

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ONONDAGA

**ZACHARY LANGDON,**

Petitioner,

For a Judgment Pursuant to Article 78 of  
the New York Civil Practice Laws and  
Rules

-against-

**SYRACUSE UNIVERSITY,**

Respondent

VERIFIED PETITION

Index No. \_\_\_\_\_

Petitioner, **ZACHARY LANGDON**, by and through his attorneys **ENGEL LAW**

**OFFICES** (Todd S. Engel, Esq, of counsel) alleges as follows:

INTRODUCTION:

1. Petitioner commences this special proceeding to challenge the actions of Syracuse University (hereinafter cited as "SU") through its Office of Student Rights and Responsibilities (hereinafter cited as "OSRR") issued a decision finding Petitioner Zachary Langdon "responsible" for violations of the following provisions of SU's Code of Student Conduct; See determination letter of Syracuse University attached hereto and made a part hereof as **EXHIBIT A**.

1) Physical harm or threat of physical harm to any person or persons, including but not limited to: assault, sexual abuse, or other forms of physical abuse. -- Responsible

2) Harassment—whether physical, verbal or electronic, oral, written or video—which is beyond the bounds of protected free speech, directed at a specific individual(s), easily construed as "fighting words," or likely to cause an immediate breach of the peace. -- Responsible

3) Conduct—whether physical, verbal or electronic, oral, written or video— which threatens the mental health, physical health, or safety of any person or

persons including, but not limited to hazing, drug or alcohol abuse, bullying and other forms of destructive behavior. -- Responsible

9) Disorderly conduct including, but not limited to, public intoxication, lewd, indecent or obscene behavior, libel, slander or illegal gambling. -- Responsible

15) Violation of University policies, rules or regulations that are published in the Student Handbook, or other official University publications or agreements. -- Responsible

Office of Residence Life - Residential Policies, 4i. Rights of Others -- Responsible

2. The only findings of fact offered by Syracuse University and the entire support for the determination was the following:

The Board found that on or about December 8, 2017, you threatened and harassed members of your residence hall community by your actions and the language you used. You contributed to a culture of bullying others by placing trash cans in front of people's doors. You made obscene and bias-related comments to various individuals on the floor, including "your boyfriend's tits are bigger than yours" and "really, the black girl anthem". In addition, you drew a swastika during a game played in a public lounge area. These behaviors, along with your attempt to discover who initially reported your behavior for an earlier incident, led to a unsafe environment for fellow students living in your residence hall.

3. Based on these findings, OSRR issued the following sanctions which are punitive in nature:

You are hereby placed on a status of indefinite suspension from Syracuse University for one academic year, effective immediately. You are to remain on indefinite suspension until the spring 2019 term. This means that you are prohibited from any presence or activity on Syracuse University owned, operated, or controlled property and from enrollment or participation in any course or program offered by Syracuse University. This includes the University Sheraton, Park Point, Campus West, Drumlins Country Club, and University Village. Should you need access to campus property or programs for any reason, you must obtain prior approval from this office. Failure to adhere to this directive will result in new Code of Student Conduct charges being filed where Expulsion is a possibility and you will be arrested for trespassing. Furthermore, violating this sanction may be grounds to deny your petition to return to the University, especially if you were suspended for threats/violence-related behavior, damage to property, or drug sales.

You must plan to vacate your on-campus housing assignment by Friday, April

6, 2018 at 5:00pm. You are expected to check out at the main desk of your assigned residence hall and return your room key by that time. Failure to return your room (or apartment) keys will result in at least a \$50 lock core replacement fee.

You may petition to return to Syracuse University as early as the spring 2019 academic term. To be considered for readmission for a future academic term, you are required to submit a petition demonstrating your good citizenship during your time away from Syracuse University.

