

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

GEORGE D. VASQUEZ,

CASE NO.: 2016-CA-005010-O

Petitioner,

v.

UNIVERSITY OF CENTRAL FLORIDA,

Respondent.

Petition for Writ of Certiorari
from the decision of the University
of Central Florida.

Lance O. Leider, Esq.,
for Petitioner.

Youndy C. Cook, Deputy General Counsel,
for Respondent.

Before ROCHE, JORDAN, and DAWSON, J.J.

PER CURIAM.

Petitioner George D. Vasquez (“Petitioner”) seeks certiorari review of his suspension through Spring 2018 from the University of Central Florida. This Court has jurisdiction under Florida Constitution Art. V, § 5(b). The Amended Petition for Writ of Certiorari is denied.

PROCEDURAL HISTORY

On December 12, 2015, Petitioner and Complainant S.L. (“Complainant”), both students at UCF, attended a party; they were acquainted through the Air Force Reserve Officer Training Corps (“ROTC”). Complainant alleged that she accepted Petitioner’s offer to take her home after the party and that he followed her into her home, where he sexually assaulted her. Petitioner denies taking her home and assaulting her.

On December 15, 2015, Complainant emailed her complaint to UCF's Title IX office, alleging sexual misconduct by Petitioner occurring after the December 12, 2015 party. The case was assigned to a Title IX investigator, who directed Petitioner through a letter to have no direct or indirect contact with, or to retaliate against, the parties involved in the investigation during the course of the Title IX investigation. (Appx. A-2). The investigator met with both parties and then with Witness V.M., who was identified by both Petitioner and Complainant as a witness. Neither party identified any other witnesses at that time. Complainant provided the investigator with a text message apology that Petitioner sent to her at 3:29 a.m. on December 13, 2015 as evidence in support of her claims. Upon completing the investigation, UCF's Title IX officer recommended that there be a further investigation of Complainant's claim by the Office of Student Conduct ("OSC").

On March 16, 2016, OSC notified Petitioner that he was the subject of allegations of misconduct, specifically sexual misconduct and alcoholic beverage behavior violation. OSC informed him that there was to be an informational meeting about the claim on March 18, 2016. At the meeting, Petitioner met Rosemarie Timothy, an OSC staff member, and completed and signed the "Office of Student Conduct Formal Hearing Information Sheet" and the "Student Rights in the Student Conduct Review Process Form." The Formal Hearing Sheet outlined relevant information regarding the student conduct process, including: Petitioner's right to have an advisor of his choosing present at the hearing; the type of hearing; the date and time of the hearing; the order of events at the hearing; the action to come from the proceeding; and appellate rights. It also listed potential witnesses known to OSC, which included only Complainant and Witness V.M. Finally, the Form notified Petitioner of his responsibility to arrange for the attendance of witnesses

he wished to have present at the proceeding, and clarified that UCF had no authority to compel the attendance of any witness.

OSC notified Petitioner in writing on March 24, 2016 that his hearing would take place on March 31, 2016. The letter reiterated the violations alleged, the date of the incident report received by OSC, identified the two potential witnesses known by OSC, and described the information received to date. Finally, the letter advised that the hearing was Petitioner's opportunity to "respond to these allegations, present witnesses as applicable, and have an advisor present."

On March 28, 2016, Petitioner contacted Ms. Timothy to confirm the date of the hearing. He also submitted a list of witnesses, including Witness V.M. and Witness E.S., another cadet from ROTC and indicated that he was seeking assistance from OSC in having those witnesses attend the hearing, as "these [were] beyond [his] control and [he] understood that [he] was not allowed to contact them." (S. Appx. O). Prior to the hearing, OSC contacted Complainant and Witness V.M. and requested their participation. Petitioner also submitted a "Request for Assistance of UCF Office of Student Conduct in Identifying and Interviewing Witnesses Discussed by [Complainant]," indicating that he had reviewed the Title IX investigation, and requested that OSC open an investigation as to the identity of Complainant's friends mentioned in her complaint who told her things she did not remember doing while unconscious on the evening in question.

