

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DR. JENNY H. CONVISER and)	
ASCEND CONSULTATION IN)	
HEALTH CARE, LLC,)	Case No. 20-CV-03094
)	
Plaintiffs,)	
v.)	Honorable Judge Franklin U. Valderrama
)	
DEPAUL UNIVERSITY,)	JURY TRIAL DEMANDED
)	
Defendant.)	

SECOND AMENDED COMPLAINT

Plaintiffs Dr. Jenny H. Conviser (“Dr. Conviser”) and Ascend Consultation in Health Care, LLC (“Ascend”) (collectively, “Plaintiffs”), by and through their counsel, file their Second Amended Complaint against Defendant DePaul University, and allege as follows:

INTRODUCTION

1. For more than thirteen years, Dr. Conviser’s job was to make sure that the student-athletes of DePaul University (“DePaul” or the “University”) were safe and well. Through her companies, including Ascend, Dr. Conviser provided mental health care and eating disorder treatment to student-athletes, managers, trainers, coaches and other staff in DePaul’s athletics program (“DePaul Athletics”), as DePaul had hired her to do. During her tenure, the University often referred to Dr. Conviser as its leading mental healthcare provider. At DePaul’s direction and delegation, Dr. Conviser also served an integral role in the University’s efforts to treat its students in a manner that complied with National Collegiate Athletic Association (“NCAA”) policies and federal law, particularly Title IX of the Education Amendments of 1972 (“Title IX”). Over the years, however, Dr. Conviser learned that, although DePaul had expressly hired her to ensure

students' welfare and to provide mental health services that DePaul was lacking, and although its policies required her to report alleged abuses to its Title IX Office, the University would have preferred she keep her mouth shut about misconduct within DePaul Athletics.

2. The more Dr. Conviser reported alleged abuses to the University, the less DePaul sent students to her for the help they desperately needed. For DePaul, the final straw came when Dr. Conviser forced a reckoning over physical and mental abuses by the University's legendary softball coach, Eugene Lenti ("Lenti"), the brother of the then long-time Director of DePaul Athletics.

3. DePaul let Lenti quietly leave the University and take a new collegiate coaching job with a clean personnel record. Yet the University retaliated against Dr. Conviser for protecting its students—exactly what she was hired to do—by terminating her and Ascend's services to DePaul Athletics. DePaul's retaliatory conduct violated Title IX. Tragically, it also deprived its students of a much-needed counselor and champion.

THE PARTIES

4. Plaintiff Dr. Conviser is a licensed clinical psychologist and an Illinois resident.

5. Plaintiff Ascend is an Illinois limited liability company with its principal place of business in Chicago. It is owned by Dr. Conviser.

6. Defendant DePaul, founded in 1898, is an Illinois not-for-profit corporation with its principal place of business located in Chicago. Founded on Vincentian ideals, DePaul represents itself to be the largest Catholic university in the United States and the thirteenth largest not-for-profit university in the nation. DePaul receives federal financial assistance.

JURISDICTION AND VENUE

7. The Court has personal jurisdiction over Defendant because this cause of action arises out of conduct occurring in the State of Illinois and all parties are Illinois residents. DePaul has conceded personal jurisdiction in this case.

8. This Court has subject matter jurisdiction over Plaintiffs' Title IX claim pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).

9. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b) because the parties reside in this Court's judicial district and the events or omissions giving rise to the claims occurred within this district. DePaul has conceded that venue is proper in this case.

STATUTORY FRAMEWORK

10. Title IX provides: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a) (emphasis added).

11. The Supreme Court requires courts to "accord [Title IX] a sweep as broad as its language." *N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 521 (1982).

12. Consistent with this mandate, the Supreme Court has recognized that Title IX, by its plain text, protects all "persons," not just certain classes of people, such as students. *Id.* at 520; see also *Kucharik v. Garden City Comm. Coll.*, No. CV 20-2190-KHV, 2021 WL 1840067, at *5 (D. Kan. May 7, 2021) ("In the context of Title IX retaliation, [a] plaintiff is not required to plead that he is a . . . student or faculty member."); *Fox v. Pittsburg State Univ.*, 257 F. Supp. 3d 1112,

1125 (D. Kan. 2017) (noting “nothing in the language or legislative history . . . suggests that Congress intended to limit Title IX’s scope to only certain members of the university”).

13. The Civil Rights Restoration Act of 1987 (“CRRA”) amended Title IX. 20 U.S.C. § 1687. Congress passed this law to overturn *Grove City College v. Bell*, 465 U.S. 555 (1984), which held that only certain parts of a college that received federal funding were subject to Title IX.

