

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF LANE

JOHN DOE,

Petitioner-Plaintiff,

v.

UNIVERSITY OF OREGON; SANDY WEINTRAUB, an individual acting in his personal capacity; CAROL MILLIE, an individual acting in her personal capacity; ROBIN HOLMES, an individual acting in her personal capacity.

Respondents-Defendants.

Case No. \_\_\_\_\_

**COMPLAINT (Violation of Federal Civil Rights Law (42 U.S.C. § 1983), Violation of Title IX); PETITION FOR WRIT OF REVIEW PURSUANT TO ORS CHAPTER 34**

STAY REQUESTED

FILING FEES: \$252 (ORS § 21.135(1), (2)(g)); \$252 (ORS 21.135(1), (2)(e)); \$100 (ORS § 34.050)).

CLAIM NOT SUBJECT TO MANDATORY ARBITRATION

DEMAND FOR JURY TRIAL

Petitioner-Plaintiff, John Doe (“John Doe”), by and through his undersigned attorney hereby alleges against Respondents-Defendants the University of Oregon, Sandy Weintraub, Carol Millie, and Robin Holmes:

**PARTIES**

1.

Petitioner-Plaintiff John Doe (hereinafter “John Doe”), is a citizen and a resident of Oregon, and at all relevant times was a student duly enrolled at the University of Oregon (“the University”).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

2.

Petitioner-Plaintiff's name is represented herein by pseudonym as required under the Family Education Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99). FERPA controls to the extent that it is not in conflict with constitutional rights and privileges. *See also* UTCR 2.010(11)(a)(ii).

3.

Defendant-Respondent the University of Oregon ("University") is a public university established by state statute. ORS 352.002(1). The University is a governmental entity performing governmental functions and exercising governmental powers. ORS 352.033. The University is an institution of higher education that receives federal funding and is subject to Title IX (20 USC §§ 1681 *et seq*).

4.

The University has a governing Board of Trustees, ORS 352.054, and is located in Eugene, Oregon.

5.

State law authorizes the University to establish policies for the administration of the university that have the force of law and may be enforced through university procedures. ORS 352.087(1)(m). The Board may delegate and provide for the further delegation of university powers, rights, duties, and privileges. (Article III, University Bylaws, approved September 11, 2015.)

///

///

PAGE 2 - COMPLAINT; PETITION FOR WRIT OF REVIEW

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

6.

The University, through its Director of Student Conduct and Community Standards, has developed procedures to control the investigation and adjudication of allegations of sexual misconduct by the university's students. *See* University of Oregon "Student Conduct Standard Operating Procedures Regarding Sexual Misconduct, Sexual Harassment, and Unwanted Sexual Contact" ("Procedures") (available at <https://uodos.uoregon.edu/StudentConductandCommunityStandards/SexualMisconduct.aspx>) (last viewed June 6, 2016).

7.

At all times material hereto, the University acted by and through its agents, servants, employees, and representatives, who were acting in the course and scope of their respective agencies or employment and/or in the promotion of the University's business, mission and/or affairs.

8.

Defendant Sandy Weintraub is, and was at all relevant times, the Director of Student Conduct & Community Standards at the University. The University's Procedures for investigating and adjudicating student sexual misconduct allegations were developed by the Office of the Director. *See* Procedures, preamble. The Director appoints the Decision-maker to investigate and adjudicate the allegations in a specific case. *Id.* at section 7. Upon information and belief, Mr. Weintraub resides in Oregon.

///

///

///

1 9.

2 Defendant Carol Millie is, and was at all relevant times, Senior Equal Opportunity  
3 Specialist in the Office of Affirmative Action and Equal Opportunity at the University. Millie  
4 was the University's designated representative, or "Decision-maker," responsible for  
5 investigating and adjudicating allegations of student sexual misconduct against John Doe. In that  
6 capacity, Millie served as the hearing officer for the adjudicative proceeding regarding the  
7 allegations against John Doe. Upon information and belief, Ms. Millie resides in Oregon.

8 10.

9 Defendant Robin Holmes is, and was at all relevant times, Vice President for Student Life  
10 at the University. Upon information and belief, Dr. Holmes resides in Oregon.

11 **JURISDICTION:**

12 11.

13 This court has jurisdiction over the petition for a writ of review because the petition is  
14 timely filed within 60 days of the decisions and determinations sought to be reviewed, which  
15 were rendered on or about September 7, 2016. ORS 34.030.

16 12.

17 This court has jurisdiction over the claims arising under Title IX and 42 U.S.C. § 1983  
18 pursuant to ORS 14.030.

19 **VENUE:**

20 13.

21 Venue is proper because the decisions and determinations challenged through the petition  
22 for a writ of review were made in this county. ORS 34.030; ORS 14.060.

1 **STATEMENT OF FACTS**

2 14.

3 In February 2016, John Doe and Jane Roe were students at the University of Oregon.  
4 That month, John Doe received notice that Jane Roe had accused him of sexual misconduct—  
5 allegations which he consistently and vehemently denied as false. He also passed four polygraph  
6 examinations that established as true his version of events. After a biased investigation and  
7 procedurally inadequate adjudication of the allegations, however, the University suspended John  
8 Doe for one year. The University Appeals Board affirmed the decision and sanction on  
9 September 7, 2016.  
10

11 **Applicable Procedure**

12 15.

13 The University’s Student Conduct Code and Sexual Misconduct Standard Operating  
14 Procedures (“SOPs”) set forth the school’s policies and procedures for investigating and  
15 adjudicating alleged disciplinary violations, including alleged violations of the University’s  
16 sexual misconduct policies.  
17

18 16.

19 The Student Conduct Code sets forth the general procedural protections an accused  
20 student may expect, and states: “Procedural fairness is basic to the proper enforcement of all  
21 University regulations.”  
22

23 17.

24 The Conduct Code further states: “Regulations and disciplinary sanctions affecting the  
25 conduct of all Students shall be based on general principles of equal treatment.”  
26

1 18.

2 The Conduct Code guarantees a student accused of sexual misconduct an “opportunity to  
3 respond to all information provided . . . .” to the decision maker.

4 19.

5 The Sexual Misconduct SOPs set forth in greater detail the procedures to be followed in  
6 investigating and adjudicating complaints of sexual misconduct.

7 20.

8 The SOPs state: “[T]hese procedures shall be interpreted and applied consistent with the  
9 Violence Against Women Act, Title IX, their implementing regulations and relevant agency  
10 guidance, and other controlling state and federal law.”

11 21.

12 Pursuant to the University’s procedures, the investigation and adjudication of student  
13 sexual misconduct allegations typically proceed according to the following time frames:

- 14 a. Fact-gathering investigation (40 days)
- 15 b. Review of Record (a period of 5 calendar days after the closing of the fact-gathering  
16 investigation)
- 17 c. Administrative Conference (5 calendar days after the close of the Review of Record)

18 These timeframes may only be altered or extended for good cause. *See* Procedures, section 8.

19 22.

20 The fact-gathering process, together with the Administrative Conference, constitute the  
21 mechanism by which the University assesses and takes formal disciplinary action regarding a  
22 student misconduct violations of university policy. *Id.*, section 10.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

23.

The University may designate an appropriate university representative, referred to as the “Decision-maker,” to both investigate and adjudicate the allegations in a specific case. *Id.*, section 7.

24.

The Decision-maker controls the record and, based on that record, determines by a preponderance of the evidence whether the accused student committed misconduct.

