IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN DOE Plaintiff, v. **OHIO WESLEYAN UNIVERSITY** 61 S. Sandusky St. Delaware, OH 43015 **JANE ROE** 5405 S. 19th Street # 2049 Phoenix, AZ 85041-3849 Defendants.	Case No. 2:17-cv-00538 Judge Watson Magistrate Judge Deavers JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiff John Doe ("Doe")[1], by his attorneys, complains as follows against Defendants Ohio Wesleyan University ("OWU") and Jane Roe ("Roe") as follows:

NATURE OF ACTION

1. Roe, a student at OWU, made false allegations of sexual misconduct against Doe, a former boyfriend, after they engaged in consensual sexual activity on September 9-10, 2016. OWU conducted a gender-biased and unfair investigation into those allegations and, as a result, OWU improperly and unlawfully disciplined Doe for sexual assault by suspending him from OWU for

[1] *See John Doe's Motion to Allow the Parties to Use Pseudonyms* (containing the basis for Doe's request for using pseudonyms in this proceeding).

the 2017 spring semester. The resulting emotional distress forced Doe to medically withdraw from the University in March of 2017.

2. OWU's unlawful discipline of Doe was caused by OWU's Direct and/or Indirect Gender Bias Motivations[2] against male students. These motivations are part of a troubling trend at American universities involving unfair and biased investigations—and severe and unwarranted discipline—that are devastating innocent male students. These male students are left with no choice but to pursue litigation under Title IX and state law in an attempt to clear their names, restore their right to pursue an education, and salvage their futures.[3] Although some females making false allegations of sexual assault are criminally prosecuted,[4] America's universities rarely discipline females who bring these types of false allegations.

3. Lawsuits seeking to remedy a university's gender-biased application of Title IX policies are not only time-consuming and costly, but sometimes come too late. For example, the parents of a male student who committed suicide recently filed suit against the university that their son attended for mishandling a Title IX proceeding. *See,* Ashe Schow, *Texas student commits suicide after Title IX Kangaroo Court,* Texas BureauWatchdog.org

---

[2] The terms "Direct and/or Indirect Gender Bias Motivations," and/or "Direct and/or Indirect Gender Bias Evidence" are used in this Complaint to refer to statements and/or conduct from which at least the following inferences can be drawn: (1) a primary advocacy on behalf of females who allege males engaged in sexual misconduct; (2) minimal or no advocacy on behalf of males who are alleged to have engaged in sexual misconduct towards females; (3) minimal or no advocacy for protecting females from sexual misconduct perpetrated by other females; and/or (4) minimal or no advocacy for protecting males from sexual misconduct perpetrated by females.

[3] *See generally, Stop Abusive and Violent Environments' Oct. 2016 Special Report: Victim-Centered Investigations: New Liability Risk for Colleges and Universities* (detailing how thirty lawsuits filed by plaintiffs accused of sexual misconduct resulted in judicial decisions which at least partially favored the plaintiffs in claims against their universities). Available at http://www.saveservices.org/wp-content/uploads/Victim-Centered-Investigations-and-Liability-Risk.pdf. (assessed 4/12/17).

[4] *See e.g.,* Joshua Miller, *Teen Charged with Lying About Being Raped by College Football Player,* New York Post, http://nypost.com/2017/02/22/teenchargedwithlyingaboutbeingrapedbycollegefootballplayers/ (accessed 5/26/17); Snejana Farberov, *Former College Co-Ed, 19, Who Falsely Accused Two Football Players Of Rape At A Party To Get Sympathy From A Prospective Boyfriend Faces TWO YEARS In Jail In Plea Deal,* Daily Mail, http://www.dailymail.co.uk/news/article-4611776/Woman-faces-2-years-prison-fake-rape-claims.html (accessed 6/19/2017)

http://watchdog.org/292821/maleaccusedstudentcommitssuicideschoolrailroading/(accessed 5/26/17).

4. These lawsuits themselves often trigger hostile reactions against the male plaintiff, a fact that has been discussed by at least one court:

> [T]he Court is an independent body . . . [that] cannot be swayed by emotion or public opinion. After issuing the preliminary injunction this Court was deluged with emails resulting from an organized campaign to influence the outcome. These tactics, while perhaps appropriate and effective in influencing legislators or officials in the executive branch, have no place in the judicial process. This is basic civics, and one would think students and others affiliated with a prestigious Ivy League institution would know this. Moreover, having read a few of the emails, it is abundantly clear that the writers, while passionate, were woefully ignorant about the issues before the Court. Hopefully, they will read this decision and be educated.

Doe v. Brown Univ., Case No. 16–017 S, 2016 WL 5409241 (D.R.I. Sept. 28, 2016).

5. Despite these many drawbacks, Defendants' unlawful actions have left Doe no other option but to seek damages and declaratory relief from this Court to remedy the emotional, mental, and economic harm Defendants have caused. Doe's causes of action include defamation, breach of contract, promissory estoppel, violations of Title IX of the Educational Amendments of 1972, violations of 20 U.S.C. Section 1681, *et seq.*, declaratory judgment, negligent misrepresentation, and intentional infliction of emotional distress.

6. In brief, OWU violated Title IX by creating a gender-biased hostile environment against males, like Doe, who have been falsely accused of sexual misconduct. This hostile environment has arisen, in part, due to OWU's pattern and practice of disciplining male students who engage in *consensual* sexual activity with female students.

7. OWU also violated OWU's own policies and procedures, as outlined in its official publications, which include its Student Handbook and other relevant policies, including those not

specifically mentioned in this Complaint (collectively referred to as "OWU Policies"),[5] by improperly and unlawfully applying and/or breaching OWU Policies and/or the implied covenant of good faith and fair dealing inherent in those policies.

8. In finding Doe responsible for sexual assault, OWU ignored or dismissed clear and convincing evidence which established that Roe voluntarily initiated and/or consented to all physical contact with Doe. This evidence includes but is not limited to:

(a) Roe's statement both before and at Doe's disciplinary hearing that Roe "became aroused" when Doe put his fingers in her vagina (the *only* conduct that formed the basis of OWU's determination that Doe had sexually assaulted Roe);

(b) Roe's statement at the hearing that immediately after Doe put his fingers in her vagina she began to "reciprocate" by engaging with Doe physically; and

(c) Roe's statement at the hearing that after becoming aroused by Doe's fingers in her vagina, she "took [her] shorts off" and "gave consent to [Doe's] penis inside of [her]."

9. OWU ignored these statements—which on their face disprove any assertion that Doe committed a sexual assault—as well as other overwhelming evidence of Doe's innocence in violation of OWU Policies in order to satisfy OWU's pre-determined goal of finding male students like Doe guilty of misconduct.

10. Upon information and belief,[6] OWU is determined to find male students accused of sexual misconduct guilty, even in cases whether the evidence does not support such a finding, in order to demonstrate to the federal government, OWU's majority-female student body, and/or the

[5] *See e.g., Exhibit 1* (OWU's 2015-16 Student Handbook). Note that the 2015-2016 Student Handbook was the version of the Handbook made available to students during the 2016-2017 academic year.

[6] It should be noted, the "information and belief" allegations in the Complaint are based on at least the following two factors: (1) the evidence referenced and/or exhibits attached to the Complaint which provide a plausible basis for Doe's "information and belief" allegations; and (2) Doe's belief that Defendants are in possession and/or control of additional evidence supporting the "information and belief" allegations that Doe will obtain in discovery.

public at large that OWU aggressively disciplines male students alleged to have engaged in sexual misconduct. This became particularly important to OWU in January of 2017, as OWU incurred backlash from its students as a result of OWU's alleged mishandling of sexual assault allegations made by a female student against a male student.

11. OWU's legitimate goal of preventing sexual assault is *not* the issue in, nor is it the basis for, this Complaint. Rather, this Complaint addresses how OWU's unlawful discipline of Doe was motivated by the anti-male gender bias detailed herein.

PARTIES, JURISDICTION, VENUE

12. Plaintiff John Doe was a student at OWU in the fall of 2016 and is a resident of the State of Ohio.

13. Defendant OWU is private liberal arts college with its principal place of business in Delaware, Ohio.

14. Upon information and belief, Defendant Jane Roe is a student at OWU who resides in Phoenix, Arizona.

15. This action arises under Ohio common law and under Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681, *et seq*. This Court has jurisdiction over this action by virtue of federal question jurisdiction pursuant to 28 U.S.C. § 1331 because the claims herein arise under the laws of the United States. The Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) for any non-federal claims alleged herein.

16. This Court has personal jurisdiction over Defendants on the grounds that Defendants reside and/or conduct business within the State of Ohio.

17. Venue rests with this Court pursuant to 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claims occurred in its judicial district.

FACTS COMMON TO ALL COUNTS

Roe's Consensual Sexual Encounter with Doe

18. John Doe and Jane Roe were in a dating relationship for approximately eight months, from January 2016 to late August/early September 2016. Over those eight months, Roe and Doe would occasionally break up, only to find themselves back together after a brief period of time. Their reconciliations often involved a sexual encounter, after which they would agree to give their relationship another chance. This kind of "make-up sex" was familiar to Doe and Roe, and it usually progressed according to a familiar routine: first the two would grind against one another's bodies, then they would mutually touch one another's genitals, and finally they would have intercourse.

19. A few days before the 2016 fall semester began, Jane Roe contacted Doe and told him that she no longer wanted their relationship to continue. Doe was hurt by this news, but because he and Doe both continued to communicate over the course of the next couple of weeks at OWU about her decision, and because they continued to see one another (even, on one such occasion, engaging in a "make out" session), Doe remained hopeful that the two would, as in the past, reconcile.

20. On the night of September 9, 2016, Doe asked Roe if she wanted to get together to continue a conversation they had started earlier in the day about the future of their relationship. Roe agreed, and the two met for a walk around the OWU campus. During that walk, the conversation was alternately angry and pleasant, as the two hashed out the issues between them (including Roe's infidelity) and grappled with the feelings they still had for one another. Although Roe communicated during their walk that she did not want to continue their relationship, she did agree to kiss Doe and, ultimately, agreed that he could stay the night in her dorm room.

21. Once in Roe's dorm room, Roe put on music and the two continued to talk and dance together. At one point, Roe took her clothes off in front of Doe and tried on a dress that Doe had

purchased for her. Afterwards, as Roe was laying on her bed, Doe asked her if he could lay down with her. Roe agreed. When Doe asked Roe if he could take off his pants she again agreed, indicating that he could get comfortable.

22. As Doe and Roe were in bed together, they laid in a "spooning position." The two began grinding their bodies against one another, as they had done in that position many times in the past. Doe began kissing Roe's neck and attempted to put his hand down Roe's shorts. Roe refused this advance and indicated that she did not want to have sex. Doe responded that that was "completely fine."

23. Nevertheless, Doe and Roe continued to lie in bed together and continued to grind their bodies against one another. At Doe's disciplinary hearing, Roe admitted that even though she initially stated that did not want to have sex, "[she] did become a bit aroused when [Doe] was touching [her]." Consequently, Roe removed her own underwear and removed Doe's underwear. She began stroking Doe's penis. Recognizing this familiar routine, Doe then inserted his fingers into Roe's vagina.

24. Roe admits that she "became aroused" after Doe put his fingers in her vagina, and that she "reciprocate[d]" that act by removing her shorts and engaging in voluntary sexual intercourse.

25. After a couple of minutes of intercourse, however, Roe began to cry. Doe immediately stopped what he was doing and asked what was wrong. Roe expressed regret for getting physical with Doe, and asked him to leave. Feeling hurt and rejected by Roe's behavior, Doe then told Roe to keep some change Doe had left on her dresser as payment for her services.

26. When Doe then told Roe that he had forgotten his ID card and would not be able to gain entry to his dorm, Roe offered to walk him back to his dorm and use her ID card to let him in. In response, Roe decided to walk Doe back to his dorm room—and she later testified that she felt no "uncomfortability" in doing so.

27. Over the course of the two days following Roe and Doe's encounter, Doe and Roe exchanged Facebook messages and emails in which Doe apologized for his actions—namely, for getting angry and leaving money on the dresser, as well as for upsetting Roe—and otherwise expressed regret that their relationship was over. In her messages, Roe confirmed that she no longer wanted Doe to be a part of her life. Further, she shocked Doe by falsely characterizing their interaction on the night of September 9/early morning of September 10th as a "sexual assault" – an allegation that Doe rejected as false.

Roe's False Allegations of Sexual Assault and the Resulting Gender-Biased Investigation

28. On the evening of September 11, 2016, Roe falsely reported to OWU Public Safety that Doe had sexually assaulted her. Upon information and belief, Roe did so because she was angry at Roe for insulting her with his "keep the change" comment, and for accusing her of infidelity. In recounting the sexual encounter between Roe and Doe, Roe told the public safety officer who took her report that "she initially told [Doe] 'no' but [she] eventually consented." She further told the officer that "they had intercourse for approximately two minutes and then [Roe] told [Doe] to get off of her, which he complied." Roe made a point to tell the officer that Doe had told her to "keep the change" that he left on her dresser. As a result of this report, sometime between September 14 and September 16, 2016 Doe was contacted by an OWU Public Safety officer who informed him of Roe's report and further advised him that a "no contact" order had been issued against him.

29. On September 15, 2016, Roe was interviewed by OWU Coordinator of Student Conduct Michael Esler and OWU Public Safety Investigator Richard Mormon. In the audio recording of that interview, Esler and Mormon can be heard laughing and joking with Roe, and at times making jokes at Doe's expense. In the written report of that interview, it is noted that Roe told Esler and Mormon that at one point after Roe and Doe had climbed into bed together, "[Doe] moved

my shorts and underwear out of the way and put his fingers inside of me."[7] She told Esler and Mormon that she did not want Doe's fingers there, so she claimed that she "grabbed his hand and pulled [him] away." Despite that, Roe claims that Doe kept kissing her, so she said that she "gave in to him, and pulled her [own] shorts down" and Doe then "put his penis inside of [Roe]."