On March 28, 2016, Petitioner submitted his own sworn statement, a sworn statement from Witness G.C., his resume, and letters of recommendation for his application to Air Force Office of Special Investigations, information regarding his academic achievements, a Facebook screenshot of Complainant's personal page, and an affidavit from an employee of his lawyer who had contacted Complainant about her employment.

On March 31, 2016, UCF convened the student conduct proceeding. Complainant, Petitioner, Petitioner's attorney, Petitioner's father, and Ms. Timothy, who acted as advisor to the Panel, were present in addition to the Panel. Petitioner, Complainant, and Petitioner's father provided statements to the Panel. No other witnesses testified. The following is the evidence considered by the Panel.

FINDINGS BELOW

Petitioner and Complainant were ROTC cadets at UCF. (Panel Hrg. Trans. 13). Complainant was Petitioner's flight commander in the unit, but Petitioner was an upperclassman who out-ranked her. (Panel Hrg. Trans. 9). In October 2015, Complainant made a complaint to the ROTC commander about a sexually explicit comment Petitioner made to her. (Panel Hrg. Trans. 1). ROTC leadership confronted him about the comment, and he apologized for it. (Panel Hrg. Trans. 17, 34).

On December 12, 2015 a fellow cadet held a birthday party at his house that both Petitioner and Complainant attended. (Appx. A-14). In her statements and at the hearing, Complainant stated that she knew that she would be drinking, so she had her roommate drop her off; she planned on returning home by either texting her roommate when she was ready or otherwise arranging for a ride. (Panel Hrg. Trans. 35, 44, 45).

Complainant testified that she spoke with Petitioner on December 13, and he told her that he could not remember much, as he was drunk. (Panel Hrg. Trans. 21-24). This testimony is directly contradicted by an affidavit, dated March 23, 2016, wherein Peitioner indicated that he was not drunk the night of the party and he did remember all the events of the evening. (Appx. A-11; Panel Hrg. Trans. 20). He explained that at first he did not remember portions of the evening, but eventually his memory came back. (Appx. A-11; Panel Hrg. Trans. 20).

The parties' version of events diverge when Complainant and Petitioner left the party— Complainant testified that Petitioner gave her a ride home, while Petitioner testified that he did not. Petitioner's affidavit states that he left the party at the same time as Witness G.Q., who filed an affidavit stating that he and Complainant walked to their cars together and got into their own cars.¹ (Appx. A-11).

Complainant testified that she texted her roommate at 1:50 a.m. to ask for a ride home. (Panel Hrg. Trans. 35). Her roommate did not respond, so she walked out of the house to call Uber. (Panel Hrg. Trans. 35, 44, 35). She stated that while she was trying to call Uber, Petitioner approached her and offered her a ride home. (Panel Hrg. Trans. 35, 45). She said that she remembered walking to Petitioner's car, turning onto her street, parking along the street at her house, and jumping out of the car to vomit in the bushes. (Panel Hrg. Trans. 46-8). She testified that Petitioner got out of his vehicle and walked her to her front door, and that he followed her inside and into her bedroom, where he kissed her repeatedly, touched her along the leg and side, and climbed on top of her and took her pants off, all without her consent. (Panel Hrg. Trans. 46-8). Complainant testified that Petitioner sent her a text later that morning at 3:29 a.m. apologizing for his conduct. The text was as follows: "Hey im [sic] really sorry about last night i [sic] didn't mean to jump over the line and misuse the trust you had with me I hope we can meet up and talk about happened sometime today, again im really sorry if I made you feel bad, my conscience was not in its right state and I didnt [sic] mean to step over the boundaries again im [sic] really sorry and hopefully we can talk about it together :(" (Appx. A-9).

¹ Witness G.Q. had not been identified as a witness to the Title IX Investigator and did not attend the student conduct proceeding. Witness G.Q. was identified by Petitioner as a witness for the first time on March 28, 2016, two days prior to the proceeding.

