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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA, HAYWARD HALL OF JUSTICE

JOHN DOE, an individual

Petitioner,

v.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; and DOES 1-20, inclusive.,

Respondents.

Case No.: RG16843940

[Hon. Kimberly Colwell, Dept. 511]

PETITIONER'S MOTION FOR ORDER AWARDING ATTORNEYS' FEES; DECLARATION OF MARK M. HATHAWAY; EXHIBITS

Date: February 26, 2018
Time: 9:30 a.m.
Place: Dept. 511

Reservation: 1929600.

TO THE COURT AND RESPONDENTS AND THEIR ATTORNEYS:

NOTICE IS HEREBY GIVEN that, on February 26, 2018, at 9:00 a.m., or as soon thereafter as this matter may be heard in Department 511 of this court located at 24405 Amador Street, 2nd Floor, Hayward, CA 94544, Petitioner JOHN DOE ("Petitioner" or "Doe") will move this court for an order awarding $56,097.85 as and for attorneys' fees under section 1021.5 of the Code of Civil Procedure. This amount does not include a "lode star" enhancement factor nor fees for the preparation and prosecution of this motion, which are estimated to be between $3,500 and $7,500 and which will be set forth in greater detail in the reply brief.

The motion will be made on the grounds that this action has resulted in the enforcement of an important right affecting the public interest, a significant benefit has been conferred on a large class of persons, to wit, college students subject to the Title IX disciplinary processes of universities and colleges throughout the State of California, and the necessity and financial burden of private enforcement are such as to make the requested award appropriate.

The motion will also be made on the ground that this action resulted in a substantial benefit of a nonpecuniary nature to college students subject to the disciplinary process throughout the State of California.

The motion will be made on the further ground that an award of attorney's fees is in the interest of justice.

The motion will be based on this notice of motion, on the declaration of Mark M. Hathaway and the memorandum served and filed herewith, on the papers and records on file herein, and on such oral and documentary evidence as may be presented at the hearing of this motion.

WERKSMAN JACKSON
HATHAWAY & QUINN LLP

DATED: January 26, 2018 By: _____

Mark M. Hathaway, Esq.
Jenna E. Eyrich, Esq.
Attorneys for Petitioner, JOHN DOE

TABLE OF CONTENTS

Cases

Statutes

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT BACKGROUND

This is a request for Respondent the Regents of the University of California to bear the expense and reimburse the family of an accused male student in an unfair campus Title IX investigation for the professional fees incurred in obtaining justice and judgment against The Regents of the University of California.

This motion should be viewed against the backdrop of Petitioner's having successfully prosecuted his writ of mandate whereby this Court found, *inter alia,* respondent the Regents of the University of California's Title IX procedures "failed to comply with the Adjudicative Framework and the law," such as allowing the unacceptable risk that the investigator was not unbiased. (Exhibit 1, Peremptory Writ; Exhibit 2, Judgement; Exhibit 3, Order Granting Petition for Writ of Mandate.) The Court found, inter alia, that "there is an unacceptable risk that the investigator [Brian Quillen] was not unbiased" and Respondent "improperly permitted Quillen to base his evaluation of credibility on what Quillen understood to be the "trauma informed approach." (Exhibit 3 at p. 26.) Furthermore, the IPVARC "conducted a substantial evidence review of the Quillen/OJA report instead of exercising its independent judgment in the review of the evidence." (Exhibit 3 at p. 26). In light of its findings, this Court granted Petitioner's writ. (Exhibit 1, Exhibit 2.)

Also of paramount importance in viewing this motion is the nature of the underlying accusation and proceedings. Specifically, this case arises amidst the national controversy stemming from the U.S. Department of Education's Office for Civil Rights' ("OCR") threats to withhold federal education dollars in order to compel colleges and universities to address sexual violence on their campuses.[1] During the 2013 to 2014 academic year, the U.S. Department of Education (the "Department")

[1] "This is an issue of political correctness run amok," according to Alan M. Dershowitz, emeritus Harvard Law professor who was among twenty-eight Harvard Law School faculty members asserting that new rules violate the due process rights of the accused. (See, *Rethink Harvard's Sexual Harassment Policy* (Oct. 15, 2014), The Boston Globe.) "As teachers responsible for educating our students about due process of law, the substantive law governing discrimination and violence, appropriate administrative decision-making, and the rule of law generally, we find the new sexual harassment policy inconsistent with many of the most basic principles we teach." *Id.* See also, Richard Dorment, *Occidental Justice,* (April 2015) Esquire; Teresa Watanabe, *More College Men Are Fighting Back Against Sexual Misconduct Cases* (June 7, 2014) Los Angeles Times.

distributed $134.75 billion dollars ($134,752,416,151) of financial aid to public and private colleges and universities for students attending their schools.[2] The OCR's threat to withhold federal funding effectively compels colleges, such as the University of California Santa Barbara, to treat students accused of sexual misconduct with a presumption of guilt and to punish every accused student in order to avoid jeopardizing the receipt of millions of federal education dollars.

The current climate arose when, in April 2011, OCR issued a "Dear Colleague" letter to provide guidance to schools on their obligations to prevent and address sexual violence[3] under Title IX.[4] The Dear Colleague letter reiterates that under Title IX, all schools that receive federal funds must take immediate and effective steps to respond to "sexual violence." 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 sexual assault, and suggested that schools should focus more on victim advocacy. Also, the Dear Colleague letter provided for no rules of *evidence*, making the preponderance of *evidence* standard meaningless.

In January 2014, the Obama White House put more pressure on colleges and universities to expel alleged perpetrators by creating a task force of senior administration officials, including the U.S. Attorney General and the secretaries of the Departments of Education, Health and Human Services and Interior, to coordinate federal enforcement efforts.[5] (It bears note that in September 2017, the current

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[2] Source: https://studentaid.ed.gov/sa/about/data-center/student/title-iv

[3] "Sexual violence" refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX. A school violates a student's rights under Title IX regarding student-on-student sexual violence when the following conditions are met: (1) the alleged conduct is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program, i.e. creates a hostile environment; and (2) the school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects

[4] The "Dear Colleague Letter" and the "Questions and Answers" are neither federal law nor federal regulations but have been determined by the Department to be "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007); see https://www.notalone.gov/schools/ which lists "Advocacy/Survivor Services Organizations" for alleged victims and survivors of sexual violence, but no resources for students accused of sexual violence.

[5] Jackie Calmes, *Obama Seeks to Raise Awareness of Rape on Campus* (January 22, 2014) New York

administration rescinded the federal "guidance" with Secretary of Education Betsy DeVos referring to campus Title IX sexual misconduct investigations as a "failed system[.]")

In February 2014, Catherine E. Lhamon, the Assistant Secretary of Education who headed OCR at the time, 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 these were "crisp marching orders from Washington."[6] The Chronicle of Higher Education noted that "Colleges face increasing pressure from survivors and the federal government[.]"[7] 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."

Not surprisingly, cases of false sexual misconduct allegations have been extensively documented, such as Rolling Stone's article on "Jackie," an alleged rape victim at the University of Virginia.[8] Also discredited, Columbia University student Emma Sulkowicz, who spent her final year at Columbia toting a mattress to protest the university's supposed failure to punish her alleged rapist.[9] Ms.

Times; Jason Felch and Larry Gordon, *Federal Task Force to Target Campus Sexual Assaults* (January 22, 2014) Los Angeles Times.

[6] Colleges Are Reminded of Federal Eye on Handling of Sexual-Assault Cases, Chronicle of Higher Education, February 11, 2014

[7] *Presumed Guilty: College men accused of rape say the scales are tipped against them*, Chronicle of Higher Education, September 1, 2014.

[8] *A Rape on Campus* by Sabrina Erdely was published in the December 4, 2014 issue of Rolling Stone. The article has since been retracted by the publisher. After other journalists investigated the article's claims and found significant discrepancies, Rolling Stone issued multiple apologies for the story. Columbia Journalism Review featured the article in "The Worst Journalism of 2014."

[9] Emma Sulkowicz waited seven months to report her allegations to Columbia University. After investigation by the university and law enforcement, Paul Nungesser, the accused student, was cleared of the charges. Ms. Sulkowicz tried to get other women to accuse Mr. Nungesser of sexual assault, but Columbia University found him not responsible for those claims as well. On April 23, 2015, Mr. Nungesser sued Columbia University for being complicit in allowing the harassment from his accuser, which "significantly damaged, if not effectively destroyed Paul Nungesser's college experience, his reputation, his emotional well-being and his future career prospects." The lawsuit includes dozens of

Sulkowicz even became something of a spokesperson for rape victims and was invited to attend the State of the Union address with Senator Kirsten Gillibrand (D-New York). Then there are the discredited claims of Erica Kinsman and of Kamilah Willingham, who had been featured in the movie, "The Hunting Ground."[10]

In "An Open Letter to Higher Education about Sexual Violence" from Brett A. Sokolow, Esq. and The NCHERM Group Partners, dated May 27, 2014, Mr. Sokolow provides examples of sexual misconduct cases where the college or university is holding the male student accountable in spite of the evidence— or the lack thereof—"because they think they are supposed to, and that doing so is what OCR wants."[11] Finally, numerous rights organizations have spoken out on the issue, including the Foundation for Individual Rights in Education, https://www.thefire.org/, the National Coalition For Men Carolinas (NCFMC), http://www.ncfmcarolinas.com/, Stop Abusive and Violent Environments (SAVE) http://www.saveservices.org/, and twenty-eight Harvard Law School faculty members asserting that new rules violate the due process rights of the accused.

Countless news articles and news programs have been devoted to the issue of fairness and due process in campus Title IX investigations that have been brought to light by litigation and lawsuits by accused students, such as this case. (See, Exhibit 8 through Exhibit 47.)

On September 7, 2017, in her speech to George Mason University, U.S. Secretary of Education Betsy DeVos referred to campus Title IX sexual misconduct investigation as a "failed system" and lacking in due process.[12] (Exhibit 4.) A month after Secretary DeVos' speech, California Governor

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Facebook messages between the two former friends and many declarations of Ms. Sulkowicz's love for Mr. Nungesser before and after the alleged rape.

[10] See, Ivan B. K. Levingston, Film *'The Hunting Ground' Misrepresents Harvard Sexual Assault Statistics* (March 26, 2015), The Harvard Crimson; Emily Yoff, *How The Hunting Ground Blurs the Truth*, (June 1, 2015) Slate; Asche Schow, *The continuing collapse of 'The Hunting Ground,' a campus sexual assault propaganda film*, (June 3, 2015) Washington Examiner.

[11] The NCHERM Group, the largest higher education specific law practice in the country, has worked with 3,000 higher education clients in the past 15 years, and frequently represents universities being investigated by the Department of Education, Office for Civil Rights (OCR). The NCHERM Group are the founders of ATIXA, a membership association of more than 1,400 campus Title IX coordinators and investigators, that produces training materials and seminars, publications, and conferences.

[12] https://www.ed.gov/news/media-advisories/us-secretary-education-betsy-devos-deliver-major-policy-address-title-ix-enforcement

Jerry Brown vetoed SB169, which would have codified the "failed system" into California law.[13] (Exhibit 5.) That public officials at both ends of the political spectrum are concerned with the lack of due process and fairness in campus Title IX sexual misconduct proceedings is due in large part to court cases, such as this case against the University of California Santa Barbara, that have brought these important issues to public attention.

In addition to this case, writ petitions from other accused students caught up in unfair Title IX investigations have met with success in California, including the following:

1. *John Doe v. University of California, Davis*, Yolo Superior Court Case no. PT15-1253; Order Granting Stay of interim suspension entered September 30, 2015;
2. *John Doe v. Regents of the University of California, et al.*, San Diego Superior Court Case no. 37-2015-00010549-CU-WM-CTL; Judgment for Petitioner entered October 1, 2015;
3. *John Doe v. University of California, Los Angeles, et al.*, Los Angeles Superior Court Case no. BS155236; Confession of Interlocutory Judgment entered October 9,201;
4. *John Doe v. Board of Trustees of the California State University, et al*., San Diego Superior Court Case no. 37-2015-00029558-CU-WM-CTL; dismissed June 12, 2017 (settlement agreement);
5. *John Doe v. La Sierra University, et al*., Riverside Superior Court Case no. RIC1606115; Judgment entered July 6, 2017
6. *John Doe v. Occidental College*, Los Angeles Superior Court Case no. BS156253; Judgment granting Petition in part entered August 9, 2017
7. *John Doe v. Ainsley Carry, et al*., Los Angeles Superior Court Case no. BS161569; Judgment granting petition entered October 12, 2017.
8. *John Doe v. Emilio Virata, et al.*, Riverside Superior Court Case no. RIC1608823; Judgment Granting Petition entered October 18, 2017;
9. *John Doe v. Samuel D. Glick, et al.*, Los Angeles Superior Court Case no. BS163739; Judgment Granting Petition entered November 2, 2017;
10. *John Doe v. Regents of the University of Southern California, et al.*, Alameda Superior Court Case no. RG16843940; Judgment and order granting petition entered November 15, 2017;

[13] https://www.gov.ca.gov/news.php?id=20027

11. *John Doe v. Samuel D. Glick, et al.[Pomona College]*, BS163739; Los Angeles Superior Court, Judgment Granting Petition entered November 2, 2017

12. *John Doe v. Ainsley Carry, et al*., Los Angeles Superior Court Case no. BS163736; Ruling and Statement of Decision in favor of Petitioner entered December 20, 2017;

13. *John Doe v. Regents of the University of California, et al.,* Santa Barbara Superior Court Case no. 17CV03053; Opinion and Judgment Granting Petition, December 22, 2017;

14. *John Doe v. Thomas Parham, et al.,* Orange Superior Court Case no. 30-2017-00908019-CU-WM-CJC; Proposed Judgment lodged December 19, 2017.

In light of Petitioner's success on his petition, and against the backdrop of this issue of national importance, Petitioner respectfully requests that this Court issue an order awarding attorney's fees in this matter. Indeed, the current administration's dialing back of the "failed" Obama-era policies is proof positive that actions such as petitioner's have been indispensable to shedding light on the pretense of fairness that campus Title IX investigations have become.

II. THE COURT MAY AWARD PETITONER'S ATTORNEY'S FEES.

The three factors necessary to support an award of attorney fees to a successful party pursuant to Code Civ. Proc. § 1021.5 are: "(1) [the] action has resulted in the enforcement of an 'important right affecting the public interest, (2) a significant benefit, whether pecuniary or nonpecuniary has been conferred on the general public or a large class of persons and (3) the necessity and financial burden of private enforcement are such as to make the award appropriate." (*In re Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214.)

For purposes of awarding attorney's fees pursuant to Code Civ. Proc. § 1021.5, a party is considered successful when an important right is vindicated by causing the defendant to modify his or her behavior. (*Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 353.)

Code Civ. Proc. § 1021.5 codified the intent of the Legislature to provide explicit statutory authority for court-awarded attorney's fees under a private general theory. (*Serrano v. Stefan Merli Plastering Co., Inc.* (2011) 52 Cal.4th 1018, 1025-1030.) The California Legislature recognized that private lawsuits are necessary to support public policies in statutory or constitutional provisions and that, without any means for the award of attorney's fees, private actions to enforce those provisions are very

often not financially feasible for many individuals. (*Woodland Hills Residents' Assn., Inc. v. City Council* (1979) 23 Cal.3d. 917, 933.)

This Court found that Petitioner was denied his right to a fair investigation process, which was vindicated by the issuance of the writ. Petitioner's success falls squarely within the circumstances described in Code Civ. Proc. § 1021.5, as, described above, the enforcement of Petitioner's rights to due process during a Title IX proceeding confers a significant benefit on the general public and there is a necessity and financial burden to privately enforce Petitioner's due process rights.

A. ISSUANCE OF A WRIT RESULTED IN THE ENFORCEMENT OF AN IMPORTANT RIGHT AFFECTING THE PUBLIC INTEREST

Petitioner has met the first prong of the section 1021.5 test, since the issuance of the writ resulted in the enforcement of an important right, the right to due process, affecting the public interest, as the vindication of the right to due process and a fair hearing in Title IX administrative proceedings affects all college students in California.

> The first prong of the section 1021.5 test…requires a determination of 'the strength' or 'societal importance' of the right involved. That right may be constitutional or statutory, but it must be 'an important right affecting the public interest'—it cannot involve trivial or peripheral public policies.' Where, as here, the right vindicated is conferred by statute, 'courts should generally realistically assess the significance of that right in terms of its relationship to the achievement of fundamental legislative goals. (*Roybal v. Governing Bd. Of Salinas City Elementary School Dist.* (2008) 159 Cal.App.4th 1143, 1148.)

In some cases, the benefit to the public may be in the form of enforcement of a fundamental constitutional or statutory policy. "The public always has a significant interest in seeing that legal strictures are properly enforced…, in a real sense, the public always derives a 'benefit' when illegal private or public conduct is rectified." (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 737.)

There is an important right affecting the public interest that college students accused of sexual assault in Title IX proceedings receive a fair hearing. These administrative proceedings are subject to review under Code Civ. Proc. § 1094.5, which in turn requires the court to assess "whether there was a fair trial." (*See Doe v. University of Southern California* (2016) 246 Cal.App.4th 221, 239-240 [discussing fair trial requirement.]) Countless news articles and news programs have been devoted to

the issue of fairness and due process in campus Title IX investigations that have been brought to light by litigation and lawsuits by accused students, such as this case. (Exhibit 7 through Exhibit 22.)

In this case, the Court found that Petitioner was deprived of a fair hearing. (Exhibit 3 at p. 26.) Specifically, Respondent did not follow their own written process, the administrative record contains facts that overcome the presumption of impartiality and demonstrate an unacceptable risk of bias, and Title IX investigator Quillen was unable to maintain the role of a neutral investigator and instead assumed the role of both prosecutor and fact finder, and Respondent "conducted substantial evidence review of the [Brian] Quillen/OJA report instead of exercising its independent judgment in the review of the evidence." (Exhibit 3, p. 17, p. 25, p. 26.)

Requiring that a college student accused of sexual misconduct in a Title IX administrative action be afforded an impartial unbiased investigation, a fair hearing, and where the University complies with its own rules, is of significant benefit to members of the public, not just for university students accused of sexual misconduct, but for all those facing allegations in such campus administrative hearings.

B. ISSUANCE OF A WRIT CONFERRED A SIGNFIFICANT BENEFIT ON COLLEGE STUDENTS WRONGFULLY DENIED THEIR DUE PROCESS RIGHTS IN TITLE IX ADMINISTRATIVE HEARINGS

Petitioner has met the second prong of the section 1021.5 test because the issuance of the writ conferred a significant benefit on college students wrongfully denied their due process rights, such as the right to an unbiased and fair process where the university or agency complies with its own rules in Title IX administrative actions.

To obtain an award under Code Civ. Proc.§ 1021.5, a party must show that its action conferred a significant public benefit on the general public or on a large class of persons. A significant benefit may be pecuniary or non-pecuniary and need not be concrete to support a fee award. (*See Braude v. Automobile Club of Southern California* (1986) 178 Cal.App.3d 994, 1013.)

> The trial court determines the significance of the benefit, and the group receiving it, 'from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case. The courts are not required to narrowly construe the significant benefit factor. 'The extent of the public benefit need not be great to justify an attorney fee[s] award.' And fees may not be denied merely because the primary effect of the litigation was to benefit the individual rather than the public." (*Indio Police Command Unit Association v. City of Indio* (2014) 230 Cal.App.4th 521, 543.)

However, the public benefit must be something more than the mere proper interpretation of a law.

> Of course, the public always has a significant interest in seeing that legal strictures are properly enforced and thus, in a real sense, the public always derives a 'benefit' when illegal private or public conduct is rectified. Both the statutory language ('significant benefit') and prior case law, however, indicate that the Legislature did not intend to authorize an award of attorney fees in every case involving a statutory violation. We believe rather that the Legislature contemplated that in adjudicating a motion for attorney fees under section 1021.5, a trial court would determine the significance of the benefit, as well as the size of the class receiving benefit, from a realistic assessment, in light of all the pertinent circumstances, of the gains which have resulted in a particular case. (*Robinson v. City of Chowchilla* (2011) 202 Cal.App.4th 382, 397, quoting *Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 939-940).

Where a lawsuit is brought to enforce existing rights, it does not necessarily preclude a significant benefit to the public. Courts have consistently awarded attorney's fees for the enforcement of well-defined, existing obligations. (*Otto v. Los Angeles Unified School Dist.* (2001) 106 Cal.App.4th 328, 334.) The court in *Otto* dealt with the right of a peace officer to an administrative appeal hearing when a disciplinary note was made in the officer's personnel file. Because the Safety Officer's Procedural Bill of Rights Act specifically provides for an appeal hearing, the court, in its award of attorney's fees, reasoned that vindication of peace officers' rights under the Act furthered the public interest in effective law enforcement.

In the instant case, Petitioner had a right to due process and a fair hearing to determine whether the allegations made against him of sexual assault were true and whether he should be subject to any discipline if the allegations against him were substantiated. Among the elements of a fair hearing in this context is the right to unbiased and impartial decisionmakers, for access to the evidence before findings are made, and a full opportunity to present a defense. In its written statement of decision, this Court found, *inter alia*, that "there is an unacceptable risk that the investigator [Brian Quillen] was not unbiased" and Respondent "improperly permitted Quillen to base his evaluation of credibility on what Quillen understood to be the 'trauma informed approach.'" (Exhibit 3 at p. 26.) Furthermore, the IPVARC "conducted a substantial evidence review of the Quillen/OJA report instead of exercising its

independent judgment in the review of the evidence." (Exhibit 3 at p. 26).

As set forth above, the issue of Title IX discipline procedures is of great national importance, inviting commentary by such luminaries as Alan Dershowitz, Gov. Jerry Brown, and the like. Accordingly, Petitioner's success clearly has resulted in the enforcement of an important right, to wit, fair procedures in Title IX actions. This affects both the general public by virtue of the huge sums of federal money at stake, and a large class of persons, namely students across the country (and California more specifically) who are subject to discipline procedures implemented by colleges and universities.

Where the University of California violated Petitioner's constitutional and statutory right to a fair hearing, and this Court rectified those violations by overturning the University of California's decision, a benefit was conferred not only on Petitioner, but on the public of the State of California. Any college or university student in the state of California could face allegations that he or she committed sexual assault, and will be subject to a Title IX administrative hearing. As such, ensuring that Title IX administrative hearings are held in accordance with constitutional and statutory requirements, and preserving the accused's due process rights, extends far beyond the rights of Petitioner and is of a significant benefit to the public.

C. THE NECESSITY AND FINANCIAL BURDEN OF PRIVATE ENFORCEMENT MAKE THE AWARD OF ATTORNEY'S FEES APPROPRIATE

The necessity and financial burden requirement "examines two issues: whether private enforcement was necessary and whether the financial burden of private enforcement warrants subsidizing the successful party's attorneys," (*Lyons v. Chinese Hosp. Ass'n* (2006) 136 Cal.App.4th 1331, 1348.) The primary purpose of the doctrine of private attorney general fees is to encourage enforcement of important public policies by providing substantial attorney's fees to successful litigants. (*Graham v. Daimler Chrysler Corp.* (2004) 34 Cal.4th 553, 565.) A litigant's nonpecuniary interests do not affect its eligibility for section 1021.5 fees under the necessity and financial burden requirement. (*In re Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1217.) An award on the "private attorney general" theory is appropriate when the cost to the prevailing party transcends his personal interest, that is, when the necessity for pursuing the lawsuit placed a burden on the plaintiff out of proportion to his individual stake in the matter. (*Woodland Hills Residents' Ass'n, Inc.* (1979) 23 Cal.3d 917, 941; *Mejia*

v. City of Los Angeles (2007) 156 Cal.App.4th 151, 158.) The petition for writ of administrative mandate sought the rescission of Respondent's decision that Petitioner was culpable of sexual assault and to suspend Petitioner for two years as punishment. The writ petition did not contemplate financial damages for Petitioner.

The necessity of private enforcement is self-evident here, given that the Title IX situation is such that the party that would most sensibly enforce the fair hearing requirement (the federal government) is the very party that has threatened the colleges and universities with its massive power of the purse-strings. In addition, Regents has an endowment over *$14.45 Billion Dollars*[14] and annual revenue of over *$7 Billion Dollars* (Exhibit 7) and is in a far superior position to stand up to OCR pressure than is Petitioner. The University of California Office of the President alone is holding over $38 Million in a slush fund.[15] Put another way, given the undeniable objective of the Department of Education's OCR to penalize accused students based on an *allegation* of sexual misconduct, the government, and the University of California Santa Barbara's Title IX process, have ensured an unfair, results-driven hearing process. Consequently, individuals such as Petitioner provide the only safety net to ensure that the Title IX processes of colleges and universities comport with fairness, due process, and the guarantees given students by the courts.

D. THERE IS NO FINANCIAL RECOVERY FROM WHICH TO PAY ATTORNEY'S FEES IN THIS MATTER

Ordinarily, fees would not be paid out of the proceeds of litigation where to do so contradicts the interests of justice. In this case, there are no proceeds at all from which to pay attorney's fees, because the writ petition did not, and cannot, contemplate payment of monetary damages. The trial court may not conclude there are no financial incentives in the litigation simply because Petitioner did not or could not seek a monetary award. (*Summit Media LLC v. City of Los Angeles* (2015) 240 Cal.App.4th 171, 193.)

Attorney's fees for representation at administrative hearings prior to litigation are also available

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[14] http://www.ucop.edu/investment-office/investment-reports/annual-reports/index.html

[15] Regents assert that reported $175 Million slush fund is actually only $38 Million. See, "UC responds to state audit report on University of California Office of the President UC Office of the President," Tuesday, April 25, 2017, https://www.universityofcalifornia.edu/press-room/uc-responds-state-audit-report-university-california-office-president

provided that those proceedings were useful and necessary to the public interest litigation. (*Best v. California Apprenticeship Council* (1987) 193 Cal.App. 3d 1448, 1459.)

III. REQUESTED FEES ARE REASONABLE

> The determination of what constitutes a reasonable fee generally 'begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate….'[T]he lodestar is the basic fee for comparable legal services in the community; it may be adjusted by the court based on factors including, as relevant herein, (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award…." (*Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 154.)

"The verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous." (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 396.) Apportionment of fees is not required if the fee and non-fee bearing claims are inextricably intertwined. (*See Fed-Mart Corp. v. Pell Enterprises, Inc.* (1980) 111 Cal.App.3d 215, 227.) Where the plaintiff is successful on his or her claim for relief, it is not important that some of the plaintiff's legal theories used to support that claim were not found meritorious, so long as the plaintiff did prevail. (*Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 249-250.)

Additionally, attorney's fees that are incurred in an administrative proceeding are compensable under section 1021.5 if the administrative proceeding is "useful and necessary to the public interest litigation." (*Best v. California Apprenticeship Council* (1987) 193 Cal.App.3d 1448, 1461; *Edna Valley Watch v. County of San Luis Obispo* (2011) 197 Cal.App.4th 1312, 1317-20.) The fee award calculation begins with the "lodestar," the number of hours reasonably expended multiplied by the reasonable hourly rate prevailing in the community for similar services. The court may then increase or decrease the amount to take into account other factors unique to the case (risks associated with contingent fee, quality of work, novelty and complexity of issues, results obtained, etc.) as long as those factors do not duplicate factors considered in calculating the lodestar. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579-580 (applying an enhancement of 2.25.) A "reasonable" hourly rate used to calculate

the lodestar is the prevailing rate for similar work in the community where the court is located. (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698.)

As set forth more fully in the following Declaration of Mark M. Hathaway, the fees requested are accurate, verified, and quite reasonable given counsel's expertise in Title IX litigation and given the fact that relatively few attorneys possess such expertise. (*See, generally,* Declaration of Mark M. Hathaway.)

IV. CONCLUSION.

WHEREFORE, in light of the foregoing, petitioner respectfully requests that the Court issue an order granting his motion for attorney's fees in the amount of $56,097.85 and that the court apply an enhancement of at least 2.00 for a total award of $112,196.70 or more.

WERKSMAN JACKSON
HATHAWAY & QUINN LLP

DATED: January 26, 2018 By: _____

Mark M. Hathaway, Esq.
Jenna E. Eyrich, Esq.
Attorneys for Petitioner, JOHN DOE

DECLARATION OF MARK M. HATHAWAY

I MARK M. HATHAWAY declare:

I am an attorney admitted to practice in all courts in the State of California, the State of New York, and the District of Columbia and am responsible for the representation of Petitioner John Doe in this matter. I have personal and first-hand knowledge of the facts set forth in this Declaration, unless otherwise stated, and, if called as a witness, I could and would testify competently to those facts

1. This is an action for a writ of mandate directing respondent the Regents of the University of California to set aside the findings and sanctions that the University of California Santa Barbara issued against Petitioner. The basis of Petitioner's petition was that respondent failed to conduct a fair hearing---the Court agreed.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Peremptory Writ of Administrative Mandate, issued herein on or about November 17, 2017.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Judgment Granting Petition For Writ Of Administrative Mandate, entered herein on November 15, 2017.

4. Attached hereto as Exhibit 3 is a true and correct copy of Order Granting Petition for Writ of Mandate, filed herein on November 15, 2017.

5. As the result of this Court's November 15, 2017 ruling and the entry of Judgment on petitioner's petition, the right of accused students to a fair Title IX hearing process has been enforced. This action has conferred a significant benefit on students throughout the State of California in that it ensures that colleges and universities must accord a fair hearing to students accused in connection with Title IX sexual misconduct cases, including the right to question the complainant, if even indirectly.

6. Over the past four years, after assisting a family friend who was accused in a similar Title IX sexual misconduct case, I have been asked to assist more than 100 accused students and professors in private and public colleges and universities in California and elsewhere. In addition, there are at least 130 pending court cases challenging the lack of due process and lack of fairness in the current climate of Title IX sexual misconduct enforcement at colleges and universities. (See, www.titleixforall.com.).

7. Attached hereto as Exhibit 4 is a true and correct copy of U.S. Secretary of Education Betsy DeVos's remarks on Title IX Enforcement calling Title IX sexual misconduct investigations as a "failed

system."

8. Attached hereto as Exhibit 5 is a true and correct copy of California Governor Edmund G. Brown Jr.'s veto of Senate Bill 169 which would have codified the "failed system" into California law.

9. This award of attorney's fees is appropriate in that absent such actions as petitioner's, there would be no real mechanism to enforce the accused's right to a fair hearing in Title IX matters.

10. I, and attorneys Jenna Eyrich, Chris L. Campbell and Kimberley Penix spent the following number of hours in preparation of this action:

Attorney and Rate	No. Hours	Total
Mark Hathaway ($650/hr.)	30.21	$19,636.50
Jenna Eyrich ($225/hr.)	109.97	$24,743.25
Chris L. Campbell ($375/hr.)	15.88	$5,955.00
Kimberley Penix ($375/hr)	3.3	$1,072.50
		$51,407.25

11. In addition to licensed attorneys, the effort in Petitioner's case also required legal assistants and paralegals as follows:

Personnel and Rate	No. Hours	Total
Yesenia Alvarado ($105/hr.)	9.0	$945.00
Tammy Nguyen ($135/hr.)	12.9	$1,741.50
Danika Abdo ($85/hr.)	9.67	$821.95
Andrew Wuence ($105/hr.)	1.83	$192.15
Teresa Tharp ($150/hr.)	6.6	$990.00
		$4,690.60

12. The total of professional fees is $56,097.85, which is entitled to an enhancement factor of at least 2.00 for a total of $112,195.70

13. Attached here to as Exhibit 6 is a redacted true and correct copy of the invoices for professional services to Petitioner. Services and charges that are lined-out, if any, are unrelated to the writ petition matter. The remainder of the hours and charges are directly related to the prosecution of this Writ of Mandate matter in Almeda Superior Court.

14. The hourly fees charged for my time and the other attorneys in our firm, as well as paralegals and legal assistants, are commensurate with the rates of other attorneys and firms in Northern California

with similar experience and expertise.

15. Attached hereto as Exhibit 7 is a true and correct copy of Summary pages from the University of California Budget for Current Operations for 2016 -2017, which reflect on page 18 an annual operating budget of $7.3 Billion Dollars.

16. Attached hereto as Exhibit 8 is a true and correct copy of Inside Higher ED Article - Federal campus safety rules reignite debate over standard of evidence.

17. Attached hereto as Exhibit 9 is a true and correct copy of an article published with the date, publication, and title as follows: 20150401 Esquire Magazine Occidental Justice

18. Attached hereto as Exhibit 10 is a true and correct copy of an article published with the date, publication, and title as follows: 20150916 LA Times - Why it's unfair for colleges to use outside investigators in rape cases -

19. Attached hereto as Exhibit 11 is a true and correct copy of an article published with the date, publication, and title as follows: 20160314 The College Fix Article -University of Texas to Police hide evidence that favors accused students

20. Attached hereto as Exhibit 12 is a true and correct copy of an article published with the date, publication, and title as follows: 20160420 News Week.com Article - Suspended College Athlete Suing U.S

21. Attached hereto as Exhibit 13 is a true and correct copy of an article published with the date, publication, and title as follows: 20160505 The Claremont Independent Article _re- Fox News Video_ - SJWs Create 'Shady Person of Color' List to Target Dissenters

22. Attached hereto as Exhibit 14 is a true and correct copy of an article published with the date, publication, and title as follows: 20160531 AirTalk®89.3 KPCC _ Should schools flag transcripts of campus sexual offenders_

23. Attached hereto as Exhibit 15 is a true and correct copy of an article published with the date, publication, and title as follows: 20161017 THE TRITON Article -Student Wins Academic Integrity Case Against UCSD _

24. Attached hereto as Exhibit 16 is a true and correct copy of an article published with the date, publication, and title as follows: 20170222 New York Post Article - Teen charged with lying about

being raped by college football players _

25. Attached hereto as Exhibit 17 is a true and correct copy of an article published with the date, publication, and title as follows: 20170228 Reason.com Article - Student Expelled for Rape Says Amherst Discriminates Against Men, Court Says He's Got a Point - Hit & Run _

26. Attached hereto as Exhibit 18 is a true and correct copy of an article published with the date, publication, and title as follows: 20170228 Student Expelled for Rape Says Amherst Discriminates Against Men, Court Says He's Got a Point

27. Attached hereto as Exhibit 19 is a true and correct copy of an article published with the date, publication, and title as follows: 20170301 EDURiskSolutions.com Article - Liability for Student Sexual Assault_ UE's Claims Say OCR and Title IX Are Not the Biggest Dangers

28. Attached hereto as Exhibit 20 is a true and correct copy of an article published with the date, publication, and title as follows: 20170302 Academic Wonderland Article -Key Amherst Decision

29. Attached hereto as Exhibit 21 is a true and correct copy of an article published with the date, publication, and title as follows: 20170303 The College Fix Article - Judge vindicates 'blacked out' student expelled for rape because accuser blabbed to HuffPo -

30. Attached hereto as Exhibit 22 is a true and correct copy of an article published with the date, publication, and title as follows: 20170306 BuzzFeedNews Article - The Trump Administration Inherited Hundreds Of Unresolved Title IX Complaints

31. Attached hereto as Exhibit 23 is a true and correct copy of an article published with the date, publication, and title as follows: 20170309 Daily News Article - UC sexual misconduct punishments inconsistent, lacking in transparency –

32. Attached hereto as Exhibit 24 is a true and correct copy of an article published with the date, publication, and title as follows: 20170329 Lexology Article -Title IX sexual assault lawsuits are increasingly asserting

33. Attached hereto as Exhibit 25 is a true and correct copy of an article published with the date, publication, and title as follows: 20170501 The TAB Article - A Title IX lawyer explains how male students sue their schools when accused of sexual assault

34. Attached hereto as Exhibit 26 is a true and correct copy of an article published with the date,

publication, and title as follows: 20170705 Wall Street Journal Will Trump End Campus Kangaroo Courts

35. Attached hereto as Exhibit 27 is a true and correct copy of an article published with the date, publication, and title as follows: 20170803 Nixon PeaBody.com Article - Judge rules that university must produce sexual assault reports in Title IX lawsuit - Data Privacy Blog

36. Attached hereto as Exhibit 28 is a true and correct copy of an article published with the date, publication, and title as follows: 20170808 The ALI Adviser Article - Title IX and Procedural Fairness_

37. Attached hereto as Exhibit 29 is a true and correct copy of an article published with the date, publication, and title as follows: 20170811 Chronicle.com Article - U.S asks court to put Hold on Lawsuit as it reviews 2011 Title IX Guidance

38. Attached hereto as Exhibit 30 29 is a true and correct copy of an article published with the date, publication, and title as follows: 20170815 KBTX.com Article - Former student files Title IX lawsuit against Texas A&M

39. Attached hereto as Exhibit 31 is a true and correct copy of an article published with the date, publication, and title as follows: 20170907 Westword Article - Colorado School of Mines Sexual Misconduct Lawsuit Filed _

40. Attached hereto as Exhibit 32 29 is a true and correct copy of an article published with the date, publication, and title as follows: 20170918 Tennessean.com Article - Nashville lawsuits signal changes to Title IX and fight against college sexual assaults

41. Attached hereto as Exhibit 33 is a true and correct copy of an article published with the date, publication, and title as follows: 20170919 Tennessean Article - Fourth sexual violence lawsuit filed against Nashville public schools

42. Attached hereto as Exhibit 34 is a true and correct copy of an article published with the date, publication, and title as follows: 20171008 WHNT Article - UNA responds to federal Title IX lawsuit, provides university's timeline of events regarding alleged sexual assault

43. Attached hereto as Exhibit 35 is a true and correct copy of an article published with the date, publication, and title as follows: 20171019 ThinkProgress.com Article - Federal lawsuit against new Title IX guidance claims it is 'offensive' and 'discriminatory' –

44. Attached hereto as Exhibit 36 is a true and correct copy of an article published with the date, publication, and title as follows: 20171020 Gazettenet.com Article - UMass Amherst sued over handling of sexual misconduct investigation, proceedings

45. Attached hereto as Exhibit 37 is a true and correct copy of an article published with the date, publication, and title as follows: 20171127 ESPN.com Artilce - Woman files Title IX gender discrimination lawsuit against Michigan State

46. Attached hereto as Exhibit 38 is a true and correct copy of an article published with the date, publication, and title as follows: 20171127 Freep.com Article - Lawsuit_ MSU brought football player back to campus after he was banned

47. Attached hereto as Exhibit 39 is a true and correct copy of an article published with the date, publication, and title as follows: 20171127 The DP Article - Penn settles lawsuit with student who accused the University.

48. Attached hereto as Exhibit 40 is a true and correct copy of an article published with the date, publication, and title as follows: 20171127 WLNS Article - MSU faces Title IX lawsuit stemming from 2015 sexual assault _

49. Attached hereto as Exhibit 41 is a true and correct copy of an article published with the date, publication, and title as follows: 20171128 Ithacajournal.com Article - Graduate sues Cornell after Title IX sexual assault investigation

50. Attached hereto as Exhibit 42 is a true and correct copy of an article published with the date, publication, and title as follows: 20171207 North Chicago Tribune - western lawsuit highlights debate on university sexual misconduct policies -

51. Attached hereto as Exhibit 43 is a true and correct copy of an article published with the date, publication, and title as follows: 20171207 Westmont College protesters blast school'..

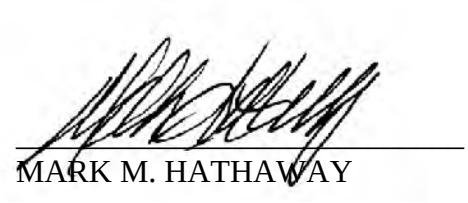
52. Attached hereto as Exhibit 44 is a true and correct copy of an article published with the date, publication, and title as follows: 20171208 Westmont, the Courts, & Basic Fairness – Academic Wonderland (2)

53. Attached hereto as Exhibit 45 is a true and correct copy of an article published with the date, publication, and title as follows: 20171212 Academic Wonderland: Pomona, The Courts Basic Fairness

54. Attached hereto as Exhibit 46 is a true and correct copy of an article published with the date, publication, and title as follows: 20171227 Save Our Sons CA COURT WIN. Judge Rules Westmont College Title IX Process Unlawful to Accused Male

55. Attached hereto as Exhibit 47 is a true and correct copy of an article published with the date, publication, and title as follows: 20180103 College sued for Title IX investigation against student – The Mac.

I declare under the penalty of perjury in the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on January 25, 2018.



MARK M. HATHAWAY

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 888 West Sixth Street, Suite 400, Los Angeles, California 90017.

On January 26, 2018, I served the foregoing document described PETITIONER'S MOTION FOR ORDER AWARDING ATTORNEYS' FEES; DECLARATION OF MARK M. HATHAWAY; EXHIBITS on all interested parties listed below by transmitting to all interested parties a true copy thereof as follows:

Jonathan D. Miller
Alison Bernal
Nye, Peabody, Stirling, Hale & Miller LLP
33 West Mission, Suite 201
Santa Barbara, CA 93101
Telephone: (805) 963-2345
Facsimile: (805) 563-5385
E-mail: jonathan@nps-law.com
ATTORNEYS FOR RESPONDENT

☐ BY FACSIMILE TRANSMISSION from FAX number (213) 624-1942 to the fax number set forth above. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(i), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

☒ BY MAIL by placing a true copy thereof enclosed in a sealed envelope addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ BY PERSONAL SERVICE by delivering a copy of the document(s) by hand to the addressee or I cause such envelope to be delivered by process server.

☐ BY EXPRESS SERVICE by depositing in a box or other facility regularly maintained by the express service carrier or delivering to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served.

☐ BY ELECTRONIC TRANSMISSION by transmitting a PDF version of the document(s) by electronic mail to the party(s) identified on the service list using the e-mail address(es) indicated.

☒ I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on January 26, 2018 in Los Angeles, California

YESENIA N. ALVARADO
ANDREW WUENCE

Exhibit 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

BY FAX

JOHN DOE, an individual, Petitioner, v. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; and DOES 1 to 20 inclusive, Respondents.	Case No.: RG16843940 [Hon. Thomas Rogers, Department 514] ~~[Proposed]~~ [illegible] PEREMPTORY WRIT OF ADMINISTRATIVE MANDATE

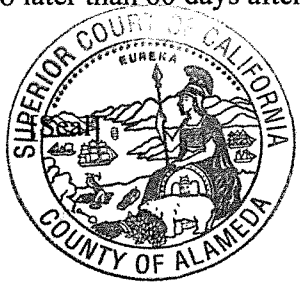
TO THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, RESPONDENT,

WHEREAS ON November 15, 2017 judgment having been entered in this action, ordering that a peremptory writ of administrative mandate be issued from this Court.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, immediately upon service of this writ Respondent The Regents of the University of California shall:

A. The Regents must set aside and vacate the decision of the University of California, Santa Barbara's Interpersonal Violence Appeal Review Committee ("IPVARC") decision in Doe v. Roe (Title IX Case# 2016-0036).

B. The Regents must file its return on the writ demonstrating compliance with the writ no later than 60 days after service of the writ on the Regents.



Chad Finke

NOV 17 2017

Clerk

By _____, Deputy Clerk

WERKSMAN JACKSON
HATHAWAY & QUINN LLP
888 WEST SIXTH STREET, FOURTH FLOOR
LOS ANGELES, CALIFORNIA 90017

Jonathan D. Miller
Alison Bernal
Nye Peabody Stirling Hale & Miller LLP
33 West Mission Street, Suite 201
Santa Barbara, CA 93101

Exhibit 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

JOHN DOE, Plaintiff, v. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al, Defendants.	No. RG16-843940 JUDGMENT Date: 11/15/17 Time: 9:00 a.m. Dept.: 514

The Petition of petitioner John Doe for a writ of mandate came on for hearing on 10/12/17 and again on 11/15/17, in Department 514 of this Court, the Honorable Thomas Rogers presiding.

After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, the Court issued an Order on 11/15/17 granting the petition for writ of mandate.

The court now enters judgment as follows:

1. The court enters JUDGMENT in favor of Petitioner JOHN DOE and against Respondent The Regents of the University of California ("The Regents"). The court granted the petition of Petitioner John Doe for a writ of mandate by Order dated 11/15/17.

2. The court directs the clerk to issue a peremptory writ of mandate commanding as follows:

   A. The Regents must set aside and vacate the decision of the University of California, Santa Barbara's Interpersonal Violence Appeal Review Committee ("IPVARC") decision in Doe v. Roe (Title IX Case # 2016-0036).

   B. The Regents must file its return on the writ demonstrating compliance with the writ no later than 60 days after service of the writ on the Regents.

3. Petitioner John Doe must submit a proposed Writ of Mandate to the clerk of the court with a $25 filing fee. (Gov. Code 20626(a)(1).)

4. Once issued by the clerk, Petitioner John Doe must serve the writ and then file a proof of service. (CCP 1096.)

5. After the Regents sets aside and vacates the IPVARC decision, the Regents may conduct further proceedings consistent with applicable law, this court's order dated 11/15/17, and this judgment. The court does not limit or control in any way the discretion legally vested in the Regents. (Code Civ. Proc. §1094.5(f).)

6. This court retains jurisdiction over the parties in this case until the court has determined that Regents has complied with the writ and set aside and vacated the Order.

7. The court's retention of jurisdiction in this case is limited to the issues presented in the petition. The court cannot, and does not, extend its jurisdiction in this case to include potential future challenges to future IPVARC decisions. (*Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 479-480.) If in the future the Regents or the IPVARC issues a new decision that addresses the facts and circumstances that were presented in this case, then any aggrieved person may challenge any such future decision in a separate action.

8. Any party may file a memorandum of costs or make a motion for an award of attorney's fees. (CCP 1032 and 1033.5; CRC 3.1700 and 3.1702.)

Dated: November 15, 2017

Thomas Rogers
Judge of the Superior Court

CLERK'S CERTIFICATE OF SERVICE BY MAIL
CCP 1013a(3)

CASE NAME: Doe vs. The Regents of the University of California
ACTION NO.: RG16843940

I certify that, I am not a party to the within action. I served the foregoing by depositing a true copy thereof in the United States mail in Oakland, California in a sealed envelope with postage fully prepaid thereon addressed to:

Mark M. Hathaway
Hathaway & Quinn LLP
888 West Sixth Street, Fourth Floor
Los Angeles, CA 90017

Alison Bernal
Nye, Peabody, Stirling, Hale & Miller
33 West Mission Street, Suite 201
Santa Barbara, CA 93101

I declare under penalty of perjury that the following is true and correct

Executed on November 16, 2017 at Oakland, California

Chad Finke,
Executive Officer/Clerk

by Shanika Monroe
Deputy Clerk

Exhibit 3

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

JOHN DOE, Plaintiff, v. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al, Defendants.	No. RG16-843940 ORDER GRANTING PETITION FOR WRIT OF MANDATE Date: 11/15/17 Time: 9:00 a.m. Dept.: 514

The Petition of petitioner Doe for a writ of mandate came on for hearing on 10/12/17 and again on 11/15/17, in Department 514 of this Court, the Honorable Thomas Rogers presiding. Counsel appeared on behalf of Petitioner Doe and on behalf of Respondent The Regents of the University of California ("The Regents"). After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The Petition of petitioner Doe for a writ of mandate directing the Regents to set aside and vacate the decision of the University of California, Santa Barbara's Interpersonal Violence Appeal Review Committee ("IPVARC") decision in Doe v. Roe (Title IX Case # 2016-0036) is GRANTED.

ADMINISTRATIVE RECORD

The administrative record submitted to the court was not indexed and was difficult to use. After this was brought to its attention, the Regents submitted an index.

In the briefing, the parties frequently did not provide useful citations to the record. Doe cites to his own information and downplayed contradictory info. The Regents frequently cited to the investigator's report at AR 175-222 as evidence instead of citing to the underlying evidence. A citation to the factual summary in a report is not particularly useful in establishing that there is substantial evidence for the factual summary in the report. The only exception is where the investigator's report contains a summary of an unrecorded and unwritten witness statement.

FACTS

Doe and Roe were both students at the University of California, Santa Barbara. Doe and Roe were friends. Roe was in a long term same sex relationship with R. (AR178)

In November 2015, Roe expressed interest in a heterosexual encounter with Doe. (AR 179, 189)

On 11/5/15, Doe and Roe had the sexual encounter that is the subject of this case. Roe invited Doe to her residence to "make out." (AR 27:16-18, 29:8-10; 179.) The went to Roe's room and had some wine. Other than Roe and Doe, there were no witnesses to the encounter. (AR 30:15-20, 65:25-66:2.)

On 11/6/15, the following day, Roe has a text conversation with another student (A.S.):

> Roe – Let's say this is my first business of hands. …
> A.S. – and did you enjoy. How was it.
> Roe – he was going to come. But someone was coming. / But it was a false alarm / But then we continued / But I'm not sure if I enjoyed the hand job, because I was nervous, because I never done one to anybody
> A.S. – Ha Ha Ha. But very very good
> Roe – Yes / Finally, I killed my curiosity." (AR 260)
> …

Roe - The truth is, if I had been waxed, and more prepared, it would have gone further, but I would have felt bad for R.
A.S. – Waxed, you mean drugs?
Roe – You mutt, waxed means shaved, you idiot
...
A.S. – I'm glad it was what you were expecting.
Roe – Wide grin emoticon
A.S. – Solidarity emoticon
Roe – And then he asked me if I wanted a blow job. I said Nope.
(AR 261-262)

On or about 11/7/15 (2-3 days after the encounter), Doe and Roe had another sexual encounter in which Roe again gave Doe a hand job. Roe said that this was consensual, but that this second event was part of her denial. (AR 29, 67, 180, 187.) This second event is not at issue in this case. (AR 67.)

On 11/8/15 (3 days after the encounter), Roe and Doe had the following text conversation[1]:

Roe - "I know ive asked you many times no but are you sure youre not just trying to fuck me."
Doe - "No I turned down a hand job last night, I'm clearly not in it solely for the sex."
Roe - "oooh that's why you did that / I was confused."
Doe – Also this is happening too fast for me rn lets talk later today I'm gonna do my work today
Roe - I was gonna say that too / glad we're on the same page.
(AR 324-325.)

On 11/10/15 (5 days after the encounter), Roe has a text conversation with another student (A.S.):

Roe – And to be honest, I like Mr. Doe. I also like his company, but it is like you've been here over x time, please leave / I should've fucking made out with you and not him. (AR 271.)

[1] Many of the text conversations were originally in Spanish and Roe states that the translations were incorrect. (AR 189) The court relies on the translations in the administrative record.

...

Roe – He's an asshole. I'll call whatever this is off / But I fucking like him / But he is an asshole / I'll stop my rant now. (AR 272)

...

Roe – Mr. A.S., I'm impatient / And compulsive / I'm going to call whatever this fling is off. (AR 274)

Roe wrote in her journal "yes I liked it." (AR 189, 216.)

On 11/13/15, Roe texted A.S. "well, ive been going through hell in many ways .. and not because of him ... my life was already difficult ... ive been through a lot ... not only my dad." (AR 407-408)

Roe stated in the investigation that after the 11/5/15 incident she went into denial and convinced herself she enjoyed what happened. (AR 180.)

A.S. said that after the incident Roe frequently stayed near Doe's residence and it appeared that Roe wanted a romantic relationship with Doe. (AR 200.) There is evidence that Roe broke off her three year relationship with R from 11/5 through about 11/15/15. Roe elsewhere states she never broke up with R, but rather "took a break to explore." (AR 31-32, 190.)

On or about 11/17/15, Roe told Doe that she had not consented to the sexual activity on 11/5/15. (AR 288.)

Around Thanksgiving 2015, Roe posted letters on campus regarding sexual assault. (AR 180, 280-282.)

On 2/22/16, Roe filed a complaint against Doe. (AR 16, 175) The Regents appointed Quillen as investigator.

On 3/2/16, Quillen sent a letter to Doe that notified Doe of the investigation. (AR 503-504.) Doe requested a copy of the complaint. Quillen stated that consistent with policy he would provide only the information in the letter and that he would provide the allegations at a meeting. (AR 354-355.) Quillen thereafter interviewed witnesses. (AR 19)

Roe told Quillen that she she withdrew consent during the encounter and it became non-consensual. Roe said that she said "no" when Doe touched her breasts and "no" when Doe placed her hand on his penis. She said that she said "no" eight times. (AR 28, 179.) Roe told Quillen that about five days after the encounter she realized it was sexual assault. (AR180.)

On 3/18/16, Quillen met with Doe. Quillen did not provide Doe with the written allegations against him. (AR 356-358.) Quillen asked Doe questions about the incident. Quillen later stated that the questions effectively disclosed the charges because the witness statements and the complainants report were embedded in the questions. (AR 19.)

Doe told Quillen that the encounter was consensual. Doe said he asked permission before he touched Roe's buttocks and breasts and asked her what she wanted to do. Doe said that Roe asked him what he wanted to do, he suggested a "hand job," and then Doe put his hands around hers to perform the sexual act. (AR 29-30, 183.)

On 4/1/16, Quillen sent a letter to Doe that confirmed that Quillen did not provide Doe with the written allegations against him. (AR 356-358) Quillen explained that under the UCSB procedure he provided Doe only with the general information in the initial letter so that Doe had "an open ended, unrestricted opportunity to present any and all information you believe is relevant, rather than being constricted by your considerations of what my office has indicated as relevant." (AR 356)

On 4/13/16 Doe submitted a lengthy written statement. (AR 365, 368) The written statement is dated 3/31/16, but Doe's email of 4/13/16 states the report was ready on 3/31/17 and Doe delayed the submission in the hopes of getting assistance from the Office of Respondent Services. (AR 365.)

Between 4/13/17 and 4/26/17, Doe and Quillen exchanged email regarding Doe's concerns with the process and disappointment that UCSB provided no support in preparing his statement.

On 4/29/16, Quillen again interviewed Doe. (AR 21-22, 40.) Quillen asked Doe about the incident. Doe objected to the suggestive lines of questioning, but Quillen stated it was the normal method of eliciting information. (AR unknown [Cited in Doe's brief as Prelim AR 344-345). Doe emailed Quillen Doe's notes from the interview, but Quillen stated that his notes and pre-prepared questions were the official record and that he would use those in his analysis. (AR 23:1-5.) Quillen later stated that the questions in some measure disclosed the nature of the charges because the charges were embedded in the questions. (AR 45.) Quillen's subsequent report states his summary of the interview. (AR 181-186.)

On 4/29/16, Doe reported to Quillen evidence of possible stalking by Roe. Quillen evaluated the information, decided that it was not sexual harassment and that it was not a matter for his office. (AR 22.) Quillen did not pursue the stalking allegations as part of his investigation and stated he would close his file. (AR 387-388.) Doe and Quillen exchanged a series of lengthy emails on the subject. (AR 375-388.)

On 5/8/17, Doe submitted information that Roe was reporting him to the Office of Judicial Affairs because she saw him on campus. (AR 370-371.)

On 5/11/17, Doe submitted additional information regarding Roe's interest in Doe dating back to May 2015. (AR 372-374.)

On 5/17/16, Doe sought assistance from the UCSB Office of the Dean of Students regarding an extension on a paper and Doe's frustration with Quillen and what Doe perceived as a lack of due process in the investigation process. The Dean's Office redirected Doe to Quillen. (AR 390-396.)

On 5/23/16, Quillen asked for a final debriefing interview with Roe and with Doe. Roe accepted. Doe deferred the interview until after final exams. (AR 24-25.)

On 5/25 and 5/27/16, Quillen provided Doe with information about how to file a complaint if Doe felt that he was being treated unfairly in the investigation process. (AR 22.)

On 6/28/16, Quillen presented Doe with the summary of evidence at a "final debrief interview.". (24-25, 177.) Doe presented Quillen with statements by students AS and SM. Quillen stated that his notes and pre-prepared questions regarding Quillen's interviews with AS and SM were the official record and that he would use those in his analysis. (AR 25-26)

On 6/30/16, Doe submitted an additional written statement. (397-399.)

On 8/1/16, Quillen submitted his report to the Office of Judicial Affairs (OJA). (AR 175-222.) The report has an extensive recitation of the contentions and responses. (AR 178-207.) The report then has an extensive summary of the evidence that suggests either consent or lack of consent, including acknowledgment of inconsistent statements, analysis of motives, and similar matters. (AR 207-220) Quillen's report credits Roe's assertion that her post-encounter actions, texts, and journal entry were her way of trying to normalize the encounter. (AR 214-216.) (See also AR 33:14-35:3.) The report concluded that Doe committed sexual assault in violation of the then applicable policy. (AR221-222.) The initial report recommended a two year suspension. (AR 175-222)

On 8/1/16, Quillen sent a letter to Doe stating that Quillen was forwarding the report to the OJA. (AR 506.) The letter informed Doe that he could meet with the OJA or he could submit a responsive written statement within 10 days. (AR 506.)

On, 8/15/16, Doe sent additional information to the Office of Judicial Affairs ("OJA") before the OJA was to make its decision. (AR 327-328)

On 8/19/16, the OJA issued its decision. (AR 327-329) The OJA considered Quillen's report and Doe's 8/15/16 submission of additional information.

On, 8/29/16, Doe filed an appeal to the Interpersonal Violence Appeal Review Committee ("IPVARC"). (AR 331-340.) On 9/30/16, the IPVARC sent Doe notice of the appeal hearing. (AR 342-351.)

The IPVARC set out the issues to be considered at the hearing. (AR 348-351.) The IPVARC procedures state that "You may not directly question the Complainant and the

Complainant may not directly question you. Instead, you may submit questions for the Panel to ask the other party." (AR 346.)

On 10/19/16, the IPVARC held a hearing. (AR 3-171.) The IPVARC did not conduct a de novo review. (AR 8:10-13.) The IPVARC considered only evidence that was submitted before 8/19/16. (AR 9:15-23.) The IPVARC reviewed the OJA's decision for procedural error and substantial evidence. (9:24-10:5, 348-352.)

The IPVARC stated that the Complainant and the Complainant may submit questions for the Panel Chair to ask the other party but that "Neither party is obligated to answer." (AR 13.)

At the IPVARC hearing, Quillen stated his procedure and conclusions. (AR 13-54.) Doe (through the Board) asked questions to Quillen. (AR 55-81.) Doe chose to incorporate his appeal summary with his closing statement. (AR 84) The Board asked questions to Doe, largely related to his late identification of witnesses. (AR 86-89.) Roe, through the Board, asked questions to Doe. (AR 89-93.) The IPVARC then heard from witnesses A.S., S.M., and N.N. (91-130.)

Doe then noted that it was 4:55, that he understood that the IPVARC had the room until 5:00, and requested that the IPVARC reconvene at another time. (AR 130.) The IPVARC stated the process needed to be completed that day, and that it would find a new room if necessary. (AR 131.)

Roe gave her statement. (AR 132-134.) The record does not reflect that Doe was permitted (through the Board) asked questions to Roe. Doe gave his statement. (AR 134-142.)

On 11/2/16, the IPVARC issued its decision. (AR 508-510.)

EVIDENCE

The request of the Regents for judicial notice filed 8/28/17 is GRANTED. (Evid Code 452(h).) Exhibit A, the former policy and guidance of the Department of Education is relevant because the Regents adopted the policies at issue in part in response to that policy and guidance.

Exhibit B, the United States Office of Victims of Crime website on "Using a Trauma Informed Approach" is relevant because Quillen stated that he used that approach. (AR 57, 61, 68, 214-215.)

The request of Doe for judicial notice filed 9/26/17 is GRANTED. (Evid Code 452(h).) The current policy and guidance of the Department of Education is relevant because the Regents adopted the policies at issue in part in response to the former policy and guidance. The court ultimately does not give any effect to the current policy and guidance because Roe's conduct was governed by the UCSB policies in effect at the time of the incident and the conduct of the academic proceedings was governed by the UCSB policies in effect at the time of the academic proceedings.

CLAIMS

Petitioner asserts that the Regents denied Doe a fair hearing because (1) Doe did not have adequate notice of the charge and a meaningful opportunity to respond to the charge; (2) the trauma informed approach to Roe's testimony shifted the burden, (3) there was structural error in the Regents' process, (4) Doe did not have an opportunity to question Roe, and (5) the Investigator altered and omitted evidence. The court identified, and the parties briefed (6) whether the IPVARC erred in reviewing the proposed decision for substantial evidence rather than undertaking an independent review of the evidence. Petitioner also (7) asserts that the final decision is not supported by the evidence.

DUE PROCESS GENERALLY.

The court considers due process issues using the court's independent judgment. (*Doe v. Regents of the University of California* (2016) 5 Cal.App.5th 1055, 1073; *Tafti v. County of Tulare* (2011) 198 Cal.App.4th 891, 896.) The Regents must follow its own procedures and those procedures must provide a level of due process appropriate for the interest at stake.

(*Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.* (2013) 57 Cal.4th 197, 212-214; *Doe v. Regents of the University of California* (2016) 5 Cal.App.5th 1055, 1077-1078.)

Under the UCSB Adjudication Framework, the investigator interviews witnesses and prepares a report. (AR 593-597.) There is no provision for providing information to the accused in the investigatory process.

On completion of the investigation, the investigator and the Student Conduct Office provide the complainant and respondent with a copy of the report. (AR 597.) The respondent may then schedule a meeting or submit additional information. (AR 597-598 [Adjudication Framework V.B.6].)

The complainant and respondent may appeal the Student Conduct Office's decision to an appeal body (the IPVARC). The UCSB Policy on Sexual Violence and Sexual Harassment states "The IPVARC shall serve as the decision-making body on the appeal." (AR 524.) The Adjudication Framework states there are four potential grounds for appeal. (AR 524 [Adjudication Framework, VI.A].) The Adjudication Framework also states that without regard to grounds of appeal that before the hearing the parties "will" submit the names of witnesses and a summary of the expected testimony (AR 600 [VI.F.1.b]) and that in the hearing the parties "will have the opportunity" to to present that information and "have the right " to hear all individuals who testify at the hearing and to propose questions to be asked of all individuals who testify at the hearing" (AR 601-602 [Adjudication Framework, VI.F.2.c and d].) The IPVARC is required to "reach a decision based on a preponderance of the evidence standard," and in doing so "shall take into account the record developed by the investigator and the evidence presented at the hearing, and may make its own findings and credibility determinations based o all the evidence before it." (AR 602 [VI.G.1 and 2].)

This procedure is adequate if the IPVARC conducts a de novo hearing and makes its decision based on the preponderance of the evidence presented at the hearing. (*Doe v. Regents*, 5 Cal.App.5th at 1077-1078.) As discussed below, this procedure is inadequate if the IPVARC sits

as an appeal body and reviews the investigator's report to determine whether it is supported by substantial evidence.

NOTICE OF AND OPPORTUNITY TO RESPOND TO THE CHARGE IN THIS CASE

Doe asserts he was not given notice of the charges or an opportunity to respond. This is legal and due process issue that the court reviews using the court's independent judgment.

On 3/2/16, Quillen sent a letter to Doe and on 3/18/16 met with Doe. On 4/13/16 Doe submitted a lengthy written statement. (AR 365, 368) On 4/29/16, Quillen interviewed Doe. (AR 21-22, 40.) On 5/11/17, Doe submitted additional information regarding Roe's interest in Doe dating back to May 2015. (AR 372-374.) On 6/28/16, Quillen presented Doe with the summary of evidence. (24-25, 177.) Doe presented Quillen with statements by students AS and SM. On 6/30/16, Doe submitted an additional written statement. (397-399.) The court finds that Doe was aware of the nature of the charge and that he had the opportunity to respond before Quillen prepared his report.

INVESTIGATOR QUILLEN'S USE OF THE TRAUMA INFORMED APPROACH

Doe asserts that Quillen's use of the trauma informed approach to Roe's testimony was both improper and shifted the burden to the accused. (AR 31-33) This is legal and due process issue that the court reviews using the court's independent judgment.

Quillen stated that he used a "trauma informed approach" when evaluating whether certain of Roe's post incident actions were consistent with consent or were consistent with post-traumatic behavior. (AR 46.) Quillen stated that the trauma informed approach is an understanding that persons who have suffered trauma can react in many different ways and that "a traumatic event can cause a complainant to act in counterintuitive ways contrary to expectations while processing in order to cope with a traumatic event." (AR 33:6-35:16.) Quillen stated his understanding that trauma can impact the way the brain processes and encodes

information and that it therefore affects memory. (AR 68:25-69:7.) Quillen referenced Roe's asserted trauma and the trauma informed approach repeatedly in his report and in his statements to the IPVARC. (AR 28:15-29:5; 33:14-35:16, 36:9-19, 45:15-46:23, 58:22-62:3, 64;19-21, 68:21-70:2, 214-218.)

When Doe asked Quillen if he had any background in psychology or neurology, Quillen stated, "So neither party is entitled to that information. So my office will not provide that information and they re not entitled to it." (AR 69:24-70:1.) When Doe asked Quillen to explain if Quillen relied on any peer reviewed studies that support the use of the trauma informed approach in investigations, Quillen stated, "I would say that strays into the information that I've received during the course of my trainings and preparation for this job. So neither party is entitled to that information and they will not receive it." (AR 77:8-19.) The IPVARC explained that the Title IX office decides what information is appropriate in IPVARC hearings and Quillen stated he was "100% confident that this is private employment information that neither party is entitled to, nor will they receive access to it." (AR 78:2-23.)

Doe asserts that the "trauma informed approach" is not well established. (Reply at 4:14-24.) The court finds the information on the approach in the United States Office of Victims of Crime ("USOVC") website is an adequate indication that it is an established approach. (Regents RJN, Exh B.) The USOVC website is concerned with how to work with complainants so that the interaction with law enforcement and participation in the prosecutorial process does not trigger re-traumatization. Quillen's description of, and use of, the trauma informed approach is not the same as the approach described in the USOVC website.

Doe asserts that Quillen's reliance on what he called the "trauma informed approach" was improper because Quillen never presented any evidence that this was an accepted theory. Quillen relied on the "trauma informed approach" as he understood it based on his training as an investigator. (AR 69:5-7.) Quillen can rely on training in neurology, psychology, and social science suggesting that persons who have suffered trauma can act in counterintuitive ways. This

would be similar to a trier of fact relying on expert testimony to explain psychological factors involved in the accuracy of eyewitness identifications, to address the perception that a battered woman is free to leave an abusive relationship, or to explain that confessions following the use of certain police interrogation techniques can be unreliable. (*People v. Ramos* (2004) 121 Cal.App.4th 1194, 1205.) (See also *People v. Page* (1991) 2 Cal.App.4th 161, 189.) In those situations, however, there is expert testimony to explain that what many people might think to be true is not true and the parties to the case can question the experts on the basis for their testimony.

In the IPVARC hearing, in contrast, Quillen stated that his evaluation of witness credibility relied on what he called the "trauma informed approach," but he did not provide any evidence that the approach was generally accepted and he refused to answer questions about the approach. This was very problematic given that Quillen's training regarding witness credibility was "beyond common experience." (Evid Code 801(a).) To the non-expert eye, Roe's texts in the days following the incident, Roe's second hand job, and Roe's journal entry that "yes I liked it" suggest that the incident was consensual or, at the least, that Roe would have a very difficult time proving by a preponderance of the evidence that it was not consensual. If an investigator relies on training that is "beyond common experience" then either the investigator must explain that training to both the parties and the IPVARC and answer questions about that training, or the IPVARC may draw an adverse inference from the lack of such an explanation. (AR 14:5-12.)