14. The CRRA defines “program or activity” for purposes of Title IX. 20 U.S.C. § 1687. It specifies that “all the operations of . . . a college, university, or other postsecondary institution” constitute a “program or activity.” 20 U.S.C. § 1687 (emphasis added). So long as a federally-funded university is an educational institution—which DePaul indisputably is—the university as a whole is an “education program or activity” subject to Title IX.

15. As a result, Title IX’s protections extend beyond a university’s core academic functions. See, e.g., *id.* (hist. and stat. notes) (noting that Congress expressly intended Title IX to have “broad, institution-wide application” for federally-funded entities); S. Rep. No. 100-64, at 16-17, reprinted in Jon S. Schultz, compiler, *Legislative History and Analysis of the Civil Rights Restoration Act* (1989) (noting the CRRA was intended to protect plaintiffs connected, for example, not only to “traditional educational operations” and “faculty and student housing,” but also to “campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities”).

16. The Supreme Court has held that Title IX’s prohibition of discrimination “on the basis of sex” includes retaliation against a person for reporting sex discrimination. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 178 (2005).

17. A school retaliates against a person when (1) the person engages in a statutorily-protected activity; (2) the school takes a material adverse action against the person; and (3) there exists a but-for causal connection between the two. *Burton v. Bd. of Regents of Univ. of Wis. Sys.*, 851 F.3d 690, 695 (7th Cir. 2017).

18. A person engages in statutorily protected activity when she reports sex discrimination to which she or another person was subject. *Jackson*, 544 U.S. at 179.

FACTS

Professional Background

19. Dr. Conviser is one of the most respected sports and clinical psychologists in the United States. Her decades of experience working with athletes and coaches, coupled with her personal experience as a former Division I athlete and head coach, make Dr. Conviser widely sought-after and a leading authority in the field of sports psychology.

20. Dr. Conviser holds a Doctorate in Psychology from the Chicago School of Professional Psychology, a Masters in Exercise Science from Northern Illinois University, and Bachelor of Science in Education from Springfield College. She is a licensed clinical psychologist, certified in sports psychology, and an eating disorder specialist.

21. Dr. Conviser is also trained and certified in mandatory reporting requirements consistent with Title IX and protocols published by the U.S. Center for SafeSport (“SafeSport”), the independent non-profit in which the U.S. Congress entrusted the responsibility to develop national policies and procedures to prevent abuse of amateur athletes such as those attending DePaul.

22. Dr. Conviser has been an Assistant Professor of Psychiatry and Behavior Sciences at Northwestern University’s Feinberg School of Medicine for the last twenty-three years.

23. Dr. Conviser is also a member of the United States Olympic and Paralympic Committee's Sport Psychology Registry, through which she received her training and certification in SafeSport protocols.

24. In 2013, Dr. Conviser founded the Illinois Sport and Performance Institute, an organization dedicated to improving safe training and competition and promoting positive coaching and training effectiveness.

25. Dr. Conviser has built a tremendously successful and meaningful career over decades and is a highly regarded professional in the fields of sports psychology, nutritional therapy, outpatient treatment for mental illness, addictions, and eating disorders for athletes and coaches. Dr. Conviser has also been a leader in prevention and awareness advocacy for collegiate athletes and coaches.

26. Esteemed hospitals and universities regularly consult Dr. Conviser with respect to senior medical staff, training, supervision, program development and intensive care for the most critically ill, including those patients with life-threatening illnesses, trauma, co-occurring addictions, mood, anxiety, and eating disorders. Her patients have also included members of the United States Figure Skating Association, World Boxing Association, National Baseball Association, Professional Golf Association, and National Reining Horse Association.

27. Dr. Conviser's distinctive specialty is counseling athletes, including student-athletes, with respect to athletic performance improvement as well as mental illnesses and conditions common among athletes, including eating disorders, obsessive compulsive disorders, anxiety disorders, and suicidal ideation. Although a non-specialized psychotherapist may help counsel student-athletes, collegiate athletes benefit significantly from treatment by a professional deeply familiar with the mental health challenges student-athletes face, as well as the ability to

coordinate with an athlete's teachers, coaches, doctors, and trainers, among others. Dr. Conviser is such a rare person.

28. Dr. Conviser has also been trained on universities' Title IX responsibilities, including reporting requirements, and worked to improve DePaul's compliance efforts when the University abdicated its own responsibilities.

