

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

JOHN DOE,
C/O ENGEL AND MARTIN
5181 NATORP BLVD., SUITE 210
MASON, OH 45040

Plaintiffs,

v.

THE OHIO STATE UNIVERSITY,
205 BRICKER HALL,
190 NORTH OVAL MALL,
COLUMBUS, OH 43210-1357

JAVAUNE ADAMS-GASTON
3034 OHIO UNION
1739 NORTH HIGH STREET
COLUMBUS, OHIO 43210-1230

MATTHEW B. PAGE
550 LINCOLN TOWER
1800 CANNON DRIVE
COLUMBUS, OH 43210

Defendants

Case No. 2:15-

CV-02830

VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, VIOLATION
OF CIVIL RIGHTS AND TITLE IX

AND

JURY DEMAND

INTRODUCTION

1. Plaintiff John Doe brings this action for a declaratory judgment, violation of Title IX, violation of civil rights under §1983, and injunctive relief
2. This case arises out of the decision of The Ohio State University (“OSU”) to impose disciplinary sanctions against John Doe in violation of the Plaintiff’s constitutional, federal statutory, and contractual rights.

PARTIES

3. Plaintiff John Doe is a joint degree M.D./M.B.A. student at the Ohio State University.
 - a. Doe is an Ohio resident with a residence at [OMITTED]. His driver’s license and voter registration is from Ohio. He has been living in Ohio for the sole purpose of attending OSU, but and was granted Ohio residency status in summer 2012 after serving 1 year living in Ohio as an enrolled medical student.
 - b. The disclosure of John Doe’s identity will cause him irreparable harm as this case involves matters of the utmost personal intimacy, including education records protected from disclosure by the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g; 34 CFR Part 99.
 - c. Doe has completed all but one year of coursework at OSU.
4. Defendant The Ohio State University (“OSU”) is a public university created by the Ohio Legislature.
 - a. OSU is governed by a board of 20 trustees who are responsible for oversight of academic programs, budgets and general administration, and employment of faculty and staff.

- b. OSU has a principal place of business in Columbus, Ohio. The President's Office is located at 205 Bricker Hall, 190 North Oval Mall, Columbus, OH 43210-1357
5. Defendant Javaune Adams-Gaston ("Adams-Gaston") is the Vice president for Student Life at OSU. She has a principal place of business at 3034 Ohio Union, 1739 North High Street, Columbus, Ohio 43210-1230.
 - a. Defendant Adams-Gaston is sued in her official capacity for declaratory and injunctive relief, and in his personal capacity for damages.
 - b. On information and belief, Adams-Gaston is acting under the policies, procedures, and practices of OSU.
 - c. Defendant Adams-Gaston has responsibility for the administering and operating aspects of the OSU Student Code of Conduct and Judicial System.
6. Defendant Matthew Page is the Associate Director for Student Life at OSU. He has a principal place of business at 550 Lincoln Tower, 1800 Cannon Drive, Columbus, Oh 43210.
 - a. Defendant Page is sued in his official capacity for declaratory and injunctive relief, and in his personal capacity for damages.
 - b. On information and belief, Page is acting under the policies, procedures, and practices of OSU.
 - c. Defendant Page has responsibility for helping to enforce and manage the disciplinary hearings under the Code of Student Conduct.

JURISDICTION AND VENUE

7. This case arises, in part, under the laws of the United States, specifically United States, specifically Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq

and 42 U.S.C. § 1988. Accordingly, this Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331 and 1343.

8. The declaratory and injunctive relief sought in this matter is authorized by 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure 57 and 65.
9. This Court may exercise supplemental jurisdiction over the state law claims because such claims are so related to claims in the action within the original jurisdiction of the Court that they form part of the same case or controversy under Article III of the United States Constitution, pursuant to 28 U.S.C. § 1367.
10. This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C. § 1391. The defendants are residents of the State in which this district is located and a substantial part of the events or omissions giving rise to the claim occurred in this district.

FACTS

THE OHIO STATE SEXUAL MISCONDUCT POLICY

11. After years of criticism for being too lax on campus sexual assault, colleges and universities are relying on Title IX to crackdown on alleged perpetrators. Unfortunately, this crackdown has gone too far. Problems include: accused students effectively are presumed guilty; instead of requiring accusers to prove they were assaulted, the accused students have to prove they had consent; and schools apply the very lowest standard of proof — preponderance of the evidence.
12. On April 11, 2011, the U.S. Education Department's Office of Civil Rights sent a “Dear Colleague” to colleges and universities.
 - a. The Dear Colleague Letter indicated that, in order to comply with Title IX, colleges and Universities must have transparent, prompt procedures to investigate and resolve complaints of sexual misconduct.

- b. Most notably, the Dear Colleague Letter required schools to adopt a relatively low burden of proof—"more likely than not"—in cases involving sexual misconduct, including assault. Several colleges had been using "clear and convincing," and some, like Stanford, had applied the criminal standard, "beyond a reasonable doubt."
- c. The Dear Colleague Letter states that schools should "minimize the burden on the complainant," transferring alleged perpetrators, if necessary, away from shared courses or housing.
- d. The Dear Colleague Letter, while not completely ignoring due process concerns, suggested that schools should focus more on victim advocacy.
- e. The Dear Colleague Letter states that schools should give both parties the right to appeal a decision, which amounts to double jeopardy for an accused student.
- f. After the Dear Colleague Letter was published, many schools changed their sexual assault and sexual harassment policies and procedures.

13. The Federal Government, through the Department of Education, Office of Civil Rights ("OCR"), has been pressuring colleges and universities to aggressively pursue investigations of sexual assaults on campuses.

- a. The Dear Colleague letter was a step in the increased enforcement of Title IX on college and universities. NPR described the Dear Colleague Letter as the government's "first warning shot." Source: *How Campus Sexual Assaults Came To Command New Attention*, NPR, August 12, 2014.
- b. The Washington Post reported in March 2015 that the Office of Civil Rights was seeking to hire up to 200 more investigators.

- c. In May 2014, the federal Department of Education disclosed for the first time the names of colleges — 55 in all — under investigation for possibly violating federal rules aimed at stopping sexual harassment.
- d. The Federal government is investigating at least 129 schools for possible Title IX violations, including notable schools such as UC Berkeley, Stanford, Harvard, Brown University, Columbia University, Cornell University, Dartmouth College, Johns Hopkins University, the University of Chicago and many top state universities. The Department has negotiated settlements with many schools, including Ohio State.
- e. In February 2014, Catherine E. Lhamon, the assistant secretary of education who heads the department's Office for Civil Rights, told college officials attending a conference at the University of Virginia that schools need to make “radical” change. According to the Chronicle of Higher Education, college presidents suggested afterward that there were “crisp marching orders from Washington.” Source: *Colleges Are Reminded of Federal Eye on Handling of Sexual-Assault Cases*, Chronicle of Higher Education, February 11, 2014.
- f. Lhannon was quoted in the LA Times stating, “We don’t treat rape and sexual assault as seriously as we should, . . . [There is] a need to push the country forward.” David G. Savage and Timothy M. Phelps, *How a little-known education office has forced far-reaching changes to campus sex assault investigations*, LA Times August 17, 2015.

14. Schools are scared of being investigated or sanctioned by the Department of Education OCR.

- a. The Federal government has created a significant amount of pressure on colleges and universities to treat all those accused of sexual misconduct with a presumption of guilt. The Chronicle of Higher Education noted that “Colleges face increasing pressure from survivors and the federal government to improve the campus climate.” Source: *Presumed Guilty: College men accused of rape say the scales are tipped against them*, Chronicle of Higher

Education, September 1, 2014. In the same article, the Chronicle noted that different standards were applied to men and women: “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.”

- b. Lhamon told a national conference at Dartmouth in the summer of 2014, “I will go to enforcement, and I am prepared to withhold federal funds.” Source: *How Campus Sexual Assaults Came To Command New Attention*, NPR, August 12, 2014. In that same article, Anne Neal of the American Council of Trustees and Alumni was quoted as follows: “There is a certain hysteria in the air on this topic, . . . It's really a surreal situation, I think.” She explained that schools are running so scared of violating the civil rights of alleged victims that they end up violating the due process rights of defendants instead.
- c. In June 2014, Lhannon told a Senate Committee, “This Administration is committed to using all its tools to ensure that all schools comply with Title IX . . .” She further told the Committee:

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.

- d. Robert Dana, dean of students at the University of Maine, told NPR that some rush to judgment is inevitable. "I expect that that can't help but be true," he says. "Colleges and universities are getting very jittery about it." Source: *Some Accused Of Sexual Assault On Campus Say System Works Against Them*, NPR, September 3, 2014.

15. The Ohio State Code of Student Conduct was adopted on June 18, 2012. A copy of the Code of Conduct is attached as Exhibit A. The Code of Student Conduct defines "Sexual misconduct" as follows:

Physical contact or other non-physical conduct of a sexual nature in the absence of clear, knowing and voluntary consent, including but not limited to:

1. Non-consensual sexual intercourse, defined as any sexual penetration (anal, oral, or vaginal), however slight, with any body part or object by any person upon any person without consent.
2. Non-consensual sexual contact, defined as any intentional sexual touching, with any body part or object by any person upon any person without consent.
3. Sexual exploitation, defined as taking non-consensual, unjust or abusive sexual advantage of another. Examples include, but are not limited to, prostituting another student, non-consensual video or audio-taping of sexual activity, going beyond the boundaries of consent (such as knowingly allowing another to surreptitiously watch otherwise consensual sexual activity), engaging in non-consensual voyeurism, and
4. Knowingly transmitting or exposing another person to a sexually transmitted infection (STI) without the knowledge of the person.

16. The Code of Student Conduct defines consent as:

the act of knowingly and affirmatively agreeing to engage in a sexual activity. Consent must be voluntary. An individual cannot consent who is substantially impaired by any drug or intoxicant; or who has been compelled by force, threat of force, or deception; or who is unaware that the act is being committed; or whose ability to consent is impaired because of a mental or physical condition; or who is coerced by supervisory or disciplinary authority. Consent may be withdrawn at any time. Prior sexual activity or relationship does not, in and of itself, constitute consent.

17. OSU also has a "Sexual Misconduct, Sexual Harassment, and Relationship Violence" Policy (the "Sexual Misconduct Policy.") A copy of the Sexual Misconduct Policy is attached as Exhibit B. This policy was last revised on September 1, 2015.

- a. On information and belief, the Sexual Misconduct Policy was revised in direct response to the pressure from the Department of Education.

- b. The Sexual Misconduct Policy defines sexual misconduct as “Conduct of a sexual nature or conduct based on sex or gender that is nonconsensual or has the effect of threatening, intimidating, or coercing a person. Includes sexual harassment, sexual violence, relationship violence, and stalking.” The Sexual Misconduct policy implicates Title IX by stating that “Sexual misconduct is a form of sex- and gender-based discrimination.”
- c. The Sexual Misconduct Policy thus defines “sexual misconduct,” as a form of sex discrimination prohibited by Title IX. The Sexual Misconduct Policy defines sexual misconduct broadly to include sexual harassment, non-consensual sexual intercourse or sexual contact, and retaliatory harassment.
- d. The September 1, 2015 Sexual Misconduct Policy includes in the definition of consent the following:

Consent cannot be given by an individual who one knows to be – or based on the circumstances should reasonably have known to be – substantially impaired (e.g., by alcohol or other drug use, unconsciousness or blackout, etc.).

- 1. Substantial impairment is a state when an individual cannot make rational, reasonable decisions because she/he lacks the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
- 2. This policy also covers individuals whose substantial impairment results from other physical or mental conditions including mental disability, sleep, involuntary physical restraint, or from the consumption of alcohol or other drugs.
- 3. Being impaired by alcohol or other drugs will never function as a defense for any behavior that violates this policy.

- 18. The Sexual Misconduct Policy provides that a student may receive accommodations, in the form of “interim measures” even “before the final outcome of an investigation.”
 - a. Such accommodations may be provided to a student who claims to be a victim of sexual misconduct even when there is no formal investigation and may continue past the duration of the investigation.

- b. Accommodations available to a student who claims to be a victim of sexual misconduct includes: “a. No contact order, b. Victim advocacy, c. Housing assistance/relocation, d. Counseling, e. Health services, f. Safety resources, g. Academic support, h. Change in work schedule/location, and i. Consideration of leave requests.”
 - c. The Title IX coordinator has the responsibility to “coordinate the provision of interim measures.”
 - d. The Sexual misconduct policy does not require that the accommodations provided to a student who claims to be a victim of sexual misconduct be disclosed to the accused student.
19. The Code of Conduct provides that “A student will only be found in violation if a preponderance of evidence supports the charges.”
20. The Code of Conduct does not state that a student is innocent until proven guilty, or the equivalent.
21. The Code of Conduct requires OSU to conduct an investigation of all allegations of sexual misconduct prior to the initiation of student discipline. The Sexual Misconduct Policy also provides that the OSU should conduct an investigation. Notably, during this investigation a student does not have the right to be represented by an attorney. Instead, the Sexual Misconduct Policy states that a student accused of misconduct “may have a support person of their choice present during any applicable investigation meeting, student hearing, or other disciplinary proceeding related to the investigation.” However, the “support person” may not act as an advocate for the student: “The role of the support person is only to be present; they will not be provided documentation or allowed to interject during the meeting.”

22. The Sexual Misconduct Policy states that the entire investigative and hearing process should “take approximately 60 calendar days following receipt of the complaint.” This process includes not only the investigation, but any hearing process.
23. A person found to have violated the Sexual Misconduct Policy or the Student Code of Conduct is subject to disciplinary action up to and including expulsion from the university.
24. OSU has taken a “victim centered approach” towards allegations of sexual misconduct which leads to bias in the system and an uneven adjudicatory process. This approach focuses almost exclusively on the rights of victims and does not include any significant mention of the rights of the accused. The OSU web page contains a brief FAQ for students who have been accused of misconduct, which does not include any substantive information on a student’s procedural rights. <http://studentconduct.osu.edu/page.asp?id=4> In contrast, The OSU Title IX webpage has a long list of the rights of victims, but merely a summary of the rights of the accused. *See* <http://studentconduct.osu.edu/page.asp?id=50>. The page for victims is suggests that interim accommodations is a victim “right.”

Victim's Rights

- The university will provide a timely and thorough investigation, and will treat the complainant with respect before, during, and after the student conduct process.
- The victim will be informed of the university's conduct process and possible outcomes. The university will also inform the victim of available counseling services, medical services, mental health services, and other campus and off campus resources for victims of sexual assault.
- Victims have the right to report a sexual assault to local law enforcement, which will not prevent university disciplinary action.
- Victims may request changes to academic and living situations after a sexual assault occurs. Student Conduct may be able to help facilitate such changes.
- Victims have the right to have one advisor throughout the student conduct process, including meetings and hearings. The advisor may not be a witness in the case. In meetings with Student Conduct or in a hearing, the advisor may not participate directly and may only communicate with the victim via whispering or writing notes.
- A victim has a right to a campus "no-contact order," which prohibits the accused student from having contact of any kind (including electronic contact or contact from third parties acting on the accused student's behalf) with you.
- The university will make reasonable efforts to protection confidentiality, within the parameters of FERPA (Family and Education Privacy Act of 1974) and the university conduct process.
- The victim is afforded the right to be updated on the investigation and be informed of the outcome of a hearing in writing.
- The victim has the right to have prior, irrelevant sexual behavior or history with other individuals excluded from a hearing. As a reminder, prior consensual behavior with the accused student does not indicate consent on subsequent occasions.
- Prior to a hearing, the victim is allowed to inform the hearing officer of relevant witnesses the victim wishes to include at the hearing and to what the witnesses plan to testify.
- Prior to a hearing, the victim may also meet with a hearing officer to discuss hearing procedures.
- During a hearing, the victim has the right to give opening and closing statements and ask questions of the accused student, via the hearing officer.

25. An OSU student accused of sexual misconduct is entitled to a hearing prior to the imposition of disciplinary sanctions. While the OSU process gives the appearance of due process, the ability of students to present a meaningful defense is limited in a number of significant ways:

- a. An accused student may have an "advisor" present during the hearing. This advisor may be an attorney. However, the role of the advisor is strictly limited. The advisor may only counsel the student and may not actively participate in the disciplinary process.
- b. An accused student may present witnesses and other evidence, although there is no provision to compel the attendance of witnesses. The accused and the alleged victim may also "invite character witnesses to submit written statements, ask questions of witnesses called by others, and will be notified of potential witnesses to be called."

- c. Cross examination of witnesses is strictly limited. The Code of Conduct states that the hearing officer or board members may ask questions of any of the participants throughout the hearing. The Code of Conduct also provides that an accused student “will be given the opportunity to ask witnesses questions, although they may be directed through the hearing officer or panel chairperson.” In other words, direct confrontation of witnesses is not permitted.
- d. The OSU Code of Conduct states that cases are decided if the "preponderance of the evidence" ("more likely than not") indicates misconduct occurred. The OSU website states, “It is a much lower standard than the one used in criminal cases, which is the ‘beyond a reasonable doubt’ standard.”
- e. The OSU Code of Conduct does not contain any rules or restrictions on the admissibility of evidence beyond a general restriction on the use of prior sexual conduct. This results in arbitrary rulings on the admissibility of evidence and the use of unreliable hearsay evidence with no opportunity to question the speaker.

THE JULY, 2014 INCIDENT AND THE DISCIPLINARY PROCEEDINGS AGAINST JOHN DOE

26. In July 2014 John Doe had sex with a female OSU medical student, Jane Roe.
- a. Jane Roe started medical school in 2013, while John Doe was completing part of his MBA program.
 - b. In June 2014, John Doe met Jane Roe at a bar. They texted back and forth in a flirtatious matter and agreed to meet up a few weeks later.
 - c. On July 12, 2014 Jane Roe invited John Doe to join her at a bar. They did not drink any alcohol together during their encounter. They made out at the bar and discussed sexual matters. At closing time, they agreed to go back to John Doe’s apartment to have sex.

- d. At John Doe's apartment, Jane Roe asked that they keep their relationship "discreet" so that their friends would not gossip. She asked John Doe if he was "clean" (without any sexually transmitted diseases) and if he had a condom before they had sex.
 - e. In the morning of July 13, 2014, Jane Roe requested to borrow John Doe's clothes and wore them home. Jane Roe kissed John Doe goodbye and made plans to meet up again later.
 - f. Jane Roe texted John Doe on July 13, 2014 at 3:42pm in the afternoon, "Thanks again for taking me home last night!" Jane Roe stated she wanted to come by his home again to drop off his clothes that day.
 - g. On July 14, 2014 Jane Roe invited John Doe out for happy hour.
 - h. On July 15, 2014 Jane Roe stated that she had left some personal items at John Doe's apartment. Jane Roe asked John Doe out to dinner at "this pho place that I wanna check out called Huong if you're interested" and offered to pick him up and drive him to dinner. The evening of July 15, 2014 Jane Roe and John Doe had drinks and dinner that evening at a restaurant, and Jane Roe invited John Doe to another restaurant where she bought him a drink.
 - i. Following the July 15, 2014 date, Jane Roe returned home to another state and the relationship did not continue except for a few text messages and casual conversations.
27. On or about May 1, 2015 – more than nine months after they had consensual sex – Jane Roe filed a Title IX complaint against John Doe.
- a. Jane Roe told the OSU Title IX investigator that she did not remember what happened from when she left the bar to when she woke up naked in John Doe's bed. She explicitly stated that she has "absolutely no memory" of this time.