Doe asserts that Quillen's reliance on what he called the "trauma informed approach" created a very difficult situation for Doe. (Opening at 11:3-15; Reply 5:12-20.) Doe observes that this understanding can be used to excuse any statements or actions that are consistent with consent and therefore inconsistent with the charges. Quillen's report identifies evidence consistent with consent (AR 214-215), but Quillen stated that it was "limited in value in light of the Trauma–Informed Approach" (AR 35:9-11). As noted above, if the investigator relies on training that is "beyond common experience" then the investigator must explain more fully the

basis for his conclusion that actions that on their face suggest consent are actually the result of trauma.

Doe asserts that Quillen's reliance on what he called the "trauma informed approach" was improper because it implicitly assumed both a trauma and that the trauma was the 11/5/15 incident. There is evidence that Roe's stress predated the 11/5/15 incident. Student S.M. stated "Jane herself had shown signs of panic and distress before the incident." (AR 424.) Roe also texted on 11/13/15, a few days after the incident, "well, ive been going through hell in many ways .. and not because of him." (AR 408) There is also substantial evidence that Roe ended a three year term relationship at or about the time of the incident and had other stressors in her life. (AR 186 [Doe references end of Roe's three year relationship], 285 [same], AR 407-408 [Roe comment on difficulties with her dad]), 420 [AS comment on Roe's problems with [parents].) These are potential alternate sources of stress or trauma. That said, Roe stated that she suffered trauma on 11/5/15. Quillen could infer that that incident was the trauma and that the trauma affected her subsequent actions.

Doe asserts that the Quillen's reliance on what he called the "trauma informed approach" was improper because Quillen was not a trained psychologist. (Doe brief at 14:26-15:9.) Quillen was not diagnosing Roe - he was simply evaluating her testimony. Quillen could consider human experience and social science information and did not need to have professional psychoanalytic credentials to evaluate testimony and credibility.

The court finds that the IPVARC improperly relied on Quillen's evaluation of witness credibility under Quillen's understanding of what he called the "trauma informed approach" without requiring Quillen to present evidence that the approach had validity and permitting the parties to question Quillen on the validity of the approach.

It is unclear whether the members of the IPVARC were trained in what Quillen called the "trauma informed approach." If that were the case, then it would raise a different, and more serious, set of issues because then both the investigator and the trier of fact would be relying on

an unexamined approach to evaluating witness credibility without providing the parties information about that approach or an opportunity to question the validity of the approach.

INVESTIGATOR AS FACT FINDER AND RECOMMENDER OF SANCTIONS

Doe asserts that Quillen was improperly responsible for investigation, fact-finding, adjudication, prosecution, and recommendation of sanctions. This is legal and due process issue that the court reviews using the court's independent judgment.

"[A] legislature may adopt an administrative procedure in which the same individual or entity is charged both with developing the facts and rendering a final decision, and separate adversarial advocates are dispensed with." (*Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.* (2013) 57 Cal.4th 197, 220.) (See also *Los Angeles Police Protective League v. City of Los Angeles* (2002) 102 Cal.App.4th 85, 93 ["There is no due process violation inherent in the fact that the chief of police imposes the initial discipline and renders the final decision whether to uphold the decision."'.) (See also *Doe v. Brandeis* (2016) 177 F.Supp.3d 561, 606 [noting danger of combining powers in a single individual].)

Under the California standard, it was appropriate for Quillen to investigate the claims, evaluate the claims, make recommend factual findings, and recommend discipline.

OPPORTUNITY TO QUESTION ROE

Doe asserts the procedure denied him the opportunity to question Roe. This is legal and due process issue that the court reviews using the court's independent judgment.

"There is no requirement under California law that, in an administrative hearing, an accused is entitled to cross-examine witnesses." (*Doe v. Regents*, 5 Cal.App.5th at 1084.) Under the Adjudication Framework, the investigator interviews witnesses and then submits a report to the Student Conduct Office (OJA), which then issues a decision. (AR 595-596.) There is no provision for cross-examination in the investigation phase.

If the respondent appeals the Student Conduct Office's (OJA's) decision to the appeal body (the IPVARC), then there is a formal hearing at which the accused can submit questions to the panel to ask of witnesses. (AR 602 [Adjudication Framework, VI.F.2.d].)

Doe did not have the opportunity at the IPVARC hearing to cross-examine Roe directly. This was consistent with both California law and the UCSB procedures. "There is no requirement under California law that, in an administrative hearing, an accused is entitled to cross-examine witnesses." (*Doe v. Regents*, 5 Cal.App.5th at 1084.) (AR 602 [Adjudication Framework, VI.F.2.d].)

Doe did have the opportunity at the IPVARC hearing to submit questions to the IPVARC that the IPVARC would then ask Roe. The IPVARC procedures state that "You may not directly question the Complainant and the Complainant may not directly question you. Instead, you may submit questions for the Panel to ask the other party." (AR 346.) At the hearing, the IPVARC stated that the Complainant and the Complainant could submit questions for the Panel Chair to ask the other party but that "Neither party is obligated to answer." (AR 13.) The IPVARC informed Roe and Doe that the IPVARC might take an adverse inference if they selectively decided not to answer questions. (AR 14:5-12.) Third party witnesses were not compelled to appear at the IPVARC hearing, so if they chose to not appear then there was no means to ask them questions. This is consistent with the IPVARC procedure. Furthermore, this is consistent with the due process required by California law in administrative proceedings regarding academic discipline.

The Regents argues that at the IPVARC hearing "Roe stated, through her questions, that there was no consent." (Opposition brief, 9:18.) Roe's submission of a question is not testimony. (CACI 105 ["The attorneys' questions are not evidence. Only the witnesses' answers are evidence."].) Roe's submission of a written question to the IPVARC did not give the IPVARC the opportunity to consider her demeanor. Roe's submission of written questions to

Doe is not equivalent to either Roe testifying or Roe answering questions that Doe submitted to the IPVARC.

The Regents argues that even if the limited ability to cross-examine Roe was a denial of due process that there was no prejudice because Doe did not list Roe as a witness in his pre-hearing filing (AR 489-497) and never submitted questions to be asked to Roe. In this regard, *Doe v. Regents*, 5 Cal.App.5th at 1093, states, "the record suggests that John was given the opportunity to submit questions for Jane in response to her testimony at the hearing, but he declined to do so. As such, we find no merit to his claim that he was not permitted to question Jane in response to her hearing testimony."

The court assumes, without deciding, that Doe was given due process because he was given an opportunity to submit questions to be asked of Roe. The court has concerns whether that is meaningful due process given that Roe was not required to answer the questions. The court has concerns with the IPVARC instruction that the IPVARC will draw no inference if a witness remains silent throughout a hearing but may draw an adverse inference if a witness chooses to participate selectively in the process. (AR 14:5-12.) That instruction would appear to discourage a complainant or witness from participating in the IPVARC hearing if the investigator had already found the complainant or witness to be credible. The court nevertheless finds that Doe suffered no prejudice because Doe did not take advantage of the opportunities provided.

IPVARC DID NOT FOLLOW THE WRITTEN PROCESS

The court finds that IPVARC did not follow the written process. This is legal and due process issue that the court reviews using the court's independent judgment.

The court raised this issue because the transcript of the hearing shows that the IPVARC stated both that it was not conducting a de novo review (AR 8:10-13) and not considering evidence submitted after 8/19/16 (AR 10:6-12) and that it was "solely responsible for determining the admissibility, relevance, and credibility of evidence" (AR 10:12-14.) (See also

143:4-11.) The IPVARC's pre-hearing notice also stated that it was reviewing the OJA's decision for procedural error and whether the decision was unreasonable based on the evidence submitted before 8/19/16 (AR 348-352) but also stated that the IPVARC was "solely responsible for determining the admissibility, relevance, and credibility of evidence." (AR 350.) The IPVARC's final decision stated that made its "decision independently based on a preponderance of the evidence" (AR 508) and then stated that it "evaluated whether the [OJA] decision as unreasonable based on the evidence using only the evidence in the Title IX investigative report" (AR 509). These statements conflict, as the IPVARC was either examining a fixed record under the substantial evidence standard or it was considering new testimony, evaluating credibility, and making an independent decision. The court's Order of 10/12/17 requested additional briefing.

The UCSB Policy on Sexual Violence and Sexual Harassment states "The IPVARC shall serve as the decision-making body on the appeal." (AR 524.) The Adjudication Framework states that the IPVARC is required to "reach a decision based on a preponderance of the evidence standard," and in doing so "shall take into account the record developed by the investigator and the evidence presented at the hearing, and may make its own findings and credibility determinations based o all the evidence before it." (AR 602 [VI.G.1 and 2].) The Adjudication Framework also states that without regard to grounds of appeal that before the hearing the parties "will" submit the names of witnesses and a summary of the expected testimony (AR 600 [VI.F.1.b]) and that in the hearing the parties "will have the opportunity" to to present that information and "have the right " to hear all individuals who testify at the hearing and to propose questions to be asked of all individuals who testify at the hearing" (AR 601-602 [Adjudication Framework, VI.F.2.c and d].)

The court reads the UCSB Policy and the Adjudication Framework as meaning that the IPVARC must make an independent determination based on the facts presented at the IPVARC hearing. The presentation of testimony at the IPVARC hearing also suggests the IPVARC is to conduct an independent review. If the IPVARC were limited to the evidence submitted to the

OJA, then the IPVARC could not consider demeanor, new facts, or inconsistent statements that were presented or observed at the IPVARC hearing.

The IPVARC's Appeal Decision states that it evaluated whether the OJA's decision "was unreasonable based on the evidence using only the evidence in the Title IX investigative report" and "The Committee found that the decision makers came to a sensible and replicable conclusion." (AR 509.) This is a review of the OJA's decision for substantial evidence. The court finds that the IPVARC erred by not following the UCSB Policy and the Adjudication Framework, undertaking an independent review of the evidence presented,[1] and making a decision based on a preponderance of the evidence standard.

The court also finds that the IPVARC's failure to make an independent review of the evidence and to consider the testimony at the IPVARC hearing was a denial of due process. The complainant and respondent do not get to ask each other questions (indirectly) until the IPVARC hearing. The right to (indirect) cross-examination is ineffective if it attaches only after the investigator and OJA have made the factual findings and the findings are reviewed for substantial evidence.

The Regents argues that there are three errors in this analysis. First, the Regents argues that Doe limited the grounds for his appeal and as a result was not permitted to present new evidence at the IPVARC hearing. The Adjudication Framework states there are four potential grounds for appeal. (AR 599 [Adjudication Framework, VI.A].) Doe appealed on the Ground 1 (procedural error in the investigation process), Ground 2 (OJA decision unreasonable based on the evidence), and Ground 4 (sanctions disproportionate to findings). Doe did not appeal on Ground 3 (new information). (AR 331-331.) The appeal was on an IPVARC form that identified only four grounds for an appeal.

[1] The IPVARC can consider the investigator's report as evidence at the IPVARC hearing. (*Doe v. Regents*, 5 Cal.App.4th at 1075-1076.)

The court finds that the UCSB procedures, the Adjudication Framework, and the appeal form are internally inconsistent and uncertain. The UCSB documents state that there can be only two substantive objections to an OJA decision. Under Ground 2 (OJA decision unreasonable based on the evidence), the student is limited to seeking review based on the evidence presented to the OJA. The appeal form section on Ground 2 expressly states, "Note: no new evidence will be considered in reviewing this ground for appeal." (AR331.) This presumably does not permit a student to testify at the IPVARC, to call witnesses, or to ask questions indirectly to witnesses, because all of that would be "new evidence." Under Ground 3 (new information), the student is limited to arguing that there is new, material, information that was unknown and/or unavailable when the OJA made its decision. This presumably does not permit any testimony by the investigator, by the complainant or respondent, or by any previously identified witness, as those persons were known and available in the investigative process.

Neither Ground 2 nor Ground 3 address Doe's ground for appeal – that in the credibility contest between Roe and Doe that the investigator and the OJA mistakenly concluded that Roe was more credible.[1] Asking the IPVARC to hear from the complainant and previously identified witnesses, to submit questions to those persons, to evaluate witness credibility, and to make a decision based on a preponderance of that evidence is neither Ground 2 (OJA decision unreasonable based on the evidence) nor Ground 3 (new information).

The Adjudication Framework informs students that they can testify at the IPVARC and can conduct indirect cross-examination. (AR 601-602 [Adjudication Framework, VI.F.2.c and d].) This suggests that they can present new information in the form of testimony without regard to the ground of the appeal. In the IVPARC hearing in this case, the IVPARC heard testimony on the substance of the incident even though the Regents now asserts that in a Ground 2 appeal

[1] The court surmises that many sexual misconduct cases are contests of credibility and that accused students appeal to the IPVARC because an IPVARC hearing is the only procedural venue for the accused to ask questions to the complainant.

the IVPARC is limited to reviewing the investigator's report and the OJA decision for substantial evidence. At the hearing, Quillen stated his procedure and conclusions (AR 13-54), Doe (through the Board) asked questions to Quillen (AR 55-81), the Board asked questions to Doe (AR 86-89), Roe, through the Board, asked questions to Doe (AR 89-93), and witnesses A.S. (AR 95-110), S.M. (AR 113-121), and N.N (AR 122-130) testified.

The Regents asserts that all of the testimony was limited to Grounds 1 and 2. For example, the IVPARC told witnesses S.M. and A.S. that their testimony was limited to the procedural issue of whether the investigator accurately and completely the statements they provided in the investigative process. (AR 96:14-20; 114:4-8.) There is a very fine line, if a line at all, between having a witness testify that the investigator did not accurately record the witness's statements (arguably a Ground 1 issue) and having a witness testify and provide "new evidence" that was not in the investigator's report (arguably a Ground 3 issue).

If, as the Regents now appears to argue, the right to indirect cross-examination on the substance of any given incident applies only to a Ground 3 appeal and even then applies only to witness who were not previously identified, then that must be stated more clearly. Furthermore, it would present due process concerns if an accused student could indirectly cross-examine the complainant at the IPVARC hearing only if the complainant was providing "new information." A reasonable reading of the right to indirect cross-examination is that it permits the questioning party to ask questions about "old information" that require the witness to show demeanor when answering. The demeanor, as well as the answers, would then be "new information."

Second, the Regents argues that the IPVARC did conduct a independent review of grounds 1 and 2. This confuses two issues. The IPVARC may very well have conducted an independent examination of the written record to determine whether the OJA's decision was supported by substantial evidence. The IPVARC did not, however, "reach a decision based on a preponderance of the evidence standard," and in doing so "take into account the record developed by the investigator and the evidence presented at the hearing." (AR 602 [VI.G.1 and

2].) The IPVARC's decision states clearly that it was reviewing the record before the OJA for reasonableness and was not making an independent de novo review of the written evidence and the evidence presented at the hearing. (AR 509.)

Third, the Regents argues that the Adjudication Framework, permits, but does not require, the IPVARC to make its own credibility determinations and factual findings. The Regents relies Adjudication Framework, VI.G.2, which states that the IPVARC "*shall* take into account the record developed by the investigator and the evidence presented at the hearing, and *may* make its own findings and credibility determinations based on all the evidence before it." (Emphasis added.) The distinction between "may" and "shall" is well established.

Applying the distinction between "shall" and "may" in Adjudication Framework, VI.G.2, would be inconsistent with the UCSB policies generally and raise due process concerns. The distinction would be inconsistent because UCSB policy and the Adjudication Framework state clearly elsewhere that "The IPVARC shall serve as the decision-making body on the appeal" (AR 524) and that the IPVARC makes the decision based on a preponderance of the evidence (AR 602 [VI.G.1].) If the IPVARC is making the decision based on a preponderance of the evidence, then it must "make its own findings and credibility determinations." As a matter of due process, it should be clear which person or body is responsible for making the decision. The IPVARC may give significant weight to the findings and determinations of the investigator/OJA while still conducting an independent review of the written record and the testimony at the hearing. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 818-819.) The IPVARC cannot, in its discretion, simply decide on a case by case basis whether to make its own findings and credibility determinations or review the investigator's findings and determinations for substantial evidence.

The court finds that the IPVARC's failure to make an independent review of the evidence and to consider the testimony at the IPVARC hearing was contrary to the UCSB policy and the Adjudication Framework.

The IPVARC's failure to make an independent review of the evidence resulted in prejudice to Doe. When, as here, the investigator has already considered inconsistent statements and made express or implied credibility findings, an independent (de novo) review of the evidence and a review of the OJA's findings for substantial evidence can lead to very different conclusions. Because the IPVARC used the substantial evidence standard, then it approved and adopted the investigator's and OJA's credibility determinations and findings even though the IPVARC might have reached a different conclusion based on the testimony presented at the IPVARC hearing. (*Doe v. Regents,* 5 Cal.App.5th at 1073-1074 [nature of substantial evidence review]. This means that the IPVARC reached its decision without independently evaluating the testimony of Roe and Doe at the hearing (or permitting indirect cross-examination). The court finds prejudice on the facts of this case.

IMPARTIALITY OF THE INVESTIGATOR

Doe asserts the Investigator altered and omitted evidence, which is an assertion that the Investigator was not impartial. This is legal and due process issue that the court reviews using the court's independent judgment.

Whenever "due process requires a hearing, the adjudicator must be impartial." (*Today's Fresh Start, Inc. v. Los Angeles County Office of Educ.* (2013) 57 Cal.4th 197, 212.) The Adjudication Framework states that the Investigator's obligation "to conduct a fair, thorough, and impartial investigation." (AR 596 [Framework, IV.D].)

"Absent a financial interest, adjudicators are presumed impartial." (*Today's* , 57 Cal.3d at 219.) "That party must lay a "specific foundation" for suspecting prejudice that would render an agency unable to consider fairly the evidence presented at the adjudicative hearing …; it must come forward with "specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias." (*Today's*, 57 Cal.3d at 221.)

The concerns about the impartiality of the investigator are intrinsically related to the role of the investigator in the process. If the IPVARC sat as a trier of fact, conducted a de novo hearing, and applied its independent judgment regarding the evidence, then the investigator was a witness at the IPVARC hearing and the IPVARC could consider whether the investigator's collection and evaluation of information was affected by bias, interest, or other motive. (Evid Code 780(f).) If, however, the IPVARC sat as an appeal body and reviewed the investigator's report and the OJA's resulting decision (AR 327-329) to determine whether they were supported by substantial evidence, then the investigator was, like a jury, primarily responsible for evaluating the credibility of the witnesses and making factual conclusions. As discussed above, the court finds that in this case the investigator was primarily responsible for evaluating the credibility of the witnesses and making factual conclusions. The court therefore considers whether there was an "unacceptable risk of bias" based on the investigator Quillen's role as the person responsible for collecting information, evaluating credibility, and making factual findings that the IPVARC then reviewed for substantial evidence.

Doe has not identified specific evidence demonstrating actual bias.

Doe has identified specific evidence demonstrating a particular combination of circumstances creating an unacceptable risk of bias. Doe's concerns go to Quillen's collection of and distillation of information. Before informing Doe of the charges against him, Quillen asked questions that had complainant's assertions embedded in them. (AR 19, 45.) This is the description of a leading question, but it is not improper in an investigation. Quillen on two occasions rejected witness statements submitted by Doe and stated that his interview notes were the official record and that he would use those in his analysis. (AR 23:1-5 [4/29/16]; 26:10-18 [6/28/16].) (See also AR 43-44 [Quillen decision to not interview witness A.S.].) This is problematic because it suggests that Quillen was reluctant to consider that his notes might not be complete and accurate. Quillen summarized some texts and omitted certain potentially exculpatory language. This is also problematic because it suggests that Quillen adopted a

prosecutorial approach and did not conduct the "fair, thorough, and impartial investigation" required by the Adjudication Framework. (AR 596.) At the IPVARC hearing, Quillen repeatedly responded to Doe's assertions with by stating that they were "demonstrably false." (AR 36:25, 45:2, 47:17, 49:2, 48:15, 51:14.) The tone of the phrase suggests that Quillen was a hostile witness rather than an impartial investigator, but it was in substance no different than Quillen's other repeated assertions that Doe's assertions were simply "false" or had "no basis in the University's policy."

The court applies its independent judgment and finds that the administrative record contains facts that overcome the presumption of impartiality and demonstrate an unacceptable risk of bias. The record suggests that in this case Quillen was unable to maintain the role of a neutral investigator and instead assumed the role of both prosecutor and fact finder. The court notes, by way of dicta, that it might have reached a different conclusion if the IPVARC had independently evaluated Quillen's report, testimony, and credibility.

EVIDENCE TO SUPPORT THE IPVARC DECISION

Doe asserts that the court should review the factual conclusions in the final decision under the independent judgment standard. The court applies the independent judgment standard in its review of the evidence if the matter at issue concerns a vested fundamental right. "A right may be deemed fundamental "on either or both of two bases: (1) the character and quality of its economic aspect; (2) the character and quality of its human aspect." (*Amerco Real Estate Company v. City of West Sacramento* (2014) 224 Cal.App.4th 778, 783.) (See also *Bixby v. Pierno* (1971) 4 Cal.3d 130, 144-145.) Doe has a strong interest in his education (*Goldberg v. Regents of University of Cal.* (1967) 248 Cal.App.2d 867, 876), the claims of sexual assault have criminal overtones (Penal Code 243.4), and the finding of sexual assault may have a significant continuing effect of Doe's reputation and resume. These arguably could support a finding that Doe has a vested fundamental right.

The Court of Appeal has, however, resolved this issue and decided that in proceedings of this sort the trial court considers factual findings for substantial evidence. (*Doe v. Regents*, 5 Cal.App.5th at 1073-1074.) (*Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 455 [trial court must follow appellate authority].)

Doe asserts that IPVARC's final decision is not supported by the evidence. The record contains evidence that could support a variety of inferences. A hearing officer or other trier of fact may draw inferences from ambiguous facts. (*Fremont Indemnity Co. v. Workers' Comp. Appeals Bd.* (1977) 69 Cal.App.3d 170, 174.) A decision must, however, be based on substantial evidence, which is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Such evidence must be reasonable, credible, and of solid value." "In assessing whether substantial evidence exists, the court considers "all evidence presented, including that which fairly detracts from the evidence supporting the Board's determination." (*California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 585–586.) (See also *Rivard v. Board of Pension Commissioners* (1985) 164 Cal.App.3d 405, 412.)

The court has found the errors in the administrative process. Therefore, the court does not reach the issue of whether on the evidence presented to the IPVARC the court might have found that the IPVARC's decision was supported by substantial evidence.

CONCLUSION

The court has found that the administrative process in this case failed to comply with the Adjudicative Framework and the law because (1) there is an unacceptable risk that the investigator was not unbiased, (2) the IPVARC improperly permitted Quillen to base his evaluation of credibility on what Quillen understood to be the "trauma informed approach," and (3) IPVARC conducted a substantial evidence review of the Quillen/OJA report instead of exercising its independent judgment in the review of the evidence.

The Petition of petitioner Doe for a writ of mandate directing the Regents to set aside and vacate the decision of the University of California, Santa Barbara's Interpersonal Violence Appeal Review Committee ("IPVARC") decision in Doe v. Roe (Title IX Case # 2016-0036) is GRANTED.

The court will prepare and enter a judgment. Doe is then responsible for preparing a proposed writ, submitting it to the clerk for signature, and serving it on the Regents. (Gov. Code 20626(a)(1); CCP 1096.)

Dated: November 15 2017

Thomas Rogers
Judge of the Superior Court

CLERK'S CERTIFICATE OF SERVICE BY MAIL
CCP 1013a(3)

CASE NAME: Doe vs. The Regents of the University of California
ACTION NO.: RG16843940

I certify that, I am not a party to the within action. I served the foregoing by depositing a true copy thereof in the United States mail in Oakland, California in a sealed envelope with postage fully prepaid thereon addressed to:

Mark M. Hathaway
Hathaway & Quinn LLP
888 West Sixth Street, Fourth Floor
Los Angeles, CA 90017

Alison Bernal
Nye, Peabody, Stirling, Hale & Miller
33 West Mission Street, Suite 201
Santa Barbara, CA 93101

I declare under penalty of perjury that the following is true and correct

Executed on November 16, 2017 at Oakland, California

Chad Finke,
Executive Officer/Clerk

by Shanika Monroe
Deputy Clerk

Exhibit 4

Secretary DeVos Prepared Remarks on Title IX Enforcement

SEPTEMBER 7, 2017

Contact: Press Office, (202) 401-1576, press@ed.gov (mailto: press@ed.gov)

Thank you Dean Henry Butler for the kind introduction and for the opportunity to be here. Thank you President Angel Cabrera for your leadership of George Mason University.

And to the students and faculty with us today, thank you for making time to be here during this busy day of classes.

It is a great honor for me to be here today to address a very important topic.

Earlier this year marked the 45th anniversary of Title IX, the landmark legislation passed by Congress that seeks to ensure: "No 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."

The amendment to the Higher Education Act was initially proposed by Democrat Senator Birch Bayh, signed into law by Republican President Richard Nixon, and was later renamed for Congresswoman Patsy Mink, herself a victim of both sex-based and race-based discrimination as a third-generation Japanese-American.

Mink's law has served an important role in shaping our Nation's educational environment.

Title IX has helped to make clear that educational institutions have a responsibility to protect every student's right to learn in a safe environment and to prevent unjust deprivations of that right.

It is a responsibility I take seriously, and it is a responsibility that the Department of Education's Office for Civil Rights takes seriously.

We will continue to enforce it and vigorously address all instances where people fall short.

Sadly, too many fall short when it comes to their responsibility under Title IX to protect students from sexual misconduct, acts of which are perpetrated on campuses across our nation.

The individual impacts of sexual misconduct are lasting, profound, and lamentable. And the emotions around this topic run high for good reason.

We need look no further than just outside these walls to see evidence of this. Yet I hope every person—even those who feel they disagree—will lend an ear to what I outline today.

I'm glad we live in a country where an open debate of ideas is welcomed and encouraged. Debate, of course, comes with responsibilities. Violence is never the answer when viewpoints diverge.

I appreciate that you have the opportunity to attend a university that promotes a higher level of discourse.

So let me be clear at the outset: acts of sexual misconduct are reprehensible, disgusting, and unacceptable. They are acts of cowardice and personal weakness, often thinly disguised as strength and power.

Such acts are atrocious, and I wish this subject didn't need to be discussed at all.

Every person on every campus across our nation should conduct themselves with self-respect and respect for others.

But the current reality is a different story.

Since becoming Secretary, I've heard from many students whose lives were impacted by sexual misconduct: students who came to campus to gain knowledge, and who instead lost something sacred.

We know this much to be true: one rape is one too many.

One assault is one too many.

One aggressive act of harassment is one too many.

One person denied due process is one too many.

This conversation may be uncomfortable, but we must have it. It is our moral obligation to get this right.

Campus sexual misconduct must continue to be confronted head-on. Never again will these acts only be whispered about in closed-off counseling rooms or swept under the rug.

Not one more survivor will be silenced.

We will not abandon anyone. We will amplify the voices of survivors who too often feel voiceless.

While I listened to the stories of many survivors and their families over these past several months, I couldn't help but think of my own family.

I thought about my two daughters.

And I thought about my two sons.

Every mother dreads getting that phone call: a despondent child calling with unthinkable news.

I cannot imagine receiving that call.

Too many mothers and fathers are left on the other end of the line completely helpless. I have looked parents in their tear-filled eyes as they recounted their own stories, and each time their pain was palpable.

I'm haunted by the story one brave young woman told me. She was targeted and victimized by her college boyfriend—someone she thought cared about her.

He looked on as his roommate attempted to rape her. She escaped her harrowing encounter, but too many do not.

For too many, an incident like this means something even worse.

There is no way to avoid the devastating reality of campus sexual misconduct: lives have been lost. Lives of victims. And lives of the accused.

Some of you hearing my voice know someone who took his or her own life because they thought their future was lost; because they saw no way out; because they lost hope.

One mother told me her son has attempted to take his life multiple times. Each time she opens the door to his bedroom, she doesn't know whether she will find him alive or dead.

No mother, no parent, no student should be living that reality.

We are here today for those families. We need to remember that we're not just talking about faceless "cases."

We are talking about people's lives. Everything we do must recognize this before anything else.

And we're here today because the previous administration helped elevate this issue in American public life. They listened to survivors, who have brought this issue out from the backrooms of student life offices and into the light of day.

I am grateful to those who endeavored to end sexual misconduct on campuses.

But good intentions alone are not enough. Justice demands humility, wisdom and prudence.

It requires a serious pursuit of truth. And so, this is why I recently hosted a summit to better understand all perspectives: survivors, falsely accused students and educational institutions, both K-12 and higher ed. I wanted to learn from as many as I could because a conversation that excludes some becomes a conversation for none. We are having this conversation with and for all students.

Here is what I've learned: the truth is that the system established by the prior administration has failed too many students.

Survivors, victims of a lack of due process, and campus administrators have all told me that the current approach does a disservice to everyone involved.

That's why we must do better, because the current approach isn't working.

Washington has burdened schools with increasingly elaborate and confusing guidelines that even lawyers find difficult to understand and navigate.

Where does that leave institutions, which are forced to be judge and jury?

Where does that leave parents?

Where does that leave students?

This failed system has generated hundreds upon hundreds of cases in the Department's Office for Civil Rights, mostly filed by students who reported sexual misconduct and believe their schools let them down.

It has also generated dozens upon dozens of lawsuits filed in courts across the land by students punished for sexual misconduct who also believe their schools let them down.

The current failed system left one student to fend for herself at a university disciplinary hearing.

She told her university that another student sexually assaulted her in her dorm room. In turn, her university told her she would have to prosecute the case herself.

Without any legal training whatsoever, she had to prepare an opening statement, fix exhibits and find witnesses.

"I don't think it's the rape that makes the person a victim," the student told a reporter. She said it is the failure of the system that turns a survivor into a victim.

This is the current reality.

You may have recently read about a disturbing case in California. It's the story of an athlete, his girlfriend and the failed system.

The couple was described as "playfully roughhousing," but a witness thought otherwise and the incident was reported to the university's Title IX coordinator.

The young woman repeatedly assured campus officials she had not been abused nor had any misconduct occurred. But because of the failed system, university administrators told her they knew better.

They dismissed the young man, her boyfriend, from the football team and expelled him from school.

"When I told the truth," the young woman said, "I was stereotyped and was told I must be a 'battered' woman, and that made me feel demeaned and absurdly profiled."

This is the current reality.

Another student at a different school saw her rapist go free. He was found responsible by the school, but in doing so, the failed system denied him due process. He sued the school, and after several appeals in civil court, he walked free.

This is the current reality.

A student on another campus is under a Title IX investigation for a wrong answer on a quiz.

The question asked the name of the class Lab instructor. The student didn't know the instructor's name, so he made one up—Sarah Jackson—which unbeknownst to him turned out to be the name of a model.

He was given a zero and told that his answer was "inappropriate" because it allegedly objectified the female instructor.

He was informed that his answer "meets the Title IX definition of sexual harassment." His university opened an investigation without any complainants.

This is the current reality.

I also think of a student I met who honorably served our country in the Navy and wanted to continue his education after his service. But he didn't know the first thing about higher education.

He Googled "how to apply to college" and applied to one nearby, an HBCU. He was accepted and became the first in his family to attend college.

The student told me that as graduation approached, his grandmother beamed with pride. She had already purchased a flight and picked out her Sunday best for the occasion.

But three weeks before graduation, he saw his future dashed.

This young man was suspended via a campus-wide email which declared him a "threat to the campus community." When he tried to learn the reason for his suspension, he was barred from campus.

He was not afforded counsel by the college and couldn't afford counsel himself. Eventually, he found a lawyer who submitted a Freedom of Information Act request pro bono—but would do no more.

Only through the FOIA was he able to discover he had been accused of sexual harassment, but he was still denied notice of the specific allegations, and he remained suspended.

This young man was denied due process. Despondent and without options or hope, after five years of sobriety, he relapsed and attempted to take his own life.

He felt he had let down everyone who mattered to him—including, most of all, his grandmother who was so much looking forward to seeing the first member of her family don a cap and gown.

"Whatever your accusers say you are," he told me, "is what people believe you are."

That is the current reality.

Here is what it looks like: a student says he or she was sexually assaulted by another student on campus. If he or she isn't urged to keep quiet or discouraged from reporting it to local law enforcement, the case goes to a school administrator who will act as the judge and jury.

The accused may or may not be told of the allegations before a decision is rendered. If there is a hearing, both the survivor and the accused may or may not be allowed legal representation.

Whatever evidence is presented may or may not be shown to all parties. Whatever witnesses—if allowed to be called—may or may not be cross-examined. And Washington dictated that schools must use the lowest standard of proof.

And now this campus official—who may or may not have any legal training in adjudicating sexual misconduct—is expected to render a judgement. A judgement that changes the direction of both students' lives.

The right to appeal may or may not be available to either party. And no one is permitted to talk about what went on behind closed doors.

It's no wonder so many call these proceedings "kangaroo courts."

Washington's push to require schools to establish these quasi-legal structures to address sexual misconduct comes up short for far too many students.

The current system hasn't won widespread support, nor has it inspired confidence in its so-called judgments.

The results of the current approach? Everyone loses.

Some suggest that this current system, while imperfect, at least protects survivors and thus must remain untouched. But the reality is it doesn't even do that.

Survivors aren't well-served when they are re-traumatized with appeal after appeal because the failed system failed the accused. And no student should be forced to sue their way to due process.

A system is not fair when the only students who can navigate it are those whose families can afford to buy good lawyers—or any lawyer at all.

No school or university should deprive any student of his or her ability to pursue their education because the school fears shaming by—or loss of funding from—Washington.

For too long, rather than engage the public on controversial issues, the Department's Office for Civil Rights has issued letters from the desks of un-elected and un-accountable political appointees.

In doing so, these appointees failed to comply with basic legal requirements that ensure our so-called "fourth branch of government" does not run amok.

Unfortunately, school administrators tell me it has run amok. The Office for Civil Rights has "terrified" schools, one said.

Another said that no school feels comfortable calling the Department for simple advice, for fear of putting themselves on the radar and inviting an investigation.

One university leader was rightly appalled when he was asked by an Office for Civil Rights official: "Why do you care about the rights of the accused?"

Instead of working with schools on behalf of students, the prior administration weaponized the Office for Civil Rights to work against schools and against students.

One administrator summed this up clearly when he told me his staff should be "forward looking advocates for how to stop sexual misconduct."

Instead, he said, "they've been forced to be backward looking data collectors" to meet the Department's demands.

Faculty from the University of Pennsylvania's law school also voiced grave concerns about the current approach. They wrote, and I quote, "it exerts improper pressure upon universities to adopt procedures that do not afford fundamental fairness."

Too often, they wrote, "outrage at heinous crimes becomes a justification for shortcuts" in processes.

Ultimately, they concluded, "there is nothing inconsistent with a policy that both strongly condemns and punishes sexual misconduct and ensures a fair adjudicatory process."

These professors are right. The failed system imposed policy by political letter, without even the most basic safeguards to test new ideas with those who know this issue all too well.

Rather than inviting everyone to the table, the Department insisted it knew better than those who walk side-by-side with students every day. That will no longer be the case.

The era of "rule by letter" is over.

Through intimidation and coercion, the failed system has clearly pushed schools to overreach. With the heavy hand of Washington tipping the balance of her scale, the sad reality is that Lady Justice is not blind on campuses today.

This unraveling of justice is shameful, it is wholly un-American, and it is anathema to the system of self-governance to which our Founders pledged their lives over 240 years ago.

There must be a better way forward.

Every survivor of sexual misconduct must be taken seriously. Every student accused of sexual misconduct must know that guilt is not predetermined.

These are non-negotiable principles.

Any failure to address sexual misconduct on campus fails all students.

Any school that refuses to take seriously a student who reports sexual misconduct is one that discriminates.

And any school that uses a system biased toward finding a student responsible for sexual misconduct also commits discrimination.

A better way begins with a re-framing.

This conversation has too often been framed as a contest between men and women or the rights of sexual misconduct survivors and the due process rights of accused students.

The reality is, however, a different picture.

There are men and women, boys and girls, who are survivors, and there are men and women, boys and girls who are wrongfully accused.

I've met them personally. I've heard their stories. And the rights of one person can never be paramount to the rights of another.

A better way means that due process is not an abstract legal principle only discussed in lecture halls.

Due process is the foundation of any system of justice that seeks a fair outcome. Due process either protects everyone, or it protects no one.

The notion that a school must diminish due process rights to better serve the "victim" only creates more victims.

A better way also means we shouldn't demand anyone become something they are not.

Students, families, and school administrators are generally not lawyers and they're not judges. We shouldn't force them to be so for justice to be served.

A better way is also being more precise in the definition of sexual misconduct.

Schools have been compelled by Washington to enforce ambiguous and incredibly broad definitions of assault and harassment.

Too many cases involve students and faculty who have faced investigation and punishment simply for speaking their minds or teaching their classes.

Any perceived offense can become a full-blown Title IX investigation.

But if everything is harassment, then nothing is.

Punishing speech protected by the First Amendment trivializes actual harassment. It teaches students the wrong lesson about the importance of free speech in our democracy.

Harassment codes which trample speech rights derail the primary mission of a school to pursue truth.

A better way is ultimately about recognizing that schools exist—first and foremost—to educate. Their core obligation under Title IX is to ensure all students can pursue their education free of discrimination.

Schools tend to do a good job, as they should, of making appropriate accommodations that don't infringe on the rights of others.

While a Title IX complaint is pending, schools usually make academic accommodations such as adjusting schedules, changing dorm assignments, and postponing papers or exams.

But there is a fundamental difference between making these sorts of accommodations for accusers—and schools which seek to punish the accused before a fair decision has been rendered.

There is a competency gap here.

Washington has insisted that schools step into roles that go beyond the mission of these institutions.

This doesn't mean schools don't have a role. They do. But we should also draw on medical professionals, counselors, clergy, and law enforcement for their expertise.

And so, a better way includes pursuing alternatives that assist schools in achieving justice for all students.

In order to ensure that America's schools employ clear, equitable, just, and fair procedures that inspire trust and confidence, we will launch a transparent notice-and-comment process to incorporate the insights of all parties in developing a better way.

We will seek public feedback and combine institutional knowledge, professional expertise, and the experiences of students to replace the current approach with a workable, effective, and fair system.

To implement sustainable solutions, institutions must be mindful of the rights of every student. No one benefits from a system that does not have the public's trust—not survivors, not accused students, not institutions and not the public.

Other groups have already made progress on these difficult issues.

The American Bar Association established a task force comprised of lawyers and advocates from diverse backgrounds and varying perspectives.

They found consensus and offered substantive ideas on how we can do better. Schools should find their recommendations useful.

The American College of Trial Lawyers also gathered experts from across the country to produce reasonable responses to the current failed system.

An open letter from Harvard's law school faculty provides important perspectives and insights that will be helpful as we pursue a better way.

Another promising idea comes from two former prosecutors, Gina Smith and Leslie Gomez.

Both of them have spent their careers specializing in sexual misconduct cases. They propose a "Regional Center" model; and it is being explored by a number of states today.

The model sets up a voluntary, opt-in Center where professionally-trained experts handle Title IX investigations and adjudications.

It looks something like this: in partnership among states and their Attorneys General, participating schools refer to the Center any Title IX incident which rises to a criminal level.

The Center cooperates with local law enforcement and has access to resources to collect and preserve forensic evidence, facilitate—but never require—criminal prosecutions, and apply fair investigative techniques to gather and evaluate all relevant evidence to determine whether sexual misconduct occurred.

This insures that students are not charged by school-based tribunals on the basis of hearsay or incomplete evidence.

This model allows educators to focus on what they do best: educate.

These are only a few examples that allow for a more effective and equitable enforcement of Title IX.

Our interest is in exploring all alternatives that would help schools meet their Title IX obligations and protect all students. We welcome input and look forward to hearing more ideas.

Schools have an opportunity to help shape and improve the system for all their students. But they also have a responsibility to do better by their students.

This is not about letting institutions off the hook. They still have important work to do.

A survivor told me that she is tired of feeling like the burden of ensuring her school addresses Title IX falls on her shoulders.

She is right. The burden is not hers, nor is it any student's burden.

We need to act as if any of these students were one of our own loved ones.

One young woman made this clear to me when she told me her story of the failed system. Both as a falsely accused student, and as a survivor.

She had recently gone through a bad break-up with her boyfriend.

Another female student, one of her close friends, sought to console her—except in all the wrong ways. The friend showed up and made an unwanted sexual advance. Upset about being rejected by the heartbroken student, the young woman who was supposed to be there as a friend, instead turned a lighthearted gesture into a full-scale Title IX incident.

Shockingly, the school punished the student who only needed a friend after a break-up. This student then revealed to me that she had been sexually assaulted earlier in life.

"I've been on both sides of this issue," she told me, "and on neither side did they get it right."

We can and must get it right for her, and for all students.

We must continue to condemn the scourge of sexual misconduct on our campuses.

We can do a better job of making sure the handling of complaints is fair and accurate.

We can do a better job of preventing misconduct through education rather than reacting after lives have already been ruined.

We can do a better job of helping institutions get it right.

And we can do a better job for each other.

The truth is: we must do better for each other and with each other.

May God bless all of you, and may He continue to bless our great Nation.

Tags: Title IX (/category/keyword/title-ix) Speeches (/news/speeches)

How Do I Find...?

- Student loans, forgiveness (http://www2.ed.gov/fund/grants-college.html?src=rn)
- College accreditation (http://www.ed.gov/accreditation?src=rn)
- Every Student Succeeds Act (ESSA) (http://www.ed.gov/essa?src=rn)
- FERPA (http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=rn)
- FAFSA (http://fafsa.ed.gov/?src=edgov-rn)
- More... (http://www2.ed.gov/about/top-tasks.html?src=rn)

Information About...

- Transforming Teaching (http://www.ed.gov/teaching?src=rn)
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- September 2016 (/news/speeches/monthly/201609)
- All Speeches (/news/speeches)

Our mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Exhibit 5

OFFICE OF THE GOVERNOR

OCT 15 2017

To the Members of the California State Senate:

I am returning Senate Bill 169 without my signature.

This bill would codify a combination of federal regulations and guidance on sexual harassment – some of which has been repealed, some of which is still in effect – as well as some language from model policies that have been developed by California universities.

This is not a simple issue. Sexual harassment and sexual violence are serious and complicated matters for colleges to resolve. On the one side are complainants who come forward to seek justice and protection; on the other side stand accused students, who, guilty or not, must be treated fairly and with the presumption of innocence until the facts speak otherwise. Then, as we know, there are victims who never come forward, and perpetrators who walk free. Justice does not come easily in this environment.

That is why in 2014 I signed into law the first affirmative consent standard in the country for colleges to adopt in their sexual assault policies, so that clear and basic parameters for responsible behavior could be established. Yes Means Yes, along with its attendant preponderance standard, is the law in California, which only the courts or a future legislature can change.

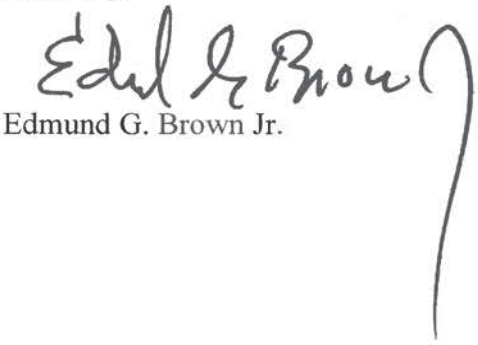
Since this law was enacted, however, thoughtful legal minds have increasingly questioned whether federal and state actions to prevent and redress sexual harassment and assault – well-intentioned as they are – have also unintentionally resulted in some colleges' failure to uphold due process for accused students. Depriving any student of higher education opportunities should not be done lightly, or out of fear of losing state or federal funding.

Given the strong state of our laws already, I am not prepared to codify additional requirements in reaction to a shifting federal landscape, when we haven't yet ascertained the full impact of what we recently enacted. We have no insight into how many formal investigations result in expulsion, what circumstances lead to expulsion, or whether there is disproportionate impact on race or ethnicity. We may need more statutory requirements than what this bill contemplates. We may need fewer. Or still yet, we may need simply to fine tune what we have.

It is time to pause and survey the land.

I strongly believe that additional reflection and investment of time in understanding what is happening on the ground will help us exercise due care in this complex arena. I intend to convene a group of knowledgeable persons who can help us chart the way forward.

Sincerely,



Edmund G. Brown Jr.

Exhibit 6

Mark J. Werksman
Alan J. Jackson
Mark M. Hathaway*
Kelly Q. Quinn**
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Board of Legal Specialization

November 30, 2016

Invoice submitted to:

[redacted]

Invoice # 19459

Re: UC Santa Barbara Title IX Writ Petition
[ret-p]

Professional Services:

			Hrs/Rate	Amount
11/4/2016	MH	[redacted]	0.10 650.00/hr	65.00
	da		2.00 85.00/hr	170.00
11/7/2016	MH		1.65 650.00/hr	1,072.50
11/8/2016	MH		0.40 650.00/hr	260.00
11/9/2016	MH		1.45 650.00/hr	942.50
11/10/2016	MH		0.10 650.00/hr	65.00
11/11/2016	TN		7.50 135.00/hr	1,012.50
11/17/2016	da		1.00 85.00/hr	85.00
11/18/2016	MH		2.64 650.00/hr	1,716.00
11/21/2016	TN		0.60	NO CHARGE
	TN		3.20	NO CHARGE
	MH		0.10 650.00/hr	65.00
11/28/2016	TN		4.10	NO CHARGE
11/30/2016	TN		1.10	NO CHARGE

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.

Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

		Hours	Amount
	For professional services rendered:	25.94	$5,453.50
11/7/2016	Payment. Check No. 225		($5,000.00)
	Total payments and adjustments		($5,000.00)
	Please replenish Client funds with		$5,000.00
	Balance due		***$5,453.50***

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Board of Legal Specialization

Invoice submitted to:

[redacted]

December 31, 2016

Invoice # 19479

Re: UC Santa Barbara Title IX Writ Petition
[ret-p]

Professional Services:

			Hrs/Rate	Amount
12/7/2016	JEE	[redacted]	3.03 225.00/hr	681.75
12/9/2016	JEE		4.72 225.00/hr	1,062.00
12/11/2016	JEE		2.20 225.00/hr	495.00
12/12/2016	JEE		0.35 225.00/hr	78.75
12/20/2016	TN		4.60 105.00/hr	483.00
12/21/2016	TN		1.60 105.00/hr	168.00
	TN		1.30 105.00/hr	136.50
12/22/2016	JEE		2.33 225.00/hr	524.25
12/26/2016	MH		4.29 650.00/hr	2,788.50
	JEE		3.10 225.00/hr	697.50
12/27/2016	TN		5.40 105.00/hr	567.00
	JEE		1.87 225.00/hr	420.75
12/28/2016	JEE		2.60 225.00/hr	585.00

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.

Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

			Hrs/Rate	Amount
12/29/2016	JEE	[redacted]	1.27 225.00/hr	285.75
	For professional services rendered:		38.66	$8,973.75

Costs, Expenses, Additional Charges:

12/30/2016	[redacted]		435.00
	Total costs:		$435.00
	Total amount of this bill		$9,408.75
	Previous balance		$453.50
	Balance due		***$9,862.25***

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January 31, 2017

Invoice submitted to:

[redacted]

Invoice # 19561

Re: UC Santa Barbara Title IX Writ Petition
[ret-p]

Professional Services:

			Hrs/Rate	Amount
12/29/2016	da	[redacted]	1.00 85.00/hr	85.00
1/5/2017	JEE		0.10 225.00/hr	22.50
1/10/2017	MH		0.40 650.00/hr	260.00
1/17/2017	MH		0.83 650.00/hr	539.50
1/18/2017	MH		1.39 650.00/hr	903.50
1/20/2017	JEE		0.10 225.00/hr	22.50
1/27/2017	da		0.67 85.00/hr	56.95
1/30/2017	da		2.33 198.05	198.05
1/31/2017	da		0.50 85.00/hr	42.50
	For professional services rendered:		7.32	$2,130.50

Costs, Expenses, Additional Charges:

12/29/2016	[redacted]	0.94
12/30/2016		102.75
1/10/2017		59.29
1/13/2017		78.75

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.

Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

		Amount
1/18/2017	[redacted]	0.67
	Total costs:	$242.40
	Total amount of this bill	$2,372.90
	Previous balance	$9,862.25
1/18/2017	Payment-Wire Transfer	($14,862.00)
	Total payments and adjustments	($14,862.00)
	Balance due	***($2,626.85)***

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February 28, 2017

Invoice submitted to:

[redacted]

Invoice # 19694

Re: UC Santa Barbara Title IX Writ Petition
[ret-p]

Professional Services:

			Hrs/Rate	Amount
2/1/2017	MH	[redacted]	1.66 650.00/hr	1,079.00
2/2/2017	MH		1.48 650.00/hr	962.00
	TT		2.00 150.00/hr	300.00
2/3/2017	TT		0.40 150.00/hr	60.00
2/8/2017	JEE		0.57 225.00/hr	128.25
2/9/2017	JEE		0.40 225.00/hr	NO CHARGE
2/12/2017	MH		1.60 650.00/hr	1,040.00
2/28/2017	MH		0.30 650.00/hr	195.00
	TT		1.80 150.00/hr	270.00
		For professional services rendered:	10.21	$4,034.25

Costs, Expenses, Additional Charges:

2/2/2017	[redacted]	6.44
2/23/2017		0.47

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.

Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

		Amount
	Total costs:	$6.91
	Total amount of this bill	$4,041.16
	Previous balance	($2,626.85)
2/17/2017	Payment-Wire Transfer	($2,372.90)
	Total payments and adjustments	($2,372.90)
	Balance due	***($958.59)***

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Board of Legal Specialization

March 31, 2017

Invoice submitted to:

[redacted]

Invoice # 19695

Re: UC Santa Barbara Title IX Writ Petition
[ret-p]

Professional Services:

			Hrs/Rate	Amount
3/7/2017	TT	[redacted]	0.40 150.00/hr	60.00
3/8/2017	da		0.17 85.00/hr	14.45
3/9/2017	yna		0.25 105.00/hr	26.25
3/13/2017	TT		1.00 150.00/hr	150.00
	yna		0.50 105.00/hr	52.50
3/14/2017	TT		1.00 150.00/hr	150.00
	MH		2.62 650.00/hr	1,703.00
3/15/2017	yna		0.50 105.00/hr	52.50
3/17/2017	MH		0.50 650.00/hr	325.00
3/21/2017	CLC		5.60 375.00/hr	2,100.00
3/30/2017	MH		0.20 650.00/hr	NO CHARGE
	MH		0.40 650.00/hr	NO CHARGE

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.

Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

			Hrs/Rate	Amount
3/31/2017	MH	[redacted]	0.79 650.00/hr	513.50
	For professional services rendered:		13.93	$5,147.20

Costs, Expenses, Additional Charges:

3/14/2017	[redacted]		503.88
			24.00
	Total costs:		$527.88
	Total amount of this bill		$5,675.08
	Previous balance		($958.59)
	Balance due		***$4,716.49***

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April 30, 2017

Invoice submitted to:

[redacted]

Invoice # 19788

Re: UC Santa Barbara Title IX Writ Petition
[ret-p]
MMH

Professional Services:

			Hrs/Rate	Amount
2/1/2017	KAP	[redacted]	1.90 325.00/hr	617.50
2/2/2017	KAP		1.40 325.00/hr	455.00
4/10/2017	MH		0.20 650.00/hr	NO CHARGE
	da		2.00 85.00/hr	170.00
4/13/2017	MH		0.85 650.00/hr	552.50
4/14/2017	MH		0.10 650.00/hr	NO CHARGE
4/17/2017	JEE		8.05 225.00/hr	1,811.25
4/18/2017	JEE		2.10 225.00/hr	472.50
	MH		0.10 650.00/hr	NO CHARGE
4/21/2017	MH		0.10 650.00/hr	NO CHARGE
4/22/2017	JEE		4.85 225.00/hr	1,091.25
4/26/2017	MH		0.77 650.00/hr	500.50
	JEE		0.23 225.00/hr	51.75

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.

Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

			Hrs/Rate	Amount
4/27/2017	CLC	[redacted]	3.05 375.00/hr	1,143.75
	MH		0.46 650.00/hr	299.00
	JEE		0.40 225.00/hr	90.00
4/28/2017	CLC		5.13 375.00/hr	1,923.75
	MH		2.00 650.00/hr	1,300.00
	For professional services rendered:		33.69	$10,478.75

Costs, Expenses, Additional Charges:

1/20/2017	[redacted]	99.90
2/17/2017		120.85
2/22/2017		69.90
2/24/2017		49.95
3/15/2017		69.90
3/21/2017		69.90
	Total costs:	$480.40
	Total amount of this bill	$10,959.15
	Previous balance	$4,716.49
4/25/2017	Payment-Wire Transfer	($4,716.49)
	Total payments and adjustments	($4,716.49)
	Balance due	***$10,959.15***

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Board of Legal Specialization

May 31, 2017

Invoice submitted to:

[redacted]

Invoice # 20037

Re: UC Santa Barbara Title IX Writ Petition
[ret-p]
MMH

Professional Services:

			Hrs/Rate	Amount
5/10/2017	CLC	[redacted]	0.50 375.00/hr	187.50
5/18/2017	JEE		0.20 225.00/hr	45.00
5/26/2017	MH		0.10 650.00/hr	NO CHARGE
5/30/2017	CLC		0.90 375.00/hr	337.50
	For professional services rendered:		1.70	$570.00

Costs, Expenses, Additional Charges:

5/2/2017	[redacted]		147.37
5/4/2017			661.54
	Total costs:		$808.91
	Total amount of this bill		$1,378.91
	Previous balance		$10,959.15
6/23/2017	Payment-Wire Transfer		($10,959.15)
	Total payments and adjustments		($10,959.15)
	Balance due		***$1,378.91***

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.
Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

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June 30, 2017

Invoice submitted to:

[redacted]

Invoice # 20038

Re: UC Santa Barbara Title IX Writ Petition
[ret-p]
MMH

Professional Services:

			Hrs/Rate	Amount
6/14/2017	JEE	[redacted]	0.50 225.00/hr	112.50
6/15/2017	yna		0.25 105.00/hr	26.25
6/21/2017	JEE		6.50 225.00/hr	1,462.50
6/22/2017	yna		0.25 105.00/hr	26.25
	JEE		7.00 225.00/hr	1,575.00
6/23/2017	JEE		8.20 225.00/hr	1,845.00
6/26/2017	CLC		0.20 375.00/hr	75.00
	yna		0.75 105.00/hr	78.75
	JEE		6.30 225.00/hr	1,417.50
6/27/2017	JEE		3.20 225.00/hr	720.00
	For professional services rendered:		33.15	$7,338.75

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.

Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

Costs, Expenses, Additional Charges:

		Amount
6/15/2017	[redacted]	72.47
		0.47
6/26/2017		0.67
		0.47
6/27/2017		89.60
	Total costs:	$163.68
	Total amount of this bill	$7,502.43
	Previous balance	$1,378.91
	Balance due	***$8,881.34***

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July 31, 2017

Invoice submitted to:

[redacted]

Invoice # 20073

Re: UC Santa Barbara Title IX Writ Petition
[ret-p]
MMH

Professional Services:

			Hrs/Rate	Amount
7/5/2017	MH	[redacted]	0.30 650.00/hr	195.00
7/11/2017	JEE		0.20 275.00/hr	55.00
7/14/2017	MH		1.79 650.00/hr	1,157.00
7/25/2017	JEE		0.70 275.00/hr	192.50
7/26/2017	yna		0.50 105.00/hr	52.50
7/27/2017	yna		0.25 105.00/hr	26.25
	For professional services rendered:		3.74	$1,678.25

Costs, Expenses, Additional Charges:

3/15/2017	[redacted]	0.47
4/28/2017		6.65
7/26/2017		107.85
7/28/2017		109.62
	Total costs:	$224.59
	Total amount of this bill	$1,902.84
	Previous balance	$8,881.34

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.

Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

	Amount
Balance due	***$10,784.18***

Mark J. Werksman
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August 31, 2017

Invoice submitted to:

[redacted]

Invoice # 20074

Re: UC Santa Barbara Title IX Writ Petition
[ret-p]
MMH

Professional Services:

			Hrs/Rate	Amount
8/3/2017	yna	[redacted]	0.25 105.00/hr	26.25
8/8/2017	yna		0.25 105.00/hr	26.25
8/28/2017	yna		0.25 105.00/hr	26.25
8/29/2017	MH		0.40 650.00/hr	260.00
	yna		0.25 105.00/hr	26.25
	JEE		0.30 275.00/hr	82.50
8/31/2017	MH		0.10 650.00/hr	65.00
	For professional services rendered:		1.80	$512.50

Costs, Expenses, Additional Charges:

8/8/2017	[redacted]	71.90
	Total costs:	$71.90
	Total amount of this bill	$584.40
	Previous balance	$10,784.18

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.

Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

	Amount
Balance due	***$11,368.58***

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FEDERAL TAX I.D. # 47-2863027

*Admitted in California
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*Certified Specialist – Taxation Law
The State Bar of California
Board of Legal Specialization

**Certified Specialist - Appellate Law
The State Bar of California
Board of Legal Specialization

Invoice submitted to:

[redacted]

September 30, 2017

Invoice # 20075

Re: UC Santa Barbara Title IX Writ Petition
[ret-p]
MMH

Professional Services:

			Hrs/Rate	Amount
9/6/2017	CLC	[redacted]	0.50 375.00/hr	187.50
9/7/2017	MH		0.20 650.00/hr	130.00
9/12/2017	yna		0.50 105.00/hr	52.50
	MH		0.10 650.00/hr	NO CHARGE
9/13/2017	yna		0.50 105.00/hr	52.50
	JEE		8.10 275.00/hr	2,227.50
9/14/2017	JEE		1.60 275.00/hr	440.00
	JEE		0.40 275.00/hr	110.00
	JEE		2.10 275.00/hr	577.50
9/19/2017	yna		0.50 105.00/hr	52.50
9/25/2017	JEE		2.40 275.00/hr	660.00
9/26/2017	JEE		1.40 275.00/hr	385.00
9/27/2017	JEE		2.60 275.00/hr	715.00

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.

Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

			Hrs/Rate	Amount
9/28/2017	yna	[redacted]	1.50 105.00/hr	157.50
	For professional services rendered:		22.40	$5,747.50
	Previous balance			$11,368.58
	Balance due			***$17,116.08***

Mark J. Werksman
Alan J. Jackson
Mark M. Hathaway*
Kelly Q. Quinn**
Joshua E. Ritter
Inbal D. Zeevi
Mark W. Allen
Elizabeth S. Little
Jenna E. Eyrich

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Board of Legal Specialization

October 31, 2017

Invoice submitted to:

[redacted]

Invoice # 20076

Re: UC Santa Barbara Title IX Writ Petition
[ret-p]
MMH

Professional Services:

			Hrs/Rate	Amount
10/4/2017	MH	[redacted]	0.80 650.00/hr	520.00
10/10/2017	yna		0.25 105.00/hr	26.25
	JEE		0.90 275.00/hr	247.50
10/11/2017	JEE		3.20 275.00/hr	880.00
10/12/2017	JEE		0.50 275.00/hr	137.50
10/19/2017	yna		0.25 105.00/hr	26.25
10/26/2017	JEE		0.70 275.00/hr	192.50
10/30/2017	aw		0.33 105.00/hr	34.65
		For professional services rendered:	6.93	$2,064.65
		Previous balance		$17,116.08
		Balance due		***$19,180.73***

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.

Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

Mark J. Werksman
Alan J. Jackson
Mark M. Hathaway*
Kelly Q. Quinn**
Joshua E. Ritter
Mark W. Allen
Elizabeth S. Little
Jenna E. Eyrich
Amanda Carter

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The State Bar of California
Board of Legal Specialization

November 30, 2017

Invoice submitted to:

[redacted]

Invoice # 20264

Re: UC Santa Barbara Title IX Writ Petition
[ret-p]
MMH

Professional Services:

			Hrs/Rate	Amount
11/1/2017	MH	[redacted]	0.10 650.00/hr	65.00
11/2/2017	JEE		2.60 275.00/hr	715.00
11/3/2017	JEE		8.20 275.00/hr	2,255.00
11/6/2017	JEE		4.30 275.00/hr	1,182.50
11/7/2017	MH		0.10 650.00/hr	65.00
11/8/2017	MH		2.00 650.00/hr	1,300.00
	yna		0.25 105.00/hr	26.25
	aw		1.50 105.00/hr	157.50
11/14/2017	yna		0.25 105.00/hr	26.25
	MH		0.10 650.00/hr	65.00
11/15/2017	MH		4.00 650.00/hr	2,600.00
	yna		0.25 105.00/hr	26.25

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.

Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

			Hrs/Rate	Amount
11/15/2017	MH		0.10 650.00/hr	NO CHARGE
	MH		0.10 650.00/hr	NO CHARGE
11/17/2017	MH		2.00 650.00/hr	1,300.00
	yna		0.50 105.00/hr	52.50
11/20/2017	JEE		0.30 275.00/hr	82.50
11/21/2017	MH		0.10 650.00/hr	65.00
	For professional services rendered:		26.75	$9,983.75

Costs, Expenses, Additional Charges:

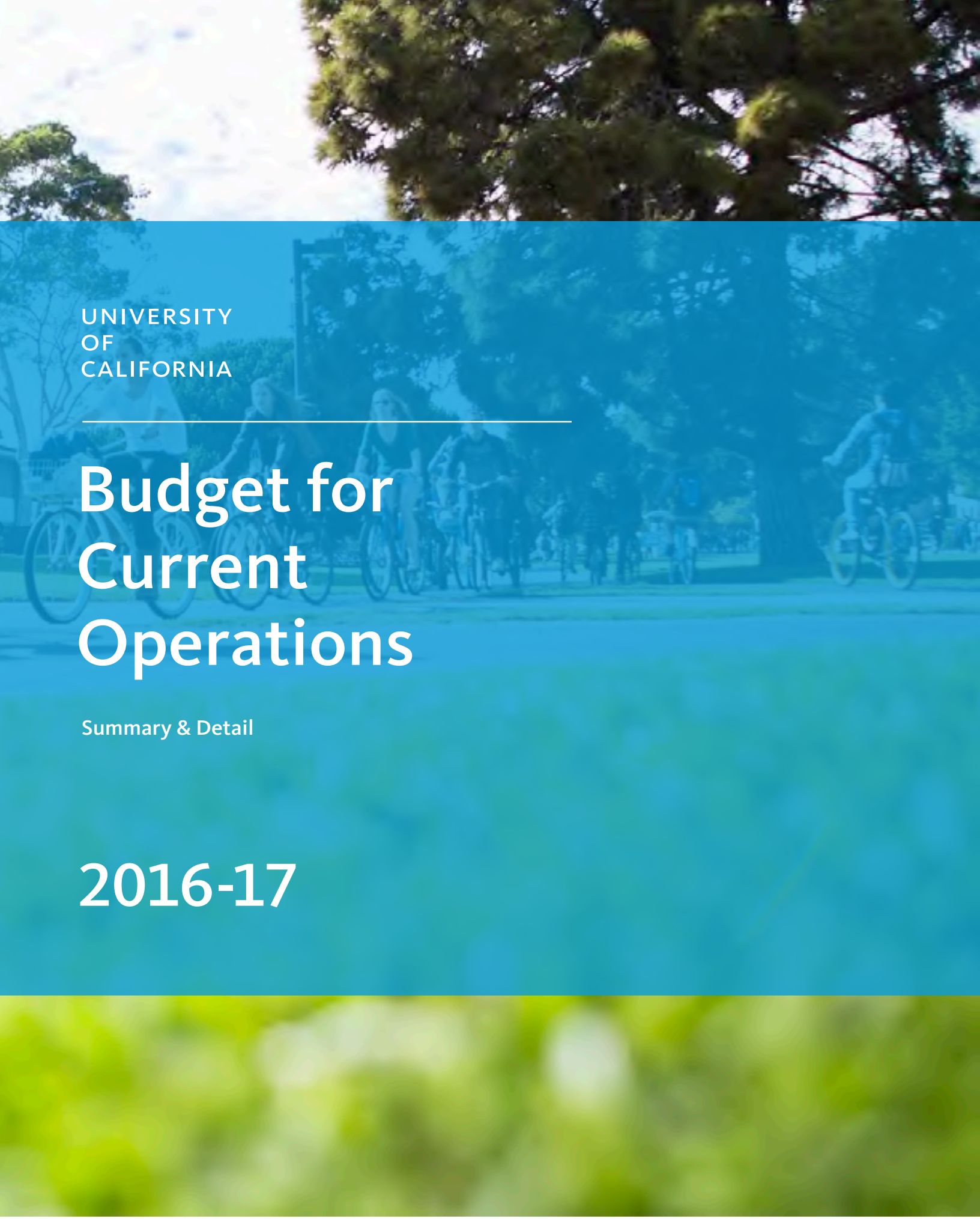
9/19/2017		89.10
		0.47
9/27/2017		20.52
		366.90
9/29/2017		121.90
10/3/2017		0.67
10/4/2017		51.95
10/30/2017		0.47
11/8/2017		66.95
11/9/2017		89.60
11/15/2017		1.82
11/16/2017		156.90
11/17/2017		27.00
11/20/2017		116.25
	Total costs:	$1,110.50
	Total amount of this bill	$11,094.25
	Previous balance	$19,180.73
11/8/2017	Payment-Wire Transfer	($8,881.34)
	Total payments and adjustments	($8,881.34)

Payment for Services Due Upon Receipt. Check, Credit Card, or Bank Wire Accepted.

Interest is Charged on Unpaid Balance at 18% Per Year After 30 Days.

	Amount
Balance due	***$21,393.64***

Exhibit 7



UNIVERSITY
OF
CALIFORNIA

Budget for Current Operations

Summary & Detail

2016-17

Foreword

The University of California was founded in 1868 as a public, State-supported land grant institution. The State Constitution establishes UC as a public trust to be administered under the authority of an independent governing board, the Regents of the University of California. The University maintains 10 campuses: Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Barbara, and Santa Cruz. Nine campuses offer undergraduate and graduate education; San Francisco is devoted exclusively to health sciences graduate and professional instruction. The University operates teaching hospitals and clinics on the Los Angeles and San Francisco campuses, and in Sacramento, San Diego, and Orange counties. The University includes approximately 150 institutes, centers, bureaus, and research laboratories throughout the state. UC's Agricultural Field Stations, Cooperative Extension offices, and the Natural Reserve System benefit all Californians. The University also oversees the Lawrence Berkeley National Laboratory and is a partner in limited liability corporations that oversee two other Department of Energy laboratories.

ORGANIZATION OF THE *2016-17 BUDGET FOR CURRENT OPERATIONS — BUDGET DETAIL*

The *Summary of the Budget Request* provides a brief overview of the major policy issues, revenue needs, and expenditure plans and objectives of the University for 2016-17. It provides explanatory detail for all aspects of the University's operating budget.

The first chapter, *UC's Role in the State of California*, provides an overview of the University's contributions to the state in both the education and economic sectors.

The *Sources of University Funds* chapter presents a digest of the major fund sources that constitute the University's $28.5 billion in operating revenues in 2016-17.

The *Cross-Cutting Issues* chapter provides budget detail for issues that cross functional areas.

Subsequent chapters discuss specific program areas in more detail and provide fuller justification of requests for funding increases. These include chapters covering the core mission activities of instruction, research, and public service, as well as all support activities and student financial aid.