29. Dr. Conviser founded her company Plaintiff Ascend, which focuses on providing professional services for the evaluation and treatment of athletes' mental illnesses, emotional states, and related nutritional needs. During the relevant time period, Dr. Conviser through Ascend employed ten to twelve therapists, as well as nutritionists and administrators, all of whom Dr. Conviser closely supervised. Previously, Dr. Conviser had provided her services to DePaul through predecessor companies, including Insight, LLC ("Insight").

Dr. Conviser's Role at DePaul

30. In 2005, DePaul hired Dr. Conviser to provide mental health services for DePaul student-athletes. Dr. Conviser also saw professionally DePaul Athletics coaches, managers, trainers and other staff. Dr. Conviser originally provided these services through her company Insight. Starting in 2017, Dr. Conviser provided the same services through her successor company, Plaintiff Ascend.

31. Between 2005 and 2017, as DePaul's contracts with Dr. Conviser's companies expired in accordance with their terms, DePaul routinely entered into new but nearly identical contracts with her companies to continue Dr. Conviser's work in DePaul Athletics.

32. These contracts with DePaul created and then maintained a referral system for DePaul student-athletes to receive specialized mental health care. DePaul would refer student-

athletes to Dr. Conviser's company, the company would assess the student-athletes and recommend a treatment plan, and DePaul would pay the company for its services.

33. For some or all of the period Dr. Conviser worked for DePaul, DePaul hired her and Ascend to achieve goals set by the NCAA concerning mental health services for the student-athlete population.

34. Dr. Conviser and her companies were DePaul's specialized mental health program for student-athletes and staff. Often referred to by DePaul Athletics senior administrators as its "leading mental health provider," only Dr. Conviser and her employees had the training and credentials to offer specialized care for student-athletes and DePaul Athletics staff. For example, upon information and belief, no mental health providers at DePaul other than Dr. Conviser were Certified Eating Disorder Specialists, Certified Addiction Specialists, or Certified Mental Performance Consultants, the national gold-standard in credentialing for sports psychology. In materials DePaul distributed to student-athletes, Dr. Conviser and her companies were listed as the go-to mental health provider for student athletes. And in a compliance report to the NCAA, DePaul did not equivocate: it held out Dr. Conviser's company as "DePaul's provider" of mental health services. In fact, DePaul told student-athletes that it would only pay for specialized athletic mental health care if it was provided by Dr. Conviser's company.

35. From 2005 until her retaliatory termination in 2018, Dr. Conviser and her colleagues successfully treated countless student-athletes, managers, trainers, and coaches referred to her by DePaul.

36. For purposes of treating their student-athletes and other members of their sports community, DePaul provided Dr. Conviser with an on-campus office in DePaul Athletics for individual student-athlete and staff consultations, as well as access to University conference rooms

for staff meetings and trainings. DePaul also permitted Dr. Conviser to see student-athletes and DePaul staff at an off-campus office located equidistant between DePaul's Lincoln Park and Downtown campuses—a location Dr. Conviser chose so she could best serve DePaul Athletics' student-athletes and staff and provide them with the required mental health services.

37. DePaul, usually through its Associate Athletics Director and Director for Sports Medicine,¹ Dr. Sue Walsh (“Walsh”), made all its referrals directly to Dr. Conviser, who would evaluate the referral and assign her staff accordingly.

38. Dr. Conviser directly treated many DePaul student-athletes and staff. At Dr. Conviser's direction, some DePaul patients primarily interfaced with other Ascend therapists whom Dr. Conviser closely supervised. As a matter of policy, Dr. Conviser personally approved all proposed treatment plans for DePaul patients.

39. Every week, Ascend staff attended four to five hours of meetings in which Dr. Conviser formally reviewed their DePaul cases and provided instructions for patient care. Dr. Conviser was also available for emergency consultation and questions regarding DePaul patient care.

40. Any changes to a DePaul patient's training, health status, nutrition needs, or referral for psychiatric services, and any personal safety issues a patient faced, were brought to Dr. Conviser by her staff for discussion and approval before implementation. Where required and

¹ At all relevant times, many of DePaul's senior administrators wore “two hats,” serving roles in both DePaul Athletics and DePaul's allegedly independent Title IX Office. Many of the key players in the retaliation against Dr. Conviser alleged here were assistant directors in the Athletics Department and simultaneously held key roles in the Title IX office. These overlapping, competing responsibilities contributed to the University's retaliation against Dr. Conviser: the Title IX Office sought to protect DePaul Athletics and its brand, rather than the student-athletes in its care.

permitted, Dr. Conviser would also advise DePaul Athletics consistent with her professional and contractual responsibilities.

41. Each time an attending Ascend staff member met with a DePaul patient, the therapist would write a summary of the session. Dr. Conviser reviewed each DePaul patient summary, made any necessary adjustments, and signed off on the document, at which point Dr. Conviser's administrative staff would send the signed summary to DePaul's Walsh.

