STATE OF MICHIGAN

COURT OF CLAIMS

MATTI KIUPEL,

Plaintiff,

v

Case No. 24-000128-MZ

Hon. Michael F. Gadola

BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY, MICHIGAN STATE UNIVERSITY, DOUGLAS FREEMAN, BIRGIT PUSCHNER, TERESA K. WOODRUFF, DALEN W. AGNEW, KIMBERLY DODD, NICOLE SCHMIDTKE, KATHYANN LEWLESS, and THOMAS D. JEITSCHKO,

Defendants.
_____ /

OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION AND DISMISSING THE AMENDED COMPLAINT

Plaintiff, Matti Kiupel, a professor of veterinary science at Michigan State University (MSU), sued defendants—MSU and the MSU Board of Trustees (collectively, the MSU Defendants), as well as Douglas Freeman, Birgit Puschner, Teresa K. Woodruff, Dalen W. Agnew, Kimberly Dodd, Nicole Schmidtke, Kathyann Lewless, and Thomas D. Jeitschko (collectively, the Individual Defendants)—raising claims arising from MSU's decision to impose disciplinary measures following an investigation into alleged misconduct. Pending before the Court is defendants' motion for summary disposition under MCR 2.116(C)(7) and (8). The Court GRANTS the motion for summary disposition and DISMISSES the amended complaint with prejudice.

I. BACKGROUND

Plaintiff is a tenured MSU faculty member and works at MSU's College of Veterinary Medicine. Upon his hire as an assistant professor in 2001, plaintiff received an appointment letter that informed him that he was on the tenure track and that his appointment "was 'subject to the rules and regulations' set forth in the Faculty Handbook." Plaintiff was awarded tenure in 2006 and became a full professor in 2012. Plaintiff's job duties before the events giving rise to this dispute included research in MSU's Veterinary Diagnostic Laboratory (VDL), as well as training veterinary science students and residents.

Plaintiff alleges that he was diagnosed with autism spectrum disorder (ASD) and that ASD affected his communications and interactions, including with the students and residents. He asserts that ASD makes it difficult for him to engage in back-and-forth conversations, understand facial expressions, appreciate personal space, and notice nonverbal cues from other individuals. He asserts that ASD causes him to exhibit body language that others may find unusual and speak in a loud tone of voice. As plaintiff puts it, ASD causes him to lack awareness of "normal workplace rules." Plaintiff asserts that defendants were aware that plaintiff had ASD at all relevant times and often commented, both formally and informally, on the manifestations of plaintiff's ASD. He asserts that he received negative performance evaluations from supervisors who criticized him for being too " 'enthusiastic and animated in [his] conversational tone,' " and explained that he was " 'generally not well received.' " Plaintiff maintains that the behaviors forming the basis for the negative evaluations were direct manifestations of ASD.

The circumstances giving rise to this case arose on December 7, 2021,[1] when four female veterinary residents complained about plaintiff to MSU's Office of Institutional Equity (OIE), the office designated to receive reports relating to violations of MSU's Relationship Violence and Sexual Misconduct/Title IX Policy (the RVSM Policy). The primary complainant reported that, on December 1, 2021, during a case review in the pathology laboratory involving a tumor on a cat's mammary gland, plaintiff asked the resident if the cat's owner had licked the tumor. According to plaintiff, he believed the resident in question located the wrong tissue as the tumor. So he made this statement to teach the resident "that oral tactile perception of objects is much more sensitive and accurate than tactile perception with the fingertips." Plaintiff denies that his comment was intended to have a sexual meaning. Rather, he "meant to underscore that the specimen was incorrect in size since oral perception is much more sensitive than the palpation with fingers." However, defendants maintain that the students also reported that plaintiff inappropriately touched them on their thighs and breasts and engaged in aggressive conduct, such as standing in doorways or hallways without allowing the students to pass by him. Nevertheless, the students declined to file a formal complaint at that time.

Plaintiff asserts that MSU's response to the complaint was colored by the recent negative publicity surrounding MSU's handling of sexual misconduct complaints in the wake of the Larry Nassar sexual abuse scandal. He asserts that, because of the scandal, MSU was under "extreme

[1] Plaintiff alleges that he had an exemplary professional reputation before 2021. However, defendants maintain that, in 2017, plaintiff was investigated for alleged sexual harassment of a resident at a professional conference, was found to have engaged in a pattern of inappropriate behavior, and was suspended without pay for a brief period.

pressure" to accept as true the complaints of all female victims and to punish accused male perpetrators. Thus, plaintiff maintains that, as early as December 17, 2021, both of his supervisors (Dodd and Agnew), as well as College of Veterinary Medicine Dean Birgit Puschner, had already determined that plaintiff was "problematic" and were advocating for swift action to be taken against him.

On December 30, 2021, MSU imposed interim measures pending a potential investigation, which included suspension of plaintiff's teaching and diagnostic work so that he would not have any contact with students or residents, either in-person or remotely. Plaintiff was permitted to perform some diagnostic work at home, and his pay and benefits were *not* impacted. Plaintiff alleges that the interim measures were disciplinary measures that MSU improperly imposed before conducting an investigation.

According to plaintiff, he inquired several times about the interim measures but did not receive any further information. He was assigned an advisor to guide him through the investigation. About five months later, on May 17, 2022, defendant Schmidtke (MSU's Title IX Coordinator) filed a formal complaint against plaintiff, which was not signed by the original four claimants. The formal complaint included allegations spanning from the summer of 2019 through December 2021 and included five total incidents. Plaintiff alleges that the complaint was too vague to give him notice of the allegations against him. In June 2022, the remainder of the faculty in the College of Veterinary Medicine were informed that an investigation was underway, although they were not told the identity of the individual being investigated.

