

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT of MICHIGAN

KYLE NELSON,

Plaintiff,

V

File No. 2:17-cv-  
Honorable

NORTHERN MICHIGAN UNIVERSITY,  
and in their individual and official capacities,  
LINA BLAIR, CHRISTINE GREER, GUY  
LaPLANTE, JOHN FRICK, JIM GADZINSKI,  
PAUL LaPLANT, THREE ANONYMOUS  
STUDENT MEMBERS OF THE STUDENT  
CONDUCT BOARD HEARING COMMITTEE,  
and UNKNOWN MEMBERS OF THE STUDENT  
CONDUCT APPEALS COMMITTEE,

Defendants.

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**COMPLAINT and JURY DEMAND**

Plaintiff Kyle Nelson makes his complaint as follows:

**Preliminary Statement**

Kyle Nelson was expelled from Northern Michigan University in violation of his Federal Constitutional Rights under the Due Process Clause of the 14<sup>th</sup> Amendment to the Constitution, when he was denied the rights to delay Student Conduct Board proceedings until after resolution of his concurrent criminal case, denied the right to confront the witnesses against him, and repeatedly retaliated against for his invocation of constitutional rights. After his expulsion, all criminal charges against him were dismissed.

### **Nature of Action and Jurisdiction**

1. The jurisdiction of this court is invoked pursuant to 42 USC §1983 and 28 USC 1331 for deprivation of Plaintiff's rights to due process under the First and Fourteenth Amendments to the United States Constitution, pendent jurisdiction pursuant to 28 U.S.C. § 1367 over the Michigan statutory law claims under § M.C.L. 15.231 *et seq.*, and because the amount in controversy exceeds \$75,000. Venue is proper in this District as all defendants are residents of the Western District of Michigan, Northern Division.

### **Parties**

2. Kyle Nelson ("Mr. Nelson," "Kyle") is a young man from Illinois who began attending Northern Michigan University in fall, 2014. He majored in construction management, and before his suspension from the University that led to his eventual expulsion, was living on campus in Gant Residence Hall, carrying a grade point average of approximately 3.55.

3. Northern Michigan University ("NMU") is a State of Michigan public university, in Marquette County, State of Michigan, with a mailing address of 1401 Presque Isle Ave., Marquette, MI 49855-5301, phone number 906-227-1000.

4. Defendant Lina Blair, at all times relevant, was the Assistant Dean of Students at NMU, who bore responsibility for the Student Conduct Board charges against Plaintiff, and oversaw the hearing as a non-voting chairperson. She is sued in her official and individual capacities.

5. Defendant Christine Greer, at all times relevant, was the Assistant Vice President and Dean of Students at NMU, to whom Defendant Blair reported. She sent a letter to Plaintiff suspending him from school and barring him from campus under threat of arrest, before any of his charges were adjudicated.

6. Defendant Guy LaPlante, at all times relevant, was a Detective/Lieutenant with the Northern Michigan University Department of Public Safety and Police Services, who investigated the alleged criminal charges against Plaintiff, obtained a search warrant based on hearsay evidence, and testified against him in his Student Conduct Board hearing.

7. Defendants Jim Gadzinski, Paul LaPlant, John Frick, and “Three Anonymous Student Members of the Student Conduct Board Hearing Committee,” at all times relevant, were NMU staff, faculty, and/or students of NMU who comprised the Student Conduct Board that heard and decided Kyle’s Student Conduct charges. They are sued in their official and individual capacities.

8. Defendants “Unknown Members of the Student Conduct Appeals Committee,” at all times relevant, were NMU staff, faculty, and/or students of NMU that considered and denied Plaintiff’s appeal of his expulsion. They are sued in their official and individual capacities.

## **FACTUAL ALLEGATIONS**

### **Criminal Allegations Are Made Against Kyle**

9. On November 2, 2015, a complaint was made via email, to an NMU “tip line,” alleging that Kyle was involved in drug activity.

10. Defendant LaPlante interviewed a witness (“John Doe”) who made certain allegations against Kyle.

11. Based on Doe’s allegations, LaPlante swore out an affidavit for search warrant against Kyle. The affidavit was based entirely on hearsay evidence.

