UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

JOHN DOE	)	
	)	Case No.
v.	)	17-cv-748
	)	
COLUMBIA COLLEGE CHICAGO, et. al.,	)	JUDGE
	)	
	)	JURY TRIAL DEMANDED
Defendants	)	
	)	
	)	

COMPLAINT

Plaintiff Doe ("Doe"),[1] by and through his attorneys, complains as follows against Defendants Jane Roe ("Roe") and Columbia College Chicago ("CCC").

Nature of this Action

1. Having been irreparably harmed by false allegations of sexual misconduct, Doe seeks damages and injunctive relief to remedy emotional, mental, economic, and physical harm caused by Defendants. Doe's causes of action include: defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, promissory estoppel, breach of contract, declaratory judgment, and violations of Title IX of the Educational Amendments of 1972, 20 U.S.C. §1681, *et seq.*

2. For example, CCC violated Title IX by creating a gender biased, hostile environment against males, like Doe, based in part on CCC's pattern and practice of disciplining male students who accept physical contact initiated by female students.

[1] *See generally, John Doe's Motion to Allow the Parties to Use Pseudonyms* (containing the basis for Doe's request for using pseudonyms in this proceeding).

3. CCC also violated CCC's policies by improperly and unlawfully applying and/or breaching these policies and/or the implied covenant of good faith and fair dealing inherent in these policies.

4. Doe's harm stems from unlawful discipline CCC imposed on Doe after Roe filed a complaint in February 2016 that falsely alleged Doe sexually assaulted Roe on December 11, 2015 when she was incapacitated by alcohol.

5. Doe did not sexually assault Roe. Rather, on December 11, 2015, Roe initiated or consented to all physical contact with Doe, which included, but was not limited to, Roe requesting that Doe engage in sexual intercourse – a request Doe declined. *See e.g., Exhibit A1,* p.69 (containing Doe's April 25, 2016 written statement to CCC), with *Id.,* p.133 (containing Roe's testimony about asking Doe to put on a condom).

6. Nevertheless, CCC found Doe responsible for sexual misconduct and suspended Doe for the 2016-17 academic year. CCC did so despite receiving at least six pieces of evidence which definitively disproved Roe's allegation that Doe sexually assaulted Roe when she was incapacitated by alcohol:

1. A toxicologist expert determined Roe falsely alleged her self-induced alcohol consumption caused her to fade "in and out of consciousness" while interacting physically with Doe. *Compare, Exhibit A1,* p.100-104 (containing report of toxicologist expert Dr. Gary Lage) with *Id.,* p.133 (containing Roe's statements about fading "in and out of consciousness.")

2. Three CCC students provided notarized affidavits stating Roe did not manifest signs of incapacitation when they observed her shortly before she claimed alcohol caused her to fade "in and out of consciousness." *See generally, Exhibit A3* (containing said affidavits which were presented to CCC);

3. CCC's disciplinary hearing panel ("Hearing Panel") itself determined Roe *falsely* alleged: (a) Doe "physically held" Roe "down and prevent[ed] her from leaving [Doe's] room"; and (b) Doe forced Roe to engage in "non-

consensual kissing." *See, Exhibit A1,* p.140 (containing the Hearing Panel's findings);

4. A polygraph expert confirmed Doe honestly testified: (1) he did *not* force Roe to perform oral sex on him; (2) Roe did *not* push his head away when he performed oral sex on Roe; and (3) Roe did *not* appear to Doe to be under the influence of alcohol or drugs. *Exhibit A2* (containing Polygraph report presented to Hearing Panel).

5. Roe's allegations against Doe were disproved by Roe's own words and actions which included, but were not limited to:

   a. Roe sent Doe a text message on the morning after she alleges she was sexually assaulted which stated she had a "great time" with Doe the night before. Yet, during this sexual encounter, Roe later claimed Doe assaulted her with enough force to leave bruises on shoulders. *Exhibit A1,* p.133 (containing Roe's statements regarding same); and

   b. Roe told the Hearing Panel that her "responses [to Doe] were unclear or very passive . . . *I never completely said the word no* . . ." – while prior to this hearing – Roe told a CCC investigator that she made "repeated requests for the sexual interaction to stop." *Exhibit A1,* p.83 (containing CCC's May 6, 2016 Charge Letter from CCC Asso. Dean Anderson to Doe); and

7. Upon information and belief,[2] Roe acted with malice when she falsely told CCC that Doe sexually assaulted her in part because she was angry Doe declined Roe's request to have sexual intercourse. *See e.g., Exhibit A-1,* p.69 (containing Doe's April 25, 2016 written statement to CCC), with *Id.,* p.133 (containing Roe's testimony about asking Doe to put on a condom).

[2] It should be noted, the "information and belief" allegations in the Complaint are based on at least the following two factors: (1) the evidence referenced and/or exhibits attached to this Complaint which provide a plausible basis for Plaintiff's "information and belief" allegations; and (2) Doe's belief that Defendants are in possession and/or control of additional evidence supporting Doe's "information and belief" allegations which Doe believes he will obtain in discovery. Doe made a good faith effort to obtain this information, but CCC refused to produce much of the requested information. *See e.g., Exhibit A1 (*discussing CCC's refusal to provide Doe documentation and information which Doe believes establish facts at issue in this complaint, which include, but are not limited to, anti-male gender biased views held by CCC employees who adjudicated Roe's complaints against Doe).

8. Then, beginning in February 2016, Roe intentionally, negligently and/or maliciously began making false statements to third parties accusing Doe of sexually assaulting her (these defamatory statements are collectively referred to as "Roe's Non-Privileged Defamation").

9. Roe's Non-Privileged Defamation included, but was not limited to, statements Roe made to individuals who anonymously gave Doe a note on or about February 3, 2016 which threatened Doe and called him a "fucker" for sexually assaulting Roe. *Exhibit A1,* p.10 (containing anonymous note placed under the door to Doe's dorm room on or about February 3, 2016).

10. Roe's Non-Privileged Defamation included, but was not limited to, her social media post in February 2016 which stated: "[y]ou know what, I do not give a fuck anymore, I have 46 followers her on Twitter and nothing to lose . . . why the hell would I lie about being raped? . . . I was supposed to perform with a new improv troupe I'm in, which I did, and I saw him in the audience . . . I bombed that performance . . . [t]he point is Columbia needs to get their shit together because I'm leaving this school & this city if they don't do something now . . . [because] they are just letting a predator get away and it makes me sick." *Exhibit A1,* p.11 (containing Roe's February 2016 social media post).

11. Although Roe's Non-Privileged Defamation social media post in the ¶9 did not explicitly mention Doe, Roe must have told many of her Twitter followers that Doe raped her because they responded with statements which referenced Doe by name, including, but not limited to: (a) "[Roe] is a rapist and should not have the privilege of attending school at Columbia." and (b) "boys like [Doe] are the reason #1NeedFeminism." *Exhibit A1,* p.11-12 containing responses to Roe's February 2016 social media post).

12. Roe's Non-Privileged Defamation included, but was not limited to, statements Roe made to her friends and/or fellow CCC students which generated at least 19 social media posts by various female CCC students in April of 2016. *Id.*, p.43-50. At least six of these posts referenced Doe by name in the following manner:

1. "I do not feel safe knowing I live in the same building as a rapist. [D]o something about [Doe]. *Id.*, p.46
2. "[DOE] FROM [XXX] AT PLYMOUTH RAPED SOMEONE. PASS IT ON." *Id.*
3. "[Doe] is a rapist and endangering all of Columbia's students, & he is still allowed to live here. Columbia is so disappointing." *Id.*, p.48
4. "[DOE] IS A LITERAL RAPIST WHO RECEIVED NO PUNISHMENT FOR WHAT HE DID HE NEEDS TO BE EXPELLED FROM THIS SCHOOL." *Id.*
5. @ColumbiaChi boasts of their forward-thinking policies, but is losing that reputation every minute that [Doe] exists in this school." *Id.*
6. "GET [DOE] OUT OF @ColumbiaChi. I will NOT go to school with a RAPIST." *Id.*

13. Roe's Non-Privileged Defamation included, but was not limited to, statements Roe made to a female friend who punched Doe in the face because Roe told this student that Doe sexually assaulted Roe. *Id.*, p.22 (containing Doe's March 16, 2016 letter to CCC's attorney).

14. Between February and July of 2016, Roe's Non-Privileged Defamation included, but was not limited to, disseminating false assault allegations to alumni of Doe's high school in California who were falsely told Doe had sexually assaulted Roe while attending CCC.

15. Roe's Non-Privileged Defamation included, but was not limited to, statements Roe made to friends and/or fellow CCC students who encountered Roe on March 16, 2016 and "flipped [Doe] off by giving [him] the middle finger" while they were in the presence of Roe.

Exhibit A1, p.26 (containing Doe's March 29, 2016 email to Asso. Dean Anderson discussing same).

16. As detailed below, CCC took no disciplinary actions against Roe or the aforementioned CCC students for retaliating against Doe's protected activities in defending himself against Roe's false allegations. Instead, CCC suspended Doe even though CCC knew Roe's allegations were false.

17. Upon information and belief, CCC's employees and/or agents involved in CCC's adjudication of Roe's sexual misconduct claims against Doe ("CCC's Adjudicators") knew Doe had not sexually assaulted Roe and that Roe had initiated and/or consented to all physical contact with Doe. Information supporting this belief includes, but is not limited to information contained in *Exhibits A, A1- A6*.

18. CCC's Adjudicators included, but were not limited to: (a) CCC's Associate Dean Dr. Beverly Anderson ("Anderson); (b) CCC's Title IX Deputy Coordinator & Health Educator Kristen Bauer ("Bauer"), (c) CCC's Deputy Title IX Coordinator Kelli Collins ("Collins"); (d) CCC's Director of Student Organizations and Leadership Sarah Shaaban ("Shaaban"); (e) CCC Associate Professor of Science and Mathematics, Elizabeth Davis-Berg ("Davis-Berg"); (f) CCC Library Dean Jan Chindlund ("Chindlund") who served on Doe's Hearing Panel along with (g) CCC Asst. Dir. Office of Student Employment Eric Wordlow ("Wordlow"); and (h) CCC Associate Professor Robert Blandford ("Blandford").

19. Moreover, beginning in February 2016, CCC engaged in a gender-biased investigation of Doe. In doing so, CCC violated Doe's rights under Title IX, and/or CCC's policies which include, but are not limited to: (a) CCC's Student Sexual Misconduct Policy & Procedures ("SMP); (b) CCC's Campus Violence Prevention Plan ("CVPP"); (c) CCC's Student

Code of Conduct ("COC"); and/or (d) CCC's Anti-Discrimination & Harassment Policy ("ADHP"). *See, Exhibit B* (containing SMP); *Exhibit C* (containing CVPP); *Exhibit D* (containing COC); *Exhibit E* (containing ADHP). These CCC policies and any other CCC policy applicable to Doe's disciplinary procedure are collectively referred to as "CCC's Policies" or "CCC Policies").

The Parties, Venue, and Jurisdiction

20. Doe is a male residing in California in San Francisco County. Doe graduated from high school in California where he worked diligently and developed a strong interest in film and video.

21. Setting his sights on a college education, Doe was excited to accept an offer to attend CCC due to its reputation as a top film school. Doe began his studies in the fall of 2015 and quickly became engaged in his film studies and the film community at CCC. At all times relevant Doe was qualified to be a student at CCC.

22. Doe was a student at CCC until CCC wrongfully found him responsible of sexual assault and unlawfully suspended him for the 2016-17 academic year.

23. Roe, upon information and belief, is currently a student at CCC.

24. On information and belief, CCC is an Illinois corporation with a principal place of operation located in Chicago, Illinois.

25. This action arises under Title IX of the Educational Amendments of 1972, 20 U.S.C. §1681, *et seq.*, and Illinois common law. This Court has jurisdiction over this action by virtue of federal question jurisdiction pursuant to 28 U.S.C. § 1331 and the protection of civil rights pursuant to 28 U.S.C. § 1343.

26. This Court has personal jurisdiction over Defendants because Defendants reside and/or conduct business within the State of Illinois.

27. Venue rests with this Court pursuant to 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claims occurred in its judicial district.

CCC's refusal to Remedy Roe's Retaliatory Violates Title IX and CCC's Policies

28. On or about March 13, 2016, Doe informed CCC that Doe was suffering retaliation at the hands of Roe and her friends after engaging in protected activities by defending himself against Roe's allegation. Specifically, Doe stated: "since I began assisting the College's investigation of [Roe's] allegations, I have been: (a) physically assaulted by [Roe's] friend who alleged I raped [Roe]; and (b) subjected to a widespread defamation campaign which includes but is not limited to the 'anonymous' letter in *Exhibit 1* (and) [Roe's] Twitter posting in *Exhibit 2*." *Exhibit A1,* p.1 (containing Doe's March 13, 2016 letter to Anderson, Bauer, Collins, and Shaaban ("Doe's Mar. 13, 2016 Letter")); *Id.,* p.10 (containing *Exhibit 1* of Doe's Mar. 13, 2016 Letter); *Id.,* p.11-13 (containing *Exhibit 2* of Doe's Mar. 13, 2016 Letter).

29. § VI of CCC's SMP states: "[i]t is a violation of this Policy and Title IX to retaliate in any way against an individual who has . . . assisted in the Grievance Procedures. Columbia will promptly investigate any allegation of retaliation and pursue disciplinary action as needed." *Exhibit B,* p.6.

30. CCC's attorney responded to Doe's Mar. 13, 2016 Letter with an email to Doe's attorney which suggested, among other things, that CCC had no knowledge of Doe being assaulted by one of Roe's female friends, despite the fact that Doe had promptly reported the attack to security. Doe sent CCC's attorney a letter on March 16, 2016 which stated in part:

> "Your request worried me because I already provided this information to a College security guard whom identified himself as Marco. In fact, when I told Marco about being punched in the face, he explained that he knew all about the allegations [Roe] was making against me." *Exhibit A1,* p.22 (containing Doe's March 16, 2016 letter to CCC's attorney).

31. On April 8, 2016, Doe sent CCC additional information about his attacker in ¶29 because no CCC employee contacted Doe regarding this assault, which was now being bragged about on social media. *Exhibit A1,* p.43. Specifically, Doe sent Anderson a social media post from a female CCC student which stated: "@coolandcozy one of my best friends punched [Doe] in the face. [I]t was immediately reported to the police and the dean. [I]sn't that cute." *Id.*

32. On or about April 11, 2016, over a month after the attack, CCC Associate Dean Wilson-Taylor finally responded by writing Doe a letter stating that CCC "was not able to identify the student who struck you right away", despite the fact that Doe had immediately reported the attack and the security guards with whom he spoke indicated that they knew the attacker. The letter continued to state that CCC Associate Dean Wilson-Taylor had: "addressed the issue with the female student and if she interacts with you in anyway please bring it to my attention." *Id.,* p.53 (containing CCC Associate Dean Wilson-Taylor's April 11, 2016 letter to Doe).

33. However, on information and belief, because of anti-male bias and/or internal and external pressure to provide preferential treatment to female students protesting sexual misconduct by male students, CCC did not discipline the female CCC student who struck Doe in the face in the same fashion CCC disciplines male students involved in similar conduct perpetrated on female students.