The investigation occurred over the next nine months. Plaintiff asserts that the evidence gathered during the investigation, including statements of the claimants, reaffirmed that the

allegations resulted from his impaired social communications and interactions caused by ASD. He alleges that Dean Puschner made statements to the investigator suggesting she had a discriminatory animus against plaintiff on the basis of his male sex or his ASD. The OIE issued its final investigation report regarding whether plaintiff violated the RVSM policy in February 2023.

A hearing occurred over a two-day period on April 4, 2023 and April 5, 2023, before an independent third-party resolution officer named Erin Butcher. Plaintiff retained an attorney to serve as his advisor for the hearing. Plaintiff alleges that the day before the hearing was scheduled to begin, he was ordered to vacate his office in the VDL and was assigned another office 3 miles away. During the two-day hearing, plaintiff testified "that others suggested to him that he *may* have ASD." (Emphasis added.) On April 24, 2023, the hearing officer issued findings that plaintiff's conduct was not sexual in nature or objectively offensive, did not violate the RVSM policy, and did not violate Title IX. Nevertheless, MSU kept the interim sanctions in place so that MSU could review whether plaintiff's conduct violated other university policies.

On July 27, 2023, Freeman, who was serving as MSU's College of Veterinary Medicine Interim Dean, sent plaintiff a letter informing him that the interim measures would remain in place and that new measures would be put into place pending a second administrative review to assess whether plaintiff's behavior may have violated other MSU policies. The additional interim measures included a prohibition on plaintiff's attendance at faculty and staff meetings. Plaintiff maintains that the second administrative review was a form of retaliation and a pretext for gender or disability discrimination.

MSU hired a law firm to conduct an administrative review and prepare a written report as it related to any policies or procedures beyond the RVSM policy. Following its administrative

review, the law firm concluded that plaintiff violated several MSU policies, including the College of Veterinary Medicine Code of Conduct. On April 30, 2024, MSU notified plaintiff of its intent to impose serious discipline on the basis of these findings. The April 30, 2024 letter cited a variety of problematic behaviors, ranging from plaintiff's unprofessional conduct at conferences to plaintiff's inappropriate contact with female residents. Plaintiff asserts that the finding that he violated several MSU policies was premised on the same general behavior for which plaintiff was found not responsible under the RVSM policy. In a May 24, 2024 written response, plaintiff objected to the process, findings, and conclusions of the administrative review.

On July 9, 2024, Freeman informed plaintiff that the interim measures would be made permanent as a form of "serious discipline." The final disciplinary measures included the following: (1) plaintiff was required to conduct his diagnostic services and research remotely; (2) plaintiff was prohibited from entering any campus building affiliated with the College of Veterinary Medicine or from engaging with College of Veterinary Medicine or VDL staff, students, or trainees; and (3) all departmental documentation would indicate plaintiff is working remotely, and he would not be listed as faculty associated with training residents or students. Plaintiff exercised his option to file a grievance in relation to the findings. On July 31, 2024, MSU sent plaintiff another letter, which addressed his grievance and upheld the disciplinary action imposed. Plaintiff remains employed by MSU without change in pay but asserts that he has suffered harm to his professional reputation and has difficulty obtaining research funding because of the disciplinary measures.

II. PROCEDURAL HISTORY

Plaintiff alleges that the disciplinary action was discriminatory in nature on the basis of his gender, highlighting that two other female faculty members were not subject to the same

disciplinary action following an investigation of similar misconduct. He also alleges that he was discriminated against on the basis of his ASD. Plaintiff asserts the disciplinary action violated his contract with MSU and several other legal principles. Plaintiff filed this lawsuit in late June 2024, and it was transferred to this Court in mid-August 2024.

With leave of the Court, plaintiff amended his complaint. In his amended complaint, plaintiff asserted claims for (1) discrimination and retaliation in violation of the Elliott Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq*., against all defendants (Count I); (2) discrimination on the basis of plaintiff's ASD, in violation of the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq*., against all defendants (Count II); (3) breach of contract against the MSU Defendants (Count III); (4) breach of the implied covenant of good faith and fair dealing against the MSU Defendants (Count IV); (5) violation of due process against all defendants (Count V); (6) promissory estoppel against the MSU Defendants (Count VI); (7) intentional infliction of emotional distress (IIED) against all defendants (Count VII); and (8) negligent infliction of emotional distress (NIED) against all defendants (Count VIII). He alleges that because of the disciplinary process, he has suffered a variety of damages.

Also in 2024, plaintiff filed a separate action against MSU, the Board of Trustees, and many of the same Individual Defendants in United States District Court for the Western District of Michigan Case No. 24-cv-667 (the federal lawsuit). In the federal lawsuit, plaintiff raised claims for violation of Title IX of the Education Amendments of 1972, 20 USC 1681 *et seq*.; violation of substantive and procedural due process; disability discrimination in violation of § 504 of the Rehabilitation Act, 29 USC 794; disability discrimination in violation of the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*., violation of equal protection; and gender discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 USC 2000e *et seq*.

Defendants moved for summary disposition at the outset of the case under MCR 2.116(C)(7) and (8). They argue that plaintiff's ELCRA discrimination claim fails on the pleadings because the two female professors plaintiff alleges were treated differently on the basis of their female sex were not similarly situated. As for plaintiff's retaliation claim, defendants argue that plaintiff did not engage in protected activity by defending himself in the Title IX investigation and that plaintiff has not alleged a causal connection between his defense in the Title IX proceedings and the continuation of the interim measures. Defendants argue that plaintiff's PWDCRA claim fails on the pleadings because he does not (and cannot) plead any facts to support that the University was aware that he has ASD.