30. In response to specific questions from Esler and Mormon regarding at what point the encounter between Roe and Doe became nonconsensual, Roe stated that "it became nonconsensual when [Doe] inserted his fingers into her vagina." Roe told Esler and Mormon that "it was clear to [Doe] that she did not want him to put his fingers into her vagina or continue having his fingers inside of her."

31. Remarkably, however, when Esler and Mormon next asked Roe how it was that consensual intercourse immediately thereafter, Roe stated: "I did become aroused from his fingers." And: "I thought I wanted more." In this one statement, Roe (a) completely contradicted her prior claim that "it was clear to [Doe] that she did not want him to put his fingers in her vagina or continue having his fingers inside her," and (b) completely eviscerated her claim that Doe sexually assaulted her.

32. Despite Roe's admission that she was aroused by Doe's fingers in her vagina and that she wanted more as a result, Morman advised Roe that Doe putting his fingers in her vagina was "*rape*." (*emphasis added*). He told Roe that OWU would report the incident to the Delaware police and that OWU would "pretty much work hand-in-hand" with the Delaware police.

33. For his part, Esler responded to Roe by saying, "as Richard [Mormon] said, *he raped you*." (emphasis added). Esler went on: "Even if it gets somewhat murky about the sexual intercourse about when you took your pants off and said OK," that is "still assault under [OWU's] policy, also known as rape."

[7] Note that OWU would not provide a copy of any of the written reports, audio recordings, or hearing materials to Plaintiff. Rather, Plaintiff was allowed only to view these materials in person. Accordingly, the statements described here come from dictations of the reports' contents made during the personal viewing.

34. Esler then advised Roe—prior to even speaking to Doe to hear his side of the story—that:

(a) "the person that files the [sexual misconduct] complaint . . . usually wins;"

(b) female complainants usually win because OWU adjudicators feel "why would this person be making stuff up?;" and

(c) "most of these guys don't deny it," rather they claim it was "a consensual act." (*emphasis added*)

35. Esler then described the option of an informal resolution procedure as being designed to allow female complainants the opportunity to "let the *guy* have it" and to "see how *he* responds and how *he* reacts." *(emphasis added).* Even though Roe told Esler that she was "aroused" by Doe's fingers in her vagina, Esler told Roe that this type of informal resolution procedures "doesn't sound like that would be appropriate here." In doing so, Esler effectively shut down any chance Doe had to avoid OWU's subsequent unlawful violations of Doe's rights under OWU policies and/or Title IX.

36. On September 19, 2016, Doe was interviewed by Mormon and Esler and asked to describe his version of the events on the night of September 9-10, 2016. That interview was recorded. Prior to the interview, Doe was not told that he could have an advisor present during this interview, nor was he advised that he could refuse to answer questions.

37. A week or two later, Doe was again contacted by Esler, who stated that Roe was calling the incident involving Doe a "sexual assault" and that the accusations against him were specifically based on the allegation that Doe inserted his fingers into Roe's vagina without her consent. Esler told Doe that he had to attend a mandatory meeting with Esler and some faculty members to discuss the complaint process and the possible penalties. He did not tell Doe prior to the meeting that Doe could have an advisor present.

38. Thereafter, Doe attended the meeting with Esler and one or two faculty members. During that meeting, Doe was repeatedly questioned about the incident with Roe and asked for more and more detail. At no point did Esler or the faculty members share with Doe what exactly Roe alleged had occurred. At no point did any of the OWU employees warn Doe of the ramifications of the interview or that OWU would provide the recorded interview to the Delaware police department. Despite receiving no advance notice, his statement was recorded. Esler did not advise Doe of the potential penalties that could be applied to Doe.

39. Sometime during the month of September, after Doe told his mother about the allegations against him, Doe's mother contacted Title IX Coordinator Dwayne Todd ("Todd") to discuss the matter. During their brief telephone conversation, Todd advised Doe's mother that in his view the matter simply involved a break up between two young people, and that Doe was just having a hard time "letting go" of Roe. Todd reassured Doe's mother that there was nothing to worry about, and also told her that there was no reason that Doe's family needed to hire an attorney. This, despite the fact that Esler and Mormon had previously advised Roe that what Doe did was "rape" and that OWU would be working "hand in hand" with the Delaware police to pursue charges against him.

40. Several months passed after Doe's meeting with Esler and the faculty member(s), and Doe heard nothing more about the incident involving Roe. In early December, however, Doe received an email from Esler asking him to call Esler. During their call, Doe was asked to meet with Esler on December 8th or 9th. When Doe met with Esler, Esler advised Doe that he did not think Roe would be pursuing the case, but he did suggest that Roe might change her mind if Doe did not transfer schools during winter break. Remarkably, Esler then told Doe that Roe's allegations involved a "he said, she said" situation which would make it hard to reach a "conclusive answer" about Roe's allegations. He also advised Doe that there were many inconsistencies in Roe's story. In doing so, Esler lulled Doe into a false sense of security about the charges against Doe, despite

actively coaching Roe that Doe had "raped" her and despite confirming to Roe that the accuser "usually wins."

41. On January 24, 2017, after Doe returned from winter break, he received a letter from Esler indicating a disciplinary hearing would be scheduled to adjudicate Roe's compaint. *See Exhibit 2.* The alleged misconduct charge to be adjudicated included sexual assault (for allegedly inserting his fingers into her vagina without consent) and sexual contact. The charges also included Roe's allegations that Doe:

(a) attempted to kiss and hold Roe without consent;

(b) touched Roe's leg and "butt" without consent;

(c) kissed Roe's neck and chest without consent;

(d) pulled her shirt up without consent;

(e) attempted to pull her shorts down without consent; and

(f) kept kissing her without consent.

See id. (Notably, as detailed fully below, OWU adjudicators ultimately determined Roe's allegations relating to charges (a) – (e) were false.)

42. After Doe received the letter from Esler, on or about January 26, 2017, Doe's mother had a second telephone conversation with Todd. During this conversation, Doe's mother again asked Todd if she should obtain an attorney to help Doe navigate his upcoming hearing. Todd stated that it was "not necessary." Doe's mother then explained to Todd how Jane's false allegations were destroying Doe's future. Todd responded in a highly irritated voice by saying, "what about the girl's life?" Finally, when Doe's mother asked Todd what consequences Jane would face for making false allegations against Doe, Todd stated that there would be "no consequences for her."

OWU's Gender-Biased Disciplinary Proceeding

43. Doe's disciplinary hearing was conducted on February 17, 2017. During that hearing, Roe made several statements that either directly contradicted earlier statements she had

given about the events of the night of September 9-10, 2016, or fully exonerated Doe of the charges against him. For example, Roe stated that:

(a) when Doe put his fingers in her vagina she "became aroused;"

(b) immediately after Doe put his fingers in her vagina she began to "reciprocate" by engaging with him physically; and

(c) after Doe became aroused by Doe's fingers in her vagina, she unilaterally "took [her] shorts off and [she] gave consent to [Doe's] penis inside of [her];"

44. At the hearing, and in compliance with OWU policy, Doe submitted a list of three questions that he wanted the hearing panel to pose to Roe. These questions directly related to Roe's credibility. One, in fact, related to Roe's false allegations of sexual assault against another OWU student. The hearing panel refused to ask any of Doe's three questions. Moreover, a hearing panel member crumpled up the paper on which Doe had written his proposed questions and threw it away during the hearing, rather than at least including it in the case file. Doe was given no other opportunity to cross-examine Roe or challenge her testimony in any way.

45. Although Doe wanted to introduce witness testimony at the hearing establishing that Roe had previously falsely accused another OWU student of sexual assault—a fact bearing directly on Roe's credibility—Esler wrongly told him that he could not do so.

46. On February 21, 2017, the hearing panel issued its decision, finding, despite the overwhelming weight of evidence, that Doe was "responsible" for sexual assault. It found him not responsible on the charge of Sexual Contact. In its decision, the hearing panel stated:

> The Panel determined that [Roe] stated that she did not want to engage in sexual activity several times in the course of the evening of September 9th and morning of September 10th, 2016. Further, it found that she did not consent, non-verbally, to your advances and resisted your efforts to put your hands down her shorts while you were in bed together. The Panel acknowledged that your testimony conflicted with that of [Roe's] on the questions of whether you inserted your fingers into her vagina and the timing of when she pulled down her shorts. In the end, by a preponderance of the evidence, the Panel concluded that a reasonable person would not

> have interpreted [Roe's] words and non-verbal behavior as "knowingly, willingly and unambiguously" agreeing to inserting your fingers in her vagina, as the Sexual Misconduct Policy requires.

See Exhibit 3.

47. The panel's decision noted that, although the presumptive sanction for sexual assault is expulsion from OWU, it had determined that Doe "believed [he] had consent to engage in sexual activity and that [Doe] stopped sexual intercourse and withdrew [his] penis from [Roe's] vagina after [Roe] started to cry." *See id.* Therefore, it found based on mitigating circumstances that Doe's sanction would be suspension for the Spring 2017 semester. It further warned, however:

> Returning to the University at the end of the suspension period is not guaranteed. You may petition to return to the Dean of Students Office prior to the fall 2017 semester. Accepting your petition and allowing you to return are dependent on showing that you have addressed the issues that led to your suspension and that you are not a risk to the University community. If and when you return you will be on probation for a length of time to be determined by the Dean of Students and you will be subject to possible restrictions as discussed in Section IX of the Sexual Misconduct Policy.

See id.

48. Doe timely appealed the decision of the hearing panel on March 2, 2017. Pursuant to OWU policy, he did so in writing, and identified as the basis of the appeal the procedural errors in the board hearing, as well as the conduct of OWU employees Esler, Mormon, and Todd throughout the investigation. Doe also noted that his appeal was based on the existence of new evidence that he had to present. Doe explained:

> The new evidence that I have is a voluntary video of another student who will testify that the claimant made similar untrue sexual misconduct allegations against him. This evidence needs to be presented because the claimant's credibility is a serious issue in this case. I was wrongfully told by [Esler] that I could not present this evidence at the hearing of this matter.

49. Doe's appeal hearing was scheduled for April 28, 2017.

50. On March 13, 2017, Doe submitted a formal request for accommodations to Todd, requesting permission to withdraw from his classes at OWU. As Doe explained,

> [Roe's] false allegations have caused me substantial psychological harm including, but not limited to, self-harming behavior which required I leave the campus of Ohio Wesleyan University (OWU) and return home for medical care. As a result, I request permission to withdraw from my classes at OWU so I can seek treatment from medical professionals in my home town and hopefully gather the strength to meaningfully participate in the . . . Appeal Hearing in my case. I make this request because my current psychological state has: (a) rendered me deeply depressed and unable to focus on much of anything other than why [Roe] is intent on ruining my life with her false allegations; (b) caused me difficulty sleeping and eating; and (c) forced me to rely almost exclusively on my recently retained advisor who – pursuant to OWU's Student Handbook – cannot speak for me speak at the . . . Appeal Hearing.

See Letter from Doe to Todd, attached as Exhibit 4.

51. On March 21, 2017 Todd responded to Doe's request to withdraw from his classes by telling Doe that OWU would not consider Doe's pending appeal if he did so. In a letter of that date, Todd stated that he wanted to explain to Doe "the impact of your withdrawal on your pending Title IX matter and appeal," and then said:

> Your student conduct file reflects that you were found responsible by the Sexual Misconduct Hearing Panel for a violation of the University's Sexual Misconduct Policy, and that your appeal of that finding was pending at the time of your withdrawal. Should you seek reinstatement at any point, the issue of your appeal . . . must be resolved prior to your return, should it be granted, to OWU.

See Letter from Todd to Doe, March 21, 2017, attached as Exhibit 5.

52. Doe responded to Todd's letter by pointing out that such conduct on the part of OWU amounted to retaliation in violation of Title IX and a breach of OWU's Policies. *See Letter from Doe to Todd, March 24, 2017, attached as Exhibit 6.*

53. Separately, on March 23, 2017 Doe submitted a formal complaint to Todd against Roe and Roe's friend, CR, for retaliation that they carried out against him in the fall of 2016. As Doe explained in that letter:

> [A]round the time of the presidential elections last year, I was interviewed by a female member of OWU Public Safety about my complaint that [Roe] and [CR] violated the "no-contact" order OWU imposed after [Roe] falsely accused me of sexual assault. I told OWU Public Safety how I was accosted by [Roe and CR] in Welch Residential Hall. I explained how when [Roe and CR] approached me, [CR] berated me because of [Roe's] false allegations that I sexually assaulted her. Among other things, [CR] called me a rapist and a son-of-a-bitch. It is my understanding [Roe and CR] admitted they engaged in this conduct when interviewed by OWU Public Safety.
>
> A few days later, I learned [Roe and CR] engaged in other conduct which violated OWU's policies and created a hostile environment at OWU based on my male gender. For instance, OWU student [L.M] told me how [Roe and CR] were spreading their false allegations that I sexually assaulted [Roe] 'all over' campus. [Roe and CR's] conduct: (a) caused me to lose numerous friendships with OWU students who appear to believe the false allegations; (b) sent me into a deep depression which caused me to lose sleep and weight; (d) caused me to fear when walking around campus; and (e) largely eliminated my ability to focus on my academic responsibilities.