34. On or about March 13, 2016, Doe informed CCC that Roe's retaliation was forcing him to withdraw from CCC. Doe did so by stating: "[n]eedless to say, it is now

becoming impossible for me to focus on school. I am constantly looking over my shoulder for the next assailant (and) I worry about how to repay the money my parents are spending on an attorney to help defend me. As a result, I fear I may have no choice but to withdraw from school so I can: (a) seek medical treatment; (b) avoid a semester of poor grades caused by the despair I am experiencing after being falsely accused; (c) get a job to pay for my attorney; and (d) focus my attention on defending myself against these false allegations. *Exhibit A1,* p.1 (containing Doe's Mar, 13, 2016 Letter).

35. Then, on or about March 29, 2016, Doe sent an email to Anderson detailing additional retaliatory conduct by Roe and her friends. *Exhibit A1,* p.26 (containing Doe's March 29, 2016 email to Anderson). In that email, Roe wrote:

> ". . . . I wanted to let you know that on March 16th my girlfriend and I accidentally crossed paths with [Roe] and two of her friends. As soon as we saw them, we diverted ourselves to a different location. But, [Roe] and her friends intentionally waited until I looked their way. When I did, [Roe's] two friends flipped me off by giving me the middle finger. I fear this is yet another example of the retaliation I detailed in my earlier attached letter. And, I look forward to hearing how the college intends to address these issues." *Id.*

36. However, Anderson's April 4th and April 5th Letters to Doe did not respond to the retaliation concerns Doe raised with Anderson in his March 13th and March 29th letters. *See generally, Id.,* p.28-31 (containing Anderson's April 4th and April 5th Letters). Consequently, on April 8, 2016, Doe sent Anderson a letter that stated:

> "Your silence regarding these issues is concerning because the violations of the SMP's confidentiality and anti-retaliation provisions have only gotten worse as evidenced in the attached social media posts by various female College students who are falsely alleging I am a rapist. The aggressive nature of these posts appears so strong that the College's President and CEO Dr. Kwang-Wu Kim was pressured to responds in the attached social media post. Moreover, the attached email details how the *Columbia Chronicle* will be publishing an article on Friday that will likely falsely label me a rapist. After this happens, my safety will clearly be in jeopardy.

Although I could publicly defend myself by broadcasting the multiple reasons Roe's allegations are false, I have remained silent. I have also asked friends who are upset about the social media posts to not respond publicly. I took these steps because the College explicitly told me I was *not* to discuss the details of Roe's allegations with others. Evidently, the retaliation I am currently suffering proves: (a) the College never issued this mandate to [Roe]; or (b) if it did, the College is giving [Roe] a free pass to violate it. Either way, I am alarmed by the gender bias indifference the College is showing to my safety.

Sadly, your disinterest in remedying the aforementioned retaliatory behavior strongly suggests an unlawfully hostile and/or abusive environment exists at the College for male students. The Fourth Circuit's *Jennings* decision identifies such an environment as having the following four elements: (1) plaintiff was a student at an educational institution receiving federal funds, (2) he/she was subjected to harassment based on his/her sex, (3) the harassment was sufficiently severe or pervasive to create a hostile (or abusive) environment in an educational program or activity, and (4) there is a basis for imputing liability to the institution. *See e.g., Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007), en banc. *See also, Yusuf v. Vassar College*, 35 F.3d 709 (2nd Cir. 1994)(rejecting a motion to dismiss Title IX claim filed by a male student alleging he was falsely accused of sexual assault); *Zamora v. Jane Doe v. Erskine Coll*., 2006 U.S. Dist. LEXIS 35780, *32-38 (Greenwood Div., N.C. May 25, 2006)(rejecting a motion for summary judgment in a Title IX claim where "a jury issue" was created with regards to "whether [the college] was deliberately indifferent" to Title IX discrimination); *Doe v. Bd. of Educ*., 982 F. Supp. 2d 641, 652 (D. Md. 2012)(stating "severe or pervasive" harm can occur when Title IX plaintiff suffers "humiliat[ion] . . . serious anxiety, fear, or discomfort . . . .")(citations omitted); *Wells v. Xavier Univ.*, 7 F. Supp. 3d 746 (S.D. Ohio 2014)(rejecting a motion to dismiss Title IX claim filed by a male student alleging he was falsely accused of sexual assault); *Doe v. Salisbury Univ.,* Case No. JKB-14-3853, 2015 U.S. Dist. LEXIS 70982 (June 2, 2015)(same); *Washington & Lee*, 2015 U.S. Dist. LEXIS 102426,*25-26 Case No. 6:14-cv-00052, 2015 U.S. Dist. LEXIS 102426 (W.D. VA, Aug. 5, 2015)(same); *Doe v. Salisbury Univ.,* CIVIL NO. JKB-15-517, 2015 U.S. Dist. LEXIS 110772 (Aug. 21, 2015)(same).

In evaluating these types of claims, the Second Circuit Court of Appeals stressed the importance of reviewing ". . . . statements by pertinent university officials, or patterns of decision-making that also tend to show the influence of gender." *Yusuf v. Vassar* College, 35 F.3d 709, 715 (2nd Cir. 1994). Similarly, in *Rouse v. Duke University,* a North Carolina district court looked to the Title IX culture of a university in rejecting a motion to dismiss a Title IX claim. *Rouse v. Duke Univ*., 869 F. Supp. 2d 674, 684-85 (M.D.N.C., Apr. 5, 2012). The *Rouse* Court rejected Duke University's ("Duke") motion to dismiss a lawsuit because of Duke's mishandling of the plaintiff's allegations of rape by finding Duke's conduct could be interpreted as creating a "hostile educational environment based on gender . . . ." *Rouse v. Duke Univ*., 869 F. Supp. 2d 674, 684-85 (M.D.N.C.,

> Apr. 5, 2012). In doing so, *Rouse* relied on the plaintiff's allegations that Duke's conduct was part of Duke's culture of hostility towards students regarding sexual assault issues. *Id.*
>
> Here, your letters and the hostility I face [manifest] the unlawful conduct detailed in the court decisions detailed above. Moreover, I believe the issues detailed above chronical the College's violation of its promises and/or contracts contained in the College's various policies and procedures. And, I believe it is reasonable to expect a court to enforce these promises and/or contracts because courts regularly recognize the contractual nature of the student-university relationship particularly in the context of student discipline. *See, e.g., Atria v. Vanderbilt University*, 142 Fed. Appx. 246, 255 (6th Cir. 2005) ("[C]ourts have adopted different standards of review when educators' decisions are based upon disciplinary versus academic criteria—applying a more intrusive analysis of the former and a far more deferential examination of the latter."); *Ross v. Creighton University*, 957 F.2d 410, 416 (7th Cir. 1992) ("It is held generally in the United States that the basic legal relation between a student and a private university or college is contractual in nature. The catalogues, bulletins, circulars, and regulations of the institution made available to the matriculant become a part of the contract."); *Reichert v. Elizabethtown College*, No. 10-2248, 2012 WL 1205158, *14 (ED. Pa Apr. 10, 2012) ("The relationship between a private college and its students is contractual in nature."); *Gundlach v. Reinstein*, 924 F. Supp. 684, 688 (E.D. Pa. 1996) ("[A] student may bring a contract action to enforce the specific promises made by his university.")" *Id.*, p.40-42 (containing Doe's April 8, 2016 letter to Anderson).

37. The 19 social media posts by various female CCC students referenced in Doe's April 8, 2016 letter to Anderson included six posts detailed in ¶11 which referenced Doe by name.

38. CCC's College's President and CEO Dr. Kwang-Wu Kim's response to the social media posts in ¶11 – which Doe's April 8, 2016 letter to Anderson referenced – stated: "@hihelloemma Columbia takes this seriously & it's currently under investigation. If you have further concerns, please DM @ColumbiaChi." *Id.*, p.49.

39. The *Columbia Chronicle* article - which Doe's April 8, 2016 letter to Anderson referenced – involved an email Doe received from a *Columbia Chronicle* reporter which stated:

> "The Chronicle recently became aware of an alleged sexual assault on campus through Twitter. In several tweets, you were named as the alleged offender. In

> ensuring our reporting covers all sides of the issue we wanted to give you the opportunity to make a comment regarding what has been said on social media. We can provide you anonymity and will not print your name. We go to print on Friday, so I would need to know if you are willing to do an interview by Friday morning." *Id.,* p.51.

In continued compliance with the SMP's requirement of confidentiality, Doe turned down the opportunity to publicly defend himself in the *Columbia Chronicle* article, despite Roe and her friends' lack of similar compliance.

40. On or about April 22, 2016, Doe informed Anderson of additional retaliatory conduct he was suffering. Specifically, Doe informed Anderson that a fellow CCC student sent threating text messages to Doe's wife[3] which stated Doe was a "rapist" who was "lucky he [still] has his teeth." *Exhibit A1,* p.57 (containing Doe's April 22, 2016 letter to Anderson); *Id.,* p.63-64 (containing the text message Doe's wife received from a CCC student regarding Doe's alleged rape of Roe).

41. On or about April 25, 2016, CCC Associate Dean Wilson-Taylor wrote Doe a letter stating CCC had spoken to the student who sent the threatening text messages to Doe's wife and "informed him that is not to have any contact with" Doe or his wife. *Id.,* p.67 (containing CCC Associate Dean Wilson Taylor's April 25, 2016 letter to Doe). But, despite requests by Doe and his wife for CCC to stop Title IX retaliation against Doe's wife, CCC allowed this retaliation to continue. For example, Doe's wife attended a Theater Foundations class with Roe. CCC did not permit Doe's wife to switch to another classes after Roe and other CCC students began retaliating against Doe's wife because of Doe's protected activities. This retaliation included, but was not limited to, Doe's wife being denied academic accommodations in a class she had with Roe while Roe received accommodations, and social media posts such as:

[3] It should be noted Doe began dating – and later married his wife - after Doe's December 11, 2015 encounter with Roe.

"@[Doe's wife name]fight me."

42. The aforementioned CCC students' physical threats on Doe and his wife and/or social media posts were taken because Doe engaged in protected activities by defending himself against Roe's false allegations. Yet, upon information and belief, anti-male bias and/or internal and external pressure to provide preferential treatment to students protesting sexual misconduct by male students, caused CCC to not discipline these students. Information supporting this belief includes, but is not limited to CCC's refusal to respond to Doe's April 22, 2016, letter to Anderson which stated:

> " . . . . the College has provided no evidence suggesting the students who are inflicting this physical and emotional abuse have been disciplined for violating College policies and/or Title IX's anti-retaliation provisions. As a result, . . . I request the College immediately initiate disciplinary procedures against these College students . . . ." *Exhibit A1,* p.57 (containing Doe's April 22, 2016 letter to Anderson) (internal footnote omitted).

43. Additional rationale supporting Doe's belief that CCC refused to protect Doe from Title IX retaliation from fellow CCC students includes, but is not limited to, the following quotation from Doe's April 29, 2016 letter to CCC's Deputy Title IX Coordinator Collins:

> "On April 22, 2016, you sent an email to my step-mother Julianne that stated, among other things:
>
> > 'I want to ensure you that the College takes seriously any allegation from any student that he or she feels uncomfortable or unsafe on campus. In light of [Doe's] specific concerns, we have put him in touch with Ron Sodini, the College's Associate Vice President of Safety & Security. I understand that Mr. Sodini and [Doe] met twice within the last week. [Doe] has Mr. Sodini's direct contact information and he should not hesitate to reach out to Mr. Sodini if he has any additional safety concerns or questions.'
>
> While my family and I thank you for your email, it appears to provide further evidence of the College's decision not to discipline students who engaged in Title IX retaliation by physically and/or verbally attacking me. I make this observation because the College appears to be ignoring my repeated requests that these students be subjected to disciplinary procedures . . . my step-mother reiterated

these concerns in her email of April 25, 2016, in which she stated, among other things:

> 'The meetings with security came weeks after we began reporting the retaliatory behavior, and are wholly inadequate if the college fails to discipline those who have physically attacked, threatened, and defamed [Doe]. As we understood, the only action the college has taken was that Dr. Wilson-Taylor "addressed the issue" with the female student that struck [Doe] in the face. We have no assurance that the female student was even disciplined for this. Moreover, it took the college over a month to let us know that the matter had been "addressed" despite the fact that [Doe] immediately reported the incident to security when it occurred, and the security guards told him that they knew the perpetrator. We have received no information regarding the college's actions to discipline the students who have threatened and defamed [Doe], or to prevent such incidents from occurring again.'

On April 28, 2016, you responded to my step-mother's April 25, 2016 email with the following:

> 'Please be assured that any safety issues or concerns that [Doe] brought to the College's attention have been addressed by Campus Safety and Security and the Dean of Students. Dr. Sharon Wilson-Taylor reached out to [Doe] yesterday.'

Again, while we thank you for your response, it appears to be yet another attempt by the College to create the illusion that you are taking appropriate action with respect to my safety concerns when you are not. Most significantly, your continued use of the word "address" to explain the actions you have taken with the students who have physically attacked, threatened and defamed me seems to be a deliberate attempt to avoid responding to my specific requests that disciplinary procedures be initiated against them, in accordance with Title IX and the College's own policies. Furthermore, Dr. Sharon Wilson-Taylor did not reach out to me on April 28, 2016 as your email suggests. I have not heard from Dr. Sharon Wilson-Taylor since her April 11, 2016 letter telling me that she had "addressed the issue" with the female student who struck me in the face on March 9, 2016.

To date, nobody from the College has suggested in any way the students who physically and/or verbally attacked me have been subjected to any discipline whatsoever. Therefore, I request you initiate these disciplinary proceedings immediately and/or inform me when such disciplinary proceedings will be initiated. If you need any assistance from me – such as copies of my communications with Dean Anderson – please let me know. I thank you in advance for your assistance with these matters." *Id.*, p.72-73 (containing Doe's April 29, 2016 letter to Collins).

44. Upon information and belief, CCC never questioned or disciplined Roe for either: (a) violating CCC's no-contact order with Doe by instigating fellow CCC students to take retaliatory actions against Doe; or (b) disclosing confidential information related to CCC's disciplinary process against Doe to third parties with no involvement in Doe's disciplinary proceeding. Information supporting this belief includes, but is not limited to, the fact that CCC never informed Doe that Roe received a letter like Anderson's May 4, 2016 letter to Doe which demanded Doe meet with Anderson to address allegations: "that [Doe] and another male made 'kissing noises' at [Roe] as she was leaving" a campus building on May 3, 2016. *Id.,* p.82 (containing Anderson's May 4, 2016 letter to Doe).