Salary increases and rising costs of employee and retiree benefits are major drivers of the University's budget plan. These issues are discussed in the *Compensation, Employee and Retirement Benefits, and Non-Salary Cost Increases* chapter.

The *Student Tuition and Fees* chapter provides information about the University's tuition and fee policy and practices.

The *Historical Perspective* chapter provides a detailed account of the history of State funding for the University over the last several decades.

The Appendix includes various tables providing current and historical budget, enrollment, and tuition information.

A separate volume, the *2015-25 Capital Financial Plan,* provides information about the University's capital facilities needs.

Table of Contents

List of Displays

Appendix

MESSAGE FROM THE PRESIDENT

For more than a century, the University of California has provided an unparalleled educational experience for generations of students. A UC education has ensured a bright, prosperous future for countless graduates. It has enriched the State of California through groundbreaking research and innovations, and a highly skilled workforce.

Past investments by the State of California in its prized public research university system have made all this possible. This spring, Governor Jerry Brown reaffirmed his commitment to public higher education by reaching a historic budget agreement with the University of California. The funding provisions of the agreement were endorsed by the Legislature in the 2015 Budget Act.

The new state budget provides the University with new revenue that translates into much needed fiscal stability. It allows University leadership to cap resident tuition at its current level for another two years. It gives students and their families time to plan and budget for college costs. And it preserves the access, affordability, and quality that Californians expect of UC.

The entire University of California community will seek continuing support from the Governor and the Legislature for our vibrant University and its students. In the spirit of our longstanding partnership with State leaders, UC is committed to doing its part.

We will not stop looking for more ways to increase efficiency and cut costs. We will adopt and implement the State's Public Employee Pension Reform Act's pensionable salary cap for new employees hired on or after July 1, 2016, building on UC's previous pension reforms. We will enhance the student experience by further simplifying the transfer process for California Community College students, improving academic advising, eliminating course bottlenecks, and positioning our students to graduate in a timely manner.

We also will tackle an objective critical to all stakeholders in the state: increasing the enrollment of resident undergraduates at the University of California. This challenging task will require collaboration and careful planning with our partners. But we at UC are committed to getting this done – for California and its students.

The University's 2016-17 operating budget outlines in detail our financial priorities and commitments for the upcoming academic year, and how we intend to uphold them. It is the roadmap that will lead us from a challenging and uncertain period into one of stability and continued growth.

Janet Napolitano, President
November 2015

THE BUDGET FRAMEWORK WITH THE GOVERNOR GUIDES DEVELOPMENT OF THE 2016-17 BUDGET FOR THE UNIVERSITY OF CALIFORNIA

Recognizing that access to quality higher education is a crucial investment in the State's future, the University of California and the State have long partnered to provide a high-caliber educational experience for all students who work hard and qualify, irrespective of social background or economic situation. Most states expect their public universities to offer a good education at an affordable price. But California's expectation has been much higher, and rightfully so. State investment in the University of California has enabled world-class faculty to offer an education comparable to those at elite private universities to generations of California's most qualified students who go on to contribute to the economic, social, and cultural vitality of the state. This proud tradition of public higher education excellence sets UC and California apart from other major research universities and other states. UC's and the State's shared commitment to excellence rests on three pillars: access, affordability, and quality.

The *Washington Monthly* ranks institutions on their contributions to the public good, evaluating factors such as social mobility, research, and public service. In its 2015 college survey, the *Washington Monthly* recognized UC for its role as an engine of social mobility and for its research and public service, noting, "As it has in previous years, the University of California system dominates our national university rankings, with a combination of research prowess and economic diversity among undergraduates." The recently published *College Access Index*, a *New York Times* measure of economic diversity and social mobility at top colleges, awarded six of the top seven spots to University of California campuses, reflecting the University's high proportion of low-income students, affordable price, and ever-improving graduation rates. At 42%, the University has a much higher proportion of Pell Grant recipients in its undergraduate population than any other major research university in the country. Enrolling at UC is a life-changing pathway to economic success for tens of thousands of students every year, which in turn contributes to the economic prosperity of the state.

The State's past support for the University has yielded an impressive return on investment, and both the State and UC share the goal of protecting that investment. Although the depth and breadth of the "great recession" earlier in this decade was a challenge to UC and many other State entities, the years of financial volatility have subsided.

The current stable financial outlook allows the University an opportunity to increase access to its educational programs and rebuild academic excellence. UC has built its 2016-17 budget plan on a foundation of renewed partnership with the State that acknowledges the University's imperative to continue pursuing efficiencies and alternative revenue strategies to help address a major portion of its budgetary needs. UC is grateful for additional State investment to help meet these needs and maintain the University's financial health.

The budget framework announced by Governor Brown as part of his May Revision to the 2015-16 budget provides much appreciated financial stability. It also includes several programmatic initiatives and efficiencies that reflect a shared goal of enhancing the educational experience at UC. Specifically, the framework calls for:

- **A commitment to additional annual increases in State funding.** In 2013, the Governor proposed regular annual increases in direct appropriations to the University of 5% in 2013-14 and 2014-15 and 4% in 2015-16 and 2016-17. The Governor has now committed, subject to agreement with the Legislature each year, to extend the 4% increases for two additional years, through the 2018-19 fiscal year, giving the University predictability in its long-term fiscal outlook. This amounts to a total increase in State funds of more than $500 million in UC's base budget over the next four years.
- **One-time funding to address high-priority costs.** The Governor's January budget proposed one-time funding of $25 million to support high-priority deferred maintenance needs across the University's 10 campuses. The Governor's May Revise proposed an additional $25 million in one-time Cap and Trade funds to address energy efficiency projects. (The deferred maintenance funding was appropriated to the University in the State Budget Act of 2015; the Legislature is expected to act on the Cap and Trade funding after it convenes in January.) These one-time funds cannot be used for other purposes.

- **Modest and predictable tuition increases.** UC has agreed to continue to freeze Tuition at 2011-12 levels for the 2015-16 and 2016-17 academic years, a total of six years with no tuition increases. Beginning in 2017-18, the framework provides for predictable Tuition increases, pegged generally to the rate of inflation. It also provides that the Professional Degree Supplemental Tuition (PDST) plan adopted by the Regents at their November 2014 meeting will remain in effect, except that PDST for the University's four law schools will remain at 2014-15 levels through 2018-19.
- **Shared commitment to addressing UC's long-term pension liability.** The Governor has agreed, subject to the Legislature's approval, to provide a total of $436 million in one-time funding over three years to address a portion of UC's pension obligations: $96 million in 2015-16 (which was approved as part of the 2015-16 budget), followed by an additional $170 million in each of the following two years. This funding will come from Proposition 2 funds, which the State Constitution specifies must be supplemental, above contribution rates approved by the Regents, and used to help pay down the UCRP's unfunded liability. This funding is contingent upon implementation of the State's Public Employee Pension Reform Act's pensionable salary cap, effective for new hires on or after July 1, 2016. The UC Retirement Options Task Force, in consultation with the Academic Senate, staff and other stakeholders, is examining options for implementation of the cap and will make recommendations to the President for her recommendation to the Regents for approval in the spring. The approved retirement benefit plan will not apply to current employees. For represented employees, it will be subject to collective bargaining.
- **Enhanced commitment to the transfer function.** In May 2014, the University's Transfer Action Team recommended ways to streamline the transfer function and increase transfer enrollment. As part of the framework agreement, UC is committing to specific timeframes for implementing several key recommendations. Specifically, UC has agreed to complete transfer preparation pathways for 20 of its top majors over the next two academic years. The first 10 pathways were completed in June 2015. These pathways will be consistent across all nine undergraduate campuses, as consistent as possible with the CSU pathways created for community college Associate Degrees for Transfer, and will specify clearly any differences between the CSU and UC pathways. In addition, consistent with the intent of the Master Plan for Higher Education, UC will increase the proportion of its California resident students who enter UC as transfers (conditioned on there being a sufficient pool of qualified applicants), achieving by the 2017-18 academic year its goal of having one-third of entering students start as transfers, both systemwide and at every undergraduate campus (with the exception of UC Merced). The President has also asked the Academic Senate to consider adoption of the state's Common Identification Numbering (C-ID) system to further simplify identification of similar courses across campuses in each of the segments.
- **Innovations to support student progress and improve time-to-degree.** In discussions with experts and campus visits that were part of discussions that led to the budget framework, UC and the Governor identified promising practices than can be expanded across the UC system to increase student success and reduce time-to-degree. These include:
    - reviews of major requirements to determine whether the number of upper-division units required to complete a major can be reduced without compromising quality, with a goal of not exceeding one academic year's worth of coursework (generally the equivalent of about 45 quarter units). This type of review has already been conducted at UCLA in some disciplines and will be completed on all undergraduate campuses by July 1, 2017.
    - development of three-year degree pathways for 10 out of the top 15 majors at each campus by March 1, 2016. Merced, which has far fewer majors than the other campuses, will develop three-year degree pathways for three out of its top five majors, which is proportional to expectations for other UC campuses. UC has committed to promoting these accelerated pathways for use by students where appropriate, with a goal that 5% of all UC undergraduate students will access these accelerated tracks by the summer of 2017.
    - enhanced use of summer session to lessen time-to-degree. Enrollment in one or more summer sessions has been shown to be a key element allowing UC students to complete their degrees more quickly. As a way to encourage more UC students to enroll in summer session, three campuses will pilot alternative pricing models in summer 2016. The models focus on expanded availability of summer session financial aid, a cap on the number of units for which a student is charged fees (allowing free enrollment for units above the cap), and low summer housing rates for continuing students who enroll in summer courses.
    - information on how UC's online initiative has prioritized development of online versions of gateway or potential bottleneck courses.
    - reexamination by the Academic Senate of current policies for Advanced Placement courses and the College Board's College-Level Examination Program tests.

  - guidance for advisors to better assist students in planning their time at UC and successfully completing their degrees within four years or fewer if they are native freshmen, two years if they are transfer students, or three years if they are native freshmen on a three-year pathway.

- **Continued innovation in the use of technology and data analytics to understand instructional costs and improve student outcomes.** A number of innovative new approaches are currently being piloted at UC campuses, including, but not limited to, the following:
  - expansion of predictive analytics and other technologies to identify students at risk of academic difficulty and monitor their progress. All campuses will describe their data and technology efforts, how this information is used, and how use of the data helps close achievement gaps.
  - piloting activity-based costing in the College of Humanities, Arts and Social Sciences at UC Riverside. UC Riverside is seeking to serve as a U.S. pilot for this new approach. Two other campuses are conducting scoping studies to determine the feasibility and cost of expanding this pilot.
  - use of adaptive learning technology to help students master challenging coursework, by tailoring instruction to individual needs, which helps students stay on track for graduation. UC Davis is leading a multi-campus pilot to investigate this technology.
  - investigating expansion of on-line certificate and Masters' degree programs to address critical workforce needs in California. UC convened industry and academic leaders this fall to discuss areas of significant need where UC can contribute by providing online programs.

The University's 2016-17 budget plan has been developed in the context of this framework and is based on the continued long-term financial modeling begun several years ago to help plan for the long-term financial sustainability of the University. Consistent with the strategic priorities underlying the University's longer-term financial planning, the 2016-17 budget plan is built on an unwavering commitment to protect UC's longstanding excellence while recognizing the limitations presented by the funding environment within which the University and other state agencies operate.

This *Summary* document, which is the first chapter of the larger, *2016-17 Budget for Current Operations – Budget Detail,* summarizes the current status of the University's operating and capital budgets and proposed changes for 2016-17. The remainder of this document provides explanatory detail for the major areas of the University's operating budget, including sources of funding and program expenditure areas. The University's capital budget program is described in more detail in the *2015-25 Capital Financial Plan* document.

KEY ELEMENTS OF THE 2016-17 BUDGET PLAN

Cost Savings/Alternative Revenues. Efficiencies and cost savings have been critical elements in the University's long range financial planning in recent years. The 2016-17 budget plan again assumes aggressive savings and increased revenue from a variety of sources, including centralized procurement, asset management, increased unrestricted philanthropy, and new approaches to insurance and risk management to help generate new revenue and reduce operating expenses. These actions will generate $109 million for the core funds operating budget in 2016-17.

4% Increase in State Support. The budget plan assumes a 4%, $125.6 million, base budget increase in State General Funds, as proposed in the Governor's multi-year funding plan for the University.

Undergraduate Enrollment. The 2016-17 budget plan assumes that enrollment of UC California resident undergraduate students will increase by 5,000 in 2016-17 compared to total enrollment in 2014-15, consistent with the State's proposal in the 2015-16 Budget Act. UC intends to demonstrate to the Director of Finance by April 30, 2016 that it has met this goal. This will release an annual appropriation of $25 million in State funding to the University to help support enrollment growth. This level of funding is sufficient to support half of the 5,000 students. UC will fund the remaining $25 million through the alternative revenue and funding strategies outlined later in this document.

Additional State General Funds. The University is requesting additional State General Funds above the 4% base budget increase for two purposes in 2016-17:

- **Graduate Enrollment.** The University's enrollment plan will boost California undergraduate enrollment by 10,000 students throughout the nine general campuses by the 2018-19 academic year (discussed below). Half of that growth will come in 2016-17, with 2,500 more students added in each of the following two years. As a research university, UC must also increase graduate enrollment, both to provide opportunities for students to pursue graduate degrees and meet California's workforce needs and to help with the instruction of undergraduate students. The University's budget plan includes $6 million in additional State funds at the agreed-upon marginal cost of instruction to support growth of 600 graduate students in 2016-17.

- **Deferred Maintenance.** The University's budget plan includes a request for $25 million in one-time funds for deferred maintenance (in addition, the plan assumes $25 million in permanent support from other sources for this purpose). The University's deferred maintenance backlog and need for capital renewal is significant and growing faster than the University can address. The State provided one-time funds in 2015-16 for this purpose; UC is requesting a second increment of one-time funds for 2016-17.

Nonresident Supplemental Tuition Increase/ Nonresident Enrollment Growth. The budget plan assumes an 8% increase in Nonresident Supplemental Tuition, consistent with the framework agreed to with the Governor. The plan also includes enrollment of an additional 1,200 nonresident students in 2016-17, a reduction in the level of growth from the prior year. The increase in nonresident tuition and nonresident enrollment will yield $68.7 million in new revenue (net of costs to educate these students) to help support the budget plan.

Financial Aid for Nonresident Undergraduate Students. The University will begin to phase out financial aid provided through the University Student Aid Program (USAP) for nonresident undergraduate students. Continuing nonresident students who already receive this aid will not be affected by this change. However, new nonresident undergraduate students will not be eligible for financial aid from USAP, which is funded from return-to-aid from Tuition. This will generate $14 million for the budget plan in 2016-17 and will be used to help fund the enrollment growth plan.

Student Services Fee Increase. The budget plan assumes an increase of 5% in the Student Services Fee. Half of the revenue generated, net of financial aid, will be used to increase student mental health services.

Tuition. There is no Tuition increase planned for 2016-17.

Mandatory Costs. The University faces mandatory cost increases of $145.3 million, including expenses such as employer contributions to the University's retirement system, employee and retiree health benefit programs, compensation increases already approved in the collective bargaining process, the faculty merit program essential to retaining high performing faculty, and inflationary costs for non-salary items (such as instructional equipment and purchased utilities).

Investment in Academic Quality. The 2016-17 plan calls for $50 million in strategic investments in core academic programs that will restore faculty ranks, increase graduate student support, expand cutting-edge technology essential to instructional delivery in the classroom of the 21st century, and rebuild other areas where the impact of recent budget cuts on the quality of the academic program have been most pronounced. Enhancing academic excellence through targeted reinvestment in critical programmatic areas is central to any comprehensive strategy for meeting State goals for improved graduation rates and other performance outcome measures. Decisions on programmatic uses for this funding will be made at the campus level, based on campus priorities.

Other High-Priority Costs. In addition to mandatory costs, the plan includes $194.4 million for high-priority costs necessary for the operation of a major research university. These include compensation increases for faculty and non-represented staff , renewed investment in deferred maintenance, and support for a modest capital program as described below.

Capital Outlay. For 2016-17, the budget plan assumes $15 million will be needed to support debt service on projects already approved by the Regents and the State. The University has received approval from the Department of Finance – after review by the Joint Legislative Budget Committee – for 26 projects for a budgeted total of $706.7 million across fiscal years 2013-14, 2014-15, and 2015-16. Of these approved projects, 11 address seismic/life-safety problems, 6 support modernization, 3 respond to previous growth, 4 fall under the infrastructure category, and 1 project provides equipment. For the 2016-17 Budget for State Capital Improvements, the University submitted one project to the State in September 2015 – the Merced 2020 Project. Funds set aside in the 2016-17 budget plan will be used to support debt service for projects coming on line in 2016-17.

Dream Loan. State legislation adopted in 2014 called for UC (and CSU) to establish a revolving loan program for undocumented students that was to be funded from a combination of additional State funds and matching funds from University sources. In addition to increases in financial aid associated with new enrollment growth, the 2016-17 budget plan includes permanent funds of $5 million, half from the University's base budget adjustment from the State and half from internal University sources, for this purpose.

Other Requests Not in the Core Funds Budget Plan

Proposition 2 Funds for UC's Retirement Plan. The budget framework agreed to with the Governor includes a provision for $436 million in Proposition 2 funds to help address the unfunded liability of the University's retirement program, provided the University adopts a cap on pensionable salary similar to the State's Public Employees' Pension Reform Act of 2013. The University will enact this change by July 1, 2016 and thus will expect to receive the 2015-16 and 2016-17 increments of Proposition 2 funds, $96 million and $170 million respectively.

Cap and Trade Funds for Energy Projects. As part of the agreement on the 2015-16 budget, the Governor agreed to support $25 million in one-time funds from Cap and Trade revenue to support energy projects that can help the University increase energy efficiency and meet its carbon neutrality goals. The University is requesting a second increment of $69.1 million in one-time Cap and Trade (or Proposition 39) funds in 2016-17 for this purpose.

Institute for Transportation Studies. A total of $9 million, to be phased in over three years in $3 million increments, is requested from the Public Transportation Account to augment State funding for the Institute for Transportation Studies, created by the State in 1947 to address the State's transportation needs in a research-based environment. With branches on four UC campuses, the Institute is recognized as the world's premier center of transportation research, bringing together UC researchers from more than 30 disciplines and annually hosting more than 250 graduate students, with about 100 Masters and Ph.D. students graduating each year. The Institute plays a major role in addressing the state's congestion, land use, energy, air quality, freight, travel behavior, planning, and engineering challenges. Funds would be used to bolster the infrastructure of the Institute to accept more research opportunities (many of which are now turned away because of inadequate staffing); improve dissemination of research results so experts in the field have access to the most up-to-date information in five areas the State has identified as critical (climate change, urban sustainability and air quality, infrastructure and energy, transportation system performance/optimization, and taxation and finance); and increase research in emerging areas within the transportation field.

Innovation and Entrepreneurship Initiative. This initiative aims to leverage the scale and diversity of the University of California's 10 campuses, five medical centers and three affiliated national labs to build a vibrant and innovative entrepreneurial culture across the system that will create direct benefits to the state and nation. The University has developed a highly competitive research environment to further stimulate creativity and innovation at all campus locations. UC has also developed an investment program to support UC entrepreneurs and increase opportunities to grow California's economy. The opportunity is now ripe for California to capitalize on UC's unique combination of world-class research and vibrant entrepreneurial culture and solve some of the State's most pressing problems while significantly stimulating its economy. The University of California will work with the Legislature to develop jointly a statewide innovation and entrepreneurship program that addresses areas of strategic importance to the State.

2016-17 Budget Plan for Core Funds (Dollars in Millions)

2015-16 OPERATING BUDGET

State General Funds	$3,161.1
Less General Obligation Bond Debt Service	(205.6)
State General Funds (excluding GO Bond Debt Service)	$2,955.6
Total Core Funds (State General Funds, Student Tuition and Fee Revenue, and UC General Funds)	$7,307.3

PROPOSED INCREASES IN REVENUE

Cost Savings/Alternative Revenues		
Asset Management	$	40.0
Systemwide Contracts	$	30.0
Fiat Lux / Risk Captive	$	15.0
Philanthropy	$	10.0
Repurposed Funds Formerly Used as Aid to Nonresident Undergraduates	$	14.0
Subtotal	$	109.0
State General Funds		
Undergraduate Enrollment Growth	$	25.0
Graduate Enrollment Growth	$	6.0
4% Base Budget Increase	$	125.6
Subtotal	$	156.6
Fees		
Student Services Fee Increase (5%)	$	8.7
Mandatory Charges - Enrollment Growth	$	55.2
Revenue for Financial Aid	$	33.1
Subtotal	$	97.0
UC General Funds		
Nonresident Supplemental Tuition	$	68.7
Indirect Cost Recovery		-
Subtotal	$	68.7
One-Time Resources		
Prior Year Enrollment Funding	$	25.0
Deferred Maintenance	$	25.0
TOTAL INCREASE IN REVENUE	**$**	**481.3**

PROPOSED INCREASES IN EXPENDITURES

Enrollment Growth	$	56.0
Mandatory Costs		
Retirement Contributions	$	24.1
Employee Health Benefits	$	28.4
Annuitant Health Benefits	$	4.2
Contractually Committed Compensation	$	26.9
Faculty Merit Program	$	32.0
Non-Salary Price Increases	$	29.7
Subtotal	$	145.3
Investment in Academic Quality	$	50.0
High-Priority Costs		
Compensation	$	129.4
Deferred Maintenance	$	50.0
High-Priority Capital Needs	$	15.0
Subtotal	$	194.4
Financial Aid		
Dream Loan	$	5.0
Other Financial Aid	$	30.6
Subtotal	$	35.6
TOTAL INCREASE IN EXPENDITURES	**$**	**481.3**

UC'S PARTNERSHIP WITH THE STATE: INVESTING IN STUDENTS, PURSUING OPPORTUNITIES FOR EXCELLENCE

Access, affordability, and quality are the University's pillars of excellence. The partnership between the University and the State is built on an enduring commitment to protect and sustain these three pillars of excellence for future generations of Californians. Preserving access ensures that the doors of opportunity a UC education provides are open to all students who work hard to become eligible and attend. Maintaining affordability ensures that financial need is not a barrier for students to attend UC. Preserving quality is essential if current and future students are to receive the same opportunities and benefits that previous generations of Californians have enjoyed by attending California's world-class research university. The University's 2016-17 budget plan is designed to protect and enhance all three pillars of excellence.

Access

The University continues to meet its obligation under the Master Plan to offer a place to all eligible resident freshman applicants even as applications continue to rise. Fall 2015 California freshman applications totaled 102,944, growing from 99,761 the year before, a 3.2% increase. Throughout the recession, UC continued to offer admission to all qualified undergraduates. Total California resident undergraduate enrollment is estimated to be approximately 175,000 in 2015-16 and remains close to historic highs.

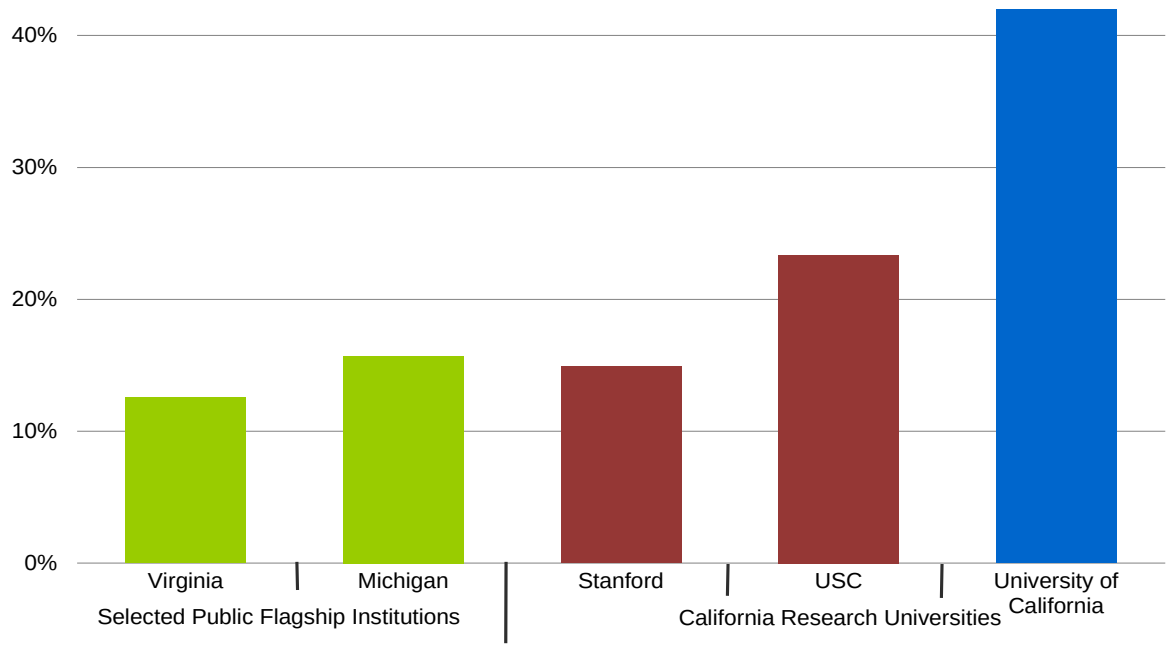
Moreover, eligible California resident students from across the socio-economic spectrum continue to enroll at the University of California. In Fall 2014, more than 40% of UC's undergraduate students were first-generation college students. This is higher than the average at other Association of American Universities (AAU) public institutions (27%) and more than double the average at AAU private institutions (18%). For the first time, the number of Chicano/Latino applicants for the Fall 2013 freshman class exceeded all other applicant categories and that trend has continued. UC enrolls higher proportions of students from underrepresented groups – UC's proportion is 24%, while other public AAU institutions average 14% and private AAU institutions average 16% – and endeavors to partner with the State to continue to improve access for traditionally underrepresented groups.

One of the most striking measures of UC's success in providing access for students from low-income backgrounds is the proportion and number of enrolled undergraduate students who receive Pell Grants. Pell Grant recipients generally come from families with incomes of $60,000 or less. UC enrolls a far greater proportion of Pell Grant recipients (42%) than any of its comparator institutions, public or private, as shown in Display 1. The University's continued success in enrolling high numbers of low-income and first-generation college students demonstrates that the efforts of the University and the State (which provides critical support through the Cal Grant program) to protect affordability have been successful. More important, a UC education transforms the lives of thousands of students every year, providing opportunities for many that were never afforded their parents. The partnership of the University and the State makes this dream a reality.

Affordability

Access and affordability of a UC undergraduate education are inextricably linked. A multi-faceted approach that includes contributions from students, their families, the State and federal governments, private scholarships, and UC has preserved access to UC for students from low-income backgrounds even as tuition and fees have increased. While the University has implemented tuition increases in the past to offset State budget cuts that resulted from the deep economic recession, the State, through its Cal Grant program, and UC, through its own institutional aid programs, have continued to work together to ensure aid remains available for the most financially needy undergraduates. Moreover, tuition has not risen for five years and will continue to remain flat through 2016-17, consistent with the budget framework agreed to with the Governor.

Display 1: 2013-14 Undergraduate Pell Grant Recipients

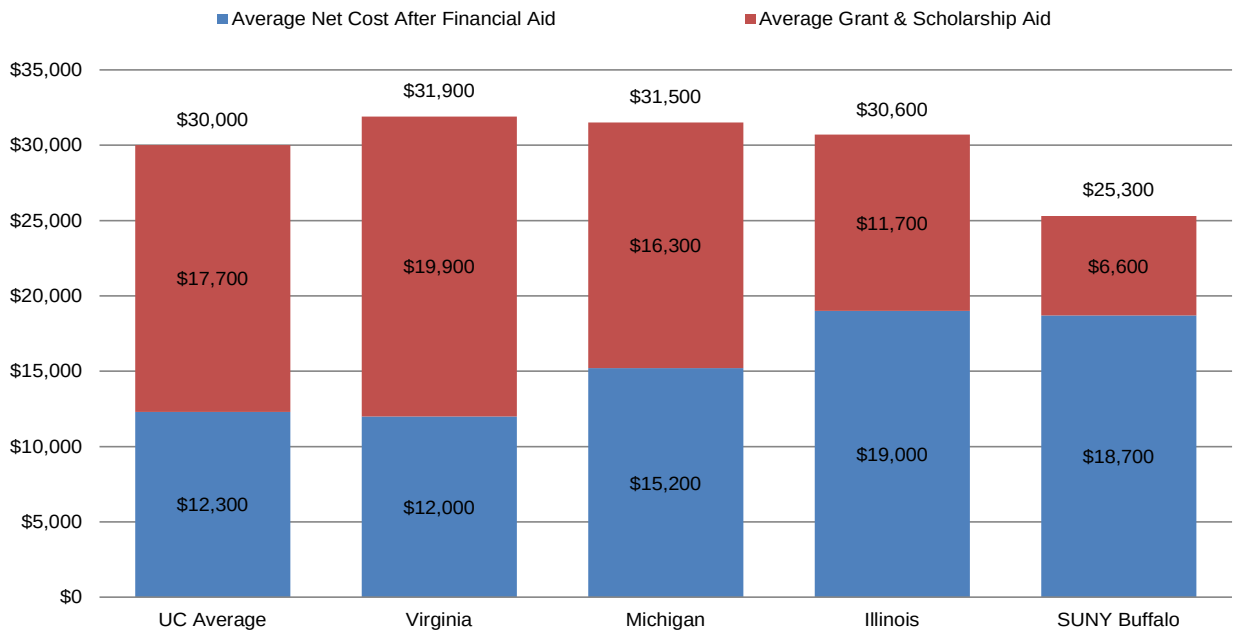


UC remains accessible for students from low-income families. UC has a very high proportion of federal Pell Grant recipients – 42% during 2013-14, which was more than at any comparable public or private institution. Four of UC's campuses each have more Pell grant recipients than the entire Ivy League combined.

Financial aid for UC undergraduates is premised on the principle that all academically eligible students should be able to attend UC irrespective of financial circumstances. When determining financial aid packages for individual students, the University considers the total cost of attending a UC campus, not just the cost of tuition and fees. For income-eligible students, federal Pell Grants and/or the State Cal Grant programs fully cover the cost of tuition; when combined with UC's robust institutional financial aid program, the total cost of attending UC is manageable for most students, and lower than at comparable universities. In fact, for the approximately two-thirds of undergraduate students who receive grants and scholarships, the average award is $17,700, significantly exceeding the mandatory tuition and fees cost of $12,192. In addition, students who may not qualify for Pell Grant or Cal Grant often are eligible for other State aid and/or the University's institutional aid programs:

- The State's Middle Class Scholarship Program will effectively reduce net tuition for undergraduates at UC by 40% for those families with annual incomes of up to $100,000 and by incrementally lesser amounts down to a 10% net tuition reduction for those with incomes up to $150,000. The program began in 2014-15 and will be fully phased in over four years. The program has been revised for 2015-16 to include a family asset cap of $150,000.
- The University's Blue and Gold Opportunity Plan covers Tuition and Student Services Fees for undergraduates whose families earn less than $80,000. More than 82,000 undergraduates at UC are expected to qualify for the Plan in 2015-16.
- The University and the State's commitment to affordability stands out. Rising student loan debt levels have received considerable attention across the country; in California, just over half of UC's 2013-14 graduating undergraduates carried some student loan debt, while 69% of college seniors who graduated from public and private nonprofit colleges had student loan debt in 2013. Among the 55% of UC students who did use student

Display 2: 2014-15 Net Cost of Attendance for Undergraduate Aid Recipients



Undergraduate need-based aid recipients at UC received an average of $17,700 in gift aid, resulting in a net cost of $12,300. UC's net cost in 2014-15 was lower than the net cost at three of its four public comparison institutions.

loans to help defray college costs, the average debt of UC's 2013-14 graduating class was $20,600, which is well below the national average for 2012-13 of $29,400. The University often uses a measure called "net cost of attendance" to determine what a student and his or her family must actually pay after accounting for financial aid. The net cost of attendance for UC financial aid recipients in 2013-14 was lower than the net cost at three of the University's four public comparison institutions, as shown in Display 2.

The University's robust financial aid programs have continued to meet the evolving support needs of its students even as their share of the cost to attend the University has increased. UC is committed – with the ongoing support of the State – to maintaining affordability for all its students.

For graduate academic students, the University's policy is intended to attract a diverse pool of highly qualified students by providing a competitive level of support relative to the cost of other institutions. This competitive context reflects the fact that graduate student enrollment is tied most directly to the University's research mission and helps the State meet its academic and professional workforce needs. Graduate awards must be sized not only to make the University financially accessible, but also to compete with awards prospective students receive from other institutions. Graduate academic students received support from fellowships, grants, and assistantships averaging about $36,500 per student during 2013-14. Fifty percent of tuition and fee increases are returned as aid to graduate academic students. Yet, while UC narrowed the gap between its offers and those of competing institutions from $2,874 in 2010 to $1,406 in 2013 (nearly a $1,500 improvement), in recent years the financial aid packages awarded by UC continued to fall short of packages offered by competing institutions. Expanding resources for graduate academic student support is a high priority for the University.

For graduate professional students, UC ensures that an amount equivalent to 33% of tuition and fee increases is provided to qualifying students in financial aid grants. Even so, about two-thirds of aid awarded to graduate professional students is in

the form of loans, primarily from federal loan programs. Many of the University's law and business programs provide loan repayment assistance programs, and since 2009-10, students in all disciplines may avail themselves of an income-based repayment plan for federal student loans, with loan forgiveness available to those who graduate into public service careers.

Quality

The University of California's unique strength among national university systems is excellence across all of its 10 campuses, as reflected in its students, faculty and researchers. By many measures the University has had extraordinary success relative to other institutions with a similar composition of students. Student outcome and scholarly production metrics are very high – among the highest in the nation. Display 3 highlights the outcomes that help make the University one of the world's most successful public institutions.

By other measures, years of fiscal crisis already have had a tangible impact on the academic excellence that has long been a hallmark of the University of California. One well-recognized measure of instructional quality is the student-faculty ratio. Display 4 tracks the budgeted and actual student-faculty ratio over the past 23 years. This ratio has risen at various times in the University's history, each time in response to significant budget cuts. The most recent recession was no exception, as campuses struggling to manage their budgets against the backdrop of uncertain funding were forced to delay hiring or made decisions not to fill vacant positions on a permanent basis. As a result, the actual student-faculty ratio rose more sharply than in previous periods of economic downturn.

Over the past two decades, student enrollment has grown at a much faster rate than faculty. Since 2007-08, enrollment has increased nearly 10% while ladder-rank faculty numbers have barely changed (increasing just 1.3%) over the same period. Faculty numbers actually declined in 2010-11 and 2011-12. Since that time, UC has been slowly replenishing faculty ranks; totals of ladder-rank faculty, however, still remain below those of 2009-10. More recently, as the budget situation has improved, campuses have begun to increase their faculty hiring, as shown in Display 5.

A high-quality educational experience for students is directly related to having the opportunity to learn from and collaborate with top faculty. The market competitiveness of faculty compensation is an ongoing concern. A little more than a decade ago, UC's faculty salaries were on par with the market. Since then, faculty salaries have slipped 12% below market, as shown in Display 6. UC is facing increasing challenges as other institutions with which UC competes for talent expand their hiring.

Maintaining a world-class institution of higher education for the benefit of California requires that all three pillars of excellence remain strong. That excellence requires attracting and retaining top faculty, high-quality graduate students, and a robust, diverse undergraduate student body. UC's ability to maintain its academic excellence has a direct bearing on the benefits students derive from attending the University. Simply preserving access and affordability without also maintaining academic excellence is an empty promise to those who seek to attend UC.

UC's 2016-17 budget plan includes the second increment of a multi-year investment in its academic program that calls for additional faculty hiring, addressing lagging faculty salaries, expanding graduate student support, and building and maintaining the technology infrastructure essential to the core instructional programs of a top research university. This investment is critical to UC's ability to continue to provide the high-quality education to which tens of thousands of students each year seek access.

Display 3: UC Outcomes Demonstrate a Record of Success

Undergraduate Success

- UC's four-year graduation rate for freshmen has risen significantly over the past 12 years — from 46.0% for the 1997 entering cohort to 62.5% for the 2010 cohort. The most recent six-year graduation rate is 84.0%. Low-income (Pell) students graduate in six years at essentially the same rate (83%) as non-Pell students (85%).
- Transfer entrants have demonstrated similar gains, with the two-year graduation rate increasing from 37.3% for the 1997 entering cohort to 55.0% for the 2012 cohort. The most recent four-year graduation rate is 87.5%. The 4-year graduation rate for transfer students is as high as the six-year rate for native freshmen.
- UC is actively engaged in efforts to continue to improve undergraduate outcomes. Increasing summer enrollment, for example, is critical to supporting timely graduation, with 9% of freshman entrants graduating in the summer of their fourth year. More full-time students are enrolling during summer session, an increase of 22% over the past decade.
- Data show that higher education remains one of the best investments an individual and the State can make. For example, within five years of graduating from UC, more than 50% of Pell Grant recipients have higher individual earnings than their entire families' income prior to their enrollment. Overall, incomes of UC bachelor's degree recipients double between two and ten years after graduation.
- UC undergraduates report significant growth in their academic skills over the course of their college education. Ninety-five percent of seniors who earned a bachelor's degree reported good to excellent skills in understanding their field of study upon graduation, compared to just 33% in their first year at UC; 94% of seniors reported strong analytical and critical-thinking skills, up from 54% as freshmen; and 91% of seniors reported good to excellent writing skills, up from 54% in their freshman year. More than 80% of seniors complete a research project or paper as part of their coursework, and more than 40% assist faculty in their research.

Rankings/Ratings

- The *Washington Monthly* considers social mobility, research and public service. Using these criteria, in its 2015 rankings:
  - Four UC campuses are among the top 10 institutions in the nation
  - Six rank among the top 20
- UC campuses rank among the top 20 best universities in the world according to the Academic Rankings of World Universities (ARWU) by the Shanghai Ranking Consultancy. Factors considered in these rankings include quality of the faculty and research output.
- The College Scorecard highlights five UC campuses that are among the top 10% of all four-year institutions in the nation on graduation rates and median earnings (Berkeley, Davis, Irvine, UCLA, and San Diego) and similar outcome measures are strong across the UC system.
- The *New York Times'* College Access Index 2015 underscores UC's role as an upward mobility machine. Six of the top seven institutions in the College Access Index are from the University of California, with UC Irvine in the top slot.
- The *U.S. News and World Report*, in its 2016 ranking system for institutions, focuses on academic reputation, financial resources, and selectivity in admissions. Its assessment on these metrics placed UC campuses among the very best public universities in the country:
  - For more than a decade, UC Berkeley continues to be the number one public institution
  - Five UC campuses are among the top 10 public institutions in the nation; six in the top 11

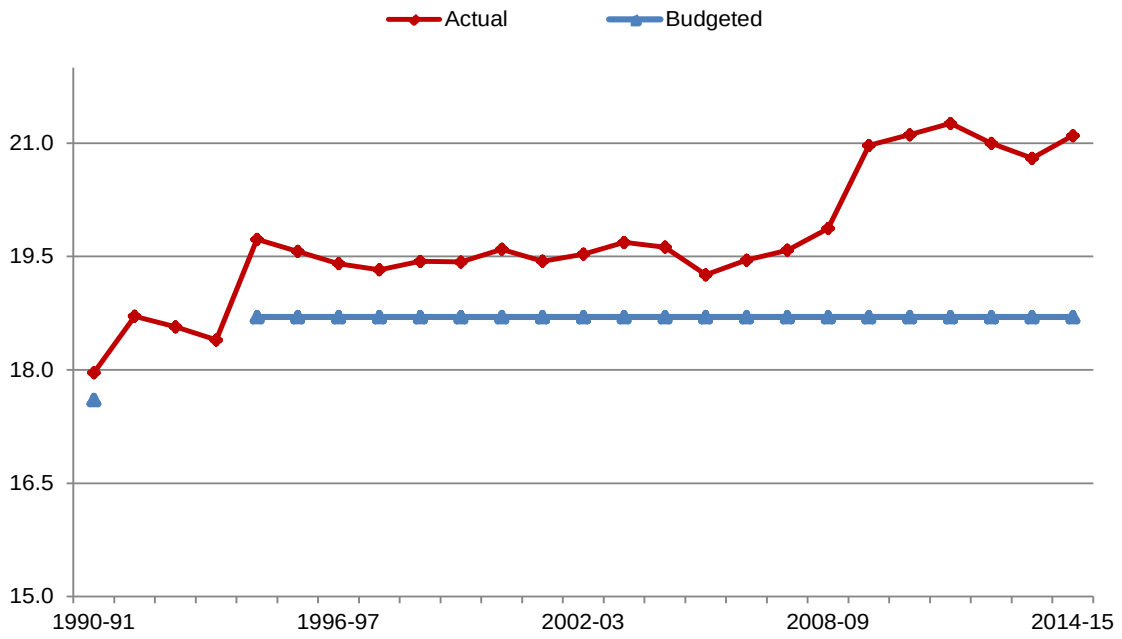
Graduate Success

- UC confers more doctoral degrees per tenured/tenure-track faculty than the average at public Association of American Universities (AAU) peers, and is on par with private AAU peers.
- In 2015, 18 UC graduate students received Sloan Research Fellowship awards, which recognize early-career scientists and scholars whose achievements and potential identify them as rising stars. And the University has 264 Fulbright Award recipients. More than 20 UC Ph.D.s have gone on to receive Nobel Prizes.

UC Health

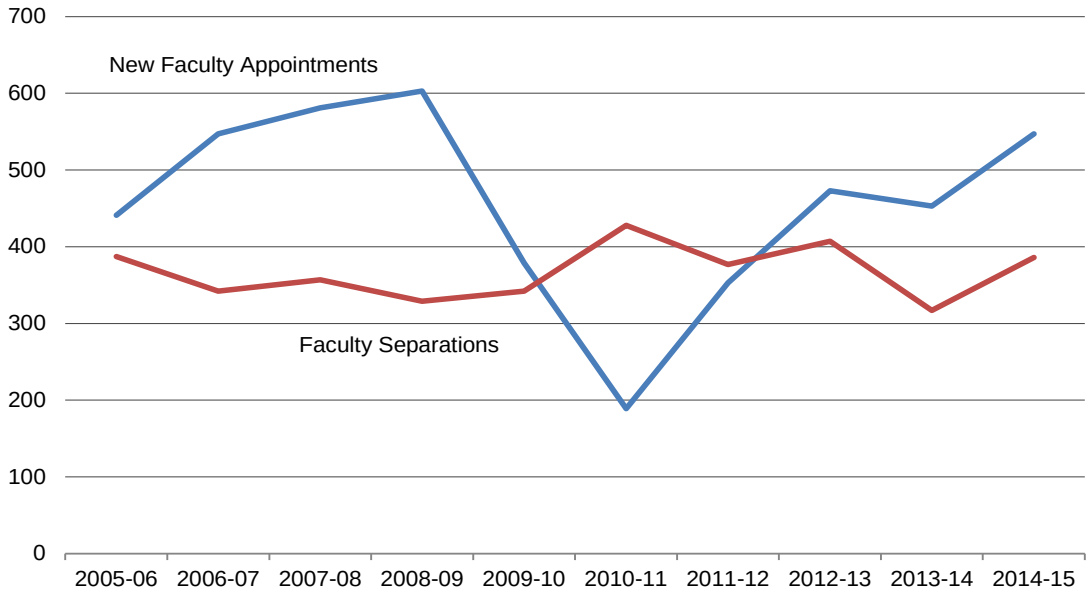
- UC has the nation's largest health sciences instructional program with more than 14,000 students and 17 health professional schools in seven fields.
- UC's health professional schools are ranked highly by U.S. News & World Report, including the nation's top schools of pharmacy (UCSF) and veterinary medicine (UC Davis). Both public health schools are ranked in the top 10 (UC Berkeley is No. 9 and UCLA is No. 10); all three nursing schools are ranked nationally (including UCSF at No. 2); and five UC medical schools are ranked nationally for research and primary care (including UCSF, No. 3 for research and primary care, and UCLA, No. 7 for primary care).
- Nearly 50% of medical students and medical residents in California are trained by UC.
- UC Health is the fourth-largest health care delivery system in California. UC Health provides 25% of care for extensive burn cases in California and 50% of all transplant surgeries in the state.

Display 4: Budgeted and Actual Student-Faculty Ratios



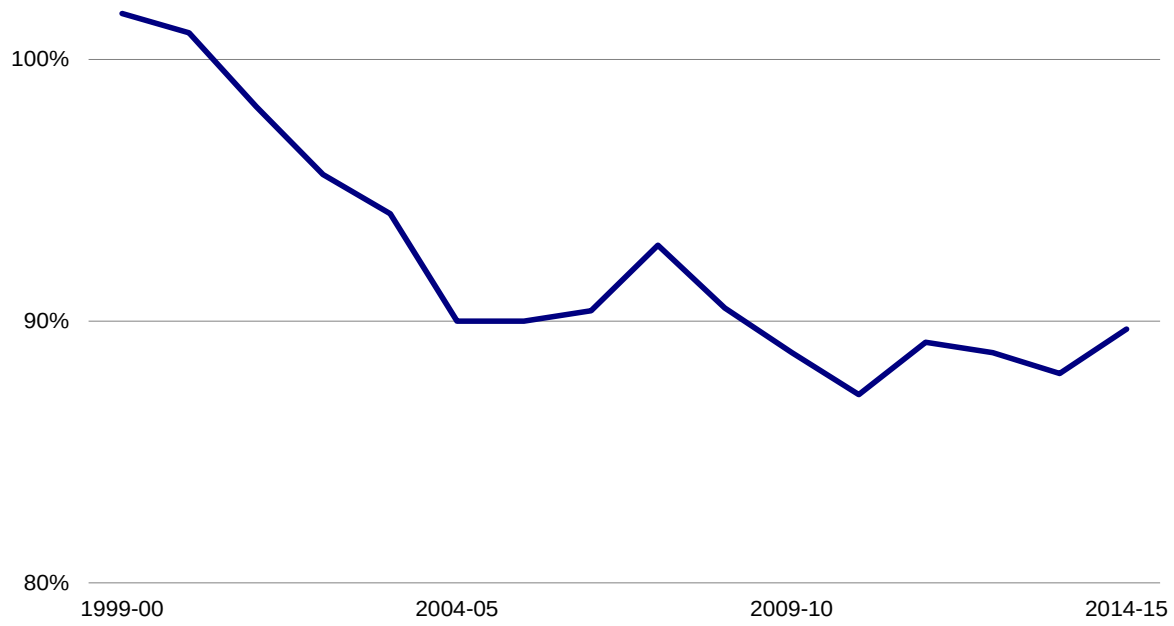
Actual student-faculty ratios have increased precipitously since the early 1990s.

Display 5: Faculty Hiring and Separations Since 2005-06



Campuses have increased faculty hiring after two years during which more UC faculty separated from the University than were hired.

Display 6: Faculty Salaries as a Percentage of Market



Faculty salaries at UC have declined relative to UC's comparison institutions. In 2014-15, UC's faculty salaries were 10.3% below those of UC's comparison institutions, and it is estimated that this gap will continue in 2015 despite the 3% increase in academic personnel salaries in July 2015.

UC's Commitment to California's Prosperity

The University's long-term financial goals aim to sustain the University's unique role in serving students at the same time as they help improve the State's economic well-being. Together, the University of California and the State have offered access to a high-quality education for hundreds of thousands of students from all walks of life. UC also offers a wide variety of public service programs, from agriculture to student preparation, and improves the quality of life of Californians through research and patient care. Over the last century and a half, the University of California has also been a major economic engine for the state, providing new knowledge and innovation as well as social mobility to generations of Californians. Research – primarily funded through competitive federal grants – has not only fueled the state's knowledge-based economy, underpinning California's economic competitiveness during a time when many parts of the country are economically challenged, but also has provided opportunity for students who will become California's next generation of leaders. From agriculture to information technology, from medicine and biotechnology to the entertainment industry, University of California students, faculty, and researchers drive innovation and economic growth in the most dynamic and transformative sectors of the state's economy, producing the advances in science and technology that spawn new companies and economic expansion while educating a versatile and highly trained workforce to meet the evolving demands of new industries and a changing society.

In 2011, UC commissioned a study of its economic contribution to the State, quantifying what has been long known: UC touches the lives of all Californians and is a major economic engine. The study found that UC generates about $46.3 billion in economic activity in California and contributes about $32.8 billion to the gross state product annually. Every dollar a California taxpayer invests in UC results in $9.80 in gross state product and $13.80 in overall economic output.

In addition, UC researchers reported more than 1,700 new inventions in 2014, and during that same year, UC inventions launched over 70 start-up companies in California and generated $118 million in royalty and fee income. UC has more than 12,500 active U.S. patents from its inventions – more than any other university in the country – and 840 startups have been founded on UC patents since 1976. These start-ups are overwhelmingly based in California and provide jobs for Californians across the State. UC attracts about $8 billion in annual funding from outside California. The State's invaluable investment in the University over the years has yielded an impressive return. UC creates knowledge that results in new companies for California and fuels the economy, trains the state's knowledge-based workforce, and opens the door of opportunity for those seeking to advance their prospects.

State General Funds – Which Provide Core Support for the University's Basic Mission – Are Projected to be Stable After a Decade of Volatility

Since 1990-91, State funding for the University of California has been marked by dramatic reductions due to recurring fiscal crises, followed by reinvestments that were often temporary. These periods of recovery were essential to maintain the University, but never fully brought State support back to prior levels. While many parts of the University, such as the medical centers and research enterprise, have flourished in recent years, the University's core academic programs have suffered as national and international economic crises resulted in declining support for State priorities, including education.

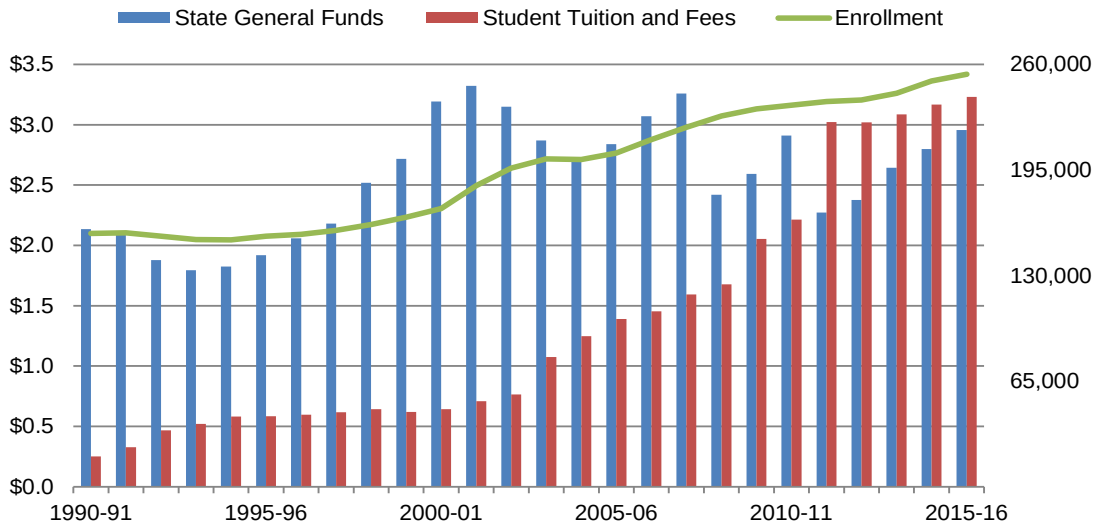
Display 7 shows the dramatic swings in State support for UC over the past two decades. Over this same period, the number of California high school graduates has soared and, as shown in Display 8, UC has grown by more than 92,600 new students and opened a tenth campus. Beginning in 2010, the University resumed employer contributions to its retirement system after a 20-year hiatus. A total of $1.4 billion is being contributed in 2015-16, including more than $400 million associated with programs funded from core funds. The State has not covered its share of these costs ($359 million of the $400 million), as it does for the California State University and California Community Colleges. As a result, the University has had to redirect resources to cover these mandatory costs that would otherwise be spent on other areas of the operating budget. During this period, the University has met its commitment to preserve access for all eligible California residents by continuing to accommodate the growing numbers of students prepared for and seeking a UC-quality university education.

The Governor's multi-year funding plan for the University provides much-needed predictability with regard to State funds, a welcome change from the fiscal crises that characterized earlier years. State funds provide the core support that allows the University to attract a myriad of other fund sources to support the education and research enterprise. State investment makes it possible for UC to operate the academic environment that entices so many Californians to its doors and that helps fuel the economy with new knowledge-based industries, which in turn create jobs and prosperity for the state.

Student Tuition and Fees are Also Critical to Maintaining Excellence

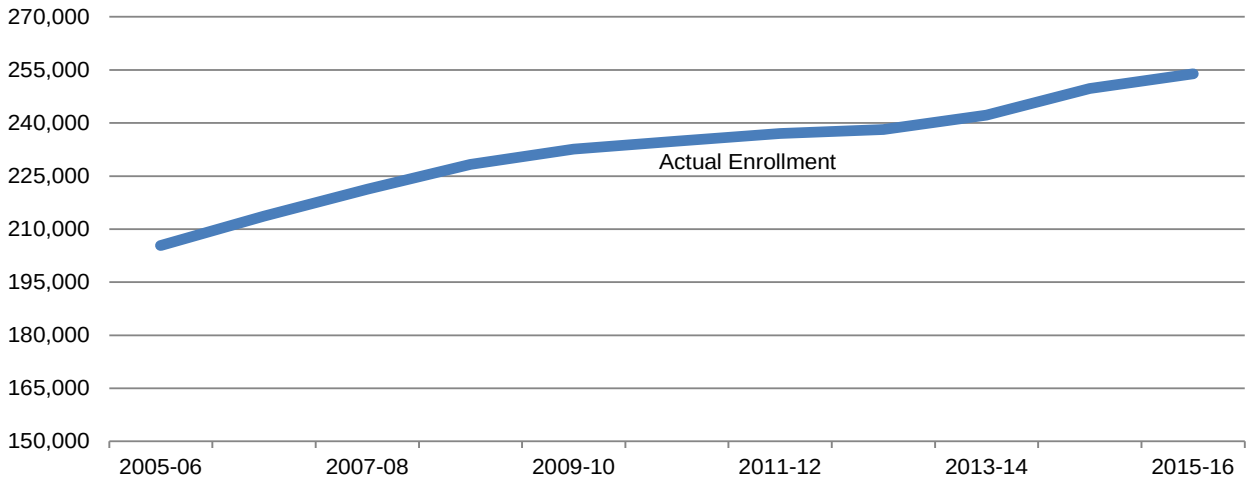
Tuition charged to all students has enabled the University to partially mitigate the impacts of reduced funding from the State during fiscal crises. In 2015-16, mandatory systemwide tuition and fees total $12,240 for California resident undergraduates and graduate academic students, and total charges are higher for graduate professional students. Looking back over the past 30 years, as shown in Display 9, tuition and fee increases have offset cuts in State support during three major economic downturns. As such, the volatility in tuition has closely mirrored the State's fiscal condition. In 2015-16, tuition comprises a little over 44% of the University's core funds budget.

Display 7: Revenues and Student Enrollment Over Time (Dollars in Billions and Not Adjusted for Inflation)



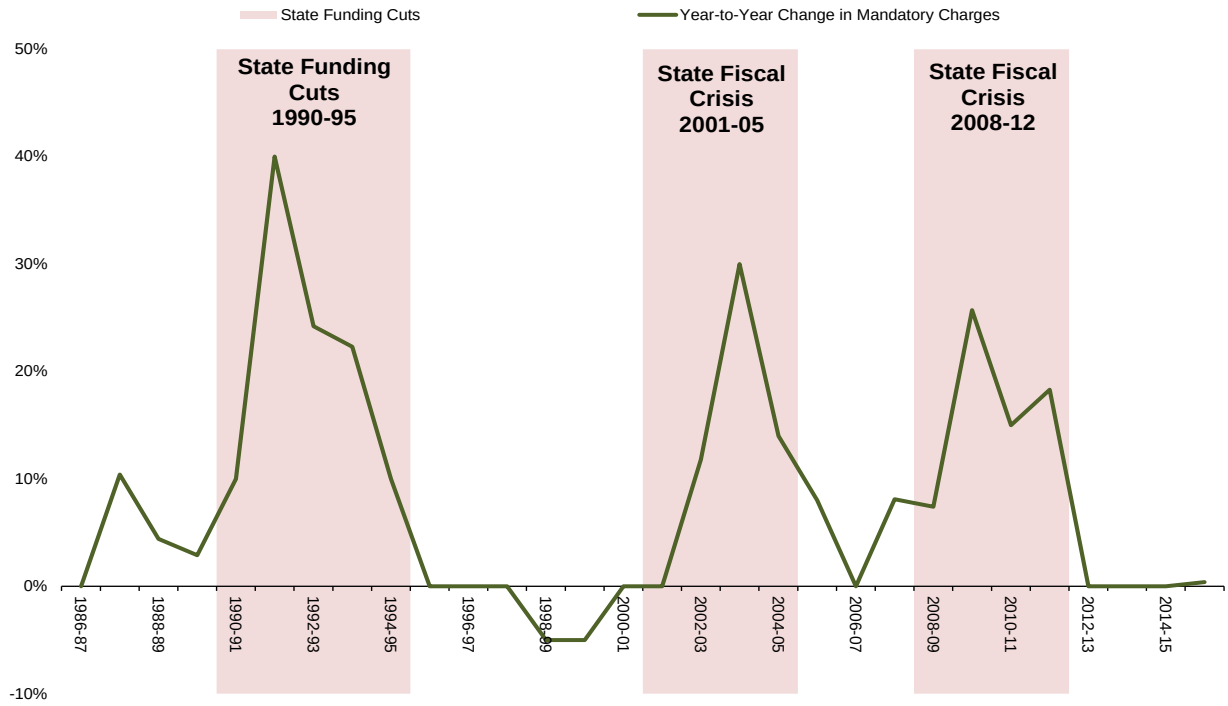
Since 1990-91, student enrollment has increased by nearly 60%, primarily driven by the University's continuing commitment to accommodate all eligible California resident undergraduates. Student tuition and fee increases have addressed only a portion of the reductions in State support and rising mandatory costs.

Display 8: Total Student Enrollment (FTE)



The Compact with Governor Schwarzenegger called for enrollment growth of 2.5% annually through 2010-11 to accommodate Tidal Wave II and expansion of graduate enrollments. Enrollments grew more rapidly than expected; and were largely unfunded by the State once the fiscal crisis began.

Display 9: Year-to-year Changes in UC's Mandatory Charges Over the Past Thirty Years (Not Adjusted for Inflation)



UC's tuition levels have been subject to chronic volatility, as tuition increases have always closely mirrored the State's fiscal condition. Tuition has increased to partially offset State budget cuts, as reflected in the highlighted years.

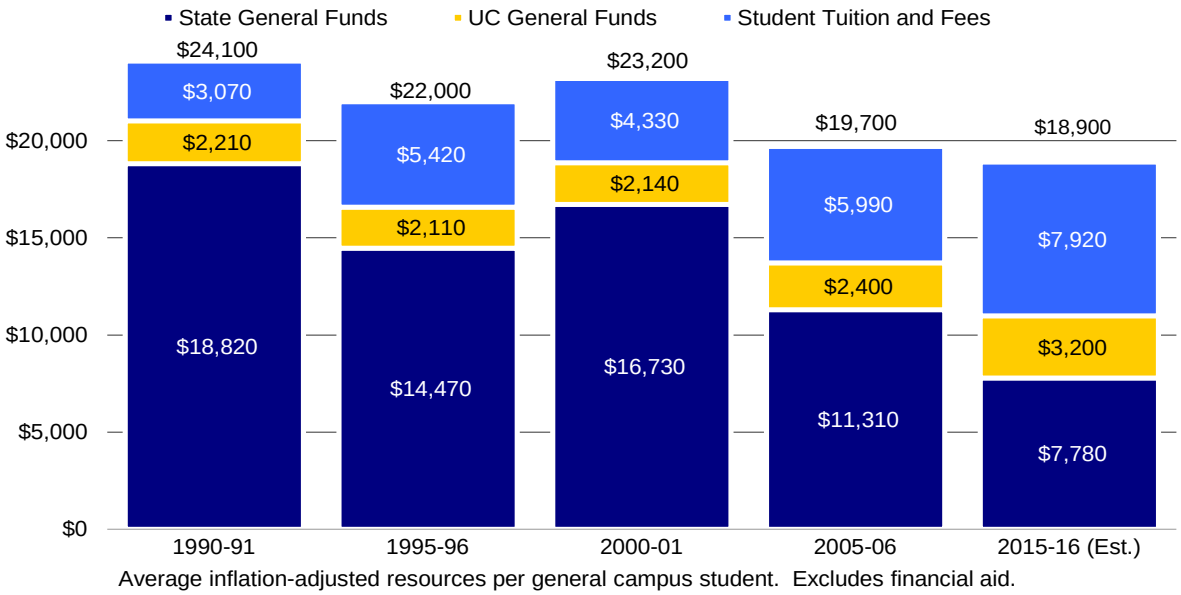
Despite steep increases, tuition and fees have addressed only a portion of the reductions in State support and rising mandatory costs. The rest of the gap has been addressed through sustainable efficiencies, cost savings, and alternative revenue generation as well as cutbacks in programs and layoffs.

Consistent with the framework agreed to with the Governor, the University will not implement tuition increases in 2015-16 or in 2016-17. By 2016-17, tuition will have remained flat for 6 years.

The consequences of the cuts in State support are evident in Display 10, as resources for educational programs for general campus students (undergraduate and graduate students combined) have declined on an inflation-adjusted, per-student basis. The display highlights three significant trends in funding for the instructional mission:

- The average expenditure per student for a UC education has declined by 22% over 25 years – from $24,100 in 1990-91 to $18,900 in 2015-16. Spending has not escalated, as many have asserted, but rather has declined on a per-student basis.
- State funding per student declined significantly – by 59% over that same time period. In 1990-91, the State contributed $18,820 per student – 78% of the total cost. In 2015-16, the State share declined to $7,780, just 41% of the total funding for education, while the student share has increased. However, with recent investments by the State, the amount of State General Funds per student is on the rise from previous lows.
- UC General Funds are helping to fund a larger share of expenditures for education. Remaining fairly flat through two decades at approximately 10% of the total expenditures, UC General Funds (with Nonresident Supplemental Tuition as the largest fund source within this fund group) now contribute 17% of the total.

Display 10: Per-Student Average Expenditures for Education (2015-16 Est. Dollars)



Average inflation-adjusted resources per general campus student. Excludes financial aid.

Since 1990-91, average inflation-adjusted expenditures for educating UC students have declined (UCRP employer contributions, which restarted in 2010-11, are excluded from this calculation); the State's share of expenditures has plunged even more steeply; and the student share, net of financial aid, has more than tripled.

SOURCES OF UNIVERSITY REVENUE

In 2015-16, the University enterprise will generate $28.5 billion[1] from a wide range of revenue sources for support of the University's operations (the majority of these resources is designated for specific purposes and not available for the core mission). Not only does the University provide instruction each year for more than 253,000 students and maintain a multi-billion dollar research enterprise, it also engages in a broad range of activities that add to the quality of life on its campuses and provide substantial public benefit, including the operation of teaching hospitals, maintenance of world-class libraries and museums, development of academic preparation programs for California high school students, management of national laboratories, and provision of housing and dining services.

Display 11 shows the distribution of major fund sources across the University's budget.

The University's annual budget is based on the best estimates of funding available from each of its primary revenue sources within core funds.

Core Funds

Core funds, totaling $7.3 billion in 2015-16, provide permanent funding for core mission and support activities, including faculty salaries and benefits, academic and administrative support, student services, operation and maintenance of plant, and student financial aid. Core funds represent 26% of the University's total expenditures and are comprised of State General Funds ($2.9 billion[1]), student tuition and fee revenue ($3.2 billion), and UC General Funds ($1.1 billion). The latter category includes Nonresident Supplemental Tuition revenue, cost recovery funds from research contracts and grants, patent royalty income, and fees earned for management of Department of Energy laboratories. Display 12 shows the distribution of core funds across major spending categories.

Non-Core Funds

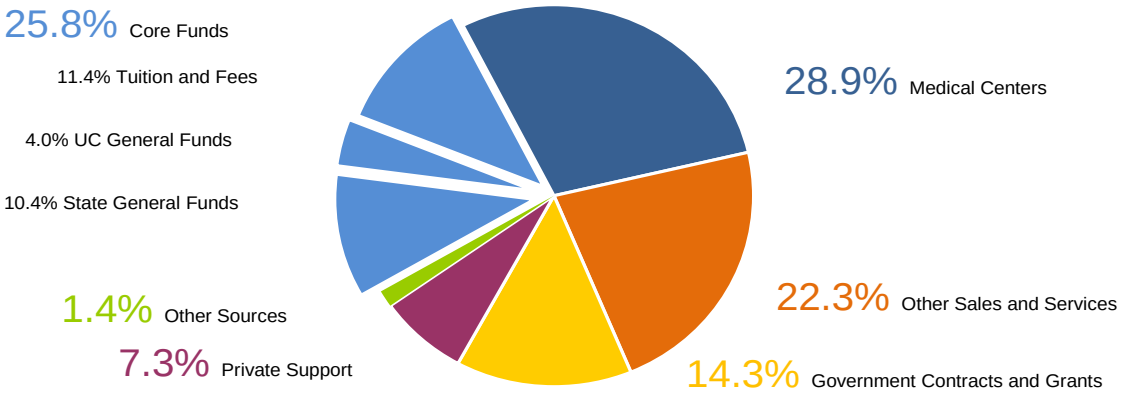
Other sources of funds augment and complement the University's core activities of instruction and research; support ancillary academic and business operations functions; allow UC to provide public service to the state and its people; and support campus learning environments that enhance the vitality, diversity, and robustness of a UC education. Non-core funds cannot be easily redirected to support core mission activities. In the case of gift, grant, and contract funds, uses are usually contractually or legally restricted; funds can be used only for purposes stipulated by the donor or granting agency. For other sources, such as hospital and auxiliary revenues, operations are market-driven and face many of the same cost and revenue pressures occurring in the private sector. Revenues are tied not only to the quality of the services and products being provided, but also to the price the market will bear.

Medical Center Revenue. UC's teaching hospitals generate revenue through their patient-care programs and other activities, primarily from private healthcare plans and government-sponsored Medi-Cal/Medicare programs, all of which is used to support the ongoing needs, both capital and operating, of the medical centers.

Other Sales and Services Revenue. A variety of self-supporting enterprises generate revenue as well, including auxiliary enterprises such as housing and dining services, parking facilities, and bookstores; University Extension; and other complementary activities, such as museums, theaters, conferences, and publishing.

