

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

OSCAR SALINAS,  
Plaintiff,  
v.  
PALO ALTO UNIVERSITY, et al.,  
Defendants.

Case No. [5:15-cv-06336-HRL](#)

**ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT  
AND GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

Re: Dkt. Nos. 65, 88

Pro se plaintiff Oscar Salinas sues over his 2013 dismissal from the Doctor of Philosophy in Clinical Psychology program at Palo Alto University (University). He alleges that his academic supervisor, Dr. Amanda Fanniff, gave him a low evaluation that misrepresented his work and abilities. Salinas further alleges that, during administrative proceedings, he was denied an opportunity to present evidence and that the University failed to conduct a proper investigation. Plaintiff contends that the subsequent decision to dismiss him from the University was arbitrary and capricious and was made in retaliation for his complaints about Fanniff. The University maintains that it did not act in an arbitrary or capricious manner, but simply exercised sound academic judgment.

Plaintiff initially sued the University, plus a number of its faculty and staff, asserting claims for breach of contract, conspiracy, fraud, negligent misrepresentation, and violation of

1 California Education Code § 94367. Jurisdiction is based on diversity, 28 U.S.C. § 1332.

2 The court dismissed the individual defendants, as well as the conspiracy and fraud-based  
3 claims. The only remaining defendant is the University. The only remaining claims are for breach  
4 of contract, breach of the implied covenant of good faith and fair dealing, and for violation of  
5 California Education Code § 94367.

6 The University timely moved for summary judgment on January 31, 2017. Several days  
7 later---and nearly one month after the deadline for bringing fact discovery disputes before the  
8 court---plaintiff filed a motion to compel fact discovery and also requested an extension of time to  
9 file his own summary judgment motion. The discovery motion was not brought in compliance  
10 with this court’s standing order re discovery disputes, and the court found no good cause for  
11 plaintiff’s requested extension. Nevertheless, the court held defendant’s summary judgment  
12 motion in abeyance and adjusted the scheduling order to allow additional time for adjudication of  
13 plaintiff’s discovery dispute and to permit him to file his own motion for summary judgment.

14 Now before the court are the parties’ cross-motions for summary judgment. Upon  
15 consideration of the moving and responding papers, as well as the oral arguments presented, the  
16 court denies plaintiff’s motion and grants defendant’s motion.<sup>1</sup>

17 **BACKGROUND**

18 Unless otherwise indicated, the following facts are undisputed:

19 The University is an accredited, private, nonprofit educational institution, with an  
20 emphasis in the behavioral and social sciences. The student body is comprised primarily of  
21 graduate students pursuing masters or doctoral degrees in psychology and counseling.

22 Salinas enrolled in the University’s Ph.D. Clinical Psychology Program in Fall 2010. He  
23 was dismissed from the program in the Spring of 2013.

24 Upon his matriculation, plaintiff was given a copy of the University’s Ph.D. Program  
25 Student Handbook (“Handbook”). The Handbook describes the core objectives of the program---  
26 basically, all of which are aimed at producing competent, ethical, and professional clinicians.

27 \_\_\_\_\_  
28 <sup>1</sup> All parties have expressly consented that all proceedings in this matter may be heard and finally  
adjudicated by the undersigned. 28 U.S.C. § 636(c); Fed. R. Civ. P. 73.

1 (Dkt. 65-1, Declaration of William J. Froming (“Froming Decl.”) ¶¶ 15-16, Ex. A (Dkt. 65-10 at  
2 ECF p. 60)).

3 Section 5.11 of the Handbook provides that students are evaluated upon both personal and  
4 professional conduct at the University:

5  
6 **In a clinical psychology training program, evaluations of competence**  
7 **must be based not only on academic achievement but on personal and**  
8 **professional qualities as well.** These include a commitment to self-  
9 understanding and self-awareness and a capacity for good relationships.  
10 The two are obviously related; understanding and acceptance of others  
11 depend in part on understanding and acceptance of ourselves. **Students are**  
12 **expected to demonstrate maturity, good judgment, discretion, and respect.**  
13 If their effectiveness is compromised by personal problems or illness, they  
14 are expected to seek competent professional help to determine whether to  
15 suspend, terminate, or limit the scope of professional studies at PAU.

16 (Id. (Dkt. 65-10 at ECF p. 28)) (emphasis added). Additionally, the Handbook states that faculty  
17 will work closely with students as mentors and advisors:

18 All students admitted to the Ph.D. program are expected to complete their  
19 graduate degrees and the faculty work closely as mentors and advisors so  
20 students graduate in a timely fashion. Communication between students  
21 and faculty advisors is vital . . .

22 (Id., (Dkt. 65-10 at ECF p. 28)).

23 As part of the Ph.D. Clinical Psychology Program, all students are required to have  
24 supervised clinical experience, or “practicum.” The first part of this training begins in the second  
25 year of the program at the Kurt & Barbara Gronowski Psychology Clinic (“Gronowsky Clinic” or  
26 “Clinic”). The Clinic is a community-based psychology training clinic and treatment center.  
27 Students work at the Clinic under the supervision of University faculty, who assess, critique, and  
28 evaluate each student’s performance. Students are evaluated on a form using a 5-point scale, with  
“5” being the highest rating (“Advanced/Skills comparable to excellent performance at internship  
level”) and “1” being the lowest (“Needs remedial work”). Evaluations typically are completed at  
the end of the quarter. (Dkt. 65-2, Declaration of Amanda Fanniff (“Fanniff Decl.”) ¶¶ 30-31, 47,  
Ex. B).