42. At all relevant times, DePaul—through officials including Walsh and its Director of DePaul Athletics, Jean Lenti Ponsetto (“Lenti Ponsetto”), who is also Lenti's sister—was aware that Dr. Conviser closely directed DePaul patient care even when student-athletes were primarily assigned to a different therapist in one of her companies, including Ascend. In short, DePaul knew that Dr. Conviser was Ascend and that Ascend was Dr. Conviser.

43. Dr. Conviser's role at DePaul was not limited to providing patient care. At DePaul's behest and direction, Dr. Conviser played an integral and active role in the University's efforts to ensure students were safe and well and that DePaul complied with NCAA policies and relevant federal law, including Title IX.

44. For example, Dr. Conviser represented DePaul Athletics at the first ever NCAA Big East Mental Health Summits held at Georgetown University in 2017 and at the NCAA headquarters in Indianapolis in 2018.

45. Dr. Conviser also participated in DePaul's compliance reports to the NCAA. As part of that responsibility, Dr. Conviser served on DePaul's Equity, Welfare and Sportsmanship subcommittee alongside long-serving, senior DePaul staff and administrators.

46. Consistent with NCAA directives, Dr. Conviser also designed on-campus advertising efforts, training, and faculty counseling to increase awareness of DePaul's available

mental health services for students and staff. (Unfortunately, DePaul did not ultimately implement these plans.)

47. Dr. Conviser was, of course, also required by the University and her professional licensing to participate in investigations into misconduct within DePaul Athletics of which she was aware.

Dr. Conviser First Reports Lenti's Abuses

48. Based on her training and expertise with respect to Title IX, Dr. Conviser had numerous concerns about DePaul's compliance with the federal civil rights law. Some of her concerns stemmed from information she learned from her patients, and some was from what she witnessed herself.

49. When patients told Dr. Conviser or other therapists at Ascend that they had experienced or witnessed abuse, Dr. Conviser would work with them to help them understand their rights and options for reporting. Consistent with professional guidelines and University policies, she would sometimes also seek their permission to report those abuses to DePaul Athletics, which she would then do.

50. In the fall of 2016, Dr. Conviser informed Walsh and then-Assistant Athletics Director Kathryn Statz of some disturbing allegations against Lenti: Dr. Conviser had learned he was "out-of-control," frequently verbally and physically abusive to his staff and players, and fostered a culture of intimidation, fear, and retaliation. For example, he regularly called his female players gendered epithets like "f---ing whores" and "sensitive bitches." Dr. Conviser's report was consistent with her duties under both the University's Title IX compliance policy and SafeSport protocols.

51. In response, DePaul's Walsh and Statz took no steps to investigate Lenti or his conduct toward his players.

52. Upon information and belief, Lenti Ponsetto—DePaul's Athletics Director and Coach Lenti's sister—also knew of Dr. Conviser's allegations against her brother, Lenti.

53. Upon information and belief, the University did not launch an investigation into Lenti's behavior based on Dr. Conviser's report, in violation of Title IX and SafeSport protocols. No University office or official followed up with Dr. Conviser about her report.

54. Had DePaul properly discharged its responsibilities, Lenti would not have been able to continue to abuse student-athletes and staff at the University.

55. Rather than investigate Lenti properly through the Title IX Office,² and discipline him accordingly, Walsh and Statz instead directed Dr. Conviser to meet with Lenti and his staff, address the issues, and educate them about Title IX.

56. At DePaul's direction, Dr. Conviser conducted a series of meetings with Lenti and his staff. In these meetings, Dr. Conviser provided guidance about how to cultivate a collaborative and healthy environment of respect between staff and student-athletes, including how to communicate with student-athletes in a non-abusive, equitable manner consistent with the University's Title IX obligations.

57. On October 10, 2016, during one of these meetings with Lenti and his staff, Dr. Conviser provided Lenti with his own personal highlighted American Psychological Association resource material explaining Title IX. This was the first time in Dr. Conviser's many years of work with DePaul Athletics that she had felt the need to provide a coach with materials about Title IX's requirements.

² DePaul's Title IX Office has since been renamed "The Office of Gender Equity."

58. After each session with Lenti and his staff, Dr. Conviser dutifully reported the events and her concerns to Walsh and Statz, usually stopping by their office to provide an oral summary. Walsh and Statz told Dr. Conviser they would take her reports and concerns under advisement and get back to her, but they never did.