25.

As the gatekeeper of the record, the Decision-maker is authorized by the University’s procedures to take necessary measures throughout the investigation and adjudication process to ensure that each party is afforded constitutionally sufficient notice and opportunity to view and respond to evidence. *Id.*, section 10.

26.

The Decision-maker is charged with creating a record of all relevant information obtained before or during the fact-gathering investigation (“Record”). The Decision-maker is required to provide notice to the parties involved at least ten days prior to the conclusion of the fact-gathering process. The notice must include the date the fact-gathering process will conclude, the time period for reviewing the record, and the date of the Administrative Conference. *Id.*, section 9.

///  
///  
///

1 27.

2 The accused student and the complainant are to be afforded an opportunity to review the  
3 record for a period of five days after the conclusion of the fact-gathering investigation, and before  
4 the Administrative Conference. *Id.*

5 28.

6 The Administrative Conference is intended to provide fair, ample, and equal opportunity  
7 for each party to respond to the Record, including posing questions to the Decision-maker, the  
8 other party, and witnesses. *Id.*, section 10.

9 29.

10 At the Administrative Conference, the parties may not directly question other parties or  
11 witnesses. Only the Decision-maker may pose questions to the complainant and the accused  
12 student, including questions suggested and provided in writing by the parties. The parties'  
13 proposed questions become part of the Record. The Decision-maker poses questions to a witness  
14 or party to whom the question is directed if she concludes that the questions are relevant and not  
15 unduly harassing. Responses to these questions become a part of the Record. *Id.*

16 30.

17 The University's procedures expressly prohibit both the accused and the complainant  
18 from introducing new or additional evidence after the conclusion of the fact-gathering process.  
19 Such evidence is not to be considered and will not become part of the record. *Id.*, section 9. The  
20 procedures also separately and specifically bar the admission of any new or additional evidence  
21 at the Administrative Conference that was available and could have been provided but was not  
22 previously provided to the Decision-maker during the fact-gathering investigation. Such  
23  
24  
25  
26



1 evidence will not be allowed or considered. *Id.*, section 10. The only exception to these rules is  
2 for good cause. *Id.*, sections 9 and 10.

3  
4 31.

5 To justify the introduction and consideration of new or additional evidence for good  
6 cause, a party may petition the Decision-maker. *Id.*, section 9. To request an exception to the  
7 bar against the admission of previously available, but unsubmitted, evidence, a party must file a  
8 petition with the Decision-maker showing why there is good cause for such admission. *Id.*,  
9 section 10.

10  
11 32.

12 For the Administrative Conference to be conducted fairly and in conformity with the  
13 University's procedures, the Decision-maker must not only give the complainant a reasonable  
14 opportunity to present information, but the accused also must receive reasonable notice and an  
15 opportunity to prepare and respond to the allegations. *Id.*, section 14.

16 **Facts of John Doe's Case**

17  
18 33.

19 Jane Roe and John Doe met during the early fall term of 2015, and they sometimes engaged  
20 in consensual sexual activity. Around the middle of the fall term, however, John Doe wanted to be  
21 in a serious relationship with someone, but Jane Roe wanted to have a more casual sexual  
22 relationship, which was not appealing to John Doe.

23  
24 34.

25 John Doe became highly concerned that Jane Roe had infected him with the herpes virus  
26 because he believed she had cold sores. John Doe is an extreme "germaphobe"—a fact to which

1 several witnesses testified at the disciplinary hearing. John Doe became so concerned that he had  
2 contracted herpes, that he went to the student health facility and text messaged his mother about  
3 his concerns.

4  
5 35.

6 John Doe and Jane Roe started talking again during winter term of 2016. Given John  
7 Doe's belief that Jane Roe was infected with the herpes virus, however, he had no interest in  
8 engaging with her sexually.

9  
10 36.

11 On February 11, 2016, Jane Roe and John Doe met for coffee and then took a walk. Jane  
12 Roe's boyfriend had just broken up with her, although John Doe reported that they did not talk  
13 about the breakup. John Doe walked with Jane Roe after coffee because she had complained that  
14 she could not smoke in her dorm room. John Doe offered to show her some places he thought  
15 that she might be able to smoke.

16  
17 37.

18 On the night of February 12, 2016, Jane Roe contacted John Doe, who lived in the same  
19 dorm, because she was highly intoxicated and afraid that, if she fell asleep, she might inhale her  
20 own vomit. She asked John Doe to watch over her, and John Doe agreed. Jane Roe came to his  
21 dorm room, and immediately collapsed onto his roommate's bed. John Doe positioned Jane Roe  
22 on her side to protect her from asphyxiation and removed her outer cardigan, in which her hand  
23 had become entangled.

24 ///

25 ///

1 38.

2 John Doe then left his room to take a shower. After showering, he did some laundry and  
3 subsequently fell asleep on a couch in the downstairs lounge of his dorm. Several witnesses  
4 corroborated this series of events.  
5

6 39.

7 In the early morning of February 13, 2016, around 3:30 A.M., John Doe returned to his  
8 dorm room. He fell asleep sitting up in his own bed, while Jane Roe continued to sleep in his  
9 roommate's bed. When John Doe awoke, Jane Roe was gone.  
10

11 40.

12 On February 18, 2016, the University notified John Doe that Jane Roe had filed with the  
13 University a sexual misconduct complaint against him.  
14

15 41.

16 Jane Roe had filed her complaint on February 16, 2016, and two days later, the University  
17 issued an emergency-action housing change against John Doe, requiring him to move to another  
18 dorm.  
19

20 42.

21 The University's Student Conduct Code provides that a preliminary hearing must be held  
22 within two business days of the emergency action.  
23

24 43.

25 For some time after the emergency action, the University maintained that John Doe had  
26 been forced to change dorms not as an emergency action but pursuant to the contract provisions

1 in his housing agreement. Ultimately, the University acknowledged that the move was pursuant  
2 to its emergency action procedures.

3 44.

4  
5 In violation of the University's policies and procedures, a preliminary hearing on the  
6 emergency action was not afforded John Doe until April 15, 2016, approximately two months  
7 after the University removed John Doe from his dorm.

8 45.

9 On April 18, 2016, defendant Sandy Weintraub, Director of Student Conduct and  
10 Community Standards, sustained the emergency action requiring John Doe to change dorms.  
11

12 46.

13 Due to the emergency action, John Doe was prohibited from visiting his friends or eating  
14 in the Hamilton dorm complex.

15 47.

16 As a result of Jane Roe's accusations, the University initiated an investigation and  
17 scheduled an Administrative Conference for May 17, 2016.  
18

19 48.

20 Carol Millie was designated as the Decision-maker in the case.

21 49.

22 In the course of the investigation, Ms. Millie conducted documented interviews of Jane  
23 Roe on February 23, 2016, and again on April 6, 2016. As is discussed below, the record  
24 suggests that Ms. Millie may have interviewed Jane Roe on other occasions without including  
25 summaries of those interviews in the record, in violation of the University's SOPs.  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

50.

According to one of Jane Roe’s first versions of the alleged assault, after she had passed out on the night of February 12, 2016, John Doe pulled her onto the floor and on top of him. He then allegedly sexually assaulted her by kissing her, putting his hands down her pants, and attempting to touch her vagina through her underwear.

51.

