

# **APPENDIX A**

"Appendix A"



19-CV-1250 & No. 20-CV-122

In the  
District of Columbia Court of Appeals

---

DEON D. COLVIN

*Plaintiff-Appellant,*

v.

HOWARD UNIVERSITY

*Defendant-Appellee*

---

Appeals Consolidated from the Superior Court of D.C.

Civil Division

Case No. 2019 CA 003573 B

Case No. 2019 CA 007929 B

The Hon Robert R. Rigsby

The Hon. Hiram E. Puig-Lugo

---

APPELLANT'S PETITION FOR REHEARING EN BANC

---

Deon D. Colvin (Pro Se)  
743 Fairmont Street, NW  
Washington, D.C. 20001  
(216) 396-8512

## STATEMENT OF PETITION

Pursuant to D.C. App. Rule 35, Appellant petitions for en banc rehearing of *Deon D. Colvin v. Howard University* on the ground that, from a deliberative standpoint, the decision of the division is flawed and conflicts with controlling authorities *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), *Richardson v. U.S.* 193 F. 3d 545 548-550 (D.C. Cir. 1999), *Lemon v. Kramer* 270 F. Supp. 3d 125, 141 (D.D.C. 2017), and *Greenpeace, Inc. v. Dow Chem. Co.*, 97 A. 3d 1053, 1059 (D.C. App. 2014).<sup>1</sup> Secondarily, as a result of the conflict with the above controlling authorities, the division's ruling also conflicts with *Williams v. Howard University*, 528 F.2d 658, 660 (D.C. Cir. 1976) and this Court's rulings on the

---

<sup>1</sup> *Haines v. Kerner*, 404 U.S. 519, 520-21 (holding allegations contained in a prisoners *pro se* complaint to less stringent standards than pleadings written by counsel in reversing a dismissal for failure to state a claim) *Richardson v. U.S.* 193 F. 3d 545 548-550 (1999) (“Courts must construe *pro se* filings liberally”)( “we hold that the District Court should have viewed Mr. Richardson’s reply to the defendant’s motion to dismiss to be an amendment to his complaint”) (“finding, that in appeal of a Fed. R. Civ. P. 12(b)(6) dismissal, that the magistrate judge should have considered a *pro se* litigant’s reply to the defendant’s answer as a motion to amend the complaint”), *Lemon v. Kramer* 270 F. Supp. 3d 125, 141 (D.D.C. 2017) (“A *pro se* plaintiff’s pleadings must be ‘considered in toto’ to determine whether they set out allegations sufficient to survive dismissal”) citing *Brown v. Whole Foods Mkt Group., Inc.*, 789 F.3d 146, 151 (D.C. Cir. 2015)(reversing the district court because it failed to consider allegations found in a *pro se* plaintiff’s opposition to a motion to dismiss); *Greenpeace, Inc. v. Dow Chem. Co.*, 97 A. 3d 1053, 1059 (D.C. App. 2014) (When considering a motion to dismiss, the reviewing court must construe all facts and inferences in favor of the non-moving party.). *U.S. v. Phillip Morris* 116 F. Supp. 2d 131, 135 (D.D.C. 2000)(“At the motion to dismiss stage, the only relevant factual allegations are the plaintiff’s, and they must be presumed to be true”).

importance of custom and practice in determining the contract in the university setting. See *Greene, v. Howard University*, 412 F. 2d 1128, 1135 (D.C. Cir. 1969), *Howard University v. Best*, 547 A. 2d 144, 151 (D.C. 1988), *Bason v. American University* 414 A. 2d. 522, 525 (D.C. 1980), and *Pride v. Howard*, 384 A. 2d 31, 35 (D.C. 1978).<sup>2</sup> A rehearing en banc is necessary to secure and maintain uniformity of the Court’s decisions and to deal with issues of exceptional importance related to direct estoppel<sup>3</sup>, and it is on these grounds that this petition for en banc rehearing is lodged.

---

<sup>2</sup> *Williams v. Howard University*, 528 F.2d 658, 660 (D.C. Cir. 1976)(a student may show their dismissal was an irrational action to avoid summary judgment); *Greene, v. Howard University*, 412 F. 2d 1128, 1135 (D.C. Cir. 1969)(“Contracts are written, and are to be read, by reference to the norms of conduct and expectations founded upon them. This is especially true of contracts in and among a community of scholars, which is what a university is. The readings of the marketplace are not invariably apt in this non-commercial context.”); *Bason v. American University* 414 A. 2d. 522, 525 (D.C. 1980)(“the usual practices of a university surrounding a contractual relationship can themselves be raised to the level of contractual obligation”); *Pride v. Howard*, 384 A. 2d 31, 35 (D.C. 1978)(“the usual procedure and practice...in effect...at the time of the contract...between Howard and appellant...constituted a part of their agreement”).

<sup>3</sup> Direct estoppel (issue preclusion) is an area of law that is often overlooked in favor of its more popular “twin” collateral estoppel. Evidence of this is found in articles and legal opinions and is aptly found in this case’s proceedings, where neither the *Colvin III* court nor Howard ever raised it as a legal issue or a defense, and thus the Appellant was never confronted with it at trial court. *When* direct estoppel applies to complaints dismissed without prejudice that are re-filed with amendments, *what* pleadings the Court is to consider for *pro se* litigants during deliberation and *how* are questions of exceptional importance. The Court’s answers will provide clarity for all complainants who are amending and re-filing after their complaints have been dismissed without prejudice. The instant action

## **QUESTION OF EXCEPTIONAL IMPORTANCE**

1. Must the court examine *all* the pleadings of a *pro se* litigant and view them as a whole, including their reply to a motion to dismiss, and view them liberally, with all facts and inferences in their favor when considering whether their complaint (or aspects of it) is precluded by direct estoppel?

## **THE COURT DIVISION'S HOLDING**

Colvin's complaint was dismissed without prejudice in *Colvin I* and he did not substantively amend his complaint in *Colvin III* to avoid direct estoppel.

## **APPELLANT'S PETITION**

Colvin petitions that he substantively amended his complaint to avoid direct estoppel (issue preclusion) and the proof that he did so can be found in (1) his amended complaints in *Colvin III*, and (2) his reply in opposition to Howard's motions to dismiss which are also a part of his pleadings. Colvin's second amended complaint was not futile, but substantive in amendment, and—along with his reply to Howard's motion to dismiss—decisively cured the deficiencies observed by the *Colvin I* (and *Colvin III*) court; thus the Court division should not

---

provides an instructive setting for elaboration of the above issues related to direct estoppel as Colvin's amendments when viewed as a whole, liberally, and with all facts and inferences in his favor are curative and hurdle this lesser known and much less often invoked legal bar.

have affirmed denial of leave to amend due to futility. The Court division misapprehended the facts in Colvin's sixth new complaint and erroneously declared it was precluded by direct estoppel, when in fact it is not. Significantly, Colvin cured his complaint in ways that were observed and acknowledged by the Court division at Oral Argument, but overlooked in its opinion. In deviation from controlling case law, the Court division failed to consider Colvin's pleadings in his opposition to Howard's motion to dismiss in *Colvin III* in its ruling.

### **THE DISMISSAL OF *COLVIN I* AND COLVIN'S AMENDMENT BURDEN IN *COLVIN III***

The *Colvin I* court dismissed without prejudice, holding that Howard's decision to dismiss was an academic decision given judicial deference as Colvin did not demonstrate Howard dismissed for reasons of improper motivation or irrational action. See Williams v. Howard (1976). Specifically, the Court held that Howard's policy was that a student is expected to complete a doctoral degree within seven years from their initial registration in the program, Colvin pursued his degree five more years than Howard's policy permitted, and Howard was within its authority to dismiss Colvin; further, Howard's policy permitted automatic dismissal of a student after seven years. Colvin asserted he was discharged based on false and inaccurate information regarding his academic record but, upon review of the facts and exhibits, the *Colvin I* Court was not persuaded. Thus

Colvin's burden in *Colvin III* in amending his pleadings was to demonstrate that Howard dismissed for reasons of improper motivation or irrational action.<sup>4</sup>

## STANDARD OF REVIEW

This Court was reviewing the lower Court's decision to grant a 12(b) motion to dismiss in *Colvin III*. In reviewing a lower Court's grant of a 12(b) motion to dismiss, this court reviews *de novo* (*Grayson v. AT & T Corporation et. al.* 15 A.3d, 219, 228, 229); does not allow technicalities in pleadings to decide the review, but construes pleadings "as to do substantial justice" (*Id.*); reviews all pleadings of a *pro se* litigant when determining if their pleadings survive a motion to dismiss, including their pleadings in reply to a motion to dismiss (*Lemon v. Kramer* 270 F. Supp. 3d 125, 141 (D.D.C. 2017), reviews *pro se* pleadings liberally (*Richardson v. U.S.* 193 F. 3d 545 548-550 (1999); assumes the pleadings of the Appellant are true and gives all possible inferences to the pleadings (*Greenpeace, Inc. v. Dow Chem. Co.*, 97 A. 3d 1053, 1059 (D.C. App. 2014) and *U.S. v. Phillip Morris* 116 F. Supp. 2d 131, 135 (D.D.C. 2000). In determining direct estoppel, the Court reviews for pleadings that cure the deficiencies cited in the prior action (*Bachman v. Bachman*, 997 S. W. 2d 23, 25-26; *Deutsch v. Flannery*, 823 F. 2d 1361, 1364-1366).

---

<sup>4</sup> This was Colvin's burden in *Colvin II* as well, but Colvin voluntarily dismissed that Complaint and filed *Colvin III* so his burden carried to the later filing.

## POINTS OF FACT AND LAW OVERLOOKED BY THE COURT

In rendering its opinion, the Court overlooked the following points of law and fact. *First*, the Court overlooked case law which states it is to review the pleadings of a *pro se* litigant *in toto* when considering if their complaint survives a motion to dismiss (*Lemon*, 270 F. Supp. 3d at 141). Thus in addition to including all of Colvin's complaints in *Colvin III* (original, amended, second amended complaint), it was to also include his pleadings in reply in opposition to Howard's motion to dismiss in its review. The division did not do the latter. This is significant to the judgment of this matter because Colvin's pleadings in his reply address and cure the deficiency cited in *Colvin I* that Colvin did not demonstrate Howard's dismissal was an irrational action.

*Second*, the Court overlooks the fact that Colvin amended his complaints to address the deficiency in *Colvin I* that Colvin had (1) gone past seven years in matriculation (2) Howard was within its authority to dismiss Colvin based on its policy that students were to complete their degrees in seven years, and (3) that Howard had a policy it could automatically dismiss after that time. Comparison of the *Colvin I* and *Colvin III* complaints demonstrates this. Compared to *Colvin I* at 8 and 9, *Colvin III* amended his complaint at 6 and 7 to show that Howard's rule states there is an *automatic* droppage from the Ph.D. program if a student hasn't completed the Ph.D. degree within seven years and that a student automatically

dropped in that manner may petition for readmission. Colvin amends to make clear the university is per Rule declaring that *all* students that do not complete within seven years will be automatically dropped, and that the droppage occurs—or is supposed to occur—automatically at the seven year mark. Colvin amended here to demonstrate that he was not in that category of student as he was never automatically dropped per Rule. Colvin amends further in his proffered second amended complaint at 8 to include footnote #1. In footnote #1 he pleads that “Howard routinely does not automatically drop 7+ year Ph.D. students, but rather accepts students to candidacy who have been in their Ph.D. programs longer than seven years if they have restored expired courses (i.e. courses older than seven years)” and then he recites verbatim the relevant wording of Howard’s candidacy application and cites where it is exhibited.<sup>5</sup> Colvin’s amendments as a whole show that Howard has a custom of not observing its “seven year automatic drop rule,” but per custom allows students to advance to Ph.D. candidacy and graduate as long

---

<sup>5</sup> In *Colvin III*, Colvin also amends his Complaint from *Colvin I* to plead that the Dean omitted from his dismissal letter that the university “encouraged him to apply after he had been in the program 7+ years,” “sanctioned his use of courses that were greater than 7 years old to meet Ph.D. course requirements” “elected to contract with him in to a Ph.D. candidacy period of a maximum five years in length” and that “in so doing, Howard knowingly and willing waived its seven (7) year expected time to degree requirement in favor of a candidacy period for Colvin as it would have been impossible for Colvin to be accepted to candidacy or have a candidacy period of any such length without such waiver.” See Colvin’s amended complaint at 34, and second amended complaint at 42 and 43.

as they have restored courses. Read liberally, Colvin is making a “customs argument” with his amendments that was not made in *Colvin I* that was acknowledged by the Court division in oral argument<sup>6</sup>, but overlooked in its opinion. According to this Court, a university’s custom and practice can indicate what each party reasonably believes the contract to be, especially within the university context, and thus the Court uses these to determine the reasonable expectations of the contracting parties. *See Howard v. Best*, 547 A. 2d 144, 149 (D.C. 1988). More pointedly, “it is well established in this jurisdiction” that custom and practice is binding if “it is proved the custom is definite, uniform, well-known, and established by clear and satisfactory evidence.” *Id.*, 149-151. With his amendments establishing Howard’s custom was to not observe its seven year time to complete policy, Colvin cures the deficiency in *Colvin I* that Howard had authority to dismiss him after seven years per its time to complete policy as he shows the policy was by custom not enforced and thus could not reasonably be

---

<sup>6</sup> At Oral Argument, when Howard’s counsel asserted Howard’s policy is to automatically drop students who do not complete their degrees within seven years, Judge Deahl stopped him abruptly and stated, “That’s obviously not true. The facts alleged in the complaint establish that’s not the case. It is clear from the complaint that Howard does not *automatically* drop after seven years and that Howard has a somewhat of a custom to allow students to go past the seven year mark.” Judge Easterly added Colvin was “not dismissed, but invited to continue and told he could stay as long as he had refreshed courses.” Judge McLeese asserted Colvin was not *automatically* dismissed after seven years. These points of fact related to custom were pled and established in Colvin’s amended and proffered second amended complaint in *Colvin III* as noted *supra*.

considered a part of their contract, or at the very least what *was* the contract included custom and practice and should be decided at trial. See *Bason*, 414 A. 2d. at 525.

*Third*, the Court overlooks that Colvin's amendments in his complaints, read liberally and with all facts and inferences in Colvin's favor, plead that Howard's dismissal was an irrational action. *Colvin III*'s amended complaint at 32, 34, 46 and 47 and second amended complaint at 42 and 43 where Colvin pleads:

(1) Howard was aware he was past seven years when it admitted him to candidacy; (2) the university encouraged him to apply to candidacy after he had been in the program 7+ years; (3) it sanctioned his courses older than 7 years to fulfill university requirements and elected to contract [with Colvin] into a Ph.D. period of a maximum of five years duration; (4) in so doing, it knowingly and willingly waived its seven (7) year expected time-to-degree requirement in favor of a candidacy period for Colvin as it would have been impossible for Colvin to be accepted to candidacy or have a candidacy period of any length without such waiver; (5) [Colvin] possessed the 72 hours of course requirements for the Ph.D. for the semester he was requesting to defend his dissertation.

The pleadings, viewed as a whole, read liberally and with all facts and inferences in Colvin's favor, is a claim that Howard's decision to dismiss him for being in the Ph.D. program past seven years was an irrational action, thus curing the deficiency in *Colvin I* that Colvin had not demonstrated irrational action.

*Fourth*, the Court incorrectly misapprehends a second time that Colvin in his *Colvin III* complaint did not cure the deficiency cited in *Colvin I* that he did not demonstrate Howard's dismissal was an irrational action. This time for a different reason: because it did not include Colvin's pleadings in his opposition to

Howard's motion to dismiss (titled *Plaintiff's Memorandum of Opposition Points and Authorities In Opposition To Defendant's Opposed Motion to Dismiss*). There Colvin's pleadings demonstrate and offer rational proof that Howard's dismissal was an irrational action. On page 4 he pleads it was "illogical, arbitrary, and capricious" for Howard to dismiss him without providing grievance. On pages 8-9 he pleads further the dismissal was "illogical" as Howard "had two earlier opportunities to dismiss him in 2011 (after 7 years in the program) and in 2014 (when Colvin was applying for candidacy) but declined to do so" but instead

"gave imprimatur to his Ph.D. candidacy only to dismiss him a mere two years later when he was seeking readmission to defend the dissertation he contracted with Howard to produce within the time he was allotted to produce it. Such behavior is illogical and capricious when viewed in the context of Howard's time allotted for candidacy (up to 5 calendar years) and its knowledge it was admitting Colvin to an undefined period of intensive research with its admission [of him] to candidacy."

Colvin essentially is making a "rational basis" argument and stating that the whole of Howard's actions in dismissing him, *i.e.*, from the time it elected to do so (when he was petitioning to defend his dissertation), and the way it elected to do so (without allowing grievance), made no sense considering its candidacy policy, what candidacy actually is and what it was admitting Colvin to in 2014, which was a "undefined period of intensive research." In short, Colvin is stating considering all Howard's actions and policies its dismissal lacked a rational basis and therefore was an irrational action. When this pleading is viewed in the context of Colvin's

other pleading, *i.e.* that Howard's policy was not to dismiss after seven years but allow students who had been in the program to graduate as long as they had viable courses, it is clear that Colvin's reply pleading to Howard's motion to dismiss cured the deficiencies cited by the *Colvin I* court that Colvin did not demonstrate improper motivation or irrational action. The Court division overlooked this.<sup>7</sup>

*Fifth*, the Court misapprehends as a matter of fact that Colvin is stating he was hurt by Howard's use of a later 1979 manual (allegedly amended in 1983) over an earlier 1979 manual (*Judgment*, p. 20-21). The Court overlooks the fact

---

<sup>7</sup> Lastly on this point, and this is key, the Court division overlooks that in *Colvin I*, in Colvin's reply to Howard's motion to dismiss on page 7 Colvin argues to the *Colvin I* court that Howard's dismissal was based on "improper motivation," an argument trail that was rejected; whereas in *Colvin III* in Colvin's reply to Howard's motion to dismiss on pages 4, 8 and 9 he switches and argues Howard's dismissal was an "irrational action." Colvin saw that his "improper motivation" argument had been flatly rejected, so in *Colvin III* he amended to make an argument his dismissal was an "irrational action." The former argument (i.e. Howard's dismissal was "improperly motived" by the belief Colvin had unviable courses, had applied for admission twice and failed to defend his dissertation on two separate occasions, and the political science faculty had recommended his dismissal) was based on a different set of facts than the latter (i.e. Howard's dismissal action was an "irrational action" because it knew Colvin had been in the program 7+ years, it invited him to apply to candidacy, approved his courses that were 7+ years old, did not dismiss in 2011, did not dismiss in 2014, approved his candidacy to an undefined period of intense research, and then chose to dismissed in 2016 when he was petitioning to defend the dissertation he contract with Howard to produce within the five year time period he was allotted per Howard's candidacy rule for production. Hence the *Colvin I* court rejected Colvin's "improper motivation" argument, and never deliberated on Colvin's "irrational action" argument—a different argument with different set of facts that Colvin would amend to make in *Colvin III*.

that Colvin amended his complaint and demonstrates this is not true. Compared to *Colvin I*, Colvin amended his complaint in *Colvin III* to use the 1979 manual (hereafter “Manual 2”) “alleged” by Howard to be the correct one.<sup>8</sup> Compared to the *Colvin I* complaint at 33, 34, 35, 36, 37 where Colvin claimed all his courses from fall 2004 to fall 2006 were viable based on the course viability standards in one 1979 manual (hereafter “Manual 1”), in the *Colvin III* complaint he amends his claims at 24, 25, 29, 30, 32, 46 to reflect the more stringent standards in Manual 2 to plead the Dean “omitted” several facts in his letter related to Colvin’s courses and that his courses from fall 2006 to Spring 2015 were restored and satisfied the viable 72 graduate credits he needed to defend his dissertation in Fall 2016, which he was requesting readmission to do. In addition to showing that Colvin had the required number of courses no matter the 1979 manual used, the further significance of the above amendments is that by using the manual the Dean allegedly used for evaluation of Colvin’s courses, Colvin demonstrates unequivocally that Howard dismissed him based on a faulty academic review of his courses, which the Dean noted in his letter to the Chair was the reason for his dismissal (see footnote 9 *infra*) (along with receiving recommendation from the

---

<sup>8</sup> Colvin uses the term “alleged” here because *Howard* claimed that the manual it presented was an amended 1983 version, but this was never established as a fact during lower court proceedings. Colvin contested in his pleadings that this claim is not verifiable, as the manuals outwardly and inwardly are almost identical except for their course viability sections.

Graduate Faculty) and not Howard's time to complete rule.<sup>9</sup> Hence *Colvin III*'s employment of the 1979 manual ("Manual 2") is another way Colvin cures the deficiency cited in *Colvin I* that Howard dismissed based on its seven year rule and had the authority to do so, *i.e.* with additional claims and pleadings (and even document evidence) that demonstrate *the 7 year completion rule was not why Howard dismissed him.*

*Sixth*, the court misapprehends the factual basis of Colvin's sixth cause of action proffered in his second amended complaint. This Court states that Colvin requested leave to amend to add a new complaint "stemming from the alleged existence of two conflicting degree manuals used by Howard," that Howard should have used the earlier manual "in determining which of his older courses remained viable" and that he was hurt by Howard's use of a later manual. The Court states:

[In his sixth amended complaint] Colvin raised this same argument [that he made in *Colvin I* in his opposition to the motion to dismiss]—that Howard should

---

<sup>9</sup> In *Colvin III*'s second amended Complaint at 15, Exhibit 6 Colvin provides the letter that the Dean sent to the Chair in April 2016 that details exactly why he was dismissing Colvin—*i.e.* his evaluation that Colvin had a number of *unviable* courses, and not the seven year rule. While this letter is not necessary to make Colvin's point that the Dean's decision was based on omission and faulty evaluation, the Court may look at this exhibit while considering Colvin's pleadings. See *Lemon*, 270 F. Supp. 3d at 141 (A court considering ...a motion [to dismiss] may "consider attachments to the complaint as well as the allegations contained in the complaint itself," *English v. District of Columbia* , 717 F.3d 968, 971 (D.C. Cir. 2013), and should presume that the complaint's factual allegations are true, construing them liberally in the plaintiff's favor, *see, e.g. , United States v. Philip Morris, Inc. , 116 F.Supp.2d 131, 135* (D.D.C. 2000).

have applied the earlier degree manual in determining which of his older courses were viable..." (p.21)

This is wholly incorrect. Colvin never stated Howard should have applied "the earlier degree manual in determining which of his older courses remained viable" as the court misapprehends.<sup>10</sup> Rather, Colvin pled at 100, 103, 106, 107, and 108 that Howard's sixth breach is that it had two outwardly indistinguishable 1979 manuals--*that you could not even tell which manual was amended and which was not, or even if an amended manual existed*—with different course viability standards and thus no discernable course viability standards; and that this was a breach of contract that hurt him when one of the manuals ("manual 2") was used that led to his dismissal, when it was not clear which manual was operative and thus what Howard's course viability standards for the Ph.D. degree actually were, and that he never could have known such. Colvin was not stating he was hurt by the use of manual 2. The Court misapprehended this fact because Colvin had already claimed via the basis of his *Colvin III* complaint and pleading at 105 (that only his fall 2004 to spring 2006 courses were excluded, not his fall 2006 courses) that no matter what manual was used he had the required number of viable courses

---

<sup>10</sup> The Court confuses Colvin's pleading in his sixth cause of action with his argument in Section I of his *Motion For Relief From Order, Reopening of the Case, and for Leave to Amend*. In the latter, Colvin moves the *Colvin III* court for Relief from its order dismissing the case on the ground that the Court incorrectly used a quote from Howard's 2007 manual to grant Howard's motion to dismiss, when the earlier 1979 manual was what applied to his case and should have been used.

(see point *Five* above).<sup>11</sup> Colvin was simply saying that the use of a stricter manual (on course viability) hurt him because it was what led *Howard* to error when it evaluated his courses. Thus Colvin's sixth claim sits as a valid additional cause of action.

*Finally*, as noted above, the division misapprehended the facts on how Colvin amended his second amended complaint and affirmed the *Colvin III* court's denial of leave to amend on the basis of futility. Colvin petitions the Court to reverse that decision based on his showing above (points *First-Sixth*) that his second amended complaint—which incorporated all Colvin's previous complaint amendments plus additions—was not futile, but along with his reply to Howard's motion to dismiss, cured the deficiencies cited by the *Colvin I* court (and the *Colvin III* court, which also dismissed based on Howard's seven year time to complete policy) and avoided direct estoppel.

## **CONCLUSION**

---

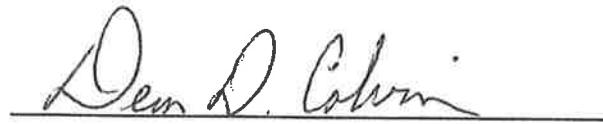
<sup>11</sup> See also Colvin's statements at Oral argument where he noted he used the 1979 version Howard presented in drafting his *Colvin III* complaint. Also, per Super. Ct. Rule 9(b) in his *Colvin I* and *Colvin III* complaints at 44, Colvin avers Howard made mistakes in reviewing his academic record, and in the latter at 25, 29, 30, 31, 32, 34 he states with additional particularity what the mistakes were in a way that Howard could respond (see *Deutsch*, 823, F.2d, 1365-66), thus he cured a deficiency noted by the *Colvin I* court that he had not provided persuasive evidence his dismissal was due to factual errors.

Colvin amended his complaint in *Colvin III* with new facts and claims that cured *Colvin I* deficiencies. The Court division's statements during Oral Argument to a great extent attest to this fact.<sup>12</sup> The Court division overlooked its charge to consider all Colvin's pleadings and misapprehended—and failed to construe liberally and with all inferences in his favor—other facts and claims in Colvin's amended complaints and pleadings that were curative. Hence Colvin petitions this honorable Court to rehear this case en banc to render a decision consistent with controlling legal precedents cited above regarding *pro se* litigants' pleadings in motion to dismiss cases, and other case law regarding the role of custom and practice in the interpretation of contracts in the university setting.

September 12, 2021

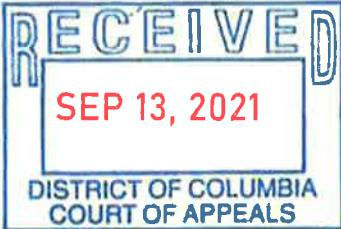
Respectfully Submitted,

DEON D. COLVIN

  
Deon D. Colvin  
Appellant (*Pro Se*)  
743 Fairmont Street, N.W. #211  
Washington, D.C. 20001  
T: 216-396-8512 E-mail:  
[DeonColvin@aol.com](mailto:DeonColvin@aol.com)

---

<sup>12</sup> See footnote 6 above.



19-CV-1250 & No. 20-CV-122

In the  
District of Columbia Court of Appeals

DEON D. COLVIN

*Plaintiff-Appellant,*

v.

HOWARD UNIVERSITY

*Defendant-Appellee*

Appeals Consolidated from the Superior Court of D.C.

Civil Division

Case No. 2019 CA 003573 B

Case No. 2019 CA 007929 B

The Hon Robert R. Rigsby

The Hon. Hiram E. Puig-Lugo

APPELLANT'S PETITION FOR REHEARING BY THE DIVISION

Deon D. Colvin (Pro Se)  
743 Fairmont Street, NW  
Washington, D.C. 20001  
(216) 396-8512

relevant wording of Howard's candidacy application and references the exhibit.<sup>3</sup>

Read liberally, Colvin is making a "customs argument" with his amendments that was not made in *Colvin I* that was acknowledged by the division at Oral Argument<sup>4</sup>, but overlooked by the division in its opinion.<sup>5</sup> With his amendments

---

<sup>3</sup> In *Colvin III*, Colvin also amends his Complaint from *Colvin I* to plead that the Dean omitted from his dismissal letter that the university "encouraged him to apply after he had been in the program 7+ years," "sanctioned his use of courses that were greater than 7 years old to meet Ph.D. course requirements" "elected to contract with him in to a Ph.D. candidacy period of a maximum five years in length" and that "in so doing, Howard knowingly and willing waived its seven (7) year expected time to degree requirement in favor of a candidacy period for Colvin as it would have been impossible for Colvin to be accepted to candidacy or have a candidacy period of any such length without such waiver." See Colvin's amended complaint at 34; and second amended complaint at 42 and 43.

<sup>4</sup> At Oral Argument, when Howard's counsel asserted the seven year automatic drop policy as the authority for Howard's dismissal, Judge Deahl stopped him abruptly and stated "that's not true" and that "it is clear from the complaint that Howard does not automatically drop after seven years and that Howard has somewhat of a custom to allow students to go past the seven year mark." Judge Easterly added that Colvin was "invited to apply after seven years and told he could stay as long as he had refreshed courses." Judge McLeese asserted Colvin was not *automatically* dismissed after seven years. These were issues that were pled and established in Colvin's amended and proffered second amended complaint in *Colvin III* as noted *supra*.

<sup>5</sup> Per this Court, a university's custom and practice can indicate what each party reasonably believes the contract to be, especially within the university context, and thus the Court uses it to determine the reasonable expectations of the contracting parties. *See Howard v. Best*, 547 A. 2d 144, 149 (D.C. 1988). More pointedly, "it is well established in this jurisdiction" that custom is binding if "it is proved the custom is definite, uniform, well-known, and established by clear and satisfactory evidence." *Id.* 149-151. Howard's candidacy application is that binding proof.

# **APPENDIX B**

"Appendix B"

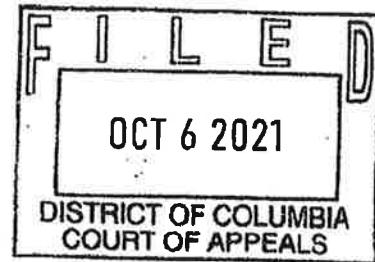
District of Columbia  
Court of Appeals

Nos. 19-CV-1250 & 20-CV-122

DEON D. COLVIN,

Appellant,

v.



CAB3573-19

CAB7929-19

HOWARD UNIVERSITY,

Appellee.

BEFORE: Glickman, Thompson, † Beckwith, Easterly, \* McLeese, \* and Deahl, \* Associate Judges.

**O R D E R**

On consideration of appellant's unopposed motion to file excess-pages of appellant's lodged petition for rehearing and lodged petition for rehearing *en banc*, and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

ORDERED that appellant's unopposed motion to file excess-pages of appellant's lodged petition for rehearing and lodged petition for rehearing *en banc* is granted, and appellant's petitions are filed. It is

FURTHER ORDERED by the merits division\* that appellant's petition for rehearing is denied. It is

FURTHER ORDERED that appellant's petition for rehearing *en banc* is denied.

**PER CURIAM**

Chief Judge Blackburne-Rigsby did not participate in these cases.

† Judge Thompson was an Associate Judge of the court at the time of argument. Judge Thompson's term expired Saturday, September 4, 2021, however, she will continue to serve as an Associate Judge until her successor is confirmed. *See* D.C. Code § 11-1502 (2012 Repl.) ("Subject to mandatory retirement at age 74 and to the provisions of subchapters II and III of this chapter, a judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 shall serve for a term of fifteen years, and upon completion of such term, such judge shall continue to serve until the judge's successor is appointed and qualifies.").

Copies to:

Honorable Robert R. Rigsby

Director, Civil Division

Copy mailed to:

Deon D. Colvin  
743 Fairmont Street, NW  
Apartment 211  
Washington, DC 20001

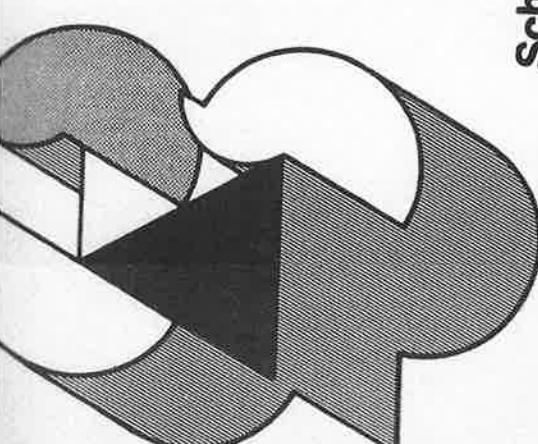
Copy e-served to:

Zachary I. Shapiro, Esquire

pii

# **APPENDIX C**

"Appendix C"



**The Graduate  
School of Arts & Sciences**

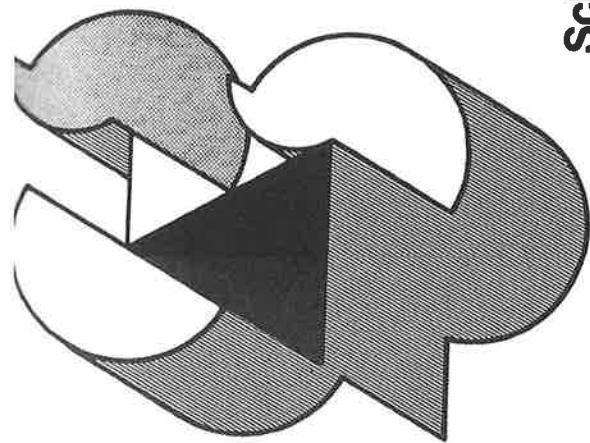
**RULES AND REGULATIONS FOR THE  
PURSUIT OF ACADEMIC DEGREES**

Approved by The Board of Trustees

Effective October 1, 1979

HOWARD UNIVERSITY • WASHINGTON, D.C. 20059 • (202) 636-6800





**The Graduate  
School of Arts & Sciences**

**RULES AND REGULATIONS FOR THE  
PURSUIT OF ACADEMIC DEGREES**

Approved by The Board of Trustees

Effective October 1, 1979

	Page
<b>ARTICLE IV.</b> ENGLISH COMPETENCY AND EXPOSITORY WRITING REQUIREMENT ..	9
<b>ARTICLE V.</b> GENERAL REQUIREMENTS FOR MASTER'S DEGREES .....	9
Section 1. Residence and Course Requirements .....	9
A. Minimum Requirements .....	9
B. Residency and Transfer of Credit .....	10
C. Length of Time for Course Viability .....	10
D. Length of Time for Completion of the Master's Degree .....	10
E. Enrollment in Thesis Courses .....	10
F. Assignment of Grades for Thesis Courses .....	10
G. Enrollment in the Terminal Semester .....	11
Section 2. Grades and Academic Status .....	11
Section 3. Student Program of Study .....	11
Section 4. Transfer of Credit to the Master's Degree .....	11
Section 5. Foreign Language Requirement .....	11
Section 6. Admission to Candidacy for the Master's Degree .....	12
Section 7. Thesis .....	13
Section 8. Final Examination for Master's Degrees .....	14
Section 9. A Sample Title Page for a Master's Thesis .....	15
<b>ARTICLE VI.</b> GENERAL REQUIREMENTS FOR DOCTOR OF PHILOSOPHY DEGREES .....	16
Section 1. Residence and Course Requirements .....	16
A. Minimum Requirements .....	16
B. Residency and Transfer of Credit .....	16
C. Length of Time for Course Viability .....	17
D. Length of Time for Completion of the Ph.D. Degree .....	17
E. Enrollment in Dissertation Courses .....	17
F. Assignment of Grades for Dissertation Courses .....	17
Section 2. Enrollment in the Terminal Semester .....	17
Section 3. Grades and Academic Status .....	17
Section 4. Program of Study .....	18
<b>ARTICLE VII.</b> APPEAL OF ACADEMIC DECISIONS .....	26
Section 11. A Sample Title Page for a Ph.D. Dissertation .....	23
Section 12. Defense of the Dissertation .....	22
Section 13. Final Oral Examination and Defense of the Dissertation .....	19
Section 14. Submission of Dissertation Topic .....	21
Section 15. Dissertation .....	22
Section 16. Admission to Candidacy for the Master's Degree .....	18
Section 17. Transfer of Credit to the Ph.D. Degree .....	18
Section 18. Transfer of Credit for Holders of Bachelor's Degree .....	18
Section 19. Transfer of Credit for Holders of the Master's Degree .....	18
Section 20. Foreign Language Requirement .....	19
Section 21. Admission to Candidacy for the Ph.D. Degree .....	19
Section 22. Doctoral Qualifying Examinations .....	21
Section 23. Submission of Dissertation Topic .....	22
Section 24. Dissertation .....	22
Section 25. Final Oral Examination and Defense of the Dissertation .....	23

## ARTICLE VI. GENERAL REQUIREMENTS FOR DOCTOR OF PHILOSOPHY DEGREES

The degree of Doctor of Philosophy will be awarded upon the student's demonstration of a broad understanding of certain fields of knowledge, ability to conduct independent research, and ability to organize research into an acceptable dissertation that will represent a contribution to a field of study.

### Section 1. Residence and Course Requirements

The completion of minimum course requirements or credits does not guarantee receipt of the degree.

**A. Minimum Requirement.** The minimum residence and course requirements for the degree are as follows:

The completion of a course of study beyond the bachelor's degree shall cover a minimum of six semesters of full-time residence and graduate study in courses (at least 9 credits per semester) yielding 72 graduate credits (inclusive of dissertation) or the equivalent in such courses if extended over a longer period.

At least four semesters of residence and full-time study (at least 9 credits per semester) or the equivalent, shall be in the Graduate School of Arts and Sciences, Howard University. Two of these four semesters of residence and full-time study, or the equivalent, shall be consecutive.

A minimum of 12 credits of work toward the degree shall be pursued after admission to candidacy.

**B. Residency and Transfer of Credit.** Residency in graduate programs (Ph.D.) at Howard University cannot be transferred. Thus, although a certain number of hours may be transferred from other accredited graduate institutions, such hours may not be used to meet the residence requirements. The number of hours allowed for transfer is discussed under the section on "Transfer of Credit to the Ph.D."

**C. Length of Time for Course Viability.** Except upon written recommendation of the head of the department concerned, based upon special examination of the candidate, no course that was pursued more than seven years prior to the term in which the student presents himself for the final examination will be credited toward the fulfillment of the requirements for the degree.

### D. Length of Time for Completion of the Ph.D. Degree.

Students are expected to complete a doctoral degree within a maximum of seven calendar years from the date of initial registration in the program. Those who have not completed the degree within that time will be automatically dropped from the program. Students dropped in this manner may petition for readmission for a specified period upon recommendation of the departmental Graduate Faculty and approval of the Executive Committee of the Graduate School.

**E. Enrollment in Dissertation Courses.** As long as a student is using the University facilities, or is conferring in person with his dissertation advisor, he must continue to enroll in a dissertation course. Such a student shall register as an auditor if he has already accumulated the maximum number of hours permitted for the dissertation courses. A Ph.D. student is not permitted to register for dissertation courses until after admission to candidacy.

**F. Assignment of Grades for Dissertation Courses.** Dissertation courses shall be assigned a grade of Incomplete. These incomplete grades are removed after the final oral exam on the dissertation.

**G. Enrollment in the Terminal Semester.** A candidate for a degree must be enrolled in the Graduate School of Arts and Sciences during the semester in which the degree is conferred.

### Section 2. Grades and Academic Status

A student with no previous graduate work is subject to the academic requirements of the master's program until he, or she, has earned the first 30 credits. A cumulative average of 3.00 (B) is required for graduation. A department will recommend courses in which grades of B or better will be required. A student who accumulates more than fifteen (15) credits with grades below B (inclusive of the master's) in a Ph.D. program will be dropped from

Satisfactorily demonstrated expository writing proficiency to the Office of Educational Affairs.

Passed the foreign language examination or fulfilled the approved substitute (where applicable).

Submitted an approved topic and proposal for dissertation research.

Received the recommendation of his/her major department.

Secured the approval of the Executive Committee of the Graduate School of Arts and Sciences.

A student is admitted to candidacy for the doctoral degree by vote of the Graduate Faculty. The candidate for admission shall make formal application to the head of his major department and the Dean of the Graduate School, who shall present the student's record to the Faculty of the Graduate School. A student must be admitted to candidacy no later than the semester before he/she expects his degree.

In order to be admitted to candidacy for the Ph.D. degree, a student must have received approval of a topic for dissertation research and a copy of the proposal with the signature of the advisor and the committee members. The proposal must be submitted along with the candidacy form.

Upon the student's admission to candidacy, the major department shall appoint a committee of at least three members of the Graduate Faculty to supervise the studies upon which his dissertation will be based, and the department shall inform the Dean of the Graduate School of the personnel of the committee.

Candidacy for the Ph.D. degree shall be valid for no more than five calendar years. Any student whose candidacy has expired may make application to the Executive Committee of the Graduate School for readmission. The department in which the student is seeking the degree shall determine the conditions under which he, or she, may be reinstated, subject to the approval of the Executive Committee of the Graduate School.

The responsibility for fulfilling these requirements on time is that of the student. Students should consult with the Dean of the

Graduate School if in doubt as to any of the requirements. Students should note carefully the specific requirements of their departments relative to admission to candidacy and regard them as additional to these general requirements.

Regulations pertaining or related to admission to candidacy should be interpreted as applicable to the date of actual approval by the Executive Committee of the Graduate School. However, deadline dates established by the Graduate School for submitting applications must be honored and no exceptions will be made.

## **Section 7. Doctoral Qualifying Examinations**

The student will be required to pass a comprehensive examination administered and supervised by the department in which he is seeking his degree. This examination will be given only once each semester. A student may take the examination while earning his first 48 credits towards the Ph.D. degree, or as required by the department concerned. Any student who fails the examination for a second time will not be allowed to continue work for the Ph.D. degree.

Qualifying examinations are: (1) a screening examination which covers the early portion of the student's program and establishes that the student is of doctoral quality and capable of doing research at this level, (2) a preliminary comprehensive examination which covers all or the major portion of the student's program. Departments may require both a screening examination and a preliminary comprehensive examination or a preliminary comprehensive examination only. This examination is referred to as preliminary in the sense that it precedes the final oral defense of the dissertation. In practice, it is the final comprehensive examination covering all course work.

In instances where a department requires a screening examination, it is expected that the results of such an examination will be reported in the Application for Admission to Candidacy and influence the department's decision to permit the continued pursuit of the degree. The screening examination may be written or oral. Such an examination must be administered as soon as possible during or after completion of two semesters in residence. If a screening examination is used, it is expected that a possible dissertation topic would be considered about the same time and pending approval of the doctoral committee the student would be eligible to continue in

# **APPENDIX D**

*"Appendix D"*



**The Graduate  
School of Arts & Sciences**

**RULES AND REGULATIONS FOR THE  
PURSUIT OF ACADEMIC DEGREES**

Approved by The Board of Trustees

**Effective October 1, 1978**

<b>ARTICLE IV.</b>	<b>GENERAL REQUIREMENTS FOR THE MASTER'S DEGREE</b>	9
<b>ARTICLE V.</b>	<b>GENERAL REQUIREMENTS FOR THE MASTER'S DEGREE</b>	9
<b>Section 1.</b>	<b>Residence and Course Requirements</b>	9
<b>A.</b>	<b>Minimum Requirements</b>	9
<b>B.</b>	<b>Residency and Transfer of Credit</b>	9
<b>C.</b>	<b>Course Viability</b>	10
<b>D.</b>	<b>Length of Time for Completion of the Master's Degree</b>	10
<b>E.</b>	<b>Enrollment in Thesis Courses</b>	10
<b>F.</b>	<b>Assignment of Grades for Thesis Courses</b>	10
<b>G.</b>	<b>Enrollment in the Terminal Seminar</b>	11
<b>Section 2.</b>	<b>Grades and Academic Status</b>	11
<b>Section 3.</b>	<b>Program of Study</b>	11
<b>Section 4.</b>	<b>Transfer of Credit to the Master's Degree</b>	11
<b>Section 5.</b>	<b>Foreign Language Requirement</b>	11
<b>Section 6.</b>	<b>Admission to Candidacy for the Master's Degree</b>	11
<b>Section 7.</b>	<b>Final Examination for the Master's Degree</b>	12
<b>Section 8.</b>	<b>A Sample Title Page for a Master's Thesis</b>	13
<b>Section 9.</b>	<b>A Sample Title Page for a Master's Thesis</b>	14
<b>ARTICLE VI.</b>	<b>GENERAL REQUIREMENTS FOR THE DOCTOR OF PHILOSOPHY DEGREE</b>	15
<b>Section 1.</b>	<b>Residence and Course Requirements</b>	16
<b>A.</b>	<b>Minimum Requirements</b>	16
<b>B.</b>	<b>Residency and Transfer of Credit</b>	16
<b>C.</b>	<b>Course Viability</b>	17
<b>D.</b>	<b>Length of Time for Completion of the Ph.D. Degree</b>	17
<b>E.</b>	<b>Enrollment in Dissertation Courses</b>	17
<b>F.</b>	<b>Assignment of Grades for Dissertation Courses</b>	17
<b>G.</b>	<b>Enrollment in the Terminal Semester</b>	17
<b>Section 2.</b>	<b>Grades and Academic Status</b>	17
<b>Section 3.</b>	<b>Program of Study</b>	18

<b>Section 4.</b>	<b>Transfer of Credit to the Ph.D. Degree</b>	18
<b>A.</b>	<b>Transfer of Credit for Holders of Bachelor's Degrees</b>	18
<b>B.</b>	<b>Transfer of Credit for Holders of the Master's Degree</b>	18
<b>Section 5.</b>	<b>Foreign Language Requirement</b>	19
<b>Section 6.</b>	<b>Admission to Candidacy for the Ph.D. Degree</b>	19
<b>Section 7.</b>	<b>Ph.D. Qualifying Examination</b>	21
<b>Section 8.</b>	<b>Submission of Dissertation Topic</b>	22
<b>Section 9.</b>	<b>Dissertation</b>	22
<b>Section 10.</b>	<b>Final Oral Examination and Defense of the Dissertation</b>	23
<b>Section 11.</b>	<b>A Sample Title Page for a Ph.D. Dissertation</b>	25
<b>ARTICLE VII. APPEAL OF ACADEMIC DECISIONS</b>	26	

## ARTICLE VI. GENERAL REQUIREMENTS FOR DOCTOR OF PHILOSOPHY DEGREE

The degree of Doctor of Philosophy will be awarded upon the student's demonstration of a broad understanding of certain fields of knowledge, ability to conduct independent research, and ability to organize research into an acceptable dissertation that will represent a contribution to a field of study.

