

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY**

JOHN DOE
c/o Engel & Martin, LLC
4660 Duke Drive, Suite 101
Mason, Ohio 45040,

Plaintiff,

v.

BELLARMINE UNIVERSITY,
INCORPORATED
2001 Newburg Rd.
Louisville, KY 40205,

Defendant

Case No.

Judge:

COMPLAINT

AND

JURY DEMAND

INTRODUCTION

1. Plaintiff John Doe brings this action for breach of contract, violation of Title IX, and other related claims.
2. This case arises out of the decision of Bellarmine University Incorporated (“Bellarmine”) to impose disciplinary sanctions against John Doe in violation of the Plaintiff’s contractual rights.

PARTIES

3. Plaintiff John Doe (“Doe”) is a student at Bellarmine.
 - a. John Doe is an Indiana resident with a residence at [OMITTED]. His driver’s license and voter registration is from Indiana. He commutes to Kentucky for the purpose of attending college.
 - b. Doe has completed three years of coursework at Bellarmine. He needs just nine additional credits to obtain his degree.

- c. John Doe has paid a significant amount of money to Bellarmine in the expectation of receiving an education and, if he successfully completes his classwork, a degree.
 - d. The disclosure of John Doe's identity will cause the student irreparable harm as this case involves matters of the utmost personal intimacy, including education records protected from disclosure by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g; 34 CFR Part 99.
4. Defendant Bellarmine is a private university.
- a. Bellarmine is an independent, private, Catholic school. Bellarmine has a current enrollment of over 3,800 students.
 - b. Bellarmine has a principal place of business at 2001 Newburg Rd, Louisville, KY 40205.
 - c. Bellarmine voluntarily participates in federal spending programs.

JURISDICTION AND VENUE

5. This case arises, in part, under the laws of the United States, specifically Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq. Accordingly, this Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over all other claims in this case, as the claims are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.
6. This case is between citizens of different states and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Accordingly, this Court has jurisdiction in this matter pursuant to 28 U.S.C. § 1332.
7. The injunctive relief sought in this matter is authorized by 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure 57 and 65.

8. This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C. § 1391. The defendant is a resident of the State in which this district is located and a substantial part of the events or omissions giving rise to the claim occurred in this district.

FACTS

BELLARMINE'S RESPONSE TO THE ISSUE OF SEXUAL MISCONDUCT ON CAMPUSES

9. After years of criticism for being too lax on campus sexual assault, colleges and universities are relying on Title IX to crackdown on alleged perpetrators. Unfortunately, this crackdown has gone too far. Problems include: accused students effectively are presumed guilty; instead of requiring accusers to prove they were assaulted, the accused students have to prove they had consent; and schools apply the very lowest standard of proof — preponderance of the evidence.
10. On April 11, 2011, the U.S. Education Department's Office of Civil Rights sent a “Dear Colleague” to colleges and universities.
 - a. The Dear Colleague Letter indicated that, in order to comply with Title IX, colleges and Universities must have transparent, prompt procedures to investigate and resolve complaints of sexual misconduct.
 - b. Most notably, the Dear Colleague Letter required schools to adopt a relatively low burden of proof—“more likely than not”—in cases involving sexual misconduct, including assault. Several colleges had been using “clear and convincing,” and some, like Stanford, applied the criminal standard, “beyond a reasonable doubt.”
 - c. The Dear Colleague Letter states that schools should “minimize the burden on the complainant,” transferring alleged perpetrators, if necessary, away from shared courses or housing.
 - d. The Dear Colleague Letter, while not completely ignoring due process concerns, suggested that schools should focus more on victim advocacy.

- e. The Dear Colleague Letter states that schools should give both parties the right to appeal a decision, which amounts to double jeopardy for an accused student.
 - f. After the Dear Colleague Letter was published, many schools changed their sexual assault and sexual harassment policies and procedures.
11. The Federal Government, through the Department of Education, Office of Civil Rights, has been pressuring colleges and universities to aggressively pursue investigations of sexual assaults on campuses.
- a. The Dear Colleague letter was a step in the increased enforcement of Title IX on college and universities. NPR described the Dear Colleague Letter as the government's "first warning shot." Source: *How Campus Sexual Assaults Came To Command New Attention*, NPR, August 12, 2014.
 - b. The Washington Post reported in March 2015 that the Office of Civil Rights was seeking to hire up to 200 more investigators.
 - c. In May 2014, the federal Department of Education disclosed for the first time the names of colleges — 55 in all, including Hobart and William Smith — under investigation for possibly violating federal rules aimed at stopping sexual harassment.
 - d. The Federal government is investigating at least 129 schools for possible Title IX violations, including notable schools such as UC Berkeley, Stanford, Harvard, Brown University, Columbia University, Cornell University, Dartmouth College, Johns Hopkins University, the University of Chicago and many top state universities. The Department has negotiated settlements with many schools, including Ohio State.
 - e. In February 2014, Catherine E. Lhamon, the assistant secretary of education who heads the department's Office for Civil Rights, told college officials attending a conference at the University of Virginia that schools need to make "radical" change. According to the

Chronicle of Higher Education, college presidents suggested afterward that there were “crisp marching orders from Washington.” Source: *Colleges Are Reminded of Federal Eye on Handling of Sexual-Assault Cases*, Chronicle of Higher Education, February 11, 2014.

- f. Lhanon was quoted in the LA Times stating, “We don’t treat rape and sexual assault as seriously as we should, . . . [There is] a need to push the country forward.” David G. Savage and Timothy M. Phelps, *How a little-known education office has forced far-reaching changes to campus sex assault investigations*, LA Times August 17, 2015.

12. Schools, including Bellarmine, are scared of being investigated or sanctioned by the Department of Education.

- a. The Federal government has created a significant amount of pressure on colleges and universities to treat all those accused of sexual misconduct with a presumption of guilt. The Chronicle of Higher Education noted that “Colleges face increasing pressure from survivors and the federal government to improve the campus climate.” Source: *Presumed Guilty: College men accused of rape say the scales are tipped against them*, Chronicle of Higher Education, September 1, 2014. In the same article, the Chronicle noted that different standards were applied to men and women: “Under current interpretations of colleges’ legal responsibilities, if a female student alleges sexual assault by a male student after heavy drinking, he may be suspended or expelled, even if she appeared to be a willing participant and never said no. That is because in heterosexual cases, colleges typically see the male student as the one physically able to initiate sex, and therefore responsible for gaining the woman’s consent.”
- b. Lhamon told a national conference at Dartmouth in the summer of 2014, “I will go to enforcement, and I am prepared to withhold federal funds.” Source: *How Campus Sexual Assaults Came To Command New Attention*, NPR, August 12, 2014. In that same article, Anne

Neal of the American Council of Trustees and Alumni was quoted as follows: “There is a certain hysteria in the air on this topic, . . . It's really a surreal situation, I think.” She explained that schools are running so scared of violating the civil rights of alleged victims that they end up violating the due process rights of defendants instead.