She also claimed that immediately after the assault, John Doe left the room to take a shower, and she quickly texted her ex-boyfriend: “Just for documentation, can you make it known I was almost raped tonight?” The time stamp of that iMessage reflects that it was sent at 3:24 A.M.

52.

During the investigation period, John Doe provided Ms. Millie with the results of two polygraph examinations confirming that he had not engaged in sexual contact with Jane Roe on the night in question.

53.

Jane Roe also falsely reported that she and John Doe exchanged iMessages the morning after the assault, in which he apologized for the assault. Jane Roe, however, could not produce the original iMessages. Instead, she presented Ms. Millie with a screen shot of the iMessages, which Jane Roe claimed she had taken in case she later decided to file a complaint.

///  
///  
///

1 54.

2 To explain why the original iMessages were no longer available for inspection, Jane  
3 Roe's counsel reported to Ms. Millie that, the morning after the assault, Jane Roe deleted John  
4 Doe's contact information from her phone and blocked all text messages from him. Jane Roe's  
5 counsel claimed that, based on information that she and Jane Roe had learned through consulting  
6 with Jane Roe's cellular phone service provider, all previous text messages from John Doe were  
7 automatically deleted when Jane Roe blocked his contact information.  
8

9 55.

10 As is further discussed below, John Doe presented to Ms. Millie expert testimony that  
11 iMessages are not automatically deleted when contacts are deleted and messages are blocked. He  
12 presented further expert testimony explaining how a person may create a fake iMessage on her  
13 phone and then delete the fake message after producing a screen shot of it.  
14

15 56.

16 Once an original text message is deleted, there is no way to verify the authenticity of the  
17 screen shot.  
18

19 57.

20 As is discussed in more detail below, when Jane Roe was confronted with John Doe's  
21 expert evidence, she changed her story about the deletion of the iMessages, claiming, through  
22 counsel, that she intentionally destroyed them at the time that she blocked John Doe's number  
23 and that she had reported as much to Ms. Millie during the investigation. Despite Jane Roe's  
24 claims that she told Ms. Millie that she had intentionally deleted John Doe's iMessages, that  
25 version of the deletion story is not contained anywhere in Ms. Millie's reports.  
26

1 58.

2 On the afternoon of February 13, 2016, Jane Roe met her ex-boyfriend for tea. He was  
3 appropriately concerned for Jane Roe after the message he'd received at 3:24 A.M. the previous  
4 night. He encouraged her to prosecute John Doe through the university system and proposed that  
5 she try to elicit an incriminating text message from John Doe or record a phone call with him  
6 establishing his guilt. Despite the fact that her ex-boyfriend was encouraging her to obtain  
7 incriminating text messages from John Doe, Jane Roe failed to mention that she had already  
8 received such iMessages that very morning. Nor did she mention that she had taken a screen shot  
9 of the iMessages for the sake of preserving evidence.  
10

11 59.

12 John Doe passed a polygraph confirming as truthful that he and Jane Roe had not traded  
13 any iMessages concerning the alleged sexual assault.  
14

15 60.

16 Jane Roe's accusations against John Doe were false and were intended to garner  
17 sympathy and attention from her ex-boyfriend.  
18

19 61.

20 As noted above, John Doe passed a polygraph confirming that he had not engaged in any  
21 sexual contact with Ms. Roe on the evening of the alleged assault.  
22

23 62.

24 Jane Roe's account of events significantly changed over time and conflicted with  
25 bystander testimony, which should have severely undermined her credibility. Nonetheless, Ms.  
26

1 Millie unreasonably excused all inconsistencies and drew all inferences—without exception—in  
2 favor of Jane Roe.

3  
4 63.

5 With regard to the walk Jane Roe had taken with John Doe on February 11, 2016, Jane  
6 Roe first reported to Ms. Millie that John Doe had “hit on her” during the walk and made sexual  
7 comments. According to her roommate’s testimony, Jane Roe also told her that John Doe had  
8 tried to kiss her, hold her hand and “do stuff.”

9  
10 64.

11 But later, at the Administrative Conference, Jane Roe added dramatic details to her  
12 narrative regarding her walk with John Doe. During the hearing, she claimed for the first time  
13 that, while on their walk, John Doe had grabbed and slapped her buttocks, hugged her from  
14 behind—even picked her up and threw her over his shoulder. She also reported for the first time  
15 that John Doe so frightened her on the walk that she had to run away from him.

16  
17 65.

18 John Doe consistently denied that he made any sexual advances toward, or engaged in  
19 any physical contact with, Jane Roe during the walk.

20  
21 66.

22 Despite Jane Roe’s shifting story about what had happened on the walk, Ms. Millie  
23 ultimately determined that Jane Roe’s version of events was more credible than John Doe’s.  
24 She then relied on her factual findings regarding the walk to support her ultimate finding that  
25 John Doe sexually assaulted Jane Roe the following evening.

26 ///



1 67.

2 Additionally, Ms. Millie arbitrarily found John Doe's testimony about the walk to be not  
3 credible because, she reasoned, if he feared sexual contact with Jane Roe due to his germaphobia,  
4 he would not have gone on a walk or have had coffee with her. Ms. Millie simply overlooked the  
5 scientific fact that one cannot contract herpes by walking or having coffee with another person.  
6 Thus, it was unreasonable to infer from John Doe's willingness to have coffee and go for a walk  
7 with Jane Roe that his testimony about his sexual aversion to Jane Roe lacked credibility.  
8

9 68.

10 Further, it is unreasonable to credit as true an ever-shifting and increasingly elaborate  
11 story of the walk, as Ms. Millie did, merely because Jane Roe told her roommate that John Doe  
12 had hit on her during the walk. Jane Roe's falsely confiding in her roommate was motivated by  
13 her need for attention and her desire to inflame her ex-boyfriend's jealousy.  
14

15 69.

16 With regard to the alleged sexual assault, Jane Roe's testimony at the hearing also  
17 included new, sensational details. She claimed for the first time that, at the time of the assault,  
18 John Doe was slapping her awake, asking her "how she wanted it," and interrogating her as to  
19 how many sexual partners she had had.  
20

21 70.

22 But, from the time that Jane Roe entered his dorm room until well past 3:24 A.M. (when  
23 Jane Roe sent the text to her ex-boyfriend falsely accusing John Doe), the door to John Doe's  
24 room had been left partially open. In the dorm room immediately opposite John Doe's, two  
25 witnesses were playing video games with the sound turned low and the door open wide. The  
26

1 witnesses testified that they would have been able to hear any noises coming from John Doe’s  
2 room. They heard nothing: no slapping, no questions, no protestations, no yelling.

3  
4 71.

5 Other aspects of Jane Roe’s story conflicted with those witnesses’ testimony. For  
6 instance, Jane Roe also testified that John Doe had left the room to take a shower immediately  
7 after the alleged assault (or so she assumed because she heard a sound that she considered to be a  
8 shower running). However, one witness testified at the hearing that John Doe had left his dorm  
9 room to take a shower hours before 3:24 A.M., which should have further called into question  
10 Jane Roe’s credibility and the accuracy of her testimony.

11  
12 72.

13 Ms. Millie, however, unreasonably dispensed with all witness testimony that undermined  
14 Jane Roe’s chronology by finding that the assault simply must have occurred much earlier than  
15 Jane Roe remembered. Ms. Millie premised her finding on an undisclosed “expert” opinion  
16 regarding trauma’s effect on a trauma victim’s memory—evidence that was not in the record.  
17 Based on this undisclosed and unqualified “expert” evidence, Ms. Millie unreasonably concluded  
18 without support that Jane Roe’s trauma must have left her confused about the time. Ms. Millie  
19 thereby side-stepped the obvious inconsistency between Jane Roe’s and the witnesses’  
20 testimony—which was the centerpiece of John Doe’s defense.