### Section 1. Residence and Course Requirements

The completion of minimum course requirements or credits does not guarantee receipt of the degree.

#### A. Minimum Requirements. The minimum residence and course requirements for the degree are as follows:

The completion of a course of study beyond the bachelor's degree shall cover a minimum of six semesters of full-time residence and graduate study in courses (at least 9 credits per semester) yielding 72 graduate credits (exclusive of dissertation) or the equivalent in such courses if extended over a longer period.

At least four semesters of residence and full-time study (at least 9 credits per semester) or its equivalent, shall be in the Graduate School of Arts and Sciences, Howard University. Two of these four semesters of residence and full-time study, or the equivalent, shall be consecutive.

A minimum of 12 credits of work toward the degree shall be pursued after admission to candidacy.

B. Residency and Transfer of Credit. Residency in graduate programs (Ph.D.) at Howard University cannot be transferred. Thus, although a certain number of hours may be transferred from other accredited graduate institutions, such hours may not be used to meet the residence requirements. The number of hours allowed for transfer is discussed under the section on "Transfer of Credit to the Ph.D."

C. Course Viability. Any course that was passed more than seven (7) years prior to the term in which the student presents himself or herself for the final oral examination will not be credited toward fulfillment of the requirements for the degree.

However, credit for such course may be restored and counted toward the fulfillment of the requirements for the degree provided (1) the chairperson submits to the Dean a written petition/recommendation and (2) the student has passed:

- (1) a comprehensive examination in the field in which the course fails, or
- (2) a written examination especially administered for the purpose of restoration of credits in the course concerned.

Under no circumstances, however, may a student receive credit toward the degree for a course which the student passed more than ten (10) years prior to the time the student presents himself or herself for the final examination.

D. Length of Time for Completion of the Ph.D. Degree.  
Students are expected to complete a doctoral degree within a maximum of seven calendar years from the date of initial registration in the program. Those who have not completed the degree within that time will be automatically dropped from the program. Students dropped in this manner may petition for readmission for a specified period upon recommendation of the departmental Graduate Faculty and approval of the Executive Committee of the Graduate School.

E. Enrollment in Dissertation Courses. As long as a student is using the University facilities, or is conferring in person with his dissertation advisor, he must continue to enroll in a dissertation course. Such a student shall register as an auditor if he has already accumulated the maximum number of hours permitted for the dissertation courses. A Ph.D. student is not permitted to register for dissertation courses until after admission to candidacy.

F. Assignment of Grades for Dissertation Courses. Dissertation courses shall be assigned a grade of incomplete. These incomplete courses are removed after the final oral exam on the dissertation.

G. Enrollment in the Terminal Semester. A candidate for a degree must be enrolled in the Graduate School of Arts and Sciences during the semester in which the degree is conferred.

Completed the number of credits in graduate courses specified by the department.

Passed the qualifying examination administered by the department concerned.

Satisfactorily demonstrated expository writing proficiency to the Office of Educational Affairs.

Passed the foreign language examination or fulfilled the approved substitute (where applicable).

Submitted an approved topic and proposal for dissertation research.

Received the recommendation of his/her major department.

Secured the approval of the Executive Committee of the Graduate School of Arts and Sciences.

A student is admitted to candidacy for the doctoral degree by vote of the Graduate Faculty. The candidate for admission shall make formal application to the head of his major department and the Dean of the Graduate School, who shall present the student's record to the Faculty of the Graduate School. A student must be admitted to candidacy no later than the semester before his/her experts his degree.

In order to be admitted to candidacy for the Ph.D. degree, a student must have received approval of a topic for dissertation research and a copy of the proposal with the signature of the advisor and the committee members. The proposal must be submitted along with the candidacy form.

Upon the student's admission to candidacy, the major department shall appoint a committee of at least three members of the Graduate Faculty to supervise the studies upon which his dissertation will be based, and the department shall inform the Dean of the Graduate School of the personnel of the committee.

Candidacy for the Ph.D. degree shall be valid for no more than five calendar years. Any student whose candidacy has expired may make application to the Executive Committee of the Graduate School for readmission. The department in which the student is seeking the degree shall determine the conditions under which he, or

she, may be reinstated, subject to the approval of the Executive Committee of the Graduate School.

The responsibility for fulfilling these requirements on time is that of the student. Students should consult with the Dean of the Graduate School if in doubt as to any of the requirements. Students should note carefully the specific requirements of their departments relative to admission to candidacy and regard them as additional to these general requirements.

Regulations pertaining or related to admission to candidacy should be interpreted as applicable to the date of actual approval by the Executive Committee of the Graduate School. However, deadline dates established by the Graduate School for submitting applications must be honored and no exceptions will be made.

#### Section 7. Ph.D. Qualifying Examinations

The student will be required to pass a comprehensive examination administered and supervised by the department in which he is seeking his degree. This examination will be given only once each semester. A student may take the examination while earning his first 48 credits towards the Ph.D. degree, or as required by the department concerned. Any student who fails the examination for a second time will not be allowed to continue work for the Ph.D. degree.

Qualifying examinations are: (1) a screening examination which covers the early portion of the student's program and establishes that the student is of doctoral quality and capable of doing research at this level, (2) a preliminary comprehensive examination which covers all or the major portion of the student's program. Departments may require both a screening examination and a preliminary comprehensive examination or a preliminary comprehensive examination only. This examination is referred to as preliminary in the sense that it precedes the final oral defense of the dissertation. In practice, it is the final comprehensive examination covering all course work.

In instances where a department requires a screening examination, it is expected that the results of such an examination will be reported in the Application for Admission to Candidacy and influences the department's decision to permit the continued pursuit of the degree. The screening examination may be written or oral. Such an examination must be administered as soon as possible during or after completion of two semesters in residence. If a screening

# **APPENDIX E**

"Appendix E"

**VERIFICATION CHECKLIST  
FOR SUBMISSION OF REQUESTED INFORMATION**

What is the total number of hours required for the Ph.D. degree in your department, beyond the bachelor's degree?  
72.00

*(A number less than 72 does not meet the requirements of the Graduate School, and you should not submit the application.)*

Name <u>Dean D. Calvin</u> , I.D. <u>01056129</u>	Yes	No
Have you been enrolled in the Ph.D. degree program for more than seven years?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If your answer is yes to the previous question, have you restored or re-taken expired courses (i.e., courses completed more than seven years ago)? Do not submit if the answer is NO	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If your answer is yes to the previous question, have you attached copies of course restoration forms to the application? Do not submit if the answer is NO	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Did you list ONLY non-dissertation courses that were taken while enrolled in the Ph.D. program in Section V.A. of the form? Revise if the answer is NO	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Did you list in Section V.C. of the form ONLY courses taken to fulfill an earned master's degree, not to exceed 24 semester (36 quarter) credit hours? I will not be using any courses from my master's degree for this application.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If you earned a master's degree from another institution and you listed credits in Section V.C., did you attach a copy of a transcript from that institution? <i>A non-Howard transcript is required if you listed courses in Section V.C.</i>  <i>I did not list any credits or transcript because I did not list courses in V. C and will not be using any courses from my master's degree for this application.</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
From your approved program of study, did you list courses that you are currently taking and those that you plan to take to meet the minimum requirements in Sections V.B. and V.E.?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Excluding credit hours listed in Section V.D., does the total number of credit hours in Sections V.A. – V.E. add to at least the number of credit hours required for the degree? Do not submit if the total number is less than the minimum requirement	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Are ALL the examination committee members listed in Section V.F. current regular (not ex-officio) members of the Graduate Faculty? Revise if the answer is No.  This requirement no longer applies to my degree program.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Is the Dissertation Proposal Approval Form signed by the committee members listed in Section V.F.? <i>The original and not a copy of this form must be submitted. Obtain signatures from ALL committee members if the answer is NO.</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Did you attach a copy of your Expository Writing certificate? Find the certificate or contact the EWP office in the Graduate School if the answer is NO. Did you attach a copy of your RCR certificate? Find the certificate in your records or contact the Office of Retention in the Graduate School, if the answer is NO.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If applicable, did you attach an IRB approval letter? <i>You must not submit the application without IRB approval if required for your project</i>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

It is the responsibility of the student and his or her faculty mentor to ensure that all sections of the form are completed accurately and all required attachments are submitted with the application. Failure to do so will result in a delay (sometimes as much as one semester) of candidacy if a less than perfect application is submitted. Applications submitted in this manner will not be accepted and reviewed by the Graduate School.

IV. Residence in the Graduate School at Howard University and Grade Point Average (G.P.A.)

A. Number of Semesters in Residence in the Ph.D. Degree Program 19

B. 1. Number of credits earned 93.00 2. Number of credits required for the Ph.D. Degree in your department (*beyond the bachelor's degree*) 72.00

C. Date Originally Admitted to the Ph.D. Degree Program Fall 2004

D. Current G.P.A. 4.0

V. Graduate Program at Howard University

A. List all Ph.D. courses completed within the past seven (7) years at Howard University (Including Consortium courses, if any)

CRN-Course No.	Title	Grade	Semester/Yr. Completed	Cr. Hrs.
POLS-234	Black Ideology	A	Fall 2007	3
POLS-257	Multivariate Data Analysis	A	Fall 2007	3
POLS-260	Black Electoral Politics	A	Fall 2007	3
CUMD-201	Current Problems: Democratic Theory	A	Spring 2008	3
POLS-209	Organizational Theory	A	Spring 2008	3
POLS-268	Seminar in Black Politics II	A	Spring 2008	3
POLS-306	IS: Methodology	A	Spring 2008	1
POLS-350	Advanced Research & Survey Design	A	Fall 2008	1
POLS-350	Advanced Research & Survey Design	A	Spring 2009	1
POLS-354	Advanced Research & Survey Design	A	Fall 2009	9
POLS-398	Doctoral Seminar	P	Fall 2009	0

**B. List all courses currently taking**

CRN-Course No.		Cr. Hrs.
POLS-350	Advanced Research & Survey Design	1

C. List the courses accepted from other degree programs to satisfy Ph.D. Degree requirements:  
(Note: A maximum of 24 credit hours may be recommended from the Master's Degree)

D. List all courses taken since entering the doctoral degree program in which the student received a grade below "B". (Include Consortium Courses, if any)

CRN-Course No.	Title	Grade	Semester/Yr. Completed	Cr. Hrs.

E. List other courses required for the Ph.D. Degree including Dissertation credits (attach additional page if needed)

CRN-Course No.	Title	Credit Hours
POLS-219	Presidential Policy Making	3
POLS-232	Nature and Uses of Political Theory	3
POLS-293	The Judicial Process	3
POLS-213	American Foreign Policy Making Process	3
POLS-214	Public Opinion and Propaganda	3
POLS-301	Independent Study: American Government	3
POLS-225	Pressure Groups	3
POLS-230	American Political Thought	3
POLS-244	Seminar in Political Economy	3
POLS-281	European Political Theory	3
POLS-227	Introduction to Black Politics	3
POLS-254	Behavioral Research Methods	3
POLS-292	Seminar in Black Politics	3
POLS-217	Methods of Political Science	3

F. Examination Committee: (Excluding the External Examiner)  
All committee members must hold current membership on the Graduate Faculty

Name	Department	Highest Degree
Committee Chairperson	Michael Fauntroy--Associate Professor, Political Science	Ph.D.
Dissertation Advisor	Daryl Harris--Chair, Department of Political Science	Ph.D.
Committee Member	Patrick Goodin--Associate Professor, Philosophy	Ph.D.
Committee Member	Quito Swan--Associate Professor, History	Ph.D.

Signature D. L. S. Date 5/23/14  
Chair

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Dean of Parent School/College

**VI. Recommendation to Candidacy by Major Department**

Signature D. L. S. Date 5/23/14  
Major Adviser

Signature D. L. S. Date 5/23/14  
Graduate Program Director  
(on behalf of the Graduate Faculty)

Signature D. L. S. Date 5/23/14  
Department Chairperson (Only)

**VII. Certification of the Office of Educational and Research Affairs**

I certify that the above student has completed all academic requirements and is eligible for admission to candidacy for the Ph.D. degree

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Constance M. Ellison, Ph.D.  
Associate Dean for Educational & Research Affairs

**VIII. Action of the Executive Committee**

Admitted to Candidacy by Vote of the Executive Committee

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Gary L. Harris, Ph.D.  
Interim Dean

# **APPENDIX F**

"Appendix F"

# HOWARD UNIVERSITY

## Office of the Associate Provost for Research and Graduate Studies

Date: April 19, 2016

TO: Dr. Clarence Lusane  
Chair  
Department of Political Science

FROM: Dr. Gary L. Harris *G.L.Harris*  
Associate Provost for Research and Graduate Studies

RE: Matriculation Extension for Mr. Deon Colvin (@01056129)

This is to address your request for a matriculation extension for Mr. Deon Colvin. After carefully considering the information available to me, I do not support your recommendation. As such, I do not support Mr. Colvin's request to: (1) waive the 10-year limit for course viability; and, (2) that Mr. Colvin is given an extension until Fall 2016 (September, 2016) to complete his doctoral program in the Department of Political Science. According to the Graduate Schools' Rules and Regulations for the Pursuit of Academic Degrees – Effective October 1, 1979 regarding course viability (Article VI, Section I.C):

**"Under no circumstances**, however, may a student receive credit toward the degree for a course which the student pursued more than ten (10) years prior to the time the student presents himself or herself for the students' final examination—pg. 17."

I understand that if Mr. Colvin plans to defend his dissertation and graduate in fall 2016, he has to complete the following requirements:

*Courses Taken in the Following Semesters*  
Spring 2007  
Fall 2007  
Spring 2008  
Fall 2008  
Spring 2009  
Fall 2009

*Courses Taken During the Following Semesters*  
Fall 2004  
Spring 2005  
Fall 2005  
Spring 2006  
Fall 2006



Page - 2

In addition, a student must be registered the semester that he/she presents himself or herself for the final oral examination (i.e. dissertation defense). Mr. Colvin is not a registered student and has not been registered at the University since spring 2015. In addition, he owes a financial balance to the University. If this money has not been paid, Mr. Colvin cannot apply to be readmitted as a Former Student Returning (FSR) for the summer semester.

In addition, Mr. Colvin is ineligible to complete all requirements toward the degree by the end of the September 2016, as requested, because he has courses that are not viable. Therefore, I have no choice but to deny your request to extend Mr. Colvin's further matriculation and dismiss him from the Graduate School.

Mr. Colvin is eligible and I welcome him to apply for admission to any other program in the Graduate School at Howard University. He may also consider seeking admission into another School or College at the University e.g., School of Education. If he chooses to apply to the Department of Political Science in the future, as a new entrant, he must follow the admissions process as outlined on the Graduate School website:

<http://www.gs.howard.edu/Admissions/default.html>.

Restore Courses Taken in the Following Semesters:

Spring 2007

Fall 2007

Spring 2008

Fall 2008

Spring 2009

Fall 2009

Repeat Courses Taken During the Following Semesters:

Fall 2004

Spring 2005

Fall 2005

Spring 2006

Fall 2006



4<sup>th</sup> and College Streets, NW, Annex III  
Washington, DC 20059

Telephone 202 806 7636  
Facsimile 202 462 4053  
[www.gs.howard.edu](http://www.gs.howard.edu)

# **APPENDIX G**

*"Appendix G"*

# HOWARD UNIVERSITY

Office of the Associate Provost  
for Research and Graduate Studies

June 6, 2016

Mr. Deon Colvin  
743 Fairmont Street, NW  
Apartment 211  
Washington, D.C. 20001

[dcolvin@bison.howard.edu](mailto:dcolvin@bison.howard.edu)

Dear Mr. Colvin:

I regret to inform you that upon review of your academic record and a recommendation from the faculty of the Graduate Program in the Department of Political Science, you are hereby dismissed immediately from the Graduate School.

The Graduate School has a fundamental interest in ensuring that graduating Ph.D. students have currency of knowledge in their fields. Therefore, the Graduate School places limits on the age of courses that can be counted toward the fulfillment of graduation requirements. Credit for courses pursued more than seven, and less than ten years, prior to the term in which the student presents herself/himself for the final examination, can be counted toward the fulfillment of degree requirements only if they are restored with the approval of the departmental Committee on Graduate Studies and the Dean. Given that doctoral students enrolled in the Graduate School are expected to complete a Ph.D. degree within a maximum of seven (7) years from the date of initial registration in the program, you have gone beyond the expected time-to-degree.

The above requirements are in accordance with established policy of the Graduate School as documented in the Rules and Regulations for the Pursuit of Academic Degrees – Effective October 1, 1979 regarding course viability (Article VI, Section 1.C), course restoration (Article VI, Section 1.C), and length of time for completion of the Ph.D. degree (Article VI, Section 1.D). As a note, the October 1, 1979 Rules and Regulations for the Pursuit of Academic Degrees document is being quoted here because it represents the rules and regulations in place during your initial admissions to the Graduate School.



You were admitted into the Department of Political Science doctoral program in the fall 2004 semester. Your transcript shows that required courses completed spring 2007, fall 2007, spring 2008, fall 2008, spring 2009, and fall 2009 are older than seven years. In addition, courses completed fall 2004, spring 2005, fall 2005, spring 2006, and fall 2006 are older than 10 years and therefore are not viable. This time-to-degree charting is based on an oral dissertation defense term of summer 2016.

In addition, I understand that you made a request of your department for a matriculation extension. I sent a formal letter to the Department Chair, Dr. Clarence Lusane dated April 19, 2016 stating that after carefully considering information that was available to me regarding your matriculation status, I did not support the recommendations to: (1) waive the 10-year limit for course viability; and, (2) that you are given an extension until fall 2016 to complete your doctoral program in the Department of Political Science. According to the Graduate Schools' Rules and Regulations for the Pursuit of Academic Degrees – Effective October 1, 1979 regarding course viability (Article VI, Section 1.C):

**"Under no circumstances, however, may a student receive credit toward the degree for a course which the student pursued more than ten (10) years prior to the time the student presents himself or herself for the students' final examination—pg. 17."**

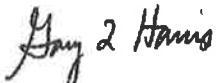
Moreover, our records show that you were not enrolled at the University and were readmitted to the doctoral program in spring 2013. The academic provision governing your re-admittance stated that you must complete all degree requirements and defend your dissertation by fall 2013. You did not satisfy this provision. In addition, you were not enrolled a second time and were re-admitted in fall 2014. Once again, the provision given that you were to defend and graduate by the end of fall 2014 was not satisfied.

In all, you have not demonstrated an inability to perform satisfactorily at the graduate level and therefore you are dismissed from the Graduate School, Department of Political Science. You are eligible and I welcome you to apply for admission to any other program in the Graduate School at Howard University. You may also consider seeking admissions into another School or College at the University e.g., School of Education. If you choose to apply to the Department of Political Science in the future, as a new entrant, you must follow the admissions process as outlined on the Graduate School website: <http://www.gs.howard.edu/Admissions/default.html/>.

If you have any question or concerns regarding this matter, please contact Dr. Constance M. Ellison, Senior Associate Dean of Graduate Studies in the Graduate School. Dr. Ellison can be reached on (202) 806-7636 or e-mailed at [cellison@howard.edu](mailto:cellison@howard.edu).

I wish you success in your future endeavors.

Sincerely,

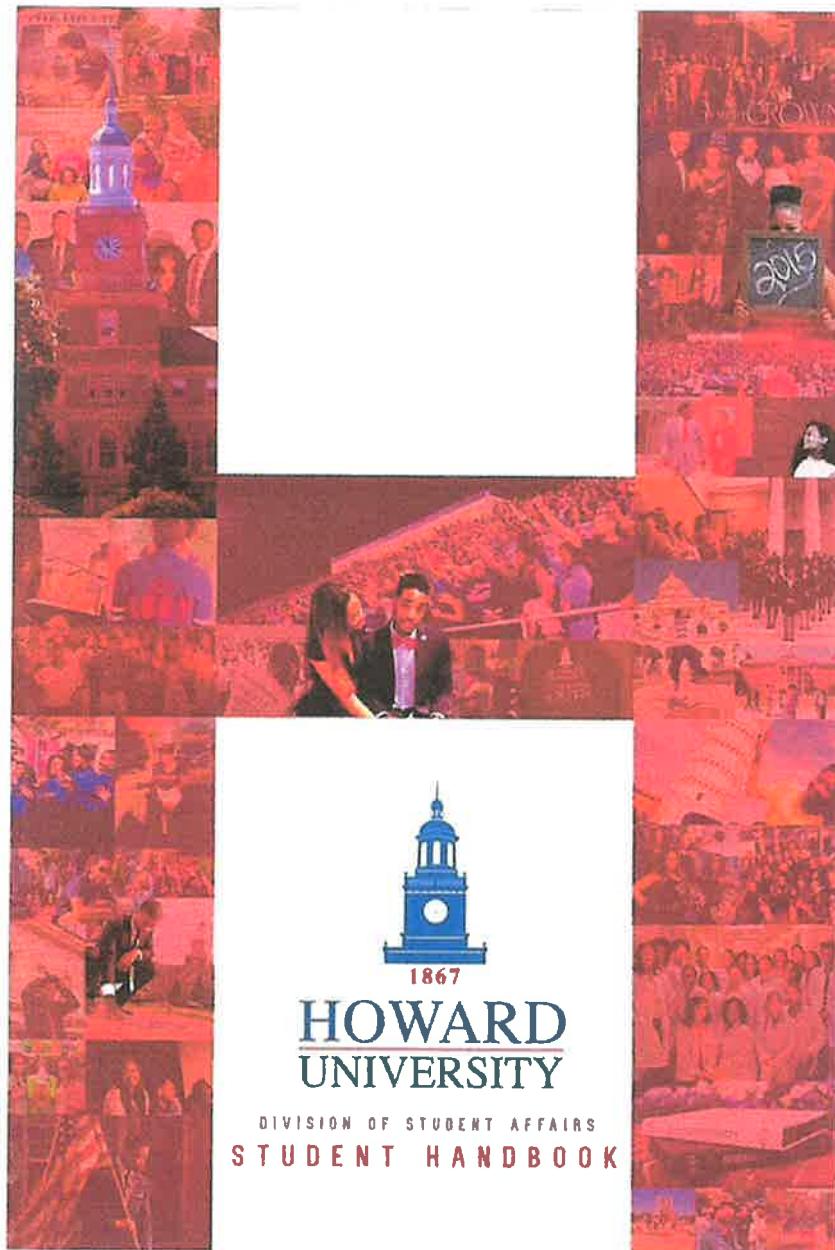


**Gary L. Harris, Ph.D.**  
Associate Provost for Research and Graduate Studies

Cc: Dr. Clarence Lusane, Chairman, Department of Political Science  
Dr. Michael Fauntroy, Director of Graduate Studies, Department of Political Science  
Dr. Constance M. Ellison, Office of the Senior Associate Dean, Graduate School  
Ms. Goodwin, Academic Coordinator, Graduate School

# APPENDIX H

"Appendix H"



# HOWARD UNIVERSITY STUDENT HANDBOOK 2015-2016

The Office of Student Life and Activities  
2397 6th Street, NW  
Armour J. Blackburn Center, Room 122  
Washington, DC 20059  
Phone (202) 806-5990  
Fax (202) 806-9194  
<http://www2.howard.edu/>

THE H-BOOK IS EDITED & PUBLISHED BY THE OFFICE OF STUDENT ACTIVITIES. IT SERVES AS A GENERAL SOURCE OF INFORMATION FOR THE HOWARD UNIVERSITY STUDENTS. THE INFORMATION IN THE H-BOOK SHOULD NOT BE REGARDED AS A CONTRACT\* BETWEEN THE STUDENTS AND HOWARD UNIVERSITY. ALL INFORMATION IS SUBJECT TO CHANGE WITHOUT WARNING.  
\*EXCEPT WHERE INDICATED

## ACKNOWLEDGEMENTS

THE OFFICE OF STUDENT ACTIVITIES WOULD LIKE TO THANK ALL UNIVERSITY OFFICIALS, PROGRAMS, OFFICERS AND DEPARTMENTS THAT CONTRIBUTED TO THE SUCCESS OF THE H-BOOK.

2015 2016 H-BOOK EDITING, LAYOUT AND DESIGN CREDITS  
MR. DARIUS THOMAS, MR. FRED SANDS IV, MRS. LENNON JACKSON, MS. LAURA JACK, DR., AND CONSTANCE M. ELLISON

## 2015-2016 H-BOOK PHOTO CREDITS:

Layla West, Byron Brown, Anthony Miller, Vondell Burns, Caleb Davis, Howard Gospel Choir, Brendien Mitchell, Sadijah Wallace, Lisa Napper, Victoria Thompson, Ikeena Ike, Javan Bowden, Brandi Montgomery, Fred Sands IV, Courtney Howard, Troy Gardner, Alexander Gibson, Mariah Sankey, Trinity Trimuel, Abigail Idokogi, Kristin Leverett, Justin Austin, Justin Knight, Office of University Communications, Office of the President, Office of Student Life and Activities.

The information in this book was supplied and approved by the school.  
Information and published event dates are subject to change.



© Global Datebooks. Printed in China. All rights reserved.  
No part of this publication may be reproduced.  
144 Turnpike Rd, Suite 250 • Southborough, MA 01772 • (800) 610-1089  
[www.globaldatebooks.com](http://www.globaldatebooks.com) • [info@gprinting.com](mailto:info@gprinting.com)

# Table of Contents

Board of Trustees .....	4
Officers of the University .....	5
Letter from the President .....	6
 <b>ACADEMIC AFFAIRS</b>	
Letter from the Provost .....	9
Keys to Academic Success .....	10
Academic Schools and Colleges .....	11
Academic Policies .....	12
Enrollment Management .....	22
Office of Undergraduate Studies (OUS) .....	23
Career Services (CEDAR Center) .....	24
Office of the Registrar .....	25
Visa and Immigration Services .....	28
Financial Aid .....	29
Office of the Bursar .....	29
TRIO Programs .....	31
Consortia and Exchange Programs .....	32
Libraries .....	33
 <b>STUDENT AFFAIRS</b>	
Letter from the Vice President of Student Affairs .....	37
Student Activities Fee Allocation .....	38
Student Affairs Directory .....	39
Student Life and Activities .....	39
Student Services .....	42
Armour J. Blackburn University Center .....	43
Recreation, Intramural & Club Sports .....	44
University Counseling Services .....	45
Student Health Center .....	46
Residence Life .....	47
Office of Off-Campus Housing & Community Engagement .....	50
Beyond Howard .....	53
Interpersonal Violence Prevention Program (IVPP) .....	54
Legal Definition of Domestic Violence in D.C. .....	56
Alcohol and Drug Prevention Notice .....	57
 <b>STUDENT GOVERNMENT AND ORGANIZATIONS</b>	
Letter from the HUSA Administration .....	64
Student Government .....	65
Student Organizations .....	66
Greek Life .....	67
Student Organization Adjudication Process .....	68
Definition and Statement on Hazing .....	70

## ***CAMPUS SERVICES***

Athletics .....	72
Enterprise Technology Services .....	73
Bison One Card.....	74
Book Vouchers.....	74
Dining Services .....	75
Religious Services.....	77
Howard University Bookstores .....	82
Environmental Health and Safety .....	83
Department of Public Safety .....	84
Parking & Shuttle Operations .....	84
HU Community Association .....	85
WHUR-FM/WHBC .....	86
Alumni Affairs .....	86
Trademark Licensing and Short-Term Vending.....	87

## ***POLICIES AND REGULATIONS***

Student Code of Conduct .....	89
Howard University Policy.....	112
Code of Ethics and Conduct .....	132
HUSA Constitution .....	142

## ***OTHER RESOURCES & CALENDAR***

Student Information Guide .....	161
2015-2016 CALENDAR.....	168

## **HOWARD UNIVERSITY POLICY ON EQUAL OPPORTUNITY**

Howard University does not discriminate on the basis of race, color, national or ethnic origin, sex, marital status, religion, handicap, age, sexual preference, political affiliation or any other as is prohibited by Federal or District of Columbia law. This policy covers administration of the University's educational policies, admission policies, scholarship and loan programs and other University administered programs and employment. Inquiries regarding provisions for handicapped persons, equal opportunity and Title IX should be addressed to the following offices listed below: Section 504 Coordinator (handicapped), Office of Student Services, Howard Center, 7th floor, (202) 238-2420; Title IX Coordinator, Carol McKinnon, Office of the Provost Administration Building, 2400 6th Street, NW, Suite 306, Washington, DC 20059, (202) 806-2550.

## ACADEMIC POLICIES

### Student Academic Grievance Procedures

#### The Informal Procedure Process

1. A student who believes that he/she has been aggrieved must first attempt to seek an informal resolution with the other party involved in the dispute, e.g. grade dispute with instructor.
2. If the student is unable to resolve the dispute with the primary party of the dispute then, the student is advised to seek the intervention of his/her department chairperson.
3. All disputes which are not resolved at the departmental level are then brought to the Dean's Office, where upon the Dean or his designee will seek to reach an informal resolution through mediation between the parties.
4. If the mediation at the Dean's level fails, then the student's grievance is consigned to the committee designated by the school/college to address student grievances herein referred to as the Student Grievance Committee.

#### The Formal Process

1. Student grievances which are consigned to the Student Grievance Committee must be specified in writing and given to the Dean or his designee.
2. A student written statement, along with supportive evidence, constitutes a case document which will be submitted to each member of the committee.
3. The second party to dispute is also requested to provide the Office of the Dean with his or her account of the matter in dispute, which becomes part of the case document that is forwarded to the committee.
4. The Student Grievance Committee is then required to set a date for convening a meeting to hear the case(s) as expeditiously as possible.
5. After the date has been set, each party to the dispute is sent a certified letter which informs him/her of the charges, date of the meeting, as well as a statement requesting his/her presence.
6. During the hearing, the student presents his/her case; after the accused party is allowed to present the other side, each side is permitted to have witnesses to testify on their behalf.
7. Following the hearing, members of the committee after deliberation on their assessment of the case should be resolved.
8. The committee's decision is sent to the Dean of the School/College in the form of a recommendation.
9. The Dean then informs the student in writing of the decision, which may be based upon the committee's recommendation or upon a modification of it.

*Approved by the Board of Trustees on April 23, 1994*

### READMISSION AFTER ACADEMIC SUSPENSION

A student, after being suspended, is not eligible to apply for readmission for at least one semester. A request for readmission shall be initiated by a written application to the Dean. A faculty committee shall review the case and render a decision based on the academic achievement level during the period of enrollment and other relevant factors. Such decisions made 30 days prior to the registration period shall be valid for the next registration period.

#### Readmission Procedures

In the event that your attendance is interrupted, please follow the procedures listed below:

- A. Students upon graduation, cannot return to the same school or status (as an FSR), but must be considered either graduate/ professional, unclassified, or seeking another undergraduate degree and must pay the \$25.00 application fee.
- B. Regulations relating to returning students require that all students who are absent from or not registered at the university for one entire semester (Summer School not included) must apply in advance for readmission.

# **APPENDIX I**

"Appendix I"

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

MR. DEON D. COLVIN  
743 Fairmont Street N.W. #211  
Washington, D.C. 20001

**Plaintiff,**

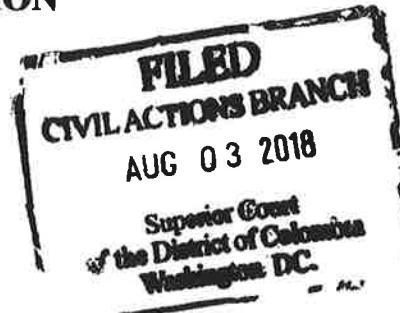
-vs.-

**HOWARD UNIVERSITY**  
2400 6<sup>th</sup> Street N.W.  
Washington, D.C. 20059

**Defendant.**

**Serve On:**

John G. Gloster Jr., Esq.  
Sr. Associate General Counsel  
Office of the General Counsel  
Howard University  
2400 6<sup>th</sup> Street N.W., Suite #321  
Washington, D.C. 20059



**CIVIL ACTION NO: 18-0005349**

**VERIFIED AMENDED COMPLAINT WITH  
JURY TRIAL DEMAND**



**COMPLAINT**

**I. INTRODUCTORY STATEMENT**

Plaintiff Deon D. Colvin appearing *in propria persona*, brings this action against Defendant, Howard University, and for his complaint, states as follows:

Plaintiff, Deon D. Colvin (hereinafter “Colvin”), is an individual who seeks reinstatement as a doctoral candidate in the Graduate School in the Department of Political Science at Howard University (“Howard”). Despite repeated attempts by Colvin to be reinstated to defend his doctoral dissertation, Howard unjustifiably refuses to do so. There is an implied contract between Colvin and Howard and Howard breached the contract. Howard never dropped Colvin from the Ph.D. program after seven (7) years and he achieved Ph.D. candidacy in May 2014, a student status which he is entitled to hold until May 9, 2019. To vindicate these rights, Colvin seeks injunctive relief, and compensatory and punitive damages against Howard University.

## **II. PARTIES AND JURISDICTION**

1. Colvin is, and was at all times mentioned a Ph.D. candidate in the Department of Political Science at Howard University and domiciled at 743 Fairmont Street N.W. #211 Washington D.C. 20001 and a citizen of the District of Columbia.
2. Howard is a university duly organized and existing under the laws of the District of Columbia with its principal place of business at 2400 6<sup>th</sup> Street N.W., Washington, D.C. 20059. It is a private university which receives funding from the federal government. Howard University is responsible for operating graduate degree programs in a manner consistent with its legal obligations to its students. At all times relevant hereto, Howard carried out its duties by and through its actual and/or apparent agents, servants and/or employees. Howard is therefore liable for their actions in connection therewith pursuant to the doctrine of Respondeat Superior and/or agency.
3. Venue of the Superior Court of the District of Columbia is proper as the acts complained of herein occurred in the District of Columbia, both the Colvin and Howard reside therein, and the compensation sought for damages exceeds \$5,000 dollars.

### III. FACTS LEADING TO CAUSES OF ACTION

1. Colvin is a 14 year resident of Washington, District of Columbia.
2. He has been a graduate student in Howard University's Department of Political Science Ph.D. Program (hereinafter "the Program") since 2004.
3. He has successfully completed 99 credits for his Ph.D. degree (48 are required beyond the Master's Degree) and has a G.P.A. of 4.0.
4. He has passed his two comprehensive examinations required for the Ph.D. degree.
5. Colvin began working on his dissertation proposal in the summer of 2009.
6. In summer 2009, Colvin's advisor Dr. Darryl Harris, Chair of the Political Science Department, tells him he did not need to enroll in courses at Howard while he is working on his dissertation proposal, and that he only needs to enroll the semester he intends to defend his dissertation proposal and the semester he intends to defend his dissertation.
7. Colvin does not enroll at Howard while he is working on his dissertation proposal.
8. According to Article VI, Section 1.D of The Graduate School Rules and Regulations For the Pursuit of Academic Degrees (1979) a student that has not completed their Ph.D. Program is dismissed after seven calendar years in the program.
9. Colvin passed the seven year mark of being a student in the Ph.D. Program after Howard's fall 2011 semester. Howard did not dismiss Colvin but allowed him to remain in the Program.
10. Colvin enrolls at Howard the spring 2014 semester and defends his dissertation proposal in May 2014.
11. Colvin successfully submits his defended dissertation proposal and the required application forms to the Graduate School and was admitted to candidacy for the Ph.D. degree on May 9, 2014. (Exhibit "A")
12. Under Article VI, Section 6 of The Graduate School of Arts and Sciences Rules and Regulations For the Pursuit of Academic Degrees (1979) candidacy for the Ph.D. Degree is valid for five calendar years.
13. Colvin began working on his dissertation in May 2014. According to Article VI, Section 6 his Ph.D. candidacy is valid until May 9, 2019.
14. In January 2016, Colvin is making progress on his dissertation and anticipates he will be ready to defend his dissertation during the fall 2016 semester.

15. According to Article VI, Section G of The Rules and Regulations For the Pursuit of Academic Degrees (1979) a candidate for a degree must be enrolled in the Graduate School of Arts and Sciences the semester in which the degree is conferred.
16. In February or March 2016 Colvin has a three-way phone discussion (“conference call”) with his advisor Dr. Harris and Political Science Chair Dr. Clarence Lusane about enrolling for 1 credit hour in the fall 2016 semester in order to defend his dissertation and obtain his Ph.D. degree. Colvin states he believes several of his courses will expire by the fall 2016 semester. Colvin is advised by Dr. Harris to write a letter to the Chair requesting an extension of time to complete his dissertation and a waiver for courses he thinks will expire.
17. On April 4, 2016 Colvin writes a letter to Chair Lusane requesting an extension of time until fall 2016 and course waiver.
18. On April 19, 2016, Chair Lusane writes a memo to the Graduate School requesting an extension of time and course waiver for Colvin.
19. In April 2016, Colvin is informed by Chair Lusane that the Department of Political Science’s request for extension of time and course waiver for him was denied and that he would receive a letter from the Graduate School about the denial.
20. In April 2016 Colvin has a meeting with Dr. Constance Ellison, Associate Dean of the Graduate School, and is told several semesters of his courses are not viable according to Ph.D. requirements and if he has viable courses the Dean’s denial could be rescinded.
21. In April 2016 Colvin meets with his advisor Dr. Harris and finds he has viable courses and does not need a course waiver.
22. On May 2, 2016 Colvin writes a letter to Chair Lusane rescinding his request for a waiver of courses and requesting the Department submit a second request to the Graduate School for his admission stating he has viable courses and that he is no longer requesting a waiver of courses.
23. On June 23, 2016 Colvin receives a letter from Dr. Gary Harris, Dean of the Graduate School, stating that he is dismissed from the Graduate School due to “a recommendation from the Graduate Faculty of the Department of Political Science” and a “review of his academic record.” (Exhibit “B”)
24. Colvin completes the final draft of his dissertation September 30<sup>th</sup>, 2016.
25. From June 2016 to December 2016, Colvin sought to appeal his dismissal via Howard’s Student Academic Grievance Procedures but Howard denied Colvin access to the procedures and upheld his dismissal from the Program.

IV.

**COUNT I: BREACH OF IMPLIED CONTRACT—HOWARD CONDUCTS A FACTUALLY INACCURATE, ARBITRARY, AND CAPRICIOUS REVIEW OF COLVIN’S ACADEMIC RECORD**

26. Paragraph 26 includes paragraphs one through twenty-five as if fully stated herein.
27. Howard reviews Colvin’s academic record in April 2016 after receiving a request from the Political Science Department to readmit him for the fall 2016 semester to defend his dissertation.
28. Howard’s review is replete with factual inaccuracies and omissions and fails to consider relevant facts about Colvin’s academic status and academic history.
29. Furthermore, the review is arbitrary and capricious in its application of Article VI, Section 1.C of The Graduate School of Arts & Sciences Rules and Regulations for the Pursuit of Academic Degrees (1979).
30. The inaccurate and capricious nature of Howard’s review of Colvin’s academic status is apparent from the Dean Harris’ dismissal letter to the Plaintiff. (Exhibit “B”)
31. First, Dean Harris writes he received recommendation from the Graduate Faculty of the Political Science Department that Colvin be dismissed (“I regret to inform you that upon...a recommendation from the faculty of the Graduate Program in the Department of Political Science, you are hereby dismissed immediately from the Graduate School”)(*Dean’s Letter to Colvin*, p.1)
32. This is factually incorrect. The Graduate Faculty of the Political Science Department did not submit a recommendation that Colvin be dismissed but submitted a written recommendation that Colvin be given additional time to complete his dissertation. (Exhibit “C”)
33. Second, Dean Harris writes that Colvin’s “courses completed fall 2004, spring 2005, fall 2005, spring 2006 and fall 2006 are older than 10 years and therefore are not viable...”(*Dean’s Letter to Colvin*, pg.3)
34. The Dean quotes Article VI, Section 1.C of The Graduate School’s Rules and Regulations for the Pursuit of Academic Degree (1979) as stating no course pursued more than 10 years prior to the time the student presents for final examination can be credited toward the Ph.D. degree. (*Dean’s Letter to Colvin*, pg.3)
35. The quote is a grossly inaccurate, arbitrary, and capricious interpretation of Article VI, section 1.C of The Graduate Schools Rules and Regulations.
36. The Graduate School’s Rules and Regulations for the Pursuit of Academic Degree Article VI, section 1.C actually states that no course pursued more than 7 years prior to the term in

which the student presents for final examination can be used for credit toward the Ph.D. degree, except upon written recommendation of the head of the department concerned, based upon special examination of the candidate. (Exhibit "D")

37. Thus there is no 10 year rule of course viability as the Dean asserts and Colvin's courses completed fall 2004, spring 2005, fall 2005, spring 2006 and fall 2006 are not excluded from viability as the Dean asserts.
38. Colvin obtained written recommendation for these courses from his Chair as prescribed by Article VI, section 1.C (Exhibit "E") and that documentation was submitted to the Graduate School along with Colvin's application for Ph.D. candidacy in May 2014, which was approved by the Graduate School. (Exhibit "A")
39. Thus the Dean's claim that Colvin's academic record contains courses that are older than 10 years and thus not viable for use toward the Ph.D. degree is factually inaccurate and a capricious interpretation of Article VI, section 1.C., and an inaccurate and capricious review of Colvin's academic record.
40. Third, Dean Harris writes that Colvin applied to the Graduate School for admission in spring 2013 and fall 2014 and failed to satisfy the requirements of those two admissions (*Dean's Letter to Colvin, p.3*).
41. This is factually incorrect. Colvin did not apply for admission for the fall 2014 semester and thus the Dean's claim is not accurate with respect to Colvin's academic/admission history.
42. Fourth, the Dean omits from his review of Colvin's academic record his status as a Ph.D. candidate (obtained May 2014) and the length of time he is allow to have such status (5Yrs.) according to Graduate School and Rules and Regulations and fails to apply these facts to his review of Colvin's academic record and status.
43. Colvin tried to make the factual inaccuracies, arbitrary and capricious interpretation, and omissions known to Howard via meetings and attempted meetings with the Dean, Provost, and via a letter to the President (Exhibit "F"), but Howard did not acknowledge them.
44. Howard's failure to conduct a review of Colvin's academic record based on the actual facts of his record (including Colvin's academic history and academic standing) and an accurate reading of The Graduate School Rules and Regulations is a breach of the "fair dealing" provision of contract law (i.e. the implied covenant of good faith and fair dealing) that applies to participants in a contractual relationship.
45. Satisfying the good faith and fair dealing provision of contract law requires that any and all academic reviews of Colvin by Howard would be fair, honest, and based on the actual relevant facts of Colvin's academic and admissions history and status.
46. Howard's breach of duty in its academic review caused reparable harm to Colvin as it led to his unwarranted dismissal from the Graduate School.

V.

**COUNT II: BREACH OF IMPLIED CONTRACT—HOWARD STRIPS COLVIN OF PH.D. CANDIDACY STATUS PRIOR TO THE ALLOTTED FIVE YEAR TIME PERIOD**

47. Paragraph 47 includes paragraphs one through forty-six as if fully stated therein.
48. Aspects of Howard's publications The Howard University Student Handbook 2015-2016 and The Graduate School of Arts & Sciences Rules and Regulations For The Pursuit of Academic Degrees (1979) constitute an implied contract between a graduate student enrolled in Howard's Graduate School of Arts and Sciences and Howard University.
49. According to Article VI, section 6 of The Graduate School of Arts & Sciences Rules and Regulations For The Pursuit of Academic Degrees (1979) the status of Ph.D. candidate shall be valid for a maximum of five calendar years from the date of attainment. (Exhibit "G")
50. Colvin was admitted to Ph.D. candidacy by the Graduate School on May 9, 2014. (Exhibit "A")
51. Thus his Ph.D. candidacy status is valid until May 9, 2019.
52. Howard revoked Colvin's Ph.D. candidacy status on June 4, 2016 via Dean Harris' dismissal letter to Colvin. (Exhibit "B")
53. Howard's revoking of Colvin's Ph.D. candidacy status prior to May 9, 2019 is a breach of the implied contract that exists between Colvin and Howard with respect to the five calendar year time period allotted for Ph.D. candidate status according to Article VI, section 6 of The Graduate School's Rules and Regulations.
54. Howard's implied contract breach reparably harms Colvin as it prevents him from enjoying his earned status of Ph.D. candidate in Howard University's Department of Political Science/Graduate School.

VI.

**COUNT III: BREACH OF IMPLIED CONTRACT—HOWARD DENIES COLVIN ACCESS TO ITS INFORMAL GRIEVANCE PROCEDURE**

55. Paragraph 55 includes paragraphs one through fifty-four as if fully stated herein.
56. A contractual relationship of student-university exists between Colvin and Howard.
57. As a part of the contractual relationship, Colvin is entitled to access to the Student Academic Grievance Procedures outlined in the Howard University Student Handbook 2015-2016 (p.12) (hereinafter "H.U. Handbook") for instances of academic grievance. ("Exhibit "H")

58. The Student Academic Grievance Procedures enumerates a two-phase student academic grievance process of The Informal Procedure Process to be followed, if necessary, by The Formal Process.
59. The Informal Procedure Process lists four steps that the aggrieved student must undergo during the informal grievance process. First (step 1) the student must attempt to discuss his issue with the other party in the dispute (i.e. in Colvin's case the Dean). Second (step 2), if that attempt is unsuccessful the student is advised to seek intervention from his/her department Chairperson. Third (step 3) if the dispute is still not resolved, the issue should be brought to the Dean's office where the Dean or his designee will attempt to reach an informal resolution through mediation between the parties (i.e. in Colvin's case, between Colvin and the Dean). Fourth (step 4), if mediation at the Dean level fails, then "the student's grievance is consigned to the ... Student Grievance Committee." (H.U. Handbook, p.12).
60. Upon receiving the Dean's dismissal letter, Colvin attempts to meet with Dean Harris.
61. Colvin is told by Assistant Dean Dr. Linda Jones that before he can meet with Dean Harris he must first meet with Associate Dean Dr. Ellison as specified in the letter.
62. After meeting with Dr. Ellison Colvin recognizes he has an academic grievance and seeks to initiate The Informal Procedure Process of the Student Grievance Procedure.
63. Colvin calls the Graduate School to arrange a meeting with Dean Harris (the "other party in the dispute") per step 1 of The Informal Procedure Process.
64. Colvin's call is routed to Dr. Linda Jones. Colvin tells Dr. Jones he wants to arrange a meeting with Dean Harris about his dismissal from the Graduate School. Dr. Jones tells Colvin that he cannot meet with Dean Harris, that the Dean "stands by his [dismissal] letter" and that he will have to take his case "to the next level."
65. Unable to meet with the Dean, Colvin meets with his department chairperson, Chair Lusane for intervention per step 2 of The Informal Procedure Process.
66. Chair Lusane does not intervene but tells Colvin he should appeal all matters related to his dismissal to The Provost. (Exhibit "I")
67. Howard fails to bring Colvin's academic grievance to the Dean's office for mediation per step 3 of The Informal Procedure Process.
68. Howard fails to consign Colvin's unresolved academic grievance to the Student Grievance Committee per step 4 of The Informal Procedure Process.
69. Colvin is instead forced to meet with Provost Wutoh to appeal his case.