- b. Jane Roe did not provide any additional information to suggest that John Doe had engaged in any violation of the Sexual Misconduct Policy or the Code of Conduct.
- c. Jane Roe told the investigator that she had shared a bottle of wine at dinner, and had a mixed drink and two shots of liquor at the friend's house before going out. After dinner, she indicated that she had two drinks at the bar.

28. Jane Roe did not file a police report about the July 2014 sexual encounter.

29. On information and belief, Jane Roe made the accusation of sexual misconduct against John Doe only after she faced possible expulsion from OSU for poor grades.

- a. Jane Roe made the accusation with the knowledge that OSU would provide her accommodations in terms of grades or the ability to repeat classes if she claimed to be a victim of sexual assault. Jane Roe was aware of the OSU policy that such accommodations would be provided even prior to the completion of any investigation.
- b. Jane Roe enrolled in medical school in August of 2013. The Ohio State University College of Medicine grants medical students up to 6 years to complete their medical degree. After previously experiencing academic failure in the 2013-2014 school year, Jane Roe was given another opportunity to return.
- c. On information and belief, Jane Roe entered into the "Pre-Entry" program the summer of 2014, sponsored by the Ohio State University College of Medicine. The Pre-Entry is "aimed at developing and enriching the academic knowledge base and skills of students prior to their entrance into medical school. The program allows students to become more competitive and successful in the medical school environment."
<http://medicine.osu.edu/students/diversity/programs/medpath/pages/index.aspx>
- d. Jane Roe began her first year of medical school for a second time in August 2014, only after taking the Pre-Entry classes.

- e. In February of 2014, Jane Roe told her friends that she was leaving medical school. This was shortly after she supposedly had to take a remediation test in January 2014; this announcement would be consistent with someone who had failed the remediation test.
 - f. On information and belief, including statements made by Jane Roe to other students, Jane Roe had failed multiple exams in the 2014-2015 school year. In Mid-March 2015 Jane Roe was required to appear before the Academic Review Board again.
 - g. Typically the policy at the OSU College of Medicine is that two academic failures for the first year result in dismissal from the medical program. However, Jane Roe was allowed to return to begin her first year of medical school for a third time in August 2015 despite having two years of previous academic failures in multiple examinations.
30. On information and belief, OSU provided accommodations to Jane Roe after she claimed to have been a victim of sexual assault in the form of a significant deviation from the academic policies of the College of Medicine. These accommodations provided Jane Roe with a substantial incentive to fabricate and maintain the allegations against John Doe.
31. Two aspects of the statement by Jane Roe to the Title IX Office are indicative of a person who has fabricated and maintained the allegation against John Doe in order to obtain academic accommodations:
- a. Jane Roe never actually directly accused John Doe of any misconduct – she merely stated that she could not recall what happened to her. This allows her to allow other people to draw an inference of wrongdoing without her making any significant accusation that can later be disproved.
 - b. Jane Roes' statement to the Title IX office indicated that she did not wish to see John Doe's future harmed, suggesting that she is only interested in a benefit to her. She told

the Title IX Office, “I am not out to ruin [John Doe’s] life or career, I just want him to know that what he did is wrong.”

32. On or about May 1, 2015, OSU began an investigation into the allegations against John Doe.

John Doe was not informed of this allegation for approximately two weeks.

- a. John Doe was prejudiced in his ability to present information and evidence because of the large gap in time.
- b. The investigator did nothing more than obtain witness statements. Many of these statements were from friends of Jane Roe. None of the witnesses had any firsthand knowledge of the alleged misconduct. For example: one of the witnesses was not even present at the bar that evening; another witness did not even appear during the hearing to be cross examined; a third witness claimed that he had 8 drinks and does not remember speaking to John Doe.
- c. The investigator did not attempt to obtain any extrinsic evidence, such as phone records or surveillance videos. The investigator, instead, relied upon “screen shots” of text messages allegedly sent by Jane Roe without attempting to independently verify the authenticity of this evidence.

33. On July 15, 2015, OSU held a hearing to determine whether John Doe had violated the OSU Code of Conduct or Sexual Misconduct Policy. This was 76 days after the investigation began - more than 60 days as required in the policy. The Hearing was nothing more than “kangaroo courts” that relied in substantial part on hearsay and the “investigation” conducted by the Title IX office.

DUE PROCESS VIOLATIONS

34. Shortly after the start of the Hearing, it was apparent that the Hearing Panel had reached a conclusion and was biased against John Doe.

35. At the hearing, John Doe could have his attorney present, but the attorney was not permitted to participate. Instead, the attorney could only pass notes or whisper advice to John Doe.
36. At the hearing John Doe was effectively prohibited from cross-examining Jane Roe in any effective manner. All questions had to be submitted to the panel members, who could choose to ask or not ask questions. Some of the questions that were eventually submitted to John Doe were reworded.
37. John Doe sought to ask Jane Roe about what accommodations she had received as a result of her claim that she was a victim of sexual misconduct. This information was crucial to John Doe's defense, as the credibility of Jane Roe was the center of this matter.
 - a. The chair of the hearing panel refused to allow these questions.
 - b. OSU did not provide John Doe with this information prior to the hearing, even though it was evidence that might tend to show his innocence of the allegations.
38. John Doe also sought to question her about her previous psychiatric history claims of depression and anxiety from the event. This information was crucial to John Doe's defense, as previous episodes of depression and anxiety not caused by post-traumatic stress disorder (PTSD) from this alleged incident would undermine the credibility of Jane Roe's claims. The chair of the hearing panel refused to allow these questions.
39. John Doe was not allowed to question her prescription drug use that evening. This information was crucial to John Doe's defense. Had Jane Roe testified that she was taking anti-anxiety drugs, such as Xanax, for example, John Doe could have provided testimony, based on his training in Medical school, that such medications, may cause "en bloc blackouts" when taken with alcohol. A person who suffers such a "black out" may have memory loss, but would not have been impaired. The chair of the hearing panel refused to allow these questions.

40. John Doe sought to question Jane Roe if she had a boyfriend at the time. Evidence about her current relationship status would be relevant to her credibility and motive to fabricate lack of consent to what essentially would have been “cheating.” The chair of the hearing panel refused to allow many of these questions.
41. The Hearing Panel did not hear any substantial evidence that John Doe had committed any sexual misconduct.
 - a. Jane Roe claimed to not have any memory of the events that occurred in John Doe’s apartment; as a result, she could not say that he did anything wrong.
 - b. John Doe testified before the hearing panel that Jane Roe consented to sexual activity.
 - c. Instead of receiving direct evidence, the hearing panel heard from “witnesses” who either were not present during the time of the alleged misconduct or who had admitted to have been drinking.
 - d. The hearing panel also was able to review “character” letters about Jane Roe. These letters included irrelevant and inflammatory statements such as the claim that Jane Roe was only acting in this matter to protect other young women from a similar fate.
42. At the hearing, John Doe sought to present evidence from an expert witness. The hearing officer was timely notified that this witness and evidence would be provided. The hearing panel refused to hear this evidence.
 - a. The proposed expert was a pharmacology faculty member at OSU who conducts teaching and research involving measuring drugs in biological fluids. The expert has provided testimony previously in both civil and criminal cases in the area of forensic toxicology of alcohol and other drugs.

- b. The proposed expert analyzed the statements of Jane Roe in order to determine if she was intoxicated based on a number of factors, including her age, build, and the amount she claimed to have consumed on the evening in question.
- c. Had the expert been permitted to testify, he would have told the hearing panel the following:

it is my opinion to a reasonable degree of scientific certainty that based upon [Jane Roe's] calculated blood-alcohol concentrations and the supporting eyewitness observations, [Jane Roe] was not alcohol impaired to the point where she was incapable of consenting to sexual intercourse and sexual contact at the time of the incident, or that she was incapable of saying "no" to [John Doe] if she did not want to have sexual intercourse or sexual contact with him. Further, it is more likely than not that she was aware of her choices and decisions that night as she was not substantially impaired by alcohol at the time of the events in question.

- d. The expert would have also explained the hearing panel that no witnesses had provided statements suggesting that Jane Roe was intoxicated based on traditional and well recognized indicators: "However, no one testified that [Jane Roe] exhibited signs of being disorientated, having staggering gait, or slurred speech."

43. Defendant Page made the decision to not permit John Doe's proposed expert witness to testify.

In a July 9, 2015 email to John Doe, Page stated, "The University rules governing this process do not permit the statement from [the expert] to be included in the hearing packet or for him to testify in the hearing."

- a. Page suggested that a student accused of misconduct could only present "factual and character" witnesses at a hearing.
- b. Page stated that the expert could not testify because "he neither witnessed nor was present for any of the events underlying the complaint." However, Page did not acknowledge that the OSU rules seem to permit significant hearsay evidence from witnesses who did not witness any of the events in question.

- c. Page suggested that John Doe could tell the hearing panel that he had “consulted an expert who informed [John Doe] of the information.”

44. John Doe was found responsible by the hearing panel. He was informed of the decision on July 16, 2015 and that OSU intended to expel him.

45. John Doe appealed the decision of the hearing panel. This appeal was denied on September 10, 2015 by Adams-Gaston.

46. On September 10, 2015, Adams-Gaston informed John Doe that he would be expelled from the Ohio State University.

DISCRIMINATORY CONDUCT

47. The Code of Conduct and the Sexual Misconduct Policy are implemented, in part, by Adams-Gaston. Adams-Gaston- is also responsible for the appeal process and made the final decision to expel John Doe after reviewing all of the information in this matter.

- a. Adams Gaston oversees the operation of the Office of Student Life and its more than 30 departments. According to her bio on the OSU webpage, “In that capacity, she has broad leadership responsibility for nearly all the operations affecting students outside the classroom. She also represents the Office of Student Life within the university's senior administration and provides leadership on issues affecting students.”

- b. Adams-Gaston has previously made statements suggesting that she is biased in favor of those who claim to be victims of sexual assault. In April 2015, Adams-Gaston attended a Survivor Gala held at the Ohio Union. The Survivor Gala featured art created by sexual assault victims. Adams-Gaston was interviewed by the Lantern, the OSU newspaper. The article says:

The gala had over 200 RSVPs, and attendees included Ohio State President Michael Drake and Javaune Adams-Gaston, vice president for Student Life. “When we think about all of the work that is done on behalf of those who are survivors, what we

know is it's a journey, and that journey takes multiple forms," Adams-Gaston said, *tears streaming down her cheeks*. "It's critical work to be done. Here at the Ohio State University our goal is to ensure everyone has an experience that makes the best of you."

Lantern, April 23, 2015 (available at <http://thelantern.com/2015/04/ohio-state-sexual-assault-victims-find-catharsis-through-art/>) (emphasis supplied).

48. As OSU's Title IX Coordinator, Brennan holds the primary responsibility for coordinating OSU's Title IX compliance efforts, including overseeing all complaints of noncompliance and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. This includes the enforcement of the Sexual Misconduct Policy.

- a. On September 11, 2014 OSU created a document titled, "Title IX Coordinator. Statement of Roles and Responsibilities." This document states that that Title IX Officer is expected to act as a fair and impartial finder of facts when investigating Title IX complaints.
- b. The Title IX coordinator "serves as consultant to any disciplinary hearing panel where sexual harassment has been determined to have occurred."
- c. However, the document also says that the Title IX coordinator is also supposed to provide alleged victims with information about their ability to obtain interim accommodations. In this role, the Title IX Coordinator is expected to act as an advocate for alleged victims of sexual misconduct.

49. Ohio State has been the subject of an investigation by the Department of Education. On May 1, 2014, the United States Department of Education named OSU as one of 55 colleges and universities in the United States "under investigation for possible violations of federal law over the handling of sexual violence and harassment complaints."

- a. On information and belief, in order to appease the Department of Education, OSU has been imposing significant discipline on male students and staff members in order to

appear to be tough on the issue of sexual misconduct on campus. OSU has been asked to provide records of all sexual misconduct investigations and adjudications since 2010 under Ohio's public records laws; OSU has not yet responded to this public records request.

- b. The most notable example occurred on July 2014 when OSU fired its marching band director, Jonathan Waters, after a school investigation that found "sexualized" culture among band members. Shortly after the school fired Waters, Ohio State was removed from the list as a result of an agreement between the school and the Department of Education.

50. The Department of Education cited the firing of Waters as one of the reasons it stopped investigating the school and entered into a settlement agreement.

- a. On September 8, 2014, OSU and the Department of Education entered into a "Compliance Agreement." A copy of the Agreement is attached as Exhibit C. As part of this Agreement required OSU agreed to make changes to the manner in which it investigates and adjudicates allegations of sexual harassment and sexual assault on campus.
- b. "This agreement, and The Ohio State University's recent response to the culture within the marching band, set clear and vitally important expectations for a community-wide culture of prevention, support, and safety," said Assistant Secretary of Education for civil rights, Catherine E. Lhamon. The Department of Education wrote in its September 11, 2014 letter addressed to the President of OSU:

During the course of this compliance review, the University conducted an investigation of alleged sexual harassment within its Marching Band and found that there was a sexually hostile environment for students in the Marching Band of which the University had notice and failed to adequately address. The University requested to resolve the review with a resolution agreement prior to the completion of OCR's investigation of all the issues in the review. As such, OCR is not making any further compliance

determinations under Title IX, including whether the University has complied with the Title IX requirements for the prompt and equitable resolution of sexual harassment and sexual violence complaints TPK in the implementation of its sexual harassment policies and procedures.

- c. A case involving the termination of Waters is pending before this Court. No. 2:14-cv-01704-JLG.

51. OSU, as part of the agreement with the Department of Education, agreed to revise its policies and procedures on sexual harassment and sexual assault. As part of the agreement, OSU was required to take certain steps that had the effect of undermining the presumption of innocence and eliminating any burden of proof on those seeking to demonstrate misconduct by another student. For example: OSU was required to assure that the “Complainant’s rights in the sexual harassment grievance process are . . . are equitable to the rights afforded the alleged perpetrator of the harassment.”

- a. The agreement encourages students to bring allegations of sexual harassment and sexual assault by guaranteeing that a student will obtain accommodations without any significant inquiry into the veracity of the claims. For example, the agreement states that OSU must explain to students about “the availability of interim measures (e.g., no contact order; change in academic or living situations as appropriate with minimum burden on the complainant; counseling; health and mental services; escort services; academic support; the ability to retake a course or withdraw without penalty) *before the final outcome of an investigation* (emphasis supplied).”
- b. The agreement codifies the dual and conflicting roles of the Title IX coordinator to investigate allegations of sexual harassment or sexual assault and also to “coordinate the provision of interim measures, and that complainants will not be required to arrange such measures by themselves. . . .”

- c. The agreement does not contain any provisions to assure the due process rights of those accused of sexual harassment or sexual assault beyond the general ability to “identify witnesses and other evidence.”
- d. The agreement requires OSU to report to the Department of Education on “all Title IX complaints filed with the University that allege sexual harassment, including sexual violence or sexual assault, during the previous year, and the University’s notice to the parties of the final outcome of the grievance.”

52. OSU has discriminated against John Doe on the basis of gender.

- a. OSU, as demonstrated by the Waters case, is heavily invested in protecting Female accusers even when there is no evidence of wrongdoing by males. On information and belief, this has been done at OSU in order to appease the Department of Education.
- b. John Doe was subjected to an investigation and discipline related to Jane Roe even though no evidence linked him to any misconduct in regards to her. Jane Roe specifically stated that she did not remember the events of the evening, yet an investigation was aggressively pursued anyway.
- c. This discrimination is intentional and is a substantial or motivating factor for OSU’s actions in this case.
 - i. On information and belief, OSU, encouraged by federal officials, has instituted solutions to sexual violence against women that abrogate the civil rights of men and treat men differently than women.
 - ii. On information and belief, OSU imposed sanctions on John Doe because it was afraid of further action from the Department of Education and/or a Title IX lawsuit from Jane Roe.

53. OSU has a chauvinistic view of men as “predators” and women as the “guardians” of virtue. This is seen by the fact that both John Doe and Jane Roe had been drinking on the night in question, yet only John Doe was subjected to an investigation and discipline for having sexual conduct with an intoxicated person.

IRREPARABLE HARM FACED BY DOE

54. John Doe has almost completed his education at OSU. He was to graduate with both a medical (MD) and masters of business administration (MBA) degree in May 2016.
- a. John Doe had 5 clerkships to complete at the Ohio State University College of Medicine and was on task to complete all his medical school requirements by November 13, 2015. Doe also had one semester of business school classes remaining to be taken in the spring semester of 2016.
 - b. John Doe was preparing to apply for medical residency in emergency medicine on September 15, 2015 but was removed from the Ohio State University on July 16, 2015. His appeal was denied on September 10, 2015. During this time he was unable to complete other requirements and unable to apply for medical residency training to continue his career.
55. John Doe faces a critical deadline on September 15, 2015.
- a. John Doe must begin to apply for medical residency training on September 15, 2015. John Doe cannot submit his application if he has been dismissed from OSU.
 - b. It is critical that John Doe submit his residency training application September 15, 2015 deadline since interviews are given out on a first-come-first-served basis. Missing this date means he may not be granted interviews and will be unable to attain a residency spot for medical training as a practicing physician.

- c. John Doe is unable to apply to a different medical school in time to enroll for the 2015-2016 school year. At this time, it is unlikely that an American medical school will accept John Doe, in part because of the discipline imposed by OSU

56. The failure to comply with the 60-days guideline from the Department of Education threatens to cause irreparable harm to John Doe and was an action in bad faith by OSU.

- a. Jane Roe reported the allegation on May 2, 2015. According to Department of Education guidance and OSU policies, in the Dear Colleague Letter, the matter should have been completely resolved, including any hearings and appeals, on or before July 3, 2015.
- b. The hearing in this matter did not take place until July 15, 2015.
- c. The appeal took an additional seven weeks, and was not decided until September 10, 2015.
- d. OSU acted in bad faith in delaying this matter. OSU was aware of the harm being suffered by John Doe; OSU was informed of this by John Doe and John Doe's attorney. OSU refused requests to consider the appeal in a reasonable time frame.
- e. As a result of OSU's delays in resolving the appeal, John Doe is now unable to complete his training and was ineligible to prepare his application for residency.

57. OSU took almost seven weeks to resolve John Doe's appeal of the decision of the Hearing Panel. OSU never provided any justification for this undue delay. On August 26, 2015, John Doe sent an email to Adams-Gaston indicating that a timely decision was necessary because John Doe's last medical licensing exam was scheduled for August 31, 2015 in Chicago. Adams-Gaston did not respond to John Doe's email, but later an Assistant VP of Student Life, Doug Koyle, responded stating, "Because we take this case very seriously, we are being as thorough as

possible with our review. It is unlikely that a final decision will be made before” August 31, 2015.

58. On September 2, 2015, John Doe’s Counsel sent an email to defendant Gaston-Adams informing OSU of the irreparable harm about to befall John Doe.

a. In this email she said:

It will be six (6) weeks tomorrow since the filing of his appeal, so we are hoping that a decision will be forthcoming. [John Doe] has been very patient and has undergone a tremendous amount of stress throughout the pendency of this case. His entire career has been put on hold and as you know, he was only four (4) short months away from completing medical school and business school.