21  
22 73.

23 Ms. Millie used the undisclosed expert opinion to find that Ms. Roe’s stories shifted  
24 because she suffered from trauma-induced memory problems and that the evidence that Jane Roe  
25  
26

1 had suffered a trauma was that her stories shifted. Ms. Millie’s reasoning was circular and  
2 outcome-driven.

3  
4 74.

5 Based on her circular reasoning, Ms. Millie found that the sexual assault did not occur  
6 immediately before 3:24 A.M.—even though that is the only time in the record that is tethered to  
7 the evidence. 3:24 A.M. is the time when Jane Roe sent the iMessage to her ex-boyfriend, and in  
8 every version of the facts related by Jane Roe, she reported that the assault occurred immediately  
9 before she sent that text.

10  
11 75.

12 In other words, Ms. Millie created a Catch-22 situation in which John Doe could not  
13 possibly establish his innocence: if his accuser’s testimony was consistent, Ms. Millie would find  
14 her credible and determine that the alleged assault occurred. But if his accuser’s testimony was  
15 inconsistent, Ms. Millie would attribute the inconsistency to trauma-induced memory issues, the  
16 existence of which, according to her faulty analysis, would prove that the alleged assault  
17 occurred. Thus, the outcome was predetermined.

18  
19 76.

20 Title IX training instructs decision-makers that inconsistencies in an accuser’s testimony  
21 may be used as evidence that the accuser has suffered trauma. Thus, the training provided to  
22 decision-makers led to the unfair and arbitrary conclusion in this case that Jane Roe’s  
23 inconsistencies proved her version of events rather than indicated her lack of credibility. Such a  
24 backward approach to determining credibility violated John Doe’s due process rights because he  
25

26

1 was effectively deprived the right to confront his accuser, to challenge her credibility through  
2 meaningful cross-examination, and to present a defense.

3  
4 77.

5 On appeal to the University Appeals Board, John Roe submitted an expert report from Dr.  
6 Daniel Reisberg, a highly qualified professor of psychology at Reed College who testified that  
7 the assumptions underlying Ms. Millie’s findings regarding trauma and its effects on memory  
8 were not scientifically supportable. Had John Doe received notice before Ms. Millie’s decision  
9 that she intended to rely on pseudo-science, extraneous to the record, to support her conclusion  
10 that Jane Roe’s inconsistencies were evidence of trauma, he would have introduced Dr.  
11 Reisberg’s report into the record before the hearing and decision. Instead, John Doe was provided  
12 no notice that Ms. Millie would premise her credibility determinations on such junk science.

13  
14 78.

15 The University Appeals Board, without even mentioning Dr. Reisberg’s report, affirmed  
16 John Doe’s suspension based on Ms. Millie’s decision, including her credibility determinations.

17  
18 79.

19 Moreover, Ms. Millie overlooked Jane Roe’s (or her counsel’s) inconsistencies regarding  
20 how the purportedly incriminating iMessages were deleted from Jane Roe’s phone. Jane Roe’s  
21 counsel first claimed that “we” contacted T-Mobile and learned that when Jane Roe deleted John  
22 Doe’s contact information from her phone and blocked all future messages from him, that  
23 process automatically deleted the incriminating iMessages. Later, after John Doe presented  
24 expert evidence that iMessages are not automatically deleted under those circumstances, Jane  
25 Roe’s counsel explained that she had been mistaken: Jane Roe intentionally deleted the  
26

1 iMessages when she deleted John Doe’s information and blocked his messages. Jane Roe’s  
2 counsel also claimed that Jane Roe had reported to Ms. Millie previously that she had  
3 intentionally deleted the messages. That information, however, does not appear in Ms. Millie’s  
4 summary of the investigation. Thus, either Jane Roe’s version of how the iMessages were  
5 deleted shifted after expert evidence showed it to be false (and Ms. Millie’s credibility  
6 determination was therefore unreasonable), or Ms. Millie failed to provide John Doe with all of  
7 the evidence in the record before the hearing, as is required by the University’s policies and  
8 procedures.  
9

10 80.

11  
12 In violation of his due process rights and the University’s policies and procedures, John  
13 Doe was not provided, before the hearing, with the exhibit in which Jane Roe’s attorney  
14 attempted to explain her erroneous prior statements regarding Jane Roe’s deletion of the  
15 iMessages allegedly sent to her by John Doe.

16 81.

17  
18 John Doe therefore had no time to prepare a response to the convenient and wholesale  
19 reversal of Jane Roe’s testimony regarding the iMessages’ deletion.

20 82.

21 John Doe, through his attorneys, demanded he be allowed to question Jane Roe’s attorney  
22 regarding Jane Roe’s new explanation for the iMessages’ deletion to determine when Jane Roe  
23 first informed her attorney that she had intentionally deleted the messages (e.g., from the outset  
24 of the representation or only after John Doe had presented expert evidence that Jane Roe’s first  
25 explanation about the destruction of the messages was false).  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

83.

Ms. Millie did not reconvene the conference to allow John Doe to directly cross-examine Jane Roe’s attorney, but allowed him to pose written questions to the attorney after the Administrative Conference. John Doe submitted questions to Ms. Millie, who, having approved them as relevant, forwarded them to Jane Roe’s attorney to be answered within three days.

84.

When Jane Roe’s attorney, however, refused to answer the questions that Ms. Millie had determined were relevant and appropriate, Ms. Millie disregarded and refused to enforce her ruling requiring answers to those questions. She drew no adverse inference regarding Jane Roe’s credibility and relied throughout her opinion on her finding that the iMessages had been exchanged between John Doe and Jane Roe.

85.

Additionally, Ms. Millie unreasonably ignored the fact that, although Jane Roe’s ex-boyfriend proposed that Jane Roe should elicit from John Doe an incriminating text to prove her allegations, Jane Roe said nothing to her ex-boyfriend about the incriminating iMessages that she had allegedly received just hours earlier. Instead, Ms. Millie arbitrarily credited Jane Roe’s illogical explanation that she had forgotten about the incriminating iMessages because her ex-boyfriend alternatively proposed recording a telephone call with John Doe.

86.

Ms. Millie also deprived John Doe of his right to present habit evidence that would have shown that he routinely assists others who are under the influence of alcohol and cannot take care of themselves. Ms. Millie incorrectly determined that John Doe’s proffered evidence was

1 character evidence, the admission of which the SOPs prohibit. The failure to allow such  
2 evidence prejudiced John Doe because Ms. Millie discounted his testimony that he would not  
3 have sexually engaged with a person who might have vomited on him, given his germaphobia.  
4 Ms. Millie found that, had he truly been so disgusted by the prospect of Jane Roe vomiting on  
5 him, he would not have allowed Jane Roe into his dorm room. But the habit evidence would  
6 have established that, whatever his revulsion to sexually engaging with a person who is  
7 intoxicated to the point of vomiting, that aversion would not have prevented him from helping  
8 that person, as he had routinely done so for others in the past.  
9

10 87.