CCC's Disciplinary Proceeding Violated Doe's Rights under CCC's Policies and/or Title IX

45. As detailed more fully below, Doe repeatedly put CCC on notice that CCC's disciplinary proceeding violated Doe's rights under Title IX and/or CCC's Policies. For example, on March 13, 2016, Doe informed CCC that it had violated CCC's Policies such as:

1. SMP § XIV(C)(1) which states: ". . . . the Coordinator shall . . . serve the . . . Respondent with written notification that an Actionable claim has been filed, a description of the type of Sexual Misconduct alleged (the 'Charge'), and the Investigator's name." *Exhibit A1,* p.1-2 (containing Doe's Mar. 13, 2016 Letter discussing how CCC denied Doe his rights under SMP § XIV(C)(1); *Exhibit B,* p.19 (containing SMP § XIV(C)(1));

2. CCC's SMP § XIV(C)(2) which mandates that: "[a]fter issuing a Charge, the Coordinator shall meet . . . the Respondent to apprise [him] of [his] rights under this Policy and to . . . provide . . . notice of the types of information that likely will be disclosed during the investigation, the recipients of this information, and the reasons for any disclosures." *Exhibit A1,* p.1-2 (containing Doe's Mar. 13,

2016 Letter discussing how CCC denied Doe his rights under SMP § XIV(C)(2); *Exhibit B,* p.20 (containing SMP § XIV(C)(2));

3. CCC's SMP § XIV(B)(2) which required Roe's complaint against Doe be: "as specific as possible, providing . . . . a chronology of the relevant events, detailing dates, places, and times; a description of the offending behavior; the names of any witnesses to the behavior or persons with knowledge of the behavior, and a requested remedy, if applicable." *Exhibit A1,* p.1-2 (containing Doe's Mar. 13, 2016 Letter discussing how CCC denied Doe his rights under SMP § XIV(B)(2)); *Exhibit B,* p.18 (containing SMP § XIV(B)(2));

4. CCC's SMP § XI which gave Doe the right to review Roe's "complaint" by stating "Complainants should be aware of Respondent's rights under FERPA to request to review information about the Sexual Harassment allegation if the information directly relates to the Respondent and the information is maintained by the College as an education record . . . ."). *Exhibit A1,* p.2 (containing Doe's Mar. 13, 2016 Letter discussing how CCC denied Doe his rights under SMP § XI); *Exhibit B,* p.11 (containing SMP § XI); and

5. CCC's SMP §1 XII which stated CCC: "shall complete an adequate, reliable, and impartial investigation . . . ." *Exhibit A1,* p.2 (containing Doe's Mar. 13, 2016 Letter discussing how CCC denied Doe his rights under SMP § XII); *Exhibit B,* p.11 (containing SMP § XII).

46. In response, on or about April 19, 2016, Anderson informed Doe that CCC "designed its Policy to comply with rules and regulations issued by the Department of Education's Office of Civil Rights ('OCR')." *Exhibit A1,* p.55 (containing Anderson's April 19, 2016 letter to Doe). For example, Anderson informed Doe that CCC's adjudication of sexual misconduct allegations are governed by: (a) OCR's "2011 Dear College Letter; and (b) OCR's "April 29th, 2014 Questions and Answers on Title IX and Sexual Violence." *Id.,* p.66 (containing Anderson's April 22, 2016 letter to Doe).

47. Anderson's statements in ¶45 are confirmed in part by CCC's SMP §1 which

warranted CCC's "commit[ment] to . . . implementing regulations ("Title IX") prohibit[ing] discrimination on the basis of sex in education programs or activities." Therefore, CCC promised to honor OCR regulations which include, but are not limited to:

a) "Public and state-supported schools must provide due process to the alleged perpetrator" *U.S. Dep*'t Of Education Office of Civil Rights, *Dear Colleague Letter,* (Apr. 4. 2011); http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html accessed 1/4/17).

b) The College must employ "[p]rocedures that . . . will lead to sound and supportable decisions." *U.S. Dep*'t Of Education Office of Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students By School Employees, Other Students, or Third Parties* (Jan. 2001); http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf accessed 1/4/17); and

c) "Investigations must be adequate, reliable and impartial, including the opportunity for both parties to present witnesses and other evidence." *Id.*[4]

48. CCC violated the Title IX mandates and CCC Policies provisions referenced in ¶¶45-46 in part because on March 10, 2016, CCC completed its "investigation" and scheduled a disciplinary "hearing" *before* CCC: (a) told Doe exactly what allegations Roe been made against him; or (b) allowed Doe to see Roe's complaint against Doe. *See generally, Exhibit A1,* p.1-2 (discussing same). Instead, Doe received a phone call from CCC employee Kelly Collins requesting Doe schedule a meeting with Shaaban. Doe asked Ms. Collins what the meeting was about. In response, Ms. Collins stated: "you don't know yet? I'll let Ms. Shaaban inform you." When Doe arrived at this meeting, Shaaban introduced herself as CCC's Title IX Coordinator. In doing so, Shaaban provided Doe false information because Anderson is CCC's Title IX Coordinator. Shaaban then told Doe that he had "been accused of sexual misconduct" regarding his interactions with Roe, but Shaaban rejected Doe's requests for information about what Roe

[4] *Exhibit 1A,* p.2 (containing Roe's Mar. 13 2016 Letter discussing how CCC denied Doe his rights under SMP §1 and OCR mandates); *Exhibit B,* p.1 (containing SMP §1).

had accused him of doing. On March 13, 2016, Doe informed CCC that his rights under SMP §XIV(A)(3) had been violated. *Exhibit A1,* p.2 (containing Doe's Mar. 13, 2016 Letter discussing how CCC denied Doe his rights under SMP § XIV(A)(3)). SMP §XIV(A)(3) states: "[e]xcept as otherwise specifically provided herein, all notices or communications due under this Policy shall be in writing and mailed or emailed to the respective addresses set forth in this Policy or provided in person to the required individual or over the phone directly to the required individual." *Exhibit B,* p.15 (containing SMP § XIV(A)(3)).

49. CCC violated SMP §XIV(A)(3) in part because by March 10, 2016 - the date CCC completed its "investigation" and scheduled a disciplinary "hearing" - CCC had only provided Doe the following three written communications:

1. A February 25, 2016 email from an administrative assistant that asked Doe to schedule a meeting with Anderson;

2. A letter Anderson provided Doe on or about February 25, 2016 which prohibited Doe from entering certain CCC buildings, required he immediately vacate his CCC dorm room, and not engage in any retaliatory actions with regard to Roe; and

3. A March 11, 2016 email that contained a March 10, 2016 letter which stated in part: "you may have violated the College's Sexual Misconduct Policy . . . [Asso. Dean] Anderson reviewed the Investigation Report . . . and determined that a reasonable Hearing Panel could conclude that . . . . [Doe] violated the College's Sexual Misconduct Policy . . . [a]ccordingly, the College will hold a hearing on this matter . . . ." *Exhibit A1,* p.2 (containing Doe's Mar. 13, 2016 Letter discussing CCC's pre-March 10, 2016 communications with Doe). *Id.,* p.17-18 (containing February 25, 2016 email from an administrative-assistant to Doe asking Doe to schedule a meeting with Anderson). *Id.,* p.14-16 (containing a March 11, 2016 email and March 10, 2016 letter to Doe related to CCC's investigation and scheduled hearing).

50. CCC's decision to jump from Doe's initial meeting with Shaaban to an "Investigation Report" and "Hearing" violated at least the following four components of the SMP under which Doe could have mitigated gender bias and/or advanced evidence of his

innocence:

1. Doe was denied his right to raise conflict of interest and/or bias concerns regarding CCC's "investigator" in part because the CCC provided Doe neither: (a) a written document identifying the "investigator"; nor (b) notice that Doe had three days to raise conflict of interest and/or bias concerns. *See, SMP §XIV(A)(2)* (stating: "[the Respondent . . . shall inform the Coordinator of any perceived conflicts with the investigator, hearing panelists, or appeals officer within three (3) days after receiving notice of such assignments.");

2. CCC violated its obligation to "broadly examine all relevant facts and circumstances of a claim" and provide Doe a "timeframe for submitting relevant evidence and identifying witnesses." *See generally, SMP § XIV(C)(3)* (stating: " . . . . the assigned Investigator *will* broadly examine all relevant facts and . . . *shall* meet with each party individually to *schedule a timeframe for submitting relevant evidence and identifying witnesses*) (emphasis added).

3. CCC did not comply with the SMP's mandate that Doe be provided "a copy of the opposing party's submissions and a standard amount of time to issue a response." *See, SMP § XIV(C)(3)*; and

4. CCC did not comply with SMP's requirement that, "[d]uring the fact gathering stage, the Coordinator shall provide . . . Respondent with periodic updates of the status of the investigation." *See, SMP § XIV(C)(3). See also, Exhibit A1*, p.5-6 (containing Doe's Mar. 13, 2016 Letter discussing how CCC denied Doe his rights detailed in items 1-4).

51. After repeatedly exposing CCC's violations of CCC's policies, Anderson finally answered some of Doe's questions in Anderson's April 4th and 5th Letters. *Exhibit A1,* pgs. 28-31 (containing Anderson's April 4th and 5th Letters). In these communications, Anderson stated that CCC had appointed Shaaban as CCC's investigator on February 3, 2016. *Id.*, p.29.

52. Since Doe had only briefly spoken to Shaaban prior to her decision to issue the investigative report that triggered CCC's Hearing Panel (despite Shaaban's assurances during such meeting that there would be an opportunity to follow up and present additional evidence), Doe asked Anderson the following question: "can I present evidence of my innocence to Ms. Shaaban for inclusion and/or evaluation in her report and if so what is the deadline for me to do

so?" *Exhibit A1*, p.33 (containing Doe's April 8, 2016 letter to Anderson). Anderson responded to Doe's request by asking Doe to "help" Anderson "understand" why Doe wanted to present evidence and what kind of evidence he wished to present since Shaaban had previously spoken with Doe. *Id.*, p.54 (containing Anderson's April 19, 2016 letter to Doe). Doe replied:

> " . . . . until I received your April 4, 2016 letter, nobody at the College provided me the specifics of [Roe's] false allegations against me. And, as you may recall, Ms. Shaaban interrogated me prior to April 4, 2016. Therefore, now that I finally know the specifics of [Roe's] false allegations, I wish to make a written statement regarding these allegations (and) any other false information I obtain in reviewing the College's file." *Id.*, p.33 (containing Doe's April 8, 2016 letter to Anderson).

53. On or about April 22, 2016, Anderson gave Doe permission to submit additional evidence to Shaaban. *Id.*, p. 65 (containing Anderson's April 22, 2016 letter to Doe). Anderson also promised that Shaaban would then "resubmit her Investigation Report (making any necessary modifications in light of newly-submitted evidence). . . ." *Id.* Doe responded on April 25, 2016 by sending Anderson and Shaaban the following information:

> "As I explained during my initial interrogation by Ms. Shaaban, I encountered [Roe] on December 11, 2015 at a 'Bob's Burger' gathering in my old dorm where [Roe] and I talked and eventually kissed. I asked [Roe] if she wanted to go to my room and she said yes. When we arrived at my dorm room we encountered Simon [] and a few other students. I believe Ms. Shaaban should interview Simon as a witness because he has information about December 11th and one additional interaction between [Roe] and me after December 11th. Simon's phone number is [(xxx)-xxx-xxxx].
>
> After spending a few minutes talking with Simon and the others on December 11th, [Roe] suggested we go into my bedroom and I agreed. Once in my bedroom, [Roe] and I continued talking and kissing. During our conversation, [Roe] expressed a desire to go further than just kissing but she thought I might find her naked body unattractive. In response, we discussed my belief that people put too much emphasis on body image issues. [Roe] agreed and after some discussion she asked me to take off her clothing and get undressed myself. Once we were both naked, we started kissing again. But, our kissing was interrupted by my friend Zach [] who wanted me sign him out of the dorm. I believe Ms. Shaaban should interview Zach. His phone number is [(xxx)-xxx-xxxx].

After hearing from Zach, I told [Roe] I would be back soon, got dressed, and met up with Zach. But, Zach and I ended up playing a few games of pool in the lobby before he left my dorm. Then, I returned to my room and found [Roe] sleeping. After getting back into bed, a group of students started making noise and woke [Roe] up. When [Roe] woke up, she started kissing me again and ultimately requested I perform oral sex on her which I did. After that, [Roe] started rubbing my penis with her hand and suggested I get a condom so we could have sexual intercourse. Since we had just met, I thought it was too early to have sexual intercourse so I declined [Roe's] offer by claiming I did not want to have sex because it might wake up my roommate Justin [] who was sleeping very close to [Roe] and I. I believe Ms. Shaaban should interview Justin. His phone number is [(xxx)-xxx-xxxx].

Although [Roe] and I continued to kiss and talk for a few more minutes, I believe I hurt her feelings by declining her offer to have sexual intercourse. This is because about 10 minutes after I declined this offer, [Roe] said she wanted to go back to her room. I said that was fine, we kissed goodbye, and she left my room. As result, I was shocked to be informed in my meeting with Ms. Shaaban that [Roe] was accusing me of sexual assault, and even more shocked to receive your April 4, 2016 letter which states [Roe] alleges that without her consent I: (a) took off her clothes, (b) touched her 'genital area and rear end, oral sex, putting [Roe's] hand on [my] genital area (or attempting to do so)'; (c) 'physically [held [Roe] down and prevent[ed] her from leaving the room;'and (d) 'ignored [Roe's] repeated requests for the sexual interaction to stop.'

None of these allegations are true in part because [Roe] initiated or verbally consented to all physical interactions with me on December 11, 2016. And, [Roe] did so when she was not manifesting any signs of alcohol and/or drug induced incapacitation. Moreover, [Roe] never told me [to] 'stop' engaging in any conduct (and) our physical interaction did not include any type of sexual intercourse. Finally, I never exhibited any type of physical or verbal pressure on [Roe] to remain in my bedroom on December 11th. In fact, I left the room myself for an extended period of time while playing pool with Zach, and [Roe] chose to stay and wait for me to return.

I do not know if [Roe] is alleging her voluntary consumption of alcohol and/or drugs had anything to do with her actions on December 11th. But, if she is, I believe Ms. Shaaban should interview individuals who observed [Roe] on December 11th. This is because I believe these individuals would testify [Roe] exhibited none of the following signs of incapacitation: stumbling, loss of equilibrium, slurred speech or word confusion, vomiting, disoriented/confused as to time, place, and/or manifesting a loss of consciousness. Therefore, if alcohol and/or drugs has anything to do with [Roe's] allegation against me, I request Ms. Shaaban interview Simon and the following students who I believe observed [Roe] on December 11th: Michael [], Connor [], Joe [], Malhaar [], and Gabe [] . . .