According to the Handbook, “[d]eficiencies in any of three general areas of [the  
University’s] clinical training (academic course work and progress toward degree, professional

1 behavior, and conduct of research) may lead to students being placed on probation, suspended, or  
2 dismissed.” (Froming Decl. ¶ 21, Ex. A (Dkt. 65-10 at ECF p. 95)). To make satisfactory  
3 academic progress, students are expected to do a number of things, including “[p]erform at an  
4 adequate level in research, internship training, clinical progress (practicum & internship),  
5 academic progress, or dissertation . . . .” (Id.). And, “[i]n cases of extreme or persistent  
6 difficulties,” a student may be dismissed for a number of reasons, including “[f]ailure to maintain  
7 the clinical competencies and professional conduct appropriate for [a] student enrolled in a  
8 graduate clinical training program, including behavior that poses serious risks (e.g., behavior  
9 resulting from psychosis, or other psychopathology or active dependence on substances, etc.) to  
10 clients, research subjects, faculty, staff, or colleagues (note that an adequate academic record  
11 cannot compensate for impaired or unethical professional behavior).” (Id. at ECF pp. 98-99).

12 There are two University committees responsible for overseeing students: the Clinical  
13 Training Committee (“CTC”) and the Student Evaluation Committee (“SEC”). (Froming Decl., ¶  
14 13). The Handbook identifies procedures for addressing concerns about student progress,  
15 including review by the CTC and SEC, and appeal to the University Internal Appeals Committee  
16 (“IAC”). (Id. ¶¶ 22-23 & Ex. A).

17 Salinas began his clinical training at the Gronowski Clinic in September 2012. His  
18 immediate supervisor was Dr. Amanda Fanniff. The next-in-line supervisor was Dr. Sandra  
19 Macias, the Clinic’s director. In evaluating plaintiff’s clinical work, Fanniff says she concluded  
20 (based on videotape review, client assessment, and written progress notes) that he was not  
21 performing adequately in two areas: (1) his ability to establish rapport with patients, known as  
22 “therapeutic alliance”; and (2) his ability to make effective use of faculty supervision and  
23 supervisory feedback. For example, she claims that:

- In one instance, she was told by clinic managers that Salinas left a patient at the front desk during a risk assessment consultation. This was problematic because plaintiff would have needed to consult with a supervisor in a private therapy room, and leaving the patient at the front desk could cause the patient to become confused, anxious, or embarrassed.

- In another instance, she reviewed a video of a therapy session and found that Salinas “appeared dismissive with a client.” That is, Fanniff says plaintiff talked for long periods of time without giving the client an opportunity to speak and “communicated in other ways which [she] thought showed that he needed to improve his therapeutic clinical skills.” She said this was a pattern she observed in several sessions.

(Fanniff Decl., ¶¶ 33-36).

By October, Fanniff expressed to Macias concerns about plaintiff’s supervision. (Dkt. 65-3, Declaration of Sandra Macias (“Macias Decl.”) ¶ 35). Specifically, Fanniff reported that Salinas would argue with her and become very defensive whenever she provided feedback or made any suggestions. (*Id.*; Fanniff Decl. ¶ 40). This led Fanniff to believe that plaintiff was unwilling to accept faculty constructive criticism. (Fanniff Decl. ¶ 40).

Fanniff met with plaintiff on October 30, 2012 for individual supervision and to review the patient session in which she formed the opinion that he was “dismissive” and “harsh” with the client. She says she gave him feedback on how to improve his skills. (Fanniff Decl. ¶ 38). When plaintiff disagreed with her assessment, Fanniff agreed to go over the video again the following week. (Dkt. 69 Declaration of Oscar Salinas ISO Opp. to MSJ (“Salinas Opp. Decl.”) ¶ 4, Ex. Q (Dkt. 68-2 at ECF pp. 87-88)).

On November 6, Fanniff and Salinas met again to review the video of the therapy session in which Fanniff concluded that plaintiff was “harsh” and “dismissive.” She says she again provided him with feedback for improvement. (Fanniff Decl. ¶ 39). Salinas challenged Fanniff on her assessment and says he told her he was “scared” because he was going to need a recommendation from her, and he felt that things were not going well between them. (Salinas Opp. Decl. ¶ 4, Ex. Q (Dkt. 68-2 at ECF p. 88)).

Plaintiff says that the following week, Fanniff “was kinder” during a November 13 supervision session, even praising him on some things. (*Id.*). However, he claims that at the very end of the session, as he was preparing to leave, Fanniff told him that he was being defensive in supervision and that, in the future, if he became argumentative, she would tell him to stop talking. (*Id.*). Salinas felt this parting comment was unprofessional on Fanniff’s part and was an attempt by her to “muzzle” him. (*Id.* ¶ 7, Ex. N (Dkt. 68-2 at ECF p. 49)).

1           During the next week’s supervision session (November 20), Salinas claims that just as he  
2 started to respond to one of Fanniff’s comments, she stopped him from talking and (allegedly,  
3 “with an impish grin” and in a “gleeful” manner) said, “No, no, that’s what I mean.” (Salinas  
4 Opp. Decl., Ex. Q at ECF p. 87).

5           Fanniff maintains that during her meetings with Salinas, he continued to be defensive and  
6 argued with her whenever she provided a suggestion or feedback on his clinical training. (Fanniff  
7 Decl. ¶ 40). At some point, Fanniff told plaintiff that he would be receiving a “1” rating on his  
8 forthcoming evaluation. She says that her individual supervision sessions with plaintiff varied in  
9 the degree to which he was defensive and argumentative; but, over the course of the fall semester,  
10 she concluded that Salinas’ competency in establishing therapeutic alliance and in accepting  
11 faculty constructive feedback did not improve sufficiently to warrant a higher rating. (Id. ¶ 41).  
12 Macias concurred with Fanniff’s evaluation. (Macias Decl. ¶¶ 36-37).

