

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

JOHN DOE,)	CASE NO. 1:20cv199-SA-DAS
)	
Plaintiff,)	
v.)	COMPLAINT FOR INJUNCTIVE,
)	DECLARATORY, AND MONETARY
MISSISSIPPI STATE UNIVERSITY,)	RELIEF
c/o Hon. Lynn Fitch)	
Office of the Attorney General)	DEMAND FOR JURY TRIAL
550 High St., Ste. 1200)	
Jackson, MS 39205)	
)	
and)	
)	
DR. THOMAS BOURGEOIS)	
in his official capacity as Dean of Students)	
c/o Hon. Lynn Fitch)	
Office of the Attorney General)	
550 High St., Ste. 1200)	
Jackson, MS 39205)	
)	
and)	
)	
JANE ROE,)	
)	
Defendants.)	

Plaintiff John Doe (“John”),¹ by and through counsel, and for his Complaint against Mississippi State University (“MSU”), Dr. Thomas Bourgeois, in his official capacity as MSU Dean of Students (“Dr. Bourgeois”), and Jane Roe (“Jane”) (the foregoing are collectively referred to as the “Defendants”), states as follows:

¹ A Motion to Proceed Under Pseudonym and for Protective Order is being filed concurrently with this Complaint in order to protect the identities of all students referenced in the pleadings and exhibits.

INTRODUCTION

1. This Complaint arises out of a biased, one-sided investigatory and hearing process after a false claim of sexual misconduct was made against John in retaliation by a former girlfriend.

2. Throughout the process, MSU gave John no opportunity to defend himself. MSU failed to provide John sufficient notice, meaning that John walked into the only investigative interview he was given with no indication of the allegation against him. MSU also refused to admit critical evidence that would demonstrate that Jane had filed her claim in retaliation for John's ending the relationship, incredibly labeling such evidence as having "low or nonexistent" probative value.

3. In contrast, MSU took Jane at her word in spite of glaring issues, including that Jane never identified a date that the alleged assault occurred and that her account of their relationship was rebutted by unmistakable evidence to the contrary – which MSU excluded from consideration. Further, MSU permitted introduction of evidence that supported Jane's false narrative even though it admitted that such evidence was not "directly related" to the issue of consent.

4. MSU found John responsible for a Policy violation and subsequently denied his appeal while failing to provide any rationale for its decisions, further demonstrating that MSU's process was merely a superficial façade designed to meet its end goal of having John suspended for four-years.

5. MSU exhibited gender bias by failing to abide by the student disciplinary standards set forth in its student code.

6. Moreover, the student code, as implemented and overseen by Dr. Bourgeois, failed to meet the standards imposed by the Due Process Clause of the Fourteenth Amendment and allowed MSU to discriminate against John on the basis of sex, in violation of Title IX.

7. Additionally, Jane's statements made after John ended the relationship were a clear attack on his character, designed to diminish his reputation and constitute defamation, and were intended to disrupt his contractual relationship with MSU.

8. John, therefore, brings this Complaint seeking injunctive relief, the vacating of the unlawful decision against him, and compensatory and punitive damages for the wrongs inflicted by Defendants.

PARTIES

9. John is a mechanical engineering student at MSU and a resident of Mississippi.

10. MSU is a public university located in Oktibbeha County, Mississippi.

11. Dr. Bourgeois is the Dean of Students at MSU, entrusted by the Board of Trustees of State Institutions for Higher Learning and MSU's President with the responsibility of maintaining appropriate standards of student conduct. As such, Dr. Bourgeois has the authority to expel, dismiss, or suspend students. *See* Operating Policy 91.100, the Code of Student Conduct (the "Code") at pg. 3, a copy of which is attached as **Exhibit 1**.

12. Jane is a former student of MSU and a resident of Alabama.

JURISDICTION AND VENUE

13. This Court has jurisdiction over the subject matter of this action: (i) under 28 U.S.C. §§ 1331 and 1343 because this action arises, in part, under the laws of the United States—Title IX of the Education Amendments Act of 1972 ("Title IX"), 20 U.S.C. §§ 1681 *et*

seq. and 42 U.S.C. § 1983; and (ii) pursuant to the principles of supplemental jurisdiction under 27 U.S.C. § 1367.

14. This Court has personal jurisdiction over MSU as it conducts business in the State of Mississippi.

15. This Court has personal jurisdiction over Mr. Bourgeois as he conducts business on MSU's behalf in the State of Mississippi.

16. This Court has personal jurisdiction over Jane pursuant to Mississippi's long-arm statute, which bestows personal jurisdiction over nonresident defendants who commit a tort in Mississippi against a Mississippi resident. *See* Miss. Code Ann. § 13-3-57.

17. This Court is authorized to grant the declaratory relief sought under 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57 and 65.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

BACKGROUND FACTS

Title IX Enforcement

19. On April 11, 2011, the United States Department of Education's ("USDOE") Office of Civil Rights ("OCR") issued its now infamous "Dear Colleague Letter," which instructed universities on how to investigate and resolve complaints of sexual misconduct under Title IX, the statute that forbids discrimination on the basis of sex by institutions that accept federal funding ("Dear Colleague Letter" available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>).