70. Howard's failure to execute steps 1-4 of The Informal Procedure Process when Colvin was attempting informal resolution of his academic grievance is a breach of the implied contract that exists between Howard and Colvin with respect to the resolution of academic grievances.
71. Howard's breach of contractual duty reparably harmed Colvin as it precluded him the opportunity of an informal resolution of his dismissal from the Graduate School and left him dismissed and unable to pursue his Ph.D. degree.

## VII.

### **COUNT IV: BREACH OF IMPLIED CONTRACT—HOWARD “CLOSES” COLVIN’S CASE, AN ACTION NOT IN ACCORDANCE WITH ITS STUDENT ACADEMIC GRIEVANCE PROCEDURES**

72. Paragraph 72 includes paragraphs one through seventy-one as if fully stated herein.
73. Colvin meets with Provost Wutoh to discuss his dismissal from the Graduate School.
74. Colvin tells Provost Wutoh that the Graduate Faculty of Political Science Department did not recommend his dismissal as Dean Harris states in his dismissal letter.
75. Colvin tells Provost Wutoh that he has viable courses according to Article VI, Section 1.C of The Graduate School Rules and Regulations and shows the Provost where Dean Harris misquotes this section of the manual.
76. Colvin tells Provost Wutoh that he did not apply for admission for the Fall 2014 semester as Dean Harris writes in the letter.
77. Provost presents to Colvin two “Permit to Register” letters from the Graduate School addressed to him and asks if he had seen the letters. Colvin tells Provost Wutoh he does not recall seeing the letters.
78. Provost Wutoh upholds the Graduate School’s dismissal and “closes” Colvin’s case. (Exhibit “J”)
79. Colvin requests a second meeting with Provost Wutoh.
80. Colvin’s request for a second meeting with the Provost is denied. The Provost’s closure of Colvin’s case is cited as the reason for the denial. (Exhibit “K”)
81. According to Step 4 of The Informal Procedure Process all unresolved grievances are to be “consigned to the committee designated by the school/college to address student grievances, herein referred to as the Student Grievance Committee” (H.U. Handbook, p. 12).

82. Howard's action of "closing" Colvin's case is not in accordance with The Informal Procedure Process or The Formal Process and is a breach of the implied contract that exists between Colvin and Howard with respect to the resolution of academic grievances.
83. Howard's duty breach is arbitrary, capricious and malicious as it was executed by The Provost, a Howard official with no role in the Student Academic Grievance Procedures and with no authority to close the case.
84. Howard's "closing" of Colvin's case reparably harmed Colvin by maintaining his unwarranted dismissal from Howard's Graduate School.

## VIII.

### **COUNT V. BREACH OF IMPLIED CONTRACT—HOWARD DENIES COLVIN ACCESS TO ITS FORMAL GRIEVANCE PROCEDURE**

85. Paragraph 85 includes paragraphs one through eighty-four as if fully stated herein.
86. Howard has a nine (9) step formal grievance process for the adjudication of student academic grievances referred to as The Formal Process.
87. The Formal Process is the next phase of grievance resolution if informal resolution fails.
88. According to Howard's Student Academic Grievance Procedures, The Formal Process (1), "Student grievances which are consigned to the Student Grievance Committee must be specified in writing and given to the Dean or his designee" (H.U. Handbook, p.12). (Exhibit "H")
89. Colvin meets with the Political Science Graduate Program Director Dr. Michael Fauntroy to discuss his plans to submit a written complaint to the Student Grievance Committee per The Formal Process outlined in the H.U. Handbook.
90. Dr. Fauntroy tells Colvin he has to get more information about his case.
91. Dr. Fauntroy informs Colvin via email that Provost Wutoh has closed his case, his status as a student at Howard has been revoked, and thus he cannot file a formal grievance. (Exhibit "L")
92. Howard's action of denying Colvin the opportunity to file a formal written complaint and have his academic grievance heard by the Student Grievance Committee is a breach of the implied contract between Colvin and Howard with respect to the implementation of its Student Academic Grievance Procedures, The Formal Process.
93. Howard's breach reparably harmed Colvin by denying him a formal hearing for his unwarranted dismissal from the Graduate School and left him unable to pursue his Ph.D. degree.

## IX.

### **COUNT VI: FRAUD—HOWARD FRAUDULENTLY REPRESENTS ITS STUDENT ACADEMIC GRIEVANCE PROCEDURES TO COLVIN**

94. Paragraph 94 includes paragraphs one through ninety-three as if fully stated herein.
95. According to the District of Columbia Code, Fraud in the Second Degree occurs when a person “engages in a scheme or systematic course of conduct with intent to defraud or to obtain the property of another by means of false or fraudulent pretense, representation or promise.”
96. A contractual relationship of student-university existed between Colvin and Howard.
97. Howard represented to Colvin that he would have access to a grievance mechanism, i.e. The Student Academic Grievance Procedures, in instances of academic grievance.
98. Howard made the representation in the Howard University Student Handbook 2015-2016 (p. 12), its premier publication to Howard students. (Exhibit “M”)
99. Howard strategically and systematically featured the Student Academic Grievance Procedures, making it the first university policy listed in its Student Handbook. (Exhibit “M”)
100. Photos of Howard’s President and Provost appear in the pages immediately prior to the Student Academic Grievance Procedures, and the President’s Letter to Students mentions the procedures and policies available to students, giving the policy an aura of importance and preeminence. (Exhibit “M”)
101. Howard insists that Colvin be familiar with the contents of the Student Handbook and other Howard publications (Letter From The President; H.U. Handbook, pgs. 6, 10), further reinforcing its prominent representation of the Student Academic Grievance Procedures. (“Exhibit “M””)
102. Howard featured and presented the Student Academic Grievance Procedures to Colvin in yearly editions of the Student Handbook from 2004 to 2016, the entire time of Colvin’s matriculation.<sup>1</sup>
103. Hence Howard, through scheme and systematic course of conduct, lured and maintained Colvin to the university under pretense that a fair and fully functioning grievance procedure, i.e. The Student Academic Grievance Procedures, existed and would be available.

---

<sup>1</sup> Immediately prior to the filing of this complaint, Colvin made an informal request to Howard for photocopies of the Handbooks and was told the Handbooks are not available.

104. Howard failed to make the Student Academic Grievance Procedures available to Colvin from June 2016 to September 2016 when Colvin attempted to utilize the procedures.

105. Howard evinced intent to defraud, as not only were the Student Academic Grievance Procedures not offered, but high ranking Howard officials involved in the promotion of The Procedures or intimately involved in the grievance process itself took unauthorized actions that ensured Colvin would not have access.

106. To wit, Dean Harris, a Howard official with an official role in The Informal Procedure Process and The Formal Process acted with intent to ensure Colvin could not access the procedures by (a) refusing to meet with Colvin or assign a designee to do the same (per The Informal Process, Step 1); and (b) failing to ensure that Colvin's grievance was brought to his office for mediation (per The Informal Process, Step 3).

107. Provost Wutoh took the unauthorized, arbitrary, capricious, and malicious action of "closing" Colvin's case, which ensured Colvin did not have access to The Formal Process.

108. President Frederick was made aware of severe administrative errors in Colvin's case that warranted grievance adjudication but did not offer Colvin access to the Student Academic Grievance Procedures. (Exhibits "F" and "N")

109. Howard's action of representing to Colvin the existence and availability of a grievance mechanism and then failing to provide the procedures upon request is fraud in the execution of an implied contract.

110. Howard's grievance fraud is not specific to Colvin, but has affected many Howard students.

111. In March and April 2018 over 2,000 Howard students occupied the university's Administration Building for nine (9) days in protest of Howard's performance in several areas of student-university relations. One of the ten (10) areas student protestors demanded reform in was Howard's execution of its grievance mechanisms.

112. Howard entered into an agreement with student protestors to review and revamp its grievance mechanisms and adopt best practices from other universities. (Exhibit "O")

113. Colvin is reparably harmed by Howard's grievance fraud as he was denied formal and informal grievance hearings for his unwarranted dismissal from Howard, which left him dismissed and unable to pursue his Ph.D. degree.

**X.**  
**COUNT VII—INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS—**  
**HOWARD INTENTIONALLY INFILCTS EMOTIONAL DISTRESS ON**  
**COLVIN**

114. Paragraph 114 includes paragraphs one through one-hundred thirteen as if fully stated herein.

115. Under longstanding District of Columbia law, Courts have held Defendants liable for intentional infliction of emotional distress where it can be shown that the action of the Defendants were (a) extreme and outrageous; (b) were intentional or reckless; and (c) caused the Plaintiff severe emotional suffering.

116. Several actions of Howard officials acting in their official capacities toward Colvin from June 4, 2016 to December 7, 2016 engaged in conduct that was extreme, outrageous, and intentional, and caused Colvin severe emotional suffering.

117. To wit, Dean Harris' refusal to meet with Colvin (or officially assign a designee) to discuss Colvin's concerns about his dismissal from the university when Dean Harris was obligated to do so according to the Student Academic Grievance Procedures, The Informal Procedure Process (Exhibit "H") constitutes conduct by the Dean that was extreme, outrageous, and intentional.

118. Further, Dean Harris knew of should have known that action of this manner toward Colvin, who had spent years pursuing his Ph.D. degree would cause severe emotional distress.

119. Provost Wutoh's action of "closing" Colvin's case when he has no role in Howard's Student Academic Grievance Procedures and thus did not have authority take such action, and doing so while he was aware of serious errors made by Dean Harris in reviewing Colvin's academic record constitutes conduct that was extreme, outrageous, and intentional. (Exhibits "H" and "J")

120. Further, Provost Wutoh knew or should have known that his arbitrary and unauthorized "closing" action would cause Colvin severe emotional distress.

121. President Frederick's action of ignoring Colvin's pleas for assistance and "closing" Colvin's case when he does not have a role in the Student Academic Grievance Procedures and hence did not have such authority, and doing so while being fully aware of the obvious and severe administrative errors made by lower level administrators constitutes action that was extreme, outrageous, and intentional. (Exhibits "H" and "N")

122. Further, President Frederick knew or should have known that his unauthorized termination action would cause Colvin severe emotional suffering.

123. By and through the above actions (i.e. paragraphs 117-122), Howard intentionally inflicted severe emotional distress on Colvin that has taken the form of depression and anxiety that is unrelieved; a circumstance, according to District of Columbia law, for which Howard is liable and Colvin is entitled to compensation.

**X.**

**SUMMATION OF COMPLAINT**

1. Defendant Howard knowingly, intentionally, and wrongfully prevented Colvin from receiving his doctoral degree by:
  - a. Refusing to fairly consider his application for readmission to the Graduate School in the Department of Political Science;
  - b. dismissing him from the Graduate School;
  - c. refusing to hold grievance hearings on his dismissal from the Graduate School;
  - d. refusing to acknowledge the length of time he is allowed to be in Ph.D. candidacy.
2. Defendant Howard knew or should have known that wrongfully depriving Colvin of the opportunity to complete his oral dissertation defense in such manners would cause him severe emotional distress.

**XI.**

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff, Deon D. Colvin, respectfully requests the following relief:

1. Injunctive relief to enjoin the Defendant from preventing (i) reinstatement of Deon D. Colvin as a graduate student in the Howard University Graduate School in the Department of Political Science at the same state he enjoyed prior to the onset of the implied contract breaches and implied contract fraud, and (ii) completion of Deon D. Colvin's oral dissertation defense;
2. Compensatory damages in the amount of \$500,000 (for loss of wages, loss of reputation, pain and suffering);

3. Punitive damages in the amount of 5.0 million;
4. Interest, costs, and attorney's fees related to the statutory claims;
5. Such additional relief as this Court deems just and proper.

**XII.**

**JURY TRIAL DEMAND**

1. Plaintiff Colvin hereby requests a jury trial in this matter.

Respectfully submitted,



Deon D. Colvin, R.Ph., M.P.A.  
743 Fairmont Street, N.W. #211  
Washington, D.C. 20001  
Phone: 216-396-8512  
Email: [DeonColvin@aol.com](mailto:DeonColvin@aol.com)

# **APPENDIX J**

"Appendix J"

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**CIVIL DIVISION**

)  
DEON D. COLVIN )  
Plaintiff, )      CIVIL ACTION NO: 2018 CA 0005349  
v.                )      Hon. Jose Lopez  
                    )      Next Event: ISC 02/08/2019  
HOWARD UNIVERSITY )  
Defendant.        )  
\_\_\_\_\_  
)

**PLAINTIFF'S OPPOSITION TO**  
**DEFENDANT'S MOTION TO DISMISS<sup>1</sup>**

COMES NOW Plaintiff Deon D. Colvin ("Colvin" or "Plaintiff"), *in propria persona*, and hereby files this Opposition to Defendant's Motion to Dismiss in response to the Motion to Dismiss filed by Defendant Howard University. Howard motioned this Court to dismiss with prejudice Colvin's complaint of various breaches of implied contract, fraud, and intentional infliction of emotional distress relating to his dismissal on the grounds that Howard was merely acting pursuant to the terms of its policies and thus Colvin's complaint is meritless and requires dismissal.

---

<sup>1</sup> Plaintiff is a pro se litigant. A pro se litigant's pleadings are held to a less stringent standard than pleadings drafted by lawyers. *Lemon v. Kramer* 270 F. Supp. 3d 125. (D.D.C. 2017) ("A pro se complaint will be construed liberally and is held to less stringent standards than formal pleadings drafted by lawyers."). *Erickson v. Pardus*, 551 F.Supp.2d 7, 11 (2007) (The pleadings of pro parties "[are] to be taken liberally, however inartfully pleaded, and must be held to less stringent standards than formal pleadings drafted by lawyers.")

At core, Howard contends Colvin's lawsuit should be dismissed because it is premised on (1) an incorrect statement of Howard's policies regarding course viability, and (2) a claim that he was not provided proper grievance procedures. Howard asserts that Colvin was provided the procedures but he abandoned his grievance rights as he did not advance his grievance to the formal process and he incorrectly, and disingenuously, misstates Howard's policies in an attempt to deceive the Court into believing he has a viable claim and has been damaged and wronged by Howard when such is not the case.

Plaintiff asks this Court to deny Howard's Motion to Dismiss because the facts of the case as set forth in the Complaint and further elaborated and expiated in this Opposition document clearly present sufficient evidence that Howard's dismissal of Colvin was executed in a manner that breached the implied contract that existed between the two parties, and that in the process of executing the aforementioned dismissal action, Howard committed fraud and intentionally inflicted emotional distress upon the Plaintiff. Furthermore and specifically, Colvin asserts his Complaint should not be dismissed because: (1) it is not based on the existence of a "10 year" course viability rule, but on the fact that he had viable courses less than 10 years old that fulfilled requirements for the Ph.D. degree, yet was nonetheless dismissed under the false pretense he did not meet course viability requirements; (2) he was not provided proper grievance procedures even though he robustly attempted to access and advance his case through the prescribed grievance procedures; (3) he was harmed by actions taken as a result of an unsolicited "gratuitous review" of his dismissal by the Provost; (4) Colvin is emotionally distressed and financially damaged by Howard's unwarranted dismissal of him from its Ph.D. program and petitions for remedy the Court can provide.

Moreover, as of its Motion to Dismiss filing, Howard does not demonstrate that Colvin “incorrectly states” its Graduate School policies, but rather that it has two virtually indistinguishable versions of its Graduate School of Arts and Sciences Rules and Regulations For The Pursuit of Academic Degrees (1979)<sup>2</sup> (“Graduate Rules and Regulations”), and thus failed in its responsibility to make its policies clear to Colvin.

On December 29, 2018 Colvin conferred with Howard and requested the Defendant withdraw its Motion to Dismiss because the facts of the case, as presented in Colvin’s Complaint, states valid causes of action. On January 2, 2019 Howard rejected Colvin’s request; hence Colvin submits to the Court this Opposition motion.

For the above reasons, and for reasons set out more fully in the accompanying Plaintiff’s Memorandum of Facts and Law in Opposition to Defendant’s Motion to Dismiss, Colvin categorically opposes Howard’s Motion to Dismiss and asks the Court to deny the motion and allow Colvin’s lawsuit to proceed to trial.

January 10<sup>th</sup>, 2019

Respectfully submitted,

**DEON D. COLVIN**



---

Plaintiff *Pro Se*  
743 Fairmont Street NW #211  
Washington, DC 20001  
T: 216-396-8512  
E-Mail: [deoncolvin@aol.com](mailto:deoncolvin@aol.com)

---

<sup>2</sup> This is to say, virtually indistinguishable save for a few paragraph sections inside the documents.

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**Civil Division**

)  
DEON D. COLVIN, )  
Plaintiff, ) CIVIL ACTION NO: 2018 CA 0005349  
v. ) Hon. Jose Lopez  
HOWARD UNIVERSITY ) Next Event: ISC 02/08/2019  
Defendant. )  
\_\_\_\_\_  
)

**PLAINTIFF'S MEMORANDUM OF FACTS AND LAW IN SUPPORT OF**  
**HIS OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

COMES NOW Plaintiff Deon D. Colvin ("Plaintiff," or "Colvin,"), *in propria persona*, and files this Memorandum of Facts and Law In Support of His Opposition to Defendant's Motion to Dismiss filed by Defendant Howard University. For the reasons set out more fully below, Plaintiff's complaint survives Defendant's motion to dismiss Pursuant to Super. Ct. Civ. R. 12 (b)(6) and Plaintiff requests that the Defendant's motion be denied.

**I. INTRODUCTION**

Defendant Howard University submits a two-page Motion to Dismiss accompanied by a nineteen-page Memorandum of Facts and Law to the Court in which it pleads that it dismissed Plaintiff Deon D. Colvin per the exact terms of its policies, and thus its dismissal decision is not

subject to any legal cause of action. Specifically, Howard claims that it dismissed Colvin pursuant to its longstanding “10-year rule” regarding course viability and provided Colvin the appropriate grievance procedures, and thus all complaint claims relating to the dismissal and grievance (Counts I-VII) should be dismissed.

Colvin categorically opposes Howard’s Motion to Dismiss on the grounds that the facts presented in his Complaint, if taken by this Court to be true, denote Howard committed at least five counts of breach of implied contract, fraud, and intentional infliction of emotional distress in relation to Colvin’s dismissal from its Graduate School. Hence Colvin opposes on the ground that the facts of his complaint survive dismissal pursuant to Super. Ct. Civ. R. 12 (b)(6).

Furthermore, Colvin contends that Howard, in its Motion to Dismiss: (a) mischaracterizes his lawsuit; (b) misappropriates its grievance procedures; and (c) misstates several relevant facts of the case. Finally, Howard introduces a second policy manual that not only does not make its case, but rather serves to highlight the myriad factual and administrative errors Howard committed in its dismissal of the Plaintiff. Plaintiff will detail the numerous factual misconstructions put forth by Howard in its Motion to Dismiss, and then elaborate why, based on the facts presented in the Complaint, Defendant’s Motion to Dismiss should be denied.

## **II. FACTUAL MISCONSTRUCTIONS IN HOWARD’S MOTION TO DISMISS**

### **A. HOWARD MISCHARACTERIZES COLVIN’S LAWSUIT**

Howard characterizes Colvin’s lawsuit as being based on a “10-year rule” of course viability. It states, “At core, Colvin bases the subject lawsuit on a plainly incorrect statement of Howard’s policies. Specifically, Colvin’s allegation that Howard’s Graduate School did not have

a 10-year course viability policy is demonstrably false.” Def. Motion to Dismiss, pg. 1-2.

Colvin’s lawsuit is not based on Howard having a 10-year course viability policy. This is a gross mischaracterization of Colvin’s lawsuit. At core, Colvin’s lawsuit is based on the fact that *he had viable courses but nevertheless was dismissed by Howard University*. Colvin had courses that were less than 10 years old that fulfilled degree requirements. Compl. ¶ 20-22. He made this clear to Howard prior to the lawsuit in a letter to the Political Science Department (Compl. ¶ 22, Def. Memorandum of Facts at Exhibit P) and in his letter to the President, where he states the courses he was utilizing for degree requirements were taken “between Fall 2006 and Spring 2015” (Compl. at Exhibit F, pg. 2-3) a date which indicates all the courses Colvin were planning to use to fulfill degree requirements were less than 10 years old<sup>1</sup> and were not contingent upon a 10 year rule of course viability. Colvin’s pleading that Howard had grossly and arbitrarily misinterpreted its course viability policy was but *one aspect* of Colvin’s complaint (and one supported by evidence) and not the basis for his lawsuit, as Howard alleges.

## B. HOWARD MISAPPROPRIATES ITS ACADEMIC GRIEVANCE PROCEDURES

Howard claims its “Academic Grievance Procedures” outlines “the process by which a student may grieve their grades” and that “it is unclear if grievance rights even attach to the subject dispute.” Def. Memorandum of Facts, p. 3, 5. Howard misappropriates its academic grievance procedures as being exclusively for grade disputes. No such specification is made in Howard’s Student Handbook where the procedures are presented. See Compl. at Exhibit M, p.

---

<sup>1</sup> As Colvin notes in his letter to the President (*Id.*, p. 3), courses taken fall 2006 semester do not reach 10 years of age until after the end of fall 2016 semester. Colvin was presenting to take his final examination during the fall 2016 semester, a time when his Fall 2006 courses were less than 10 years of age.

8.<sup>2</sup> Insofar as Colvin's grievance is of an academic nature—i.e., wrongful dismissal for not meeting Ph.D. academic requirements—and based on a review of his academic record—it is clear that Howard's "Academic Grievance Procedures," which are dexterously tailored for broad application; are the applicable procedures for Colvin's grievance of his dismissal, and is the relevant Howard policy that attaches to Colvin's grievance claims in the current lawsuit.

### **C. HOWARD MISSTATES RELEVANT FACTS**

In its Motion to Dismiss, Howard misstates several relevant facts. In Its Memorandum of Facts and Law, page 8, Howard states, "In response to the decision of the Provost, Colvin wrote a professor seeking to initiate the informal grievance process. Compl. at Exhibit L." This is incorrect and a misstatement of fact. After receiving the decision of the Provost, Colvin had a meeting with Dr. Fauntroy, Graduate Program Director, seeking to initiate the *formal* grievance process. Compl. ¶ 89. At the meeting Dr. Fauntroy discusses with Colvin how to present his grievance in writing. Compl. at Exhibit L. The next day Dr. Fauntroy emails Colvin that he is not eligible to file a formal grievance. Compl. ¶ 91.

Howard also misstates that Colvin elected to discontinue the grievance process and appeal his dismissal directly to the Provost and President. Howard states, "Rather than continue with the grievance process, Colvin elected to seek redress outside of the process, by appealing directly to the Provost and President." Def. Memorandum of Facts, p. 16. This is patently incorrect. Colvin never abandoned the grievance process or attempted to appeal his case to the Provost or President for a decision in lieu of the grievance procedures. Regarding

---

<sup>2</sup> An example is given after Step 1 of the Informal Procedures that is preceded by the abbreviation "e.g." (rather than "i.e.") which denotes what follows is only an example and in no way encompasses the breadth of disputes that can be aggrieved through the procedures.

the former, Colvin only went to "discuss" his dismissal with the Provost while he was in the process of informal procedures, not to appeal his case. Compl. ¶73. Regarding the latter, Colvin contacted the President for a meeting *after* his case had been closed by the Provost and he had been told he could not file a formal grievance. Compl. at Exhibit F. Howard's misstatements advance to the Court that a) Colvin never attempted to file a formal grievance regarding his dismissal and b) that he decided to forgo grievance processes and sought decisions from the Provost and President. Def. Memorandum of Facts, 16. This is a false assertion and the truth is Colvin was precluded from grievance procedures by the actions of Howard's officials. See Compl. ¶ 63-66, 78, 91, 108.

Having addressed several of Howard's factual misconstructions in its Motion to Dismiss, Plaintiff proceeds to expiate why Defendant's motion should be denied.

### **III. THE SUBJECT LAWSUIT**

On August 3, 2018 Colvin filed an amended complaint with D.C. Superior Court claiming five counts of breach of implied contract, one count of fraud, and one count of intentional infliction of emotional distress in relation to his dismissal from Howard University's Graduate School. On October 9, 2018 Howard filed a Motion to Dismiss on the grounds that Colvin's complaint fails to state a claim upon which relief can be granted. On October 17, 2018 Plaintiff filed for an extension of time until January 10, 2019 to respond to Defendant's Motion to Dismiss. On October 18, 2018 the Court granted Plaintiff's requested extension, but misconstrued Plaintiff's request of extension date and assigned December 21, 2018. The Clerk's office failed to serve Plaintiff the Court's Order via USPS mail. On January 3, 2019

Plaintiff files with the Court a Motion for Leave to File an Untimely Brief and requests the Court allow Plaintiff to file his brief by January 10, 2019 as originally requested.

**D. LEGAL STANDARD**

Howard motions the Court to dismiss the current lawsuit pursuant to Super. Ct. Civ. R. 12 (b)(6), which provides for the dismissal of an action based upon the plaintiff's "failure to state a claim upon which relief can be granted." "[T]o survive a motion to dismiss [under Rule 12 (b)(6)], a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *District of Columbia vs. Hofgard* (2015) citing *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) (quoting *Ashcroft*, 556 U.S. at 678); see also *Bell Atl. Corp.*, 550 U.S. at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level."). "A pro se plaintiff's pleadings must be considered in toto to determine whether they set out allegations sufficient to survive dismissal. *Lemon v. Kramer* 270 F. Supp. 3d 125 (D.D.C Sept. 11, 2017).

**IV. PRELIMINARY ARGUMENTS & FACTS**

**E. Howard's Academic Decision to Dismiss Colvin is Not Entitled to Judicial Deference**

As a preliminary argument, Howard claims the entirety of Colvin's complaint should be dismissed since he has failed to state a relievable claim as Howard's academic decision to dismiss is entitled to judicial deference. Def. Memorandum of Facts, p. 11.

As Howard correctly points out, Courts consistently hold to disturb a university academic decision a plaintiff needs to demonstrate improper motivation or irrational action. *Williams v. Howard University*, 528 F.2d 658, 660 (D.C. Cir. Jan. 6, 1976). *Id.*, p.12

Colvin's pleadings that Howard dismissed him on the basis of false and inaccurate information about his academic record, academic history, and the level of support he had from the faculty of the Political Science Department (Compl. ¶ 20-22, 31-32, 40-41, Exhibit F) are pleadings that demonstrate Howard acted with improper motivation in its decision to dismiss him. Specifically, Howard was improperly motivated by the belief that Colvin did not have viable courses, had applied for readmission and failed to defend his dissertation on two separate occasions, and that the faculty of the Political Science Department recommended his dismissal from the Ph.D. program when it decided to dismiss him. Compl. at Exhibit B; Def. Memorandum of Facts, p.7. Colvin's pleadings along with exhibits in this Memorandum (Plaintiff's Memorandum at Exhibit P), which show all of these motivations to be misguided, satisfy Colvin's obligation to demonstrate Howard acted with improper motivation with respect to his dismissal. Insofar as Colvin's pleadings fulfill the "improper motivation" criteria, Howard's dismissal decision is not entitled to judicial deference and the Court should deny Howard's motion to dismiss on this ground.

**F. All Implied Contract Claims Are Valid, As There is no Actual Contract Between Colvin and Howard Yet a 'Contractual Relationship' Exists**

As a second preliminary argument, Howard contends that Plaintiff cannot bring a lawsuit for implied contract because the student-university relationship is contractual. Def. Memorandum of Facts, p. 13. While courts have held the student-university relationship to be ‘contractual in nature,’<sup>3</sup> it is not contractual in fact. That is, neither Colvin nor Howard is signatory to an actual written contract with the other with expressed boundaries as to the terms of the contract.<sup>4</sup> The doctrine of implied contract is less rigid in discerning whether a contractual relationship exists between two parties. From Colvin’s and Howard’s dealings, it can be inferred that the Howard University Student Handbook 2015-2016 and the 1979 Graduate Rules and Regulations are implied contracts. Howard uses the two publications to defend its dismissal action and claim that it provided academic grievance procedures to Colvin; Colvin uses the same to claim his dismissal was wrongful and he was denied grievance hearings on his dismissal. Both parties show an “intent to be bound” by aspects of the two publication’s contents. As no actual contract exists, but a ‘contractual relationship’ abides, Colvin is not incorrect to claim that aspects of Howard’s University Student Handbook and Graduate School Rules and Regulations can be viewed as an implied contract that existed between himself and Howard, and that Howard’s breaches of their contents were breaches of the implied contract

---

<sup>3</sup> Howard’s case listing is adequate here. See Def. Memorandum of Facts, p.13.

<sup>4</sup> For this reason, students have been ineffective at asserting aspects of a university’s Student Handbook, such as tuition increase projections, as a binding part of the student-university contract. *Basch v. George Washington Univ.*, 370 A. 2d 1364, 1366 (D.C. 1977). Or that a University’s Graduate School Rules and Regulations is a contract. *Mosby-Nickens v. Howard Univ.*, 864 F. Supp. 2d 93 (D.D.C. 2012). (“Plaintiff does not meet her burden of proving that the Graduate School Rules and Regulations constitutes a binding contract between her and Howard University.”)

that existed between the two parties (Counts I-VII).<sup>5</sup> <sup>6</sup> Insofar as Colvin's claim to an implied contract is sustainable from a legal standpoint, Howard's motion to dismiss on the ground that Colvin cannot claim breach of implied contract should be denied.

**G. Only Howard's 1979 Rules & Regulations Apply To Colvin's Lawsuit, Not Subsequent Amendments**

As a final preliminary issue, Plaintiff would like bring to the Court's attention that Colvin became a Graduate and Ph.D. student at Howard in 2004. Comp. ¶ 2. Howard has since amended its Graduate School policies several times, e.g. in 2007, 2013 and thereafter. Def. Memorandum of Facts, 3-4. Howard mentions its amended documents throughout its pleadings. *Id.*, p. 9, 14. The only Howard Graduate School policy that governed Colvin's dismissal, and thus is germane to the current lawsuit, is *The Graduate School of Arts and Sciences Rules and Regulations For The Pursuit of Academic Degrees (1979)*. The Dean states such in his dismissal letter to Colvin. Compl. at Exhibit B, p.1 where he states:

As a note, the October 1, 1979 Rules and Regulations for the Pursuit of Academic Degrees is being quoted here because it represents the rules and regulations in place during your initial admissions to Graduate School.

**V. ARGUMENTS**

**1. Colvin States a Valid Claim of Breach of Implied Contract Relating to the Dean's Dismissal Decision, (Count I); Thus Howard's Motion to Dismiss Should Be Denied**

---

<sup>5</sup> Further, Courts have rejected a pure shoehorning of the student-university relationship into one doctrinal category. *Slaughter v. Brigham Young Univ.*, 514 F.2d 622, 626 (10 Cir. 1975) ("The student-university relationship is unique, and it should not be and cannot be stuffed into one doctrinal category."). Further, while "elements of contract law have been applied to the student-university relationship, rigid importation of contract doctrine has been rejected." *Abbariao v. Hamline Univ. School of Law*, 258 N.W.2d at 113.

<sup>6</sup> Howard claims Colvin also refers to the student-university relationship as "contractual." Def. Memorandum of Facts, p. 9. When Colvin uses the term he is referring to the *nature* of the student-university relationship (rather than an explicit contract) or using the term as shorthand for implied contract.

Howard argues that Colvin's Count I claim should be dismissed because he "relies on a plainly inaccurate recitation of the Graduate School Policy and other non-material aspects of his dismissal" that "does not give rise to any breach of contract claim." Def. Memorandum of Facts, p. 14. Howard specifically identifies as "immaterial" Colvin's claim that "faculty did not submit a recommendation to dismiss Colvin" and the fact that Colvin "did not apply for readmission in certain semesters." Def. Memorandum of Facts, p. 14. Howard's pleading for dismissal of Count I should be denied based on the materiality and accuracy of Colvin's pleadings.

Colvin claims Howard violated the implied covenant of "Good Faith and Fair Dealing" provision of contract law in its dismissal decision. Comp. ¶ 44. As the *Wright* court held, "Every contract includes an implied covenant of good faith and fair dealing. *Allworth v. Howard Univ.*, 890 A.2d 194, 201 (D.C. 2006). The meaning of "good faith" varies with the context. Restatement (Second) of Contracts § 205, cmt. a (1981). Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party." *Wright v. Howard Univ.*, 60 A.3d 749 (2013) (citing *Allworth*, 890 A. 2d at 201-02.)). Colvin contends that in the context of the contractual-in-nature student-university relationship that existed between himself and Howard in which Colvin remunerates Howard while Howard evaluates Colvin's fitness for degree conferment, satisfying the 'Good Faith and Fair Dealing' provision provides that Howard would make any academic decision regarding him based on the actual facts of his case, and not on factual inaccuracies. Compl. ¶ 44-45. Howard employs several factual inaccuracies in its dismissal decision and their centrality to the decision is apparent. The materiality of the factual

inaccuracy that “Howard faculty recommended to dismiss Colvin” is apparent from the fact it is identified at the outset of the Dean’s dismissal letter as one of two factors that precipitated the dismissal, the other being the Dean’s academic review. On page 1, the Dean states:

*I regret to inform you that upon review of your academic record and a recommendation from the faculty of the Graduate Program in the Department of Political Science, you are hereby dismissed immediately from the Graduate School.”*

Compl. at Exhibit B.

The materiality of the factual inaccuracy that Colvin “applied for readmission in certain semesters” which Colvin denies (Comp. ¶ 40-41) is also apparent in the Dean’s letter, and the relevant excerpt is stated plainly as a part of the reason for the dismissal by Howard in its Def. Memorandum of Facts, p.7. There Howard states:

“The Dean also explained to Colvin, as a reason for Colvin’s dismissal:

[Y]ou were not enrolled at the University and were readmitted to the doctoral program in Spring 2013. The academic provision governing your readmittance stated that you must complete all degree requirements and defend your dissertation by fall 2013. You did not satisfy this provision. In addition, you were not enrolled a second time and were readmitted in fall of 2014. Once again, the provision that you were to defend and graduate by the fall of 2014 was not satisfied.” *Id.*”

Colvin states he did not apply for readmission in fall of 2014. Thus the Dean’s claims that he was “readmitted” with a provision to graduate by fall of 2014 is an error on Howard’s part. Howard does not dispute Colvin’s pleadings regarding the two factual inaccuracies (Compl. ¶31-32, 40-41), but instead maintains that they were non-material to the dismissal decision. The evidence presented above shows the inaccuracies were material to Colvin’s dismissal and Colvin is correct to claim that the Dean violated the “Good Faith and Fair Dealing” provision of contract law in dismissing him on the basis of a battery of factual inaccuracies regarding his academic and admission history. Compl. ¶ 41, 44.

Finally, there is Howard's claim that Colvin relies on an "incorrect recitation" of Graduate School Policy and thus fails to state a claim. This is plainly incorrect. Rather, Colvin accurately states the policy as it appears in the 1979 booklet provided to him by Senior Associate Dean Dr. Constance Ellison<sup>7</sup> in a meeting in April 2016 about his pending dismissal. Compl. ¶ 20, Compl. at Exhibit D, p.2. Colvin quotes the policy as stating "no course pursued more than 7 years prior to the term in which the student presents for final examination can be used for credit toward the Ph.D. degree, except upon written examination of the head of the department concerned, based upon special examination of the candidate." Compl. ¶ 36. This is an accurate paraphrasing of the policy, which states:

Except upon written recommendation of the head of the department concerned, based upon special examination of the candidate, no course that was pursued more than seven years prior to the term in which the student presents himself for the final examination will be credited toward the fulfillment of the requirements for the degree. (Compl. at Exhibit D, p.2)

The policy quoted is from *The Graduate School of Arts and Sciences Rules and Regulations For The Pursuit of Academic Degree, Effective (1979)*—the exact policy booklet, year (1979), date (October 1) and page number (p.17) quoted by the Dean in his dismissal letter. There the Dean plainly states the policy he is referencing is the 1979 booklet ("According to the Graduate Schools' Rules and Regulations for the Pursuit of Academic Degrees—Effective October 1, 1979 regarding course viability (Article VI, Section 1.C"—p.17.") (Compl. at Exhibit B, p. 2) *and makes no reference to a 1983 amended version.*

---

<sup>7</sup> Senior Associate Dean Dr. Constance Ellison is the Howard University official designated in the Dean's dismissal letter as the initial person Colvin is to contact regarding any questions or concerns regarding the dismissal. Compl. ¶ 61, Exhibit B, p.3. Senior Associate Dean Ellison is keenly involved in Graduate School's Rules and Regulations, and is the Howard official that promulgated the updated 2007 Graduate School Rules and Regulations Manual. See Def. Memorandum of Facts, Exhibit 3, front cover.

Howard interpolates that there is an updated 1983 version of the Policy manual that states the updated policy. Def. Memorandum of Facts, p. 3-4, Exhibits 1 and 2. However, not only is such version not referenced by the Dean in his dismissal letter, Howard's claim that such version exists is not demonstrated by the evidence presented (Exhibits 1 and 2). The booklet presented has no notation that it was published in 1983 or that it is an amended 1983 version of the 1979 policy manual. See also Exhibit R.<sup>8 9 10 11</sup> The page which supposedly documents the alleged change (Def. Exhibit 2) does not appear anywhere in the alleged 1983 manual. *Id.* The only fact that can be ascertained from Howard's exhibits is that there are two versions of *The Graduate School of Arts and Sciences Rules and Regulations For The Pursuit of Academic Degrees (1979)*.<sup>12</sup> It cannot be said that Colvin is incorrectly reciting the policy when he quotes from the version of the booklet he was provided by the Senior Associate Dean when he went to discuss his pending dismissal. Insofar as Colvin's breach of implied covenant of "Good Faith and Fair Dealing" claim is correctly stated, accurately quoted, and materiality evident, Howard's motion to dismiss for failure to state a claim for which relief can be granted should be denied.

---

<sup>8</sup> Colvin obtained an electronic photocopy of the alleged 1983 document from Howard on December 13, 2018 per informal email request for a photocopy made on November 5, 2018.

<sup>9</sup> Colvin had no knowledge of this document prior to filing his Complaint, and only became aware of the alleged document upon reading Howard's Motion to Dismiss.

<sup>10</sup> By comparison, Defendant's Graduate School Rules and Regulations For The Pursuit of Academic Degrees 2007 (Def. Memorandum of Facts at Exhibit 3) is an updated version and has notation identifying such on its front cover where in the upper right-hand corner it states "Updated 03-21-17."

<sup>11</sup> Howard's original document (Exhibit Q) and the alleged amended document (Exhibit R) are virtually identical in appearance and it is impossible to tell which is amended and which is the original, or even that an amended version exists. The documents appear in their entirety in the exhibits section for the Court's review.

<sup>12</sup> A state of affairs that at worst indicates fraudulent misrepresentation, and at best indicates Howard failed to clearly promulgate its Graduate Rules and Regulations (and any alleged amendments) to Colvin.

**2. Colvin States a Valid Claim of Breach of Implied Contract for Howard Dismissing Him Prior to 2019 Regardless of Standard Applied (Count II); Hence Howard's Motion to Dismiss Should Be Denied**

With respect to Count II, Howard contends that Colvin "has not identified any [implied] contract that guarantees him five years to complete his candidacy regardless of whether he continues to meet the academic standards of the University," and his inability to do so "is fatal to his [Count II] breach of contract claim." Def. Memorandum of Facts and Law, p. 15. The plain facts of the case, as presented in the Complaint, find Howard's assertion is incorrect.

In Complaint ¶ 49, Colvin identifies Howard's policy appearing in Article VI, Section 6 of *The Graduate School of Arts and Sciences Rule and Regulations For The Pursuit of Academic Degrees (1979)* as the implied contract which guarantees him five calendar years for candidacy. Pages 20-21 delineate the University's regulations pertaining to Ph.D. candidacy, which states:

Upon the student's admission to candidacy, the major department shall appoint a committee of at least three members of the Graduate Faculty to supervise the studies upon which his dissertation will be based, and the department shall inform the Dean of the Graduate School of the personnel of the committee.

Candidacy for the Ph.D. degree shall be valid for no more than five calendar years. Any student whose candidacy has expired may make application to the Executive Committee of the Graduate School for readmission. The department in which the student is seeking the degree shall determine the conditions under which he, or she, may be reinstated, subject to the approval of the Executive Committee of the Graduate School.

The responsibility for fulfilling these requirements on time is that of the student. Students should consult with the Dean of the Graduate School if in doubt as to any Requirements of their departments relative to admission to candidacy and regard them as additional to these general requirements.

Regulations pertaining or related to admission to candidacy should be interpreted as applicable to the date of actual approval by the Executive Committee of the Graduate School. However, deadline dates established by the Graduate School for submitting application must be honored and no exceptions will be made. (Comp. at Exhibit G)

The policy as written sets a maximum period of five years for Ph.D. candidacy. No minimum time for Ph.D. candidacy is identified; nor are any circumstances delineated wherein which Howard would truncate the maximum time Colvin is allowed for candidacy, or whereby Colvin would forfeit the maximum time allotted. Howard counters that certain academic or extenuating circumstances could supersede the stated policy, such as academic dishonesty or sexual assault, or not meeting the academic standards of the University and “Howard could dismiss that student immediately and it would not be forced to continue to enroll that student for the full five year period.” Def. Motion to Dismiss, p. 15. There is no statement to that effect in the policy. Even if such reasonable argument could be accepted, according to the facts of the Complaint, none of the extenuating circumstances Howard mentions applied to Colvin. Colvin was a student in good standing with viable courses necessary to sit for final examination regardless of any standard applied (i.e. whether or not one employs a “10-year rule” of course viability) when he was dismissed in June 2016, a little over two years into his Ph.D. candidacy. Compl. ¶ 21-22 and Exhibits B and F, p. 2). Insofar as such extenuating circumstances Howard mentions are not stated in its policy, or even existed in Colvin’s case, Colvin is correct in claiming he was entitled to a maximum of five years of candidacy commencing on May 9, 2014 and ending May 9, 2019 and that the university breached its implied contract with him when he was wrongly stripped of his Ph.D. candidacy prior to May 9, 2019. Compl. ¶ 49-53. Further, taken most liberally, the five year time allotment for candidacy also gives the student that amount of time to resolve any issues of course viability that may arise during candidacy (e.g. retake expiring courses, etc.) before presenting for his/her final exam. The facts of the case as presented in the complaint, and corroborated by supportive evidence, demonstrate Colvin

states a valid claim for breach of implied contract with respect to the time he was allowed Ph.D. candidacy (Count II). Thus Howard's motion to dismiss should be denied.

**3. Colvin States Valid Claims that Howard Denied Him Informal and Formal Grievance Procedures (Counts III, IV, V); Hence Howard's Motion to Dismiss Should be Denied.**

Howard pleads that Colvin fails to state a claim regarding the failure of Howard to provide informal and formal grievance procedures. Specifically, Howard contends: (1) it is not clear the procedures attach to Colvin's case; (2) Howard properly provided the step of the informal procedure that might attach and thereafter Colvin abandoned the grievance process; (3) Colvin sought redress outside of the process and was provided a "gratuitous review" of his dismissal by the Provost and President; (5) by making an appeal to the Provost, Colvin "functionally waived the informal and formal processes," thus his claims that he did not receive grievance procedures (Counts III, IV, V) are not valid and should be dismissed; and (5) Colvin cannot claim it was a breach of contract for the Provost to close his file as "Colvin has not alleged any contract where he was guaranteed any review by the Provost. As such the Provost' review was gratuitous and not guaranteed by contract." Def. Memorandum of Facts, p. 15-16.

Howard's contentions are incorrect and are refuted by the facts of the case and thus fail to serve as a basis for dismissal of Colvin's claims in Counts III, IV, and V.

First, Howard is incorrect to state the grievance procedures may not attach to Colvin's dispute. The procedures as presented in the Howard Student Handbook 2015-2016 do not come with disclaimers or exceptions, but are presented as the procedures for *all* academic grievances. Compl. at Exhibit M, p.8. Colvin's grievance is about his dismissal, which occurred for academic reasons, i.e. failure to meet academic standards, and thus it is clear the

procedures, which provide for grievance of decisions about academic performance, would attach to his dispute.

Second, is Howard's pleading that it provided the only step of informal grievance it was required to provide (Step 3) when Colvin met with Dr. Ellison after receiving the dismissal letter. Compl. ¶ 62. This is incorrect for several reasons. First, just because Colvin's dispute is with the Dean does not mean Howard can "skip" steps in the informal process. Colvin is the initiator of the dispute and he is obligated to follow the process and Howard must do the same. Nothing in the procedures provides for the exception Howard claims. Secondly, the pleading fails to take into account the fact that when Colvin met with Dr. Ellison he was not pursuing grievance. Colvin did not decide to pursue grievance until *after* his meeting with Dr. Ellison. *Id.* Then he proceeded to initiate informal Steps 1 and 2. Compl. ¶ 63-66. Thus a meeting that occurred before Colvin had initiated grievance cannot be used to satisfy grievance provisions. Thus Howard's claim that it properly provided Step 3 of informal grievance when Colvin met with Dean Ellison is incorrect.