Defendants further argue that plaintiff's breach-of-contract claim against the MSU Defendants should be dismissed because the three policies that plaintiff cites as the basis for his breach-of-contract claim did not create an enforceable contract. They argue that plaintiff also has not alleged a material breach of contract, and plaintiff failed to allege any damages. Additionally, they argue plaintiff did not file a timely notice of intent (NOI) as it relates to this issue. Defendants further argue that Michigan law does not recognize an independent claim for breach of the implied warranty of good faith and fair dealing. As for plaintiff's promissory-estoppel claim, defendants argue that plaintiff failed to file a timely NOI for this claim and that plaintiff cannot establish that defendants made an enforceable promise. Defendants argue that plaintiff has not stated a valid IIED claim because he does not allege conduct that rises to the level of extreme and outrageous conduct, and because any IIED claim would be barred by qualified immunity.

Defendants raise additional arguments about Counts V, VII, and VIII, including an argument regarding governmental immunity. However, plaintiff agreed in his response brief to abandon Counts V and VIII (due process and NIED) as it relates to all defendants and Count VII

(IIED) as it relates to MSU and the Board of Trustees. Therefore, the Court will DISMISS these claims without further discussion on the merits.

Plaintiff further responds that he has stated a valid ELCRA discrimination claim because the two female professors outlined in his complaint were similarly situated, and plaintiff should be entitled to discovery to obtain additional details about those professors. Plaintiff argues that he has pleaded a valid retaliation claim because defendants failed to lift the interim sanctions and imposed additional sanctions after plaintiff defended himself in the Title IX investigation. For the PWDCRA claim, plaintiff argues that he adequately alleged that defendants were aware he had ASD and that they often commented on the manifestations of the disorder. For breach of contract, plaintiff argues his April 2024 NOI was timely because the claim did not accrue until July 2023, which was well within the one-year notice period. He argues the MSU policies in question created binding contractual obligations and that he alleged facts to support breach and damages. Plaintiff argues he has alleged valid claims for breach of the implied covenant of good faith and fair dealing and promissory estoppel. Also, plaintiff argues he stated a valid IIED claim as it relates to the Individual Defendants because of the facts presented in the amended complaint.

Defendants reply by reemphasizing the arguments made in their motion for summary disposition. With leave of the Court, defendants also submitted a supplemental brief, in which they explain that while this motion was pending, the federal judge issued an opinion dismissing plaintiff's federal case in its entirety with prejudice on defendants' motion to dismiss under Fed R Civ P 12(b)(6). Although the claims raised in the federal lawsuit were not identical to those raised here, they were analogous. Defendants argue that the federal judge's ruling can, at the very least, be considered persuasive authority on several key factual issues that were shared between the federal lawsuit and this action. Following the dismissal of the federal lawsuit, plaintiff filed a

notice of appeal, which was recently dismissed by stipulation of the parties in late April 2026. Although this Court permitted a response, plaintiff has not responded to defendants' supplemental brief. Because the briefing is adequately detailed to decide the issues, the Court dispenses with oral argument under Court of Claims LCR 2.119(E)(3).

III. STANDARD OF REVIEW

Defendants move for summary disposition under MCR 2.116(C)(7) and (8). Because defendants' motion under MCR 2.116(C)(7) relates to claims that plaintiff has agreed to abandon voluntarily, the focus for purposes of this Court's review is MCR 2.116(C)(8). A motion under MCR 2.116(C)(8) examines the legal sufficiency of the claims using the factual allegations raised in the complaint. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). The Court must accept the factual allegations in the complaint as true and will decide the motion on the pleadings alone. *Id*. at 160. The Court will grant the motion if the claim is so clearly unenforceable as a matter of law that no factual development would justify recovery. *Id*. Plaintiff incorporates by reference several MSU policies and procedures, which he does not attach to his first-amended complaint, but which are in the possession of the MSU Defendants. See MCR 2.113(C)(1)(b). Defendants provide a number of those policies as exhibits to the motion for summary disposition, and plaintiff does not contest their accuracy. The Court will consider these documents incorporated by reference as part of the pleadings. See MCR 2.113(C)(2).

IV. ELCRA CLAIMS

A. DISCRIMINATION CLAIM

Turning first to plaintiff's ELCRA discrimination claim, ELCRA prohibits an employer from discriminating against an individual in relation to the terms, conditions, or privileges of employment on the basis of their sex. MCL 37.2202(1)(a). A sex discrimination claim may be

established through either direct or indirect evidence. *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001). When, as in this case, the plaintiff does not rely on direct evidence of discrimination, the plaintiff must establish his indirect discrimination case through the burden-shifting framework outlined in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). *Hazle*, 464 Mich at 462. Under the *McDonnell Douglas* framework, the plaintiff may establish a prima facie claim for discrimination by showing that (1) he is a member of a protected class, (2) he suffered an adverse employment action, (3) he was qualified for the position, and (4) similarly situated individuals outside of the protected class were not affected by the employer's adverse conduct. See *Smith v Goodwill Indus of West Mich, Inc*, 243 Mich App 438, 447; 622 NW2d 337 (2000).

Once the plaintiff has established a prima facie case, a presumption arises that the employer's conduct was discriminatory. *Hazle*, 464 Mich at 463. The employer may rebut that presumption by producing evidence that the employment actions in question were taken for a legitimate and nondiscriminatory reason. *Id*. at 464. If the employer meets that burden of production, then the presumption of discrimination "drops away." *Id*. at 465. At that point, the plaintiff must demonstrate that the employer's proffered reason for the employment action was a pretext for unlawful discrimination. *Id*. at 465-466. Thus, although the burden-shifting framework exists, the ultimate burden of persuasion remains with the plaintiff. *Kilpatrick v Lansing Community College*, 348 Mich App 44, 56; 17 NW3d 689 (2023).