Dr. Conviser Continues to Bring Campus Abuse to DePaul's Attention

59. In 2017, DePaul renewed its contract (the "Agreement") with Dr. Conviser, through Ascend, as it routinely did every few years. At that time, Dr. Conviser was the only Certified Mental Performance Consultant on campus and DePaul relied on her to provide specialized care that satisfied the NCAA's mental health policy goals for universities.

60. Out of concern for student-athletes, Dr. Conviser reached out and had a meeting with Walsh and Statz again in June 2017 following her attendance at the NCAA Mental Health Summit on behalf of DePaul. She also met with Statz's replacement as Assistant Athletics Director, Dr. Jill Hollembeak ("Hollembeak"), in September 2017. At these meetings, Dr. Conviser discussed how DePaul could increase students' awareness of mental health risks, prevention measures, and readily available support services. Unfortunately, but in hindsight not surprisingly, the University provided no substantive response to Dr. Conviser's overtures.

61. In December 2017, Dr. Conviser requested a meeting with the Athletics Director, Lenti Ponsetto. The purpose of the meeting was to discuss the status of student mental health resources and services at DePaul. Lenti Ponsetto attended the meeting, as did Walsh and Hollembeak, who was also serving as the University's Deputy Title IX Coordinator.

62. At this meeting, Dr. Conviser discussed the University's role in promoting campus-wide mental health. She focused the conversation on specific instances of Lenti abusing student-athletes and coaches—a risky decision, given Lento Ponsetto's attendance at the meeting. Dr.

Conviser raised concerns that Lenti's conduct was inconsistent with the University's Title IX obligations.

63. Dr. Conviser pointed out during the meeting that part of Lenti's abusive behavior involved his recruiting the most vulnerable female student-athletes, those who came from single-parent households and impoverished homes and some of whom exhibited low self-esteem, depression and/or had suffered from abusive childhoods.

64. Dr. Conviser also raised concerns to the DePaul senior staff present that the soccer and basketball teams were hosting recruitment events that included alcohol and sexual favors, some of which she had heard were provided by female DePaul students.

65. Dr. Conviser also reported at the meeting that a DePaul coach was involved in a sexual relationship with a student-athlete on his team, in violation of University rules. The student-athlete provided sexual favors to the coach in exchange for protection from his shaming and criticism.

66. Dr. Conviser's admonitions and reports were first met with stony silence by the senior DePaul administrators in attendance, and then denial. Hollembeak scoffed at the suggestion that such abuses could happen at DePaul. She said sex between coaches and students "doesn't happen here" because the school is located in a "big city with lots of other entertainment and diversions."

67. Dr. Conviser was stunned by her DePaul colleagues' belief that DePaul coaches could never behave inappropriately or abusively.

68. Upon information and belief, DePaul never investigated or sanctioned the coach Dr. Conviser had reported for engaging in a prohibited sexual relationship with a student on his team. Nor did DePaul investigate Dr. Conviser's reports concerning athletic recruitment.

69. Dr. Conviser viewed that meeting as a turning point. DePaul Athletics' officials no longer trusted her to protect the DePaul "brand," and she no longer trusted them to protect their student-athletes and staff.

70. Soon after the December 2017 meeting, DePaul retaliated against Dr. Conviser by reducing its referrals to Dr. Conviser and Ascend. In the first three months of 2018, DePaul referred just six new clients to Ascend, a lower rate than previous years.

71. Despite DePaul's growing hostility toward her, Dr. Conviser continued to advocate for student-athletes and push the University to comply with Title IX. For example, early in 2018, Dr. Conviser reported the sexual assault of a student to Walsh.

72. Shortly after that report, and, upon information and belief, at Walsh's or Lenti Ponsetto's behest, Karen Tamburro, DePaul's then Title IX Coordinator, sought a meeting with Dr. Conviser. During the meeting, Dr. Conviser raised a number of related issues, including the use of sex as part of DePaul Athletics' recruitment and students' discomfort reporting sexual assault and other abuses. As Title IX Coordinator, Tamburro should have known how to conduct an interview in a respectful, thoughtful manner. Instead, Tamburro was hostile, mocking and criticizing Dr. Conviser throughout the discussion. Tamburro repeatedly pressed Dr. Conviser to divulge confidential patient information in breach of Dr. Conviser's professional and ethical duties, and was angry when Dr. Conviser would not.

73. Immediately afterward, Dr. Conviser received an email from Lenti Ponsetto, insisting in self-serving fashion, that DePaul purportedly takes seriously the safety and well-being of students, and, in gas-lighting fashion, suggesting that Dr. Conviser, rather than the University, was deterring student-athletes from reporting.