20. Educational institutions designed to educate America's youth are ill-equipped to adjudicate allegations of sexual assault, remain wary of bad publicity, and continue to overreact

to the threat of federal investigations, sanctions, and lawsuits, in part by discriminating against men on the basis of their sex.

21. MSU is no different: MSU has held events that purport to advocate for victims, but in reality distort the true nature sexual assault and unfairly target accused students before any findings of fact have been made.

22. For example, as part of the national “It’s On Us” campaign, MSU’s Student Association screened “The Hunting Ground” in 2016’s Fall Semester.

23. “The Hunting Ground,” portrayed as a documentary featuring the stories of sexual assault survivors, has been sharply criticized. A group of 19 Harvard Law professors wrote that it “provides a seriously false picture both of the general sexual assault phenomenon at universities” as well as the Harvard student accused in the film (*see* the full statement at <https://www.scribd.com/doc/289393251/Statement-on-Hunting-Ground>).

24. As colleges and universities like MSU become quasi-criminal investigators, they institutionalize unfair procedures that lead to unfair and unreasonable punishments of students accused of misconduct.

25. OCR has directed schools to provide basic procedural protections to students, instructing that grievance procedures must provide “[a]dequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence,” and “equitable grievance procedures.” *See* Dear Colleague Ltr.

26. Further, in 2017, in interim guidance issued after rescinding the 2011 Dear Colleague Letter,² OCR “cautioned” schools “to avoid conflicts of interest and biases in the adjudicatory process and to prevent institutional interests from interfering with the impartiality of

² Even though USDOE formally rescinded the 2011 Dear Colleague Letter on September 22, 2017, schools continue to enforce the policies and procedures instituted in response to it.

the adjudication.” Q&A on Campus Sexual Misconduct, Sept. 22, 2017, at 5 (available at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>).

27. OCR advised that written notice of any allegations should be provided to an accused “with sufficient time to prepare a response before any initial interview” and that parties subsequently “should have the opportunity to respond to [a] report in writing in advance of the decision of responsibility and/or at a live hearing to decide responsibility.” *Id.* at 4-5.

28. OCR instructs schools to “maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings.” *Id.* at 5.

29. Under the new regulations, all university grievance processes must “provide both parties equal opportunity to review and respond to the evidence gathered during the investigation. See a copy of the Final Rule, available at <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>, at pg. 98.

30. The new regulations further require that a university provide an accused student with “written notice of the allegations with sufficient details to permit parties to prepare for an initial interview, which the [university] must send to both parties upon formal receipt of the complaint.” *Id.* at pg. 102.

31. Written notice is further required “in advance of any meeting, interview, or hearing conducted as part of the investigation or adjudication.” *Id.*

32. Further, universities must prepare and send to both parties an “investigative report that summarizes all the relevant evidence including inculpatory and exculpatory evidence. *Id.* at pg. 101.

MSU's Student Conduct Process

33. The primary policy at issue here is MSU Operating Policy 3.04, Sexual Misconduct (the "Policy"),³ a copy of which is attached as **Exhibit 2**.

34. The Policy notes that "sexual misconduct" is an umbrella term for a variety of unwelcome behaviors, including Sexual Assault. *Id.* at 2.

35. The Policy defines "Sexual Assault" as follows:

Sexual Assault refers to rape or other intentional physical sexual acts perpetrated against a person without their consent. Sexual assault includes sexual penetration or intercourse or any other physical contact of a sexual nature that occurs without consent. This includes but is not limited to deliberate physical touching as well as contact of a sexual nature with an object. Sexual assault also includes attempts to induce sexual activity via direct threats of physical violence, even where no physical contact ultimately occurs.

Id.

36. The Policy defines "Consent" as follows:

Consent refers to words or actions that clearly show an active, knowing and voluntary agreement to engage in a particular sexual activity. Consent is determined objectively. This means that an individual is deemed to have given consent when a reasonable person, under the particular circumstances of the encounter, would understand the individual's words and/or actions as indicating the required agreement.

Consent may be withdrawn at any time by words and/or actions that clearly show the individual no longer wishes to participate. Silence and/or the absence of resistance by themselves are not consent. Consent to engage in sexual activity in the past by itself is not consent to future sexual activity. Consent to engage in sexual activity with one person is not consent to engage in sexual activity with another person.

Id. at pg. 3.

37. The Policy also contains a False Reporting provision, which notes that "submitting a deliberately false report or providing false information in bad faith is prohibited under this policy and is grounds for disciplinary action. A report is made in bad faith when the

³ John notes that MSU now has an updated Operating Policy 3.04, recently approved by President Mark Keenum on August 12, 2020 and which provides substantial additional protections. However, Exhibit 2 reflects the Policy as it existed at the time of the events of this Complaint.

person making it actually knew it was false or made it with reckless disregard for the truth.” *Id.* at pg. 11.

38. The Policy claims that “[a]ll investigations and disciplinary proceedings concerning alleged sexual misconduct will be conducted in a prompt, fair, and impartial manner by individuals who have received appropriate training.” *Id.*

39. The Policy states that while an investigation is pending, MSU may take interim measures “to protect complainants,” but occasionally provides them for the accused student when necessary to preserve the integrity of the investigation. One example of an interim measure is the issuance of No Contact orders between complainant and accused. *Id.* at pgs. 11-12.