Of upmost concern is the rapidly approaching date for which [John Doe] is to apply for Residency. This application process begins September 15, 2015 and is on a first come, first serve basis. If he is able to continue with his schooling at OSU, then he must have his application, essays, letters of recommendation all submitted by September 15th. This will require a significant amount of time and effort on his part, so we would appreciate a decision on his appeal as soon as possible, and hopefully by the end of this week. Thank you for your time and attention to this serious matter.

b. Defendant Adams-Gaston did not respond to the September 2, 2015.

59. John Doe did not receive a decision on his appeal until September 10, 2015.

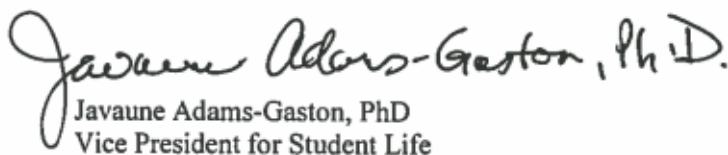
a. John Doe had submitted a three page single-spaced appeal, accompanied by a two page, single-spaced, letter as an appeal to defendant Adam-Gaston. In this appeal, John Doe raised a number of procedural errors, including that the panel failed to permit the testimony of John Doe’s expert witness. John Doe also argued that the sanction imposed was grossly disproportionate to the violation that occurred and failed to take into account substantial mitigating evidence.

b. The response to the John Doe’s three page single-spaced appeal, accompanied by a two page, single-spaced consisted of a simple one-page letter that did not address the substance of any of the appeal issues raised by John Doe. The letter is set forth here:

I have received your appeal of the outcome of your disciplinary case. The Code of Student Conduct requires that an appeal state the basis on which you are appealing. Your appeal is based on your claims that a procedural error resulted in material harm or prejudice to you, and that the sanction imposed is grossly disproportionate to the violation committed.

I have reviewed your appeal and all information in this case and have met with you. I have given your request careful consideration. I have determined that no procedural error resulting in material harm or prejudice to you occurred in this case, and therefore, I am upholding the finding of the Student Conduct Board. Additionally, I do not find the sanction disproportionate to the violations for which you were found responsible, and I am also upholding the sanction that resulted from this process.

If you have questions regarding your case, please contact the Student Conduct office, at (614) 292-0748.


Javaune Adams-Gaston, PhD
Vice President for Student Life

cc: Student Conduct

**COUNT I
(DECLARATORY JUDGMENT – VIOLATION OF DUE PROCESS PROVISIONS
OF UNITED STATES AND OHIO CONSTITUTIONS)**

60. Plaintiff repeats and incorporates all the allegations of this Complaint, as if fully set forth herein.
61. This Count is brought against all defendants.
62. The Fifth Amendment to the United States Constitution, made applicable to the State of Ohio by the Fourteenth Amendment, provides that no person shall “be deprived of life, liberty, or property, without due process of law.”
63. The Fourteenth Amendment to the United States Constitution provides that no state shall deprive “any person of life, liberty, or property, without due process of law.”

64. Section 16, Article I, Ohio Constitution, guarantees that every person injured in his lands, goods, person or reputation shall have remedy by “due course of law.”
65. The Due Process Clauses of the Ohio and United States Constitutions are implicated by higher education disciplinary decisions, including the disciplinary decisions under the OSU Code of Student Conduct.
66. OSU has a constitutional obligation to provide a fundamentally fair and reliable hearing process.
67. The Plaintiff is entitled under the Constitutions of Ohio and the United States to the opportunity to be heard in a meaningful manner at the hearing.
68. The Plaintiff’s interests in the results of the hearing are significant.
 - a. Dismissal from OSU denies the Plaintiff the benefits of education at OSU to complete both his MD and MBA degrees
 - b. Dismissal damages the Plaintiff’s academic and professional reputation.
 - c. Dismissal has severely affected the Plaintiff’s ability to enroll at other institutions of higher education to complete his medical degree and to pursue a career as a practicing physician
69. The Defendants have violated the Plaintiff’s due process rights in the following manner:
 - a. OSU conducted a biased and incomplete investigation which was then provided to the Hearing Panel.
 - b. OSU permitted the use of hearsay evidence at the Hearing without providing the Plaintiff with the opportunity to effectively cross-examine witnesses.
 - c. The Plaintiff was not permitted to effectively cross-examine Jane Roe in regards to her psychiatric, academic, or relationship history, or drug use.

- d. The Plaintiff was not permitted to effectively cross-examine adverse witnesses. All questions had to be submitted through the Hearing Panel Chair, and no follow-up was possible.
- e. The Plaintiff was denied the effective assistance of an attorney or other advisor. An advisor was permitted to be present, but the advisor was not permitted to participate.
- f. The Hearing Panel denied John Doe the opportunity to present crucial and significant information, including:
 - i. Information about accommodations received by Jane Roe
 - ii. Expert testimony that would refute the allegations made by Jane Roe.

70. The Plaintiff and the Defendants have a dispute about whether the OSU Code of Conduct and Sexual Misconduct Policy, as applied to John Doe, violates the Due Process Clause of the United States Constitutions and the Due Course of Law Clause of the Ohio Constitution.

71. The Plaintiff is entitled to a declaration that the OSU Code of Conduct and Sexual Misconduct Policy, as applied to John Doe, violates the Due Process Clause of the United States Constitutions and the Due Course of Law Clause of the Ohio Constitution.

72. Pursuant to 42 U.S.C. §1988, John Doe is entitled to his attorney's fees and costs incurred in bringing this action.

COUNT II
(42 U.S.C. §1983 -- VIOLATION OF DUE PROCESS PROVISIONS OF UNITED STATES CONSTITUTION)

73. Plaintiff repeats and incorporates all the allegations of this Complaint, as if fully set forth herein.

74. This count is brought against Adams-Gaston and Page in their individual capacities for damages.

75. The Defendants have acted under color of law in violating the Plaintiffs' rights under the Fifth and Fourteenth Amendments to the United States Constitutions.

76. The Defendants have acted intentionally and with callous disregard for the Plaintiffs' clearly established constitutional rights.
77. As a direct and proximate result of the Defendants' violations of the Plaintiff's constitutional rights, he has suffered severe and substantial damages. These damages include diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress and other compensatory damages, in an amount to be determined by a jury and the Court.
78. Pursuant to 42 U.S.C. §1983, Defendants Adams-Gaston and Page are liable to the Plaintiff for his damages.
79. Pursuant to 42 U.S.C. §1988, the Plaintiff is entitled to his attorney's fees and costs incurred in bringing this action.

**COUNT III
(DECLARATORY JUDGMENT -- TITLE IX)**

80. Plaintiff repeats and incorporates all the allegations of this Complaint, as if fully set forth herein.
81. This count is brought against OSU.
82. Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Title IX provides in pertinent part: "No person . . . 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."
83. Defendant OSU is an education programs or activities operated by recipients of Federal financial assistance.

84. Title IX bars the imposition of university discipline where gender is a motivating factor in the decision to discipline.
85. OSU committed impermissible gender bias against the Plaintiffs in the investigation and adjudication of Jane Roe accusations.
86. The decision of the Hearing Panels was an erroneous outcome which was the direct result of a flawed and biased proceeding.
87. Particular circumstances suggest that gender bias was a motivating factor behind the erroneous findings and the decision to impose discipline upon John Doe. These circumstances include:
 - a. A general atmosphere at OSU where those who lodge a complaint of sexual assault are immediately treated as “survivors.”
 - b. The failure of OSU to conduct full and fair investigations.
 - c. The failure of the Hearing Panel to afford accused students the opportunity to present evidence in their defense and to effectively cross-examine their accusers under the auspices of “protecting” victims.
 - d. The role of the Title IX Office as both an investigator and advocate for alleged victims.
88. OSU has a pattern of pattern and practice of discriminatory decision-making that tends to show the influence of gender on the investigative and discipline process. This is shown, in part, by the imposition of investigations and sanctions for sexual assault and sexual harassment under the Sexual Misconduct Policy predominantly against males such as Waters.
89. OSU applies “archaic assumptions” in reviewing allegations against male students.
90. The circumstances of the Investigatory process and the Hearings cast doubt on the accuracy of the outcome of the disciplinary proceeding.

91. The Plaintiff and OSU have a dispute about whether the OSU policies and practices for adjudicating allegations that students have committed sexual assault or sexual harassment in violation of the OSU Code of Conduct or the Sexual Misconduct Policy violates Title IX.
92. The Plaintiff is entitled to a declaration OSU policies and practices for adjudicating allegations that students have committed sexual assault or sexual harassment in violation of the OSU Code of Conduct or the Sexual Misconduct Policy violates Title IX.
93. Pursuant to 42 U.S.C. §1988, John Doe is entitled to his attorney's fees and costs incurred in bringing this action.

**COUNT IV
(TITLE IX)**

94. Plaintiff repeats and incorporates all the allegations of this Complaint, as if fully set forth herein.
95. This count is brought against OSU.
96. As a direct and proximate result of the OSU's violations of the Plaintiff's rights under Title IX, the Plaintiff has suffered severe and substantial damages. These damages include diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress and other compensatory damages, in an amount to be determined by a jury and the Court.
97. OSU is liable to the Plaintiff for his damages.
98. Pursuant to 42 U.S.C. §1988, John Doe is entitled to his attorney's fees and costs incurred in bringing this action.

**COUNT V
(INJUNCTIVE RELIEF)**

99. Plaintiffs repeat and incorporate all the allegations of this Complaint, as if fully set forth herein.
100. This claim is brought against Adams-Gaston, Page, and Brennan in their official capacities for the injunctive relief sought for violations of constitutional rights, and against OSU for injunctive relief sought for claims under Title IX.
101. The Defendants continued actions under the OSU Code of Student Conduct and Sexual Misconduct Policy against the Plaintiff violates the United States Constitution and the Ohio Constitution, and the Ohio Administrative Code.
102. The Defendants continued actions under the OSU Code of Student Conduct and Sexual Misconduct Policy against the Plaintiff violates Title IX.
103. The Defendants continued actions against the Plaintiff under the OSU Code of Student Conduct is causing substantial, immediate, and continuing damage to the Plaintiff.
104. The Plaintiffs are entitled to an Injunction from this Court prohibiting the imposition of, or reporting of, any disciplinary actions under the OSU Code of Student Conduct and Sexual Misconduct Policy against the Plaintiff.

Wherefore, Plaintiff seeks the following relief from the Court:

- On Counts I and III, Judgment in favor of the Plaintiff declaring that the Defendants have violated the United States Constitution, the Ohio Constitution, the Ohio Administrative Code, and Title IX;
- On Counts II and IV, damages in an amount to be determined at trial;
- On Count V, an Injunction prohibiting the imposition of, or reporting of, any disciplinary actions against the Plaintiff to any 3rd party (other academic institutions).
- Court costs and other reasonable expenses incurred in maintaining this action, including reasonable attorney's fees as provided for by 42 U.S.C. § 1988 and otherwise.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

 /s/ Joshua Adam Engel
Joshua Adam Engel (0075769)
ENGEL AND MARTIN, LLC
5181 Natorp Blvd., Suite 210
Mason, OH 45040
(513) 445-9600
(513) 492-8989 (Fax)
engel@engelandmartin.com

VERIFICATION

I, [REDACTED] being duly sworn, state that I have reviewed the factual allegations contained in this Verified Complaint. I am the John Doe described in the Complaint. I believe that the disclosure of my identity will cause me irreparable harm as this case involves matters of the utmost personal intimacy, including education records protected from disclosure by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g; 34 CFR Part 99. All of the factual allegations in the Verified Complaint are true and accurate to the best of my knowledge.

[REDACTED]

Subscribed and sworn before me this 14th day of September 2015



Notary Public



Darshak Patel
Notary Public
New Jersey
My Commission Expires August 1, 2018

Exhibit A

Code of student conduct (effective June 18, 2012)

3335-23-01 Introduction and purpose

The code of student conduct is established to foster and protect the core missions of the university; to foster the scholarly and civic development of the university's students in a safe and secure learning environment, and to protect the people, properties and processes that support the university and its missions. The core missions of the university are research, teaching and learning, and service. Preservation of academic freedom and free and open exchange of ideas and opinions for all members of the university are central to these missions.

3335-23-02 Jurisdiction

The code applies to the on-campus conduct of all students and registered student organizations, including conduct using university computing or network resources. The code also applies to the off-campus conduct of students and registered student organizations in direct connection with:

- A. Academic course requirements or any credit-bearing experiences, such as internships, field trips, study abroad, or student teaching;
- B. Any activity supporting pursuit of a degree, such as research at another institution or a professional practice assignment;
- C. Any activity sponsored, conducted, or authorized by the university or by registered student organizations;
- D. Any activity that causes substantial destruction of property belonging to the university or members of the university community, or causes or threatens serious harm to the safety or security of members of the university community; or
- E. Any activity in which a police report has been filed, a summons or indictment has been issued, or an arrest has occurred for a crime of violence.

The code governs all campuses of the university. However, students attending at regional campuses, centers, or institutes are advised to consult their local resources for additional information or rules pertaining to those locations, which may create hearing boards or processes for the locations, consistent with these rules.

The university reserves the right to administer the code and proceed with the hearing process even if the student withdraws from the university, is no longer enrolled in classes, or subsequently fails to meet the definition of a student while a disciplinary matter is pending.

Students continue to be subject to city, state, and federal laws while at the university, and violations of those laws may also constitute violations of the code. In such instances, the university may proceed with university disciplinary action under the code independently of any criminal proceeding involving the same conduct and may impose sanctions for violation of the code even if such criminal proceeding is not yet resolved or is resolved in the student's favor.

3335-23-03 Definitions

As used in the code,

- A. "University premises" includes all lands, buildings, facilities, and resources owned, leased, managed, or operated by the university.
- B. "Student" includes an individual who has paid an acceptance fee, registered for classes, or otherwise entered into any other contractual relationship with the university to take instruction.
 - 1. It further includes persons who are eligible to receive any of the rights and privileges afforded a person who is enrolled at the university, including, but not limited to, those individuals admitted to the University and attending orientation programs.
 - 2. Student status lasts until an individual graduates, is dismissed, or is not in attendance for two (2) complete, consecutive terms.
 - 3. "Student" also includes registered student organizations.
- C. "Members of the university community" include, but are not limited to, students, faculty, staff, and visitors to the campus.
- D. "Complaint" includes a written statement, alleging a violation of the code of student conduct or other published rule applicable to students at the university, provided to an authorized university official, per section 3335-23-05 A. Information submitted by other means will be reviewed and may, at the university's discretion, be acted upon but will not be treated as a formal complaint.
- E. "Crime of violence" includes the offenses stated in Ohio revised code § 2901.01.

3335-23-04 Prohibited conduct

Any student found to have engaged, or attempted to engage, in any of the following conduct while within the university's jurisdiction, as set forth in section 3335-23-02, will be subject to disciplinary action by the university. For the purposes of this section, attempt shall be defined as conduct that, if successful, would constitute or result in the prohibited conduct. Any student who abandons an attempt or prevents the prohibited conduct from occurring under circumstances that demonstrate a complete and voluntary renunciation of the prohibited conduct will not be subject to disciplinary action by the university.

- A. **Academic misconduct** Any activity that tends to compromise the academic integrity of the university or subvert the educational process. Examples of academic misconduct include, but are not limited to:
 - 1. Violation of course rules as contained in the course syllabus or other information provided to the student;
 - 2. Knowingly providing or receiving information during examinations such as course examinations and candidacy examinations; or the possession and/or use of unauthorized materials during those examinations;
 - 3. Knowingly providing or using unauthorized assistance in the laboratory, on field work, in scholarship or on a course assignment;

4. Submitting plagiarized work for an academic requirement. Plagiarism is the representation of another's work or ideas as one's own; it includes the unacknowledged word-for-word use and/or paraphrasing of another person's work, and/or the inappropriate unacknowledged use of another person's ideas;
5. Submitting substantially the same work to satisfy requirements for one course or academic requirement that has been submitted in satisfaction of requirements for another course or academic requirement without permission of the instructor of the course for which the work is being submitted or supervising authority for the academic requirement;
6. Falsification, fabrication, or dishonesty in creating or reporting laboratory results, research results, and/or any other assignments;
7. Serving as, or enlisting the assistance of, a substitute for a student in any graded assignments;
8. Alteration of grades or marks by the student in an effort to change the earned grade or credit;
9. Alteration of academically related university forms or records, or unauthorized use of those forms or records;
10. Engaging in activities that unfairly place other students at a disadvantage, such as taking, hiding or altering resource material, or manipulating a grading system; and
11. Violation of program regulations as established by departmental committees and made available to students.

B. Endangering health or safety

1. **Endangering behavior** Taking or threatening action that endangers the safety, physical or mental health, or life of any person, or creates a reasonable fear of such action. Relationship violence or intimate partner abuse may constitute endangering behavior.
2. **Stalking** Engaging in a pattern of unwanted conduct directed at another person that threatens or endangers the safety, physical or mental health, or life or property of that person, or creates a reasonable fear of such a threat or action.

C. Sexual misconduct Physical contact or other non-physical conduct of a sexual nature in the absence of clear, knowing and voluntary consent, including but not limited to:

1. Non-consensual sexual intercourse, defined as any sexual penetration (anal, oral, or vaginal), however slight, with any body part or object by any person upon any person without consent.
2. Non-consensual sexual contact, defined as any intentional sexual touching, with any body part or object by any person upon any person without consent.
3. Sexual exploitation, defined as taking non-consensual, unjust or abusive sexual advantage of another. Examples include, but are not limited to, prostituting another student, non-consensual video or audio-taping of sexual activity, going beyond the boundaries of consent (such as knowingly allowing another to surreptitiously watch otherwise consensual sexual activity), engaging in non-consensual voyeurism, and

knowingly transmitting or exposing another person to a sexually transmitted infection (STI) without the knowledge of the person.

4. Sexual harassment, as defined in applicable university policy.
5. Indecent exposure, defined as the exposure of the private or intimate parts of the body in a lewd manner in public or in private premises when the accused may be readily observed.

For the purposes of this rule, consent shall be defined as the act of knowingly and affirmatively agreeing to engage in a sexual activity. Consent must be voluntary. An individual cannot consent who is substantially impaired by any drug or intoxicant; or who has been compelled by force, threat of force, or deception; or who is unaware that the act is being committed; or whose ability to consent is impaired because of a mental or physical condition; or who is coerced by supervisory or disciplinary authority. Consent may be withdrawn at any time. Prior sexual activity or relationship does not, in and of itself, constitute consent.