See Letter from Doe to Todd, attached as Exhibit 7.

54. Though Doe had earlier reported this conduct to Esler, Esler had advised Doe that no disciplinary action would be taken against Roe or her friend, and that their conduct was "irrelevant" and "wouldn't help [Doe's] case."

55. On April 7, 2017 Todd responded to Doe's letter indicating OWU would be retaliating against him if it refused to hear his pending appeal, as well as his written complaint against Roe and CR for retaliation. In a letter of that date, Todd stated that OWU *would* in fact address Doe's pending appeal even in the wake of his withdrawal, claiming that his earlier letter never stated otherwise. *See Letter from Todd to Doe, April 7, 2017, attached as Exhibit 8.* Insofar as the retaliation claim against Doe was concerned, Todd stated that OWU had sufficiently handled Roe's conduct at the time it occurred by taking "steps to ensure such an encounter did not occur again." *Id*. Further, Todd stated, because Doe had effectively withdrawn from OWU, he could no longer pursue a claim against Roe based on a violation of OWU's Policies.

56. Prior to the commencement of the appeal hearing on April 28, 2017, Doe submitted to the appeal board a written statement regarding the bases for his appeal. Doe explained during the

hearing that the written statement was necessary because he did not feel cognitively able to think, speak, or otherwise aid in his own defense because of the severe emotional distress that Roe's false allegations had caused him.

57. In his written statement, Doe reiterated the bases for the appeal that he identified in his March 2, 2017 letter and cited to specific testimony to explain, in detail, how his procedural rights were violated because the preponderance of the evidence did not support a finding that Doe was responsible for sexual assault. In particular, Doe identified fourteen of Roe's own statements that disproved her allegations against him:

> 1. [Roe] stated that when I put my fingers in her vagina she 'become aroused by [my] fingers and [she] thought that [she] wanted more . . . .'
>
> 2. [Roe] admitted that also *immediately after* I put my fingers in her vagina she began to 'reciprocate' by engaging with me physically.
>
> 3. After becoming aroused by my fingers in her vagina, [Roe] stated she unilaterally 'took [her] shorts off and [she] gave consent to [my] penis inside of [her].'
>
> 4. Regarding her decision to engage in with me physically in her dorm room on September 10th, [Roe] stated: 'what would be the harm' in having sex with because she figured 'we will have sex and it will be okay. Maybe he will transfer and that would be it.'
>
> 5. [Roe] confessed that even though she 'initially did not want to' engage sexually '[she] did become a bit aroused when [I] was touching [her].'
>
> 6. Prior to agreeing to having consensual intercourse, [Roe] admitted she told me I could strip down to my underwear and spend the night because she wanted to 'cuddle' with me.
>
> *7.* [Roe] attempted to refute my testimony about how one of the ways she telegraphed to me that she wanted to engage sexually was the provocative way she unilaterally decided to undress in front of me so she could try on a dress I bought her. *Id.* Specifically, [Roe] attempted to minimize her conduct by alleging she wasn't 'trying to be seductive.' But, she also acknowledged a concern that she might be 'lead[ing me] on' by her conduct on September 9th and 10th.
>
> 8. While [Roe] initially told me that she would not kiss me, she acknowledged she then changed her mind and kissed me on the park bench because she wanted to see if the kiss caused the 'spark' I was hoping would change her mind about dating me again.

> 9. When [Roe] and I were dancing and talking in her dorm room, she stated she initially told me that she did not want me to 'kiss and touch' her. But, she then changed her mind and 'consented' to my kissing and touching her in her dorm room.
>
> 10. [Roe] discussed our history of breaking up and her pattern of changing her mind about whether to reengage sexually with me. *Hearing Video.* For example, [Roe] stated the we broke up twice and both times got back together 'through make-up sex.'
>
> 11. Contrary to her many allegations to the contrary, [Roe] admitted that any touching I engaged in on a park bench prior to our engaging in consensual intercourse was not 'inappropriate.'
>
> 12. [Roe] stated the reason she invited me to come back to her dorm room was because she felt very comfortable with me, trusted me, and felt safe with me. She described her feelings during our interaction in her dorm room as being lighthearted and laughing.
>
> 13. [Roe] acknowledged she experience no 'uncomfortability' when she volunteered to walk me back to my dorm after we had consensual intercourse – even though a legitimate victim of sexual assault would likely never feel very 'uncomfortable' and *not* volunteer to walk his/her attacker home.
>
> 14. Morman's summary of [Roe's] audio testimony notes she confessed she 'become aroused from [my] fingers' being in her vagina and she 'thought [she] wanted more . . . that's why I gave in.'

See April 28 Written Statement, attached as Exhibit 9 (internal citations omitted).

58. Doe further identified twelve instances where Roe contradicted herself in statements before and during the disciplinary hearing:

> 1. At the hearing, [Roe] admitted any touching I engaged in on a park bench on September 9th was not 'inappropriate.' *Hearing Video.* This contradicts [Roe's] statement to OWU that I 'kept kissing [her on the park bench], even though [she] had told [me] that [she] didn't want kisses.'
>
> 2. On September 11, 2016, [Roe] told OWU that when we danced and talked in her dorm room, she changed her mind and 'consented' to my kissing and touching her. *Id*. Four days later, [Roe] made a similar statement when she stated she was feeling 'very positive' in the bedroom when [we] were singing and dancing together. She described [me as] putting [my] face close to hers when they were dancing when [I] was also touch her waist and her butt.' But, 10 days later, [Roe] completely reversed her earlier testimony by alleging that after we danced, I 'started kissing [her and she] . . . told [me that she] didn't want to kiss [me] . . . .'

3. At the hearing, [Roe] confessed that because she became 'aroused' by my fingers in her vagina, she unilaterally 'took [her] shorts off and [she] gave consent to [my] penis inside of [her].' [Roe's] confession *completely contradicts*:

> a. [Roe's] September 15th claim that after I 'inserted [my] fingers into her vagina [she] said that she 'did not want them there' so she grabbed [my] hand and pulled [it] away . . . [and when I] 'put [my] penis inside of [her] . . . she told [me] again that she did not want to have sex . . . .'
>
> b. [Roe's] September 25th allegation that after I 'put [my] fingers inside of [her that she] gave into [me] and allowed [me] to penetrate [her] with [my] penis, but still telling [me] that [she] didn't want to.'
>
> c. [Roe's] September 15th claim that she grabbed my hand when my fingers entered her vagina and 'kept telling [me] no' but that I would not 'stop.'

4. The Hearing Panel knew items 3(a)-3(c) were false because [Roe] testified at the hearing that *after* I put my fingers in her vagina she began to '*reciprocate*' by engaging with me physically. *Hearing Video.* As a result, the Hearing Panel also knew that on September 15th falsely claimed she 'kind of just la[id] still' when my fingers were in her vagina.

5. [Roe's] confession that she became 'aroused' by my fingers in her vagina, voluntarily 'took [her] shorts off,' and 'gave consent to [my] penis inside of [her]' cannot be squared with her September 15th allegation that she made it: '*clear to [me] that she did not want [me] to put [my] fingers into her vagina[.]*'

6. The Hearing Panel knew [Roe] told lies in her attempt to falsely convince OWU that I was a person of bad character. This is partly because the Hearing Panel knew Morman corrected [Roe] when she lied about me being kicked out of a fraternity.

7. [Roe's] motivation for her false allegations likely involved her anger because she *repeatedly* emphasized my unwarranted insult of her by leaving coins on her dresser as payment for our sexual encounter.

8. Similarly, [Roe] *repeatedly* stated she got angry when I discussed her past infidelities such as her kissing a good friend of mine.

9. [Roe's] false allegations might also be tied to her anger when I blocked her on Facebook after she used profanity in response to my finding out she had been physically involved with a friend of mine shortly after September 10th..

10. [Roe] knows she lacks a basis for claiming I tricked her into engaging with me physically by telling her I was definitely leaving OWU at the end of December 2016. This is because she told OWU that I stated I "might" be transferring out of OWU.

11. [Roe] engaged in conduct a reasonable juror would deem damaging to her credibility by initially alleged we interacted sexually on September 2nd and 3rd when the actual dates were September 9th and 10th. This is because a legitimate victim of sexual assault would likely remember the exact date he/she was sexually assaulted.

> 12.[Roe's] desire to for revenge was also manifested in her violation of OWU's "no-contact" order. For instance, she and her friend Corrine accosted me in Welch Residential Hall and Corrine called me a rapist and a son-of-a-bitch.

Id. (internal citations omitted).

59. Doe explained in his written statement:

> [A] reasonable juror might likely determine the 26+ facts detailed above prove by the 'preponderance of the evidence' that [Roe's] allegations are false even if I never uttered a word in my own defense. But, my testimony provides further evidence of why the Hearing Panel committed a massive procedural error by violating OWU's 'preponderance of the evidence' mandate.

And, further:

> [T]he 26+ facts above prove OWU violated the OCR guidance regarding the credibility of the parties and the presence of corroborating evidence in Title IX cases. *See e.g., OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* ("OCR's Sexual Harassment Guide") (January 2001). *https://www.federalregister.gov/documents/2001/01/19/01-1606/revised-sexual-harassment-guidance-harassment-of-students-by-school-employees-other-students-or.* (accessed 4/3/17).5 For, OCR's Sexual Harassment Guide recommends evaluating the 'relative credibility' of evidence by looking at the level of detail and consistency of each person's account . . . in an attempt to determine who is telling the truth. Another way to assess credibility is to see if corroborative evidence is lacking where it should logically exist.' *Id.,* p. 9. Thankfully, the Board still has the power to honor OCR's guidance and reverse the Hearing Panel's erroneous decision and procedural errors.

Id.

60. In the written statement, Doe also provided detail in support of his assertion that his rights under Title IX and OWU Policies were violated by the conduct of Esler and Mormon, which evidenced OWU's Direct and/or Indirect Evidence of Gender Bias Motivations. For example:

> [H]ad Esler [] have given me access – in 2016 - to his gender-biased statements contained in the audio of his September 15, 2016 interview of [Roe], I would not have allowed him to dupe me with a false sense of security because I would have heard the promises he made to [Roe] essentially ensuring my conviction. And, I would have immediately exercised my right to be represented by an attorney. While Esler correctly notes he informed me of my right to an attorney at my September 2016 interrogation, Esler incorrectly alleges he notified me of this right *prior* to my arriving at this interrogation. *Id.* For, had Esler done so, I would have contacted my parents and they would have insisted I bring an attorney to the interrogation. Esler's

> failure to notify me of my right to an advisor – prior to my arriving at the interrogation – likely violated federal law and OWU's Student Handbook which states 'respondents have the right to be accompanied by an advisor of their choice for all proceedings.' This is partly because my September 2016 interrogation qualified as a '[p]roceeding[]' which the S.H. defines as: 'all activities related to a non-criminal resolution of a University disciplinary complaint, including but not limited to, fact finding investigations, formal or informal meetings, and hearings.'

Id. (internal citations omitted)

The Gender-Biased Appeals Hearing

61. The appeals hearing was held on April 28, 2017 at 4 p.m.

62. At the hearing, Doe presented a list of questions for the appeals board to ask of Roe.

These questions included:

> Do you remember – telling Investigator Morman – and Mr. Esler – that – you - "become aroused" when [Doe] – put his fingers in your vagina – and that – when this happened – you – wanted more" – sexual interaction with [Doe]?
>
> If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:
>
> Why do you believe you didn't make this statement to Investigator Morman – and Mr. Esler
>
> Is it true – that during the hearing – you stated that – after – [Doe] put his fingers in your vagina you began to "reciprocate" - by engaging with [Doe] physically?
>
> If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:
>
> Why do you believe you didn't make this statement to during the hearing?
>
> Would you agree – you said at the hearing – that after becoming - aroused by [Doe's] fingers in your vagina – you - "took [your] shorts off - and [you] gave consent to [Doe's] penis inside of [you]"?
>
> If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:
>
> Why do you believe you did not make this statement to during the hearing?
>
> Do you remember – telling the hearing panel – that – you decided to engage – [Doe] – sexually – on September 10th – because you thought - "what would be the harm" in having sex with because you figured - "we will have sex and it will be okay."?

If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:

Why do you believe you didn't make this statement to during the hearing?

Isn't it true – you told the hearing panel – that while – you - "initially" - did not want to engage sexually with [Doe] – that you later - "become a bit aroused when [Doe] was touching [you]"?

If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:

Why do you believe you didn't make this statement to during the hearing?

Isn't it true – that prior – to agreeing to consensual intercourse with [Doe] – you told him – that he could - strip down to his underwear – and spend the night – in part - because you wanted to "cuddle" with him?

If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:

Why do you believe you didn't make this statement to during the hearing?

At the hearing – didn't you say - you were not –"trying to be seductive" - when you tried on the dress – [Doe] bought you – even you – you - acknowledged – having a concern that you might be "lead[ing him] on" – by your actions – on September 9th and 10th?

If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:

Why do you believe you didn't make this statement to during the hearing?

Even though - you initially told [Doe] - that you would not kiss him – isn't it true - you later changed your mind – because you wanted to see - if kissing him – would cause the "spark" – [Doe] was hoping - would change your mind - about dating him again?

If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:

Why do you believe you didn't make this statement?

Do you remember – telling Public Safety Officer – Jackie Harmony – that when you and [Doe] - were dancing and talking in your dorm room – you initially told [Doe] - that she did not want him to "kiss and touch" you - - - - But then – you changed your mind and "consented" to him kissing and touching you?

If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:

Why do you believe you didn't make this statement – to Officer Harmony?