- c. In June 2014, Lhannon told a Senate Committee, “This Administration is committed to using all its tools to ensure that all schools comply with Title IX . . .” She further told the Committee:

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

- d. Robert Dana, dean of students at the University of Maine, told NPR that some rush to judgment is inevitable. “I expect that that can't help but be true,” he says. “Colleges and universities are getting very jittery about it.” Source: *Some Accused Of Sexual Assault On Campus Say System Works Against Them*, NPR, September 3, 2014.
 - e. In July 2016, Vice President Biden suggested that schools that do not comply with administration guidelines could be stripped of federal funding. Source: *Obama, Biden Won't Visit Universities That Fall Short In Addressing Sexual Assault*, Huffington Post, July 4, 2016 (“The vice president said he'd like to take away federal funding from those universities.”)
13. In response to pressure from OCR, DOJ, and the White House, educational institutions, like Bellarmine, are limiting procedural protections afforded to male students, like John Doe, in sexual misconduct cases. This is not political speculation. The Association of Title IX Administrators

published “2014 Whitepaper” entitled *Equity is Such a Lonely Word*, includes training materials presented to college Title IX departments and states: “victims have historically been accorded 3/5 of the rights of an accused individual (or less), and **victims are typically women**, equity may require institutions to recalibrate the pendulum to right the historical imbalance.” (emphasis added).

14. Bellarmine has adopted Policy 9.2.7.2, the Discrimination and Sexual Misconduct Policy. (A copy of the Policy 9.2.7.2 is attached to this Complaint is attached as Exhibit A.)

a. Policy 9.2.7.2 defines “Sexual Misconduct” to include (a) Sexual Exploitation, (b) Sexual Harassment, (c) Non-Consensual Sexual Contact, and (d) Non-Consensual Sexual Intercourse, or Retaliation.

i. Non-Consensual Sexual Contact is defined as sexual contact that occurs without effective consent.

ii. Sexual Contact is defined as the deliberate touching of a person’s intimate parts including genitalia, groin, breast or buttocks, or clothing covering any of those areas, or using force to cause a person to touch his or her own or another person’s intimate parts.

iii. Non-Consensual Sexual Intercourse is defined as sexual intercourse that occurs without consent.

iv. Sexual Exploitation is defined as taking sexual advantage of another person without consent, and includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such person, including but not limited to the use of alcohol or other drugs;

v. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

- vi. Consent is defined as words or actions that show an explicit, knowing, and voluntary approval and agreement to engage in mutually agreed-upon sexual activity.
 - b. Policy 9.2.7.2 is in addition to the policy set forth in the Student Handbook and states that complaints are to be made in accordance with Policy 9.2.7.3, the Procedure for Resolving Complaints of Discrimination or Sexual Misconduct. (A copy of Policy 9.2.7.3 is attached as Exhibit B.)
 - c. Policy 9.2.7.3 states that complaints of discrimination and sexual misconduct (including sexual harassment, sexual exploitation, non-consensual sexual contact, non-consensual intercourse and retaliation) by a University student against another University student are addressed by the Student Code of Conduct and Conduct Procedures in the Student Handbook.
- 15. The relationship between John Doe and Bellarmine is governed by the Student Handbook. (A copy of the Student Handbook is attached as Exhibit C.)
 - a. The Student Handbook constitutes a contract between students and the school and, in particular, between John Doe and Bellarmine.
 - b. A copy of the Student Handbook is provided to each student.
- 16. The Student Handbook also contains a section entitled “Sexual Discrimination & Misconduct Policy” (the “Sexual Misconduct Policy.”)
 - a. Students who violate the sexual misconduct policy will be disciplined under the University’s Code of Conduct whether or not a criminal prosecution occurs.
 - b. Violations of the Sexual Misconduct Policy may result in counseling, educational sanctions, disciplinary probation, suspension, expulsion, and referral to the proper law enforcement authorities for prosecution.

17. The Sexual Misconduct Policy includes the following relevant definitions:

- a. Sexual Harassment is defined as “Unwelcome, gender-based verbal or physical conduct that is, sufficiently severe, persistent or pervasive that it, has the effect of unreasonable interference with, denying or limiting someone’s ability to participate in or benefit from the University’s educational program and/or activities and is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.
- b. Non-Consensual Sexual Contact is defined as “Any intentional sexual touching, however slight, with any object, by a man or a woman upon a man or a woman, that is without consent and /or by force.”
- c. Sexual Contact is defined to include “intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts . . .”
- d. Incapacitation is defined as “a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g. to understand the “who, what, when, why or how” of their sexual interaction).
- e. Consent is defined as “informed, freely and actively given, mutually understandable words or actions. A person has the right at any time to say ‘no’ to sexual activity and that ‘no’ means ‘no.’” The Sexual misconduct Policy further provides: “Verbal communications of nonconsent, nonverbal acts of resistance or rejection, or mental incapacitation of the alleged victim due to any cause including the alleged victim’s use of alcohol or drugs constitute a lack of consent. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.”

18. Upon receipt of a complaint that a student has violated the policy, Bellarmine has an obligation to begin an investigation.
- a. The Sexual Misconduct Policy states: “Once an informal or formal report has been made, a prompt, thorough, and impartial inquiry by the University will occur.”
 - i. This investigation should be interpreted as implementing the requirement under the Title IX Guidance in the Dear Colleague Letter, as part of a “prompt and equitable” resolution process.
 - ii. The Sexual Misconduct Policy permits the reporting party “to participate in conduct procedures without being physically present through written statement, phone conference, or other means.”
 - b. The Sexual Misconduct Policy anticipates that witnesses will not only provide statements, but also be present at any hearings. The Sexual Misconduct Policy states, “The University will request the presence of any witnesses identified by the reporting party or responding party. . . . The University will request the presence of any witnesses identified by the reporting party or responding party to provide statements during conduct procedures.”
19. The Sexual Misconduct Policy provides that the reporting student has, *inter alia*, the following rights:
- a. The right to confer with an “advocate” chosen from the Bellarmine University campus community (student, faculty, or staff member) to help prepare information to present at the hearing.
 - i. This advocate may be present at the hearing, but may not speak at the hearing or otherwise “represent” the reporting student unless specifically requested to do so by the chairperson of the hearing panel.
 - ii. The Bellarmine rules specifically prohibit this person from being an attorney.

- b. The right to make his or her statement without being in the presence of the responding party in the hearing.
 - c. The right to make an “Impact Statement,” describing the effect that the incident has had on the reporting party emotionally or physically.
 - d. The right to call witnesses (other than character witnesses) to testify at the hearing and to have witnesses (other than character witnesses) submit written statements.
 - e. The right to appeal the decision to the Vice President for Student Affairs.
20. The Sexual Misconduct Policy provides that the accused student has, *inter alia*, the following rights:
- a. The right to confer with an “advocate” chosen from the Bellarmine University campus community (student, faculty, or staff member) to help prepare information to present at the hearing.
 - i. This advocate may be present at the hearing, but may not speak at the hearing or otherwise “represent” the reporting student unless specifically requested to do so by the chairperson of the hearing panel.
 - ii. The Bellarmine rules specifically prohibit this person from being an attorney.
 - b. The right to make his or her statement without being in the presence of the responding party in the hearing.
 - c. The right to call witnesses (other than character witnesses) to testify at the hearing and to have witnesses (other than character witnesses) submit written statements.
 - d. The right to appeal the decision to the Vice President for Student Affairs.
21. The Sexual Misconduct Policy provides for the provision of “accommodations” for those who make allegations that they are victims of sexual assault prior to any determination that sexual misconduct has occurred.