74. Dr. Conviser was left heartbroken at Lenti Ponsetto's meritless attack on her professional ethics.

75. Lenti Ponsetto's email made even clearer that Dr. Conviser was stuck in an impossible situation. DePaul claimed it wanted Dr. Conviser to report abuses to the University, feigning concern that she was not doing so. But when Dr. Conviser lodged such reports, she was met with denial, criticism, and retaliation. Dr. Conviser could not win. She could tolerate abuse and violate her duties, or she could earn DePaul's ire by reporting.

The Final Straw

76. On April 6, 2018, in accordance with detailed instructions by Dr. Conviser, an Ascend therapist joined the source of her information to call the Title IX Office and report that Lenti was physically abusing women involved with the softball team—including, specifically, that he had had hit one in the face.

77. DePaul knew that the report of abuse against Lenti came from Ascend, and that Dr. Conviser closely directed all of Ascend's actions and decisions. Upon information and belief, DePaul knew that Dr. Conviser was behind the April 6, 2018, report of Lenti's misconduct when it received the report, or within days after.

78. On or before April 12, 2018, DePaul's Title IX Office—led by Statz, Lenti Ponsetto's deputy—opened what DePaul later referred to as an “independent and confidential investigation” into Lenti's conduct.³

³ The First Amended Complaint erroneously alleged that the investigation began on April 19, 2018. Dr. Conviser's records indicate that she received confirmation that the investigation was underway on that date, but that the investigation in fact started no later than April 12, 2018. See Exh. 1, Popok Dec. at ¶¶ 2-6.

79. Dr. Conviser had finally forced the University to acknowledge abuse in DePaul Athletics. But it was her whistleblowing—not Lenti’s abuses—that the University decided to punish.

80. At some point during the investigation, DePaul received confirmation that Dr. Conviser was central to the April 6, 2018 report—just as DePaul would have already assumed given that one of Dr. Conviser’s therapists had been on the call on which the report was made, and given DePaul’s knowledge of Dr. Conviser’s deep involvement in all decisions at Ascend.

81. On April 13, 2018, Walsh wrote to Dr. Conviser that she should stop caring for a student-athlete referred to her by DePaul, right in the middle of that student’s treatment. This was the first time in her more than thirteen-year association with DePaul that it had ever required Dr. Conviser to rescind care for a patient.

82. After the April 6, 2018, report to the Title IX Office, DePaul’s referral rate to Ascend plummeted. In the remaining nine months of 2018 after the report, DePaul referred only three new clients to Ascend. That was a dramatic reduction of referrals compared to 2016, 2017, and even to the first three months of 2018.

83. After the April 6, 2018, report, DePaul Athletics also began to tell student-athletes and DePaul staff that the University would no longer pay for services provided by Dr. Conviser and Ascend. And after that date, Walsh, Dr. Conviser’s primary referral source at DePaul, stopped referring new patients to Dr. Conviser and Ascend.

84. By 2019, DePaul had stopped referring any new patients to Ascend altogether. That year, Ascend treated just nine returning DePaul patients, fewer than a third of the number it had treated the year before, and fewer than a quarter of the number it had treated in 2017.

85. In 2020, Dr. Conviser and Ascend treated only two returning DePaul patients, and by the beginning of 2021, they were no longer treating any.

86. In effect, Dr. Conviser's relationship with DePaul was over, even though the Agreement for her services through Ascend was not set to terminate until June 30, 2021 (the "Termination Date").

87. Dr. Conviser never received any explanation about why DePaul had changed the terms of its relationship with her and Ascend. When Dr. Conviser asked Walsh—who had been responsible for most of DePaul's referrals to Ascend—to explain the change, Walsh responded, "Don't kill the messenger." Walsh's answer suggested to Dr. Conviser that Walsh had been directed to terminate the relationship by someone else at DePaul against her judgment.

88. Upon information and belief, DePaul stopped referring Dr. Conviser and Ascend patients in retaliation against her and did not replace Dr. Conviser's care with comparable mental health services for DePaul patients.

89. The University materially breached its contract with Dr. Conviser before the Termination Date by not complying with the Agreement's express terms. The Agreement identified three exclusive bases for terminating the Agreement early—imminent threats by Ascend to student-athletes, the felony conviction of an Ascend counselor and Ascend losing its business license or corporate charter—but none of those had occurred. And DePaul did not provide the required thirty days written notice with an opportunity for Dr. Conviser to cure a material breach giving rise to the termination, as required by the Agreement.

90. For Dr. Conviser, the cost of doing her job—protecting students' safety and wellbeing by reporting alleged Title IX violations—was losing her job with DePaul.