Relatedly, Howard does not dispute Colvin's claim (Count III) that he was not provided Step 1 or Step 2 of informal grievance, only that they were not obligated to provide it. Step 1 (meeting with the other party in the dispute) is integral to effecting informal resolution of grievance. Step 2 (seeking intervention with Chair) is also important. Insofar as Howard did not engage in these steps with Colvin, it did not provide informal grievance procedures. Step 3-4 were also not provided as they were pre-empted by the Provost's closing of Colvin's case. Thus Colvin states a valid breach of contract claim when he asserts Howard did not provide informal

grievance to him and breached the implied contract with respect to informal grievance (Count III). Comp. ¶ 70.

Third, Howard is incorrect when it asserts that “Colvin elected to seek redress outside the grievance process by appealing directly to the Provost and President.” The facts in the complaint do not show Colvin was seeking to appeal his case to the Provost and seeking redress outside the grievance process when he met with the Provost. In the complaint, Colvin states he only went to “discuss” his dismissal with the Provost. Compl. ¶ 73.<sup>13</sup> Colvin does not indicate that he requested the Provost perform a review of his case or that he was seeking redress outside the grievance procedure. Nor is there any evidence that Colvin requested a formal review by the Provost, or that he had made the decision to forgo grievance in lieu of a decision by the Provost. Rather, Colvin was still in the informal stage of grievance and merely sought to discuss his case with Provost upon the advice of his Chair. The Provost’s “gratuitous review” and “closing” decision was an unsolicited act. The Provost is a Howard official with no role in the grievance process and no authority to take action in cases of academic grievance. According to his complaint, when Colvin went to pursue formal grievance, he was informed he could not do so as a result of the Provost closing of his case. Compl. ¶ 91 and Exhibit L. Hence Colvin states a valid breach of implied contract claim when he asserts he was denied formal grievance procedures (Count V). Comp. ¶ 86-93. Finally, Colvin states a valid claim that the Provost’s closing was a breach of implied contract (Count IV). Colvin was entitled to access to the academic grievance procedures outlined in the Student Handbook. The Provost’s closing of

---

<sup>13</sup> Colvin consistently uses the term “discuss” when referencing his meeting with the Provost. In a follow up email to the Provost’s office in which he requests a second meeting with the Provost, Colvin also employs the term and also does so in his letter to the President. Compl. at Exhibit K and F.

Colvin's case prevented Colvin's access to the remaining informal grievance procedures (Step 3-4) and the formal grievance procedures. Hence the Provost closing was a "breach of the implied contract that existed between Howard and Colvin with respect to the resolution of academic grievances." Compl. ¶ 82.

In all, the facts of the case show Colvin's Counts III, IV, and V are valid and facially survive a Rule 12 (b)(6) motion to dismiss. Thus Howard's motion should be denied.

#### 4. Colvin States a Claim for Fraud (Count VI); thus Howard's Motion to Dismiss Should Be Denied

Regarding Colvin's grievance fraud claim (Count VI), Howard asserts that it provided Colvin grievance procedure and that Colvin "does not plead any element necessary to prove a civil fraud claim." Def. Memorandum of Facts, p. 17.

To plead fraud, Colvin must plead (1) a false representation; (2) in reference to a material fact; (3) made with knowledge of its falsity; (4) with the intent to deceive, and (5) action is taken in reliance upon the representation. *Bennet v. Kiggins*, 377 A.2d 57, 59-60 (D.C. 1997). Specifically, Howard maintains (1) it did not make false representation in reference to a material fact relating to its grievance procedure, (2) Colvin does not plead Howard had knowledge of falsity or (3) had intend an intent to deceive, nor does he plead any action taken by him "in reliance on any fraudulent statement." *Id.* Examination of Colvin's pleadings demonstrates Howard's assertion here is incorrect.

Colvin pleads (1) that Howard made "a false representation in reference to a material fact relating to its grievance procedures" with his pleading that Howard in its Student Handbook 2015-2016 cogently represents its grievance procedures as existing and accessible

(Compl. ¶ 97-103 and at Exhibit M, p. 8) and then failed to provide the procedures when he tried to access them from June to September 2016. Compl. ¶ 104. Specifically, Colvin was not provided steps 1-4 of informal procedure<sup>14</sup> and access to formal grievance was denied. Compl. ¶ 63-68, 91. Colvin pleads (2) and (3), Howard had “knowledge of its falsity” “with an intent to deceive” with his pleading that Howard officials either involved in the promotion of the grievance procedures to him (i.e. Provost, President) or charged with facilitating them (i.e. Dean) knew Colvin was entitled to the procedures and knew and that they were not being provided<sup>15</sup> and then, while continuing to promote the procedures to Colvin in the Student Handbook as accessible, intentionally took actions that they knew would preclude Colvin from accessing the procedures (i.e. Dean’s refusal to meet precluded informal grievance; Provost’s and President’s closing action precluded access to formal grievance), the latter intentional actions evincing an intent to deceive. Compl. ¶ 105-109. Finally, Colvin pleads (5) “action taken as a result of Howard’s false representation,” with his pleading Howard “lured” and “maintained” him at University (Compl. ¶ 102-103); that is to say Colvin chose to “attend” Howard and “maintained” his enrollment at the University as a result of Howard’s fraudulent representation that academic grievance procedures would be provided if needed. Examination of Colvin’s complaint shows his grievance fraud pleading (Count VI) contains the elements of fraud. Thus Howard’s motion to dismiss for lack of elements should be denied.

---

<sup>14</sup> Informal grievance steps 1 and 2 were simply not provided by Howard officials when Colvin approached them, while steps 3 and 4 were precluded when the Provost closed Colvin’s case.

<sup>15</sup> The Dean knew Colvin had not been provided informal grievance because he did not meet with Colvin as per Informal procedure step 1. The Provost, through his “communications with administrators in the Graduate School” (Compl. at Exhibit J) knew or should have known Colvin had not had formal grievance when he closed Colvin’s case. The President “communicated with the Provost about the circumstances of the case” (Compl. at Exhibit N) and thus knew or should have known Colvin had not had formal grievance when he closed the matter.

5. Colvin States a Claim for Intentional Infliction of Emotional Distress (Count VII); thus Howard's Motion to Dismiss Should be Denied

Lastly, Howard contends that Colvin's dismissal was a normal academic decision based on the plain text of its policies that does not meet the high bar for an intentional infliction of emotional distress cause of action. Howard notes to establish intentional infliction of emotional distress, a plaintiff must show (1) 'extreme and outrageous' conduct on the part of the defendant; which (2) intentionally or recklessly (3) causes the plaintiff 'severe emotional distress.'" *Paul v. Howard Univ.*, 754 A. 2d 297, (D.C. May 25, 2000). "The requirement of outrageousness is not an easy one to meet." *Drejza v. Vaccaro*, 650 A.2d 1308, 1312 (D.C. 1994).

Firstly, the facts indicate Howard's decision was not one based on the "plain text of its policies" but wrongful action based on incorrect academic information and a failure to provide grievance procedures. It is the actions Howard undertook with respect to grievance that is at the center of Colvin's emotional distress claim. Colvin identifies: (1) the Dean's refusal to meet with him per Step 1 of informal grievance procedure; (2) the Provost's action to close his case; and (3) the President's action to close his case despite being made aware that Colvin had viable courses and of numerous administrative errors made by the Dean in reviewing Colvin's academic record as "extreme," "outrageous," and "intentional" actions that caused him severe emotional distress. Comp. ¶ 116-123.

Colvin asserts the officials knew (or should have known) their actions would cause him severe emotional distress, yet proceeded with the (distress-causing) action. Colvin had been pursuing his Ph.D. degree for twelve years and was presenting himself for his final examination.

He was claiming he had viable courses. He was pursuing grievance. It was extreme, outrageous, and "beyond the bounds of decency" for Howard as an educational institution to conduct Colvin's academic dismissal and his attempts to engage in grievance procedures in the manner it did. Far less extreme actions were available. (The Dean could have met with Colvin to discuss the dismissal; the Provost and President could have recommended formal grievance.) Insofar as the facts presented show that Howard took actions that were not in conformance with the plain text of its policies (i.e. regarding course viability and grievance procedure), that were extreme, outrageous, and intentional, and that caused Colvin severe emotional distress, Colvin states a claim that on its face survives dismissal pursuant to Rule 12 (b)(6), and Howard's motion to dismiss should be denied.

#### **V. CONCLUSION**

For each of the Counts in the complaint, the facts presented make a claim that on its face survives dismissal pursuant to Super. Ct. Civ. R. 12 (b)(6). Colvin states to the court valid claims and seeks relief that the Court can provide (i.e. reinstatement, compensatory & punitive damages). For the reasons set out fully above, Plaintiff requests the Defendant's Motion to Dismiss with prejudice be denied in its entirety.

January 10<sup>th</sup>, 2019

Respectfully submitted,

**DEON D. COLVIN**



Plaintiff

743 Fairmont Street NW #211

Washington, DC 20001

T: 216-396-8512

**CERTIFICATE OF CONFERENCE**

On or about January 8, 2019, undersigned Plaintiff contacted Defendant through its counsel to request its consent for the relief sought in Plaintiff's Opposition to Defendant's Motion to Dismiss, which is to have Defendant's Motion to Dismiss dismissed in its entirety. On or about January 8, 2019 Defendant responded that Plaintiff does not need its consent to file an Opposition and thus it did not give consent for relief sought.

  
Deon D. Colvin

Deon D. Colvin  
Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 10th day of January, 2019, that a copy of this Motion and Memorandum was filed with the Court and sent to Defendant Howard University via electronic mail to signed counsel and via USPS regular mail to:

John G. Gloster Jr., Esq.  
Sr. Associate General Counsel  
Office of the General Counsel  
Howard University  
2400 6<sup>th</sup> Street N. W. Suite #321  
Washington, D.C. 20059

  
Deon D. Colvin

Deon D. Colvin  
Plaintiff

# **APPENDIX K**

"Appendix K"

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

---

**DEON D. COLVIN**

*Plaintiff,*

v.

**HOWARD UNIVERSITY**

*Defendants.*

**Civil Action No.: 2018 CA 005349 B**

**Judge: José M. López**

---

**ORDER**

This matter is before the Court on Defendant Howard University's Motion to Dismiss ("the Motion") filed on October 9, 2018, Plaintiff Deon Colvin's Opposition ("Opposition") filed January 10, 2019, and Defendant's Reply to the Opposition ("Reply") filed January 17, 2019. For the reasons described herein, Defendant's Motion to Dismiss is hereby **GRANTED**.

**STANDARD OF REVIEW**

"To survive a motion to dismiss under D.C. Super. Ct. R. Civ. P. 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a claim [for] relief that is plausible on its face." *District of Columbia v. Holfgard*, No. 2015 CA 003354B at 4 (D.C. Sup. Aug. 5, 2015). In evaluating a motion to dismiss, the court must determine: (1) whether the complaint includes well-pleaded factual allegations, and (2) whether such allegations plausibly give rise to an entitlement for relief. *See Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949-52 (U.S. 2009); *see also Mazza v. House Craft LLC*, 18 A.3d 786, 790-91 (D.C. 2011), *vacated as moot*, 22 A.3d 820, 821 (D.C. 2011) (per curiam). The complaint need not include "detailed factual

allegations,” but must include “more than an unadorned, the defendant-unlawfully-harmed-me accusation.” *Mazza*, 18 A.3d at 790 (quoting *Iqbal* at 1949).

When considering a motion to dismiss, the reviewing court must construe all facts and inferences in favor of the non-moving party. *See Greenpeace, Inc. v. Dow Chem. Co.*, 97 A.3d 1053, 1059 (D.C. App. 2014). The allegations must, however, be sufficient “to raise a right to relief above the speculative level.” *Pietrangelo v. Wilmer Cutler Pickering Hale & Dorr, LLP*, 68 A.3d 697, 709 (D.C. App. 2013) (quoting *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (U.S. 2007)). Further, the complaint must provide more than mere labels and conclusions. *Grayson v. AT&T Corp.*, 980 A.2d 1137, 1144 (D.C. 2009).

### **LEGAL ANALYSIS**

Defendant, Howard University, asserts that the Plaintiff’s complaint should be dismissed for failing to state a claim upon which relief can be granted. Howard University argues that this Court gives judicial deference to determinations made by school officials regarding students not performing adequately to school standards. Plaintiff, Deon Colvin, opposes the Motion stating judicial deference should not be given because Howard University founded its decision to discharge the Plaintiff on false and inaccurate information.

In his complaint, Mr. Colvin alleges Howard University breached an implied contract between himself and Howard University for (1) conducting an inaccurate, arbitrary, and capricious review of his academic record, (2) dismissing him before the expiration of a five year period given to students after being approved for candidacy, and (3) denying him access to grievance procedures. In addition, Mr. Colvin alleges Howard University committed fraud and intentionally inflicted emotional distress.

Mr. Colvin began his graduate studies at Howard University as a student in the Department of Political Science Ph.D. Program in 2004. (Compl. 3). Between 2004 and 2014, Mr. Colvin worked on his dissertation proposal and enrolled in the spring semester of 2014 to defend his proposal. *Id.* Mr. Colvin successfully defended his proposal and was admitted to candidacy for the Ph.D. degree on May 9, 2014. *Id.* In April 2016, the Political Science Chair communicated, on behalf of Mr. Colvin, with the Graduate School seeking an extension of time for Mr. Colvin to defend his dissertation<sup>1</sup> and request a course waiver.<sup>2</sup> *Id.* at 4, *see also* Compl. Ex. C. Mr. Colvin's requests were denied. On June 23, 2016, Mr. Colvin received a letter from Howard University's Associate Provost for Research and Graduate Studies ("the Letter") explaining Plaintiff was dismissed for going "beyond the expected time-to-degree," as found in the "established policy of the Graduate School as documented in the Rules and Regulations for the Pursuit of Academic Degrees—Effective October 1, 1979." (Compl. Ex. B). The Letter states "doctoral students enrolled in the Graduate School are expected to complete a Ph.D. degree within a maximum of seven (7) years from the date of initial registration in the program. . . ."

This Court gives deference to judgments made by school officials with regard to the adequacy of students' performance to meet academic standards. *Alden v. Georgetown Univ.*, 734 A.2d 1103, 1108 (D.C. 1985). So long as there is no demonstration, by the plaintiff, of improper motivation or irrational action there is no reason to disturb a university's academic decision. *Williams v. Howard University*, 528 F.2d 658, 660 (D.C. Cir. Jan. 6, 1976). Mr. Colvin asserts Howard University discharged him based on false and inaccurate information of his academic record. Upon review of the complaint and exhibits, the Court is not persuaded.

---

<sup>1</sup> The letter from Howard University's Associate Provost for Research and Graduate Studies states Mr. Colvin was readmitted to the doctoral program in 2013 and was not enrolled a second time. He was again readmitted in 2014. (Compl. Ex. B).

<sup>2</sup> The waiver requested credits be reinstated for courses older than 10 years, specifically courses completed in 2006. (Compl. Ex. C).

The Rules and Regulations for the Pursuit of Academic Degrees—Effective October 1, 1979, Article VI, Section 1 (D), “Length of Time for Completion of the Ph.D. Degree,” states, “[s]tudents are expected to complete a doctoral degree within a maximum of seven calendar years from the date of initial registration in the program.” (Compl. Ex. D). Mr. Colvin stated in his complaint he enrolled in the doctoral program in 2004. (Compl. 3). He then stated he was working on his dissertation and even requested an extension to complete the dissertation leading up to his dismissal in June 2016. (Compl. 3-4). Mr. Colvin pursued his doctoral degree for five more years than Howard University’s policy permitted. Based upon this policy, Howard University was within its authority to dismiss Mr. Colvin for failing to complete his doctoral degree within the maximum seven year period. In fact, Howard’s policy permits automatic dismissal of a student whom fails to complete a doctoral degree within seven years. (Compl. Ex. D). The Court does not find that Mr. Colvin has demonstrated the University dismissed him for reasons of improper motivation or irrational action. Thus, the Court gives deference to the University’s academic decision to discharge Mr. Colvin from the doctoral program and hereby dismisses Counts One through Five of Mr. Colvin’s Complaint.

Count Six of Mr. Colvin’s complaint alleges Howard University committed fraud for not providing him with grievance procedures. A complaint for fraud must plead: (1) a false representation; (2) in reference to material fact; (3) made with knowledge of its falsity; (4) with the intent to deceive; and (5) action is taken in reliance upon the representation. *Bennett v. Kiggins*, 377 A.2d 57, 59-60 (D.C. 1997). Mr. Colvin fails to sufficiently plead all elements needed to move forward with a claim for fraud.

The pleadings fail to present facts that Howard University knowingly made express false representations with regard to material facts about its grievance process with the intent to deceive

Mr. Colvin. Plaintiff also fails to plead the reliance he took based upon the alleged false representations because no subsequent action was taken by Mr. Colvin based upon representations made by Howard University. Therefore, Count Six of Mr. Colvin's Complaint is dismissed.

Finally, Count Seven of the Complaint alleges Howard University's decision to dismiss Mr. Colvin and close his file equates to intentional infliction of emotional distress. A sufficient pleading for intentional infliction of emotional distress must show "(1) extreme and outrageous conduct on the part of the defendant which (2) intentionally or recklessly (3) causes plaintiff 'severe emotional distress.'" *Paul v. Howard Univ.*, 754 A.2d 927 (D.C. 2000). Mr. Colvin alleges the administrators of Howard University<sup>3</sup> intentionally refused to meet with or ignored his pleas for assistance and such conduct resulted in his depression and anxiety.

In the present matter, the conduct of school officials does not raise to a degree of outrageousness for a viable claim of intentional infliction of emotional distress. Howard University's conduct is not of the outrageous nature to maintain a claim for intentional infliction of emotional distress. Outrageousness is not an easy requirement to meet. *Drejza v. Vaccaro*, 650 A.2d 1308, 1312 (D.C. 1994). Conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and regarded as atrocious, and utterly intolerable in a civilized community." *Id.* at 1312 n.10. In a student and school relationship, harm caused by a school towards a student for not allowing a student to take a final exam and graduate does not meet the outrageousness requirement. *Manago v. District of Columbia*, 934 A.2d 925, 928 (D.C. 2007). Mr. Colvin reached out to a variety of school officials at varying levels to have

---

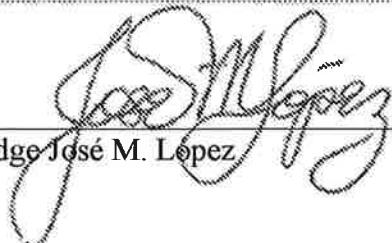
<sup>3</sup> Associate Provost for Research and Graduate Studies, Gary Harris, refused to meet with Mr. Colvin after the Letter of dismissal. Provost and Chief Academic Officer, Anthony Wutoh, closed Mr. Colvin's file. President of Howard University, Wayne Frederick, ignored Mr. Colvin's pleas for assistance and confirmed closure of the file. (Compl. 13).

his academic record reviewed in order to have his dismissal overturned. The officials not only reviewed his record they and other faculty members provided him with responses as to why his dismissal and his closed file were final. (Compl. Ex. I, J, K, L, N). The University and its staff did not conduct themselves in a manner which reaches a level of outrageousness and therefore Count Seven of the complaint is dismissed.

In conclusion, all counts of Plaintiff's complaint have been dismissed for failure to state a claim upon which relief can be granted.

Accordingly, it is on this 25th day of February, 2019, hereby

**ORDERED**, that the Motion to Dismiss is hereby **GRANTED WITHOUT PREJUDICE**.



Judge José M. Lopez

**COPIES TO:**

Zachary Shapiro (E-serve)

Deon Colvin  
743 Fairmont Street, N.W.  
Washington, DC 2001

# **APPENDIX L**

"Appendix L"

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

DEON D. COLVIN  
743 Fairmont Street N.W. #211  
Washington, D.C. 20001

Plaintiff,

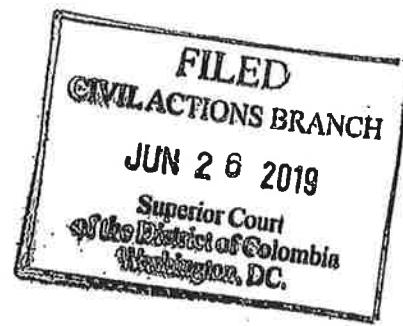
-vs.-

HOWARD UNIVERSITY  
2400 6<sup>th</sup> Street N.W.  
Washington, D.C. 20059

Defendant.

Serve On:

John G. Gloster Jr., Esq.  
Sr. Associate General Counsel  
Office of the General Counsel  
Howard University  
2400 6<sup>th</sup> Street N.W., Suite #321  
Washington, D.C. 20059



**VERIFIED AMENDED COMPLAINT  
WITH JURY TRIAL DEMAND**

**CASE NO. 2019 CA 003573**  
Hon. Robert R. Rigsby  
Next Event ISC: 09/20/2019

**COMPLAINT**

**I. INTRODUCTORY STATEMENT**

Plaintiff Deon D. Colvin appearing *in propria persona*, brings this action against Defendant, Howard University, and for his complaint, states as follows:

Plaintiff, Deon D. Colvin (hereinafter “Colvin”), is an individual who seeks reinstatement as a doctoral candidate in the Graduate School in the Department of Political Science at Howard University (“Howard”). Despite repeated attempts by Colvin to be reinstated to defend his doctoral dissertation, Howard unjustifiably refuses to do so. There is an implied contract between Colvin and Howard and Howard breached the implied contract, causing Colvin’s graduate credits to expire. Howard did not drop Colvin from the Ph.D. program after seven (7) years, but rather contracted with Colvin into a Ph.D. candidacy period wherein Colvin would have an allotment of time to conduct dissertation research and defend that research before an examination Committee pursuant to the attainment of a Ph.D. degree. To vindicate his contractual rights, plaintiff seeks reinstatement and compensatory damages against Howard University.

## **II. PARTIES AND JURISDICTION**

1. Colvin is, and was at all times mentioned, a Ph.D. candidate in the Department of Political Science at Howard University and domiciled at 743 Fairmont Street N.W. #211 Washington D.C. 20001 and a citizen of the District of Columbia.
2. Howard is a university duly organized and existing under the laws of the District of Columbia with its principal place of business at 2400 6<sup>th</sup> Street N.W., Washington, D.C. 20059. It is a private university which receives funding from the federal government. Howard University is responsible for operating graduate degree programs in a manner consistent with its legal obligations to its students. At all times relevant hereto, Howard carried out its duties by and through its actual and/or apparent agents, servants and/or employees. Howard is therefore liable for their actions in connection therewith pursuant to the doctrine of *Respondeat Superior* and/or agency.

3. Venue of the Superior Court of the District of Columbia is proper as the acts complained of herein occurred in the District of Columbia, both Colvin and Howard reside therein, and the compensation sought for damages exceeds \$5,000 dollars.

### **III. FACTS LEADING TO CAUSES OF ACTION**

1. Colvin is a 14 year resident of Washington, District of Columbia.
2. Colvin enrolled as a graduate student in Howard University's Department of Political Science Ph.D. Program (hereinafter "the Program") in August 2004.
3. He completed 99 graduate credits of coursework for his Ph.D. degree (48 are required beyond the Master's Degree) and had a G.P.A. of 4.0.
4. He passed his two comprehensive examinations required for the Ph.D. degree.
5. Colvin began working on his dissertation proposal in the summer of 2009.
6. According to Article VI, Section 1.D of The Graduate School Rules and Regulations For the Pursuit of Academic Degrees (1979) "students are expected to complete a doctoral degree within a maximum of seven years. Those who have not completed the degree within that time will be automatically dropped from the program. Students dropped in this manner may petition for readmission for a specified period upon recommendation of the departmental Graduate Faculty and approval of the Executive Committee of the Graduate School."
7. Colvin passed the seven year mark of being a student in the Ph.D. Program after Howard's fall 2011 semester. Howard did not automatically drop Colvin according to specifications of Article VI, Section 1.D but allowed him to remain in its Ph.D. program.
8. Colvin enrolls at Howard the spring 2014 semester (Exhibit "A") and defends his dissertation proposal in May 2014.
9. Colvin successfully submits his defended dissertation proposal and the required application forms to the Graduate School and was admitted to candidacy for the Ph.D. degree on May 9, 2014. (Exhibits "B" and "C")
10. Under Article VI, Section 6 of The Graduate School of Arts and Sciences Rules and Regulations For the Pursuit of Academic Degrees (1979) candidacy for the Ph.D. Degree is valid for a maximum of five calendar years. (Exhibit "D")
11. Colvin was admitted to candidacy May 9, 2014. Thus according to Article VI, Section 6 his Ph.D. candidacy was valid until May 9, 2019.

12. Colvin's academic advisor, Professor Darryl Harris, tells Colvin he does not need to be enrolled while he is engaged in dissertation research and that he only needs to enroll the semester he intends to defend his dissertation.
13. On April 4, 2016 Colvin sends a request to the Political Science Department to request that the Graduate School readmit him for fall 2016 semester to defend his dissertation and for a course waiver.
14. On May 2, 2016 Colvin writes a letter to the Political Science Department rescinding his request for a waiver of courses and requesting the Department submit a second request to the Graduate School for his admission stating he has viable courses from fall 2006 to spring 2015 and that he is no longer requesting a waiver of courses.
15. On June 23, 2016 Colvin receives a letter from Dr. Gary Harris, Dean of the Graduate School, stating that he is dismissed from the Graduate School due to "a recommendation from the Graduate Faculty of the Department of Political Science" and a "review of his academic record." (Exhibit "E")
16. From June 2016 to December 2016, Colvin sought to appeal his dismissal via Howard's Student Academic Grievance Procedures but Howard denied Colvin access to the procedures and upheld his dismissal from the Program.

#### IV.

##### **COUNT I: BREACH OF IMPLIED CONTRACT—HOWARD CONDUCTS A FACTUALLY INACCURATE REVIEW OF COLVIN'S ACADEMIC RECORD**

17. Paragraph 17 includes paragraphs one through sixteen as if fully stated herein.
18. Howard reviews Colvin's academic record in April 2016 after receiving a request from the Political Science Department to readmit him for the fall 2016 semester to defend his dissertation.
19. The purpose of Howard's review of Colvin's academic record was to assess Colvin's eligibility to defend his dissertation according to Graduate School rules and regulations.
20. Howard's review is replete with factual inaccuracies and factual omissions and is thus a breach of the implied contract between Colvin and Howard.
21. The factual inaccuracies in Howard's review of Colvin's academic status are apparent from Dean Harris' dismissal letter to the Plaintiff.
22. First, Dean Harris writes he received recommendation from the Graduate Faculty of the Political Science Department that Colvin be dismissed. ("I regret to inform you that upon...a

recommendation from the faculty of the Graduate Program in the Department of Political Science, you are hereby dismissed immediately from the Graduate School") (Exhibit "E", p.1)

23. This is factually incorrect. The Graduate Faculty of the Political Science Department did not recommend to the Graduate School that Colvin be dismissed, but rather recommended that Colvin be given additional time to complete his dissertation. (Exhibit "F" and "L")
24. Second, Dean Harris incorrectly evaluates that Colvin's courses completed fall 2006 semester as "older than 10 years and therefore are not viable." (Exhibit "E", p.2)
25. This is factually incorrect. Colvin's fall 2006 courses would not be 10 years of age until after the end of the fall semester of 2016 (December 2016) and thus were viable courses the semester Colvin proposed to defend his dissertation (i.e. fall 2016 semester).
26. Third, the Dean writes and evaluates that Colvin was re-admitted in fall 2014 and failed to satisfy the provision that he defend his dissertation and graduate by the end of fall 2014. (Exhibit "E", p.2)
27. Colvin never applied to Howard for re-admission for the fall 2014 semester and thus the Dean's claim regarding the fall 2014 readmission and all related claims (regarding "extension letters," dissertation attempts, etc.) are factually inaccurate with respect to Colvin's academic and application history.
28. In addition to factual inaccuracies, Dean Harris made significant factual omissions in his review of Colvin's academic record.
29. Firstly, the Dean reviews that Colvin's required courses completed spring 2007, fall 2007, spring 2008, fall 2008, and spring 2009 are older than seven years. (Exhibit "E", p.2)
30. The Dean omits from his review that Colvin had these courses restored as prescribed by Article VI, section 1.C of Graduate Rules and Regulations and the Graduate School approved Colvin's use of these courses for the fulfillment of Ph.D. requirements in May 2014 when it approved his application for Ph.D. candidacy. (Exhibits "G," B," and "C", p.10-13)
31. Secondly, the Dean reviews "In addition, courses completed fall 2004, spring 2005, fall 2005, spring 2006, and fall 2006 are older than 10 years and therefore not viable." (Exhibit "E", p.2)
32. The Dean omits that Colvin's courses taken fall 2006, spring 2007, fall 2007, spring 2008, fall 2008, spring 2009, fall 2009, fall 2014 and spring 2015 equal the 72 graduate credits required to meet Graduate School course requirements for the Ph.D. degree (Political Science<sup>1</sup>) according to Article VI, Section 1. A. of Graduate Rules and Regulations and that Colvin possessed the required number of viable courses to sit for final examination for the

---

<sup>1</sup> These courses also fulfilled Department of Political Science requirements for courses in Colvin's two major and one minor areas (American Government, Black Politics, and Political Theory) respectively.

fall 2016 semester, the semester he was requesting to defend his dissertation. (Exhibits "H" and "I")

33. The Dean reviews Colvin had "gone beyond the expected time-to-degree" of seven (7) years from the date of initial matriculation (Exhibit "E", p.1)
34. The Dean omits that Howard was aware Colvin was beyond the expected time-to-degree when it admitted him to Ph.D. candidacy on May 9, 2014, yet it sanctioned his use of courses that were greater than 7 years old to meet Ph.D. course requirements, and elected to contract with him into a Ph.D. candidacy period.
35. The significant and relevant factual inaccuracies and omissions in Howard's academic review indicate Howard either was unaware of the facts or intentionally conducted a factually inaccurate and factually deficient evaluation of Colvin's academic record. Either situation is a breach of the implied contract that existed between the two parties.
36. Colvin tried to make the factual inaccuracies and factual omissions known to Howard via meetings and attempted meetings with the Dean, Provost, and via a letter to the President (Exhibit "J"), but Howard did not acknowledge them (Exhibits "P" and "M").
37. Howard's failure to conduct a review of Colvin's academic record based on the actual facts of said record is a breach of the "fair dealing" provision of contract law (i.e. the implied covenant of good faith and fair dealing) that applies to participants in a contractual relationship.
38. Satisfying the good faith and fair dealing provision of contract law requires that any and all academic reviews of Colvin by Howard be based on the actual facts of Colvin's academic record and academic history and not misinformation and relevant fact omission.
39. Howard's breach of duty in its academic review caused irreparable harm to Colvin as it led to his unwarranted dismissal from the Graduate School and premature stripping of his Ph.D. candidacy.

V.

**COUNT II: BREACH OF IMPLIED CONTRACT—HOWARD STRIPS COLVIN OF PH.D. CANDIDACY STATUS WITHOUT JUST CAUSE AND DENIES HIM ACCESS TO THE ALLOTTED TIME TO PERFORM DISSERTATION RESEARCH AND PETITION FOR DEFENSE OF DISSERTATION**

40. Paragraph 40 includes paragraphs one through thirty-nine as if fully stated therein.
41. Aspects of Howard's publications The Howard University Student Handbook 2015-2016 and The Graduate School of Arts & Sciences Rules and Regulations For The Pursuit of Academic

Degrees (1979) constitute an implied contract between a graduate student enrolled in Howard's Graduate School of Arts and Sciences and Howard University.

42. The candidacy period is a period where the candidate conducts research under university supervision and auspices. (Exhibit "D")
43. According to Article VI, section 6 of The Graduate School of Arts & Sciences Rules and Regulations For The Pursuit of Academic Degrees (1979) the status of Ph.D. candidate shall be valid for a maximum of five calendar years from the date of attainment. (Exhibit "D")
44. Colvin was admitted to Ph.D. candidacy by the Graduate School on May 9, 2014. (Exhibit "B"). Thus Colvin was allowed candidacy status until May 9, 2019.
45. Colvin was stripped of his Ph.D. candidacy with the Dean's dismissal letter on June 6, 2016.<sup>2</sup>
46. Colvin was dismissed when he had the required 72 graduate course credits and met the criteria of time allotted for Ph.D. candidacy (no more than 5yrs) to sit for final examination. Thus he was stripped of Ph.D. candidacy without just cause.
47. Howard claims Colvin was dismissed for failing to graduate within the expected time to degree period (Exhibits "E" and "L"), but Howard was aware Colvin was past his expected time to degree at time of contract, and contracted into a Ph.D. candidacy period with him on that basis. Thus Colvin was stripped of Ph.D. candidacy without just cause.
48. Howard also claims Colvin was dismissed, in part, for not meeting a fall 2014 readmission provision (i.e. "extension letter") when Colvin never applied for readmission for fall 2014 semester. (Exhibits "E" and "L"). Thus Colvin was stripped of his Ph.D. candidacy without just cause.
49. Howard's stripping of Colvin of his Ph.D. candidacy status is a breach of implied contract with respect to the Ph.D. candidacy period contracted between Colvin and Howard wherein Colvin, as a Ph.D. candidate, would be given time to do dissertation research (up to 5 years) and an opportunity to present his research to an examination committee in fulfillment of the Ph.D. degree as long as he met university criteria for the Ph.D. degree.
50. Howard's stripping without just cause irreparably harmed Colvin as he lost the opportunity to present his Ph.D. research of two years, lost his status as a Ph. D candidate, loss opportunity to obtain his Ph.D. degree, loss potential wages, loss time from work and other endeavors, and caused him great emotional distress, pain and suffering.

---

<sup>2</sup> Colvin first received notice of the dismissal on June 23, 2016 via electronic mail (Exhibit "R").

VI.

**COUNT III: BREACH OF IMPLIED CONTRACT—HOWARD DENIES COLVIN ACCESS TO ITS INFORMAL GRIEVANCE PROCEDURE**

51. Paragraph 51 includes paragraphs one through fifty as if fully stated herein.
52. A contractual relationship of student-university exists between Colvin and Howard.
53. As a part of the contractual relationship, Colvin is entitled to access to the Student Academic Grievance Procedures outlined in the Howard University Student Handbook 2015-2016 (p.12) (hereinafter “H.U. Handbook”) for instances of academic grievance. (“Exhibit “K”)
54. The Student Academic Grievance Procedures enumerates a two-phase student academic grievance process of The Informal Procedure Process to be followed, if necessary, by The Formal Process.
55. The Informal Procedure Process lists four steps that the aggrieved student must undergo during the informal grievance process. First (step 1) the student must attempt to discuss his issue with the other party in the dispute (i.e. in Colvin’s case the Dean). Second (step 2), if that attempt is unsuccessful the student is advised to seek intervention from his/her department Chairperson. Third (step 3) if the dispute is still not resolved, the issue should be brought to the Dean’s office where the Dean or his designee will attempt to reach an informal resolution through mediation between the parties (i.e. in Colvin’s case, between Colvin and the Dean). Fourth (step 4), if mediation at the Dean level fails, then “the student’s grievance is consigned to the ... Student Grievance Committee.” (H.U. Handbook, p.12).
56. Upon receiving the Dean’s dismissal letter, Colvin attempts to meet with Dean Harris.
57. Colvin is told by Assistant Dean Dr. Linda Jones that before he can meet with Dean Harris he must first meet with Associate Dean Dr. Ellison as specified in the dismissal letter.
58. After meeting with Dr. Ellison, Colvin recognizes he has an academic grievance and seeks to initiate The Informal Procedure Process of the Student Grievance Procedure.
59. Colvin calls the Graduate School to arrange a meeting with Dean Harris (the “other party in the dispute”) per step 1 of The Informal Procedure Process.
60. Colvin’s call is routed to Dr. Linda Jones. Colvin tells Dr. Jones he wants to arrange a meeting with Dean Harris about his dismissal from the Graduate School. Dr. Jones tells Colvin that he cannot meet with Dean Harris, that the Dean “stands by his [dismissal] letter” and that he will have to take his case “to the next level.”
61. Unable to meet with the Dean, Colvin meets with his department chairperson, Chair Lusane for intervention per step 2 of The Informal Procedure Process.

62. Chair Lusane does not intervene but tells Colvin he should meet with the Provost. (Exhibit "L")
63. Colvin meets with Provost Wutoh to discuss his unwarranted dismissal from the Graduate School and the Dean's refusal to meet with him.
64. After the meeting, Provost Wutoh informs Colvin via letter that he upholds the Graduate School's dismissal and that he has closed Colvin's case. (Exhibit "M")
65. Howard fails to engage in steps 1 and 2 of The Informal Procedure Process with Colvin.
66. Howard fails to bring his academic grievance to the Dean's office for mediation per step 3 of The Informal Procedure Process and made it impossible for Colvin to do so.
67. Howard fails to consign Colvin's unresolved academic grievance to the Student Grievance Committee per step 4 of The Informal Procedure Process, but instead "closed" his case.
68. Howard's failure to execute steps 1-4 of The Informal Procedure Process when Colvin was attempting informal resolution of his academic grievance (and making it impossible for him to do so) was a breach of the implied contract that existed between Howard and Colvin with respect to the resolution of academic grievances.
69. Howard's breach of contractual duty irreparably harmed Colvin as it precluded him the opportunity of an informal resolution of his dismissal from the Graduate School and left him dismissed and unable to pursue his Ph.D. degree.

## VII.

### **COUNT IV: BREACH OF IMPLIED CONTRACT—HOWARD “CLOSES” COLVIN’S CASE, AN ACTION NOT IN ACCORDANCE WITH ITS STUDENT ACADEMIC GRIEVANCE PROCEDURES**

70. Paragraph 70 includes paragraphs one through sixty-nine as if fully stated herein.
71. Colvin met with Provost Wutoh to discuss an unresolved academic grievance, i.e. his dismissal from Howard's Graduate School.
72. After the meeting, Provost Wutoh informs Colvin that he upholds the Dean's dismissal and that he has closed Colvin's case. (Exhibit "M")
73. Colvin requests a second meeting with Provost Wutoh.
74. Colvin's request for a second meeting with the Provost is denied. The Provost's closure of Colvin's case is cited as the reason for the denial. (Exhibit "N")

75. According to Step 4 of The Informal Procedure Process all unresolved grievances are to be "consigned to the committee designated by the school/college to address student grievances, herein referred to as the Student Grievance Committee" (H.U. Handbook, p. 12) (Exhibit "K").
76. Howard's action of "closing" Colvin's case is not in accordance with The Informal Procedure Process or The Formal Process and is a breach of the implied contract that exists between Colvin and Howard with respect to the resolution of academic grievances.
77. Howard's duty breach is arbitrary and capricious as it was executed by The Provost, a Howard official with no role in the Student Academic Grievance Procedures and with no authority to close the case prior to Colvin receiving grievance procedures (Exhibits "K" and "Q").
78. Howard's "closing" of Colvin's case irreparably harmed Colvin by maintaining his unwarranted dismissal from Howard's Graduate School and precluding further access to Howard's Student Academic Grievance Procedures.

## VIII.

### **COUNT V: BREACH OF IMPLIED CONTRACT—HOWARD DENIES COLVIN ACCESS TO ITS FORMAL GRIEVANCE PROCEDURE**

79. Paragraph 79 includes paragraphs one through seventy-eight as if fully stated herein.
80. Howard has a nine (9) step formal grievance process for the adjudication of student academic grievances referred to as The Formal Process.
81. The Formal Process is the next phase of grievance resolution if informal resolution fails.
82. According to Howard's Student Academic Grievance Procedures, The Formal Process (1), "Student grievances which are consigned to the Student Grievance Committee must be specified in writing and given to the Dean or his designee" (H.U. Handbook, p.12). (Exhibit "K")
83. Colvin meets with the Political Science Graduate Program Director Dr. Michael Fauntroy to discuss his plans to submit his grievance in writing to the Student Grievance Committee per The Formal Process outlined in the H.U. Handbook.
84. Dr. Fauntroy tells Colvin he has to get more information about his case.
85. Dr. Fauntroy informs Colvin via email that Provost Wutoh has closed his case, his status as a student at Howard has been revoked, and thus he cannot file a formal grievance. (Exhibit "O")

86. Howard's action of denying Colvin the opportunity to file a formal grievance and have his academic grievance heard by the Student Grievance Committee is a breach of the implied contract between Colvin and Howard with respect to the implementation of its Student Academic Grievance Procedures, The Formal Process.
87. Howard's breach irreparably harmed Colvin by denying him a formal grievance hearing for his unwarranted dismissal from the Graduate School and left him unable to pursue his Ph.D. degree.

## IX.

### SUMMATION OF COMPLAINT

1. Defendant Howard knowingly, intentionally, and wrongfully prevented Colvin from pursuing his doctoral degree by:
  - a. dismissing him from the Graduate School based on misinformation and omitted facts regarding his academic record;
  - b. prematurely "closing" his case;
  - c. refusing to provide grievance hearings (informal and formal) on his dismissal from the Graduate School;
  - d. engaging in (a)-(c) causing Colvin's course credits to expire.
2. Defendant Howard knew or should have known that wrongfully depriving Colvin of the opportunity to pursue his doctoral degree in such manners would cause him severe emotional distress.

## X.

### PRAYER FOR RELIEF

**WHEREFORE**, the Plaintiff, Deon D. Colvin, respectfully requests the following relief:

1. reinstatement as a graduate student in the Howard University Graduate School in the Department of Political Science as a Ph.D. candidate in the same state he enjoyed prior to the onset of the aforementioned implied contract breaches (Counts I-V) which caused his graduate course credits to expire;
2. Howard's reconsideration of Colvin's request for readmission to defend his dissertation consistent with the relevant facts of Colvin's academic and admissions history as established in these judicial proceedings and/or as established at trial;
3. compensatory damages in the amount of \$450,000 (for breaches of implied contract, loss of time, loss of potential wages, loss of reputation, emotional distress, pain and suffering);
4. interest, costs, and attorney's fees related to the statutory claims;
5. such additional relief as this Court deems just and proper.

**XI.**

**JURY TRIAL DEMAND**

1. Plaintiff Colvin hereby requests a jury trial in this matter.

Respectfully submitted,



Deon D. Colvin  
743 Fairmont Street, N.W. #211  
Washington, D.C. 20001  
Phone: 216-396-8512  
Email: DeonColvin@aol.com

**VERIFICATION**

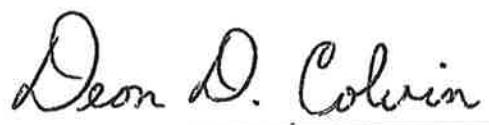
I, Deon D. Colvin, on this 26<sup>th</sup> of June 2019, do hereby state that the foregoing Verified Amended Complaint With Jury Trial Demand is true to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Deon D. Colvin

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26<sup>th</sup> day of June 2019, that a copy of the foregoing Verified Amended Complaint With Jury Trial Demand was sent via USPS Certified Mail to:

John G. Gloster Jr., Esq.  
Sr. Associate General Counsel  
Office of the General Counsel  
Howard University  
2400 6<sup>th</sup> Street N.W., Suite #321  
Washington, D.C. 20059

  
\_\_\_\_\_  
Deon D. Colvin (Plaintiff)

# **APPENDIX M**

*"Appendix M"*

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**CIVIL DIVISION**

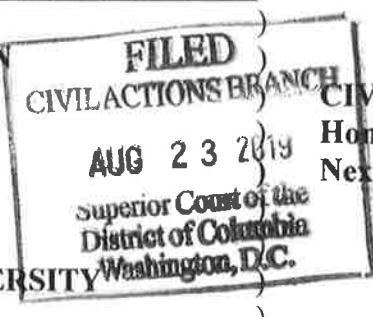
DEON D. COLVIN

Plaintiff,

-vs.-

HOWARD UNIVERSITY

Defendant.



CIVIL ACTION NO: 2019 CA 0003573

Hon. Robert R. Rigsby

Next Event: ISC 09/20/2019

#950963

**PLAINTIFF'S MEMORANDUM OF OPPOSING POINTS AND AUTHORITIES  
IN OPPOSITION TO DEFENDANT'S OPPOSED MOTION TO DISMISS<sup>1</sup>**

COMES NOW Plaintiff Deon D. Colvin ("Colvin" or "Plaintiff") *in propria persona*, Pursuant to Super. Ct. Civ. R. 12-I(e), and hereby files this Memorandum of Opposing Points and Authorities in Opposition to Defendant's Opposed Motion to Dismiss to oppose Defendant's Opposed Motion to Dismiss filed by the Defendant Howard University. Defendant's Motion fails to state a claim for dismissal under Super. Ct. Civ. R. 12 (b)(6), thus it should be denied. In further support, Colvin states as follows.

**I. INTRODUCTION**

Howard bases the bulk of its argument for dismissal on the legal doctrines of *res judicata*, collateral estoppel, and the law of the case. It contends Colvin has filed a nearly identical complaint and that the decision to dismiss rendered by the Superior Court on February 25, 2019

<sup>1</sup> Colvin is pro se. Pleadings of pro se litigants are provided liberal construction by the Court. *Lemon v. Kramer*, 270 F. Supp. 3d 125 (D.D.C. 2017) ("A pro se complaint will be construed liberally and held to less stringent standards than formal pleadings drafted by lawyers"), *Erickson v. Pardus*, 55 F. Supp. 2d 7, 11 (2007)(The pleadings of pro se parties "[are] to be taken liberally, however inartfully pleaded, and must be held to less stringent standards than formal pleadings drafted by lawyers").

was a final decision. Alternatively, in *arguendo* Howard contends that for reasons indicated in its prior Motion to Dismiss in the previous action, Colvin fails to state a claim upon which relief may be granted. Howard is patently incorrect in its base and *arguendo* contentions, and attempts to deceive the Court as to the sound legal bases of Plaintiff's Complaint. Colvin's complaint is neither barred nor identical nor yields to Howard's alterative arguments. Rather, Plaintiff's amended pleadings indicate Howard committed at least five breaches of implied contract with its June 6, 2016 dismissal of the Plaintiff and subsequent related actions, and that Plaintiff is entitled by law to an injunction of Howard's dismissal action and compensatory damages. In sum, Howard's Opposed Motion to Dismiss fails to make a claim for dismissal of Colvin's complaint. This Memorandum of Opposing Points and Authorities will illuminate that Howard's errant and ill-conceived motion is deceptive, lacks legal grounding, and should be dismissed entirely.