- a. The accommodations include the ability of Bellarmine to “remove the alleged responding party from his or her living arrangement, pending the hearing.”
 - b. The accommodations include the ability of the Dean of Students to issue an interim “no contact” prohibiting the accused student from contacting the alleged victim.
 - c. The accommodations include changes in living arrangements. The Sexual Misconduct Policy also suggests that if both the reporting student and the accused student live in the same housing arrangement, “the alleged responding party will, most likely, be the one to move as the alleged reporting party can be further victimized by having to move.
 - d. On information and belief, Bellarmine provides to students who allege that they are victims of sexual misconduct academic accommodations, including changes in grades, assignments, and class schedules, prior to a determination that sexual misconduct has occurred.
22. Violations of the Sexual Misconduct Policy are punishable by sanctions including probation, residence hall suspension, university suspension, or university expulsion.
23. Allegations of violations of the Sexual Misconduct Policy are resolved pursuant to the Student Conduct Procedures contained Community Standards and Obligations section of the Student Handbook.
24. The Student Conduct Procedures are set forth in the Student Handbook and are used to adjudicate student conduct. The Student Conduct Procedures provide that a student who has been charged with a violation “will be afforded” certain rights “to assure fundamental fairness in the student conduct process.” These rights include: notice; file access/review; an investigation; a hearing; the ability to call witnesses; the presence of a “supporter;” a written decision; an appeal; and the maintenance of records. These rights are detailed below:

- a. Notice. Under the Student Conduct Procedures, an accused student is entitled “to be informed in writing of the specific violation in which the student was allegedly involved.”
- b. File Access/Review. Under the Student Conduct procedures an accused student “has the right to review official documents in his/her student conduct file.” Bellarmine restricts access to the files by requiring the accused student to make an appointment with the Dean of Students to review the files at an office, and prohibits the copying of any documents or the removal of any documents.
- c. Investigation. Under the Student Conduct Procedures, “[i]n cases of sexual misconduct, the school will conduct a full and timely investigation of the complaint.”
 - i. Hearing. Under the Student Conduct Procedures, an accused student has the right to a “fair and impartial hearing.” The rules further provide that the “case will be heard in a fair manner.” Rules for the hearing include the following:
 1. An accused student is permitted “to respond to the information, to present information, and to include relevant witnesses, during a fair and impartial hearing.”
 2. The hearing is described as a “private, internal review process” where “criminal law concepts” and the rules of evidence do not apply.
 3. The standard of proof at the hearing is “the preponderance of the evidence; which means that the information presented, as a whole, shows that the occurrence of the alleged behavior was more probable than not.”
 4. Conduct Panels are composed of one chief hearing officer, one faculty member and one staff member.
 5. Private attorneys may not be present at the hearing.

6. The reporting student and the accused student are “given the opportunity to indirectly question each other and all witnesses through the hearing officer(s) during the proceedings.”
 7. Hearings may be extended or continued “based on good cause (i.e., illness or reasonable delays).”
- d. Witnesses. Under the Student Code of Conduct an accused student has the right to “have witnesses speak or present material relevant to the case.” An accused student bears the “responsibility. . . to notify the witnesses of the hearing.” and to provide a list of the witnesses
 - e. Supporter. Under the Student Code of Conduct an accused student may have an “advisor” or “supporter” present. This advisor must be a Bellarmine University faculty member, staff member or student. The advisor or supporter may attend the hearing but who is not permitted to speak. The Handbook explains, “The role of the supporter is simply to lend emotional and personal support to the student involved in the student conduct process.”
 - f. Written Decision. Under the Student Code of Conduct an accused student is entitled to receive written notification of the findings of the hearing and the sanctions imposed.
 - g. Appeal. Under the Student Code of Conduct, an accused student may appeal an adverse decision resulting in suspension or dismissal from the University or residence halls.
 - i. Appeals are limited to three specific grounds: the sanction was disproportionate to the offense committed; new information that was not known at the time of the original hearing is available; or the hearing did not conform to the procedures outlined in the Student Code of Conduct.

- ii. Appeals of University suspension or dismissal are heard by the Committee on Student Appeals. This committee is composed of two students appointed by the Student Government Association, one faculty member and two administrators.

25. Bellarmine's restrictions on the students choice of advisors or support person is in violation of the requirements of the Clery Act. 20 U.S.C. § 1092(f) (1990), with implementing regulations in the Federal Registrar 34 C.F.R. 668.46.

- a. As of July 1, 2015, the Clery Act requires Bellarmine to permit complainants and respondents to be accompanied by an advisor of choice in meetings and proceedings related to the investigation and adjudication of allegations of sexual violence, dating violence, domestic violence, and stalking. Bellarmine is not permitted, under the Clery Act, from limiting the choice of advisor or barring the presence of an advisor.
- b. The Clery Act provides: "the accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice" 20 U.S.C.S. 1092(f)(8)(B)(iv)(II).

26. Bellarmine's investigative and adjudicative process violates the Clery Act in other respects. The Clery Act requires that Bellarmine have disciplinary proceedings for allegations for sexual misconduct that are prompt, fair, and impartial. 20 U.S.C.S. 1092(f)(8)(B)(iv)(I). This includes, the following requirements under 34 C.F.R. 668.46(k)(3)(i)(C):

- a. Proceedings must be completed within reasonably prompt timeframes designated by an institution's policy, including a process that allows for the extension of timeframes for good cause
- b. An accused student must be given timely and equal access to any information that will be used during informal and formal disciplinary meetings and hearings

- c. Proceedings must be conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused.
27. Bellarmine has a duty under the accreditation standards to provide a disciplinary process that consistent with the liberal values of fairness and due process.
- a. Accreditation standards applied to the colleges and universities generally require that truthfulness, clarity, and fairness characterize the institution's relations with students and that an institution's educational policies and procedures are equitably applied to all its students.
 - b. Bellarmine is accredited by the Southern Association of Colleges and Schools, Commission on Colleges. The accreditation standards applied to the school, in Section 1.1, require that Bellarmine operate "with integrity in all matters."
28. The Student Code of Conduct applies to behavior both on and off-campus. The policy states that it applies to "all university-related travel and study abroad experiences. . ."

THE NEW YEAR'S INCIDENT IN GERMANY AND THE DISCIPLINARY PROCEEDINGS AGAINST JOHN DOE

29. John Doe was suspended from Bellarmine for events that allegedly occurred on the evening of December 31, 2016 (the "Incident").
30. On the date of the Incident, John Doe was part of a winter break trip to Europe organized by the Kentucky Institute for International Studies (KIIS), a faculty-led study abroad consortium of colleges and universities in Kentucky and surrounding states. KIIS welcomes students from any academic institution in the United States and Canada to participate in its study abroad programs.
- a. KIIS is not a part of Bellarmine. Credits for participation in the KIIS program is granted by Western Kentucky University and students much actually apply to Western Kentucky

University to receive credit. Accordingly, conduct on a KIIS trip may not be covered by the Student Code of Conduct.