This petition must be in writing or in another tangible medium and must include all of the following:

1. A personal statement (1) reflecting on what you have learned from the incident that resulted in your departure from Syracuse University; (2) describing your activities during the period in which you have been separated from the University (such as enrollment in courses at another college or university or full or part-time employment); and (3) articulating with specificity the ways in which you will contribute to building a positive community at Syracuse University if you are permitted to return.
2. You must submit evidence of academic progress and/or gainful employment during your time away from Syracuse University. You are strongly encouraged to contact your academic advisor to discuss the process for transferring credits into your program at Syracuse University. Please arrange for these materials to be sent directly to the Office of Student Rights and Responsibilities, 310 Steele Hall, Syracuse, NY 13244 in the following format:
  - a. You will be required to submit an official transcript from any institution you may have attended during your suspension from Syracuse University; and/or
  - b. You will be required to submit a paystub and/or a letter on company letterhead which clearly verifies your dates of employment and scope of your work.
3. You must submit written verification of completion of at least 80 hours of community service beginning on or after April 3, 2018. Community service projects must be verified in writing by the agency that you have chosen to serve. Community service hours may not be verified by any member of your family or by any student of Syracuse University or SUNY ESF. In addition, you may not receive payment for your services.
4. You must submit at least three (3) character references from individuals who will be able to attest to your good citizenship, maturity and readiness to return to Syracuse University. These references must be in writing and may not be completed by a family member, friend or another Syracuse University or SUNY ESF student.
5. Find three books related to the topics of diversity, inclusion, and mindfulness. Write a 1-page synopsis of each book. Using the three books that you read, along with additional sources, write a 12-page research/reflection paper on the following prompt:

- What does it mean to be a member of a diverse community?
- How do you plan to contribute in a meaningful way to the communities of which you are a member?
- What does diversity mean to you?

Your paper should be double spaced, with standard 12 point font and 1 inch margins.

Your petition and the above referenced materials should be submitted on or after December 1, 2018 for consideration for readmission for the spring 2019. You may upload your petition at once or separately using the Petition to Return from Suspension form. Upon review of your submitted materials, you will be informed in writing whether and under what conditions we would be prepared to support your return to Syracuse University.

In accordance with University policy, you have the right to appeal this decision. Any appeal must be submitted in writing and conform to the procedures outlined in Part 12 of the Syracuse University Student Conduct System Handbook. Should you wish to exercise this right, you must submit your Intent to Appeal by 5 p.m., on April 4, 2018. You must submit your full Appeal of University Conduct Board Outcome online to the Office of Student Rights and Responsibilities within three (3) business days (no later than 5:00 p.m. on April 6, 2018).

Consistent with federal law, Syracuse University retains records of Code of Student Conduct violations for seven years from the date of the most recent incident in the student's file or until one year after the student has graduated from the University, whichever is longer, provided the student was not suspended, expelled, prohibited from future enrollment or otherwise withdrawn for disciplinary or medical reasons, in which case the records are retained indefinitely.

4. Petitioner brings this proceeding due to the fact that Respondent violated SU's Code of Student Conduct and Process Manual (hereinafter cited as "Administrative Hearing Procedure") and the requirements of due process by (1) failing to provide a clear statement of the charges against Petitioner in sufficient detail to enable him to prepare a defense, (2) by failing to provide a fair and independent hearing process in accordance with due process standards, (3) by failing to base the decision on credible evidence, (4) by failing to make a determination based on

an application of the elements of each Code of Student Conduct provision allegedly violated, (5) by failing to maintain a proper record of the proceeding to enable SU to meet its obligations to show that the decision was based on a fair credible process under Article 78, (6) by failing to apply the free speech protections guaranteed to students in the SU Bill of Rights, and (6) by acting in an arbitrary and capricious manner by making findings unsupported by “substantial evidence,” and by failing to consider the context in which statements made by Petitioner were made.

## II. PARTIES

5. Petitioner was a fulltime student at Syracuse University who resided in campus housing. He is 19 years old, and entered Syracuse University in the Fall of 2017. He intended to graduate as part of the Class of 2021.

6. Petitioner enrolled at Syracuse University as a cadet in the United States Army’s ROTC program. Upon information and believe, Syracuse University admitted Petitioner under a special contractual arrangement and scholarship with the United States government as part of the Army’s ROTC program.

7. Upon information and belief, Syracuse University is a non-profit corporation with its principal place of operations in Syracuse, New York. It is licensed and regulated as a University by the State of New York, and upon information and beliefs, receives grants and substantial funding from the State of New York and the United States Government.

8. Syracuse University’s OSRR is responsible for handling administrative proceedings brought against SU students for allegedly violating SU’s rules, including claims brought under Title IX of the United States Code.

9. Syracuse University's process for conducting such administrative proceedings against its students are contained in the SU Student Conduct System Handbook. A copy of the SU Student Conduct System Handbook, which I obtained from SU's website, is attached hereto as **Exhibit 3**.