> As my March 13th, March 29th, April 8th, and April 22nd letters to you suggest, I have spent many a sleepless night trying to figure out why [Roe] and her friends want to destroy my life by falsely accusing me of sexual assault. Although I will probably never know for sure what motivated this hatred, I believe Ms. Shaaban will find a partial answer in Reggie D. Yager's attached academic paper entitled *What's Missing From Sexual Assault Prevention and Response*. Mr. Yager's paper reviews multiple academic studies regarding sexual assault and suggests the data indicates a high percentage of false allegations stemming from things like retribution for a real or perceived wrong, rejection or betrayal. *See e.g.,* Reggie D. Yager, *What's Missing From Sexual Assault Prevention and Response,* (April 22, 2015) http: ssrn.com/abstract=2697788.
>
> That being said, the hostility and retaliation I have been suffered at the hands of [Roe] and her friends has become unbearable. As detailed in my previous letters, this hostility has included physical and verbal abuse that has left me unable focus on school. I am constantly worried about being physically attacked or defamed in social media or the College's newspaper. And, even though I am innocent, I once again reiterate that I would be willing to withdraw from the College and promise never to reapply provided the following occur: (a) the College warrants that any and all references to [Roe's] allegations will be removed from my official file at the College; (b) the College agrees my transcript will show I withdrew from my classes this semester without receiving a grade in those classes; (c) the College warrants that in response to any third-party inquiries about me, it will state that I "withdrew in good standing" from the College; and (d) [Roe] agrees items a-c satisfy the 'informal' dispute resolution provisions of the College's Sexual Misconduct Policy ('SMP').
>
> I understand that the College has rejected this proposal, but I respectfully request that you reconsider as I believe that this resolution would be preferable for all parties to the alternative. If [Roe] and/or the College reject this proposal – and I am later found responsible - I will have no alternative but to file a lawsuit to: (a) clear my name, (b) remedy the Title IX concerns discussed above; (c) address violations of my contractual and/or quasi-contract rights under the College's policies; and/or (d) seek damages from those that defamed me and/or engaged in the aforementioned hostility and retaliation. Therefore, I once again implore you to help me put this nightmare behind me as quickly as possible and accept my offer to address these issues via the SMP's 'informal' resolution process." *Id.*, p.68-70 (containing Doe's April 25, 2016 letter to Anderson and Shaaban).

54. Doe sent the letter in ¶53 in part in an attempt to overcome barriers CCC repeatedly erected to prohibit Doe's ability to defend himself by withholding information regarding what specific provision of CCC's SMP he was being charged with. Doe first

requested this information on March 13, 2016. *Exhibit A1,* p.3-4 (containing Doe's Mar. 13, 2016 Letter). But, Anderson's April 4th and 5th Letters provided no response. So, on April 8, 2016 Doe sent Anderson a letter asking: "can you please explicitly detail all provisions of the SMP that I am alleged to have violated so I can properly defend myself? If you will not do so, can you please tell me why you will not do so?" *Exhibit A1,* p.33 (containing Doe's April 8, 2016 letter to Anderson).

55. CCC also rejected Doe's requests to disclose information that CCC's "Coordinator" prohibited the Hearing Panel from receiving because the "Coordinator" deemed the "material" to be "unduly prejudicial (compared to its probative value), immaterial, irrelevant, or are the Investigator's opinion." *See e.g., Exhibit A1,* p.7, p.35 (containing Doe's Mar. 13, 2016 Letter requesting "a log that: (a) briefly summarizes what material was removed; (b) who reviewed this material; and (c) why the Coordinator believed the material was unduly prejudicial (compared to its probative value), immaterial, [or] irrelevant . . . .") (quoting SMP §XIV (D)(3)); *Exhibit B,* p.21 (containing §XIV (D)(3)).

56. Instead of providing the "log" Doe requested, Anderson's April 4th and April 5th offered to "note any redactions on the investigative file." *Id.,* p.29. Thus, on April 8, 2016, Doe wrote a letter to Anderson stating:

> " . . . did [Roe] seek medical treatment - and if she did - will I be given access to any medical records related to this treatment? I request access to these records and/or physical evidence because it is highly relevant to my defenses. For example, if [Roe] alleges she was incapacitated, hospital records would likely contain blood alcohol tests. This is likely why the SMP directed "students alleging they were sexually assaulted" collect preserve evidence and seek medical care." (discussing *SMP* § IV (A)-(C) . . . ."
>
> "is the College rejecting my request that if materials are redacted it would provide a log that: (a) briefly summarized what material was removed; (b) who reviewed this material; and (c) why the Coordinator believed the material was unduly prejudicial (compared to its probative value), immaterial, [or] irrelevant? If the

> College is rejecting this request, can you please detail why?" *Id.,* p.35-36 (containing Doe's April 8, 2016 letter to Anderson).

57. On April 19, 2016, Anderson rejected Doe's requests regarding the aforementioned log. *Id.,* p.55. Instead, Anderson alleged CCC's investigative file ***might*** answer questions about whether Roe received any medical treatment related to her allegations against Doe. *See generally, Id.,* p.55 (containing Anderson's April 19, 2016 letter to Doe discussing Doe's ability to review CCC's investigative file); *Id.,* p.59 (containing Doe's April 22, 2016 letter to Anderson which addresses Anderson's April 19, 2016 letter). Anderson also alleged that as of May 3, 2016, CCC only redacted Roe's CCC identification number and email from CCC's investigatory file. *Id.,* p.80 (containing Anderson's May 3, 2016 letter to Doe).

58. Regarding Doe's ability to review CCC's investigative file, CCC repeatedly erected road blocks which were addressed in Doe's May 10, 2016 letter which stated:

> "Thank you for your letter dated May 9, 2016. However, I was a bit puzzled as to your assertion that the College has never denied access to the investigation materials' while at the same time continuing to send me in circles regarding a specific date and time that I can review the materials.
>
> To review our past communication on this topic, I first requested to review the investigation materials in my April 8, 2016 letter, and reiterated this request in my April 22, April 27 and May 8 communications. My April 8, 2016 letter also proposed some dates and times that I could review the materials. I never received a response regarding those proposed dates, but your April 19, 2016 letter indicated that I would be able to review the investigation materials, and requested that I 'advise regarding times and dates that are good for [me].' I responded in my April 22, 2016 letter with a proposal, but once again my proposal was simply ignored, and then in your April 27, 2016 letter you indicated that I would be able to review the materials only after the notice of hearing was issued. Thus, you can understand my impression that although you keep telling me I will be able to review the materials, your refusal to respond to my proposals for specific dates and times makes me feel very much that I have been denied access to them.
>
> My impression that I am being sent in circles on this question was reinforced by your letter yesterday. My May 8, 2016 letter requested that you provide 'some dates and times when I can review' the investigative materials, but instead of providing possible dates and times, you simply posed the same question back to

> me. However, in case this is just a miscommunication, I would like to reiterate that I am available to review the investigation materials at your earliest convenience, or more specifically, any day this week upon reasonable notice. However, I would also like to reiterate my request (made in my April 8, April 22, April 27 and May 8 letters) that prior to my coming in to review the investigative materials, you inform me of any limitations on my ability to copy or make notes of the materials, so that I am properly prepared when I come in to review them." *Id.*, p.91 (containing Doe's May 10, 2016 letter to Anderson).

59. CCC finally provided Doe access to CCC's investigatory file on or about May 12, 2016. *Id.*, p.93 (containing Doe's May 12, 2016 email to Anderson). But, even though Shaaban said "she'd provide [Doe] with her interview notes" taken before she completed her investigative report, Doe was not provided Shaaban's notes. *Id.* In addition, CCC did not provide Doe a copy of his statement to Shaaban. *Id.*

60. When Doe reviewed CCC's file regarding his disciplinary proceeding, he saw no documents evidenced Roe's receipt of medical treatment related to her allegations against Doe. Therefore, upon information and belief, CCC removed exculpatory information from CCC's investigative file which would have undermined Roe's allegations against Doe without informing Doe that this material had been removed. Information supporting this belief includes, but is not limited to: (a) Roe's Hearing Panel testimony that Roe received medical treatment related to her assault allegations which resulted in her allegedly being diagnosed with "PTSD"; and (b) CCC refused to honor Shaaban's promise in ¶59 that Doe would be able to review Shaaban's interview notes of witnesses

61. On or about May 15, 2016, Doe sent Anderson a letter which raised the following four questions regarding Doe's upcoming disciplinary hearing:

> [First], on or before May 18, 2016, I request you confirm the hearing panel will receive the documents attached in Exhibits [found in Complaint Exhibit A1, pgs.95-128] which contain (1) text messages between myself and [Roe] which Ms. Shaaban states were attached to her report but were actually omitted; (2) my April 25th written statement; and (3) the toxicologist report generated by Dr.

> Lage. If any of these exhibits will not be provided to the hearing panel, I request the College inform me of its rationale for prohibiting the hearing panel from receiving the exhibits.
>
> [Second], on or before May 18, 2016, I request the College confirm Dr. Lage will be permitted to testify via phone at my upcoming hearing. [Third], on or before May 18, 2016, I request the College confirm the College will not be presenting the hearing panel with any documentation other than the materials in attached Exhibits 1-4 . . .
>
> If you have any questions or concerns, please contact me anytime. I thank you in advance for your assistance with these matters. *Id.*, p.94-128 (containing Doe's May 15, 2016 letter to Anderson and the letter's exhibits).

62. Hearing Panel Members Chindlund, Wordlow, and Baldford conducted Doe's disciplinary hearing on May 23, 2016. Anderson and CCC's attorney also attended the hearing. Roe and her advisor attended the hearing via a Skype connection which everyone in the room could watch except Doe and his advisor.

63. After the hearing, the Hearing Panel found the preponderance of evidence proved Roe ***falsely*** alleged: (a) Doe "physically held" Roe "down and prevent[ed] her from leaving [Doe's] room"; and (b) Doe forced Roe to engage in "non-consensual kissing." *See, Id,* p.140 (containing the Hearing Panel's findings). Nevertheless, the Hearing Panel found Doe "responsible" for sexually assaulting Roe after alleging her testimony was more "credible" than Doe's testimony. *Id.*, p.139-145 (containing the Hearing Panel Decision).

64. As a result, on or about June 7, 2016, Anderson sent Doe a letter which stated in relevant part:

> "In light of the Panel's determination . . . you are suspended for the 2016-2017 Academic Year. You are also prohibited from attending any College sponsored events on or off campus during this time. While you may re-enroll after this upcoming academic year, you will remain barred from living in a College residence hall.
>
> If you chose, to appeal the panel's finding or the above sanctions, you must do so within ten days of receipt of this letter (or within ten days of receipt of a recording

of the Hearing . . . ." *Id.*, p.146 (containing Anderson's June 7, 2016 letter to Doe).

65. On or about June 23, after reviewing the Hearing audio detailed in ¶64, Doe filed the following timely appeal:

A. Introduction

As detailed below, I never assaulted [Roe] in any way. As a result, I believed the College would clear my name because the College's Sexual Misconduct Policy ('SMP') guaranteed me an 'adequate, reliable, and impartial investigation. . . .' *See e.g., Exhibit 1,* pgs.2-3 (quoting SMP§ XII). Instead, the College subjected me to an inadequate, unreliable, and biased investigation which resulted in my unlawful discipline.

Evidence of the College's violations of my SMP and Title IX rights include the fact that the preponderance of the evidence points to only one reliable conclusion - that [Roe's] allegations against me are false. For example, the evidence of my innocence includes the following six pieces of undisputed evidence:

1. The hearing panel members ("Hearing Panel") determined [Roe] dishonestly alleged that I "physically held" her "down and prevent[ed] her from leaving [my] room"; *[Complaint] Exhibit [A]1,* p.140 (containing the Hearing Panel's findings);

2. The Hearing Panel agreed [Roe's] allegations that I forced her to engage in "non-consensual kissing" were false; *Id.*;

3. Despite [Roe's] allegations to the contrary,[5] a polygraph expert determined: (1) I did *not* force [Roe] to perform oral sex on me; (2) [Roe] did *not* push my head away when I performed oral sex on her; and (3) [Roe] did *not* appear to me to be under the influence of alcohol or drugs. *[Complaint] Exhibit [A]2* (containing Polygraph report presented to Hearing Panel);

[5] The footnote which appeared in this location in Doe's Appeal stated: "*[Complaint] Exhibit [A]1,* p.133 (containing College Investigator Sarah Shaaban's ("Investigator Shaaban") report which states [Roe] alleged – on one hand – that her voluntary consumption of alcohol caused her fade "in and out of consciousness" and caused her to experience "long [periods of] time where she doesn't remember" what happened. But on the other hand, [Roe] alleged remembering that: "Respondent 'pushed her down' and made her give him oral sex. She then stated he gave her oral sex and that she was trying to push him away . . . [s]he stated [when he was forcing her to perform oral sex] she kept trying to push him away and he pushed her head back down on his penis . . . [s]he also mentioned she had bruises on both shoulders . . . [s]he believed the bruises . . . were from him holding her down.").

4. Dr. Gary Lage - a toxicologist expert - proved [Roe] falsely claimed she was so incapacitated that she was fading "in and out of consciousness." *Compare, [Complaint] Exhibit [A]1,* p.100-104 (containing report of toxicologist expert Dr. Gary Lage) with *Id.,* p.133 (containing [Roe's] statements about fading "in and out of consciousness.");

5. Three students provided sworn affidavits stating [Roe] did not manifest signs of incapacitation when they observed her shortly before she claims alcohol caused her to fade "in and out of consciousness." *See generally, [Complaint] Exhibit [A]3* (containing said affidavits which were presented to Hearing Panel); and

6. [Roe] repeatedly provided contradictory testimony which included, but was not limited to:

    a. On one hand, telling the Hearing Panel that she felt her "responses [to me] were unclear or very passive . . . *I never completely said the word no* . . ."[6] – while on the other hand – telling Investigator Shaaban that she made "repeated requests for the sexual interaction to stop." *[Complaint] Exhibit [A]1,* p.83 (containing May 6, 2016 Charge Letter from Asso. Dean Anderson to Respondent); and

    b. Admitting that the morning after she claims I assaulted her with enough force to leave bruises on shoulders, she sent me a text message stating she had "good time" with me the night before. *[Complaint] Exhibit [A]1,* p.133 (containing [Roe's] statements regarding same). When I raised this point in the hearing, [Roe's] explanation was that "I realized like after I sent it that I really didn't have a good time with him, and I wasn't really thinking when I sent that text." *Hearing Audio* at 50:46. However, [Roe] also stated that she "asked her friends what she should say" when responding to the text message. *[Complaint] Exhibit [A]1,* p.133; *see also Hearing Audio* at 48:44 (containing a similar statement). The statement that she "wasn't really thinking" is inconsistent with the idea that she had discussed her response with her friends. More importantly, if I had truly assaulted [Roe] with such force that she had bruises, it seems unlikely that she would have to think about whether she had had a good time.

These undisputed facts should have called into question [Roe's] testimony, but were disregarded by the Hearing Panel. As detailed in my pre-hearing written statement, one explanation for [Roe's] false allegations is that I hurt her feelings by declining her offer to have sexual intercourse. *Compare, Id.,* p.69 (containing Respondent's April 25, 2016 written statement), with *Id.,* p.133 (containing [Roe's] statements about asking me to put on a condom). And while you may

[6] The footnote which appeared in this location in Doe's Appeal stated: Hearing Audio at 01:34:22 (emphasis added).

want to reject this explanation, academic studies suggest a high percentage of false allegations stem from things like retribution for a real or perceived wrong, rejection or betrayal. *See e.g., Id.,* p.69 (discussing Reggie D. Yager, *What's Missing From Sexual Assault Prevention and Response*, (April 22, 2015) http: ssrn.com/abstract=2697788). Another possible explanation is that [Roe] needed someone to blame because she regretted her actions, despite engaging in them freely at the time. This is supported by the fact that she told Inspector Shaaban that she "does not really do that kind of thing" and that the "next day she stated that she felt bad about herself," as well as her statement that she realized after sending the text "that I really didn't have a good time" – suggesting that as she contemplated the events of the night before, she began to regret her behavior. *[Complaint] Exhibit [A]1*, p.133; *Hearing Audio* at 50:46.