12. The search warrant was granted and executed on November 2, 2015 by LaPlante, and returned an assortment of over the counter and prescription pills and a small amount (less than an ounce) of alleged marijuana and marijuana “wax.”

13. After the search was executed, LaPlante read Kyle his “Miranda” rights, and Kyle exercised those rights under the Fifth Amendment, and chose to not make any statements.

14. Kyle was charged by the Marquette County Prosecutor on November 3, 2015 with a single count of delivery of marijuana on 11/3/2015 (MCL 333.7401 (2) (d) (iii), a felony with a maximum sentence of 4 years imprisonment, fine of up to \$20,000, and other possible penalties.

15. Kyle was arraigned on November 4, 2015 was eventually bound over to Circuit Court on the charge.

#### **NMU Initiates Conduct Board Proceedings**

16. While the criminal charges were pending, NMU (via defendant Greer) sent Kyle a letter dated November 3, 2015 suspending him from school “until all charges are adjudicated,” and that he was prohibited from “enter[ing] onto any part of the campus” campus under threat of arrest and filing of additional *Student Code* charges.

17. On December 18, 2015, NMU initiated eighteen charges against Kyle alleging various violations of the NMU Student Code, for Drugs: Possession, Use or Sale (Code 2.3.12) and under the “General Regulatory Statement (Student Code 2.3.15).

18. According to the charging document, the charges were based on a “Description of Incident reported by” Defendant LaPlante, with “Charges Imposed by” Defendant Blair.

19. A Conduct Board Hearing was held on April 15, 2016. Defendant Blair was the “non-voting chairperson” of that proceeding. Other Board members included defendants John

Frick, Jim Gadzinski, Paul LaPlant, and “Three Anonymous Student Members Of The Student Conduct Board Hearing Committee” whose names are redacted from the hearing transcript.

20. Kyle was represented by attorney Trent Stupak.

21. NMU’s Code states at 2.4.5.13 that attorneys are not permitted in conduct proceedings except in the event that there are concurrent criminal charges, in which case “the role of the attorney is limited and passive. He/she cannot actively participate in the hearing or ask questions. His/her role is to advise the student regarding self-incrimination and to observe the proceedings. All communication regarding the student conduct process will be directed to the student.”

22. Accordingly, Stupak was permitted to be present because Kyle’s criminal case was concurrent and ongoing.

**Defendants Rebuffed Kyle’s Multiple Requests to Postpone  
the Conduct Board Hearing until the Criminal Case Was Concluded**

23. NMU’s Student Handbook, which sets forth rules of procedure in Conduct Board Hearings, states at section 2.4.5.14: “Disciplinary proceedings involving a student charged with conduct that potentially violates both the criminal law and the Student Code will proceed without regard to pending civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this Student Code may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the Dean of Students or designee. “

24. The Handbook also permits the Dean of Students, or designee, the authority to postpone a hearing “due to extenuating circumstances.”

25. Conduct board hearings are recorded and the case file is otherwise vulnerable to subpoena by the prosecuting attorney.

26. Kyle had a Fifth Amendment right to not make any statements in the conduct board proceeding that could be used against him in his criminal case. Accordingly, before and during the conduct board hearing, Kyle made multiple requests to postpone it until the conclusion of his criminal case. All such requests were refused by Defendant Blair.

27. Kyle had also demanded that the witnesses against him be produced so that he could cross-examine him in the hearing; Blair also refused these requests.

28. When the hearing commenced on April 15, 2016, in accordance with his constitutional right to remain silent and not have his statements to the NMU defendants be used against him in his criminal charges, Kyle stood mute to the charges that were alleged against him.