10. The OSRR failed in its duty to preserve a record of the hearing when it failed to either electronically or stenographically record the proceeding, thereby denying Petitioner's due process rights under New York's CPLR Article 78 to obtain a judicial review the conduct of the proceeding.

11. Since Petitioner's rights under the SU Student Conduct System Handbook were not provided to him, and were in fact violated, since SU did not provide fundamental fairness and due process in the conduct or determination of the claims brought by the OSRR against Petitioner, and since the decision and sanctions imposed on Petitioner were arbitrary and capricious, SU is made a Respondent in the instant proceeding.

### III. FACTS

12. Petitioner Zachary Thomas Langdon was an 18 year old freshman student enrolled at SU for the 2017-18 academic year. He was an ROTC contracted cadet attending SU under a special ROTC contract between the federal government and the University which provided him with a full college scholarship.

13. He was assigned by Syracuse University to reside at the DellPlain residence hall.

14. Petitioner was informed by an officer with the Syracuse University Department of Public Safety ("DPS) on or about December 11, 2017, that four female students in his dormitory provided statements to DPS against Petitioner and three other white male students, two of whom were also ROTC cadets, alleging that Petitioner and the other students made offensive statements

or engaged in other acts which they claimed were improper.

15. The day that the DPS officer took the statements, the DPS officer told Petitioner that he would be charged with something, but they did not tell him specifically what we would be charged with.

16. Upon information and belief, DPS failed to undertake any serious or meaningful independent investigation of the truth or relevance of any of the allegations made against Petitioner. DPS did nothing more than write down the allegations made by the students. DPS did not seek to verify the accuracy of the allegations, did not question the students making the statements to determine how they knew about the facts alleged, and did not seek independent verification from eye witnesses of the allegations. The lack of corroborating evidence should have prevented any charges from being brought.

17. On or about February 9, 2018, Petitioner received formal charges from the OSRR. The charges were brought by OSRR, not by the alleging students. The charging statement, attached hereto and made part hereof as **EXHIBIT C**, specified the student code sections that Petitioner was accused of violating, but did not specify any facts or any basis for the OSRR's determination that Petitioner had violated any of the rules.

18. Upon information and belief, the OSRR made no effort to investigate or verify the truth of the charges, or to tailor the charges to the facts that had been alleged against Petitioner, before bringing the charges. Instead, OSRR issued to Petitioner a form charging letter alleging that Petitioner violated all of the policies in the student manual without providing any specific allegations about how the student's conduct constituted a violation of the charges.

19. The charging letter against Petitioner fails to contain factual allegations, and fails to indicate how any of the unstated allegations made against Petitioner would constitute a violation

of any of the policies in the student manual.

20. On or about February 11, 2018, Petitioner went to OSRR's offices to find out what the charges were about, since the charging letter gave Petitioner no clue as to the basis of the charges. The OSRR officer told Petitioner that he was being charged with violating the Code of Student Conduct because other students had alleged to DPS that Petitioner made the following statements:

1. Hiroshima Political Comment. According to OSRR, a student alleged that Petitioner had said that the United States should celebrate the dropping of the atomic bomb on Hiroshima. Petitioner believes that this allegation was based on a statement made by Petitioner that was taken out of context. Petitioner had a discussion with a resident named Sylvia from another floor about whether the United States should have dropped the atomic bomb on Hiroshima. Petitioner said it was the right thing to do because of all the lives it saved by avoiding the invasion of Japan. Petitioner said that there should be a day of remembrance for Hiroshima just like there is one for Pearl Harbor. This was a protected political statement that could not constitute a violation of the Code of Student Conduct and was protected by SU's free speech policy.

2. Second Class Citizens Comment. OSRR claimed that one or more students alleged that Petitioner said that women were "second class citizens." Petitioner categorically denies ever saying that, and certainly does not believe it. Petitioner suspects that Sylvia made the allegation by extrapolating from a discussion they had about whether men's or women's snowboarding was better to watch. Petitioner said he liked Men's snowboarding better, and Sylvia disagreed.

In any case, Petitioner was not told who made or what was the basis of the allegation and therefore could not adequately respond to the allegation made against him. Moreover, even if Petitioner had said and believed that women were “second class citizens,” which he did not say and does not believe, the statement of opinion would be protected by SU’s policy on free speech.