Isn't it true – you told the hearing panel – about your changing your mind – about reengaging sexually with [Doe] – after the two of you broke up - - - - and how both times – you broke up – you got back together - "through make-up sex"?

If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:

Why do you believe you didn't make this statement – to the hearing panel?

Do you agree – you told the hearing panel – that when [Doe] touched you – on the park bench – on September 9th – his touching was not "inappropriate"?

If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:

Why do you believe you didn't make this statement – to the hearing panel?

Isn't it true – you invited [Doe] into your dorm room – on the night in question– because – you were - very comfortable with him - trusted him - and felt safe with him - - - and that your – interactions - in your dorm - were lighthearted and laughter filled?

If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:

Why do you believe you didn't make this statement?

Do you remember – telling the hearing panel that you - experienced no "uncomfortability" when – you volunteered - to walk [Doe] back to his - dorm after you had consensual intercourse?

If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:

Why do you believe you didn't make this statement?

Wouldn't you agree – most - sexual assault victims - would likely not - feel "uncomfortable" - enough – to volunteer – to walk their - attacker home?

If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:

Why do you think - victims - of sexual assault would likely not - feel "uncomfortable" –volunteering – to walk their attacker home?

Do you remember telling Investigator Morman and Mr. Esler that – you "gave in" - and engaged in - consensual intercourse –because – you - "become aroused from [Doe's] fingers" in your vagina - and you - "thought [you] wanted more . . . ."?

If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:

Why do you believe you didn't make this statement?

Would you agree –your statement at the hearing - that [Doe's] touching of you – on the park bench – was not – "inappropriate" - - - contradicts – your statement to Officer Harmony – that on the park bench – [Doe] kept kissing you – "even though [you] had told [him] that [you] didn't want kisses"?

If [Roe's] answer is anything but unequivocal agreement that a contradiction exists please ask the following question:

Why do you believe – no contradiction exists – with regard to the question I just asked you?

Do you remember on September 11, 2016 -telling OWU investigators - that when you and [Doe] danced and talked in your dorm room – you changed your mind - and "consented" to his kissing and touching you.

Do you agree –this statement contradicts – the information you included in your September 25th email – to Officer Harmony – where you alleged - that after you danced – [Doe] "started kissing [you and you] . . . told [Doe that you] didn't want to kiss [him] . . . ."?

If [Roe's] answer is anything but unequivocal agreement that a contradiction exists please ask the following question:

Why do you believe – no contradiction exists – with regard to last two questions I just asked you?

This paragraph discusses how you told the hearing panel that - after you became "aroused" by [Doe's] fingers in your vagina – you "took [your] shorts off and [] gave consent to [his] penis inside of [you]" – right?

Would you agree this testimony - is the opposite of what you said – on September 15th – when you alleged – that when – [Doe] "inserted [his] fingers into [your] vagina - - - [you] said that [you] 'did not want them there' - - - - so [you] grabbed [Doe's] hand and pulled [it] away - - - - [and when he] 'put [his] penis inside of [you] - - - - she told [him] again that [you] did not want to have sex" ?

If [Roe's] answer is anything but unequivocal agreement that a contradiction exists please ask the following question:

Why do you believe – no contradiction exists – with regard to the question I just asked you?

Isn't it true- you statement about –engaging in consensual intercourse with [Doe] – contradicts – your September 25th allegation that – after – he put his penis – inside you –you were telling him - "[you] didn't want to" have intercourse?

If [Roe's] answer is anything but unequivocal agreement that a contradiction exists please ask the following question:

Why do you believe – no contradiction exists – with regard to the question I just asked you?

Would you agree – your statement about –engaging in consensual intercourse with [Doe] – after his fingers "aroused you" – contradicts – your September 15th claim that – that you - grabbed his hand when his fingers entered her vagina - and "kept telling [him] no" - but that he would not "stop."?

If [Roe's] answer is anything but unequivocal agreement that a contradiction exists please ask the following question:

Why do you believe – no contradiction exists – with regard to the question I just asked you?

Could you please explain how you - began to "reciprocate" physically with [Doe]– after he – his fingers aroused you - given your September 15th allegation - that you - "kind of just la[id] still" - when his fingers were in your vagina.

Would you agree –a contraction exists – between: (a) your statement – that you became "aroused" by [Doe's] fingers in your vagina – so much so – that that you "gave consent to [his] penis [being] inside of [you]" - - - and (b) your September 15th allegation – that you – made "clear to [Doe] that [you] did not want [him] to put [his] fingers into [your] vagina . . . ."?

If [Roe's] answer is anything but unequivocal agreement that a contradiction exists please ask the following question:

Why do you believe – no contradiction exists – with regard to the question I just asked you?

Do you remember – Officer Morman telling you – that you were incorrect – when you alleged - [Doe] had been kicked out of a fraternity?

Would you agree – you repeatedly - emphasized to OWU investigators - how you were - angry or insulted – by [Doe] leaving coins on your dresser - as payment for your sexual encounter?

Do you remember repeatedly telling OWU investigators - that you would get

upset – when [Doe] –discussed – what he believed to be - your infidelities – like the time you kissed – one of his friends?

Isn't it true – you – [Doe] blocked you on Facebook – after you – sent him curse words – in response to – his posts – about your past infidelities?

Do you remember – telling the hearing panel – that [Doe] – told you – he "might" transfer out of OWU - after Christmas break – 2016?

Do you agree- this is somewhat – different from what – you told Investigator Morman and Mr. Esler- when you claimed [Doe] – told you - was not returning to OWU in January 2017?

Isn't it true –you initially alleged – [Doe] assaulted you on September 2nd and 3rd?

But later – you realized you got the dates wrong – isn't that correct?

Wouldn't you agree- you violated OWU's "no-contact" order – when you and your friend [CR] – interacted with [Doe] – and [CR] called [Doe] a rapist and a son-of-a-bitch?

If [Roe's] answer is anything but an unequivocal "yes" please ask the following question:

What reason do you have – to believe – [CR] – didn't call [Doe] a rapist and a son-of-a-bitch – in your presence – after you were told about – the "no contact order"

63. Despite the relevance of the questions in paragraph 61, the appeals panel refused to ask Roe a single one of Doe's questions.

64. During the appeals hearing, Doe presented evidence that Roe had once before falsely accused another OWU student, DC, of sexual assault. In his testimony Doe explained that Roe had accompanied a friend of Doe's to a fraternity formal during the 2015-2016 school year. Though Doe and Roe were dating at this time, he trusted Roe to go to the formal with his friend. While at the formal, however, Roe told DC (not the man she accompanied to the formal), DC, that Roe and Doe had broken up. Roe and DC then made out. After DC and Roe made out, Roe showed up at Doe's dorm room intoxicated, claiming someone touched her and assaulted her. Doe later found out that the individual Roe alleged assaulted her was DC.

65. Doe also presented two other witnesses who testified that Roe had falsely accused DC of sexual assault. One witness, SJ, testified that Roe's accusation against DC was well-known around the OWU campus. The other witness, DC himself, stated that he was told Roe had accused him of sexual assault, and that he was often given dirty looks by friends of Roe.

66. For her part, Roe denied that she had falsely accused another student of sexual assault. In support of her denial, Roe was permitted to read out loud from an alleged text exchange she supposedly had with a friend in which she claimed that she did not accuse DC of assault. The alleged text exchange was not presented for Doe's review prior to the evidence deadline of April 24th, nor was it shown to the Board or Doe during the appeal hearing.

67. The appeals hearing concluded at approximately 7 p.m. on Friday, April 28, 2017. Prior to completing the hearing, the appeal panel repeatedly expressed concerns about wanting to wrap up their deliberations before it got too late.

68. At roughly 7:30 a.m. the next morning, April 29, 2017, Doe was provided with the appeals board's decision. The decision was memorialized in a letter from Todd, which stated that, after "considerable deliberation," the panel determined there were insufficient grounds to alter the original finding of responsibility against Doe. The letter further indicated:

> On the grounds of new evidence, the panel did not find a preponderance of evidence to support the claim that the complainant falsely accused a different student of sexual assault.
>
> On the grounds of alleged procedural errors, the panel determined that two cases could be considered errors. The first case pertained to the failure of the panel to retain a copy of the two questions (which the panel found not relevant) and one statement you submitted to the panel during the original hearing. One of your witnesses suggested that one of the three submitted topics pertained to the alleged false allegation against another student. The panel determined that this matter was considered in the appeal hearing itself, and as mentioned above, was found lacking in sufficient evidence. The second case involved the failure to include the date, time, and location of the hearing in the original charge letter. The appeal panel determined that this omission is unlikely to have influenced the original panel or the outcome of the hearing.

> On the grounds of the appropriateness of the sanction, the panel did not find a sufficient reason to change the sanction imposed by the original hearing panel.

See Letter from Dwayne Todd, incorrectly dated March 28, 2017, attached as Exhibit 10.

69. Despite Todd's claim of "considerable deliberation," upon information and belief the appeal panel's Direct and/or Indirect Gender Bias Motivations caused them to quickly reach a decision without reviewing the extensive evidence Doe requested the panel review in his written statement in Exhibit 9. Given the relatively short time between the time the appeals hearing concluded and the time that Doe received the appeals board's decision, it is highly unlikely that the appeal panel members reviewed the audio tapes of the disciplinary hearing or otherwise considered the evidence in this case to confirm for themselves that the preponderance of that evidence mandated a finding of not responsible.

70. Upon information and belief, the appeals panel's erroneous belief that they could not reconsider factual determinations made by the original hearing panel occurred in part because of training provided by Esler which was tainted by his Direct and/or Indirect Gender Bias Motivations. Evidence supporting this belief includes but is not limited to Esler's testimony at Doe's appeal board hearing regarding Esler's role in providing this training. However, whether the "preponderance of evidence" standard was correctly applied in Doe's case, as required by OWU's Policies, was a *procedural* matter that needed to be considered by the appeals panel.

71. Moreover, the appeals panel's determination that there was not "a preponderance of evidence to support the claim that the complainant falsely accused a different standard of sexual assault" is flatly contradicted by the evidence presented. Two witnesses, along with Doe himself, testified that Roe made a false accusation against DC. The appeals panel's determination that the testimony of *three* witnesses (weighed against the self-serving and unsubstantiated testimony of Roe herself) did not amount to a preponderance of the evidence is a clear indication of their Direct and/or Indirect Gender Bias Motivations.

72. As a result the appeal board allowed their Direct and/or Indirect Gender Bias Motivations to violate OWU's Policies and Doe's Title IX rights by erroneously rejecting Doe's appeal.

Anti-Male Gender Bias Triggered Violations of Doe's Rights Under OWU's Policies and Title IX

73. Upon information and belief, OWU's violations of Doe's rights under OWU's Policies and Title IX was caused by Direct and/or Indirect Gender Bias Motivations as detailed in part below.

74. Upon information and belief, widespread anti-male bias exists at OWU in large part because of an April 11, 2011 "Dear Colleague" letter issued by the United States Department of Education's ("DOE") Office of Civil Rights ("OCR") which instructed how colleges and universities must investigate and resolve complaints of sexual misconduct under Title IX. ("2011 Dear Colleague Letter") (available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html accessed 5/26/17). This letter, which is express and unequivocal in its bias against male students, equates complainants in sexual misconduct proceedings as being females who must receive preferential treatment. For instance, the 2011 Dear Colleague Letter:

(a) Incorrectly states:[8] "'1 in 5 *women* are victims of completed or attempted sexual assault while in college' . . . [t]he Department is deeply concerned about this problem[.]" 2011 *Dear Colleague Letter*, p.2 (emphasis added);

[8]As discussed in this Complaint, OWU, OCR, and President Obama's administration's often-repeated allegation that "1 in 4" or "1 in 5" female college students are sexually assaulted is unsupported. For example, a report issued by The American Association of University Women noted that over 90% of the colleges and universities in the United States reported *none* of their students were raped in 2014. *See,* American Association of University Women, *91 Percent of Colleges Reported Zero Incidents of Rape in 2014,* (Nov. 23, 2015). Similarly, a "special report from the Bureau of Justice Statistics titled 'Rape and Sexual Assault Victimization Among College-Age Females, 1995-2013' . . . found . . . female college . . . are less likely to be victims of sexual assault than their peers who are not enrolled in college. The report found . . . the incidence [of sexual assault] . . . was far lower than anything approaching 1 in 5: 0.76 percent for nonstudents and 0.61 percent for students." Emily Yoffe, The Problem with Campus Sexual Assault Surveys, SLATE, Sept. 24, 2015. *http://www.slate.com/articles/double_x/doublex/2015/09/aau_campus_sexual_assault_survey_why_such_surveys_don_t_paint_an_accurate.html*(accessed 5/26/17). In addition, academics conducting a research study found approximately 50% of sexual assault allegations at two Midwestern American colleges were false. *See,* Eugene J. Kanin, *False Rape Allegations* Archives of Sexual Behavior, Vol. 23 No.1 (1994) available https://archive.org/details/FalseRapeAllegations) (accessed 5/26/17).

Another academic paper exposed the lack of objective proof behind a "consensus among legal academics that only two

(b) Warns that "the majority of campus sexual assaults occur when ***women*** are incapacitated, primarily by alcohol." *Id.,* (emphasis added);

(c) Suggests educational institutions seek grants from the U.S. Department of Justice's Office on Violence against ***Women*** which require institutions "develop victim service programs and campus policies that ensure victim safety, [and] offender accountability. . . ." *Id.,* p.19 (emphasis added);

(d) Warns education institutions that they must "never" view the "victim at fault for sexual violence" if she has been using "alcohol or drugs." In fact, OCR asks "schools to consider" providing students who violate alcohol or drug policies with amnesty if they allege they were sexually assaulted while consuming alcohol or drugs. *Id.* p.15.; and

(e) Requires educational institutions "minimize the burden on the complainant." p.15-16.