29. After Kyle confirmed that none of the multiple witnesses who had made allegations against him in the police investigation would be present at the hearing, including the person who had made the allegations to the NMU “tip” line, he stated in his opening statement:

“I object to this hearing moving forward in the absence of the complaining witness. I do not have the right to cross examine the witness nor any of the witnesses. I was demanding that all of the witnesses be here and no one showed. Everyone lied about the truth. Any statements by them saying I was here and I have many documents saying I was out in Chicago many times. So I'd like to present my opening statement now. I mean I don't think this hearing should move forward but, I mean, I can't -- I mean I want to cross examine people because I want to see these people. I don't even know these people and they're lying to me ....”

30. Kyle also noted that he had objections to the search that had been executed, and noted in the hearing that there was a pending challenge to that search. He further stated:

“I hope to clarify and answer some questions. However, I am limited because of my pending Marquette County charge. The Northern Michigan University code of conduct philosophy is being compromised because my 4th Amendment rights of search and seizure have been violated. I have yet to exercise my Constitutional rights of a fair trial.”

31. When questioned why he was seeking an extension and to not move forward today, he stated, “Because I have to stand mute on many charges because of the pending court things and what's going on and I'll have a better case to prove myself once it gets cleared up and I can talk more on the charges.”

32. In response to Kyle’s request for an extension, Blair responded, “But according to the student code, we move forward, the University moves forward with charges regardless.”

33. During the Hearing, Conduct Board members repeatedly ignored Kyle’s invocation of constitutional rights, pressed him with questions, and told him that if he did not refute the charges, they would make a decision based on the allegations. Examples include:

MALE VOICE: So Kyle, you realize if you don't elaborate at all on any of these charges or give us any reason to provide any other information, we're just going to go off the information that we have in front of us and make our decision based off of that regardless of what's going on in the legal system.

MALE VOICE: And so Kyle, just so you know, I just want to reiterate, regardless of what's going on with the legal system, the Conduct Board is meeting today and we are going to make a decision based on all the information presented in front of us based on witness accounts and based on what you have to say. So by standing mute to all of these you're not really giving us anymore of an insight into anything.

34. When the board asked him to respond to hearsay statements, Kyle responded: “Well, as I started to say, that all these students I don't know, I've never met, and I was hoping to god they'd come here so I could ask them questions; where do I live, who am I, what's my phone number. They don't know anything about me. People say everything about me and I don't even know them. I mean, I ask them what do they know about me? They won't even come to the meeting.”

35. When the board nonetheless kept asking him to respond to the hearsay allegations, Kyle continued to stand “mute.”

36. Kyle specifically asserted his Fifth Amendment rights on more than 20 occasions but this did not deter the board from criticizing his right to remain silent. For example, at one exchange, after Kyle said “I can’t comment on anything that may incriminate myself and my current legal case,” this dialogue occurred:

MS. BLAIR: But you know what we have the pictures, right?

KYLE NELSON: I know. I’m sure whatever you’re saying, I just can’t comment, I assert my 5<sup>th</sup> Amendment right.

MALE VOICE: You can't even comment that you're aware that we saw the video?

KYLE NELSON: That's my 5th Amendment right, I can't comment.

37. On another occasion, this dialogue occurred:

KYLE NELSON: I assert my 5th Amendment right.

MALE VOICE: Kyle, we really do have to ask this.

38. Kyle was also questioned about his claims that his 4<sup>th</sup> Amendment rights were violated:

MALE VOICE: Okay, that's why I'm asking is to help me understand why you feel your rights were violated. You said specifically your search and seizure rights were violated, help me understand why that's the case.

KYLE NELSON: There's a pending motion in court to decide that issue and I can't comment any further.

39. Towards the end of the hearing, Kyle said “I’d like to ask some questions.” He was denied by Blair who stated, “No more of that.” However, immediately after she told Kyle that, the other members of the Conduct Board were permitted to ask many additional questions of both Detective LaPlante and Kyle.