3. Alleged Trash Cans. According to OSRR, a student named Brian told DPS that a student named Zach put trashcans in front of his (Brian’s) dorm room. Petitioner states categorically that he never put trashcans in front of Brian’s or anyone else’s room.

It is possible that this allegation directed at another student named Zach who was in the group of students being charged, rather than to Petitioner, and the DPS officer might have mixed up which student Brian was referring to. In either case, there was no credible evidence presented at the hearing to show that Petitioner placed trashcans in front of Brian’s room, or that the placing of trashcans in front of a student’s room would constitute a violation of SU’s rules.

4. Swastika. According to OSRR, one or more of the students alleged that Petitioner made anti-Semitic jokes and used a swastika while playing a game called “quiplash,” which is a comedy game, with four other male students. No specific anti-Semitic jokes were alleged. Petitioner denies making anti-Semitic jokes. Petitioner used a swastika as his game symbol because he had the lowest score in the game, and the swastika represented the fact that he was a “loser” at quiplash. At one point, Petitioner also used a Hammer and Sycle as his symbol during another game for the same reason, which was not charged as a

violation of the student code.

Petitioner denies being anti-Semitic, and denies making anti-Semitic jokes. No specific evidence of anti-semitic jokes made by Petitioner was ever provided. Game pieces used in a game of Quiplash could not possibly constitute a violation of the Code of Student Conduct and is protected by Syracuse University's promise of free speech

5. Fire Alarm Joke. According to OSRR, one or more students alleged that Petitioner said to one of his friends that he could understand how someone could shoot up a school. This allegation was taken entirely out of context. After the dormitory had a string of four fire alarms in one night, at about 4:00 a.m., while half asleep from being awakened by the fourth fire alarm, Petitioner made the statement in jest to express his frustration about being unable to sleep. One of the women on the floor asked Petitioner why he said that, and Petitioner said it was a joke because of all the fire alarms. This statement is protected free speech, was said in jest, was taken out of context, was not stated as a threat, nor could it be taken seriously when viewed in the proper context. Again, the statement was protected by SU's policy on free speech since no one was being incited to commit an immediate breach of the peace.

6. Black Girl Anthem. Petitioner was accused of saying "Really Raven – is that the black girl anthem?" A fellow student who Petitioner was friendly with named Raven was playing outside in public at a loud level a rap song called "Bodak Yellow," which has very crude lyrics. Petitioner made what he was thought to be a joke to her, someone he knew and considered a friend,

about the song. This student instead was offended by Petitioner's statement. This student told Petitioner that she was offended by the statement, and Petitioner promptly apologized for saying it. Months later it was included as a charge against Petitioner. Although this statement was identified in the decision, the Panel made no attempt to explain how it constituted a violation of the charges. A single casual statement like this, even if viewed broadly, certainly could not rise to the level of a "fighting words" or "incitement" as defined by the United States Supreme Court, and thus the statement was protected by Syracuse University's promise of free speech

7. Alleged Boyfriend Comment. According to OSRR, a woman on Petitioner's floor alleged that Petitioner told her that "her boyfriend's tits were bigger than yours." This allegation is entirely false. Petitioner told the woman's boyfriend, who had been working out and was wearing one of her shirts, that "his boobs were bigger than his girlfriend's." The boyfriend laughed. Petitioner never said anything like that to her, and it was a joke to her boyfriend about his working out. The finding in the suspension notice is not based on the words Petitioner used, and mischaracterizes to whom the words were spoken and why, in an apparent attempt to support a harassment charge. Once again, the allegation was based on rank hearsay that was disputed, and the person making the allegation was not available for examination. No attempt was made to verify the truth of the allegation. The use of rank hearsay statements in this way violated basic principles of fairness and due process.

#### IV. THE CONDUCT OF THE HEARING

21. Upon information and belief, SU's rules allow a charged student to have a procedural advisor attend and provide advice during the disciplinary hearing. Petitioner requested to have a procedural advisor appointed to assist him at the hearing. The OSRR told Petitioner that no one was available to serve as his procedural advisor, an attorney would not be allowed in the room, and that he would thus have to defend himself alone at the hearing. Thus, Petitioner was forced to defend himself against an organized presentation by the OSRR with no opportunity to question or confront the disputed hearsay evidence presented against him by an SU police officer who had no first hand knowledge of the underlying facts.

