

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY AT LOUISVILLE
NO. _____
FILED ELECTRONICALLY**

NINA YODER

9914 Mary Dell Lane
Louisville, KY 40291

PLAINTIFF

v.

UNIVERSITY OF LOUISVILLE

DEFENDANTS

Serve: Angela Koshewa
Office of General Counsel
2301 South Third Street
Louisville, KY 40292

Serve: Jack Conway
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601

and

DR. ERMALYNN KIEHL

in her individual and official capacities

Serve: University of Louisville
2301 South Third Street
Louisville, KY 40292

and

DR. MARCIA HERN

in her individual and official capacities

Serve: University of Louisville
2301 South Third Street
Louisville, KY 40292

**VERIFIED COMPLAINT, PETITION FOR DECLARATION OF RIGHTS, and REQUEST
FOR INJUNCTIVE RELIEF**

The Plaintiff, Nina Yoder, for her Verified Complaint against the Defendants, University of Louisville, Dr. Ermalynn Kiehl, and Dr. Marcia Hern, states the following:

NATURE OF THE ACTION

This is an action for injunctive relief, monetary damages, and a petition for declaration of rights arising from the Defendant's deprivation of the Plaintiff's rights under the state and federal constitutions and other applicable state and federal laws.

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff was born in the former Soviet Union but is now a United States Citizen residing in Jefferson County, Kentucky, and is also a former medic in the Active Duty military and currently a member of the U.S. Army Reserve.
2. Defendant University of Louisville (hereinafter, "the University") is a nonprofit Kentucky corporation doing business in Louisville, Jefferson County, Kentucky, a Kentucky institution of higher learning per KRS 164.810, and a state agency.
3. Defendant Ermalynn Kiehl is an Associate Dean at the University of Louisville, and was partially or wholly responsible for the injuries to the Plaintiff as set forth below.
4. Defendant Marcia Hern is a professor at the University of Louisville, and was partially or wholly responsible for the injuries to the Plaintiff as set forth below.
5. Jurisdiction is proper in this Court because the action arises under the state and federal constitutions, statutes, and common law, the Plaintiff seeks injunctive relief, and the Plaintiff is seeking monetary damages in excess of the jurisdictional requirements of this Court.
6. Venue is proper because Plaintiff resides in Jefferson County, the Defendant performs its official duties and conducts business in Jefferson County, and the injuries in question occurred

in Jefferson County, all within this Judicial District.

FACTUAL ALLEGATIONS

7. Plaintiff incorporates by reference, as set forth fully herein, each and every averment, allegation, or statement contained in the previous paragraphs of this Complaint.
8. Plaintiff was a student at the University's School of Nursing ("the Nursing School") from January, 2007 until February 27, 2009.
9. Plaintiff was in good academic standing with a GPA of over 3.0, and was scheduled to graduate from the Nursing School in August of 2009.
10. On February 26, 2009, Plaintiff received a call from Glenda Adams, a professor at the Nursing School, who stated that she needed to meet with Plaintiff at the Nursing School in person the following morning.
11. On February 27, 2009, Plaintiff arrived at the Nursing School and was greeted by Dr. Ermalynn Kiehl, Associate Dean of Undergraduate Programs, who escorted Plaintiff into an office with two persons believed to be police or campus security officers.
12. Dr. Kiehl informed Plaintiff that she (Kiehl) had "pictures" and that "students voiced concerns that lead us [the University] to believe you may have a gun."
13. Plaintiff did not have a gun in her possession at that time, and has never brought any firearm onto University campus.
14. Plaintiff was subjected to a pat-down search by the two security officers, and was found not to have any firearms or anything illegal on her person.
15. After Plaintiff was searched, Dr. Kiehl presented Plaintiff with a number of color printouts of postings allegedly made by Plaintiff to a subheading ("blogs") of her personal page at the internet site www.myspace.com. These postings are attached hereto, in their entirety, as **Exhibit 1.)**

16. These postings were the personal beliefs of the Plaintiff, did not create a disturbance, did not breach confidentiality of any kind, and did not advocate or endorse any illegal activity.
17. Dr. Kiehl informed Plaintiff that she could not allow her to become a nurse due to the nature of these internet postings.
18. Dr. Kiehl further informed Plaintiff that she had been withdrawn from all of her classes, and that she was considered “persona non-grata,” and not allowed to enter the University's campus.
19. On or about March 2, 2009, Plaintiff received a letter from Marcia J. Hern, Dean and Professor at the Nursing School, which confirmed Plaintiff's “academic dismissal” due solely to her “internet postings.” This letter is attached as **Exhibit 2**.
20. Per the Nursing School's procedures, Plaintiff submitted a petition for review of the decision to dismiss her to the Undergraduate Academic Affairs Committee. The Petition is attached as **Exhibit 3**.
21. The Plaintiff's petition (**Exhibit 3**) specifically complained of violations of her constitutional rights by the Defendants.
22. Plaintiff was not allowed to attend the meeting of the Undergraduate Academic Affairs Committee in which her petition was decided, nor was she allowed to contact anyone from the University to inquire as to the status of the petition.
23. On or about March 11, 2009, Plaintiff received a letter from Dr. Kiehl informing her that her petition was denied. No further reasons for Plaintiff's dismissal was given in the letter, which is attached as **Exhibit 4**.