Id.

75. The 2011 Dear Colleague Letter has resulted in colleges and universities, including OWU, making it more difficult for males accused of sexual misconduct to defend themselves. For example, the 2011 Dear Colleague Letter required schools to adopt the lowest burden of proof—more likely than not"—in cases involving sexual misconduct. Several colleges had been using "clear and convincing" and some, like Stanford University, applied the criminal standard, "beyond a reasonable doubt."

76. Similarly, on April 29, 2014, OCR published a document signed by OCR's then Assistant Secretary of Education Catherine E. Lhamon ("Sec. Lhamon") titled "Questions and Answers on Title IX and Sexual Violence" ("OCR's 2014 Q&A") (available at

---

percent" of sexual assault allegations are false. *See,* Edward Greer, *The Truth behind Legal Dominance Feminism's Two-Percent False Rape Claim Figure,* 33 Loy. L.A.L. Rev. 947(2000); available http; digitialcommon.Imu.edu/llr/vol33/iss 3/3). Issues such as these are addressed in detail in Stuart Taylor Jr. and KC Johnson's recent book *The Campus Rape Frenzy: The Attack on Due Process at America's Universities.* The rationale behind some of the false allegations is detailed in an academic research paper which reviewed multiple academic studies. *See,* Reggie D. Yager, *What's Missing From Sexual Assault Prevention and Response*, (April 22, 2015) http: ssrn.com/abstract=2697788 (accessed 5/26/17). This paper determined a high percentage of sexual assault allegations are false and based on the alleged victims': (1) need for a cover story or alibi; (2) retribution for a real or perceived wrong, rejection or betrayal; and/or (3) desire to gain sympathy or attention. *Id.*

http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf (accessed 5/26/17). This OCR directive hampers an accused student's ability to defend himself by reducing or eliminating the accused's ability to expose credibility flaws in the allegations made against him. For example, OCR's 2014 Q&A states schools:

a) "[M]ust not require a complainant to be present" at sexual misconduct disciplinary hearings. *OCR's 2014 Q&A,* p.30;

b) May decide to eliminate all opportunities for "cross-examination." *Id.,* p.31; and

c) Must avoid "revictimization" by minimizing the number of times a victim is interviewed so "complainants are not unnecessarily required to give multiple statements about a traumatic event." *Id.,* pp.30, 38.

77. Neither OCR's 2014 Q&A nor the 2011 Dear Colleague Letter were subject to notice-and-comment rulemaking, and therefore their validity as binding law is at best questionable. Thus, Senator James Lankford wrote to the DOE to express his concerns that the DOE's Dear Colleague letters are not interpretive, but are unlawfully altering the regulatory and legal landscape of Title IX and the U.S. Constitution. *See Exhibit 11* (containing Senator Lankford's letter to ODE Acting Secretary John King).

78. Following Senator Lankford's letter, Representative Earl Ehrhart from Georgia filed a lawsuit against the DOE on April 21, 2016 in federal court alleging that DOE's implementation of the 2011 Dear Colleague letter was unconstitutional and unlawful. *See* http://www.saveservices.org/wp-content/uploads/Ehrhart-v.-DOE-2016.pdf (accessed 5/26/17). Similar allegations were made against DOE in the federal lawsuit *Doe v. Lhamon et al.,* which was filed in United States District Court for the District of Columbia. *See Exhibit 12* (containing *Doe v. Lhamon et al.,* Complaint).

79. Both through the 2011 Dear Colleague letter and through its public comments, OCR pressured colleges around the county to make it more difficult for male students accused of sexual misconduct to defend themselves. In fact, in February 2014 Sec. Lhamon told college officials

attending a conference at the University of Virginia that schools needed to make "radical" change. According to the Chronicle of Higher Education, college presidents suggested afterward that there were "crisp marching orders from Washington." *See, e.g., Colleges Are Reminded of Federal Eye on Handling of Sexual-Assault Cases, Chronicles of Higher Education,* February 11, 2014, located at http://chronicle.com/article/Colleges-Are-Reminded-of/144703/ (accessed 5/26/17).

80. Many academics, authors, and organizations have raised alarms that DOE/OCR's worthwhile goal of protecting college students from sexual misconduct has evolved into an unlawful example of federal governmental overreach that violates the rights of male students who never engaged in misconduct. *See, e.g.,* Emily D. Safko, *Are Campus Sexual Assault Tribunals Fair?: The Need For Judicial Review and Additional Due Process Protections In Light of New Case Law,* 84 Fordham L. Rev. 2289 (2016), pgs. 2304-05 (discussing universities' concerns regarding OCR enforcement actions that commentators believe "incentivizes schools to hold accused students accountable by implementing and conducting proceedings that are unfairly stacked against the accused."). *Id.,* pgs. 2320-24 (addressing same); *Exhibit 13* (containing *Open Letter From Sixteen Members of Penn Law School Faculty* (Feb. 17. 2014) (stating in part: "[a]lthough we appreciate the efforts of Penn and other universities to implement fair procedures, particularly in light of the financial sanctions threatened by OCR, we believe that OCR's approach exerts improper pressure upon universities to adopt procedures that do not afford fundamental fairness."); Barclay Sutton Hendrix, *A Feather On One Side, A Brick On The Other: Tilting The Scale Against Males Accused of Sexual Assault In Campus Disciplinary Proceedings*, 47 Ga. L. Rev. 591, (2013); Stephen Henrick, *A Hostile Environment for Student Defendants*: *Title IX and Sexual Assault on College Campuses,* 40 N. Ky. L. Rev. 49 (2013); *Exhibit 14* (containing *Rethink Harvard's Sexual Harassment Policy,* LETTER TO EDITOR, BOSTON GLOBE, Oct. 15, 2015); Janet Halley, *Trading the Megaphone for the Gravel in Title IX Enforcement,* HARV. L. REV. F. 103, 103-17, (2014); Samantha Harris, *Campus Judiciaries on Trial: An Update from the Court,* HERITAGE FOUNDATION, Oct. 6. 2015;

http://www.heritage.org/research/reports/2015/10/campus-judiciaries-on-trial-an-update-from-the-courts (accessed 5/26/17); Janet Napolitano, "*Only Yes Means Yes": An Essay on University Policies Regarding Sexual Violence and Sexual Assault,* Yale Law and Policy Review Volume 33; Issue 2 (2015); Robin Wilson, *Presumed Guilty,* CHRONICLE OF HIGHER EDUCATION (Sept. 3. 2014) http://chronicle.com/article/Presumed-Guilty/148529/?cid=a&utm_medium=en (accessed 5/26/17) (noting: "Under current interpretations of colleges' legal responsibilities, if a female student alleges sexual assault by a male student after heavy drinking, he may be suspended or expelled, even if she appeared to be a willing participant and never said no. That is because in heterosexual cases, colleges typically see the male student as the one physically able to initiate sex, and therefore responsible for gaining the woman's consent."); *Dershowitz and Other Professors Decry 'Pervasive and Severe Infringement' of Student Rights,* Jacob Gershman (May 18, 2016), http://blogs.wsj.com/law/2016/05/18/dershowitz-and-other-professors-decry-pervasive-and-severe-infringement-of-student-rights/ (accessed 5/26/17).

81. As detailed in many of the cited publications, OCR's investigations put millions of dollars in federal student aid at risk. This is because DOE/OCR can impose civil penalties and/or suspend institutions from participating in federal student financial aid programs if DOE/OCR finds a university, such as OWU, did not do enough to discipline males alleged to have engaged in sexual misconduct with female students. Sec. Lhamon confirmed this risk of losing federal funds at a national conference at Dartmouth in the summer of 2014 when she threatened, "I will go to enforcement, and I am prepared to withhold federal funds." *See How Campus Sexual Assaults Came to Command New Attention,* NPR, August 12, 2014 located at http://www.npr.org/2014/08/12/339822696/how-campus-sexual-assaults-came-to-command-new-attention (accessed 5/26/17).

82. Similarly, in June 2014, Sec. Lhamon told a Senate Committee, "[t]his Administration is committed to using all its tools to ensure that all schools comply with Title IX[.]" In addition, Sec. Lhamon noted:

> "If OCR cannot secure voluntary compliance from the recipient, OCR may initiate an administrative action to terminate and/or refuse to grant federal funds or refer the case to the DOJ to file a lawsuit against the school. To revoke federal funds—the ultimate penalty—is a powerful tool because institutions receive billions of dollars a year from the federal government for student financial aid, academic resources and many other functions of higher education. OCR has not had to impose this severe penalty on any institution recently because our enforcement has consistently resulted in institutions agreeing to take the steps necessary to come into compliance and ensure that students can learn in safe, nondiscriminatory environments."

83. In 2016, the American Association of University Professors severely criticized OCR's mandates as undermining student's rights to fair and impartial adjudications in cases of alleged sexual misconduct. *See Exhibit 15* (containing AAUP's March 24, 2016 publication entitled: *Executive Summary: The History, Uses, and Abuses of Title IX*).

84. Similarly, in 2017, The American College of Trial Attorneys' ("ACTA") *White Paper On Campus Sexual Assault Investigations* noted: "OCR has established investigative and disciplinary procedures that, in application, are in many cases fundamentally unfair to students accused of sexual misconduct." *Exhibit 16,* p.3 (containing American College of Trial Attorneys' March 2017 *White Paper On Campus Sexual Assault Investigations*). To remedy this unfairness, ACTA made the following recommendations:

1. Sexual misconduct investigations and hearings should be conducted with due consideration for any appearance of partiality, including that which might arise from the fact finder's other responsibilities or affiliations.

2. The subject of a sexual misconduct investigation should promptly be provided with the details of the allegations and advised of his/her right to consult legal counsel.

3. The subject of a sexual misconduct investigation has the right to be advised and accompanied by legal counsel at all stages of the investigation.

4. The parties to a sexual misconduct investigation should be permitted to conduct some form of cross-examination of witnesses, in a manner deemed appropriate by the institution, in order to test the veracity of witnesses and documents.

5. The subject of a sexual misconduct investigation should be provided with access to all evidence at a meaningful time and in a meaningful manner so that he/she can adequately respond to it.

6. The standard of proof for "responsibility" should be clear and convincing evidence.

7. Fact finders in sexual misconduct investigations and hearings should produce written findings of fact and conclusions sufficiently detailed to permit meaningful appellate review.

Id., p.2.

85. As detailed in paragraphs 28-71 above, OWU afforded Doe none of the traditional cornerstones of American justice articulated by the ACTA. Instead, upon information and belief, OWU allowed gender bias to motivate it to ignore the exculpatory evidence establishing Doe's innocence. This occurred because OWU has institutionalized OCR's Dear Colleague letter—and all its attendant gender bias—into its implementation of OWU Policies.

86. For example, OWU has embraced and incorporated the Obama Administration's "It's On Us" campaign. *See* https://obamawhitehouse.archives.gov/sites/default/files/docs/college_list_updated_9.22.14.pdf (accessed 6/19/2017) (Obama Administration's press release identifying OWU's participation in said campaign). This campaign manifests Direct and Indirect Evidence of Gender Biased Motivations in part because it portrays male students as sexual predators in promotional materials that state:

a) "It's on us to make sure ***guys*** know that if ***she*** doesn't or can't consent to sex, it's sexual assault." *See* http://itsonus.org/index.html#pledge (accessed 5/26//17) (emphasis added);

b) Suggesting individuals videotape themselves "[s]ay[ing] to a camera…it's on us to recognize that if a ***woman*** doesn't or can't consent to sex, it's rape." *Id.,* (emphasis added); and

c) Stating: "*Never* blame the victim," "*always* be on the side of the survivor," and "*trust* the survivor." *Id.,*(emphasis added).

87. The Obama Administration also repeatedly alleged—and OWU has parroted[9]—that "[a]n estimated one in five women has been sexually assaulted during her college years[.]" *See, e.g.*,https://www.whitehouse.gov/blog/2014/09/19/president-obama-launches-its-us-campaign-end-sexual-assault-campus (accessed 5/2617); https://www.whitehouse.gov/the-press-office/2014/04/29/fact-sheet-not-alone-protecting-students-sexual-assault (accessed 5/2617).[10]

88. Upon information and belief, OWU's erroneous discipline of Doe was caused in part by OWU's fear that if it did not show preferential treatment to females who allege sexual misconduct by males, OWU would become involved in an OCR investigation and risk losing millions of dollars in federal aid. This withdrawal of federal funding would be catastrophic for OWU because, upon information and belief, in academic year 2014-2015 OWU undergraduate students

---

[9] *See* graphic from OWU student newspaper, *The Transcript*, actually going further and stating that "1 in 4 college women report surviving rape or attempted rape," attached as Exhibit 17.

[10] As detailed in part in footnote 8, however, allegations that 20% of America's female college students are being sexually assaulted by their male counterparts has been thoroughly refuted by organizations such as the Bureau of Justice Statistics, which determined that only 0.61% of female college students are sexually assaulted. Similarly, Emily Yoffe's 2014 article in *Slate* refutes the "1 in 5" allegation. Emily Yoffe, *The College Rape Overcorrection*, SLATE, Dec. 7, 2014 ,http://www.slate.com/articles/double_x/doublex/2014/12/college_rape_campus_sexual_assault_is_a_serious_problem_but_the_efforts.html (accessed 5/26/17). Specifically, Ms. Yoffe asked Christopher Krebs - the lead author of the study cited by President Obama - whether his study represented the experience of the approximately 12 million female students in America. *Id.* Mr. Krebs stated those involved in the study, "don't think one in five is a nationally representative statistic." *Id.* This was because Mr. Krebs stated his sampling of only two schools "[i]n no way . . . make[s] our results nationally representative." *Id. See also*, Heather MacDonald, *An Assault on Common Sense*, The Weekly Standard, Nov. 2, 2105, http://www.weeklystandard.com/an-assault-on-common-sense/article/1051200 (accessed 5/26/17) (detailing why a recent survey conducted by Association of American Universities has been improperly distorted to falsely suggest large percentages of female college students are being sexually assaulted on America's college campuses).