13           Salinas requested a meeting with both Fanniff and Macias to discuss his performance.

14           Fanniff and Macias met with plaintiff on November 28. They reviewed some recordings  
15 of plaintiff’s therapy sessions, and Macias agreed with Fanniff’s evaluation of his performance. In  
16 their view, “how [Salinas] was acting with his clients is kind of how he was acting in supervision .  
17 . . . that he would get a little bit annoyed with clients if they weren’t kind of going along with his  
18 interpretation.” (Salinas Opp. Decl. ¶ 15, Ex. D (Dkt. 68-1 at ECF p. 17)). Macias says that she  
19 provided Salinas with feedback and suggestions for improvement, and that plaintiff’s response  
20 “was to assert that both Dr. Fanniff and I were wrong in our evaluation and he proceeded to argue  
21 with both Dr. Fanniff and I.” (Macias Decl. ¶ 38). Macias says she attempted to explain why she  
22 did not see things the way he did, but Salinas “was defensive and continued to argue with me.”  
23 (Id.). Both Macias and Fanniff aver that plaintiff appeared to be angry and was verbally  
24 argumentative throughout the meeting. (Id.; Fanniff Decl. ¶ 43).

25           On December 10, Salinas sent an email to Macias, titled “The Story of My Supervision,”  
26 in which he explained why he thought Fanniff was wrong about his clinical performance. (Salinas  
27 Opp. Decl., Ex. Q; Macias Decl. ¶ 39). In reflecting on the matter, Salinas concluded that Fanniff  
28 must have felt a need to exert dominance over him; and, to his way of thinking, she had been

1 trying to compete with him (e.g., by offering, in group discussions, analyses of patient behavior  
2 that differed from those he offered). Additionally, plaintiff came to believe that Fanniff had (in a  
3 very subtle manner) attempted to manipulate him into saying certain things during supervisory  
4 sessions in order to make him look bad. For example, Fanniff says she observed that plaintiff  
5 appeared to be anxious in therapy sessions (which she said is very typical among beginning  
6 students) and tried to provide suggestions about managing his anxiety in session in order to more  
7 effectively connect with the client. (Fanniff Decl. ¶ 63, Ex. L (Dkt. 65-10 at ECF p. 154)).  
8 Salinas believes that Fanniff was, in fact, trying to get him to say that he would never be anxious  
9 and would never make mistakes, in order to make him look arrogant. (Salinas Opp. Decl., Ex. Q  
10 at ECF pp. 84-85). In sum, Salinas said that Fanniff was flat-out wrong about him and questioned  
11 her competency and ethics as a supervisor. (Salinas Opp. Decl., Ex. Q).

12 Macias forwarded plaintiff’s December 10 email to (1) Dr. Robert Russell, the Director of  
13 the CTC; and (2) Dr. Jim Breckenridge, the Dean of Academic Administration and Operations.  
14 (Macias Decl. ¶ 40). She says that she did so “because [she] was concerned that Plaintiff was  
15 reacting to the feedback of his clinical training in a manner that reflected an inability to use faculty  
16 feedback.” (Id.).

17 Additionally, after discussing the matter with Clinic Assistant Directors, Macias (together  
18 with those directors) agreed that it was best to assign Salinas to another supervisor for the  
19 upcoming winter quarter. She says she made this decision because, given Salinas’ views about  
20 Fanniff, he likely would not benefit from her supervision. And, Macias wanted to give Salinas  
21 another opportunity at getting supervisory feedback from another supervisor. (Macias Decl. ¶ 41).

22 On December 11, Macias met with Salinas in her office and advised him of the supervisor  
23 change. Dr. Nancy Huang would supervise him for the remainder of the fall quarter, and he would  
24 be reassigned to Dr. Yotam Heineberg for the following quarter. (Macias Decl. ¶ 42). Several  
25 days later, in a December 14 email, Macias advised Salinas that he needed to submit information  
26 about his clinic hours and that, upon receipt of that information, Fanniff would complete his  
27 forthcoming evaluation for the Fall semester. (Id. ¶ 43).

28 In her evaluation form, Fanniff gave plaintiff a “2” rating on most factors and a “Not

1 Applicable” on others. According to the evaluation form, a “2” rating is the “[m]ost common  
2 rating for beginning practica” and signifies “[p]erformance consistent with other entry-level  
3 practica students.” (Fanniff Decl. ¶ 47, Ex. B at ECF p. 106). A “Not Applicable” rating means  
4 that the particular skill/objective was “Not applicable for this training experience/Not assessed  
5 during training experience.” (Id.). As discussed above, Fanniff gave plaintiff a “1” on  
6 “Therapeutic Alliance,” meaning that he “Alienates patients, fails to communicate empathy,  
7 and/or deficient in ability to recognize problems in therapeutic relationship. Fails to discuss  
8 therapeutic relationship in supervision.” (Id. ¶ 48, Ex. B at ECF p. 112). She also gave him a “1”  
9 rating on “Uses Consultation/Supervision Productively,” signifying that plaintiff is “Frequently  
10 defensive and inflexible; resists important and necessary feedback.” (Id. ¶ 49, Ex. B at ECF p.  
11 107). In one of the comments sections, Fanniff noted:

12 He has had some difficulty in making effective use of supervision. Oscar  
13 initially presented as defensive when provided with feedback regarding his  
14 sessions. In discussion, it became clear that he felt he was explaining why  
15 he had done what he did at the time and did not realize that this appeared  
16 argumentative and defensive. After this conversation, Oscar’s  
17 responsiveness to supervision improved, but he has continued to have  
18 difficulty accepting alternative perspectives on his performance. This has  
19 been apparent in individual supervision as well as in a joint meeting with  
20 Dr. Macias.