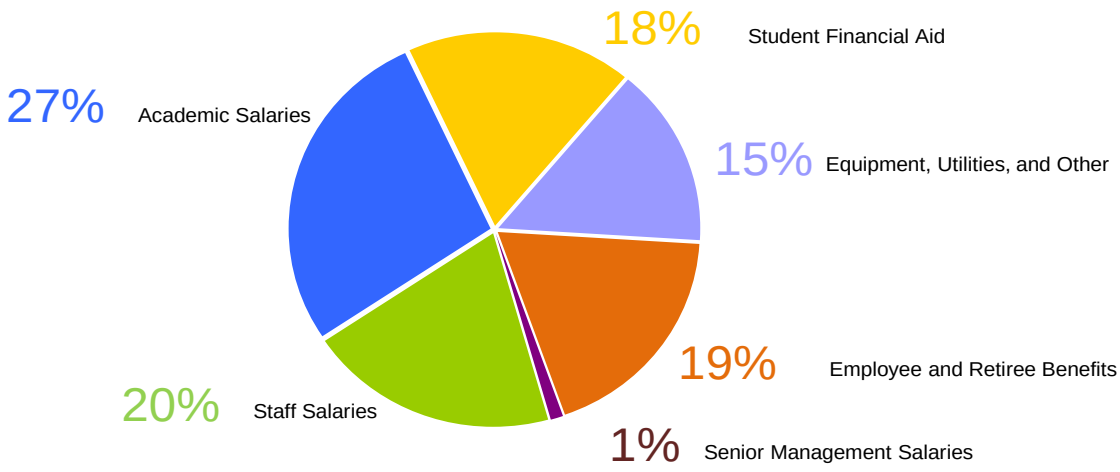
[1]This excludes General Obligation bond debt service that is in UC's base budget but which is not available for general operating budget purposes.

Display 11: 2015-16 Sources of Funds



UC's $28.5 billion operating budget consists of funds from a variety of sources. State support, which helps attract other dollars, remains crucial and together with tuition and fees and UC General Funds provides the core support for the University's basic operations.

Display 12: 2014-15 Expenditures from Core Funds



Government Contracts and Grants. Federal, state, and local governments directly fund specific research programs, as well as student financial support.

Private Support. Endowment earnings, grants from campus foundations, and other private gifts, grants, and contracts fund a broad range of activities, but are typically restricted by the donor or contracting party.

Other Sources. Revenue from the DOE National Laboratory Management Fee, a portion of contract and grant administration funds, and the portions of federal indirect cost recovery and patent revenue that, by agreement with the State, are not included as part of Core Funds are categorized as "other sources."

SUMMARY OF THE UNIVERSITY'S 2016-17 BUDGET PLAN

Proposed Increase in Revenue

The 2016-17 budget plan proposes $481.3 million in revenue increases to match expenditure needs. These increases fall into four revenue categories.

Cost Savings/Alternative Revenue Sources. The budget plan assumes $40 million in funding related to strategies to manage liquidity and $30 million from savings achieved through new systemwide procurement contracts in 2016-17, as well as $15 million associated with the new self-insurance initiative, *Fiat Lux,* and $10 million in additional funding available to the operating budget from new models of philanthropic giving. These initiatives continue the University's practice of resolving a portion of its funding needs through internal actions to reduce costs, promote efficiencies, and generate new revenue.

The plan also assumes phase-out of the need-based aid currently provided to nonresident undergraduate students. While currently enrolled nonresident students receiving this aid will not be affected, beginning in 2016-17, the University will begin to phase out this aid component. It is expected the University will save $14 million in 2016-17 that can be used to help fund the enrollment increase planned for the budget year.

State General Funds. The plan includes a 4% base budget increase, or $125.6 million in new State General Funds, as proposed in the Governor's multi-year funding plan. The plan assumes receipt of $25 million in permanent State funding in 2015-16 associated with enrolling an additional 5,000 undergraduate California residents in 2016-17 as compared to 2014-15 levels. It also includes a request for $6 million from the State to support graduate enrollment growth to complement and support dramatic increases in undergraduate enrollment. Finally, the plan proposes $25 million in one-time funds for deferred maintenance, similar to the funding provided in the 2015-16 budget.

UC General Funds. Most campuses have expanded their nonresident enrollment to help backfill reductions in State support. The budget plan proposes $68.7 million in new revenue from Nonresident Supplemental Tuition (net of instructional costs associated with these students) based on an 8% increase in nonresident tuition and a projected increase in nonresident enrollment of 1,200 students. This constitutes reduced growth in nonresidents from the prior year. The plan assumes no change in indirect cost recovery from federal research contracts and grants due to a combination of several factors: there are continuing declines in research funding, which are offset by increases in higher federal indirect cost rates recently negotiated by several campuses and some increases in funding from non-federal resources.

Major Expenditure Categories for 2016-17

The budget plan includes a $481.3 million increase in expenditures. Proposed expenditures address mandatory and other high-priority cost increases, enrollment growth to allow the University to continue to provide increased access for California students, and investment in core academic programs, as summarized below.

Enrollment Growth. UC is dedicated to the mission of access for California residents consistent with its founding as the state's land-grant institution and in accordance with the Master Plan for Higher Education. Moreover, as a research university, UC must have sufficient graduate enrollment to meet the state's economic development and workforce needs for Ph.D. graduates, help advance knowledge through its research mission, and work with faculty and undergraduate students as part of the education continuum. The 2016-17 budget plan envisions growth at both the undergraduate and graduate levels.

The University strongly shares the Legislature's interest in providing increased access for Californians and is committed to taking the actions necessary to meet the State's enrollment goal. Because the state's proposal for increasing enrollment over two years came after the 2015-16 admissions process was essentially complete, most of the increase will need to be accomplished in a single year, 2016-17.

The 2016-17 budget plan assumes $25 million is appropriated in 2015-16 and continues in 2016-17 as a permanent augmentation to fund half the cost associated with the 5,000 undergraduate student enrollment growth. The Budget Act suggests several ways UC can fund the other $25 million needed for this enrollment level, including using Nonresident Supplemental Tuition revenue and eliminating financial aid provided to nonresident undergraduate students from Tuition return-to-aid funds.

Under the budget plan, the University will eliminate financial aid provided through the University Student Aid Program to nonresident undergraduate students. This change will be phased in so that current students receiving this aid are not affected by this change. The remaining half of the enrollment will be supported with funds redirected from this program. Until this redirection is more fully phased in, bridge funding will be allocated from the $25 million in one-time funds that are to be provided in 2015-16 once the University has shown that it will enroll the full 5,000 student increase.

As the State's research university, UC is also concerned with enrollment of graduate students to complement and support dramatic undergraduate growth. As faculty are added to meet the increased enrollment demand, graduate students must increase to support faculty in the research mission of the University and to help with the teaching and mentoring associated with additional undergraduates. Therefore, the University is requesting an additional $6 million above the base budget increase to support in the enrollment of 600 more graduate students by 2016-17.

Actions taken for 2016-17 have implications for future years – as new classes of students coming in are larger than classes graduating, total enrollment grows. The University intends to sustain expanded access in 2017-18 and beyond, enrolling 2,500 new California resident undergraduate students each year in 2017-18 and 2018-19 such that, at the end of four years, total California resident undergraduate enrollment will have increased by 10,000 students, providing access to thousands more students each year than otherwise would have occurred. The multi-year enrollment plan being developed by the University will reflect this intention for future years.

Mandatory Costs. The University must pay a variety of cost increases each year, regardless of whether new funding is provided to support them. Below is a description of the major mandatory cost increases projected for 2016-17.

- **UC Retirement Plan.** The University of California Retirement Plan (UCRP) provides pension benefits for more than 54,227 retirees and survivors and had about 121,200 active employee members as of July 1, 2015. (Figures exclude Department of Energy laboratories.)

  Prior to November 1990, contributions to UCRP were required from both the University as the employer and from employees as members. As it did with all other state agencies, the State provided funding for employer contribution associated with State-funded employees. In the early 1990s, the Regents and the State agreed to suspend employer and employee contributions to UCRP after actuaries confirmed that it was adequately funded to provide for service costs for many years into the future.

  In the nearly 20 years during which employer and member contributions were not required, the State saved more than $2 billion. However, the funded status of UCRP declined as future service costs accrued and the accrued liability rose. Furthermore, the recent national economic crisis diminished the value of UCRP assets. The funded ratio is 81% as of July 2015.

  The University restarted contributions to UCRP in April 2010. The employer contribution rate increased by two to three percentage points per year until 2014-15, when it was stabilized at 14 percent. Employee contributions rose 1.5 percentage points each year and stabilized in 2014-15 at eight percent for most employees (some represented employees contribute nine percent of pay and members of the new 2013 tier contribute seven percent of pay).

  In December 2010, the Regents reformed retirement plan benefits to reduce long-term costs and approved a new tier of pension benefits for employees hired on or after July 1, 2013, which increased the early retirement age from 50 to 55 and the maximum age factor from age 60 to 65.

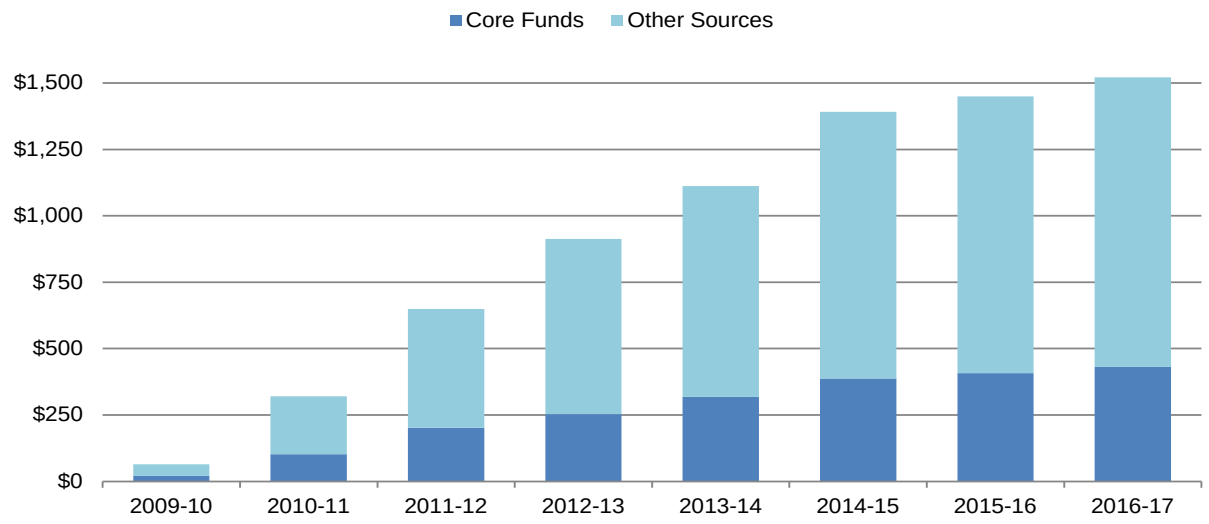
  In 2012-13, the State augmented the University's budget with $89.1 million intended to be used toward the State's share of the employer contribution to UCRP. Since that time, the State has not provided targeted funds for its share of the annual employer's contribution to UCRP, as it does for other State agencies. In 2015-16, the University is contributing $407.5 million from core fund sources and $1.4 billion from all fund sources to UCRP.

The 2016-17 budget plan includes $24.1 million for increases in core-funded employer contributions to the retirement system. With no expected change in the 14% current employer contribution rate, this increase represents only new costs associated with anticipated employee growth in faculty and other academic staff and compensation increases. Display 13 shows how employer contributions to the retirement system have leveled off since 2014-15 as the contribution rate remains at the current 14% level. UC's employer contributions are expected to rise to $431 million from core funds and $1.4 billion from all fund sources in 2016-17.

UCRP's unfunded liability is being addressed through several actions approved by the Regents. In addition to increasing the contributions, the University also has borrowed to supplement the employer and member contributions to meet the Annual Required Contribution (ARC or "modified" ARC), which is the amount needed to fund annual costs plus interest on the unfunded liability. Without future borrowing and assuming a 7.25% investment return, the Plan is estimated to be 100% funded by the year 2045. Additional borrowing is proposed for 2015-16, 2016-17, and 2017-18 in a separate item being brought to the Board for approval at the November meeting. This would shorten the time for the Plan to reach 100% funded by five years (or 2040).

As noted above, part of the budget framework agreed to with the Governor in May 2015 calls for the University to add a cap on pensionable salaries consistent with the cap established in the Public Employees' Pension Reform Act adopted by the State in 2013, in return for $436 million in Proposition 2 funds over three years: $96 million in 2015-16, followed by an additional $170 million in each of the following two years. A task force is developing recommendations for the President that will conform to this requirement. A proposal will be brought to the Board of Regents so that retirement benefit changes can be implemented on July 1, 2016. Because these changes will be prospective and only affect new employees hired on or after July 1, 2016, they will not impact the cost increases anticipated for 2016-17. Proposition 2 funds being directed to the unfunded liability cannot be used to offset cost increases or otherwise relieve the impact of employer contributions on UC's operating budget. The 2016-17 budget plan assumes the University will implement the salary cap as requested and that the second increment of Proposition 2 funds, $170 million, will be provided, consistent with the framework with the Governor.

Display 13: Actual and Projected Employer Contributions to UCRP by Fund Source (Dollars in Millions)



Employer contributions to UCRP restarted in April 2010. Contribution rates will remain at 14% of employee covered compensation in 2016-17, at a cost of about $431 million for core-funded programs and $1.4 billion in total.

- **Employee Health Benefits.** Until recently, employee health benefit costs have risen rapidly, typically between 8.5 percent and 11 percent annually. Because no State funds have been provided for this purpose since 2007-08, campuses have redirected funds from existing programs to address these cost increases.

  Significant efforts have been made in the past several years to limit health benefit cost increases and reduce pressure on already strained operating budgets. Through negotiations with providers and other measures, UC was able to limit

health benefit cost increases to 7.1 percent in 2011, 2.4 percent in 2012, 5 percent in 2013, and five percent in 2014. Overall health benefit costs in 2016-17 are expected to increase by about five percent, or $28.4 million.

In addition, employees have been required to bear a larger responsibility for the rising costs of these benefits, partially offsetting any salary increases they may have received in recent years. In 2002-03, the University adopted a progressive medical premium rate structure (based on full-time salary rates) designed to help offset the impact of medical premium increases on lower-paid employees. While UC pays approximately 87 percent of monthly medical premiums for employees on an aggregate basis, the University covers an even larger portion of the premium for those in the lower salary brackets. In the current environment, with limited new funding and continuing cost pressures, it is expected that some of the cost increases will continue to be borne by most employees.

- **Retiree Health Benefits.** In 2015-16, more than 60,302 UC retirees and beneficiaries are eligible to receive or are receiving an estimated $287 million of health benefits paid for by the University. The State has historically provided funding to the University equivalent to the per-employee funding provided for other State employees for the increased number of annuitants expected in the coming year. In the 2014-15 budget, the State stopped funding these costs separately, adding them to the expenditures to be covered within the base budget increase provided under the Governor's multi-year funding plan. The annuitant health costs are estimated to increase by $4.2 million in 2016-17.

  Because accumulated future retiree health benefits costs are not pre-funded, UC has an unfunded liability for retiree health representing the cost of benefits accrued to date by current faculty, staff, and retirees based on past service, estimated to be $17.3 billion in 2015-16. In December 2010, to reduce long-term costs and the unfunded liability for retiree health, the Regents approved changes to retiree health benefits that included reductions in UC's aggregate annual contribution to the Retiree Health Program, and a new eligibility formula for all employees hired on or after July 1, 2013, existing employees with fewer than five years of service credit, and existing employees whose age plus service credit is less than 50 as of June 30, 2013.

- **Contractually Committed Compensation.** Salaries increases for represented employees are governed by collective bargaining agreements with each represented bargaining unit. These agreements call for compensation increases totaling $26.9 million in 2016-17.

- **Faculty Merit Program.** The University has maintained the faculty merit program each year – even through years of fiscal crisis – because of the importance of this program to the quality of the University. Faculty are generally eligible to be considered every two to three years for a merit increase, which is intended to reward them for excellent teaching and research, as well as fulfillment of their public service mission. This program requires a rigorous peer review process before a merit increase is awarded. The cost of the faculty merit program is estimated to be $32 million in 2016-17.

- **Keeping Pace with Inflation.** To maintain the quality of the instructional program and all support activities, the University must regularly replace, upgrade, or purchase new instructional equipment, library materials, and other non-salary items. The University must also purchase utilities to provide energy to its facilities. Just as costs for salaries and benefits for employees rise, the University's non-salary spending is affected by inflation. Throughout the recent recession, inflationary pressures remained relatively soft. However, as the state economy has improved, cost pressures have begun to build. Based on the Department of Finance recent projections, the University's 2016-17 expenditure plan includes $29.7 million for non-salary price increases, consisting of a 2.0% general non-salary price increase, as well as an adjustment to cover projected increases in purchased utility costs above inflation.

Investment in Academic Quality. As noted earlier, the President has made it a top priority to invest in the academic infrastructure of the University for the benefit of UC students, faculty, and researchers focusing on areas that directly impact the quality of the University's instructional, research, and public service programs as well as the fiscal health of the system. While there are no agreed-upon standards in the higher education community for determining quality, there are clear metrics that are commonly used when rating great universities. They include, among other things, maintaining an outstanding faculty, measured in terms of individual achievements as well as adequate numbers to teach and train, and recruiting and educating outstanding undergraduate and graduate students. The areas identified for investment in academic quality are critical to maintaining excellence and have all been identified by the Regents as high priorities for many years, prior to the onset of the most recent fiscal crisis. Consistent with the University's long-range plan, the University 2016-17 budget proposal proposes $50 million for this investment for the following types of programs:

- **Enhancing Undergraduate Instructional Support.** The previous two compacts with former Governors proposed an additional 1% per year base budget increase to help address chronic shortfalls in key areas of the budget that directly

affect instructional quality – expanding cutting-edge technology essential to instructional delivery in the classroom of the 21st century, restoring library collections, and more adequately supporting ongoing building maintenance. The University must continue reinvesting in these areas if it is to keep up with technical innovations – all of which were chronically underfunded before the recent fiscal crisis.

- **Improving the Student-Faculty Ratio.** During the recent fiscal crisis, the University's student-faculty ratio deteriorated dramatically, standing currently at about 21:1 (well below the budgeted ratio of 18.7:1. Improving the student-faculty ratio will allow the University to offer smaller class sizes where possible, improve the quality of the educational experience and adequacy of course offerings, and help students complete requirements and graduate more quickly. A lower student-faculty ratio increases opportunities for contact outside the classroom, guidance in internships and placements, and undergraduate participation in research and public service. Reducing the student-faculty ratio is also important as the University seeks to make further improvement in performance outcomes, such as graduation rates and time-to-degree, as requested by the State in budget trailer bill language.
- **Supporting Startup Costs for New Faculty.** As campuses begin to hire faculty once again – to replace those who have retired or separated, to hire those needed to help meet growing enrollment demand, and to generate research that will enhance innovation and quality – one of the major challenges they face is the cost of startup packages for new faculty. Startup costs include renovation of laboratory space; equipment; graduate student, postdoctoral scholar, and technical staff support; and other costs necessary for new faculty to establish their research teams and projects. In some disciplines – especially health sciences, life sciences, physical sciences, and engineering – startup costs can exceed $1 million per faculty member. Since UC's top candidates have multiple job prospects and UC is in competition for these hires, UC's ability to provide facilities and staff to support cutting-edge research has a direct impact on the quality of faculty campuses are able to recruit..
- **Addressing Faculty Salary Gaps.** A recent study on ladder-rank faculty compensation concluded that faculty salaries lagged the market by 10.3% in 2014-15. As the University's budget stabilizes, closing this gap is a high priority as UC competes with other institutions across the country for top faculty. The faculty salary lag is discussed in more detail below in the Compensation item.
- **Augmenting Graduate Student Support.** Graduate education and research at the University have long fueled California's innovation and economic development, helping establish California as one of the 10 largest economies in the world. The strength of UC's graduate programs is key to attracting and retaining the highest-quality faculty. The University must ensure that the amount and duration of graduate student support remains competitive.

High-Priority Costs. In addition to the categories above, additional cost increases are required in several other areas as part of the normal cost of operating a major research university:

- **Compensation.** The recent fiscal crisis made it difficult for the University to keep pace with the market with respect to faculty and staff salaries. As noted above, recent studies show UC falling further behind its comparator institutions.

  The rapid increase over several years to 8% of pay in employee contributions to the retirement program has further impacted employee take-home pay, as have increases in health benefit costs. Although the benefits provided by UC are an important component of the packages offered to candidates, the salary component itself must be competitive to attract and retain quality faculty and staff employees if the University is to maintain its preeminent stature.

  Consistent with UC's longer-term financial planning, the 2016-17 budget supports a salary program for faculty and staff consisting of a 3% pool to be allocated based on merit and other factors, with a total cost of $129.4 million for non-represented staff and faculty. Actual salary and benefit actions for represented employees are subject to notice, meeting-and-conferring, and/or consulting requirements under the Higher Education Employer-Employee Relations Act.
- **Deferred Maintenance.** The University maintains 135 million gross square feet of space at the 10 campuses, five medical centers, and nine agricultural research and extension centers. Nearly half of this space – 64.8 million square feet – is eligible for State support, including space used for classrooms, laboratories, offices, and some research and academic support activities. Nearly 60% of the University's State-eligible space is more than 30 years old, with 43% of that space built when the University was in a period of rapid expansion between 1950 and 1980, as shown in Display 14. The University faces an immense and growing deferred maintenance backlog as the electrical, heating and ventilation, elevator, plumbing, and other building systems in these aging buildings and supporting campus infrastructure reach the end of their useful life.

  The 2016-17 budget plan includes $25 million in one-time funds requested from the State and an additional $25 million in permanent funding from resources included in the budget plan to build up the permanent base of funding for deferred maintenance. This is the second increment in a multi-year ramp-up of funding for deferred maintenance.

- **Capital Improvements.** The process for funding State-eligible capital projects changed in 2013-14. The State's General Obligation bond debt has been shifted to the University's base budget, and it is now included as part of the base budget for the purpose of calculating the State-funded base budget adjustment each year. Under the new process, a portion of UC's State funding can be used to fund or finance State-eligible capital projects.

  The University faces a growing backlog of capital projects over the coming years. The projected need for capital improvements for State-eligible projects for the five-year period from 2015-16 through 2019-20 is $2.9 billion. The new State process allows the University to continue to address its highest-priority capital needs until a new General Obligation bond can be brought before California voters. The State approval process is streamlined compared to the previous process – the Department of Finance and the Legislature will continue to review the projects being proposed for State funding, but there will be no need to go through the State Public Works Board for approval of important milestones. The new process requires the University to submit a list of projects proposed for funding by September 1 of each year, with the Department of Finance providing to the University a final list of approved projects no earlier than April 1.

  The package submitted to the State reflects a rigorous review process and includes the highest priority systemwide projects. As a first review in its capital program planning, each campus develops a 10-year *Capital Financial Plan* – a strategic plan of specific projects prioritized to meet the campus mission, academic, and support needs – that fits within the context of physical and funding opportunities and constraints; this Plan is reviewed and accepted by the Regents each November. Then, to the extent that this approval will allow funding to be redirected from an already constrained operating budget, a list is developed based on campus priorities, which subsequently undergoes a strenuous review based on systemwide priorities.

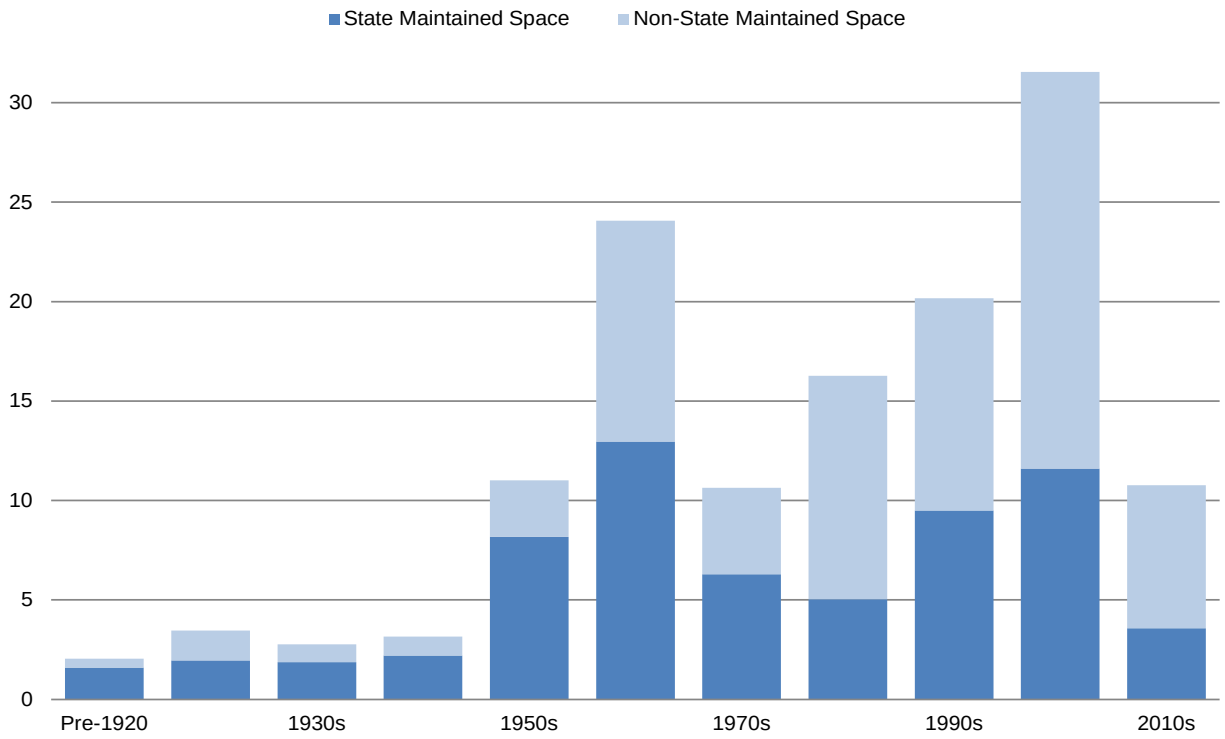
  Under the new process, the State has approved 26 projects, from fiscal years 2013-14 to 2015-16, totaling more than $706 million. The approved projects include seismic/life safety projects, infrastructure renewal, additional classroom and lab space to accommodate past enrollment growth, and continuing projects that require funding for completion.

  For 2016-17, the University is proposing one capital outlay project, the State-funded portion of the Merced 2020 Project. This project requests $400 million in State capital outlay funds to construct 414,400 Assignable Square Feet in academic and student support space. The Department of Finance will notify the University of approval of this 2016-17 capital outlay project no earlier than April 1, 2016. This proposal represents only a small portion of the University's total funding need for State-eligible capital improvements projects. Funds set aside in the 2016-17 budget plan will be used to support debt service for projects coming on line in 2016-17.

  The University maintains a continuing commitment to pursue gifts and other potential sources to supplement State funding for construction. The University has capital needs for student-life and auxiliary programs that do not qualify as State-supportable and, therefore, must be addressed with non-State resources only. In this context, the University has intensified its efforts to make the most efficient use of existing facilities, to carefully define and analyze facility needs, to evaluate competing needs and set priorities that maximize the value of available funds, and to continually improve management of project design and construction.

- **Dream Loan.** SB 1210 (Lara) was adopted during the 2014 legislative session under the University's sponsorship. It called for UC (and CSU) to establish a revolving loan program for undocumented to be funded from a combination of additional State funds and matching funds from University sources. While the State has not provided additional funds for this purpose, the University believes it is an important program and must be implemented. The University will phase in the program, starting in 2015-16, with temporary resources. In addition to increases in financial aid associated with new enrollment growth, the 2016-17 budget plan includes $5 million, half from State General Funds and half from internal University sources, for this purpose.

Display 14: State and Non-State Maintained Space by Decade of Construction (Gross Square Feet in Millions)



The University's physical plant expanded rapidly in the 1950s and 1960s and again in the 1990s and 2000s. Driving UC's deferred maintenance and capital renewal needs is the fact that many buildings were constructed in the 1950s and 1960s.

MAJOR REPORTING REQUIREMENTS FOR 2015-16

Performance Outcome Measures

UC has historically reported on measures of institutional quality that have been of interest to the Governor, Legislature, University leaders, and the general public. Six years ago, the University began systematically publishing an annual Accountability Report (www.universityofcalifornia/accountability) with an increased emphasis on outcome measures.

The Accountability Report contains much of the information requested by the Legislature and Governor in trailer bill language attached to the 2014-15 budget (AB 94). That language asks the University to submit an annual report on specified outcome measures by March 1. The University submitted its first report in March 2014.

The report requires data on the following outcome measures:

- Number and proportion of transfers from the California Community Colleges (CCC);
- Number and proportion of low-income students enrolled annually;
- Four-year graduation rates for students and separately for low-income students;
- Two-year graduation rates for CCC transfer students and separately for CCC low-income students;
- Degree completions for freshman, CCC transfer, graduate, and low-income students;
- The percentage of students on track to complete a degree in four years;
- The amount of resources received divided by the number of degrees awarded;
- For undergraduate students, the amount of resources received divided by the number of degrees awarded;
- Average number of course credits at graduation;
- Number of degree completions in science, technology, engineering, and mathematics (STEM) fields, disaggregated by undergraduate, graduate, and low-income students.

The University's March 2015 report demonstrates the University's continued improvement in each of these outcome measures, including steady increases in the number of CCC transfers it enrolls, graduation rates for freshmen and CCC transfers, and the number of students graduating with degrees in STEM fields. In terms of enrolling low-income students, the University far surpasses the proportion of these students enrolled in other AAU institutions, both public and private. Most UC students graduate within a normal range of units required for degree completion.

The Governor's Three-Year Financial Sustainability Plan

Provisional language associated with the 2015-16 Budget Act requests UC (and CSU) to submit three-year financial sustainability plans that are to include projections of revenue and expenditures and enrollment by level of student for 2016-17, 2017-18, and 2018-19 using assumptions provided by the Department of Finance. The Department of Finance instructed the University to assume continuation of the Governor's plan to provide UC with a 4% base budget increase for each of the fiscal years, and to also assume no tuition increase for 2016-17, consistent with the framework agreed to with the Governor. After 2016-17, tuition increases are to be pegged generally to inflation. DOF also assumes $171 million will be provided from Proposition 2 funds for UCRP unfunded liability in 2016-17 and $169 million for the same purpose in 2017-18. The assumptions provided by the Department of Finance are silent on enrollment growth. In addition, the University is to supply goals for each year associated with the performance outcome measures included in the annual reporting requirement described above. The University's plan is being provided to the Board for approval at the November meeting.

Other Reports

Other reporting requirements in the 2015-16 Budget Act request an update on the implementation of the budget framework agreement with the Governor, a report on legally allowable funds for instruction, and a report on the use of funds for student support services for students from underrepresented minority and low-income backgrounds.

THE PATH FORWARD

The State's historic support for the University has yielded an impressive return on investment. The University of California offers life-changing opportunities to hundreds of thousands of students each year. In addition, the academic enterprise provides a benefit to the State on a wide variety of fronts, from the highly trained and talented workforce it contributes to the California economy, to health care for hundreds of thousands of patients, and other assistance to thousands of stakeholders through its wide-ranging public service programs. Similarly, the research enterprise provides a return on investment to the State in myriad ways, from creating the breakthroughs that launched California's most iconic industries in, for example, aerospace, agriculture, biotechnology, computers and telecommunications; to supporting dedicated research faculty who attract federal and private research funding equivalent to four to five times what they are paid in salary and benefits; and to creating new businesses and jobs based on UC patents that spawned over 840 startups, a majority of which are located in the communities adjacent to UC campuses. Emerging from the great recession that challenged UC and many State entities whose funding was cut to balance the State budget, both the State and UC are committed to and share the goal of protecting this historic investment for the benefit of students and California.

After years of financial volatility, the University faces a fairly stable financial outlook that will provide an opportunity to increase access to its educational programs and rebuild academic excellence. The University has built its 2016-17 budget plan on the foundation of a renewed partnership with the State – the University must continue to pursue efficiencies and alternative revenue strategies to help address a major portion of its budgetary needs and it welcomes the provision of additional State investment to also help meet these needs and keep the University financially healthy. The University is strongly committed to increased access for California resident undergraduate students and has developed an enrollment strategy that will meet the State's expectation as expressed in the 2015 State Budget Act. The resources proposed in this budget plan will help the University meet this commitment as well as address several additional high priorities of the Regents.

Exhibit 8

INSIDE HIGHER ED

#News (/news)

Standards of Evidence

> An Education Department proposal on how colleges need to conduct campus disciplinary hearings involving sexual assault is sparking renewed debate over the standards of evidence in those proceedings.

By Michael Stratford // February 25, 2014

0 COMMENTS (/NEWS/2014/02/25/FEDERAL-CAMPUS-SAFETY-RULES-REIGNITE-DEBATE-OVER-STANDARD-EVIDENCE#DISQUS_THREAD)

WASHINGTON -- The drafting of new campus safety rules under the Clery Act is reigniting some of the debate over what standard of evidence colleges should be required to adopt in campus disciplinary proceedings involving sexual assault.

Education Department officials on Monday released their first proposal (http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/vawa-2draftregs-tracked.pdf) for new campus safety regulations to conform with changes Congress made last March (https://www.insidehighered.com/quicktakes/2013/03/01/new-us-law-includes-sexual-assault-provisions-colleges) to the Clery Act. The proposal spells out how institutions must handle new, expanded crime reporting requirements, such as including instances of domestic violence, dating violence and stalking in their published crime statistics.

Exhibit 8

involving sexual assault. The administration said that colleges must use that standard -- as opposed to the higher, "clear and convincing" evidence standard that many institutions had been using -- in order to be in compliance with Title IX, the federal law barring sex discrimination by educational institutions.

Some individual rights organization criticized that 2011 guidance, calling it unfair and unjust for accused students to face a lower standard of evidence. Victims' rights and campus safety advocates, meanwhile, praised the administration's interpretation of Title IX and have argued that the lower evidentiary standard is needed in order to combat the problem of sexual violence on college campuses.

During debate on the Campus SaVE Act over the past several years, many of those campus safety advocates pushed Congress to codify the Obama administration's guidance on the evidentiary standard into federal law. But, at the insistence of individual rights organizations, such a provision was stripped from the final version of the Clery Act changes that passed the House and Senate and signed into law by the president.

The Clery Act is silent on evidentiary procedures but it now requires colleges to provide "prompt, fair and impartial" campus disciplinary proceedings. In defining what constitutes "prompt, fair and impartial," Monday's proposal from the department says that the proceedings must "comply with guidance issued by the U.S. Department of Education's Office for Civil Rights."

The Foundation for Individual Rights in Education on Monday decried that proposed language as a "bait and switch" and accused department officials of showing a "galling" disregard for the Congressional intent of the Clery Act changes and limits on the rule making process.

Joe Cohn, the foundation's legislative and policy director, said that by requiring campus disciplinary proceedings to comply with guidance from the Office for Civil Rights, the department would, in effect, codify in regulation the "preponderance" evidence standard that Congress specifically rejected in its recent changes to the Clery Act.

"The negotiated rule making process does not empower negotiators to sneak into law substantive requirements that were debated and rejected by Congress," Cohn said. "Negotiated rule makers were not elected by the public. They must not replace Congress's will with their own."

FIRE said that the department and negotiators on the rule making panel who supported the change were contradicting Congressional intent and exceeding their rule making power.

S. Daniel Carter, a campus safety advocate, meanwhile, said that the proposed rule tracks Congressional intent by deferring the standard of evidence issue to be decided at the sub-regulatory level -- that is, through the guidance issued by the department's civil rights office.

Carter, who directs the 20 National Campus Safety Initiative at the VTV Family Outreach Foundation and is a member of the negotiating panel, said he disagrees with FIRE's interpretation of the deal.

PowerPoint (http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/vawa-reviewoftitle9.pdf) presentation.

Still, even if the department's rule making is focused on the Clery Act and not Title IX, it would be possible for the administration to establish an evidentiary standard consistent with the one it has said exists in Title IX.

Erin E. Buzuvis, a professor at Western New England University School of Law and an expert in Title IX law, said that although the department's rule making under the Clery Act would not change Title IX itself, it could possibly elevate the preponderance of the evidence standard into regulation.

Buzuvis, who had not reviewed the department's proposal, said that agencies often engage in "incorporation by reference" to adopt the standards of another part of law elsewhere.

"If the department were to incorporate by reference [its guidance on Title IX evidentiary standards], which is a practice that agencies engage in all the time, those requirements do become binding and have the force of law."

Still, she said she believes the Education Department has the clear authority to promulgate rules about the standard of evidence under the Clery Act. The fact that Congress ended up not including such a standard in the final version of the new version of the Clery Act, she said, does not endorse any particular standard but rather leaves it up to the agency to decide.

"I think the Clery Act left the department no choice but to create a standard of evidence," she said. "It's just such an obvious question when it comes to looking at what the hearings are going to look like: what standard of evidence is going to be used?"

The department's rule making panel on the campus safety issues will continue its meeting Tuesday and another negotiating session is slated for next month.

Read more by *Michael Stratford*

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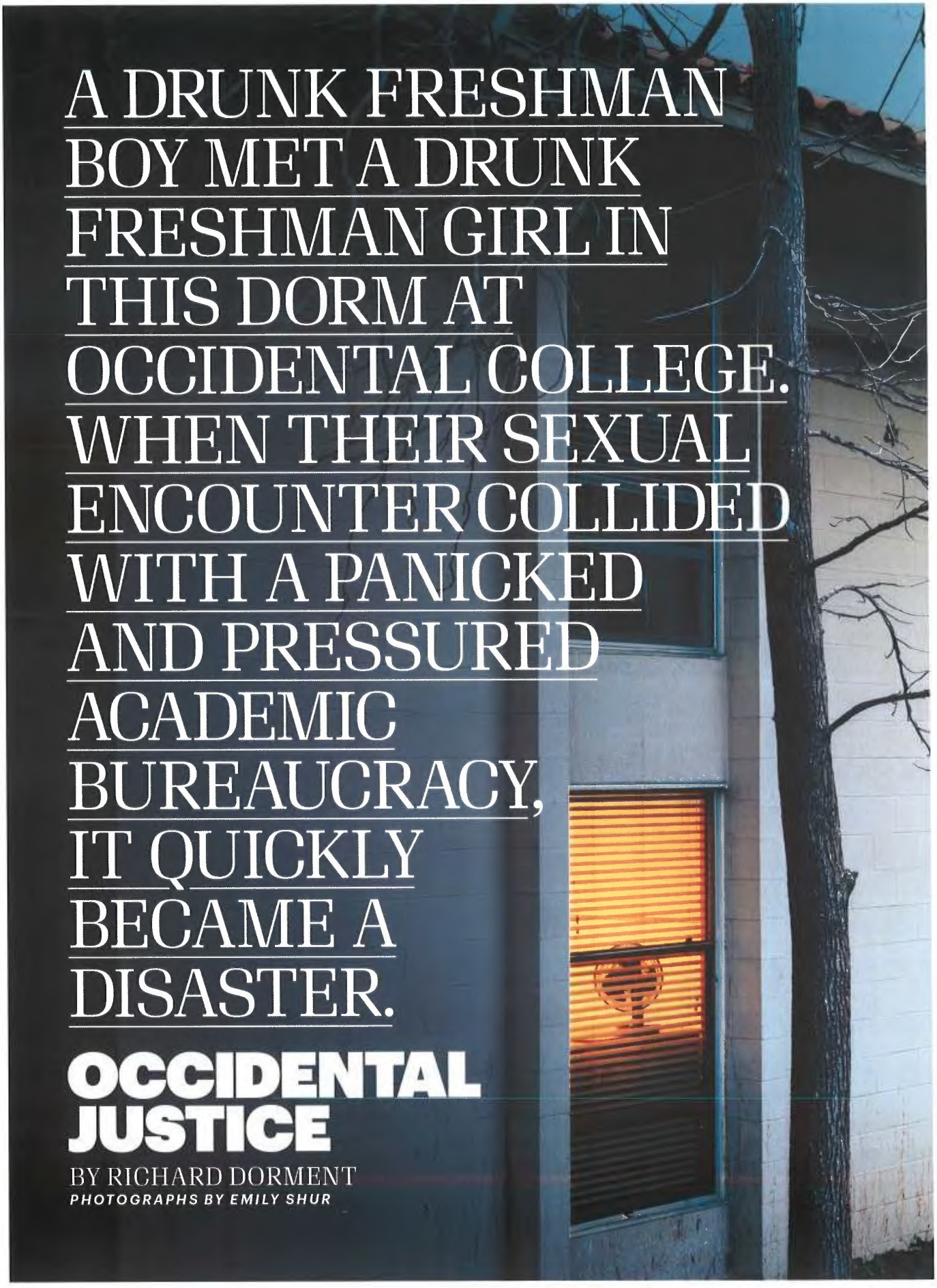
BACK TO TOP

Exhibit 9



A DRUNK FRESHMAN BOY MET A DRUNK FRESHMAN GIRL IN THIS DORM AT OCCIDENTAL COLLEGE. WHEN THEIR SEXUAL ENCOUNTER COLLIDED WITH A PANICKED AND PRESSURED ACADEMIC BUREAUCRACY, IT QUICKLY BECAME A DISASTER.

OCCIDENTAL JUSTICE

BY RICHARD DORMENT

PHOTOGRAPHS BY EMILY SHUR

ON SEPTEMBER 7, 2013, TWO FRESHMEN were gearing up for their third Saturday night at Occidental College. The small liberal-arts school in the Eagle Rock section of Los Angeles was just beginning its fall term, and after an unseasonably warm day that ran well into the 90s, the campus settled into one of those clear 70-degree nights that people plan their retirements around. In the southeastern corner of campus, under the red tile roof of Braun Hall, the hours ahead offered nothing but possibility.

The one freshman, John, eighteen years old and a slim six one, was good and drunk by sundown. He'd started drinking earlier in the day as part of a freshman-jock initiation. Shots, chugging, stupid human tricks—bonding and hallowed ritual to some, hazing to others—left him too drunk to finish the initiation, and around 11:00 P.M. a teammate escorted him back to the second floor of Braun. He would later describe that night as the drunkest he's ever been, and a neighbor from down the hall would describe his level of intoxication as a "shitshow." He was "slurring his words, stumbling over the others when he got up." *That* kind of drunk.

The other freshman, Jane, one month shy of her eighteenth birthday and a mere five feet two inches tall, was rebounding from the previous night's hangover by shooting vodka and sipping screwdrivers at a small gathering in a friend's room. Around 10:15, she and some friends went looking for a party off campus, but once her preparty buzz turned into full-blown, falling-down drunkenness, she parted ways with the group and started to make her way back to her room on the third floor of Braun. One of the friends who helped get her back to the dorm would later say Jane had a hard time walking and, upon seeing a resident advisor, said, "I have to act normal." *That* kind of drunk.

Once inside the dorm, Jane ran into John's roommate, who told her that John was having a little dance party in their room. Her interest piqued, she went into the room, and by the time John's roommate caught up with her a few seconds later, John and Jane were embracing. The roommate promptly left John and Jane alone, and minutes later, two of Jane's friends who'd been with her earlier in the evening came in to check on her. One of them would later describe the ensuing half hour as Jane "trying to kiss John and dance with him . . . and John trying to get [the two friends] to leave." That friend also said that "Jane was grabbing John and trying to kiss him. . . . John was

◀ Braun Hall on Occidental's campus in Los Angeles, where both Jane and John lived in the fall of 2013.

'somewhat' responsive... but 'also seemed pretty indifferent' to Jane's advances. [The friend] observed that John was 'not at all going for her... it was not like he was grabbing her and pulling her onto the bed.'" Eventually, according to Jane's other friend in the room, "John and Jane laid down together on John's bed, with Jane on top of John... 'getting really physical'... [with Jane] 'kind of riding on top of John. Her hips were moving.... It looked like something sexual was going down.'" Her two friends convinced Jane it was time to go home, but not before she gave John her number. (The college would later commission an inquiry into the events of the night, with two independent investigators interviewing witnesses and summarizing their statements—and in some instances quoting them directly—in an official report. All observations attributed to witnesses in this story, as well as texts cited, are taken from that report.)

The two friends got her back to her room, put her to bed, and left. It was 12:31 A.M., and she got a text.

JOHN: The second that you're away from them, come back
JANE: Okay
JOHN: Get the fuck back here.
JANE: They're still with me o
JOHN: Make them leave. Tell them yoy want to sleep. I'dc. [I don't care.] Just get back here
JANE: Okay do you have a condom
JOHN: Yes.
JANE: Good give me two minutes
JOHN: Come here.
JANE: Coming
JOHN: Good girl.
JOHN: Knock when you're here

Seemingly aware of what was coming next, Jane texted a friend "I'm wasted" and "I'mgoingtohave sex now," and while she made her way down to John's room, she vomited in a trash can in the hallway before making it to the men's bathroom and, finally, John's room.

Later, John would say he remembers few specifics about the following hour, including the 12:39 A.M. text he sent to his roommate instructing him to "stay the fuck out of our room." He also put a piece of paper in the slot for the key card to the room, the millennial equivalent of the sock on the doorknob. Jane would say that she doesn't remember much either, except for when she told John she'd just thrown up and needed a piece of gum; and when she asked him again if he had a condom; and when she performed oral sex on him; and when John told her that his roommate had just walked in on them having sex. (His roommate would later tell investigators that, based on what he was told to look out for during the sexual-assault-prevention training he received during orientation, what he saw when he walked in the room didn't look like sexual assault.) Later, when John went down the hall to use the restroom, a neighbor from down the hall knocked on John's door to check on Jane. According to the investigators' report, "He asked if she was okay. Jane responded, 'yeah.' [He] said he asked, 'Are you sure?' Jane replied, 'Yeah, I'm fine.' [He] said he asked Jane Doe a third time if she was okay, and she answered that she was." While the neighbor would also say that Jane answered "kind of unconvincingly" and she sounded "kind of sad," he said he "took her word for it." (Jane told investigators that she also remembers this exchange.) John returned from the restroom, and thirty minutes later Jane left his room.

At 1:57 A.M., John texted his roommate, "Our room is free, go back any time," and twenty minutes later Jane sent the following text message to two friends:

:)

John would later learn that he finished the night by talking to a female friend for a few minutes—about what he does not recall—and going to sleep. Jane, meanwhile, went back to her room, where, her roommate would later say, she "was not making sense, was slurring her words, could not unbutton her clothing...." However, when Jane's roommate went to take a shower, Jane got out of bed and made her way to the common room in another dorm. Her roommate eventually found her in her pajamas, "sitting on a couch on some guy's lap," as her roommate put it, and joking about Nascar. Her roommate got her out of there, stating later that Jane was incoherent.

John and Jane would both wake up the next day extremely hungover and uncertain about what had happened. Later in the day, Jane would learn she was no longer a virgin. Three months later, John would find out he'd been expelled.

BEFORE *ROLLING STONE* AND UVA, BEFORE JAMEIS WINSTON and Florida State, before a slight young woman began hauling a mattress around Columbia University, there was Title IX, the landmark 1972 statute establishing that no student in a federally financed education program can be discriminated against or deprived of equal access to education because of his or her gender. For decades Title IX was known mostly for its impact on college sports, and though the law technically covered incidents of harassment and violence, sexual assaults on college campuses were generally matters left to the discretion of college administrators. "Most schools were not thinking of these cases as being about Title IX," says Nancy Cantalupo, a professor at Georgetown Law and a vice-president at the National Association of Student Personnel Administrators. "They were just thinking about them as being a part of their student disciplinary process."

That all began to change in 2011, when the Office for Civil Rights in the Department of Education, which is charged with enforcing Title IX compliance, sent out what it calls a "Dear Colleague" letter informing any college that receives federal funding—that would be almost all of them—that it must treat sexual-assault claims as potential federal civil-rights violations or risk losing their funding. The decision effectively put colleges in the law-enforcement business, and it also provided a powerful tool to a new generation of activists across the country who were fed up with how administrators too often blamed or dismissed victims of sexual assault on campus.

In the spring of 2013, two professors at Occidental, Caroline Heldman and Danielle Dirks, filed two complaints against the school, under Title IX and a related law, on behalf of the recently formed Oxy Sexual Assault Coalition (OSAC), alleging Occidental had mishandled investigations and underreported incidents of sexual assault for dozens of women. OSAC's list of grievances is disturbing, including: "two of three respondents found responsible for multiple rapes have been invited back on campus, exposing a new crop of students to known predators"; "administrators telling survivors after meeting their assailants, 'he didn't seem like the type of person who would do something like that' or 'he didn't seem like a rapist'"; and a college administrator "telling a group of male athletes that most of the cases of alleged rape at Oxy are 'girls getting back at their ex-boyfriends.'" There were allegations that critics of the administration were being intimidated and that their e-mails were being secretly monitored, both charges that Occidental would

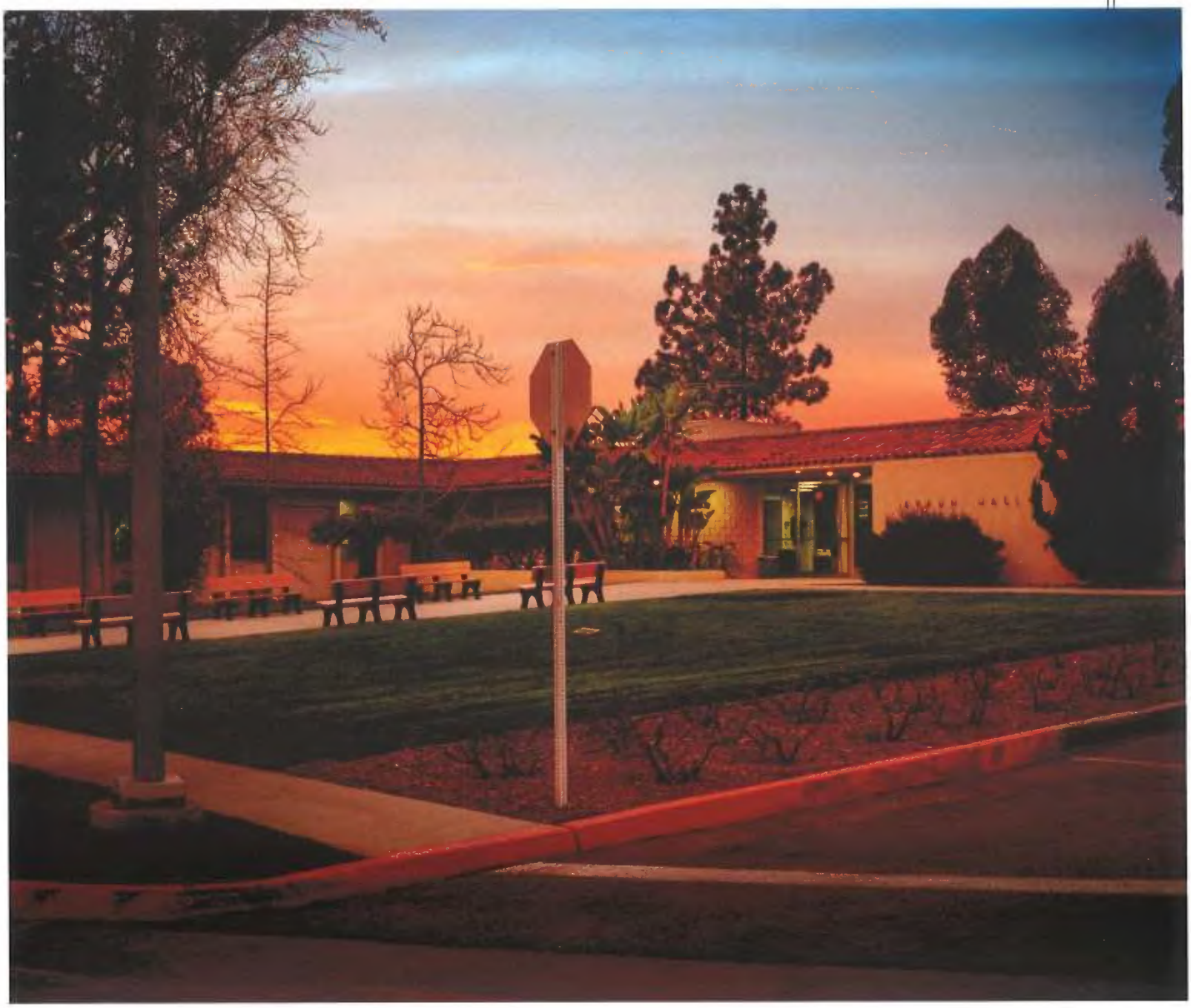
deny. Under intense pressure from both the OCR—which was investigating the potential Title IX violations and could, theoretically, withhold Occidental's federal funding—and campus activists, the college president, Jonathan Veitch, promised to make amends and turn Occidental into a national leader in fighting sexual assault, in part by revising its policies on investigating such offenses and expanding its definition of sexual assault.

John was only vaguely aware that all this was going on when he made his decision to attend Occidental. "I'd heard about it, but I had this kind of 'it won't affect me' mentality," he says, sitting in the shaded area outside a Starbucks in a sunny part of California last November. "College has this built-up reputation as being the best years of your life. You're gonna get a great education, you're gonna meet amazing people, you have the social and moral liberty to indulge yourself. It's built up as that in our society, and it was definitely that way for me."

Fourteen months since that night, John has agreed to speak in detail for the first time about his experience at Occidental. With a pristine white zit just above his mouth and little evidence of ever having shaved, he's a young nineteen, and in between bites of a bagel and sips of some chai concoction, he spoke a little about his life before college: born and raised in California to religious parents; an A student who drank a little but not much in high school; a varsity athlete in a prep-school sport; a highly social kid who, in the words of his father, never clung to his mother's leg when entering a new room. He'd applied to Occidental in part because his grandparents had met there as students and in part because he liked its international-relations program, and when he was accepted, he crossed his other options off the list.

John—not his real name, as he prefers to remain anonymous—arrived on campus at the end of August and, like all incoming students, attended the mandatory orientation seminars. "Absolutely mandatory," he says today. "And due to the fact that they'd just been hit with this major Title IX suit a couple months earlier, our orientation was absolutely dominated by sexual assault." When the presentations turned to alcohol and its role in sexual assaults, John recalls, "the line is basically that you have to get consent. If someone's incapacitated, if someone's passed out, [they] can't give consent. That was pretty clear." Nothing about signs of potential incapacitation beyond obvious unconsciousness? None that he can recall, John says. "Even now it's murky on where the line is between drunk and incapacitated." (Occidental declined to clar-

▼ The night after their drunken encounter, John and Jane sat outside Braun Hall and, according to John, talked for two hours about what had happened the night before—which both claimed they couldn't really remember.



ify how its orientation distinguished between intoxication and incapacitation either during 2013 or after.)

He knew Jane a little from around the dorm and from a class they had together. "I had seen her two or three times in class. I had one conversation with her. I really didn't know her at all." And then came his initiation night. "There were a variety of drinking games, like you had to drink a certain amount of alcohol in a certain amount of time, then you had to do push-ups and run to another house. There were four challenges, and I made it through three because I was throwing up so much."

John says he remembers almost nothing from the following hours back at his dorm. "Nothing specific. I woke up and I was like, *wow*. Like, *what?*" He checked his text history and put the pieces together, slightly mortified by what he was reading. ("When I look in the mirror, do I see that person [from the texts]? No. That was me extremely, extremely intoxicated.")

Jane—also not her real name—told investigators that she woke up on Sunday morning still a little drunk and saw a number of missed calls and "freaked out voice mails" from the friend to whom she wrote "Imgoingtohave sex now." Reading through her text messages, she began to suspect what had happened, but she wasn't certain until later in the day, around seven, when she met with John's neighbor from down the hall—the "Are you okay?" one—who confirmed what happened. (John's roommate told investigators that he'd met with Jane earlier in the day, around 3:00 P.M., and told her that she'd had sex with John, though Jane never mentioned this meeting in her statements.) Around 11:00 P.M., she bumped into John and, according to the investigators' report, "asked him bluntly, 'Did we have sex last night?' He told her that they did. But when she asked how he knew, he said he did not remember having sex with her. He said that he concluded they had sex, because he found her belt and earrings, he saw his text messages, and he found a used condom." (Jane, through her attorney, declined to comment for this article and has never spoken publicly about that night or its aftermath. All statements and recollections attributed to her are from the investigators' report.)

After this initial encounter, John says, they met up again later that night and spoke for a while outside their dorm. "We just sat outside Braun Hall and talked for like two hours. I was like, 'Wow, we had sex last night and I don't really know you,' and she was like, 'I don't really know *you*.' And we just talked it through. I mean, it's awkward, but we had a pretty decent conversation and basically chalked it up to a drunken mistake. We left things very good right then.

"That was Sunday night, and Monday, the next day, I was sitting in class and she wasn't there," he says. "And halfway through the period—there's a whole bunch of open seats—she walked in. I was at the far side of the classroom. We made eye contact, she came over and sat next to me." John's roommate, who was also in the class, told investigators that it looked like the two were getting along normally. "I thought it was weird after I learned of the complaint," he said. "Why sit next to him if he assaulted you?"

Jane was late for class because, acting on advice from her roommate, she'd gone to the campus health center to speak to a counselor about Saturday night. According to Jane's statement to investigators, the counselor listened to her story and responded: "That sucks a lot." Jane then met with the resident survivor advocate, who advised her to go get a rape kit performed at a local clinic. The advocate also told her that since she was seventeen, the doctor would have to alert the authorities. As Jane did not want to involve the police, she instead went to class and sat next to John because, as an advisor would later report, she "didn't want to make a big deal of it." (The advisor also reported that she told her she "felt fine sitting next to him" and that he "genuinely seems like a good person"—which may have been plain statements of fact or, as some would later contend, evidence she was in denial, which is not uncommon among trauma and abuse victims.) After class, she approached her professor, Movindri Reddy, and over two conversations, told her everything that had happened. Reddy suggested she speak to someone.

Jane and John would text later that night:

JOHN: What did you guys talk about? [referring to a group dorm meeting]

JANE: Making good decision. Which I found somewhat fitting.

JOHN: Ahaha that is definitely fitting. I think I'm gonna take a long break from alcohol here...

JANE: I might join you on your stint of sobriety

JOHN: Dooo itttt. I'm gonna be sober all week, I need to focus on school and get my head on straight.

JANE: Do you feel guilty?

JOHN: Yes. I was blackout drunk but I still feel terrible about what happened. I'm so sorry that everything happened this way, I wish it was more special for you.

JANE: Okay

JOHN: I don't know. I'm not angry that stuff happened between us, I just wish we had known each other more.

JOHN: I'm glad that we're still talking :)

JOHN: Sigh. I hope none of that came across the wrong way. I want you to know that I'm not a bad guy.

JANE: I think I'm still trying to think through everything. And I'm not doing a great job

"I thought we were just kinda gonna have an awkward friendship moving forward," John says. "Unbeknownst to me, she'd been talking to a lot of people. You know, counselors."

WHAT ABOUT THE POLICE?

Law-enforcement agencies have a terrible reputation among victim advocates for their unwillingness and/or inability to build a case against alleged sexual assailants. Among the efforts to fix how police departments handle sexual-assault cases, few show as much promise as Carrie Hull's. A detective with the Ashland, Oregon, police department, Hull launched a program in 2013 called You Have Options, and she's seen sexual-assault reports to the police more than double (especially among the students at nearby Southern Oregon University) in just a year. You Have Options takes the best parts of what many colleges offer students—support, guidance, and the ability to set the scope and pacing of the investigation (hence the Options)—and combines them with the rigors of a full-blown police investigation. "It's a training issue for law enforcement," says Hull, who's currently in touch with fifty-three police departments across the country on You Have Options training. "You have to give anybody who is interviewing a victim of trauma, particularly sexual trauma, in-depth training on how to do a trauma-informed interview.... Then you have to actually get out of your chair and take that really good information that you often get from these interviews and start corroborating it." Background checks on suspects, forensic interviews, wiring an accuser so she might surreptitiously record a confession from an assailant: "We're not doing anything that is not being done in any other caseload. We're just using it within a sexual-assault caseload.... That's the stuff the DA needs" to build a case.

One of those counselors was Danielle Dirks, the professor who'd helped file the Title IX complaint the previous spring and the someone that Reddy suggested she speak to. According to Dirks's statements to investigators, when Jane first told Dirks her story, Dirks called what happened to Jane "rape," to which Jane replied, "Oh, I am not calling it rape yet." According to Jane's statements to investigators, Dirks told her that John "fit the profile of other rapists on campus in that he had a high GPA in high school, was his class valedictorian, was on [a sports] team, and 'from a good family.'" Dirks would also tell the investigators that Jane's behavior matched "the dozens of other survivors [of sexual assault] I have met with on campus"; that Jane had been in "a strong state of denial" about the nature of the event; that John was "acting in the same way all these other young men [involved in sexual assaults] have acted by checking in on Jane after the incident, and seeking to manage her by being nice in a manner... described as 'disingenuous.'"

(Dirks did not respond to requests to be interviewed for this story, but she told the Web site Business Insider in May 2014 that "regarding my alleged statement on the 'profile of a rapist' at Occidental, the College's investigative report misrepresents my statements and contains factual errors regarding my involvement in the case." Whether Jane misrepresented to investigators what Dirks told her, or whether investigators made a mistake when recording Jane's testimony, and whether it bothered the college that a key witness in its investigation, the person whose handwritten notes from meeting with the accuser were submitted as evidence, is now alleging factual errors and misrepresentations in the final report is unknown. Occidental declined to comment on Dirks's claims or anything else regarding the details of the case, citing pending litigation. However, Dirks elaborated on her view of male college students in general to *New York* magazine in September: "Research, [Dirks] says, shows that only a small percentage of college guys truly don't know where the line is—'and, for them, if you tell them to get verbal consent, they don't push so hard.' She pauses. 'But the rest of them—and I know it's hard to think of our brothers, our sons, like this—are calculated predators. They seem like nice guys, but they're not nice guys.'")

Over the following week—as she continued speaking with Dirks and, as she relayed to investigators, her roommate "pushed her to realize that she had been sexually assaulted"—Jane started to develop what she described as emotional problems. Nightmares. Problems focusing. Flashbacks to that night. According to the investigators' report: "Jane Doe stated that she decided to report what had happened when she realized how much it had affected her emotionally, while seeing no reaction from John. She noted that he attended his classes without difficulty, and she 'saw that he wasn't fazed by what had happened at all.'"

Jane told investigators that since the incident with John, "navigating around corners with right angles 'scare[d] the hell out of me [because] I don't know what is around the corner.'" She also said that she heard John was "going on about how much he hates women." (John denies saying anything like this.) And she told investigators, "It scares me that he still goes out and still goes to party. I don't think anyone should have to go through what I have gone through."

About ten days after the event, Jane decided she would report the incident to both the campus and criminal authorities. (At Occidental, like nearly all colleges, a student can choose both options, one option, or neither—there is typically no requirement that the accuser or the college alert the local police that a potential crime occurred—though in Jane's case, because she was under the age of eighteen at the time of the incident, Occidental policy would have likely required administrators to contact the authorities whether she wanted them to or not.) Jane was ready to call it rape.

"I WAS WALKING ON CAMPUS WITH SOME FRIENDS AT AROUND 9:30," John recalls of the night when his life as a normal Occidental student effectively ended. "I got a call on my cell phone from an unknown number and I picked it up. It was the Title IX director of the school, saying, 'You need to get all your stuff and get out of the dorm. We're gonna have officers take you somewhere.' She was being extremely legalistic, telling me that there's a complaint against me but not really clarifying what it is. And I remember just being like, 'Tell me what's going on.' And she was just like, 'We really can't.'

"I called my dad right away," John says, "and I was like, 'You should go outside. I have something to tell you.'"

John's father called a family friend, an attorney in Los Angeles named Mark Hathaway, and after learning the extent of the allegations over the next few days, according to John, they started "looking over the text-message evidence. It was like, logically, there's no way they could expel me."

Around the time Jane filed her complaint with Occidental, she went to the LAPD, where, according to her statement to investigators, she was asked by a desk officer "if John forced her into his room, and when she said 'No,' the officer stated, 'Well then, it's not rape.'" Jane went home distressed. (According to a representative from the LAPD, this was a procedural error and not how accusations of sexual assault are typically handled. It is also a prime example of exactly what women fear they will encounter if they go to the police.)

Despite the initial encounter, LAPD detectives visited Occidental several days later and told Jane that they would investigate the case. Six weeks later, after collecting evidence—including the text messages exchanged by John and Jane—and interviewing witnesses (except for John, who, on the advice of his attorney, declined to be interviewed by the officers), they found insufficient evidence to charge John with a crime. According to the Charge Evaluation Worksheet completed on November 5, filled out and signed by the deputy district attorney, "witnesses were interviewed and agreed that the victim and suspect were both drunk, however, that they were both willing participants exercising bad judgment.... Specifically, the facts show the victim was capable of resisting based on her actions.... More problematic is the inability to prove the suspect knew or reasonably should have known that she was prevented from resisting in that state. It would be reasonable for him to conclude based on their communications and her actions that, even though she was intoxicated, she could still exercise reasonable judgment...."

A little over a year later, the investigating officer (who asked that her name be withheld, explaining that she doesn't want to appear in Web searches about this case and potentially dissuade victims from speaking to her) remembered the case clearly: "We had these really bad text messages that supported a consensual encounter," she says. "Even though everything pointed to her being intoxicated, she still had enough frame of mind to send these text messages saying, 'I'm on the way. I'm coming. I'm coming. Do you have a condom?' So his state of mind is, she's saying yes.... How was he supposed to know that she did not want to give consent? And if he's intoxicated, then that kind of falls under the same category: Was *he* able to give consent? There's a whole bunch of different factors that went into this.

"Based on the evidence," she adds, "I don't think he committed a crime."

WHEN HE STEPPED UP TO A PODIUM AT THE WHITE HOUSE LAST September to launch "It's On Us," a campaign to combat sexual assault on college campuses, President Obama said, "An estimated one in five women has been sexually assaulted during her

college years." That statistic—which quickly took hold in conversations around the issue—stems primarily from a 2007 study commissioned by the National Institute of Justice in which 19 percent of female students reported experiencing a completed or attempted sexual assault during their four years in college, with sexual assault defined as ranging from forced vaginal sex to "forced kissing or fondling." The findings were based on Web surveys of students at two unnamed public universities, and they more or less mirror the findings of a few other studies over the past few decades.

However, the lead author of the NIJ study, Christopher Krebs of RTI International, a research organization in North Carolina, is the first to point out the limitations of his data. "We don't think our data are nationally representative. We've never described them in that way or claimed that they are," he says by phone from his office outside Raleigh. And since data on the prevalence of college sexual assault is widely considered soft (due especially to varying definitions of sexual assault as well as an estimated 90 percent nonreporting rate among victims), it's easier to understand the Obama administration's actions as less the urgent response to a growing crisis and more the logical extension of its long-held sympathies. "There really has not been an increase in incidents," says Brett Sokolow, a lawyer and the founder of the National Center for Higher Education Risk Management, which consults with colleges and universities on their sexual-assault policies. "The catalyst was a shift in priorities for a new administration coming into office."

"When I started here at the White House," says Lynn Rosenthal, who joined the Obama administration in its early days as the White House advisor on violence against women and left her position in January, "the vice-president asked me to look at all the data about violence against women and girls, and he wanted to know what was different from fifteen years ago, when we passed the Violence Against Women Act." (Then-senator Biden was instrumental in the passage of the 1994 bill, which helped contribute to a staggering 67 percent decrease in reported rates of domestic violence between 1993 and 2010.) "And when we looked at the data, the high rates of both dating violence and sexual-assault experience by women in the sixteen- to twenty-four-year-old age group just really stood out. The vice-president looked at this data and said, 'This is where we need to be working. If we can make a difference here, we can make a difference.'"