Ms. Yoffe also noted that if the "one-fifth to one-quarter assertion [regarding sexual assaults on college campuses were true that] would mean that young American college women are raped at a rate similar to women in Congo, where rape has been used as a weapon of war." Emily Yoffe, *The College Rape Overcorrection*, SLATE, December 7, 2014, http://www.slate.com/articles/double_x/doublex/2014/12/college_rape_campus_sexual_assault_is_a_serious_problem_but_the_efforts.html (accessed 5/26/17).

Despite these facts, then V.P. Joe Biden repeatedly presented Direct and/or Indirect Evidence of Gender Bias Motivations in promoting the "It's On Us" campaign as a tool to protect female students from male students. *See e.g.,* https://www.osu.edu/buckeyesact/vpbidenvideo.html (accessed 5/26/17). V.P. Biden also made it clear the Obama Administration and DOE used Title IX investigations and potential loss of federal funding to encourage university presidents to join the campaign. *Id.* In addition, V.P. Biden manifests Direct and/or Indirect Evidence of Gender Bias Motivations by encouraging "***guys***" to take the "It's On Us" pledge to combat the fact that 1 in 5 college ***women*** are the victim of sexual assault while attending college. *Id.*

received Pell Grants of approximately $1,748,084 and Federal Student Loans of over $12,266,803. https://nces.ed.gov/collegenavigator/?s=OH&ct=2&ic=1&pg=4&id=204909 (accessed 5/26/17).

89. Evidence supporting the assertion that OWU was motivated to act in a gender-biased manner in addressing accusation of sexual misconduct includes, but is not limited to, statements by Esler that:

(a) policy changes like the "Dear Colleague" letter create better environments for survivors of sexual assault by providing "more guidance" and "stricter requirements;" and

(b) the Department of Education uses its fiscal "leverage" to make policy friendlier to those accusing another student of sexual assault.

See Exhibit 18 (containing article from OWU student newspaper containing Esler quotes). Therefore, upon information and belief, OWU's erroneous discipline of Doe was motivated in part to avoid an OCR investigation, to preserve federal funding, and/or to avoid negative publicity based on an allegation that OWU did not adequately handle sexual assault investigations.

90. Further, upon information and belief, OWU's anti-male bias against Doe stemmed not just from its institutionalization of the Dear Colleague letter mandates and its fear of losing millions in federal funding, but also from the pressure that OWU administrators were under in January and February of 2017 due to OWU's alleged mishandling of sexual assault allegations made by a female student against a male student, "PD," earlier in 2017. In that case, upon information and belief, a hearing in January 2017 led to a determination that PD was responsible for sexually assaulting the female student. PD, who was a residential advisor at OWU, failed to file a timely appeal of the disciplinary board's finding, but was nevertheless granted an extension of time in which to do so and was authorized by Esler to continue living on campus in the OWU dorms while his proceedings were pending.

91. After learning that PD was still on campus and living in his OWU dorm, members of the student body reacted angrily to OWU's decision to allow PD to remain on campus. Upon information and belief, the backlash from the student body concerned OWU administrators enough that they responded by sending out a survey to all OWU students about sexual assaults on campus. That survey was first distributed on February 13, 2017 – just four days before Doe's disciplinary hearing.

92. Upon information and belief, as a result of the pressure that OWU was feeling from its student body due to the alleged mishandling of the PD matter, OWU felt compelled to send a message to its students by finding Doe responsible for sexual assault and severely punishing him – despite the absence of evidence indicating he had engaged in any misconduct. Similarly, in an effort to appease the student body, the appeals board refused to reverse the finding of the disciplinary panel.

93. Further, upon information and belief, OWU's anti-male bias also stems from OWU's involvement with various gender-biased organizations and events. For example, OWU is a "partner" institution with the American Association of University Women ("AAUW"), which has a long history of gender bias against men. For example:

(a) AAUW sponsors "Take Back the Night Marches" to promote "*women's* safety," an event that OWU hosts annually. *See Exhibit 19* (slide from American Association of University Women power point). Prominent feminist Christina Hoff Sommers has noted these events are regularly "driving home the point" to male college students "that women are from Venus and men are from Hell." *Exhibit 20,* (containing May 30, 2013 essay entitled *Why Men Are Avoiding College*.) In addition, takebackthenight.org's website details the organization's "history" of organizing females to engage in advocacy on behalf of females subjected to sexual assault, domestic violence, and other crimes. *Exhibit 21* (containing pages from takebackthenight.org's website);

(b) AAUW promotes the slogan, "A Nation's Decency Is In Large Part Measured by How It Responds to Violence Against W*omen*." *See Exhibit 19* (slide from American Association of University Women power point);

(c) The AAUW website states: "Our campuses are in crisis. The chance of a *woman* being sexually assaulted during college is about the same as *her* chance of catching the flu during an average year — except *she* can't just take Nyquil and rest in bed for a few days[.]" *See id.* (slide from American Association of University Women power point) (emphasis added);

(d) AAUW refers to campus sexual assault as "A NATIONAL EPIDEMIC -- 60+ colleges around the country currently being investigated by the federal government for mishandling sexual assault complaints. Students are continuing to come forward with personal stories of unsatisfactory treatment of their complaints. Universities often underreport the number of sexual assault cases on their campuses and fail to properly investigate complaints. No effective sanctions against the schools for these blatant violations. This needs to stop." *See id.* (slide from American Association of University Women power point);

(e) AAUW suggests universities find more male students guilty of sexual misconduct in order to remedy AAUW's belief that: "For too many female students college doesn't turn out the way it's supposed to[.]" *See id.* (slide from American Association of University Women power point);

(f) AAUW cites the following as valid statistics:

i. approximately 25% of college *women* were sexually assaulted,

ii. as many as 50% of college students experienced dating violence,

iii. 13% of college *women* were stalked

See id. (emphasis added).

(g) AAUW promotes—and OWU students have participated in—the "Walk a Mile in Her Shoes" campaign which "encourages MEN to take a stand against sexual assault and about how *men* can PLEDGE to take steps to stop it." *See id.* (slide from American Association of University Women power point) (all caps in original); and

(h) AAUW sponsors *The Red Flag Campaign* which urges institutions to distribute promotional materials "wherever *men* hang out" and encourage "prizes" for "*men* who participate in *Red Flag Campaign* programming." *Exhibit 22* (containing information from Red Flag Campaign's website) (emphasis added). This promotional material includes statements such as: (i) "*He* said if I really loved *him*, I would have sex with *him*;" (b) "If I want to get some, I just need to get *her* wasted;" (c) "*She* gets pissed when I hang out with my friends – *She* says *she* should be enough;" and (d) "Say Something – Another *guy* kept cornering my friend at a party. So, I checked in with *her*." See i*d.* (emphasis added).

94. Similarly, OWU has embraced *The Clothesline Project,* which is designed to address violence against women. *See Exhibit 23* (information from *The Clothesline Project's* website). Evidence of *The Clothesline Project's* gender bias is reflected in several of the statements on the project's website:

(a) Clothesline Project's events are designed to develop "provocative 'in-your face' educational and healing tool[s]" that "break the silence and bear witness to *one issue – violence against women*;"

(b) Defines a "[s]urvivor" as "a *woman* who has survived intimate personal violence such as a rape; battering, incest, child sexual abuse." and;

(c) Defines "[v]ictim" as "a *woman* who has died at the hands of her abuser.

OWU's participation in the Clothesline Project occurs during its annual "Women's Week," which also includes its annual Take Back the Night rally. *See Exhibit 24* (article from OWU student newspaper).

95. OWU students have participated in an annual "Slutwalk" on campus, whose purpose is to march, rally, and protest rape culture, "slutshaming," and victim blaming. *See Exhibit 25* (containing article from OWU student newspaper).

96. Finally, articles in OWU's student newspaper, *The Transcript*, speak to the student body's focus on women's issues generally, and violence against women, in particular, and attest to the amount of attention directed at these issues during the academic year. *See, e.g., Exhibit 26.*

97. Based on the information detailed in this Complaint and upon information and belief, OWU's unlawful discipline of Doe occurred in part because of OWU's archaic assumptions that men are always the sexual aggressors and that women generally resist sex. This is evidenced, in part, by OWU's: (a) unlawful rejection of the preponderance of evidence which proved Roe voluntarily initiated and/or consented to all physical contact with Doe; (b) decision to ignore testimony that established Doe's innocence in part because that testimony proved Roe's allegations were internally inconsistent and lacking in credibility; (c) prohibiting Doe from challenging the credibility of Roe; and (d) unlawful discipline of Doe for engaging in sexual activity to which Roe consented or initiated.

98. The Direct and Indirect Evidence of Gender Bias Motivations indicates that OWU engages in gender discrimination based on unlawful notions of masculinity and femininity, which results in a hostile environment for males. This hostile environment in turn results in an adverse educational setting in violation of Title IX. This hostile environment causes innocent males on OWU's campus to be unlawfully disciplined and interferes with males' ability to participate in or benefit from various activities including learning on campus.

99. Although OWU may contend that the OWU Policies are gender neutral on their face, the policies as applied are not. Because of the Direct and Indirect Evidence of Gender Bias Motivations detailed in this Complaint, OWU is motivated to discipline innocent male students like Doe via sexual misconduct proceedings that afford females preferential treatment in violation of Title IX and/or OWU Policies.

100. OWU's, OCR's, and/or the federal government's legitimate and commendable goal of preventing sexual assault is *not* the issue in, nor is it the basis for, this Complaint. Rather, this Complaint addresses how OWU's unlawful discipline of Doe was motivated by the Direct and Indirect Evidence of Gender Bias Motivations to: (a) afford females like Roe preferential treatment regarding Title IX and/or OWU Policies; (b) severely discipline male students like Doe who are alleged to have engaged in sexual misconduct regardless of their innocence, and (c) equate "victim/complainants" in sexual misconduct proceedings as being females who receive preferential treatment over the males they accuse of sexual misconduct.

101. Upon information and belief, OWU's pattern and practice of discriminating against male students is done to appease the federal government, OWU's female student body, and/or the general public even though the preponderance of the evidence proves these male students did not engage in sexual misconduct.

Violations of Doe's Rights under OWU Policies and/or Title IX

102. As detailed in paragraphs 28-71 above, the conduct of OWU in this case violated Doe's rights under OWU Policies and Title IX. This conduct also violated OCR's guidance regarding the credibility of the parties and the presence of corroborating evidence. *See e.g., OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* ("OCR's Sexual Harassment Guide") (January 2001). *https://www.federalregister.gov/documents/2001/01/19/01-1606/revised-sexual-harassment-guidance-harassment-of-students-by-school-employees-other-students-org.* (accessed 5/26/17).[11] For example, OCR's Sexual Harassment Guide recommends evaluating the "relative credibility" of

[11] This Court has acknowledged the appropriateness of OWU incorporating OCR directives into OWU's adjudication of allegations of sexual misconduct. *See, Exhibit 27,* pageid 694 (containing *Pierre v. University of Dayton* No.3:15-cv-362, Docket 30 (W.D.S.D.OH. March 27, 2017) (rejecting a plaintiff's breach of contract claim in part because Dayton's "use of the "preponderance of evidence standard of proof is directed by" OCR).

evidence by looking at the level of detail and consistency of each person's account . . . in an attempt to determine who is telling the truth."

103. In Doe's written submission to the appeal panel, and as set forth in paragraph 56 above, Doe identified fourteen statements Roe made that proved her allegations against Doe were false. *See Exhibit 9*. Further, Doe's written submission reported twelve instances in which Roe provided contradictory statements to the investigators and/or the disciplinary panel. *See id.*

104. Despite this overwhelming evidence—and despite the fact that Doe's testimony on the issue of when and under what circumstances he put his fingers in Roe's vagina was consistent from the first interview through to the disciplinary hearing—OWU nevertheless found Doe responsible for sexual assault. Given these facts, OWU utterly failed to abide by the OCR recommendations regarding the weighing of relative credibility and instead allowed its Direct and/or Indirect Evidence of Gender Bias Motivations to taint the disciplinary process.

105. As detailed in paragraphs 28-71, OWU also violated several OCR mandates relating to the investigation and adjudication of sexual misconduct complaints. For example, OWU violated the OCR mandate that colleges and universities "provide due process to the alleged perpetrator." *U.S. Dep*'t Of Education Office of Civil Rights, *Dear Colleague Letter,* (Apr. 4. 2011); http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html. OWU denied due process to Doe by, among other things, failing to: (a) advise him that he was entitled to an advisor at all stages of the investigatory and disciplinary process; (b) advise him that he could refuse to answer questions; (c) advise him in advance that his testimony would be recorded and shared with the local authorities; (d) allow him to offer evidence and witnesses relating to Roe's credibility; (e) allow him to question Roe by way of written questions submitted to the hearing panel that related to Roe's credibility; (f) provide him with an impartial trier-of-fact to determine his responsibility for the charges against him.