21 (Fanniff Decl. ¶ 50 & Ex. B). At the end of the evaluation form, Fanniff stated: “Oscar is  
22 performing at an appropriate level of skill in nearly all relevant competency areas, but needs  
23 further development in making effective use of supervision and skills related to developing the  
24 therapeutic alliance. I believe Oscar has the capability to improve upon these skills and to develop  
25 into an effective therapist.” (Id., Ex. B at ECF p. 114).

26 Salinas did not sign the evaluation.

27 Because Salinas received at least one “1” rating on his evaluation and didn’t sign his  
28 evaluation form, and because the school was aware of “concerns about [his] reaction to  
supervisory feedback and evaluation,” Russell sent an email to Salinas on January 10, 2013,  
advising him to (1) review his evaluation with his advisor (Dr. Friedberg) ASAP and (2) attend a  
CTC meeting on January 14. Salinas was advised to review the Handbook before the meeting and  
was told that he could bring Dr. Friedberg (or anyone else he wanted) to that meeting. (Dkt. 65-4



1 Declaration of Robert Russell (“Russell Decl.”) ¶ 43, Ex. E (Dkt. 65-10 at ECF p. 134).

2 The January 14 CTC meeting minutes indicate that Salinas was advised that there usually  
3 was a pool of first year practicum students that received “1” ratings and that those students usually  
4 progressed satisfactorily after some guidance. Salinas told the CTC that the “1” ratings he  
5 received were “flat out lies,” and that Fanniff had been manipulative and abused him in their  
6 supervisory relationship. When asked to explain, Salinas shared his belief that Fanniff had tried to  
7 compete with him in clinical group supervisory sessions and had also tried to manipulate him into  
8 saying that he would never be anxious. The committee noted that the meeting had been called, not  
9 because plaintiff disagreed with Fanniff, but because of the way in which he expressed his  
10 disagreement. And, the committee suggested that there might be other valid viewpoints as to the  
11 reality of the situation:

12 The committee asked [Salinas] to describe how he felt he presented himself  
13 in the first part of this meeting. He said he knows how bad it looked for  
14 him to say a supervisor lies. He understands, but that is how he saw it. He  
15 mentioned how Dr. Fanniff told him that he was being defensive just as he  
16 was leaving supervision and he stated, “Who does that?”

17 The committee again pointed out his level of thought attribution and  
18 inference. They pointed to the documents he has sent out regarding the  
19 situation and how by doing so he is establishing information about what  
20 somebody’s intent is. They asked if he understands the intent of what he  
21 did and how it affects other people and how they think about him, and about  
22 how they think about the supervisor. He stated that he had no choice and  
23 asked what was he supposed to do?

24 The committee explained that students in that situation in the past had  
25 talked to the supervisor to try and get an understanding of what was  
26 happening, and if that didn’t help, they would go talk to the clinic  
27 leadership and present their case, and if that didn’t seem to help, they would  
28 arrange to speak to the DCT or the Assoc. DCT in order to work out an  
alternative, such as getting a new supervisor.

The committee told Oscar that his habit of equating reality with how he  
views it is not warranted, particularly in clinical training. Realities  
pluralificate in clinical training and the more experience you get the more  
flexible you have to become to understand that there are very different ways  
of seeing the same thing. You have to have some faith in those that have  
been appointed to train you in that their view is in fact privileged by virtue  
of their training.

(Russell Decl. ¶ 53, Ex. F (Dkt. 65-10 at ECF pp. 137-38)). In the end, the CTC felt that Salinas  
was making unwarranted inferences about what the feelings and alleged motivations of other

1 people must be. While it noted that his “1” ratings would not necessary stop him from succeeding  
2 in the program, the committee found Salinas’ characterization of events “worrisome” and  
3 concluded that “the situation ha[d] gone beyond the 1’s on [plaintiff’s] evaluation.” (Id. at ECF p.  
4 138).

5 Following the January 14 meeting, Salinas sent a series of emails to Russell and other CTC  
6 members, again explaining why he believed he was right and Fanniff was wrong, and positing  
7 various theories as to why Fanniff did what she did. (Russell Decl. ¶ 55, Ex. G (Dkt. 65-10 at  
8 ECF pp. 140-42)).

9 On January 24, 2013, Russell wrote Salinas to advise that the CTC was continuing his  
10 suspension from work at the Gronowski Clinic and would be referring the matter to the SEC for a  
11 full review “because of unmitigated reservations concerning [his] ability to engage in clinical  
12 supervision going forward, as illustrated by your choice of responses to your clinical supervisors  
13 and CTC members during the supervisory feedback and CTC review process.” (Russell Decl. ¶  
14 58, Ex. H (Dkt. 65-10 at ECF p. 144)).

15 On February 12, 2013, Dr. Nigel Field (the then-Chair of the SEC, now deceased) wrote  
16 plaintiff to advise that, pursuant to procedures set out in the Handbook, the SEC would hold a  
17 meeting on March 1, 2013 to discuss his status in the Ph.D. program. Because of the serious  
18 nature of the matter, the SEC encouraged Salinas to bring an advocate (such as his faculty advisor)  
19 and to come prepared to address the issues. (Froming Decl. ¶ 61, Ex. I (Dkt. 65-10 at ECF pp.  
20 146-47)).