Complainant's version of the events remained consistent throughout her interview with the Title IX Investigator on December 15, 2015, her sworn statement to the ROTC on March 14, 2016, her sworn interview with ROTC investigators on March 22, 2016, and her testimony at the March 30, 2016 hearing. By contrast, Petitioner's description of the night in question varied throughout the investigation proceedings below, namely that he originally told the Title IX investigator that he was drunk and could not remember much, yet prior to the conduct hearing, he filed an affidavit stating he was not drunk and could remember all of the evening's events. (*Compare* Appx. A-3 with Appx. A-11).² At the conduct hearing, Petitioner testified that he sent the text message apology to apologize for the October 2015 incident, not for anything occurring in December, 2015. (Panel Hrg. Trans. 17, 23, 32). Petitioner also submitted copies of statements of the parallel investigation that ROTC conducted, several of which mentioned the October 2015 incident. (Appx. A-18; S. Appx. L).

At the March 30, 2016 proceeding, Ms. Timothy was tasked with controlling the equipment to create a recording of the proceeding. However, at some point it became apparent that two segments of the hearing had not been recorded due to an equipment malfunction. (Panel Hrg. Trans. 60). These portions included the questioning of Complainant by Petitioner and the statement given by Petitioner's father. Upon discovery of the malfunction, the Panel recreated the questioning and statements of Complainant and Petitioner's father and ensured that those portions were recorded to have a complete record.

² In Petitioner's interview by the Title IX Investigator on January 5, 2016, he stated that he was drunk on the night in question, rating himself a 7/8 on a 10-point scale. (Appx. A-3). He stated that he remembered doing a keg stand at the party and nothing else until he woke up at home. (Appx. A-3). He reviewed and signed the statement without amendment. In Petitioner's initial interview with the Title IX Investigator, he indicated that he did not remember much about the evening due to being drunk, including giving Complainant a ride home. (Appx. A-3). In his March 28 affidavit, however, he indicates that he was not that drunk and denies giving Complainant a ride home. (Appx. A-11; Panel Hrg. Trans. 20).

At the conclusion of the proceeding and taking of statements, the Panel deliberated and reconvened to announce its ruling. The Panel found that that Petitioner was in violation of both student conduct code violations for sexual misconduct and alcohol beverages, and it recommended disciplinary suspension through Spring 2017 and educational sanctions. (Appx. A-17).

On April 12, 2016, the Director of the Office of Student Rights and Responsibilities accepted the Panel's proposed determination as to the violations and imposed the following sanctions: (1) disciplinary suspension through the Complainant's graduation date of Spring 2018; (2) disciplinary probation, upon return to UCF for the duration of his academic career; and (3) listed education sanctions recommended by the panel. (Appx. A-7). He informed Petitioner that he had the right to internally appeal the Panel's determination. (Appx. A-7).

Petitioner filed his internal appeal on April 21, 2016, which included new evidence that was not presented at the proceeding. (Appx. A-8). Petitioner also criticized the Director for improperly increasing the recommended disciplinary suspension from a suspension through Spring 2017 to a suspension through 2018. (Appx. A-8). On May 29, 2016, UCF's Dean of Students affirmed the internal appeal in all respects, including the length of the suspension. (Appx. A-1). The Dean's letter served as the final decision from UCF. Petitioner then pursued this certiorari proceeding to review UCF's decision.

LEGAL ANALYSIS

In a certiorari proceeding, the circuit court is limited to determining whether the lower tribunal's decision was supported by competent substantial evidence, whether there was a departure from the essential requirements of the law, and whether procedural due process was accorded. *Fla. Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1092 (Fla. 2000); *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995); *City of Deerfield Beach v. Vaillant*,

419 So. 2d 624, 626 (Fla. 1982); *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957) (en banc). In the instant Writ, Petitioner attacks the Panel's determination on the basis that he was not afforded due process and that there was no competent, substantial evidence to uphold the Panel's determination.

I. Due Process

"Due process is a flexible concept and requires only the proceeding be essentially fair." *Carillon Community Residential v. Seminole County*, 45 So. 3d 7, 9 (Fla. 5th DCA 2010). In the context of student disciplinary proceedings, notice of charges and an opportunity to be heard are essential to due process. *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260, 263 (Fla. 1973).