Concentrating on college campuses made sense for the administration, as the women at risk were of college age and it was also where the administration had some direct control. "The federal government has no jurisdiction over rape," explains Senator Claire McCaskill, a former sex-crimes prosecutor who is leading the charge on a bill to strengthen the process by which colleges measure and report incidents of sexual assault. "But it has jurisdiction over campus sexual assault via Title IX."

The 2011 Dear Colleague letter "was the first time the administration called sexual violence specifically a civil-rights issue," says Catherine Lhamon, the current assistant secretary for civil rights at the Department of Education. And in threatening to cut off funding to a college or university that the OCR determined was unable or unwilling to enforce Title IX, the administration literally made a federal case of campus rape. College administrators were officially on notice, and the stakes for noncompliance—loss of money to cover financial aid and scientific R&D, among other federal funds, as well as the very bad publicity that comes with being on the OCR's hit list—couldn't be higher.

In addition to requiring every college to employ a dedicated Title IX coordinator to oversee compliance, the Dear Colleague letter recommended schools provide "holistic and comprehensive victim services" to accusers (counseling, etc.) and stipulated that colleges must apply a "preponderance of the evidence" standard to its proceedings rather than the higher "clear and convincing" standard or even the highest "beyond a reasonable doubt" standard used in criminal cases. (Although some experts estimate that 80 percent of colleges were already using the preponderance-of-the-evidence standard prior to 2011, it became the national standard thereafter.) The preponderance standard dictates that any judge or jury be only 50.1 percent sure that the accused is responsible, and it typically applies to civil cases in which monetary damages (rather than jail time) are what's at stake.

While advocates of the shift to preponderance say it merely brought campus investigations in line with other Title IX investigations and civil proceedings, it also considerably lowered the bar for achieving a finding of "responsible," or guilty, against the accused. "It should not be harder for a victim to prove that she was assaulted than it is for the person she's accusing to prove the assault didn't occur," explains Sokolow. "A preponderance [standard] creates a level playing field, whereas with any higher standard, it technically privileges men. It makes it harder for a victim to prove that a male assaulted her." Besides, Sokolow says, "Colleges aren't really addressing rape. They're addressing sexual violence as a civil-rights violation and as a form of discrimination, and their definitions are much broader."

This shift helped spur reports to campus authorities—by nearly 50 percent, with the number of sexual-assault reports on college campuses across the country jumping from 3,177 in 2011 to 4,721 in 2013. (At Occidental, it increased by more than 400 percent, from twelve incidents in 2011 to sixty-four in 2013.) However, there was no comparable shift in the number of reports to the police. "It should surprise no one that students are choosing to go to colleges" before criminal authorities, says Joseph Cohn, the policy director with the Foundation for Individual Rights in Education (FIRE), an advocacy group for free speech and due-process rights

◀ Occidental—of which seventy-seven-year-old Thorne Hall is the symbolic center—is awaiting rulings from the federal government on complaints of its handling of sexual-assault cases.

on campus. "Complainants are being told by well-intentioned victims' advocates that law enforcement doesn't really have an interest in doing this for you, and you'll be put under intense scrutiny and they'll cross-examine you and they won't believe you. On campus, there's a lower standard of evidence, and you'll get a much easier outcome with much less scrutiny." In a Senate roundtable on sexual assault last year, Alexandra Brodsky, a prominent sexual-assault activist and herself a sexual-assault survivor, confirmed as much: "When I reported violence to my school, five, six years ago now, I was explicitly told not to go to the police—that it wouldn't be worth it and would be emotionally draining.... I know I would never have come forward if I had been forced into that option."

In the case of John and Jane, how the LAPD and the district attorney's office interpreted and acted on the evidence would have no bearing on the campus investigation. Occidental, using its own standard of proof and its own policies and definitions, was in charge.

"I WENT INTO MONK MODE," JOHN SAYS OF THE DAYS AND weeks following Jane's formal complaint. "Like: I'm just not gonna feel things, which is easier said than done.... Like, I'm nineteen. I just left home. My mom's poring over details of me having sexual intercourse with a girl. I felt like I was a kid that got completely thrown around by a bunch of people with high-powered doctorate degrees and a lot of institutional power."

John was being investigated for two potential violations of the school's student conduct code—sexual assault, and nonconsensual sexual contact. (The former is defined by Occidental as "having or attempting to have sexual intercourse with another individual: by force or threat of force; without effective consent; or where that individual is incapacitated"; the latter is a broader definition and encompasses inappropriate touching, kissing, and the like.) He also received a "stay away" letter from the school's dean of students' office, directing him to avoid contact with Jane. "On a small campus of two thousand people," he says, "everyone knew. I would get death stares daily." Jane, according to her attorneys and investigators, continued to struggle with anxiety and fear, with Dirks reporting Jane telling her that "at one point, [she] sat unable to move for twenty minutes on a bench on campus."

The college hired an outside agency, Public Interest Investigations, to oversee its inquiry, with two independent investigators interviewing ten witnesses, including Jane. John declined to speak with them, although he and Jane both agreed to turn over their texts. At Occidental, as at many colleges, neither the accused nor the accuser is permitted to have an attorney present during questioning, which campus authorities believe is the best way to keep bickering and blowhards out of what's supposed to be a private, speedy deliberation. However, any testimony given to the private investigators can be considered fair game in criminal investigations, and because of the LAPD inquiry, John's attorney advised him to decline to be interviewed by campus investigators.

John and Jane were each able to choose an advisor to help guide them through the process, and Jane's was Movindri Reddy, the professor who had first put her in touch with Danielle Dirks. John, however, had a more difficult time trying to find someone. "I'm at a new place, and I don't know any of the staff. My lawyer pulled up a list of people with Title IX training, because they were the only ones who could serve as advisors. I just kind of went down the list. Most of the people I asked said no." (Five Occidental staffers declined to be his advisor.) "Eventually I found a nice lady who worked in dining services to sit with me. She'd previously served on a panel, and she said my chances of winning were extremely good."

According to college policy, "Formal resolution of a complaint... will occur through the use of a Conduct Conference"—which is recommended for uncontested accusations—"or a Hearing Panel... which typically consists of three members drawn from a pool of trained faculty and campus administrators." However, Occidental determined that John would not face a hearing panel but rather a single external adjudicator, Marilou Mirkovich, a local lawyer specializing in employment law. (Occidental's policy permits it to appoint an external adjudicator at its sole discretion. It declined to explain its decision, either to John's attorney or to Esquire.)

To Mirkovich, the hearing needed to resolve four issues: Did John and Jane have sex? Did Jane, at the time of the incident, appear to give consent? Was Jane too drunk—and in fact incapacitated—to provide consent? And did John know, or should he have known, that she was incapacitated? John and Jane were allowed to make opening statements. Witnesses were called and questioned. And John, who'd entered the proceedings confident of his chances, says he grew uncomfortable as the hearing unfolded. "I was in a room full of women, and there's a crying girl with a lengthy speech about how I sexually assaulted her, and she broke down in tears," he says. "And looking around, I saw the look on all these women's faces, and they're relating. My adjudicator, hired by the school, I saw the look on her face and I'm like, *That's not good.*" (Occidental has no policy about the optimal male-female balance of such proceedings, meaning, in theory, Jane could just as easily have been placed in a room full of men.)

Over the course of the six-and-a-half-hour proceeding, it was quickly determined that, yes, John and Jane had sex, and, yes, at the time, via text messaging, it was reasonable to conclude that Jane was giving consent. But was Jane too drunk to give consent—was she, in fact, incapacitated? And should John have known that Jane was so drunk that her consent was questionable, despite the fact that he himself was just as drunk?

To John, those questions began and ended with what he gleaned from the sexual-assault orientation: You're incapacitated and unable to

WHAT ABOUT

YES MEANS YES?

Over the past year, California has enacted, and New York's governor has proposed, affirmative consent laws for colleges that receive state funding, and these so-called "yes means yes" statutes require unambiguous verbal agreement between two students before any sexual activity as well as between various levels of sexual activity. Setting aside how realistic such requirements are, these laws do little to obviate the he-said-she-said nature of most sexual-assault cases, and they also do nothing to clarify the "How many beers is too many?" guessing game, as Rebecca O'Connor of RAINN recently put it, that clouds whether someone is able to offer meaningful consent. Even going so far as to dictate that *any* alcohol consumption is enough to nullify consent would at least clear up the confusion that affirmative consent measures have left in place. Drastic, maybe, but impossible to misunderstand.

give consent when you're passed out and you physically can't speak or indicate yes or no. To Scott Berkowitz, the president of the Rape, Abuse & Incest National Network (RAINN), incapacitation is about "being physically unable to resist or unable to speak. Generally it's understood to mean that drugs or alcohol have had such an effect on [a victim] that they're not in a position to express consent." To the state of California, incapacitation means "incapable of resisting because the victim... was unconscious or asleep [or] was not aware, knowing, perceiving, or cognizant that the act occurred."

None of these definitions mattered. The only definition that mattered to Mirkovich was Occidental's:

"Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because s/he lacks conscious knowledge of the nature of the act (e.g., to understand the who, what, when, why, or how of the sexual interaction) and/or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if s/he is asleep, unconscious, or otherwise unaware that sexual activity is occurring.... Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impact an individual's decision-making ability; awareness of consequences; ability to make informed judgments; or capacity to appreciate the nature and quality of the act."

Mirkovich concluded that Jane's "successfully navigat[ing] herself, under her own power to [John's] room... [indicates that she] had an awareness of where she was and that her motor skills were sufficiently intact." However, Mirkovich also concluded that because multiple witnesses describe her as "slurring her speech, stumbling, and not making sense... [Jane's] decision-making ability was significantly impaired.... [She] was not aware of the consequences of her action and she did not have the capacity to appreciate the nature and quality of the act. Accordingly, [Mirkovich] finds [Jane] was incapacitated."

Did John know she was incapacitated? Mirkovich decided that even though John "was more intoxicated than he had ever been," and that "this level of intoxication so impaired [John's] ability to assess [Jane's] incapacitation that he did not have actual knowledge of [her] incapacitation," his state of mind had no bearing. Occidental policy dictated that "being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence... and does not diminish one's responsibility to obtain consent." If a sober person would have known that Jane was too drunk to know what she was doing, Mirkovich reasoned, then John should've known that, too. (At press time, Occidental had refused to release a transcript of the hearing, so all of Mirkovich's findings come from her final report to the college. Mirkovich declined to speak with Esquire.)

Mirkovich declared John responsible for both violations. Occidental, like many colleges, had a variety of options for punishments, ranging from community service and censure to expulsion. (In 2010, the Center for Public Integrity found that a mere 10 to 25 percent of students found responsible for some degree of sexual assault were expelled. Occidental, for its part, once assigned a book report to a student found responsible for sexual assault.) However, John was given the most severe punishment: "permanent separation from the college."

"I was in shock," John says now. "I went from *There's no way I could lose* to *Wow, okay. I'm going to be living with my family again.*" Under Occidental's system, both students can appeal the decision on the grounds of procedural errors or the existence of new evidence. In his appeal, John cited, among other factors, the all-female makeup of the deliberations and Danielle Dirks's potentially prejudicial statements in the investigators' report (which Dirks herself now disputes), but the college found none of his objections qualified.

It was the middle of December, with winter break looming, and John had to act quickly if he was going to transfer to another school before the next semester began. He contacted a small college in the Midwest he'd previously considered attending, and the college agreed to take him, unaware of what had happened at Occidental. It was not a world-class institution, but it would allow him to continue his education while his lawyer plotted his next move. He arrived on the first day in January, just a few weeks after his expulsion from Occidental, and immediately, he says, "I get called into the dean's office. They said, 'We got an anonymous call. Have you been expelled from Occidental for sexual assault?' I was like, 'How do you know this?' And they were like, 'We can't say. An anonymous phone call.' They rescinded their acceptance, and I flew back home the next day." (Officials at the college would only confirm that John had been accepted and that his acceptance had been rescinded.)

John had nowhere to go.

AND SO HE SUED, MOSTLY, HE SAYS, BECAUSE OCCIDENTAL left him no choice. "After learning that I would have trouble attending another institution, I had to press charges. I have to get an education." In February 2014, he filed suit with the L.A. Superior Court to ask for a Writ of Mandate, which would overturn the college's decision and clear John's record on the grounds he didn't receive a fair hearing.

Upon filing his petition, John also asked the court to stay the school's decision so he could apply to other schools without a mark on his transcript that may or may not be final.

To make his case, John submitted the college's investigation and hearing reports as evidence, which made all of the internal documents, texts, e-mails, and deliberations part of the public record. (Occidental says that John or his lawyer had no right to remove these documents from the college's secure server or to make them public. Occidental requested the court seal all the files,



▲ From left, attorney Gloria Allred at a press conference in April 2013 with Occidental students who complained that the college violated federal standards for dealing with their claims of rape or sexual assault; Occidental students on sexual-assault-awareness night, the day after students and alumni filed their Title IX complaint; President Obama signing a memo establishing the White House Task Force to Protect Students from Sexual Assault, in January 2014.

and the court declined to do so.) The names of Jane and John are redacted, though none of the witnesses are so fortunate. After the documents became public, one of the female witnesses described to the Huffington Post that she received hate mail along the lines of: "What kind of a radical fucking man hating dyke are you?" and "Please, slice your goddamn wrists, nail your pussy shut and go wait tables before you harm someone else. It's bitches and whores like you who give women a bad name." (Neither Jane's friends nor any of the other witnesses we contacted responded to our requests for comment on this story. We have withheld their names for obvious reasons.)

Using these documents as evidence, John's attorney, Mark Hathaway, set about attacking the external adjudicator's decision: "It would be difficult to imagine a better documented case of consensual sex than this case, where the female student initiates the sexual contact, asks for a condom in writing, tells a friend she is going to have sex in writing, asks for a condom again when she gets to the room, tells friends she is 'fine' when she is having sex, willingly performs consensual oral sex, is interrupted by a roommate while having sexual intercourse and continues having intercourse, and then texts smiley faces to friends right after having sexual intercourse." All of this, Hathaway argued, demonstrated that Jane "had 'conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction).'" Occidental, meanwhile, defended its procedures and policies as legal and fair, particularly given its prerogatives as a private university.

In deciding whether to issue the stay, Judge James Chalfant told John's attorney and the lawyer representing Occidental that "[John's] got a pretty strong position.... I would think an eighteen-year-old boy who gets these texts would think she's fully capable of consenting." The court is expected to issue its final decision in May, but Chalfant granted John's request for a stay: "Why wouldn't it be in the public interest to stay this scarlet letter that's being attached to his transcript until such a time as there is a final decision on the merits?"

A few weeks after filing with the Superior Court, in an apparent effort to show Occidental's inconsistent application of its own sexual-assault policies, John filed a sexual-assault complaint against Jane Doe with Occidental. He claimed she did not obtain his consent prior to performing oral sex on him—as he doesn't even recall this happening, and nobody ever asked Jane whether she received consent from John, he believes it should be subject to the same scrutiny under which he was investigated. (Sexual intercourse, as it's defined in the Occidental policy, includes oral sex, and there is no statute of limitations on when an accuser can file a claim.) However, because he would not meet with the university's investigator without his attorney present—just as he wouldn't meet with the investigator during the earlier investigation without his attorney present—the school declined to hear his complaint, citing his "inconsistent assertions, the timing of [his] complaint, and [his] failure to cooperate in the initial assessment process."

With Occidental refusing to investigate John's accusation of sexual assault, John's lawyer then filed a Title IX complaint against Occidental with the Office for Civil Rights in mid-October. The OCR, which receives many complaints but only commits full investigations to a fraction of them, has yet to determine whether it will look into John's case.

WHAT ABOUT ALCOHOL?

There are growing efforts, and countless creative ideas, to try to minimize alcohol's role on college campuses and the part it plays in sexual misconduct. While there is only one known cause of rape—rapists—it is impossible to overstate the role that drinking to excess plays in putting everybody involved in potentially dangerous situations. Limit beer at sanctioned parties to cans, as UVA decided in the fallout from the *Rolling Stone* scandal. Ban hard liquor, per Dartmouth. Lower the drinking age so staff or security personnel could supervise parties. Open up sorority houses to take away fraternities' home-field advantage. Encourage marijuana use. "I would never have [gone back to John's room] if I had been sober," Jane told investigators, and John says alcohol basically annihilated his better judgment. It's hard to say they're wrong.

"THE CURRENT SYSTEM IS, ON THE WHOLE, poor and improving," says Sokolow, the risk-management consultant, which turns out to be the nicest thing anybody has to say about how colleges are handling sexual-assault allegations. (The new documentary *The Hunting Ground* captures the appalling and unethical ways that many colleges continue to treat women who report sexual assaults.) "The Department of Education has created a square-peg/round-hole phenomenon by asking colleges to take on a function that is simply not innate, or intuitive, for those who work on college campuses. And I think what's happening on a lot of campuses is they're feeling the pressure of OCR to push things forward that really should not be."

"These investigations are hard to do even for trained law-enforcement professionals," says Berkowitz of RAINN. "So many schools turn them over to people with minimal training, and the process is just set up in such a way that it's really hard to investigate the truth of the crimes. And colleges just are not very good at it."

"Imagine a student is murdered on a college campus," says David Lisak, a psychologist who has studied sexual assault—including cases at colleges and in the military—for more than two decades. "Nobody thinks that colleges should investigate and adjudicate the case. Well, rape is really not that much less serious. Rape is a very serious, violent crime... so do I think that universities are equipped right now to do a proper investigation? No."

Under the current guidelines recommended by the Office for Civil Rights, schools have considerable leeway in how they structure their investigation and adjudication processes. Some rely on multiperson hearing panels and some rely on what's called the single-investigator model; some colleges have more expansive definitions of assault than others. And some provide more protections to the accused than others, an issue that has gained prominence as increasing numbers of accused students file lawsuits against their former colleges for unfair hearings.

Last October, twenty-eight professors at Harvard Law School wrote an op-ed in *The Boston Globe* detailing their objections to Harvard's recently enacted sexual-assault policies, which they believe "lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused, and... [jettison] balance and fairness in the rush to appease certain federal administrative officials." (Harvard's policies align with both the guidelines issued by the OCR and Occidental's policies.) One of the signers, Nancy Gertner, writing recently in *The American Prospect* and describing herself as "an unrepentant feminist," argued that "just because the legal system has moved away from the view that all rape accusations are contrived does not mean it must move to the view that none are."

Janet Halley, another cosigner and a prominent feminist legal scholar, explained the larger issue this way: "Thing number one: We want to have workplaces and educational settings where sexual abuse is absent," she says by phone from [*continued on page* 124]

Occidental Justice

[*continued from page 99*] her office in Cambridge. "Thing number two: When we're charging somebody with a violation of norms that are morally and legally important, we need to understand that we are bringing a major accusation against them, one that can destroy their career, their peace of mind, and their reputation. And three, we need to remember that the legitimacy of the sex-harassment system will be squandered if we don't try to do both."

Halley finds fault with many of Harvard's policies, including the preponderance standard. "Every legal lever has been ticked in the direction of the accuser and against the [accused]. . . . I think it's almost in bad faith to be arguing that we 'need' [the preponderance standard] because we have to get equality of the parties. It's called going too far." What's more, she doesn't buy the idea that because there is no prospect of losing one's liberty, the preponderance standard is appropriate. "The idea that what we're talking about here is just a civil sanction, the equivalent of money damages, is unreal to me. When we expel or suspend a student and put that on the transcript, it's going to be very hard for that person to go to any other institution of higher education." (In a letter rebutting John's appeal to Occidental, Jane's lawyers wrote, "Ms. Jane Doe was raped by . . . John Doe," citing the adjudicator's "well-reasoned, thirteen-page opinion," which suggests just how empty the distinction really is between sexual assault as a breach of student conduct and rape as a criminal offense.)

Like both Halley and Gertner, Joseph Cohn of FIRE thinks the preponderance standard doesn't reflect the true gravity of the circumstances, and "since [the accused] can potentially be expelled and branded a rapist, the right to counsel in these hearings seems like it should be required." The recent Violence Against Women Act reauthorization included a provision that, starting in July 2015, all schools need to allow both students to have the advisor of their choice, including lawyers, throughout the process. However, it's up to the schools whether the lawyer can speak or not, and any lawyer could effectively be reduced to what more than one expert has described as a "potted plant."

With active, participating attorneys comes the prospect of heightened scrutiny of everyone involved—including the accuser, who at present can be shielded from having to answer questions from either the accused or the accused's representative. Critics of the current system believe that without meaningful scrutiny through cross-examination, there is no way to achieve a faithful verdict. "Sexual assault advocates will argue," Gertner wrote in *The American Prospect*, "it will be traumatic for the [accuser] to confront [the accused], even if only through her representatives rather than directly. It will be traumatic for the [accuser] to be asked to repeat her story over again. . . . These arguments, however, assume the outcome—that the [accuser's] account is true—without giving the accused an opportunity to meaningfully test it."

Or, as Cohn put it, "The way we sort through fact and fiction in any process that's fair is by putting accusations through scrutiny. We can do things that try to make it less difficult [for the accuser], but it can't be avoided." Nobody is suggesting a "Did you order the code red?" level of questioning, but merely a guarantee that the accused (or his representative) can ask reasonable questions of the accuser (if not directly then through a representative) about the accusations. At Occidental, as at many colleges, those accused can submit questions for the accuser (and vice versa) to the hearing coordinator, who then has the discretion to choose which questions he or she will ask. John says that of the thirty-eight questions he submitted to his hearing's coordinator, the ones he most wanted the coordinator to ask—like how Jane could remember performing oral sex on John but not remember having intercourse, or how she could remember John telling her, while they were having intercourse, that his roommate had just walked in on them yet not actually remember having intercourse—were never asked, and nobody bothered to tell him why.

The thing is: The system, as it was designed and reformed over the past few years, worked here. The OCR investigation of Occidental created a campuswide, historically high sensitivity to allegations of sexual assault. The college exercised its discretion broadly, without transparency—a lone adjudicator instead of the three-person panel; an expansive, extralegal definition of incapacitation; the selective choice of which questions Jane had to answer—just as the federal guidelines allow. The criminal burden of proof proved too high a barrier for Jane to meet, but the college's lower preponderance standard delivered the desired outcome for her. And John's expulsion, with a potential mark on his transcript for sexual assault, is likely to result in a life of diminished opportunity. There were no mistakes at Occidental, and if John's experience with college justice sounds reasonable—if it sounds fair—then this is all much ado about some kid getting exactly what he deserved.

If, however, something about this doesn't sound quite right, and if the L. A. Superior Court judge ultimately finds John's "strong position" from the hearing is enough to overturn Occidental's ruling, then there will be more and more conversations (and lawsuits) about whether colleges, with their myriad competing interests (reputation and ranking, building endowment and protecting athletic programs), can ever be competent and trustworthy stewards of justice. Whether everyone might be better served by a better-funded, better-trained police force that uses advanced police work (see page 94) to investigate all claims of sexual assault (and if it doesn't, it'll have to answer to the elected officials who have to answer to voters). Whether more prosecutors might be convinced to stop limiting themselves to slam-dunk cases—as many critics claim—and start taking more chances to try putting sexual assailants behind bars (and face removal from office if they refuse to do so). Whether colleges might be allowed to leave the actual investigation and adjudication to law-enforcement experts while still providing sustained, on-the-ground support and guidance for the accuser and the accused. Or, ideally, all of the above, anything that would treat sexual assault as far too serious an accusation for jerry-built adjudication—and too terrible an offense to treat as less than a crime. Such an approach would also benefit women who don't go to college and face a 30 percent greater risk of being assaulted between the ages of eighteen and twenty-four than do their college-attending peers, according to one recent study of the Department of Justice's National Crime Victimization Survey data from 1995 to 2011.

"No one here knows," John says, finishing his chai. He's enrolled at a college not far from the Starbucks—unlike a great many other schools he wanted to attend, this college didn't require what's called a transfer registrar report from Occidental, which would have indicated his expulsion. (He had to supply his transcript, which, because of the order of stay from the Superior Court, is clean for now.) And unlike his experience at the small midwestern college he attended for approximately one hour, no one's phoned in an anonymous tip yet. "I haven't been called into the dean's office, but it's always in the back of my mind."

His case is on the L. A. Superior Court docket at the end of May. If the judge finds in his favor, his family may pursue additional litigation against Occidental to cover its legal fees, which amounted to $76,000 as of February. He still has friends attending Occidental, though not his former roommate—who declined to comment but who has transferred to a less politically toxic campus, John says—and none of the other witnesses from that night. He doesn't know what they think of him, if they think of him at all, though he likes to remember what one of them—Jane's close friend, one of the friends who pulled her out of John's room to begin with—told investigators: "I think Jane was just as much a part of this as John. . . . She could have said, 'No,' or she could have just not responded to his texts, or just not gone back down to his room."

Jane, meanwhile, remains at Occidental, though the *Los Angeles Times* reported last spring that she had taken some time off and was in therapy for what her lawyer characterized as post-traumatic stress disorder. She'll likely be there still this fall, when a few hundred lucky teenagers, the Occidental class of 2019, arrive on campus, the years in front of them filled with nothing but possibility. ■

Exhibit 10

Op-Ed Why it's unfair for colleges to use outside investigators in rape cases

Emma Sulkowicz, a senior visual arts student at Columbia University, poses in 2014 with a 50-pound mattress, which she carried around campus for several months to protest the university's lack of action after she reported being raped during her sophomore year. (Andrew Burton / Getty Images)

By **Justin Dillon, Matt Kaiser**

SEPTEMBER 16, 2015, 5:00 AM

In recent months, public attention has focused on campus sexual assault like never before. As a result, the way that colleges and universities handle rape allegations is evolving rapidly.

Some of these reforms are good — students should have ready access to counseling and support services, and colleges should have conversations with their students about the norms of consent on campus. But as lawyers who have represented dozens of accused students nationwide, we believe that many of these changes are warping traditional ideas of due process. One especially worrisome development is the move by schools to use outside investigators to decide cases.

·win situation. Finding a student responsible for
n — and put the school at risk of a lawsuit. Finding
rom the Department of Education — currently 124

Exhibit 10

schools and counting — a Title IX lawsuit, or public shaming along the lines of what happened to Columbia University when one of its hearing panels exonerated Emma Sulkowicz's alleged assailant. Hers was the mattress seen 'round the world.

To protect themselves, a growing number of schools, including Harvard, Dartmouth, the University of Michigan and Boston College, are turning to the “single investigator” model — or as we call it, after Victor Hugo, the “Inspector Javert” model. They outsource the entire investigation and, increasingly, the ultimate decision about whether there was a sexual assault, to a single hired gun. Once the outsider decides there was a rape, the school takes the case back and imposes a sanction — frequently expulsion. Although the student may appeal the decision, reversals are hard to achieve. (Colleges don't make statistics available, so we're basing that judgment on our professional
experience.)

The Javert model is perfect for schools hoping to avoid liability. It's decidedly less perfect for accused students.

These investigations are often run by former campus police officers or former sex-crimes prosecutors. They have dedicated their careers to uncovering wrongdoing, so it's only natural that they will tend to view every fact through a prism of guilt.

“

The "single investigator" model ... is perfect for schools hoping to avoid liability. It's decidedly less perfect for accused students.

Worse, these outsiders are not actually independent; they are looking for repeat business from deep-pocketed universities, and they know that it's cheaper and easier for schools to deal with a lawsuit from an expelled student than a federal investigation, a Title IX lawsuit and a public attack.

The incentives are clear and they do not favor the accused.

An accused student, moreover, has no meaningful chance to challenge the evidence against him. He isn't even allowed to ask a witness a question that didn't occur to the investigator who, again, isn't motivated to zealously scrutinize allegations.

Yet more extreme: An accused student often never sees the actual evidence against him — verbatim transcripts or recordings. Instead, Javert may give truncated witness summaries to the student and ask for input before a final decision is entered. But witness summaries are to witness interviews what CliffsNotes are to books, and they are drafted by an investigator who has every incentive to minimize exculpatory information.

A hearing model — in which three people drawn from the university community review evidence and hear live testimony — is far from perfect. The panelists are often poorly trained and are too quick to believe the more

sympathy-inducing party, which is almost always the accuser. Neither side is given any real power to challenge the evidence. They are, in short, often kangaroo courts.

But virtually every client we've represented would still take a kangaroo court over Javert. Campus sexual assault cases turn entirely on the credibility of the witnesses. Even a bad hearing allows the accused to find out what's being said about him and provides some small way to explain why it isn't true. In the Javert model, everything happens behind closed doors.

Fairness, you see, isn't the point of the Javert model. It shields a college from liability and bad publicity. It gives a college cover with the Education Department. It handsomely rewards the investigators who make money from it. And it's predictable. In our experience, Javert finds what virtually everyone involved in this process — except the accused — wants him to find. No one ever said Javert was bad at his job.

Justin Dillon and Matt Kaiser are partners at Kaiser, LeGrand & Dillon in Washington and have represented dozens of students nationwide in campus sexual assault cases.

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Exhibit 11

BIAS LEGAL SEXUAL ASSAULT

University of Texas tells its police to hide evidence that favors students accused of rape

COLLEGE FIX STAFF
MARCH 14, 2016

Advocates for due process in campus rape adjudications have long sought to remove college officials from investigations because their various conflicts of interest render them unable to provide basic fairness to either party. (See this **recent column** by Barnard College student Toni Airaksinen on her involvement in sexual-misconduct cases.)

That's why it's troubling those advocates to see how the University of Texas-Austin is attempting to turn a neutral institution – its campus police – into an advocate for one party.

Its new "**blueprint**," flagged by ***Inside Higher Ed***, tells campus police to conduct *worse* investigations. UT-Austin's Institute on Domestic Violence and Sexual Assault developed the manual, which tells police to ignore contradictions and

Exhibit 11

inconsistencies in rape accusers' allegations because they must be the result of "trauma":

> While conducting research on why so few incidents of sexual assault are prosecuted, Rebecca Campbell, a psychology professor at Michigan State University, interviewed police officers to learn more about how they perceive victims they interview. "The stuff they say makes no sense," she **quoted one officer** as saying. "They can't get their story straight," said another. "No way it's true. No one would act like that if it's true."

What *Inside Higher Ed* ignores, but the **Foundation for Individual Rights in Education** picks up, is how the blueprint instructs police to do interviews with rape accusers:

> In particular, Section 7 of the manual, billed as a "toolkit" for police investigators, warrants further discussion. … FIRE is deeply concerned by the recommendation that police investigators—who even by the report's own admission are supposed to serve as "neutral fact finders"—should deliberately conduct their investigations in such a way as to "anticipate" and "counter" possible defense strategies.
>
> One of the most disturbing of these recommendations relates to the defense strategy of "impeachment by contradiction," which happens when "[a] witness testifies to facts at the trial that are different from facts recorded in their case documentation." To prevent the defense from being able to do this, the report essentially suggests that investigators avoid creating any record in which parties might make contradictory statements. So, investigators should "avoid repeating a detailed report" when conducting follow-up interviews, and they should "reduce the number of reports prepared by investigators," all to limit the defense's ability to challenge the prosecution's case.
>
> An investigator who is trying to anticipate and counter defense strategies in the course of his/her investigation is not acting as a neutral fact-finder—that is, someone who is trying to find out what actually happened.

UT-Austin isn't simply telling police to "take steps to ensure that relevant evidence will be admissible," but asking them to "refrain from documenting what could be characterized as relevant exculpatory evidence—inconsistencies in a party's story—in order to help one party's case," FIRE's Samantha Harris writes: "That isn't the role of a neutral fact-finder."

The blueprint also lays out several "myths" (Table 3.5) that many people outside of the Title IX industrial complex would think are very debatable.

Two examples: "If a girl initiates kissing or hooking up, she should not be surprised if a guy assumes she wants to have sex," and "Rape accusations are often used as a way of getting back at guys" (persuasively argued in litigation by accused students who note the curious timing of rape allegations).

Read the blueprint, **the story** and **FIRE's analysis**.

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IMAGE: Seamartini Graphics/Shutterstock

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SOMETHING WE SHOULD KNOW?

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Exhibit 12

SUSPENDED COLLEG EXUAL ASSAULT 'GUIDANCE'

BY MAX KUTNER ON 4/20/16 AT 1:

Suspended Colorado State University-Pueblo student athlete Grant Neal is suing the U.S. government for the sexual assault guidance it issued in 2011.

AUNDREA HASSELBACH

U.S. COLLEGES AND UNIVERSITIES CAMPUS RAPE CAMPUS SEXUAL ASSAULT LAWSUITS COURTS SEXUAL ASSAULT

A former Colorado State athlete who was suspended for sexual assault last fall is now suing the United States government for gender discrimination, while alleging that the Department of Education's sexual assault guidance violates federal laws, therefore suggesting that every campus sex assault case decided under that guidance could be overturned.

Exhibit 12

According to the lawsuit, Grant Neal, a sophomore at Colorado State University-Pueblo (CSU-Pueblo) who played football and wrestled at the school, had consensual sexual intercourse with a female classmate, who is not named in the lawsuit, last October. The next day, a peer of that woman, who is also not named, reported to the school that Neal had raped the woman.

In December, after investigating, the school found that Neal was more than likely responsible for sexual misconduct—the standard that the federal Department of Education tells schools to use—and suspended him for as long as the alleged victim remained at the school. The woman said he never raped her, according to the lawsuit.

After the ruling, Neal apparently lost athletic scholarships and has found that no other school will admit him. His suspension had critics, and a petition for the university to overturn it has nearly 2,000 supporters.

The lawsuit names the university and several school officials, including its president, as defendants, and notably also includes the U.S., the Department of Education and the Department of Education's Office for Civil Rights (OCR), as well as Secretary of Education John King Jr. and Assistant Secretary for Civil Rights Catherine Lhamon—a first in such cases by male students accused of sexual assault, according to legal experts.

The basis for the lawsuit is the OCR's controversial "Dear Colleague" letter, which it issued to colleges and universities in 2011. The letter stated that sexual violence at schools falls under Title IX, the federal law that prohibits sex discrimination in education settings. The OCR offered guidance for how schools should handle sexual assault and violence cases. It also said those that mishandle them would be in violation of Title IX and could lose federal funding.

Advocates for male respondents in campus sexual assault cases say the 2011 guidance led to an overcorrection on the issue in a way that discriminates against young men, is inherently anti-male and denies them due process. Neal's lawsuit alleges that the OCR's guidance violates the law.

"We believe the 'Dear Colleague' letter issued by the U.S. Department of Education is illegal and unconstitutional," Andrew Miltenberg, who represents Neal and has become a go-to lawyer for male respondents in sexual assault cases, tells *Newsweek* via email. "By essentially encouraging male gender bias, the Administration's directive has violated Title IX and created a new class of victims on campus—accused male students who have had their right to due process stripped away."

Male students accused of sexual assault are increasingly suing their schools, and especially since 2013, more of them are claiming Title IX discrimination—the same violation that female sexual assault complainants have made, alleging that schools mishandled their claims in a way that goes against their Title IX rights. Most of these so-called reverse-Title IX cases have been unsuccessful: In March, a judge dismissed a high-profile case against Columbia University by Paul Nungesser, the student who was the subject of classmate Emma Sulkowicz's "mattress" art project and protest. Nungesser has until April 25 to file an updated complaint. Miltenberg represents him too and has said he plans to file.

However, a handful of these cases have recently survived motions to dismiss, including ones against Washington and Lee University, Brown University and Brandeis University.

Neal is suing for violations of Title IX and due process and breach of contract. He also alleges that the "Dear Colleague" letter violates the federal Administrative Procedure Act, which mandates a notice and review process for when the government issues a new rule. The lawsuit claims that the OCR issued "binding law" under the guise of "guidance" without following the APA procedures.

Such a violation, the lawsuit alleges, means the "Dear Colleague" letter and all disciplinary decisions made under it are "unconstitutional, arbitrary and void." A ruling in favor of that claim might open any campus sexual assault decision a school made since 2011 to a challenge.

Hans Bader is a senior attorney at the Competitive Enterprise Institute, a nonprofit public policy organization, who practices education law and previously worked as an attorney at the OCR. He points out that a footnote to the "Dear Colleague" letter says it does not add to existing law, and yet "it requires colleges to follow those letters to the T," he asserts.

"Requiring schools to apply that as gospel when they essentially made it up out of nothing—that's a plain violation of the APA because you have an entirely new legal obligation without notice and comment, without even the pretext of any real basis," he says.

Several advocates for male respondents have recently vowed to take on the OCR. Last week, Families Advocating for Campus Equality, a due process advocacy organization led by mothers of male students accused of sexual misconduct, filed testimony with a Senate subcommittee opposing a federal proposal to increase the OCR's funding by about 30 percent. "Approval of such a dramatic increase in OCR's budget will only reward OCR for its much-criticized overreach," the organization said.

And earlier this month, the Foundation for Individual Rights in Education, a nonprofit that advocates for free speech and due process on campus, called for students to help challenge the OCR for the same "abuse of power" that the Neal lawsuit alleges. A FIRE spokesman says the Neal lawsuit is unrelated to the organization's effort.

"When an administrative agency wants to promulgate a regulation that will force people to change their behavior in some way," says Justin Dillon, an attorney who is working with FIRE on its effort, "the agency, No. 1, has to put out a notice that it's thinking of taking this action, and No. 2, allow people to comment on this action, whether they're for or against it."

Those procedures, Dillon says, ensure that only federal employees with accountability to the voting public are the ones setting rules. "Agencies are not Congress. Agencies are unelected people," he says. "The staff of the agency are just garden-variety federal employees with absolutely no democratic accountability. The idea is, you don't want to have people who are not accountable to the voters basically making laws" without those review procedures.

Should a judge determine that the "Dear Colleague" letter is null and void, Dillon says, some "might argue that they have a right to reopen a case" under pre-2011 procedures—unless the ruling that vacates the letter only applies moving forward.

Dillon, who is not involved in Neal's case, says he and FIRE are "very close to filing" their own lawsuit that makes a similar argument.

The OCR has been a defendant in at least one other lawsuit. In 2005, plaintiffs sued the OCR, alleging its investigation into a possible Title IX violation involving male and female high school hockey teams was flawed. A federal court judge dismissed the case in 2007.

A CSU-Pueblo spokeswoman declined to comment on pending litigation. A Department of Education spokesman declined to comment for the same reason.

As of April 13, the OCR is investigating 175 colleges for their handling of sexual violence cases.

"We've seen just a cataclysmic change around the country in terms of attention to the issue; responsiveness to it; and training, preparation for our students so that we can see safer campuses," Lhamon, the civil rights assistant secretary, told *Newsweek* last year. She said the OCR had not yet rescinded funding from a school for mishandling a sexual violence claim but added, "I would absolutely be prepared to do it."

[redacted]

T&T Laid Off Hundreds of Workers in Time for Christmas

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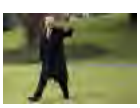

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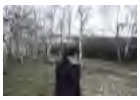

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The Other Side of the College Sexual Assault Crisis

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CLAREMONTINDEPENDENT

SJWs Create 'Shady Person of Color' List to Target Dissenters

CAMPUS NEWS MAY 5, 2016 *Steven Glick* 62

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Exhibit 13

During the height of the racial protests at Claremont McKenna College last November, CMCers of Color issued a list of demands including the resignation of Dean Spellman and the establishment of a permanent "safe space" that would function as a Resource Center for students from marginalized backgrounds.

The student group wrote an official proposal to the administration, but also created a private Google doc with other miscellaneous items they wanted for their safe space, such as kitchen items and a sound system.

Among this list is a Shady Person of Color (SPOC) board, which includes a royal court of five members of the CMC community who opposed the group. Brandon Gonzalez, the King SPOC, is the Assistant Dean of Admissions. Gonzalez led the diversity initiative that CMCers of Color felt misrepresented CMC. The Queen SPOC, Hannah Oh (CMC '15), was the Editor-in-Chief of the *Claremont Independent* at the time,

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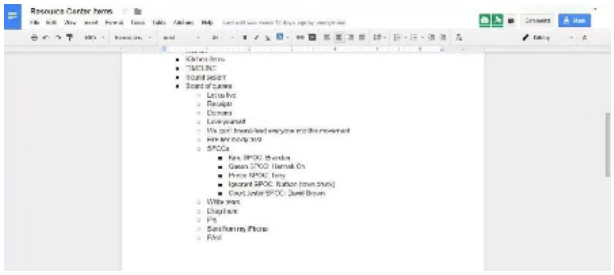
and coauthored an editorial critiquing the protestors' tactics. In a similar vein, Nathan Tsai (CMC '17), the "Ignorant SPOC," wrote a letter that garnered 277 signatures in opposition to the protestors' demands.



Tony Sidhom (CMC '17) was included on the list because he was critical of the movement as a whole, particularly with regards to the methods they used. Sidhom didn't agree with the idea that CMC was institutionally racist, and was vocal in raising his concerns at Student Senate.

The Court Jester SPOC, David Brown (CMC '19), was critical of the protestors' lack of logistics and data as well as their tactics. Brown told the *Independent*, "If [CMCers of Color] had provided a single piece of evidence indicating that they were

Wear Hoop Earrings

MARCH 7, 2017

Safe Spaces Segregate the Claremont Colleges

NOVEMBER 17, 2015

Students Demand Administrators 'Take Action' Against Conservative Journalists

APRIL 17, 2017

being systematically kept from performing well, I would have believed them. If I, in my own experience, had noticed a single instance where I was being held down based on the color of my skin I would have believed them. But they didn't, I didn't, and I don't believe them."

"I find the fact that they named themselves 'CMCers of Color' an insult. Instead, they purposefully use their name to manipulate their appearance as if to seem they were anything more than just 30 militant new wave liberal students," Brown added. "I heard one of the protestors called a friend of mine 'too rich to be black.' Doesn't it seem a little strange to you that the people supposedly fighting racism are the ones perpetuating racist stereotypes? The entire notion of fake or 'shady' people of color is just blatantly racist. Since when does being a person of color not allow you free thought? The whole point of this is so the protestors can still feel good about themselves by saying that they represent all 'real' people of color

campus, but in order for them to consider you 'real,' you have to be one of them. Martin Luther King, Jr. said he wanted people to be judged off of the content of their character rather than the color of their skin. Oddly enough, the protestors have consistently done the opposite. The protestors are the most racist group on campus I've seen to date."

The use of the term 'SPOC' to dissociate students of color who dissented from the protest movement was widespread last semester. "Pomona's new Latinx club was actually planning on creating a 'SPOC calling-out' committee" to target Latino students who did not agree with them, stated Kevin Covarrubias (CMC '18). "The fact that such an idea was even brought up is deeply disturbing. As a 5C community, we should be all for constructively engaging with each other while debating the actual substance of our beliefs, not indulging in baseless ad hominems directed at one another."

Edit: This story has been updated to include the name of David Brown, who initially requested anonymity.

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APRIL 8, 2017

Kyle • 2 years ago

SJW vs SPOC hunger games ... can't wait

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Jen • 2 years ago

We don't teach tolerance anymore, with the disturbing effect of dismissing -- with extreme prejudice -- those with different opinions. A focus on race will enhance resentment and produce more racists. A focus on a vibrant intellectual life replete with diverse viewpoints enhances understanding. It's mind and character - not skin color - that creates connections between and among humans. Strident demands stifle debate and encourage the very worst

demands stifle debate and encourage the very worst elements of the mob. Seek 1st to understand, then be understood.

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Maria Carreira • 2 years ago

Please add my name to the SPOC list.

Reply • Share ›

Amused bystander • 2 years ago

Enough commentators have noted that the protests had important points to make regarding their own opinions. But I disagree that the point of protests is to disrupt. The point of protests is to bring about positive change. That's not accomplished by suppressing alternative viewpoints or by threatening and bullying, but by constructive engagement. Indeed, the shutting down of contrary voices is as baldy oppressive as anything they are protesting. Where does one draw distinctions between immaturity, naiveté, and evil? Shouting obscenities and shaming students of color with alternative opinions certainly reflects anger, but it does not set the stage for the dialogue needed to advance a cause. What makes such behaviors any different in tactics compared to crazed Trump supporters? If your cause is just, reason will win out in the court of popular opinion.

If "safe spaces" are needed for anybody, it seems that the maligned "SPOCs" are the candidates for protection. Not the bullies. I agree with Dr. Martin Luther King: Don't judge people by the color of their skin, but by the content of their character. And on that assessment, some of you guys fall short of

deserving respect.

Reply • Share ›

Sherlock • 2 years ago

It is a common tactic for apologists to attack the messenger to avoid confronting the issue. A protest is not the time for civil discourse, protests serve a different purpose. Complaints that calm conversation with the opposition does not happen at a protest is as straw man an argument as there is. No one likes protesters. Disruption is the point. Instead of complaining about the disruption, maybe try and root out the problem? Pretty sure CI's predecessors would have done so...

Reply • Share ›

Huh? ➚ Sherlock • 8 months ago

So the burden of peace is on those being harassed and not on the harassers? Hmm... I suppose that means that the slaves of the American South just weren't doing it right then... who knew?

Reply • Share ›

Huh? ➚ Huh? • 8 months ago

Oh yeah, one more thing... also pretty sure we call it 'domestic abuse' when a man tries to force a woman to listen to him with "disruptive" tactics. Just saying.

Reply • Share ›

Bill Pasadena • 2 years ago

SPOC -
What happened to calling them Oreos?

Reply • Share ›

CraigAustin • 2 years ago

You would think, with all the discussion about "rights", some adult would, at some point mention "obligations", there are no rights for adults without obligations. The right to free speech is only valid if you fulfill your obligation to let others speak freely, not your friends, your most hated enemies , once you defend their right to speak, you have earned

yours, and your enemies are obligated to allow you to speak. If you think yours rights as a law abiding citizen are set in stone, break some laws and try execising them from jail, the rights of a taxpayer are tied to paying taxes. The idea of people old enough,but certainly not mature or bright enough to be in college whining about their "rights" without any idea of their obligations is a disgrace on their parents and peers, somebody should give them the details , and no Facebook until they get it.

Reply • Share ›

Holden Caulfield • 2 years ago

LMFAO. Why would anyone go to this school? What a piece of shit institution for putting up with this. I would transfer...yesterday.

Reply • Share ›

Clem Cirelli • 2 years ago

So this is what a liberal arts education has come to: suppression of dissenting views, silencing of voices speaking their own opinions instead of that of the mob, and students labeling people according to their ethnicity and race while bleating for "safe spaces" in which to hide under rocks for cover from the consequences of their own heinous behaviors? What a waste of time.

Reply • Share ›

Amused bystander • 2 years ago

The antics of "CMCers of Color" called to mind Winnie Mandella's "Mandela United Football Club". Obviously not in the same league, but suffering a similar perversion of ideals.

Various folks have noted how sad it is that their goals, while laudatory, have been pursued in an immature, counterproductive, destructive, and prejudicial manner.

This "list" they created demonstrates that they can be as racist as those they condemn as racists. It's sad to see the damage they have created within the 5 Cs community. I'm just glad that their ideology now made so very naked. Time for reflection, contrition, and rebuilding trust. That begins with listening to others, rather than shutting them down.

 • Reply • Share ›

Marcus Agard • 2 years ago

The worst part of this whole movement is that there could have been an actual conversation and actual change, but at every opportunity for discourse, CMCers of Color has done something to shoot themselves in the foot. I really hope that this movement dies so that real positive change can happen next year.

 • Reply • Share ›

Really?!? • 2 years ago

As a recent cmc alumna of color, I was pretty proud of the movement and all for supporting these students that felt neglect and overall lack of support. However when watching the protest I was ashamed of how these students voiced their opinions with unnecessary profanity and calling out. Now this?!?! I don't know how these students expect to garner any support for their (actually) good cause. I'm very sad to see them misrepresent POCs and further discrediting all of their hard work and the issues at hand through this immature and inappropriate action. I get it, there's a bunch of anger and frustration but this in no way was the right way to use those emotions. I hope they can learn something from this debacle and move forward to make some positive changes on campus.

 • Reply • Share ›

So saith the Lord... ➚ Really?!?
• 8 months ago

The anger of man does not produce the righteousness of God. - James 1:20

When you are angry do not sin; do not let the sun go down on your anger. - Ephesians 4:26

Reply • Share ›

Don'tkillmetoo • 2 years ago

You should clarify when your pictures are from (i.e. One at the top): makes a big difference to outsiders/alums if that's from the fall fiasco or if there have been continued protests

Reply • Share ›

Taylor Schmitt ➚ Don'tkillmetoo • 2 years ago

This picture is from the protests this past fall. Sorry for any confusion this may have caused.

Reply • Share ›

Andy • 2 years ago

I personally consider myself to be quite liberal in most regards but have become increasingly disenfranchised from the greater community in Claremont. The substitution of logic and understanding for irrationality and emotional reasoning is appalling and something to be ashamed of. Rather than spread a message through debate, benevolence, and being the better person these individuals and many others instead chose the path of proselytization via bullying. Any movement that sees force and the antagonizing of any who don't conform to their twisted world view is a group I can never support in any capacity, regardless of whether I agree with their grievances or not.

Reply • Share ›

Jonathan Mitrosky • 2 years ago

The people need to stand up to these groups period. I am so sick and tired of hearing these little left wing turds attempting to turn people in and demanding resignations of people that disagree with them. Just go to class and learn something. Stop with this liberal crap. We are destroying America. The media has only added fuel to this new age left agenda that is warping young people's minds that it is ok to be offended by everything and expect people to bow for your every demand. Guess what? If you think

your every demand. Guess what? If you think someone disagreeing with your crappy agenda is bad wait till you get in the real world. Join the Military and go see how communist countries handle groups like yours. Let's just say it won't end well for you.

Reply • Share ›

Little left wing turd ➚ Jonathan Mitrosky
• 2 years ago

@Jonathan Mitrosky - We're making America Great Again. Have a good day sir

Reply • Share ›

Cuckkiller ➚ Little left wing turd
• 2 years ago

Kill yourself, faggot

Reply • Share ›

Elliott Hamilton • 2 years ago

I'm glad that CMCers of Color are being exposed for being the racist, intolerant bigots they are. This screenshot only confirms what we've already known.

Good job, leftists.

Reply • Share ›

Joseph Reynolds ➚ Elliott Hamilton
• 2 years ago

Once again its impossible for people of color to be racist. What is racism Elliott???WHaat is it????

Reply • Share ›

student ➚ Joseph Reynolds
• 2 years ago

@joseph

a belief that the members of different racial or ethnic groups possess specific characteristics, abilities, or qualities, which can be compared and evaluated.

by definition, literally anyone can be racist.

Reply • Share ›

Hannah Oh • 2 years ago

The screenshot was obtained and sent to us from a source within CMCers of Color. We aren't publishing the name of the source, for obvious reasons. In every other case, the CI has cited where its evidence comes from.

Reply • Share ›

curious • 2 years ago

I appreciate the effort to complicate the narrative by exposing what can go on behind the scenes among members of the movement. The fact that the Doc is private does not excuse its divisive rhetoric, and the quotes included certainly help to bolster the argument.

I hope that, as the CI writers continue to provide an alternative viewpoint in the predominantly liberal climate of Claremont, they will also strive to reach and maintain high journalistic standards by providing sources for all of their evidence. This article fails to do that.

Reply • Share ›

curious • 2 years ago

Where did you find your image of the private Google Doc?

Reply • Share ›

does it matter? ➚ curious • 2 years ago

I don't think that that matters at all. For example, in the Trump facebook fiasco, I don't believe the fact that it was a private group message discouraged commentators for maintaining the stance that the statement

was completely uncalled for.

Reply • Share ›

Lol • 2 years ago

Will the real slim shady please stand up

Reply • Share ›

OhCool • 2 years ago

I find it upsetting that although clearly wishing to remain anonymous, he was called out by commentors. Presumably, the commentors are students who claim that others violate the rights of people of color. Exercise your right to freedom of speech by all means and call out his name however my conclusion is that social justice warriors are the aggressors that they frame others to be.

Reply • Share ›

Bob ➚ OhCool • 2 years ago

Thank you. I will continue to exercise my freedom of speech. My conclusion is that I find it humorous that you found my comment upsetting.

Reply • Share ›

OhCool ➚ Bob • 2 years ago

Bob, I find it troublesome that those who claim to stand up for marginalized students will outwardly oppose the wishes of marginalized students who disagree with those claiming to stand up for marginalized students [insert grammar check from Dale].

That's not really a humorous concept in my opinion.

Reply • Share ›

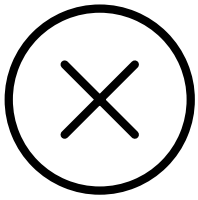
Haywood Jablowme ➚ Bob

• 2 years ago

Exhibit 14

89.3 KPCC

Member-supported news for Southern California



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    - The Social Safety Net
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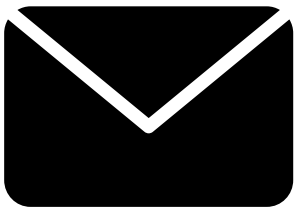
- 
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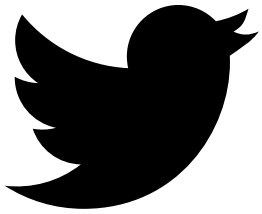
- 

Should schools flag transcripts of campus sexual offenders?

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Some schools are considering adding a notation on a student's transcript for having been punished or dismissed for sexual misconduct.
Mario Tama/Getty Images

Brianna Flores | AirTalk® | May 31, 2016

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17:59
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As awareness of campus sexual assault increases, some schools are considering adding a notation on a student's transcript for having been punished or dismissed for sexual misconduct.

Those in support of the measure argue that academic institutions cannot take precautionary measures to ensure the safety of other students.

Some, like the American Association of Collegiate Registrars and Admission Officers, a trade association of higher education professionals, supports the option for colleges to add a notation, but says it's complicated knowing just how much information to include in the notation. that as an option for colleges and universities to consider.

The organization says that about 15 percent of schools engage in the practice now, and expects more to do so in the future. Some remain skeptical, citing unreliability as major concern. Laws mandating transcript notation have passed in Virginia and New York, but failed in Maryland and California. The District of Columbia is currently considering such a measure.

Should transcripts be reserved for academic notations or should universities start adding other notations for the safety of others? How beneficial could the mark actually be? How permanent should the notation be and how much information should be included? Should high school transcripts reveal information about sexual misconduct, too?

Guests:

Mark Hathaway, private defense attorney in Los Angeles who has represented students and others accused of sexual misconduct

Michele Landis Dauber, helped revise Stanford's policy on sexual assault and is a nationally-respected advocate for improving college and university policies on sexual assault. She is also a professor of Law and Sociology at Stanford University.

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- Reading today's presidential election through the life of Abraham Lincoln
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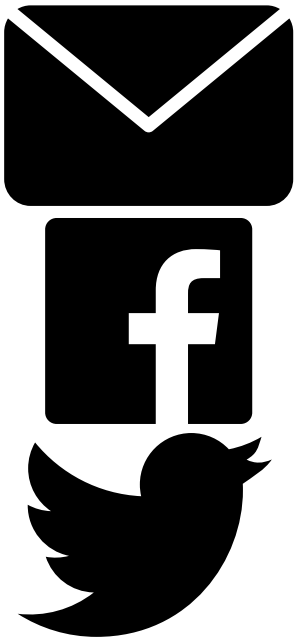

very soon the (public) universities will be only for the "poor" - since any normal young American student will avoid this "pit of Marxist/Commies/PC/ femi/nazi cabal of dictators" , who are now running the (public) universities like the (Chinese) "Cultural Revolution" re-education gulags ... :-)

Share ›

michael from OC So Cal • 2 years ago

Could be a slipperly slope . SO how about adding another note if they were known to have contracted a communicable disease in the past ? Seems this could be another areea for protecting public safety. I am not sure the academics should be getting thrust into the public safety responsibility even more.

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Rebecca • 2 years ago

"We're not putting people in jail" so let the mob rule. And if you don't think college administrators are a mob you've never been before them on charges.

1 Share ›

double a • 2 years ago

Why are there so many rapes on universities' campus?
This is the US of A..
it's not some third world developing country…
The standard should be higher.

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theresa • 2 years ago

would anyone feel safe with a doctor or lawyer who committed sexual assault in college? Isn't due process a good way to filter-out the chaff?

Share ›

Ned in Van Nuys • 2 years ago

The Duke lacrosse team was a huge threat to the safety of others according to University administration fora quite some time. Should those--as we know now totally innocent young men-- have been stigmatized after the University investigation found them guilty?

1 Share ›

Transex4Transex ➚ Ned in Van Nuys • 2 years ago

Ned - you mean you do not like it when the "Marxist/Commies/PC/ femi/nazi cabal of dictators" in the (public) universities is running rough-shod over any one who is not "PC" conformist !?
Oyve!

Share ›

RobofWhittier • 2 years ago

No, not without a truly legal trial. Where is the ACLU on this one....

1 Share ›

Transex4Transex ➚ RobofWhittier • 2 years ago

Robo - ACLU is always on the side of the "justice" -

even if they have to send those who do not conform to the "PC Gulag Rules" to the (Chinese-style) "Cultural Revolution GULAGS ...
.... but then what do you expect from the ACLU, the organization founded by the Commies in 1920's (half the decendants the European Socialists/Communists, Jewish) and now is ACLU run by the descendants (TrustFund babies) of the those Commies ... :-)

Share ›

theresa • 2 years ago

if male athletes or 'Greek' males were the targets of precocious predators a stamp on a transcript would be law

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Astrogoth • 2 years ago

Sure, let's ruin a young persons life because an 18 y/o has buyers remorse the next week.

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PCC

Should schools flag transcripts of campus sexual offenders?

00:00 / 17:59

Exhibit 15

THE TRITON *Independent, student-run news source at the University of California, San Diego.*

STUDENT WINS ACADEMIC INTEGRITY CASE AGAINST UCSD

OCTOBER 17, 2016 NATALIE LAM CAMPUS, NEWS 0

After five years of pursuing a lawsuit against UCSD, former student Jonathan Dorfman won an academic integrity case after being expelled for allegedly cheating on a chemistry midterm in 2011. Dorfman now intends to return to the university with a clean slate.

According to the *California Court of Appeals* document, Dorfman testified that he had arrived late to his exam in May of 2011 and had changed the pre-assigned test version on his scantron to match his test booklet, even though the class had been instructed not to tamper with test versions at the beginning of the exam. Since Dorfman was unaware of that instruction, he did not inform any instructors about changing the test version.

In July of 2011, two months after the exam date, Dorfman was informed that Professor John Crowell suspected him of violating the academic integrity policy by changing the test version. By then, Dorfman had already discarded the exam booklet, said Robert Ottilie, Dorfman's attorney, during a phone interview. Crowell had not created an assigned seating chart; therefore, Dorfman was unable to compare his answers to the students around him.

Dorfman's case went to the Academic Integrity Review Board (AIRB). The exhibits of evidence used against him were the change in test version and an outside professor's claim that the chances of Dorfman's eight wrong answers matching

December 27, 2017 0

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December 5, 2017
Outback Adventure Guides Paid $1.60 to $10 Hour

Exhibit 15

another student, Student X, were a "billion to one," as stated in the California Court of Appeals document.

In October of 2011, Dorfman lost the case, and appealed on the basis that the Academic Integrity Coordinator was helping the accusing professor assemble his case by consulting another professor from another university for the statistics, even though the coordinator was supposed to be a neutral figure. Dorfman argued that because of the timing of Crowell's allegations, and the university's refusal to reveal the identity of Student X, his due process rights were violated as per UCSD's Academic Integrity Policy.

The Regents' Policy on Student Conduct and Discipline requires all of the universities in the UC system to have the minimum requirements of "the opportunity for a prompt and fair hearing where the University shall bear the burden of proof, and at which the student shall have the opportunity to present documents and witnesses and to confront and cross-examine witnesses presented by the University" as stated in the California Court of Appeals document.

The Council of Provosts reviewed the hearing and decided to throw it out, allowing Dorfman to have a second hearing. Ottilie maintained that Dorfman had violated instructions by changing his scantron version letter, but that violating instructions was not the same as cheating. "You can turn in a work five minutes late and that would be violating instruction, but that doesn't mean it's cheating," said Ottilie. Therefore, according to Ottilie, there was no case against Jonathan.

Consequently, a second AIRB hearing was held. Ottilie added that Dorfman found 44 students out of 618 with 23, 24, and 25 matching answers, and that half of those were from students in different rooms. Still, Dorfman lost the case because, according to the court documents, he could not adequately explain the similarities in his test answers with Student X, which led the panel to conclude that it was more likely than not for him to have cheated.

Dorfman then pushed for a court trial, which eventually went to the California Court of Appeals. During the trial, Ottilie argued that the the professor accused Dorfman of copying every single question on the test. Most people who cheat, however, only copy one or two answers, not the entire test. In addition, Ottilie asserted that it would have been difficult for Dorfman to have cheated for all three hours of the exam as it would require him to constantly look at the other student's test and make sure he was on the right number for the whole duration of the exam. There were no eyewitnesses and the three TAs in the exam room did not report any suspicious behavior.

Furthermore, Ottilie contended that Dorfman outperformed all other students in attendance, midterms and the final. He also mentioned that this was the second time Dorfman was taking the class. He originally took the class during the winter quarter, but due to a family emergency, had to temporarily leave school. Therefore, he was retaking the class in spring quarter, so he has already been exposed to the material before.

Throughout the trial, the location of Student X became essential to Dorfman proving his innocence. If Student X sat nearby, then Dorfman most likely would be guilty of cheating, but if Student X had not sat nearby then Dorfman couldn't have possibly copied the answers. Despite the importance of Student X's location in the case, UCSD refused to divulge information pertaining to Student X, claiming it was not relevant.

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In the *hearing transcript of Dorfman v. UCSD*, a judge brought up the issue of the university having sole control over the information on Student X to Michael Goldstein, the attorney representing the Board of Regents of the University of California. "That's always the case," said Goldstein. The judge replied, "so you can accuse someone of cheating, fail to provide something you say could be dispositive, and a young man's life is ruined?"

In a later portion of the transcript, the judge also commented on the unilateral nature of case, saying, "it seems very one-sided to say well we decided this was enough and we're not going to give the information to the defense to try to poke holes in it." Goldstein countered by maintaining that it was university policy to not reveal the identity of the student that the accused student supposedly cheated off of to anyone.

Based on the university's inability to disclose Student X's location, the court ruled in favor of Dorfman. The Court also ruled that UCSD must notify Dorfman and the court forthwith for any future trials, and required the university to reveal the identity of Student X should they go to court again.

"I have never seen more affirmative evidence from a student that said he didn't do it in a case," said Ottilie. "It was the most egregious case from a university that I've ever seen."

Natalie Lam is a News Writer for The Triton. She can be reached at nplam@ucsd.edu.

← Previous article Next article →

Exhibit 16

NEWS

Teen charged with lying about being raped by college football players

By Joshua Rhett Miller

February 22, 2017 | 1:30pm | Updated

Nikki Yovino
Facebook

Two college football players who were suspended from their team last year and saw their scholarships revoked after rape accusations have been cleared by police after authorities say their accuser recanted her story.

Nikki Yovino, 18, of South Setauket, NY, has been charged with second-degree falsely reporting an incident and tampering with or fabricating physical evidence in connection to an incident at a Sacred Heart University football party in October, the Connecticut Post reports.

When pressed about inconsistencies in her original statement, Yovino admitted that she made up the rape allegations against the two football players in hopes of gaining sympathy from another man — a prospective boyfriend, according to an arrest warrant affidavit.

Police said Yovino told them on Oct. 15 at a hospital where they responded for a sexual assault complaint that she attended a Sacred Heart football club party the night before at a house on Lakeside Drive in Bridgeport.

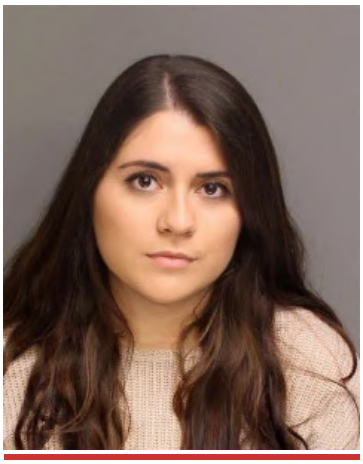
Exhibit 16

Investigators said Yovino claimed two men pulled her into a bathroom in the basement of the house and held her down, taking turns sexually assaulting her, the Connecticut Post reports.

“I don’t want to be in here, I don’t want to do anything,” police said she claimed she told the men. “My friends are waiting for me outside, let me go outside.”

Both men admitted having sex with Yovino, but claimed it was consensual. Bridgeport Police Detective Walberto Cotto Jr. later questioned Yovino after other students said it appeared Yovino went into the bathroom willingly with the two men.

One student, according to the arrest warrant affidavit, said he overheard Yovino telling the men she wanted to have sex with them.



Bridgeport Police Dept.

“She admitted that she made up the allegation of sexual assault against (the football players) because it was the first thing that came to mind and she didn’t want to lose (another male student) as a friend and potential boyfriend. She stated that she believed when (the other male student) heard the allegation it would make him angry and sympathetic to her,” according to the affidavit.

Mark Sherman, Yovino’s attorney, said he had not yet been provided with police reports and video footage pertaining to the case, but told The Post he expects Yovino to plead not guilty at her arraignment on March 3.

“The details of what happened here will come out at the appropriate time during the court process,” Sherman wrote in an email.

Yovino, who was released after posting $5,000 bond, faces up to five years in prison if convicted on the tampering charge, a felony, the Connecticut Post reports.

One of the students has since been readmitted to the university, but he’s no longer a member of the football team and lost his scholarship. The names of the students are being withheld by Hearst Connecticut Media and one of their attorneys told the Connecticut Post that he just wants to put the incident behind him.

Sacred Heart officials declined to provide information about specific students, including the identities of the two former football players and whether they had been reinstated by the university, citing federal privacy laws in a statement to The Post.

“Sacred Heart never expelled the two students nor was any student stripped of scholarships because of any allegations,” university spokesperson Kimberly Primicerio wrote in an email. “Whenever there is any kind of incident at Sacred Heart University, we go to great lengths to ensure due process for all parties involved. The way that this particular case is playing out certainly demonstrates the validity of our procedures.”

Another university spokesperson, Deborah Noack, declined to indicate whether Yovino was a current or former student at the university. Her Facebook page identifies her as a psychology and pre-med student at Sacred Heart University and Suffolk County Community College.

FILED UNDER **COLLEGE ATHLETES**, **CONNECTICUT**, **RAPE**

Exhibit 17

Exhibit 17

Student Expelled for Rape Says Amherst Discriminates Against Men, Court Says He's Got a Point

Male student had evidence he was the victim of sexual assault, not the perpetrator. His college didn't care.

Robby Soave|Feb. 28, 2017 4:01 pm


Matthew G. BisanzA former student, "John Doe," has sued Amherst College for wrongfully expelling him after a female student accused him of sexual misconduct. The case is notable because Doe might have actually been the victim, rather than the perpetrator: *he* was incapacitated, she was not.

On Tuesday, Doe won a significant victory: a district court judge scrutinized Doe's claims that Amherst violated his rights, breached its contract with him, and conducted an unfair extra-legal procedure. Several of the claims survived Amherst's challenge, allowing the lawsuit to proceed.

Of particular note, the judge thought Doe's claim that Amherst discriminated against him on the basis of gender had some merit. The judge also ruled that Doe was right to assume the college would conduct a fair investigation. "These are specific factual allegations that the College responded differently to similar reports when the genders of the potential victims and aggressors were different," wrote Judge Mark Mastroianni. "They provide a foundation from which a court can infer gender-based discrimination may have played a role in the College's responses."