106. OWU also violated the OCR mandate requiring that schools employ "[p]rocedures that . . . will lead to sound and supportable decisions." *U.S. Dep*'t Of Education Office of Civil Rights, *OCR's Sexual Harassment Guide*. OWU failed to employ procedures leading to sound and supportable decisions in that: (a) Esler and Mormon "failed to investigate this matter in a neutral and impartial manner;" (b) Esler presented an unfair and biased report summarizing the evidence to the hearing panel; (c) Esler improperly advised Doe that he could not have any witnesses testify at the hearing that would call into question [Doe's] credibility; and (d) Esler failed to provide impartial assistance and support to Doe throughout the investigation.

107. OWU also violated OCR mandate that schools provide ""[a]dequate, reliable, and impartial *investigation* of complaints, including the opportunity to present witnesses and other evidence." *See id*. (emphasis added). In Doe's case, Mormon and Esler were biased against Doe, and in favor of Roe, from the outset in part because:

(a) Esler stated to Roe—prior to even speaking to Doe and learning his side of the story—that:

(i) "the person that files the complaint . . . usually wins;"

(ii) female complainants usually win because OWU adjudicators feel "why would this person be making stuff up?;" and

(iii) "most of these guys don't deny it," rather they claim it was "a consensual act."

(b) Esler described the option of an informal resolution procedure as being designed to allow female complainants the opportunity to "let the guy have it" and to "see how he responds and how he reacts." *(emphasis added)* Even though Roe told Esler that she was "aroused" by Doe's fingers in her vagina, Esler told Roe that this type of informal resolution procedures "doesn't sound like that would be appropriate here." In doing so, Esler effectively shut down any chance Doe had to avoid OWU's subsequent unlawful violations of Doe's rights under OWU policies and/or Title IX.

(c) *Before* Morman and Esler even heard Doe's side of the story, they both assured Roe that she had been "raped." Morman stated that because Doe committed "rape," OWU would work "pretty much work hand-in-hand" with the Delaware Police to prosecute him if Roe wanted OWU to do so. Esler stated:

> [A]s Richard said, he raped you there is no question at least the events leading up to when he put his fingers in you that was without consent you didn't give any consent of that and that's what our policy requires not that you didn't do anything lay there silently that is not consent. Consent you either have to say yes let's do this or nonverbally indicate that you do you know want to have sex by moving your hips objectively or things like that from what you're saying not only did you not do any of that stuff but you affirmatively said no repeatedly and took physical actions to try to keep your underpants. Even if it gets somewhat murky about the sexual intercourse about when you took your pants off and said Okay Okay, and even there I think that would come on the coercion.

In fact, even after Roe told Esler and Morman that she was "aroused" by Doe's fingers in her vagina, Esler continued to violate his obligation under OCR mandates and OWU policies to act in a fair and neutral investigation by engaging in the following exchange with Roe:

> Esler: Even if it gets a little muddy after he put his fingers in that there was no consent verbally or nonverbally correct?
>
> [Roe responds by saying Esler is correct]
>
> Esler: Then that is still assault under [OWU's] policy. Also known as rape.

(d) Esler helped Roe craft her sexual assault claim against Doe, which Esler had reason to know was false. This was because Doe initially claimed to Esler that even the sexual intercourse between Roe and Doe was non-consensual. Upon information and belief, once Esler realized that Doe's own statements contradicted any such charge, Esler then coached Roe to fabricate an allegation against Doe that Esler knew or should have known was false and/or unsupported by the facts.

(e) Morman never mentioned in his investigatory report that Roe confessed, in her taped interview, to removing her shorts and having sexual intercourse *almost immediately* after Doe put his fingers in her vagina. Morman's report also omitted Roe's admission that she and Doe had a history of breaking up and then getting back together sexually.

108. The conduct of OWU detailed throughout the Complaint also violated OWU Policies which state that:

(a) Respondents have the right to be accompanied by an advisor of their choice for all proceedings. *See Exhibit 1 at p. 32*;

(b) Within 24 hours of receipt of the formal charges, the Coordinator of Student Conduct will notify the respondent (the complainant will be copied) in writing of the charge(s), the complainant(s), the date(s) of the alleged violation(s), the section(s) of the Code of Conduct that is alleged to have been violated, the range of sanctions that may be imposed, the date, time, place of the conduct hearing and the right of appeal. The notice will also include the names of the members of the Sexual Misconduct Hearing Panel assigned to hear the case and a statement that the respondent and complainant have the right to challenge the participation of any panelist that they feel is unable to objectively decide the case. *See id. at p. 41*;

(c) The Office of Student Conduct will conduct a prompt and fair investigation of all reports of sexual misconduct that it receives. *See id. at p. 35*;

(d) The respondent has the right to a decision based on the preponderance of the evidence. More precisely, there must be a preponderance of evidence to find a respondent responsible. When there is no preponderance of evidence or if the preponderance of evidence supports the respondent, the respondent is not responsible for the violation. *See id. at p. 46*;

(e) The University is committed to providing a prompt and fair investigation and resolution of cases of sexual misconduct that protect the rights of the respondent and complainant, and the interests of the University community. *See id. at p. 47*;

(f) At each stage of the conduct process, including pre-hearing meetings, hearings for formal and informal resolution, and any appeals that might be filed, the respondent and complainant have the right to be accompanied by an Advisor. *See id. at p. 46;* and/or

(g) The respondent and complainant have the right to refuse to answer questions. *See id. at p. 47*;

OWU also violated that provision of the Student Handbook which states that the Title IX Coordinator and/or their designees will "ensur[e] a fair and neutral process for all parties" involved in proceedings. *Id. at p. 111*

109. As detailed in part in paragraphs 56-60 above, Doe put OWU on notice in his appeal that its investigation and disciplinary proceeding violated OWU Policies and Title IX. Despite giving OWU an opportunity to cure those violations, OWU persisted in its gender-biased course of conduct.

110. The procedural violations that permeated Doe's disciplinary process, combined with a gender bias against males and an underlying motive to protect OWU's reputation and financial wellbeing led to an erroneous finding of sexual misconduct against John Doe. This occurred even though to ensure a fair and impartial proceeding, "[e]ach case must be decided on its own merits, according to its own facts. If a college student is to be marked for life as a sexual predator, it is reasonable to require that he be provided a fair opportunity to *defend himself and an impartial arbiter to make that decision.*" *Doe* v. *Brandeis Univ.*, 177 F. Supp. 3d 561 (D.Mass. 2016) (emphasis added).

Damages Caused by Defendants

111. Because of the conduct of Defendants, Doe suffered and continues to suffer from severe depression. This depression has manifested in, among other things, self-harming behavior for which Doe had to seek medical treatment. His depression caused Doe to have to seek a medical withdraw from OWU. In addition, Doe has experienced severe difficulty sleeping, eating, and concentrating.

112. As a direct and proximate result of Defendants' conduct detailed in this Complaint, Doe has suffered and will continue to suffer mental anguish, personal humiliation, and a great loss of reputation, loss of employment opportunities and/or wages, reduced future earning capacity, attorneys' fees, and other direct and consequential damages.

113. As a direct and proximate result of Defendants' conduct detailed in this Complaint, Doe has suffered and will continue to suffer loss of educational opportunities and difficulty in gaining entrance to another university comparable to OWU.

Count 1 – Defamation Per Se

(Against Roe)

114. Doe hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

115. During the fall of 2016 and spring of 2017, Roe made statements to fellow students at OWU that Doe had sexually assaulted or raped her.

116. These statements were false.

117. Roe acted with actual malice in making the statements, as she knew the statements were false or acted with reckless disregard as to their falsity.

118. Roe was not privileged to make the false statements.

119. Roe's non-privileged statements were not made by Roe in support of any complaint she filed against Doe with OWU or any governmental or quasi-governmental body. Rather, Roe's non-privileged statements related to this count are: (a) completely unrelated to any complaint Roe made about Doe to OWU or any governmental or quasi-governmental body; and (b) were not made in the presence of OWU employees or any other governmental or quasi-governmental body involved in an action against Doe.

120. The statements at issue amount to defamation per se because on their face they accuse Doe of a crime and have a tendency to injury his personal or professional reputation.

121. As a result of Roe's false statements, Doe suffered damage to his reputation.

122. As a direct and proximate result of Roe's statements, Doe suffered and will continue to suffer the damages detailed above.

Count 2 – Defamation *Per Quod*
(Against Roe)

123. Doe hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

124. During the fall of 2016 and spring of 2017, Roe made statements to fellow students at OWU that Doe had sexually assaulted or raped her.

125. These statements were false.

126. Roe acted with actual malice in making the statements, as she knew the statements were false or acted with reckless disregard as to their falsity.

127. Roe was not privileged to make the false statements.

128. Roe's non-privileged statements were not made by Roe in support of any complaint she filed against Doe with OWU or any governmental or quasi-governmental body. Rather, Roe's non-privileged statements related to this count are: (a) completely unrelated to any complaint Roe made about Doe to OWU or any governmental or quasi-governmental body; and (b) were not made in the presence of OWU employees or any other governmental or quasi-governmental body involved in an action against Doe.

129. The statements at issue amount to defamation per quod because in context they accuse Doe of a crime, and have a tendency to injury his personal or professional reputation.

130. As a result of Roe's false statements, Doe suffered damage to his reputation.

131. As a direct and proximate result of Roe's statements, Doe suffered and will continue to suffer the damages detailed above.

Count 3 – Tortious Interference with Contract
(Against Roe)

132. Doe hereby incorporated by reference the aforementioned allegations in contained in this Complaint as though fully set forth herein.

133. A contract existed between Doe and OWU.

134. Roe knew of the existence of the contract between Doe and OWU.

135. Roe intentionally procured the breach of the contract between OWU and Doe by falsely accusing Doe of sexual assault, which Roe knew would likely result in Doe's suspension or

expulsion from OWU.

136. Roe had no justification for her actions.

137. As a result of Roe's actions, Doe has suffered damages.

WHEREFORE, with regard to Counts 1-3, Doe demands judgment against Roe as follows:

(a) For actual, special, and compensatory damages, including Doe's legal fees, in an amount to be determined at trial but in no event less than $75,000.00;

(b) For punitive damages in an amount sufficient to deter Roe from conducting similar future conduct but in no event less than $100,000;

(c) Judgment for attorneys' fees, pursuant any applicable statute;

(d) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;

(e) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or

(f) Such other and further relief as this Court finds just and equitable.

Count 4 -- Breach of Contract
(Against OWU)

138. Doe hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

139. Doe applied for and enrolled at OWU and, with the assistance of his parents, paid tuition and other fees and expenses. Doe did so in reliance on the understanding, and with the reasonable expectations, among others, that: (a) OWU would implement and enforce OWU Policies, and (b) OWU Policies would comply with the requirements of applicable law, including but not limited to Title IX.

140. OWU Policies create an express contract, or, alternatively, a contract implied in law or in fact between Doe and OWU.

141. As set forth in this Complaint, OWU repeatedly and materially breached OWU Policies and Doe's rights under Title IX incorporated into OWU Policies.

142. During all times relevant to this Complaint, Doe complied, or substantially complied, with all the OWU Policies. All the foregoing breaches of contract were wrongful, without lawful justification or excuse, were prejudicial, and were part of an effort to achieve a predetermined result in Doe's case: a finding of responsible for sexual misconduct. As a direct and foreseeable result of these breaches of contract, Doe has sustained, and will continue to sustain, the damages detailed above.

WHEREFORE, with regard to Count 3, Doe demands judgment against OWU as follows:

(a) For actual, special, and compensatory damages, including Doe's legal fees, in an amount to be determined at trial but in no event less than $75,000.00;

(b) For punitive damages in an amount sufficient to deter Roe from conducting similar future conduct but in no event less than $100,000;

(c) Judgment for attorneys' fees, pursuant any applicable statute;

(d) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;

(e) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or

(f) Such other and further relief as this Court finds just and equitable.

Count 5 -
Violation of Title IX – Hostile environment sexual harassment and/or discrimination
(Against OWU)

143. Doe hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

144. Pursuant to 20 U.S.C. § 1681, Title IX is a federal statute designed to prevent sexual discrimination and/or harassment in educational institutions receiving federal funding.

145. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, applies to all public and private educational institutions that receive federal funds, including colleges and universities. The statute prohibits discrimination based on sex in a school's "education program or

activity," which includes all of the school's operations. Title IX provides in pertinent part: "[n]o 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). The United States Supreme Court has held that Title IX authorizes private suits for damages in certain circumstances.

146. OWU receives federal financial assistance and is thus subject to Title IX.

147. Title IX includes an implied private right of action, without any requirement that administrative remedies, if any, be exhausted. An aggrieved plaintiff may seek money damages and other relief.

148. Both the DOE and the DOJ have promulgated regulations under Title IX that require a school to "adopt and publish grievance procedures providing for the prompt and equitable resolution of student…complaints alleging any action which would be prohibited by" Title IX or its regulations. 34 C.F.R. § 106.8(b) (Department of Education); 28 C.F.R. § 54.135(b) (Department of Justice).

149. Title IX mandates OWU afford equitable procedures and due process to Doe which includes, but is not limited to those detailed in this Complaint.

150. OWU knew, or in the exercise of due care should have known, that it denied Doe his rights under Title IX and/or OWU's policies as set forth in the preceding paragraphs.

151. OWU's policies fail to meet the standards required by Title IX and/or Constitutional safeguards as interpreted by United States Courts regarding how institutions of higher education conduct disciplinary proceedings.

152. Upon information and belief, in virtually all cases of campus sexual misconduct addressed by OWU, the accused student is male and the accusing student is female.