## **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

### **a. The Subject Complaint**

Howard dismissed Colvin from its Graduate School on June 6, 2016. Colvin filed the subject Complaint with the Court on May 30, 2019 and an Amended Complaint on June 26, 2019 alleging five breaches of implied contract by Howard related to his dismissal.<sup>2</sup> Howard filed an Opposed Motion to Dismiss on July 12, 2019. Colvin filed a Motion for a 30-day Extension of Time on July 18, 2019. Howard filed a Notice of Related Case and Motion to Transfer Judges on July 18, 2019. Colvin filed an Opposition to Defendant's Notice of Related Case and Motion to Transfer Judges on August 1, 2019. Howard filed a Statement in Opposition to Plaintiff's Motion For Extension of Time on August 1, 2019. Colvin filed this Memorandum of Opposing

---

<sup>2</sup> Two previous complaints (*Colvin I* and *Colvin II*) were dismissed without prejudice on February 25, 2019 and May 28, 2019 respectively.

Points and Authorities In Opposition to Defendant's Opposed Motion to Dismiss on August 23, 2019.

b. Case Synopsis

This matter involves the dismissal of the Plaintiff Deon D. Colvin, who was in Ph.D. candidacy, when he sought readmission to defend his dissertation and obtain his Ph.D. degree in Howard's fall 2016 semester. Howard stated in letter that Plaintiff is dismissed from Howard's Graduate School due to a recommendation from the Graduate Faculty in the Department of Political Science and an evaluation of Colvin's academic record. In letter same, Howard expressed the desire for its graduates to be current in their field of study; that Colvin's fall 2006 courses were older than 10 years and thus unviable for use toward Ph.D. degree requirements, that Colvin had failed on two occasions to defend his dissertation in 2013 and 2014 within the time provided in readmission letters, and that Colvin was passed the time-to-degree period for Ph.D. study of seven years. Colvin sought to appeal his dismissal on the grounds that Howard erred in evaluating his fall 2006 courses as unviable, that he had the required number of 72 graduate credits for Ph.D. degree requirements, that he never applied for the 2014 readmission Howard cited, that Howard contracted with him into a Ph.D. candidacy period aware that he was passed the expected time-to-degree and admitted him to candidacy on that basis and without stipulation; thus he is entitled to the contracted Ph.D. candidacy period and defense of his dissertation. Plaintiff was refused in his attempt to initiate the Informal grievance process with the Dean, and when he went to the Provost for discussion and counsel, the Provost closed his case and revoked his admission, precluding his ability to further access Howard's Informal and Formal Grievance processes. Colvin wrote a letter to H.U. President Frederick asking for assistance with his dismissal and explaining the Dean's administrative errors in evaluating his

student record, but President Frederick closed the matter. Colvin filed a complaint in D.C. Superior Court that has evolved, after being dismissed without prejudice, to the current Complaint companioned with the current Memorandum. Colvin contends Howard's dismissal was based on misinformation and executed in bad faith (i.e. failure and unwillingness to execute its contractual obligations of a factual academic evaluation, a Ph.D. candidacy period, and to provide grievance), and that Howard's decision to dismiss was illogical, arbitrary, and capricious and thus a breach of the student-university contract that was extended in May 2014 with Howard's restoration of Colvin's courses older than seven years and his admission to candidacy for an undefined period of dissertation research under university auspices with an allotted maximum time of five years according to Howard Graduate Rules and Regulations. Colvin further contends Howard simultaneously waived its time- to-degree rule ("7-year rule") with its admission of him to candidacy in favor of its candidacy provisions, as it would have been impossible for him to be admitted to candidacy or have any period of candidacy without such waiver. Howard's contract breach in academic record evaluation, candidacy period, and grievance procedures has severely injured the Plaintiff psychologically, financially, and career-wise and Plaintiff seeks an Order of reinstatement and damages in this matter.<sup>3</sup>

### **III. HOWARD ADMITS TO THE FACTUAL ACCURACY OF COLVIN'S PLEADINGS**

As a preliminary matter, Colvin would like to bring to the Court's attention that Howard does not deny the accuracy of Colvin's pleadings. According to Super. Ct. Civ. R. 8(b)(6) failure to deny an allegation made in a complaint will be treated by the Court as an admission of its veracity. Specifically, Howard does not deny (and thus admits) that (1) Howard's Graduate

---

<sup>3</sup> Colvin has a 250+ page dissertation on African American conservatism he is waiting to defend that is viewable by the Court upon request.

Faculty did not submit a recommendation to the Graduate School that Colvin be dismissed; (2) Colvin did not apply for readmission in 2014 and thus is not guilty of not fulfilling the provisions of that readmission; (3) Howard had two clear opportunities in fall 2011 and spring 2014 to drop Colvin from its program prior to admitting him to candidacy but elected not to do so; (4) Howard was aware Colvin had passed the time-to-degree when it admitted him to candidacy in May 2014; and (5) Howard wrongly assessed Colvin's fall 2006 courses as not viable when they were viable for usage in fall 2016, the time Colvin sought to obtain his degree.

#### **IV. HOWARD MISSTATES FACTS**

As a final preliminary matter, Plaintiff wishes note that Howard has misstated several facts in relation to this matter in its Opposed Motion to Dismiss. Firstly, it claims that the prior decision in the case was a final decision (Def. Memorandum, p. 1, 4). This is incorrect. The first decision was "dismissed without prejudice" and was not final. Second, it claims Colvin improperly files this lawsuit (*Id.*, p. 5). This lawsuit is properly filed according to Court rules. Third, it claims Colvin engages in "word for word recital" of claims in *Colvin I* (*Id.*, p.4). *Colvin III* is an amended complaint based on the manual Howard claims is its operative one (Pl. Opposition to Notice of Related Case, p. 3-5). Fourth, it claims Colvin abandoned grievance and pursued recourse outside the grievance process appealing to the Provost and President (Def. Memorandum, p. 7). Colvin never abandoned grievance but sought out informal discussion with the Provost who took action that precluded Colvin from further access to grievance procedures (Compl. ¶ 63, 71, Exhibit N), and Colvin only contacted the President after was told he could no longer file grievance as his admission had been revoked (Exhibit J). Fifth, Howard states Colvin sought an overruling of decisions by the Dean, Provost, and President by subordinate employees (Def. Memorandum, p. 7). Colvin went to a subordinate employee for intervention per Informal

Step 2 and another for advice in submitting a written grievance (Compl. ¶ 61, 83-85, Exhibit O), not to overrule decisions. Howard's misstating of facts is intentional, habitual and subversive and an attempt to mislead the Court regarding the actual facts of this matter in order to provoke the Court to an unwarranted dismissal.

## **V. STANDARD OF REVIEW**

"To survive a motion to dismiss under D.C. Super. Ct. Civ. R. 12 (b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a claim [for] relief that is plausible on its face." A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *District of Columbia vs. Holfgard*, No. 2015 CA 003354B at 4 (D.C. Sup. Aug. 5, 2015). When considering a motion to dismiss, the reviewing court must construe all facts and inferences in favor of the non-moving party. See *Greenpeace, Inc. v. Dow Chem. Co.*, 97 A.3d 1053, 1-59 (D.C. App. 2014). "A pro se plaintiff's pleadings must be considered in toto to determine whether they set out allegations sufficient to survive dismissal. *Lemon v. Kramer* 270 F. Supp. 3d 125 (D.D.C. Sept 11, 2017).

## **VI. ARGUMENTS**

### **1. Plaintiff's Complaint Is Not Precluded by *Res Judicata*, Collateral Estoppel, or Law of the Case, Thus Defendant's Motion to Dismiss Should be Denied**

Defendant argues that Plaintiff's Complaint (*Colvin III*) is barred by *Res Judicata*, collateral estoppel, and "the law of the case" (Def. Memorandum of Points, p. 9-13). Examining the criteria in which the above legal doctrines apply to causes of action finds that they do not hold as reasons for dismissal of *Colvin III*. These doctrines apply only after an order of final

judgment has been rendered by a court or similarly infused administrative body.<sup>4</sup> Defendant argues *Colvin III* is barred by the dismissal of *Colvin I*, which it claims was a “final adjudication on the merits” (Def. Memorandum of Points, p. 9). This is wholly incorrect. *Colvin I* was dismissed without prejudice (Def. Exhibit 2, p. 6) and no final judgment order was issued per Super. Ct. Civ. Rule 58. Complaints dismissed without prejudice may be re-filed with amendment and litigation may continue. *Ciralsky v. Central Intelligence Agency*, 689 F. 2d. 141 (D.D.C. 2010); *Welch V. Folsom*, 925 F. 2d 666, 668 (3d Cir. 1991); *Hoskins v. Poelstra*, 320 F.3d 761, 763 (7<sup>th</sup> Cir. 2003). Hence *Colvin III*, which is the amended re-filing allowed by the Court’s dismissal without prejudice ruling of *Colvin I*, is not precluded by *res judicata*, collateral estoppel, or “the law of the case” and Howard’s Motion to Dismiss on these grounds should be denied.<sup>5</sup>

### ***Howard’s Arguendo Contentions***

By incorporation, Howard adds five additional arguments to its Opposed Motion to Dismiss from a previous motion (Def. Memorandum of Points, p.13-14). Colvin advances the following as rebuttals to Howard’s *Arguendo* arguments.

#### **2. Howard’s Academic Decision to Dismiss Colvin is not Entitled to Judicial Deference and its Request for Deference Should be Denied**

---

<sup>4</sup> See *Patton v. Klein*, 746 A.2d 866, 870 (D.C. 1999) (“Under the doctrine of *res judicata* (claim preclusion), a final judgment on the merits of a claim bars re-litigation in a subsequent proceeding of the same claim between the same parties or their privies”) (“In order for collateral estoppel to apply (1) the issue [must be] actually litigated and (2) determined by a valid, final judgment on the merits....”) (emphasis added) *Id.* at 871. “The ‘law of the case’ doctrine bars a trial court from reconsidering the same question of law presented to and decided by another court of jurisdiction when... (2) the first court’s ruling is sufficiently final...” *Kumar v. D.C. Water & Sewer Authority*, 25 A.3d 9, 13 (D.C. 2011) (emphasis added).

<sup>5</sup> Relatedly, Defendant also holds *Colvin III* is a “nearly identical complaint” under a different case number as a reason for barring (Def. Memorandum of Points, p. 2). Plaintiff incorporates his arguments from his Opposition to Defendant’s Notice of Related Case and Motion to Transfer Judges (p. 4-5) to make the argument that the current matter is an *amended* complaint.

In *Bain v. Howard University*, the *Bain* Court held that only “the most compelling evidence of arbitrary or capricious conduct” on the part of a university in student dismissal warrants court interference (Exhibit 1, p.12). Howard contends its academic decision to dismiss Colvin is entitled to judicial deference as “Colvin has not pled any arbitrary or capricious behavior surrounding his dismissal” (*Id.*). In sum, Howard claims its dismissal decision should be given judicial deference because of the “complete absence of alleged facts of arbitrariness or capriciousness” on the part of Howard in Colvin’s pleadings (*Id.*, p. 13). Howard is incorrect. Colvin alleges and provides evidence of myriad instances of arbitrary and capricious conduct by Howard related to his dismissal. Specifically, Colvin alleges Howard failed to comply with published policies when it evaluated his academic record. Colvin pleads Howard failed to comply with its published policy on course viability (Article VI, Section 1.C.) when it declared Colvin’s fall 2006 courses were not viable (Compl. ¶ 24-25). Colvin pleads Howard did not comply with its policy on minimum course requirements for the Ph.D. degree (Article VI, Section 1.A.) when it dismissed him for “much” of his graduate credits being older (Def. Memorandum of Points, p.7) when in fact he possessed the required 72 graduate credits for readmission (Comp. ¶ 31-32). Third, Colvin pleads Howard failed to comply with published policies of informal and formal grievance when it denied him access to its informal and formal grievance procedures, and arbitrarily and capriciously closed his case (Compl. ¶ 53-55, 80-82, 65-68, 75-77, 83-86). Fourth, Colvin pleads Howard engaged in arbitrary and capricious conduct in executing it’s time-to-degree policy (“7-year rule”) (Article VI, Section 1.D). Specifically, Colvin pleads Howard had two opportunities to dismiss him in 2011 (after 7 years in Ph.D. program) and 2014 (applying for candidacy) but declined to do so and instead gave imprimatur to his Ph.D. candidacy only to dismiss him a mere two years later when he was

seeking readmission to defend the dissertation he contracted with Howard to produce within the time he was allotted to produce it (Compl. ¶ 6-7, 34, 47, 49). Such behavior is illogical and capricious when viewed in the context of Howard's time allotted for candidacy (up to 5 calendar years) and its knowledge it was admitting Colvin to an undefined period of intensive research with its admission to candidacy.<sup>6</sup> Last but not least, Colvin's pleadings allege arbitrary conduct by Howard in the deployment of its time-to-degree policy, as he pleads he was not dismissed at the seven year mark according to the plain dictates of the policy (i.e. automatic dropage after 7 years) (Compl. ¶ 6-7; Exhibit G, p. 17), but rather in a matter not prescribed by said policy (arbitrary, misinformed dropage in candidacy) (Compl. ¶ 49).<sup>7</sup> Specifically, *Colvin's pleadings allege Howard failed to comply with several of its published policies in the course of its dismissal action, and arbitrarily and capriciously deployed another*. As *Bain* and other courts have observed, a University's failure to comply with its published policies is evidence of arbitrariness and is an actionable offense.<sup>8</sup> In sum, Colvin does plead and provide evidence of

---

<sup>6</sup> For Howard to be in compliance with its time to degree policy, and to not be arbitrary and capricious in its execution, it would have had to automatically dismiss Colvin after seven years, or at least decline Colvin's application for candidacy if it deemed he had been in the program to long. To execute two years later when Colvin was applying for readmission to fulfill the purpose of candidacy, which is defense of dissertation and graduation, completely defies the logic of Howard's candidacy admission and is the epitome of arbitrary and capricious conduct. Furthermore, it belies the nature of the student-university contract Colvin and Howard embarked upon with its admission of him to candidacy.

<sup>7</sup> The policy states automatic dropage from the Ph.D. program after seven years and the steps a student dropped in such manner may undertake to be readmitted. The policy terminates there. The policy does not state that students who are in program past seven years are subject to being dropped arbitrarily at any time based on misinformation. Hence Howard's misinformed dropping of Colvin does not comport with the policy's wording.

<sup>8</sup> *Bain v. Howard University* 968 F.2d 294. ("Nonetheless, a school's failure to comply with published policies can be evidence of arbitrariness"). *Frank v. Marquette University*, 209 Wis. 372, 245 N.W. 125 (1932) ("The law is apparently well settled that a university, college, or school may not arbitrarily or capriciously dismiss a student or deny to him the right to continue his course of study therein") *Connelly v. University of Vermont and State Agr. Col.*, 244 F. Supp. 156 (D. Vt. 1965) ("[A] student dismissal motivated by bad faith, arbitrariness, or capriciousness may be actionable"). *Greenhill v. Bailey*, 519 F.2d 5, 10 n. 12 (8<sup>th</sup> Cir. 1975) ("For a court to overturn a student's dismissal on substantive grounds it must find that such dismissal was arbitrary and capricious..."). *William v. Howard Univ.* 582 F.2d 658 (1976) ("It has been held that an arbitrary denial of readmission made in bad faith by a private university presents an actionable claim").

arbitrary and capricious conduct on the part of Howard regarding his 2016 dismissal. Hence Howard's deference defense should be summarily rejected and its motion to dismiss denied.

3. All of Colvin's Breach of Implied Contract Claims (Counts I-V) Are Valid as There is No Explicit (i.e. Actual or Written) Contract Between Himself and Howard University, yet a "Contractual Relationship" Exists

Howard argues that there is no "implied contract between Colvin and Howard," (Def. Opposed Motion to Dismiss, p.14), but an explicit one, and since "there is an explicit contract...Colvin cannot state a claim for [] breach of an implied contract" (Def. Exhibit 1, p. 13). Courts recognize the university-student relationship as "contractual in *nature*"<sup>9</sup>(emphasis added). At the same time there is no explicit or actual contract, as neither Colvin nor Howard are signatories to such. Considering there is no actual contract between Colvin and Howard, yet a "contractual relationship" exists, Colvin is correct in referring to breaches of the "contract" that exists between the two parties as breaches of *implied* (rather than Actual) contract.<sup>10 11</sup> Hence all of Colvin's pleadings of breach of implied contract are validly asserted (Counts I-V). Thus Howard's motion to dismiss for failure to state a claim for breach of implied contract should be denied.

---

<sup>9</sup> *Manago v. District of Columbia*, 934 A. 2d 295, 927; *Chenari v. George Washington Univ.*, 172 F. Supp. 3d 38.

<sup>10</sup> From a legal standpoint, the whole of the student-university contract is based on an implied doctrine of contract law, i.e. the Implied Covenant of Good Faith and Fair Dealing. See *Bain v. Howard Univ.* ("that implied covenant [of good faith and fair dealing] is *the entire contract* concerning academic matters between a school and its students") (emphasis in original). Being based in an *implied* covenant, the student-university relationship is at its very essence an *implied* contract.

<sup>11</sup> Furthermore (and not inconsistent with *Bain*) many Courts recognize the university-student relationship as unique and not falling neatly within classic contract doctrine. *Slaughter v. Brigham Young Univ.*, 514 F.2d 622, 626 (10<sup>th</sup> Cir. 1975). ("The student-university relationship is unique, and it should not be and cannot be stuffed into one doctrinal category.") *Abbarao*, 258 N.W. 2d at 113. ("Elements of the law of contracts have been applied to the student-university relationship, but rigid importation of contractual doctrine has been rejected").

4. Colvin Can and Does State a Claim For Breach of Contract For His Dismissal (Count I) and Thus Howard's Motion For Dismissal For Failure to State a Claim Should be Denied

Howard's primary argument that Colvin fails to state a claim in Count I because he misstates Howard's course viability policy (Exhibit 1, p.14 at ¶ 1-4) refers to Colvin's pleading in *Colvin I* and does not apply to the current matter.

Howard's corollary argument made in the same section, i.e. that all of Colvin's other alleged contract breaches "(e.g. that the faculty did not submit a recommendation to dismiss Colvin, Colvin did not apply for readmission in certain semesters)" are "immaterial and cannot serve as a basis for a breach of contract claim" (*Id.* at ¶ 5) do apply to the current matter and are incorrect. Both of the alleged contract breaches were material factors in Colvin's dismissal. The Graduate Faculty's submission of a recommendation to dismiss was one of two pillars that Colvin's dismissal was grounded in according to the Dean, the other being his evaluation of Colvin's academic record (Exhibit E, ¶ 1). Another factor was the Dean's belief that Colvin failed to meet the provisions of a 2014 readmission letter (Exhibit E, p.2; Exhibit L, ¶ 1). Howard does not dispute Colvin's pleadings that Graduate faculty did not recommend his dismissal or that he never applied for the 2014 readmission that factored into the Dean's decision (Compl. ¶ 23, 27), but rather claims these pleadings are immaterial. These two pleadings, coupled with other pleadings in Count I (e.g., the Dean incorrectly evaluated Colvin's fall 2006 courses as not viable, the Dean omitted from his evaluation that Colvin had the required 72 graduate credits to defend and graduate in fall 2016), coupled with the fact that Howard failed to provide informal and formal grievance procedures to Colvin serve as evidence Howard engaged in a bad faith dismissal of the Plaintiff.<sup>12</sup> A bad faith dismissal constitutes an actionable claim.<sup>13</sup> Thus Colvin

---

<sup>12</sup> "Bad Faith" is defined as "intentional dishonest act by not fulfilling legal or contractual obligations, misleading another, entering into an agreement without the intention or means to fulfill it, or violating basic standards of

can and does make a valid claim for breach of contract of the Implied Covenant of Good Faith and Fair Dealing (Count I). Howard's claim that the two alleged breaches are immaterial and cannot serve as the basis for a breach of contract claim in Count I is incorrect and its motion to dismiss for failure to state a claim in Count I should be denied.

5. Colvin Can and Does State a Claim For Breach of Contract That Howard Stripped Him of Ph.D. Candidacy Without Just Cause and Denied Him Access To The Allotted Time To Perform Dissertation Research (Count II), Thus Howard's Motion To Dismiss for Failure To State a Claim Should Be Denied

Howard argues "Colvin cannot state a claim for breach of contract for [Howard] dismissing him prior to 2019" (Def. Memorandum of Points, p. 14). In support of its contention, Howard submits, "Colvin has not identified any contract....that guarantees him five years to complete his candidacy regardless of whether he continues to meet the academic standards of the University" (Def. Exhibit 1, p. 15). Howard provides example that a student found guilty of a Title IX sexual assault could be dismissed prior to five years and concludes, "Colvin's inability to plead any contract guaranteeing him five years to complete his candidacy is fatal to his breach of contract claim." (Id.) Howard misstates Colvin's pleadings. Colvin does not plead that he was *guaranteed* five years but that he was *allowed up to that time* when he was dismissed without just cause, and that his dismissal without just cause was a breach of contract that *denied him*

---

honesty in dealing with others. Most states recognize what is called "implied covenant of good faith and fair dealing" which is breached by acts of bad faith, for which a lawsuit may be brought (filed) for the breach (just as one might sue for breach of contract)." Hill, Gerald and Kathleen, The People's Law Dictionary. Fine Communications. Source: <https://dictionary.law.com/Default.aspx?selected=21>. Accessed: 08-22-2019.

Howard violated basic standards of honesty and failed to fulfill its contractual obligations with its academic assessment of Colvin based on misinformation and non-compliance with it published policies, its false claim to have received a dismissal recommendation from Graduate Faculty, and preclusion of Colvin from its Student Academic Grievance Procedures which it was obligated to provide upon request; its actions thus being a textbook example of a Bad Faith dismissal.

<sup>13</sup> *Williams v. Howard Univ.*, 528 F.2d. 658 (1976) ("It has been held that an arbitrary denial of readmission made in bad faith by a private university presents an actionable claim..."). *Connelly v. University of Vermont and State Agr. Col.*, 244 F. Supp. 156 (D. Vt. 1965) ("[T]o the extent that the plaintiff has alleged his dismissal was for reasons other than the quality of his work, or in bad faith, he has stated a cause of action.").

access to Howard's allotted time for dissertation research. Colvin cites the plain wording of Howard's Graduate Rules and Regulations booklet which states "Candidacy for the Ph.D. degree shall be valid for no more than five calendar years" (emphasis added) as proof he was allowed up to five years (until May 9, 2019) for his candidacy (Compl. ¶ 43, 44; Exhibit D). Moreover, unlike with Howard's example, Colvin was in good standing and had met all the requirements to defend his dissertation and graduate in fall 2016 when he was dismissed (graduate course hours, G.P.A., etc.). Insofar as Howard's dismissal was unjust, i.e., based on misinformation, arbitrary, capricious, and in bad faith (Compl. ¶¶46-48, Arguments #2 and 4 above), Colvin's claim that he was stripped of candidacy without just cause and denied access to the allotted time (up to 5 years) to perform dissertation research is a valid one and Howard's motion to dismiss for failure to state a claim should be denied.

6. Colvin Can and Does State Claims that Howard Denied Him Informal and Formal Grievance (Counts III-V), And Thus Howard's Motion to Dismiss For Failure to State A Claim Should Be Denied

Finally, Howard contends that "Colvin cannot state a claim that Howard denied him informal and formal grievance procedures" and thus Colvin cannot state a claim upon which relief can be granted (Def. Memorandum of Points, p. 14). Specifically, Howard argues (1) it is not clear its grievance procedures attach to Colvin's dismissal, (2) the first two steps of its informal grievance procedure do not apply to dismissals by the Dean, (3) it did not make sense for Colvin to appeal to subordinate persons about the Dean's dismissal, (4) Howard provided Step 3 of informal grievance when Colvin met with Asst. Dean Ellison, (5) thereafter Colvin abandoned his grievance as he did not specify it in writing to the Dean as per Step 1 of the Formal Grievance procedure, (6) rather than continue with the process, Colvin elected to seek redress outside the process by appealing directly to the Provost and President, (7) by appealing to the Provost Colvin

functionally waived the informal and formal grievance processes, (8) Colvin had no contract with the Provost and so it was not a breach of contract for the Provost to close Colvin's file, and (9) no party in the informal or formal process can overrule the decision of the Provost (Def. Exhibit 1, p. 15-17). Colvin's pleadings and Howard's Student Academic Grievance Procedures show Howard to be incorrect on all of its assertions and that it committed several breaches of implied contract. First, the Student Academic Grievance Procedures is Howard's procedure for handling *all* academic grievances<sup>14</sup> (Exhibit K). As Colvin's grievance is academic in nature (i.e. dismissal based on academic record) it is clear that the procedures are applicable and is the relevant Howard policy that attaches to Colvin's grievance claims in the current lawsuit. Second, there is nothing in Howard's Informal Grievance policy that exempts the Dean's dismissal from Informal grievance Steps 1 and 2 and thus Howard's claim of exemption is baseless (*Id.*), (3) Colvin sought intervention from his Department Chair per Informal grievance procedure step 2 (Compl. ¶ 61; Exhibit K); Howard's claim that Colvin's appealing to subordinate persons doesn't make sense is baseless upon review of its Informal Procedure, (4) Colvin's meeting with Dean Ellison occurs prior to Colvin beginning grievance (Compl. ¶ 58-59) and *thus a meeting occurring before Colvin initiated grievance<sup>15</sup> cannot be used to say Howard satisfied step 3 of informal grievance*, (5) Colvin did not abandon grievance after Informal Step 2 but went merely to "discuss" the difficulties he was having pursuing informal grievance with the Dean, after which the Provost "closed" his case<sup>16</sup> (Compl. ¶ 62-64); (5)

<sup>14</sup> Howard tries to use the example given to say its academic grievance procedures are for grievance of grades (Def. Exhibit 1, p. 15), but the use of e.g. rather than i.e. prior to the example is instructive and indicates the example given is just that - one example of the way the procedures attach to students' academic grievances.

<sup>15</sup> As the procedure itself outlines, it is the student that initiates the Student Academic Grievance Procedures, not the University (Exhibit K).

<sup>16</sup> Howard claims Colvin "appealed" his case to the Provost (Exhibit 1, p. 16-17) but offers no evidence to support its assertion. Howard presents no letter submitted by Colvin to the Provost requesting an appeal. It presents no

Colvin never abandoned informal or formal grievance but was precluded from pursuing it further as a result of Provost's closing action (Compl. ¶ 64-66); (6) Colvin never appealed to the Provost and only contacted the President *after* he had been told he could no longer pursue Formal Grievance (Exhibit J), thus Howard is incorrect in asserting that Colvin "opted out" of grievance to appeal to Provost and President, (7) as Colvin did not appeal to Provost, he never waived the informal and formal processes, (8) Howard breached contract when Provost closed Colvin's case before Colvin had been provided informal and formal grievance (Compl. ¶ 65-68, 76-78, 83-85), (9) the Provost's decision to close the case was breach of contract that denied Colvin informal and formal grievance, and thus Colvin states a claim for which relief can be granted in Counts III, IV, and V and Howard's motion to dismiss for failure to state a claim should be denied.

## **VII. CONCLUSION**

**WHEREFORE** for the reasons set forth above it is clear that Colvin's Complaint (*Colvin III*) survives Howard's attempt to dismiss pursuant to Super. Ct. Civ. R. 12 (b)(6), Colvin respectfully requests that Howard's motion to dismiss Counts I-V for failure to state a claim be denied in its entirety.

August 23, 2019

Respectfully Submitted,

**DEON D. COLVIN**

  
Deon D. Colvin

Plaintiff (*Pro Se*)  
743 Fairmont Street, N.W. #211  
Washington, D.C. 20001  
T: 216-396-8512  
E-mail: [DeonColvin@aol.com](mailto:DeonColvin@aol.com)

---

~~letter of claims sent to the Provost as part of an appeal process. It presents no letter by the Provost stating to Colvin the date and manner of appeal. In contrast, Colvin presents documents that show he only went to discuss his matter with the Provost (Exhibit I at ¶ 1; Exhibit IV). In the absence of countervailing evidence, Colvin's pleading is to be taken as true.~~

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23<sup>rd</sup> day of August, 2019 that a copy of the foregoing PLAINTIFF'S MEMORANDUM OF OPPOSING POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S OPPOSED MOTION TO DISMISS was filed with the Court and sent to Defendant Howard University via electronic mail to signed counsel and via USPS regular mail to:

John G. Gloster Jr., Esq.  
Sr. Associate General Counsel  
Office of the General Counsel  
Howard University  
2400 6<sup>th</sup> Street N. W. Suite #321  
Washington, D.C. 20059

*Deon D. Colvin*

---

Deon D. Colvin  
Plaintiff

# **APPENDIX N**

"Appendix N"

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
Civil Division

DEON COLVIN,

*Plaintiff,*

v.

HOWARD UNIVERSITY,

*Defendant.*

Case No. 2019 CA 003573 B  
Judge Robert R. Rigsby

**ORDER**

This matter is before the Court on three motions: (1) Defendant's Opposed Motion to Dismiss, filed on July 12, 2019; (2) Plaintiff's Motion for Extension of Time to Respond to Defendant's Opposed Motion to Dismiss, filed on July 18, 2019; and (3) Defendant's Opposed Motion to Stay Discovery, filed on November 15, 2019. Defendant filed its Opposition to Plaintiff's Motion for Extension of Time to Respond on August 1, 2019. Plaintiff filed his Opposition to Defendant's Motion to Dismiss on August 23, 2019, and Defendant filed its Reply on August 28, 2019. Upon consideration of the parties' filings and the entire record herein, Plaintiff's Motion for an Extension of Time to Respond is **GRANTED**, Defendant's Motion to Dismiss is **GRANTED**, and Defendant's Opposed Motion to Stay Discovery is **DENIED as moot**.

**BACKGROUND**

The instant case arises out of a controversy surrounding Plaintiff Deon Colvin's dismissal from Defendant Howard University's Graduate School in the Department of Political Science.

Pl.’s Compl. at 2. Plaintiff asserts the following facts in his Amended Complaint, filed on June 26, 2019:

Plaintiff “enrolled as a graduate student in Defendant Howard University’s Department of Political Science Ph.D. Program in August 2004.” Pl.’s Compl. at ¶ 2. During the summer of 2009, Plaintiff began working on his “dissertation proposal.” *Id.* at ¶ 5. Although Defendant has a policy of automatically dropping students who do not complete a doctoral degree within a maximum seven year period, Defendant “allowed [Plaintiff] to remain in its Ph.D. program.” *Id.* at ¶¶ 6 – 7. Plaintiff enrolled at Howard in Spring 2014, and defended his dissertation proposal in May 2014. *Id.* at ¶ 8. Following his dissertation proposal defense, Plaintiff was admitted to candidacy for the Ph.D. degree on May 9, 2014. *Id.* at ¶ 9.

Pursuant to Defendant’s regulations, candidacy for a “Ph.D. Degree is valid for a maximum of five calendar years.” *Id.* at ¶ 10. Plaintiff was informed by his academic advisor that he did not need to be enrolled at the University while he was completing his dissertation research. *Id.* at ¶ 12. On April 4, 2016, Plaintiff requested that Defendant readmit him for the Fall 2016 semester so that he may defend his dissertation. *Id.* at ¶ 13. Additionally, Plaintiff requested a course waiver for courses he had completed outside of the normal eligibility window. *Id.* On May 2, 2016, Plaintiff wrote a letter “rescinding his request for a waiver of courses.” *Id.* at ¶ 14. On June 23, 2016, Plaintiff received a letter dismissing him from Defendant’s Graduate School. *Id.* at ¶ 15. Plaintiff sought to appeal Defendant’s decision from June 2016 to December 2016 using Defendant’s Student Academic Grievance Procedures. *Id.* at ¶ 16.

### **PROCEDURAL HISTORY**

On July 27, 2018, Plaintiff Deon Colvin filed a Complaint against Howard University in Superior Court. Def.’s Mot. to Dismiss at 2. In the Complaint, Plaintiff pled five (5) counts of

“Breach of Implied Warranty” against Defendant. *Id.* at 3. Defendant filed an Opposed Motion to Dismiss in the aforementioned case on October 9, 2018, and Plaintiff filed his Opposition to Defendant’s motion on January 10, 2019. *Id.* On February 25, 2019, the Superior Court Judge assigned to the case, Judge José López, ordered that the Motion to Dismiss was “**GRANTED WITHOUT PREJUDICE.**” 02/25/2019 Order.

On May 20, 2019, Plaintiff filed a second Complaint against Defendant; however, this Complaint was voluntarily dismissed by Plaintiff on May 28, 2019. Def.’s Mot. to Dismiss at 4. On May 30, 2019, Plaintiff filed his Complaint against Defendant in the instant case. Prior to a responsive pleading or motion from Defendant, Plaintiff filed an Amended Complaint in the instant case on June 26, 2019. On July 12, 2019, Defendant filed its Opposed Motion to Dismiss.

### **LEGAL STANDARD**

A motion to dismiss pursuant to Rule 12(b)(6) challenges the legal sufficiency of a complaint. *See Luna v. A.E. Eng’g Servs., LLC*, 938 A.2d 744, 748 (D.C. 2007). A plaintiff’s complaint must contain a short and plain statement of the claim for relief, such that the complaint “puts the defendant on notice of the claim against him.” *Sarete, Inc. v. 1344 U St. Ltd. P’Ship*, 871 A.2d 480, 497 (D.C. 2005); *see generally* Super. Ct. R. Civ. P. 8(a). A complaint must, at a minimum, contain a short and plain statement of the claim showing that the plaintiff is entitled to relief. Super. Ct. Civ. R. 8(a)(2).

When considering a motion to dismiss, the Court must accept as true all of the allegations put forth in the complaint, and construe all facts and inferences in favor of the non-moving party. *See Murray v. Wells Fargo Home Mort.*, 953 A.2d 308, 316 (D.C. 2008). Dismissal for failure to state a claim upon which relief can be granted is warranted only when it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim. *See id.* However, the

allegations in the complaint must be sufficient to “raise a right to relief above a speculative level.” *Clampitt v. Am. Univ.*, 957 A.2d 23, 29 (D.C. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Additionally, the complaint must provide more than mere labels and legal conclusions couched as fact. *See Grayson v. AT&T Corp.*, 980 A.2d 1137, 1144 (D.C. 2009). The complaint need not include “detailed factual allegations,” but must include “more than an unadorned, the defendant-unlawfully-harmed-me accusation.” *Mazza v. House Craft, LLC*, 18 A.3d 786, 790 (D.C. 2011).

## **DISCUSSION**

### **I. Plaintiff’s Motion for Extension of Time to Respond**

Plaintiff requests in his motion an extension of thirty (30) days from the original deadline to respond to Defendant’s Motion to Dismiss to file his opposition. Plaintiff is a *pro se* party attempting to litigate this case to the best of his ability. Due to the lack of prejudice on the part of Defendant and the complexity of the issues in the instant case, the Court grants Plaintiff’s Motion for an Extension of Time to Respond to Defendant’s Motion to Dismiss and extends the deadline to file his opposition to August 28, 2019. As Plaintiff filed his Opposition on August 23, 2019, five days prior to the extended deadline, the Court deems Plaintiff’s Opposition timely filed.

### **II. Defendant’s Motion to Dismiss**

Preliminarily, the Court notes that Defendant advances several arguments that the claims brought by Plaintiff are barred by the doctrines of *res judicata*, collateral estoppel, and District of Columbia case law. All of the arguments proffered by Defendant require a finding that the February 25, 2019 Order in the prior case involving the same parties and the same nucleus of facts was a final decision on the merits; however, “it is beyond dispute that a dismissal without

prejudice does not determine the merits.” *Shin v. Portals Confederation Corp.*, 728 A.2d 615, 618 (D.C. 1999) (internal citations omitted). As the February 25, 2019 Order dismissed the claims in the previous case “**WITHOUT PREJUDICE**,” there was no final decision on the merits for the underlying claims in this case. Thus, Defendant’s assertions that the current case must be dismissed based on the aforementioned doctrines are invalid, and Defendant’s motion to dismiss cannot succeed on these grounds.

Defendant also moved to dismiss the instant Complaint for failure to state a claim. The Court discusses these arguments below.

A. Counts I and II – Breach of Implied Contract due to Plaintiff’s Dismissal

Plaintiff asserts in Counts I and II of his Complaint that actions taken by Defendant during the process of reviewing his academic record and dismissing him from the Ph.D. program led to “his unwarranted dismissal from the Graduate School,” breaching the implied contract between the parties. Compl. at ¶¶ 39, 49. Specifically, in Count I, Plaintiff asserts that Defendant’s “failure to conduct a review of [Plaintiff’s] academic record based on the actual facts of said record is a breach of the fair dealing provision of contract law.” Compl. at ¶ 37. In Count II, Plaintiff asserts that Defendant breached the implied contract between the parties when they revoked his Ph.D. candidacy “without just cause”. Compl. at ¶¶ 49 – 50.

Defendant first argues that Plaintiff’s dismissal should be considered an academic decision made by the educational institution, and therefore, the decision should be given greater judicial deference. “[A] judgment by school officials that a student has not performed adequately to meet the school’s academic standards is a determination that usually calls for judicial deference.” *Alden v. Georgetown Univ.*, 734 A.2d 1103, 1108 (D.C. 1999) (internal citations omitted).

Here, the Court is not persuaded that Plaintiff's dismissal from Defendant's program was an academic decision which requires judicial deference. Plaintiff asserts in his Complaint that Defendant communicated to him that he was being dismissed because he had failed to meet several timing requirements of the Ph.D program. Compl. at Ex. E. Specifically, Defendant notes that Plaintiff entered the Ph.D. program in 2004 and took longer than the proscribed seven (7) years to complete the program. *Id.* Although Defendant argues that these policies were formulated to guarantee its students had current knowledge in their chosen academic field making the policies academic in nature, these policies are written and applied as procedural standards. Unlike grades or an academic dismissal based on poor performance, which are subjective determinations where deference would be appropriate, the application of strict timing policies does not require any subjective considerations. Accordingly, this Court will evaluate Plaintiff's claims as though they are procedural claims, not academic ones.

Defendant also argues that Plaintiff's dismissal was proper in light of the regulations and procedures in place at the educational institution. "The relationship between an educational institution and its students is contractual in nature. The terms set down in the educational institution's bulletin become a part of the contract. The terms in the catalogue are to be given their common meaning and interpreted from the point of view of a reasonable person in the position of the parties." *Kraft v. William Alanson White Psychiatric Foundation*, 498 A.2d 1145, 1148 (D.C. 1985) (internal citations omitted).

In Defendant's "Graduate School Rules and Regulations for the Pursuit of Academic Degrees" published in 2007, Defendant states "[s]tudents are expected to complete a Ph.D. degree within a maximum of seven (7) years from the date of initial registration in the program." Def.'s Motion to Dismiss, Ex. 3 at 19 (originally filed in *Colvin v. Howard University*, 2018 CA

005349 B, and incorporated into Defendant's current Motion to Dismiss). "A student who exceeds this period may be dismissed." *Id.* at 20. Plaintiff admits in his Complaint that he entered into his graduate program in 2004 and that he had not completed that program when he received the June 6, 2016 letter dismissing him from the program. Based on the facts as alleged in Plaintiff's Complaint, Defendant's dismissal of Plaintiff was not a violation of the contract between the parties. Thus, Plaintiff has failed to state a claim in Counts I and II of his Complaint and those counts must be dismissed.

B. Counts III, IV, and V – Grievance Process

Plaintiff asserts in Counts III, IV, and V of his Complaint that actions taken by Defendant violated Defendant's "Student Academic Grievance Procedures" and thereby breached the implied contract between the parties. Compl. at ¶¶ 52 - 87. According to Defendant's "Student Handbook" issued for the 2015 – 2016 school year, "[a] student who believes that he/she has been aggrieved must first attempt to seek an informal resolution with the other party involved in the dispute, e.g. grade dispute with instructor." Pl.'s Compl. at Ex. K. Based off the plain language of the handbook, this process is meant to apply to disputes regarding academic decisions, such as a grade. The Court, as discussed above, has already determined that the facts as alleged in Plaintiff's Complaint establish a procedural dispute not an academic dispute, which means that the aforementioned processes cannot apply to Plaintiff's claims. Further, Plaintiff has not identified any subjective determinations, such as the assignment of a grade, at issue in the instant case which could fall under the "Student Academic Grievance Procedures." Accordingly, the claims relating to Defendant's alleged failures regarding the review of Plaintiff's dismissal must be dismissed.

### **III. Defendant's Opposed Motion to Stay Discovery**

As this Court is granting Defendant's Motion to Dismiss and dismissing Plaintiff's Complaint, Defendant's Opposed Motion to Stay Discovery is moot.

#### **CONCLUSION**

Accordingly, and based on the entire record herein, it is this the 25<sup>th</sup> day of November, 2019, hereby

**ORDERED** that Plaintiff's Motion for Extension of Time to Respond is **GRANTED**; it is further

**ORDERED** that Defendant's Motion to Dismiss is **GRANTED**; it is further

**ORDERED** that Defendant's Motion to Stay Discovery is **DENIED as moot**; it is further

**ORDERED** that Plaintiff's Complaint is **DISMISSED**, this case is **CLOSED** and that all future hearings are **VACATED**.

**SO ORDERED.**

  
\_\_\_\_\_  
Robert R. Rigsby, Associate Judge  
Superior Court of the District of Columbia

Copies to:

Zachary I. Shapiro  
*Counsel for Defendant*  
Via CaseFileXpress

Deon D. Colvin  
743 Fairmont Street NW #211  
Washington, DC 20001

# **APPENDIX O**

"Appendix O"

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
Civil Division

DEON D. COLVIN,

*Plaintiff,*

v.

HOWARD UNIVERSITY,

*Defendant.*

Case No. 2019 CA 003573 B  
Judge Robert R. Rigsby

**ORDER**

This matter is before the Court on *Plaintiff's Opposed Motion for Relief from Order, Reopening of the Case, and for Leave to File an Amended Complaint* #2, filed December 20, 2019 and *Plaintiff's Opposed Motion to Take Judicial Notice*, filed on January 16, 2020. Defendant filed their *Opposition Plaintiff's Opposed Motion for Relief from Order, Reopening of the Case, and for Leave to File an Amended Complaint* on January 3, 2020.

**BACKGROUND**

The instant case arises out of a controversy surrounding Plaintiff Deon Colvin's dismissal from Defendant Howard University's Graduate School in the Department of Political Science. Pl.'s Compl. at 2. Plaintiff asserts the following facts in his Amended Complaint, filed on June 26, 2019:

Plaintiff "enrolled as a graduate student in Defendant Howard University's Department of Political Science Ph.D. Program in August 2004." Pl.'s Compl. at ¶ 2. During the summer of 2009, Plaintiff began working on his "dissertation proposal." *Id.* at ¶ 5. Although Defendant has a policy of automatically dropping students who do not complete a doctoral degree within a

maximum seven year period, Defendant “allowed [Plaintiff] to remain in its Ph.D. program.” *Id.* at ¶¶ 6–7. Plaintiff enrolled at Howard in Spring 2014, and defended his dissertation proposal in May 2014. *Id.* at ¶ 8. Following his dissertation proposal defense, Plaintiff was admitted to candidacy for the Ph.D. degree on May 9, 2014. *Id.* at ¶ 9.

Pursuant to Defendant’s regulations, candidacy for a “Ph.D. Degree is valid for a maximum of five calendar years.” *Id.* at ¶ 10. Plaintiff was informed by his academic advisor that he did not need to be enrolled at the University while he was completing his dissertation research. *Id.* at ¶ 12. On April 4, 2016, Plaintiff requested that Defendant readmit him for the Fall 2016 semester so that he may defend his dissertation. *Id.* at ¶ 13. Additionally, Plaintiff requested a course waiver for courses he had completed outside of the normal eligibility window. *Id.* On May 2, 2016, Plaintiff wrote a letter “rescinding his request for a waiver of courses.” *Id.* at ¶ 14. On June 23, 2016, Plaintiff received a letter dismissing him from Defendant’s Graduate School. *Id.* at ¶ 15. Plaintiff sought to appeal Defendant’s decision from June 2016 to December 2016 using Defendant’s Student Academic Grievance Procedures. *Id.* at ¶ 16.

### **PROCEDURAL HISTORY**

On July 27, 2018, Plaintiff Deon Colvin filed a Complaint against Howard University in Superior Court. Def.’s Mot. to Dismiss at 2. In the Complaint, Plaintiff pled five (5) counts of “Breach of Implied Warranty” against Defendant. *Id.* at 3. Defendant filed an Opposed Motion to Dismiss in the aforementioned case on October 9, 2018, and Plaintiff filed his Opposition to Defendant’s motion on January 10, 2019. *Id.* On February 25, 2019, the Superior Court Judge assigned to the case, Judge José López, ordered that the Motion to Dismiss was granted without prejudice. 02/25/2019 Order.

On May 20, 2019, Plaintiff filed a second Complaint against Defendant; however, this Complaint was voluntarily dismissed by Plaintiff on May 28, 2019. Def.’s Mot. to Dismiss at 4. On May 30, 2019, Plaintiff filed his Complaint against Defendant in the instant case. Prior to a responsive pleading or motion from Defendant, Plaintiff filed an Amended Complaint in the instant case on June 26, 2019. On July 12, 2019, Defendant filed its Opposed Motion to Dismiss. On November 25, 2019, upon consideration of the entire record, this Court granted Defendant’s motion finding that Defendant had not breached its contractual duties to Plaintiff. Plaintiff filed its *Opposed Motion for Relief from Order, Reopening of the Case, and for Leave to File an Amended Complaint #2*, on December 20, 2019. Defendant filed their Opposition on January 3, 2020.