A. Failure to Maintain Proper Record of Hearing

Petitioner argues that UCF failed to maintain an accurate and complete record of the OSC formal hearing procedures as required by Florida Board of Governor's Regulation Rule 6.0105(1)(j) and Regulation UCF-5.009(3)(c). Specifically, he argues that UCF failed in its attempt to recreate the lost portions of the record by refusing to ask Complainant all questions that were originally asked, but does not identify which questions were not asked. He contends that this failure to preserve the original record interfered with his right to meaningfully appeal the Hearing Panel's April 12, 2016 decision, because the record was not accurate. UCF argues that the outage was due to an equipment failure, which was discovered shortly after the equipment malfunctioned. Upon discovery, UCF ensured that the participants recreated the omitted portions.

The Court concludes that no due process violation due to the defect in the recording equipment, Here, once UCF realized that the hearing was not being recorded, it remedied the situation by recreating the portions that were not recorded. During this process, Petitioner had the

opportunity to ask any questions he wanted re-asked, and he took advantage of the opportunity. (Panel Hrg. Trans. 71:16-19). Moreover, Petitioner fails to specify any portion of Complainant's testimony that was not recreated when the equipment malfunction was discovered. For these reasons, there is no basis to conclude that Petitioner's due process rights were violated.

B. Failure to Conduct a Thorough and Neutral Investigation

Petitioner argues that UCF, through OSC and the Panel, denied him due process by failing to conduct a thorough and neutral investigation of Complainant's claim. In particular, he alleges that it failed to identify or interview key witnesses, including those who were at the party on December 12, 2015. He also alleges that a key fact in this case is whether Complainant accepted a ride home with Petitioner or not, and there were witnesses who could have provided exculpatory information for Petitioner in this regard.

It is clear from the record that Petitioner was given an opportunity to identify witnesses, yet he failed to inform UCF of his additional witness until two days before the hearing. Petitioner was adequately informed that it was his responsibility, not UCF's, to secure his own witnesses to testify at the hearing, yet he chose to proceed without any witnesses present. The Court therefore concludes Petitioner was afforded due process in this regard.

C. Failure to Preserve Petitioner's Right to a Fair Hearing by Preventing Him from Securing Witnesses for His Defense

Petitioner contends that he was denied due process because UCF prevented him from securing witnesses to testify in his defense. He argues that the Title IX investigator told him not to contact any parties, including witnesses, who were involved in this matter. Moreover, he claims that Witness V.M. was present at the party and witnessed Petitioner and Complainant interacting. Petitioner states that he requested that UCF procure Witness V.M. to testify at the hearing.

The record refutes this claim in two ways. The first is that UCF via email from Rosemarie Timothy, the coordinator for the Office of Student Conduct, to Witness V.M., notified Witness V.M. that she was a witness to the incident and requested that Witness V.M. participate in the hearing. (*See* S. App. H.). Secondly, as discussed above, Petitioner was advised, in writing, that he was responsible for securing his own witnesses. As such, there is no indication that Petitioner was denied due process on this claim.

D. The Hearing Panel's Judgment Was Improperly Subverted

Petitioner contends that he was denied due process because the Panel was not permitted to independently determine the relevance of the questions asked at the hearing. Specifically, he argues that Rosemarie Timothy erroneously instructed the Hearing Panel on the permissible scope of the questions, thereby unfairly limiting its inquiry. He additionally argues that Ms. Timothy improperly cut off questioning relating to Complainant's statement to Petitioner of past history abuse with others, as well as instructing the Hearing Panel that "any type of prior history is not relevant and cannot be asked in a hearing, which is what [sic] I made the interruption before."

The rule governing the student conduct review process, UCF-5.009(3)(a)(1-2), requires the following in a formal hearing:

1. A panel to consider an individual case shall be randomly selected by the Office of Student Conduct from the Student Conduct Board and shall consist of two (2) faculty and administrative staff members combined, and two (2) student members. One panel member shall be selected by the Office of Student Conduct to chair the hearing and report the finding(s) and recommended sanctions, if any, to the Director of the OSC or designee.
2. **At hearings conducted by a panel, an Office of Student Conduct staff member shall act as an advisor to the panel.** The Director of the OSC or designee shall receive the panel's proposed finding(s) as to "in violation" or "not in violation" of the Rules of Conduct, and consider any sanctions proposed by the panel.