To recap: On the night of February 4-5, 2012, Doe and female student "Sandra Jones" began kissing each other in a common area. They then moved to Jones' dorm room. Jones' roommate, who was not there at the time, was in a relationship with Doe.

A sexual encounter began. Doe was blackout-drunk at the time, and later had no memory of what transpired. Jones had been drinking but was merely buzzed. She started to perform oral sex on Doe—what happened next is disputed. Jones would eventually characterize the encounter in several different ways: initially maintaining that it was ill-advised but consensual, later claiming that it began consensual but became nonconsensual, and ultimately describing herself as an unwilling participant.

Doe had no idea what happened but later asserted that he would never engage in sexual activity with someone who hadn't consented.

After the encounter ended, Doe went back to his own dorm room and passed out. Jones texted a residential advisor and confessed that she had not been "an innocent bystander". She also texted another male student and invited him over for sex. In subsequent text messages to the residential advisor, Jones complained that this second male student had to be badgered into having sex with her.

Months later, Jones wrote an essay about the encounter for a student publication. "It began consensually, but evolved into something that was decidedly not," she wrote.

Doe read the essay and felt sorry about what had happened—though he still had no memory of it, and maintained that he had not engaged in non-consensual sex. He approached a student identified as "LR" in the lawsuit. LR worked at the student publication and had edited Jones' essay. LR also served on Amherst's Special Oversight Committee on Sexual Misconduct. According to the lawsuit, Doe "explained that while he still had no memory of his interaction with Jones, he hoped to get some guidance on what he could do to make amends to Jones."

LR told him to seek counselling and continuing avoiding Jones. LR also treated this encounter as a sort of admission of wrongdoing on Doe's part. LR reported Doe to Amherst's Title IX team, and informed Jones that she would testify on Jones' behalf if any complaint was made.

This was in April of 2013, more than a year after the initial encounter. Jones did not file her own complaint until October 28, 2013.

Amherst hired a lawyer, Allyson Kurker, to investigate the dispute. Intriguingly, this investigator wasn't persuaded by LR's assertion that Doe had confessed, and wrote in a report "LR's testimony… conflicted with the testimony of others."

The text messages Jones sent on the night of February 4-5 would have also conflicted with her own assertions about what happened. But these text messages were never reviewed by Amherst officials. Doe was found responsible for sexual misconduct and expelled.

Weeks later, having learned about the text messages that might have acquitted him, Doe asked the college to re-litigate the matter. Amherst refused.

His lawsuit contends, in part, that he was discriminated against because of his gender. There's one specific detail that makes this claim plausible: Doe was incapacitated by alcohol at the time of the incident, and Jones was not. Amherst's sexual misconduct policy stipulates that incapacitated individuals cannot consent to sexual activity. It's therefore possible to argue that Jones could not have had consent to initiate sexuality activity with Doe in the first place—which would mean Jones had engaged in sexual misconduct.

But Amherst officials showed no interest in pursuing this possibility. They did not make any effort to uncover evidence that would have supported it. No one pressed Doe to file a Title IX complaint against Jones.

For these reasons, Doe's contention that he was subjected to gender discrimination—in addition to breach of contract and unfair treatment in general—cannot be dismissed, according to the judge's ruling.

KC Johnson, a professor of history at Brooklyn College and co-author of the new book *The Campus Rape Frenzy*, writes that this judge has a "dubious" record on campus due process issues. The fact that Mastroianni "nonetheless sides with the accused student on all core elements" of the lawsuit is very good news for Doe's case, says Johnson.

Photo Credit: Wikimedia commons

Associate Editor Robby Soave, a 2017–2018 Novak Fellow at the Fund for American Studies, is the author of a forthcoming book about campus activism in the age of Trump.

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12.28.17 10:15 am

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12.28.17 10:10 am

3 Things to Like About 2017
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MOST VISITED

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Jonathan Haidt | 10.26.17 6:00 am

The Massive Higher-Ed Scam You've Never Heard About: Podcast
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Nick Gillespie | 12.27.17 12:30 pm

Ross Ulbricht Files Appeal to the Supreme Court on His Life Sentence Without Parole
Brian Doherty | 12.27.17 3:42 pm

#MeToo Is Turning Into a Witch-Hunt
Shikha Dalmia | 12.27.17 12:15 pm

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Exhibit 18

Student Expelled for Rape Says Amherst Discriminates Against Men, Court Says He's Got a Point

Male student had evidence he was the victim of sexual assault, not the perpetrator. His college didn't care.

Robby Soave | Feb. 28, 2017 4:01 pm

Matthew G. Bisanz

A former student, "John Doe," has sued Amherst College for wrongfully expelling him after a female student accused him of sexual misconduct. The case is notable because Doe might have actually been the victim, rather than the perpetrator: *he* was incapacitated, she was not.

On Tuesday, Doe won a significant victory: a district court judge scrutinized Doe's claims that Amherst violated his rights, breached its contract with him, and conducted an unfair extra-legal procedure. Several of the claims survived Amherst's challenge, allowing the lawsuit to proceed.

Of particular note, the judge thought Doe's claim that Amherst discriminated against him on the basis of gender had some merit. The judge also ruled that Doe was right to assume the college would conduct a fair investigation.

"These are specific factual allegations that the College responded differently to similar reports when the genders of the potential victims and aggressors were different," wrote

Judge Mark Mastroianni. "They provide a foundation from which a court can infer gender-based discrimination may have played a role in the College's responses."

To recap: On the night of February 4-5, 2012, Doe and female student "Sandra Jones" began kissing each other in a common area. They then moved to Jones' dorm room. Jones' roommate, who was not there at the time, was in a relationship with Doe.

A sexual encounter began. Doe was blackout-drunk at the time, and later had no memory of what transpired. Jones had been drinking but was merely buzzed. She started to perform oral sex on Doe—what happened next is disputed. Jones would eventually characterize the encounter in several different ways: initially maintaining that it was ill-advised but consensual, later claiming that it began consensual but became nonconsensual, and ultimately describing herself as an unwilling participant.

Doe had no idea what happened but later asserted that he would never engage in sexual activity with someone who hadn't consented.

After the encounter ended, Doe went back to his own dorm room and passed out. Jones texted a residential advisor and confessed that she had not been "an innocent bystander". She also texted another male student and invited him over for sex. In subsequent text messages to the residential advisor, Jones complained that this second male student had to be badgered into having sex with her.

Months later, Jones wrote an essay about the encounter for a student publication. "It began consensually, but evolved into something that was decidedly not," she wrote.

Doe read the essay and felt sorry about what had happened—though he still had no memory of it, and maintained that he had not engaged in non-consensual sex. He approached a student identified as "LR" in the lawsuit. LR worked at the student publication and had edited Jones' essay. LR also served on Amherst's Special Oversight Committee on Sexual Misconduct. According to the lawsuit, Doe "explained that while he still had no memory of his interaction with Jones, he hoped to get some guidance on what he could do to make amends to Jones."

LR told him to seek counselling and continuing avoiding Jones. LR also treated this encounter as a sort of admission of wrongdoing on Doe's part. LR reported Doe to Amherst's Title IX team, and informed Jones that she would testify on Jones' behalf if any complaint was made.

This was in April of 2013, more than a year after the initial encounter. Jones did not file her own complaint until October 28, 2013.

Amherst hired a lawyer, Allyson Kurker, to investigate the dispute. Intriguingly, this investigator wasn't persuaded by LR's assertion that Doe had confessed, and wrote in a report "LR's testimony… conflicted with the testimony of others."

The text messages Jones sent on the night of February 4-5 would have also conflicted with her own assertions about what happened. But these text messages were never reviewed by Amherst officials. Doe was found responsible for sexual misconduct and expelled.

Weeks later, having learned about the text messages that might have acquitted him, Doe asked the college to re-litigate the matter. Amherst refused.

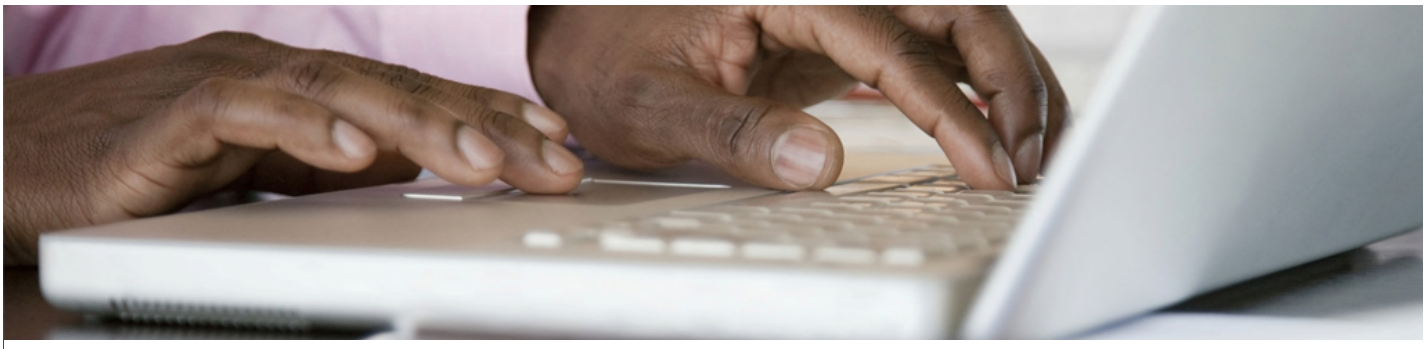
His lawsuit contends, in part, that he was discriminated against because of his gender. There's one specific detail that makes this claim plausible: Doe was incapacitated by alcohol at the time of the incident, and Jones was not. Amherst's sexual misconduct policy stipulates that incapacitated individuals cannot consent to sexual activity. It's therefore possible to argue that Jones could not have had consent to initiate sexuality activity with Doe in the first place—which would mean Jones had engaged in sexual misconduct.

But Amherst officials showed no interest in pursuing this possibility. They did not make any effort to uncover evidence that would have supported it. No one pressed Doe to file a Title IX complaint against Jones.

For these reasons, Doe's contention that he was subjected to gender discrimination—in addition to breach of contract and unfair treatment in general—cannot be dismissed, according to the judge's ruling.

KC Johnson, a professor of history at Brooklyn College and co-author of the new book *The Campus Rape Frenzy*, writes that this judge has a "dubious" record on campus due process issues. The fact that Mastroianni "nonetheless sides with the accused student on all core elements" of the lawsuit is very good news for Doe's case, says Johnson.

Exhibit 19



Blogs

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March 2017

Liability for Student Sexual Assault: UE's Claims Say OCR and Title IX Are Not the Biggest Dangers

Ever since the "Dear Colleague" letter (DCL) was issued in April 2011, higher education institutions have faced extraordinary pressure and significant costs to comply with its interpretation of Title IX requirements for addressing sexual violence. Under the new presidential administration, the Office for Civil Rights (OCR) may withdraw or stop enforcing the DCL and related guidance. Despite this possibility, United Educators (UE) strongly advises against scaling back efforts to combat campus sexual violence.

OCR action to enforce Title IX is not the leading exposure in UE claims; most losses to date have been generated by litigation, including lawsuits and threats to sue, initiated by students. Regardless of what OCR does, student litigation will likely continue due to ongoing widespread publicity and student activism on campus sexual assault. This reality, with sexual assault's negative effects on the

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June 2016

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November 2013

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Exhibit 19

entire community and the institutional mission, demonstrates that institutions should continue investing in effective sexual assault prevention and response measures.

UE's Loss Experience

From 2011 to 2015, UE and our higher education members incurred losses—payments to claimants and defense costs—of nearly $31 million in claims from alleged victims (almost $22 million) and alleged perpetrators (nearly $9 million) of campus sexual assault. Notably, OCR matters were responsible for only 22 percent of the losses in victim claims and 4 percent in perpetrator claims.

Limitations of Title IX

An important reason for OCR's relatively small impact on losses is that money damages for Title IX violations are available only through lawsuits filed in court. While OCR enforces Title IX administratively – e.g., by requiring institutions under review to revise their sexual assault policies and procedures -- it cannot award money damages. Yet even in litigation, Title IX plays a less significant role than might be expected because in court, where the standard of proof is more rigorous than in OCR actions, Title IX violations are hard to prove. A plaintiff must show that the institution knew about the problem but was "deliberately indifferent," meaning an official with authority to address sex discrimination ignored or refused to remedy it. However, institutions that must defend Title IX cases in court face considerable disruption and expense.

Beware of Negligence and Breach of Contract

Students bringing litigation more often claimed negligence (for victims) or breach of contract (for perpetrators) rather than Title IX violations, likely because the Title IX standard is so difficult to meet.

These claims are often more dangerous and costly for institutions than Title IX claims because they are usually easier for plaintiffs to prove. To establish negligence, for example, a student needs to show an institution breached its duty of care to the student, causing the student injury. Students in UE's claims frequently alleged that, because they were negligently trained, employees who investigated or adjudicated sexual violence incidents made harmful mistakes. Although a plaintiff must establish what a reasonable duty of care means, this is a lower standard than establishing that an institution was deliberately indifferent to sexual assault.

Similarly, perpetrators in particular frequently alleged breach of contract, rather than Title IX, to argue that institutions did not handle sexual assault allegations against them properly. Whereas Title IX would require a male perpetrator to prove that he was treated unfavorably based on his sex, a breach of contract claim may succeed if the student shows that the institution did not follow the its own published policies governing internal sexual misconduct. Institutions should take care to follow their policies and procedures and to train employees and students on their rights and responsibilities.

Based on UE claims, higher education institutions do themselves a disservice if they focus narrowly on Title IX and OCR's enforcement and disregard the higher

risk of loss from student-initiated litigation. Student plaintiffs have various avenues to establish liability apart from Title IX, and those alternative legal theories may be easier to prove. Therefore, institutions should remain vigilant regarding campus sexual assault.

Resources

Review of Student-Victim Sexual Assault Claims With Losses

By Hillary Pettegrew, senior risk management counsel

TAGS: Higher Education Compliance Misconduct Latest Title IX

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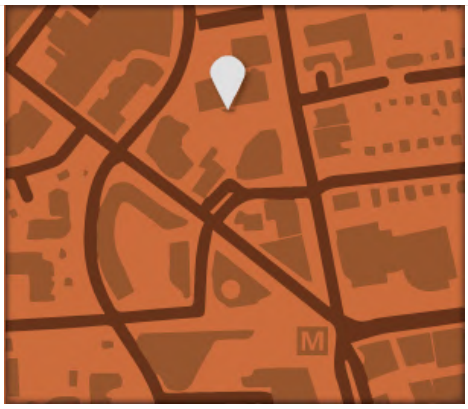

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Exhibit 20

Academic Wonderland

Comments on the Contemporary Academy

Key Amherst Decision

- MARCH 2, 2017MARCH 2, 2017
- KC JOHNSON
- 11 COMMENTS

Of all the campus cases since the Dear Colleague letter, the Amherst case is the worst. This case featured a student (JD) who not only could use his accuser's own words to prove his innocence, but could demonstrate from the college's own findings that he was, plausibly, a sexual assault victim—and yet the college culminated a biased process by expressing disinterest in his evidence. If Amherst could get this lawsuit dismissed, it would be hard to imagine any set of facts in which an accused student could be certain of prevailing.

On Tuesday, however, Judge Mark Mastroianni (http://www.mad.uscourts.gov/springfield/mastroianni.htm), an Obama appointee, allowed the lawsuit to proceed. You can read the decision here (https://kcjohnson.files.wordpress.com/2013/08/amherst-decision-on-motion.pdf). I've written extensively about the Amherst case (http://www.mindingthecampus.org/2015/06/amhersts-version-of-kafkas-the-trial/), and also the May 2016 hearing that led to the ruling (https://academicwonderland.com/2016/05/27/amherst-update/). Robby Soave also has an excellent summary of the ruling (https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=7&cad=rja&uact=8&ved=0ahUKEwjrndzJhLfSAhVJMyYKHeoMCx0QqOcBCDUwBg&url=http%3A%2F%2Freason.com%2Fblog%2F2017%2F02%2F28%2Fstudent-expelled-for-rape-says-amherst-d&usg=AFQjCNHiZTPbAtkEL1le7QG7FIX6_u9nOg&sig2=iz0BnKvJdB52cmOkE-6EOw).

The ruling keeps alive all of the core elements of the lawsuit—the breach of contract claim that Amherst didn't even follow its own rules; the good faith/fairness claim; and the Title IX claim. Mastroianni allowed multiple aspects of the Title IX claim to proceed, including a claim of deliberate indifference for Amherst's unwillingness to investigate the accusing student (who I'll call A.S.) for possible sexual assault. He also seemed to anticipate that at the next stage of the case, Amherst would try and get around the breach of contract claim by suggesting that the student handbook wasn't a contract.

The only major claim he dismissed was JD's racial discrimination claim, with the judge noting that no specific evidence existed to corroborate the claim. This is true. It's also true that Amherst's own sexual assault policy Oversight Committee was the organization that initially made the claim, "despite," Mastroianni noted, "being unable to document past instances of racial disparities in disciplinary proceedings." (The committee's "evidence" focused around a claim that white students would find it easier to hire lawyers.) The judge didn't explore what it said about Amherst's overall procedural unhealthiness that an important sexual assault committee could offer fact-free musings based on nothing more than stereotypes.

Most of the ruling was what could have been expected given the strength of the claim. But two aspects of the ruling stood out as a bit surprising.

Judge Mastroianni's Impressions

There's little reason to believe that Mastroianni was eager to make this decision. In a case at UMass, he sided with the university (https://www.bostonglobe.com/metro/2015/08/06/clark-faces-rape-lawsuit-umass-case-dismissed/PmVkSWtW1ydKzR0FdEFr4N/story.html), despite ample grounds for doubting UMass' fairness. In this case, he waited nine months (and a day) after the hearing in the case to render his decision, which cited every recent 1st District campus sexual assault decision but one—the *Brandeis* opinion written by Judge Saylor. Saylor's was, by far, the most comprehensive sexual assault opinion in explaining the shortcomings of a college or university disciplinary process, and the opinion was extensively discussed (by both sides) in the May hearing.

Mastroianni didn't explain why he didn't cite the *Brandeis* opinion. But at the very least, his choice suggests a judge who isn't eager to vindicate the rights of accused students. That background makes all the more remarkable some of the passages from Mastroianni's opinion, with emphasis added in each case.

Here's how he described A.S.'s behavior on the night in question: "In the course of the text message exchange, [A.S.] stated that she 'fucked' Doe and *proposed lying to others about what happened*, expressing concern about the fact that others, including RM, had seen her kissing Doe in the common room, and her belief that Doe 'was too drunk to make a good lie out of shit.'"

Here's how he described JD's approach to the hearing: "Doe relied on the investigation conducted by [Allyson] Kurker as he prepared for the hearing. No College employees, including his advisor, Torin Moore, Assistant Dean of Students and Director of Residential Life, advised him to conduct his own investigation. Indeed, based on his conversations with Moore and [Title IX deputy coordinator] Mitton Shannon, he believed a confidentiality policy prevented him from conducting his own investigation or even seeking emotional support from other students. *Doe had no knowledge or experience with disciplinary hearings, let alone the experience or knowledge necessary to effectively advocate on his own behalf*, and he was emotionally distraught."

Here's how he described the hearing and the omission of the key evidence: "Twice during the hearing, references were made to [A.S.]'s text message exchanges after Doe had left her room; *text exchanges that were not obtained and reviewed by the investigator or otherwise presented to the Hearing Board* . . . Jones was not asked to produce the text messages."

And here's how he described the text messages: "The text messages [A.S.] and DR exchanged directly discuss the interactions between [A.S.] and Doe. *On their face, the text messages suggest that [A.S.] viewed herself as the initiator of the sexual activity*. They also include expressions of hatred of Doe, initiated by DR,

to which [A.S.] agreed . . . *These texts can be read in a way that raises additional questions about the credibility of the version of events [A.S.] gave during the disciplinary proceeding against Doe*."

To be sure, Mastroianni noted that "at this stage in the litigation, the court must accept as true the factual allegations made by Doe and must make any reasonable inferences favorable to his position." But this is a very unusual case, given the volume of information provided in the complaint. (Representing an innocent client broadened the tactics open to JD's legal team.) JD's lawsuit included all the evidence Amherst possessed (or should have possessed) to adjudicate his case—the hearing transcript, the investigator's report, the text messages. The "facts" as presented by JD—and as described above by the judge—are unlikely to change later in litigation.

Of course, judges can and do find for colleges even when they believe the accused student might be innocent. (Recall the Case Western Reserve case (https://www.thefire.org/breaking-news-judge-dismisses-students-title-ix-claim-against-case-western-reserve-university/).) But the fact that Mastroianni appears to have formed accurate impressions about many of the key facts in the case can't be seen as a good sign for Amherst. That these passages came from a judge who didn't appear ideologically inclined to side with the accused student makes them all the more powerful.

A.S.'s Record as an Accusers' Rights Activist

In allowing the Title IX portions of the lawsuit to proceed, Mastroianni avoided any mention of the important 2nd Circuit *Columbia* case. That decision suggested that a frenzied campus atmosphere (which Amherst experienced to an even greater degree than Columbia) could in and of itself provide the necessary baseline to allow a Title IX complaint to survive a motion to dismiss. As with the omission of the *Brandeis* decision, Mastroianni appears to have chosen to ignore the most favorable decisions for accused students.

Instead, Mastroianni relied on two other "credible anecdotal references" to sustain the Title IX complaints. First was the fact that, according to the disciplinary panel's own findings, JD was blacked out at the time A.S. initiated sex with him, thus rendering him incapable of consenting, but Amherst never investigated the accusing student for sexual assault. Second was A.S.'s record as a campus accusers' rights activist.

As Mastroianni explained, the complaint "also alleges that at the time [A.S.] filed her complaint she was involved in a student-led movement to compel the College to change the way it handled sexual assault allegations, including by expelling a male student accused of sexual misconduct. He further asserts the College was actively trying to appease the student-led movement and was aware both [A.S.] and LR were involved with the student-led movement." In fact, the opinion (in various ways) references A.S.'s involvement in the campus accusers' rights movement four times.

In the process, Mastroianni gave unusual attention to a document that received comparatively little attention in the briefings, and virtually no attention in the May oral argument—JD's internal appeal at Amherst. You can read the document here (https://kcjohnson.files.wordpress.com/2013/08/amherst-jd-appeal.pdf), and Amherst's cursory rejection of the appeal here (https://kcjohnson.files.wordpress.com/2013/08/amherst-appeal-rejection.pdf).

In the appeal, JD brought attention to remarks that A.S. made after the hearing panel rendered its decision. The remarks themselves are blacked out, but A.S. did have an interview with the *Huffington Post* that was published *as the college was considering the appeal*. In a passage that could easily be read as a pressure tactic against the college, A.S. told Tyler Kingkade

(http://www.huffingtonpost.com/2013/12/15/amherst-college-sexual-assault-policies_n_4402315.html), "The typical laptop thief is suspended for five semesters. Rapists are not suspended for that long, if at all. No rapist convicted by a hearing board has been expelled from Amherst in 20 years. That's unacceptable and something Amherst has to change immediately." Kingkade did not identify A.S. as an accuser in a pending sexual assault appeal.

JD noted that two of his witnesses—seeing A.S.'s comments—recognized that the zeal with which she advanced a broader accusers' rights agenda might well have given her a motive to lie. But Amherst denied the appeal, suggesting, "Whatever broad political agenda [A.S. and LR] may have had or not is immaterial to the panel's decision." Imagine the reaction of an Amherst professor if a student made that sort of argument about evidence in a research paper.

By establishing as central to the case A.S.'s accusers' rights activism—particularly at the time of the hearing panel's decision—Mastroainni's opinion undercut the already extremely dubious rationale by which Judge James Robart (https://academicwonderland.com/2017/01/12/amherst-accuser-skirts-deposition/) not only denied JD an opportunity to depose A.S., but allowed A.S. to avoid producing relevant documents.

In the subpoena, JD asked for, among other things, "all communications, including text messages or emails, between you and anyone else on February 5, 2012"; "all notes, journal/diary entries, recordings, transcripts, or other memoranda by you relating to Your Complaint, the Investigation, John Doe, [and] the John Doe Disciplinary Process"; and "any and all communications with witnesses in the John Doe Disciplinary Process concerning the topic of sexual misconduct, the John Doe Disciplinary Process, Your Complaint, John Doe, and/or your interactions with John Doe on February 4-5, 2012."

Robart quashed the subpoena first by suggesting that being deposed and (to a lesser extent) having to turn over documents would traumatize A.S.—though, of course, if A.S. filed a false accusation, it's hard to see why the trauma from having to re-live that unfortunate decision would be relevant. Second, Robart claimed that Amherst officials could supply all the relevant material—though, of course, many of the documents that JD requested would never have come into the possession of Amherst officials.

Now that Mastroainni has placed A.S.'s contemporaneous accusers' rights activism front and center, Robart's claim that A.S. would possess no relevant information is unsustainable. The circuitous reasoning of his initial decision to quash the subpoena makes it entirely possible Robart will refuse to back down. But given that Mastroainni's opinion suggests that it's plausible, based on the facts before the court, to deem A.S. a possible perpetrator of sexual assault, perhaps it's time for Robart to drop the trauma claim.

To date, Mastroainni's important decision has received no mention in the Amherst student newspaper.

11 thoughts on "Key Amherst Decision"

Judge vindicates 'blacked out' student expelled for rape because accuser blabbed to HuffPo - The College Fix says:
MARCH 3, 2017 AT 8:34 AM

[…] exhaustively analyzed by Brooklyn College Prof. KC Johnson, co-author of the new book The Campus Rape Frenzy, Judge Mark […]

REPLY

chrishalkides says:
MARCH 3, 2017 AT 11:01 PM
When I looked at the Amherst paper's website yesterday, it could have served as a parody of social justice concerns.

REPLY

> **KC Johnson** says:
> MARCH 5, 2017 AT 12:09 AM
> I know. It's remarkable.

REPLY

Robert Franklin says:
MARCH 4, 2017 AT 12:06 AM
"yet the college culminated a biased process by expressing disinterest in his evidence." "Disinterest" means "impartiality." That is precisely what Amherst didn't express. Good work, though.

REPLY

> **KC Johnson** says:
> MARCH 4, 2017 AT 12:10 AM
> Disinterest:
> "lack of interest in something."
> "he chided Dennis for his disinterest in anything that is not his own idea"

REPLY

Safety Dance Continues I : EphBlog says:
MAY 1, 2017 AT 10:24 AM
[…] have been sympathetic to this view. Unfortunately (for Williams), courts have been less willing (at Amherst and at Brandeis) to grant the Colleges free reign.[1] John Doe will argue that the College, […]

REPLY

Vincent Morrone says:
MAY 15, 2017 AT 6:33 PM
Does this mean that, now that they failed to reach a settlement via mediation, that it goes back to the judge who bent over backwards not to hear the case, or this new judge?

REPLY

> **KC Johnson** says:
> MAY 15, 2017 AT 6:37 PM
> The mediation remains ongoing, at least according to the court docket (newest deadline is the 26th). If it fails, yes, the case goes back to Judge Mastroianni. Despite his reluctance, his opinion seemed to make it hard to imagine he'd side with Amherst on summary judgment.

REPLY

vincentmorrone says:
MAY 26, 2017 AT 10:53 PM

I don't suppose there's any update on this?

REPLY

KC Johnson says:
MAY 26, 2017 AT 10:56 PM
Just filed–three more weeks of mediation.

REPLY

vincentmorrone says:
MAY 26, 2017 AT 11:45 PM
I'm guessing that's probably a good sign then? They're probably trying to agree on language. Amherst is most likely making sure JD can't disclose the amount of the settlement and that their records doesn't reflect fault. Which is a pity. We need a few of these cases to have public consequences. It's the only way it's going to ever stop.

REPLY

Exhibit 21

LEGAL OPINION SEXUAL ASSAULT

Judge vindicates 'blacked out' student expelled for rape because accuser blabbed to HuffPo

GREG PIPER - ASSOCIATE EDITOR
MARCH 3, 2017

Pro tip for accusers: Don't give interviews while an appeal is pending

This might be the first time a *Huffington Post* article saved a student from being branded a rapist for his entire life.

In likely the biggest due-process case *The College Fix* has ever covered, a federal judge has ruled an expelled student's multi-pronged lawsuit against Amherst College can continue on most prongs.

A judge who, revealingly, failed to cite the past year's **two biggest** due-process wins for accused students in his judicial backyard, against Brandeis and Columbia, while still finding a way to rule in the accused student's favor.

This is the "**blacked out" rape case** filed in spring 2015, in which the accuser's unearthed text messages **seemingly confirmed that she had violated** an incapacitated male before accusing him of rape.

MORE: **She initiated sex when I couldn't consent, expelled student claims**

"John Doe" appeared to be down in the count as recently as November, when a *different* federal judge (**the immigration-order guy**!) ruled that **he couldn't depose "Sandra Jones**" in his Amherst suit because it would inflict "trauma" on an accuser of dubious credibility.

But lo and behold, his accuser's eagerness to *publicly threaten Amherst* with a deluge of negative press if it didn't expel Doe has brought him back off the mat.

Judge questions 'credibility' of accuser's version

As **exhaustively analyzed** by Brooklyn College Prof. KC Johnson, co-author of the new book ***The Campus Rape Frenzy***, Judge Mark Mastroianni's **Tuesday order** has some

Exhibit 21

surprises.

He upheld Doe's breach-of-contract claim against Amherst's refusal to follow its own rules, and his Title IX claim that Amherst showed "deliberate indifference" by refusing to investigate Jones' alleged violation of Doe.

MORE: **Amherst plays down damning text messages by rape accuser**

Mastroianni said Jones' texts reveal she "proposed lying" about what she had done; that Amherst misled Doe into thinking he couldn't do his own investigation; and that the school never bothered to obtain Jones' damning text messages, in spite of the fact they were mentioned "twice during the hearing":

> These texts can be read in a way that raises additional questions about the credibility of the version of events Jones gave during the disciplinary proceeding against Doe.

Her political agenda might doom her accusations

What came out of left field, according to Prof. Johnson, is the weight Mastroianni put on Doe's **internal appeal** of the ruling against him – a document that received "virtually no attention in the May oral argument."

Two days after Amherst found Doe "responsible" and expelled him, ***The Huffington Post*** published an article about Amherst that quoted a student anti-rape activist. Here's what she said:

> The typical laptop thief is suspended for five semesters. Rapists are not suspended for that long, if at all. No rapist convicted by a hearing board has been expelled from Amherst in 20 years. That's unacceptable and something Amherst has to change immediately.

The content of her quote and its source is blacked out in Doe's appeal letter, which is part of the court record.

But the rest of the letter says enough to confirm Doe is citing the *HuffPo* article, which he said showed Jones' "apparent crusade to see a student expelled for rape" – and which, Johnson notes, does *not* identify her "as an accuser in a pending sexual assault appeal."

MORE: **Amherst showed 'startling indifference' to the truth**

Doe was the first person "expelled for sexual misconduct in 20 years," he wrote, "fulfilling the desire [Jones] expressed in the article." He showed the article to two of his witnesses, and they agreed they would "change their testimony" that Jones had no "ulterior motivation" to accuse him.

Amherst waved off this appeal, but Mastroianni has put Jones' "contemporaneous accusers' rights activism front and center" by referencing it four times, Johnson says.

Spotlight back on different judge with 'circuitous reasoning'

Mastroianni noted that when Jones accused Doe:

> [S]he was involved in a student-led movement to compel the College to change the way it handled sexual assault allegations, including by expelling a male student accused of sexual misconduct. [Doe] further asserts the College was actively trying to appease the student-led movement and was aware both Jones and LR [a witness against Doe and member of a sexual-misconduct committee] were involved with the student-led movement.

According to Johnson, this is bad news for Judge James Robart, **who shielded Jones from deposition** and turning over relevant communications to Doe.

MORE: **Judge rejects subpoena on accuser who violated blacked-out student**

The judge used the "extremely dubious rationale" that deposition would traumatize her (a person who might have sexually violated Doe) and that Amherst had the relevant documents already (nope):

> Robart's claim that [Jones] would possess no relevant information is unsustainable. The circuitous reasoning of his initial decision to quash the subpoena makes it entirely possible Robart will refuse to back down. But given that Mastroainni's opinion suggests that it's plausible, based on the facts before the court, to deem [Jones] a possible perpetrator of sexual assault, perhaps it's time for Robart to drop the trauma claim.

***Reason*'s Robby Soave** points out another telling part of this case that could lead Robart to give Jones and her "political agenda" a second look.

MORE: **Lawsuit claims college employee made false accusation to not get fired**

Jones' collaborator apparently convinced a memory-free Doe that *he* was the aggressor:

> Months later, Jones wrote an essay about the encounter for a student publication. "It began consensually, but evolved into something that was decidedly not," she wrote.
>
> Doe read the essay and felt sorry about what had happened—though he still had no memory of it, and maintained that he had not engaged in non-consensual sex. He approached a student identified as "LR" in the lawsuit. … According to the lawsuit, Doe "explained that while he still had no memory of his interaction with Jones, he hoped to get some guidance on what he could do to make amends to Jones."
>
> LR told him to seek counselling and continuing avoiding Jones. LR also treated this encounter as a sort of admission of wrongdoing on Doe's part. LR reported Doe to

> Amherst's Title IX team, and informed Jones that she would testify on Jones' behalf if any complaint was made.
>
> This was in April of 2013, more than a year after the initial encounter. Jones did not file her own complaint until October 28, 2013.

MORE: **Appeals court reinstates reverse discrimination case against Columbia**

This turn of events is pretty incredible, and it came from a judge (Mastroianni) who seemed dead-set on not giving an inch to wrongfully accused students, Johnson writes:

> In a case at UMass, he **sided with the university**, despite ample grounds for doubting UMass' fairness. In this case, he waited nine months (and a day) after the hearing in the case to render his decision, which cited every recent 1st District campus sexual assault decision but one—the *Brandeis* opinion written by Judge Saylor. [Two years ago, Mastroianni also **presided over a settlement** between Amherst and a wrongfully accused student.] …
>
> In allowing the Title IX portions of the lawsuit to proceed, Mastroianni avoided any mention of the important 2nd Circuit *Columbia* case. That decision suggested that a frenzied campus atmosphere … could in and of itself provide the necessary baseline to allow a Title IX complaint to survive a motion to dismiss. As with the omission of the *Brandeis* decision, Mastroianni appears to have chosen to ignore the most favorable decisions for accused students.

It should be clear to Amherst by now that their investigation was so disastrous that even a judge favorably inclined toward kangaroo-court investigations, an appointee of Barack Obama, could not endorse it.

The administration might want to pursue another settlement, and quickly.

MORE: **Due process on campus 'will get worse before it gets better'**

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ABOUT THE AUTHOR

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Greg spent several years as a technology policy reporter and editor for Warren Communications News in Washington, D.C., and guest host on C-SPAN's "The Communicators." Previously he led media and public relations at Seattle's Discovery Institute, a free-market think tank. Greg is developing a Web series about a college newspaper, COPY, whose pilot episode was a semifinalist in the TV category for the Scriptapalooza competition in 2012. He graduated in 2001 with a B.A. from Seattle Pacific University, where he co-founded the alternative newspaper PUNCH and served as a reporter, editor and columnist for *The Falcon*.

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Exhibit 22

The Trump Administration Inherited Hundreds Of Unresolved Title IX Complaints

Hundreds of sexual assault victims turned to the Department of Education for justice after feeling betrayed by their schools. Years later, many of them are still waiting for their complaints to be answered. “It’s a shame.”

Posted on March 6, 2017, at 7:30 a.m.

Tyler Kingkade
BuzzFeed News Reporter

A student holds a sign protesting campus sexual assault at Stanford, which is one of more than 300 universities or colleges under investigation by the federal government for its handling of sexual assault cases.
Ramin Talaie / Getty Images

In January 2013, a handful of sexual assault survivors from the University of North Carolina at Chapel Hill decided they’d had enough of how the prestigious public school treated rape victims. To fix the problem, they filed a complaint against UNC with the US Department of Education, sparking a federal investigation.

They haven’t heard much from that government agency since then.

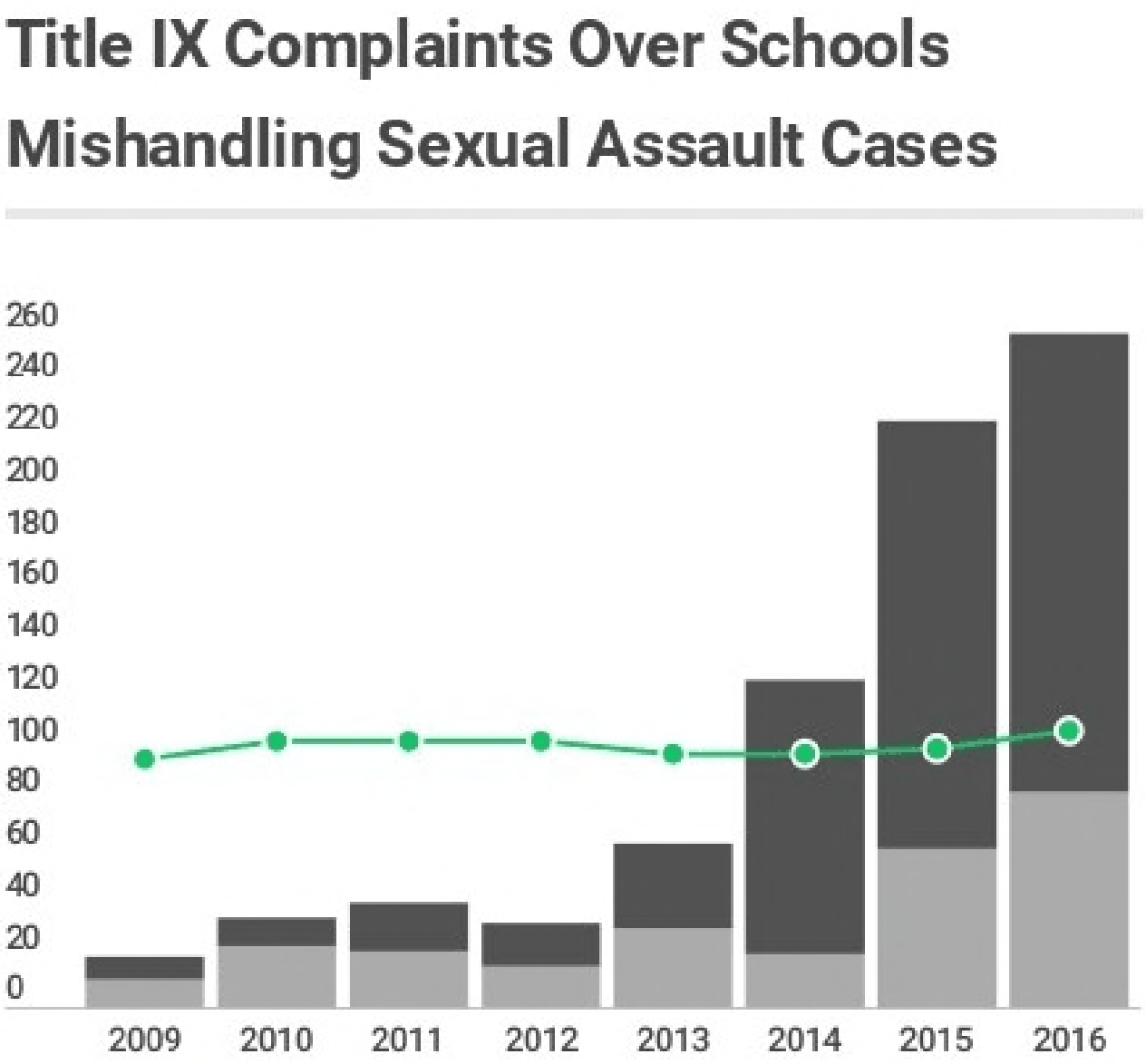
The Education Department’s Office for Civil Rights has more than 300 investigations open into how colleges

Exhibit 22

dozens of them, including the one at UNC, have been dragging on for three years or longer. And many of those students who filed complaints in 2013 and 2014 told BuzzFeed News they've gone years without any communication with federal officials.

With the investigations languishing, it leaves open the question of whether these schools are properly addressing sexual violence, and it delays reforms that may be ordered if the colleges are botching their responses to rape reports. The office responsible for the investigations is overworked, understaffed, and facing an uncertain future under the Trump administration, which is determined to roll back Obama-era policies and shrink federal bureaucracy. The sexual assault survivors who turned to the federal government for justice are now left wondering when — or if — they'll see the outcomes of these investigations.

"They could just let them sit forever," said one official who worked on OCR's enforcement, noting that the agency doesn't actually have deadlines to close the 311 current cases open at 227 campuses.



“Most people who do file a complaint while they’re in school will most likely either transfer, graduate, or drop out before their complaint is resolved,” Annie Clark, executive director of End Rape On Campus, told BuzzFeed News.

Clark is one of those people. She and Andrea Pino were among the group that filed the UNC complaint. The last time they heard from OCR was in 2013, when they declined a deal to cut off the investigation early if UNC agreed at that point to make reforms to its sexual assault policies.

“This is regular for a lot of complainants,” said Pino, who co-founded End Rape On Campus with Clark. “It's a shame.”

"They promised interviews while I was still on campus, but that never happened."

The US Department of Education declined to comment for this story.

When the UNC complaint was filed, the women said they were determined to show that mishandling sexual assault wasn’t just a problem at their university — it was something happening across the country; and they did. Soon, students were showing each other how to file Title IX complaints with the Education Department. The number of these complaints jumped from 17 to 32 between 2012 and 2013, and then continued to climb to a record 177 last year. Many people expected these investigations to last about a year, because that’s how long the Office of Civil Rights took in similar cases in 2012.

The growing backlog hasn’t just frustrated the students who filed them, but the institutions being investigated as well.

Annie Clark, co-founder of End Rape on Campus, hugs a fellow sexual assault survivor at a 2014 news conference.
Chip Somodevilla / Getty Images

When universities come under federal investigation, they're bound to face scrutiny from state legislators, boards of trustees and regents, students and faculty, and prospective students deciding whether to spend tens of thousands of dollars to enroll. Clark said her group often gets calls from parents asking whether a school that's not on the list is safer, a notion she tries to dispel.

"Schools typically who are on that list are looked at like they've done something wrong without any outcome yet from OCR," said Kai McGintee, a higher-education attorney who has defended universities in sexual misconduct cases.

It's unclear what direction the Education Department will take under the Trump administration on how it enforces the gender equity law Title IX. Many civil rights groups were angered that the administration quickly rescinded Obama-era guidance on how transgender students should be accommodated. Education Secretary Betsy DeVos has not made clear how she might change the way her department handles Title IX investigations, and their fate depends on who gets appointed assistant secretary for civil rights at the department. It's unclear when Trump will make his pick for the position.

Jennifer Reisch, legal director of the nonprofit firm Equal Rights Advocates, worries that when investigations are finished under the Trump administration, the results "won't be as strong as it might've been under the previous administration," a concern based on Republicans' aversion to what they consider government overreach. For example, OCR may not demand extensive reforms, publicly call out schools when they have violated Title IX, or demand that colleges reimburse tuition and counseling costs for victims whose cases were mishandled — things

"The average time spent to wrap up an investigation grew from 289 days in 2010 to 963 days last year."

Each complaint can represent one or many students, and nearly a third of the open complaints were filed in 2014 or earlier, meaning dozens or even hundreds of complainants could be waiting to hear from OCR officials. BuzzFeed News spoke with students behind more than a dozen complaints filed more than two years ago, and all said they'd gone years without speaking to the OCR. Some have not even been interviewed by investigators.

Hope Brinn and Mia Ferguson, who filed complaints against Swarthmore in April 2013, said the last time OCR contacted them was in February 2014, and both have since graduated. "They promised interviews while I was still on campus, but that never happened," Ferguson said.

The women who filed a complaint nearly four years ago against the University of Southern California also say they were never interviewed. One of them, Alexa Schwartz, asked OCR in January 2016 about the status of the case and was told it's still ongoing — the same answer she got when she asked about it in March 2014. "I'm not sure what information they are waiting for at this point," Schwartz said.

The family of a student who was raped at the University of Kansas said they haven't heard from federal officials since July 2015, when they were told their complaint was being "fast tracked." In the investigation of Harvard College, the lead complainants haven't heard from OCR since it did campus visits in May 2015. Joanna Espinosa said she hasn't heard from OCR since it told her the agency would open an investigation into her complaint against the University of Texas–Pan American in April 2014. The family of a student who filed a complaint against Iowa State University in 2014 hasn't heard anything from the feds in over a year. The woman who sparked the investigation in 2013 at the University of Colorado Boulder finally heard this week that the evidence collection from the Title IX investigation there is done, and OCR officials are waiting on "management review."

"I know they are absolutely inundated and swamped, and it's not going to get better with the new administration."

"I don't take it personally," said Julia Dixon, who filed a complaint against the University of Akron in early 2014 and hasn't heard from the department in two years. "I know they are absolutely inundated and swamped, and it's not going to get better with the new administration."

Former OCR officials say it's normal for there to be little communication between people who file complaints and investigators once a case is opened. But it's unusual for so many cases to drag on for years, which makes the silence from the feds more infuriating to complainants. Department data shows the average time spent to wrap up an investigation grew from 289 days in 2010 to 963 days last year.

Secretary of Education Betsy DeVos
Chip Somodevilla / Getty Images

When Catherine Lhamon ran OCR under Obama, she expanded all Title IX sexual violence investigations to become institution-wide, so investigators reviewed all cases at a school rather than just the cases that sparked federal complaints, former Education Department officials told BuzzFeed News.

Combined with a sharp rise in the number of complaints being filed, this "has strained and continued to strain the agency's resources," one former longtime OCR attorney told BuzzFeed News. This has caused many career staff to leave over the last three or four years, the former attorney added. As a result of the ever-growing workload, the former attorney said, "Morale has been really, really bad for the last several years."

OCR got a 7% budget increase at the end of 2015, allowing it to hire 49 more officials — not all of them investigators. But the OCR's staff includes 51 fewer people than it did a decade ago when the agency received about half as many complaints. One investigator who left an OCR field office last year told BuzzFeed News "you couldn't really feel the difference," because the volume of complaints kept growing. Overall, these type of complaints grew by 1,170% during the Obama administration, partly because the White House widely advertised filing them as an option for students.

"Unless new [employees] are added, the backlog of unresolved cases will grow, frustrating students and, in many cases, jeopardizing their access to education," OCR warned in a report for Congress last year, as the agency sought more funding. The number of cases each investigator takes on has almost doubled since 2006, OCR's report noted.

President Obama tried last year to get OCR more funding to help clear the backlog of Title IX investigations, but was largely unsuccessful. As President Trump now prepares a budget that is expected to include cuts to the Education Department, hope of getting more funding for OCR has diminished.

It's unclear how much these federal investigations cost colleges. The closest available data comes from a report by the insurance firm United Educators, examining 305 claims reported from 104 campuses between 2011 and 2013. It found those schools collectively spent close to $5 million defending themselves in OCR investigations, but that was before the probes became more expansive.

Former Vice President Joe Biden last year at a Las Vegas event promoting Obama-era initiatives to combat campus sexual assault.
Ethan Miller / Getty Images

“It’s an extraordinarily time-consuming and costly exercise to comply with a OCR investigation — not to mention the negative press with being under investigation by the federal government,” McGintee told BuzzFeed News. “No college wants that.”

In May 2014, over the protests of higher education officials, the department began disclosing what’s sometimes called a “shame list,” showing which colleges are under Title IX investigations. But now schools are growing frustrated that their names seem to hang there in perpetuity.

“The underlying issue is not that there is a list itself — it’s the criteria of how an institution is put on, and how they get off and comply with federal regulations is not clear,” said Makese Motley, a lobbyist for the American Association of State Colleges and Universities. “They should not be on the list for years at a time.”

Colleges are often left in the dark by federal officials while an investigation is ongoing. There's usually a flurry of activity early in an OCR investigation, when colleges are asked to provide documents and data. Investigators might conduct on-campus interviews, but otherwise, they rarely have direct contact with a school until an

Title IX investigations wouldn't take as long if they focused on individual complaints rather than institutional failings, as OCR often did under the George W. Bush administration. But that would be a "terrible move," argued W. Scott Lewis, a higher education consultant with the National Center for Higher Education Risk Management.

"They could just let them sit forever."

"Even when you get the singular complaint, you have to determine if this was a systematic issue," Lewis told BuzzFeed News. "Frankly, that's how civil rights investigations should be. I need to know if this problem is a larger problem, or if this is an anomaly. And even if it is an anomaly, you still have to fix it."

To close out cases quickly, the department could simply say that no violation occurred or that the school already had changed its policies to comply with Title IX, according to two former OCR officials. Or it could let cases linger indefinitely, since the investigation manual doesn't provide a timeline for staffers to follow. "They can have a case that stays open for 10 years if the administration chooses to do nothing about it," said a former OCR investigator.

It'd be a mistake if the department chose those routes, and decided to essentially drop investigations, argued Clark, of End Rape On Campus.

"It would be moving our nation backwards," Clark said. "Instead of trying to eliminate discrimination, it would be almost enshrining it."

Tyler Kingkade is a national reporter for BuzzFeed News and is based in New York City.
Contact Tyler Kingkade at tyler.kingkade@buzzfeed.com.

Got a confidential tip? Submit it here.

Exhibit 23

SPORTS › COLLEGE SPORTS

UC sexual misconduct punishments inconsistent, lacking in transparency

By ASSOCIATED PRESS | |
PUBLISHED: March 9, 2017 at 4:50 pm | UPDATED: August 28, 2017 at 5:49 am

SAN FRANCISCO — An associate UCLA professor who pursued a romantic relationship with a student until she was afraid to attend classes paid the university $7,500 in lieu of suspension. At UC Irvine, a dean accused of sexually harassing a co-worker agreed to take a demotion and stayed on as a teacher.

And at UC Santa Cruz, a professor accused of sexually assaulting a female student after a wine-tasting trip resigned before he could be fired. The University of California later agreed to pay his accuser $1.15 million.

The cases, among a trove of confidential files released last week by UC officials, show that the same lack of transparency and lax discipline that critics complained about at UC Berkeley in recent years also occurred at UC's nine other campuses.

In a rare look at the handling of sexual misconduct allegations in one of the nation's largest university systems, the cases show discipline was meted out inconsistently. The files cover 112 cases from January 2013 to April 2016 at nine campuses, excluding Berkeley, which separately released documents last year.

The Associated Press scoured hundreds of pages, many of which UC officials redacted in whole or in part citing privacy reasons. While the employees who were investigated included cafeteria workers and administrative employees, the AP examined cases involving the most prominent figures on campuses: the faculty.

The UC President's Office said faculty accounted for a quarter of the more than a hundred employees found to have violated sexual misconduct policies over the nearly three-year period but declined to specify those cases in particular. The AP was able to verify at least 21 of the cases involving faculty members, and found:

— In several instances, rumors about the accused swirled for years before anything was done.

— Two were fired and one instructor's contract was not renewed.

— Two people agreed to temporarily forgo merit pay increases, one took a 10 percent pay cut.

Exhibit 23

Exhibit 24

Title IX sexual assault lawsuits are increasingly asserting both “post-reporting” and “heightened risk” claims

USA | March 29 2017

Title IX of the Education Amendments of 1972 (Title IX) is enforceable through an individual’s private right of action, which has given rise to two general avenues for sexual discrimination claims in litigation. The first avenue concerns an alleged official policy of intentional discrimination by a recipient of federal education funding, which has typically arisen in matters of admissions, scholarship administration or athletic programming. The second avenue has typically applied to claims of sexual harassment or assault, where the primary elements are: (a) actual knowledge that a student has faced sexual misconduct in the institution’s program and activities and (b) deliberate indifference with respect to addressing the sexual misconduct that the institution knows is occurring.

Increasingly, plaintiffs are relying upon both avenues in Title IX lawsuits seeking redress for sexual misconduct. As noted above, plaintiffs typically assert the institution responded with deliberate indifference *after* they reported the sexual misconduct. Plaintiffs are also asserting concurrently that *before* their initial reports of the sexual misconduct the institution engaged in an official policy of discrimination posing a heightened risk to students. This alert addresses a recent judicial ruling analyzing such expansively pled Title IX claims. *Jane Does 1–10 v. Baylor Univ*., Case No. 6:16-CV-173-RP (W.D. Tex. March 7, 2017).[1]

Background

Ten plaintiffs, identified as Jane Does 1 through 10, allege that, while each was a student at Baylor University between 2004 and 2016, she was sexually assaulted by another student. Plaintiffs assert that, after each sought assistance and protection from Baylor, the university acted with deliberate indifference. Plaintiffs also contend that Baylor’s responses reflected a practice of mishandling reports of peer sexual assault and chilled student reporting. Baylor moved to dismiss the claims, characterizing plaintiffs’ allegations as “an amalgam of incidents that involved completely different contexts, offenders and victims,” and arguing that “evidence of a general problem of sexual violence is insufficient.” Federal District Court Judge Robert Pittman analyzed the plausibility of plaintiffs’ “post-reporting” and “heightened risk” Title IX claims.

Post-reporting claims

Plaintiffs’ complaint alleges that Baylor was deliberately indifferent to their reports of sexual assault, thereby causing them further sexual assault or harassment or creating a hostile educational environment. Baylor raised three primary arguments that plaintiffs’ post-reporting allegations were insufficient to state a claim for liability, each of which the court rejected.

First, Baylor argued that plaintiffs failed to allege that an “appropriate person” obtained “actual knowledge” of the sexual misconduct. Each plaintiff alleges that she reported her sexual assault to a Baylor office established by the university specifically to provide services and support to students, such as the police department or counseling center. The court found it to be plausible that such personnel either were “appropriate persons” under Title IX or communicated plaintiffs’ reports to an “appropriate person.”

Second, Baylor argued that allegations of non-compliance with regulatory and administrative guidance from the Department of Education (DOE), which plaintiffs reference in their complaint, are insufficient to establish deliberate indifference. The court agreed that an alleged failure to comply with certain DOE guidelines cannot, alone, demonstrate deliberate indifference. The court, however, stated generally that DOE regulations may be consulted when assessing the appropriateness of a school’s response to sexual assault reports. The court, however, offered no specific analysis regarding the applicable weight or review when referencing DOE regulations or guidance documents in litigation.

Third, Baylor argued that plaintiffs have not stated plausible allegations that they were subjected to further harassment after their reporting, especially for those individual plaintiffs who do not allege any specific instances of subsequent assault or harassment. While noting that allegations of further assault or harassment are necessary for a claim under Title IX, the court ruled that “to subject” a student to harassment “a school need only make the student vulnerable to that harassment.” The court concluded that each plaintiff adequately alleges Baylor’s failure to investigate her reporting of an assault and ensure that she would not thereafter be subjected to continuing assault and harassment. This Title IX analysis, however, is not universally accepted in federal district courts nationally. There is a split of authority with several opinions holding that a plaintiff must plead “further harassment” actually occurred after the school was on notice of the initial harassment.

While finding the Title IX claims to be plausibly supported, the court still dismissed four of ten plaintiffs’ “post-reporting” claims because they fell outside of the two-year statute of limitations applicable to this case.[2] The other six plaintiffs will be allowed to proceed with their “post-reporting” claims.

Heightened risk claims

Plaintiffs allege that Baylor’s handling of reports of sexual assaults created a heightened risk of sexual assault throughout the university’s student body. Specifically, plaintiffs allege the university knew of and permitted a “campus condition rife with sexual assault,” that sexual assault was “rampant” on campus, that the university mishandled and discouraged reports of sexual assault and that its response to these circumstances “substantially increased” the risk that plaintiffs and others would be sexually assaulted.

The court acknowledged the potential for “near constant liability” for schools due to the prevalence of sexual assault among college-aged individuals. Consequently, to succeed under a heightened-risk claim, the court concluded that plaintiffs must demonstrate the misconduct complained of was “not simply misconduct that happened to occur [at the school] among its students,” but “was in fact caused by an official policy or custom of the university.” Liability cannot be based, for example, solely on a school’s “failure to promulgate and publicize an effective policy and grievance procedure for sexual harassment claims.” This “heightened risk” analysis is not universally applied, as other courts have been unwilling to broaden Title IX claims to encompass an alleged general risk that was not specific to a university-controlled context.

The court found that plaintiffs have pled plausible claims that Baylor’s alleged policy or custom of inadequately handling and even discouraging reports of peer sexual assault created a heightened risk of sexual assault. Particularly, the court based its ruling on allegations that the university (1) misinformed victims of sexual assault as to their rights under Title IX, (2) failed to investigate reported sexual assaults, (3) discouraged those who reported sexual assaults from naming their assailants or otherwise coming forward and (4) reported to DOE that no assaults took place on campus during time periods relevant to plaintiffs’ claims.

The court allowed all ten plaintiffs to move forward with their “heightened risk” claims, including those raising incidents more than two years before the commencement of the litigation. Plaintiffs claim that they had no reason to know of the causal connection of all of the incidents until spring 2016 when media reports surfaced regarding several sexual assaults on the Baylor campus. The court concluded that, while it is plausible that the plaintiffs were aware of their heightened risk claims when their assaults occurred, it is also plausible that they had no reason to further investigate those claims until the media reports surfaced. As a result, when the case was filed in June 2016, plaintiffs acted within the applicable two-year limitations period.

The court’s ruling in *Does 1–10 v. Baylor* arose in an initial stage of the litigation, the adjudication of Baylor’s motion to dismiss the complaint. Given the procedural posture, the court had to accept the truth of plaintiffs’ well-pled factual allegations and determine only whether plaintiffs have pled plausible Title IX claims for relief. The ruling allows the litigation to proceed to discovery for the development of a factual record, where both sides will fully define the support for their respective positions and the university may move for a pre-trial disposition via a summary judgment motion.

This ruling offers an important signal to colleges and universities regarding the potential for expansively pled and litigated claims in a Title IX lawsuit. When defending against a Title IX lawsuit, a college or university must recognize that its response to a particular reported incident may not be analyzed solely in isolation, but in connection with other temporally connected or similarly arising incidents. As a sound defense strategy, a college or university should establish early in the litigation, either through pre-trial rulings or conferences with the court, the precise scope of the applicable claims and permissible discovery. This is particularly important where Title IX causes of action plead alleged and disputed theories of intentionally discriminatory policies pre-dating the harassment or assault directed at the plaintiff.

Further, Baylor has moved to certify the ruling for an interlocutory appeal to the Fifth Circuit, contending that it has far-reaching implications for the university and schools nationally. Particularly, Baylor seeks immediate appellate review of two legal issues. First, Baylor challenges the court’s decision to permit plaintiffs’ claims based on a “heightened risk” of sexual assault, contending that the ruling implicitly and incorrectly assumes that such claims do not require allegations that the educational institution exercised substantial control over the context and the assailant at the time of the sexual assault. Second, even if a “heightened risk” theory is cognizable, Baylor maintains that the court applied an overly broad statute of limitations analysis in allowing claims dating back over a decade.

Federal district courts are addressing diverse Title IX claims in sexual misconduct cases. Their rulings have varied in the evolving Title IX litigation landscape and require a careful analysis of the particular nuances of each case. Title IX issues will soon reach the federal appellate courts with more regularity and, if splits in analysis continue, likely the United States Supreme Court for ultimate determination.

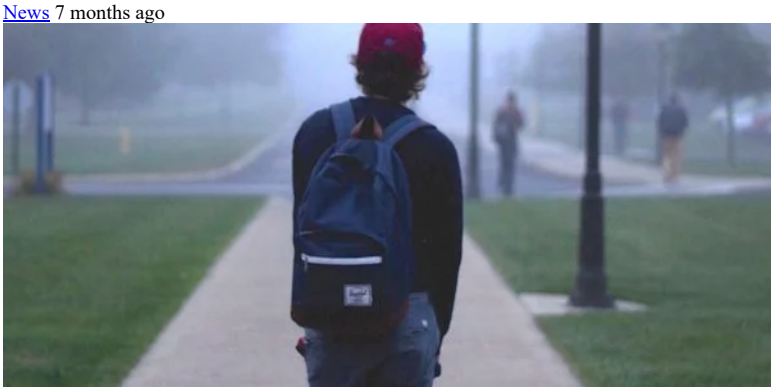
1. The plaintiffs in the Baylor lawsuit alleged both Title IX and state law claims. This alert focuses on the Title IX claims. [Back to reference]

2. Title IX has no express limitations period. Consequently, the court applied the two-year general personal injury statute of limitations period under Texas law to the Title IX claims. Tex. Civ. Prac. & Rem. Code § 16.003(a). [Back to reference]

Nixon Peabody LLP - Emily L. Sy and Steven M. Richard

Exhibit 25

News 7 months ago



A Title IX lawyer explains how male students sue their schools when accused of sexual assault

Share
Harry Shukman

‘They claim they’re victims of discrimination and the university’s process violates Title IX’

Male students accused of sexual assault are now taking their schools to court in high-profile and expensive lawsuits, according to a top Title IX lawyer.

Daniela Nanau, an attorney who often works on college cases, gave us the inside story on how students alleged to have committed sexual assault are suing their universities, claiming their cases were mishandled because they’re men.

These lawsuits, she explained, tend to be put forward by male students from wealthy families (who can pay the hundreds of thousands needed for these cases). They allege anti-male bias in their college tribunals – and, according to Nanau, the majority of cases are unsuccessful. We found out why.

Posed by model

Tell me about this trend and how it works.

The trend that has surfaced in recent years is that parties who are alleged to have engaged in sexual harassment – which can be threats all the way up to sexual assault – are contesting the disciplinary process. They're saying the disciplinary process they've had is plagued by an anti-male bias. They claim they're victims of discrimination and the university's process violates Title IX – the federal law that prohibits gender discrimination.

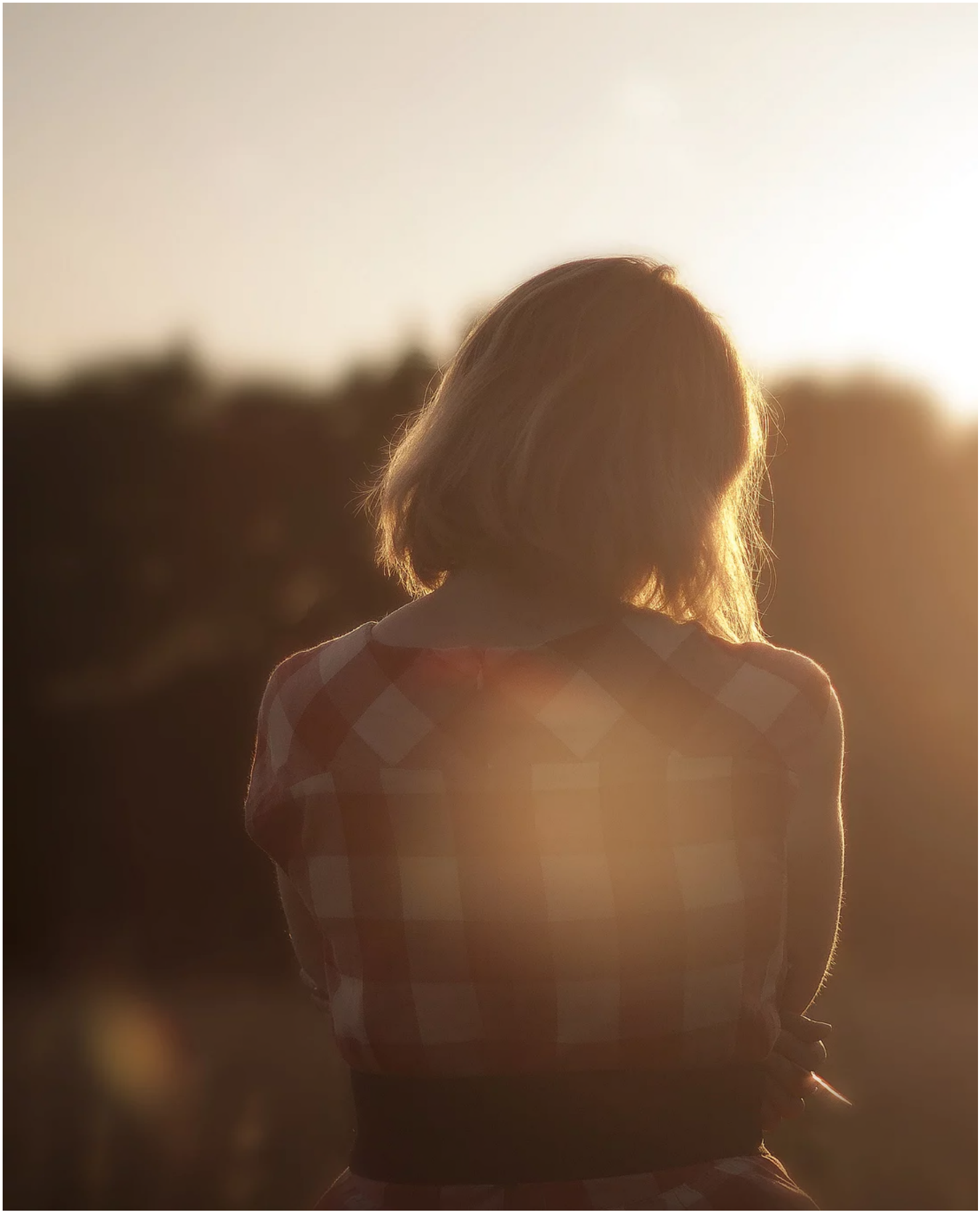
Schools have tried to contest these claims, and in some cases students who are alleged to have engaged in sexual harassment were successful. But in the vast majority of cases that I have seen reported, the students are not successful in making out a Title IX violation. And that's because I think that the standard is pretty high. The Second Circuit, which is the highest federal court in New York before the Supreme Court, has laid out a test that students have to meet in order to show that the disciplinary process they were subjected to was marred by illegal gender discrimination.

So there are two ways of attacking a university disciplinary proceeding on the grounds of gender bias. One way is if the plaintiff or the alleged harasser was innocent and wrongly found to have committed an offense – which is tough to prove. In the second way the plaintiff will say: "Regardless of whether or not I'm innocent or guilty, the severity of the penalty that has been imposed on me and they way the school came to the conclusion that I was guilty is very severe and very different from what other students have received regarding comparable misconduct."

Is there a case you have in mind?

One example is John Doe vs Columbia University in 2015. The plaintiff accused of sexual assault claimed he was treated more harshly and unfairly on the basis of his sex. And he says because of this anti-male bias, he couldn't get a fair process. The problem with his claim and why it was dismissed is that he was just using conclusory allegations claiming the process was rigged against him, so he was found guilty of sexual assault, rather than showing or describing real evidence. [A district judge threw out the claim before trial, although he has appealed].

The court documents show he just says conclusions that there's an anti-male bias at Columbia, but doesn't describe how it functions – who's responsible for it? Who perpetuates it? You have to do that in a complaint, show some kind of evidence. Judges are aware some people are trying to use the federal court process to clear their names, and they're clear in their decisions that it's not really worth it. Don't try it, because the standards are high – you need to show real discriminatory treatment.



Is there another case that really emphasizes this trend for you?