The focus of this case is on whether plaintiff pleads a prima facie case of gender discrimination on the basis that similarly situated female professors were not subjected to the same adverse treatment. To support that he was similarly situated to the female professors in question, plaintiff must establish that "all of the relevant aspects of his employment situation were nearly

identical" to those of the comparators. *Town v Mich Bell Telephone Co*, 455 Mich 688, 699-700; 568 NW2d 64 (1997) (opinion by BRICKLEY, J.) (quotation marks and citation omitted). However, plaintiff need not demonstrate "an exact correlation with the employee receiving more favorable treatment," but rather, the comparable employees "must be similar in all of the *relevant* aspects." *Kilpatrick*, 348 Mich App at 57 (quotation marks and citations omitted). Thus, for example, it is not necessarily dispositive whether plaintiff and the comparable professors shared a supervisor. See *id*. Summary disposition on this issue is appropriate on the pleadings when the complaint fails to allege that the other individuals were similar in all relevant aspects. See *Simpson v Dep't of Corrections*, unpublished per curiam opinion of the Court of Appeals, issued May 2, 2008 (Docket No. 275554), p 4.[2]

The federal district court has already made findings relevant to one of the two comparators in the context of plaintiff's federal gender-discrimination claims, thus raising questions about whether plaintiff's claim in relation to that professor is barred by collateral estoppel. "Generally, collateral estoppel can be invoked when three elements are met: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full [and fair] opportunity to litigate the issue; and (3) there must be mutuality of estoppel." *Hamood v Trinity Health Corp*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 364627); slip op at 5 (quotation marks and citation omitted; alteration in original). Mutuality of estoppel is not required when, as here, the collateral estoppel would be asserted defensively against a party who had a full and fair opportunity to litigate the issue. *Id*. at

[2] Although *Simpson* is not binding precedent, the Court relies on it for its persuasive value in the context of (C)(8) motions. *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017).

___; slip op at 5. In *Hamood*, the Court of Appeals recently held that collateral estoppel applied to the factual allegations supporting the plaintiff's ELCRA claims on the basis of a federal court's ruling on related Title VII claims, reasoning that although the claims were different, the *factual issues* in question were the same under both legal standards. *Id*. at ___; slip op at 7.

Likewise, in this case, while the Title IX claim raised in the federal lawsuit was not identical with the ELCRA claim raised in this case, the key factual issue of whether plaintiff could establish that similarly situated female individuals were treated differently was at issue for both claims. The comparator in question in the federal case was a female professor who was accused of engaging in a consensual, sexual relationship with a female student in 1992, which was not reported and investigated until 2018. In this context, the federal district court found that the allegations were insufficient to establish the professor was similarly situated because plaintiff "does not allege that they were in the same college at MSU, that they were subject to the same policies, or that the Individual Defendants were involved in investigating and resolving the 2018 incident." *Kiupel v Mich State Univ Bd of Trustees*, unpublished opinion of the United States District Court for the Western District of Michigan, issued July 17, 2024 (Case No. 24-cv-00667), p 12.

Additionally, plaintiff had a prior sexual harassment complaint in 2017 while the comparator did not. *Id*. at 12-13. The federal district court further concluded that plaintiff failed to plead sufficient facts to plausibly infer gender discrimination for purposes of his Title VII gender-discrimination claim for the same reasons. *Id*. at 15. Thus, the question whether plaintiff could establish a relevant comparator was essential to the claims, actually litigated, and determined by a valid judgment. There is also no dispute that plaintiff had the same opportunity to litigate the federal case. And again, mutuality of estoppel is not required when it is being applied defensively.

Regarding the finality of the federal judgment, while this motion for summary disposition was pending, plaintiff voluntarily dismissed his pending appeal in the United States Court of Appeals for the Sixth Circuit. Therefore, the district court opinion and order, which resolved all pending claims and resulted in a final judgment closing the case, retains its preclusive effect. See *id*. Thus, the issue whether this female comparator is similarly situated cannot be relitigated in the context of this case.

Even assuming the federal district court's factual findings were not binding under principles of collateral estoppel, the Court would nevertheless conclude that plaintiff fails to plead a discrimination claim as it relates to this female professor. The female professor in question is not alleged to have engaged in various acts of sexual misconduct. She was alleged to have engaged in a consensual relationship with one student, which occurred about 25 years before MSU investigated the complaint. Plaintiff does not allege that the female professor worked for the same college or was bound by the same policies as plaintiff was, or that the same individuals were involved in investigating the claims against her. Furthermore, this professor was alleged to have engaged in a relationship with one student, rather than being accused by multiple individuals of a pattern of misconduct, as was the case with plaintiff. Therefore, plaintiff does not meet his burden at the pleadings stage to plead facts to demonstrate that this comparator was similarly situated in all relevant aspects of employment.

The second comparable employee is a female professor who was accused in 2024 of referring to supporters of President Donald Trump as "naïve" and was not disciplined. Plaintiff did not mention this comparator in the federal lawsuit. Nevertheless, this comparator is not similarly situated in all relevant aspects considering she was accused of engaging in improper political rhetoric—not sexual misconduct. And like the other female comparator, there is no

allegation that this professor worked for the same college, was bound by the same policies, or was disciplined by the same decision-makers. In fact, plaintiff offers no argument in his response brief as to how this comparator is similarly situated. Therefore, plaintiff does not meet his burden at the pleadings stage to show that this professor was similarly situated in all relevant aspects of employment. For these reasons, dismissal of plaintiff's ELCRA discrimination claim is appropriate on the pleadings.

B. RETALIATION

Plaintiff also pleads a retaliation claim under ELCRA against all defendants. ELCRA prohibits an employer from retaliating against an individual on the basis of engaging in a protected activity recognized under ELCRA. MCL 37.2701(a) prohibits an employer from "[r]etaliat[ing] or discriminat[ing] against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act." To state a retaliation claim, a plaintiff must allege sufficient facts to show "(1) that he engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action." *El-Khalil*, 504 Mich at 161 (quotation marks and citation omitted).