40. Blair then attempted to draw the hearing to a close, and asked Kyle to provide a closing statement. He stated:



“It states in the student code of conduct book that the accused student and witness for the accused student shall have the right to question the complainant, complainant's witnesses and to examine information presented in connection with the incident. I feel I was denied the chance to answer any questions and clarify things. I know the conduct philosophy is not to interfere with my U.S. Constitutional Rights. I'll read the 2.0 philosophy: enrollment at Northern Michigan University is both voluntary and optional. The admission into the University community obligates each student to abide by the regulations established by the University. It is intended that these regulations will further the educational mission of the University by providing an environment conducted to the personal growth and development of the students. These regulations may not, however, be unreasonable or forbid the exercise of a right guaranteed by the Constitution of the United States. The 4th Amendment right to not have an illegal search and seizure and also my 6th Amendment right to have the right to a counsel were violated. I should have the opportunity to discuss this with you. I would like to be able to clarify these charges at a later date so I hope you consider that and give me an extension for another hearing. I am interested in the truth coming out and I hope you are as well.”

41. After Kyle gave this “closing statement,” board members recommenced peppering him with questions criticizing his invocation of Constitutional rights.

MALE VOICE: Kyle, you said you wanted a chance to answer questions and clarify but so far you've stood mute to every single question that any of us have asked as far as trying to get to the bottom of any of this.

MALE VOICE: Kyle, do you understand that the criminal court system and the student conduct system at Northern are two separate and distinct processes?

KYLE NELSON: Right.

MALE VOICE: So help me understand why you won't participate fully now.

KYLE NELSON: Well, LaPlante is here so it's a conflict of interest. *[Referring to LaPlante also being the complaining witness in the criminal case]*

42. Board members continued to examine and press Kyle on particular points, despite the hearing being closed, and Kyle having repeatedly and consistently asserted his Fifth Amendment rights:

MALE VOICE: But they are in the room that you have control over, according to University policy, and the vehicles that you and your witnesses have said belong to you, help me understand why the drugs, why the paraphernalia?

KYLE NELSON: I'm not going to be charged with anything and I assert my 5th Amendment right.

MALE VOICE: You are aware that any of the evidence that was seized, your phone and such, was seized via warrant?

KYLE NELSON: Those were unlawful warrants. Those are tactics used to get it (inaudible)

MS. BLAIR: Can you explain that to us?

KYLE NELSON: No.

MS. BLAIR: Any other questions for Kyle at this time?

FEMALE VOICE: So if all of this is a lie, how did it relate back to you? How did they just know, do you know what I mean? If everything is a lie, how is it that this –

....

MALE VOICE: Why would students be texting you asking if you have any [redacted]

KYLE NELSON: I don't know how to answer, I have no idea.

MS. BLAIR: Any other questions for Kyle?

FEMALE VOICE: What were the [redacted] that you were asking for?

KYLE NELSON: I have no idea.

FEMALE VOICE: Because it's a lot more than once, it's several, several times that you texted her asking for [redacted] and she responded back.

MALE VOICE: What about, [redacted] These are all 11 messages that were sent from your phone that were seized in the warrant. Do you have anything to say about that?

KYLE NELSON: That's kind of messed up, I don't know that that was ever me, but I have to assert my 5th Amendment rights. Don't know if you've got other people's phones or what.

### **NMU Expels Kyle**

43. Later that same day after the hearing, Defendant Blair emailed Kyle to inform him that he had been found responsible for violating regulations 2.3.12, "Drugs: Possession, Use or Sale," and 2.3.15, "General Regulatory Statement."

44. The email went through each of the charges, and disclosed that Kyle had been found responsible for most of them, and what the voting result of the seven conduct board members had been on each charge.

45. For many of the charges, Blair wrote that the panel determined that Kyle had “violated federal law,” “violated state law,” “violated federal and state law,” and “violated multiple federal laws.”

46. The email concluded by stating, “If you wish to appeal based on questions of fact or procedure, or for leniency of the sanction, follow the guidelines provided in 2.6 of the Student Code.”

**Kyle Sought Leniency While Continuing to Maintain His Constitutional Rights Regarding his Pending his Criminal Case**

47. On April 18, 2016, Kyle submitted his appeal. He wrote:

“I was unable to answer questions or explain myself during the conduct meeting because I had criminal charges pending in Marquette County,” and that he should have had the opportunity for the hearing to be “carried out following criminal proceedings. ... so that he could be “free to tell the truth. “

He added, “I was only told that these conduct hearings were independent of the criminal proceedings but in fact they weren’t independent which is why the consideration for the proceedings to be carried out following the criminal proceedings was crucial.”