(emphasis added). This rule makes clear that Ms. Timothy was serving as an advisor to the panel, with accompanying authority to monitor and direct the hearing.

As to Petitioner's argument that Ms. Timothy improperly limited any inquiry into Complainant's prior abuse/history. UCF-5.006(9)(f)(6) states, "The complainant may not have irrelevant past conduct, including sexual history, discussed during the hearing. The issue of relevancy shall be determined by the Hearing Panel or the Hearing Officer." Petitioner maintains that Complainant's prior accusations of abuse are relevant, but he fails to explain how or why. Accordingly, the court concludes that it was not error to limit inquiries into these prior events. *See Dept. of Professional Regulation v. Wise*, 575 So. 2d 713, 715 (Fla. 1st DCA 1991) (indicating that while the rape shield statute is irrelevant in an administrative disciplinary proceeding, evidence of a patient's sexual history was "wholly irrelevant and should not have been admitted by the hearing officer"). Accordingly, Petitioner fails to demonstrate how Ms. Timothy improperly subverted the Panel's judgment and denied him due process, as she was essentially correct in her role at the hearing generally and on her relevancy ruling specifically.

E. Evidence of Apology Used for Improper Purpose

Petitioner argues that the Panel placed improper weight on a text message in which he vaguely apologized to Complainant. He states that the Panel construed the text message as an admission of guilt to prove that Petitioner had sexually assaulted Complainant. Petitioner relies on section 90.4026, Florida Statutes (2016), for the proposition that his text message should not have been admitted into evidence at all in that a statement of sympathy or benevolent gesture cannot be used as evidence in a civil action.

That statute on which Petitioner relies cuts against his argument that the text message was simply a statement of sympathy of benevolent gesture and thus inadmissible: "A statement of fault,

however, which is part of, or in addition to, any of the above shall be admissible pursuant to this section.” Fla. Stat. § 90.4026(2) (2017). His statements in his text message of “jump[ing] over the line,” “misus[ing Complainant’s] trust,” and “step[ping] over the boundaries” all tend to admit fault, rather than a simple statement of sympathy or benevolent gesture.

Additionally, there is nothing to indicate that the text message was improperly admitted as evidence or that the Panel improperly weighted it. Petitioner was given an opportunity to explain the circumstances, which he did and the Panel considered his explanation in making its determination. The Court therefore finds no due process violation.

F. Complainant Was Permitted to Discuss Petitioner’s Inadmissible Past Conduct During the Hearing

Petitioner contends that UCF-5.009(4)(h) prohibits review of an accused student’s prior conduct history until after a student has been found in violation of the Student Rules of Conduct. He argues that Complainant should not have been permitted to discuss his prior conduct history during the course of the hearing.

As a preliminary matter, the UCF regulation on which Petitioner relies only applies to prior student conduct history with UCF, while the conduct history in question is an interaction that Petitioner and Complainant had that was reported to and resolved by the Air Force ROTC. Because the matter was resolved by Air Force ROTC, the cited regulation is inapplicable to the case. Additionally, Petitioner himself interjected that prior conduct history into the proceeding when he used it to explain his text message apology, as well as mentioning it in several investigation statements. (Tr. 17:7-14, 23:10-14, 32:3-5; Appx. A-3). For these reasons, Petitioner was not deprived of due process in this case.

G. Petitioner Was Denied the Presumption of Innocence

Petitioner argues that he was denied the presumption of innocence until proven guilty, namely in that UCF improperly shifted the burden to him to prove his own innocence. In support of this argument, he points out that the Panel made statements in its “Statement of Hearing Determination” that Petitioner was not able to disprove Complainant, and therefore credited her testimony and discredited his.