11  
12 Defendant Millie unfairly allowed Jane Roe to introduce evidence into the record long  
13 after the hearing's conclusion. On May 27, 2016—ten days after the Administrative  
14 Conference—Jane Roe claimed to have remembered material evidence that she wished to add to  
15 the record. Specifically, Jane Roe stated that she had suddenly recalled a Facebook message that  
16 she claimed John Doe sent to her the day after the alleged sexual assault. The message read: “Can  
17 I ask, are you going to report me?”  
18

19 88.

20 Hearings officer Millie added that evidence to the record without providing any notice to

21 John Doe.

22 ///

23 ///

24 ///

25 ///

26 ///

1 89.

2 The University's Sexual Misconduct Standard Operating Procedures specifically prohibit  
3 submission of new evidence "that was available and could have been provided but was not  
4 previously provided to the Decision-maker during the fact-gathering investigation."  
5

6 90.

7 Nonetheless, hearings officer Millie kept the official record open to allow Jane Roe to  
8 submit the additional evidence even though it had allegedly been available as of February 13,  
9 2016, before Jane Roe ever filed a complaint against John Doe. Jane Roe never established good  
10 cause as to why she did not provide this evidence during the fact-gathering investigation beyond  
11 offering the incredible explanation that she had forgotten about it.  
12

13 91.

14 In response, John Doe submitted expert evidence regarding a person's ability to create a  
15 misleading Facebook account using another person's profile picture, from which damaging  
16 messages may be sent. He also submitted the results of a polygraph examination confirming that  
17 he had never sent such a Facebook message to Jane Roe.  
18

19 92.

20 In violation of the University's procedures and John Doe's due process rights, Ms. Millie  
21 relied on evidence to which John Doe was given no opportunity to respond, to find that he had  
22 sent the Facebook message. Before issuing her decision, Ms. Millie admitted to the record the  
23 summary of University of Oregon Police Department Officer Royce Meyers containing his  
24 analysis of the Facebook message allegedly sent by John Doe. Officer Meyers's summary  
25  
26



1 reflects his understanding of what digital information is captured by Facebook's servers  
2 concerning a person's account and sent messages.

3  
4 93.

5 John Doe was provided no notice that Ms. Millie would admit Officer Meyers's summary  
6 to the record and was afforded no opportunity to respond before Ms. Millie issued her decision,  
7 despite the fact that the Student Conduct Code provides that an accused student has a right to  
8 respond to all information provided to the decision-maker.

9  
10 94.

11 Ms. Millie unfairly noted in her decision that she found it suspicious that John Doe had  
12 conducted a factory reset of his computer on the same day that Jane Roe re-discovered the  
13 Facebook message. John Doe reset his computer on May 27, 2016, because his family's  
14 computers had been infected with malware and he was concerned that his computer had been  
15 similarly infected. Ms. Millie was aware, however, that Jane Roe did not seek to have the  
16 Facebook message admitted until May 31, 2016. Thus, John Doe could have had no knowledge  
17 that a purported Facebook message would be at issue until days after he had completed the  
18 factory reset.  
19

20 95.

21 Additionally, Ms. Millie stated in her decision that she considered the record both with  
22 and without the Facebook message and that her determination was unaffected by the information.  
23 But Ms. Millie relied on the Facebook message throughout her decision and listed it among the  
24 corroborating evidence supporting her decision.  
25

26 ///

1 96.

2 Significantly, Ms. Millie disregarded, without explanation, the fact that John Doe passed  
3 four polygraph tests establishing as truthful his denial of having had any sexual contact with Jane  
4 Roe on the night in question. As noted above, John Doe passed two polygraph examinations  
5 establishing the truthfulness of his denial of having sexually assaulted Jane Roe. He  
6 subsequently passed a polygraph examination establishing that he had never sent Jane Roe the  
7 relevant iMessages regarding the alleged sexual assault. Finally, he passed a polygraph  
8 examination establishing that he never sent Jane Roe the Facebook message at issue.  
9

10 97.

11 Under Oregon law, the results of polygraph examinations are admissible in administrative  
12 proceedings. *See Wiggett v. Oregon State Penitentiary*, 85 Or App 635 (1987) (holding that a  
13 polygraph examination is admissible in prison disciplinary proceeding); *Waisanen v. Clatskanie*  
14 *Sch. Dist.*, 220 Or App. 563, 575 (2009) (relying on *Wiggett* to uphold the admission of  
15 polygraph evidence in school teacher's dismissal board hearing); *State v. Hammond*, 218 Or App  
16 574, 576 (2008) (polygraph evidence in probation revocation hearing).  
17  
18

19 98.

20 Moreover, Ms. Millie dismissed, without explanation, compelling testimony from the  
21 administering polygrapher who stated that passing three polygraphs was unprecedented in her  
22 experience. The polygrapher also explained that while there may be concerns about false  
23 positives (that is, results inaccurately reflecting that a person is lying), polygraphs are highly  
24 reliable when the results reflect truthfulness.  
25

26 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

99.

The University’s decision to suspend John Doe therefore followed a biased investigation and hearing – both of which were conducted by Ms. Millie. Ms. Millie, acted simultaneously as investigator, prosecutor, judge, and jury.

100.

Ms. Millie unfairly drew every inference in the complainant’s favor, took every opportunity to make adverse credibility determinations against John Doe, excused the complainant’s inconsistencies (sometimes by resorting to junk science), discounted without explanation John Doe’s having passed four polygraph tests, and ultimately issued an arbitrary decision against the overwhelming weight of the evidence.

101.

Indeed, the University’s perceived need to respond to public criticism of colleges’ mishandling of claims of sexual assault created an environment that made it impossible for the University’s administration to impartially determine the facts.

102.

The University—concerned about the recent national and local attention focusing on the treatment of sexual assault complaints on college campuses—responded to Jane Roe’s accusations through arbitrary, discriminatory and illegal actions designed to reach a predetermined outcome, namely, John Doe’s suspension from the University.

103.

The University’s gender-based bias is apparent in Ms. Millie’s willingness to draw all inferences against John Doe, to dismiss all evidence presented by John Doe (whatever its

1 strength), to overlook all inconsistencies in Jane Roe’s testimony, and to accept all of Jane Roe’s  
2 shifting explanations for destroying evidence or conveniently remembering incriminating  
3 evidence months after it was available.

4  
5 104.

6 The University’s gender-bias is also apparent in the discriminatory and selective way it  
7 applies or disregards its policies and procedures to disfavor male accused students.

8 105.

9 For instance, despite the University’s insistence on strict adherence to its required time  
10 frames when it favored the female complainant, the University failed to similarly observe the  
11 required time limits for issuing the Appeals Board’s decision, much to the detriment of John  
12 Doe.

13  
14 106.

15 John Doe’s attorney requested that the Administrative Conference be set a few weeks  
16 beyond the usual timeframe set forth in the SOPs because she would be out of the country on a  
17 long-planned trip. Ms. Millie refused to grant the extension, citing concerns that the delay would  
18 negatively impact the complainant, including her access to education. But when it came to  
19 deciding John Doe’s appeal, the University failed to render its decision within the required time,  
20 made no effort to notify John Doe that its decision would be delayed (until after John Doe’s  
21 attorney contacted the Board), and failed to state good cause for the delay—all in violation of its  
22 procedures. The Appeals Board’s decision was due on August 19, 2016. The Appeals Board  
23 issued its conclusory decision almost three weeks late, on September 7, 2016—allowing John  
24 Doe little time to challenge the appeal before the beginning of the fall term.  
25  
26

1 107.