40. Upon the filing of a complaint, MSU’s Title IX Coordinator selects an appropriate person(s) to conduct an investigation. *Id.* at pg. 12.

41. The Policy claims that “[a]ll parties to a sexual misconduct investigation will have equal rights throughout the resolution process and will have an equal opportunity to present relevant witnesses and other evidence if a hearing is necessary.” *Id.*

42. The Policy asserts, “[b]oth the complainant and accused have the right to have an advisor present at any hearing or any meeting related to the investigation or adjudication.” *Id.*

43. The relevant standard of proof is preponderance of the evidence. *Id.* at pg. 13.

44. The Policy notes that adjudication proceedings are to be conducted in accordance with the Code. Where the Policy contains additional requirements or conflicts with the Code, the Policy controls. *Id.*

45. The Policy states that student-on-student sexual misconduct charges are assigned to the Student Conduct Board. *Id.*

46. The Policy states that the “complainant and accused will be advised of the charges and their rights in connection with the investigation. If a hearing is required, they will be advised of the hearing procedure at a pre-hearing conference.” *Id.*

47. The Policy is silent as to when the accused will be informed of the charges and accused’s rights.

48. However, the Code is much more specific and states that the “accused shall be notified in writing or email by the Dean of Students’ Office of the specific charges, the board assigned to hear the charges, the time and place of the hearing, and the names of witnesses who are expected to present information,” as well as substantial other information relation to hearing conduct. Exh. 1 at pg. 4.

49. Prior to a hearing, the Title IX Coordinator must prepare a memorandum summarizing relevant policy, undisputed facts, disputed factual questions, and listing all potential witnesses and exhibits to the hearing. At least three days prior to a hearing, a draft is provided to both parties for comments. The Title IX Coordinator has the discretion whether to incorporate any proposed revisions into the final memorandum. Further, no witness or exhibit excluded from the final memorandum may be admitted in the hearing. Exh. 2 at pg. 14.

50. The Policy states both parties will be given reasonable advance notice as to who will hear the matter, the identity of witnesses, and evidence to be presented at the hearing. *Id.* at pg. 13.

51. During the hearing, the Policy dictates that both parties may ask questions or provide information in response to testimony or other evidence. However, the parties cannot directly question or cross-examine each other. Rather, MSU provides alternate means for

questioning, including the submission of written questions which may be asked by the hearing chair. *Id.* at pg. 14.

52. A decision of responsibility is determined by a majority vote of panel members.

Id.

53. Appeals are governed by the Code. An appeal petition must be made by the student in writing within 5 days from the date of notification. The Code limits appeals and appeals may only be granted for two reasons:

- An error in procedure, which prejudiced the process to the extent that the participant was denied a fundamentally fair hearing as a result of the error. Procedural flaws alone are not grounds for an appeal. Significant procedural errors that may have affected the verdict or sanction will be considered.
- The emergence of new evidence that could not have been previously discovered and that, had it been represented at the initial hearing, would have substantially affected the original decision of the hearing body.

Exh. 1 at pg. 7.

54. The Code requires that the student “specify in detail why they believe they are entitled to an appeal. Based on its merit, the request for appeal will be reviewed by the Dean of Students or his or her designee. A request for appeal which does not clearly raise, in writing, one or more of the reasons listed above shall be dismissed without further consideration.” *Id.*

55. The Code further states that “[t]he decision of the Dean of Students or his or her designee, granting or denying the appeal will be in writing.” *Id.*

John and Jane’s Tumultuous Relationship

56. John and Jane met at the end of the 2019 Spring semester.

57. John and Jane dated casually in the summer of 2019, though the two had jobs in Mississippi and Tennessee, respectively.

58. Upon returning to campus for the 2019 Fall semester, the relationship became more serious.

59. That fall, John and Jane called John's parents and informed them that they were making plans for marriage.

60. Following the call, John's father contacted his brother-in-law, a pastor, who recommended that John and Jane read the book "*Finding the Love of Your Life*."

61. John and Jane read the book, "*Finding the Love of Your Life*," together and finished it over the Thanksgiving holiday weekend.

62. John and Jane remained on campus over the Thanksgiving holiday weekend because MSU's Egg Bowl, the rivalry game between MSU and Ole Miss, was occurring November 28th and they wanted to attend.

63. John and Jane made plans to visit each other's families during the 2019 winter holidays.

64. Throughout their relationship, John and Jane had sexual encounters on a near daily basis, though John, as a deeply religious individual, would later regret those encounters.

65. Despite appearances, the relationship had flaws.

66. During the 2019 Fall semester, John, who had previously been a good student on scholarship with a 3.3 GPA in a rigorous field of study, began to suffer academically.

67. Jane became increasingly demanding and prioritized her needs over those of John, requiring constant emotional support.

68. Jane became upset with John if he attempted to study or dedicate time to his schoolwork rather than focusing on her needs.

69. Jane's manipulation resulted in John's grades continuing to slip and a severe decline in his mental health.

70. As a result of Jane's negative effect on his health, John, formerly a strong student, failed the Fall semester with a .6 GPA.