- b. The trip was led by Professor Domine and Professor Cuisinier. Professor Domine works at Bellarmine. Professor Cuisinier works at Western Kentucky University.
31. John Doe is 100% innocent of the allegations made against him. One of the faculty advisors on the trip referred to the whole matter as a “witch hunt.”
 32. On December 27, 2016, MW kissed John Doe during the evening. He tried to push her away because she was intoxicated. She got upset when he did not kiss her back. Later, MW invited John Doe back to her hotel room, where they made out.
 33. On December 28, 2016 a number of students were hugging and kissing. The girls were kissing each other a lot. At one point John Doe, MW, and two other unidentified students were kissing at the same time. During the kissing, there was also consensual sexual touching, such as on the breasts and buttocks.
 34. On December 29, 2016 after dinner AM hugged John Doe. She later texted him “I’m so mad at you, every girl likes you.” John Doe and AM met in the hotel lobby and kissed.
 35. On December 30, 2016 John Doe took a side trip with AM and two other students (identified in the report as Student A and Student C). They hugged at the end of the trip.
 36. On December 31, 2016 John Doe and about ten other students went out to dinner and then a bar.
 - a. While watching fireworks, John Doe had his arms around SG and SD. There was a large crowd and at one point his hand slipped and briefly touched SD on the butt and later on her breast. He apologized but SD was upset and left with RB.
 - b. After the fireworks, John Doe started making out with SG. John Doe does not clearly remember the rest of the events on that evening.
 37. On January 1, 2017, John Doe and the others traveled to Paris

- a. Domine and Cuisinier spoke with the women involved about 8:00 pm on January 1, 2017. The women told Domine and Cuisinier about the Incident. Each student told the professors that they did not feel threatened by John Doe and they had no objection to him completing the trip.
 - b. Domine and Cuisinier spoke with the KIIS executive director, who approved John Doe's continued participation in the program.
 - c. About 2-3 hours later, Domine and Cuisinier were approached by a number of the women, who said that had had a change in heart about John Doe and requested that he be removed from the program.
 - d. After consulting with the Executive Director, Domine and Cuisinier decided to remove John Doe from the program. He was asked to leave the hotel and told that he would have to find his own way back to the United States. Essentially, he was abandoned on the streets of a foreign country.
38. On January 1, 2017, John Doe was expelled from the KIIS program. He was kicked out of his hotel room onto the streets of foreign country. The faculty advisers essentially told him, "your flight is in two days. Good luck."
39. On January 3, 2017, Bellarmine received complaints from one or more students on the trip alleging misconduct by John Doe.
40. On or about January 9, 2017, Bellarmine began an investigation. An investigative report was completed on or about February 28, 2017.
41. SG, one of the students on the trip, was interviewed by the investigator on January 17, 2017
- a. The investigative report does not provide a transcript of the interview, but merely a summary of the statements prepared by the investigator.
 - b. SG admitted that she had been drinking on the night of the Incident.

- c. SG stated that she had been holding hands with John Doe and later made out with him. She said that she was drunk and John Doe had to hold her head up at one point. She also said that while they were making out John Doe slapped her twice on the butt and tried to reach under her skirt.
 - d. SG stated that she believed that John Doe's actions on New Year's Eve were consensual. She changed her opinion later after discussing the matter with other students.
42. MW, one of the students on the trip, was interviewed by the investigator on January 18, 2017
- a. The investigative report does not provide a transcript of the interview, but merely a summary of the statements prepared by the investigator.
 - b. MW stated that John Doe made a pass at her on the night of the incident by grabbing her and pulling her close. She pushed him away and left.
 - c. MW saw John Doe kissing SG. She also observed John Doe making a pass at SD and AM. She said that she never saw any of the women say "no." She saw AM push John Doe away.
43. AM, one of the students on the trip, was interviewed by the investigator on January 19, 2017
- a. The investigative report does not provide a transcript of the interview, but merely a summary of the statements prepared by the investigator.
 - b. AM stated that John Doe was "really nice" to her and the other women on the trip.
 - c. AM kissed John Doe one evening, but declined to pursue a relationship because she did not like that he was flirting with the other women
 - d. AM observed John Doe flirt with and touch other women on the trip. This flirting would include putting his arm around women, tickling, and sometimes grabbing a leg. She observed that they all laughed it off. AM observed Student A and Student B kissing John Doe on one evening prior to the Incident.

- e. On December 31, 2016 AM stated that John Doe tried to touch her legs, but that she told him no and pushed him off.
- f. On the morning after the Incident, AM described how there was “talk” amongst the women on the trip and AM got angry and started yelling at John Doe.

44. RB, one of the students on the trip, was interviewed by the investigator on January 19, 2017

- a. The investigative report does not provide a transcript of the interview, but merely a summary of the statements prepared by the investigator.
- b. RB stated that “there had been incidents of people making out” during the trip, but RB had not witnessed this first hand. She shared her impression that the kissing and sexual contact was consensual.
- c. On December 31, 2016 she observed John Doe sitting next to SG at dinner. He had his arm around her. She later met up with John Doe at a bar. She stated she observed John Doe with his arm around SG and that when John Doe tried to put his arm around RB, RB walked away. She stated she observed she observed SD walk up to John Doe and given him a hug. John Doe then moved his hand too low in an attempt to touch SD; SD said no and moved away.
- d. RB stated that she saw John Doe making out with SG and that John Doe was touching her “all over.” She told the investigator that this appeared consensual, but several people became concerned that SG was intoxicated and tried to pull her away.

45. GD, one of the students on the trip, was interviewed by the investigator on January 27, 2017

- a. The investigative report, unlike with other witnesses, includes what purports to be a transcript of the interview instead of a summary of the statements prepared by the investigator.

- b. GD described a lot of flirting on the trip, but had no first hand knowledge of the Incident. He said John Doe had the reputation of a flirt.

46. John Doe was interviewed on January 18, 2017

- a. The investigative report provides a transcript of the interview instead of a summary of the statements prepared by the investigator.
- b. John Doe described a trip where the students were very close, drinking a lot, and engaging in a lot of flirting, kissing, and other mild sexual behavior.
- c. John Doe recalled a few of the events on December 31, 2017, but indicated that he believed he might have been drugged that evening. He suspected someone had slipped ecstasy or another drug into his drink.

47. BW, one of the students on the trip, was interviewed by the investigator on January 19, 2017

- a. The investigative report, unlike with other witnesses, includes what purports to be a transcript of the interview instead of a summary of the statements prepared by the investigator.
- b. BW stated saw MW making out with John Doe earlier in the trip. She did not think this was right because MW had been drinking and had a boyfriend.
- c. BW stated on a different night she saw MW , Student A and Student B all making out with John Doe at a bar.
- d. BW suggested that SD was bothered by John Doe's attempt to make a pass at her on the night of the Incident because she was very religious and conservative.

48. AM(2) , one of the students on the trip, was interviewed by the investigator on February 2, 2017.

(AM and AM2 are different students. AM is a female. AM2 is a male.)

- a. The investigative report, unlike with other witnesses includes what purports to be a transcript of the interview instead of a summary of the statements prepared by the investigator.
- b. AM2 said that on the night of the Incident John Doe was “hanging” on the women and that AM had to push him away from her during a cab ride. AM observed John Doe in the front seat of a cab and AM in the back seat. He said he observed John Doe reach back to touch AM’s leg; he thought she was uncomfortable but noted that she did not say anything about it. AM2 also saw John Doe touch SD on the butt one time but did not describe her having a negative reaction at the time.
- c. AM2 states that the women who were hanging out with John Doe may have led him to “certain questionable things.”