2 Gender-bias aside, the University conducted an investigation and hearing that were  
3 procedurally unfair.

4 108.

5 As stated above, the University and Ms. Millie, failed to observe the University’s policies  
6 requiring that both parties to the disciplinary action be allowed to review the entire record before  
7 the disciplinary hearing and decision.  
8

9 109.

10 The University and Ms. Millie found that John Doe committed a sexual assault by relying  
11 on evidence outside the record, to which John Doe had no opportunity to respond.  
12

13 110.

14 During the hearing, Jane Roe was allowed to testify from a separate room, which  
15 prevented John Doe from observing her demeanor as she testified against him. Consequently, the  
16 University violated its rule that both parties should be provided the full record and violated John  
17 Doe’s due process right to confront his accuser. Non-verbal testimony and demeanor is  
18 particularly important to determining credibility, which is crucial in “he said, she said” cases.  
19

20 111.

21 Hearings officer Millie, however, witnessed and relied on Jane Roe’s non-verbal  
22 testimony and observed the demeanor of all witnesses.

23 ///

24 ///

25 ///

26 ///

1 112.

2 Although the audio of the hearing testimony was recorded, Jane Roe’s non-verbal  
3 testimony was not preserved on a video recording. Nor was there a live video feed of the  
4 testimony that John Doe could watch during the hearing.  
5

6 113.

7 John Doe was not allowed to cross-examine Jane Roe or any of her witnesses, thereby  
8 denying him any meaningful opportunity to confront the witnesses against him. All questions  
9 posed to the complainant or her witnesses were required to be submitted to and posed by Ms.  
10 Millie.  
11

12 114.

13 Again, John Doe could not observe his accuser and, consequently, could not assess her  
14 facial expressions or other non-verbal responses to the questions posed. He therefore could not  
15 challenge such responses with relevant cross examination. Although the SOPs allow testimony  
16 to be given in separate rooms, it was procedurally unfair for Ms. Millie to have been in the same  
17 room as the complainant without John Doe being afforded access to the same record.  
18

19 115.

20 For the reasons stated above, the University deprived John Doe of basic due process and  
21 equal protection rights guaranteed by the Fourteenth Amendment to the United States  
22 Constitution, by Title IX of the Education Amendment of 1972, 20 U.S.C. § 1681, *et seq.* (“Title  
23 IX”) and its implementing regulations, and by the University’s own stated policies and  
24 procedures.  
25

26 ///

1 116.

2 As a result of the University's illegal conduct, John Doe's academic performance, career  
3 prospects, earning potential, and reputation have been severely and irreparably damaged. The  
4 significant time, effort, and expense that John Doe devoted to obtaining a college education in a  
5 timely manner and to fostering relationships in the University community have been destroyed.  
6

7 117.

8 As a result of the University's unlawful actions, John Doe's reputation has been severely  
9 damaged and his academic performance has suffered greatly.  
10

11 118.

12 As a result of the University's unlawful actions, John Doe's ability to pursue an  
13 undergraduate degree through his continued enrollment has also been compromised.  
14

15 119.

16 As a result of the University's unlawful actions, John Doe has suffered extreme emotional  
17 distress.  
18

19 120.

20 John Doe therefore brings this action to obtain relief based on the University's clear  
21 violations of the United States Constitution, Title IX, and its own policies.  
22

23 121.

24 John Doe is entitled to have the disciplinary decision vacated, to an expungement of any  
25 and all records related to the disciplinary process, to an award of damages for the University's  
26 and the individual defendants' injurious actions, and to his reasonable attorneys' fees and costs  
incurred in pursuing this action.

1 122.

2 Without appropriate redress, the unfair and illegal outcome of the disciplinary hearing  
3 will continue to cause damage to John Doe.

4 **FIRST CLAIM FOR RELIEF**

5 **(Petition for Writ of Review – against the University)**

6 123.

7 John Doe incorporates and realleges paragraphs 1 through 122 as if fully set forth herein.

8 124.

9 For the reasons stated above, this Court should issue a writ of review because a  
10 substantial interest of John Doe has been injured, and the University, in the exercise of judicial or  
11 quasi-judicial functions, has, in University case number 00425-001-2016, failed to follow the  
12 procedure applicable to the matter before it, rendered a decision that is unconstitutional, and  
13 rendered a decision that is not supported by substantial evidence in the whole record.  
14

15 125.

16 The defendants deprived John Doe of his due process rights under the Fourteenth  
17 Amendment to the United States Constitution.  
18

19 126.

20 As a student at a public university, John Doe has a property interest in his continued  
21 enrollment at the University of Oregon and a liberty interest in his good reputation, as well as his  
22 status as a student in good standing. Because of the unfair procedures and the arbitrary and  
23 capricious adjudication of the sexual misconduct allegations and the emergency-action housing  
24  
25  
26



1 change, he has suffered the stigma of being labelled a sexual assailant and has been deprived of  
2 his ability to pursue his education without significant delay.

3  
4 127.

5 The actions alleged above violated John Doe's right to due process, specifically:

- 6 a. John Doe's removal from his dorm without appropriate notice or an opportunity  
7 for a hearing;
- 8 b. Hearing officer Millie's combined role of investigator, fact-finder, and decision-  
9 maker;
- 10 c. Ms. Millie's failure to provide John Doe any opportunity to cross-examine the  
11 complainant or her witnesses;
- 12 d. Ms. Millie's allowing the complainant to testify during the hearing in a room  
13 separate from John Doe, which prevented him from confronting his accuser and  
14 from observing her demeanor and/or non-verbal testimony;
- 15 e. Ms. Millie's allowing additional evidence into the record after the hearing's  
16 conclusion, without any valid demonstration of good cause;
- 17 f. Ms. Millie's failure to notify John Doe of the complainant's additional, newly  
18 submitted evidence before admitting it into the record;
- 19 g. Ms. Millie's failure to provide John Doe with the entire record before the hearing  
20 and/or decision;
- 21 h. Ms. Millie's reliance on evidence outside the record in reaching her decision,  
22 including an unqualified expert opinion and Officer Meyers's summary of his  
23 analysis of Facebook practices;  
24  
25  
26

PAGE 33 -COMPLAINT; PETITION FOR WRIT OF REVIEW

- 1           i. Ms. Millie’s apparent bias against John Doe resulting in an unfair investigation  
2           and adjudication of the complaint; and
- 3           j. Ms. Millie’s exclusion of relevant habit evidence establishing that John Doe  
4           routinely helped others when they were intoxicated, which would have explained  
5           why John Doe’s helping Jane Roe was not motivated by ulterior motives. It also  
6           would have explained why he helped her, even though he was repulsed by the  
7           prospect of her potentially vomiting on him, a prospect which, given his  
8           germaphobia, made it highly unlikely that he would attempt to sexually engage  
9           with her;
- 10          k. Although Ms. Millie correctly found that the assault did not occur immediately  
11          before 3:24 A.M., she unreasonably failed to infer from that fact that the assault  
12          did not occur at all. Jane Roe’s sending at text to her ex-boyfriend at 3:24 A.M.  
13          was the only event tied to a verifiable time, and Ms. Roe consistently testified that  
14          the sexual assault occurred immediately before she sent the text. The evidence  
15          presented by John Doe proved that no assault could have occurred at 3:24 A.M. as  
16          alleged by Jane Roe. But Ms. Millie, disregarding that significant inconsistency  
17          in Jane Roe’s testimony, arbitrarily determined that “a purely chronological  
18          assessment of credibility would be a faulty assessment of credibility because a  
19          reporting party’s information and actions may be fragmented and not in  
20          chronological order due to their trauma.” Ms. Millie then arbitrarily and unfairly  
21          introduced her own, made-up version of the facts and chronology to support her  
22          with her;  
23          with her;  
24          with her;  
25          with her;  
26          with her;

1 theory of guilt, while ignoring the only consistent factual detail in Jane Roe's  
2 testimony: the alleged time of the assault.