UCF-5.009(4)(c) states the following:

All hearings shall be conducted on the basis that the charged student is not in violation until the preponderance of evidence proves otherwise. At a hearing, the technical rules of evidence applicable to civil and criminal cases shall not apply. The burden of proof in a student conduct hearing is not on the student charged with a violation of the Rules of Conduct.

(S. Appx. D).

In the context of student disciplinary proceedings, students are not entitled to “the same safeguards afforded criminal defendants.” *Student Alpha Id No. Guja v. School Bd. of Volusia County*, 616 So. 2d 1011, 1012 (Fla. 5th DCA 1993). As UCF notes, the proceeding was not about determining Petitioner’s guilt or innocence. The “Statement of Hearing Determination,” although perhaps inartfully written, makes clear that the Panel carefully considered all of the evidence presented to it, and made its decisions based on the totality of the evidence presented. As such, the record does not support Petitioner’s claim that he was denied the presumption that he was not in violation of the Code of Conduct, or that he was not afforded due process.

H. The UCF OSC Unduly Burdened Petitioner by Frustrating His Efforts to Bring This Petition for Writ of Certiorari

Finally, Petitioner argues that UCF frustrated his attempts to bring this petition by refusing to cooperate with his counsel in obtaining the records and communicating with his counsel. He

indicates that his counsel was not authorized to pick up the case file on his behalf, and that Petitioner was prohibited from entering the UCF campus. Additionally, he claims that UCF provided him with a transcript that lacks witness identifiers and is difficult to follow because of the redactions. As Petitioner did in fact successfully file the instant Petition, he was not denied due process in this respect.

As none of Petitioner's arguments regarding bias have merit, the Court holds that Petitioner failed to demonstrate that he was deprived of due process, as the process was essentially fair. *See Matar*, 944 So. 2d at 1160.

II. Competent Substantial Evidence

Petitioner argues that there is no competent, substantial evidence to support the findings by UCF. Specifically, he states that the testimony was unsworn, and that unsworn testimony cannot be considered in support of Complainant's position. "Competent substantial evidence is such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred or such evidence as is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *Bill Salter Adver., Inc. v. Dep't of Transp.*, 974 So. 2d 548, 550-51 (Fla. 1st DCA 2008) (internal quotation omitted).

A. Complainant's Unsworn Testimony is Not Competent Evidence

Petitioner's first argument that Complainant's testimony should be disregarded because it was unsworn is misplaced. The absence of the oath under the circumstances of this case is not fatal. *See Student Alpha Id No. Guja*, 616 So. 2d at 1012 (Fla. 5th DCA 1993) (stating that "disciplinary proceedings do not require the same safeguards afforded [to] criminal defendants"); *see also Jaska v. Regents of Univ. of Michigan*, 597 F.Supp. 1245 (E.D. Mich. 1984) (finding that school disciplinary proceedings are not criminal trials). Petitioner's argument that Complainant's

unsworn testimony does not provide competent, substantial evidence is without basis. While Complainant was not formally sworn in, she was reminded that providing false or misleading information would be in violation of the Rules of Conduct.

The record establishes that the Panel relied on several pieces of evidence to reach its recommendation, including the consistency of Complainant's testimony at the hearing and all of her prior statements given during the investigation. By contrast, Petitioner's version of the events significantly changed over the course of the entire investigation—initially he could remember almost nothing of the evening, yet his memory returned once the proceeding became imminent. It is plain that the Panel found Complainant's testimony credible, thereby providing competent, substantial evidence to support its recommendation.

B. Complainant's Testimony is Unreliable

Petitioner next argues that unreliable evidence cannot serve as the sole foundation of an essential element of an offense, and Complainant's unreliable testimony alone served as the basis for establishing all elements of the alleged offense. He particularly points to the fact that on the evening in question, Complainant was intoxicated and had no memory of getting into Petitioner's vehicle or the ride home; how long she was locked in her bathroom; how long Petitioner was in her home; and certain portions of the sexual encounter.