71. John was forced to seek medical attention at MSU's Student Health Center as a result of the anxiety and depression caused and exacerbated by his relationship with Jane and he received medication.

72. John's life continued in a downward spiral until his return to his family's home following the semester.

73. There, with greater freedom from Jane's influence, John was able to consider the direction of his academic and personal life.

74. Upon realizing the extent to which Jane negatively impacted his life, John made the decision to end the relationship and did so on December 19, 2019.

75. Jane had an antagonistic response to the end of the relationship.

76. Jane sent John numerous emails, text messages, and phone calls berating him for his decision.

77. Once the relationship ended, John was able to take actionable steps to improve himself.

78. With the support of his family and counseling, John made plans to address his academic failure the previous semester and the resultant loss of his ability to participate in a co-op.

79. John's grades immediately began to improve following the end of his relationship with Jane. He finished the Spring semester with a 3.5 GPA.

80. Unbeknownst to John at the time, Jane remained unsatisfied with the relationship ending and decided to take retaliatory action in an effort to forever alter John's life.

Jane Files a Report of Sexual Misconduct in Retaliation

The Report

81. Shortly after students returned for the Spring semester, Jane filed a Report of Sexual Misconduct with MSU's Office of Compliance & Integrity on January 22, 2020.

82. The Report alleged that John sexually assaulted Jane.

83. The Report failed to identify the date that the incident supposedly occurred.

84. The Report identified two potential witnesses: a female student and close friend of Jane's (the "Friend"), with whom Jane allegedly discussed the "incident," and John's roommate (the "Roommate"), who may have been present at the unspecified time the "incident" occurred.

MSU's Communications with John Following the Report

85. Early in the afternoon of January 23, 2020, Nick Gordon, MSU Assistant Director, Office of Student Conduct ("Mr. Gordon") emailed John the following with the subject line "Meeting in the Dean of Students' Office":

[John], We have received report of an incident that you may have been involved in from late November of 2020 [sic]. Please respond to this email with times you are available on Monday, January, 27, 2020 to meet with me and a colleague. I look forward to hearing from you soon."

A copy of this correspondence is attached as **Exhibit 3**.

86. John promptly replied with his class schedule for January 27, 2020. The following morning, Mr. Gordon said only: "[John], Just come to my office on the first floor of the YMCA after your 9-9:50 class is complete. Thank you." *Id.*

87. This “notice” was so vague that John did not know what it was in reference to: it did not identify who filed the complaint, where or when the alleged incident occurred, or what the incident actually was.

88. In violation of the Code, the notice did not inform John in writing or by email of the specific charges against him. *See* Exh. 1 at pg. 4.

89. In violation of the Policy, the notice did not inform John of his right to have an advisor present at the meeting. *See* Exh. 2 at pg. 12.

90. In violation of OCR guidance, the notice failed to provide John with sufficient time to prepare a response before an initial interview.

John’s Meeting with Mr. Gordon and Ms. Butler

91. The morning of January 27, 2020, John met with Mr. Gordon and Compliance Specialist Lateshia Butler (“Ms. Butler”).

92. John arrived at the meeting with no indication as to its purpose.

93. In fact, when Ms. Butler asked John why he thought he was there, John responded that he believed the meeting was regarding a student in a class the prior semester who had been accused of plagiarism.

94. Ms. Butler was amused by this statement and informed Mr. Gordon, who had briefly left the room seeking a pen and paper, of it immediately upon his return.

95. This tone gave John a false sense of security before the investigators proceeded to ambush John with the true purpose of the meeting.

96. Ms. Butler and Mr. Gordon provided John with a copy of the Policy and informed him of Jane’s allegation of sexual misconduct.

97. Though the investigators informed John he had the right to speak with an advisor, they failed to inform him that he had the right to have an advisor present with him in the meeting. *See* Exh. 2 at pg. 12.

98. The investigators further did not propose or indicate that the meeting could be rescheduled to a time when John could have an advisor attend with him, or to a time after John met with an advisor.

99. While John was blindsided by the allegations, the tone of the meeting established an atmosphere where John felt like Mr. Gordon and Ms. Butler were on his side.

100. For approximately the first half of this 30-40 minute meeting, Mr. Gordon and Ms. Butler did not ask John specific questions. Rather, John, in a shocked state, simply informed them about his troubled relationship with Jane and openly wondered why she would have filed a patently false complaint against him.

101. John had knowledge that Jane had previously claimed a former boyfriend had sexually assaulted her while they had been intoxicated, and John was concerned that Jane was making a similar allegation against him.

102. During the meeting, Mr. Gordon and Ms. Butler did not inform John of the precise conduct providing the basis for Jane's report, or even the date it had allegedly occurred.

103. The questions that the investigators did pose were general and essentially inquired as to whether there had *ever* been a non-consensual encounter during John and Jane's relationship, to which John responded that there had not.

104. John observed that Mr. Gordon took only minimal notes during the meeting while Ms. Butler did not take any, in violation of OCR instruction that schools maintain documentation of all proceedings.

105. Therefore, there was no comprehensive written record as to John's statements made during the meeting.

106. Because MSU had failed to inform John of his right to have an advisor present, John also had no advisor to take notes or otherwise record his statements accurately.