3 128.

4 The University's actions were taken on the basis of John Doe's gender and violated his  
5 right to Equal Protection under the Fourteenth Amendment.

6 129.

7 The University violated its own policies and procedures through Ms. Millie's unfair  
8 conduct of the investigation and hearing, including but not limited to:

- 9
- 10 a. Ms. Millie's reliance on evidence outside the record in reaching her decision,  
11 including an unqualified expert opinion and Officer Meyers's summary of his  
12 analysis of Facebook practices;
  - 13 b. Ms. Millie's admitting additional evidence (the Facebook message and Officer  
14 Meyers's summary of his analysis of Facebook practices) into the record after the  
15 Administrative Conference without a showing of good cause;
  - 16 c. Ms. Millie's failing to allow John Doe access to the full record, including  
17 information from additional, undocumented interviews of Jane Roe and the  
18 demeanor and non-verbal responses of Jane Roe at the hearing;
  - 19 d. Ms. Millie's failing to allow John Doe access to the full record before the  
20 hearing—specifically, the newly minted and inconsistent explanation for Jane  
21 Roe's destruction of the iMessages submitted by Jane Roe's counsel; and  
22
  - 23 e. John Doe's forced removal from his dorm without a hearing within two business  
24 days of his removal.  
25  
26

1 130.

2 The University's decision was not based on substantial evidence in the whole record  
3 because:

- 4 a. Ms. Millie based many of her findings on illogical, arbitrary inferences;  
5  
6 b. Ms. Millie, without explanation, disregarded compelling evidence submitted  
7 by John Doe, including overwhelming evidence of his innocence in the form  
8 of four polygraph examinations;  
9  
10 c. Ms. Millie drew every inference in Jane Roe's favor, made arbitrary credibility  
11 determinations, threw suspicion on John Doe based on impossible  
12 conclusions, explained away the inconsistencies between Jane Roe's  
13 testimony and bystander witness testimony, and overlooked all inconsistencies  
14 in Jane Roe's testimony;  
15  
16 d. When fairly and impartially weighed, the evidence in the whole record does  
17 not support Ms. Millie's determination that it was more likely than not that  
18 John Doe committed the misconduct alleged.

19 131.

20 Moreover, the Appeals Board's affirmance of Ms. Millie's decision, without additional  
21 analysis, merely perpetuated the errors and procedural deficiencies alleged above.

22 132.

23 The Appeals Board's failure to address at all Dr. Reisberg's expert report challenging Ms.  
24 Millie's use of extraneous, unscientific evidence regarding trauma and memory compounded the  
25 initial due process violation and the University's failure to follow its policies and procedures.  
26

1 133.

2 John Doe suffered monetary damages, loss of educational opportunities, and other direct  
3 and consequential damages.

4 134.

5 Because the University has injured the substantial rights of John Doe in a number of  
6 ways, the University should be ordered to desist from further proceedings in the matter to be  
7 reviewed, including the enforcement of any sanctions, in order to allow John Doe to continue his  
8 education during the pendency of this action.

9 135.

10 Petitioner has no other plain, speedy, or adequate remedy than the review prayed for in  
11 this petition.

12 136.

13 John Doe also requests a stay of the enforcement of the sanctions imposed by the  
14 University of Oregon during the pendency of this petition.

15 **SECOND CLAIM FOR RELIEF**

16 **(Violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, et seq.;**  
17 **against all Defendants)**

18 137.

19 John Doe incorporates and realleges paragraphs 1 through 122 as if set forth fully herein.

20 ///

21 ///

22 ///

23 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

138.

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, et seq. (“Title IX”) provides, in relevant part, that:

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.

139.

Upon information and belief, the University of Oregon receives federal funding through various means including, without limitation, student loans provided to University of Oregon students directly by the federal government and through other funds furnished by the federal government.

140.

Regulations implementing Title IX require that schools “adopt and publish grievance procedures providing for the prompt and equitable resolution of student . . . complaints alleging any action which would be prohibited by” Title IX or its regulations. To assist schools with implementing those regulations, the Office of Civil Rights (“OCR”) of the United States Department of Education has identified a number of factors to be used in determining whether a school’s procedures satisfy the “prompt and equitable” requirements of the regulations. The procedures adopted by a school covered by Title IX must not only “ensure the Title IX rights of the complainant,” but must also “accord[] due process to both parties involved . . . .” Pursuant to the Revised Sexual Harassment Guidance, “due process” must include, among other things,

1 “[a]dequate, reliable, and impartial investigation of complaints, including the opportunity to  
2 present witnesses and other evidence.”

3  
4 141.

5 The individual Defendants deprived John Doe, on the basis of his sex, of his Title IX  
6 rights to due process and equal protection through the improper administration, and/or the  
7 existence, in its current state, of its Student Conduct Code and Sexual Misconduct Standard  
8 Operating Procedures and other applicable policies and procedures.

9 **Count 1 - Selective Enforcement**

10  
11 142.

12 The University of Oregon, in violation of Title IX, discriminated against John Doe based  
13 on his sex and, as a result, John Doe has been seriously and irreparably damaged. The  
14 University’s decision to initiate the proceeding, and its subsequent conduct of the proceedings,  
15 were affected by John Doe’s gender.

16  
17 143.

18 The University of Oregon discriminatorily investigated, charged, and disciplined John  
19 Doe.

20  
21 144.

22 As a direct and proximate consequence of the University of Oregon’s Title IX violation,  
23 John Doe has sustained significant damages including, but not limited to, being delayed in his  
24 educational pursuits, having an academic and/or disciplinary record(s) that improperly reflect that  
25 he was found to have committed sexual misconduct and/or other related offenses, and extreme  
26 emotional distress.

1 145.

2 This black mark on John Doe’s record inhibits or destroys his ability to enroll in a  
3 similarly ranked college or university and stigmatizes John Doe, as he now has a record that  
4 notes findings of guilt for serious misconduct that he did not commit.  
5

6 146.

7 John Doe has also suffered monetary damages, loss of educational opportunities, and  
8 other direct and consequential damages.

9 147.

10 John Doe is entitled to recover damages for the University of Oregon’s and the individual  
11 defendants’ Title IX violations, in an amount to be determined at trial, plus prejudgment interest,  
12 reasonable attorneys’ fees, expenses, costs and disbursements, and appropriate equitable relief.  
13

14 **Count 2 - Erroneous Outcome from an Unfair Proceeding**

15 148.

16 In violation of Title IX, the University of Oregon discriminated against John Doe based  
17 solely on his gender and, as a result, seriously and irreparably damaged him. It discriminated  
18 against him by failing to comply with its own procedures and by failing to comply with the  
19 requirements of Title IX, in order to reach a pre-ordained result, due to his gender and based on  
20 gender stereotypes.  
21

22 149.