91. DePaul Athletics subjected Dr. Conviser to retaliation. As a result, Dr. Conviser was excluded from participation in, and denied the benefits of, the University—including the provision of mental health care to DePaul Athletics.

The Aftermath at DePaul

92. In June 2018, DePaul—quietly and without any fanfare—granted Lenti early retirement, leaving his reputation intact.⁴

93. Lenti “unretired” one year later, only to accept a coveted position as Auburn University’s Assistant Softball Coach, where he continues to be employed.

94. On information and belief, DePaul did not inform Auburn of Lenti’s misconduct, nor did it report the coach’s abuses to the SafeSport, as required. That was left to Dr. Conviser to do after it was clear that DePaul would not.

95. In an article dated April 22, 2019, *The DePaulia*, reported that “[g]rievances like these have drawn into question the efficacy of DePaul’s Title IX department. The numbers tell the same story.” In that same article, a student recounted her experience reporting to DePaul’s Title IX Office after she was sexually assaulted by a classmate. Even though she had a witness who could corroborate her story, the student said, the DePaul administrator with whom she spoke “simply would not listen. . . . There was no discussion of any other steps I could take through DePaul, and there were no consequences for the other student involved.” *The DePaulia* further

⁴ Lenti’s “retirement”—with no press conference or media statement—caught the University community by surprise. Subsequent reporting by *The DePaulia*, the independent student newspaper, and comments submitted online at the time indicate that Lenti’s abusive conduct, including hitting and punching his players, was well-known. As one *DePaulia* reader put it in response to the announcement of Lenti’s departure “if a man hit/punched/assaulted a woman he normally goes to jail, if he is a famous coach he gets to retire. Shame on this school and [Athletics Director] for covering up what this man has done.”

reported that the Title IX Office did not inform the reporting student of “her legal rights under Title IX” and that she ultimately “sought counseling from a therapist not affiliated with DePaul.” This reporting is consistent with Dr. Conviser’s own experiences.

96. Another student told The DePaulia that a representative of the Title IX Office had told her, erroneously, that “most of reported sexual assaults on campus are false allegations.”

97. The University’s mistreatment of victims continues. With Dr. Conviser’s termination, DePaul students lost a champion.

COUNT I
(Retaliation in Violation of Title IX,
20 U.S.C. §§ 1681 et seq.)

98. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 97 as if fully alleged here.

99. Dr. Conviser was an integral part of DePaul Athletics. She provided mental health services to student-athletes and staff and played a central role in DePaul’s efforts to comply with Title IX and NCAA policies.

100. As required by DePaul policy and professional standards, Dr. Conviser repeatedly reported sex discrimination to University officials and instructed others to do the same. Over the course of two academic years, Dr. Conviser repeatedly pressed DePaul to address abuses within the University and instructed others to report similar offenses. During this time, DePaul decreased student referrals to Dr. Conviser and Ascend. For DePaul, the last straw was Dr. Conviser’s successful effort to bring a particularly troubling instance of Lenti’s abuse to the University’s attention in the spring of 2018.

101. All of these efforts in which Dr. Conviser engaged constitute statutorily protected activities under Title IX.

102. As a result of Dr. Conviser's protected activities, the University took materially adverse action against her, dramatically reducing patient referrals, withdrawing funding for an ongoing patient, announcing to students that it would no longer fund treatment by Ascend, and ultimately terminating her contract in its entirety.

103. Plaintiffs have suffered actual and ascertainable damages as a direct and proximate result of DePaul's retaliation.

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Defendant on Count I for violations of Title IX, 20 U.S.C. § 1681(a), in an amount to be determined at trial, plus prejudgment interest, post-judgment interest, reasonable attorneys' fees and costs, and any other relief that this Court deems just and proper.

COUNT II
(Breach of Contract/Implied Covenant of Good Faith and Fair Dealing)

104. Plaintiff Ascend incorporates by reference the allegations contained in paragraphs 1 through 97 as if fully alleged here.

105. DePaul and Ascend executed a professional services agreement with a four-year term commencing July 1, 2017 and terminating on June 30, 2021.

106. This Agreement was a valid and binding contract.

107. Pursuant to the Agreement, DePaul represented that it "may refer student-athletes that it believes are in need of clinical psychological assessment to Ascend" and that it would pay Ascend for services it provided to those student-athletes. .

108. In exchange, Ascend agreed "to conduct a preliminary evaluation of illnesses of a psychological or nutritional nature of the student-athletes referred to it by DePaul" and recommend and provide treatment as necessary.