49. SD, one of the students on the trip, was interviewed by the investigator on February 15, 2017.

- a. The investigative report, unlike with other witnesses includes what purports to be a transcript of the interview instead of a summary of the statements prepared by the investigator.
- b. SD is not a student at Bellarmine.
- c. SD alleged that on the night of the Incident, John Doe grabbed her butt twice and breast. She said to him, “No, I am a virgin and I don’t want any of that.” and left.
- d. SD recounted a conversation with SG about kissing John Doe from to the night of the incident, and indicated that SG was interested in pursuing a romantic relationship with John Doe. She observed John Doe kissing SG during the night of the Incident; she described them as “making out” and “grabbing each other.”
- e. SD confirmed that the trip involved a lot of flirting and physical contact. She told the investigator that most of the women “went along” with John Doe’s flirting and touching

“because he was cute and this was a fun time.” SD also stated that she had observed John Doe smacking men on the butt, as well.

50. A number of important witnesses were not interviewed.

a. Professor Domine and Professor Cuisinier initially were not interviewed. Instead, they submitted a report on the Incident. Follow-up questions were sent to one of the professors.

b. A number of students on the trip, identified as “Student A,” “Student B,” “Student C,” “Student D,” and “Student E,” were not interviewed.

51. The investigators failed to conduct any follow-up interviews with witnesses and never attempted to resolve inconsistencies between statements.

52. The investigative report contains a number of statements from witnesses who did not actually witness anything. In other words, the investigative report is filled with hearsay from people who did not have first-hand knowledge of events. The report repeats the rumors and descriptions that the witnesses heard from other students. For example:

a. The investigative report indicates that AM did not observe John Doe kissing SG or touching SD, but that she “heard later that this happened.” The report also notes AM stating that she had heard that John Doe had “fingered” another student “from behind.”

b. The investigative report indicates that RB was told by SG and SD that John Doe had been touching and “smacking” her butt inappropriately.

c. The investigative report includes a statement by GD describing what SD claimed had taken place. He simply said that she was “very upset” and described “groping.” But, he added, “I have no details about that.” Amazingly, the investigative report includes the opinion of GD that SD was “in denial” about “the possible Title IX violation” by John Doe.

- d. The investigative report includes a statement by BW that December 31, 2016 “was when all the bad stuff happened but I wasn’t present for that. I just heard after.”
 - i. The investigative report includes BW relating statements from SG, SD and others about what John Doe allegedly did, but includes the acknowledgement that BW did not witness anything because she did not go to the bar.
 - ii. BW even said to the investigator, “this is kind of hearsay.” The investigator responded, “this is part of the process” and suggested that eventually they would seek first hand knowledge.
 - e. The investigative report includes a statement by AM2 that “somebody said” JD made SD feel uncomfortable “and that’s what set it off.”
53. On March 31, 2017, Bellarmine conducted a hearing to determine whether John Doe had violated the Student Code of Conduct. John Doe was found responsible and faced a one semester suspension from Bellarmine.
54. John Doe appealed the results of the March 31, 2017, on the grounds that Bellarmine had denied him his right, under the Clery Act, to have an advisor of his choosing, including counsel.
55. On April 21, 2017, the Vice President of Student Affairs, Helen Grace Ryan, agreed with John Doe’s appeal and ordered that a new hearing take place. (The notice from Ryan was dated April 20, 2017, but was sent by email at 7:47 a.m. on Friday, April 21, 2017.)
56. On April 21, 2017, Bellarmine scheduled a new hearing for April 26, 2017. (The notice from Ryan was dated April 20, 2017, but was sent by email at 7:47 a.m. on Friday, April 21, 2017.)
57. On Sunday, April 23, 2017 John Doe retained counsel with experience in campus disciplinary matters. (John Doe initially contacted counsel on Friday, April 21, 2017, but did not actually retain counsel until Sunday, April 23, 2017.)

58. On Monday, April 24, 2017 – the first business day after being retained – John Doe’s counsel requested a continuance of the hearing.

- a. John Doe’s counsel indicated to Bellarmine that a continuance was necessary because counsel had a previously scheduled two-day seminar in Dayton, OH and needed additional time for adequate review of student’s file and preparation. Counsel subsequently informed that Bellarmine was represented by Steptoe & Johnson. All subsequent communications were with attorney, Jim Newberry.
- b. John Doe’s counsel also indicated that John Doe needed to study for final examinations at the scheduled time of the hearings.

59. On Tuesday, April 25, 2017, John Doe’s counsel spoke with Bellarmine’s counsel and repeated the request for a continuance of the hearing dates. As a result of that conversation, Bellarmine agreed to continue the hearing – but only for 18 hours!

60. On Wednesday, April 26, 2017, John Doe and his counsel reviewed the investigative file.

- a. Bellarmine required that the review take place in a campus office with the Dean of Students present. As a result, John Doe could not privately discuss the contents of the investigative report unless they went to a separate room – but they were not permitted to take the report into the separate room.
- b. Bellarmine did not permit John Doe or John Doe’s counsel to retain a copy of the investigative report.
- c. The investigative report did not contain the names of many witnesses. The original version of the report made available to John Doe had all names redacted and referred to witnesses with alphabetical labels, e.g. “Student A,” “Student B,” etc. . . . When John Doe complained, he was provided with a “less redacted copy” which still had a number of names redacted.

61. On Thursday, April 27, 2017, Bellarmine conducted a second hearing on the Incident.
 - a. John Doe was not provided with the names of all witnesses who would testify.
 - b. Although this second hearing was intended to be *de novo*, witnesses and Bellarmine employees referenced statements from the prior hearing on a number of occasions.
 - c. One witness, AM, was present in person. EP, BW, SG, and RB were present by phone. SD was not present either by phone or in person.
 - d. John Doe requested that the Domine and Cuisinier be requested to attend the hearing. Counsel for Bellarmine stated that they would not be permitted. He read from a prior April 26, 2017 email: “The two faculty members you mentioned were not witnesses in the first hearing, and we do not expect them to be present tomorrow as we understand neither of them had any firsthand information as to the alleged misconduct.”
 - i. The hearing panel proceeded to review the investigative report, which contained a number of statements from witnesses who lacked firsthand knowledge.
 - ii. The hearing panel heard from witnesses who provided statements based on hearsay and statements from witnesses who lacked firsthand knowledge.
62. On May 1, 2017 John Doe submitted an appeal. In his appeal, John Doe raised the following issues:
 - a. New evidence had been discovered that that one of the complaining parties works for the Office of Student Affairs and had regular contact with the Vice President of Student Affairs and other members of the Student Affairs staff.
 - b. The fact that one of the complaining parties works for the Office of Student Affairs and had regular contact with the Vice President of Student Affairs and other members of the Student Affairs created impermissible bias in the staff The respondent claims that he only became aware of this circumstance after the hearing.