23 The University of Oregon created an environment in which John Doe, an accused male  
24 student, was denied due process so as to be almost assured a finding of guilt. Such a biased  
25  
26



1 process deprived John Doe, as a male student, of educational opportunities on the basis of  
2 gender.

3  
4 150.

5 The University of Oregon conducted its “investigation” and subsequent hearing  
6 in a manner that was biased against John Doe, based on his gender. From the beginning, the  
7 investigation and adjudication process was tilted in favor of Jane Roe, the female accuser,  
8 because of her gender. The hearing officer/investigator, Ms. Millie, largely accepted Jane Roe’s  
9 statements at face value and granted her the presumption of truth because she is female. John  
10 Doe did not have an equal opportunity to present evidence or to access the record, based on his  
11 gender.

12  
13 151.

14 The University and its agents responded to Jane Roe’s accusations with arbitrary,  
15 capricious, discriminatory, and gender-based actions—including requiring John Doe to change  
16 dorms without notice or an opportunity to be heard before the forced relocation. Further, the  
17 preliminary hearing within two business days, as guaranteed by the Student Code of Conduct,  
18 was delayed for approximately two months.

19  
20 152.

21 The University repeatedly failed to adhere to its stated policies and procedures.

22  
23 153.

24 The University contributed to an erroneous outcome through the following:

- 25 a. Failing to provide adequate policies and procedures for the investigation and  
26 adjudication of complaints of alleged sexual misconduct;

1 b. Violating the University’s policy against gender/sex-based discrimination by  
2 establishing a de facto presumption, on the basis of gender stereotypes, that John  
3 Doe committed sexual assault;

4 c. Failing to allow John Doe to present a defense by denying him the opportunity  
5 to cross-examine or confront witnesses and by failing to allow him full access to  
6 the record before and during the hearing;

7 d. Failing to provide John Doe with basic due process, including the opportunity  
8 to confront Jane Roe with questions to test her veracity and credibility and to  
9 explore her motivations for her accusations;

10 e. Rendering an adverse decision against John Doe without sufficient evidence to  
11 support such a decision;

12 f. Relying on undisclosed expert opinion to render an adverse decision against  
13 John Doe; and

14 g. Failing to allow John Doe an opportunity to respond to Officer Meyers’s report,  
15 which was admitted to the record after the hearing and disclosed only after Ms.  
16 Millie’s decision was issued.

17  
18  
19  
20 154.

21 The University’s gender bias affected the outcome of the proceeding.

22 155.

23 As a direct and proximate consequence of the University’s Title IX violation, John Doe  
24 has sustained significant damages including, but not limited to, having an academic and/or  
25  
26

1 disciplinary record(s) that improperly reflects that he was found to have committed sexual  
2 misconduct and/or other related offenses.

3  
4 156.

5 John Doe's record thereby inhibits or destroys his ability to enroll in a similarly ranked  
6 college or university and stigmatizes John Doe because he now has a record that reflects findings  
7 of guilt for serious misconduct that he did not commit.

8 157.

9 John Doe has also suffered monetary damages, loss of educational opportunities, and  
10 other direct and consequential damages.

11  
12 158.

13 John Doe is entitled to recover damages for the University's and individual defendants'  
14 Title IX violations, in an amount to be determined at trial, plus prejudgment interest, reasonable  
15 attorneys' fees, expenses, costs and disbursements, and appropriate equitable relief, as directed  
16 by the Court.

17 **THIRD CLAIM FOR RELIEF**

18 **(Denial of Due Process – against the individual defendants)**

19  
20 159.

21 John Doe incorporates and realleges paragraphs 1 through 122 as if fully set forth herein.

22 160.

23 The individual defendants deprived John Doe of his due process rights under the  
24 Fourteenth Amendment to the United States Constitution.

25  
26 ///

1 161.

2 As a student at a public university, John Doe has a property interest in his continued  
3 enrollment at the University of Oregon and a liberty interest in his good reputation, as well as his  
4 status as a student in good standing. Because of the unfair procedures and the arbitrary and  
5 capricious adjudication of the sexual misconduct allegations and the emergency-action housing  
6 change, he has suffered the stigma of being labelled a sexual assailant and has been deprived of  
7 his ability to pursue his education without significant delay.  
8

9 162.

10 The actions alleged above violated John Doe's right to due process.  
11

12 163.

13 John Doe has also suffered monetary damages, loss of educational opportunities, and  
14 other direct and consequential damages.

15 164.

16 The actions of the individual Defendants were taken under the color of state law.  
17

18 165.

19 John Doe brings this claim pursuant to 42 U.S.C. § 1983.

20 166.

21 John Doe also seeks reasonable attorneys' fees under 42 U.S.C. § 1988.  
22

23 **FOURTH CLAIM FOR RELIEF**

24 **(Violation of Equal Protection – against individual Defendants)**

25 167.

26 John Doe incorporates and realleges paragraphs 1 through 122 as if set forth fully herein.

1 168.

2 The individual defendants' actions were taken on the basis of John Doe's gender and  
3 violated his right to Equal Protection under the Fourteenth Amendment.

4 169.

5 The actions of these Defendants were taken under the color of state law.

6 170.

7 John Doe brings this claim pursuant to 42 U.S.C. § 1983.

8 171.

9 John Doe also seeks reasonable attorneys' fees under 42 U.S.C. § 1988.

10  
11 **PRAYER FOR RELIEF**

12  
13 WHEREFORE, John Doe requests that the Court order its clerk to issue a writ of review  
14 to Respondent-Defendant University of Oregon, commanding University of Oregon to (a) desist  
15 from further proceedings in this matter, including the enforcement of any sanctions; and (b) to  
16 return the writ to this Court with a certified copy of the record in this matter for review by the  
17 Court. Upon that review, John Doe requests that the Court reverse the decision of Respondent-  
18 Defendant University of Oregon.

19  
20 John Doe further demands that judgment be entered in his favor and against Defendants,  
21 for the following relief:

22 (a) Order the University of Oregon to correct John Doe's academic and disciplinary  
23 record to remove any findings issued by the University of Oregon with respect to the  
24 charges leveled against him;

25  
26

1 (b) Order the University of Oregon immediately to allow John Doe to re-enroll at the  
2 University of Oregon;

3 (c) Award John Doe compensatory damages in an amount to be proven at trial, in  
4 addition to prejudgment interest, punitive damages, reasonable attorneys' fees, expenses  
5 and costs; and  
6

7 (d) Such other relief that the Court deems just and proper under the circumstances.  
8

9 DATED this 15th day of September, 2016.  
10

11 JANET HOFFMAN & ASSOCIATES

12  
13 /s/ Janet Hoffman

14 JANET HOFFMAN, OSB No. 781145  
15 Of Attorneys for John Doe  
16 1000 SW Broadway, Suite 1500  
17 Portland, OR 97205  
18 Phone: (503) 222-1125  
19 Fax: (503) 222- 7589  
20 E-mail: [janet@jhoffman.com](mailto:janet@jhoffman.com)  
21  
22  
23  
24  
25  
26

**ORS 34.030 ATTORNEY CERTIFICATION**

I hereby certify that I have examined the record of the proceedings in this matter to the extent that it is now available to me, and have examined the decisions and determinations made in it, and that these decisions and determinations are erroneous as alleged in this petition.

/s/ Janet Hoffman  
JANET HOFFMAN, OSB No. 781145

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26