- D. **Destruction of property** Actual or threatened damage to or destruction of university property or property of others, whether done intentionally or with reckless disregard.
- E. **Dangerous weapons or devices** Storage or possession of dangerous weapons, devices, or substances including, but not limited to, firearms, ammunition, or fireworks, unless authorized by an appropriate university official or permitted by a university policy, even if otherwise permitted by law. Use or misuse of weapons, devices, or substances in a manner that causes or threatens serious harm to the safety or security of others.
- F. **Dishonest conduct** Dishonest conduct, including, but not limited to: knowingly reporting a false emergency; knowingly making false accusation of misconduct; misuse or falsification of university or related documents by actions such as forgery, alteration, or improper transfer; submission of information known by the submitter to be false to a university official.
- G. **Theft or unauthorized use of property** Theft, or the unauthorized use or possession of university property, services, resources, or the property of others.
- H. **Failure to comply with university or civil authority** Failure to comply with legitimate directives of authorized university officials, law enforcement or emergency personnel, identified as such, in the performance of their duties, including failure to identify oneself when so requested; or violation of the terms of a disciplinary sanction.
- I. **Drugs** Use, production, distribution, sale, or possession of drugs in a manner prohibited under law. This includes, but is not limited to, the misuse of prescription drugs.
- J. **Alcohol** Use, production, distribution, sale, or possession of alcohol in a manner prohibited under law or applicable university policy or facility policy.
- K. **Unauthorized presence** Unauthorized entrance to or presence in or on university premises.
- L. **Disorderly or disruptive conduct** Disorderly or disruptive conduct that unreasonably interferes with university activities or with the legitimate activities of any member of the university community.
- M. **Hazing** Doing, requiring, or encouraging any act, whether or not the act is voluntarily agreed upon, in conjunction with initiation or continued membership or participation in any group, that causes or creates a substantial risk of causing mental or physical harm or humiliation. Such acts may include, but are not limited to, use of alcohol, creation of excessive fatigue, and paddling, punching or kicking in any form.

- N. **Student conduct system abuse** Abuse of any university student conduct system, including but not limited to:
1. Failure to obey the summons or directives of a student conduct body or university official;
 2. Falsification, distortion, or misrepresentation of information before a student conduct body;
 3. Disruption or interference with the orderly conduct of a student conduct proceeding;
 4. Knowingly instituting of a student conduct proceeding without cause;
 5. Discouraging an individual's proper participation in, or use of, a university student conduct system;
 6. Influencing the impartiality of a member of a student conduct body prior to, and/or during the course of a student conduct proceeding;
 7. Harassment and/or intimidation of a member of a student conduct body prior to, during, and/or after a student conduct proceeding;
 8. Failure to comply with one or more sanctions imposed under the code of student conduct; and
 9. Influencing another person to commit an abuse of a university student conduct system.
- O. **Violation of university rules or federal, state, and local laws** Violation of other published university regulations, guidelines, policies, or rules, or violations of federal, state, or local law. These university regulations, guidelines, policies, or rules include, but are not limited to, those which prohibit the misuse of computing resources, sexual harassment, rules for student groups or organizations, and residence hall rules and regulations.
- P. **Riotous behavior**
1. Participation in a disturbance with the purpose to commit or incite any action that presents a clear and present danger to others, causes physical harm to others, or damages property.
 2. Proscribed behavior in the context of a riot includes, but is not limited to:
 - a. Knowingly engaging in conduct designed to incite another to engage in riotous behavior; and
 - b. Actual or threatened damage to or destruction of university property or property of others, whether done intentionally or with reckless disregard; and
 - c. Failing to comply with a directive to disperse by university officials, law enforcement, or emergency personnel; and
 - d. Intimidating, impeding, hindering or obstructing a university official, law enforcement, or emergency personnel in the performance of their duties.
 3. This rule shall not be interpreted as proscribing peaceful demonstrations, peaceful picketing, a call for a peaceful boycott, or other forms of peaceful dissent.

- Q. **Recording of images without knowledge** Using electronic or other means to make a video or photographic record of any person in a location where there is a reasonable expectation of privacy without the person's prior knowledge, when such a recording is likely to cause injury, distress, or damage to reputation. This includes, but is not limited to, taking video or photographic images in shower/locker rooms, residence hall rooms, and restrooms. The storing, sharing, and/or distributing of such unauthorized records by any means is also prohibited.

Student conduct procedures

3335-23-05 Initiation and investigation of code violations

- A. **Initiation** Person(s) witnessing or experiencing what they believe to be a possible code violation should provide an authorized university official with the information.
1. Information and/or complaints about possible code violations occurring in residence halls should be provided to the residence hall director.
 2. Information and/or complaints about possible non-residence hall related code violations should be provided to the director of student conduct, or chief student conduct officer for the regional campuses.
 3. Information and/or complaints regarding academic misconduct should be referred to the coordinator of the committee on academic misconduct.
 4. In cases where the alleged activity may involve a violation of criminal law in addition to a violation of the code, information and/or complaints should be provided to the Ohio state university police or other appropriate law enforcement agency. The university will review all information and/or complaints received and may conduct a preliminary investigation of the alleged violation.
- B. **Investigation**
1. **Role of the university**
 - a. The Ohio state university police or other appropriate law enforcement agency shall have primary responsibility for the investigation of acts that involve suspected violation of federal, state, local laws, or applicable university policies.
 - b. Residence hall directors, assistant hall directors, the director of student conduct, the chief conduct officer for the regional campuses, and other designated university personnel are authorized to investigate alleged violations other than those involving academic misconduct.
 - c. The coordinator of the committee on academic misconduct is authorized to investigate allegations involving academic misconduct.
 2. **Role of other participants**
 - a. During the investigation, the student allegedly involved in misconduct may be:
 - i. notified of the alleged violation,
 - ii. requested to make an appointment to discuss the matter, and
 - iii. provided a date by which the appointment must be made.
 - b. Any person believed to have information relevant to an investigation may also be contacted and requested to make an appointment to discuss the matter.

3. Failure to comply with a request to make and keep an appointment relevant to an investigation may result in a disciplinary hold being placed on a student's registration and records and/or the initiation of charges for student conduct system abuse.
4. Upon completion of an investigation, the investigator will decide upon an appropriate course of action, which may include, but is not limited to:
 - a. Taking no further action,
 - b. Deferring further action with or without conditions, or
 - c. Initiating charges with the appropriate university student conduct body.

3335-23-06 Filing of complaint and initiation of charges

A written complaint alleging a violation of the code of student conduct should be filed with the university as soon as practicable following the discovery of the alleged violation. Absent extraordinary circumstances, the written complaint must be filed within six (6) months for cases of non-academic misconduct (3335-23-04 (B-Q)), and one (1) month for academic misconduct (3335-23-04 (A)), from the date upon which a university official becomes aware of the alleged violation and identifies the student(s) who allegedly committed the violation. Absent extraordinary circumstances, the university must initiate charges, if any, within one (1) year of the filing of the complaint.

3335-23-07 Notice of charges

- A. **Notification** Students shall be notified of university charges in writing, unless a more effective form of notification is deemed appropriate. Charges may be presented in person, by placement in a student's residence hall mailbox, by email to the accused student's official university email address (which may direct the student to view the notice on a secure website) or by mail to the accused student's local or permanent address on file in the office of the university registrar.
- B. **Current address** All students are required to maintain an accurate and current local and permanent address with the University Registrar.
- C. **Meeting with university official** Following notification of charges, students are strongly encouraged to and shall be afforded the opportunity to meet with a university official for the purpose of explaining the university student conduct process and discussion of the charges.
- D. **Failure to respond** Failure of the accused student to respond to the initiation of charges or schedule a preliminary meeting shall in no way prevent the university from scheduling and conducting a hearing in the absence of the accused student.

3335-23-08 Administrative decision

In all cases, a student charged with one or more violations of the code of student conduct has the right to a hearing. However, in a case where a charged student admits to such violation(s) in writing, the student may request in writing to have a decision as to appropriate action made administratively by a hearing officer rather than have the charges referred to a hearing officer or board for a hearing. In such situations, the student waives the right to a hearing and the related procedural guarantees provided by a hearing officer or board hearing. Administrative decisions in academic misconduct cases involving graduate students are to be made in consultation with the graduate school. Following an administrative decision, the student retains the right to request an appeal of the original decision, but may do so only upon the ground that the sanction is grossly disproportionate to the violation committed.

3335-23-09 Notice of hearing & request for postponement

- A. **Notice** If a hearing is to be held, written notification will be provided. The notice may be hand delivered; placed into a student's residence hall mailbox; sent by email to the accused student's official university email address, which may direct the student to view the notice on a secure website; or mailed to the last known address of the student, by first class mail, no fewer than ten (10) calendar days prior to the hearing. Unless already provided to the student, the notification will include the charge(s), date, time, and location of the hearing, the designated hearing officer or board, a statement of the student's rights, and information on the hearing procedures.
- B. **Postponement** The accused student may request a postponement for reasonable cause or a separate hearing from other accused persons. A request for a postponement for reasonable cause must be made in writing, include supporting rationale, and be received by the person sending the hearing notification at least two (2) business days before the scheduled hearing.

3335-23-10 Hearing procedures

Although the procedural requirements are not as formal as those existing in criminal or civil courts of law, to ensure fairness, the following procedures will apply and, unless already provided to the student, be included within the hearing notice:

- A. **Attendance** Attendance at hearings is limited to those directly involved or those requested by the hearing officer or board to attend. The hearing officer or board will take reasonable measures to assure an orderly hearing, including removal of persons who impede or disrupt proceedings.
- B. **Advisor** The accused student may have an advisor throughout the disciplinary process. The advisor may only counsel the student and may not actively participate in the disciplinary process, unless clarification is needed as determined by the hearing officer or board.
- C. **Written statements & witnesses** The accused may: submit a written statement invite relevant factual witnesses to attend, invite character witnesses to submit written statements, ask questions of witnesses called by others, and will be notified of potential witnesses to be called. The accused must submit a list of potential witnesses to the hearing officer at least two (2) business days prior to the hearing. The university may present witnesses as well as question those presented by the accused.
- D. **Witness absence** The hearing officer or board coordinator may allow written statements if, for good reason, a fact witness cannot attend the hearing.
- E. **Consultants** In cases requiring special expertise, the board coordinator may appoint individuals with appropriate expertise to serve as consultants to the board. The consultants may be present and provide information as called upon during the hearing but will not vote.
- F. **Standard of evidence** A student will only be found in violation if a preponderance of evidence supports the charges. In the event of a tie, the board will continue to deliberate. If after the board determines that exhaustive deliberations have occurred and a majority decision is not reached, the student will be found not in violation.
- G. In cases where prompt review is essential (e.g., when graduation or the end of the academic year is imminent) the accused may be offered the option of an expedited administrative review consisting of an administrative decision or administrative hearing. The accused student may decline such expedited review without the expectation that the process can be completed on an expedited timeline.

3335-23-11 Attendance

Because the most accurate and fair review of the facts can best be accomplished when all parties are present, the accused is expected to attend and participate. If an individual does not choose to attend a hearing, the charges will be reviewed as scheduled on the basis of the information available, and a decision will be made. Although no inference may be drawn against a student for failing to attend a hearing or remaining silent, the hearing will proceed and the conclusion will be based on the evidence presented. No decision shall be based solely on the failure of the accused student to attend the hearing or answer the charges.

3335-23-12 Record of proceedings

A single record consisting of written notes, tape recording, or other method selected by the hearing board or officer, will be made of all hearings. Such record will remain the property of the university but will be made available to the accused for review during the appeal period. A written notice of the decision and, if found in violation, information regarding appeal procedures will be provided to the accused student.

3335-23-13 Hearing bodies

- A. In addition to the committee on academic misconduct, student conduct boards for residence life, and the university conduct board, the director of student conduct, hearing officers within the office of student conduct, the coordinator of the committee on academic misconduct, and university housing professional staff are to be considered as official university hearing officers, and may hear cases of alleged violations of the code affording accused students the same procedural guarantees as provided in hearings by a committee or board.
- B. The accused student has the right to accept responsibility for the charges, which will result in an administrative decision, or choose to have a hearing.
- C. Students will generally be afforded the right to choose an administrative or board hearing, except under special circumstances where, in order to ensure a fair and just process, the hearing officer may determine the appropriate hearing venue.

3335-23-14 Committee on academic misconduct

- A. On behalf of the committee, the coordinator may investigate and resolve all reported cases of student academic misconduct that fall under the committee's jurisdiction. The coordinator and chair shall establish procedure for the investigation and resolution of cases. The committee does not hear cases involving academic misconduct in professional colleges having a published honor code. These colleges shall follow their own codes and procedures which can be obtained in their respective central offices. Some allegations against graduate students that fall under the committee's jurisdiction may also implicate the university policy and procedures concerning research misconduct and/or graduate school policy on the investigation of allegations of research misconduct by a graduate student. Upon receipt of such an allegation, the coordinator shall meet with the dean of the graduate school or designee, and/or the senior vice president for research or designee, and these parties shall mutually agree on the appropriate procedure for adjudicating the case. Notice of this decision and a description of the procedure to be used shall promptly be given to the student who has been charged. The coordinator or chair may refer complaints to the office of student conduct if it is determined that the academic misconduct allegation is incidental to some other misconduct.

- B. The committee on academic misconduct is constituted according to rule 3335-5-48.7 of the administrative code.
- C. All complaints of academic misconduct shall be reported to the coordinator of the committee.
- D. Students have an obligation to report suspected misconduct.
- E. A quorum for a hearing shall be no fewer than four voting members of the committee which shall include no fewer than one student member and two faculty members.

For cases involving graduate students, reasonable efforts will be made to have graduate students serve as the student members of the hearing committee.

3335-23-15 Student conduct boards for residence life

The boards may hear only those cases that involve code violations that occur within university housing, whether committed by residents or nonresidents. The boards are comprised of students who currently reside or have resided in university residence halls within the previous academic year. The boards may initiate any sanction with the exception of suspension or dismissal. If it appears during the hearing, to the board or to the board advisor, that the violation may be serious enough to warrant suspension or dismissal, the board will adjourn and refer the case back to the hearing officer for referral to the office of student conduct.

3335-23-16 University conduct board

- A. **Membership** The university conduct board is responsible for adjudicating allegations of non-academic misconduct referred by student conduct hearing officers, The board consists of:
 1. Fifteen (15) faculty and/or administrative members recommended by the director of student conduct to the vice president for student life for three-year terms which begin with the autumn term;
 2. Twelve (12) undergraduate student members, appointed by undergraduate student government;
 3. Six (6) graduate student members, appointed by the council of graduate students;
 4. Two (2) professional student members, appointed by the inter-professional council; and
 5. The director of student conduct or designee shall serve as board coordinator ex-officio without vote.
- B. **Quorum** A quorum for a hearing shall be no fewer than four (4) voting members of the board which shall include no fewer than two (2) student members. A hearing board shall consist of no more than eight (8) voting members.
- C. **Appointment** All student appointments shall be for staggered two-year terms beginning in the autumn term. Six (6) of the undergraduate student members, three (3) of the graduate student members, and one (1) of the professional student members shall be appointed in odd-numbered years, with the remainder appointed in even-numbered years.
 1. To be eligible for appointment or service, a student must possess a minimum 2.5 cumulative grade point average and not be under current disciplinary sanction from the university.

2. Additional alternate members may be appointed as needed.
- D. **Removal** The director of student conduct may remove university conduct board members for cause, including but not limited to, not attending training, falling below the minimum grade point average, repeated absences, violating the code of student conduct or other applicable laws or policies, or not responding to repeated attempts at communication. Notification shall be made in writing to the university conduct board member prior to removal, whenever possible.

University sanctions

3335-23-17 General guidelines for sanctions

Sanctions should be commensurate with the violations found to have occurred. In determining the sanction(s) to be imposed, the hearing officer or board should take into account any mitigating circumstances and any aggravating factors including, but not limited to, any provocation by the subject of the conduct that constituted the violation, any past misconduct by the student, any failure of the student to comply fully with previous sanctions, the actual and potential harm caused by the violation, the degree of intent and motivation of the student in committing the violation, and the severity and pervasiveness of the conduct that constituted the violation. Misconduct, other than constitutionally protected expression, motivated by bias based on age, color, disability, gender identity or expression, national origin, race, religion, sex, sexual orientation, or veteran status may be considered an aggravating factor for sanctioning. Impairment resulting from voluntary use of alcohol or drugs (i.e., other than medically necessary) will also be considered an aggravating, and not a mitigating, factor. One or more of the following courses of action may be taken when a student has been found to have violated the code of student conduct:

- A. **Informal admonition** An oral or written admonition issued by a hearing officer or residence hall advisor resulting from the student's misconduct. No formal charges are required before the issuance of an informal admonition. However, following issuance of an informal admonition, the student shall be entitled to a hearing upon written request, under the procedures provided in the code of student conduct. A written request for such a hearing must be filed with the university official who administered the informal admonition, within five (5) working days of the student's receipt of the informal admonition. An informal admonition shall not be considered a disciplinary sanction, but may be considered in any subsequent hearings.
- B. **Disciplinary sanctions**
 1. **Formal reprimand.** A written letter of reprimand resulting from a student's misconduct.
 2. **Disciplinary probation.** This probationary condition is in effect for a specified period of time and may involve the loss of specified privileges. Further violation of university policies during the probationary period will additionally be viewed as a violation of the probation, which shall result in further action up to and including suspension or dismissal.
 3. **Suspension.** Suspension is a sanction that terminates the student's enrollment at the university for a specified period of time. Satisfactory completion of specified stipulations may be required for readmission at the end of the suspension period.
 4. **Dismissal.** Dismissal is a sanction which permanently separates a student from the university without opportunity to re-enroll in the future.

- C. **Conditions of suspension and dismissal** A student who has been dismissed or suspended from the university shall be denied all privileges afforded a student and shall be required to vacate campus at a time determined by the hearing officer or board. In addition, after vacating campus property, a suspended or dismissed student may not enter upon campus and/or other university property at any time, for any purpose, in the absence of expressed written permission from the vice president for student life or designee. To seek such permission, a suspended or dismissed student must file a written petition to the vice president for student life for entrance to the campus for a limited, specified purpose or to have the terms of this condition modified or reduced.
- D. **Failing or lowered grades** In cases of academic misconduct, a hearing officer or board may authorize the instructor to award a failing or lowered grade in the course, a loss of credit on the graded coursework, and impose any of the above-listed sanctions including suspension or dismissal from the university.
- E. **Other sanctions** Other appropriate sanctions may be imposed by a hearing officer or board singularly or in combination with any of the above-listed sanctions. Examples include, but are not limited to, making restitution for property damage or misappropriation of university property or services, or the property of any person, residence hall contract termination or reassignment to another room, restriction of access to specified campus facilities and/or property, research assignments, community service projects, special workshop participation, and/or referral to medical resources or counseling personnel.

Appeal process

3335-23-18 Appellate process

A. Right to appeal

1. A student found to have violated the code of student conduct has the right to appeal the original decision. The appeal is not intended to re-hear or re-argue the same case, and is limited to the specific grounds outlined below. The appeal must state the specific grounds for the appeal and should include all supporting documentation. The appeal must be postmarked or hand delivered to the appropriate appeal officer, or sent via email, as provided below, within five (5) working days after the date on which notice of the decision is sent to the student. Each student shall be limited to one appeal. The decision of the appeal officer is final.
2. In cases involving charges relating to sexual harassment as defined in applicable university policy, the victim may appeal the original decision in accordance with the appeals procedures provided in this section. Such charges include, but are not limited to, sexual misconduct and stalking.
3. A student who has accepted responsibility for violating the code of student conduct waives the right to appeal, except on the basis that the disciplinary sanction is grossly disproportionate to the violation(s) committed.
4. Each party shall be limited to one appeal. The decision of the appeal officer is final.