- c. The sanctions were unduly harsh due to his otherwise good record as a Bellarmine student.
- d. The hearing failed to comport with the Student Code of Conduct in the following respects:
 - i. Bellarmine denied John Doe the effective assistance of an attorney advisor by not permitting his counsel adequate time to prepare for the hearing.
 - ii. Bellarmine denied John Doe the right to call witnesses. In particular, John Doe suggested that some witnesses were not identified in the investigative report and his request to call as witnesses the professors on the trip was specifically denied.
 - iii. Bellarmine denied John Doe's reasonable request for a continuance.
 - iv. Bellarmine, in general, denied John Doe a fair and impartial hearing.

63. On May 12, 2017, John Doe received a notification from the Vice President of Student Affairs that his appeal had been denied.

- a. The letter inaccurately suggested that "many of the facts of this case were undisputed" based on the fact that John Doe raised few questions about the report beyond the lack of training of the investigators. The letter later acknowledges that "The most significant disputed facts center on whether the respondent's actions were consensual or non-consensual."
- b. The letter confirmed that only the Incident should have been considered. The letter states, "The sexual misconduct that is the subject of this proceeding is alleged to have occurred in Munich on the night of December 31, 2016 and the early morning hours of January 1, 2017."
- c. The letter inaccurately states that the complainants "state they never consented to the respondent's actions." In fact, as noted *supra*, many of the complainants admitted they had no direct knowledge any misconduct.
- d. The letter rejected the appeal issues raised by John Doe.

- i. In regards to the new evidence that one of the complaining parties works for the Office of Student Affairs and had regular contact with the Vice President of Student Affairs and other members of the Student Affairs staff, the letter claims that the student “worked less than 20 hours in the Office of Student Affairs all semester, hardly enough to generate longstanding personal relationships that might have impacted the outcome of this proceeding.” The letter further indicates that the Vice President of Student Affairs based her “decision on the remaining portions of the record without giving any consideration to the witness’s somewhat narrow testimony,” but did not address whether such bias might have affected the hearing.
- ii. In regards to the issue of proportionality of the discipline imposed, the letter claims that John Doe’s “conduct was egregious and in clear and repeated violation of the sexual misconduct policy.”
- iii. In regards to the denial of John Doe’s right to have an attorney act as his advisor, the letter contains a number of mis-statements.
 1. The letter incorrectly suggested that “the level of legal sophistication utilized by the respondent in his April 2 appeal suggests that he already was working with legal counsel at that point.” This is 100% false assumption. John Doe prepared his initial appeal with only the assistance of his mother (who is not an attorney).
 2. The letter acknowledges that John Doe retained counsel on or about April 20, 2017. The letter suggests that six days to review the file and prepare for a hearing was adequate. This is 100% false assumption. John Doe did not retain counsel until Sunday, April 23, 2017. John Doe’s counsel

indicated that she had previously scheduled commitments and did not have adequate time to prepare. The letter also fails to acknowledge that Bellarmine would not provide counsel with a copy of the investigative report but, instead, insisted that the materials be reviewed on campus.

- iv. In regards to the inability to call unidentified witnesses, the letter suggested that John Doe should have known who the unidentified witnesses in the investigative report were because “there were a small number of students involved in the study abroad program, and as a result, the respondent should have known all of them.” The letter further suggests that John Doe could have “asked prior to the hearing to utilize as witnesses all of the students listed in the report whether they were listed by name or generically.”
- v. In regards to the inability to call the professors as witnesses, the letter also suggested that the professors would not have been permitted to testify because “neither of those professors had any first hand knowledge of the events.” However, the letter failed to acknowledge that other witnesses who did not have first hand knowledge were permitted to submit information or testify.
- vi. In regards to John Doe’s claim that he was interviewed without the presence of an attorney advisor, the letter merely states that John Doe “did not request the presence of an advisor of any kind at that time” and further “did not object to any of [the] contents” of the investigative report at the April 27, 2017 hearing.
 1. The Letter does not acknowledge that the Bellarmine policy that prohibited John Doe from having an attorney during the interview was contrary to the Clery Act.

2. The letter does not acknowledge that the hearing procedures are informal and do not require formal objections like a criminal trial to preserve appellate issues.
 - e. The letter concluded that John Doe “engaged in a pattern of activity that is entirely inappropriate under Bellarmine’s Policy” – a strange conclusion given that the Incident occurred on one evening.
64. The Defendants’ continued actions against John Doe are causing substantial, immediate, and continuing damages. Suspension from Bellarmine has caused John Doe to be denied the benefits of education at his chosen school, damaged his academic and professional reputations, and may affect his ability to enroll at other institutions of higher education and to pursue a career. John Doe may also lose eligibility for a valuable scholarship, which will make attendance at his chosen school significantly more difficult.

**COUNT I
(BREACH OF CONTRACT)**

65. Plaintiff repeats and incorporates all the allegations of this Complaint, as if fully set forth herein.
66. By enrolling at Bellarmine, and paying his tuition and fees, and attending the school, John Doe and Bellarmine had a relationship that may reasonably be construed as being contractual in nature.’
67. The terms of the contract between Doe and Bellarmine are generally found in various College policies and procedures, including those set forth in the student handbook.
68. The contract between John Doe and Bellarmine required Bellarmine to provide John Doe with an adjudicatory process that was “fair and thorough.”
- a. The Student Handbook states, “The community conduct process is based on the concepts of fundamental fairness and reasonableness.”

- b. The Student Handbook incorporates the obligation of Bellarmine under the Clery Act to have disciplinary proceedings for allegations for sexual misconduct that are prompt, fair, and impartial. 20 U.S.C.S. 1092(f)(8)(B)(iv)(I); 34 C.F.R. 668.46(k)(3)(i)(C).
69. The contract between John Doe and Bellarmine contains an implied covenant of good faith and fair dealing. This implied covenant prohibits Bellarmine from doing anything which will have the effect of destroying or injuring the right of John Doe to receive the fruits of the contract. The covenant imposes upon Bellarmine the duty to act in a “bona fide” manner, meaning with good faith, honestly, openly, and sincerely; without deceit or fraud.
70. John Doe paid Bellarmine tuition and fees for the 2016-2017 school year.
71. Bellarmine repeatedly and materially breached the explicit guarantee of essential fairness and as well as the implied covenant of good faith and fair dealing and other contractual provisions. These breaches include, but are not limited to, the following:
 - a. Bellarmine imposed discipline on John Doe for conduct that did not occur on campus or in a school-related activity.
 - i. The Student Code of Conduct applies to behavior both on and off-campus. The policy states that it applies to “all university-related travel and study abroad experiences. . .” In addition to a breach of this specific provision, applying the Code of Conduct to a non-school-related activity was a breach of the guarantee of fundamental fairness, and the implied covenant of good faith and fair dealing.
 - ii. The KIIS trip was not “university-related travel.” Rather, KIIS is an independent organization and any academic credits are provided by Western Kentucky University, not Bellarmine.
 - b. Bellarmine imposed discipline on John Doe without providing him with sufficient notice.