The Paul Nungesser case at Columbia. That's a case with a very well-publicized situation. And the plaintiff in that case who was accused of sexual assault tried to use that publicity to somehow demonstrate anti-male bias at Columbia. The judge said he had nothing. Especially he, the alleged harasser, went to the media and tried to use them

to tell his side of the story. He couldn't then say it was everyone else's fault.

So I think it's an interesting case of where the court demonstrates how you really have to have something more than a feeling of anti-male bias to bring one of these cases. Just because the college process breached the student conduct code, for instance, that's not enough. You really have to demonstrate that there was something flawed with the process. You can't claim bias when you're involved in the circus. It wasn't that he was a passive party, he was an active participant in the process that he then claimed was biased against him because of his gender. [Nungesser's case was also thrown out of court.]

You mentioned that the students who tend to bring these cases tend to be wealthy and privileged.

I definitely think that is true. It's difficult to find attorneys who will find cases not paid by the hour. And these cases tend to be people of privilege or those with families who can afford to fund the litigation. That doesn't necessarily determine the outcome of those cases but it does limit the avenue of redress. Federal litigation is very costly – just going to trial alone can be a quarter of a million dollars. Getting there costs also hundreds of thousands. These are very evidence-intense cases, and most of the evidence is based on testimonials – what people say on the record rather than what's in phones or emails or other documents. So it's expensive.

There are still firms bringing these cases because the clients come in and they have the ability to pay an hourly retainer and as long as there is some evidence, lawyers will file these lawsuits. But the more prudent attorney and student looking to clear his name would only bring a case if they really had something. Otherwise it's a bit of a luxury. If you get your claim dismissed from federal court and a judge saying: "You've got nothing," I don't think that gets you any closer to clearing your name. And those marks on your transcript are there for ever.

Not wanting to sound too cynical, but it seems that these students are being quite opportunistic and jumping on the stereotype that Title IX lawyers aren't doing their jobs properly.

In the cases that are coming out now, the courts are acknowledging that. For example, one case that came out in March 2015 in New York, Peter Yu vs Vassar College. The court said: "There has been much debate in recent times about the most effective method for addressing the formidable problem of sexual assault on college campuses. The court's role is not to advocate for best practices or policies or to retry disciplinary proceedings. Here the full question before the court is whether Vassar College expelled Peter Yu for sexual assaulting a fellow student, if it discriminated against him based on gender and violation of Title IX." So the court is saying their ability to regulate what goes on in schools is fairly limited. And it's really those outlier cases where the process is so one-sided that a student is going to find any luck. [Yu's case was dismissed by a judge.]

If someone has been found to be responsible for sexual misconduct and they're just trying to use the federal process to clear their name but the evidence isn't there, then yes – I think we should look critically at those folks. They're trying to use the court system as a second bite at the apple. And that's not what Title IX is for. So I do take a cynical eye.

A lot of right wing media is dominated by the idea that Title IX prosecutors are part of a grand liberal conspiracy out to get men – what's your take?

It's a myth. These colleges and universities – even if they're not-for-profit institutions – their job is to provide educational services for a fee. And they have a contractual relationship with every single student who comes onto campus. I really think that those two basic components create the circumstances that mean if there is a liberal bias on a university, it will be among the faculty teaching classes – that doesn't mean the school is informed by people who try to realize their liberal politics through the administration. That's because they have a business to run – educating folks who pay fees in exchange for degrees. And so the school is obliged to treat each student equally, because of their contractual relationship – the laws demand that. If there is a liberal bias in a school, it would not bleed into the administration to view their contractual relationships with men and women differently. I think idea is incredibly far-fetched.

Conversation edited for length and clarity.

@hshukman

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Exhibit 26

MENU

Culture Wars

Will Trump End Campus Kangaroo Courts?

Published July 5, 2017

By KC Johnson, Wall Street Journal

Democratic senators, a New Jersey task force and even the ABA mobilize against due process.

Is the Education Department preparing to dial back the Obama administration's assault on campus due process? In late June, Candice Jackson, who in April became acting head of the department's Office for Civil Rights, made her first public remarks about the regulatory regime she inherited. Ms. Jackson said she is examining her predecessors' work but offered no specifics about when, or if, Obama-era mandates will be changed.

Beginning in 2011, the Obama administration used Title IX—the federal law banning sex discrimination at schools that receive federal funds—to pressure colleges and universities into adopting new procedures for handling sexual-misconduct complaints. At most schools, accused students already faced secret tribunals that lacked basic due-process protections. But the Education Department

mandated even more unfairness. It ordered schools to lower the standard of proof to "preponderance of the evidence" instead of the "clear and convincing evidence" standard that some schools had used. It required schools to permit accusers to appeal not-guilty findings and discouraged allowing students under investigation to cross-examine their accusers.

As a result, scores of students have sued their colleges, alleging they were wrongfully accused. They have won more than 50 decisions in state and federal court since 2012, while nearly 40 complaints have been dismissed or decided in the colleges' favor.

Ms. Jackson has already reversed another Obama-era policy that sought to tip the scales in favor of accusers. Earlier this year, BuzzFeed revealed that her predecessor, Catherine Lhamon, had ordered that whenever someone filed a Title IX complaint against a school with the Education Department, the civil-rights office would investigate every sexual-assault allegation there over several years. The shift sometimes led to reopening cases in which accused students already had been cleared. Ms. Jackson argued last week that this policy—which Ms. Lhamon never announced publicly—treated "every complaint as a fishing expedition through which our field investigators have been told to keep searching until you find a violation rather than go where the evidence takes them."

These first signs of renewed fairness have elicited strong protests. Last week 34 Democratic senators, led by Washington's Patty Murray, sent a letter to Education Secretary Betsy DeVos accusing her of endorsing "diminished" enforcement of federal civil-rights laws. The senators did not even make a pretense of caring about due process for the accused. Congressional Republicans have mostly remained silent.

Read more at Wsj.com→

Exhibit 27

8.3.17

Judge rules that university must produce sexual assault reports in Title IX lawsuit

BY: STEVEN M. RICHARD

Nationally, courts are adjudicating lawsuits brought by plaintiffs raising Title IX claims relating to alleged sexual misconduct. In one such case, the plaintiffs, identified as Jane Does 1 through 10, allege that, while each was a student at Baylor University, she was sexually assaulted by another student. Discovery in Title IX lawsuits can be quite broad, with plaintiffs often seeking documentation and information not only about the incidents at issue, but also the college or university's responses to other reported allegations of sexual misconduct.

In *Does 1-10 v. Baylor University*, W.D. Tex., 6:16-cv-173, discovery disputes have arisen regarding the relevant and proportionate scope of permissible discovery. Recently, the Western District of Texas Federal District Court issued a ruling addressing the discoverability of Baylor's records relating to sexual assaults and code of conduct violations of non-plaintiff students. Baylor responded that the plaintiffs' requests for such student records raise serious privacy concerns.

At a hearing, the court indicated that it considered any records relating to sexual violence or sexual harassment to be highly relevant to the case, regardless of whether the records pertained to the plaintiffs or non-party students. The court, however, suggested that plaintiffs' requests regarding code of conduct violations generally were overly broad. The plaintiffs and the universities engaged in post-hearing efforts to try to resolve the discovery issues, but were unable to do so.

In a July 27 written decision, the court rejected Baylor's proposal to provide spreadsheet information listing details about alleged sexual assaults and the eventual disposition of the complaints. Baylor argued that such a spreadsheet would protect third-party students, who would otherwise receive a FERPA notice regarding the planned production of documents relating to a sexual assault in which they were either the complaining party or the accused. While the court acknowledged that it "is

Exhibit 27

acutely aware of the privacy concerns that Baylor raises," it could not agree that those privacy concerns outweigh plaintiffs' interest in investigating their allegations in the litigation. The court concluded that the requested records could show an "official policy adopted by custom" concerning the handling of reported sexual assaults. Therefore, the court ordered Baylor to produce documents —not summaries—related to sexual violence against or sexual harassment of third-party students.

Regarding the request for documents relating to third-party violations of the student code of conduct, the court found its scope to be too broad. The court allowed limited discovery regarding violations relating to "sex"—which it understood to mean sexual conduct generally.

The court ordered the production of the non-party student records subject to the entry of a protective order in the case that "will add a substantial level of privacy protection to students whose records will be disclosed." As this ruling demonstrates, the scope of discovery in sexual misconduct cases against colleges and universities can be broad, and the institution must ensure that it takes the necessary measures to protect the privacy interests of non-party students (particularly protections afforded by FERPA). To the extent that a court orders production as it did here, a protective order should be entered to limit the viewing and use of the produced documents, including requirements for the redaction of personally identifiable information or sealing of records in any court filings.

CATEGORY: PRIVACY LITIGATION & CLASS ACTION

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Exhibit 28

Title IX and Procedural Fairness: Why Disciplined-Student Litigation Does Not Undermine the Role of Title IX in Campus Sexual Assault

ERIN E. BUZUVIS | AUGUST 8, 2017 | STUDENT SEXUAL MISCONDUCT

As an aspect of its prohibition on sex discrimination, Title IX of the Education Amendments Act of 1972 requires educational institutions that receive federal funding to engage in a "prompt and equitable" response to reports of sexual harassment, including sexual violence. In the last five years, the Department of Education has increased its efforts to enforce this requirement, both resulting from and contributing to increased public attention to the widespread problem of sexual assault among students, particularly in higher education. The increase in both enforcement and public attention has motivated colleges and universities to improve their policies and practices for addressing sexual assault, including their disciplinary processes. More students are being disciplined as a result.

Not surprisingly, this increase in discipline for sexual assault has correlated with an increase in litigation by students who have been disciplined for sexual assault under Title IX. In some cases, disciplined-student plaintiffs have prevailed in overturning their punishment, causing many to suggest that colleges and universities are "overcorrecting" for earlier deficiencies in their procedures that lead to under-enforcement of campus policies banning sexual misconduct. Much of this rhetoric places blame on Title IX for universities' problems with compliance and calls, either implicitly or expressly, for repeal of Title IX's application to sexual assault.

This framing of Title IX is both misleading and problematic. Individual stories and cases of procedural error and bias, or allegations of procedural error and bias, in sexual assault hearings are often presented as evidence of a trend that universities have abandoned procedural fairness in order to comply with the new requirements of Title IX. It does seem accurate to

Exhibit 28

suggest that litigation involving students disciplined for sexual assault occurs more frequently today than before the present era of increased enforcement, which effectively began when the Department of Education's 2011 Dear Colleague Letter clarified the institutional response required under Title IX to reports of sexual assault. Yet, by clarifying the government's expectations for colleges and universities under Title IX, the Dear Colleague Letter motivates institutions to make sexual assault easier and more comfortable for victims to report and to improve their policies and procedures for addressing the reports of sexual assault that they receive. It is possible, therefore, that students disciplined for sexual assault are just as litigious as they were prior to the Dear Colleague Letter—there are simply more of them today. This is not because of problems that the Letter caused; rather, it is because of the problems it corrected.

Moreover, the cases in which disciplined students have succeeded on the merits of their claims cannot serve as evidence of a widespread problem without proper context. When contextualized, statistics place those victories within the larger number of cases that universities win on motions to dismiss or summary judgment, the unknown number of cases in which universities impose discipline that is not litigated, and the additional unknown number of cases in which campus disciplinary proceedings do not result in discipline in the first place.

Finally, the rhetoric of Title IX blame fails to recognize that in cases in which disciplined students have prevailed, the winning arguments have not been anti-male bias, which might suggest a problem that is systemic instead of isolated. Nor have disciplined students prevailed on any procedural argument targeting anything that the Department of Education has required institutions to do as part of a Title IX-compliant response to sexual assault. Nothing in Title IX requires or encourages colleges and universities to violate the due process or contractual rights of students who are accused of sexual assault.

This Article examines the recent spate of disciplined – student cases in an effort to harmonize Title IX compliance with the procedural rights of students who are accused of sexual assault. First, by way of background, it describes and provides historical context for Title IX's application to the problem of sexual assault on college and university campuses, as well as the requirements the law imposes on the educational institutions within its scope. Next, it describes the role that Title IX plays in disciplined-student cases themselves. As Part III illustrates, it is popular for disciplined-student plaintiffs—who thus far have all been male—to argue that the college or university's decision to discipline them was tainted by "reverse" sex

discrimination prohibited by Title IX. However, even as some courts have determined such claims meet the bare minimum of proper pleading, reverse discrimination claims have yet to prevail on the merits. Part IV describes how disciplined-student plaintiffs have had comparatively more success challenging disciplinary procedures and outcomes using due process, administrative law, and breach of contract claims. This Part also notes that cases in which disciplined students have successfully argued due process, administrative law, and breach of contract claims do not create legal obligations for defendant institutions that conflict with Title IX's requirement to engage in a prompt and equitable response to sexual assault on campus. For these reasons, the Article argues in its final part that neither the fact of litigation by disciplined students nor the examples of their occasional success undermines Title IX and its application to sexual assault. Procedural fairness is an important component of all campus disciplinary hearings, and litigation is an appropriate response to ensure that universities do not commit material errors in disciplining students for sexual assault. However, such litigation should not be viewed as evidence of a problem with Title IX or a reason to withdraw universities' responsibility to engage a prompt and equitable response to campus sexual assault.

Read the full article including footnotes.

Erin E. Buzuvis, Title IX and Procedural Fairness: Why Disciplined-Student Litigation Does Not Undermine the Role of Title IX in Campus Sexual Assault, 78 Mont. L. Rev. 71 (2017).

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ERIN E. BUZUVIS

WESTERN NEW ENGLAND UNIVERSITY SCHOOL OF LAW

Erin Buzuvis is the Director, Center For Gender and Sexuality Studies and Professor Of Law at WNE School of Law. Professor Buzuvis researches and writes about gender and discrimination in education and athletics, including such topics as Title IX's application to campus disciplinary proceedings for sexual assault, Title IX and college athletics reform, intersecting sexual orientation and race discrimination in collegiate women's athletics, retaliation and related discrimination against female college coaches, and participation policies for transgender and intersex athletes. Additionally, she is a co-founder and contributor to the Title IX Blog, an interdisciplinary resource for news, legal developments, commentary, and scholarship about Title IX's application to athletics and education.

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Exhibit 29

THE CHRONICLE
of Higher Education

August 11, 2017 by Nick DeSantis

U.S. Asks Court to Put Hold on Lawsuit as It Reviews 2011 Title IX Guidance

The U.S. Department of Education on Friday asked a federal court to put on hold for 90 days a lawsuit challenging hotly contested guidance from the Obama administration on campus sexual-assault policy, while the department reviews the guidance that is being challenged.

In 2011 the department's Office for Civil Rights issued a "Dear Colleague" letter that ratcheted up pressure on colleges to deal with reports of sexual misconduct promptly and equitably. The letter argued that the federal gender-equity law known as Title IX compelled colleges to do everything possible to prevent assaults and to punish the perpetrators. Critics of that guidance have said that the directive pushed colleges to trample on the due-process rights of accused students.

Last year a University of Virginia law-school graduate sued the department over the guidance after being found responsible for sexual misconduct. Oklahoma Wesleyan University joined the lawsuit about two months later.

Education Secretary Betsy DeVos has met with sexual-assault survivors and accused students on the guidance, and has signaled that it needs to change. But she has not yet offered specifics on how her department might modify it.

In the motion filed on Friday, the department asked the court to hold the lawsuit "in abeyance for 90 days" because the civil-rights office was "reviewing the 2011 Dear Colleague Letter" that is at the center of the litigation.

The motion stated that the government had consulted with lawyers for the plaintiffs, who did not oppose the request.

Return to Top ↑

This entry was posted in Government, Sexual Assault, Sexual Misconduct, Students. Bookmark the permalink.

Exhibit 29

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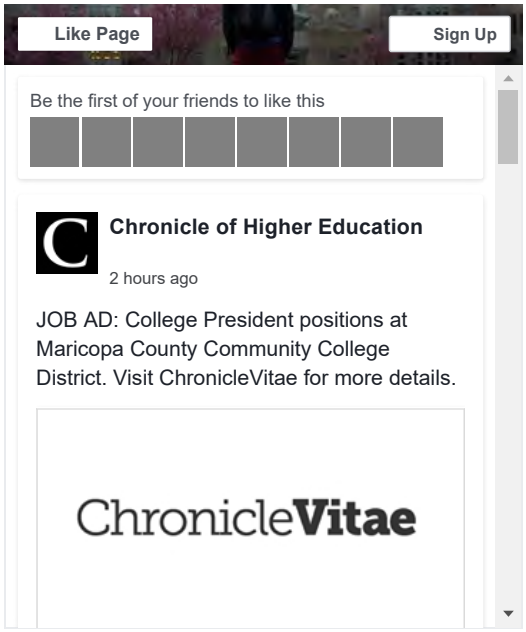

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Exhibit 30

Former student files Title IX lawsuit against Texas A&M

By Rusty Surette | Posted: Tue 5:21 PM, Aug 15, 2017 | Updated: Tue 10:52 PM, Aug 15, 2017

COLLEGE STATION, Tex. (KBTX)- KBTX has learned a Title IX lawsuit has been filed by a former student against Texas A&M University that alleges male-gender bias in a sexual conduct investigation.

Texas A&M University has declined to comment on the case.

The student is represented by attorneys Andrew Miltenberg and Michelle Simpson Tuegel.

Exhibit 30

Click here to see a copy of the lawsuit.

According to a statement from the attorneys, their client, referred to as John Doe in the lawsuit, was wrongfully accused of sexual misconduct by a fellow student and suspended for over one full year and dismissed from the University's Corps of Cadets.

"TAMU failed to provide a fair and unbiased investigation of the encounter, resulting in the violation of Title IX and John Doe's fourteenth amendment rights to due process. The University went so far as to conduct the sexual misconduct and adjudication process without John Doe's participation, while the accused student was hospitalized and admitted to a mental health treatment facility," said the attorneys.

"After he was falsely accused of sexual misconduct, this young man suffered severe depression and anxiety resulting in his hospitalization and subsequent admittance to a mental facility," said Miltenberg, who has represented hundreds of accused males on college campuses.

"Yet, the administrators at TAMU -- showing callous disregard for his
well-being and rights to due process -- moved forward with a biased hearing and presumption of guilt, providing him with no opportunity to defend himself from these false claims," said Miltenberg.

According to the complaint, the John Doe's accuser, Jane Doe, had previously been accused of sexual misconduct by a male student. While John Doe was removed from campus housing and his extracurricular activities during the course of the disciplinary process, Jane Doe was allegedly able to remain in her dormitory and activities while claims against her were being investigated and adjudicated.

"While John Doe was found 'responsible' of all four charges against him, without a basis, rationale, evidentiary support, or the opportunity to defend himself, TAMU assigned Jane Doe and her accuser '50/50
responsibility,' and Jane Doe received no sanctions," according to the statement issued from the attorneys.

"The stark difference in the procedures and sanctions implemented in the investigations of John Doe and Jane Doe point to a blatant male gender bias at TAMU," said Tuegel. "The anti-male discriminatory bias in the TAMU process is a clear violation of Title IX and the Fourteenth Amendment requirement for procedural due process."

The complaint goes on to state that, in erroneously deciding that John Doe engaged in sexual misconduct in violation of TAMU's Title IX policy, the adjudicator relied on prejudicial assumptions and failed to apply the requisite preponderance of evidence standard required by both the University's own policies and Title IX.

The student's attorneys say at all times, John Doe was deemed guilty.

Consequently, John Doe was suspended for over one full year and dismissed from the University's Corps of Cadets, said the attorneys.

The complaint states that "this extreme and severe sanction was not warranted in light of the lack of evidence."

"The complaint also notes that TAMU has recently come under fire for its unlawful Title IX procedures. In 2015, the U.S. Department of Education Office of Civil Rights opened an investigation at TAMU into the disciplinary process and procedures in place in the University," said the attorneys.

Exhibit 31

01:07

Threesome on Video Leads to School of Mines Sexual-Conduct Lawsuit

MICHAEL ROBERTS | **SEPTEMBER 7, 2017** | **6:46AM**

20 1

Shortly after a former first-year student sued the University of Denver over what his complaint describes as "false allegations of non-consensual sexual contact" with a fellow DU

AA

filed a similar suit against the Colorado School of Mines. The Mines student in question, identified by the pseudonym John Doe, says he was never given a chance to properly defend himself against inaccurate claims that he'd taken advantage of a drunk female student during a threesome and captured and distributed a video of the encounter.

In response to an inquiry from *Westword*, Peter Han, vice president of external relations for the Colorado School of Mines, corresponding via email, offers the following response: "Colorado School of Mines is committed to providing a safe environment for our students that is free of harassment, sexual violence and sexual exploitation. Mines has taken concrete steps to implement prevention programs, provide support to students who may experience sexual violence and ensure that all situations are handled fairly and justly."

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those involved in these matters.

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Likewise, Andrew Miltenberg, an attorney with New York-based Nesenoff & Miltenberg LLP, offers no comment about the Mines case. The quotes from him that appear in this post were shared during

of them had been published, and they don't specifically address the latest matter.

The DU and CSM complaints aren't the only ones from Colorado currently on Miltenberg's agenda. As we reported last September, he had previously filed separate suits on behalf of another DU attendee, a CU Boulder student and CSU-Pueblo's Grant Neal, who reached a settlement with his former university in July.

Although these cases aren't identical, they share common characteristics. In general, Miltenberg accuses schools of discriminating against those who are accused of sexual misconduct at universities – they're usually, but not always, male – for fear of public backlash if they're not found guilty.

Attorney Andrew Miltenberg.

Courtesy of Andrew Miltenberg

he told us last month, "because the greater risk is to not punish the accused and then face a lawsuit from the accuser, like what happened at Columbia" – a reference to a recent controversy involving a female student at the New York university who demonstrated her displeasure with how her rape case was handled by the school via an art project in which she carried a mattress with her while on campus.

"They held rallies and did other things that were bad for business," Miltenberg said about the Columbia case, which resulted in a recent settlement with the male student in the incident. "That's not good for university admissions or alumni giving. So they choose the path of least resistance, the path that has less risk financially and reputationally – which is to find against the young man, assuming that only one out of every ten will have the fortitude or the resources to actually take on a university with an endowment that could be in the hundreds of millions and is often seen as a pillar of the local community. David versus Goliath doesn't even do justice to it as a

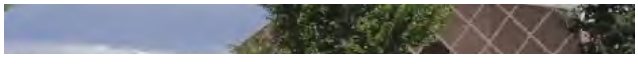
Miltenberg also objects to investigative guidelines that frequently eschew hearings or the opportunity to directly question witnesses in favor of a model in which an investigator puts together a report and reaches a conclusion that tends to be rubber-stamped by a school's administrators. As he told us in 2016, he sees this approach as "outdated and ineffective. Basically, you're putting one person in charge of the entire process, as opposed to the model many schools have moved to, where there are multiple investigators – usually two – interviewing all the witnesses and the parties and issuing a report. After that, the parties have an opportunity to comment on that report, the investigators issue a final report, and the Title IX coordinator decides if there's enough information for a hearing, usually before one person or a panel."

Against this backdrop comes the latest complaint, which alleges that Colorado School of Mines "investigated and adjudicated Plaintiff in an arbitrary and

the basis of his male sex. CSM failed to adhere to portions of its own guidelines and policies, which themselves are insufficient to protect the rights of male students. CSM's process and discipline of finding sexual misconduct and ordering removal prior to any hearing of the issues exhibited a discriminatory bias against male students and an underlying motive to protect CSM's reputation and financial well-being."

The document adds that John Doe "has sustained damage to his future education and career prospects as a result of the reputational harm suffered as a result of CSM's branding him responsible for a sexual offense he did not commit. Plaintiff has lost the money spent on obtaining a college education at CSM along with a $30,000 academic scholarship. The sacrifices made by Plaintiff's family in order for him to receive a college education from defendant CSM has been wasted."

Warning: The following account is explicit.



The Colorado School of Mines campus.

YouTube file photo

On the night of October 8, 2016, and the morning of October 9, the lawsuit states, John went to an off-campus party that was also attended by Jane Roe and her friend Megan Poe (these names are pseudonyms, too). He'd known Megan since freshman orientation. Over the course of the evening, all three consumed alcohol, with John supposedly becoming more inebriated than either of the women. However, he'd arranged to catch a ride with a designated driver, and when he left the get-together, Jane and Megan joined him. En route, John and Megan are said to have been "making out."

The trio soon arrived at John's fraternity house, the lawsuit continues, and Jane and Megan accepted his offer to spend the night in a spare room. The three got together there a short time later, and after more kissing, John allegedly asked Megan if she

couldn't have sex because she was "on her period," but she was game for oral sex – and after she started performing this act, Jane "approached the two and began removing her clothing and joined Megan Poe in oral sex."

The document maintains that "Plaintiff did not invite or request any sexual contact from Jane Roe," but he raised no objections when she straddled him for intercourse even though he wasn't wearing a condom – although he subsequently found one in his wallet and slipped it on, the suit allows. Amid this act, John reportedly "blacked out" and has no memory of what happened until the following morning. But the complaint stresses that he had earlier asked Jane if she was sure she wanted to have intercourse and she answered, "Yes."

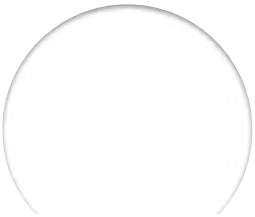
Later that day, the document goes on, John "learned from a classmate that a posting from his phone, on the rugby team's chat group, contained a video of

Megan Poe and another video with Jane Roe partially nude." He quickly had the videos removed – the main concerns of Megan and Jane, according to the lawsuit. But on October 10, a member of the frat reported the incident to the school's deputy Title IX coordinator, and one month later, on November 10, a report found that John had violated the institution's policy prohibiting gender-based discrimination, sexual harassment and sexual violence by "(a) having engaged in sexual activity with Jane Roe while she was mentally incapacitated as a result of drinking alcohol, (b) by having taken video of a sexual activity, and (c) distributing these videos without consent of the recipients."

The November 10 report marked "the first time that Plaintiff learned of the actual charges and allegations against him," even though he was supposed to have received a notification of them when the investigation was launched, the suit says. The document adds that witness statements were summarized, with no copies of the transcriptions

more intoxicated than either Jane or Megan, and falsely claimed that he admitted to taking the videos, even though he couldn't recall doing so. Moreover, the complaint accuses the school of refusing to let John appeal the decision, question witnesses or present new evidence. A letter dated January 31, 2017 indicated that the college's "policy and procedures do not require a 'formal hearing' to resolve these types of conduct matters."

The lawsuit seeks a different kind of resolution. It cites six separate causes of action and demands that "the outcome and findings by Colorado School of Mines be reversed; Plaintiff's reputation be restored; Plaintiff's disciplinary record be expunged" and more. Additionally, the complaint asks that the court award John Doe with "further relief as the Court deems just, equitable and proper."



Michael Roberts has
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news and politics to sp
and stories that defy
categorization.

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Darius Ratcliff, in for life. **Denver Police Department**

Darius Ratcliff Sentenced to Life Plus 128 Years

WESTWORD STAFF | **DECEMBER 27, 2017** | **6:37AM**

Before he turned twenty, Darius Ratcliff took part in a crime that left one man dead and several injured. On December 22, after a four-day trial, he was convicted of one count of first-degree murder

AA

Ratcliff was sentenced to life in prison without the possibility of parole for the murder conviction, and to 48 years in prison for each of the attempted-murder convictions. He was also sentenced to 32 years for his June conviction of first-degree assault-peace officer in connection with an officer-involved shooting.

All of the sentences are to run consecutively, or life plus 128 years. In short, Ratcliff has committed a lifetime's worth of crimes before he could legally order a beer or possess an ounce of marijuana in Colorado.

As Michael Roberts has reported, the incident that put Ratcliff on law enforcement's radar took place around 11 p.m. on Friday, November 6, 2015, at a residence in the Baker neighborhood.

The Denver Police Department tweet sent out early the next morning read, in part, "#BREAKING #DPD resp to Bayaud & Bannock on report of shooting. 4 victims. 2 trans unk cond, 2 walk in @ hosp unk cond." That was followed a few hours later by another DPD tweet sharing

been pronounced deceased, 1 critical, & the other 2 have non life threatening injuries. Ongoing investigation."

Prior to an official announcement of the homicide victim's identity, family members of Christian Martinez confirmed his death, with his brother, L.J. Cisneros, posting a series of tributes, including a photo collection captioned, "FUCK I MISS MY BROTHER...."

The shooting took place during a fight in which combatants spilled out of a house party, and Martinez was fatally shot in the back – and Ratcliff was subsequently named a suspect in a Crime Stoppers alert. Another alert was issued in June 2016, and a few weeks later, at 9:40 p.m. on July 31, officers spotted a suspicious vehicle on North Olive Street. that matched the description of a vehicle involved in a drive-by shooting early that evening. Ratcliff was driving; he fled the vehicle but was located nearby, when he fired shots at the police officers and one returned fire, striking Ratcliff in the abdomen.

After a four-week trial that ended

the officer, but the first-degree-assault charge stuck.

And according to Denver District Attorney's Office spokesman Ken Lane, there are still more charges pending against Ratliff:

· Three counts of burglary and one count of criminal mischief, in connection with the alleged burglary of a marijuana dispensary on June 3, 2016, in the 4000 block of Jackson Street.

· Four counts of attempted murder, four counts of attempted first-degree assault, four counts of menacing, and one count of illegal discharge of a firearm, in connection with an alleged shooting on September 27, 2015, in the 3300 block of Colorado Boulevard; charges in that case were filed August 9, 2016.

· One count of escape from pending felony for allegedly fleeing from police as he was being escorted from the city jail into Denver Health Medical Center on

captured moments later.

Arraignment is scheduled for those cases on January 22, 2018, at 8:30 a.m. in Denver District courtroom 4G.

Exhibit 32

Two Nashville lawsuits signal new chapter in the fight against campus sex assaults

Stacey Barchenger and Adam Tamburin, The Tennessean Published 6:00 a.m. CT Sept. 18, 2017 | Updated 5:40 p.m. CT Sept. 18, 2017

(Photo: USAT)

This story has been updated to correct information about the enrollment status of the plaintiff in the Belmont University lawsuit.

Two Nashville lawsuits reflect a new chapter in the debate over how colleges respond to sexual assault claims, echoing concerns over Title IX outlined this month by Betsy DeVos.

President Donald Trump's education secretary announced plans to overhaul federal rules surrounding Title IX, the federal law that guides campuses on sexual discrimination and violence responses. Those plans have prompted criticism, but also support.

Her concerns that administrative discipline procedures unfairly disadvantage students accused of sexual assault are evident in Nashville, where two of the city's most prominent universities are embroiled in legal battles defending their Title IX investigations.

Two pending cases

A lawsuit filed Sept. 11 alleges Belmont University mishandled a Title IX investigation of a student identified in court papers as John Doe. The lawsuit says Doe was cleared of sexual misconduct after a university investigation spurred by a female student's allegation of sexual assault.

But it says the university did not properly notify him of other allegations against him. The school eventually suspended him for the spring 2017 semester, finding that he was "purposefully untruthful" during the investigation and that he violated a dorm visitation policy. The lawsuit argues the punishment "constructively expelled" Doe from Belmont.

The lawsuit says the woman who accused Doe of assault was not similarly punished for being "the untruthful party."

In a statement, Belmont's university counsel Jason Rogers forcefully defended the university's investigation of Doe's case, and investigations of sexual assaults in general.

“The University fully and fairly investigates all complaints of sexual assault and, in adjudicating the complaints, treats all of those involved with respect and impartiality," Rogers said. "This situation was no different. As this case progresses, we are confident that Belmont's commitment to these principles will be evident and its actions will be vindicated."

Belmont outlines policies against "deliberate deception" in its code of conduct and stipulates rules about dorm room visitation by "members of the opposite sex" in its residence life handbook. Orientation sessions and annual emails reinforce both rules and students must agree to follow university policies in their applications.

The lawsuit, which also alleges Doe was deprived of his right to a lawyer, was filed by Nashville attorney Michelle Owens, who declined to comment on the specific case.

But Owens has been outspoken in support of broad reforms to federal rules, fielding about 25 media interviews by her own estimate since DeVos announced her position on Title IX a little more than a week ago.

Owens volunteers with Stop Abusive and Violent Environments' Tennessee chapter. SAVE leaders met with DeVos and encouraged her to take a look at Title IX.

Owens told the USA TODAY NETWORK - Tennessee that she has represented about 50 students nationwide in administrative investigations related to Title IX, and been involved in three lawsuits. She said going to court is a last recourse, and did not expect more cases filed because of DeVos' reforms.

"If someone files a lawsuit over Title IX it is because they are left with no other option and that doesn't change because of the political climate," Owens said in an email. "I don't think anyone relishes filing a lawsuit against their university. What students want is a fair and impartial determination at the university level."

The Belmont case is not the only challenge pending in local courts.

In May, a student identified in court papers as Z.J. sued Vanderbilt University saying he had been wrongfully accused of sexual assault.

► **From May:** Former student sues Vanderbilt for $10M after expulsion for sexual assault (/story/news/2017/05/15/former-student-sues-vanderbilt-10-m-after-expulsion-sexual-assault/323062001/)

He alleged Vanderbilt did not follow its own campus discipline policies when it expelled him, an assertion the school denied, saying the university works to "thoroughly investigate all sexual misconduct complaints and resolve them promptly and equitably."

Title IX reforms on a broad scale

The Belmont and Vanderbilt lawsuits come in the midst of a sea change involving Title IX.

Former President Barack Obama’s administration enacted a series of strict guidelines that pressured colleges and universities to be more aggressive in tackling sexual assault cases on campus. About the same time many universities made fighting sexual assault a priority.

New rules are expected from DeVos' department soon.

In particular, DeVos has said students accused of sexual assault do not get fair treatment under the current system. She repeatedly referenced the lack of due process for the accused during a speech this month, saying many college disciplinary hearings amount to “kangaroo courts” that unfairly penalized accused students.

► **More:** Tennessee colleges have muted reaction to DeVos' work to change Title IX policies (/story/news/education/2017/09/08/tennessee-colleges-have-muted-reaction-devos-work-change-title-ix-policies/647976001/)

Victims' rights (http://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/victims'-rights) advocates have been harshly critical of that stance.

Sara Starr, a Vanderbilt senior who has led efforts to fight sexual assault at the university, said she has heard from several students who are concerned about DeVos’ proposed changes to Title IX rules.

“Every story she gave (in her speech) was about someone who was accused and didn’t think they should have been,” Starr said. “What about everyone on the other end?”

Starr saw a link between that position and the spate of lawsuits filed by students accused of sexual assault.

“The highest level of office in this country is telling people that we should care more about the alleged perpetrators than survivors of sexual assault,” she said. “That is going to embolden a lot of people to push back when they are rightfully accused.”

Starr said she was sexually assaulted on campus as a freshman. That's why, she said, she got involved to make changes at Vanderbilt. The USA TODAY NETWORK - Tennessee generally does not name victims of sexual assault, but Starr agreed her name could be used.

Starr worries that progress she has seen on Vanderbilt’s campus — including added training, conversation and resources to help survivors of sexual assault — are in jeopardy under DeVos’ Education Department.

That DeVos was appointed by Trump, who was criticized during his campaign after the release of a tape in which he talked about groping women, added to Starr's concern.

Under the Obama administration, Starr said, “you felt like you had people in high levels of government clearly making a push to do what we were doing on the ground.

“We’re not seeing that anymore, and that’s very frustrating,” she said. “It has a very real chance to regress the progress we have made and generally make it harder for us to move forward.”

Reach Adam Tamburin at 615-726-5986 and atamburin@tennessean.com. Follow him on Twitter @tamburintweets. Reach Stacey Barchenger at sbarchenger@tennessean.com. Follow her on Twitter @sbarchenger.

Exhibit 33

Fourth sexual violence lawsuit filed against Nashville public schools

Anita Wadhwani, USA TODAY NETWORK - Tennessee Published 3:49 p.m. CT Sept. 19, 2017 | **Updated 5:48 p.m. CT Sept. 19, 2017**

(Photo: File)

A fourth lawsuit has been filed against Nashville public schools alleging school officials failed to properly respond to student-on-student sexual misconduct (/story/news/2017/09/14/nashville-williamson-schools-sexual-assault-lawsuits-hunters-lane-maplewood-independence/659443001/) that was videotaped, uploaded to the internet and circulated among students on their cell phones.

The suit asks for $3 million and additional punitive damages, as well as an injunction forcing Metro public schools to comply with federal sexual harassment laws.

► **More:** 3 schools 'deliberately indifferent' to sexual assault reports, lawsuit claims (/story/news/2017/09/14/nashville-williamson-schools-sexual-assault-lawsuits-hunters-lane-maplewood-independence/659443001/)

A spokeswoman for Metro schools cited the pending litigation and student privacy concerns in declining to comment on the latest lawsuit.

'Unwelcome sexual conduct' in a stairwell

Filed Monday, the federal suit alleges that a 14-year-old girl identified only as "Mary Doe #2" was subject to "unwelcome sexual conduct" involving an unspecified number of 18-year-old male students in a stairway at Maplewood High School last September.

Another 14-year-old girl was with her and was also the victim of unwanted sexual contact in the stairwell while at least one male student videotaped the incidents, the lawsuit said. That girl, identified as "Jane Doe 2," filed a separate lawsuit earlier this month.

The practice of videotaping sexual encounters and assaults is so widespread in Metro schools that kids have nicknamed it "exposing," and the girls depicted in them are labeled as "sluts" or "whores," both lawsuits claim.

Related stories:

►Nashville schools update child abuse reporting policy (/story/news/education/2017/08/31/nashville-schools-update-child-abuse-reporting-policy-after-tennessean-investigation/616867001/)

► A child says he or she was abused. Now what? (/story/news/2017/08/28/tennessee-child-abuse-investigative-process-brentwood-academy/601524001/)

► Schools aren't implementing sex abuse prevention law (/story/news/2017/08/27/nervous-legal-action-schools-arent-implementing-sex-abuse-prevention-law-tennessee/598330001/)

When Mary Doe #2 came home with "hickeys" on her neck and told her mother she had been involved in "unwanted sexual activity," her mother called the principal, the suit said. The principal spoke to the male students involved, and told Mary Doe #2 to return to class, the lawsuit said.

'Exposing' video surfaces

In October, the mother of Jane Doe 2 notified the principal of the existence of a videotape of the incident. Called to the school office, Mary Doe #2 acknowledged she was one of the girls on the video, the suit said. The principal sent her back to class without informing her mother of the video, according to the lawsuit.

Mary Doe #2 continued to experience harassment at the school as the video circulated, while school officials failed to expel or substantially punish the 18-year-old male students, the suit said.

She failed a class, her grades fell and she sought counseling from her pastor.

School officials failed to properly prevent, investigate and then protect girls from sexual harassment as required by federal rules known as Title IX that require public educational institutions to maintain environments free from sexual harassment, the suit alleges.

Metro spokeswoman Michelle Michaud said previously the school district "has policies and procedures in place to address Title IX complaints."

DA declines to prosecute

The District Attorney's office declined to prosecute anyone involved in the Maplewood incidents after police detectives presented the result of their investigation, said MNPD spokeswoman Kris Mumford.

Tammy Meade, a sex crimes prosecutor, said the District Attorney's office is unable to locate and discuss a case, or its outcome, without the name of a victim. The alleged victims are minors and their names are confidential in police records and the civil lawsuits.

"The reaction of the school is pretty clear from the facts there was no action taken under Title IX after it (the alleged sexual misconduct) came to the schools' attention," said Stephen Crofford, an attorney representing both girls and their mothers.

Crofford has filed two other lawsuits alleging two girls were sexually assaulted at Hunters Lane High School in March and April in separate "exposing" incidents.

Crofford said that after his initial suit was filed in July against Metro, parents began calling him, saying "that happened to my daughter, too."

A separate federal lawsuit filed against the Williamson County School Board alleges that a girl identified only as "Janie" was pushed into a boys locker room and assaulted during an after-school activity. The lawsuit similarly alleges the school failed to follow Title IX rules to prevent, report and investigate sexual assault allegations.

Other schools under scrutiny

Separately, the Achievement School District in Tennessee is the subject of an ongoing federal investigation (/story/news/education/2017/09/04/achievement-school-district-tennessee-under-federal-sexual-violence-investigation/617785001/)into sexual violence, according to the U.S. Department of Education's Office of Civil Rights.

The state-run district, created for Tennessee's lowest-performing schools, is one of 154 K-12 school districts nationwide with open Title IX sexual violence investigations. It is the only public school district in Tennessee to be investigated.

The investigation began Sept. 10, 2014, according to the U.S. Department of Education.

A spokeswoman for Tennessee's Department of Education said the investigation was prompted by a parent who filed a complaint with the district and the U.S. Department of Education. The district responded and cooperated with federal officials in 2014, and considers the case resolved, a spokeswoman said.

Private schools such as Brentwood Academy, which is under scrutiny (/story/news/local/williamson/2017/08/09/lawsuit-brentwood-academy-officials-refused-report-repeated-rapes-and-assaults-12-year-old-boy/552578001/) after a lawsuit was filed over its handling of child-on-child sexual assaults, are not required to follow the same Title IX rules unless they receive federal funding.

Reach Anita Wadhwani at awadhwani@tennessean.com; 615-259-8092 or on Twitter @AnitaWadhwani.

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Exhibit 34

WHNT NEWS 19

Timeline of Events in UNA Title XI Lawsuit

http://whnt.com/2017/10/07/una-responds-to-federal-title-ix-lawsuit-provides-universitys-timeline-of-events-regarding-alleged-sexual-assault/

FLORENCE, Ala. - The University of North Alabama has responded to a federal lawsuit accusing it of Title IX violations. UNA is asking for a dismissal of the lawsuit based on protections provided by the 11th Amendment of the U.S. Constitution. The Amendment addresses the sovereign immunity of states. That type of immunity is the legal idea that a state is protected from any criminal prosecution or civil suit. UNA claims because it's a state agency it can't be sued.

Back in August the lawsuit filed on behalf of a "Jane Doe" alleged that UNA covered up the sexual assault of a student by her professor David Dickerson. Lawyers for the university argue that's not true.

UNA says after getting word of the accusations, it conducted an investigation and in less than a month were able to place Dickerson on administrative leave. The university also says it issued Dickerson a no-contact order and that he was not allowed back on campus for the remainder of his contract.

UNA did continue to pay Dickerson for the remainder of his employment agreement. UNA President Kenneth Kitts says he made that decision to protect the students involved and avoid possible litigation from Dickerson.

Statements from university officials named in the lawsuit were included in the response filings. We have put together a timeline of the UNA's version of events based on those statements below.

November 2015

- Jacques asked Beaver to get the names and phone numbers of students who attended the competition in Orlando.
- Jacques told Beaver she had scheduled an interview with "Jane Doe" on December 1.

December 2015

- Jacques says that "Jane Doe" canceled the meeting and declined to be interviewed.
- A Human Resources Director and Deputy Title IX coordinator interviewed the two male students who were at the competition. The results of those interviews indicated that Dickerson may have engaged in behavior that violated UNA policies.
- Dickerson was interviewed on December 8. During that interview, Dickerson admitted to some but not all of the alleged interactions with "Jane Doe" in the swimming pool. At the conclusion of the meeting, Dickerson was instructed to have no contact with any of the four students who participated in the competition.
- After realizing that Dickerson's statement was not consistent with the two males interviewed by the Title IX office, Beaver reached out to "Jane Doe" and the other female student that attended the trip.
- "Jane Doe" agreed to meet with Beaver on December 9. Beaver suggested that she stay away from Dickerson while the investigation was ongoing. She also suggested that "Jane Doe" stay off campus since exams had ended before winter break. Beaver also asked "Jane Doe" to travel in the company of other people for her safety. Beaver says she didn't think asking her to stay away from campus would adversely affect her because "Jane Doe" had already concluded her exams.
- On December 11, VP of Human Resources Catherine White followed up with Dickerson by issuing a written No Contact order. The two male students that attended the trip were also informed of the order.
- On December 14, White, the Provost, Dr. John Thornell, and Dean Greg Carnes discussed Dickerson's employment with UNA. Dr. Kitts later makes the final decision to not renew Dickerson's contract.
- On December 17, Carnes, White, and Beaver called Dickerson to inform him that his employment was being terminated. Dickerson got upset and threatened legal action against the university. Dean Carnes told him that his employment contract would not be renewed at the end of its term, but that he would be paid until the contract expired. Dickerson was instructed that he was only allowed on campus to collect his personal belongings. Dickerson agreed to that outcome.

January 2016

- Dickerson cleaned out his office under the supervision of Dean Carnes on January 8. All students involved were informed that Dickerson would no longer be on campus.

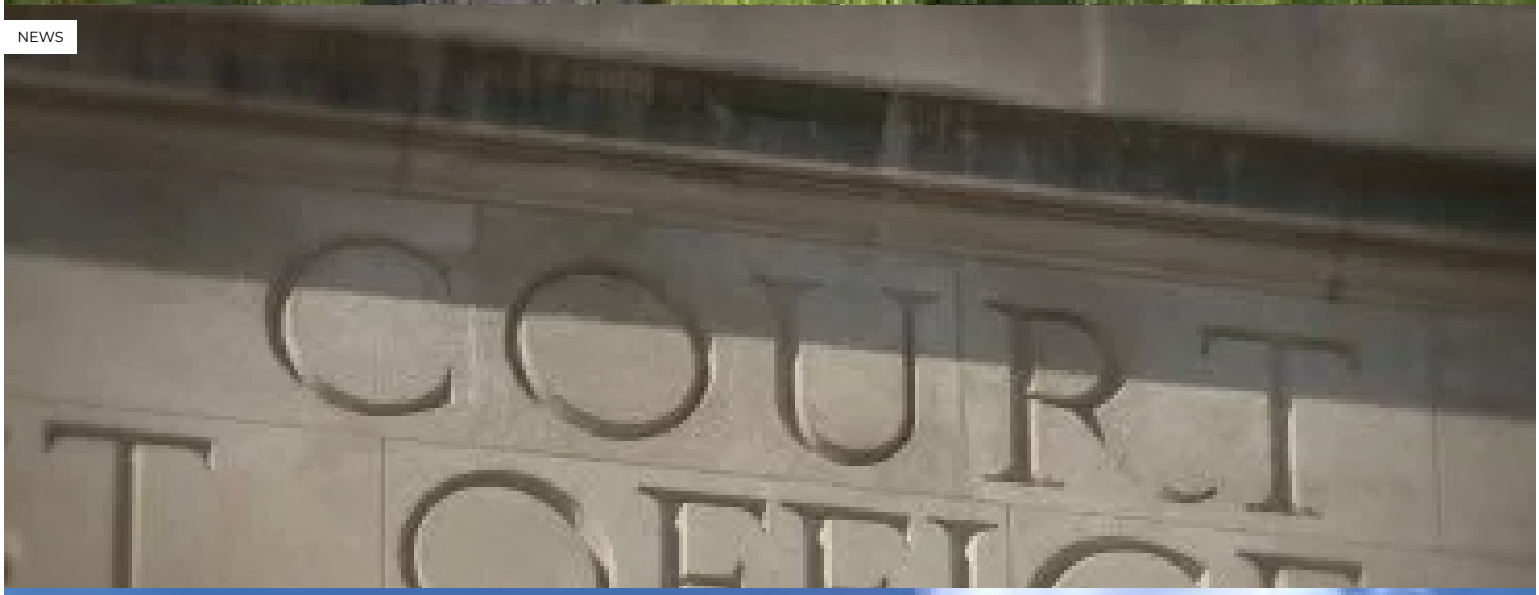
February 2016

- David Shields, VP for Student Affairs at UNA says he received a request for medical withdrawal for "Jane Doe" by Ms. Jennifer Berry, a UNA counselor, on February 17.
- Shields said he trusted Berry's judgment and didn't seek further information regarding the request.
- Shields says that "Jane Doe" and her father went into his office on February 28 and told him "Jane Doe" had stopped attending classes on January 28. Sheild says they wanted a withdrawal dated as such.
- Shields says that was the only contact he had with the student. He also claims he wasn't aware of the report of inappropriate conduct or an investigation involving the plaintiff.

October 2016

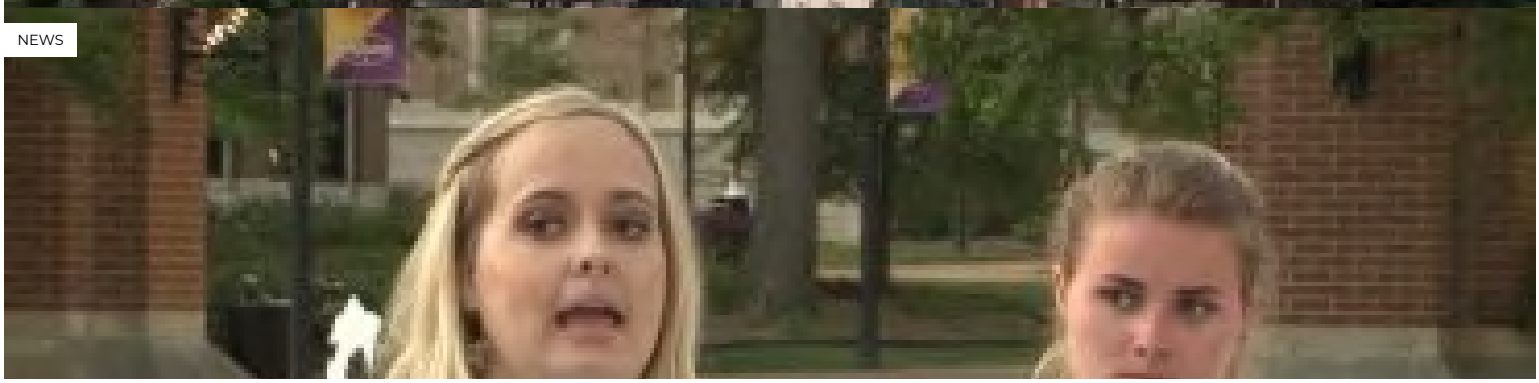
UNA responds to federal Title IX lawsuit

NEWS



SHOALS

NEWS



SHOALS

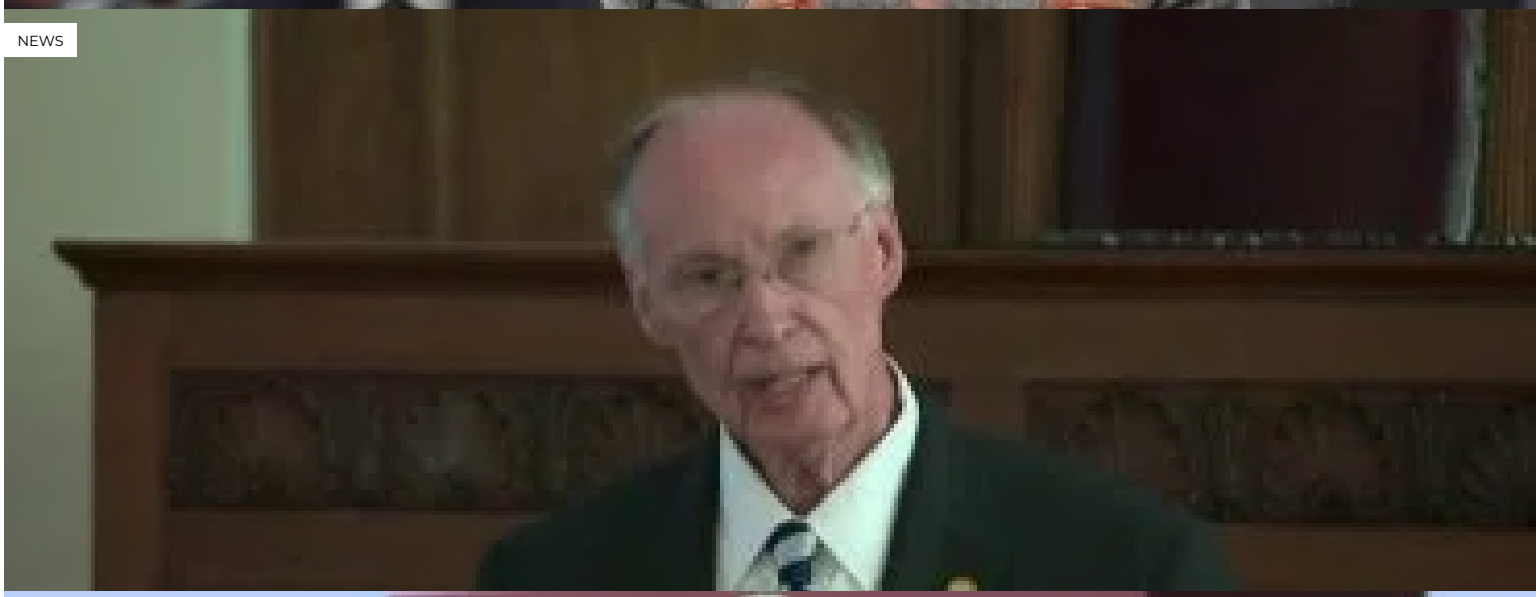
Fourth complaint filed about illegal dumping of UNA debris

NEWS

NEWS

NEWS

NEWS



NEWS

Exhibit 35

Federal lawsuit against new Title IX guidance claims it is 'offensive' and 'discriminatory'

The complaint calls the rules "reckless."

CASEY QUINLAN
OCT 19, 2017, 12:50 PM

EDUCATION SECRETARY BETSY DEVOS SPEAKS ABOUT PROPOSED CHANGES TO TITLE IX, SEPT. 7, 2017, AT GEORGE MASON UNIVERSITY ARLINGTON, VA., CAMPUS. (CREDIT: AP/JACQUELYN MARTIN)

The new Education Department guidance document on how universities should handle sexual harassment complaints under Title IX, the federal civil rights law that prevents sex and gender discrimination in education, has been challenged.

On Tuesday, Equal Means Equal, an organization focused on gender discrimination, and three women who say they have experienced sex-based discrimination under Title IX filed a federal lawsuit against Education Secretary Betsy DeVos and the Department of Education. The complaint argues that the department's new guidance is "unlawful, arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law" and should be vacated and set aside. It says that the new rules violate Title IX, the First Amendment, the Administrative Procedures Act, and the Massachusetts Constitution's Equal Protection Clause.

Exhibit 35

In September, the department rescinded 2011 guidance and 2014 sexual assault guidance that clarified the protections sexual assault survivors should be granted under Title IX. The new lawsuit focuses on the department's "Q&A on Campus Sexual Misconduct" document. The document is supposed to help answer questions as the department goes through a comment period to overhaul guidance on Title IX and how to handle complaints involving sexual assault, which is sex-based discrimination.

Under the interim document, or the "Q&A," there would be "no fixed time frame" for what qualifies a prompt investigation, schools can implement a process that allows only the accused to appeal a decision, and colleges are given the freedom to pursue mediation, which means alleged survivors would have to essentially work things out with the person they accused of sexually assaulting them. Colleges would also be able to use a higher burden of proof, the clear and convincing standard, rather than what is typically used for civil rights matters, preponderance of the evidence. Preponderance of the evidence is based on the probable truth or accuracy of the evidence, not the amount of evidence involved, but clear and convincing myst be substantially more probable to be true than not. By using a higher bar for a specific type of sex-based discrimination, people who face sex-based discrimination are put at a disadvantage for no real reason, DeVos hasn't justified this different approach for one type of discrimination versus another. In addition, once the accused has been found responsible, universities are allowed to consider the effect of the consequence on the accused, but not on the victim.

The federal lawsuit involves three female plaintiffs who all have pending investigations at the department's Office for Civil Rights or civil litigation under Title IX. The plaintiffs attended Stonehill College, Boston University, and The School of the Art Institute of Chicago.

"The DeVos rules are offensive, discriminatory, and unlawful," Wendy J. Murphy, who is counsel for the lawsuit, told ThinkProgress.

The complaint says that the DeVos rules in their entirety violate Title IX because they "permit schools to treat civil rights harms differently on the basis of sex." The rules allow universities to use a more onerous burden of proof — the clear and convincing standard — in the case of a sex-based civil rights harm although the rules do not state that this standard can be used in other protected class categories, such as race and national origin. The preponderance of the evidence standard has long been the standard required under civil rights laws, the complaint argues. In 2004, the department sent a letter to Georgetown University that said it applied the wrong standard for sexual discrimination complaints by using the clear and convincing standard. The plaintiffs also argue that the redress of some claims would go through "absurd dual assessments":

> For example, if a black woman were assaulted on the basis of her race *and* her sex at a school that opted to apply the "clear and convincing evidence" standard in sex-based matters, that single civil rights offense would be subjected to two different burdens of proof.

The lawsuit also mentions that the Q&A document does not have the authority to refer to certain provisions of the Campus SaVE Act, which updated the Clery Act, or apply criminal law definitions rather than civil rights definitions. The interim guidance keeps referring to the the SaVE Act even though the law uses criminal law definitions such as sexual assault rather than civil rights definitions such as "unwelcome" and "offensive" to determine an offense happened.

The complaint mentions that some of the women in the complaint already contacted the Office for Civil Rights and were given either incomplete answers about whether interim guidance would affect their investigations or were told the department couldn't say the guidance wouldn't affect them. Defense attorneys are already using the Q&A document to support legal briefs arguing against those who bring Title IX-related complaints, the plaintiffs say in their complaint.

#BETSY DEVOS, #EDUCATION, #JUSTICE, #RAPE CULTURE, #SEXUAL ASSAULT, #TITLE IX

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Exhibit 36

News > Local (/News/Local/)

UMass Amherst sued over handling of sexual misconduct investigation, proceedings

By DUSTY CHRISTENSEN
@dustyc123

Friday, October 20, 2017

AMHERST — A former male student is suing the University of Massachusetts Amherst in federal court over its handling of sexual misconduct allegations against him, which his lawsuit characterizes as "gender-based discrimination."

The lawsuit, filed on Oct. 11, names as defendants the university, assistant dean of students Louis Ward, associate dean of students Patricia Cardoso-Erase and Title IX coordinator Debora Ferreira.

Among the allegations in the anonymous John Doe's lawsuit are that university officials waited too long — 330 days, until after Doe's graduation — to schedule a sexual misconduct hearing, that officials intimidated potential witnesses from Doe's fraternity, that the university is improperly withholding his degree and violating his due-process rights, that UMass's misconduct investigations and hearings are flawed and that its policies and procedures are "biased against male students."

"The university has no comment on the litigation," UMass Amherst spokesman Ed Blaguszewski said in a statement. Requests for comment from Doe's lawyers went unanswered on Friday.

The litigation comes at a time of significant change at the federal level over how schools handle sexual misbehavior allegations. Last month, Education Secretary Betsy DeVos announced her administration would rescind and rewrite Obama-era guidance on campus sexual assault to protect the due-process rights of those accused of misconduct as well as victims coming forward with those allegations.

In his complaint, Doe's lawyers directly reference Devos's statements on campus sexual misconduct and the Department of Education's recent interim guidance on Title IX, a 1972 law that protects people from discrimination based on sex.

Exhibit 36

"The Department promulgated the new guidance specifically to protect the due process rights of accused students and ensure fundamental fairness to all parties, but the University has ignored and continues to ignore these rights," the suit reads.

'Dear Colleague' letter

At the center of the national conversation on sexual assault is 2011 guidance — the so-called "Dear Colleague" letter — that President Barack Obama's administration handed down, using the threat of cutting federal funds to ensure that institutions of higher education investigate all sexual misconduct allegations.

Women's rights advocates praised that move from the education department's Office for Civil Rights as leading to significant changes on many college campuses, such as requiring a lower standard of proof — a preponderance of evidence standard — when adjudicating those cases.

Since 2011, however, male students have filed a large number of lawsuits against colleges and universities, alleging that they were denied due process in proceedings that were unfairly biased against them. DeVos called those campus hearings "kangaroo courts," and last month scrapped the Obama-era rules, allowing schools to use a higher standard of proof.

That decision was welcomed by advocates for those accused of sexual misconduct, but others have seen those changes as part of a larger rollback of legal protections for women under the administration of President Donald Trump.

The latest pushback to the education department's actions came on Thursday, when women's rights activists and three unnamed student plaintiffs from Massachusetts sued the department and DeVos over her announced intent to change campus assault policies. Filed in U.S. District Court in Boston, the case contends that DeVos is violating Title IX.

At UMass Amherst, Chancellor Kumble R. Subbaswamy said at a forum on sexual violence last week that the university continues using the preponderance of evidence standard.

Changing national policy

It is under that context that Doe has filed his lawsuit against UMass Amherst, making explicit reference to the changing situation at the national level.

"The OCR guidance rendered it virtually impossible for charged students, virtually all male, to defend themselves against accusations of sexual assault," Doe's lawsuit reads, using an acronym for the education department's Office for Civil Rights. "OCR, in effect, enabled a system in which state and private universities can easily strip students of their rights."

"The harm caused by the 2011 'Dear Colleague' Letter has impacted John and his life by causing UMass Amherst to disadvantage him on the basis of his gender," the suit continues.

Doe's lawyers also argue that because of the time that has elapsed, Doe has already been deprived of a fair hearing, as Doe and potential witnesses on his behalf have graduated and are no longer on campus.

In recent years, local schools have faced several lawsuits by male students claiming that their schools mishandled their sexual misconduct cases because they are men.

UMass Amherst faced a similar case in 2014, which was dismissed, and in 2015, when the university was sued by Kwando Bonsu, a chemical engineering student. Bonsu was found not responsible for sexual misconduct, but was suspended for a year from the university and permanently barred from living on campus after being found responsible of sending his accuser a Facebook friend request and using her name in an email to friends asking for help. The university settled with Bonsu in 2016 for undisclosed terms.

A similar suit against Amherst College in January 2015 was settled out of court, as was a lawsuit this summer with an unnamed plaintiff who said he was falsely accused of rape. The college declined to give specifics on that settlement.

Dusty Christensen can be reached at dchristensen@gazettenet.com.

Exhibit 37

Lawsuit: MSU didn't help woman in assault case
MICHIGAN STATE SPARTANS
32d - Paula Lavigne and Dan Murphy

NFL draft prospects to watch in Thursday's bowl games
9h - Kyle Bonagura

Don't forget about Lamar Jackson as he caps another spectacular year
LOUISVILLE CARDINALS 11h - Andrea Adelson

Each phone call brings hope, anguish as a Navy coach's son waits for a new heart
5h - Heather Dinich

For Tide, don't expect Jeremy Pruitt's job juggling to be Lane Kiffin Part II
1d - Alex Scarborough

How Scott Frost is balancing full-time

Michigan State failed to support woman in sexual assault case, lawsuit states

Paula Lavigne and Dan Murphy Nov 27, 2017

A woman who reported that she was sexually assaulted by a Michigan State football player in 2015 filed a Title IX gender discrimination lawsuit Sunday, alleging that the school failed in its investigation of her complaint and in not supporting or protecting her despite multiple requests for help.

The lawsuit stems from a report that former Michigan State wide receiver Keith Mumphery sexually assaulted the woman, who goes by Jane Doe in the lawsuit, in her dorm room on March 17, 2015. It states that the school failed to provide her with counseling and academic support while twice investigating her complaint and, after eventually finding Mumphery in violation, did not uphold a provision banning him from campus.

"My client is frustrated and wants to make a difference," said the woman's attorney, Karen Truszkowski. "We felt that we didn't have any other choice in this matter."

Exhibit 37

Michigan State did not have any comment when first contacted about the lawsuit late Sunday night.

On Monday, Michigan State spokesman Jason Cody said: "MSU just became aware of the lawsuit this morning. Sexual misconduct in all of its forms is an issue our leaders take very seriously. We have taken and continue to take significant steps to increase campus resources and revise campus policies to hear complaints in a timely and fair manner.

"While MSU does not comment on pending litigation, we will continue work to improve how MSU prevents and responds to sexual assault as we defend against this lawsuit."

On March 17, 2015, the woman had been drinking and was intoxicated when she invited Mumphery to her room, according to the lawsuit, but she resisted Mumphery's attempts to pull her onto his lap. She "just wanted to hang out but Mumphery wanted sex. Mumphery sexually assaulted [her] in her dorm room," it states. The lawsuit also states that Mumphery called her a "dumb white girl" and a "tease" and then left.

The woman's report the next day to Michigan State resulted in a Title IX investigation that six months later found that Mumphery had not violated the school's violence and sexual assault policy.

The woman also filed a police report alleging sexual assault. Police investigated her claim, but the county prosecutor's office decided not to bring charges against Mumphery in August 2015, citing a lack of evidence and saying prosecutors were unable to get in contact with Mumphery's accuser. Mumphery told police that the woman seduced him in her dorm room on the night in question after months of messaging each other.

The lawsuit states that during the school's Title IX investigation, which took almost twice as long as the school's policy of 90 days, Michigan State did not offer the woman any options to get a no-contact order, rearrange her housing, seek counseling or academic support or change her class schedule. Those were all provisions required under U.S. Department of Education guidelines and university policy, according to the lawsuit.

The lawsuit states that during the investigation, "Mumphery could roam the campus completely unrestricted." The woman worked in the same campus building as the Title IX investigators, and when she raised a concern about seeing Mumphery when he came in for interviews, she was told to merely "be on the lookout," but no assistance was offered, according to the lawsuit. It states that she quit her job "because she was so fearful of running into Mumphery or of him retaliating against her."

The woman suffered mentally and emotionally, having "flashbacks, nightmares, hypervigilance and depression," and her "right to an educational opportunity

came to a screeching halt," the lawsuit states.

"Plaintiff was afraid every day after the assault. Plaintiff did not know who knew about the assault or who might retaliate against her," it states. "She was fearful that she would see Mumphery, his friends, or his fellow football players. Plaintiff constantly looked over her shoulder and became withdrawn."

In September 2015, the MSU Office for Institutional Equity's Title IX investigators found that Mumphery had not violated Michigan State's relationship violence and sexual misconduct policy.

The university finished its investigation into her complaint around the same time the U.S. Department of Education Office for Civil Rights had finished its review of Michigan State's handling of sexual violence cases. That investigation was prompted by two complaints from other female students, one of whom reported being sexually assaulted by two Michigan State basketball players in 2010.

Michigan State was found to be in violation of federal guidelines in several respects, including the way in which the university investigated complaints. On Aug. 28, 2015, the university entered into a 21-page resolution agreement with the U.S. Department of Education to improve its prevention and response procedures. One of the mandates was to review handling of prior complaints, which it did in the woman's case involving Mumphery.

As a result, a university review panel determined in January 2016 that the Title IX investigators had erred, and on March 21, 2016, it was determined that the woman had not given consent and that Mumphery violated the policy by sexually assaulting her, the lawsuit states. Mumphery, who last played for the Spartans in 2014, was expelled from his graduate studies program and banned from campus until Dec. 31, 2018.

In May 2015, just weeks after the reported assault, he was drafted by the Houston Texans, where he played two seasons. The Texans cut him two days after the sexual assault allegations were first made public in a May 31, 2017, story in the Detroit Free Press.

The lawsuit notes that on June 14, 2016 -- just a week after he had been banned from campus -- an MSU Twitter account tweeted that Mumphery had been invited to a university-sponsored football camp on campus.

The tweet from the @MSU_Football account reads "#SpartansinNFL heading back to @michiganstateu to work camp!" and includes his @GeorgiaBoi25 Twitter handle among those from four former players listed. The lawsuit states that he was also invited to a golf outing, at which he appeared.

During that weekend, "[the woman] was terrified when her friends notified her that Mumphrey had been spotted on campus and around East Lansing," the lawsuit states, and continues to note that she "began calling campus authorities, but received no information and was merely shuffled from department to department."