Defendants argue that plaintiff did not engage in a protected activity when he defended himself in a Title IX proceeding. ELCRA provides, in relevant part, that a person may not "[r]etaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act." MCL 37.2701(a). Because ELCRA was modeled after Title VII, Michigan courts frequently look to caselaw interpreting Title VII when

interpreting ELCRA, including in the context of the antiretaliation provision. See *Miller v Dep't of Corrections*, 513 Mich 125, 137; 15 NW3d 129 (2024). Protected activity is recognized in the federal context in two situations: when the plaintiff participates in an investigation, proceeding, or hearing under Title VII, or when the individual has opposed a practice by the employer that constitutes a violation of Title VII. See *Johnson v Univ of Cincinnati*, 215 F3d 561, 578 (CA 6, 2000).

The Court concludes at the outset that the merits of plaintiff's retaliation claim based on the Title IX defense were already litigated and decided in the federal district court. The federal district court already rejected plaintiff's argument that his participation in defending the Title IX investigation constitutes protected activity. *Kiupel*, unpub op at 16-17. Although plaintiff framed the claim as one under Title IX, the federal court noted that it was examining the issue under the same general legal standards for Title VII claims, which would be the same general legal standard for ELCRA claims. *Id*. at 16. The federal district court found plaintiff's reliance on *Doe v University of Kentucky*, 111 F4th 705 (CA 6, 2024), to be misplaced because that case involved a Title IX claimant while in this case plaintiff was the Title IX respondent. *Kiupel*, unpub op at 17-18. Therefore, the court found plaintiff's defense in the Title IX action was not protected activity. Thus, the issue whether plaintiff's defense of the Title IX claim constituted recognized protected activity was already decided in the federal district court via a final judgment.[3] Accordingly, plaintiff's attempt to relitigate this same factual issue in the context of this lawsuit is barred by collateral estoppel.

[3] For the reasons noted earlier, the remaining elements of collateral estoppel are satisfied in this case.

To the extent plaintiff is attempting to plead a distinct retaliation claim under ELCRA, plaintiff's attempt fails as a matter of law because he does not plead that he participated in an ELCRA investigation, proceeding, or hearing, or that he opposed a violation of gender discrimination under ELCRA in any manner other than defending the Title IX proceeding. Plaintiff does not allege that he filed a formal charge or complaint of sex discrimination before the alleged retaliation or that he opposed any form of gender discrimination before the alleged retaliation. He therefore fails to state a valid ELCRA retaliation claim. Even assuming the federal district court did not already decide the issue in the context of the Title IX claim, defending a Title IX proceeding has been found *not* to constitute protected activity. See *Doe v Belmont Univ*, 367 F Supp 3d 732, 756-758 (MD Tenn, 2019) (ruling that the plaintiff could not sustain a retaliation claim because his participation in defending a Title IX investigation was not protected activity recognized under Title IX).[4] Accordingly, plaintiff fails to state a retaliation claim under ELCRA.

V. PWDCRA CLAIM

Plaintiff also alleges that defendants took adverse actions against him on the basis of his ASD, in violation of the PWDCRA.[5] The PWDCRA provides, in relevant part, that an employer shall not "[d]ischarge or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment, because of a disability or genetic information that is unrelated to the individual's ability to perform the duties of a particular job or

[4] Plaintiff relies on *Booker v Brown & Williamson Tobacco Co*, 879 F2d 1304, 1312 (CA 6, 1989) to support that he has stated a valid claim for relief under ELCRA premised on his defense of the Title IX action. But *Booker* does not support that position and did not involve the question whether defending a Title IX claim constitutes protected activity. See *id*.

[5] The federal district court never reached the issue whether plaintiff stated a valid ADA or Rehabilitation Act claim because plaintiff voluntarily dismissed those claims.

position." MCL 37.1202(b). Under the PWDCRA, a "disability" can mean, in relevant part, either that the plaintiff has a disability, as defined in the statute, or that the employer regarded the plaintiff as having a disability. See MCL 37.1103(d)(*i*) and (*iii*). Plaintiff alleges that defendants either knew of his disability or that they regarded him as having a disability.

The elements of a discrimination claim under the PWDCRA are: (1) the plaintiff is disabled as defined in the act, (2) the disability is unrelated to the plaintiff's ability to perform his job duties, and (3) the plaintiff has been discriminated against in one of the ways outlined in the statute. *Peden v Detroit*, 470 Mich 195, 204; 680 NW2d 857 (2004). Again, the plaintiff can establish discrimination if the employer discriminated against him on the basis of a perceived disability, even if the plaintiff did not have that disability. *Chiles v Machine Shop, Inc*, 238 Mich App 462, 475; 606 NW2d 398 (1999). In the latter circumstance, the plaintiff must "adduce evidence that a defendant regarded the plaintiff as having an impairment that substantially limited a major life activity—just as with an actual disability." *Id*.

The parties do not dispute for purposes of this motion that ASD is a disability under the PWDCRA. Rather, the key issue is whether plaintiff pleaded adequate facts to support that defendants knew of his disability. Both parties acknowledge that plaintiff must allege facts to show that defendants knew of his disability. See *Goshton v Overton*, unpublished per curiam opinion of the Court of Appeals, issued August 11, 2011 (Docket No. 297231), p 2 ("It is axiomatic that a plaintiff cannot show that an employer fired an employee 'because of' a disability unless the decision-maker knows of the disability.").