107. John left the meeting feeling as though he had answered the questions and would be happy to provide more information if necessary,

108. On January 28, 2020, John received a No Contact Order from the Dean's office, which incorrectly stated that his meeting with the investigators had occurred that day and not the previous day.

John's Meeting with Mr. Mullen

109. Approximately two weeks later, on February 11, 2020, John received an email from the Dean of Students Office requesting that he schedule a meeting to discuss information that had been received by the Office.

110. John and his mother attended the meeting with Associate Dean of Students Tabor Mullen ("Mr. Mullen").

111. At this meeting, John was informed that he was charged with a violation of the Policy and, therefore, presented with the option to accept or deny responsibility.

112. John indicated that he did not accept responsibility and therefore the matter would be referred to the Board.

113. Following the meeting, John's mother called Mr. Mullen and inquired when the "assault" allegedly occurred, as MSU still had failed to inform John as to the date. Mr. Mullen stated generally, "November 2019."

MSU's First Draft of the Memorandum was Riddled with Inaccuracies

114. As required by the Policy, Ms. Butler circulated via email a draft of the memorandum (the “April 7th Memorandum”) to the parties for comment.

115. The email stated that any comments or proposed edits must be submitted by the close of business on April 13, 2020, though Mr. Mullen later sent a separate email which stated that no edits would be accepted after April 17, 2020.

116. Later that same day, John sent his revised copy of the memorandum to Ms. Butler.

117. The April 7th Memorandum contained numerous factual inaccuracies and misrepresentations of John’s statements, including the following:

- The Memorandum claimed that it was undisputed that on the night in question, Jane had arrived at John’s apartment, John was watching a movie, and Jane worked on homework. The Memorandum stated this even though **no date was specified** and John had not in fact stipulated to this “fact;”
- The Memorandum claimed that John said he had been drinking that night – this was **not** what John had stated, rather he had indicated that there were nights that the two were together when they had been drinking;
- The Memorandum claimed John acknowledged that Jane had said she did not want to have sexual intercourse on that night, even though John in fact did not acknowledge this or admit “that night” ever occurred;
- The Memorandum claimed that John had “apologized” to Jane after the incident, even though John denied that the incident ever even occurred; and
- The Memorandum claimed that Jane had “agreed” to ending their relationship, even though John had provided numerous emails and text messages evidencing that Jane was strongly against ending the relationship.

118. Curiously, the April 7th Memorandum also noted that the parties “agree that the alleged sexual assault was not discussed” in the various communications exchanged following the breakup, but apparently attributed no significance to this fact.

119. John identified the many inaccuracies and misrepresentations of his statements to investigators and provided his own position statement describing the facts of the relationship, as well as documents in the form of emails, text messages, and voicemail transcripts from Jane in support. John also noted Jane's prior allegation of sexual assault against a former boyfriend and his concern that the false claim against him could be just one of many.

The Investigative and Hearing Process is Biased Against John

120. On April 16, 2020, John received an email from MSU's Director of Title IX and EEO Programs Brett Harvey ("Mr. Harvey").

121. Mr. Harvey informed John of his duty to review the hearing memorandum and proposed edits, as well as to make decisions regarding admissible evidence and witnesses.

122. Mr. Harvey shockingly claimed that John's proposed revisions to the Memorandum differed "substantially" from what Mr. Gordon and Ms. Butler had reported to him, as they had apparently reported that John had confessed to the "incident" occurring.

123. The email made it clear that the remaining investigative process and hearing would be biased against John.

124. Mr. Harvey decided to include Mr. Gordon and Ms. Butler's accounts into the Memorandum and named both as witnesses as to John's statements made during the hearing.

125. MSU therefore considered the investigators' accounts to be infallible, even though they took few to no notes and the interview was not recorded.

126. This decision significantly prejudiced John because the investigators, as persons in positions of authority, are automatically deemed more credible.

127. Mr. Harvey's decision to include the investigator's accounts in the Memorandum and to name them as witnesses to John's statements violated the Policy's guarantee that "[a]ll

investigations and disciplinary proceedings concerning alleged sexual misconduct will be conducted in a prompt, fair, and impartial manner.”

128. Mr. Harvey further stated that he was obligated to inform the hearing panel of John’s account given during the interview, even as John repeatedly claimed that his statements during the interview were mischaracterized and taken out of context.

129. Most shockingly, and a clear indication that this investigation was not in fact neutral, Mr. Harvey claimed that “The details of the breakup between the parties are not directly relevant to that question [whether sexual contact occurred without consent],” and therefore John could not admit exhibits regarding the same, including the emails and text messages.

130. Mr. Harvey absurdly claimed that this evidence had “low or nonexistent” probative value to the question of consent, even as John had repeatedly made clear he believed Jane had filed her report in retaliation for his ending the relationship.

131. Further, MSU had an obligation under the Policy to consider John’s allegation that Jane had provided false information in bad faith, which itself is a violation of the Policy. *See* Exh. 2 at pg. 11.

132. In abandoning this duty, MSU simultaneously ensured that John would not be able to defend himself and that Jane would not be investigated or charged with filing a false report.

The Second Draft of the Hearing Memorandum Pitted the Investigators Against John

133. In his April 16th email, Mr. Harvey stated that Jane still had not provided a copy of her own position statement, even though the second draft of the Memorandum was circulated that same day.