21 On February 25, 2013, Russell wrote plaintiff to advise that at the upcoming SEC meeting,  
22 the CTC intended to recommend that he be academically dismissed on competency grounds---  
23 namely, that he lacked the ability to receive critique of his clinical work and to discuss that  
24 critique effectively and constructively with faculty evaluators. The letter stated that the CTC  
25 “formed this academic judgment based on your performance in the clinic and perhaps more  
26 importantly, on observation of your communications to the faculty in your reaction to your receipt  
27 of their evaluations.” (Russell Decl. ¶ 59, Ex. J (Dkt. 65-10 at ECF p. 149)).

28 Macias and Fanniff each submitted statements to the SEC. Both discussed what they

1 perceived as Salinas’ resistance to feedback and supervision, as well as their concern over the  
2 level of anger they felt he had shown. Macias, for example, pointed out that plaintiff accused her  
3 of being unethical and threatened to report her to the Board of Psychology. She was concerned by  
4 his escalation of the matter---so much so, that she said she feared for her and Fanniff’s personal  
5 safety if the matter were to escalate any further, and both were advised by school administrators to  
6 work from home for the rest of the week. (Macias Decl. ¶ 55, Ex. K (Dkt. 65-10 at ECF pp. 151-  
7 52); Fanniff Decl. ¶ 63, Ex. L (Dkt. 65-10 at ECF pp. 154-55)).

8 The SEC proceeded with its meeting on March 1, 2013. In essence, faculty stated that they  
9 found plaintiff incapable of considering points of view other than his own. Russell, for example,  
10 noted that although plaintiff had performed well in class, with respect to his performance at the  
11 Clinic, he had “never heard of anyone so resistant to alternatives or lacking in flexibility.”  
12 Plaintiff, on the other hand, maintained that he welcomed constructive criticism and felt he had no  
13 choice but to react in the way that he did because Fanniff’s evaluation of him was wrong. (Dkt.  
14 88-2 Declaration of Oscar Salinas ISO MSJ (“Salinas Decl.”), Ex. W; Dkt. 65-10 Deft’s MSJ, Ex.  
15 M).

16 On March 22, 2013,<sup>2</sup> Field wrote a letter to Dr. Allen Calvin (the University’s President at  
17 the time), recommending that Salinas be dismissed from the program, effective immediately, due  
18 to what the SEC found to be his inability to be supervised:

19 Meeting with Oscar Salinas on March 1, 2013, the SEC found that, while he  
20 is clearly capable, he is not able to be supervised in his clinical work. At  
21 his request, four faculty members of the SEC viewed videotapes of his  
22 therapy sessions. We were therefore able to independently confirm that  
23 indeed, as is true of any intern early on in training, he is in need of close  
24 clinical supervision. Given his unwillingness to constructively make use of  
25 a clinical supervisor’s feedback, and noteworthy tendency to misconstrue  
26 the intent of a clinical supervisor in a negative direction, it is not possible to  
27 supervise him. In light of this, he is not suitable to be in a clinical training  
28 program. Again, it is not a matter of his competence per se that is in  
question, but rather his inability to be supervised.

(Russell Decl. ¶ 68, Ex. N (Dkt. 65-10 at ECF pp. 165-66)).

On April 10, 2013, Calvin wrote plaintiff to advise that he was accepting the SEC’s

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<sup>2</sup> Field’s letter is dated “March 22, 2012,” but given the context of the proceedings, that date  
apparently is a typographical error.

1 recommendation to dismiss him from the Ph.D. program, effective immediately. (Froming Decl. ¶  
2 69, Ex. O (Dkt. 65-10 at ECF p. 168).

3 Plaintiff appealed the decision to the IAC. On August 27, 2013, William Froming  
4 (University Provost) wrote Salinas to advise that the IAC would hear his appeal on September 16,  
5 2013. Plaintiff was invited to submit materials he wished the IAC to review beforehand.  
6 (Froming Decl., ¶ 72, Ex. P (Dkt. 65-10 at ECF p. 177). Plaintiff did so, maintaining that he had  
7 always behaved calmly and professionally and was being unfairly portrayed as an angry and  
8 deranged individual. (Salinas Opp. Decl., Exs. M, N (Dkt. 68-2, ECF pp. 41-59)).

9 Froming avers that prior to the appeal hearing, IAC members reviewed numerous  
10 documents, including plaintiff's submissions. At the hearing, they heard testimony and also  
11 interviewed Fanniff and Macias about their interactions with Salinas. The IAC Chair, Dr. James  
12 Breckenridge, also reviewed recordings of plaintiff's client sessions. (Froming Decl. ¶¶ 76-80,  
13 Ex. R (Dkt. 65-10 at ECF pp. 196-214)).

14 On November 25, 2013, Breckenridge wrote a letter to Froming, stating the IAC found no  
15 basis to overturn the decision to dismiss plaintiff. The committee found no evidence that anyone  
16 at the University had treated Salinas in a significantly arbitrary, capricious, or improper manner.  
17 Although Fanniff had described plaintiff as "angry" and "frightening," the committee found no  
18 evidence that anyone had suggested that plaintiff suffered from a psychological impairment. And,  
19 despite his claims to the contrary, the IAC found that evidence about his clinical competency  
20 (including recordings of his therapy sessions) had been carefully considered and that there was no  
21 evidence that decisionmakers refused to investigate his supervisors' claims. (Froming Decl. ¶ 81,  
22 Ex. S (Dkt. 65-10 at ECF pp. 216-18)).