Plaintiff fails to plead any facts to support that defendants knew about his disability or regarded him as having a disability (namely, ASD). Plaintiff alleges a blanket statement that

defendants knew about his disability, which is insufficient to state this element of his PWDCRA claim. See *State ex rel Gurganus v CVS Caremark Corp*, 496 Mich 45, 63; 852 NW2d 103 (2014) ("However, conclusory statements that are unsupported by allegations of fact on which they may be based will not suffice to state a cause of action."). Plaintiff further attempts to support his conclusion by alleging that defendants referred to the manifestations of his ASD, such as in his performance reviews. He states, "By way of example, Defendants often commented on the manifestations of Plaintiff's disorder both informally or in formal employment documentation." He alleges that he received negative performance evaluations that referred to plaintiff being too " 'enthusiastic and animated in [his] conversational tone,' " which was " 'generally not well received.' " Plaintiff was described as " 'boorish,' " and criticized for an " 'eagerness to share opinion/insights,' " often resulting in plaintiff " 'not listening to others.' "

Plaintiff offers no factual basis for a finding that defendants were aware that ASD was the source of plaintiff's behavior or that defendants regarded him as having this condition. The fact that plaintiff was criticized for his tone and demeanor does not support that MSU regarded him as having ASD or knew about the condition. Plaintiff does not offer proposed additional factual allegations in his response brief. Rather, he contends that he cannot provide further details without some discovery. He does not, for example, allege that he informed anyone at MSU about his condition, that he provided paperwork or information about his condition, or that anyone spoke to the University about his condition on his behalf.

At most, plaintiff alleges that during the April 2023 RVSM hearing he testified that another person suggested to him that he *may* have ASD—signaling that even plaintiff was unsure at that time whether he had the condition. However, plaintiff does not allege any facts to support that Butcher (an independent third party) informed defendants of plaintiff's testimony. The hearing

occurred well over a year after the investigation started so that testimony could not have formed the basis for imposing the interim measures back in December 2021. Furthermore, plaintiff's equivocal suggestion that someone told him that he *may* have ASD does not impute knowledge of his condition to MSU, particularly when plaintiff himself was not even aware at that time of whether he had the condition. For these reasons, plaintiff has failed to state a PWDCRA claim because he fails to plead facts to support that defendants either knew of or regarded plaintiff as having ASD.

VI. BREACH-OF-CONTRACT CLAIM

Plaintiff additionally alleges that the MSU Defendants breached a binding agreement with him formed by three MSU policy statements: the RVSM policy, the Faculty Handbook, and the Anti-Discrimination Policy. He alleges the breach occurred when defendants sanctioned him without adequate due process, discriminated and retaliated against him on the basis of his gender, and violated the confidentiality of his investigation. Plaintiff emphasizes that the policies indicated he would be disciplined only for cause and that certain due-process protections would be followed.[6]

A. NOTICE

Starting with the threshold issue whether plaintiff satisfied the jurisdictional notice requirement, plaintiff submitted an NOI on April 23, 2024 and filed this lawsuit in the circuit court in June 2024. MCL 600.6431 governs the notice requirement in the Court of Claims and provides, in relevant part:

[6] Again, plaintiff has voluntarily agreed to abandon his due-process claim against the MSU Defendants.

> Except as otherwise provided in this section, a claim may not be maintained against this state unless the claimant, within 1 year after the claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against this state or any of its departments, commissions, boards, institutions, arms, or agencies. [MCL 600.6431(1).]

Defendants argue that plaintiff's breach-of-contract claim accrued when the interim measures were first instituted in December 2021, which was more than two years before the NOI was submitted. A breach-of-contract claim accrues " 'at the time the wrong upon which the claim is based was done regardless of the time when damage results.' " *Scherer v Hellstrom*, 270 Mich App 458, 463; 716 NW2d 307 (2006), quoting MCL 600.5827.

Defendants maintain that plaintiff attempts to rely on the abrogated continuing-wrongs doctrine to revive the claims barred under the one-year notice period, including plaintiff's claims arising from the initial imposition of interim sanctions in December 2021. The continuing-wrongs doctrine has been abrogated from the common law in Michigan. See *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 288; 769 NW2d 234 (2009).

While it is true that plaintiff alleges that the MSU Defendants first imposed interim measures in December 2021, plaintiff further alleges that the interim measures were reimposed, along with new measures, on July 27, 2023, after the investigation was completed and the hearing officer issued her findings. In fact, the disciplinary measures did not become final until *after* plaintiff filed this lawsuit. Thus, plaintiff's claims premised on distinct wrongs committed on or after April 23, 2023, were timely under the one-year notice period. This would include all claims

arising following the conclusion of the initial investigation, which culminated in the April 24, 2023 report, and would include the imposition of interim sanctions on and after July 27, 2023.[7]

B. EXISTENCE OF A CONTRACT

Turning to the merits, the elements of a breach-of-contract claim include: "(1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach." *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 178; 848 NW2d 95 (2014). The parties dispute whether the MSU policies in question formed a binding contract. A binding contract requires "parties competent to contract, a proper subject matter, legal consideration, mutuality of agreement, and mutuality of obligation." *Bodnar v St John Providence, Inc*, 327 Mich App 203, 212-213; 933 NW2d 363 (2019) (quotation marks and citation omitted). There must be an offer and acceptance, and mutual assent to all essential contractual terms. *Id*. "It is well settled under Michigan law that an employer's statement of policy contained in a manual or handbook can give rise to contractual obligations in certain circumstances." *Id*. Those circumstances have been extended to include issues of severance and wrongful termination. *Id*. at 213-214.

In *Toussaint v Blue Cross & Blue Shield of Mich*, 408 Mich 579, 595; 292 NW2d 880 (1980), the Michigan Supreme Court addressed whether two employees could sustain claims for

[7] Defendants suggest in passing that the same rationale would apply to each of plaintiff's claims against the MSU Defendants, rendering them untimely. However, those claims are also timely to the extent they are premised on conduct that occurred within one year of the filing of the NOI. See MCL 600.6431(1); *Garg v Macomb Co Community Mental Health Servs*, 472 Mich 263, 282; 696 NW2d 646 (2005), as amended (explaining that an ELCRA claim accrues "at the time the wrong upon which the claim is based was done regardless of the time when damage results") (quotation marks and citation omitted); *Stephens v Worden Ins Agency, LLC*, 307 Mich App 220, 235; 859 NW2d 723 (2014) ("A tort claim accrues when all the elements of the claim have occurred and can be alleged in a proper complaint.") (quotation marks and citation omitted).

wrongful discharge based on their employment agreements, which allowed for discharge only for cause. Both plaintiffs testified that they were told they would be with their respective companies as long as they did their job. *Id*. at 597. In fact, one of the plaintiffs was handed the company manual upon hire, which stated that the disciplinary procedures applied to all employees who completed a probationary period and that it was the company's policy to terminate employees for just cause, only. *Id*. at 597-598. On appeal, the Court held that the just-cause requirements were legally enforceable and may become part of the employment contract by either express agreement or "as a result of an employee's legitimate expectations grounded in an employer's policy statements." *Id*. at 598. Those legitimate expectations may be grounded in the employer's written policy statements found within a policy manual. *Id*. at 599.