134. The April 16th Memorandum included the investigator's accounts and, far from being neutral parties, the tone is clear that the investigator's accounts were intended to discredit John.

135. The April 16th Memorandum alleged that the investigators informed John of his right to postpone answering questions until he had spoken with an advisor. This mischaracterized the investigators statements to John, as they had not indicated a willingness to postpone the meeting, and, even if true, still fails to comply with MSU Policy, which states that the accused student has the right to "have an advisor *present* at any hearing or any meeting related to the investigation or adjudication (emphasis added)." *Id.* at pg. 12. Moreover, this statement does not remedy the fact that John's notice walking into the meeting was insufficient.

136. The investigators' account is a recitation of John's statements taken out of context, or statements that he outright denied ever saying.

137. For example, the investigators claim that John had stated he had been drinking "that night," when an exact date was never given and John had only admitted there were nights that the two had drank together.

138. The investigators' account fails to mention that John walked into the meeting with no indication as to its topic, that John was blindsided by an allegation of sexual assault, and that John spent the entirety of the meeting in a shocked state and openly wondering as to why Jane would have filed a claim against him and attempted to make sense of it.

139. Rather, the investigators' account served only to cherry-pick the statements of John that properly fit into Jane's narrative.

140. The investigators did not introduce any evidence to support their account of John's statements and indeed no such comprehensive evidence existed, given that very few notes were taken in the meeting, which was not otherwise recorded.

141. The investigators offered no concrete reason that their version of events should be accepted over John's, aside from the implicit credence that is bestowed upon persons in positions of authority.

The Investigatory Process Benefited Jane at Each Turn

142. Jane did not submit her position statement until sometime after April 16, 2020, even though Mr. Mullen's April 13, 2020 email stated that no edits to the hearing memorandum would be accepted after Friday, April 17, 2020.

143. Mr. Harvey sent an email to John, along with the again-revised hearing memorandum, on April 23, 2020.

144. Further, Mr. Harvey's email stated for the first time that the Friend that Jane had listed as a witness in her initial Report was not, but should have been, interviewed.

145. While disregarding all evidence proposed by John as lacking probative value, Mr. Harvey did not have the same analysis towards the Friend's testimony. Indeed, Mr. Harvey stated that the Friend's testimony "while not directly related to the question of consent, [] is sufficiently relevant that [the Friend] should have been included as a potential witness."

146. The April 23rd Memorandum therefore included the Friend's account and listed her as a potential witness.

147. This action ran afoul of the Policy, which states that each party is to have equal rights throughout the process, an equal opportunity to present relevant evidence and witnesses, and reasonable advance notice as to the identity of the witnesses. Exh. 2 at 12-13.

148. Mr. Harvey's email did not include John's Roommate as another potential witness, even though he was also included in Jane's Report.

149. The investigators had spoken with the Roommate, who immediately defended John's character and stated that John would not commit sexual assault.

150. Following their discussion with the Roommate, upon belief, the investigators did not speak with him again and the Roommate was not listed as a witness, presumably because his statements were inconsistent with Jane's narrative.

151. The April 23rd Memorandum also included Jane's position statement.

152. Jane's delayed submission of her position statement meant that she had the opportunity to review John's position statement and tailor hers in response, a privilege that John did not have and another instance of Jane receiving benefits under the Policy that John did not. *See Id.*

153. For the first time, Jane's position statement alleged that the "incident" occurred sometime between November 27, 2019 and December 1, 2019.

154. As a former romantic couple who had sexual intercourse on a near daily basis, this timeframe was insufficient to put John on notice.

155. Upon information and belief, Jane selected this date range because the Roommate was not on campus and could not corroborate John's account.

156. Jane failed to mention that this date range was the time that she was happily informing family of her future wedding plans with John, sending John photographs of her ideal engagement ring, and reading with John the book "*Finding the Love of Your Life.*"

157. Jane claimed that she did not report the incident at the time because she was in denial and did not understand whether she had been sexually assaulted.

158. Jane's claim to not understand whether she had been sexually assaulted is inconsistent with her own prior allegation of sexual assault against a former boyfriend, indicating that she in fact does know what constitutes sexual assault.

Immediately Following An Unfair Hearing, MSU Finds John Responsible, Without Explanation

159. The hearing was rescheduled to May 5, 2020 due to conflicts with John's final exam schedule and took place via webex.

160. Without minimizing the hardships and inconveniences imposed by COVID-19, the virtual hearing was wrought with challenges, including difficulty hearing others and sound delays.

161. The hearing, like the entirety of the investigatory process, served only to support Jane's version of events while discrediting John.

162. During the hearing, it was noted that Jane met with the investigators numerous times.

163. In contrast, the investigators only asked to meet with John once and John did not know that was the purpose of the meeting until after he had arrived.

164. The hearing lasted approximately 3.5 – 4 hours. At the end of the hearing, the Board took a brief recess and, upon returning, immediately announced their decision, finding John responsible of the charge against him despite the fact that the preponderance of the evidence standard was not met.

165. A Notice of Hearing Board Outcome was sent to John later that same day, which offered no rationale for the decision. A copy of the Notice of Hearing Board Outcome is attached as **Exhibit 4**.