COUNT ONE – VIOLATIONS OF 42 U.S.C. § 1983

24. Plaintiff incorporates by reference, as set forth fully herein, each and every averment, allegation, or statement contained in the previous paragraphs of this Complaint.

25. Section 1983 imposes civil liability upon any person who, acting under the color of state law, deprives another individual of any rights, privileges, or immunities secured by the Constitution or law of the United States. To establish a valid claim under §1983, the Plaintiff must demonstrate that Defendants, acting under color of state law, deprived her of a right secured either by the Constitution or the laws of the United States.
26. At all times material hereto, all Defendants were acting under color of state law.
27. Defendants, in their individual and official capacities, violated Plaintiff's right to free speech under the Constitution and the laws of the United States and of Kentucky by retaliating against her and otherwise restricting her right to publish information protected by the First Amendment of the U.S. Constitution and Sections One and Two of the Kentucky Constitution.
28. Defendants in their individual and official capacities violated Plaintiff's substantive due process rights under the Constitution and the laws of the United States and of Kentucky by depriving her of the interest she had acquired in her credit hours accumulated at the School of Nursing, and/or her expected Bachelor's degree in Nursing.
29. Defendants, in their individual and official capacities, violated Plaintiff's procedural due process rights under the Constitution and the laws of the United States and Kentucky by:
- (a) Failing to notify Plaintiff of any charges against her prior to dismissing her from the School of Nursing;
 - (b) Failing to offer Plaintiff a due process hearing before dismissing her from the School of Nursing;
 - (c) Failing to offer Plaintiff the opportunity to hear and question witnesses against her;
 - (d) Failing to offer Plaintiff the chance to examine the evidence and documents used by the University to dismiss her from the Nursing School;
 - (e) Failing to permit Plaintiff to introduce witness testimony;

- (f) Failing to allow Plaintiff to testify on her own behalf or to in any way describe her version of events prior to dismissing her from the Nursing School;
- (g) Failing to allow Plaintiff meaningful assistance of counsel at any point in the disciplinary process;
- (h) Failing to make an administrative hearing record sufficient to permit meaningful judicial review;
- (i) Failing to prepare an adequate decision with findings of fact and/or conclusions of law setting forth the basis for Plaintiff's dismissal from the School of Nursing;
- (j) Failing to specify which of the University's rules, policies or laws Plaintiff violated;
- (k) Imposing a sanction (dismissal from the School of Nursing) against Plaintiff which is completely disproportionate to the violation alleged (posting on a private website)
- (l) Failing to consider the full range of available sanctions, including oral reprimand, written reprimand and probation; and
- (m) Failing to appoint an impartial arbiter to preside over Plaintiff's petition for review.

30. The law regarding the above violations was clearly established, and the violations were not objectively or subjectively reasonable.

DAMAGES

31. Plaintiff incorporates by reference, as set forth fully herein, each and every averment, allegation, or statement contained in the previous paragraphs of this Complaint.

32. As a result of Defendants' unlawful conduct, Plaintiff is entitled to compensatory damages in an amount exceeding the jurisdictional minimums of this Court.

33. Plaintiff is entitled to punitive damages for the willful, wanton, oppressive, malicious, and/or grossly negligent unlawful conduct of Defendants, as set forth above.

34. Pursuant to 42 U.S.C. § 1988, Plaintiff is further entitled to her costs and attorneys fees in bringing and maintaining this action, plus interest.

DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

35. Plaintiff incorporates by reference, as set forth fully herein, each and every averment, allegation, or statement contained in the previous paragraphs of this Complaint.

36. Plaintiff requests this Court issue a declaratory judgment deeming unconstitutional any and all policies, procedures, practices, and/or customs, whether written or unwritten, under which Plaintiff was deprived of her constitutional rights as set forth above, and further requests that the Court permanently enjoin Defendants from following or enforcing such policies, procedures, practices, and/or customs.

37. Plaintiff further requests that she be granted permanent injunctive relief in the following forms:

- (a) That the University reinstate Plaintiff as a student in the School of Nursing;
- (b) That the University grant her full credit for all academic work missed as a result of Defendants' wrongful conduct;
- (c) That the University be required to clear Plaintiff's disciplinary and academic record in regard to any disciplinary actions taken in unlawful violation of Plaintiff's rights;
- (d) That the University and all its employees and other agents be enjoined from disclosing any information with regard to Plaintiff's discipline in any context, including but not limited to any letters of recommendation or reference

REQUEST FOR IMMEDIATE INJUNCTIVE RELIEF

38. Plaintiff incorporates by reference, as set forth fully herein, each and every averment, allegation, or statement contained in the previous paragraphs of this Complaint.

39. Plaintiff requests this Court immediately issue an injunction allowing Plaintiff to return to classes at the University's School of Nursing pending the outcome of this litigation, for reasons set forth in her Motion for Immediate Injunctive Relief, filed this same day.

WHEREFORE, the Plaintiff, Nina Yoder, respectfully requests the following:

1. An award of damages as set forth in the Complaint above against all Defendants, jointly and severally;
2. A declaratory judgment and permanent injunctive relief;
3. Immediate injunctive relief;
4. Trial by jury on all issues so triable;
5. Her costs and attorney's fees, plus pre- and post-judgment interest;
6. Any and all other relief to which she may be entitled.

Respectfully submitted,

s/Daniel J. Canon

DANIEL J. CANON
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