22. On March 27, 2018, the conduct board hearing was held. Upon information and belief, the panel consisted of five students chosen and trained by the OSRR. The hearing was the epitome of a kangaroo court.

23. A Department of Public Safety (DPS) officer presented the statements that DPS collected, as if they were verified and true facts, even though no attempt was made by DPS to verify or to determine the accuracy or context of the statements. No corroborating testimony was given.

24. Petitioner was not allowed to cross-examine the officer. He could only ask questions to the hearing panel, most of which they rejected. No other witnesses testified, and Petitioner had no ability to call, confront or question his accusers.

25. The DPS Officer, who merely transcribed witness statements, and the Board itself mixed Petitioner up with other students several times during the proceeding. For example, Petitioner was accused at the hearing of calling a gay student a derogatory term – an allegation not made at the meeting with OSRR. Petitioner told the panel that he never used that term and asked for the date, time and location of the alleged statement. The DPS officer then identified the person

who made the statement as another student named Zachary (not Petitioner). After realizing that they had the wrong identity, that article was discarded. Had DPS or the OSRR performed a proper investigation, or had the alleging witnesses been required to testify, this prejudicial mixup would never have happened.

26. Later in that same hearing the Board read an accusation that “Zachary” had smeared apples on another student's door.” Petitioner again stated that the allegation was untrue and not mentioned in his meeting with the Office of Student Rights and Responsibilities. The board said it was an error or mix-up and dropped it.

27. Upon information and belief, the hearing panel spent a majority of the hearing discussing a statement that Petitioner had made in October 2017 that was not part of the charges that Petitioner was informed about in his meeting with OSRR. Clearly, the OSRR presented the hearing panel with additional factual allegations against Petitioner, *ex parte*, before the commencement of the hearing. The full extent of OSRR’s *ex parte* “briefing” of the panel is not known to Petitioner, but such conduct clearly prejudiced the independence and fairness of the proceeding. After all, the OSRR was the complaining party at the hearing, and had a conflict of interest in briefing the hearing panel outside of the hearing process. Upon information and belief, no attempt was made by the OSRR to separate its role as prosecutor from its role as the party duty bound to conduct a fair and independent hearing process.

28. The new statement that took up much of the hearing arose out of a playful conversation petitioner had with a female African-American friend in the dormitory. During the conversation, the friend playfully told Petitioner to go to his room, and petitioner responded with something like “don’t tell me what to do, you go back to your plantation.” She was offended, Petitioner apologized, and the friend told him that she accepted his apology. Sometime later, she

complained about the statement. Petitioner had previously been charged with violating the Code of Conduct for this statement, and accepted a settlement under which he had to watch an anti-bias movie. Petitioner met the requirements of the punishment by the University, and the matter was concluded. It was unfair and prejudicial for the hearing panel to have been given this statement and for it to be brought up at the hearing because it was not part of the charges that Petitioner was provided and had already been resolved. Yet, this prior event was the main focus of the hearing, even though Petitioner objected to it being considered.

29. Under SU's written procedures, the allegations supporting the specific charges against Petitioner should have been set forth in writing before the hearing so that Petitioner would know the charges against him and be able to defend them. Syracuse University did not provide proper written notice of the charges, and instead upon information and belief, briefed the hearing panel *ex parte* in a manner that prejudiced the fairness and independence of the process. Petitioner was forced to respond at the hearing to allegations made without prior notice, to allegations arising from mixed up identity, and to an event that was the subject of a previous sanction and not part of the current charges.

30. The hearing was a farce because SU did not comply with its obligations to provide a clear written statement of the basis for the charges.

31. Petitioner attempted to put these relatively minor, and generally playful, statements that he did make, described above, in context.

32. Petitioner believes the hearing panel predetermined the results before the hearing started, and were not interested in hearing his contextual explanations.

33. No one who complained against Petitioner was present for examination concerning the truth of the allegations or the context in which they were made. It was a "star chamber" type

of proceeding, supported by *ex parte* charges given to the panel outside of the hearing by OSRR, and testimony by a DPS officer who did nothing more than act as a stenographer for hearsay allegations that were either false or taken badly out of context.

34. In ruling on the matter, the panel made no attempt to apply the specific elements of charges to the statements that they found against Petitioner. The panel simply determined that they did not feel the statements should have been made, and therefore constituted a violation of everything that had been charged.