153. OWU created an environment in which male students accused of sexual assault, such as Doe, are fundamentally denied their rights under Title IX and/or OWU Policies so as to be virtually assured of a finding of responsible. Such a biased and one-sided process deprives male OWU students

like Doe of educational opportunities based on their gender. Upon information and belief, OWU's investigation and/or discipline of Doe was taken to demonstrate to DOE, DOJ, OCR, OWU's largely-female student body, and/or the general public that OWU: (a) is aggressively disciplining male students accused of sexual assault, and (b) providing females involved in sexual misconduct proceedings with preferential treatment not provided to males.

154. OWU had actual or constructive knowledge that the investigation and/or discipline of Doe posed a persuasive and unreasonable risk of gender discrimination with regard to Doe.

155. OWU's actions and inactions detailed above set in motion a series of events that OWU knew, or reasonably should have known, would cause OWU's male students, such as Doe, to suffer unlawful gender discrimination.

156. OWU's investigation and/or discipline of Doe is discriminatory and based upon or motivated by Doe's male gender.

157. OWU unlawfully failed to exercise the authority to institute corrective measures to remedy: (a) OWU's violations of Doe's rights under OWU Policies, Title IX, and/or guidance promulgated by OCR; and/or (b) OWU's unlawful determination that Doe violated OWU Policies which OWU adopted pursuant to federal laws and regulations related to Title IX.

158. OWU exhibited deliberate indifference by refusing to remedy: (a) its violations of Doe's rights under OWU Policies, Title IX, and/or guidance promulgated by OCR, and/or (b) its erroneous determination that Doe violated OWU Policies which OWU adopted pursuant to federal laws and regulations related to Title IX.

159. OWU's deliberate indifference caused Doe to suffer sexual harassment and/or discrimination so severe, pervasive or objectively offensive that it deprived Doe of access to educational opportunities or benefits and caused other harms detailed in this Complaint.

160. Upon information and belief, OWU possesses additional documentation evidencing the unlawful pattern of gender-biased decision making which provides preferential treatment to female students who falsely accused male students like Doe of sexual misconduct.

161. Upon information and belief, OWU possesses additional documentation evidencing its refusal to discipline female students who were alleged to have sexually assaulted male students.

162. As a direct result of OWU's violations of Doe's rights under Title IX and/or OWU Policies, Doe has suffered and will continue to suffer the damages detailed above.

163. OWU's hostile environment, sexual harassment and/or discrimination caused Doe to be damaged in an amount to be determined at trial.

Count 6 -Violation of Title IX – Deliberate Indifference
(Against OWU)

164. Doe hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

165. OWU acted with deliberate indifference towards Doe because of his male gender.

166. OWU unlawfully failed to exercise its authority to institute corrective measures to remedy: (a) its violations of Doe's rights under OWU's Policies, Title IX, and/or guidance promulgated by OCR, and/or (b) its erroneous determination that Doe violated OWU policies which were adopted pursuant to federal laws and regulations related to Title IX.

167. OWU exhibited deliberate indifference by refusing to remedy: (a) its violations of Doe's rights under OWU Policies, Title IX, and/or guidance promulgated by OCR, and/or (b) its erroneous determination that Doe violated OWU Policies which were adopted pursuant to federal laws and regulations related to Title IX.

168. Upon information and belief, OWU possesses additional documentation evidencing its gender-based deliberate indifference towards Doe and/or other similarly situated male students.

169. OWU's deliberate indifference caused Doe to suffer and continue to suffer the damages detailed above.

Count 7 -Violation of Title IX – Erroneous Outcome
(Against OWU)

170. Doe hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

171. OWU unlawfully disciplined Doe because of his male gender.

172. By erroneously disciplining Doe, OWU violated OWU Policies, Title IX, and/or guidance promulgated by OCR regarding Title IX.

173. OWU erroneously disciplined Doe because the preponderance of the evidence established that Roe consented to Doe's fingers in her vagina, and thus Doe was innocent and wrongly found to have committed an offense.

174. The flawed outcome of Doe's hearing was caused by the gender bias of OWU and its employees, as evidenced in part by the statements of Esler and Mormon and as otherwise set forth throughout this Complaint.

175. Upon information and belief, OWU possesses additional communications evidencing OWU's erroneous discipline of Doe based on his gender.

176. OWU's erroneous discipline of Doe caused Doe to suffer and continue to suffer the damages detailed above.

177. OWU's erroneous discipline of Doe entitles Doe to injunctive relief in part because OWU's discipline of Doe is unlawful and violates Doe's rights under OWU Policies, federal and/or state laws. As detailed in this Complaint, OWU's erroneous discipline of Doe will cause irreparable harm that may be uncertain, great, actual and not theoretical. Moreover, OWU's discipline may not be able to be remedied by an award of monetary damages because of difficulty or uncertainty in proof or calculation. Therefore, Doe may be entitled to injunctive relief which includes, but is not

limited to an Order requiring that OWU: (a) expunge Doe's official OWU student file of all information related his encounter with Roe; (b) be barred from disclosing OWU's aforementioned discipline of Doe to third parties in the future; and/or (c) allow Doe to immediately re-enroll at OWU.

Count 8 -Violation of Title IX – Selective Enforcement
(Against OWU)

178. Doe hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

179. As detailed in this Complaint, OWU violated Title IX's prohibitions against engaging in the "selective enforcement" of OWU Policies on the basis of gender. *See e.g., Marshall v. Indiana Univ.*, Case No. 1:15-cv-00726, 2016 U.S. Lexis 32999, *19 (S.D. Ind. Mar. 15, 2016) (emphasis in original) (citing *Routh v. Univ. of Rochester*, 981 F. Supp. 2d 184, 211-12 (W.D.N.Y. 2013) (stating that "selective enforcement" liability under Title IX occurs when a plaintiff "allege[s] facts sufficient to give rise to the inference that the school intentionally discriminated against the plaintiff *because of* his or her sex"). In addressing a selective enforcement claim raised by a male student in a similar situation to Doe, the Second Circuit noted the "selective enforcement" theory requires that the school's "decision to initiate the proceeding" or the "severity of the penalty" "was affected by the student's gender" without regard to guilt. *Yusuf v. Vassar College*, 35 F. 3d 709, 715 (2d Cir. 1994).

180. The facts detailed in this Complaint establish that OWU's decision to initiate the proceeding against Doe and/or or the severity of the penalty imposed on Doe was affected by Doe's male gender, without regard to his guilt.

181. OWU's Title IX liability to Doe caused Doe to suffer and continue to suffer the damages detailed above.

WHEREFORE, regarding Counts 4-8, Doe demands judgment and relief against OWU as follows:

a. Damages in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) to compensate Doe's past and future pecuniary and/or non-pecuniary damages caused by OWU's conduct;

b. Order(s) requiring OWU to expunge Doe's official OWU student files of all information related to his interactions with Roe;

c. Order(s) requiring Doe's reinstatement to OWU;

d. Judgment for attorneys' fees, pursuant to any applicable statute, including Title IX;

e. Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;

f. Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or

g. Such other and further relief as this court may deem just, proper, equitable, and appropriate.

Count 9 – Declaratory Judgment
(Against OWU)

182. Doe hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

183. As detailed in this Complaint, Doe has a legal tangible interest in requiring OWU to administer OWU Policies, Title IX, and/or OCR guidelines in a lawful manner.

184. As detailed in this Complaint, OWU is opposing Doe's aforementioned legal tangible interest in part because of OWU's violations of Doe's rights under Title IX and/or OWU Policies.

185. Therefore, an actual controversy exists between Doe and OWU concerning said legal tangible interests.

186. Judicial intervention is required because unless OWU is enjoined, its unlawful acts will cause irreparable harm to Doe which includes, but is not limited to: (a) denying Doe the benefits of his education at OWU; (b) damage to Doe's academic and professional reputation; and/or (c) Doe's inability to enroll at other institutions of higher education and to pursue his chosen career.

WHEREFORE, regarding Count 8, Doe demands a Declaratory Judgment that OWU violated Doe's rights under OWU Policies, Title IX and/or OCR regulations.

Count 10 - Promissory Estoppel

(Against OWU, in the alternative to Doe's Breach of Contract and/or Negligence Claims)

187. Doe hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

188. As described in this Complaint: (a) Doe detrimentally relied on OWU's promises to adjudicate Roe's false allegations of sexual misconduct in accordance with OWU Policies and applicable law including, but not limited to, Title IX; (b) Doe's detrimental reliance on these promises and subsequent damages detailed in this Complaint were foreseeable to OWU.

189. OWU's breaches caused Doe to suffer the damages detailed above in an amount to be determined at trial.

Count 11 - Negligence

(Against OWU, in the alternative to Doe's Breach of Contract and/or Promissory Estoppel Claims)

190. Doe hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

191. As described in this Complaint: (a) OWU owed Doe a duty to honor the provisions of OWU Policies; (b) OWU breached that duty by, among other things: conducting disciplinary proceedings that violated Doe's rights under OWU Policies and applicable law including, but not limited to, Title IX; and (c) OWU's breach of these duties is the cause in fact and legal cause of Doe's injuries detailed above.

192. OWU's negligence caused Doe to suffer and continue to suffer the damages detailed above.

WHEREFORE, with regard to Counts 10-11, Doe demands judgment against OWU as follows:

(a) For actual, special, and compensatory damages, including Doe's legal fees, in an amount to be determined at trial but in no event less than $75,000.00;

(b) Order(s) requiring OWU to expunge Doe's official OWU student files of all information related to his interactions with Roe;

(c) Order(s) requiring Doe's reinstatement to OWU;

(d) Judgment for attorneys' fees, pursuant to any applicable statute;

(e) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;

(f) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or

(g) Such other and further relief as this court may deem just, proper, equitable, and appropriate.

Count 12 – Negligent Misrepresentation
(Against OWU)

193. In the course of their employment, Esler and Todd provided false information to Doe and his family relating to the seriousness of the accusations against Doe, Roe's likelihood of success in proving her false allegations, and Doe's need to be represented by an attorney during the course of proceedings against him.

194. Esler also provided false information to Doe regarding his right to introduce testimony at his disciplinary hearing relating to Roe's previous false allegations of sexual assault against another OWU student.

195. Doe and his family were looking to these OWU employees for guidance on how to respond to the accusations against Doe and how to prepare a defense to the charges against Doe.

196. Doe justifiably relied on the misrepresentations of Esler and Todd.

197. The misrepresentations of Esler and Todd caused Doe and his family to forego legal representation until Doe's rights had already been prejudiced and caused Doe to lose a vital

opportunity to present evidence in his defense, which in turn caused Doe to be found responsible by the University for the charge of sexual assault, despite overwhelming evidence to the contrary.

198. Esler and Todd failed to exercise reasonable care or competence in communicating the information to Doe.

199. Esler and Todd's aforementioned conduct caused Doe to suffer the damages detailed above in an amount to be determined at trial.

Count 13 – Intentional Infliction of Emotional Distress
(Against OWU and Roe)

200. Doe hereby incorporates by reference the aforementioned allegations contained in this Complaint as though fully set forth herein.

201. As detailed in this Complaint, Roe's and OWU's conduct was extreme and outrageous.

202. Roe intended her conduct to inflict severe emotional distress, or knew there was at least a high probability that her conduct would cause severe emotional distress to Doe, as detailed above.

203. OWU intended its conduct to inflict severe emotional distress, or knew there was at least a high probability that its conduct would cause severe emotional distress to Doe, as detailed above.

204. Roe's conduct caused Doe severe emotional distress and other damages detailed in this Complaint.

205. OWU's conduct caused Doe severe emotional distress and other damages detailed in this Complaint.

206. Roe's and OWU's aforementioned conduct caused Doe to suffer the damages detailed above in an amount to be determined at trial.

Count 14 - Breach of the Covenant of Good Faith and Fair Dealing

(Against OWU)

207. Doe repeats and re-alleges each and every allegation hereinabove as if fully set forth herein.

208. Based on the aforementioned facts and circumstances, OWU acted in bad faith in causing the erroneous discipline of Doe and/or the disproportionate sanction imposed on Doe.

209. Based on the aforementioned facts and circumstances, OWU breached and violated a covenant of good faith and fair dealing implied in its agreement(s) with Doe.

210. As a direct and foreseeable consequence of these breaches, Doe suffered the damages detailed above.

211. Doe is entitled to recover damages for OWU's breach of the express and/or implied contractual obligations described above.

212. As a direct and proximate result of the above conduct, Doe sustained the damages detailed above.

WHEREFORE, with regard to Counts 12-14, Doe demands judgment against Roe and OWU as follows:

(a) For actual, special, and compensatory damages, including Doe's medical fees and legal fees, in an amount to be determined at trial but in no event less than $75,000.00;

(b) For punitive damages in an amount sufficient to deter Roe and OWU from conducting similar future conduct but in no event less than $100,000;

(c) Order(s) requiring OWU to expunge Doe's official OWU student file of all information related to his interactions with Roe;

(d) Order(s) requiring Doe's reinstatement to OWU;

(e) Judgment for attorneys' fees, pursuant to any applicable statute;

(f) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;

(g) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or

(h) Such other and further relief as this court may deem just, proper, equitable, and appropriate.

Respectfully submitted,
Attorney for Doe

By: /s/ Eric J. Rosenberg
Eric J. Rosenberg (0069958)
Maureen P. Tracey (0070920)
Rosenberg & Ball Co. LPA
395 North Pearl Street
Granville, Ohio 43023
740.644.1027 phone
866.498.0811 fax
erosenberg@rosenbergball.com

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2017, a copy of the foregoing First Amended Complaint was filed electronically with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all registered parties.

/s/ Eric J. Rosenberg
Counsel for Plaintiff John Doe