23 This lawsuit followed.

### 24 LEGAL STANDARD

25 A motion for summary judgment should be granted if there is no genuine issue of material  
26 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a);  
27 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). The moving party bears the initial  
28 burden of informing the court of the basis for the motion, and identifying portions of the

1 pleadings, depositions, answers to interrogatories, admissions, or affidavits which demonstrate the  
2 absence of a triable issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). In  
3 order to meet its burden, “the moving party must either produce evidence negating an essential  
4 element of the nonmoving party’s claim or defense or show that the nonmoving party does not  
5 have enough evidence of an essential element to carry its ultimate burden of persuasion at trial.”  
6 Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc., 210 F.3d 1099, 1102 (9th Cir. 2000).

7 If the moving party meets its initial burden, the burden shifts to the non-moving party to  
8 produce evidence supporting its claims or defenses. See Nissan Fire & Marine Ins. Co., Ltd., 210  
9 F.3d at 1102. The non-moving party may not rest upon mere allegations or denials of the adverse  
10 party’s evidence, but instead must produce admissible evidence that shows there is a genuine issue  
11 of material fact for trial. See id. A genuine issue of fact is one that could reasonably be resolved  
12 in favor of either party. A dispute is “material” only if it could affect the outcome of the suit  
13 under the governing law. Anderson, 477 U.S. at 248-49.

14 “When the nonmoving party has the burden of proof at trial, the moving party need only  
15 point out ‘that there is an absence of evidence to support the nonmoving party’s case.’”  
16 Devereaux v. Abbey, 263 F.3d 1070, 1076 (9th Cir. 2001) (quoting Celotex Corp., 477 U.S. at  
17 325). Once the moving party meets this burden, the nonmoving party may not rest upon mere  
18 allegations or denials, but must present evidence sufficient to demonstrate that there is a genuine  
19 issue for trial. Id.

## 20 DISCUSSION

### 21 A. Contract Claims

22 Salinas contends that the decision to dismiss him was arbitrary and capricious because it  
23 was based on Fanniff’s (allegedly unwarranted and erroneous) evaluation. He argues that the  
24 school simply endorsed Fanniff’s viewpoint without conducting a proper investigation into the  
25 matter. As discussed, the University maintains that Salinas’ dismissal was based on the sound  
26 academic judgment of its faculty members.

27 “There is a widely accepted rule of judicial non-intervention into the academic affairs of  
28 schools.” Paulsen v. Golden Gate Univ., 25 Cal.3d 803, 808 (1979). “However, some courts,

1 including those of California on occasion, have carved out an exception to this rule by permitting  
2 limited intervention whenever it is alleged that a university or college has acted arbitrarily or in  
3 bad faith.” Id. “A university may not act maliciously by arbitrarily and capriciously dismissing or  
4 refusing to award a degree to a student on the ground of academic deficiencies if said student  
5 fulfills its degree requirements.” Banks v. Dominican College, 35 Cal. App.4th 1545, 1552 (1995)  
6 (quotation and citations omitted). Plaintiff’s burden of establishing arbitrary and capricious  
7 conduct, however, “is a heavy one.” Id. He must show that his “dismissal was without any  
8 discernable rational basis.” Id.

9 A university’s decision may be overturned only if the court “find[s] it to be arbitrary and  
10 capricious, not based upon academic criteria, and the result of irrelevant or discriminatory  
11 factors.” Banks, 35 Cal. App.4th at 1551. And, a court “must uphold the university’s decision  
12 ‘unless it is such a substantial departure from accepted academic norms as to demonstrate that the  
13 person or committee responsible did not actually exercise professional judgment.’” Id. (quoting  
14 Regents of University of Michigan v. Ewing, 474 U.S. 214, 225, 88 L.Ed.2d 523, 532, 106 S.Ct.  
15 507 (1985)).

16 For its part, the University points to Handbook provisions that state that the clinical  
17 psychology program requires students to, among other things, maintain clinical competency and  
18 “demonstrate maturity, good judgment, discretion, and respect.” (Froming Decl. ¶ 16, Ex. A (Dkt.  
19 65-10 at ECF p. 28)). Defendant also notes that in deposition, plaintiff agreed that, to perform  
20 satisfactorily as a doctoral candidate, a student must, among other things, demonstrate that they  
21 use their faculty supervisors in a productive and nondefensive manner. (Dkt. 65-9, Vartain Decl. ¶  
22 5, Ex. U (Salinas Depo. at 65:6-18)). He also testified that he understood the faculty’s conclusion  
23 to be that he was resistant to feedback. (Id. (Salinas Depo. at 74:1-3, 104:5-8)).

24 Defendant has also submitted the declarations of eight of its faculty, each of whom was  
25 involved to some degree in reviewing plaintiff’s grievance. In sum, they attest that:

- 26 • Faculty assessment and evaluation is an important part of helping students to  
27 improve skills and that a student’s ability to effectively respond to faculty feedback  
28 and evaluation is a core threshold competency in the clinical psychology program.

1 (Froming Decl., ¶¶ 8-10, 29-31; Dkt. 65-8 (Declaration of James Breckenridge  
2 (“Breckenridge Decl.”), ¶¶ 19-21; Russell Decl., ¶¶ 26-28; Macias Decl., ¶¶ 25-27;  
3 Fanniff Decl., ¶¶ 24-26; Dkt. 65-7, Declaration of Christopher Weaver (“Weaver  
4 Decl.”), ¶¶ 9-11; Dkt. 65-5, Declaration of Grace Chen (“Chen Decl.”), ¶¶ 25-27;  
5 Dkt. 65-6, Declaration of Luli Emmons (“Emmons Decl.”), ¶¶25-27).