35. The hearing panel ignored the presumption of innocence, and Petitioner's fundamental right to confront and question the truth of disputed allegations made against him. The Office of Student Rights and Responsibilities, the complaining party, tampered with the independence of the panel by having control of the panel selection and training process outside of the pervue of Petitioner, by providing the panel with allegations and briefings outside of the confines of the hearing process, all while having a clear conflict of interest in acting both as the prosecutor and the coordinator of the hearing.

36. Petitioner is informed and believes that it is OSRR's standard procedure for an OSRR employee to act as a hearing panel "advisor" during the hearing panel's deliberations. Allowing the complaining party to participate *ex parte* in the hearing panel's deliberations would prejudice the entire process. Petitioner is informed and believes that OSRR does not keep a record of the deliberations, which are conducted by OSRR in secret.

37. The hearing panel issued its decision dated April 3, 2018, finding Petitioner guilty of all of the charges, even charges for which no evidence of any kind had been presented at the hearing (such as making threats of physical harm, conduct threatening safety of others, disorderly conduct, and violation of unspecified other policies).

38. It is not clear who actually prepared the hearing panel decision that was submitted to Petitioner. Because it was included on a form used by OSRR, Petitioner believes that OSRR was involved in actually writing the decision. The ruling simply finds Petitioner guilty of all of the allegations without any analysis, and states that the panel believed certain unsubstantiated allegations read by the DPS officer at hearing, even though Petitioner disputed those allegations and they were not supported by any credible evidence.

39. Petitioner does not believe that SU made any record of the proceeding. There was no stenographer present during the hearing to transcribe the testimony and preserve it for appeal, and there was no apparent recording equipment or microphones used at the hearing. No transcript or video recording was provided.

40. Petitioner is informed and believes that OSRR recommends in its training process that the hearing panel provide as little justification for its determination as possible because it believes that providing unsupported conclusions will make the decision more difficult to challenge and review.

## **V. The Appeal Process**

41. Petitioner timely submitted an appeal, and received a ruling that was virtually identical to the hearing panel determination. There was no evidence that Petitioner's appeal was even considered by anyone outside of the OSRR. Petitioner does not believe the persons responsible for reviewing the record on appeal had a record to review. Attached hereto as **EXHIBIT D** is a true and correct copy of the denial of Petitioner's appeal.

## **VI. The Independence of Hearing Panel**

42. Petitioner believes that the students on the hearing panel receive virtually no legal training on the presumption of innocence, and reliability of evidence, the meaning of the burdens

of proof, or the proper procedures for conducting an independent and fair hearing. Instead, they are trained to apply their own notions of political correctness, and to say as little as possible in their decisions about the basis for their findings in order to make the findings difficult to challenge.

43. The OSRR's control over the hearing process resulted in an unfair and biased hearing. OSRR had a conflict of interest in bringing the charges and seeking a conviction on the one hand, while being required to run the process in a fair and independent way on the other. No attempt was made to separate the individuals at OSRR responsible for bringing the charges from the individuals running the hearing.

44. OSRR trains, selects, and instructs the hearing panel in secret. OSRR provided the hearing panel with allegations and information outside of the hearing process before the process began; the scope and content of those communications are unknown to Petitioner.

45. OSRR controlled and was in a position to continue to communicate with the hearing panel after the hearing, both during and after the deliberations, and was in a position to influence those deliberations.

46. The SU hearing process gave Petitioner no right to be represented, to confront or cross-examine witnesses concerning disputed matters of fact, to compel the attendance of witnesses making allegations, or for the Petitioner to monitor or assure the independence and fairness of the process of selecting, training and briefing the hearing panel members. The hearing process is entirely in the control of the OSRR, which had a clear conflict of interest because it was also the complaining party.

#### VII. SU's Promise of a Fair and Independent Hearing Process

47. . The Syracuse University Statement of Student Rights and Responsibilities provides as follows:

## 9. FUNDAMENTAL FAIRNESS

Students have the right to fundamental fairness before formal disciplinary sanctions are imposed by the University for violations of the Code of Student Conduct—as provided in the published procedures of the University’s Conduct System or other official University publications. Students have the right to written notice and the opportunity for a hearing before any change in status is incurred for disciplinary reasons unless a significant threat to persons or property exists.