109. The Agreement specified that DePaul compensate Ascend for any treatment provided.

110. After the April 6, 2018, report against Lenti, the University breached the Agreement by cutting off referrals and announcing to students that it would not pay for Ascend services—all without following the Agreement’s express requirements for termination.

111. Additionally, DePaul breached the implied covenant of good faith and fair dealing, implied in all contracts under Illinois law, by refusing to send any new referrals to Dr. Conviser in retaliation for her properly and lawfully reporting Lenti’s misconduct to the University, and telling student-athletes that DePaul would no longer pay if they saw Dr. Conviser and Ascend for treatment.

112. DePaul did this in retaliation for Dr. Conviser’s efforts to bring to light abuses within the University, including those by Lenti.

113. By failing to fulfill its obligations under the Agreement by referring student-athletes to Dr. Conviser and Ascend, DePaul anticipatorily breached the Agreement even before it ever notified Dr. Conviser that it had “terminated” the Agreement.

114. DePaul’s material breaches of its obligation of good faith and fair dealing and its anticipatory repudiation also constitute constructive termination of the Agreement.

115. Plaintiff has complied with all contractual conditions and fully performed its obligations under the Agreement.

116. Plaintiff has suffered actual and ascertainable damages as a direct result of Defendant’s breach of the contract, as well as a breach of the implied covenant of good faith and fair dealing.

117. The parties' contract also contains in Section 9 an "attorneys' fees and costs" provision.

WHEREFORE, Plaintiff Ascends prays that this Court enter judgment in its favor and against Defendant on Count II for breach of contract and the breach of the implied covenant of good faith and fair dealing in an amount to be determined at trial, plus prejudgment interest, post-judgment interest, reasonable attorneys' fees and costs, and any other relief that this Court deems just and proper.

COUNT III
(Indemnification)

118. Plaintiff Ascend incorporates by reference the allegations contained in paragraphs 1 through 97 as if fully alleged here.

119. DePaul and Ascend executed a professional services agreement with a four-year term commencing July 1, 2017 and terminating on June 30, 2021.

120. This Agreement was a valid and binding contract.

121. The Agreement contains a broad Indemnification provision (the "Indemnification") that encompasses both first-party and third-party claims for indemnity. Specifically, Section 9 of the Agreement states, in pertinent part, "[t]o the fullest extent permitted by law, each Party ("the Indemnifying Party") shall defend, indemnify, and hold harmless the other party ("the Indemnified Party"), its agents, employees, affiliates, trustees, director, officers, faculty members, past or present, from and against any and all claims, damages, losses, and expenses including, but not limited to, reasonable attorneys' fees, arising out of or relating to any actual or alleged (i) misrepresentation, breach of warranty, breach of promise, or breach of covenant by the Indemnifying Party of any representation, warranty, promise, or covenant in this Agreement..." (emphasis added).

122. The Agreement does not contain an express provision limiting the Indemnification to third-party claims against the parties.

123. As the drafter of the Agreement, Defendant had the power and opportunity to include such an express provision in the Agreement if it had intended to limit the scope of the Indemnification to third-party claims against the parties.

124. The Indemnification therefore applies to the first-party claims between DePaul and Ascend.

125. After the April 6, 2018 report, the University breached the Agreement by cutting off referrals and ending payment in bad faith without following the Agreement's express requirements for termination.

126. By failing to fulfill its obligations under the Agreement by referring student-athletes to Dr. Conviser and Ascend, DePaul anticipatorily breached the Agreement even before it ever notified Dr. Conviser that it had "terminated" the Agreement.

127. DePaul's material breaches of its obligation of good faith and fair dealing and anticipatory repudiation also constitute constructive termination of the Agreement.

128. Plaintiff has complied with all contractual conditions and fully performed its obligations under the Agreement.

129. Accordingly, Plaintiff is entitled to indemnification for its reasonable costs and fees, including attorneys' fees, related to seeking redress for their damages caused by DePaul's breaches of the Agreement.

WHEREFORE, Plaintiff Ascend prays that this Court enter judgment in its favor and against Defendant on Count III for indemnification in an amount to be determined at trial, plus

prejudgment interest, post-judgment interest, reasonable attorneys' fees and costs, and any other relief that this Court deems just and proper.

Respectfully submitted,

By: /s/ Michael S. Popok

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Dated: May 24, 2021

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 24, 2021, I electronically filed the foregoing Second Amended Complaint with the Clerk of this Court by using the CM/ECF system upon the following counsel for Defendant DePaul University:

Christina M. Egan, Esq.
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Chicago, Illinois 60601-1815

By: /s/ Michael S. Popok
Michael S. Popok

Dated: May 24, 2021