In *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 525-526; 473 NW2d 652 (1991), the Supreme Court addressed the legitimate-expectation issue again in the context of a lawsuit filed by about 180 employees of the defendant who sought enforcement of a compensation plan that was later rescinded by the company. The Supreme Court limited its holding in *Toussaint* as follows:

> In addition to the lack of precedent extending *Toussaint* to facts similar to those presented here, policy considerations weigh in favor of containing *Toussaint* to the wrongful-discharge scenario. Were we to extend the legitimate-expectations claim to every area governed by company policy, then each time a policy change took place contract rights would be called into question. The fear of courting litigation would result in a substantial impairment of a company's operations and its ability to formulate policy. [*Id*. at 531.]

The Court cited favorably to prior opinions of the Court suggesting that policies must be flexible to adapt and respond to change. *Id*. at 531-532. Therefore, the Court declined to extend *Toussaint* to statements contained in a permanent compensation plan. *Id*. at 532.

Importantly, plaintiff does not allege that he executed a written contract with the MSU Defendants upon his hire that outlined certain due-process requirements. Instead, he alleges he received an appointment letter upon hire referring to the fact that his employment was subject to the terms of the Faculty Handbook, which outlined procedures for imposing minor and serious discipline. Thus, plaintiff relies on the legal principle in *Toussaint* to allege he had a legitimate expectation that the University would follow its own policies and procedures during the disciplinary process. But plaintiff does not cite a single Michigan case that has extended the legitimate-expectation rule from *Toussaint* beyond situations involving wrongful discharge.

Rather, the Michigan Supreme Court in *Dumas* expressly limited *Toussaint* to "the wrongful-discharge scenario." *Id*. at 531. There is no dispute plaintiff was not discharged in violation of a just-cause provision in the Faculty Handbook. In fact, he continued to work for MSU at the time he filed this lawsuit for the same pay. The disciplinary measures require plaintiff to work remotely and prohibit him from engaging with students and staff, thus eliminating his ability to teach students and residents. Plaintiff alleges these disciplinary measures (1) violated certain due-process protections outlined in MSU's policies, (2) were imposed in violation of MSU's anti-discrimination and anti-retaliation policies, and (3) were imposed in violation of the confidentiality provision in the Faculty Handbook. The Court recognizes that this situation may be considered analogous to *Toussaint* given that plaintiff was disciplined in a manner he alleges violated the Faculty Handbook. However, because the Michigan Supreme Court in *Dumas* expressly limited *Toussaint* to the wrongful-discharge scenario, and plaintiff was not discharged, the Court declines to extend the holding in *Toussaint* to a new legal context.

Plaintiff cites a nonbinding opinion of the United States District Court for the Western District of Michigan, *Doe v Northern Mich Univ*, 393 F Supp 3d 683, 699 (WD Mich, 2019),

which is distinguishable from this case because it related to claims by a student in connection with the university's alleged failure to comply with its own disciplinary rules. Similarly, plaintiff's reliance on *Carlton v Trustees of Univ of Detroit Mercy*, unpublished per curiam opinion of the Court of Appeals, issued April 9, 2002 (Docket No. 225926), pp 3-4, is also misplaced because that case involved a student claim for dismissal from a university program.

Plaintiff also relies on *Rood v Gen Dynamics Corp*, 444 Mich 107, 137-145; 507 NW2d 591 (1993). However, that case was also limited to claims for wrongful discharge, which are not present in this case (plaintiff was disciplined but not discharged). See *id*. Finally, plaintiff relies on *In re Certified Question from the United States Court of Appeals from the Sixth Circuit*, 432 Mich 438; 443 NW2d 112 (1989), but that case addressed whether an employer may change a discharge-for-cause policy to one of employment-at-will and held that employers may, in fact, make changes to a written policy without having reserved the right to do so in advance. *Id*. at 454-456.

In summary, no case has extended the legitimate-expectation principle from *Toussaint* outside of the wrongful termination context, and the *Dumas* Court expressly limited *Toussaint* to the wrongful-discharge setting. Plaintiff cites no other legal basis to find that his appointment letter or the university policies formed a binding contract. Because no binding contract existed, the Court need not address whether plaintiff has alleged damages or whether it was necessary for plaintiff to allege a "material" breach of contract.

VII. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Plaintiff also alleges a claim against the MSU Defendants for breach of the implied covenant of good faith and fair dealing by departing from the disciplinary process outlined in the

University's policies and imposing interim measures that were disciplinary in nature. He maintains that he had an "employment contract" in the form of "his appointment letter, which incorporates the Faculty Handbook." The Michigan Supreme Court recently confirmed and applied the longstanding principle articulated by the Michigan Court of Appeals that "there is no independent cause of action for breach of the implied covenant of good faith and fair dealing." *Kircher v Boyne USA, Inc*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 166459); slip op at 7-8. Rather, the principle is an interpretive tool through which a court may construe the contractual obligations of the parties or other statutory duties. *Id*. at ___; slip op at 7. Again, plaintiff has not alleged a valid contract through MSU's policies or handbooks to support a breach-of-contract claim, and for the reasons discussed earlier, *Toussaint*'s legitimate-expectations principle does not apply outside of the wrongful-termination context. Therefore, plaintiff fails to state a distinct claim for relief in relation to breach of the implied covenant of good faith and fair dealing.