48. Similarly, the Syracuse University Bill of Rights provides as follows:

### Bill of Rights

All faculty, staff and students have the right to:

\* \* \*

4. Participate in a process that is fair, impartial, and provides adequate notice and meaningful opportunity to be heard.

49. The Hearing procedures also require the hearing panel to consider the evidence fairly and impartially:

9.1 The purpose of the hearing is to provide the opportunity for complainants and respondents to present all relevant testimony and other information with regard to alleged violations of the Code of Student Conduct. It is the responsibility of the hearing Board to consider impartially all relevant testimony and other information, determine the facts, and impose appropriate sanctions.

Syracuse University Student Conduct System Handbook, Section 9.1

### VIII. The Non-Punitive Purpose of SU’s Conduct Process

50. According to the Applicable Syracuse University Student Conduct System Procedures 2017-2018, the purpose of the Student Conduct System is educational. It was not enacted by the University to be punitive, and not enacted to advance a political correctness agenda.

Sections 1.6 to 1.8 specifically provide:

The University views its student conduct process as a learning experience that is intended to result in the growth and understanding of individual

responsibilities on the part of all persons.

1.7 The decision to pursue allegations of student misconduct through the University Student Conduct System is deemed acceptance of its philosophy that any potential sanctions will be designed to address the safety and security of persons and property and to educate students with regard to higher standards of behavior.

1.8 Violations of the Code of Student Conduct will be adjudicated by the University Student Conduct System, which is designed to reflect and to support the educational mission of the institution **and ensure the fair and equitable treatment of all individuals and groups charged with** or reporting student **misconduct**.

#### IX. SU's PROMISE OF FREE SPEECH

51. The first provision in SU's Statement of Student Rights and Responsibilities expresses its commitment to, and guaranty to students of, the right to free speech:

##### 1. SPEECH/EXPRESSION/PRESS

Students have the right to express themselves freely on any subject provided they do so in a manner that does not violate the Code of Student Conduct. Students in turn have the responsibility to respect the right of all members of the University to exercise these freedoms.

52. Thus, SU cannot punish students for engaging in speech unless that speech constitutes a violation of the **specific provisions** of the Code of Student Conduct.

#### **X. FOR A FIRST CAUSE OF ACTION: DEPRAVATION OF DUE PROCESS RIGHTS**

53. Petitioner repeats, and realleges and incorporates each paragraph hereinbefore mentioned.

54. .For all of the foregoing reasons, Petitioner has been denied his rights to due process provided to him by the New York State and Federal Constitution, and therefore the result was an arbitrary and capricious determination by Respondent in violation of the law.

#### **XI. FOR A SECOND CAUSE OF ACTION: VIOLATION OF ADMINISTRATIVE PROCEDURES**

49. Petitioner repeats, and realleges and incorporates each paragraph hereinbefore

mentioned.

50. For the foregoing violations of the SU Code of Student Conduct and Administrative Hearing Procedures, the Respondent has violated the Petitioner's contractual rights under SU's Code of Student Conduct and Hearing Procedures, and the final result was arbitrary, capricious or otherwise in violation of law.

**XII. FOR A THIRD CAUSE OF ACTION:  
RESPONDENT'S DETERMINATION WAS UNSUPPORTED  
BY SUBSTANTIAL EVIDENCE**

76. Petitioner repeats, and realleges and incorporates each paragraph hereinbefore mentioned.

77. For the foregoing violations of the SU's Code of Student Conduct and Administrative Hearing Procedures, the Respondent's determination was made in violation of Petitioner's rights under SU's procedures. Moreover, the facts found by the hearing panel do not constitute violations of the Code of Student Conduct under the defined elements of the claims. The decision was thus arbitrary, capricious, and unsupported by substantial evidence.

**WHEREFORE**, Petitioner respectfully prays that the Court vacate the finding of responsibility of the Petitioner, and vacate all sanctions imposed on him, issue an injunction requiring SU to remove any mention of the matter in SU's official records and transcript, and enjoin any further action against him on the basis of the acts identified in the proceeding, and for such other and further relief that the Court deems just and proper.

No prior request for this relief has been made to this or any other Court.

DATED: Syracuse, New York  
August \_\_\_\_\_, 2018

Yours, etc.,

---

TODD S. ENGEL

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VERIFICATION

I have reviewed the foregoing petition and verify that everything is true and correct based on my own personal knowledge, or where indicated based on my information and belief.

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Zachary Langdon