166. The Notice stated that John was subject to a **four-year** suspension ending May 5, 2024, a grossly unjust and unwarranted penalty.

167. The Notice further required John to submit his request for appeal on or before May 11, 2020.

MSU Denies John's Appeal, Again Without Explanation

168. John timely submitted his appeal on May 11, 2020.

169. John identified and thoroughly described five separate procedural errors, including bias by the investigators, wrongfully excluded evidence, ongoing memorandum circulation issues, investigation issues, and problems imposed by the virtual nature of the hearing.

170. John's appeal met the standard imposed by the Code because he identified numerous errors in procedures, which prejudiced the process to the extent that he was denied a fundamentally fair hearing as a result. *See* Exh. 1 at pg. 7.

171. Nevertheless, MSU denied John's appeal via letter from Dr. Bourgeois on June 1, 2020. A copy of the appeal denial is attached as **Exhibit 5**.

172. Dr. Bourgeois' letter simply stated that the "petition for appeal is denied because it did not meet the standard for appeal." The letter offered no other rationale for the decision.

173. The letter indicated that John's suspension was effective June 1, 2020 through May 5, 2024.

174. John had been taking summer courses and had completed one May class and two June classes, and had received As in all three. John had also registered for two July classes months and his access was abruptly denied following Dr. Bourgeois' letter.

175. The letter further noted that, “upon request” John’s four-year sanction would be reviewed.

176. As noted by the letter, this decision exhausted John’s rights to appeal, leaving him with a battered reputation and undeserved sanction for an act that he did not commit.

177. Desperate and with no remaining options, John’s parents contacted Dr. Bourgeois and asked what John could have been submitted that would have met the appeal standard.

178. Dr. Bourgeois was curt, dismissive, and entirely unreceptive to the lifelong damage just inflicted upon John, only stating: “We are not going to have another hearing.”

Irreparable Harm

179. MSU’s flawed and one-sided process allowed it to reach a decision motivated by gender bias that ignored evidence supporting John’s version of events and served only to wrongfully attribute responsibility to John, which MSU had predetermined from the outset.

180. This discriminatory tone lasted throughout the end of the process, as Jane was given numerous benefits that John was not.

181. The resulting sanction of a four-year suspension with a Title IX violation on his record, with just three semesters left until graduation, will severely and irreparably harm John’s educational career, his reputation, his economic prospects, and future employment opportunities.

182. Dr. Bourgeois, as Dean, is capable of lifting John’s sanction.

CLAIM ONE
Violation of Title IX
(Against MSU)

183. John restates and re-avers each and every allegation in the preceding paragraphs as if fully restated herein.

184. Title IX, 20 U.S.C. §§ 1681 et seq., provides, in relevant part, “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

185. Title IX is enforceable through an implied right of action affording an individual discriminated against due to his or her gender pecuniary damages and equitable relief.

186. The conduct of MSU discriminated against John on the basis of his sex through discriminatory, gender-biased implementation of the process, in the context of pressure from OCR, the public, and the climate on MSU’s campus.

187. MSU ignored evidence supporting John’s version of events and undermining Jane’s credibility and imposed a sanction on him that is likely to severely and irreparably harm him for life.

188. MSU ignored all evidence demonstrating that Jane was upset over John’s ending the relationship and filed the report in retaliation, absurdly claiming it to be not relevant, while allowing evidence it admitted was not “directly related” but served to support Jane’s false narrative.

189. Had MSU admitted any of the evidence put forth by John, it would have been clear that the preponderance of the evidence standard had not been met; rather, the evidence would have instead demonstrated it was more likely than not that an assault **had not** occurred.

190. MSU simply chose to believe Jane because she is a woman and to disbelieve John because he is a man.

191. MSU did not consider, much less impose, a sanction on Jane for filing a false report, even though doing so is a violation of the Policy.

192. MSU then denied John's request for an appeal without reason and reinforced the sanction imposed.

193. MSU has failed to remediate its discriminatory actions against John, and he is now at risk of irreparable harm to his reputation, his future educational and economic prospects.

194. As a direct and proximate result of MSU's acts and omissions, John has suffered and is entitled to damages in an amount to be determined at trial, plus prejudgment interest and attorney fees and costs.

CLAIM TWO

42 U.S.C. § 1983, Denial of Fourteenth Amendment Procedural Due Process (Against Dr. Bourgeois in his Official Capacity)

195. John restates and re-avers each and every allegation in the preceding paragraphs as if fully restated herein.

196. 42 U.S.C. § 1983 provides in pertinent part that every person who subjects any citizen of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law or suit in equity.

197. 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."

198. Procedural due process limits governmental decisions which may serve to deprive individuals of liberty or property interests, such as interest in a higher education.

199. It is well accepted that procedural due process requires that students be given notice and some opportunity to be heard before being sanctioned for misconduct.

200. John was denied sufficient notice when MSU, under the supervision of Dr. Bourgeois, failed to inform him as to the nature of his meeting with investigators.

201. John was denied procedural due process when he attended a meeting without an advisor who could ensure that a recording or proper documentation captured his statements accurately.