- 6 • A student will be unable to succeed if he is unaccepting of feedback because of  
7 defensiveness. (Froming Decl., ¶32; Breckenridge Decl., ¶22; Russell Decl, ¶29;  
8 Macias Decl., ¶28; Fanniff Decl., ¶27; Chen Decl. ¶28; Emmons Decl. Emmons,  
9 ¶28).

10 Faculty agree that Salinas’ communications and his behavior during administrative proceedings  
11 demonstrated unprofessional behavior and showed he was not able to respond effectively to  
12 faculty assessment and feedback on his clinical skills. (Russell Decl., ¶¶ 45-64, Decl. Chen, ¶¶  
13 41-62, Decl. Emmons, ¶¶ 41-62, Weaver Decl., ¶¶ 23-37, Decl. Breckenridge, ¶¶ 4-18, Decl.  
14 Froming, ¶¶ 44-85, Exs. E, F, G, H, J, N, S).

15 The University further maintains that, as with any other student, plaintiff was given all the  
16 process that was due, namely, review by the CTC and SEC, as well as an appeal and review by the  
17 IAC. (Decl. Froming, ¶¶ 22-23, 46-81, 88; Russell Decl. ¶¶ 25, 45-64; Macias Decl., ¶ 24; Fanniff  
18 Decl. ¶23; Weaver Decl., ¶¶ 16-17, 23-42; Chen Decl. ¶¶ 24, 41-62; Emmons Decl. ¶¶ 24, 41-62;  
19 Exs. A, F, H, I, J, N, O).

20 Salinas insists that he has never been resistant to feedback and that he has happily accepted  
21 criticism from other faculty. He denies ever becoming so angry with Fanniff (or anyone else) as to  
22 cause them to fear for their safety. He maintains that Fanniff could not truly have reached the  
23 conclusion that he was resistant to feedback. This is because he believes that she bore quite a bit  
24 of ill will against him, as demonstrated by what he perceived to be her competitiveness and need  
25 to exert dominance over him. And, at the motion hearing, he stated his belief that Fanniff  
26 probably did not like him precisely because he was very competent. When probed by the court as  
27 to Fanniff’s evaluation of him, Salinas agreed that her positive remarks about his abilities are true  
28 and correct, but he feels that her low evaluation of his skills is simply wrong and could only have

1 been the product of the bad feelings he believes she harbored for him. As for other University  
2 faculty and staff, Salinas contends that their agreement with Fanniff's assessment is nothing more  
3 than a cover-up, plain and simple.

4 As for evidence, Salinas submits his own declarations (in which he recounts his views of  
5 the pertinent events) as well as a number of exhibits. (Dkts. 69, 88-1). Defendant objects that the  
6 declarations contain whole passages that lack foundation and constitute inadmissible expert  
7 opinions, improper argument, and speculative and unsupported conclusions. Additionally,  
8 defendant argues that the appended exhibits (namely, the transcripts of plaintiff's patient therapy  
9 sessions) have not been properly authenticated. Fed. R. Evid. 602, 701, 702. Although  
10 defendant's evidentiary objections are well taken, the court has considered all of plaintiff's  
11 proffered evidence. Nevertheless, the court concludes that he has not presented evidence creating  
12 a genuine issue of material fact as to the alleged arbitrary and capricious nature of the University's  
13 decision to dismiss him.

14 Plaintiff has submitted evaluation forms in which patients gave him positive reviews, as  
15 well as transcripts he prepared of therapy session recordings, and other therapy records.<sup>3</sup> He also  
16 submits his transcripts, articles, and other academic records. (Salinas Opp. Decl., Exs. E, F; Dkt.  
17 88-2, Salinas Decl. ISO MSJ ("Salinas Decl."), Exs. B, E, F, T). These, he says, establish that he  
18 did have rapport with clients and that he was competent. Additionally, because the recordings of  
19 sessions where Fanniff found him to be "dismissive" and "harsh" no longer exist,<sup>4</sup> Salinas argues  
20 that he is entitled to an inference that those recordings would have proved that he was not  
21 "dismissive" or "harsh" at all. However, plaintiff's own view of his therapy conduct does not  
22 create a genuine dispute of any fact material to his claims. See Banks, 35 Cal. App.4th at 1550  
23 (stating that it is not the student's self-perception, but rather the perception of the decisionmaker

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25 <sup>3</sup> The court granted plaintiff's motion to seal certain of these records. Plaintiff having advised that  
26 he was unable to e-file them under seal, the court directs the clerk to enter those exhibits on the  
docket, under seal.

27 <sup>4</sup> In discovery, defendant acknowledged that the recordings of some of plaintiff's therapy sessions  
28 had been discarded, but it submitted a declaration from Macias, who averred that those recordings  
were destroyed in the Fall of 2012 in the ordinary course of business, several years before the  
present lawsuit was filed. (Dkt. 71-1).



1 that is relevant). The record demonstrates that Salinas was not dismissed because of his work with  
2 patients, but because of the way in which he responded to faculty feedback, causing the faculty to  
3 conclude that he would not succeed in the program due to an inability to accept constructive  
4 criticism. (Froming Decl., ¶¶ 46-70; Russell Decl., ¶¶ 31-64; Weaver Decl., ¶¶ 23-42; Chen Decl.,  
5 ¶¶ 30-62; Emmons Decl., ¶¶ 30-62, Exs. E-O).