He asked for “a chance for another hearing or to explain myself to you or for leniency on these sanctions regarding the charges for which led to my expulsion. I feel if I were able to answer the questions that I was unable to answer at the hearing you would have a better understanding of my situation.

Due to these circumstances I am asking for leniency on my sanctions and an opportunity to explain myself and answer any and all questions at a new conduct hearing.”

48. On April 28, 2016, the unknown defendant members of the Student Conduct Appeals Committee met to consider appeal. They affirmed the expulsion, in a letter of the same date, basing its decision in part on Kyle's decision to not specifically address the charges against him. They stated, "[Y]ou also had the opportunity to speak and voluntarily chose not to utilize that right during the majority of the hearing." The letter was signed, "Student Conduct Appeals Board" (*sic*).

49. On January 31, 2017, all criminal charges against Kyle were dismissed.

## LEGAL ALLEGATIONS

### Count I

#### **Violation of 14<sup>th</sup> Amendment Due Process (42 USC § 1983) – All NMU Defendants**

50. As a student at public university, Plaintiff enjoyed a constitutionally protected property interest in continuing his education, and obtaining his degree.

51. Because the allegations against him impugn his reputation and integrity, Plaintiff also enjoyed a protected liberty interest.

52. Plaintiff was entitled to due process of law before he could be deprived of his constitutionally protected interests.

53. Plaintiff's right to due process is particularly strong in the case of a disciplinary matter; see, e.g., *Flaim v. Med. College of Ohio*, 418 F.3d 629 (6<sup>th</sup> Cir 2005) and *Doe v. University of Cincinnati, et al.*, \_\_\_ F 3d \_\_\_ (6<sup>th</sup> Cir., No. 16-4693, 9/25/17).

54. At a minimum, due process requires a person facing suspension or expulsion "the opportunity to be heard at a meaningful time and in a meaningful manner." This includes an

opportunity to present his side of the story, and be able to “respond, explain, and defend,” “before an unbiased decision maker.” [*Flaim* and *Doe*, Id., internal cites omitted]

55. These rights include cross-examination, where credibility is essential to a determination of the truth.

56. Where Plaintiff was unable to present his side of the story, without jeopardizing his constitutional rights of criminal procedure, he was essentially deprived of his due process rights, and NMU made a one-sided determination that was averse to him. As noted in *Doe*, “One-sided determinations are not known for their accuracy.”

57. Moreover, NMU’s procedures in this case were fundamentally unfair. Defendant Blair had the ability to postpone the hearing but chose not to do so. She permitted members of the Conduct Board Committee to repeatedly grill Kyle about the allegations, even after the hearing was closed, when they were well aware he was invoking his constitutional right to remain silent. In fact, Defendant LaPlante first memorialized Kyle’s invocation of his Fifth Amendment right when he questioned him on November 2, 2015.

58. Defendants were also unduly influenced by retaliatory animus to Kyle for invoking his constitutional rights in the hearing, judging from their repeated attempts to get him to answer questions, their apparent frustration, their communications that they would make a decision without his input, and the Appeals Committee’s reference to Kyle’s remaining silent as a basis for their decision.

59. Ironically enough, the expulsion decision communicated to Kyle on April 15, 2016 justified much of its basis by concluding that Kyle had violated federal and state law, as opposed to NMU regulations.

60. In depriving Plaintiff of his constitutionally protected rights, including his fundamental right to and property interest in continuing his public university education, Defendants' actions abridged his right to due process of law in violation of the Fourteenth Amendment to the United States Constitution.

61. At all times relevant, Plaintiff had a clearly established right to due process of law, of which a reasonable public official would have known, especially given the seriousness of the charges, potential sanctions, and consequences of error or deprivation of rights.

62. Defendants would have been especially aware of Kyle's constitutional rights to due process of law in a disciplinary proceeding after the *Doe* decision referenced above, but despite that decision and multiple invitations for Defendants to revisit and vacate the decision, they refused.