Unfortunately, the Hearing Panel ignored the evidence of my innocence in my pre-hearing written statement even though it was consistent with my statements at the hearing and to Investigator Shaaban. Making matters worse, the Hearing Panel incorrectly alleged my testimony was less credible than [Roe's] testimony. This allegation lacked merit in part because the Hearing Panel knew [Roe's] credibility was largely invalidated by facts such as items 1-6 above. *Compare, Id.,* p.144 (containing the Hearing Panel's "credibility" allegations), with *Hearing Panel Audio* (detailing Hearing Panel's knowledge of items 1-6).

Why would the Hearing Panel intentionally ruin my life so they could embrace [Roe's] false allegations? The facts detailed below identify the cause as being internal and external pressure for the College to equate complainants in sexual misconduct proceedings as females who must receive preferential treatment over males like me. *See generally, Infra,* §(B)(1)(discussing same). As a result, the Hearing Panel's decision must be reversed for at least the following two reasons identified in your June 7, 2016 letter: (1) the College's investigation did not comply with this Policy and this failure resulted in a decision adverse to [me], (2) . . . the sanctions and/or other remedies are substantially disproportionate to the misconduct . . . ." *[Complaint] Exhibit [A]1,* p.146 (containing Asso, Dean Anderson's June 7, 2016 letter to Respondent) (quoting *SMP §XIV(E)*).

Consequently, based on the information in §§B-D below, I respectfully request the Coordinator and the Appeals Officer exercise their authority under the SMP to reject the Hearing Panel's unlawful decision and expunge my record at the College of any and all references to this disciplinary procedure.

(B) <u>The College's failure to comply with the SMP motivated their unlawful discipline.</u>

Sadly, the College violated my SMP and Title IX rights throughout the course of its investigation. For example, our correspondence identifies over a dozen examples of the College's violations of the SMP and/or Title IX. *See generally, [Complaint] Exhibit [A]1,* pgs.1-9 (containing Respondent's March 13, 2016

letter to Asso. Dean Anderson); *Id.,* pgs.19-22 (containing Respondent's March 16, 2016 letter to Asso. Dean Anderson); *Id.,* pgs.32-42 (containing Respondent's April 8, 2016 letter to Asso. Dean Anderson); *Id.,* pgs. 57-62 (containing Respondent's April 22, 2016 letter to Asso. Dean Anderson); *Id.,* pgs. 72-73 (containing Respondent's April 29, 2016 letter to Asso. Dean Anderson); *Id.,* pgs. 85-86 (containing Respondent's May 8, 2016 letter to Asso. Dean Anderson); *Id.,* pgs. 91-92 (containing Respondent's May 10, 2016 letter to Asso. Dean Anderson) (collectively referred to as "Pre-Hearing Communications").[7]

After my parents hired an attorney and I was able to begin defending myself from these false allegations, you reluctantly remedied some of the violations I brought to your attention. *Id.* But, at least two unresolved SMP and/or Title IX violations were never addressed. First, College employees including yourself, President Kwang-Wu Kim, and Asso. Vice President Sharon Wilson-Taylor refused to discipline College students who retaliated against me for exercising my SMP and Title IX rights in defending against [Roe's] false allegations. *See generally, [Complaint] Exhibit [A]1,* pgs. 1, 22, 26-27, 40, 53, 57, 67 (discussing same).

Second, the College refused to remedy conflicts of interest and/or gender bias issues related to Investigator Sarah Shaaban, yourself, and/or the Hearing Panel members which prohibited the College's ability to honor the SMP's mandate that I receive an "adequate, reliable, and impartial investigation . . . ." *See e.g., [Complaint] Exhibit [A]1,* pgs.33-35 (discussing same). For example, I expressed deep concern that Investigator Shaaban and the adjudicators in my case might be involved "in either: (1) the events being currently investigated by OCR in response to a Title IX complaint filed against the College; and/or (2) the College's response to the OCR investigation." *Id.,* p.34.

Nevertheless, you refused to provide me any information related to this OCR investigation even though I detailed how Investigator Shaaban repeatedly violated my SMP rights. *Id.,* pgs.33-34. As a result, I requested the "College . . . appoint a new mutually agreeable investigator – from outside the college - who will restart the process in accordance with the SMP and Title IX." *Id.,* p.34.

You rejected my request even though it turned out my concerns about Investigator Shaaban's bias were correct. For instance, Investigator Shaaban attempted to artificially inflate [Roe's] alcohol intake after I raised concerns that [Roe's] incapacitation claims were false. This occurred in Investigator Shaaban's May 5,

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[7] The footnote which appeared in this location in Doe's Appeal stated: "It should be noted, the College considers rules and regulations issued by the Department of Education's ('DOE') Office of Civil Rights ('OCR') to be part of the College's SMP. *See e.g., SMP §1* (stating the College is 'committed to . . . implementing regulations ('Title IX') prohibit[ing] discrimination on the basis of sex in education programs or activities.'); [*Complaint Exhibit A1.,*] *p.28* (containing Asso. Dean Anderson's April 4, 2016 letter to Respondent stating: '[t]he College designed its Policy to comply with rules and regulations issued by the Department of Education's Office of Civil Rights ('OCR')).

2016 Summary which states [Roe] reported that she "had *at least* 3-4 beers" on the evening she claims I assaulted her. *Exhibit 1*, p.134 (emphasis added). Investigator Shaaban knew this claim was false because [Roe] initially reported having 3-4 beers and subsequently sent Investigator Shaaban an email stating she consumed only "3 beers." *Id.*, p.133. On no occasion did [Roe] report having *more* than 3-4 beers.

Similarly, when I learned that [Roe] was dishonestly alleging incapacitation, I asked Investigator Shaaban to interview three students who saw [Roe] on the night in question because they would likely testify that she was not incapacitated. *Id.*, p.68-69. Investigator Shaaban interviewed these students. *Id.* pgs.36-38. After these interviews, two of the three students, as well as a third student who was not interviewed, signed affidavits stating [Roe] did not appear intoxicated or incapacitated. *Exhibit 3*, pgs.1, 3-4. But, Investigator Shaaban's witness summery of their testimony was devoid of this testimony which would have undermined [Roe's] credibility. *Exhibit 1*, p.136-138. Consequently, the Hearing Panel's finding should be reversed in part because Investigator Shaaban's conduct irreparably prejudiced me by violating the SMP's mandate that I receive an "adequate, reliable, and impartial investigation. . . ." *See e.g., [Complaint] Exhibit [A]1*, pgs.2-3 (discussing same).

(B)(1) The Hearing Panel's decision should be reversed because it was motivated by anti-male gender bias.

The Hearing Panel's decision should also be reversed because our Pre-Hearing Communications document how the College equates complainants in sexual misconduct proceedings as being females who must receive preferential treatment. For instance, I noted:

> "[T]he SMP explicitly encourages the College's participation in anti-male "public awareness events such as, 'Take Back The Night,' the Clothesline Project, candlelight vigils, protests, or survivor speak-out events." *Id., § XII*. The SMP states the College uses these anti-male 'public awareness' events to 'provide information about students' Title IX rights at these events.' *Id., § XII*. *Id.* In addition, the SMP suggests a presumption of my guilt in part by referencing [Roe] as the 'victim', whom the College must not subject to 'additional trauma.' Examples of this language include referring to Complainants like [Roe] as:

- '*Victims* who may not be ready to report formally, but would still like information and support . . . .' *Id.*, §*IX(A)(2)(emphasis added).*

- 'The College understands that *victims* of Sexual Misconduct may experience difficulty recalling some details of an incident and that certain memories may become repressed. Accordingly, individuals should report as much

information as they can initially but know that they may add to or otherwise modify a complaint at any time.' *Id., XIV(B)(2)(emphasis added).*

- The Panel shall endeavor to conduct the Hearing in a manner that does not inflict *additional trauma* on the Complainant. *Id., §XIVD)(3)(emphasis added).*

Moreover, the SMP provides no 'interim measures' to falsely accused male students even though [Roe's] false allegations destroyed my life and subjected me to acts of violence and public ridicule. Instead, the SMP's interim Measures below are designed to help Complainants like [Roe] and hurt Respondents like me:

- ' . . . . the Coordinator . . . shall . . *protect the Complainant* . . . [by imposing] temporary remedial actions may include, but are not limited to:

- Offering on-campus *counseling to the Complainant* at the College's cost;

- *Providing the Complainant with appropriate academic adjustments* with the consultation of appropriate faculty members (such as changes in course schedules, tutoring, or the provision of alternative course completion options);

- Offering *extracurricular accommodations to the Complainant*;

- *Changing the Complainant's living and dining* arrangements;

- *Assisting with the Complainant's transportation* to and from classes (to the extent practicable on Columbia's campus);

- *Working with the Complainant to modify work schedules* and other conditions;

- *Temporarily suspending the Respondent* if the College determines that the Respondent poses a significant and immediate threat to an individual or that the Respondent's continued presence on campus is likely to create substantial disruptions;

- *Modify the Respondent's academic, extracurricular, living, or other arrangements, while the investigation is pending*.' *Id., §XIV(A)(7)*(emphasis added).

In fact, the SMP mandates the College 'take such interim steps in a manner that *minimizes the burden to the Complainant*. . . .' *Id., §XIV(A)(7).* Given the direct and/or circumstantial evidence of the College's inappropriate gender bias and/or burden shifting detailed above and below, I respectfully request the charge against me be adjudicated via a mutually agreeable process outside the College." *[Complaint] Exhibit [A]1,* p.4-5.

Despite this evidence, you rejected my request to adjudicate the charge against me via a "mutually agreeable process outside the College." Similarly, you dismissed my concerns of being sacrificed as one the Colleges' male scapegoats to OCR in response to OCR's investigation of the College. *See e.g., Id.*, pgs. 4-7, 33-35, 41, 58-59 (discussing OCR's investigation of the College; gender bias at the College; and the College's violation of Title IX). You brushed off these concerns even though [Roe's] complaint was linked to this OCR investigation in an April 11, 2016 article in the Columbia Chronicle. *See [Complaint] Exhibit [A]4* (containing said article).

Unfortunately, our Pre-Hearing Communications only scratch the surface of evidence suggesting OCR wants schools like the College to eliminate the rights of male students like myself. But, rest assured, I am not requesting the College wage a battle with OCR on my behalf. Rather, as detailed below, I ask that the Hearing Panel's erroneous finding against me be reversed because it was either: (a) motivated by the unlawful gender bias addressed in our Pre-Hearing Communications; o[r] (b) violated SMP and/or OCR's mandates for an "impartial" adjudication of sexual misconduct allegations.

(B)(2) <u>The Hearing Panel violated the SMP and Title IX's mandate for an "impartial" adjudication of the charges against me.</u>

The finding against me must be reversed because the Hearing Panel violated the "impartial" mandates contain in the SMP and OCR's directives. *[Complaint] Exhibit [A]1*, p.2 (discussing SMP and OCR's requirement that sexual misconduct charges be adjudicated in an "impartial" fashion). In my case, the lack of impartiality appears to have been caused in part by gender bias in the training provided to the Hearing Panel. For, as you likely recall, you repeated blocked my attempts to expose this bias by prohibiting my access of the College's sexual misconduct training materials. *Id.*, pgs. 6, 34-35, 59, (discussing Asso. Dean Anderson's rejection of Respondent's request for access to the sexual misconduct training materials). As a result, a reasonable juror would likely find the reason you refused to provide these training materials was because they evidenced gender bias against male students like me.[8]

But even if the Hearing Panel alleges their conduct was untailed by gender bias, the erroneous finding against me must still reversed because the audiotape of the hearing proves the Hearing Panel manifest at least six examples of profound bias

[8] The footnote which appeared in this location in Doe's Appeal stated: "I used the 'reasonable juror' standard in my appeal in part because our Pre-Hearing Communications contained my concerns that if: 'I am later found responsible - I will have no alternative but to file a lawsuit to: (a) clear my name, (b) remedy the Title IX concerns discussed above; (c) address violations of my contractual and/or quasi-contract rights under the College's policies; and/or (d) seek damages from those that defamed me and/or engaged in the aforementioned hostility and retaliation.'"

in favor or [Roe]. First, a reasonable juror would reject the Hearing Panel's allegation that [Roe's] testimony was "more credible" than my testimony. *[Complaint] Exhibit [A]1,* p.144 (containing the Hearing Panel's decision). This is because the [Roe's] testimony cannot be "more credible" than my testimony, since:

1. The Hearing Panel determined [Roe] falsely alleged I "physically held" her "down and prevent[ed] her from leaving [my] room"; *Exhibit 1,* p.140 (containing the Hearing Panel's findings);

2. The Hearing Panel agreed [Roe's] allegations that I forced her to engage in "non-consensual kissing" were untruthful; *Id.*;

3. Despite [Roe's] allegations to the contrary,[9] a polygraph expert determined: (1) I did *not* force [Roe] to perform oral sex on me; (2) [Roe] did *not* push my head away when I performed oral sex on her; and (3) [Roe] did *not* appear to me to be under the influence of alcohol or drugs. *[Complaint] Exhibit [A]2* (containing Polygraph report presented to Hearing Panel);

4. Dr. Gary Lage - a toxicologist expert - proved [Roe] falsely claimed she was so incapacitated that she was fading in and out of consciousness. *Compare, [Complaint] Exhibit [A]1,* p.100-104 (containing report of toxicologist expert Dr. Gary Lage) with *Id.,* p.133 (containing [Roe's] statements about fading in and out of consciousness.");

5. Three students provided sworn affidavits stating [Roe] did not manifest signs of incapacitation when they observed her shortly before she claims alcohol caused her to fade in and out of consciousness. *See generally, [Complaint] Exhibit [A]3* (containing said affidavits which were presented to Hearing Panel); and

6. [Roe] repeatedly provided contradictory testimony which included, but was not limited to:

    a. On one hand, telling the Hearing Panel that she felt her "responses [to me] were unclear or very passive . . . *I never completely said the word no* . .

[9] The footnote which appeared in this location in Doe's Appeal stated: "*See, [Complaint] Exhibit [A]1,* p.133 (containing College Investigator Sarah Shaaban's ('Investigator Shaaban') report which states [Roe] alleged – on one hand – that her voluntary consumption of alcohol caused her fade 'in and out of consciousness' and caused her to experience 'long [periods of] time where she doesn't remember' what happened. But on the other hand, [Roe] alleged remembering that: 'Respondent 'pushed her down' and made her give him oral sex. She then stated he gave her oral sex and that she was trying to push him away . . . [s]he stated [when he was forcing her to perform oral sex] she kept trying to push him away and he pushed he head back down on his penis . . . [s]he also mentioned she had bruises on both shoulders . . . [s]he believed the bruises . . . were from him holding her down."')."