- i. The Student Conduct Procedures provide that an accused student is entitled “to be informed in writing of the specific violation in which the student was allegedly involved.” In addition to a breach of this specific provision, the failure to provide adequate notice was a breach of the guarantee of fundamental fairness, and the implied covenant of good faith and fair dealing.
- ii. John Doe was disciplined only for conduct that occurred on December 31, 2016. The May 12, 2017 letter from Ryan states, “all of the sexual misconduct that is the subject of this proceeding is alleged to have occurred in Munich on the night of December 31, 2016 and the early morning hours of January 1, 2017.” The letter further states that there were five complainants.
- iii. Bellarmine’s investigator misled John Doe about the nature of the allegations against him.
 1. The investigators told John Doe that “the interview process is to support you.” In reality, the purpose of the interview was to gather evidence that could be used against John Doe during a subsequent disciplinary hearing.
 2. During his interview, John Doe complained that he was not aware what he had allegedly done wrong. When the investigators asked if there was anyone else they should speak to, he responded, “I don’t know what I am being accused of so I don’t who I can refer you to.” The investigator later told John Doe that the investigation was limited to allegation that he inappropriately touched SD.
- iv. Bellarmine failed to provide meaningful notice to John Doe of the allegations against him. As a result, John Doe was not able to adequately prepare his defense.

1. The investigative report and hearing relied upon and referenced conduct that occurred prior to December 31, 2017.
 2. Bellarmine merely advised John Doe initially that he had violated the Sexual Misconduct Policy. This amounts to no notice at all. It doesn't tell him what he is alleged to have done wrong. Bellarmine never provided John Doe with a statement of the particular conduct alleged to have been a violation of particular Bellarmine policies.
- c. Bellarmine imposed discipline on John Doe without providing him with reasonable access to the investigative report and other materials to be used against him.
- i. The Student Code of Conduct provides that John Doe “has the right to review official documents in his/her student conduct file.” In addition to a breach of this specific provision, the failure to provide adequate access to the file was a breach of the guarantee of fundamental fairness, and the implied covenant of good faith and fair dealing.
 - ii. Bellarmine breached this promise by not providing reasonable access.
 1. John Doe was not permitted to have a copy of the investigative report or other evidence so that he could prepare adequately.
 2. Bellarmine made the file available for review only at inconvenient locations and times and did not provide John Doe with adequate privacy.
 3. John Doe had only three days after retaining counsel to review the materials.
 4. restricts access to the files by requiring the accused student to make an appointment with the Dean of Students to review the files at an office, and prohibits the copying of any documents or the removal of any documents.

- d. Bellarmine imposed discipline on John Doe without conducting an adequate investigation.
 - i. The Student Conduct Procedures required Bellarmine to conduct “a full and timely investigation of the complaint.” In addition to a breach of this specific provision, the failure to conduct a full and fair investigation was a breach of the guarantee of fundamental fairness, and the implied covenant of good faith and fair dealing.
 - ii. Bellarmine’s investigator failed to interview a number of important witnesses, including students who were on the trip and the faculty advisors.
 - iii. Bellarmine did not employ an experienced or trained investigator into allegations of what essentially was a criminal sexual assault. The use of the investigators chosen by Bellarmine was unreasonable because Bellarmine had available, better, alternatives, including a number of trained and experienced law enforcement officers in its police department. Bellarmine could have referred the matter to these officers for an investigation.
- e. Bellarmine imposed discipline on John Doe without conducting a fair hearing.
 - i. The Student Conduct Procedures provide that an accused student has the right to a “fair and impartial hearing.” The rules further provide that the “case will be heard in a fair manner.” In addition to a breach of this specific provision, the failure to provide a fair hearing was a breach of the guarantee of fundamental fairness, and the implied covenant of good faith and fair dealing.
 - ii. The Student Conduct Procedures provide that John Doe be given a list of all witnesses 24 hours prior to any hearing. This list was not provided.
 - iii. John Doe was prohibited from presenting evidence, including relevant witnesses, during the hearing.

1. John Doe wanted to present the testimony of the two faculty advisors, but was prohibited by Bellarmine from offering this evidence.
 - a. This evidence was significant, as one of the faculty advisors had previously described the charges against John Doe as a “witch hunt.”
 - b. The reason for excluding the witnesses was pre-textual. Bellarmine claimed that the witnesses lack “first hand” knowledge. However, Bellarmine allowed to hearing panel to hear from other witnesses who lacked first hand knowledge and to receive an investigative report that was replete with hearsay and rumor.
2. The no-contact order imposed by Bellarmine made it impossible for John Doe to obtain witnesses.
 - a. Under the Student Code of Conduct an accused student bears the “responsibility. . . to notify the witnesses of the hearing.” and to provide a list of the witnesses
 - b. John Doe was prohibited from contacting any witnesses or the complainants. The No-Contact Order imposed by Bellarmine, thus, prevented John Doe from contacting the witnesses to ascertain if they had favorable information, and further prevented him from informing them about the hearing so they could attend.
- iv. Bellarmine refused the request of John Doe for a reasonable continuance.
 1. John Doe was informed on Thursday, April 20, 2017 that a hearing in which he could retain counsel was scheduled for Wednesday April 26,

2017. As a result, John Doe was given only three to four working days to obtain counsel and prepare for the hearing.

2. The rules provide that hearings may be continued “based on good cause.” Allowing counsel adequate time to prepare to provide adequate support to a client constitutes good cause, yet bellarmine agreed to only an 18 hour continuance.
- v. The hearing panel relied received evidence in the investigative report about allegations of misconduct by John Doe prior to the Incident and opinions of other students about John Doe’s character. This evidence was irrelevant and should have been excluded by the express provisions of the Student Conduct Procedures which prohibit character witnesses.
- vi. The conduct of entire process treated John Doe as if he was guilty from the start, thereby tainting the hearing process. Bellarmine administrators and investigators acted from the beginning as advocates who “believed” the complainants without conducting any investigation.
 1. The chair of the hearing panel on numerous occasions answered question for witnesses and then proceeded to ask the witness “if they had anything to add . . .”
 2. One of the Complainants is employed in the Office of Student Affairs. This employment creates an implicit bias on the part of hearing officials and other Bellarmine staff and a conflict of interest.
 3. The bias of the entire process was so pervasive throughout the pre-hearing and hearing processes that it destroyed any possibility of fairness and ensured that John would be found guilty. The finding was plainly a

product of the presumption of guilt, as well as the atmosphere of bias and hysteria that permeated the entire disciplinary process.

- f. Bellarmine imposed discipline on John Doe without allowing him to have an attorney as an advisor.
 - i. The Student Conduct Procedures provide that an accused student has the right to an advisor at all stages of the investigative and adjudicative process. Bellarmine has recognized that, under the Clery Act, a student is permitted to have an attorney act as the advisor. In addition to a breach of this specific provision, the failure to allow John Doe to have an attorney act as his advisor was a breach of the guarantee of fundamental fairness, and the implied covenant of good faith and fair dealing.
 - ii. Bellarmine originally enforced a provision of the Student Conduct Procedures requiring that the advisor must be a Bellarmine University faculty member, staff member or student. As a result, John Doe was denied the opportunity to have an attorney as his advisor when he was interviewed. His statement to the investigator was provided to the hearing panel and was relied upon by the hearing panel in reaching a decision and Ryan in considering his appeal.
 - iii. Bellarmine prevented John Doe from having the effective assistance of his attorney-advisor at the April 27, 2017 hearing. John Doe was informed on Thursday, April 20, 2017 that a hearing in which he could retain counsel was scheduled for Wednesday April 26, 2017. As a result, John Doe was given only three to four working days to obtain counsel and prepare for the hearing. Bellarmine made it difficult for counsel to review the investigative report and refused a request for a reasonable continuance to allow counsel adequate time to prepare.

iv. The advisor or supporter may attend the hearing but who is not permitted to speak.