202. Without proper documentation of the meeting, it would be virtually impossible for John to convince MSU to take his word of that of their agents.

203. John was denied an opportunity to be heard when MSU, under the supervision of Dr. Bourgeois, denied him the right to introduce evidence related to the end of his relationship with Jane, which directly supported his claim that Jane filed her false claim of sexual misconduct in retaliation.

204. John has an interest in his higher education and the sanctions imposed by MSU will have a substantial lasting impact on his personal life, educational and employment opportunities, and reputation in the community.

205. John's interests were erroneously deprived when MSU, under the supervision of Dr. Bourgeois, failed to provide him with adequate notice, excluded relevant and highly probative evidence to support his version of events, and his appeal was denied without sufficient basis.

206. As a direct and proximate result of these due process violations, John has and will continue to suffer ongoing harm, including damage to his reputation, loss of educational and career opportunities, economic injuries and other non-economic damages.

207. As a direct and proximate result of MSU's acts and omissions, under the supervision of Dr. Bourgeois, John has suffered and is entitled to damages in an amount to be determined at trial, plus prejudgment interest and attorney fees and costs.

CLAIM THREE

**42 U.S.C. § 1983, Denial of Fourteenth Amendment Substantive Due Process
(Against Dr. Bourgeois in his Official Capacity)**

208. John restates and re-avers each and every allegation in the preceding paragraphs as if fully restated herein.

209. 42 U.S.C. § 1983 provides in pertinent part that every person who subjects any citizen of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law or suit in equity.

210. 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.”

211. A substantive due process claim exists where the government’s deprivation of a property interest was arbitrary or not reasonably related to a legitimate government interest. A dismissed student may succeed on such a claim where he shows that the university’s decision was not careful or deliberate.

212. MSU’s disciplinary process, the supervision of which is a responsibility delegated to Dr. Bourgeois, resulted in a decision finding John responsible for violating the Policy, in face of considerable evidence to the contrary. This decision was arbitrary and not reasonably related to a legitimate governmental interest.

213. John has been subjected to a four-year suspension without reason, a considerable period tantamount to the entire college experience, and MSU’s decision was not careful or deliberate as it excluded all evidence in favor of John’s story as irrelevant while admitting all evidence that supported Jane’s false narrative, even where it admitted that the evidence was not directly relevant to the question at hand.

214. As a direct and proximate result of these due process violations, John has and will continue to suffer ongoing harm, including damage to his reputation, loss of educational and career opportunities, economic injuries and other non-economic damages.

215. As a direct and proximate result of MSU's acts and omissions, under the supervision of Dr. Bourgeois, John has suffered and is entitled to damages in an amount to be determined at trial, plus prejudgment interest and attorney fees and costs.

CLAIM FOUR
Defamation
(Against Jane)

216. John restates and re-avers each and every allegation in the preceding paragraphs as if fully restated herein.

217. Jane orally and in writing made multiple false and defamatory statements to MSU officials and others regarding John, including her false claim that John had sexually assaulted her.

218. Jane knew that her false statements would initiate and facilitate a disciplinary process that could lead to John's expulsion.

219. Jane made these statements with the intent to harm John's good name and reputation by falsely accusing him of sexual misconduct

220. In carrying out the aforementioned conduct, Jane acted negligently, willfully, maliciously, and/or with reckless indifference to the consequences of her actions against John.

221. Jane's oral and written statements are actionable as they injured John's reputation and have exposed him to public contempt and degradation.

222. As a direct and proximate result of Jane's intentional and malicious publication of false and defamatory statements, John was subjected to a disciplinary process and sanctions that have damaged him and will continue to damage and injure his character and reputation.

223. As a result of the foregoing, John is entitled to recover damages from Jane in an amount to be determined at trial, plus attorney fees and costs.

CLAIM FIVE
Tortious Interference With Contract
(Against Jane)

224. John restates and re-avers each and every allegation in the preceding paragraphs as if fully restated herein.

225. John and MSU were parties to a contract as evidenced by the Policy, the Code, and John's payment of tuition to attend MSU.

226. Jane acted intentionally and willfully to interfere with John's contract with MSU.

227. Jane's acts were calculated to cause damage to John and to his rights under the contract.

228. Jane's acts were performed with the unlawful purpose of causing damage and loss, without right or justifiable cause on her part.

229. As a result of Jane's acts, John suffered actual damage and loss.

230. As a result of the foregoing, John is entitled to recover damages from Jane in an amount to be determined at trial, plus attorney fees and costs.

WHEREFORE, John respectfully requests that this Court:

(A) Award compensatory and punitive damages in an amount to be determined at trial;

- (B) Enter injunctive relief that vacates the decision of MSU and Dr. Bourgeois to dismiss John for four years and removes from his academic record all references to the dismissal decision and any other related sanctions or disciplinary actions;
- (C) Issue a declaration that MSU's process is unlawful;
- (D) Award court costs and other reasonable expenses incurred in maintaining this action, including reasonable attorney fees; and
- (E) Award such other relief as this Court may deem just and proper.

Dated: September 30, 2020

JURY DEMAND

Plaintiff respectfully demands a trial by jury pursuant to Fed. R. Civ. P. 38.

Respectfully Submitted,

/s/ S. Ray Hill, III

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