6 In addition to some of the same documents submitted by the University (e.g., Handbook  
7 excerpts, Fanniff’s evaluation, his communications with the faculty and staff, and documents  
8 pertaining to the proceedings before the CTC, SEC, and IAC), plaintiff also submits:

- 9 • A copy of his supervision contract with Fanniff (Dkt. 88-1, Salinas Decl. ¶ 3, Ex.  
10 BB). Pointing out that it required “Adherence to Agency, Legal, and Professional  
11 Standards,” plaintiff argues that it is significant that the University never claimed  
12 that he violated that particular contract.
- 13 • Correspondence with another University professor, which plaintiff says shows that  
14 he has accepted faculty feedback from others. (Salinas Decl., Ex. U).
- 15 • The University’s interrogatory responses, which he says demonstrate that defendant  
16 was evasive as to evidence of his lack of professionalism; failed to investigate  
17 whether he actually posed a threat to the personal safety of his supervisors; and  
18 could identify no one other than Fanniff and Macias who said that he did not  
19 welcome criticism. (Salinas Opp. Decl., Exs. H, I; Salinas Decl., Exs. I, J, Z).
- 20 • A purported excerpt from the American Psychological Association’s Ethics Code,  
21 providing that psychologists must avoid harming others, including students; as well  
22 as an article pertaining generally to the evaluation of supervisees. (Salinas Opp.  
23 Decl., Ex. B; Salinas Decl. Ex. Y).

24 As for the resulting harm he says he has suffered, Salinas submits his law school  
25 application materials (Salinas Decl., Ex. S). Plaintiff, who currently is in his third year in law  
26 school, says that prior to his dismissal from the University, he was accepted to more law schools  
27 than he was afterward. He believes the only possible explanation is the fact that he had to disclose  
28 his dismissal in his subsequent applications. (Salinas Decl. ¶ 21). Additionally, plaintiff says that

1 he submitted an article for publication in a psychology journal, but his submission was rejected.  
2 The stated reason was that the journal’s reviewers concluded that “this work is currently  
3 underdeveloped and is unlikely to have sufficient impact on the literature.” (Salinas Opp. Decl.,  
4 Ex. R. (Dkt. 68-2 at ECF p. 93)). Salinas disagreed with that assessment and submitted a letter  
5 appealing the rejection. (Id. at ECF pp. 94-102). But, Salinas says the editor never responded.  
6 He believes this was “because I told him I had been dismissed by the doctoral program. Clearly,  
7 [the editor] decided, prejudicially, that the University must have had good grounds to dismiss me,  
8 and that I was not worthy of a response.” (Salinas Opp. Decl. ¶ 21).

9 In essence, plaintiff’s claims boil down to the proposition that Fanniff gave him a low  
10 evaluation because she didn’t like him. Ergo, under Salinas’ theory, there was no good reason for  
11 the University’s decision to dismiss him. But the law does not command that students obtain a  
12 degree or remain in a particular program simply because they believe themselves to be qualified.  
13 Rather, Salinas must offer evidence that would support a reasonable jury finding that there was no  
14 discernable rational basis for his dismissal. Banks, 35 Cal. App.4th at 1552. Was there that  
15 evidence? Despite its volume, plaintiff’s proffered evidence deals in generalities; and, the alleged  
16 bad motives underpinning plaintiff’s theory of the case relies on conjecture ladled with  
17 speculation. In sum, plaintiff has not presented any evidence that the decision to dismiss him from  
18 the clinical psychology program was based on anything other than valid academic criteria and the  
19 sound judgment of the University faculty. As to his contract-based claims, plaintiff’s summary  
20 judgment motion is denied, and the University’s motion is granted.

21 **B. California Education Code § 94367**

22 Plaintiff claims that he was dismissed in retaliation for exercising free speech rights to  
23 complain about what he perceived to be Fanniff’s unwarranted low evaluation and unfair  
24 supervision. California Education Code § 94367, also known as the Leonard Law, provides in  
25 relevant part:

26 No private postsecondary educational institution shall make or enforce a  
27 rule subjecting a student to disciplinary sanctions solely on the basis of  
28 conduct that is speech or other communication that, when engaged in  
outside the campus or facility of a private postsecondary institution, is  
protected from governmental restriction by the First Amendment to the

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United States Constitution or Section 2 of Article I of the California Constitution.

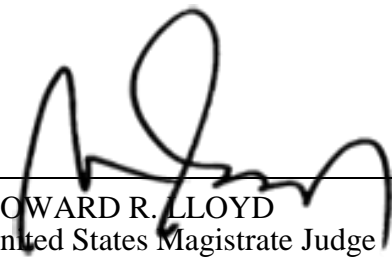
Cal. Civ. Code § 94367. Although there is no clear evidence that Salinas complained outside the University prior to his dismissal, courts have held that the statute does not exclude speech that occurs solely within the confines of a campus. Yu v. Univ. of La Verne, 196 Cal. App.4th 779 (2011). Even so, for the reasons discussed above, Salinas has not produced evidence raising a genuine issue of material fact that he was dismissed because of his complaints (as opposed to the manner in which he complained). Accordingly, as to this claim plaintiff's summary judgment motion is denied and defendant's motion is granted.

**ORDER**

Based on the foregoing, plaintiff's motion for summary judgment is denied and defendant's motion for summary judgment is granted. The clerk shall enter judgment accordingly and close this file.

SO ORDERED.

Dated: September 25, 2017

  
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HOWARD R. LLOYD  
United States Magistrate Judge

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5:15-cv-06336-HRL Notice has been electronically mailed to:

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