- B. **Grounds for appeal** An appeal may be based only upon one or more of the following grounds:

1. Procedural error that resulted in material harm or prejudice to the student (i.e., by preventing a fair, impartial, or proper hearing). Deviations from the designated procedures will not be a basis for sustaining an appeal unless material harm or prejudice results ;
2. Discovery of substantial new evidence that was unavailable at the time of the hearing, and which reasonably could have affected the decision of the hearing body; or
3. Disciplinary sanction imposed is grossly disproportionate to the violation(s) committed, considering the relevant aggravating and/or mitigating factors.

Non-attendance by the accused student may not be the sole grounds for an appeal.

C. Appropriate appeal officers

1. Appeals from residence hall hearings:
 - a. All appeals from residence hall hearings, other than contract terminations, shall be submitted to the director of residence life or designee.
 - b. All appeals where the sanction imposed by the residence hall hearing is contract termination shall be submitted to the director of student conduct or designee.
2. Appeals of a decision of a student conduct hearing officer or from the university conduct board's will be submitted for decision to the vice president for student life or the designee.
3. Appeals of decisions of the committee on academic misconduct or its coordinator will be submitted for decision to the executive vice president and provost or designee.

D. Appeal proceedings

1. The appeal officer will dismiss the appeal if the appeal is not based upon one or more of the grounds set forth in section (B) above.
2. The appeal officer will decide the appeal based upon a review of the record and supporting documents (e.g. prior disciplinary history).
3. The appeal officer may consider additional relevant information from any party to the proceeding and then decide the appeal based upon the enhanced record.

E. Possible dispositions by the appeal officer The appeal officer may, after a review of the record:

1. Uphold the original decision and/or sanction(s);
2. Dismiss the case or individual charge(s) against the student and vacate any portion or all of the sanction(s);
3. Modify or reduce the sanction(s); or in cases involving charges relating to sexual harassment as defined in applicable university policy, enhance the sanction; or
4. Remand the case to the original hearing body or refer the case to a new hearing officer or board to be reheard. If possible, a new hearing officer or board should be different from the one that originally decided the case. If a case is reheard by a hearing officer or board, the sanction imposed can be greater than that imposed at the original hearing.

3335-23-19 Minor deviations from procedure

A student and hearing officer may agree in advance to minor deviations from procedure. Such deviations are not then subject to appeal. Other minor deviations are acceptable as long as such deviations are not found upon appeal to be materially harmful to the accused student.

3335-23-20 Interim suspension

When the vice president for student life or designee has reasonable cause to believe that the student's presence on university premises or at a university-related or registered student organization activity poses a significant risk of substantial harm to the safety or security of themselves, others, or to property, the student may be immediately suspended from all or any portion of university premises, university-related activities or registered student organization activities. This temporary suspension will be confirmed by a written statement and shall remain in effect until the conclusion of a full hearing or administrative decision, without undue delay, in accordance with the rules of the Ohio state university. The student may, within three (3) working days of the imposition of the suspension, petition the vice president for student life for reinstatement. The petition must be in writing, and must include supporting documentation or evidence that the student does not pose, or no longer poses, a significant risk of substantial harm to the safety or security of themselves, others, or to property. A decision on such petition will be made without undue delay by the vice president for student life or designee.

3335-23-21 Administrative disenrollment and other restrictions

- A. A student may be disenrolled from the university; prohibited from all or any portion of university premises, university-related activities or registered student organization activities; and/or permitted to remain only under specified conditions when the vice president for student affairs or designee finds that there is clear and convincing evidence that the student's continued presence poses a significant risk of substantial harm to the health or safety of themselves, others, or to property.
- B. In those cases under paragraph (A)(1) of this rule in which it appears that the risk posed by the student is a result of a health condition or a disability as defined by the americans with disabilities act, the vice president for student life or designee shall also determine whether the risk or disruption can be eliminated or sufficiently reduced through reasonable accommodation and, if so, shall take appropriate steps to ensure that accommodation is made. The vice president for student life or designee may request the student to undergo an appropriate examination, as specified by the vice president for student life or designee, to determine whether any such condition exists and whether any such accommodation is possible. If the student fails to undergo such an examination, and if the other available evidence supports a finding under paragraph (A) the vice president for student life or designee shall, to the extent reasonably possible, take the least restrictive measure or combination of measures necessary to resolve the risk or disruption.
- C. A student who has been disenrolled; prohibited from university premises, university-related activities or registered student organization activities; or permitted to remain only under specified conditions may petition the vice president for student life for revision of that status. The petition must include supporting documentation or evidence that:
 1. The conditions found to have existed under paragraph (A) no longer exist and will not recur, and
 2. The student meets all normal and appropriate standards for admission and enrollment in any academic unit in which the student seeks to re-enroll. Upon receipt of such a

petition, the vice president for student life or the vice president's designee shall evaluate the evidence and may consult with the student, any appropriate university personnel, and any other persons whom the vice president for student life or designee deems appropriate. The vice president for student life or designee may deny the petition, grant the petition in whole or in part under specified conditions, or grant the petition in whole or in part without condition.

3335-23-22 Authority

The bylaws of the university board of trustees and rules of the university faculty provide that the university president shall have the final responsibility and authority for the discipline of all students of the university See rule 3335-11-01 (A) of the administrative code. This responsibility and authority has been delegated by the president to the vice president for student life, whose office is also charged with responsibility for promulgation of rules governing student conduct, see rule 3335-1-03 (H) of the administrative code.

The deans of colleges and of the graduate school, the directors of schools, and the chairpersons of departments, respectively, are responsible to the president through regular disciplinary channels for the discipline of all students in the activities of their respective colleges, schools, and departments, see rule 3335-11-01 (B) of the administrative code. Likewise, the deans and directors of the regional campuses are responsible to the president through the executive vice president and provost for the discipline of all students in the activities of their respective campuses.

The Ohio state university code of student conduct is an official publication of the university board of trustees. All petitions for revision and amendment of this code of student conduct should be submitted through the office of the vice president for student life. Proposed revisions to the code shall be reviewed, in draft form, by the office of the president, the office of academic affairs, and the steering committee of the university senate before being presented for approval to the university senate by the council on student affairs. No revision shall become effective unless approved by the university board of trustees and until printed notice of such revisions is made available to students.



**THE OHIO STATE
UNIVERSITY**

Exhibit B Sexual Misconduct, Sexual Harassment, and Relationship Violence, 1.15

University Policy

Applies to: Faculty, staff, students, student employees, graduate associates, appointees, volunteers, vendors, & visitors.

Responsible Office

Office of Human Resources

POLICY

Issued: 10/01/1980

Interim Revised: 09/01/2015

Members of the university community, vendors, and visitors have the right to be free from all forms of sexual misconduct. Sexual misconduct is conduct of a sexual nature that is nonconsensual, or has the effect of threatening, intimidating, or coercing a person. Sexual misconduct includes sexual harassment, sexual violence, and relationship violence. Sexual misconduct impedes the realization of the university's mission of distinction in education, scholarship, and service. All members of the university community are expected to conduct themselves in a manner that does not infringe upon the rights of others and maintain an environment free from sexual misconduct.

Sexual misconduct violates the dignity of individuals and will not be tolerated. The university community seeks to eliminate sexual misconduct through education and by encouraging everyone to report concerns or complaints, including third parties when the accused is a member of the university community. The university is committed to stopping sexual misconduct, preventing its recurrence, eliminating any hostile environment, and remedying its discriminatory effects. This policy defines expectations for the university community and establishes mechanisms for determining when those expectations have been violated.

Purpose of the Policy

To maintain an environment for work and study free from sexual misconduct.

Definitions

Term	Definition
Sex- and gender-based discrimination	Unfairly treating an individual or group of individuals differently than others on the basis of sex or gender. Sexual misconduct is a form of sex- and gender-based discrimination.
Sexual misconduct	Conduct of a sexual nature or conduct based on sex or gender that is nonconsensual or has the effect of threatening, intimidating, or coercing a person. Includes sexual harassment, sexual violence, relationship violence, and stalking. Sexual misconduct is a form of sex- and gender-based discrimination.
Sexual harassment	<p>In the employment context, sexual harassment is unwelcome, sex- or gender-based verbal or physical conduct that unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.</p> <p>In the education context, sexual harassment is unwelcome, sex- or gender-based verbal or physical conduct that is sufficiently severe, persistent or pervasive that it interferes with, denies or limits an individual's ability to participate in or benefit from the university's educational programs and activities.</p> <p>It can take two forms: power differentials (<i>quid pro quo</i>) or hostile environment:</p> <p>A. <i>Quid pro quo</i> sexual harassment exists when:</p> <ol style="list-style-type: none"> 1. There are unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; and 2. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status; or 3. Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions adversely affecting such individual. <p>B. <i>Hostile environment</i> in the employment context includes any situation in which there is harassing conduct that is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an</p>



THE OHIO STATE
UNIVERSITY

Sexual Misconduct, Sexual Harassment, and Relationship Violence, 1.15

University Policy

Applies to: Faculty, staff, students, student employees, graduate associates, appointees, volunteers, vendors, & visitors.

Term	Definition
	<p>individual's work performance or creates an intimidating, hostile or offensive work environment; hostile environment in the education context includes any situation in which there is harassing conduct that limits, interferes with or denies educational benefits or opportunities, from both a subjective (the complainant's) and an objective (reasonable person's) viewpoint.</p> <ol style="list-style-type: none"> 1. The determination of whether an environment is "hostile" is based on a totality of circumstances. These circumstances may include: <ol style="list-style-type: none"> a. The degree to which the conduct interfered with the complainant's educational or work performance; b. The type, frequency, and duration of the conduct; c. The identity of and relationship between the accused and the complainant(s); d. The number of individuals involved; e. The age and sex of the accused and the complainant(s); f. The location of the incident(s) and the context in which it occurred; g. The nature and severity of the conduct; h. Whether the conduct was physically threatening; i. Whether the conduct was humiliating; j. The effect of the conduct on the complainant's mental or emotional state; k. Whether the conduct arose in the context of other discriminatory conduct; l. Whether the speech or conduct deserves the protections of academic freedom or the first amendment. 2. A single or isolated incident of sexual harassment (e.g., rape) may be severe enough to create a hostile environment. <p>All such acts of sexual harassment are forms of sexual misconduct covered under this policy.</p>
Sexual violence	<p>Sexual acts perpetrated against an individual's will or when an individual is incapable of giving consent. All such acts of sexual violence are forms of sexual misconduct covered under this policy.</p>
Sexual assault	<p>Non-consensual sexual contact and non-consensual sexual intercourse. All such acts of sexual assault are forms of sexual violence, and therefore sexual misconduct, covered under this policy.</p>
Non-consensual sexual contact	<p>Any intentional sexual touching, however slight, with any body part or object, by any individual upon another individual that is without consent and/or by force or coercion.</p> <p>Sexual contact includes: intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts or object, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.</p> <p>All such acts of non-consensual sexual contact are forms of sexual assault, and therefore sexual misconduct, covered under this policy.</p>
Non-consensual sexual intercourse	<p>Any sexual penetration, however slight, with any body part or object, by any individual upon another individual that is without consent and/or by force or coercion.</p> <p>Sexual penetration includes: vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact); no matter how slight the penetration or contact.</p> <p>All such acts of non-consensual sexual intercourse are forms of sexual assault, and therefore sexual misconduct, covered under this policy.</p>
Sexual exploitation	<p>Occurs when an individual takes non-consensual or abusive sexual advantage of another for that individual's own advantage or benefit, or to benefit or advantage anyone other than the individual being exploited, and that behavior does not otherwise constitute one of the other sexual violence offenses. Examples of sexual exploitation include, and are not limited to:</p> <ol style="list-style-type: none"> A. Engaging in voyeurism; B. Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals; C. Going beyond the boundaries of consent (such as letting others hide in a closet to watch you having consensual sex);



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	<p>D. Invasion of sexual privacy; E. Knowingly transmitting a sexually transmitted infection (STI) to another individual; F. Non-consensual video or audio-taping of sexual activity; G. Possession, use and/or distribution of alcohol or other drug (e.g., Rohypnol, Ketamine, GHB, Burundanga, etc.) for the purpose of engaging in or facilitating any activity prohibited under this policy. H. Prostituting another individual;</p> <p>All such acts of sexual exploitation are forms of sexual violence, and therefore sexual misconduct, covered under this policy.</p>
Relationship violence	<p>Dating violence and domestic violence. All such acts of relationship violence are forms of sexual misconduct covered under this policy.</p>
Domestic violence	<p>Conduct that would meet the definition of a felony or misdemeanor crime of violence committed by the complainant's current or former spouse or intimate partner, a person with whom the complainant shares a child in common, a person who is or has cohabitated with the complainant as a spouse or intimate partner, or individual similarly situated to a spouse under domestic or family violence law, or anyone else protected under the domestic or family violence law of the jurisdiction in which the offense occurred. An individual need not be charged with or convicted of a criminal offense to be found responsible for domestic violence pursuant to this policy.</p>
Dating violence	<p>Violence or threat of violence by an individual who has been in a social relationship of a romantic or intimate nature with the complainant. Whether there was such relationship will be determined based on the reporting party's statement and with consideration of the length and type of relationship, and the frequency of interaction of the persons involved in the relationship.</p>
Stalking	<p>A course of conduct directed at a specific individual that would cause a reasonable person under similar circumstances and with similar identities to the complainant to fear for her, his, or others' safety, or to suffer substantial emotional distress. A course of conduct includes two or more acts, including but not limited to, those in which the alleged perpetrator directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about the complainant, or interferes with the complainant's property.</p>
Consent	<p>Permission that is clear, knowing, voluntary, and expressed prior to engaging in and during an act. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.</p> <p>A. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. B. Consent may be withdrawn at any time. C. Previous relationships or prior consent cannot imply consent to future sexual acts; this includes "blanket" consent (i.e., permission in advance for any/all actions at a later time/place). D. Consent cannot be given by an individual who one knows to be – or based on the circumstances should reasonably have known to be – substantially impaired (e.g., by alcohol or other drug use, unconsciousness or blackout, etc.).</p> <ol style="list-style-type: none"> 1. Substantial impairment is a state when an individual cannot make rational, reasonable decisions because she/he lacks the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction). 2. This policy also covers individuals whose substantial impairment results from other physical or mental conditions including mental disability, sleep, involuntary physical restraint, or from the consumption of alcohol or other drugs. 3. Being impaired by alcohol or other drugs will never function as a defense for any behavior that violates this policy. <p>E. An individual cannot consent who has been coerced, including being compelled by force, threat of force, or deception; who is unaware that the act is being committed; or who is coerced by a supervisory or disciplinary authority.</p>
Title IX coordinator	<p>The designated university official with primary responsibility for coordinating the university's compliance with Title IX. This individual provides leadership for Title IX activities; offers consultation, education, and</p>



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Term	Definition
	training; and helps to ensure that the university responds appropriately, effectively, and equitably to all Title IX issues.
Deputy coordinator	Individual responsible for supporting the Title IX coordinator and accessible to any community member for consultation and guidance. A deputy coordinator is housed in Offices of Human Resources, Athletics, and Student Life. Only the deputy coordinators in Offices of Human Resources and Student Life oversee investigative functions; the deputy coordinator in Athletics does not.
University community	Faculty, staff, students, student employees, graduate associates, appointees, volunteers, vendors, and visitors.
Appointees	An individual deemed to have an affiliation with the university in a non-compensatory capacity as designated in the applicable Human Resources Information System.

Policy Details

- I. Scope
 - A. Medium
 1. This policy applies to alleged **sexual misconduct** in any medium. Sexual misconduct may manifest in many evolving forms (e.g., physical, verbal, visual, online/electronic/social media, etc.).
 - B. Location
 1. This policy applies to alleged sexual misconduct that takes place on university property or at university-sponsored events, regardless of their location.
 2. This policy may also apply to alleged sexual misconduct that occur off-campus when the Title IX coordinator or deputy coordinator determines that the alleged off-campus conduct could reasonably create a hostile environment.
 - C. Jurisdiction
 1. The university has a compelling obligation to address allegations and suspected instances of sexual misconduct when it knows or should have known information that would lead a reasonable person to believe that this policy has been violated. The university may take any action it deems appropriate, including informing the accused of the allegations and pursuing an investigation even in cases when the complainant is reluctant to proceed. The complainant will be notified in advance when such action is necessary.
 2. The university's disciplinary response may be limited if the accused is a visitor or other third-party or is not subject to the university's jurisdiction.
 - D. **Title IX coordinator and deputy coordinator**
 1. Alleged sexual misconduct involving any individual covered by this policy is addressed by the Title IX coordinator or deputy coordinator.
 2. See responsibilities section for a complete list of responsibilities.
 - E. This policy is not intended for, and will not be used to, infringe on academic freedom or to censor or punish members of the **university community** who exercise their legitimate first amendment rights.
 - F. Policy maintenance
 1. This policy is coordinated through the efforts of the Title IX coordinator and deputy coordinators.
 2. This policy and the associated procedures will be updated, revised, and edited only by a working group comprised of the Offices of Human Resources, Legal Affairs, Student Life, and University Compliance and Integrity.
- II. Romantic and/or Sexual Relationships
 - A. Romantic and/or sexual relationships between individuals in a supervisory, teaching, evaluation, advising, coaching, or counseling relationship constitute a conflict of interest. The individual in the position of higher institutional authority has the responsibility to eliminate the conflict of interest. The conflict of interest must be eliminated in a way which minimizes potential for harming the individual with lower institutional authority.



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- B. Faculty, staff, and students who are in the position to influence academic or employment decisions about others with whom they are in a romantic and/or sexual relationship should recuse themselves from such decisions.
- C. In the event of an allegation of **sexual harassment**, the university will strictly scrutinize a defense based upon **consent** when the facts establish that an institutional power differential existed within the relationship.
- D. Prohibited relationships
 - 1. Romantic and/or sexual relationships between faculty/staff/graduate associates/undergraduate TAs and students, and between attending physicians and medical residents/interns/fellows, cannot continue whenever there are supervisory, teaching, evaluation, advising, coaching, or counseling responsibilities for the student. Alternative academic/supervisory arrangements must be made to avoid being in a prohibited relationship; if acceptable alternative arrangements are not feasible, the relationship cannot continue.
 - 2. Romantic and/or sexual relationships between supervisor and employee are prohibited. No individual involved in a romantic and/or sexual relationship will have direct responsibility for evaluating the performance or for making decisions regarding the hiring, promotion, tenure, compensation, or termination of the other party to the relationship. Supervisors, including faculty supervisors, must take immediate steps to make acceptable alternative arrangements regarding their supervisory responsibility for the other party to avoid an actual or apparent conflict of interest. If acceptable alternative arrangements are not feasible, the relationship cannot continue.
 - 3. Notification responsibilities to avoid prohibited relationships
 - a. University faculty/staff/graduate associates/undergraduate TAs must notify their supervisor (e.g., dean, chair, vice president, direct supervisor, etc.) of any prohibited relationship in which they are involved; and, have a duty to cooperate in making acceptable alternative arrangements. The Office of Human Resources is available to facilitate or consult with parties about notification and making acceptable alternative arrangements.
 - b. Individuals who engage in prohibited relationships (i.e., who do not notify their supervisors and do not make acceptable alternative arrangements) are in violation of this policy. Supervisors, including faculty supervisors, who obtain information that would lead a reasonable person to believe that the Romantic and/or Sexual Relationships section of this policy has been violated, have an institutional duty to report the violation to the Office of Human Resources.
 - c. Individuals in positions of power, who engage in a series of exploitive sexual or romantic relationships, whether or not notification has occurred, may be held in violation of the romantic and/or sexual relationship section of this policy.
 - 4. Making acceptable alternative arrangements means removing any supervisory, teaching, evaluation, advising, coaching, or counseling responsibilities between the individual with institutional power and the student or employee. The alternative arrangements should avoid negative consequences for the student or employee; if acceptable alternative arrangements are not feasible, the relationship cannot continue.
- E. Corrective action for prohibited romantic and/or sexual relationships
 - 1. After a thorough review of the facts, corrective action will be taken with any faculty/staff/student employee who violates the romantic and/or sexual relationship section of this policy by:
 - a. Entering into or engaging in a prohibited relationship without notification and without making immediate acceptable alternative arrangements, or
 - b. Failing to follow any part of this policy, or
 - c. Failing to implement any responsibility of supervisors as identified in this policy. This applies to all supervisors, including faculty who serve in supervisory roles.
 - 2. The corrective action process will be in accordance with university policies, faculty rules, or Code of Student Conduct.
 - 3. An individual who promptly provides notification of a prohibited relationship and cooperates in making acceptable alternative arrangements in a timely manner will not be held in violation of the romantic and/or sexual relationship section of this policy.