### **DISCUSSION**

Motions for reconsideration are construed under either Super. Ct. Civ. R. 59(e) or 60(b). *Nuyen v. Luna*, 884 A.2d 650, 655-56 (D.C. 2005). If “for the first time, the movant is requesting consideration of additional circumstances . . . the motion is properly considered under Rule 60(b), but if the movant is seeking relief from the adverse consequences of the original order on the basis of error of law, the motion is properly considered under Rule 59(e).” *Id.* at 655 (citing *Wallace v. Warehouse Emps. Union # 730*, 482 A.2d 801, 804 (D.C. 1984)). In the instant motion, Plaintiff argues that this Court failed to appropriately consider Plaintiff’s evidence presented, failed to render a holding on Plaintiff’s implied breach of contract claim, and that this Court’s interpretation of the presented “Student Academic Grievance Procedures” is overly narrow, thus resulting in the Court erroneously finding in its November 25, 2019 Order that Defendant had failed to state a claim upon which relief could be granted.

Counter to Plaintiff's allegations, this Court did address the issue of whether Defendant breached an implied contract between the parties. This Court examined both Plaintiff's preferred legal standard, that Defendant's act of dismissing Plaintiff from the Ph.D. program should have been considered an academic decision made by an educational institution, and whether the revocation of his Ph.D. candidacy by Defendant was made without just cause. In reviewing the facts of the present case in the light most favorable to Plaintiff, this Court examined and found inapplicable the standard proposed by Plaintiff. While Plaintiff argues that this Court should reverse itself due to an "overly narrow" interpretation of Defendant's policies regarding academic dismissals, Plaintiff notes that Defendant's policy merely provides some examples of what might constitute an academic dismissal and is in no way an exhaustive list. However, Plaintiff's action is not an example that would be typical of that list (e.g., a dismissal due to failing to maintain a minimum grade point average, being wrongfully excluded from the Dean's List, or being placed on academic probation). *Cf.* Pl. Motion for Relief at 4, fn. 4–5. This Court previously held and does so again that Plaintiff's case in controversy is not one of academic dismissal but one procedural in nature. Had this Court instead determined that Plaintiff's dismissal should have been considered an academic decision made by an educational institution; the burden would have been substantially higher for Plaintiff to meet. *See Alden v. Georgetown Univ.*, 734 A.2d 1103, 1108 (D.C. 1999) (internal citations omitted) (stating that judicial deference is usually given to the institution in cases regarding academic decisions).

Therefore, this Court turned to evaluating Plaintiff's claims as though they were procedural. Under that standard, this Court noted the contractual relationship between educational institutions and their students, *see Kraft v. William Alanson White Psychiatric Foundation*, 498 A.2d 1145, 1148 (D.C. 1985) (internal citations omitted), and that the most

recent “Graduate Rules and Regulations For the Pursuit of Academic Degrees” agreed to by Plaintiff were controlling in the matter. Plaintiff presents for consideration no new evidence or arguments to this Court, rather contending that this Court should have relied on the 1979 version instead of the one published in 2007. This Court was unpersuaded and remains so that the 1979 document, and not the 2007 version, governed in the present case. Nevertheless, even if this Court erred, the 1979 and 2007 versions of the policy are substantively identical and the decision of this Court did not turn on the inconsequential differences between the referenced provision. *See* Super. Ct. R. Civ. P. 61. Under both version, Plaintiff had seven (7) years in which to complete the program; Plaintiff did not; and pursuant to policy Plaintiff was aware of, Defendant dismissed him from the program. Plaintiff’s subjective disagreement with this Court cannot serve as a basis to disturb the dismissal of this case. Accordingly, Plaintiff’s plea for relief from judgment and reopening of the case is denied.

Additionally, although Plaintiff seeks leave to file a second amended complaint, given the facts of the matter presented, granting Plaintiff leave to amend would be futile. Accordingly, Plaintiffs’ request for leave to file a second amended complaint is denied.

Finally, *Plaintiff’s Opposed Motion to Take Judicial Notice* does not appear to request additional relief, rather directly challenges Defendant’s arguments presented in its opposition. Accordingly, the Court treats this motion as a reply. However, to the extent Plaintiff’s motion requests additional relief it is denied as moot as the Court has denied to reopen Plaintiff’s case.

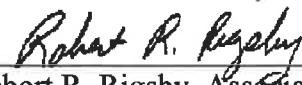
### **CONCLUSION**

Accordingly, and based on the entire record herein, it is this the 29<sup>th</sup> day of January, 2020, hereby

**ORDERED** that *Plaintiff's Opposed Motion for Relief from Order, Reopening of the Case, and for Leave to File an Amended Complaint* #2 of November 25, 2019 is **DENIED**; it is further

**ORDERED** that *Plaintiff's Opposed Motion to Take Judicial Notice* is **DENIED AS MOOT.**

**SO ORDERED.**

  
\_\_\_\_\_  
Robert R. Rigsby, Associate Judge  
Superior Court of the District of Columbia

Copies to:

Zachary I. Shapiro  
*Counsel for Defendant*  
Via CaseFileXpress

Deon D. Colvin  
743 Fairmont Street NW #211  
Washington, DC 20001

# **APPENDIX P**

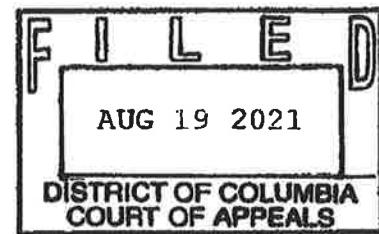
"Appendix P"

**District of Columbia  
Court of Appeals**

**Nos. 19-CV-1250 & 20-CV-122**

**DEON D. COLVIN,**  
Appellant,

**v.**



**CAB3573-19 &  
CAB7929-19**

**HOWARD UNIVERSITY,**  
Appellee.

**On Appeal from the Superior Court of the District of Columbia  
Civil Division**

**BEFORE: Easterly, McLeese, and Deahl, Associate Judges.**

**JUDGMENT**

This case came to be heard on the transcript of record and the briefs filed, and it was argued by counsel. On consideration whereof, and as set forth in the opinion filed this date, it is now hereby

**ORDERED and ADJUDGED that the orders of the Superior Court are affirmed.**

**For the Court:**

  
Julio A. CASTILLO  
Clerk of the Court

Dated: August 19, 2021.  
Opinion by Associate Judge Deahl.

**Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.**

**DISTRICT OF COLUMBIA COURT OF APPEALS**

Nos. 19-CV-1250 & 20-CV-0122

DEON D. COLVIN, APPELLANT,

v.

HOWARD UNIVERSITY, APPELLEE.

FILED 08/19/2021  
District of Columbia  
Court of Appeals  
Julio A. Castillo  
Julio Castillo  
Clerk of Court

Appeals from the Superior Court  
of the District of Columbia  
(CAB-3573-19)  
(CAB-7929-19)

(Hon. Robert R. Rigsby, Trial Judge)  
(Hon. Hiram E. Puig-Lugo, Trial Judge)

(Argued April 27, 2021

Decided August 19, 2021)

Deon D. Colvin, *pro se*.

*Zachary I. Shapiro*, with whom *Nathiya Nagendra*, was on the brief, for  
appellee.

Before EASTERLY, MCLEESE, and DEAHL, *Associate Judges*.

**DEAHL, Associate Judge:** Howard University dropped Deon Colvin from its Political Science PhD program, citing his failure to complete his doctoral degree within the prescribed seven-year timeframe. Colvin responded by filing suit in D.C. Superior Court alleging several breaches of contract. That lawsuit was dismissed,

so Colvin filed another, and another, and another, with each likewise being dismissed. This consolidated appeal is from the third and fourth of those dismissed suits, and it concerns the preclusive effect the various dismissals have on the subsequent suits. Because each of the contested dismissals was justified by either collateral estoppel (issue preclusion) or res judicata (claim preclusion), we affirm.

## I.

Colvin was first admitted to Howard's Political Science PhD Program for the Fall 2004 semester. As provided in Howard's Graduate School Rules and Regulations, PhD students are expected to complete their doctoral degree within seven years, otherwise they are to "be automatically dropped from the program." Colvin was therefore expected to complete his doctoral degree by the fall of 2011. He did not, but neither did Howard automatically drop him from the program. As a result, Colvin continued working toward his degree for several more years. By 2014, he was ready to defend his dissertation proposal and he sought admission to "candidacy" for his PhD degree. Despite it being almost three years past the seven-year mark, Howard permitted Colvin to re-enroll to defend his dissertation proposal. He successfully did so and Howard admitted him to candidacy for his PhD degree in May 2014. Per a separate provision of Howard's Graduate School Rules and

Regulations, Colvin's PhD candidacy period remained valid for a maximum of five years.

Two years later, Colvin again sought readmission for the Fall 2016 semester so he could present and defend his dissertation. This time, however, the Dean of Howard's Graduate School denied his request. He instead dropped Colvin from the PhD program citing several factors: (i) Colvin had far exceeded the seven-year "expected time-to-degree" requirement; (ii) a number of Colvin's courses were too old to count toward fulfillment of Colvin's graduation requirements; and (iii) Colvin had previously been given two extensions under the condition that he defend his dissertation within a certain timeframe, and he failed to meet that condition each time.

Believing his dismissal from the PhD program was based on factual inaccuracies—more specifically, that he possessed the requisite number of course credits to satisfy his degree requirements, and that he was only given one prior extension, not two—Colvin contested his dismissal via Howard's informal grievance process as set out in the Student Handbook. His efforts were unsuccessful. The Dean stood by his dismissal letter; the Chair of the Department of Political Science informed Colvin that there was nothing he could do, and explained that the

principal reason for Colvin’s dismissal was his “failure to finish and defend [his] dissertation within the length of time required of all graduate students”; Howard’s Provost determined that Colvin’s dismissal was “in accordance with . . . program policies and procedures”; and Howard’s President agreed with the Provost, believing that the factual inaccuracies claimed by Colvin “provided no additional pertinent information which would impact the disposition of [Colvin’s] dismissal.” When Colvin attempted to initiate Howard’s formal grievance process, he was informed that he could not do so because the Provost had already closed Colvin’s case.

Colvin then sued Howard in D.C. Superior Court. That lawsuit eventually splintered into four separate suits, which we detail below.

### *Colvin I*

Colvin first filed suit in July 2018 (*Colvin I*), and the case was assigned to Judge José M. López. The *Colvin I* complaint alleged five counts of implied breach of contract for Howard’s factually inaccurate review of his academic record (Count I); ouster of Colvin prior to the conclusion of his five-year status as a doctoral candidate (Count II); failure to allow Colvin to engage in the informal grievance process (Count III); failure to comply with its grievance procedures when the

Provost closed Colvin's case (Count IV); and failure to allow Colvin to engage in the formal grievance process (Count V).

Howard moved to dismiss the suit for failure to state a claim under Superior Court Civil Procedure Rule 12(b)(6). It argued that academic decisions regarding whether a student has satisfied a school's academic standards are entitled to judicial deference and should not be second-guessed absent evidence of arbitrary or capricious conduct, which Colvin had not alleged. Howard also asserted that Colvin's breach of contract claims failed as a matter of law because (i) Colvin could point to no contractual provision guaranteeing him the full five years of his doctoral candidacy period, (ii) Howard had complied with its policies when dismissing Colvin, namely, its seven-year time-to-degree and course-viability policies, and (iii) Howard complied with its informal grievance procedures, and Colvin abandoned his right to submit a formal grievance when he appealed his ouster directly to Howard's Provost and President.

Colvin opposed the motion. He argued his dismissal was arbitrary and violated the covenant of good faith and fair dealing implicit in every contract. *See Allworth v. Howard Univ.*, 890 A.2d 194, 201 (D.C. 2006) ("[A]ll contracts contain an implied duty of good faith and fair dealing.") (internal quotation marks omitted).

For support, he claimed that his ouster was based on several faulty factual premises and that he was entitled to remain in the PhD program for the duration of his five-year candidacy period so long as he could satisfy Howard's degree requirements. He also contested Howard's assertion that it had complied with its informal grievance process and disputed that he had abandoned his formal grievance rights by seeking assistance from Howard's Provost and President.

Judge López granted Howard's motion to dismiss, albeit without prejudice. He concluded that Howard's academic decision to oust Colvin from its PhD program was entitled to deference so long as there was "no demonstration . . . of improper motivation or irrational action." Because Howard's policies permitted dropping Colvin from the program after he failed to complete his doctoral degree within the allotted seven-year time period, Judge López determined that Colvin had not demonstrated any "improper motivation or irrational action," and thus failed to state a claim on which relief might be granted in any of his five breach of contract claims.

Colvin did not file a motion for reconsideration or attempt to amend his complaint to cure the alleged deficiencies noted by Judge López. Nor did he appeal the dismissal.

*Colvin II*

Instead of attempting to cure his complaint in *Colvin I*, Colvin filed a new suit (*Colvin II*). The *Colvin II* complaint was roughly the same as the *Colvin I* complaint, alleging the same five counts for breach of contract.<sup>1</sup> The only differences between the two complaints were factual in nature, as Colvin attempted to bolster his allegations that Howard relied upon factual inaccuracies when dropping him from its PhD program. Before Howard responded to the *Colvin II* complaint, Colvin voluntarily dismissed his suit under Superior Court Civil Procedure Rule 41(a)(1)(A)(i). He did not provide an explanation for the voluntary dismissal, but his decision was perhaps prompted by the fact that the same judge who presided over *Colvin I* (Judge López) was assigned to preside over *Colvin II*.

*Colvin III*

Two days after voluntarily dismissing *Colvin II*, Colvin initiated a third action (*Colvin III*), this time drawing Judge Robert R. Rigsby as the presiding judge. The

---

<sup>1</sup> The *Colvin I* complaint also raised allegations of fraud and intentional infliction of emotional distress. These claims were omitted from the *Colvin II* complaint and are not relevant to this appeal so, aside from flagging them here, we do not discuss them further.

*Colvin III* complaint—like the *Colvin II* complaint—alleged the same five counts for breach of contract as the *Colvin I* complaint and was nearly identical to it in substance. The main differences between the *Colvin I* and *Colvin III* complaints were also of the factual variety, as Colvin fleshed out some facts that were presented in slightly less-detailed form to Judge López in *Colvin I*.

Howard filed a motion requesting that Judge Rigsby transfer *Colvin III* to Judge López. It argued the *Colvin III* complaint was “functionally identical” to the claims “previously adjudicated and dismissed in *Colvin I*” and accused Colvin of “garden-variety judge shopping.” Colvin opposed the transfer motion but denied Howard’s accusations that he was judge shopping. Judge Rigsby denied the motion to transfer the case to Judge López.

In addition to its motion to transfer, Howard again moved to dismiss the case for failure to state a claim, but this time it also argued that the dismissal of *Colvin I* precluded *Colvin III* “under the doctrines of *res judicata*, collateral estoppel, and the law of the case.” Judge Rigsby rejected Howard’s preclusion arguments, concluding the various preclusion doctrines were not applicable because *Colvin I* was dismissed without prejudice, so there was no final decision on the merits of Colvin’s contract claims. But he agreed with Howard that the complaint failed to survive a Rule

12(b)(6) motion—albeit for different reasons than those Judge López provided in *Colvin I*—and dismissed the *Colvin III* complaint for failure to state a claim. Although Judge Rigsby’s order did not state whether the dismissal was with or without prejudice, the case was closed and all future hearings were vacated.

Colvin then filed a motion to reopen *Colvin III* and for leave to amend his complaint. In the proffered amended complaint, Colvin sought to add a sixth count for breach of contract stemming from Howard’s alleged failure to maintain one uniform degree-requirement manual. According to Colvin, Howard used two different manuals (a 1979 manual and a 1983 amended version of the 1979 manual) that detailed different policies regarding which courses could be used to satisfy a student’s degree requirements, which caused him to be unfairly dropped from the program. Judge Rigsby denied Colvin’s motions to reopen and to amend, concluding the amendments would be futile. Colvin noted an appeal to this court, contesting the dismissal of *Colvin III* and the denial of his motion to amend.

#### *Colvin IV*

Colvin then initiated a fourth action (*Colvin IV*), drawing Judge Hiram E. Puig-Lugo as the presiding judge. The *Colvin IV* complaint was identical to the proffered amended complaint Colvin was denied leave to file in *Colvin III*.

Howard moved to dismiss the *Colvin IV* complaint, primarily arguing that Colvin's contract claims were barred by res judicata in light of Judge Rigsby's Rule 12(b)(6) dismissal of *Colvin III*. Colvin opposed the motion, arguing the *Colvin III* dismissal order did not state whether it was with or without prejudice, thus no final judgment on the merits was issued, making res judicata inapplicable. Judge Puig-Lugo agreed with Howard that res judicata precluded Colvin's fourth suit. He explained that because the claims in *Colvin III* were the same as those raised in *Colvin IV*, and because "Judge Rigsby issued a final judgment on the merits against [Colvin] on [those claims]," res judicata barred relitigation of the claims in *Colvin IV*. To the extent Colvin was alleging any new claims in his *Colvin IV* complaint, Judge Puig-Lugo noted that res judicata would still present a barrier because Colvin could have brought those claims in *Colvin III*.

Colvin appealed Judge Puig-Lugo's order to this court, which we then consolidated with the *Colvin III* appeal. Appeals from the dismissals in *Colvin III* and *Colvin IV* are now before us.

## II.

On appeal, Colvin challenges the following trial court orders: (i) the dismissal of *Colvin III*; (ii) the denial of his motion for leave to amend the *Colvin III* complaint; and (iii) the dismissal of *Colvin IV*. We discuss each challenge in turn.

#### A. Dismissal of *Colvin III*

Judge Rigsby dismissed the *Colvin III* complaint on its merits, but only after rejecting Howard's arguments that various preclusion doctrines barred the claim from proceeding. While the parties now debate whether Judge Rigsby was right on the merits of the 12(b)(6) motion, Howard again argues in the alternative that *Colvin III* was precluded by the dismissal of *Colvin I*. We agree.<sup>2</sup> Howard argues *Colvin III* is precluded by *Colvin I* under three different preclusion doctrines: res judicata (claim preclusion), collateral estoppel (issue preclusion),<sup>3</sup> and the law of the

---

<sup>2</sup> That Howard failed to cross-appeal Judge Rigsby's adverse preclusion ruling does not bar us from affirming on that basis. *See Borger Mgmt., Inc. v. Sindram*, 886 A.2d 52, 63-64 (D.C. 2005) (cross-appeal unnecessary for appellee to argue independent basis for affirmance that was rejected by the trial court).

<sup>3</sup> The term “res judicata” is sometimes used in its broader sense: as an umbrella term encompassing both claim and issue preclusion. *See Migra v. Warren City Sch. Dist. Bd. of Ed.*, 465 U.S. 75, 77 n.1 (1984) (citing Restatement (Second) of Judgments, Introductory Note before ch. 3 (1982), and 18 WRIGHT, MILLER &

case doctrine. We conclude that while *Colvin III* is not claim-precluded, the question whether the complaint filed was sufficient to state a claim is issue-precluded by *Colvin I*. Because of that, we need not determine whether the law of the case doctrine applies.

### 1. Claim preclusion

When a court renders a final judgment on the merits of a cause of action, claim preclusion creates an absolute bar to relitigating that cause of action between the same parties. *Shin v. Portals Confederation Corp.*, 728 A.2d 615, 618 (D.C. 1999). At first glance, claim preclusion would seem to apply here. After all, (1) the parties in *Colvin I* are the same as those in *Colvin III*; (2) the two complaints raise the same five breach of contract claims; and, as Howard points out, (3) Judge López's dismissal was a final appealable judgment in the sense that the "dismissal of a complaint, even without prejudice, is sufficiently drastic to be deemed final, and therefore appealable." *Perry v. District of Columbia*, 474 A.2d 824, 825-26 (D.C. 1984). But to take that third step would be a mistake. We have never equated finality

---

COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION § 4402 (1981)). "To avoid confusion, we employ the more modern terminology, referring to . . . *res judicata* as 'claim preclusion' and collateral estoppel as 'issue preclusion.'" *Smith v. Jenkins*, 562 A.2d 610, 612 n.3 (D.C. 1989).

for appealability purposes with finality for claim preclusion purposes, and it would be an error to do so.

Whether a judgment is sufficiently final to permit an appeal is a different question from whether it is sufficiently final to have claim-preclusive effects. While there is some “overlap in the purposes of requiring finality for appeal and for preclusion, it is clear that definitions of finality cannot automatically be carried over from appeals cases to preclusion problems.” 18A WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION § 4432 (3d ed. 2021); *see also* Restatement (Second) of Judgments § 13 cmt. b (1982) (rejecting premise that “finality for appellate review is the same as finality for purposes of [claim preclusion].”). Here, the *Colvin I* dismissal was not final for claim preclusion purposes because it was without prejudice.

Dismissals without prejudice are not final for claim preclusion purposes because a dismissal without prejudice “does not determine the merits” of the underlying claim(s). *Interdonato v. Interdonato*, 521 A.2d 1124, 1131 n.11 (D.C. 1987). Where there is no final judgment on the underlying merits of a cause of action, claim preclusion is inapposite. *See, e.g., id.* (when dismissal does not determine the merits, claim preclusion does not apply); *Thoubboron v. Ford Motor*

*Co.*, 809 A.2d 1204, 1210 (D.C. 2002) (“[A] dismissal without prejudice has no res judicata effect.”); *Shin*, 728 A.2d at 618 (“[A] dismissal of a claim without prejudice does not bar a subsequent suit of issues arising out of the same cause of action.”); *Pipher v. Odell*, 672 A.2d 1092, 1095 (D.C. 1996) (“[A] dismissal without prejudice, by definition, does not bar a subsequent suit.”); *Evans v. Schlein*, 51 A.2d 472, 474 (D.C. 1946) (“The effect of the dismissal of a suit ‘without prejudice’ is to finally dispose of that particular suit, but it does not operate as a bar to a new suit on the same cause of action.”).<sup>4</sup>

Because Judge López’s *Colvin I* dismissal was without prejudice, it was not a final judgment on the substantive merits of Colvin’s breach of contract claims, but a ruling that he had insufficiently pled those claims. *See Dozier v. Ford Motor Co.*, 702 F.2d 1189, 1194 (D.C. Cir. 1983) (“The usual meaning of [without prejudice] . . . is ‘without prejudice as to the substantive cause of action.’”) (quoting *In re*

---

<sup>4</sup> That is not to say that a dismissal without prejudice might never become a final judgment on the merits of the underlying claim(s). For example, had Judge López’s dismissal without prejudice in *Colvin I* provided a specified time period in which Colvin could file an amended complaint, and Colvin then failed to meet that deadline, we might then treat the dismissal as being with prejudice and having claim-preclusive effects. *See, e.g., Hoffman v. Nordic Naturals, Inc.*, 837 F.3d 272, 279-80 (3d Cir. 2016) (finding claim preclusion applied where appellant elected not to amend his complaint within the timeframe provided by the trial court, but instead filed a new action). Howard never argued that any express or implied deadline for Colvin to file an amended complaint in *Colvin I* had passed.

*Kauffman Mut. Fund Actions*, 479 F.2d 257, 267 (1st Cir. 1973)). That meant Colvin was permitted to amend his complaint or file a new action on the same underlying claims. Given the lack of finality in the relevant sense, *Colvin I* did not have claim-preclusive effect.

## 2. Issue preclusion

Issue preclusion is another matter.<sup>5</sup> It prevents not the relitigation of a particular *claim*, but the relitigation of a particular *issue* decided in a prior action. *See Davis v. Davis*, 663 A.2d 499, 501 (D.C. 1995). This case involves defensive

---

<sup>5</sup> There are two different types of issue preclusion: collateral estoppel, which occurs when the second action involves a different claim, and direct estoppel, which occurs when the second action involves the same claim. *See Restatement (Second) of Judgments* § 27 cmt. b (1982) (“If . . . the second action is brought on a different claim, . . . preclusion is sometimes designated as collateral estoppel.”); WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION § 4402 (3d ed. 2021) (stating that direct estoppel occurs “whenever a first suit was ended in a manner that did not give rise to claim preclusion, but that did warrant preclusion of a specific issue in a later action on the same claim”); *id.* § 4418 (defining and discussing direct estoppel). Howard uses the term collateral estoppel to describe the type of issue preclusion at play here, but direct estoppel is the more accurate term because the claims in *Colvin III* are the same as those raised in *Colvin I*. The difference is semantic only, *see* 18 WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION § 4418 (3d ed. 2021) (“[T]he traditional distinction between direct and collateral estoppel should not of itself control the answer to any particular question of issue preclusion.”), but to avoid any confusion, we use the broader term, “issue preclusion.”

issue preclusion, which is “when a defendant seeks to prevent a plaintiff from relitigating an issue the plaintiff has previously litigated unsuccessfully in another action against the same or a different party.” *United States v. Mendoza*, 464 U.S. 154, 159 n.4 (1984). We review a trial court’s application of defensive issue preclusion de novo. *Whiting v. Wells Fargo Bank*, 230 A.3d 916, 926 (D.C. 2020).

Unlike with claim preclusion, whether a dismissal has issue-preclusive effects does not depend on if it was with prejudice. Restatement (Second) of Judgments § 13 cmt. d (1982) (“[A]n adjudication that does not bar the plaintiff from maintaining another action against the defendant on the same claim” may yet trigger “issue preclusion in another action between the parties on the same or a different claim as to issues that were decided as a basis for the judgment.”); 7 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE: TRIALS § 2373 (4th ed. 2021) (“A dismissal without prejudice . . . ha[s issue-preclusive] effect for issues actually litigated in the first action.”);<sup>6</sup> *Deutsch v. Flannery*, 823 F.2d 1361, 1364 (9th Cir. 1987) (“It matters not that the prior action resulted in a dismissal without prejudice.”). What matters is that (1) “the issue in the new case . . . was actually

---

<sup>6</sup> See also 18 WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION § 4418 (3d ed. 2021) (issue preclusion may arise “from dismissal of a first action on grounds that do not go to the merits of the claim presented and that are not intended to preclude a second action”).

litigated and decided in the prior case,” (2) “by a final and valid disposition on the merits,” (3) “after a full and fair opportunity for litigation by the same parties or their privies,” (4) “under circumstances where the determination was essential to the judgment, and not merely dictum.” *Smith v. Jenkins*, 562 A.2d 610, 617 (D.C. 1989); *Davis*, 663 A.2d at 501.<sup>7</sup>

That is the case here. *Colvin I* squarely addressed whether Colvin’s contract claims, as pled, articulated a legal basis on which relief could be granted. *Colvin III* raised the same issue because the complaint had not materially changed. The issue decided in *Colvin I* is thus the same as the issue presented to Judge Rigsby in *Colvin III*. See *Deutsch*, 823 F.2d at 1364 (applying issue preclusion where differences between first and second complaints “lack[ed] substantive significance”); *Bachman v. Bachman*, 997 S.W.2d 23, 26 (Mo. Ct. App. 1999) (stating that a dismissal without prejudice for failure to state a claim does not “permit refiling of a petition previously determined not to state a claim”). Had the *Colvin III* complaint pled new claims or pled new facts addressing the deficiencies in the *Colvin I* complaint, our conclusion

---

<sup>7</sup> The Restatement (Second) of Judgments Ch. 3, Topic 2, Title E Introductory Note (1982) recognizes several potential exceptions to the application of issue preclusion even when these four criteria are satisfied. Colvin does not argue that any of these exceptions apply so we do not consider them or the extent to which we follow the Restatement’s view regarding those potential exceptions.

would likely be different. But it did neither. *Colvin III* did not raise any new claims, and the few factual alterations in the *Colvin III* complaint did not materially alter what was already presented and rejected by Judge López in *Colvin I*. The first prong (the issue in the new case was litigated and decided in the prior case) is therefore satisfied.

The other elements of issue preclusion are also met. The *Colvin I* dismissal was rendered after a full and fair opportunity for litigation by the same parties attempting to litigate the sufficiency of the *Colvin III* complaint; the issue whether the *Colvin I* complaint was sufficient to withstand a Rule 12(b)(6) motion was essential to the *Colvin I* dismissal order; and the *Colvin I* dismissal resulted in a final and valid judgment on the merits of the sufficiency of the *Colvin I* complaint. *See Davis*, 663 A.2d at 501 (listing elements for issue preclusion). Only the last point warrants elaboration.

As we recognized in *Davis*, the Restatement (Second) of Judgments § 13 (1982) instructs that “for purposes of issue preclusion[,] ‘final judgment’ includes any prior adjudication of an issue that is determined to be sufficiently firm to be accorded conclusive effect.” 663 A.2d at 503 (ellipses omitted). Although *Colvin I* was dismissed without prejudice and (as explained above) is therefore without

claim-preclusive effect, Judge López's determination that the *Colvin I* complaint could not withstand a Rule 12(b)(6) motion was sufficiently firm for issue preclusion purposes. The parties fully briefed and submitted their Rule 12(b)(6) arguments to the trial court; Judge López issued a detailed order explaining why the complaint did not survive Howard's Rule 12(b)(6) motion; and the dismissal was appealable to this court, *Perry*, 474 A.2d at 825-26.

The dismissal of *Colvin I* was therefore final for purposes of issue preclusion. This outcome aligns with the Restatement's view, *supra* cmt. g, and the path taken by other jurisdictions where a dismissal without prejudice was given issue-preclusive effect in a subsequent action. *See, e.g., Germain Real Estate Co., LLC v. HCH Toyota, LLC*, 778 F.3d 692, 696 (8th Cir. 2015) (applying Arkansas law); *Garcia v. Prudential Ins. Co. of Am.*, 293 P.3d 869, 873-74 & n.7 (Nev. 2013); *Dema v. City of Mesa*, 338 F. App'x 596, 597 (9th Cir. 2009) (applying Arizona law); *West Coast Mgmt. & Cap., LLC v. Carrier Access Corp.*, 914 A.2d 636, 643-45 (Del. Ch. 2006); *Rodriguez v. Dep't of Corr.*, 29 P.3d 401, 405 (Idaho 2001); *Deutsch*, 823 F.3d at 1364-65.

### B. Leave to Amend *Colvin III*

After the dismissal of *Colvin III*, Colvin requested that Judge Rigsby grant him leave to file an amended complaint.<sup>8</sup> Judge Rigsby denied this request as futile, which Colvin now claims was an abuse of discretion. We disagree.

Although Superior Court Civil Procedure Rule 15(a)(3) instructs that leave to amend “should [be] freely give[n],” it is not required if the amendment would be futile. *Miller-McGee v. Wash. Hosp. Ctr.*, 920 A.2d 430, 436 (D.C. 2007). It would have been here. The amended complaint sought to add a new claim for breach of contract, stemming from the alleged existence of two conflicting degree requirement manuals used by Howard.<sup>9</sup> Under the earlier manual, Colvin argues all of his courses dating back to 2004 were viable toward fulfilling his PhD requirements, whereas under the later manual that Howard incorrectly applied to him, his courses from 2004

---

<sup>8</sup> Because Colvin had already filed an amended complaint in *Colvin III* as a matter of course under Superior Court Civil Procedure Rule 15(a)(1), and because Howard did not consent to the amendment, Colvin was required to seek leave from the court. See Super. Ct. Civ. R. 15(a)(3).

<sup>9</sup> Colvin also claims the amended complaint provided additional facts that further demonstrated his dismissal was improper. But he fails to explain how these new facts materially altered his complaint. On our read, the additional facts merely add details to those that were already pled and rejected in *Colvin I* and the initial *Colvin III* complaint.

to 2006 were not viable. Judge Rigsby found that discrepancy immaterial, and thus any amendment futile, because under both versions of the manual Colvin “had seven (7) years in which to complete the program; [Colvin] did not; and pursuant to policy [Colvin] was aware of, [Howard] dismissed him from the program.”

We agree that the proposed amendment would have been futile, though we note an additional and independent reason why that is so: Colvin raised this same argument—that Howard should have applied the earlier degree manual in determining which of his older courses remained viable—in his opposition to the motion to dismiss in *Colvin I*. Judge López found it did not save his claims from dismissal, and Colvin did not contest that finding (either by filing a motion to reconsider or appealing the judgment to this court). Judge Rigsby’s conclusion in *Colvin III* that it would have been futile to amend the complaint to rely on the earlier degree requirement manual was thus compelled by the issue-preclusive effects of *Colvin I*, consistent with our analysis in Part II.A.2. Repackaging the argument as a standalone claim, as opposed to a gloss on his preexisting claims as he had presented it in *Colvin I*, does not get Colvin around the issue preclusion bar.

### C. Dismissal of *Colvin IV*

Judge Puig-Lugo dismissed the *Colvin IV* complaint on the basis that the causes of action alleged therein were claim precluded by *Colvin III*. Because we affirm the dismissal of *Colvin III*, we agree.<sup>10</sup>

Unlike *Colvin I*, *Colvin III* was dismissed with prejudice. When a Rule 12(b)(6) dismissal is made with prejudice, it is considered a final judgment “on the merits and is accorded [claim-preclusive] effect.” *Ashton Gen. P’ship, Inc. v. Federal Data Corp.*, 682 A.2d 629, 632 n.2 (D.C. 1996) (internal quotation marks omitted); *see also* 7 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE: TRIALS § 2373 (4th ed. 2021) (stating that a “dismissal with prejudice normally will act as a bar to a subsequent action between the same parties”). *Colvin IV*, which is identical to the amended complaint Colvin sought leave to file in *Colvin III*, is therefore barred by claim preclusion. To the extent any new claims were added to the complaint filed in *Colvin IV*—which is questionable given that the claims raised

---

<sup>10</sup> Had we reversed the dismissal of *Colvin III*, claim preclusion could not have applied. *See Adams v. Jonathan Woodner Co.*, 475 A.2d 393, 397 (D.C. 1984) (“[A] judgment based upon [issue preclusion] or [claim preclusion] is no longer valid when the decision upon which the court relied in applying either of the doctrines has been reversed.”).

in the *Colvin IV* complaint are identical to those raised and rejected as futile in Colvin's motion to amend the *Colvin III* complaint—those claims would nonetheless be claim-precluded because they could have been raised in *Colvin III*. *See Patton v. Klein*, 746 A.2d 866, 870 (D.C. 1999) (claim preclusion “operates to bar in the second action not only claims which were actually raised in the first, but also those arising out of the same transaction which could have been raised”).

Colvin correctly notes that Judge Rigsby's order in *Colvin III* does not state whether it is with or without prejudice. But Superior Court Civil Procedure Rule 41(b)(1)(B) states that “[u]nless the dismissal order states otherwise or as provided elsewhere in these rules, a dismissal by the court—except a dismissal for lack of jurisdiction or for failure to join a party under Rule 19—operates as an adjudication on the merits.” Because “‘an adjudication on the merits’ is synonymous with a dismissal with prejudice,” a trial “court that dismisses a case under Rule 12(b)(6) without stating whether it is with or without prejudice operates as a dismissal with prejudice.” *Rollins v. Wackenhut Servs., Inc.*, 703 F.3d 122, 132 (D.C. Cir. 2012) (Kavanaugh, J., concurring) (citing *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001)); *see also Wagshal v. Rigler*, 711 A.2d 112, 114 n.6 (D.C. 1998) (“[T]he presumption in most dismissals is that they operate ‘as adjudications upon the merits,’ that is, with prejudice.”) (quoting Super. Ct. Civ. R. 41(b)); 7

WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE: TRIALS § 2373 (4th ed. 2021) (“If the court does not specify that the dismissal is without prejudice, and the basis for it comes within the terms of the final sentence of [Federal] Rule [of Civil Procedure] 41(b), it will be treated as being with prejudice.”).<sup>11</sup>

There is nothing in the *Colvin III* dismissal order to suggest Judge Rigsby intended for it to be without prejudice. In fact, the order instructed that the case be closed and that all future hearings be vacated, strongly suggesting that he intended a dismissal with prejudice. We therefore have no reason to depart from the presumption that it was a dismissal with prejudice.

### III.

The orders of the Superior Court are affirmed.

*So ordered.*

---

<sup>11</sup> Superior Court Civil Procedure Rule 41(b)(1)(B) is substantially similar to its federal counterpart. See Comment to 2017 Amendments on Super. Ct. Civ. R. 41 (noting differences between the federal and local rule, none of which are applicable here). We may therefore “look to federal court decisions interpreting the federal rule as ‘persuasive authority in interpreting the local rule.’” *Goldkind v. Snider Bros., Inc.*, 467 A.2d 468, 472 (D.C. 1983) (quoting *Vale Props., Ltd. v. Canterbury Tales, Inc.*, 431 A.2d 11, 13 n.3 (D.C. 1981)).

# **APPENDIX Q**

"Appendix Q"

**Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing**

**(a) TIME TO SERVE A RESPONSIVE PLEADING.**

(1) *In General.* Unless another time is specified by this rule or an applicable statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer within 21 days after being served with the summons and complaint.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) *The United States or the District of Columbia and the Agencies, Officers, or Employees of Either Sued in an Official Capacity.* The United States or the District of Columbia or an agency, officer, or employee of either sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney (in suits involving the United States) or the Attorney General for the District of Columbia (in suits involving the District of Columbia).

(3) *United States or District of Columbia Officers or Employees Sued in an Individual Capacity.* A United States or District of Columbia officer or employee sued in an individual capacity for an act or omission occurring in connection with the duties performed on the United States' or the District of Columbia's behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney (in suits involving the United States) or the Attorney General for the District of Columbia (in suits involving the District of Columbia), whichever is later.

(4) *Effect of a Motion.* Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(5) *Entry of Default.* Unless the time to respond to the complaint has been extended as provided in Rule 55(a)(3) or the court orders otherwise, failure to comply with the requirements of this rule will result in the entry of a default by the clerk or the court *sua sponte*.

(b) **HOW TO PRESENT DEFENSES.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

- (1) lack of subject-matter jurisdiction;
- (2) lack of personal jurisdiction;
- (3) [Omitted];
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted;
- (7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) MOTION FOR JUDGMENT ON THE PLEADINGS. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) RESULTS OF PRESENTING MATTERS OUTSIDE THE PLEADINGS. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) MOTION FOR A MORE DEFINITE STATEMENT. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) MOTION TO STRIKE. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

- (1) on its own; or
- (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) JOINING MOTIONS.

(1) *Right to Join*. A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitations on Further Motions*. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) WAIVING AND PRESERVING CERTAIN DEFENSES.

(1) *When Some Are Waived*. A party waives any defense listed in Rule 12(b)(2)–(5) by:

- (A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or
- (B) failing to either:
  - (i) make it by motion under this rule; or
  - (ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others*. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

- (A) in any pleading allowed or ordered under Rule 7(a);
- (B) by a motion under Rule 12(c); or
- (C) at trial.

(3) *Lack of Subject-Matter Jurisdiction.* If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) **HEARING BEFORE TRIAL.** If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

#### COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 12*, as amended in 2007 and 2009, except for: 1) the substitution of “applicable statute” for “federal statute” in subsection (a)(1); 2) the deletion of inapplicable federal limitation periods in subsection (a)(1)(A); 3) the addition of references to “the District of Columbia” in subsections (a)(2) and (a)(3); 4) the retention of subsection (a)(5) regarding the automatic entry of default against a defendant who does not timely respond to the complaint; and 5) the omission of subsection (b)(3), which deals with improper venue and is not applicable in the District of Columbia.

#### COMMENT

SCR-Civil 12(a) is rearranged to reflect the format established by the federal rule revisions of December 1993. Federal limitation periods are altered to comport with those in the existing Superior Court rule. Additionally, a paragraph (5) has been added to preserve the existing Superior Court rule of automatic entry of default against a defendant who does not timely respond to the complaint.

# **APPENDIX R**

"Appendix R"

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**  
**CIVIL DIVISION**

**DEON D. COLVIN**  
743 Fairmont Street N.W. #211  
Washington, D.C. 20001

**Plaintiff,**

-VS-  
-VS-

**HOWARD UNIVERSITY**  
2400 6<sup>th</sup> Street N.W.  
Washington, D.C. 20059

**Defendant.**

## Serve On:

John G. Gloster Jr., Esq.  
Sr. Associate General Counsel  
Office of the General Counsel  
Howard University  
2400 6<sup>th</sup> Street N.W., Suite #321  
Washington, D.C. 20059

**CIVIL ACTION NO: 2019 CA 003573**  
**Hon. Robert R. Rigsby**  
**Next Event: None Scheduled**

**VERIFIED AMENDED COMPLAINT  
#2 WITH JURY TRIAL DEMAND**

**COMPLAINT**

## I. INTRODUCTORY STATEMENT

Plaintiff Deon D. Colvin appearing *in propria persona*, brings this action against Defendant, Howard University, and for his complaint, states as follows:

Plaintiff, Deon D. Colvin (hereinafter “Colvin”), is an individual who seeks reinstatement as a doctoral candidate in the Graduate School in the Department of Political Science at Howard University (“Howard”). Despite repeated attempts by Colvin to be reinstated to defend his doctoral dissertation, Howard unjustifiably refuses to do so. There is an implied contract between Colvin and Howard and Howard breached the implied contract, and dismissed Colvin from his Ph.D. candidacy and its Ph.D. program. Howard never dropped Colvin from the Ph.D. program after seven (7) years, but rather contracted with Colvin into a Ph.D. candidacy period wherein Colvin would have an allotment of time to conduct dissertation research and defend that research before an examination Committee pursuant to the attainment of a Ph.D. degree. Howard also lacked cognizable course requirements for the Ph.D. degree throughout his matriculation, which led to Colvin being wrongfully dismissed as he attempted readmission to the University for his final examination. To vindicate his contractual rights, plaintiff seeks reinstatement and compensatory and punitive damages against Howard University.

## **II. PARTIES AND JURISDICTION**

1. Colvin is, and was at all times mentioned, a Ph.D. candidate in the Department of Political Science at Howard University and domiciled at 743 Fairmont Street N.W. #211 Washington D.C. 20001 and a citizen of the District of Columbia.
2. Howard is a university duly organized and existing under the laws of the District of Columbia with its principal place of business at 2400 6<sup>th</sup> Street N.W., Washington, D.C. 20059. It is a private university which receives funding from the federal government. Howard University is responsible for operating graduate degree programs in a manner consistent with its legal obligations to its students. At all times relevant hereto, Howard carried out its duties by and through its actual and/or apparent agents, servants and/or

employees. Howard is therefore liable for their actions in connection therewith pursuant to the doctrine of *Respondeat Superior* and/or agency.

3. Venue of the Superior Court of the District of Columbia is proper as the acts complained of herein occurred in the District of Columbia, both Colvin and Howard reside therein, and the compensation sought for damages exceeds \$5,000 dollars.

### **III. FACTS LEADING TO CAUSES OF ACTION**

1. Colvin is a 15 year resident of Washington, District of Columbia.
2. Colvin enrolled as a graduate student in Howard University's Department of Political Science Ph.D. Program (hereinafter "the Program") in August 2004.
3. He completed 99 graduate credits of coursework for his Ph.D. degree (48 are required beyond the Master's Degree) and had a G.P.A. of 4.0.
4. He passed his two comprehensive examinations required for the Ph.D. degree.
5. Colvin began working on his dissertation proposal in the summer of 2009.
6. The Graduate School Rules and Regulations that govern Colvin's matriculation is The Graduate School Rule and Regulations for the Pursuit of Academic Degrees (1979).
7. According to Article VI, Section 1.D of The Graduate School Rules and Regulations For The Pursuit of Academic Degrees (1979) "students are expected to complete a doctoral degree within a maximum of seven years. Those who have not completed the degree within that time will be automatically dropped from the program. Students dropped in this manner may petition for readmission for a specified period upon recommendation of the departmental Graduate Faculty and approval of the Executive Committee of the Graduate School" (Exhibit 1).
8. Colvin passed the seven year mark of being a student in the Ph.D. Program after Howard's fall 2011 semester. Howard did not automatically drop Colvin according to specifications of Article VI, Section 1.D., and he remained in its Ph.D. program.<sup>1</sup>

---

<sup>1</sup> Howard routinely does not automatically drop their 7+ year Ph.D. students, but rather accepts students to candidacy who have been in their Ph.D. programs longer than seven years if they have restored expired courses (i.e. courses older than seven years). This is evident in Howard's Ph.D. candidacy application pg. 1 where it asks the questions, "Have you been enrolled in the Ph.D. program for more than seven years?" and "If your answer is yes to the previous question,

9. Colvin enrolls at Howard the spring 2014 semester (Exhibit 2) and defends his dissertation proposal in May 2014.
10. Colvin successfully submits his defended dissertation proposal and the required application forms to the Graduate School and was admitted to candidacy for the Ph.D. degree on May 9, 2014. (Exhibits 3 & 4)
11. Under Article VI, Section 6 of The Graduate School of Arts and Sciences Rules and Regulations For the Pursuit of Academic Degrees (1979) candidacy for the Ph.D. Degree is valid for a maximum of five calendar years. (Exhibit 5)
12. Colvin was admitted to candidacy May 9, 2014. Thus according to Article VI, Section 6 his Ph.D. candidacy was valid until May 9, 2019.
13. Colvin's academic advisor, Professor Darryl Harris, tells Colvin he does not need to be enrolled while he is engaged in dissertation research and that he only needs to enroll the semester he intends to defend his dissertation.
14. On April 4, 2016 Colvin sends a request to the Political Science Department to request that the Graduate School readmit him for fall 2016 semester to defend his dissertation and for a course waiver.
15. On April 19, 2016, the Chair of the Political Science Department is alerted via an internal memo that Colvin would be ineligible to complete degree requirements by September 2016 because "he has courses that are not viable"<sup>2</sup> (Exhibit 6). Chair Lusane advises Colvin to speak with Associate Dean Ellison about the pending rejection letter that Colvin would be receiving in the mail from the Graduate School.
16. Colvin has a meeting with Associate Dean of the Graduate School Constance Ellison in late April 2016 and is told his request for readmit is slated to be denied due to several semesters of invalid courses. Associate Dean Ellison tears off a portion of the pending letter that lists the unviable courses (Exhibit 7) and gives it to Colvin and tells Colvin that if he can show on his transcript that he has the required number of viable courses the Graduate School would accept the Political Science Department's recommendation.

---

have you restored or re-taken expired courses (i.e. courses completed more than seven years ago)? Do not submit if the answer is NO" (Exhibit 4, p.1.)(bold & caps included in text).