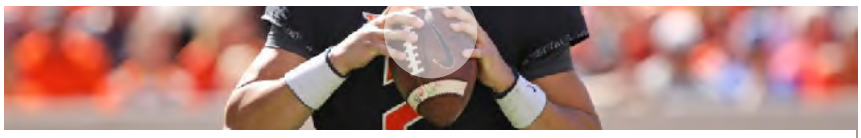
In laying out the ways in which Michigan State failed to uphold the provisions of Title IX, the lawsuit puts the woman's experience in a broader context, stating the university has "engaged in a custom and practice of suppressing sexual assault grievances, of violating their own policies regarding sexual assault investigations ... thereby encouraging a culture of sexual violence and creating a hostile educational environment."

The lawsuit was filed less than a week after former Michigan State team doctor and physician for USA Gymnastics Larry Nassar pleaded guilty to seven sexual assault charges. Former gymnast Rachael Denhollander is among several women who have accused the university of working against those who came forward to report Nassar's abuse, and she's among more than 140 women and girls who have filed lawsuits against Nassar, Michigan State and USA Gymnastics.

"For decades, MSU and [USA Gymnastics] athletic trainers, supervisors, head coaches and even psychologists received first-hand testimony of the sexual abuse perpetrated by Larry," Denhollander said last week. "Each and every time, MSU officials silenced these victims."

Earlier this month, a federal judge in another Title IX case against Michigan State -- this one involving four former female students -- denied the university's overall request to dismiss the lawsuit and allowed three of the women's claims to proceed.

NFL draft prospects to watch in Thursday's bowl games



Mason Rudolph and the high-powered Oklahoma State passing game will be challenged by Hokies LB Tremaine Edmunds in the Camping World Bowl on Thursday (5:15 p.m. ET, ESPN). (1:20)

Kyle Bonagura
ESPN Staff Writer

8:18 AM PT

It's becoming a trend in college football for top draft-eligible players to sit out their bowl games in order to avoid the risk of injury with a significant payday looming, including a handful who could have suited up today. The overwhelming majority of the players who will enter the NFL as rookies in 2018, though, will suit up for their team in a bowl game.

Here's a look at some of the players NFL scouts will be paying close attention to on Thursday:

Virginia at Navy, Military Bowl presented by Northrop Grumman, 1:30 p.m. ET, ESPN and ESPN App

S Quin Blanding, Virginia

Kiper position rank: No. 9 safety

Scouts Inc. ranking: No. 145 overall

Virginia's all-time leader in tackles (479), Blanding was a first-team All-ACC selection and a semifinalist for the Jim Thorpe Award.

More college football bowl coverage

- Ultimate College Football Playoff preview
- 2017-18 bowl schedule and results
- One-stop guide to every bowl game
- Capital One Bowl Mania
- College Football Playoff | Sugar | Rose
- Orange | Fiesta | Cotton | Peach

QB Kurt Benkert, Virginia

Kiper position rank: No. 10 quarterback

Scouts Inc. ranking: No. 151 overall

Benkert, who started his career at East Carolina, set Virginia's single-season school record with 3,062 yards passing to go along with 25 touchdown passes.

LB Micah Kiser, Virginia

Kiper position rank: No. 4 inside linebacker

Scouts Inc. ranking: No. 126 overall

Kiser was named first-team All-ACC after finishing the regular season with 134 tackles for the second straight season.

Virginia Tech vs. Oklahoma State, Camping World Bowl, 5:15 p.m. ET, ESPN and ESPN App

OG Wyatt Teller, Virginia Tech

Kiper position rank: No. 10 offensive guard

Teller was named first-team All-ACC playing on an offense that averaged over 400 yards per game and totaled 2,006 yards rushing. He will play in the Senior Bowl.

LB Tremaine Edmunds, Virginia Tech

Kiper position rank: No. 1 outside linebacker

Scouts Inc. ranking: No. 31 overall

Edmunds is viewed as a potential first-round pick but has the ability to return for another season.

QB Mason Rudolph, Oklahoma State

Kiper position rank: No. 6 quarterback

Scouts Inc. ranking: No. 55 overall

One of the most prolific passers in college football, Rudolph has thrown 13,267 yards in his career, including 4,553 this season to go along with 35 touchdown passes.

WR James Washington, Oklahoma State

Kiper position rank: No. 10 wide receiver

Scouts Inc. ranking: No. 63 overall

Arguably the most dangerous deep threat in the country, Washington caught 69 passes for 1,423 yards (20.62 yards per catch) and 12 touchdowns. His 3,890 yards receiving over the past three seasons are the most in the FBS.

Stanford vs. TCU, Valero Alamo Bowl, 9 p.m. ET, ESPN and ESPN App

Will Thursday's Alamo Bowl be Bryce Love's last game at Stanford? Thearon W. Henderson/Getty Images

RB Bryce Love, Stanford

Kiper position rank: No. 2 running back

Scouts Inc. ranking: No. 38 overall

The latest in Stanford's proud tradition of finishing second in the Heisman Trophy voting, Love rushed for 1,973 yards and averaged an astounding 8.32 yards per carry.

FB Daniel Marx, Stanford

Kiper position rank: No. 7 fullback/H-back

Marx has served as the lead blocker for Christian McCaffrey and Love. Not bad.

DT Harrison Phillips, Stanford

Kiper position rank: No. 6 defensive tackle

An FWAA second-team All-American, Phillips pulled off a rare feat for a defensive lineman by recording 100 tackles during the regular season, including 17 for loss.

S Justin Reid, Stanford

Kiper position rank: No. 4 safety

Reid, the younger brother of 49ers safety Eric Reid, was a first-team All-Pac-12 honoree after finishing the season with 97 tackles and five interceptions.

DE Ben Banogu, TCU

Kiper position rank: No. 7 defensive end

Scouts Inc. ranking: No. 61 overall

In his first season on the field with the Horned Frogs after sitting out last season following his transfer from Louisiana-Monroe, Banogu developed into a potential first-round pick. He finished with 15.5 tackles for loss and 8.5 sacks in the regular season.

Washington State vs. Michigan State, San Diego County Credit Union Holiday Bowl, 9 p.m. ET, FS1

Luke Falk hopes to end his record-setting career with a Holiday Bowl victory. AP Photo/Young Kwak

QB Luke Falk, Washington State

Kiper position rank: No. 9 quarterback

Scouts Inc. ranking: No. 49 overall

Falk needs 187 yards to pass former Boise State quarterback Kellen Moore for sixth on the BCS all-time passing yards list. Falk threw for 3,593 yards and 30 touchdowns this season, but struggled with holding onto the ball and was sacked 39 times.

OG Cody O'Connell, Washington State

Kiper position rank: No. 5 offensive guard

Known as The Continent, the 6-foot-8, 354-pound senior was a first-team All-Pac-12 selection a year after being selected as a finalist for the Outland Trophy.

C Brian Allen, Michigan State

Kiper position rank: No. 9 center

Scouts Inc. ranking: No. 155 overall

Allen has started games at left guard (16), center (15) and right guard (five) in his career and was named second-team All-Big Ten.

Exhibit 38

Lawsuit: MSU brought ex-football player back to campus after his sexual misconduct ban

David Jesse, Detroit Free Press Published 12:27 p.m. ET Nov. 27, 2017 | **Updated 6:46 p.m. ET Nov. 27, 2017**

Lawsuit clams Michigan State University athletic department brought Keith Mumphery back to campus after he was banned in alleged sex assault case.

(Photo: Andrew Weber, Andrew Weber-USA TODAY Sports)

Michigan State University's athletic department helped a former football player return to campus despite an order banning him after he violated the school's relationship violence and sexual misconduct policy, a newly filed lawsuit claims.

The Title IX discrimination lawsuit was filed in federal court Sunday by a woman who said she was sexually assaulted by former Michigan State football player Keith Mumphery in 2015. The woman is identified as Jane Doe in the lawsuit. Mumphery, who never was charged in criminal court, played for the Spartans in 2011-14.

"MSU's response was to protect Mumphery and to assist (Mumphery) in securing travel arrangements," alleges the lawsuit.

The lawsuit also says the university only took proper action after the federal Office of Civil Rights forced them to reevaluate cases and after the player — Mumphery — had expired his playing eligibility at the school.

"MSU just became aware of the lawsuit this morning," spokesman Jason Cody told the Free Press. "Sexual misconduct in all of its forms is an issue our leaders take very seriously. We have taken and continue to take significant steps to increase campus resources and revise campus policies to hear complaints in a timely and fair manner.

"While MSU does not comment on pending litigation, we will continue work to improve how MSU prevents and responds to sexual assault as we defend against this lawsuit."

The suit is the latest in a long string of complaints filed by female students against Michigan State over handling of sexual assault allegations. Those range from a large number of athletes suing the university over their handling of complaints against disgraced gymnastics doctor Larry Nassar; to last off-season's complaints against football players to a federal investigation of the overall handling of sexual assaults.

Also read:

Rachael Denhollander: 'MSU officials silenced' Larry Nassar's victims (https://www.freep.com/story/news/local/2017/11/22/rachael-denhollander-msu-officials-silenced-larry-nassars-victims/889919001/)

The feds and Michigan State signed a resolution agreement in late 2015 that mandated the university re-evaluate how it handled several sexual assault allegations, including the one in the most recent lawsuit.

According to the lawsuit, on Jan. 22, 2016, a review panel convened and determined the Michigan State investigative office made both procedural error and arbitrary and capricious findings when investigating the sexual assault complaint.

The investigative office was directed to reopen the investigation to clarify its findings and to remedy the procedural errors.

On March 21, 2016, a full year after the assault was reported, investigators found that the victim had not given “consent” as defined in MSU’s Policy on Relationship Violence and Sexual Misconduct and that Mumphery violated the policy by sexually assaulting the plaintiff.

Related:

Riley: On sexual assault and harassment, zero tolerance is the only option (https://www.freep.com/story/news/columnists/rochelle-riley/2017/11/21/riley-whats-right-answer-sexual-assault-and-harassment-zero-tolerance/885956001/)

Police release report on Michigan State football sexual assault probe (https://www.freep.com/story/sports/college/michigan-state/spartans/2017/08/03/michigan-state-football-sexual-assault/535065001/)

"After (Michigan State) determined that Mumphery had sexually assaulted Plaintiff, the Defendants again did not provide Plaintiff with any Title IX information regarding academic accommodations, counseling services, a no-contact order, or relocation accommodations," the lawsuit says. "After the second OIE decision, it took another three months for sanctions to be issued against Mumphery. Sanctions were finally issued June 7, 2016."

According to the lawsuit. Mumphery was notified he was banned from campus June 7, 2016.

"Eight days later, on June 14, 2016, MSU sent out tweet on Twitter stating that Mumphery was invited to and would be attending a MSU sponsored football camp to be held June 18, 2016," the lawsuit says.

"Mumphery was also invited to attend a MSU sponsored golf outing scheduled for June 17, 2016.

"The Defendants invited Mumphery back to the MSU campus after Mumphrey had been found in violation of the Defendants’ own policies regarding sexual assault and violence, and he had been prohibited from using or visiting University facilities."

The lawsuit claims Mumphery appeared at the golf outing.

"No attempt was made to notify Plaintiff that Mumphrey was present on the MSU campus, to verify that Plaintiff was safe and in a secure location, or inform Plaintiff that Mumphery had been removed from the campus," the suit says. "During that June weekend, Plaintiff was terrified when her friends notified her that Mumphery had been spotted on campus and around East Lansing. Plaintiff began calling campus authorities but received no information and was merely shuffled from department to department."

The suit seeks to have the victim compensated for her mental anguish following the situation.

Mumphery played for the Spartans in 2010-14 and caught the final touchdown in their win over Baylor in the Cotton Bowl Classic on Jan. 1, 2015, his last game at MSU. He has played two seasons with the NFL's Houston Texans, but was waived before the start of this season (http://www.nfl.com/news/story/0ap3000000813276/article/houston-texans-waive-keith-mumphery-max-bullough).

Contact David Jesse: 313-222-8851 or djesse@freepress.com. (mailto:djesse@freepress.com) Follow him on Twitter: @reporterdavidj (http://twitter.com/reporterdavidj)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JANE DOE,

Plaintiff,

v.

Hon. _____

Case No. _____

MICHIGAN STATE UNIVERSITY; MICHIGAN STATE UNIVERSITY BOARD OF TRUSTEES; LOU ANNA SIMON in her Individual and Official Capacities,

Defendants.

Karen Truszkowski (P56929)
Temperance Legal Group PLLC
503 Mall Court #131
Lansing, MI 48912
844-534-2560 phone
800-531-6527 fax

Julie A. Jacot (P43443)
Jacot Law PLLC
1044 N. Irish Road, Ste A
Davison, MI 48423
810-653-9526 phone
810-658-2444 fax

COMPLAINT AND JURY DEMAND

Plaintiff, JANE DOE, by and through her attorneys, KAREN TRUSZKOWSKI and JULIE A. JACOT, hereby files the following complaint against Defendants as captioned above.

Exhibit 39

The Daily Pennsylvanian

Penn settles lawsuit with student who accused the U. of mishandling sexual misconduct case

The student, John Doe, was accused of sexually assaulting another student last year

By Caroline Simon | 11/27/17 11:00pm

Photo: Ananya Chandra

Penn has settled a lawsuit with a former student who took legal action to protest the University's handling of a sexual misconduct investigation last year.

According to court documents, Penn agreed to pay the student accused of rape an undisclosed amount after he sued the school on grounds that the University's investigation violated his civil rights.

Exhibit 39

The student, known as John Doe in court documents, was accused of sexual assault by another student, Jane Roe, in Jur of 2016. Penn opened an investigation against Doe, tried him before a three-person hearing panel, and found him responsible for sexual misconduct. Doe, who was a senior at the time, was given a two-year suspension.

Doe, who is black, claimed that Penn breached its contract with him by not handling the investigation fairly. He also argued that Penn discriminated against him based on his race and gender, violating Title IX, which protects against sex-based discrimination in schools.

In September, John Padova, a district court judge for the Eastern District of Pennsylvania, ruled that the court would move forward with three of Doe's claims. The claims included that Penn had not provided a thorough and fair investigation, that Penn had not properly trained members of the hearing panel that adjudicated his case, and finally, tha Penn had failed to protect him from gender discrimination under Title IX.

If the case had moved forward, Doe's lawyers would have been able to subpoena documents surrounding the incident an more broadly research Penn's adjudication process. However, since the case has been settled, Penn's adjudication proces will not be examined by lawyers.

Experts say that universities facing lawsuits of this kind often make settlements to avoid legal scrutiny of their inner workings.

"You will often see that these cases will settle shortly after the plaintiff wins a motion to dismiss precisely because the school does not want to expose the grubby interworking of its sexual misconduct process," said Justin Dillon, a lawyer who specializes in Title IX issues.

University spokesperson Stephen MacCarthy declined to comment on Nov. 27, citing a University policy of not commenting on litigation.

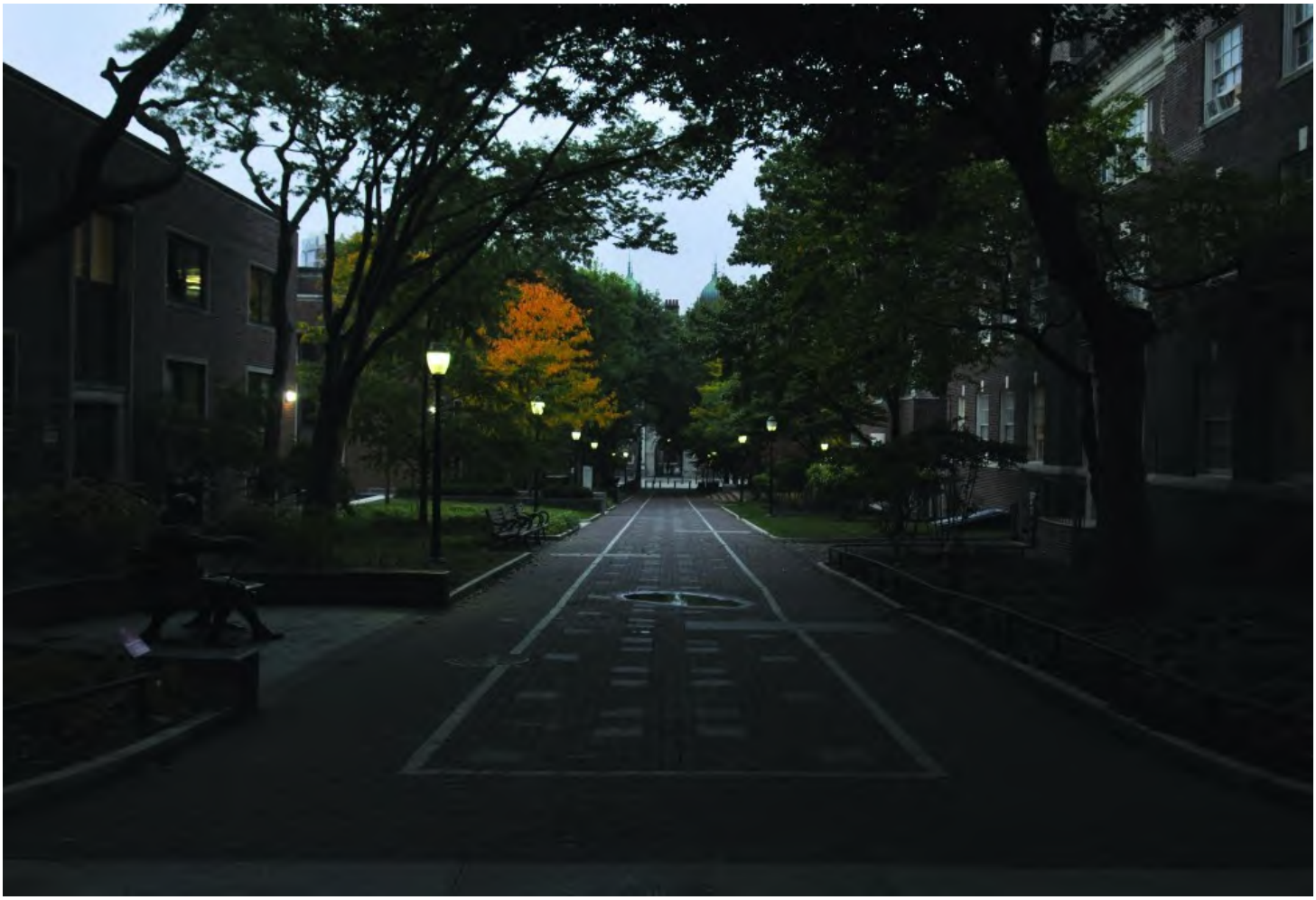


Photo: Ananya Chandra

Doe's allegations and how the University reacted

Doe argued in his complaint that Penn's investigation — which is supposed to "include interviews of the complainant an respondent, interviews of witnesses and review of documentation, physical evidence, and any other relevant evidence" – may have been faulty because the Office of the Sexual Violence Investigative Officer did not adequately question inconsistencies in Roe's story or explore whether she would have been motivated to exaggerate parts of her account.

In Padova's ruling, he cited Doe's original complaint, which stated that the office, led by Deborah Harley, did not obtain video recordings of the bar or of Doe and Roe's walk home. Padova's ruling also found that the office did not interview th student who accompanied Roe to the Penn Women's Center, Special Services Department in the Division of Public Safet and the Philadelphia Police Department's Special Victims Unit.

Andrew Miltenberg, a lawyer who specializes in Title IX issues, said sexual violence investigators at universities can influence hearing panels to reach a particular outcome by presenting the investigative reports in a certain way.

"The investigators tend to act as the gatekeeper of information for the panel, not the collector of information — either overemphasizing certain evidence that is inculpatory evidence, or deemphasizing or relegating to a footnote evidence tha tends to be exculpatory," he said.

However, in their response to Doe's original complaint, University administrators directly addressed this concern by pointing out that at Penn, the sexual violence investigator and the adjudicating panel have disagreed on certain verdicts.

Joann Mitchell, Penn's senior vice president for institutional affairs and chief diversity officer, noted in an unsworn declaration that in three of the four cases Penn has adjudicated in the past two years, the investigator and panel reached different conclusions or recommended different sanctions.

Doe, whose counsel Patricia Hamill declined to comment for this story, also alleged that Penn breached its obligation to properly train members of the hearing panel that tried his case.

He pointed to a document called “Sexual Misconduct Complaint: 17 Tips for Student Discipline Adjudicators” that Penn uses to train hearing panel members, alleging that the materials teach adjudicators to presume that the accused student guilty.

Doe cited the guide’s warning that perpetrators may have “positive attributes such as talent, charm, and maturity,” but that these qualities are “generally irrelevant to whether the respondent engaged in nonconsensual sexual activity," and that a “typical rapist operates within ordinary social conventions to identify and groom victims.”

Matt Kaiser, a lawyer who has encountered similar guides in cases at other universities, said these guides can encourage panel members to assume the accused student is guilty, endangering the possibility of a fair outcome.

"It’s hard to imagine what an analog to that could be in a criminal justice context," he said.

A developer of the guide did not respond to requests for comment.

Doe's third claim — that Penn discriminated against him because of his gender, violating Title IX — was grounded in wh he saw as a process that was fundamentally unfair to accused students, who are typically male.

But Daniela Nanau, a civil rights lawyer who has worked on campus sexual misconduct cases, said it is rare for universit adjudication processes to actually be biased against men.

"Most courts who have reviewed these cases have not sided with the students," Nanau said. "To demonstrate that a disciplinary process is infected by gender bias requires more than just pointing to the outcome by a disgruntled student who doesn't like it."

Doe's case demonstrates larger issues within sexual assault adjudication processes

On Penn’s campus, the sexual assault adjudication process has long been contentious — while students have mobilized many times in support of stronger protections for victims, some law professors have questioned the policies’ lack of due process for accused students.

In a 2017 report released by the Foundation for Individual Rights in Education critiquing due process protection in disciplinary procedures at America's top universities, Penn's sexual misconduct policy received a failing grade of only 3 out of a possible 20 points for protecting due process. According to the report, Penn also does not include an explicit presumption of innocence for accused students.

“What we’ve seen in many institutions — the military, the church, universities, fraternities — is that the institution has some interest in protecting its own reputation,” said Cari Simon, a lawyer who specializes in school violence law. “[This] can lead to that institution choosing to sweep sexual violence under the rug.”

But for Felice Duffy, a lawyer who has defended students on both sides of sexual misconduct cases, protecting victims an allowing due process for respondents are not mutually exclusive.

"This is really about fairness and due process and being thorough, and I am a huge believer that sexual assault on college campuses is a problem," Duffy said. "No matter which side I've represented, this process hasn't been that great."

Exhibit 40

MSU faces Title IX lawsuit stemming from 2015 sexual assault

By 6 News Web Staff (http://wlns.com/author/wlnskevinvanderkolk/)
Published: November 27, 2017, 2:08 pm | Updated: November 27, 2017, 6:43 pm

EAST LANSING, Mich (WLNS) – Michigan State University faces a Title IX gender discrimination lawsuit stemming from an alleged sexual assault by a former Spartan football player.

The suit claims the woman was assaulted in her dorm room on St. Patrick's Day 2015.

The Ingham County prosecutor chose to not bring charges against the player.

In the suit she claims she followed the requirements to report an assault to the university and MSU did not support or protect her.

She claims MSU took six months to complete the Title IX investigation, which would be a violation of its own policy that such investigations should be completed within 90 days.

The woman says she is suffering from PTSD caused by the stress of dealing with the university's failure to help and protect her.

Michigan State University spokesperson Jason Cody today said, in a statement, "MSU just became aware of the lawsuit this morning. Sexual misconduct in all of its forms is an issue our leaders take very seriously. We have taken and continue to take significant steps to increase campus resources and revise campus policies to hear complaints in a timely and fair manner. While MSU does not comment on pending litigation, we will continue work to improve how MSU prevents and responds to sexual assault as we defend against this lawsuit."

This story is developing and will be updated online and on 6 News

Exhibit 40

Related Posts

Despite claims, former student says MSU knew about Nassar (http://wlns.com/2017/12/21/despite-claims-former-student-says-msu-knew-about-nassar/)

Boyce to MSU: "Show us what Spartans will do" (http://wlns.com/2017/11/16/boyce-to-msu-show-us-what-spartans-will-do/)

Nassar accusers to MSU: "We're victims and we deserve answers" (http://wlns.com/2017/11/15/nassar-accusers-to-msu-were-victims-and-we-deserve-answers/)

Show Comments

WLNS.com (http://wlns.com/)

(http://www.nexstar.tv/)

Exhibit 41

Cornell grad sues university after investigation of sexual assault accusation

Matt Steecker, ithacajournal.com | @MSteecker Published 3:18 p.m. ET Nov. 27, 2017 | **Updated 1:30 p.m. ET Nov. 28, 2017**

(Photo: Getty Images/Ingram Publishing)

A Cornell graduate is suing the university, saying he was discriminated against and denied a hearing following a Title IX investigation into a sexual assault allegation.

The lawsuit, filed Tuesday in U.S. District Court for the Northern District of New York, accuses Sarah Affel, Title IX coordinator for Cornell University, of discrimination based on the student's ethnicity, sex and religion. The documents also state a variety of allegedly unlawful actions that were taken against the former student, referred to as John Doe, an ethnically Bangladeshi Muslim.

The graduate is now demanding a jury trial and is seeking restitution from Cornell.

The suit is the second in eight months that alleges a student or former student contemplated suicide (/story/news/2017/04/11/cornell-male-student-alleges-gender-bias-title-ix-lawsuit/100335346/) following a Title IX investigation at the university.

Court documents state the accuser, referred to as Jane Roe, became heavily intoxicated after drinking at a party in December 2014, and had to be carried back to her dorm room by her resident assistant. Doe, a trained EMT, then entered the room and the resident assistant left.

According to Roe's accusations, which date back to April 2015, Roe woke up to find Doe in her bed and that he touched her, kissed her, and forced her to perform a sex act. However, Doe alleges he slept on the floor until 6 a.m. and left.

In April 2015, Cornell University police helped Roe make a phone call to Doe on a recorded telephone line in an attempt to receive a confession, court records state. Doe admitted he was in Roe's room, but denied Roe's accusations.

In May 2015, Doe took a polygraph test that indicated there was "no deception" and a passing result, but this examination was dismissed by Affel, the suit states. While she said the polygraph test did not carry any weight, she did however consider hearsay, double hearsay and "bad act" evidence, documents state.

The Tompkins County District Attorney's Office decline to charge Doe, and the Cornell University Police Department closed its investigation.

The lawsuit states Affel used anti-Muslim, anti-male and anti-South Asian stereotypes to find Doe culpable. Affel stated in her report that Doe's behavior, such as his tendency to have called Roe his child or a sweetheart, was “unusually paternal to the point of being patronizing or demeaning.”

In September 2015, a review panel reached a conclusion that a preponderance of the evidence suggested Doe was guilty of sexual misconduct, and the panel suggested a two-year suspension with mandatory counseling and psychological care, the lawsuit states. The suspension was decreased to one year after an appeal.

The suit states the former student's suspension is listed on his school records.

Doe sought out mental health services following the investigation, and was also admitted to a psychiatric ward for several days because of his suicidal thoughts, documents state. The former student also alleges he endured economic injuries and a loss of educational and career opportunities, because he said his chances of getting into medical school have severely diminished.

The lawsuit alleges Cornell University has recognized increased internal pressure and pressure from the state and federal government to aggressively discipline male students accused of sexual misconduct because of threats to revoke state and federal funds.

Andrew Miltenberg is Doe's attorney. Miltenberg was Paul Nungesser's lawyer in a lawsuit against Columbia University.

Nungesser was the Columbia University student accused of sexual assault by Emma Sulkowicz, who became known for carrying around a mattress around the university campus after Nungesser was not guilty by Columbia.

In addition to Doe, another Cornell student is being represented by Miltenberg in a different lawsuit. The university does not comment on cases in litigation.

Follow *@MSteecker* (http://twitter.com/MSteecker) on Twitter.

Read or Share this story: http://ithacajr.nl/2BhfV42

Exhibit 42

Northwestern lawsuit highlights debate on university sexual misconduct policies

A student is suing Northwestern University, contending that the university denied him due process when it concluded he had sexually assaulted a fellow student and then kicked him out of school last year. (Chris Walker/Chicago Tribune)

By **Dawn Rhodes**
Chicago Tribune

DECEMBER 7, 2017, 8:25 PM

Northwestern University is being sued by a student who contends that the university denied him his right to due process when it concluded that he had sexually assaulted a fellow student and then kicked him out of school last year.

Filed in federal court in September, the suit argues that Northwestern's sexual misconduct policies so heavily favor accusers that respondents have little ability to defend themselves. He contends that Northwestern's procedures denied him a fair hearing and that the punishment ruined his reputation and career prospects. Neither student is named in the lawsuit.

universities in the midst of a roiling debate over
ıcation.

Exhibit 42

Those policies fall under federal Title IX guidelines that date to 1972 and prohibit discrimination on the basis of sex at institutions that receive federal funds. For years, Title IX was better known for requiring universities to balance participation rates between men and women in sports programs.

But that changed in 2011, when the Department of Education under President Barack Obama sent universities a "Dear Colleague" letter that detailed specific steps universities must take to respond to sexual misconduct allegations or risk losing federal funding.

The goal was to push universities to respond more forcefully to a problem of sexual assault on campuses that the administration said had long been neglected.

Critics, though, maintained that the prescriptions went too far in favor of the accusers and sacrificed fundamental fairness. For example, the letter required schools receiving federal funding to use the lowest standard of proof, and limits were placed on the accused's ability to question their accusers.

Betsy DeVos, the education secretary under President Donald Trump, was among those detractors.

In September, she rolled back the Obama-era policies and announced interim rules that give universities more latitude on the standard of proof they must employ in hearings, remove fixed deadlines for completing Title IX investigations and allow schools the option to suggest informal resolutions to complaints.

Hearkening to DeVos' concerns about protecting rights of the accused, the new guidelines also permit schools to enact an appeals process open to both the complainant and the respondent, or just the respondent alone.

Related: DeVos scraps Obama-era guidelines on campus sexual assault »

Related: Illinois victims advocates have mixed feelings about DeVos' changes to college sex assault investigations »

Those issues make up a big part of the lawsuit against Northwestern.

The sexual misconduct finding arose out of a March 2015 incident in which the female student, a sophomore at the time who is identified only as Jane Roe, accused the male student, a freshman identified as John Doe, of forcing her to perform oral sex. His lawyers argue that the encounter was consensual, though they acknowledge the woman abruptly ended it. Only after an acrimonious breakup, his lawyers maintain, did the woman begin to make the accusations, at first in their circle of friends.

The case landed on the desk of Northwestern's deputy Title IX coordinator.

In January 2016, she informed the male student that her office had received a report of an incident involving him, but provided no specifics, the lawsuit states. Then in March, the Title IX investigator assigned to the case and a hearing panel found him responsible for sexual assault.

He was ordered to leave the university for a minimum of two years. The university's appellate panel upheld the decision that May — though for different reasons — and ordered his immediate removal from campus, according to the suit.

The lawsuit faults Northwestern's sexual misconduct policy, which was revised in 2014, and said it denied the accused a fair hearing process.

"It eliminated any semblance of fairness toward students accused of sexual misconduct (who are overwhelmingly male), and reflected the university's intentional, institutionalized gender bias, in which female complainants are presumed to be 'survivors' and 'victims' of sexual assault and accused males are presumed to be 'perpetrators' merely on the basis of the accusation," the lawsuit states.

In male student's case, the suit states, the changes at Northwestern meant that complaints first were heard by an investigator who interviewed complainants, respondents and witnesses separately, and hearings were separated into private interviews with the parties involved. The accused student could not hear anything the complainant testified to nor could directly question the accuser, the suit said.

Illinois' Preventing Sexual Violence in Higher Education Act, enacted in 2015, specifically prevents parties from cross-examining each other, and they can't be forced to testify in front of each other in a hearing. The law also stipulates that if one of the parties opts not to testify in front of the other, a school must provide some way to hear the other person's statements.

The lawsuit also alleges that Northwestern's investigators ignored text messages that the accused provided that would have supported his assertion that the woman's reaction to the evening had dramatically changed over time, from at first not expressing misgivings to, ultimately, her assertion that she had been assaulted.

"This deliberate skewing of the evidence by the investigator and Hearing Panel violated both the University's contractual obligations to conduct a fair and impartial process and Title IX's prohibition against disparate treatment based on gender," the lawsuit states.

Attorneys for Northwestern and the accused student did not return messages seeking comment. University officials declined to comment on the specifics of the lawsuit because it is still pending.

But Northwestern did provide this statement: "The University's Policy on Sexual Misconduct provides for the resolution of complaints in a manner that is prompt, fair, and impartial while maintaining privacy and fairness consistent with applicable legal requirements."

However the lawsuit is resolved, survivor advocates harbor concern over DeVos' new guidelines, saying that they create an environment that will undermine victims and lead to less rigorous federal oversight.

"The problem of false allegations is not remotely of the scale or scope of the problem of sexual abuse," said Kaethe Morris Hoffer, executive director of Chicago Alliance Against Sexual Exploitation.

Other organizations have expressed concern about the fairness of university disciplinary procedures.

The Foundation for Individual Rights in Education in Washington, D.C., which has advocated for due process rights, faulted many universities over their handling of complaints but also said that schools were at a disadvantage.

Universities "don't necessarily have all the right tools to get this right," said Joe Cohn, legislative and policy director for the foundation. "You're asking campus administrators to figure out if a rape occurred, and they're doing it without the rules of evidence, without the ability to conduct discovery. They're doing it without trained judges and lawyers who can actively participate in the process, and they don't typically have access to forensic evidence or any expertise in handling and interpreting it even if they could collect it."

The disadvantage extends to students as well, one lawyer experienced in such cases said.

Pete Agostino, an Indiana attorney who has represented complainants and respondents in university sexual misconduct cases, said that defending oneself in a hearing may be beyond some students' ability and that schools do not always clarify for accused students how to use the resources offered to them.

"This process has very serious consequences, and you don't get to defend yourself fully if you don't know ahead of time exactly what you're being accused of and then not have assistance where you need it," he said. "It's not like you have an opportunity to practice these things; it's a one-shot deal."

But Megan Rosenfeld, policy director of the Chicago Alliance Against Sexual Exploitation, maintained that questions about due process miss the point.

"A lot of this conversation is conflating due process, which is a criminal term, and a private community's ability to decide who belongs to our country club, who goes to our school, who is in our workplace based on a number of standards," she said. "As long as they're not discriminatory, that's fine. The repercussions are not so grave as they are in criminal court."

In the end, experts agree that the way universities handle complaints will continue to evolve.

"It's not a matter of discouraging students from coming forward," Agostino, the Indiana attorney, said. "It's a matter of creating a process that has fairness built into it. If you have a fair process, it lends credibility all the way around. It is a gain for everyone."

drhodes@chicagotribune.com

Twitter @rhodes_dawn

This article is related to: Colleges and Universities, Northwestern University, Barack Obama, Donald Trump

Exhibit 43

LOCAL NEWS

Pomona College protesters blast school's handling of sexual assault complaints

Pomona College students protest outside the administration building on Thursday, Dec. 7, 2017. According to the protesters, Pomona College puts the needs of those accused of sexual assault ahead of their accusers and has failed to provide a safe campus for its students. (Photo by Beau Yarbrough/SCNG)

By BEAU YARBROUGH | byarbrough@scng.com | Inland Valley Daily Bulletin
PUBLISHED: December 7, 2017 at 8:00 pm | UPDATED: December 9, 2017 at 12:50 pm

Pomona College and the larger Claremont Colleges consortium put those accused of sexual assault ahead of those reporting that they've been assaulted, according to protesters who rallied outside the school's administration building on Thursday.

"Survivors are continually pushed off of this campus as liabilities after reporting to this college, and Pomona seems to do everything in their power to support and protect perpetrators on this campus," said environmental analysis major Kay Calloway, one of the protest organizers. "That's really unacceptable."

Exhibit 43

Calloway is a sexual assault survivor and spent a semester away from campus as a result. When she got back, she was given a male roommate whom she did not know.

"And then they helped the man who assaulted me transfer to another school without a record of why he was expelled," she said. "And that's just so counter-intuitive to what they claim to be, which is a supportive and progressive university."

Assaulted at Claremont
@assaultedcmont

"I have class in the same building as my rapist two times a week" #assaultedatClaremont

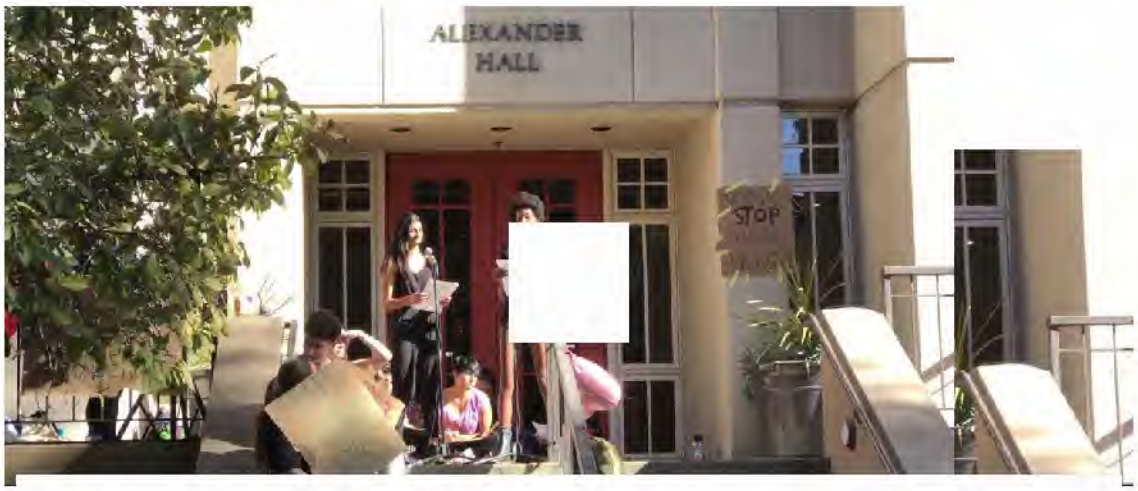
1:40 PM - Dec 7, 2017

1 13 16

Assaults are not reported to the Claremont Police Department, according to gender and women studies major Sagarika Gami, one of the protest organizers and a sexual assault survivor.

"Usually these cases are handled within the college themselves, according to college policy," she said, "because it's a matter between two students."

Although Calloway and Gami have been advocating for sexual assault survivors during all four of their years at Pomona College, Thursday's protest was triggered by an anonymous open letter published Monday by Invisible, an online magazine focusing on gender issues at the Claremont Colleges.



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"In early October, I was threatened and sexually assaulted by a Pomona student," the letter begins. "The threat was a double suicide, made explicit with a planned weapon, and repeated twice. They told me that it was not even a threat. It was like dominoes, it would just happen, and we both knew it."

Assaulted at Claremont
@assaultedcmont

silence is violence! show! up! #assaultedatClaremont
1:54 PM - Dec 7, 2017
1 6

On Thursday, Calloway and Gami read out a 10-point list of demands, including that the letter writer's investigation be wrapped up by Dec. 15, in accordance with Pomona College's best practices; not push sexual assault survivors to take a leave of absence from school (for which Calloway said she never got a refund on her tuition); and consistently expel those found guilty of sexual assault and state the reason for the expulsion in student records.

Assaulted at Claremont
@assaultedcmont

Having to explain Pomona's policy and terms to the administrators allegedly in charge of protecting students is currently a burden put on to survivors #assaultedatClaremont
4:07 PM - Dec 7, 2017
1 5

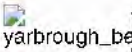
The college does not discuss individual cases, spokeswoman Marylou Ferry said, but she expressed sympathy for the protesters.

"Can we do better? We're always learning," she said. "No one here wants to see any student suffer from any type of sexual harassment or assault."

The college has taken a number of steps in recent years to improve its handling of allegations of abuse, Ferry said. The steps include the creation of a full-time College Associate Dean and Title IX Coordinator (Title IX is the federal law that prohibits discrimination in education); implemented an online sexual assault reporting tool; instituted annual trauma-informed response investigation training for staff investigators; provided bystander engagement training for the campus community; introduced a new campus safety app to improve student security across all five undergraduate Claremont Colleges; and required all new students to complete online sexual assault prevention program before coming to campus.

"We have what we think is a very strong process," Ferry said. "It's a difficult and hard thing and we want to keep getting better."

Tags: echo code, Education, Top Stories IVDB



Beau Yarbrough

Beau Yarbrough wrote his first newspaper article taking on an authority figure (his middle school principal) when he was in 7th grade. He's been a professional journalist since 1992, working in Virginia, Egypt and California. In that time, he's covered community news, features, politics, local government, education, the comic book industry and more. He's covered the war in Bosnia, interviewed presidential candidates, written theatrical reviews, attended a seance, ridden in a blimp and interviewed both Batman and Wonder Woman (Adam West and Lynda Carter). He also cooks a mean pot of chili.

Follow Beau Yarbrough @LBY3

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If you see comments that you find offensive, please use the "Flag as Inappropriate" feature by hovering over the right side of the post, and pulling down on the arrow that appears. Or, contact our editors by emailing moderator@scng.com.

Exhibit 44

Academic Wonderland

Comments on the Contemporary Academy

Pomona, the Courts, & Basic Fairness

DECEMBER 8, 2017DECEMBER 9, 2017

KC JOHNSON

2 COMMENTS

As more and more schools (currently 72 since the Dear Colleague letter, and counting (https://docs.google.com/spreadsheets/d/1CsFhy86oxh26SgTkTq9GV_BBrv5NAA5z9cv178Fjk3o/edit#gid=0)) have found themselves on the losing end of due process decisions, a handful of institutions have resisted in a troubling manner. Rather than acknowledge that court decisions showed the need to reform their unfair procedures, schools instead have maneuvered to neuter an accused student's efforts to go to court.

The trend started a few months ago at Penn State. After a temporary restraining order blocked the university from suspending a student, the university abruptly announced (without informing the court) that it was withdrawing the student's guilty finding (https://twitter.com/kcjohnson9/status/917133630958338048)—but would re-try him, subject to eliminating some (but not all) of the procedural defects in the investigation identified by the court. The accused student's lawyer filed a contempt motion; the day before the hearing on the motion, Penn State withdrew plans (https://twitter.com/kcjohnson9/status/931014916869447680) for a new disciplinary hearing for the student.

Then came Texas, where the university president overturned a not guilty finding after the accuser—whose father was a major donor to the school—had filed an appeal. The accused student sued; the judge in the case scheduled a hearing, at which the president was scheduled to testify. Less than a week before the hearing, Texas announced that the president had cancelled his guilty finding (https://twitter.com/kcjohnson9/status/933339727905816576), and would submit the accuser's appeal to another, unnamed Texas administrator. But the court called the university's bluff, and refused to cancel the hearing. That morning, just before the president was to take the stand (https://twitter.com/kcjohnson9/status/935223200644063233), the two sides settled, and the university permanently withdrew the guilty finding.

Exhibit 44

A common theme to these two cases: Penn State or Texas procedures did not allow a new hearing after the university had adjudicated the case and dismissed an internal appeal. In short, both schools were trying to invent new procedures on the fly to remove procedurally flawed decisions from a court's jurisdiction.

At least Penn State and Texas had the good sense to ultimately back down. Not so, at least as of now, Pomona College in California. The basics of the Pomona case were depressingly familiar. (You can read the complaint here (https://kcjohnson.files.wordpress.com/2017/12/pomona-complaint.pdf).) Two students met in spring 2015, and flirted; both had been drinking. (The accuser also had smoked some marijuana.) The two students went back to the accused student's dorm room.

As the two students became more intimate, the accuser later would say that she had not desired to go forward. She was experiencing, she later claimed, a PTSD-related reaction caused by *other* alleged sexual assaults she had experienced. Nonetheless, this claimed issue was never communicated to the accused student. So the two students (according to the college investigator's summary of an interview with the accuser) "ended up in his bed, but she was unsure of how they got there." The accuser further admitted voluntarily kissing the accused student (who I'll call JD), while both were shirtless, in his bed.

At that point, the two stories diverged. The accuser claimed that the additional sexual contact was without consent; JD claimed that the accuser consented unequivocally by physically moving his hand down to her vagina. Both sides agreed that to the extent the accuser was experiencing mental turmoil from PTSD, she never communicated that to JD, and JD (who was a college student, not a trained mental health professional) was unaware of it.

The accuser filed a Title IX complaint with Pomona nine months after the incident. (She appears never to have gone to the police.) Under Pomona's policies, the Title IX coordinator hired an investigator who interviewed the two parties and some witnesses, and produced a report. That document then went to an adjudicator hired by Pomona, who presided over what Pomona procedures call a "hearing." The accused student was allowed to present questions—*five days before the hearing*—that the hired adjudicator might (or might not) ask of the accuser.

In JD's case, the investigator, Li Fellers, spoke to him, his roommate, the accuser, and a couple of the accuser's friends who said that she told them about her discomfort with the incident shortly after it occurred.

The accused student seemed to have strong evidence. JD passed a lie detector test (which Pomona later would refuse to consider). On the critical issue at play in the case, whether she had denied consent to sexual touching, the accuser gave fundamentally inconsistent statements—claiming in one discussion with the investigator that she had frozen during the encounter and had said nothing to JD, claiming in another that she had clearly said no.

Moreover, Fellers' own investigation raised questions about the accuser's credibility. The accuser alleged that JD had stalked her, claiming that at two social events on campus, JD—around 15 feet away from her at one occasion, around 20 feet away from her on another—sought to intimidate her. But the accuser, by her own admission, couldn't identify someone from beyond 10 feet away, due to poor eyesight, and therefore had no idea whether JD was even in the room. Fellers further reported that a "majority" of the *accuser's own witnesses* had "contradicted her accounts" of the harassment claim.

Nonetheless, this concrete demonstration of the accuser's dubious credibility did not prevent Fellers from producing a report suggesting she had believed the accuser's claim about sexual assault. During the subsequent Pomona hearing, Fellers admitted that around half of her business came from Title IX investigations—suggesting a strong incentive to stay on the good side of the Title IX coordinators who hire her.

Before the hearing commenced, JD's lawyer (who wasn't allowed to represent him at the hearing himself) asked for copies of the witness statements to Fellers—only to discover that Pomona policy doesn't have investigators retain this information. (It was "typically standard that we don't record" witness interviews, Fellers would later tell the Pomona hearing. "Clients [the universities] don't want us to record." It's not hard to imagine why.) Instead, Pomona turned over Fellers' interview notes—but with dozens of redactions, even though Pomona policy provided no grounds for withholding this type of material. Fellers later said that the redactions came from the college counsel's office.

The hearing was a farce—neither the accuser nor her witnesses appeared. In a passage that recalled the hearing in the 6th Circuit's University of Cincinnati case, the adjudicator, Joseph Costa, noted that procedures existed for some indirect questioning of the accuser, but an absent witness could answer no questions. "If she was here," said he, "you know, it would be a different story."

Costa added, "One of the big issues for me in this matter is . . . there's a lot of factual disputes, and a lot of what is here goes to certain factual disputes." Yet because the accuser chose not to appear for the hearing, Costa never was able to explore concerns he had with her side of the story. Instead, he heard from a dean to whom the accuser had given her initial allegation—and denied multiple questions JD wanted asked, including questions about the accuser's medical history, which seemed relevant to the case given her unverified claim of PTSD.

In the end, Costa largely accepted the presentation from Fellers' report, and, absent cross-examination of the accuser (but after a hearing in which he did question JD at length), Costa found JD guilty. He so concluded despite finding that JD "was earnest in his statements at the hearing that he believed he had consent." When Pomona denied the appeal, the college's process was over. So JD went to state court.

That the case was assigned to Judge Mary Strobel seemed ominous—Strobel authored a troubling summer 2017 opinion upholding the infamous Occidental guilty finding. (That was the case where the accuser texted a friend—before going to the accused student's dorm room—saying she was going to have sex, but Occidental found him guilty anyway (http://www.esquire.com/news-politics/a33751/occidental-justice-case/).) But the Pomona procedures were too much even for Judge Strobel, who noted that the lack of any opportunity for cross-examination raised "serious fairness questions," and was so "prejudicial" to JD that the college denied him a "fair hearing." She set aside Pomona's guilty finding. You can read her opinion here (https://kcjohnson.files.wordpress.com/2013/08/pomona-writ-of-mandate.pdf).

Pomona, of course, has the right to appeal an adverse ruling. Instead, in mid-November Title IX coordinator Sue McCarthy informed JD that Pomona was going to re-try him, using a different adjudicator but the exact same evidence (including the Fellers report) from the original case, and under the same procedures that had produced the decision Judge Strobel set aside.

The university did not inform Judge Strobel of this rather startling decision, which appears to violate existing Pomona procedures. Even more remarkably, McCarthy provided no indication that this second "hearing" (which, again, has no authorization under the college's policies) would include cross-examination of the accuser, the defect identified in Judge Strobel's ruling.

Indeed, McCarthy placed an extra burden on JD, demanding that he produce a 20-page report responding to Fellers' original investigative report, including questions for the accuser if she decided to show up for this new hearing.

It's not hard to see what Pomona is doing here. Just as Penn State and Texas attempted, the message: wrongly accused students can sue, and might even win in court—but the victory will be meaningless, because the school will simply re-do the process, without altered procedures.

2 thoughts on "Pomona, the Courts, & Basic Fairness"

Stuart Taylor says:
DECEMBER 9, 2017 AT 1:43 AM
These people should be hung by their thumbs, or something more painful. Stuart

Sent from my iPhone

>

REPLY

Chris_Halkides says:
DECEMBER 9, 2017 AT 9:54 PM
One of my arguments against the present Title IX hearings is that even if they were conducted in good faith, they lack subpoena power and the participants lack proper training. It's not a particularly strong argument, given that so many of these hearings are not conducted in good faith.

REPLY

Exhibit 45

Academic Wonderland

Comments on the Contemporary Academy

Pomona, the Courts, & Basic Fairness

- DECEMBER 8, 2017DECEMBER 9, 2017
- KC JOHNSON
- 2 COMMENTS

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The accused student seemed to have strong evidence. JD passed a lie detector test (which Pomona later would refuse to consider). On the critical issue at play in the case, whether she had denied consent to sexual touching, the accuser gave fundamentally inconsistent statements—claiming in one discussion with the investigator that she had frozen during the encounter and had said nothing to JD, claiming in another that she had clearly said no.

Moreover, Fellers' own investigation raised questions about the accuser's credibility. The accuser alleged that JD had stalked her, claiming that at two social events on campus, JD—around 15 feet away from her at one occasion, around 20 feet away from her on another—sought to intimidate her. But the accuser, by her own admission, couldn't identify someone from beyond 10 feet away, due to poor eyesight, and therefore had no idea whether JD was even in the room. Fellers further reported that a "majority" of the *accuser's own witnesses* had "contradicted her accounts" of the harassment claim.

Nonetheless, this concrete demonstration of the accuser's dubious credibility did not prevent Fellers from producing a report suggesting she had believed the accuser's claim about sexual assault. During the subsequent Pomona hearing, Fellers admitted that around half of her business came from Title IX investigations—suggesting a strong incentive to stay on the good side of the Title IX coordinators who hire her.

Before the hearing commenced, JD's lawyer (who wasn't allowed to represent him at the hearing himself) asked for copies of the witness statements to Fellers—only to discover that Pomona policy doesn't have investigators retain this information. (It was "typically standard that we don't record" witness interviews, Fellers would later tell the Pomona hearing. "Clients [the universities] don't want us to record." It's not hard to imagine why.) Instead, Pomona turned over Fellers' interview notes—but with dozens of redactions, even though Pomona policy provided no grounds for withholding this type of material. Fellers later said that the redactions came from the college counsel's office.

The hearing was a farce—neither the accuser nor her witnesses appeared. In a passage that recalled the hearing in the 6th Circuit's University of Cincinnati case, the adjudicator, Joseph Costa, noted that procedures existed for some indirect questioning of the accuser, but an absent witness could answer no questions. "If she was here," said he, "you know, it would be a different story."

Costa added, "One of the big issues for me in this matter is . . . there's a lot of factual disputes, and a lot of what is here goes to certain factual disputes." Yet because the accuser chose not to appear for the hearing, Costa never was able to explore concerns he had with her side of the story. Instead, he heard from a dean to whom the accuser had given her initial allegation—and denied multiple questions JD wanted asked, including questions about the accuser's medical history, which seemed relevant to the case given her unverified claim of PTSD.

In the end, Costa largely accepted the presentation from Fellers' report, and, absent cross-examination of the accuser (but after a hearing in which he did question JD at length), Costa found JD guilty. He so concluded despite finding that JD "was earnest in his statements at the hearing that he believed he had consent." When Pomona denied the appeal, the college's process was over. So JD went to state court.

That the case was assigned to Judge Mary Strobel seemed ominous—Strobel authored a troubling summer 2017 opinion upholding the infamous Occidental guilty finding. (That was the case where the accuser texted a friend—before going to the accused student's dorm room—saying she was going to have sex, but Occidental found him guilty anyway (http://www.esquire.com/news-politics/a33751/occidental-justice-case/).) But the Pomona procedures were too much even for Judge Strobel, who noted that the lack of any opportunity for cross-examination raised "serious fairness questions," and was so "prejudicial" to JD that the college denied him a "fair hearing." She set aside Pomona's guilty finding. You can read her opinion here (https://kcjohnson.files.wordpress.com/2013/08/pomona-writ-of-mandate.pdf).

Pomona, of course, has the right to appeal an adverse ruling. Instead, in mid-November Title IX coordinator Sue McCarthy informed JD that Pomona was going to re-try him, using a different adjudicator but the exact same evidence (including the Fellers report) from the original case, and under the same procedures that had produced the decision Judge Strobel set aside.

The university did not inform Judge Strobel of this rather startling decision, which appears to violate existing Pomona procedures. Even more remarkably, McCarthy provided no indication that this second "hearing" (which, again, has no authorization under the college's policies) would include cross-examination of the accuser, the defect identified in Judge Strobel's ruling.

Indeed, McCarthy placed an extra burden on JD, demanding that he produce a 20-page report responding to Fellers' original investigative report, including questions for the accuser if she decided to show up for this new hearing.

It's not hard to see what Pomona is doing here. Just as Penn State and Texas attempted, the message: wrongly accused students can sue, and might even win in court—but the victory will be meaningless, because the school will simply re-do the process, without altered procedures.

2 thoughts on "Pomona, the Courts, & Basic Fairness"

Stuart Taylor says:
DECEMBER 9, 2017 AT 1:43 AM
These people should be hung by their thumbs, or something more painful. Stuart

Sent from my iPhone

>

REPLY

Chris_Halkides says:
DECEMBER 9, 2017 AT 9:54 PM
One of my arguments against the present Title IX hearings is that even if they were conducted in good faith, they lack subpoena power and the participants lack proper training. It's not a particularly strong argument, given that so many of these hearings are not conducted in good faith.

REPLY

Exhibit 46

CA COURT WIN. Judge Rules Pomona College Title IX Process Unlawful to Accused Male

OCTOBER 18, 2017

On Monday Los Angeles Superior Court Judge Mary H. Strobel ordered Pomona College to dismiss the college's findings and two-semester suspension of an accused male student, finding that Pomona College's Title IX disciplinary process unlawfully denied the student a fair hearing.

Last July, Pomona College found the accused student responsible for sexual misconduct and issued the suspension following a campus hearing, which the female accuser refused to attend. On July 26, 2016, John Doe, as the wrongfully accused student is identified in court records, appealed Pomona College's Title IX action to the California Superior Court, and named Samuel D. Glick, Chairman of the Pomona College Board of Trustees, Miriam Feldblum, Dean of Students, and Darren Mooko, Pomona College's Title IX Coordinator and Diversity Officer as respondents. In August 2016, Judge Strobel ordered Pomona College to stay the suspension pending a final ruling on John Doe's appeal, which has now been issued against Pomona College.

In her final ruling, Judge Strobel expressed particular concern about Pomona College's denial of the accused student's right to question the complainant at a hearing, in light of last year's Court of Appeal decision involving the University of California, San Diego, Doe v. Regents of the University of California (2016) 5 Cal.App.5th 1055.

"Pomona College's Title IX investigation process has been devastating for the student and his entire family," said Mark Hathaway, attorney for John Doe. "Pomona College presumed him guilty from the start and discounted

Exhibit 46

evidence that he was the victim and wrongfully accused by a female student from another college. John Doe is glad to finally have vindication."

Court Ruling onJohn Doe's Petition for Writ

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News

College Sued For Title IX Investigation Against Student

Editor's note: The legal documents referenced and quoted from in this article were lawfully obtained by The Mac Weekly, and are publicly available online. The letters and emails referenced in this article were all entered into evidence during court proceedings, and are all publicly available as well.

Macalester College was sued last February by a former student who accused the college of violating his right to due process and failing to provide him reasonable accommodations for his disabilities. The student, Alec Scott Jackson '18, was being investigated by the college for an alleged case of sexual assault, and the lawsuit charged Jackson's rights were violated during that disciplinary process. Jackson's appeal for a restraining order against Macalester, which would have prevented them from carrying out his investigation while the suit was pending, was denied, and Jackson withdrew the lawsuit a few days later. Jackson no longer attends Macalester College.

The claim of sexual assault stemmed from an alleged incident that took place off-campus against a non-Macalester student in early October. Jackson requested "reasonable accommodations," which would have allowed him to have full attorney representation throughout the investigation. Jackson's lawyers argued that his disabilities would prevent him from effectively participating in the disciplinary process, and that both he and the college would benefit from that accommodation. Macalester denied that request.

Macalester's sexual misconduct policy gives all students involved in a Title IX investigation the right to an advisor who can support them throughout the process. It does not, however, allow the advisors to directly participate or speak for the students. Macalester argued that Jackson's request would violate that aspect of the policy, and offered alternative accommodations in place of full attorney representation.

After a few further meetings to discuss accommodations, and the halting and resuming of the investigation at the request of the claimant in the sexual assault case, Macalester and Jackson agreed that his psychologist could offer him assistance throughout the investigative process. Jackson and Macalester scheduled an interview between him and a third-party investigator on February 25, a standard step in the investigation process for sexual misconduct cases.

Lawsuit filed

On February 23, Jackson filed a lawsuit against Macalester College and the U.S. Department of Education. Jackson's attorney notified Macalester that he would not attend the scheduled interview, saying in a letter that Jackson "had no choice but to resort to legal action to obtain appropriate due process, protection and accommodations."

The lawsuit argued that Macalester's handbook and Sexual Misconduct Policy violated Jackson's right to due process, which Jackson claimed that he had a right to throughout the disciplinary process. Not allowing Jackson to have the full representation of a lawyer denied him "due process protections necessary to ensure a fair determination of the facts [of his case]," his lawsuit argued. According to the lawsuit, Macalester's policy "lacks even the most rudimentary due process protections for the accused in disciplinary matters, which in turn virtually guarantees that the outcomes of these investigations will be arbitrary in close cases."

In 2011, the Department of Education sent a letter to all colleges around the country informing them of steps they must take to meet legal obligations under Title IX. The letter called on schools, including Macalester, to establish a Title IX Coordinator, take immediate steps to end sexual harassment and sexual violence and protect all students from sex discrimination. The letter explicitly stated that public schools must provide due process to students facing sexual misconduct charges, as long as they "do not restrict or unnecessarily delay" the investigation. However, the letter did not address whether or not students at private colleges are entitled to similar protections.

Jackson's lawsuit argued that by not affording those protections to students at private colleges, the Department of Education is violating students' constitutional right to due process. The lawsuit argued that as a result of the Department's letter, students — especially those accused of sexual misconduct violations — are afforded "a significantly lower level of due process."

The lawsuit went on to argue that Title IX actions by private colleges, such as Macalester, are effectively actions conducted by the federal government because the Department has heavily influenced those policies.

Therefore, private colleges are required to provide due process protections to their students.

The Department also required that, when schools are investigating cases of sexual misconduct, they adopt a "preponderance of the evidence" standard. In those cases, colleges must prove that the alleged action was "more likely than not" to have occurred, a weaker standard of proof than in other civil cases, which often use a "clear and convincing evidence" standard. The letter advised a 60-day timeline for colleges to complete sexual violence investigations, a timeframe which Macalester repeatedly cited as justification for its willingness to move on with Jackson's investigation.

Jackson also sued Macalester for alleged violations of the Americans with Disabilities Act and the Rehabilitation Act. According to his lawsuit, Macalester failed to make reasonable accommodations throughout the process for his documented disabilities. As Macalester is an institution which receives federal funding, it is prohibited from discriminating on the basis of disability. Jackson argued that the failure to accommodate him in his disciplinary process led him to receive unequal access to the college's resources, and could endanger his future standing at the college.

The lawsuit argued that Macalester's denial of Jackson's request for accommodations "subjects him to the likelihood that he will be excluded from education at the College on the basis of disability despite the fact that he does not pose a direct threat to the health or safety of others."

After Jackson was initially arrested in October and released without charges, Macalester issued a no-contact order against Jackson, severely limiting the amount of time he can spend on campus. This was, according to court filings, an interim measure "needed to protect the parties or the broader campus community." The no-contact order was also partially motivated by a previous sexual misconduct charge brought against Jackson in 2014.

Jackson, through his lawsuit, sought a declaration that the lack of due process for private college students is unconstitutional, and an order that would require private colleges to provide similar protections. Jackson also wanted Macalester to issue a declaration that its sexual misconduct policy violated due process laws, an injunction that would halt its disciplinary process, and a declaration that Macalester failed to accommodate his disabilities.

Attempts to halt investigation

Macalester first said it would continue its investigation of Jackson unless the college received a court injunction ordering it to stop. Karla Benson Rutten, Macalester's Title IX Coordinator, told Jackson "the College will move forward with concluding the investigation and adjudication of the complaint, with or without your participation," as Jackson did not attend the February 25 meeting as previously scheduled.

Macalester argued that it could not postpone its investigation while the court proceedings were ongoing because the Department of Education's 60-day guideline to carry out sexual misconduct investigations had already been delayed, and it could not ignore that guideline. Jackson's lawyers inquired whether violating the 60-day guideline would trigger legal action against Macalester, and did not receive a clear answer.

On February 28, five days after the lawsuit was first filed, Jackson filed a motion for a restraining order against Macalester. The motion, if granted, would prevent Macalester from investigating Jackson's sexual assault charge. It would also prevent the Department of Education from retaliating against Macalester for not investigating the claim. Macalester then chose to suspend its investigation into Jackson until the motion for a restraining order was approved or denied.
According to the motion filed in court, successful restraining orders may be issued when there is a threat of irreparable harm for the plaintiff, little chance of harm for other parties involved (in this case, Macalester), a probability of success for the plaintiff and a public interest in issuing a restraining order.

Arguments in support of the restraining order claimed it was necessary to halt the investigation during the legal process, as Macalester's failure to provide due process or reasonable accommodations would have led to Jackson's imminent expulsion from Macalester — an "irreparable harm." Jackson's lawyers argued that Macalester failed to provide him with a sufficient notice of his charges or a proper hearing, which means the "probability of success" for his case was fairly high.

Macalester and the Department of Education issued orders opposing the restraining order, stating that the order would violate Macalester's legal obligation to "promptly" investigate sexual misconduct complaints. Macalester disputed the charges that Jackson was not provided a proper notice or hearing, saying that his complaints about the policy were subjective, and Macalester followed all necessary guidelines in his case. Macalester's Title IX policy contains all necessary rights and safeguards that are permitted for students, and thus the claim that Macalester is acting as a government agent is invalid. Macalester argued that Jackson's fears of irreparable harm were not valid, since the investigation was still underway and any punishments, such as expulsion, were still entirely hypothetical. Granting a restraining order would harm Macalester, as it would weaken the school's Title IX policies and jeopardize the safety of campus and potential victims that may come forward, the school argued.

Macalester also argued against Jackson's charge that he was not provided reasonable accommodations, saying that allowing him to have full legal representation would lead to inequity in the process, and that the school offered him different accommodations which were sufficient. Macalester

argued that it had "done more than [the Americans with Disabilities Act] requires," and reasonable accommodations can be provided even when they are not what the student requests.

On March 11, the motion for a restraining order was denied. In her ruling, U.S. District Court Judge Wilhelmina Wright stated that in the Court's opinion, Jackson did not demonstrate that the restraining order was necessary to prevent him from suffering "immediate, irreparable harm." Jackson's claim that the restraining order was needed to prevent imminent expulsion was speculative and unsubstantiated, according to Wright. Therefore, the restraining order on Macalester's investigation was denied.

Six days after the restraining order was denied, Jackson voluntarily dismissed the case and withdrew the lawsuit.
Marty Carlson '94, Jackson's attorney, said in an interview that the ruling was disappointing. However, he noted that Wright's denial of their restraining order was not based on a large "categorical rejection" of their argument, but was a more limited ruling based on one aspect of their case for a restraining order.

"You've got to recognize that there's a fairly high likelihood that you're not going to be successful," Carlson said. "This is a high-risk litigation from the plaintiff's perspective, but if you aren't willing to take those sorts of risks, nothing can get changed in the long run."

Jackson, in the same interview, said that he initiated the lawsuit "to help [himself] out of an undeserved and unfair situation, and also to set what we hope would be a national precedent in order to give the accused in situations such as this more due process protections." He said that he had no reservations about publicizing his case and trying to start a broader conversation about this issue.

Carlson is a former member of the Alumni Board who had provided legal services for many Macalester students in the past. According to Carlson, he was notified of the case by Dean of Students Jim Hoppe, who contacted him and told him Jackson was currently in jail, and would be notifying him to seek legal representation.

Changes to Macalester policies

Macalester's most recent Sexual Misconduct Policy, adopted July of last year, outlines the protocol which must be followed to investigate and adjudicate claims of sexual misconduct, which includes sexual violence and sexual assault. This process was followed in Jackson's case, which began with a meeting between him and Benson Rutten.

According to Benson Rutten, the most recent changes to Macalester's policy altered how reports of sexual misconduct violations are processed, and how those complaints are investigated.

Under the new process, Macalester has a legal obligation under Title IX to respond to incident reports. If Benson Rutten determines that the report violates Macalester policy, and the person filing the report wishes to file a complaint, the investigation proceeds. Macalester hands the investigation off to outside investigators, who conduct interviews and gather information about the incident. The investigator(s) submit a report to the Title IX Coordinator. In cases of sexual assault, the complainant and respondent can add additional information or make clarifications on the written report. Two administrators (in cases involving students, one of these people is the Vice President for Student Affairs) make the final decision on the investigation. If they determine that the preponderance of the evidence standard is met, meaning that it is "more likely than not" that a policy was violated, then the respondent is found officially responsible.

Macalester revised these policies in order to "follow the guidelines set forth by the Department of Education … with a goal of creating a prompt, fair, respectful and thorough process," according to Benson Rutten.

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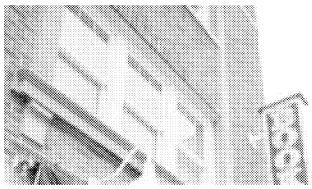

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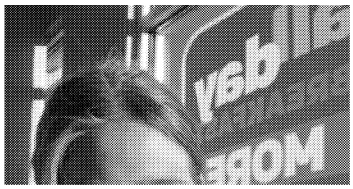

Court dismisses parts of Naca's lawsuit against Macalester, but case will continue

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