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F. Important advisory statement on romantic/sexual relationships

1. Individuals in positions of power must be aware that romantic or sexual relationships with students are fraught with danger for exploitation and pose a legal risk to both the individual and the institution.
2. There are special risks in any sexual or romantic relationship between individuals in inherently unequal positions of power. These relationships may be subject to concerns about the validity of consent and unfair treatment of other students or employees. Such relationships can undermine the atmosphere of trust essential to the educational process and the employment relationship. They may, moreover, be less consensual than the individual whose position confers power believes. The apparent consensual nature of the relationship is inherently suspect due to the fundamental asymmetry of power in the relationship and it thus may be difficult to establish consent as a defense to a charge. Even when both parties consented at the outset to a romantic or sexual involvement, this past consent does not remove grounds for or preclude a charge or subsequent finding of sexual harassment based upon subsequent unwelcome conduct.
3. The greater the institutional power differential that exists the greater risk there is for exploited consent. Exploited consent exists when consent to a relationship is given as a function of the position of power one individual occupies over another within an institution.
4. Many international students, faculty, and staff come from cultures in which deference to any authority figure is important and sexual harassment laws do not exist. Some individuals may be especially vulnerable to exploitive relationships given cultural, language, and immigration/visa issues. Faculty, staff, and students should be very careful to avoid relationships that may be exploitive in nature.
5. The university discourages romantic and/or sexual relationships between faculty and students due to the possibility of a power differential.
6. The university strongly discourages romantic and/or sexual relationships between faculty and graduate students when in the same department; between faculty and undergraduate students majoring in the faculty member's area of expertise; when the faculty member has any influence over academic judgments about the student; and in any context when the perceived power differential may be significant.

III. Employee Duty to Report

- A. All university employees, except those exempted by legal privilege of confidentiality or expressly identified as a confidential reporter, have an obligation to report incidents of **sexual assault**. Any employee who becomes aware of information that would lead a reasonable person to believe that sexual assault may have occurred involving anyone covered under this policy, must report such information immediately.
- B. The following members of the university community have an additional obligation to report incidents of sexual harassment as well as sexual assault when they become aware of information that would lead a reasonable person to believe that sexual harassment may have occurred involving anyone covered under this policy. These individuals must report the incident within five work days of becoming aware of such information:
 1. Any human resource professional (HRP);
 2. Supervisor, including faculty supervisors and volunteer supervisors;
 3. Chair/director; and
 4. Faculty member.
- C. Employees with a duty to report may make such reports in the following formats:
 1. To report any information regarding sexual misconduct, contact the [Title IX coordinator](#) by emailing titleix@osu.edu; or
 2. To report allegations of employee sexual misconduct, contact the deputy Title IX coordinator in the [Office of Human Resources](#) by calling 614-292-2800 (medical center employees contact 614-293-4988), filing a [Discrimination and Harassment Complaint](#) form; or emailing sexualharassment@osu.edu; or
 3. To report allegations of student sexual misconduct, contact the deputy Title IX coordinator in the [Office of Student Life, Student Conduct Department](#) by calling 614-292-0748 or emailing studentconduct@osu.edu.



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- D. The following categories of employees are exempt from the duty to report sexual assault and sexual harassment, due to their legal or professional privilege of confidentiality or their designation by the university as a confidential reporter.
1. Professional and pastoral counselors
 - a. A professional counselor is a person whose official responsibilities include providing mental health counseling to members of the university community and who is functioning within the scope of that license or certification. This definition applies even to professional counselors who are not employees of the university, but are under contract to provide counseling at the university. This also includes an individual who is not yet licensed or certified as a counselor, but is acting in that role under the supervision of an individual who is licensed or certified. An example is a Ph.D. counselor-trainee acting under the supervision of a professional counselor at the university.
 - b. A pastoral counselor is a person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition. In this context, a pastor or priest who is functioning as an athletic director or as a student advocate would not be exempt from the reporting obligations.
 2. Other employees with a professional license requiring confidentiality or who are supervised by such a person, such as Student Health Services employees and medical center employees, and who are functioning within the scope of that license or certification. For example, a physician with dual appointments (clinician and professor) would be required to report instances of sexual harassment and sexual assault of which she or he becomes aware of in the scope of her or his employment as a professor, but while operating as a clinician may keep such information confidential.
- E. Corrective action may be taken against any individual who has a duty to report and who fails to respond in a manner consistent with the provisions of applicable laws, regulations, policies, and procedures.
- IV. Confidentiality
- A. The university recognizes the importance of confidentiality. To the extent possible, information received in connection with the filing, investigation, and resolution of allegations will be treated as confidential except when necessary to conduct an appropriate investigation, to provide assistance and resources to complainants, to perform other appropriate university functions, or when the university is required to provide information under the law.
 - B. When requests for confidentiality arise, they will be evaluated by the Title IX coordinator to determine whether the university can honor the request while still providing a safe and nondiscriminatory environment.
 1. When a complaint involves or impacts students, complainants will be advised that honoring a request for confidentiality may limit the university's ability to respond fully to the incident, including pursuing disciplinary action against the accused.
 2. In cases not involving or impacting students, the university may have a compelling responsibility to pursue an investigation regardless of the complainant's request for confidentiality.
 - C. All individuals involved in the process should observe the same standard of discretion and respect for everyone involved in the process.
- V. Retaliation
- A. The university will not tolerate retaliation in any form against any individual who makes an allegation, files a report, serves as a witness, assists a complainant, or participates in an investigation of discrimination or harassment. University policy and state and federal law prohibit retaliation against an individual for reporting discrimination or harassment, or for participating in an investigation.
 - B. Retaliation is a serious violation that can subject the offender to discipline, up to and including termination of employment and/or student status, independent of the merits of the underlying allegation.
- VI. Investigation and Resolution Options
- A. Early resolution
 1. Early resolution may be appropriate in some circumstances if all parties agree; the university approves; and only with the assistance of a university official such as a counselor, trained mediator, or designated



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administrator. Early resolution is encouraged when the parties desire to resolve the situation cooperatively and/or when a formal resolution is not likely to yield a satisfactory outcome. Participation in early resolution is voluntary. Early resolution may include an inquiry into the facts, informal discussion with the parties, mediation, referral to counseling, conducting targeted preventative educational and training programs, and/or providing remedies for the individual harmed by the offense. Early resolution may be appropriate for responding to anonymous reports and/or third-party reports. Steps taken in early resolution must be documented.

2. In cases of alleged **sexual violence**, mediation is never an appropriate option for resolution, even on a voluntary basis.
3. Complainants are never required by the university to discuss issues directly with the accused.
4. In all cases, the university will inform the complainant of her or his right to end the informal process at any time and either choose to begin the formal stage of the report process or choose not to further pursue the matter.

B. Formal investigation and resolution

1. In instances when early resolution is inappropriate or unsuccessful, when any party requests, or when the university requires formal investigation of alleged sexual misconduct, the university will consider the concerns and rights of all parties and provide an equitable process.
2. In cases when the complainant states she or he does not want to pursue a formal investigation, the complainant will be informed that the ability to investigate may be limited. When determining whether to move forward with a formal investigation, the Title IX coordinator or deputy coordinator may consider:
 - a. The seriousness of the allegation;
 - b. In the case of a student complainant, the age of the student;
 - c. Whether there have been other complaints or reports against the accused; and
 - d. Privacy concerns of the complainant.
 - e. Under some circumstances, the Title IX coordinator or deputy coordinator may have an obligation to formally investigate a complaint, such as when there is a risk to the campus community, and the complainant will be informed as such.

C. Investigators will be trained to resolve cases of alleged sexual misconduct and will be familiar with applicable policies and procedures.

VII. Remedies

A. When the university makes a finding of a policy violation it will take steps, whether individual or systemic, to stop the alleged sexual misconduct, prevent its recurrence, eliminate any hostile environment, and remedy the discriminatory effects on the complainant and others, as appropriate.

B. Corrective action/sanctions

1. When the accused is a student, sanctions may be taken pursuant to the [Code of Student Conduct](#). Potential sanctions under the Code of Student Conduct include formal reprimand, disciplinary probation, suspension, dismissal, and other appropriate educational sanctions.
2. In the event that a record of such sanction will become a part of the accused's educational records, prior notice will be given.
3. When the accused is an employee, corrective actions may be taken pursuant to the [Corrective Action and Involuntary Termination](#) policy, [Student Employment](#) policy, and/or the [Rules of the University Faculty 3335-5-04](#). Potential corrective actions include coaching, development plans, reduction in supervisory duties and leadership responsibilities, changes in salary, termination, and other appropriate corrective actions.
 - a. In the event that a record of such corrective action will become a part of the accused's personnel records, prior notice will be given.
 - b. Corrective action may also be taken against any individual with a duty to report under this policy who fails to report alleged sexual misconduct in a manner consistent with the provisions of this policy.



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4. Student employees may be subject to corrective action and sanctions under both sections 1 and 3 above. For instance, a student employee who is dismissed from the university under section 1 may also be subject to termination or other corrective action under section 3.
- C. Interim measures
1. Interim measures may be available before the final outcome of an investigation to ensure equal access to the university's education and employment programs and activities, and to protect the complainant when necessary. Interim measures may be available to the complainant whether or not formal investigation is used. Interim measures may continue past the duration of the investigation as deemed appropriate by the university. Interim measures may include and are not limited to:
 - a. No contact order,
 - b. Victim advocacy,
 - c. Housing assistance/relocation,
 - d. Counseling,
 - e. Health services,
 - f. Safety resources,
 - g. Academic support,
 - h. Change in work schedule/location, and
 - i. Consideration of leave requests.
 2. The Title IX coordinator, deputy coordinator, and other specifically designated university employees will coordinate the provision of interim measures. Complainants will not be required to arrange such measures by themselves. When providing interim measures, the university will minimize the burden on the complainant.
- D. Other remedial measures
1. When the university is unable to conduct a full investigation into a particular incident due to a lack of specificity in the report or request for confidentiality, the university may take other remedial measures as appropriate to remedy the effects of the alleged sexual misconduct and/or prevent its recurrence. Remedial measures may also be implemented when it is determined that inappropriate behavior occurred, and that the behavior did not rise to the level of a policy violation. Remedial measures may include and are not limited to:
 - a. Providing training on sexual misconduct,
 - b. Increasing security in a designated space,
 - c. Changing policy or procedure, and
 - d. Conducting climate checks.
- VIII. False Allegations
- A. The absence of a finding of a policy violation is not equivalent to a false allegation.
 - B. It is a violation of this policy for anyone to knowingly or with reckless disregard for the truth make false allegations of sexual misconduct. Corrective action/sanctions may be imposed on individuals who knowingly or with reckless disregard for the truth make false allegations of sexual misconduct.
- IX. Use of Sexual Misconduct Allegations in Employment or Academic Actions
- A. When making decisions affecting an individual's employment or academic status, allegations of sexual misconduct may be considered only if they have been addressed through this policy or procedure, a court of law, or other administrative proceeding.



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PROCEDURE

Issued: 10/01/1980

Interim Revised: 09/01/2015

- I. Reporting Allegations of Sexual Misconduct
 - A. A report can be made by any individual who is directly involved in, who observes, or who reasonably believes that sexual misconduct may have occurred. This includes allegations by third parties against any individual covered by this policy. Members of the university community have a duty to report such information; see Employee Duty to Report section above.
 - B. Reports can be made by contacting the [Title IX coordinator](#) or by using the following resources:
 1. To report allegations of employee sexual misconduct, contact the deputy Title IX coordinator in the [Office of Human Resources](#) by calling 614-292-2800 (medical center employees contact 614-293-4988), filing a [Discrimination and Harassment Complaint](#) form; or emailing sexualharassment@osu.edu; or
 2. To report allegations of student sexual misconduct, contact the deputy Title IX coordinator in the [Office of Student Life, Student Conduct Department](#) by calling 614-292-0748 or emailing studentconduct@osu.edu.
 3. [University Anonymous Reporting Line](#); and/or
 4. [University Police](#) (to report criminal activity only).
 - C. While reports may be made to any of these channels, the employee duty to report is not fulfilled by using the University Anonymous Reporting Line or University Police. See Policy Details section III.C. for employee duty to report.
 - D. Filing a report with the university does not preclude the individual from filing a report with an external law enforcement or other agency nor does it extend time limits with those agencies. Individuals may request assistance from the Title IX coordinator or deputy coordinator to notify such authorities.
- II. Reporting Retaliation
 - A. Allegations of retaliation should be directed to the [Title IX coordinator or deputy coordinator](#).
- III. Conducting Investigations
 - A. All parties will be informed of the procedures of the investigation and all allegations being investigated.
 - B. Parties may have a support person of their choice present during any applicable investigation meeting, student hearing, or other disciplinary proceeding related to the investigation. The role of the support person is only to be present; they will not be provided documentation or allowed to interject during the meeting. If a support person is determined to be unreasonably interfering with the meeting or proceeding, she or he may be asked to leave.
 - C. Irrelevant prior sexual history of either party will not be allowed as evidence in any proceeding.
 - D. The investigator will apply a preponderance of the evidence standard to determine whether a violation of this policy has occurred.
 - E. A typical investigation will take approximately 60 calendar days following receipt of the complaint. This will vary depending on the complexity of the investigation and the severity and extent of the alleged sexual misconduct. When in an individual case the following timeframes cannot be met for legitimate reasons, the parties will be informed when and why they will not be met.
 1. The 60 calendar day timeframe refers to the entire investigation process, which includes and is not limited to:
 - a. Initiating the investigation including contacting the complainant for an intake interview (7 days);
 - b. Conducting the fact-finding investigation (33 days);
 - c. Holding a hearing or engaging in another decision-making process to determine whether a policy violation has occurred (10 days); and
 - d. Determining what actions the university will take to eliminate the hostile environment, prevent its recurrence, and remedy its discriminatory effects, including imposing sanctions against the accused and providing remedies for the complainant and university community, as appropriate, and issuing written notice of the finding of the investigation (10 days).



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2. Other factors may affect one or more parts of the timeframe, including and not limited to, the complexity, severity, and extent of the alleged sexual misconduct. The process may be extended if necessary due to illness, holidays, unavailability of parties or witnesses, complexity of the case, or competing demands on investigators or decision makers.
- F. The investigation generally will include interviews with the parties if available, interviews with other witnesses as determined by the investigator, and a review of relevant documents as appropriate. In cases of alleged sexual assault, **relationship violence**, or stalking, parties will be given timely and equal access to information that will be used during disciplinary meetings and hearings.
1. In cases of alleged sexual misconduct by an employee, investigated by the Office of Human Resources and/or the Office of University Compliance and Integrity, the investigator will prepare a written case report that typically provides a summary of facts, analysis, findings, and recommended corrective actions. This report is shared with the complainant and accused at the conclusion of the investigation.
 2. In cases of alleged sexual misconduct by a student, investigated by the Office of Student Life, Student Conduct Department, a student charged with one or more violations of [Code of Student Conduct](#) has the right to a hearing. In a case when a charged student admits to such violation(s) in writing, the student may request in writing to have a decision as to appropriate action made administratively by a hearing officer rather than have the charges referred to a hearing officer or board for a hearing. In such situations, the student waives the right to a hearing and the related procedural guarantees provided by a hearing officer or board hearing. In cases of sexual misconduct, the university conduct board consists only of faculty and staff representatives.
- G. Notification of Findings
1. In all cases of alleged sexual misconduct, the accused will be informed in writing of the finding and any recommendation for sanctions or corrective action. The complainant will be informed in writing of the finding, any actions taken to resolve the complaint that are directly related to the complainant, and any disciplinary action or sanction imposed when the complainant needs to be aware of the sanction for it to be fully effective (e.g., restrictions on communication or contact with the complainant).
 2. In cases of sexual assault, relationship violence, or stalking, parties will receive notice of findings simultaneously, in writing, including notice of all sanctions or corrective actions imposed.
 3. In cases adjudicated by the Office of Student Life, Student Conduct Department, the parties will be notified of the institution's procedures for appeal, the results of any appeal, any change to the result, and when such results become final.
- H. In cases involving employees subject to collective bargaining agreements or university rules, parties will retain all rights afforded under applicable federal, state, or local laws.

Responsibilities

Position or Office	Responsibilities
Title IX coordinator	<ol style="list-style-type: none"> 1. Oversee all Title IX reports and investigations. 2. Oversee the maintenance of comprehensive documentation of the receipt of a report, investigation, and resolution. 3. Oversee the communication of investigation findings to the complainant and accused. 4. Ensure appropriate action steps, corrective action, and/or sanctions are issued. 5. Monitor action steps, corrective action, and/or sanctions to ensure behavioral change and compliance. 6. Address all concerns promptly and thoroughly. 7. Respect the confidentiality and reputation of all parties. 8. Refer individuals to available university and/or community resources if counseling assistance is needed. 9. Ensure that individuals delegated the responsibility for receiving and/or investigating reports receive ongoing training on the substantive requirements of Title IX. 10. Coordinate investigations with University Police as necessary. 11. Ensure that the Title IX coordinator's other job responsibilities do not create a conflict of interest in regard to their Title IX responsibilities.



**THE OHIO STATE
UNIVERSITY**

Sexual Misconduct, Sexual Harassment, and Relationship Violence, 1.15

University Policy

Applies to: Faculty, staff, students, student employees, graduate associates, appointees, volunteers, vendors, & visitors.