<sup>2</sup> The internal memo mentions other barriers (e.g. such as a Colvin owing a financial balance to the university, Colvin is not currently registered, etc.) but these do not appear in the Dean's dismissal letter and thus cannot be construed as factors contributing to Colvin's dismissal.

17. Colvin meets with his Permanent Advisor Professor Daryl Harris who finds that Colvin has courses from fall 2006 to Spring 2015 that fulfill Political Science Department requirements for the Ph.D. degree.
18. On May 2, 2016 Colvin writes a letter to the Political Science Department rescinding his request for a waiver of courses and requesting the Department submit a second request to the Graduate School for his admission stating he has viable courses from fall 2006 to spring 2015 and that he is no longer requesting a waiver of courses.
19. On June 23, 2016 Colvin receives a letter from Dr. Gary Harris, Dean of the Graduate School, stating that he is dismissed from the Graduate School due to “a recommendation from the Graduate Faculty of the Department of Political Science” and a “review of his academic record” (Exhibit 8).
20. In late June or early July 2016 Colvin meets with Dean Ellison a second time and she gives him a copy of The Graduate School Rules and Regulations Manual (1979) (Exhibit 25). Colvin finds the wording of Article VI, Section 1. C. in the Manual different from that in the Dean’s dismissal letter and finds that according to the Manual all of his courses from Fall 2004 to Spring 2015 count as viable courses toward Ph.D. degree (Exhibit 9). He finds the wording similar to the HU Political Science Graduate Bulletin he had been using to ascertain Ph.D. degree requirements (Exhibit 10, p.1). Colvin also finds factual inaccuracies and factual omissions in the Dean’s dismissal letter and resolves to appeal his dismissal.
21. From June 2016 to December 2016, Colvin sought to appeal his dismissal via Howard’s Student Academic Grievance Procedures but Howard denied Colvin access to the procedures and upheld his dismissal from the Program.
22. In September 2016, Colvin wrote a letter to the Chair Lusane asking for information about the departments deliberations about him and his request to the Department that it send notify the Graduate School he was no longer requesting a waiver of courses in anticipation of a meeting with the President about his case (Exhibit 11). In reply, Chair Lusane states for the first time that Colvin was dismissed for failing to graduate in the time required of graduate students (i.e. Howard’s 7 year time-to-degree period) and for failing to meet the deadlines of two extension letters (Exhibit 12).
23. Upon the filing of Colvin’s first Complaint, Howard would claim Colvin is using an outdated version of The Graduate School Rules and Regulations Manual (1979) for his complaint claims (Exhibit 13).

#### IV.

#### **COUNT 1: BREACH OF IMPLIED CONTRACT—HOWARD CONDUCTS A FACTUALLY INACCURATE REVIEW OF COLVIN’S ACADEMIC RECORD**

24. Paragraph 24 includes paragraphs one through twenty-three as if fully stated herein.

25. Howard reviews Colvin's academic record in April 2016 after receiving a request from the Political Science Department to readmit him for the fall 2016 semester to defend his dissertation.
26. The purpose of Howard's review of Colvin's academic record was to assess Colvin's eligibility to defend his dissertation according to Graduate School rules and regulations.
27. Howard's review is replete with factual inaccuracies and factual omissions and is thus a breach of the implied contract between Colvin and Howard.
28. The factual inaccuracies in Howard's review of Colvin's academic status are apparent from Dean Harris' dismissal letter to the Plaintiff.
29. First, Dean Harris writes he received recommendation from the Graduate Faculty of the Political Science Department that Colvin be dismissed. ("I regret to inform you that upon...a recommendation from the faculty of the Graduate Program in the Department of Political Science, you are hereby dismissed immediately from the Graduate School") (Exhibit 8, p.1).
30. This is factually incorrect. The Graduate Faculty of the Political Science Department did not recommend to the Graduate School that Colvin be dismissed, but rather recommended that Colvin be given additional time to complete his dissertation (Exhibits 14 & 12).
31. Second, Dean Harris incorrectly evaluates that Colvin's courses completed fall 2006 semester as "older than 10 years and therefore are not viable." (Exhibit 8, p.2)
32. This is factually incorrect. Colvin's fall 2006 courses would not be 10 years of age until after the end of the fall semester of 2016 (December 2016) and thus were viable courses the semester Colvin proposed to defend his dissertation (i.e. fall 2016 semester). Furthermore, according to Article VI, Section 1.C. of The Graduate School Rules and Regulations Manual (1979) (Exhibit 9) and the Course Restoration Form Colvin submitted and approved by the Graduate School on May 9, 2014 (Exhibits 3 & 4, pgs. 1, 10-13), Colvin's fall 2006 were restored in Spring 2014 and usable to fulfill degree requirements for the duration of his candidacy period at Howard.
33. Third, the Dean writes and evaluates that Colvin was re-admitted in fall 2014 and failed to satisfy the provision that he defend his dissertation and graduate by the end of fall 2014. (Exhibit 8, p.2)
34. Colvin never applied to Howard for re-admission for the fall 2014 semester and thus the Dean's claim regarding the fall 2014 readmission and all related claims (regarding "extension letters," dissertation attempts, etc.) (Exhibit 8, p.2) (extension claims in Exhibit 11, par. 1 & 3) are factually inaccurate with respect to Colvin's academic and application history.
35. In addition to factual inaccuracies, Dean Harris made significant factual omissions in his review of Colvin's academic record.

36. Firstly, the Dean reviews that Colvin's required courses completed spring 2007, fall 2007, spring 2008, fall 2008, and spring 2009 are older than seven years. (Exhibit 8, p.2)
37. The Dean omits from his review that Colvin had these courses restored as prescribed by Article VI, section 1.C. and the Graduate School approved Colvin's use of these courses for the fulfillment of Ph.D. requirements in May 2014 when it approved his application for Ph.D. candidacy. (Exhibits 9, 3, & 4, pgs.1,10-13)
38. Secondly, the Dean reviews "In addition, courses completed fall 2004, spring 2005, fall 2005, spring 2006, and fall 2006 are older than 10 years and therefore not viable" (Exhibit 8, p.2).
39. The Dean omits that Colvin's courses taken fall 2006, spring 2007, fall 2007, spring 2008, fall 2008, spring 2009, fall 2009, fall 2014 and spring 2015 equal the 72 graduate credits required to meet Graduate School course requirements for the Ph.D. degree (Political Science<sup>3</sup>) according to Article VI, Section 1. A. and that Colvin possessed the required number of viable courses to sit for final examination for the fall 2016 semester, the semester he was requesting to defend his dissertation (Exhibits 15, 16, & 9).
40. Furthermore, according to Article VI, Section 1. C. of The Graduate School Rules and Regulations Manual (1979) (Exhibit 9), and the Course Restoration Form Colvin submitted and approved by the Graduate School on May 9, 2014 (Exhibits 3 & 4, pgs. 1, 10-13), all of Colvin's courses completed fall 2004, spring 2005, fall 2005, spring 2006, and fall 2006 were restored and were therefore viable to fulfill course requirements for the Ph.D. degree.
41. The Dean reviews Colvin had "gone beyond the expected time-to-degree" of seven (7) years from the date of initial matriculation (Exhibit 8, p.1)
42. The Dean omits that Howard was aware Colvin was beyond the expected time-to-degree when it admitted him to Ph.D. candidacy on May 9, 2014, yet it encouraged him to apply after he had been in the program 7 +years (Exhibit 4, pg.1), sanctioned his use of courses that were greater than 7 years old to meet Ph.D. course requirements, and elected to contract with him into a Ph.D. candidacy period of a maximum of five years in length (Exhibits 4, pgs. 1, 10-13, & Exhibits 3 & 5).
43. In so doing, Howard knowingly and willingly waived its seven (7) year expected time-to-degree requirement in favor of a candidacy period for Colvin as it would have been impossible for Colvin to be accepted into candidacy or have a candidacy period of any length without such waiver.

---

<sup>3</sup> These courses also fulfilled the Department of Political Science requirements for courses in Colvin's two major and one minor areas (American Government, Black Politics, and Political Theory) and Political Science Department course requirements, respectively (Exhibit 10, p.1-3).

44. The significant and relevant factual inaccuracies and omissions in Howard's academic review indicate Howard either was unaware of the facts or intentionally conducted a factually inaccurate and factually deficient evaluation of Colvin's academic record. Either situation is a breach of the implied contract that existed between the two parties.
45. Colvin tried to make the factual inaccuracies and factual omissions known to Howard via meetings and attempted meetings with the Dean, Provost, and via a meeting with the Provost and a letter to the President (Exhibit 17), but Howard did not acknowledge them (Exhibits 18 & 19).
46. Howard's failure to conduct a review of Colvin's academic record based on the actual facts of said record is a breach of the "fair dealing" provision of contract law (i.e. the implied covenant of good faith and fair dealing) that applies to participants in a contractual relationship.
47. Satisfying the good faith and fair dealing provision of contract law requires that any and all academic reviews of Colvin by Howard be based on the actual facts of Colvin's academic record and application history and not misinformation and relevant fact omission.
48. Howard's breach of duty in its academic review caused irreparable harm to Colvin as it led to his unwarranted dismissal from the Graduate School and premature stripping of his Ph.D. candidacy.

V.

**COUNT 2: BREACH OF IMPLIED CONTRACT—HOWARD STRIPS COLVIN OF PH.D. CANDIDACY STATUS WITHOUT JUST CAUSE AND DENIES HIM ACCESS TO THE ALLOTTED TIME TO PERFORM DISSERTATION RESEARCH AND PETITION FOR DEFENSE OF DISSERTATION**

49. Paragraph 49 includes paragraphs one through forty-eight as if fully stated therein.
50. Aspects of Howard's publications The Howard University Student Handbook 2015-2016 and The Graduate School of Arts & Sciences Rules and Regulations For The Pursuit of Academic Degrees (1979) constitute an implied contract between a graduate student enrolled in Howard's Graduate School of Arts and Sciences and Howard University.
51. The candidacy period is a period where the candidate conducts research under university supervision and auspices (Exhibit 5).
52. According to Article VI, section 6 of The Graduate School of Arts & Sciences Rules and Regulations For The Pursuit of Academic Degrees (1979) the status of Ph.D. candidate shall be valid for a maximum of five calendar years from the date of attainment (Exhibit 5).
53. Colvin was admitted to Ph.D. candidacy by the Graduate School on May 9, 2014 (Exhibit 3). Thus Colvin was allowed candidacy status until May 9, 2019.

54. Colvin was stripped of his Ph.D. candidacy with the Dean's dismissal letter on June 6, 2016.<sup>4</sup>
55. Colvin was dismissed when he had the required 72 graduate course credits and met the criteria of time allotted for Ph.D. candidacy (no more than 5yrs) to sit for final examination. Thus he was stripped of Ph.D. candidacy without just cause!
56. Howard claims Colvin was dismissed for failing to graduate within the expected time to degree period (Exhibit 12), but this assertion belies the fact that Howard was aware Colvin was past his expected time to degree at time of contract, and elected to contract into a Ph.D. candidacy period with him on that basis (Exhibits 3 & 4, pgs. 1, 2-14). Thus Colvin was stripped of Ph.D. candidacy without just cause.
57. Howard also claims Colvin was dismissed, in part, for not meeting a fall 2014 readmission provision (i.e. "extension letter") (Exhibits 12 & 8, p.2) when Colvin never applied for readmission for fall 2014 semester. Thus Colvin was stripped of his Ph.D. candidacy without just cause.
58. Howard's stripping of Colvin of his Ph.D. candidacy status is a breach of implied contract with respect to the Ph.D. candidacy period contracted between Colvin and Howard wherein Colvin, as a Ph.D. candidate, would be given time to do dissertation research (up to 5 years) and an opportunity to present his research to an examination committee in fulfillment of the Ph.D. degree as long as he met university criteria for the Ph.D. degree.
59. Howard's stripping without just cause irreparably harmed Colvin as he lost the opportunity to present his Ph.D. research of two years, lost his status as a Ph. D candidate, loss opportunity to obtain his Ph.D. degree, loss potential wages, loss time from work and other endeavors, and caused him great emotional distress, pain and suffering.

## VI.

### **COUNT 3: BREACH OF IMPLIED CONTRACT—HOWARD DENIES COLVIN ACCESS TO ITS INFORMAL GRIEVANCE PROCEDURE**

60. Paragraph 60 includes paragraphs one through fifty-nine as if fully stated herein.
61. A contractual relationship of student-university exists between Colvin and Howard.
62. As a part of the contractual relationship, Colvin is entitled to access to the Student Academic Grievance Procedures outlined in the Howard University Student Handbook 2015-2016 (p.12) (hereinafter "H.U. Handbook") for instances of academic grievance. (Exhibit 20)

---

<sup>4</sup> Colvin first received notice of the dismissal on June 23, 2016 via electronic mail (Exhibit 24).

63. The Student Academic Grievance Procedures enumerates a two-phase student academic grievance process of The Informal Procedure Process to be followed, if necessary, by The Formal Process.
64. The Informal Procedure Process lists four steps that the aggrieved student must undergo during the informal grievance process. First (step 1) the student must attempt to discuss his issue with the other party in the dispute (i.e. in Colvin's case the Dean). Second (step 2), if that attempt is unsuccessful the student is advised to seek intervention from his/her department Chairperson. Third (step 3) if the dispute is still not resolved, the issue should be brought to the Dean's office where the Dean or his designee will attempt to reach an informal resolution through mediation between the parties (i.e. in Colvin's case, between Colvin and the Dean). Fourth (step 4), if mediation at the Dean level fails, then "the student's grievance is consigned to the ... Student Grievance Committee." (H.U. Handbook, p.12).
65. Upon receiving the Dean's dismissal letter, Colvin attempts to meet with Dean Harris.
66. Colvin is told by Assistant Dean Dr. Linda Jones that before he can meet with Dean Harris he must first meet with Associate Dean Dr. Ellison as specified in the dismissal letter.
67. After meeting with Dr. Ellison, Colvin recognizes he has an academic grievance and seeks to initiate The Informal Procedure Process of the Student Grievance Procedure.
68. Colvin calls the Graduate School to arrange a meeting with Dean Harris (the "other party in the dispute") per step 1 of The Informal Procedure Process.
69. Colvin's call is routed to Dr. Linda Jones. Colvin tells Dr. Jones he wants to arrange a meeting with Dean Harris about his dismissal from the Graduate School. Dr. Jones tells Colvin that he cannot meet with Dean Harris, that the Dean "stands by his [dismissal] letter" and that he will have to take his case "to the next level."
70. Unable to meet with the Dean, Colvin meets with his department chairperson, Chair Lusane for intervention per step 2 of The Informal Procedure Process.
71. Chair Lusane does not intervene but tells Colvin he should meet with the Provost. (Exhibit 12)
72. Colvin meets with Provost Wutoh to discuss his unwarranted dismissal from the Graduate School and the Dean's refusal to meet with him.
73. Provost Wutoh informs Colvin via letter that he upholds the Graduate School's dismissal and that he has closed Colvin's case. (Exhibit 18)
74. Howard fails to engage in steps 1 and 2 of The Informal Procedure Process with Colvin.
75. Howard fails to bring his academic grievance to the Dean's office for mediation per step 3 of The Informal Procedure Process and made it impossible for Colvin to do so.

76. Howard fails to consign Colvin's unresolved academic grievance to the Student Grievance Committee per step 4 of The Informal Procedure Process, but instead "closed" his case.
77. Howard's failure to execute steps 1-4 of The Informal Procedure Process when Colvin was attempting informal resolution of his academic grievance (and making it impossible for him to do so) was a breach of the implied contract that existed between Howard and Colvin with respect to the resolution of academic grievances.
78. Howard's breach of contractual duty irreparably harmed Colvin as it precluded him the opportunity of an informal resolution of his dismissal from the Graduate School and left him dismissed and unable to pursue his Ph.D. degree.

## VII.

### **COUNT 4: BREACH OF IMPLIED CONTRACT—HOWARD “CLOSES” COLVIN’S CASE, AN ACTION NOT IN ACCORDANCE WITH ITS STUDENT ACADEMIC GRIEVANCE PROCEDURES**

79. Paragraph 79 includes paragraphs one through seventy-eight as if fully stated herein.
80. Colvin met with Provost Wutoh to discuss an unresolved academic grievance, i.e. his dismissal from Howard's Graduate School.
81. Colvin informed Provost Wutoh that the Dean's letter had factual inaccuracies and wrongly quoted The Graduate School Rules and Regulations Manual (1979) regarding course viability for the Ph.D. degree.
82. Provost Wutoh informed Colvin that he upholds the Dean's dismissal and that he has closed Colvin's case. (Exhibit 18)
83. Colvin requests a second meeting with Provost Wutoh.
84. Colvin's request for a second meeting with the Provost is denied. The Provost's closure of Colvin's case is cited as the reason for the denial (Exhibit 21).
85. According to Step 4 of The Informal Procedure Process all unresolved grievances are to be "consigned to the committee designated by the school/college to address student grievances, herein referred to as the Student Grievance Committee" (H.U. Handbook, p. 12) (Exhibit 20).
86. Howard's action of "closing" Colvin's case is not in accordance with The Informal Procedure Process or The Formal Process and is a breach of the implied contract that exists between Colvin and Howard with respect to the resolution of academic grievances.

87. Howard's duty breach is arbitrary and capricious as it was executed by The Provost, a Howard official with no role in the Student Academic Grievance Procedures and with no authority to close the case prior to Colvin receiving grievance procedures (Exhibits 22 & 20).
88. Howard's "closing" of Colvin's case irreparably harmed Colvin by maintaining his unwarranted dismissal from Howard's Graduate School and precluding further access to Howard's Student Academic Grievance Procedures.

## VIII.

### **COUNT 5: BREACH OF IMPLIED CONTRACT—HOWARD DENIES COLVIN ACCESS TO ITS FORMAL GRIEVANCE PROCEDURE**

89. Paragraph 89 includes paragraphs one through eighty-eight as if fully stated herein.
90. Howard has a nine (9) step formal grievance process for the adjudication of student academic grievances referred to as The Formal Process.
91. The Formal Process is the next phase of grievance resolution if informal resolution fails.
92. According to Howard's Student Academic Grievance Procedures, The Formal Process (1), "Student grievances which are consigned to the Student Grievance Committee must be specified in writing and given to the Dean or his designee" (H.U. Handbook, p.12) (Exhibit 20).
93. Colvin meets with the Political Science Graduate Program Director Dr. Michael Fauntroy to discuss his plans to submit his grievance in writing to the Student Grievance Committee per The Formal Process outlined in the H.U. Handbook.
94. Dr. Fauntroy tells Colvin he has to get more information about his case.
95. Dr. Fauntroy informs Colvin via email that Provost Wutoh has closed his case, his status as a student at Howard has been revoked, and thus he cannot file a formal grievance. (Exhibit 23)
96. Howard's action of denying Colvin the opportunity to file a formal grievance and have his academic grievance heard by the Student Grievance Committee is a breach of the implied contract between Colvin and Howard with respect to the implementation of its Student Academic Grievance Procedures, The Formal Process.
97. Howard's breach irreparably harmed Colvin by denying him a formal grievance hearing for his unwarranted dismissal from the Graduate School and left him unable to pursue his Ph.D. degree.

## IX.

**COUNT 6: BREACH OF CONTRACT-  
HOWARD HAS TWO GRADUATE RULES AND REGULATIONS MANUALS  
(1979) CONTAINING DIFFERENT STANDARDS FOR THE PH.D. DEGREE, MAKING  
IT IMPOSSIBLE FOR COLVIN TO HAVE DISCERNED ITS  
PH.D REQUIREMENTS DURING HIS MATRICULATION**

98. Paragraph 98 includes paragraphs one through ninety-seven as if fully stated herein.

99. Upon Colvin's filing a complaint with D.C. Superior Court, Howard would claim that Colvin was using an outdated Graduate Rules and Regulations (1979) manual to make his claims, and that an amended version of the Graduate Rules and Regulations (1979) exists.

100. If what Howard states has any validity, it had at least two Graduate School Rules and Regulations Manual (1979) in circulation during Colvin's matriculation (2004-2016), and these manuals contained different course viability standards as articulated in Article VI, Section 1.C. of each manual.

101. To wit, Howard's The Graduate School Rules and Regulations Manual (1979) (Exhibits 9 & 25, p.13) (hereafter "Manual 1") at Article VI, Section 1.C. states,

C. *"Length of Time For Course Viability. Except upon written recommendation of the head of the Department concerned, based upon special examination of the candidate, no course that was pursued more than seven years prior to the term in which the student presents himself for the final examination will be credited toward the fulfillment of the requirements of the degree."*

102. To wit, Howard's The Graduate School Rules and Regulations Manual (1979) (Exhibits 26 & 27, p.12) (hereafter "Manual 2") at Article VI, Section 1.C. states,

C. *"Length of Time For Course Viability. Any course that was pursued more than (7) years prior to the term in which the student presents himself or herself for the final oral examination will not be credited toward fulfillment of the requirements for the degree.*

*However, credit for such course may be restored and counted toward the fulfillment of the requirements of the degree provided (1) the chairperson submits to the Dean a written petition/recommendation and (2) the student has passed:*

*(1) a comprehensive examination in the field in which the course falls, or*

*(2) a written examination especially administered for the purposes of restoration of credits in the course concerned.*

*Under no circumstances, however, may a student receive credit toward the degree for a course which the student pursued more than 10 years prior to the time the student presents himself for the student's final examination.*

103. Howard claims Manual 2 is an amended version and the version in effect during Colvin's matriculation (Exhibit 13). However, the manuals look almost exactly alike making it impossible to discern which one is the original and which one is an amended version, or even if an amended version exists.
104. According to Manual 1, all Colvin's courses from Fall 2004 to Spring 2015 are viable for fulfillment of Ph.D. requirements and Colvin had three years to complete the Ph.D. program without any further course registration.
105. According to Manual 2, none of Colvin's courses taken from Fall 2004 to Spring 2006 are viable.
106. Howard having two Graduate Rules and Regulations Manuals (1979) circulating is a breach of its implied contract with Colvin that there would be one clear standard with respect to its Ph.D. requirements.
107. Howard's contract breach of having to two Graduate Rules and Regulations manuals irreparably harmed Colvin as it lead to the Dean's use of Manual 2 in his review of Colvin's academic record, which led to the Dean's evaluation of numerous semesters of Colvin's courses as unviable and to Colvin's dismissal, when it is not clear what version of The Graduate School of Arts & Sciences Rules and Regulations For the Pursuit of Academic Degrees was operative and thus what Howard's course viability standards for the Ph.D. degree actually were.
108. Howard's contract breach also harmed Colvin throughout his matriculation as he did not know nor could he have known what Howard's course viability standards were for the Ph.D. degree.
109. This situation was further compounded by the fact that Ph.D. course viability standards published by Howard University for its Political Science Department, i.e. the Graduate School Graduate Program Bulletin Political Science Department Spring 2007 (Exhibits 10 & 28, p. 7) differ from Manual 1 and Manual 2, though closely simulating Manual 1.
110. This final breach is egregious in its deceptiveness and damage caused to Colvin in the form of an unfair dismissal from his Ph.D. program amid the actual situation of Howard not actually having a cognizable standard for course viability for the Ph.D. degree.
111. Hence plaintiff seeks punitive damages in addition to compensatory damages for Howard's egregious negligence and misleading of the plaintiff and for essentially having no cognizable requirements for its Ph.D. degree.

112. Further, Colvin also contends that, in addition to the reasons provided above for injunction of Howard's dismissal (i.e. Counts I-V), his dismissal should also be reversed on the ground that Howard breached contract with him insofar as it was unclear regarding its Ph.D. standards.
113. Finally, Colvin contends once he is reinstated, he should be allowed to continue his Ph.D. candidacy based on the standards of Manual 1 which he was provided by Constance Ellison, Associate Dean of the Howard University Graduate School.

**X.**

**SUMMATION OF COMPLAINT**

1. Defendant Howard knowingly, intentionally, and wrongfully prevented Colvin from pursuing his doctoral degree by:
  - a. dismissing him from the Graduate School based on misinformation and omitted facts regarding his academic record;
  - b. dismissing him for no longer meeting Ph.D. course viability requirements when Howard has differing (and therefore un-cognizable) course viability requirements;
  - c. prematurely "closing" his case;
  - d. refusing to provide grievance hearings (informal and formal) on his dismissal from the Graduate School;
  - e. engaging in (a)-(d) causing Colvin's candidacy period and some courses to expire.
2. Defendant Howard knew or should have known that wrongfully depriving Colvin of the opportunity to pursue his doctoral degree in such manners would cause him severe emotional distress.

**XI.**

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff, Deon D. Colvin, respectfully requests the following relief:

1. Injunction of Howard's dismissal action;
2. reinstatement as a graduate student in the Howard University Graduate School in the Department of Political Science as a Ph.D. candidate in the same state he enjoyed prior to the onset of the aforementioned implied contract breaches (Counts I-V);
3. Howard's reconsideration of Colvin's request for readmission to defend his dissertation consistent with the relevant facts of Colvin's academic and admissions history and the reality of Howard's lack of cognizable Ph.D. standards, as established in these judicial proceedings and/or as established at trial;
4. compensatory damages in the amount of at least \$585,000 (for breaches of implied contract, loss of time, loss of potential wages, loss of reputation, pain and suffering);
5. Punitive damages of at least \$500, 000 (for negligent or intentional breach of contract, or both).
6. interest, costs, and attorney's fees related to the statutory claims;
7. such additional relief as this Court deems just and proper.

**XI.**

**JURY TRIAL DEMAND**

1. Plaintiff Colvin hereby requests a jury trial in this matter.

Respectfully submitted,



Deon D. Colvin  
743 Fairmont Street, N.W. #211  
Washington, D.C. 20001  
Phone: 216-396-8512  
Email: DeonColvin@aol.com

**VERIFICATION**

I, Deon D. Colvin, on this 20<sup>th</sup> of December 2019, do hereby state that the foregoing Verified Amended Complaint #2 With Jury Trial Demand is true to the best of my knowledge, information, and belief.

  
Deon D. Colvin  
Deon D. Colvin

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> of December 2019 a copy of the foregoing Verified Amended Complaint #2 With Jury Trial Demand was sent via USPS Regular Mail to:

John G. Gloster Jr., Esq.  
Sr. Associate General Counsel  
Office of the General Counsel  
Howard University  
2400 6<sup>th</sup> Street N.W., Suite #321  
Washington, D.C. 20059

  
Deon D. Colvin  
Deon D. Colvin (Plaintiff)

# **EXHIBIT 6**

# HOWARD UNIVERSITY

Office of the Associate Provost for Research  
and Graduate Studies

Date: April 19, 2016

TO: Dr. Clarence Lusane  
Chair  
Department of Political Science

FROM: Dr. Gary L. Harris *G.L.Harris*  
Associate Provost for Research and Graduate Studies

RE: Matriculation Extension for Mr. Deon Colvin (@01056129)

This is to address your request for a matriculation extension for Mr. Deon Colvin. After carefully considering the information available to me, I do not support your recommendation. As such, I do not support Mr. Colvin's request to: (1) waive the 10-year limit for course viability; and, (2) that Mr. Colvin is given an extension until Fall 2016 (September, 2016) to complete his doctoral program in the Department of Political Science. According to the Graduate Schools' Rules and Regulations for the Pursuit of Academic Degrees - Effective October 1, 1979 regarding course viability (Article VI, Section 1.C):

**"Under no circumstances, however, may a student receive credit toward the degree for a course which the student pursued more than ten (10) years prior to the time the student presents himself or herself for the students' final examination—pg. 17."**

I understand that if Mr. Colvin plans to defend his dissertation and graduate in fall 2016, he has to complete the following requirements:

1. Courses Taken in the Following Semesters:

Spring 2007

Fall 2007

Spring 2008

Fall 2008

Spring 2009

Fall 2009

2. Courses Taken During the Following Semesters:

Fall 2004

Spring 2005

Fall 2005

Spring 2006

Fall 2006



Page - 2

In addition, a student must be registered the semester that he/she presents himself or herself for the final oral examination (i.e. dissertation defense). Mr. Colvin is not a registered student and has not been registered at the University since spring 2015. In addition, he owes a financial balance to the University. If this money has not been paid, Mr. Colvin cannot apply to be readmitted as a Former Student Returning (FSR) for the summer semester.

In addition, Mr. Colvin is ineligible to complete all requirements toward the degree by the end of the September 2016, as requested, because he has courses that are not viable. Therefore, I have no choice but to deny your request to extend Mr. Colvin's further matriculation and dismiss him from the Graduate School.)

Mr. Colvin is eligible and I welcome him to apply for admission to any other program in the Graduate School at Howard University. He may also consider seeking admission into another School or College at the University e.g., School of Education. If he chooses to apply to the Department of Political Science in the future, as a new entrant, he must follow the admissions process as outlined on the Graduate School website:  
<http://www.gs.howard.edu/Admissions/default.html>.

# **APPENDIX S**

"Appendix S"

# HOWARD UNIVERSITY

GRADUATE SCHOOL  
OFFICE OF EDUCATIONAL AND RESEARCH AFFAIRS

## MEMORANDUM

To: Dr. John Cotman  
Dr. Daryl Harris  
Department of Political Science

From: Dr. Constance M. Ellison  
Associate Dean  
Office of Educational and Research Affairs

Date: June 27, 2014

Subject: Admission to Candidacy for spring 2014

The students listed below have been certified by your department and the Graduate School as having fulfilled the necessary requirements for advancement to candidacy.

The original candidacy form for each student listed is enclosed. Please forward a copy of the candidacy form to each student, and place the original candidacy form in the students' departmental file for future inquiries.

ID/Name	Degree Sought	Candidacy Effective
Benjamin Akwei 02645979	Ph.D	5/9/2014
Michael Anderson 02282784	M.A.	5/2/2014
K. Brash Dixon 02587593	M.A.	5/2/2014
Anita Brower 01921260	M.A.P.A.	5/2/2014
Brittany Butler 02582017	M.A.	5/2/2014
Deon Colvin 01056129	Ph.D.	5/9/2014
Christopher Etienne 02660200	M.A.	5/2/2014
Saul Faal 02514054	M.A.	5/2/2014
Teerah Goodrum 02514383	M.A.	5/2/2014
Saidat Ilo 02629140	Ph.D.	5/9/2014
Falla Lamin 02609416	Ph.D.	5/9/2014
Ollie Milligan 01549505	Ph.D.	5/9/2014
Sherice Nelson 02446741	Ph.D.	5/9/2014
Chioma Oruh 02581537	Ph.D.	5/9/2014
Loretta Reeves 01663185	M.A.P.A.	5/2/2014
Toni Reynolds-Criner 02694232	M.A.	5/2/2014
Wilberta Smith-Bynum 02638457	M.A.	5/2/2014
Sharon St. Louis 02594172	Ph.D.	5/9/2014
AviElle Watkins 02336076	M.A.	5/2/2014

# **APPENDIX T**

"Appendix T"

# GRADUATE SCHOOL RULES AND REGULATIONS FOR THE PURSUIT OF ACADEMIC DEGREES 2007

Constance M. Ellison, Ph.D.  
Senior Associate Dean for Research and Graduate Studies  
Graduate School

# HOWARD UNIVERSITY

---

**Constance M. Ellison, Ph.D.**  
**Senior Associate Dean for Research and Graduate Studies**  
**Graduate School**

## Table of Contents

ARTICLE I. ADMISSIONS.....	5
Section 1. Admission to the Graduate School.....	5
Section 2. Admission to a Department .....	5
Section 3. Departmental Admissions Committee.....	6
Section 4. Committee on Graduate Studies.....	6
Section 5. Categories of Admissions .....	6
A. Degree- Regular Student .....	6
B. Degree-Provisional Student.....	6
C. Unclassified Student (Non-Degree Student).....	7
Section 6. Academic Advisement.....	7
Section 7. Readmission to the Graduate School.....	7
Section 8. Pursuit of an Advanced Degree by a Graduate Faculty Member.....	8
ARTICLE II. REGISTRATION AND ENROLLMENT .....	8
Section 1. Permanent Record .....	8
Section 2. Student Load .....	8
Section 3. Leave of Absence for Exceptional Family Circumstances .....	8
A. Length of Leave .....	9
B. Application Procedures.....	9
C. Special Considerations .....	9
Section 4. Temporary Interruption of Student's Program for Other Reasons .....	11
ARTICLE III. GRADES AND COURSE CREDIT .....	11
Section 1. Letter Grades and Their Value .....	11
A. The Grading System .....	11
B. D and F Grades.....	11
C. Incomplete Grades.....	11
Section 2. Change of Grade .....	12
Section 3. Approval for New or Additional Courses.....	12
Section 4. Auditors.....	12
Section 5. Undergraduate Courses Taken by Graduate Students.....	12
Section 6. Graduate Courses Taken by Undergraduate Students.....	12
Section 7. Transfer of Credit to Graduate Degrees.....	12
Article IV. OTHER REQUIREMENTS FOR THE DEGREE .....	13
Section 1. English Competency and Expository Writing .....	13
Section 2. Responsible Conduct of Research.....	13
ARTICLE V. GENERAL REQUIREMENTS FOR THE MASTER'S DEGREE .....	13

	3
Section 1. Residency, Credit Requirements, and Admission to Candidacy.....	13
A. Residency.....	13
B. Minimum Credit Requirements.....	13
C. Admission to Candidacy.....	14
Section 2. Course Requirements.....	15
A. Length of Time for Completion of the Master's Degree .....	15
B. Course Viability .....	15
C. Enrollment in Thesis Writing Courses.....	15
D. Assignment of Grades for Thesis Writing Courses.....	16
E. Enrollment in the Semester in Which the Degree is conferred.....	16
Section 3. Program of Study .....	16
Section 4. Grades and Academic Status.....	16
Section 5. Transfer of Credit .....	16
Section 6. Foreign Language Requirement for a Master's Degree .....	17
Section 7. Qualifying and/or Comprehensive Examination .....	17
Section 8. Thesis or its Equivalent: Committee, Document, and Defense.....	17
A. The Committee.....	17
B. The Document .....	17
C. Defense.....	18
ARTICLE VI. GENERAL REQUIREMENTS FOR DOCTOR OF PHILOSOPHY DEGREE .....	18
Section 1. Residency, Credit Requirements, and Admission to Candidacy.....	18
A. Residency.....	18
B. Minimum Credit Requirements .....	18
C. Admission to Candidacy.....	18
Section 2. Course requirements.....	19
A. Length of Time for Completion of the Ph.D. Degree.....	19
B. Course Viability .....	20
C. Enrollment in Dissertation Writing Courses.....	20
D. Assignment of Grades for Dissertation Writing Courses .....	20
E. Enrollment in the Terminal Semester .....	20
Section 3. Grades and Academic Status.....	21
Section 4. Program of Study.....	21
Section 5. Earned Credit Transferal to the Ph.D. Degree .....	21
Section 6. Foreign Language Requirement .....	21
Section 7. Ph.D. Qualifying and/or Comprehensive Examinations .....	22
Section 8. Dissertation Proposal, Committee, Document, and Defense .....	22

A. Dissertation Proposal.....	4 22
B. Dissertation Committee.....	22
C. Dissertation Document.....	22
D. Final Oral Examination and Defense of the Dissertation .....	23
<b>ARTICLE VII. GENERAL REQUIREMENTS FOR CERTIFICATE PROGRAMS .....</b>	<b>24</b>
Section 1. Residency and Credit Requirements .....	24
A. Residency .....	24
B. Minimum Credit Requirements .....	24
Section 2. Course Requirements.....	24
A. Length of Time for Completion of the Certificate Program .....	24
B. Course Viability .....	25
Section 3. Grades and Academic Status.....	25
Section 4. Program of Study .....	25
Section 5. Transfer of Credit to a Certificate Program.....	25
<b>ARTICLE VIII. APPEAL OF ACADEMIC DECISIONS.....</b>	<b>25</b>
Section 1. The Informal Process.....	26
Section 2. The Formal Process .....	26
Howard University Credit Hour Assignment Policy .....	27
Semester Calendar Credit Hours .....	27
Definition of a Credit Hour.....	27
Academic Code of Student Conduct .....	29
HOWARD UNIVERSITY POLICY: Title IX of the <i>Education Amendments of 1972</i> , as amended, and the Violence Against Women Act.....	31
HOWARD UNIVERSITY POLICY: RESPONSE TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING POLICY.....	44

## **ARTICLE VI. GENERAL REQUIREMENTS FOR DOCTOR OF PHILOSOPHY DEGREE**

### ***Section 1. Residency, Credit Requirements, and Admission to Candidacy***

#### **A. Residency**

A minimum of six (6) credit hours per semester constitutes residency. A student must be in residence in the Graduate School for at least four (4) semesters in order to be recommended for a degree. Credits transferred from other accredited graduate institutions may not be used to meet the residency requirement.

#### **B. Minimum Credit Requirements**

The minimum course credits for the degree is 72 graduate credits (inclusive of dissertation) beyond the bachelor's degree. However, departments may require credits in excess of this amount, and various factors may result in a student's taking more than the minimum number of credit hours prior to satisfactorily completing the degree requirements. No more than twelve (12) credits in dissertation writing courses may count towards the requirements for the degree. The completion of minimum course requirements or credit does not guarantee receipt of the degree.

#### **C. Admission to Candidacy**

Admission to the Ph.D. program does not automatically admit a student to candidacy for the Ph.D. degree. A student shall be admitted to candidacy upon completion of most requirements for the Ph.D. degree, except the dissertation.

A student can be admitted to candidacy upon meeting the following requirements:

1. Submit a complete admission to candidacy form to the Graduate School. It must include a list of graduate courses completed, those in process, and those courses in the field yet to be completed.
2. Pass all of the required core courses.
3. Pass the qualifying and/or comprehensive examination administered by the department (where applicable).
4. Demonstrate proficiency in expository writing in addition to satisfying the RCR requirement as described in Article IV above.
5. Pass the foreign language examination or fulfil the approved substitute (where applicable).
6. Secure the approval of the Institutional Review Board (IRB), Institutional Biosafety Committee (IBC), Institutional Animal Care and Use Committee (IACUC) or other institutional committees as required for the research project.
7. Receive approval of a dissertation topic via a process determined by the Committee on Graduate Studies in the major department. A copy of the approved dissertation proposal must accompany the request for the admission to candidacy.
7. Receive the endorsement of the Committee on Graduate Studies in the major department.
8. Receive the approval of the Graduate School.

Admission to candidacy must be achieved at least one semester *prior to* that in which the student expects to receive the degree.

Candidacy for the Ph.D. degree shall be valid for no more than five academic years. Any student seeking renewal of candidacy must apply to the Graduate School through the department for readmission. The department in which the student is seeking the degree shall determine the conditions under which the student may be reinstated, subject to approval of the Graduate School.

The responsibility for fulfilling these requirements is that of the student. Students should consult the Director of Graduate Studies in their department if in doubt as to any of the requirements. Students should carefully note the specific requirements of their departments relative to admission to candidacy and regard them as additional to these general requirements.

## ***Section 2. Course requirements***

### **A. Length of Time for Completion of the Ph.D. Degree**

Students are expected to complete a Ph.D. degree within a maximum of seven (7) years from the date of initial registration in the program. A student who exceeds this period may be

dismissed. After seven years, students must petition for readmission and may be readmitted only upon fulfillment of conditions recommended by the departmental Committee on Graduate Studies and approved by the Executive Committee of the Graduate School, subject to the rules for readmission to the Graduate School in Article I, Section 7.

## **B. Course Viability**

The Graduate School has a fundamental interest in ensuring that its graduating Ph.D. students have currency of knowledge in their fields. Therefore, the Graduate School places limits on the age of courses that can be counted toward the fulfillment of graduation requirements.

Credit for courses pursued more than seven and less than ten years, prior to the term in which the student presents herself/himself for the final examination, can be counted toward the fulfillment of degree requirements only if they are restored as described in this paragraph with the approval of the departmental Committee on Graduate Studies and the Dean. In order for a course to be restored under this paragraph, the student must pass an examination administered expressly for the purpose of restoration of credits in the course concerned or a comprehensive examination in the field in which the course falls.

**Under no circumstances, however, may a student receive credit toward the degree for a course which the student pursued more than ten (10) years prior to the time the student presents himself or herself for the student's final examination.**

In the event that a student has been granted a leave of absence pursuant to Article II, Section 3 on account of childbirth, adoption, illness, caring for incapacitated dependents, disability, military service, or similar circumstances, or if the student's progress toward a degree has been delayed as a result of such conditions or circumstances but without the need for a leave of absence, the student may apply in writing to the departmental Graduate Studies Committee and the Dean for an exception to the foregoing limitations on course viability and course restoration. A copy of any such application must be provided to the Office of Special Student Services. Such exceptions are strongly disfavored where the courses exceed the foregoing time limitations because of the Graduate School's fundamental interest in ensuring that graduating students have currency of knowledge in their disciplines.

## **C. Enrollment in Dissertation Writing Courses**

A student is not permitted to register for dissertation writing until he or she has been admitted to candidacy. A student who is using the University facilities or is conferring in person with the dissertation advisor must continue to enroll in a dissertation writing course. The student must register as an auditor if he/she has already accumulated the maximum number of hours permitted for dissertation writing courses (12 credit hours).

## **D. Assignment of Grades for Dissertation Writing Courses**

Dissertation writing courses will be assigned a grade of Incomplete while the work is in progress. The "incomplete" grades will be removed upon successful passage of the final oral examination for the dissertation.

## **E. Enrollment in the Terminal Semester**

A degree candidate must be registered for at least one graduate credit hour during the semester in which the degree is conferred.

### **Section 3. Grades and Academic Status**

A cumulative grade point average of 3.00 (B) is required for graduation. A student will be permitted only two "C" grades. After the student receives a third "C" grade, he/she will be dismissed from the Graduate Program. "C" grades earned at the master's level at Howard University or elsewhere are not to be included in this count; only "C" grades received in a Ph.D. program at Howard are counted.

A student who falls below 3.00 GPA will be given due notice by the Graduate School that he/she must raise his/her quality point index to 3.00 in the next **two terms** in residence. Students failing to do so will be dismissed from the Graduate School.

**A student who demonstrates an inability to perform satisfactorily at the graduate level may be recommended for dismissal.**

### **Section 4. Program of Study**

Each department in which the student is enrolled shall specify the programs and the requirements for each matriculating degree student. An approved Program of Study for each student must be filed with the Graduate School no later than the end of the first semester in residence. The responsibility of submitting the individualized Program of Study is that of the student. Failure to do so in a timely manner may result in suspension of enrollment privileges at the University.

### **Section 5. Earned Credit Transferal to the Ph.D. Degree**

**Students holding a bachelor's degree who were admitted directly into the Ph.D. program** may—with the approval of the Committee on Graduate Studies—transfer a maximum of 18 semester credit hours of graduate credits with a grade of B or better into the Ph.D. program.

**Students holding a Master's degree** from a recognized accredited institution (this includes Howard University) or an equivalent international institution may transfer no more than 24 graduate course credits with a grade of B or better into the Ph.D. program, dependent upon approval of the Committee on Graduate Studies in the major department. Official transcripts must accompany any request for transfer of credits.

Students currently enrolled in a program of the Graduate School who wish to seek admission to another program in the Graduate School must obtain written permission from the department in which the student is enrolled for transfer to another program. A copy of the approved document must be submitted to the Graduate School. The student must formally apply for admission into the new program. The rules on transfer of credits noted above will apply to students who desire to switch programs.

### **Section 6. Foreign Language Requirement**

The department in which the student is enrolled shall determine any foreign language requirement or its substitute.

Students may satisfy the foreign language requirement by passing an examination prepared by the foreign language department at Howard University based on materials submitted by the department concerned.

## ***Section 7. Ph.D. Qualifying and/or Comprehensive Examinations***

The student will be required to pass a qualifying and/or comprehensive examination administered by the Graduate Faculty of the department in which the student is enrolled. This examination will be given only once each semester. A student should take the examination while earning his/her first 48 credits towards the Ph.D. degree, or as required by the department concerned. Students must consult their departments for specific information on the examination(s).

A candidate who fails such an examination on the first try may sit for a second examination, provided that the second examination not be administered earlier than two months from the date of the first examination. Failure on the second examination will result in dismissal from the Graduate School.

## ***Section 8. Dissertation Proposal, Committee, Document, and Defense***

Ph.D. programs require the submission of a dissertation in partial fulfillment of requirements for the degree. A member of the Graduate Faculty who shall act as the student's advisor must supervise students preparing the dissertation document. Said advisor must be a member of the department in which the degree will be granted. Students are advised to consult their departments concerning requirements.

### **A. Dissertation Proposal**

The subject of the dissertation shall be determined as early in the program as possible. As a condition for admission to candidacy, the student must present an approved proposal for his/her doctoral dissertation research as authorized by his/her advisor and members of the dissertation committee.

The proposal should include an outline of the proposed research including the nature, scope, and significance of the problem, the theory, methodology, and a tentative title. A copy of the approved dissertation proposal must accompany the admission to candidacy form submitted to the Graduate School. The proposal and candidacy application must be approved by at least four members of the Graduate Faculty with a majority of members from the department.

### **B. Dissertation Committee**

The dissertation committee must consist of the dissertation advisor, at least three other members of the Graduate Faculty, and an external member of comparable stature as determined by the Committee on Graduate Studies. Each member of the committee is responsible for fully reviewing and approving both the process and the final dissertation document. Final approval of the dissertation, in all aspects, is the responsibility of the full dissertation committee acting on behalf of the Graduate School.

### **C. Dissertation Document**

The candidate for the Doctor of Philosophy degree is required to present a dissertation, which is the result of significant and sustained research in his/her discipline. The student must

demonstrate ability to organize and present effectively the findings and results of his/her research. When completed, it is expected that such research will make a meritorious contribution to the field of knowledge.

The document shall be prepared in accordance with the conventions of the discipline and conform to the requirements of the Graduate School as specified in the manual available in the Graduate School. Before the final oral examination is scheduled, the dissertation must be deposited with the Graduate School according to a schedule established by the Graduate School. The dissertation shall also be deposited in the department where the student is seeking the Ph.D. degree not later than three weeks *before* the date of the final examination for the degree. The candidate shall prepare three copies of the dissertation and four copies of the dissertation abstract in accordance with the prevailing Graduate School guidelines on preparing such documents.