As a preliminary matter, the Panel found the Complainant credible and this Court should not disturb such a finding. *See Brown v. State*, 959 So. 2d 146, 149 (Fla. 2007) (determining that the appellate court “does not reweigh the evidence or second-guess the [lower tribunal's] findings as to the credibility of the witnesses”). Moreover, while Petitioner focuses on what Complainant did not remember, it is plain that there were periods of time that she did remember during the night in question, including: accepting a ride home from Petitioner; Petitioner getting out of his vehicle

and walking her to her front door; kissing her and following her into her bedroom; and climbing on top of her and taking her pants off. It is also notable that Complainant's version of the events remained consistent, whereas Petitioner's did not. The evidence that was presented would lead a reasonable mind to accept it as adequate to support the conclusion reached. *Bill Salter Adver., Inc.*, 974 So. 2d at 550-51. The Court cannot reweigh evidence and the Panel's findings of credibility. *Brown*, 959 So. 2d at 149.

C. Apology Text Message is Vague and Uncertain

Petitioner argues that the Panel improperly viewed or misconstrued the text message as an admission of guilt to the incident.

When the Panel considered the text message, it did so in context—after allowing both Complainant and Petitioner to explain the circumstances surrounding the text. In so doing, it accepted Complainant's version of the events that the message was sent as an apology for the sexual misconduct. *See Brown v. State*, 959 So. 2d at 149. That, in conjunction with Complainant's consistent testimony, provided competent, substantial evidence for accepting the text message as an apology.

D. Complainant's Testimony is Contradicted by Statements Made to Air Force ROTC Investigators

Petitioner argues that Complainant's statements were not consistent, but that she gave several contradictory accounts of the events in an independent investigation that Air Force ROTC conducted. UCF correctly points out that the statements on which Petitioner relies were not made by Complainant but by other people relaying what Complainant allegedly told them. UCF is further correct in noting that Petitioner focuses on irrelevant word choices that do not actually affect the substantive meaning of Complainant's version of the events. Petitioner's argument does not detract Complainant's credibility and the Panel's conclusion that there was competent and substantial

evidence to support its decision. *See Bill Salter Adver., Inc*, 974 So. 2d at 550-51. This argument, therefore, lacks merit.

E. Complainant's Testimony is Not Corroborated by Any Other Witness or Evidence

Petitioner maintains that Complainant's testimony was the only evidence offered to substantiate her allegations of sexual assault. He states that there were no outward signs of physical or sexual assault, and if the incidents had occurred as Complainant reported, then she would have sustained some physical injuries. This argument is purely speculative and wholly without merit. As such, the Court declines to consider it.

F. Complainant's Account of Events is Based on in Part on Hearsay From Her Friends

Finally, Petitioner claims that Complainant readily admits that she blacked out and does not remember large portions of the evening in question, and she admits that she pieced together her knowledge of the evening based on statements from her friends.

There are several problems with this argument. The first is that hearsay is admissible in student conduct hearings. *See Heiken v. University of Cent. Florida*, 995 So. 2d 1145, 1146 (Fla. 5th DCA 2008) (determining that it was permissible for the university to rely on hearsay evidence when the accused student was given an opportunity to address the hearsay). Petitioner was given ample opportunity to address the hearsay at several stages of the proceeding, yet failed to do so. The second problem is that Complainant individually made several, consistent statements of her own, independent, albeit spotty, recollections of that evening. Petitioner also made several inconsistent statements and indicated initially that he blacked out, then later said that his memory returned. This argument, therefore, must fail, as Complainant provided competent substantial evidence of her version of the events.

Petitioner's arguments regarding due process are unavailing. Additionally, the Panel's determinations are supported by competent substantial evidence, and UCF did not depart from the essential requirements of the law.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Amended Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this ____ day of _____, 2017.

/S/ _____
RENEE A. ROCHE
Presiding Circuit Judge

JORDAN and DAWSON, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Lance O. Leider, Esq.**, The Health Law Firm, 1101 Douglas Ave., Altamonte Springs, Florida 32714; and **Youndy C. Cook, Deputy General Counsel**, Office of the General Counsel, University of Central Florida, 4365 Andromeda Loop N. MH360, Orlando, FL 32816-0015; on this ____ day of _____, 2017.

Judicial Assistant