Position or Office	Responsibilities
	<ol style="list-style-type: none"> 12. Periodically review reports to identify any patterns of sex- or gender-based discrimination. 13. Develop and implement regular university-wide events to raise awareness about all forms of sex- and gender-based discrimination. 14. Retain ultimate oversight responsibility for any responsibilities designated to Title IX deputy coordinators. 15. Develop and implement periodic Title IX training for the university community. 16. Periodically review Title IX related policies and procedures to ensure that they are an efficient resource for the university.
Deputy coordinators	<ol style="list-style-type: none"> 1. Oversee all Title IX reports and investigations. 2. Oversee the maintenance of comprehensive documentation of the receipt of a report, investigation, and resolution and provide to the Title IX coordinator. 3. Oversee the communication of investigation findings to the complainant and accused. 4. Ensure appropriate action steps, corrective action, and/or sanctions are issued. 5. Monitor action steps, corrective action, and/or sanctions to ensure behavioral change and compliance. 6. Address all concerns promptly and thoroughly. 7. Respect the confidentiality and reputation of all parties. 8. Refer individuals to available university and/or community resources if counseling assistance is needed. 9. Ensure that individuals delegated the responsibility for receiving and/or investigating reports receive ongoing training on the substantive requirements of Title IX. 10. Coordinate investigations with University Police as necessary. 11. Ensure that the deputy's other job responsibilities do not create a conflict of interest in regard to their Title IX responsibilities.
Office of Human Resources (OHR)	<ol style="list-style-type: none"> 1. Conduct all investigations when the accused is an employee, including student employees. In cases when the accused is a student employee, collaborate with the Office of Student Life, Student Conduct Department. 2. Maintain comprehensive documentation of the receipt of a report, investigation, and resolution and provide to the Title IX coordinator. 3. Communicate investigation findings to the complainant and accused. 4. Issue appropriate action steps and/or corrective actions. 5. Monitor action steps and/or corrective action to ensure behavioral change and compliance. 6. Address all concerns promptly and thoroughly. 7. Respect the confidentiality and reputation of all parties. 8. Refer individuals to available university and/or community resources if counseling assistance is needed.
Office of Student Life, Student Conduct Department	<ol style="list-style-type: none"> 1. Conduct all investigations when the accused is a student in the non-employment context. In cases when the student is also a student employee, collaborate with the Office of Human Resources. 2. Maintain comprehensive documentation of the receipt of a report, investigation, and resolution and provide to the Title IX coordinator. 3. Communicate investigation findings to the complainant and accused. 4. Issue appropriate action steps and/or sanctions. 5. Monitor action steps and/or sanctions to ensure behavioral change and compliance. 6. Address all concerns promptly and thoroughly. 7. Respect the confidentiality and reputation of all parties. 8. Refer individuals to available university and/or community resources if counseling assistance is needed.
Human resource professional (HRP)	<ol style="list-style-type: none"> 1. Report sexual harassment within five work days when you become aware of information that would lead a reasonable person to believe that sexual harassment may have occurred. 2. Report sexual assault immediately when you become aware of information that would lead a reasonable person to believe that sexual assault may have occurred. 3. Address all concerns promptly and thoroughly. 4. Respect the confidentiality and reputation of all parties. 5. Refer individuals to available university and/or community resources if counseling assistance is needed.



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UNIVERSITY**

Sexual Misconduct, Sexual Harassment, and Relationship Violence, 1.15

University Policy

Applies to: Faculty, staff, students, student employees, graduate associates, appointees, volunteers, vendors, & visitors.

Position or Office	Responsibilities
Supervisor (including faculty supervisor and volunteer supervisor), chair/director, and faculty member	<ol style="list-style-type: none"> 1. Report sexual harassment within five work days when you become aware of information that would lead a reasonable person to believe that sexual harassment may have occurred. 2. Report sexual assault immediately when you become aware of information that would lead a reasonable person to believe that sexual assault may have occurred. 3. Address all concerns promptly and thoroughly. 4. Respect the confidentiality and reputation of all parties. 5. Refer individuals to available university and/or community resources if counseling assistance is needed.
All employees	Report sexual assault immediately when you become aware of information that would lead a reasonable person to believe that sexual assault may have occurred.

Resources

For more information:

Affirmative Action, Equal Employment Opportunity and Non-Discrimination/Harassment, Policy 1.10,

hr.osu.edu/public/documents/policy/policy110.pdf

Code of Student Conduct, studentaffairs.osu.edu/csc/

Corrective Action and Involuntary Termination, Policy 8.15, hr.osu.edu/policy/policy815.pdf

Discrimination and Harassment Complaint form, hr.osu.edu/public/documents/forms/shdisccomplaint.pdf

Frequently Asked Questions, hr.osu.edu/public/documents/policy/resources/115faq-general.pdf

Frequently Asked Questions: Romantic and/or Sexual Relations,

hr.osu.edu/public/documents/policy/resources/115faq-relations.pdf

General Records Retention Schedule, library.osu.edu/documents/records-management/general-schedule.pdf

Nondiscrimination Notice, hr.osu.edu/public/documents/policy/resources/110nondiscrimnotice.pdf

Rules for Classified Civil Service, hr.osu.edu/policy/ccs/

Rules of the University Faculty, 3335-5-04, trustees.osu.edu/university/facultyrules

Student Employment, Policy 10.10, hr.osu.edu/policy/policy1010.pdf

Task Force Examining the Policy on Consensual Relationships Report and Recommendations,

hr.osu.edu/policy/resources/115report.pdf

Workplace Violence, Policy 7.05, hr.osu.edu/public/documents/policy/policy705.pdf

For support and counseling:

Counseling and Consultation Service, 614-292-5766, ccs.ohio-state.edu

Office of Student Life, 614-292-9334, studentlife.osu.edu

Student Advocacy Center, Sexual Civility & Empowerment, 614-292-1111, advocacy.osu.edu/sexual-violence/

The Ohio State Employee Assistance Program, 614-292-4472, osuhealthplan.com/members/ohio-state-employee-assistance-program-eap

For issues of academic freedom:

Council on Academic Freedom and Responsibility (CAFR), senate.osu.edu/committees/CAFR/CAFR.html

Contacts

Subject	Office	Telephone	E-mail/URL
Policy consultation	Employee Relations, Office of Human Resources	614-292-2800	ohrc@hr.osu.edu hr.osu.edu/elr
To make a report	Title IX coordinator or deputy coordinator	See Title IX coordinators list at titleix.osu.edu/	titleix@osu.edu titleix.osu.edu



**THE OHIO STATE
UNIVERSITY**

Sexual Misconduct, Sexual Harassment, and Relationship Violence, 1.15

University Policy

Applies to: Faculty, staff, students, student employees, graduate associates, appointees, volunteers, vendors, & visitors.

Anonymous report	Anonymous Reporting Line (does not satisfy employee duty to report)	866-294-9350	secure.ethicspoint.com
Criminal report	University Police (to report criminal activity only; does not satisfy employee duty to report)	911 (emergency) 614-292-2121(non-emergency)	ps.ohio-state.edu
Faculty issues	Office of Academic Affairs	614-292-5881	oaa.osu.edu/
Title IX	Title IX coordinator, Office of University Compliance and Integrity	614-247-5838	titleix@osu.edu titleix.osu.edu

History

Issued:	10/01/1980	Issued as Sexual Harassment
Revised:	01/06/1983	
Revised:	11/05/1993	
Edited:	01/15/1997	
Edited:	10/31/1997	
Revised:	07/08/2000	
Revised:	01/01/2004	
Revised:	07/01/2006	
Edited:	12/01/2013	
Interim revised:	09/01/2015	Renamed Sexual Misconduct, Sexual Harassment, and Relationship Violence

Exhibit C

RESOLUTION AGREEMENT OHIO STATE UNIVERSITY OCR DOCKET #15-10-6002

The U.S. Department of Education, Office for Civil Rights (OCR), initiated this proactive compliance review of The Ohio State University (the University) on June 23, 2010, pursuant to Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibits discrimination based upon sex in any education program or activity receiving Federal financial assistance.

The University has embarked on the development and revision of policies specifically designed to implement the statutory requirements and relevant guidance from governmental agencies, and to develop better practices in its processes of prevention and response to these issues. To date, actions already taken by the University have included the following:

- ❖ Appointment of a Title IX Coordinator with electronic and public forum communications about the appointment and role.
- ❖ Creation of the Office of University Compliance and Integrity, which addresses, among other things, Title IX compliance, and houses the Title IX Coordinator.
- ❖ Creation of a Title IX webpage with a collection of resources designed to be a “one-stop shop” for securing information about Title IX and sex discrimination.
- ❖ Creation of a University-wide Title IX notice of nondiscrimination, including web links to the statement on the footer banner of many of the University web pages, including the University’s Title IX web page.
- ❖ Appointment of Deputy Title IX Coordinators with electronic notification of their identity and contact information.
- ❖ Additions to the Student Conduct web page with links to various resources, including the Student Code of Conduct; information about sexual harassment; hearing procedures; information about sexual violence, including but not limited to information about Title IX compliance; definitions; the University’s sexual misconduct policy; consent; filing complaints; the standard of proof applied; victim resources; law enforcement; no contact orders; protection orders; accused’s rights; and victim’s rights.
- ❖ Appointment of the Sexual Violence Consultation Team (SVCT), a group of first responders who meet monthly to discuss all sexual harassment/violence complaints received to determine whether/not the correct responder is investigating the complaint; that the correct resources are being provided; to ensure that the correct referrals are being made, and to provide review and input on related issues and inquiries.
- ❖ Training on Title IX issues for segments of the University community, ranging from in-depth multi-session training for individuals with specific responsibilities under the policy,

to sessions for targeted departments or administrative groups; and training for new and returning students.

- ❖ A system of cooperation between the University police and University officials charged with investigating complaints of sexual harassment/violence.
- ❖ Demonstrated responsive and appropriate actions taken against students, faculty and staff who violate Title IX as it relates to sexual harassment and sexual violence.
- ❖ In response to a University finding of a sexually hostile environment in the University's marching band, issuance of a statement from the University president to the campus community assuring the community of the University's commitment to address violations of Title IX and to provide a safe campus.

The University agrees to take the following steps:

I. TITLE IX COORDINATOR

By November 15, 2014, the University will develop a statement of roles and responsibilities and mandatory training requirements for its Title IX Coordinator to, at a minimum, include:

- A. The Title IX Coordinator(s) will coordinate with appropriate administrative, student services, and law enforcement offices on campus (e.g., housing, academic deans, health and counseling services, University Police Department (UPD), Human Resources, and Student Judicial Affairs (SJA)) in order to identify and address any patterns or systemic problems under Title IX and to assess the overall efficacy of the coordination among these various offices.
- B. The Title IX Coordinator will have expert knowledge of the University's Title IX grievance procedure(s) and oversee all Title IX complaints received by the Title IX Coordinator and all other departments, offices, and individuals delegated the responsibility for receiving and/or investigating complaints of sex discrimination, including sexual harassment and sexual assault, and will address any patterns or systematic problems that arise during the review of such complaints and assess overall efficacy of coordination and of overall response by the University to sexual misconduct, including the implementation and efficacy of interim measures taken to protect the parties during the grievance process, steps taken to stop sex discrimination/harassment found to have occurred and prevent its recurrence, eliminate any hostile environment that has been created for students, and steps taken to remedy its discriminatory effects on the complainant and others, as appropriate.
- C. The Title IX Coordinator will be responsible for the prompt investigation of complaints alleging sexual harassment; making findings as to whether sexual harassment occurred or not; identifying remedies (including interim measures) necessary to address the sexual harassment, eliminate any hostile environment, and

prevent its reoccurrence; and serving as consultant to any disciplinary hearing panel where sexual harassment has been determined to have occurred to ensure the University's compliance with Title IX. To the extent that any of these duties will be delegated to other individuals at the University, the statement will clearly state what will be delegated to whom and how the Title IX Coordinator will retain oversight of any delegated responsibilities.

- D. The Title IX Coordinator will oversee the provision of initial and ongoing training on the substantive requirements of Title IX and how to investigate complaints under Title IX that allege sex discrimination, including sexual harassment and sexual violence, filed by students, staff, and faculty to any deputy coordinators and any other individuals from any University department or office delegated the responsibility for receiving and/or investigating complaints of sex discrimination, including sexual harassment and sexual assault.
- E. The Title IX Coordinator will have responsibility for the development, scheduling, and implementation of regular events hosted by or supported by the University leadership on campus to raise awareness in the campus community about all forms of sex discrimination (including sexual harassment and sexual assault) and the University's policies and procedures regarding such matters, so as to reinforce to the University community the importance of this issue to the University administration.
- F. The Title IX Coordinator will retain ultimate oversight responsibility for any deputy coordinators the University designates to assist the Title IX Coordinator. The University also will develop specific statements of roles and responsibilities for each deputy coordinator that clearly delineate the scope of each deputy coordinator's duties and their subordinate roles to the Title IX Coordinator.
- G. The Title IX Coordinator will be responsible for providing information to students and employees regarding their Title IX rights and responsibilities, including information about the resources available on and off campus, the formal and informal complaint processes, the availability of interim measures, and the ability to file a complaint with local law enforcement and complaint with the University simultaneously.
- H. The Title IX Coordinator will be responsible for the development, scheduling, and implementation of necessary periodic Title IX training for the University community (i.e., staff, faculty, resident assistants, coaches, students, etc.).
- I. The Title IX Coordinator will be responsible for periodic review and assessment of the University's Title IX procedures, and any related policies and procedures, to ensure that they are consolidated to the maximum extent possible to provide an efficient resource for students, faculty, and staff.

- J. Neither the Title IX Coordinator nor any deputy coordinators should have other job responsibilities that create a conflict of interest with regard to their duties and responsibilities under Title IX.
- K. The Title IX Coordinator will be responsible for communicating with the UPD regarding the University's obligations under Title IX and serving as a resource on Title IX issues. The Title IX Coordinator will be given access to UPD records regarding Title IX investigations, so long as it does not compromise the criminal investigation or is otherwise prohibited by law.
- L. The Title IX Coordinator will be responsible for coordinating the development and implementation of annual assessments (i.e. surveys) of campus climate with regard to sexual harassment and sexual violence.

REPORTING REQUIREMENT:

By November 15, 2014, the University will provide OCR with the statement drafted pursuant to Item I above, and copies of any University publications, website links, or other materials where the statement has been published.

II. DOCUMENT MAINTENANCE

The University will maintain comprehensive documentation of its receipt, investigation, and resolution of all oral and written complaints, reports or other notice of sexual harassment. Effective immediately, in addition to the documentation it already maintains, the University will also maintain documentation fully detailing any interim measures afforded to complainants pending the completion of an investigation and, where sexual harassment is found to have occurred, documentation fully detailing all the steps, individual and systemic, the University took to stop the harassment, prevent its recurrence, eliminate any hostile environment, and remedy its discriminatory effects on the complainant and any others as appropriate.

REPORTING REQUIREMENT:

- 1. By December 15, 2014, the University will provide to OCR verification that it is implementing the documentation system described in Item II.

III. TITLE IX POLICIES, PROCEDURES, AND RELATED WRITTEN MATERIALS

- A. By October 15, 2014, the University will submit for OCR review and approval a revised general notice of nondiscrimination to comply with the applicable requirements of the Title IX regulation at 34 C.F.R. § 106.9 regarding notice of nondiscrimination. As part of its revisions, the University will re-title its notice of nondiscrimination "Notice of Nondiscrimination" and remove "Title IX" from the title; revise the document to make clear it is the University's, and not solely Human Resources,' notice; and add notice and contact information of the University's other

civil rights coordinators in every place the notice of nondiscrimination is published, including the University's Title IX web page.

- B. To address sexual harassment, including sexual violence, the University currently has in place a number of policies, procedures, guidelines, and other related documents, including, but not limited to: sexual harassment policies and procedures published on the Title IX web page of the Office of University Compliance and Integrity; the Sexual Violence Response Guidelines; Policy Guidelines: Sexual Harassment by Students in the Non-Employment Context; Code of Student Conduct; OSU's Sexual Misconduct Policy; Human Resources Policy 1.15: Sexual Harassment Policy; Human Resources Guidelines for Investigating Complaints of Discrimination and Harassment; Human Resources Policy 1.10: Affirmative Action, Equal Employment Opportunity & Non-Discrimination/Harassment Policy; resource materials published by the Student Wellness Center; and resource materials published by the Office of Diversity and Inclusion.

By October 15, 2014, the University will conduct a comprehensive review of all of the documents listed above, and any additional relevant published University materials through any University department or office, and submit for OCR review and approval revised sexual harassment policies and procedures and other related documents for complaints and reports of harassment involving students, faculty, staff, and third parties. The University will revise or eliminate the policies and procedures as appropriate, including revising or adding cross-references and links between the various documents, to ensure, at a minimum:

1. All University policies, procedures, guidelines, and other documents are internally consistent and do not contain conflicting/contradictory information.
2. The documents clearly and consistently state the University's commitment to respond to all complaints and reports of sexual harassment as well as any other incidents of sexual harassment of which it knows or should know about.
3. The documents clearly and consistently state the specific University employees and/or offices that are responsible for accepting, investigating, and resolving complaints of sexual harassment, including sexual violence. If this varies depending on the type of complaint, they will clearly and consistently state where each specific type of complaint is to be filed, investigated, and resolved.
4. The documents clearly and consistently explain how complaints of sexual harassment by third parties can be made.
5. The documents clearly and consistently explain the specific University policy and/or procedure that applies to each type of complaint investigation.

6. The documents provide consistent definitions of and guidance about the University terms “sexual harassment,” “consent,” “sexual violence,” “sexual assault,” and “sexual misconduct.”
7. Complainant’s rights in the sexual harassment grievance process are consistently stated and are equitable to the rights afforded the alleged perpetrator of the harassment.
8. The alleged perpetrator of harassment’s rights in the sexual harassment grievance process are consistently stated and are equitable to the rights afforded the complainant.
9. The documents clarify that, in determining whether sexual harassment against a student resulted in a sexually hostile environment, the University will also consider the conduct in question from both a subjective and objective perspective.
10. The documents clearly describe the protections afforded against retaliatory harassment.
11. With regard to mandatory reporting of sexual harassment by employees, the documents clearly and consistently state who the specific “appropriate university officer” to whom the report should be made is for each type of harassment to be reported.
12. The documents provide clear and consistent assurance that, regardless of which University employee or entity processes the complaint, the Title IX Coordinator will maintain oversight of the complaint investigation and resolution, will be provided written notice of the complaint and the investigation determination, and, where sexual harassment is found to have occurred, will oversee the steps the University will take in response. These steps will not just include discipline against the harasser or steps to stop the harassment, but will also include all steps necessary, individual and systemic, to prevent recurrence, to eliminate any hostile environment and to remedy the discriminatory effects of the harassment on the complainant and others, as appropriate. The documents will provide description of the various steps and remedies that might be provided depending on the investigation findings.
13. The documents, especially but not limited to the documents provided by the Student Wellness Center, the Office of Diversity and Inclusion, and Human Resources, clearly state the existence of, contact information for, and roles of the Title IX Coordinator and deputy Title IX coordinators.
14. The documents clearly and consistently explain the availability of interim measures (e.g., no contact order; change in academic or living situations as appropriate with minimum burden on the complainant; counseling; health and mental services; escort services; academic support; the ability to retake a course or

withdraw without penalty) before the final outcome of an investigation to ensure equal access to the University's education programs and activities and protect the complainant as necessary. Information about interim measures will be made easy to locate and understand (e.g., with corresponding, obvious content titles instead of potentially confusing titles such as "Accommodations"). The documents will make clear that the Title IX Coordinator or other specifically designated University employee will coordinate the provision of interim measures, and that complainants will not be required to arrange such measures by themselves through multiple University departments and offices. The documents will also ensure that, when taking interim measures, the University will minimize the burden on the complainant.