63. Moreover, Defendants would not have been burdened by delaying Kyle's Conduct Board hearing until the conclusion of his criminal proceedings, given that the hearing did not take place until nearly six months after the incident.

64. Defendants' insistence on expelling Kyle, and all the other attendant adverse consequences, were arbitrary, capricious and motivated by bad faith.

65. These individual Defendants, by their conduct, showed intentional, outrageous, and reckless disregard for Plaintiff's Due Process rights, deprived him of those rights, and acted out of vindictiveness, malice and ill will towards Plaintiff, and bias and animus, with intent to punish Plaintiff for and to deter him from exercising those rights.

66. At all times relevant, the individual Defendants named in this suit and the other agents, representatives, and employees of Defendant NMU were acting under color of state law

and in concert or conspiring with one another, in a common plan, and as such their actions represented official policy of Defendant NMU, and are attributable to Defendant NMU.

67. As a direct and proximate result of Defendants' illegal conduct, Plaintiff has suffered great damages, as described herein.

## **Count II**

### **Retaliation (42 USC § 1983) – All NMU Defendants**

68. Plaintiff has a right to be free from retaliation for exercising rights protected by the First, Fourth, Fifth, Sixth, and Fourteenth Amendment to the U.S. Constitution, including his right to obtain counsel to protect his rights in the Conduct Board proceedings, and to protect his rights to remain silent so that it would not jeopardize his criminal proceedings.

69. Defendants have retaliated against Plaintiff for exercising his rights to obtain counsel by permanently expelling him.

70. Defendants repeatedly expressed exasperation and frustration with Kyle's assertions of legal rights; and acting under color of state law and in concert with one another, by their conduct, showed intentional, outrageous, and reckless disregard for Plaintiff's constitutional rights, with vindictiveness and ill will, and with an intent to punish Plaintiff for and to deter him from exercising his rights.

71. The acts of these defendants, and other agents, representatives, and employees of Defendant Northern Michigan University are attributable to NMU, and represent NMU official policy, with animus and mistrust of attorneys evident even their Code of Conduct.

72. At all times relevant, Plaintiff had a clearly established right to the above-cited constitutional rights that a reasonable public official would have known.

73. As a direct and proximate result, Plaintiff has suffered great damages as described herein.

### **Damages**

74. As a direct and proximate result of Defendants' actions, Plaintiff suffered damages exceeding \$75,000, as follows:

- a. *Economic Damages* – additional cost of education, lost value of education, lost educational and lost earning opportunities, lost career opportunities, attorney fees, incidental and consequential damages.
- b. *Non-Economic Damages* – harm to reputation, emotional distress, mental anguish and continuing mental anguish, denial of social pleasures and enjoyment, inconvenience, embarrassment, ridicule, humiliation, mortification, fear, and outrage

75. At all times relevant, Plaintiff has made a good faith effort to mitigate his damages.

76. Defendants disregard for Plaintiff's rights was intentional, outrageous, vindictive, malicious, and warrants the imposition of punitive damages.

### **Jury Demand**

Plaintiff demands a jury trial.

### **Relief Requested**

**WHEREFORE** Plaintiff requests this honorable court grant him:

- a. In excess of \$75,000 damages against defendants in their individual capacities, as warranted by the law and the proofs, including:
  - i. economic and non-economic damages as described above;



- ii. the greatest possible combination of non-economic and exemplary damages;
- iii. punitive or special damages as permitted by law;
- b. costs and pre- and post- judgment interest as permitted by law;
- c. attorney fees as permitted by 42 USC 1988 (b) and otherwise under law;
- d. prospective relief, as permitted by law and equity, against Defendant NMU and the individual NMU defendants in their official capacities, for reversal of the expulsion and associated failing grades from the fall, 2015 semester, reinstatement and commensurate relief;
- e. other remedies as are just, appropriate, and permitted by law or equity.

Respectfully submitted,

NACHT & ROUMEL, P.C.

*/s/ Nicholas Roumel*

Attorneys for Plaintiff

February 1, 2018