#### **D. Final Oral Examination and Defense of the Dissertation**

The candidate shall be required to pass a final oral examination in defense of the dissertation. The examination shall be based primarily on his/her research, the field of his/her research, and related areas of study.

The oral examination committee shall consist of a minimum of five members, four of whom must be current members of the Graduate Faculty at Howard University, and at least one of whom shall be from outside the University and be of comparable stature (see: Article I, Section 4). Upon the recommendation of the Committee on Graduate Studies in the department where the degree is earned, the Dean of the Graduate School shall appoint members of the oral examination committee.

The process for the conduct of the final oral examination shall be as follows:

1. The Committee on Graduate Studies in the major department shall request permission from the Graduate School to conduct an oral examination, adhering to the published deadlines. A copy of the approved candidacy form must accompany the request. Currency of courses as stipulated in Article VI, Section 2B must be established and affirmed in the memorandum to request the scheduling of an oral examination.
2. The Committee on Graduate Studies in the department shall submit to the Dean a list of recommended examiners.
3. The Dean or his designee shall appoint an examination committee and shall notify each member of the committee of the date, time, and place of the examination.
4. The Dean and Associate/Assistant Deans of the Graduate School shall be ex-officio members of all oral examination committees.

The final oral examination shall be open to members of the faculty of the University, and to other persons whom the candidate's major department or the candidate may invite. Final approval of the dissertation in all aspects is the responsibility of the full committee acting on behalf of the Graduate School.

A candidate who fails the oral examination on the first try may sit for a second examination, provided that the second examination not be administered earlier than two months from the date of the first examination. Failure on the second examination will result in dismissal from the Graduate School. A student dismissed for this reason will not be readmitted to the Graduate School.

A department can recommend dismissal of a student who, after failing the dissertation oral defense the first time, does not resubmit the dissertation and present himself/herself for re-examination within a six-month period.

# **APPENDIX U**

"Appendix U"

No. 19-CV-1250 & No. 20-CV-122

---

In the  
District of Columbia Court of Appeals

---

DEON D. COLVIN

*Plaintiff-Appellant,*

v.

HOWARD UNIVERSITY

*Defendant-Appellee*

---

Appeals Consolidated from the Superior Court of D.C.

Civil Division

Case No. 2019 CA 003573 B

Case No. 2019 CA 007929 B

The Hon. Robert R. Rigsby

The Hon. Hiram E. Puig-Lugo

---

REPLY BRIEF OF APPELLANT

---

Deon D. Colvin (Pro Se)  
743 Fairmont Street, NW  
Washington, D.C. 20001  
(216) 396-8512

## TABLE OF CONTENTS

<b>Contents</b>	<b>Page(s)</b>
TABLE OF AUTHORITIES.....	iii
STATEMENT OF REPLY.....	1
PRELIMINARY ARGUMENTS.....	1
1. Howard Misstates and Misapplies Facts In An Attempt To Mislead the Court.....	1
2. Howard Seeks to Prevail By Inserting Holdings From <u>Colvin I</u> For The Court's Deliberations, But The Attempt Is Futile Because The Lionshare Of Holdings No Longer Apply.....	3
3. Howard Dismissed Colvin For Unviable Courses, Not For Being Past Its Time To Complete Policy.....	4
REPLY ARGUMENTS.....	5
I. COLVIN STATES VALID BREACH OF IMPLIED CONTRACT CLAIMS, THUS REMAND IS WARRANTED.....	5
a. Colvin Can Raise a Claim for Breach of the Implied Covenant Of Good Faith and Fair Dealing to this Court.....	6
b. Howard's Academic Decision to Dismiss Colvin Was a Dismissal Motivated by Bad Faith that is Not Entitled to Judicial Deference.....	8
c. Colvin Can and Does State a Breach Claim for the Dean's Decision to Dismiss Him.....	10
d. Colvin Can and Does State a Breach Claim for the University Dismissing Him Prior to 2019.....	13

e. Colvin Can and Does State Breach Claims that Howard Denied Him Informal and Formal Grievance Procedures.....	14
f. Colvin Can and Does State a Breach Claim on the Basis of Howard's Two Policy Manuals With Different Ph.D. Requirements.....	18
II. COLVIN'S CLAIMS ARE NOT PRECLUDED AS A MATTER OF LAW DUE TO PRIOR ADJUDICATIONS, AND HE SHOULD BE GRANTED LEAVE TO AMEND HIS COMPLAINT.....	21
III. COLVIN IV IS NOT TIME BARRED BY THE APPLICABLE THREE-YEAR STATUE OF LIMITATIONS.....	23
CONCLUSION.....	24
CERTIFICATE OF SERVICE	

## TABLE OF AUTHORITIES

Cases	Page(s)
<i>Alden v. Georgetown Univ.</i> , 734 A. 2d 1103 (D.C. 1999).....	8, 9
<i>Allworth v. Howard University</i> , 890 A. 2d 194 (D.C. 2006).....	7
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 677 (2009).....	24
<i>Bain v. Howard University</i> , 968 F. Supp. 2d, 294 (D.D.C. 2013).....	7, 17
<i>Capitol Place I Assocs. L.P. v. George Hyman Constr. Co.</i> , 673 A. 2d 194 (D.C. 1996).....	23
<i>Haines v. Kerner</i> , 404 U.S. 519, 520-521 (1972).....	19
<i>3M Co. v. Browner</i> , 17 F. 3d. 1453 (D.C. Cir. 1994).....	24
<i>Mesumbe v. Howard University</i> , 706 F. Supp.2d 86 (D.D.C. 2010).....	17
<i>Peretti v. Montana</i> , 464 F. Supp. 784, 786 (D. Mont. 1979).....	7
<i>Schnitzler v. United States</i> , 761 F. 3d 33 (D.C. Cir. 2014).....	19
<i>Shin v. Portals Confederation Corp.</i> , 728 A. 2d 615, 618 (D.C. 1999).....	21
<i>Tsintolas Realty Co. v. Mendez</i> , 984 A.2d 181 (D.C. 2009).....	12, 13, 20
<i>Williams v. Howard Univ.</i> , 528 F. 2d 658 (D.C. Cir. 1976).....	8

## STATEMENT OF REPLY

Colvin submits this Reply Brief of Appellant pursuant to D.C. App. Rule 28.

### PRELIMINARY ARGUMENTS

#### 1. HOWARD'S MISSTATES AND MISAPPLIES FACTS IN AN ATTEMPT TO MISLEAD THE COURT

Howard makes a plethora of untrue statements in its Brief, presumably to convince the Court that the facts align in its favor. See HU Brief, entire. Colvin points out these misstatements and misapplications of fact to correct the record to ensure proper adjudication of his appeal.

To wit, Howard states Colvin "...enrolled in the spring 2014 semester for the candidacy portion of his program." *Id.*, p. 5-6. Actually, Colvin did not enroll in spring 2014 *for* the candidacy portion of his program, but rather to see if he could defend his dissertation proposal and submit a candidacy application *to gain acceptance into* the candidacy portion of the program. Colvin would not be accepted to candidacy until June 27, 2014 (retroactive to May 9, 2014) and was not in the candidacy portion in the spring 2014 semester. See Colv. App. Exhibit 4, p. 3 at 8-9. Howard states "Colvin was provided 'two extensions' of time to complete his program. However, Colvin did not meet his deadlines..." HU Brief, p. 6. Colvin contends the fall 2014 "extension," *i.e.* readmission letter cited by the Dean was an administrative error that never should have been a part of any evaluation of his academic record. See Opening Brief, p. 20. Howard states, "Colvin admitted that numerous classes he previous[ly] completed could face expiration." HU Brief, p. 6. What Colvin erroneously stated about his courses is of no

import; it was Howard that was charged with a proper review of Colvin's academic record and it failed to perform its contractual duty. Howard states, "At the time, Colvin was 'still a ways from completing [his] research and writing' necessary to complete the Ph.D. program." *Id.*, p. 21. Howard misappropriates the facts and inserts a subjective statement made on September 8, 2016 to justify a decision to dismiss that was made on April 19, 2016 based on Colvin's courses.<sup>1</sup> See Colv. App. Exhibit 4 at Exhibit "O." Howard states, "Colvin sent...Howard's President...and Provost numerous correspondences requesting reconsideration of the dismissal decision." HU Brief, p. 7. Howard provides *no written correspondence from Colvin* that shows he requested anything other than to simply "discuss" his case with the Provost. See Colv. App. Exhibit 4, p. 9 at 63, 71. Howard states, "Colvin sought to circumvent the decision of Howard's Provost by seeking review of his dismissal from subordinate employees [Dr. Fauntroy and Chair Lusane] to the Provost." HU Brief, p. 7. Actually, Colvin did not seek a review by subordinate employees, but went to those employees for advice in writing a formal grievance letter and to inquire about the internal deliberation process of the Political Science Department for recommending students and if the Department had recommended to dismiss him. See Colv. App. Exhibit 4, p. 10 at 83; App. Exhibit 5 at Exhibit 4, p. 5 at 22. Howard writes, "The Dean concluded that Colvin "demonstrated an inability to perform satisfactorily at the graduate level [.]." HU Brief, p. 7. Actually, the

---

<sup>1</sup> Colvin would complete his dissertation revisions three weeks later on September 30<sup>th</sup>, 2016 as per the Chair's statement to the Graduate School that Colvin "anticipates that with revisions he will be ready to defend his dissertation by September 2016." See HU App., 514, par 1.

Dean concluded, “In all, you have **not** demonstrated an inability to perform satisfactorily at the graduate level, and therefore you are dismissed from the Graduate School...” See Colv. App. Exhibit 4 at Exhibit “E.” The Dean’s conclusion statement is another of the many errors related to Colvin’s dismissal that is found in the Dean’s dismissal letter. Other of Howard’s numerous misstatements of fact are addressed below in Colvin’s replies.

## **2. HOWARD SEEKS TO PREVAIL BY INSERTING HOLDINGS FROM COLVIN I FOR THE COURT’S DELIBERATIONS, BUT THE ATTEMPT IS FUTILE AS THE LIONSHARE OF JUDGEMENTS NO LONGER APPLY**

Howard tries to submit rulings from Colvin I but Colvin has since amended his Complaint several times, curing the deficiencies in presentation highlighted by prior proceedings. See HU Brief, p. 2, 9, 19. For example, the Colvin I Court ruled Colvin was “again readmitted in 2014” (HU App., 316, fn. #1); Colvin pleads that the 2014 readmission at issue was not applied for and was an administrative error. See Opening Brief, p. 20. In Colvin I, Colvin did not provide the Court with the Dean’s April 2016 letter to the Political Science Department Chair that indicates when and on what basis the decision to dismiss was made (see section 3 below). Consequently, that Court held that Colvin did not present sufficient evidence to sustain his claim (“Mr. Colvin asserts Howard University discharged him based on false and inaccurate information of his academic record. Upon review of the complaint and exhibits, the Court is not persuaded.”) *Id.*, p. 316, par. 1-2. Relatedly, Colvin did not provide the detail and clarity regarding the Dean’s errors in evaluation of his courses that was provided in Colvin III. See Colv. App. Exhibit 4, p. 5 at 24-25, 29-32. The Colvin I Court, sensing

that Colvin's complaint may have been underdeveloped and lacking clarity, or otherwise missing relevant factual pleadings, wisely dismissed without a judgment on the merits. Hence Colvin appeals that this Court views Colvin I as a preliminary holding based on incomplete and underdeveloped pleadings and evidence. As such, Colvin will not spend time in this Reply Brief on holdings in Colvin I.

### **3. HOWARD DISMISSED COLVIN FOR UNVIABLE COURSES, NOT FOR BEING PAST ITS TIME TO COMPLETE POLICY**

While Howard would assert to Colvin and plead to the trial Court that he was dismissed due to failure to complete the Ph.D. program in seven years, a closer examination of pleadings and documents in Colvin's proposed Verified Amended Complaint #2 illuminates that Howard's decision to dismiss was based solely on the belief that Colvin did not have viable courses, and not the length of time he was in its Ph.D. program. See Colv. App. Exhibit 5 at Exhibit 4 at Exhibit 6, p. 1-2. To wit, in Dean Harris' April 19, 2016 letter to the Chair of Political Science Dr. Clarence Lusane, he states the following:

In addition, Mr. Colvin is ineligible to complete all requirements toward the [Ph.D.] degree by the end of September 2016, as requested, *because he has courses that are not viable*. Therefore, I have no choice but to deny your request to extend further matriculation and *dismiss him from the graduate school*.

The Dean is emphatic that Colvin could apply for other degree programs, even Political Science, but his current matriculation in the Ph.D. program was over:

Mr. Colvin is eligible and I welcome him to apply for admission to any other program in the Graduate School at Howard University. He may also

consider seeking admission into another School or College at the University, e.g. School of Education. If he chooses to apply to the Department of Political Science in the future, as a new entrant, he must follow the admission process as outlined on the Graduate School website...

Further revealing the basis of the Dean's decision is his statement two paragraphs prior, where he makes the following observation concerning Colvin's courses:

I understand that if Mr. Colvin plans to defend his dissertation and graduate in fall 2016, he has to complete the following requirements:

**Restore Courses Taken in the Following Semesters:**

Spring 2007

Fall 2007

Spring 2008

Fall 2008

Spring 2009

Fall 2009

**Repeat Courses Taken During the Following Semesters**

Fall 2004

Spring 2005

Fall 2005

Spring 2006

Fall 2006

From the quotations and above lists it is clear that the Dean believed Colvin had numerous courses to restore and repeat and based his decision to dismiss on the belief that Colvin did not have the required number of viable courses to fulfill Ph.D. requirements. The Dean's decision to dismiss was made on April 19, 2016 and Colvin received formal notice of his dismissal on June 23, 2016.

**REPLY ARGUMENTS**

**I. COLVIN STATES VALID BREACH OF IMPLIED CONTRACT CLAIMS, THUS REMAND IS WARRANTED**

**a. Colvin Can Raise a Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing To This Court**

Contrary to Howard's assertion (HU Brief, p. 29), Colvin's Complaints in Colvin III and Colvin IV *do* contain causes of action asserting breach of the Implied Covenant of Good Faith and Fair Dealing. See Colv. App. Exhibit 4, p. 4-6 at 19-32, 35-39; Compl. IV at 26-39, 44-48. The claims are prominently featured in Count I of each complaint where Colvin states, "Howard's failure to conduct a review of Colvin's academic record based on the actual facts of said record is a breach of the "fair dealing" provision of contract law (i.e. the implied covenant of good faith and fair dealing) that applies to participants in a contractual relationship." Id. at 37 and 46, respectively. Moreover, Colvin asserted his breach of implied covenant claim to the Colvin III Court a second time in his Motion For Relief From Order, Reopening Of The Case, And For Leave to File An Amended Complaint where he states, "[Colvin] asks for relief from the Court's Order because it does not address his complaint that Howard breached implied contract, i.e. the Implied Covenant of Good Faith and Fair Dealing, when it did not conduct a factually accurate review of [Colvin's] academic record." See Colv. App. Exhibit 5, p. 5. Since Colvin clearly raised the breach of implied covenant claim found in his Opening Brief (p. 20-24) to the trial Court, he can rightly have his claim considered by this Court on appeal.<sup>2</sup>

---

<sup>2</sup> Howard also advances that the student-university contract is explicit and thus any claim of an implied contract breach is wrongly argued and involves claims not recognized by law. See HU Brief, 16, fn. #6. Firstly, insofar as the student-university contact is not one involving signature by the two parties, it by nature is an implied

Secondly, Howard claims that “even if Colvin could raise a claim for breach of implied covenant of good faith and fair dealing through his appeal, he would still fail to state a claim” because “[he] must allege either bad faith or conduct arbitrary and capricious” and “Howard did not act arbitrarily or in bad faith when it dismissed Colvin pursuant to the plain text of its policies allowing for “automatic” dismissal for any Ph.D. student who is enrolled for more than seven years, particularly in light of the fact that Colvin had failed to meet his deadline to complete his program despite being previously provided with two extensions.” See HU Brief at 29-30. Howard is plainly incorrect as Colvin *does* allege that Howard acted in bad faith when it dismissed him based on inaccurate information about his academic record (*i.e.* that he had unviable courses) and refused to correct its error when he brought it to Howard’s attention, which made its act of dismissal a “willful rendering of imperfect performance,” a classic act of bad faith according to the Court’s criteria articulated in Allworth v. Howard University. See Opening Brief, p. 22-23. Colvin shows that it was this act of bad faith, this “willful rendering of imperfect performance” with respect to Howard’s evaluation of his student

---

contract. As one Court observed, “Since a formal contract is rarely prepared, the general nature and terms of the agreement are usually implied, with specific terms to be found in the university bulletin and other publications; custom and usages can also become specific terms by implication.” Peretti v. Montana, 464 F. Supp. 784, 786 (D. Mont. 1979). Secondly, in Bain v. Howard University, 968 F. Supp. 2d, 294, 299 (D.D.C. 2013) the Court noted the heart of the student-university contract is the implied covenant of good faith and fair dealing (“that implied covenant is *the entire contract* concerning academic matters between a school and its students”). It goes without saying that if the heart of the student–university contract is an *implied* covenant, it cannot be inappropriate to refer to breaches of the student-university contract as breaches of *implied* contract.

record and willingness to use misinformation as the basis of its academic evaluation *that led to and was the cause of his dismissal, and not Howard's 7 year rule. Id., 24; Colv. App. Exhibit 5* at Exhibit 4 at Exhibit 6, p. 1-2. Thus Colvin states a valid claim for breach of the implied covenant of good faith and fair dealing in his Opening Brief (p. 20-24) that should be considered by this honorable Court.<sup>3</sup>

**b. Howard's Academic Decision to Dismiss Colvin Was A Dismissal Motivated by Bad Faith That Is Not Entitled to Judicial Deference**

Howard argues that its decision to dismiss Colvin from its Ph.D. program “was, at core, an academic determination that Colvin was not meeting the University’s program standards” as he “had failed to meet his deadline to complete his program despite being provided with two prior extensions.” See HU Brief, p. 17-20. Citing Alden v. Georgetown, Howard stresses that Courts usually give deference to a “judgment by school officials that a student has not performed adequately to meet the school’s academic standards.” *Id.* Howard cites Williams v. Howard Univ. to iterate that a student needs to demonstrate “improper motivation or irrational action” or “arbitrary and capricious behavior” to disturb a university decision and that Colvin “has not pled any arbitrary or capricious behavior surrounding his dismissal.” *Id.* Howard concludes that

---

<sup>3</sup> Lastly, Colvin’s breach of implied covenant claim extends to one of two “extensions” Howard claims was used in its decision to dismiss. Colvin appeals the fall 2014 extension was unsolicited and an administrative error brought to Howard’s attention that it unreasonably refused to correct (Opening Brief, p.20; Colv. App. Exhibit 4, p. 6 at 36 and Exhibit “J” p. 3, par. 1), further bolstering Colvin’s claim Howard’s dismissal was an act in bad faith (*i.e.* willful rendering of an imperfect academic evaluation) in which Howard breached contract, and this breach was the cause of his dismissal.

rather than pleading arbitrary or capricious behavior, Colvin simply “disagrees with Howard’s dismissal decision,” “incorrectly believes that he was guaranteed a minimum of five years of candidacy”; notes “he was given gratuitous reviews of the dismissal decision” and “sought to grieve the decision of the Dean (1) to the Dean’s subordinates...after the Provost had rendered a decision.” *Id.*

*The fatal flaw in Howard’s judicial deference argument is that the above are not the only pleading options Colvin has to disturb judicial deference.* As Colvin cites in his Opening Brief, and which Howard conveniently avoids, according to *Alden*, Colvin may also plead his dismissal was motivated by bad faith, which is what Colvin does in his Opening Brief, p. 20-29. Alternatively, Colvin may provide “*some* evidence from which a fact-finder ‘could conclude that there was no rational basis for the decision,’” which Colvin provides as well. *Id.*

To conclude Colvin does more than just issue idle criticisms, as Howard asserts; rather, he meets his legal burden set by this Court in *Alden* to disturb the deference it would normally give to Howard’s dismissal decision, and demonstrates how his contractual rights were violated in the course of Howard’s dismissal of him from its Ph.D. program.<sup>4</sup> See Opening Brief, p. 20-24. Thus Howard is manifestly in error with its assertion its dismissal of Colvin is entitled to judicial deference.

---

<sup>4</sup> The only thing Howard gets correct here is that “Colvin concedes that his dismissal was an academic decision.” See HU Brief, p. 19, par. 2. In agreeing with Colvin that his dismissal was an academic decision, *it is Howard that concedes* that Colvin was entitled to grievance via its Student Academic Grievance Procedures. *Id.*, p. 5, par. 1.

**c. Colvin Can and Does State a Breach Claim For The Dean's Decision to Dismiss Him**

Howard asserts that Colvin “seemingly argues” that the Dean’s impartial review of his academic record was a breach of contract. See HU Brief, p. 20-21. Howard posits that Colvin cannot state a breach of contract claim because the Dean’s decision to dismiss him was made pursuant to Howard’s Rules, namely its Time to Complete rule and its 10-year rule regarding course viability:

In making his assertion, Colvin wholly ignores the plain language of the Rules, which states: “Students [in the Ph.D. program] are expected to complete the doctoral degree within a maximum of seven calendar years from the date of initial registration in the program.

..Moreover, the Rules contain a strict ten-year requirement for the viability of course-work he performed more than 10 years prior to the date of his dismissal. As such, Colvin could not receive credit for the coursework he performed more than 10 years prior to the date of his dismissal.” *Id.*

Howard goes on to say “Colvin was ‘still a ways from completing [his] research and writing’ necessary to complete the Ph.D. program,” and since Howard dismissed “pursuant to the plain language of its Rules,” the trial Court rightly determined that “Defendant’s dismissal of the Plaintiff was not a violation of the contract between the two parties.” *Id.* Furthermore, since both Rules contain the same language that a student “can be dismissed” for failure to complete in seven years, Colvin thus fails to state a claim under any version of the Rules. *Id.* Finally, Howard claims that the “discrepancies” that Colvin refers to in the Dean’s letter are at best “immaterial factual inaccuracies” that cannot “serve as the basis of a breach of contract claim (e.g. that the faculty did not submit a recommendation to dismiss Colvin, that Colvin did not apply for

readmission in certain semesters, that Colvin's fall 2016 courses were not yet older than 10 years)." *Id.*

Howard is woefully incorrect in making the above assertions. Contrary to Howard's claims, Colvin can and does state multiple breach claims because he pleads and presents evidence that the Dean's decision to dismiss him was based on misinformation about his student record, and not pursuant to its Time to Complete Rule as Howard claims. To wit, the Dean states in letter to the Chair of the Political Science Department he dismissed Colvin for the following reason:

In addition, Mr. Colvin is ineligible to complete all requirements toward the degree by the end of the September 2016, as requested, *because he has courses that are not viable*. Therefore, I have no choice but to deny your request to extend Mr. Colvin's further matriculation *and dismiss him from the Graduate School*. Colvin App. Exhibit 5 at Exhibit 4 at Exhibit 6, p. 2 par 2. (Italics added).

On page 1 of the same letter and on page 3 of his dismissal letter to Colvin the Dean erroneously lists Colvin's courses that he had restored in 2014 and that The Graduate School had accepted as restored when it admitted him to candidacy as courses that needed to be restored or retaken. *Id.*, p. 1; Colv. App. Exhibit 4, p. 5-6 at 28-32 and at Exhibits "E", "B", and "C", p.1, 10-13.<sup>5</sup> Also, in the dismissal letter itself the Dean erroneously listed Colvin's fall 2006 courses—courses that would not be a decade old until the end of the fall 2006 semester—as "older than 10 years." *Id.* These and other untruths and errors (e.g. that the Graduate Faculty recommended Colvin's dismissal,

<sup>5</sup> Further, according to "Manual I," all Colvin's courses from fall 2004-fall 2006 that the Dean listed as he needed to repeat (see above, p. 5) were restored and viable for use toward the Ph.D. degree. See Plaintiff's Opp. Mot. For Relief From Order, Reopening of Case, and For Leave to File Amended Complaint (Colvin III) at Exhibit 4, p. 7 at 40, in the case record.

Colvin failed to meet the requirements of a fall 2014 readmission letter that he graduate by fall 2014) Howard at one time or another would assert as reasons it dismissed Colvin. See Opening Brief, p. 26.

Since it was a breach of the implied Covenant to *willfully* dismiss Colvin based on information that was untrue about his academic record (hence committing a “bad faith dismissal”), and it was also a breach to revoke his Ph.D. candidacy for the same reason, Colvin states at least two valid breach of contract claims related to the Dean’s dismissal (his Counts I and II in each of his complaints). Contrary to Howard’s assertion, the trial court erred and failed to hold that Howard’s dismissal based on misinformation was a violation of the implied contract (*i.e.* the implied covenant of good faith and fair dealing) between the two parties, thus its decision should be reversed and remanded. *Because the “discrepancies” i.e. “factual inaccuracies” Howard references were the cause of Howard’s decision to dismiss,* Howard is manifestly wrong in claiming the factual inaccuracies are “immaterial” in this matter and cannot serve as a basis of a breach of contract claim. Rather, they *are* extremely material and Colvin can and does state breach claims related to the Dean’s decision to dismiss him.<sup>6</sup>

---

<sup>6</sup> In the course of its assertions Howard reviews the criteria for a breach of contract claim and concludes Colvin cannot conjure a breach claim under any theory of contract law:

To prevail on a claim of breach of contract, the plaintiff must establish (1) a valid contract between the parties; (2) an obligation or duty arising out of the contract; (3) a breach of that duty; and (4) damages caused by breach. Tsintolas Realty Co. v. Mendez, 984 A. 2d 181, 187 (D.C. 2009). HU Brief, p. 21.

**d. Colvin Can and Does State a Breach Claim for the University Dismissing Him Prior to 2019.**

Howard posits that “Colvin cannot State a Breach of Contract Claim For the University Dismissing Him Prior to 2019.” See HU Brief, p. 22-24. Howard posits further, “Colvin has not identified any contract, whether it be implied or actual, that guarantees him a minimum of five years to complete his candidacy regardless of whether he continues to meet the academic standards of the university.” *Id.* Howard’s contention here seemingly pertains to Colvin’s Count II claims in his complaints that Howard breached implied contract when it revoked his candidacy status and dismissed him prior to May 9, 2019, the maximum time he was allowed to be in candidacy as a matter of contract. If this is Howard’s contention, then it is in error. As noted in sections a thru c above, Colvin correctly identifies the bad faith dismissal Howard executed that breached the implied covenant of good faith and fair dealing aspect of their contract as a breach claim relating to the university dismissing him prior to 2019. Additionally, Colvin identifies the candidacy provision of their contract that allowed him up to five years in candidacy status that was breached when Howard dismissed in bad faith. See Colv. App.

---

Actually, Colvin’s breach of implied contract claims fit perfectly the *Tsintolas* court standard noted by Howard. In his complaints, Colvin notes (1) a valid contract between the parties (the student-university contract); 2) that Howard had *an obligation arising out of that contract* according to the implied covenant to provide a review of his record based on the facts and not misinformation, and (3) when he notes that he was dismissed on the basis of misinformation and denied the opportunity to defend his dissertation and be conferred with the Ph.D. degree, he identifies *a breach and damages caused by Howard’s contract breach.* See Counts I and II of Colvin’s Complaint in Colvin III and IV, and his proposed Verified Amended Complaint #2.

Exhibit 4, p. 6-7 at 41-46, 48-49. Insofar as Colvin has stated a breach (actually breaches) related to the university dismissing him prior to 2019, Howard's assertion should be dismissed by this honorable Court.

e. Colvin Can and Does State Breach Claims that Howard Denied Him Informal and Formal Grievance Procedures

Howard contends Colvin "fails to state a claim for breach" with his allegation that it failed "to provide him with informal and formal grievance procedures." See HU Brief, p. 24-27. This section indicts as failing Counts III, IV, and V of Colvin's complaints in Colvin III and Colvin IV. Howard offers a slew of arguments in support of the above contention that contain myriad factually untrue statements and fallacious reasoning. Each of these arguments is replied to in turn.

#### **Howard's Arguments**

In support of Howard's position that Colvin does not state a claim that it denied him formal and informal grievance procedures, Howard advances the following: 1) it is unclear whether the formal or informal grievance procedures attach to Colvin's dispute; 2) if they do, any grievance is moot as Colvin has conceded his dismissal is an academic decision entitled to judicial deference and therefore any grievance is futile; (3) the first two steps relate to disputes with subordinate positions to the Dean and disputes with the Dean are exempt from the first two informal steps; (4) if the procedures attach, Colvin pleads that Howard properly provided step 3 when he met with Assoc. Dean Ellison; (5) thereafter Colvin abandoned his grievance as he did not specify it in writing; (6) rather than continue with the grievance process, Colvin elected to seek redress outside the

process, by appealing directly to the Provost and President; (7) to the extent Colvin alleges breach of an implied contract for the Provost closing his file, Colvin has not alleged any contract whereby he was guaranteed review by the Provost, and thus any allegation regarding the Provost's review cannot support a breach of contract claim; (8) by appealing to the Provost, Colvin functionally waived the informal and formal processes; (9) no party in informal or formal grievance can overrule a decision by the Provost as upheld by the President, but regardless Colvin did even not attempt to initiate the formal grievance process. See HU Brief, p. 24-27.

### **Colvin's Replies**

To Howard's arguments, Colvin replies accordingly: 1) Colvin's dismissal was an academic decision and as such the Student Academic Grievance Procedures attach to his dispute; moreover, where there is discrepancy between the two parties over a section of the contract and it is ambiguous, and it is reasonable for Colvin as the non-drafting party to believe that he could use the procedures for his dispute, this Court under *contra proferentum* should rule in Colvin's favor; (2) Colvin agreeing that his dismissal is an academic decision is not synonymous with conceding his dismissal is entitled to judicial deference; in fact, Colvin provides reasons why his dismissal is not entitled to judicial deference in arguments (a) and (b) above; (3) Howard's claim that an academic grievance involving the Dean is exempt from The Informal Procedure Process Steps 1 and 2 is baseless; the language of the Procedures grants no such exemption; (4) Colvin did not plead that he was properly provided step 3 when he chronicled his June 2016 meeting with Assoc. Dean Ellison; Colvin's meeting with Assoc. Dean Ellison occurs prior to

Colvin beginning grievance (*see* Colv. App. Exhibit 4 at 57-59 and Colv. App. Exhibit 5 at Exhibit 4 at 20) and *thus a meeting occurring before Colvin initiated grievance*<sup>7</sup> *cannot be used to argue Howard satisfied step 3 of informal grievance*, (5) Colvin did not abandon grievance after attempting Informal Step 2 but merely went to “discuss”<sup>8</sup> with the Provost the difficulties he was having pursuing informal grievance with the Dean, after which the Provost “closed” his case<sup>9</sup> (Colv. App. Exhibit 4, p. 9 at 63-64); (6) Colvin never abandoned informal or formal grievance to seek redress outside the process, but rather was precluded from further pursuing grievance as a result of the Provost’s closure of his case<sup>10</sup> (*Id.*, at 64-68); and he only contacted the President after he had been told he could no longer pursue Formal Grievance (*Id.* at Exhibits “O” and “J”); (7)

---

<sup>7</sup> As the procedure itself delineates, it is the *student* that initiates the Student Academic Grievance Procedures, not the University. *See* Colv. App. Exhibit 4 at Exhibit “K.” Howard concedes this in its Appellee Brief, p. 5, par. 2.

<sup>8</sup> *See* Colv. App. Exhibit 4 at 63. Colvin also states he went to the Provost for “counsel.” *See* Colv. App. Exhibit 7 at Exhibit “A” (Declaration of Deon D. Colvin) p. 3 at 15.

<sup>9</sup> Howard maintains Colvin went to the Provost for “appeal” or “reconsideration” of his dismissal. *See* HU Brief, p. 7, par. 2 and p. 27, par. 1. However, *Howard presents no letter submitted by Colvin to the Provost requesting an appeal or reconsideration. It presents no letter of claims sent to the Provost as part of an appeal or reconsideration process. It presents no letter by the Provost stating to Colvin the date and manner of an appeal or reconsideration.* In contrast, Colvin presents additional documents that show he only went to “discuss” his matter with the Provost (Colv. App. Exhibit 4 at Exhibit “J” pg. 1, par. 1 and Exhibit “N”). In the absence of contravening evidence, Colvin’s pleading is to be taken as true.

<sup>10</sup> Additionally, Colvin argues while he certainly did not request an “appeal” or “reconsideration,” even if he desired such, the Provost could not and should not have commenced either one because such processes did not exist in Colvin’s contract with Howard. *Thus there was no relief that the Provost could have given Colvin by contract when Colvin visited him in July 2016.*

Howard breached implied contract when the Provost closed Colvin's case because the closing action is not a part of grievance procedure and it occurred before Colvin was provided informal or formal grievance (*Id.*, 65-68, 76-78, 83-85) and while he was seeking it; (8) as Colvin did not appeal to the Provost, he never waived the informal and formal grievance processes, (9) Colvin did not initiate formal grievance because while he was in the process of drafting his grievance letter, he was told by a Howard official that he no longer had the option of pursuing grievance because his enrollment had been revoked.<sup>11</sup>

Despite Howard's myriad objections and arguments, examination of the record shows that Howard improperly denied Colvin access to its Student Academic Grievance Procedures in an obvious breach of their student-university contract, which entitled him to grieve academic decisions. Therefore, Howard is patently wrong in claiming Colvin cannot state a breach claim alleging that it denied him informal or formal grievance procedures. Inasmuch as Colvin was a victim of contract breaches in the ways articulated

---

<sup>11</sup> Lastly, Howard posits *Bain* and *Mesumbe* are not apt comparisons to the instant matter because they were students in another College at the University and were dismissed for different reasons, and because the *Bain* case was ultimately decided in Howard's favor. See HU Brief, p. 25, fn. #10. Colvin replies that both cases are apt comparisons for the purpose they were presented to the trial Court, which was to show the types of cases that were being grieved at Howard University via its Student Academic Grievance Procedures, *i.e.* procedural, academic dismissal cases. What is *not* of importance (and ironically, this is what Howard stresses) is the outcome of the cases relative to this matter because they differ in legal substance, as *Bain* and *Mesumbe* involved purely procedural issues leading to their academic dismissals while Colvin's case involves administrative error leading to his.

in Counts III, IV, and V of his complaints, the counts should be remanded for further proceedings.

f. **Colvin Can And Does State a Breach Claim on the Basis of Howard's Two Policy Manuals With Different Ph.D. Requirements**

Howard claims that Colvin cannot state a breach of contract claim for its having in circulation two Graduate School Rules and Regulations Manuals (1979) during Colvin's matriculation with different Ph.D. requirements. See HU Brief, p. 28. Firstly, Howard states such a claim is barred by *res judicata*. Secondly, it states such a claim cannot be made because "Colvin fails to identify any contract between himself and Howard where there would be only one policy manual." *Id.* Thirdly, Howard contends that this is a harmless error as "Colvin admits that both policies contain the same provision requiring dismissal of a Ph.D. student who did not complete his program in seven years." *Id.* In arguing the latter, Howard seems to be intimating that its having two competing policy manuals did not substantially affect Colvin's matriculation rights—and had no bearing on the instant matter to any appreciable extent—as Colvin was dismissed because he did not complete the program in seven years. With the above assertions, Howard attempts to discredit Colvin's Count 6. Colvin replies Howard is patently wrong with all its premises and that he can and does state a serious breach of contract claim that had great bearing on the instant matter.

First, Colvin's claim is not barred by *res judicata* because Colvin I was dismissed without prejudice and as such was not a final decision on the merits. Since Colvin I was not a final decision, and Colvin II was voluntarily dismissed and was not a final decision

either, Colvin raising this claim in Colvin III is not barred by *res judicata*.<sup>12</sup> Secondly, the **student-university contract** that existed between Colvin and Howard is the contract that Colvin indirectly identifies in his complaint where he states Howard having two policy manuals made it “impossible for him to...discern its Ph.D. requirements during his matriculation” (See Colv. App. Exhibit 5 at Exhibit 4, p.13 at Caption to Count 6).<sup>13</sup> Further, the nature of an implied contract is that some of its terms are so basic and fundamental to the contractual relationship that they are comprehended and assumed by the parties to be a part of the contract as a matter of course (i.e. as a matter of “doing business”) and a requisite of being in the contractual relationship *even though they are not written down*. Colvin’s expectation that there would be clear requirements for the Ph.D. degree he was pursuing at Howard is a contractual requisite that needs no elaboration or justification. If there are no clear Ph.D. standards how was Colvin to know

---

<sup>12</sup> Howard incorrectly states Colvin raises the claim for the first time in Colvin IV, when he also raises it in Colvin III, in his proposed Verified Amended Complaint #2, which the trial court refused to admit. See Colv. App. Exhibit 5 at Exhibit 4, p. 13-15 at 99-113.

<sup>13</sup> Colvin is a layperson and thus his complaint and pleas in pursuance thereof should be given liberal construction by this court. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972) (“however inartfully pleaded....the allegations of the *pro se* complaint...we hold to less stringent standards than formal pleadings drafted by lawyers”); Schnitzler v. United States, 761 F. 3d 33, 38 (D.C. Cir. 2014) (the District Court has “an obligation to construe a *pro se* plaintiff’s filings liberally, and to consider his filings as a whole, before dismissing a complaint”). Additionally, Colvin *does* mention the student-university contract that existed between himself and Howard (and that extended to the Howard University Graduate Rules and Regulations Manual (1979)) elsewhere in his complaint, which he included by reference in his Count 6. See Plaintiff’s Opposed Motion For Relief From Order, Reopening of Case, and For Leave to File An Amended Complaint in Colvin III, Exhibit 4, p. 8-9, and 13 at 50, 61-62, and 98 in the case record.

if he was meeting or not meeting standards, and how could the university know if he qualified for the Ph.D. degree? Thus for Howard to have two manuals containing different course viability requirements was a breach of implied contract because it meant that it had no cognizable standards for the degree Colvin was pursuing. Howard argues that this was a harmless error that did not hurt Colvin because he was dismissed for not satisfying the seven year provision that was in both manuals. Howard's argument fails because (1) Colvin was dismissed because of belief he did not have viable courses, and 2) it was the course requirements for the Ph.D. degree that differed in each manual that directly impacted Howard's review and evaluation of Colvin's courses and led to the evaluation that Colvin should be dismissed. Colvin articulates this in his Count 6 where he states the Dean used "Manual 2" instead of "Manual 1" "which led to the Dean's evaluation of numerous semesters of Colvin's courses as unviable and to [his] dismissal" (Colv. App. Exhibit 5 at Exhibit 4, p. 14 at 107, 101-102, 104-105). Colvin was also harmed throughout his matriculation as "he did not know nor could he have [ever] known what Howard's course viability standards were for the Ph.D. degree." *Id.*, p. 108. Howard had *a contractual duty* to have clear standards for the degree Colvin was seeking. Having identified a contract, a contractual duty, and harm resulting from Howard's failure to perform its contractual duty<sup>14</sup>, Colvin can and does state a valid breach of contract claim against Howard for its having two policy (i.e. Rules and Regulations) manuals during his matriculation (2004-2016). Finally, Howard's concluding claim is that "Colvin cannot plead a breach of contract claim, or generally

---

<sup>14</sup> Tsintolas Realty Co. v. Mendez, 984 A. 2d 181, 187 (D.C. 2009).

invalidate Howard's policies, merely because he has located an aged version of the Rules that is consistent, but not verbatim identical, with the Rules cited in his dismissal." See HU Brief, p. 28. This is a baseless and meritless assertion as Colvin did not just "locate an aged version of the Rules" but rather the manual he references and that is the basis of the instant matter ("Manual I") was provided to him by *the Assoc. Dean of the Graduate School* as a reference for the Graduate School Ph.D. standards when he went to her to discuss his dismissal from the university for allegedly failing to meet its Ph.D. standards. See Opening Brief, p. 12-13. Accordingly, Howard's claim that Colvin cannot state a breach related to Howard having two Policy Manuals is baseless, and Colvin's Count 6 should be remanded for further proceedings.

## **II. COLVIN'S CLAIMS ARE NOT PRECLUDED AS A MATTER OF LAW DUE TO PRIOR ADJUDICATIONS, AND HE SHOULD BE GRANTED LEAVE TO AMEND HIS COMPLAINT**

*First*, Howard argues to this Court that the instant consolidated matters (Colvin III and Colvin IV) are precluded as a matter law—particularly *res judicata*, collateral estoppel, and the law of the case, because they contain the same nucleus of facts as Colvin I, which, although it was dismissed without prejudice, was a final adjudication on the merits. See HU Brief, p. 30-39. Howard's argument here is baseless. A dismissal without prejudice is not a decision on the merits. See *Shin v. Portals Confederation Corp.*, 728 A. 2d, 615, 618 ("it is beyond dispute that a dismissal without prejudice does not determine merits"). Colvin II was voluntarily dismissed by Colvin and thus it was dismissed without prejudice as well. Hence the instant matters have not had a prior final decision on the merits and thus are not barred by the aforementioned legal doctrines.

*Second*, Howard argues that the trial Court was right in its preclusion of Colvin IV, because Colvin III, from which Colvin IV derives as an amended refilling, was finally adjudicated and the fact that it was a simple dismissal is of no moment. *Id.* Colvin does not object to the Colvin IV Court's dismissal on *res judicata* ground, rather Colvin is appealing *this* Court's interpretation of a simple dismissal as being a final adjudication on the merits, thus Colvin IV is properly included in the instant matter for this Court's deliberation of Colvin's arguments in support of a reinterpretation of a simple dismissal as being a non-final adjudication on the merits.

*Third*, Howard contends the trial Court should have precluded Colvin III and this Court should do so, because Colvin I was a final adjudication with preclusive effect. Howard is incorrect here, for as mentioned above, Colvin I was not a final adjudication, so Colvin III is not precluded under the above legal doctrines.

*Fourth*, Howard advances that the trial Court properly held that Colvin's attempt to amend his complaint is futile. Howard is incorrect here as well. As Colvin notes in his Opening Brief (p. 45-47), he adds a valid breach of contract claim and additional pleadings and facts that bolster his complaint. Because the amended complaint adds a valid cause of action and significant facts and evidence that indicate Colvin's complaint to be valid, the trial Court erred and abused its discretion when it refused to grant leave to amend. Thus Colvin is entitled to ask this Court for reversal of the lower Court's rejection of his request. Howard's objection to this is wrongheaded, and its reasoning that Colvin has "filed seven complaints against Howard across four lawsuits", and has "demonstrated an abject inability to cure the deficiencies of his complaints filed across

multiple lawsuits" (HU Brief, p. 38) is hyperbolic and baseless, as Colvin III is really only Colvin's second full attempt at his claims (as Colvin II was voluntarily dismissed) and thus Colvin III's case history does not show repeated re-filings and an inability to cure deficiencies as Howard suggests. In all, Howard's arguments for the dismissal of the instant matter lack legal standing and this honorable Court should summarily reject them.

### **III. COLVIN IV IS NOT TIME BARRED BY THE APPLICABLE THREE-YEAR STATUE OF LIMITATIONS**

Finally, Howard argues Colvin IV should be dismissed because it is time-barred. See HU Brief, p. 39-42. Howard cites the statute of limitations began to run on Colvin's complaint starting June 6, 2016 and that Colvin's December 4, 2016 filing of Colvin IV is proximately six months beyond the three year statute of limitations this District allows for the filing of a breach of contract claim. *Id.*, p. 40. Howard's statute claim was lodged, but not addressed, at the trial court level. Colvin argues Colvin IV was tolled under this Court's discovery rule<sup>15</sup> because Colvin did not know he had been injured until October 19, 2017, when he received his student file from Howard and found he was in candidacy, which is the basis of all six of his causes of action (i.e. his breach of implied contact, grievance procedure, and damage claims). See Colv. App. Exhibit 7 at Exhibit "A" at 10-12, 21-23. Prior to that time Colvin did not have the necessary knowledge or

---

<sup>15</sup> Capitol Place I Assocs. L.P. v. George Hyman Constr. Co., 673 A. 2d 194, 199 (D.C. 1996)(Under the discovery rule, "accrual occurs...when a party knows or by the exercise of reasonable diligence should know (1) of the injury; (2) the injury's cause in fact; and (3) of some evidence of wrongdoing."

evidence regarding his matriculation to sustain a cause of action.<sup>16</sup> The statute of limitations clock normally begins to run “when the factual and legal prerequisites for filing a suit are in place.” 3M Co. v. Browner, 17 F. 3d.1453, 1460 (D.C. Cir. 1994). For the above reason, Howard errs when it argues Colvin IV was time barred as of June 6, 2019, because the Court’s discovery rule tolled his filing deadline to October 19, 2020.

## CONCLUSION

The standard to survive a 12(b)(6) motion to dismiss is the plaintiff must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009). Colvin has outstandingly met this burden of showing Howard dismissed him and stripped him of his Ph.D. candidacy based on misinformation; and failed to provide him grievance procedures. Additionally, Colvin pleads and provides evidence that Howard breached contract the entire time of his matriculation by not having cognizable Ph.D. requirements, and demonstrates how he was harmed by that breach as well. Colvin also rightly petitions the Court for a new and fairer interpretation of simple dismissals by the D.C. Superior Court. In short, Howard’s objections fail in every aspect. For the above reasons, and because the trial court erred, Colvin appeals to this Court of Appeals to reverse all dismissals of his causes of action and remand this matter for further proceedings.

---

<sup>16</sup> The Graduate School nor the Department of Political Science provides written notice to students that they are in candidacy. Prior to receiving his student file, Colvin only had the word of mouth of his advisor regarding his status, who had been wrong on other matters related to his candidacy (See Colv. App. Exhibit 7 at Exhibit “A” at 5-12) and which he could not rely on in a court of law if his advisor had advised him wrongly, or failed to remember what he had told him.

August 28, 2020

Respectfully Submitted To This Honorable Court of Appeals,

  
Deon D. Colvin  
Appellant *Pro Se*