15. All procedures and guidelines used to investigate sexual harassment complaints (e.g., the Human Resources Guidelines, the Student Conduct Policy Guidelines, etc.) state provisions for adequate and reliable investigation of complaints, including the opportunity for both the complainant and the alleged perpetrator of the harassment to identify witnesses and other evidence; designated and reasonably prompt timeframes for the major stages of the investigation (i.e., conducting the fact-finding investigation, completing the decision-making process to determine whether the alleged sexual harassment occurred and created a hostile environment, issuing written notice of the outcome of the investigation, and determining the actions the University will take to stop the harassment, eliminate the hostile environment, prevent its recurrence, and remedy its discriminatory effects.
 16. The documents clearly and consistently state that any informal mechanisms for resolving sexual harassment complaints are only to be used if the parties agree to them; that it is not appropriate for a student who is complaining of harassment to be required to work out the problem directly with the alleged harasser, and certainly not without appropriate involvement by the University (e.g., participation by a counselor, trained mediator, or, if appropriate, administrator); that in some cases, such as alleged sexual assaults, mediation will not be appropriate even on a voluntary basis; and that the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process.
 17. The documents provide clear assurance that, for circumstances in which there is a preponderance of the evidence that sexual harassment in violation of Title IX occurred but insufficient evidence that a particular student or employee violated the University's conduct codes, the University will still take other necessary steps to stop the harassment, prevent its recurrence, eliminate any hostile environment, and remedy the discriminatory effects of the harassment on the complainant and others, as appropriate.
- C. Within 60 calendar days of receipt of the OCR-approved nondiscrimination notice, Title IX grievance procedures for complaints of sex discrimination, and revised sexual harassment policies, procedures, and other related documents, the University will certify to OCR that the University has formally adopted the revised documents;

updated all printed publications and online publications with the revised documents (inserts may be used pending reprinting of any printed publications); and electronically disseminated the revised grievance procedures to students and employees.

- D. By October 15, 2014, the University will revise the information on its Campus Police web page under the “Reporting Sexual Assault” link, to clarify that interim measures taken during an investigation of a complaint of sexual harassment or assault should minimize the burden being placed on alleged victims of sexual assault. The University will also revise the information on its Campus Police webpage to indicate that the campus police will ensure that complaints of sexual harassment/violence are forwarded to the Title IX Coordinator for appropriate action.
- E. If OCR has any objections to the documents provided by the University for review under Item III (A-B), OCR will notify the University of its objections promptly, no later than 60 calendar days after receiving the draft documents.

REPORTING REQUIREMENTS:

- 1. By October 15, 2014, the University will submit the revised nondiscrimination notice, Title IX grievance procedures for complaints of sex discrimination other than harassment, and revised sexual harassment policies, procedures, and other related documents drafted under Item III (A-B) to OCR for review and approval. The University will also submit links to the revised portions of the Campus Police web page pursuant to Item III.D.
- 2. Within 60 calendar days of receipt of the OCR-approved statement, policies, procedures, and other documents, the University will submit documentation verifying its implementation of Item III.C. This documentation will include evidence of the electronic dissemination of the revised grievance procedures to students and employees, a list of the titles of the publications in which the information appears (e.g. college catalog, Title IX web page, student handbook) as well as a copy any such publications, which may include either a printout or a link to an online publication containing the revised grievance procedures or, if not yet finalized, a copy of the insert for printed publications. The University will also provide documentation of how the revised procedures were distributed and that University police, the Title IX Coordinator, students, employee union leaders, Human Resources personnel, Student Conduct personnel, and other appropriate University community members.
- 3. By June 15, 2015, and by the same date annually thereafter through June 15, 2017, the University will submit to OCR copies of all Title IX complaints filed with the University that allege sexual harassment, including sexual violence or sexual assault, during the previous year, and the University’s notice to the parties of the final outcome of the grievance. Pursuant to this requirement, the University will provide OCR upon request additional documentation related to the investigation of each

complaint, such as witness interviews, investigator notes, evidence submitted by the parties, investigative reports and summaries, documentation regarding interim measures provided or offered, any final disposition letters, hearing records, disciplinary records, documentation regarding any appeals, and documentation regarding additional steps taken to stop harassment found to have occurred, eliminate any hostile environment, prevent recurrence of the harassment, and remedy its effects on complainants and others as appropriate.

IV. TRAINING

- A. The University will provide periodic, comprehensive training, overseen by the Title IX Coordinator, to deputy coordinators and any other University officials and administrators from any office or department (e.g., Human Resources, Student Conduct, etc.) who will be directly involved in processing, investigating and/or resolving complaints of sex discrimination (including sexual harassment and sexual assault) or who will otherwise play a role in coordinating the University's compliance with Title IX. By December 15, 2014, the University will revise and submit to OCR for approval its existing training materials as necessary to incorporate the clarifications and changes outlined in Item III (A-B). This training will cover, at a minimum: the University's obligations regarding the investigation of Title IX complaints filed by students, staff, and faculty; instruction on how to conduct and document adequate, reliable, and impartial Title IX investigations, including the appropriate legal standards to apply in a Title IX investigation; and confidentiality requirements; the identity and responsibilities of the Title IX Coordinator and deputies; the University's revised Title IX policies and grievance procedures; the student conduct hearing process; the University's proactive efforts to prevent sexual violence; and available resources for the complainant and the respondent.
- B. Within sixty (60) days, OCR will review and approve the training materials to ensure they cover the items outlined in Item IV(A), above.
- C. By June 15, 2015, and by the same date annually thereafter, the University will provide training on Title IX sex discrimination, including sexual harassment, to administrators, professors, instructors, residential assistants, coaches, University police, all of its housing (including any student employees) staff and other staff who interact with students on a regular basis. By December 15, 2014, the University will revise its training materials, including any online training modules, as necessary to incorporate the clarifications and changes outlined in Item III (A-B). Within sixty (60) days, OCR will review and approve the training materials to cover the information outlined. The training will provide essential guidance and instruction on recognizing and appropriately addressing allegations and complaints of sex harassment; an understanding of the University's responsibilities under Title IX to address allegations of sexually inappropriate behaviors, whether or not the actions are potentially criminal in nature; and the employees' obligations for reporting sexual harassment that they observe or are otherwise aware of. In addition, the training will cover the University's revised Title IX grievance procedures for Title IX.

- D. By December 15, 2014, the University will review and revise its existing freshman orientation programs and materials (including information that is sent to students after acceptance of their offer of admission to the University by the University President) to include information specifically targeted to effectively raise awareness among its student population of Title IX and what it prohibits and the rights it confers on students; the University's prohibition against all forms of sex discrimination prohibited by Title IX, including sexual harassment and sexual violence, including how to recognize sex discrimination and sexual harassment when it occurs; how and with whom to report any incidents of sex discrimination (including sexual harassment and sexual assault); the University's policies on underage alcohol consumption as well as the connection between alcohol abuse and sexual harassment and sexual violence, who to speak with if they are concerned about issues of sexual harassment and/or sexual assault; and the identity and role of the Title IX Coordinator(s) and delegates with regard to ensuring the University's compliance with Title IX, including investigating complaints of sex discrimination, including sexual harassment and assault, and her contact information. In addition, the orientation sessions will cover the University's updated grievance procedures for Title IX complaints, incorporating all of the clarifications and changes described in Item III (A-B) above. Within sixty (60) days, OCR will review and approve the training materials to ensure they cover the items outlined above.
- E. By December 15, 2014, the University will revise its existing orientation sessions held for returning students, and any annual residence life orientation for students residing in campus housing, to include a series of required informational session(s) to ensure that students are aware of Title IX and what it prohibits and the rights it confers on students; the University's prohibition against sex discrimination (including sexual harassment and sexual assault); how to recognize such sex discrimination and sexual harassment when it occurs; how and with whom to report any incidents of sex discrimination (including sexual harassment and sexual assault), which would include increasing their awareness of the identity and role of the University's Title IX Coordinator and delegates, and contact information. The orientation sessions will be consistent with the clarifications and changes outlined in Item III (A-B) above. Within sixty (60) days, OCR will review and approve the training materials to ensure they cover the items outlined above.
- F. By December 15, 2014, the University's Title IX Coordinator will work with the Student Wellness Center to ensure that all of the Student Wellness Center's offered presentations for sexual violence education and support are consistent with the University's Title IX policies and procedures, including the clarifications and changes outlined in Item III (A-B) above.
- G. By December 15, 2015, the University will identify any additional training needed for specific groups, including but not limited to, fraternities, sororities, band, cheerleaders, and athletes based on assessments made by the Title IX Coordinator based on actions outlined in Item V (A-D).

H. By January 1, 2015, and by the same date annually thereafter, the University will provide training on Title IX sex discrimination to groups identified in Item V (G).

REPORTING REQUIREMENT:

By December 15, 2014, the University will submit to OCR all of the training materials revised in accordance with Item IV above. By January 31, 2015, and by the same date annually thereafter through January 31, 2017 the University will submit to OCR documentation verifying all of the Title IX training it has conducted during the previous academic years, respectively, identifying which specific groups were trained using which materials, the date(s) of the training, and the name and position title of the trainer(s).

V. CLIMATE ASSESSMENTS AND RESPONSE

- A. By December 15, 2014, the Title IX Coordinator will oversee a comprehensive review of all reports and complaints of sexual harassment, including sexual violence, made to the University through any office or department (e.g., Student Conduct, housing, Human Resources, Compliance and Integrity, etc.), and the University's response during the 2012-2013 and 2013-2014 academic years. The Title IX Coordinator will determine whether the information, when reviewed as a whole, indicates any potential patterns or particular programs, activities, offices, departments, or areas at the University in need of further University action to respond to a sexually hostile environment or prevent a hostile environment from occurring. The Title IX Coordinator will develop written recommendations for further actions to be taken and will coordinate their implementation.
- B. Effective immediately, to the extent that Human Resources staff will continue to be responsible for the receipt, investigation, and/or resolution of any reports of sexual harassment at the University, the University will add a representative from Human Resources to its Sexual Violence Consultation Team.
- C. By June 15, 2015, and by the same date annually thereafter, the University, under the oversight of the Title IX Coordinator, will conduct a climate check or series of climate checks with students to assess the effectiveness of steps taken pursuant to this Agreement, or otherwise by the University, to achieve its goal of a campus free of sexual harassment, in particular sexual violence. To assist in these efforts, the University shall formulate a working group of students and staff to help gather and provide feedback on how the climate check or checks are conducted, and how to respond to its results. The climate check will be completed in part by sending a survey to each University student, including all regional, graduate, and professional school students. The climate check will contain questions about the student's awareness of incidents of sex discrimination (including sexual harassment and sexual violence – personal or against third parties) and any experiences with sex discrimination while attending the University, identifying any particular programs, activities, or geographical locations where the discrimination occurred, and the student's awareness of the University's Title IX policies and procedures. The

ongoing climate checks will also include ensuring students know to whom they can report concerns about sex discrimination, such as the Title IX Coordinator, as described in other provisions of this Agreement. The University will first submit its climate check tools, including the student survey, and any subsequent revisions to OCR for review and approval prior to its implementation. The climate checks will also include a review of reports and complaints of sexual harassment received by the University during the year. The University will use the information gathered through the climate checks to determine if additional action and/or Title IX training for faculty, staff, and/or students is required to maintain an environment in each University program, activity, school, and department free from sex discrimination and sexual harassment.

- D. By September 30, 2014, the University will establish a campus focus group consisting of representative leaders from the student community (e.g., women's groups, athletes, residential assistants, student government leaders, fraternity and sorority leaders, etc.) and University officials to provide input regarding strategies for ensuring that students understand their rights under Title IX, how to report possible violations of Title IX, and the University's obligation to promptly and equitably respond to Title IX complaints. The campus focus group will provide input to a designated University official regarding the strategies identified.

REPORTING REQUIREMENTS:

1. By January 15, 2015, the University will submit documentation to OCR showing its progress in implementing Item V for the 2014-2015 academic year, including: the report of the review of the 2012-2013 and 2013-2014 reports and complaints of sexual harassment and written recommendations; and documents showing the inclusion and regular participation of Human Resources in the University's Sexual Violence Consultation Team.
2. By January 15, 2015, the University will submit its proposed climate check tools, including the student survey, to OCR for review and approval.
3. By June 15, 2015, and by the same date annually thereafter, through June 15, 2017, the University will submit to OCR: the results of the climate assessment and written recommendations for any further action determined necessary; and documentation verifying that it implemented the recommendations from the previous year's assessment.
4. By June 30, 2015, and by the same date annually thereafter, through June 15, 2017, the University will provide documentation to OCR demonstrating its implementation of Item V.E., including any resulting summaries of the information obtained and any proposed and/or completed actions based on that information.

VI. STUDENT-FOCUSED REMEDIES

By January 1, 2015, in accordance with its revised grievance procedures, the University will review the sexual harassment/violence complaints filed and reports made of sexual harassment/violence during and since academic year 2011-2012 to determine whether the University investigated each complaint or report promptly and equitably, including but not limited to, specifically determining whether the University used the appropriate definitions and analyses of sexual harassment and hostile environment under Title IX; provided interim relief to protect the complainant during the pendency of the investigation; provided written notice of the outcome (including any appeal) and appeal rights to the complainant and the respondent; and took steps to prevent the recurrence of harassment and to address any hostile environment created by the harassment. The University will take appropriate action to address any problems identified in the manner in which these complaints were handled; including providing appropriate remedies that may still be available for the complainants in these cases, such as counseling or academic adjustments.

REPORTING REQUIREMENTS:

1. By February 28, 2015, the University will submit to OCR for review and approval the results of its review conducted pursuant to Item VI, specifically identifying any complaints or reports that were not handled promptly and equitably, all supporting materials relating to the University's review, and the University's planned action(s) to address any problems identified in the review. Within 30 days of OCR's approval, the University will take appropriate action to address any problems identified in its review.

VII. UNIVERSITY'S INVESTIGATION OF MARCHING BAND

A. During the course of OCR's investigation, the University conducted a comprehensive investigation of alleged sexual harassment of members of its Marching Band. On July 22, 2014, the University issued its investigative report and recommendations for corrective action. The University's report found that there was a sexually hostile environment for students in the Marching Band and that the Band's Director "failed to eliminate the sexual harassment, prevent its recurrence, and address its effects." The University report included specific corrective action steps to be taken by the University. This Agreement incorporates and includes the University's corrective action steps, as set forth below, as requirements in this Agreement:

1. Evaluate and Strengthen Marching Band Leadership
 - Realign the values of the Marching Band to the university's academic mission.
 - Assess the effectiveness of Marching Band staff's leadership and management.
 - Take appropriate personnel action to address all concerns.
 - Review the organizational oversight of the Marching Band, clarify accountability for its operations and activities, and establish

expectations for an independent view of the Band's activities.

- Create a committee of Marching Band members, staff, and alumni to identify strategies for changing the Band's culture (based on an anonymous benchmark survey discussed below) and ensuring that its members:
 - Understand the university's prohibition against sex discrimination, including sexual harassment and violence, and retaliation;
 - Recognize sex discrimination, sexual harassment, and sexual violence when they occur;
 - Understand how and to whom to report any incidents;
 - Understand the connection between alcohol and drug abuse and sexual harassment or violence; and
 - Feel comfortable that university officials will respond promptly and equitably to reports of sexual harassment, sexual violence, and retaliation

2. Policies and Procedures

- Review and revise as necessary all Marching Band policies and procedures to ensure compliance with Title IX and university policies; highlight expectations and options for concern reporting; and align Band values to the university's academic mission.
- Communicate regularly that the Marching Band will not tolerate sexual harassment and violence and will respond to any incidents and to any student who reports such incidents.

3. Counseling and Training

- Continue to offer counseling, health, mental health, or other holistic and comprehensive victim services to all members of the Marching Band affected by sexual harassment, and notify students of all Title IX related services and supports available in the university.
- Require annual training for all Marching Band members and staff about sexual harassment, sexual violence, hazing, retaliation, and alcohol abuse.
- Require annual training for all Marching Band staff on recognizing and appropriately addressing allegations of sexual harassment or sexual violence under Title IX, including prohibitions on retaliation.
- Require regular culture training that focuses on adherence to university values and the need to replace negative culture with positive culture.
- Require annual leadership and management training for all Marching Band staff.

- Provide annually to all Marching Band members and staff written materials on sexual harassment and sexual violence, which should include but not be limited to:
 - What constitutes sexual harassment or sexual violence;
 - What to do if a student has been the victim of sexual harassment or sexual violence;
 - Contact information for counseling and victim services;
 - How to file a complaint with the university and the options and means to do so, including through EthicsPoint, the university’s anonymous reporting line;
 - The role of the university’s Title IX Coordinator and how to contact her; and
 - What the university will do to respond to allegations of sexual harassment or sexual violence, including interim measures that can be taken
- Ensure that the annual anonymous culture surveys described below serve to measure the effectiveness of the trainings provided.

4. Climate Surveys and Controls

- Conduct “climate checks” of Marching Band members and staff to:
 - Anonymously collect specific data and establish a 2014 baseline about the Band’s culture and the concerns of students and staff;
 - Measure change through annual and anonymous follow-up surveys;
 - Assess the effectiveness of efforts to ensure that the Band is free from sexual harassment, sexual violence, and alcohol abuse;
 - Plan proactive steps to replace negative culture with positive culture;
 - Identify any additional matters that need to be investigated and addressed; and
 - Share data as appropriate with the Marching Band alumni community and seek its assistance to improve the Band’s culture
- Establish independent monitoring and review of information gathered and the steps taken to reverse an insular culture with external accountability.

B. In addition to the steps outlined above, the University will submit to OCR for review and approval (1) its proposed timetable for implementing each of the steps outlined above and any additional proposed recommendations and findings (2) the specific individual remedies that it proposes to provide to individual band members subjected to the sexually hostile environment, including the basis and timetable for providing the remedies.

REPORTING REQUIREMENTS:

1. By November 1, 2014, the University will submit the documentation required in Item VII.B.
2. By October 15, 2014, and every three months thereafter until completed, the University will provide OCR with quarterly updates and documentation of its implementation of the steps outlined in Item VII.A. Documentation will include the name and title of the individual(s) responsible for implementing the corrective action step and a narrative description of the steps taken to implement the action step and status of the action step.
3. By October 15, 2014, the University will provide documentation of its implementation of the individual remedies proposed by the University and approved by OCR pursuant to Item VII.B.

GENERAL REQUIREMENTS

The University understands that OCR will not close the monitoring of this agreement until OCR determines that the University has fulfilled the terms of this agreement and is in compliance with Title IX and its implementing regulation at 34 C.F.R. §§ 106.8, 106.9, and 106.31, which were at issue in this review.

The University understands that, by signing this agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, the University understands that during the monitoring of this agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this agreement and is in compliance with Title IX and its implementing regulation at 34 C.F.R. §§ 106.8, 106.9, and 106.31.

The University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this agreement, OCR will give the University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

/s/

9/8/2014

President or Designee

Date