The Handbook explains, “The role of the supporter is simply to lend emotional and personal support to the student involved in the student conduct process.”

72. As a direct and foreseeable result of the University’s failure to honor its express and implied contractual promises and representations, John Doe has sustained, and will continue to sustain, substantial injury, damage, and loss, including, but not limited to: mental anguish; severe emotional distress; injury to reputation; past and future economic loss; deprivations of due process; loss of educational opportunities; and loss of future career prospects.

**COUNT II
(PROMISSORY ESTOPPEL)**

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

74. This Count is asserted against Bellarmine.

75. As described above, the Student Handbook and other official College publications constitute promises and representations that Bellarmine intended to induce reliance on the part of John Doe. In reasonable reliance, John accepted Bellarmine’s offer of admission and incurred the cost of tuition and related expenses based on Bellarmine’s representations that it would honor its express and implied promises, including the guarantees of fundamental fairness, and the implied covenant of good faith and fair dealing.

76. John Doe relied to his detriment on these express and implied promises and representations made by Bellarmine, including that Bellarmine would comply with all applicable federal laws and regulations.

77. Injustice can only be avoided by enforcement of Bellarmine’s promises and representations, including the representation that Bellarmine would comply with all applicable federal laws and regulations.

78. As a direct and foreseeable result of the University's failure to honor its promises and representations, John Doe has sustained, and will continue to sustain, substantial injury, damage, and loss, including, but not limited to: mental anguish; severe emotional distress; injury to reputation; past and future economic loss; deprivations of due process; loss of educational opportunities; and loss of future career prospects.

**COUNT III
(NEGLIGENCE)**

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

80. This Count is asserted against Bellarmine.

81. Having put in place a student disciplinary process, Bellarmine owed a duty of care to John Doe and others to conduct that process in a non-negligent manner and with due care. Bellarmine officials who directed and implemented that process owed John Doe the same duty of care. Bellarmine is responsible for the conduct of those acting on its behalf under the theory of *respondiat superior*.

82. Negligence in this case is defined as a process that is "fair and ethical."

- a. This duty is imposed by the contractual and/or quasi-contractual relationship between the parties.
- b. This duty is imposed by applicable federal laws and regulation including, but not limited to, the Clery Act.
- c. This duty is further imposed by applicable accreditation standards and the role of Bellarmine in providing an education consistent with the liberal values of fairness and due process. Accreditation standards applied to the colleges and universities generally require that truthfulness, clarity, and fairness characterize the institution's relations with students and that an institution's educational policies and procedures are equitably applied to all its students.

83. The obligation of Bellarmine included the obligation to conduct an investigation in a non-negligent manner.

84. The conduct of Bellarmine in conducting an investigation fell below the applicable standard of care and amounted to breaches of the duty of due care. This negligent conduct included, but was not limited to:

- a. The investigators used Bellarmine had insufficient experience in the investigation of allegations of sexual assault and had previously expressed a bias in favor of alleged victims. On information and belief, the investigator never worked as a prosecutor or law enforcement officer.
- b. The investigators misled John Doe into the nature of the allegations they were investigating.
- c. The investigators failed to interview significant witnesses.

85. The conduct of Bellarmine in holding a hearing fell below the applicable standard of care and amounted to breaches of the duty of due care. As described above, Bellarmine used a biased process and hearing panel.

86. As a direct and proximate result of Bellarmine's negligence, John Doe has suffered severe and substantial damages. These damages include diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress and other compensatory damages, in an amount to be determined by a jury and the Court.

87. The Defendants are liable to John Doe for damages.

**COUNT IV
(VIOLATION OF TITLE IX)**

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

89. Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Title IX provides in pertinent part: “No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”
90. Defendant Bellarmine is an education program or activity operated by recipients of Federal financial assistance.
91. Title IX bars the imposition of discipline against students where gender is a motivating factor in the decision to discipline.
92. Bellarmine committed impermissible gender bias against John Doe in the investigation and adjudication of the Complainant’s accusations.
 - a. The investigator and the panel failed to act in accordance with University procedures designed to protect accused students. The investigator, the panel, and the reviewing administrators, furthermore, reached conclusions that were incorrect and contrary to the weight of the evidence.
 - b. There has been substantial criticism of colleges and universities, both in the student body and in the public media (including the Internet), accusing schools of not taking seriously complaints of female students alleging sexual assault by male students. On information and belief, Bellarmine’s administration was cognizant of, and sensitive to, these criticisms. As a result, Bellarmine’s decision-makers and its investigators were motivated to favor the accusing female over the accused male, so as to protect themselves and Bellarmine from accusations that they had failed to protect female students from sexual assault.

- c. On information and belief, Bellarmine was motivated in this instance to accept the female's accusation of sexual assault so as to show the student body and the public that the University is serious about protecting female students from sexual assault by male student. The investigators, hearing panel, and administration adopted a biased stance in favor of the accusing female and against the defending male in order to avoid the criticism that Bellarmine turned a blind eye to such assaults by men.
93. The decisions of the hearing process and the appeal process for John Doe were erroneous outcomes which were the direct result of a flawed and biased proceeding. In a fair and unbiased system, whether someone is a "victim" is a conclusion to be reached at the end of a fair process, not an assumption to be made at the beginning. Bellarmine has reversed this process and assumed that John Doe was guilty because he was a male accused of sexual assault rather than evaluating the case on its own merits.
94. Bellarmine has discriminated against John Doe because of sex. This discrimination is intentional and is a substantial or motivating factor for Bellarmine's actions in this case. Particular circumstances suggest that gender bias was a motivating factor behind the erroneous findings and the decision to impose discipline upon John Doe. These circumstances include:
 - a. Bellarmine, encouraged by federal officials, has instituted solutions to sexual violence against women that abrogate the civil rights of men and treat men differently than women.
 - b. Bellarmine has applied flawed or incorrect legal standards, employed biased or negligent investigatory techniques.
 - c. Bellarmine officials and administrators who had the authority to institute corrective measures had actual notice of and failed to correct the misconduct. The imposition of discipline on John Doe is the a result of a flawed and biased hearing process. This resulted in a deprivation of access to educational opportunities at Bellarmine.

95. The circumstances of the Investigatory process, the hearing process, and the appeal process cast doubt on the accuracy of the outcome of the disciplinary proceeding.
96. As a direct and proximate result of Bellarmine's violations of John Doe's rights under Title IX, John Doe has suffered severe and substantial damages. These damages include diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress and other compensatory damages, in an amount to be determined by a jury and the Court.
97. Bellarmine is liable to John Doe for his damages.
98. Pursuant to 42 U.S.C. §1988, John Doe is entitled to his attorney's fees incurred in bringing this action.

Wherefore, Plaintiff seeks the following relief from the Court:

- Judgment in favor of John Doe awarding damages in an amount to be determined at trial;
- An Injunction restoring John Doe as a student and prohibiting further disciplinary proceedings in a manner that violates the contract between the parties.
- Court costs and other reasonable expenses incurred in maintaining this action, including reasonable attorney's fees as authorized by 42 U.S.C. §1988.

JURY DEMAND

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

Respectfully submitted,

/s/ Jeffrey Shipp

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