."[10] – while on the other hand – telling Investigator Shaaban that she made "repeated requests for the sexual interaction to stop." *[Complaint] Exhibit [A]1*, p.83 (containing May 6, 2016 Charge Letter from Asso. Dean Anderson to Respondent); and

b. Admitting that the morning after she claims I assaulted her with enough force to leave bruises on shoulders, she sent me a text message stating she had "good time" with me the night before. *[Complaint] Exhibit [A]1*, p.133 (containing [Roe's] statements regarding same). When I raised this point in the hearing, [Roe's] explanation was that "I realized like after I sent it that I really didn't have a good time with him, and I wasn't really thinking when I sent that text." *Hearing Audio* at 50:46. However, [Roe] also stated that she "asked her friends what she should say" when responding to the text message. *[Complaint] Exhibit [A]1*, p.133; see also *Hearing Audio* at 48:44 (containing a similar statement). The statement that she "wasn't really thinking" is inconsistent with the idea that she had discussed her response with her friends. More importantly, if I had truly assaulted [Roe] with such force that she had bruises, it seems unlikely that she would have to think about whether she had had a good time.

The above evidence demonstrating my credibility contrasts with the four weak arguments that the Hearing Panel gave in support of their decision that [Roe] was more credible. First, the Hearing Panel alleged my: 'Intake Form seemed to convey a genuine account of events that took place the evening in question . . . [and my] subsequent statements conflict with some of those made in the intake form and appear to be artificial.' *[Complaint] Exhibit [A]1*, p.144. But, the Hearing Panel does not provide any examples of these conflicts, other than a slight discrepancy regarding the order in which we got undressed. Nor does the Hearing Panel explain how the Intake form was "genuine" while the subsequent responses were 'artificial.' On the contrary, I believe that my subsequent statements were more thorough and complete because, as noted elsewhere, during the initial interview with Investigator Shaaban, I did not even know what I was being accused of.

Second the Hearing Panel alleged I: 'stated that [Roe] consented to each allegation. However, the Panel determined that [Roe] showed considerable hesitancy to engage physically with the Respondent. For example, in the text messages that were submitted as evidence, [Roe] demonstrated little interest in [my] advances.' *Id.* In making this comment, the Hearing Panel erroneously conflates [Roe's] lack of interest following December 11, 2015, with her interest on that night. By [Roe's] own statements, it is hard to see how she 'showed considerable hesitancy'. On the contrary, she acknowledged that she was 'equally

[10] The footnote which appeared in this location in Doe's Appeal stated: Hearing Audio at 01:34:22 (emphasis added).

as enthusiastic' in making out with me on the couch and agreed to go back to my room with me. *Hearing Audio* at 51:53, 48:44. This is also supported by:

1. Witness #3, who reported that he saw [Roe] and I on the couch 'kissing each other;'

2. Witness #4 who reported that he saw that [Roe] 'had her head resting on [my] chest;' *[Complaint] Exhibit [A]1*, p.138; and

3. Simon['s] affidavit, in which he stated that when he saw us in the living room of my apartment, [Roe] 'seemed to want to enter Alex's bedroom; she seemed disinterested in talking to me or anyone else in the living room. Prior to them entering Alex's bedroom, they kissed and she seemed completely content with it.' *[Complaint] Exhibit [A]3*, p. 4.

Given the above, the Hearing Panel's conclusion that 'the Complainant showed considerable hesitancy to engage physically with the Respondent' is not supported by the preponderance of the evidence.

Third, the Hearing Panel incorrectly alleges I 'submitted a confusing picture of [Roe's] alcohol consumption . . . [because my evidence] appears to suggest simultaneously that the Complainant suffered from alcohol-induced amnesia (from the Toxicology report) and had very little to drink at all (per witness statements).' *[Complaint] Exhibit [A]1*, p.144. First of all, it is unclear how any confusion regarding my evidence on [Roe's] alcohol consumption makes her allegations of alcohol induced incapacitation more credible. Furthermore, the Hearing Panel misconstrues the evidence presented regarding [Roe's] alcohol consumption. The toxicology report, witness statements and [Roe's] own statements all support the view that while [Roe] may have had enough to drink to have suffered from alcohol-induced amnesia, she did not drink enough to be incapacitated or to have 'blacked out" or have been "in and out of consciousness.' *Hearing Audio* at 07:25; *[Complaint] Exhibit [A]1*, p. 103, 132-133, 137-138; *[Complaint] Exhibit [A]3*, p.1, 3 and 4. A reasonable juror would find this evidence decreased [Roe's] credibility since it shows that either: (a) she is not being truthful about having lost consciousness; or (b) her memories from the night in question are impaired.

Finally, the Hearing Panel erroneously argues: the 'polygraph questions submitted failed to shed light on the alleged violations of the College policy. For example: One of the questions asked was "On or about December 11, 2015, did you use any force to cause [Roe] to perform oral sex on you?" The Panel notes that while force certainly could indicate non-consensual sex, there are many other variables that could indicate non-consensual sex as it is defined in the College's policy. Moreover, the Panel did not receive a copy of the pre-test interview cited in the report.' *[Complaint] Exhibit [A]1*, p. 145.

While the Hearing Panel is correct that variables other than force could indicate non-consensual sex, the polygraph question focused on the use of force because this is the specific policy violation alleged by [Roe]. Moreover, 'force' is dispositive with regard to [Roe's] credibility because she alleged [I use[d] enough "force" to leave bruises on her shoulders. Therefore, the polygraph questions the Hearing Panel attacked are highly relevant to both [Roe] and my credibility with respect to this alleged violation of the SMP. As a final note, it is my understanding a copy of the pre-test interview cannot be provided as it was an oral interview which was not recorded.

Based on the evidence above, a reasonable juror would find the Hearing Panel violated OCR's guidance regarding credibility and corroborating evidence. *See generally, OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* ("OCR's Sexual Harassment Guide") (January 2001).[11] For, OCR's Sexual Harassment Guide recommends evaluating the 'relative credibility" of evidence by *looking at the level of detail and consistency* of each person's account . . . in an attempt to determine who is telling the truth. Another way to assess credibility is to see if *corroborative evidence is lacking where it should logically exist*.' *OCR's Sexual Harassment Guide*, p.9.) (emphasis added). *See also,* OCR's 2014 *Questions and Answers On Title IX and Sexual Violence,* p.40 (mandating schools like Columbia train Adjudicators about 'how to determine credibility; how to evaluate evidence and weigh it in an impartial manner.').[12] Here – as this appeal details – an impartial Hearing Panel would have had determined the 'level of detail and consistency' in our respective statements and 'corroborative evidence' establish my innocence. The Hearing Audio demonstrates that with respect to each and every question that I was asked, I responded with greater detail than [Roe], and the consistency of my numerous oral and written statements can be contrasted with the blatant contradictions in [Roe's] testimony detailed herein.

The second reason a reasonable juror would find the Hearing Panel manifest a profound bias in favor of [Roe] is because they unlawfully prohibited me from exposing [Roe's] lack of credibility. For instance, during the hearing, I provided the Hearing Panel with *[Complaint] Exhibit [A]5* which contained my proposed questions for [Roe]. But, the Hearing Panel refused to ask [Roe] *any* of the questions from *[Complaint] Exhibit [A]5* and instead, when I requested during the hearing that they ask the questions, one of the members blatantly lied, stating "I think we have asked many of them, actually." *Hearing Audio,* 01:18:50. In reality, the Hearing Audio proves the Hearing Panel asked *none* of my questions of [Roe], which I repeat verbatim below:

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[11] The footnote which appeared in this location in Doe's Appeal stated: "(available at https://www2.ed.gov/offices/OCR/archives/pdf/shguide.pdf)."

[12] The footnote which appeared in this location in Doe's Appeal stated: "(available at http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf)."

[Roe's] Questions for [Doe]

1. After you were interviewed by Investigator Shaaban, do you remember sending her email an email stating you only had '3 beers' on December 11th?
   - This information located on bottom of page 2, of Complainant's Summary, in Addendum section.[13]

2. You sent Investigator Shaaban his email because you – 'wanted to me more precise' about how much alcohol you drank– correct?
   - This information located on bottom of page 2, of Complainant's Summary, in Addendum section.[14]

3. Do you agree, you claim there are 'long time[s]" that you don't 'remember' what happened on December 11th because you were 'under the influence of alcohol'
   - This quotation is located on page 2, of Complainant's Summary.[15]

4. You allege your consumption of alcohol caused you to fade 'in and out of consciousness' - right?
   - This quotation is located on page 2, of Complainant's Summary.[16]

5. Have you ever heard people say they cannot remember embarrassing things they did the night before because they drank too much?

6. Wouldn't you say - that in the days after December 11th, you 'felt bad about' your actions in [Doe's] bedroom on December 11th?
   - page 2 of Complainant's Summary states: '[t]he next day she stated she felt bad about herself.'[17]

7. Wouldn't you also agree - you were concerned about some of complements or suggestive things you said to [Doe] in his bedroom on December 11th?
   - page 2 of Complainant's Summary states [Roe]: '[s]he remembered he was complementing her during the night and he would want her to say something about him.'[18]

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[13] *See, Complaint Exhibit A1,* p.133 (containing document Doe requested CCC utilize as an exhibit while questioning Roe during Doe's disciplinary hearing).

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

8. You asked [Doe] if he had a condom - because you thought [Doe] was interested in having sex and you were not on birth control– right?
   - page 2 of Complainant's Summary.[19]

9. Let's change topics just a bit. I would like you to review Malhaar['s] notarized affidavit[20] and when you are done please let us know.

   Beyond any objection you might have to this affidavit, what information in the hearing panel's documents can you point to that contradicts Malhaar['s] affidavit about December 11th?

10. Can you please review Simon['s] [affidavit[21] and when you are done please let us know.

    Beyond anything you might personally disagree with, what information in the hearing panel's documents can you point to that contradicts Simon's affidavit?

11. Next, I would like you to review Lorenzo['s] affidavit[22] and when you are done please let us know.

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[18] *Id.*

[19] *Id.*

[20] *See, Complaint Exhibit A3,* p.1 (containing Malhaar's affidavit which Doe presented to Anderson to be utilized as exhibit at Doe's disciplinary hearing). Malharr's affidavit stated: "(1) On May 3, 2016, Sarah Shaaban asked me about my observations of [Roe] and [Doe] on December 11, 2015.; (2) During the interview discussed in ¶1, Ms. Shaaban never asked me if [Roe] seemed intoxicated or incapacitated. Had Ms. Shaaban asked me this question, I would have told her that when I saw [Roe] at a Bob's Burgers night on December 11, 2015 that she did not appear in any way incapacitated; (3) I base my testimony in ¶2 on my personal experience of observing people in incapacitated states. These people sometimes throw up, pass out, or exhibit similar symptoms of consuming too much alcohol or drugs. But, [Roe] did not display these symptoms when I was in her presence on December 11, 2016." *Id.*

[21] *Id.,* p.4 (containing Simon's affidavit which Doe presented to Anderson to be utilized as exhibit at Doe's disciplinary hearing). Simon's affidavit stated: "I saw [Roe] and [Doe] on December 11, 2015 prior to them going into [Doe's] bedroom. [Roe] did not seem intoxicated or incapacitated. Rather, she looked to be in full control of herself, did not have any problem walking, and seemed to want to enter [Doe's] bedroom; she seemed disinterested in talking to me or anyone else in the living room. Prior to them entering [Doe's] bedroom, they kissed and see seemed completely content with it." *Id.*

[22] *Id.,* p.3 (containing Lorenzo's affidavit which Doe presented to Anderson to be utilized as exhibit at Doe's disciplinary hearing). Lorenzo's affidavit stated: "(1) On May 3, 2016, Sarah Shaaban asked me about my interactions with [Roe] and [Doe] on December 11, 2015. But, Ms. Shaaban did not ask me if [Roe] seemed intoxicated or incapacitated; (2) Had Ms. Shaaban asked me if [Roe] seemed intoxicated or incapacitated when I saw her on December 11th, I would have responded by stating she did not appear so. This is because when I saw [Roe] on December 11th she did not exhibit any problems with her equilibrium or speech. In addition, I did not see her vomit, lose consciousness, or exhibit similar

Beyond any objection you might have to the contents of Lorenzo's affidavit, what information in the hearing panel's documents can you point to that contradicts Lorenzo's affidavit?

12. Finally can you please review Zach['s] [last name omitted] affidavit[23] and when you are done please let us know.

    Beyond any concern you might personally have with this affidavit, what information in the hearing panel's documents can you point to that contradicts Zach's affidavit?

13. Let's shift gears for a few minutes - do you recall telling Ms. Shaaban that during a party on December 11th you 'tried to push [Doe] away a couple of times' when he was trying to kiss you?
    - This quotation is located on page 1 of Complainant's Summary.[24]

14. Did you review Investigator Shaaban's summary of Witnesses 1, 3 and 4 who reported seeing you and [Doe] interact at the party on December 11th?
    - This information is located in Investigator Shaaban's May 5th Witness summary.[25]

15. Can you point to anything in Investigator Shaaban's summary of Witnesses 1, 3 or 4 that suggests they saw you trying to push [Doe] away from you at the party?

16. Can you point to something in the hearing panel's documents – other than your own testimony – that supports your allegation that you were trying to push [Doe] away from you at the party?

17. Despite pushing [Doe] 'away a couple of times,' you decided to leave the party with [Doe] to go to his room - right?

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symptoms I associate with being intoxicated or incapacitated." *Id.*

[23] *Id.*, p.2 (containing Zach's affidavit which Doe presented to Anderson to be utilized as exhibit at Doe's disciplinary hearing). Zach's affidavit stated: "(1) On May 3, 2016, Sarah Shaaban asked me about my interactions with [Doe] on the evening of December 11, 2015. Among other things, I told Ms. Shaaban that [Doe] and I played pool for at least 20 minutes before [Doe] signed me out of his dorm in the early morning hours of December 12, 2015.; (2) In the early morning hours of December 12th, 2015, I remember playing one game of pool with [Doe], then watche[d] him play another game with someone else afterwards, before signing me out. This took about 20 minutes." *Id.*

[24] *See, Complaint Exhibit A1,* p.132 (containing document which Doe requested CCC utilize as an exhibit when questioning Roe during Doe's disciplinary hearing).

[25] *Id.*, p.137-38.

- This information located bottom of page 1 of Complainant's Summary – going on to page 2.[26]

18. Why would you agree to go the bedroom of someone who you so repulsed you that you were pushing them off you just minutes before?

19. Do you remember sending [Doe] a text message on December 12th acknowledging you had a great time with him on December?
    Present text message if necessary.[27]

20. You told [Doe] that you had a good time because you 'wanted to be nice' to him – right?
    - This information located bottom of page 2 of Complainant's Summary – going on to page 2.[28]

21. Before you sent this text on December 12th, you talked to some friends about how to respond to [Doe] – do you remember that?
    - This information located bottom of page 2 of Complainant's Summary – going on to page 2.[29]

22. During your conversations with these friends on December 12th, did you discuss the alleged non-consensual physical interactions you are making against [Doe] in this case?

23. During your conversations with friends on December 12th, did you tell them about the bruises you allege [Doe] gave you on December 12th?

24. Do you have any photos of these bruises to present to the hearing panel?

25. Can you point to any information in the hearing panel's documentation that contains the testimony of someone who saw these alleged bruises?"

How would a reasonable juror react to the Hearing Panel's refusal to ask these questions of [Roe]? They would likely find the Hearing Panel violated the SMP and Title IX's 'impartial' mandates by: (a) refusing to ask [Roe] relevant and reasonable questions because they knew [Roe's] answers to these questions would undermine her credibility; and (b) falsely claiming the Hearing Panel asked [Roe]

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[26] *Id.*, p.133.