VIII. PROMISSORY-ESTOPPEL CLAIM

Defendants also seek dismissal of plaintiff's promissory-estoppel claim against the MSU Defendants. The elements of promissory estoppel are: "(1) a promise (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee and (3) that, in fact, produced reliance or forbearance of that nature (4) in circumstances requiring enforcement of the promise if injustice is to be avoided." *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 41; 761 NW2d 151 (2008). "The promise must be definite and

clear, and the reliance on it must be reasonable." *Id.*[8] Additionally, the doctrine should be applied with caution and only when the facts are unquestionable. *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 687; 599 NW2d 546 (1999).

Plaintiff's promissory-estoppel claim is premised on an alleged promise arising from his appointment letter that MSU would follow the Faculty Handbook. However, as with plaintiff's breach-of-contract claim, plaintiff provides no legal support for his position that an employee handbook or a university's policies create a legitimate expectation that the terms would be followed. As the Court of Appeals explained in the context of a severance-pay policy, these types of policies and procedures could be (and often are) changed at will by the employer. See *Klein v HP Pelzer Automotive Sys, Inc*, 306 Mich App 67, 83; 854 NW2d 521 (2014). Plaintiff does not allege that MSU promised him that its Faculty Handbook would remain unchanged over the 20 years between when he was hired and when the investigation began. Plaintiff claims that his case is distinguishable from the legal precedent on this issue because he was a tenured faculty member. Yet he provides no legal basis for a finding that a recognizable promise arises from university handbooks and policies because the plaintiff in question was a tenured faculty member.

Furthermore, even if plaintiff could demonstrate a promise, he does not plead detrimental reliance. Plaintiff alleges that he declined other employment offers over the years in reliance on

[8] The Court rejects defendants' argument that the claim is untimely because plaintiff did not submit an NOI within one year of when his claim accrued under MCL 600.6431(1). A promissory-estoppel claim accrues when the alleged promise is broken. See, e.g., *Raby v Bd of Trustees of the Police & Fire Retirement Sys of the City of Detroit*, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2011 (Docket No. 293570), p 6 (citing two prior unpublished Court of Appeals opinions articulating the same legal standard). For the reasons discussed in connection with the breach-of-contract claim, all promissory-estoppel claims premised on alleged distinct broken promises within one year of the date plaintiff submitted his NOI are timely.

that alleged promise. The Court of Appeals has rejected a similar argument that a change in an employment position in reliance on a promise constitutes consideration to support a promissory-estoppel claim. See *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 442-445; 505 NW2d 275 (1993) (holding that "resignation from one position to assume another and relocation of family would be customary and necessary incidents of changing jobs rather than consideration to support a promissory estoppel claim"), abrogated in part on other grounds by *Patterson v Kleiman*, 447 Mich 429, 433 & n 3; 526 NW2d 879 (1994). The Court concludes that the inverse would also be true—the decision *not to* resign from one position to assume another is likewise insufficient to support the reliance element of a claim of promissory estoppel. Therefore, plaintiff has failed to state a valid promissory-estoppel claim.

IX. IIED CLAIM

The final remaining claim is plaintiff's IIED claim against the Individual Defendants. The elements of IIED include: "(1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress." *Moore v Detroit*, 252 Mich App 384, 389; 652 NW2d 688 (2002) (quotation marks and citation omitted). "Liability attaches only when a plaintiff can demonstrate that the defendant's conduct is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." *Swain v Morse*, 332 Mich App 510, 534; 957 NW2d 396 (2020) (quotation marks and citation omitted). Thus, "[l]iability does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *Id*. (quotation marks and citation omitted). The trial court is the initial gatekeeper and determines whether the defendant's conduct may be reasonably regarded as so extreme and outrageous in nature that it allows the IIED claim to proceed. *Id*. "But where reasonable individuals may differ, it is for the jury to determine

if the conduct was so extreme and outrageous as to permit recovery." *Id*. (quotation marks and citation omitted). Mere inconsiderate conduct on the part of an employer is insufficient to support an IIED claim. *Graham v Ford*, 237 Mich App 670, 675; 604 NW2d 713 (1999).

Plaintiff's claim is premised on his earlier allegations, with particular emphasis on defendants' alleged failure to provide plaintiff with due process, a claim that he dismissed in response to this motion for summary disposition. Plaintiff argues that defendants ignored various internal policies to avoid bad publicity for failing to take sufficient action against male individuals accused of sexual misconduct in the wake of the Nassar scandal. Plaintiff's allegations, even if accepted as true, are not so extreme and outrageous in nature that they can support a claim of IIED. Plaintiff cites no caselaw that would extend a claim of IIED to allegations that an employer violated its own internal policies or breached an alleged contract during the investigation of an employee that resulted in the discipline of that employee (even assuming an improper motive existed for doing so). Accepting the factual allegations as true, the conduct of the Individual Defendants was not so outrageous in character, or extreme in degree, that it would permit a reasonable fact-finder to conclude that the conduct went beyond *all* possible bounds of human decency so as to be considered atrocious or intolerable in a civilized community. This case simply does not present that extreme scenario. Accordingly, plaintiff has failed to state a cognizable IIED claim.[9]

X. CONCLUSION

For the reasons stated in this Opinion and Order,

[9] Because plaintiff has not pleaded a cognizable IIED claim, the Court need not address whether the Individual Defendants would be entitled to qualified immunity against the claim.

IT IS ORDERED that defendants' motion for summary disposition under MCR 2.116(C)(8) is GRANTED.

IT IS FURTHER ORDERED that plaintiff's amended complaint is DISMISSED with prejudice.

IT IS SO ORDERED. This is a final order that resolves the last pending claim and closes the case.

Dated: May 14, 2026

Hon. Michael F. Gadola
Chief Judge, Court of Claims