[27] *Id.*, p. 96 (containing Roe's text message to Doe which Doe requested CCC utilize as an exhibit at Doe's disciplinary hearing).

[28] *Id.*, p.132 (containing document which Doe requested CCC utilize as an exhibit while questioning Roe during Doe's disciplinary hearing).

[29] *Id.*

the aforementioned questions. *Compare, [Complaint] Exhibit [A]5* (containing Respondent's questions for [Roe]), with *Hearing Audio* (proving the Hearing Panel did not ask the questions in *[Complaint] Exhibit [A]5*).

The third reason a reasonable juror would likely find the Hearing Panel manifest an unlawful bias in favor of [Roe] is because the Hearing Panel relentlessly cross-examined me while asking [Roe] no questions that might have exposed her false statements against me. Evidence of this biased behavior is repeated over and over again in the hearing audio. For example, the Hearing Panel asked [Roe] questions such as: "what consent" she gave me when she alleged she was "being physically held down uhm and being prevented from leaving the room?" *Hearing Audio*, 1:04:05. How did [Roe] respond to this softball question designed to increase her credibility? She started to bunt and then stopped her response mid-sentence by stating: "Uhm, there was no consent, like I just, I was, I felt uncomfortable the whole time and thought that he." *Id.* On another occasion, the Hearing Panel preempted a question to [Roe] about what consent she had given to kissing me on the couch with the comment "You said that you did not give consent", despite the fact that just a few minutes earlier, [Roe] had said explicitly that she "was okay" with the kissing. *Hearing Audio* at 48:44, 51:53. In addition, the Hearing Panel members failed to question inflammatory statements made by [Roe] during the hearing, including her statement that "I genuinely have been fearful for my life from this." *Id.* at 01:38:20. Had the Hearing Panel questioned [Roe] about such fears, or had I been given the opportunity to question her, they would have learned that this statement had no foundation because I have not interacted with [Roe] in any way since December 2015. I sent her a few text messages prior to winter break, and when she failed to engage in conversation, I dropped all contact.

In contrast to their treatment of [Roe], Hearing Panel members repeatedly threw me hostile knuckle ball questions in the hopes of impeaching my credibility. For example, one question falsely alleged I had earlier testified to "grabb[ing]" [Roe's] hand and trying to get her to "touch" my penis against her will when she the "pulled her hand back." *Id.*, 1:11:02. In response, I explained the Hearing Panel member's question misrepresented my earlier testimony be stating:

> "Well I had asked first if she would have liked to [touch my penis], and she said yeah, and when she pulled back, she pulled back and after that I did not request that anymore. Oh but at some point later in the night when we were making out, she voluntarily by herself put her hand on my penis . . . ." *Id.*

It should be noted, during my testimony, I repeatedly identified the reason I orally asked [Roe] for her permission to engage in things like touching my penis. Specifically, I stated this was because the video the College asked me to watch suggested I should verbally ask for permission prior to sexual contact. *See e.g.*, *Id.*, at 00:07:02; and 00:17:42.[30] My testimony about asking for permission is

[30] It should be noted, Doe's intent to honor CCC's policies regarding sexual misconduct is established in

consistent with my written statement which stated: "[Roe] initiated or verbally consented to all physical interactions with me on December 11, 2016." *[Complaint] Exhibit [A]1,* p.69.

Therefore, the Hearing Panel's attempts to spin my statements as inconsistent lack merit. This is particularly true because unlike [Roe's] allegations which were repeatedly discredited, the worst that can be said about my testimony is that it became more detailed as the College provided me more information. If you put yourself in my shoes, you should have no problem understanding how this occurred. For, nobody disputes the fact that when I gave my first statement to Investigator Shaaban I did so without anybody at the College telling me "exactly what allegations ha[d] been made against me." *Id.*, p.2. Consequently, as the College slowly dribbled these facts to me, a reasonable juror would find it perfectly natural that my response would address these ever expanding allegations.

Fourth, a reasonable juror would likely find the Hearing Panel manifest a profound bias in favor of [Roe] because they ignored [Roe's] hearing testimony which undermined her credibility. For example, the table below details [Roe's] lack of credibility with regard to our kissing and time spent on a couch:

Conflicting testimony in [Roe's] allegations about kissing and our interactions on the couch.	[Roe] told Investigator Shaaban that she tried 'to push" me "away a couple of times' when we were kissing on a couch at a party prior to going to my room. *[Complaint] Exhibit [A]1,* p.132.
	At the hearing, [Roe] told a different story stating: 'I just wanted to clarify uhm, about, so the kissing at, on the couch was, and going to his apartment, I did say okay to those things, I was okay with those things.' *Hearing Audio,* 48:44. 'So, I did give consent when we kissed and when we went to his room.' *Id.,* 1:26 'I, when we began to kiss, I was also, I didn't hesitate at first and I did try to pull away at times but I did, uh overall uh I was okay with it and I was, uh I guess you could say was equally as enthusiastic as he was.' *Id.,* 51:53

Fifth, a reasonable juror would likely find the Hearing Panel manifest a profound bias in favor of [Roe] because they violated SMP §XIV(D)(6) which states:

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part because he was one of only 20% of CCC students who watched CCC's sexual misconduct webinar. *See, Exhibit BB,* p.1 (containing *Columbia Chronicle's* Sept. 28, 2015 article entitled *Participation low in 'mandatory' sexual misconduct webinar*).

> '[t]he Hearing Panel *shall examine all evidence* received through the course of the investigation *and hearing* and, as required by the Office for Civil Rights, determine whether it is more likely than not that the Respondent engaged in the misconduct alleged (a "preponderance of the evidence" standard.' (emphasis added).

A reasonable juror would find the Hearing Panel violated this mandate in part because the table below highlights much of the evidence they ignored with regard to [Roe's] allegation that she was incapacitated:

Why The Evidence Disproves[Roe's] Incapacitation Allegations	**Testimony/Evidence**
Testimony regarding [Roe's] alcohol intake	[Roe's] email to Investigator Shaaban states she only consumed 3 beers. *[Complaint] Exhibit [A]1*, p.133. Witness #2 told Investigator Shaaban that [Roe] had about 3-4 beers. *Id.*, p.137
	Witness #4 told Investigator Shaaban that he saw [Roe] with a can of beer in her hand but he did not know how many she had consumed. *Id.*, p.138.
	Lorenzo['s] affidavit stated: '[h]ad Ms. Shaaban asked me if [Roe] seemed intoxicated or incapacitated when I saw her on December 11th, I would have responded by stating she did not appear so. This is because when I saw [Roe] on December 11th she did not exhibit any problems with her equilibrium or speech. In addition, I did not see her vomit, lose consciousness, or exhibit similar symptoms I associate with being intoxicated or incapacitated.' *[Complaint] Exhibit [A]3,* p.3.
	Malhaar['s] affidavit stated: 'Ms. Shaaban never asked me if [Roe] seemed intoxicated or incapacitated. Had Ms. Shaaban asked me this question, I would have told her when I saw [Roe] at a Bob's Burgers night on December 11, 2015 she did not appear in any way incapacitated.' *Id.*, p.1.

Why The Evidence Disproves[Roe's] Incapacitation Allegations	Testimony/Evidence
	Simon[']s] affidavit stated: [Roe] 'did not seem intoxicated or incapacitated. Rather, she looked to be in full control of herself, did not have any problem walking and seemed to want to enter Alex's bedroom; she seemed disinterested in talking with me . . . they kissed and she seemed completely content with it.' *Id.*, p.4.
Why [Roe's] incapacitation claims lack merit	[Roe] alleges her alcohol consumption caused her to experience a 'long [period of] time where she doesn't remember" what took place and she alleges fading "in and out of consciousness' because of her alcohol consumption. *[Complaint] Exhibit [A]1*, p.133.
	A toxicologist expert noted that: [1] 'Based on the worst case scenario' [Roe's] 'blood alcohol level three hours after her consumption, the assumed time of the sexual activity, would have been approximately 0.095%, which is sufficient to render her intoxicated, but neither stuperous nor unconscious, and she certainly would have been aware of her actions.' *Id.*, p.102 [2] 'large amounts of alcohol, particularly if consumed rapidly, can produce partial (i.e. fragmentary) or complete (i.e., en bloc) blackouts, which are periods of memory loss for events that transpired while a person was drinking.' 'individuals can engage in a wide range of goal-directed, voluntary, often complicated behaviors during blackouts – from driving cars to having sexual

Why The Evidence Disproves[Roe's] Incapacitation Allegations	Testimony/Evidence
	intercourse.' 'Alcohol-induced blackouts are very common among college age individuals.' [3] 'The fact that [Roe] has limited memory of the events on the night of December 11, 2015, is totally consistent with her stated alcohol consumption, and alcohol-induced amnesia.' *Id.*, 102-03.

Simply put, the aforementioned table does not support [Roe's] claim that she was so intoxicated that she "lost consciousness." However, it is possible and even likely that she experienced alcohol-induced amnesia and does not remember everything that happened. This is supported by the fact that [Roe's] testimony provided significantly fewer details regarding the events of the night than my testimony. Regardless, these facts prove the Hearing Panel ignored major defects with [Roe's] credibility.

Sixth, a reasonable juror would likely find the Hearing Panel manifest an unlawful bias in favor of [Roe] because it violated guidelines set forth by Association of Title IX Administrators ('ATIXA'). ATIXA is a group that has published papers advocating that colleges severely limit the procedural protections afforded male students in sexual misconduct cases. Nevertheless, in the Tip of the Week – attached as *[Complaint Exhibit [A]6* - ATIXA discussed how five universities 'got it completely wrong' in finding male students responsible for 'hook-ups' when alcohol was involved. Specifically, ATIXA expressed concerns that these universities are making 'Title IX Plaintiffs' of the students who were wrongly accused (and) noted:

> *'A common policy problem comes from failing to distinguish between intoxicated and incapacitated*. Yet, the most serious issue comes from failing to implement a mens rea, if you will, within the definition. Certainly, criminal concepts like mens rea are not strictly applicable to the campus conduct process, but if we agree as I stated above that having sex with a willing, yet intoxicated person is not an offense, *there must be something that the respondent does, beyond having sex, that makes a lawful act (sex) into a policy violation . . . there has to be something more than an intent to have sex to make this an offense. Otherwise, men are simply being punished for having sex, which is gender discrimination under Title IX, because their partners are having sex too and are not being subject to the code of conduct for doing so*.

> Without a knowledge standard, a respondent will suffer an arbitrary and capricious application of the college's rules.' *[Id.,]* (*emphasis added*).

To avoid this error, ATIXA directs universities to determine if: '*[t]he respondent knew that the Complainant was drinking or using drugs and may know how much/what kind.'* Here, my oral testimony and polygraph prove [Roe] never appeared incapacitated to me. Next, ATIXA suggests groups like the Hearing Panel determine if [Roe] '*was stumbling or otherwise exhibited loss of equilibrium'* or exhibiting '*[s]lurred speech or word confusion*' . . . '*[b]loodshot, glassy or unfocused eyes*' . . . '*[a]ny of the signs of alcohol poisoning*' . . . '[v]*omiting, especially repeatedly'. . . being disoriented, or confused as to time, place, etc*., or . . . '*[l]oss of consciousness.' [Id.]* Here, the record is completely devoid of any eye-witness testimony suggesting [Roe] displayed any of these symptoms.

Given the multiple violations of the SMP and Title IX described above, I request the College's Coordinator and the Appeals Officer exercise their authority under the SMP to reject the Hearing Panel's unlawful decision and expunge my record at the College of any and all references to this disciplinary procedure.

Such a finding is particularly warranted because the College and the Hearing Panel's handling of my case evidences the erroneous conduct roundly criticized in the three attached court decisions in *[Complaint] Exhibits [A]7-[A]9.* These recent decisions address lawsuits filed by male students who were falsely accused of sexual assault. The two California decisions reversed university discipline in part because universities:

a. Allowed adjudicators to render findings of responsibility based on impermissible factors;

b. Unduly hindered the accused's ability to cross-examine female students who alleged sexual assault; and /or

c. Provided the accused with insufficient access to information about charging and/or factual allegations against them. *See generally, [Complaint] Exhibits [A]7-[A]8* (containing *Doe v. University of Southern California, Cali.* Court of Appeals, 2nd App. Dist., No. BS148077 (April 5, 2016); and *Doe v. Regents of Univ. of Cal. San Diego,* Sup. Court of Cal., Cty. Of San Diego, No.37-2015-10549 (July 10, 2015)).

Similarly, the College's handling of my case runs afoul of concerns addressed in *Doe v. Brandeis Univ.*, U.S. Dist. Ct. Dist. Of Mass., No. 15-11557. *See, [Complaint] Exhibits [A]9* (containing same). The *Brandeis* Court rejected a motion to dismiss various breach of contract, equitable, and negligence claims. *Id.*, p.11-12. This occurred in part because the falsely accused male student was

subjected to a disciplinary procedure that denied him the right to confront witnesses. *Id.* p.10. In addressing these defects, the *Brandeis* Court noted:

> 'Brandeis's authority to discipline its students is not entirely without limits. Although the relationship between the university and its students is essentially contractual, the university's disciplinary actions may also be reviewed by the courts to determine whether it provided 'basic fairness' to the student. While that concept is not well-defined, and no doubt varies with the magnitude of the interests at stake, it is nonetheless clear that the university must provide its students with some minimum level of fair play.' *Id.*, p.10-11.

The *Brandeis* decision also illuminated how OCR pressure likely prompted the Hearing Panel to severely discipline male students like myself even though the preponderance of the evidence clearly proves I am innocent. For instance, the *Brandeis* Court noted:

> 'In recent years, universities across the United States have adopted procedural and substantive policies intended to make it easier for victims of sexual assault to make and prove their claims and for the schools to adopt punitive measures in response . . . [t]he goal of reducing sexual assault . . . is certainly laudable. Whether the elimination of basic procedural protections—and the substantially increased risk that innocent students will be punished—is a fair price to achieve that goal *is another question altogether*.' *Id*, p.11 (emphasis added).

I request the College's Coordinator and the Appeals Officer answer this question by finding the Hearing Panel committed reversible procedural errors by finding me responsible when the clear preponderance of the evidence proved I am innocent.

(C) The sanction imposed violates the SMP.

As detailed above, the totality of the evidence points to only one reliable conclusion - I should be found not responsible because [Roe's] allegations against me are false. At the very least, the facts above warrant a reduction of the sanction imposed to something akin to the 'verbal reprimand' referenced in SMP §XIV(D)(7) which the College would agree to expunge from my record after a short period of time. This is because SMP §XIV(D)(7) suggests harsh sanctions such as a 'suspension' imposed against me is only appropriate in situations such as:

1. Situations where the responded engaged in 'Sexual Misconduct in the past';

2. Facts that suggest 'the conduct at issue here was premeditated'; or

3. 'The probability that [I] will offend again . . . .'

None of these aggravating factors exist here. Therefore, I request that the sanction against me be determined a violation of the SMP.

(D) Conclusion

In conclusion, I want to emphasis the incredible damage I have suffered because [Roe] and the Hearing Panel decided to falsely label me a sexual predator. The stigma of this label has left me deeply depressed and fearful because my lifetime dreams are now all but impossible if my academic record is marred with the false allegation that I sexually assaulted someone. For since being falsely accused, I learned that male students are being denied entry even to at community colleges and the military because their Colleges found them responsible for sexual misconduct. Therefore, I beg the Coordinator and the Appeals to reject the Hearing Panel's unlawful decision and expunge my record at the College of any and all references to this disciplinary procedure so that I can begin to put this nightmare behind me.

66. On or about July 11, 2016, CCC acknowledged Doe's timely appeal and informed Doe that his appeal was provided to Roe to allow her to provide a written response opposing Doe's appeal. *See generally, Exhibit F,* p.1 (containing Doe's July 2016 communications with CCC regarding Doe's Appeal).

67. On or about July 8, 2016, Roe sent Anderson a document opposing Doe's appeal. *See, Exhibit G* (containing Roe's July 8, 2016 letter to Anderson opposing Doe's appeal).

68. On or about July 13, 2016, Anderson informed Doe that Anderson assigned CCC Acting Chair of Cinema Arts & Sciences Joe Steiff ("Steiff") as the "Appeals Officer" for Doe's appeal (and) gave Doe three days to file a conflict of interest challenge to Steiff. *Exhibit F,* p.2 (containing Anderson's July 13, 2016 email to Doe).

69. On or about July 15, 2016, Doe sent Anderson a letter which included the following conflict of interest challenge to Steiff:

> "Section XIV(A)(2) of the SMP provides that a conflict exists if the investigator, hearing panelists, or appeals officer 'has a material and actual conflict of interest […] due to material bias.' Although I have little information regarding Mr. Steiff, his profile on the College's website indicates that his films include an educational documentary entitled 'How Will I Tell? Surviving Sexual Assault.' See http://www.colum.edu/academics/media-arts/cinema-art-and-science/faculty.html. The title suggests that Mr. Steiff's documentary tells the story of a victim of sexual assault and focuses on the impact that such sexual assault had on the victim. In contrast, Mr. Steiff is tasked in his role of Appeals Officer with determining, based on a preponderance of the evidence, whether [Roe's] accusations of sexual assault against me are true or false. This requires an objective analysis of facts regarding a complainant's accusations, rather than an appeal to pity for a confirmed victim. I am concerned that Mr. Steiff's choice to create a film documenting the perspective of victims of sexual assault, as well as time spent with actual victims, results in material bias on the part of Mr. Steiff against those accused of sexual assault, such as myself.
>
> Accordingly, I request that the College remove Mr. Steiff from his role as Appeals Officer and appoint an alternative who does not demonstrate material bias toward the complainant.
>
> I thank you in advance for your attention to this matter." *Id,* p.3 (containing Doe's July 15, 2016 letter to Anderson).

70. In response to Doe's requests in ¶69, Anderson reluctantly replaced Steiff with Davis-Berg. *See generally, Id.,* p.3-5 (containing emails between Doe and Anderson which detail Anderson's: (a) reluctance to replace Steiff; and (b) her ultimate decision to replace Steiff with Davis-Berg).

71. Yet, despite the violations of CCC's Policies and Title IX detailed in this Complaint, Davis-Berg rejected Doe's appeal on or about August 22, 2016. *See generally, Exhibit H* (containing Davis-Berg's August 22, 2016 rejection of Doe's appeal).

72. As detailed in part in Doe's Appeal in ¶65 above, the Hearing Panel's gender bias, malice, negligent and/or intentional conduct violated Doe's rights under Title IX and/or CCC's Policies. Upon information and belief, similar gender bias, malice, negligent and/or intentional conduct caused Davis-Berg's unlawful rejection of Doe's Appeal. Information supporting this

belief, includes, but is not limited to, CCC's refusal to provide Doe information and documentation during his disciplinary process that Doe maintained would establish gender bias on the part of CCC Adjudicators.

73. In addition, CCC's gender bias, malice, negligent and/or intentional conduct violated Doe's rights under Title IX and/or CCC's Policies with regard to accommodations related to Roe's false allegations against Doe. For example, on or about March 13, 2016, Doe sent CCC a letter stating in part:

> "what accommodations – if any – was [Roe] provided (and) was she told she could obtain these accommodations only if she filed a charge against me? I pose thesequestion in part because I fear [Roe] may have made false allegations to obtain a benefit from the College and/or her friend group. *See e.g.*, Reggie D. Yager, *What's Missing From Sexual Assault Prevention and Response*, (April 22, 2015) http: ssrn.com/abstract=2697788 (addressing academic studies suggesting a substantial percentage of sexual assault allegations are made under false pretenses sometimes because of: (i) the need for a cover story or alibi; (ii) retribution for a real or perceived wrong, rejection or betrayal; and/or (iii) desire to gain sympathy or attention" *Exhibit A1*, p.8 (containing Doe's Mar. 13, 2016 Letter)(internal footnote omitted).

74. Doe's request for information regarding Roe's accommodations in ¶73 was based in part on his belief that these accommodations would impeach Roe's credibility during Doe's disciplinary hearing if Roe received academic or disciplinary accommodations because of her allegations against Doe. For example, CCC's Policies provide students making sexual misconduct allegations amnesty from disciplinary proceedings related to unlawful alcohol or drug use. *See, Exhibit B,* p.6 (containing SMP's amnesty policy).

75. Anderson's April 5, 2016 letter rejected Doe's request for information related to Roe's accommodations. *Exhibit A1*, p.30 (containing Anderson's April 5, 2016 letter to Roe). In response, Doe sent Anderson a letter on April 8, 2016 which asked:

> "how does the College suggest I explore whether Roe's false allegations were made to obtain a benefit from the College and/or her friend group? What court

> decision and/or Title IX regulation supports your claim that you cannot provide me information about accommodations given to [Roe]?" *Id.*, p.39 (containing Doe's April 8, 2016 letter to Anderson).

76. On April 19, 2015, Anderson responded to Doe by stating CCC would reconsider its preliminary belief that FERPA prohibits the disclosure of the College's accommodations to Roe if Doe "disagree[d]" with CCC's belief. *Id.*, p.56 (containing Anderson's April 19, 2016 letter to Roe). As a result, on April 22, 2016, Doe replied to Anderson as follows:

> "I disagree with the College's belief that FERPA prohibits the disclosure of the College's accommodations to [Roe's] and therefore ask that the College reconsider its decision and provide me the information I request unless it can point to court decision and/or Title IX regulations that support its FERPA allegations." *Id.*, p.62 (containing Doe's April 22, 2016 letter to Anderson).

77. On May 3, 2016, Anderson alleged Doe misinterpreted CCC's position regarding accommodations provided to Doe and stated it "would not be appropriate" for CCC to disclose to Doe accommodations CCC provided to Roe. *Id.*, p.81 (Anderson's May 3, 2016 letter to Doe).

78. On the other hand, CCC hogtied Doe's requests for academic accommodations. Doe addressed these issues in a May 2, 2016 letter he sent to Anderson which stated:

> "On April 22, 2016, I sent you a letter requesting that I be able to "(a) attend all classes remotely – via a video feed or recorded classes; (b) make up assignments I missed since being falsely accused of sexual misconduct; and (c) obtain incompletes for this academic period which allow me to up to three months to make up any missed assignments or exams."
>
> Your April 29, 2016 letter to me did not indicate whether my requests would be granted, but asked that I inform you of the assignment I am missing and for which classes. This list, to the best of my knowledge, is attached . . . However, because I have not attended classes for several weeks now, I would need to contact my professors to confirm this list is complete.
>
> Since a week went by between my request for academic accommodations and your response, and given that a hearing has still not been scheduled, I would like to revise my request in (c) above to provide that I be given the longer of three months after (i) the semester ends or (ii) the end of the disciplinary process. Given that only two weeks remain in the semester, I am concerned that the disciplinary process will not be completed this semester and I do not believe that I will be able

> to focus on finishing my coursework while these false accusations remain hanging over my head.
>
> I would like to add that I made a tremendous effort to continue attending classes and keep up with my assignments for as long as I could this semester, despite my shock at the false allegations and growing anxiety about the College's mishandling of the Title IX process. Even after I was struck in the face and defamed on social media, I kept going to classes, but all I could think about were the things that students were posting about me and my safety on the streets so it became very difficult to concentrate. In addition, whenever I would go to class I would run into some of the students who were tormenting me, and they would stare at me and laugh or show aggression. I reported on some of the instances but my safety concerns grew to fear as the school failed to address the issues in an adequate and timely manner, so after discussing with my parents, I stopped attending classes. I have tried to work on some of the assignments in the meantime, but still find that I am unable to concentrate.
>
> I continue to feel a great loss that I had to discontinue attending classes. For example, I was really enjoying learning about the physics of musical instruments, taught by a professional violin maker whom I could ask any question. In English I was learning a lot about how people talk and act from the great discussions the teacher led. While I will be able to learn from doing the worksheets, papers and projects on my own, I feel that I have been robbed of the knowledge I would have gained from the interaction with my professors and fellow students – which is the reason I wanted to attend college here. Nonetheless, I would still like to finish the coursework so that I can at least obtain the college credits, and our tuition money will have not been paid completely in vain.
>
> I thank you in advance for your assistance with these matters." *Id.,* p.75-76 (containing Doe's May 2, 2016 letter to Anderson).

While Anderson subsequently informed Doe that he might be able to independently negotiate academic accommodations with individual professors, some of Doe's professors either did not respond to Doe's requests for academic accommodations or erected roadblocks to making up missed assignments. As a result, CCC's unlawful conduct caused Doe to fail numerous classes which he would have otherwise passed.

CCC's Anti-Male Gender Bias Triggered Violations of Doe's Rights under Title IX and/or CCC's Policies

79. As detailed in part above, CCC's unlawful discipline of Doe was caused by anti-male gender bias. For instance, as referenced in Doe's Appeal in ¶65, SMP § XII explicitly encourages CCC's participation in anti-male "public awareness events such as, 'Take Back The Night,' the Clothesline Project, candlelight vigils, protests, or survivor speak-out events." The SMP states CCC uses these anti-male "public awareness" events to "provide information about students' Title IX rights at these events." *Id.,* p.4 (containing Doe's Mar. 13, 2016 Letter discussing evidence of anti-male gender bias at CCC will cause CCC to unlawfully find him responsible for Roe's false allegations); *Exhibit B,* p.12 (containing SMP § XII).

80. On May 3, 2016, Anderson informed Doe that the SMP references "Take Back The Night" events because OCR's April 29, 2014's Questions and Answers on Title IX and Sexual Violence "states that 'OCR wants students to feel free to participate in preventive educational programs and access resources for survivors' and specifically mentions 'Take Back the Night" as such a program." *Exhibit A1,* p.79 (containing Anderson's May 3, 2016 letter to Doe).

81. Upon information and belief, CCC's and/or OCR's endorsement of "Take Back The Night" events evidence an intent to afford preferential treatment to females instead of implementing a gender neutral approach to alleged sexual misconduct. Evidence supporting this belief includes, but is not limited to, prominent feminist author Christina Hoff Sommers' determination that "'Take Back The Night' marches" are regularly "driving home the point" to male college students "that women are from Venus and men are from Hell." *Exhibit I,* (containing May 30, 2013 essay entitled *Why Men Are Avoiding College*.) In addition, takebackthenight.org's website details the organization's "history" of organizing females to

engage in advocacy on behalf of females subjected to sexual assault, domestic violence, and other crimes. *Exhibit J* (containing pages from takebackthenight.org's website).

82. Similarly, upon information and belief, CCC's "The Clothesline Project" events – detailed in Exhibit K - evidence an intent to afford preferential treatment to females instead of implementing a gender neutral approach to alleged sexual misconduct. Evidence supporting this belief includes, but is not limited to, the following information contained on The Clothesline Project's Website's webpage dedicated to detailing the "History of the Clothesline Project:"

a) The Clothesline Project's events are designed to develop "provocative 'in-your-face' educational and healing tool[s]" that "break the silence and bear witness to *one issue – violence against women*." *Exhibit L,* p. 1 (containing the "History of the Clothesline Project" from The Clothesline Project's Website) (emphasis added);

b) "Survivor = *A woman* who has survived intimate personal violence such as a rape, battering, incest, child sexual abuse;" *Id.*, p.1 (emphasis added), and;

c) Victim = *A woman* who has died at the hands of her abuser; *Id.*, p.2 (emphasis added).

83. Similarly, as detailed in Doe's Appeal in ¶65, at least the following three provisions of CCC's SMP encourage anti-male bias in violation of CCC's promise of the "neutral" adjudication of sexual misconduct allegations by referred to Roe as the "victim" whom CCC must not subject to "additional trauma":

1. CCC identifies those that believe they may have been subjected to sexual misconduct as "*Victims*." *SMP, §IX(A)(2)(emphasis added).*

2. "The College understands that *victims* of Sexual Misconduct may experience difficulty recalling some details of an incident and that certain memories may become repressed. Accordingly, individuals should report as much information as they can initially but know that they may add to or otherwise modify a complaint at any time." *Id., XIV(B)(2)(emphasis added),* and;

3. Hearing panels "shall endeavor to conduct the Hearing in a manner that does not inflict *additional trauma* on the Complainant. *Id., §XIV(D)(3) (emphasis added).*

> *See generally, Exhibit B,* pgs.21 (containing SMP XIV(D)); *Exhibit A1,* p.4-5 (containing Doe's Mar. 13, 2016 Letter discussing evidence of anti-male gender bias within CCC's SMP which caused CCC to unlawfully find him responsible for Roe's false allegations).

Equating complainants with victims in this fashion encourages the presumption that every accused is guilty, in contradiction with Title IX's requirement to conduct an impartial and fair investigation and hearing. The behavior of CCC's Adjudicators towards Doe at all stages of the investigation, hearing and appeal was consistent with this presumption.

84. Similarly, at least the following two provisions of CCC's SMP encourage anti-male bias in violation of CCC's promise of the "neutral" adjudication of sexual misconduct allegations by promising preferential accommodations to female complainants like Roe while denying these accommodations to male students like Doe:

1. Mandating CCC "take such interim steps in a manner that *minimizes the burden to the Complainant*. . . ." *Id., §XIV(A)(7)* (emphasis added); and

2. " . . . . the Coordinator . . . shall . . . *protect the Complainant* . . . [by imposing] temporary remedial actions may include, but are not limited to:

    - Offering on-campus *counseling to the Complainant* at the College's cost;
    - *Providing the Complainant with appropriate academic adjustments* with the consultation of appropriate faculty members (such as changes in course schedules, tutoring, or the provision of alternative course completion options);
    - Offering *extracurricular accommodations to the Complainant*;
    - *Changing the Complainant's living and dining* arrangements;
    - *Assisting with the Complainant's transportation* to and from classes (to the extent practicable on Columbia's campus);
    - *Working with the Complainant to modify work schedules* and other conditions;
    - *Temporarily suspending the Respondent* if the College determines that the Respondent poses a significant and immediate threat to an individual or

> that the Respondent's continued presence on campus is likely to create substantial disruptions;
>
> - *Modify the Respondent's academic, extracurricular, living, or other arrangements, while the investigation is pending*. *§XIV(A)(7)*(emphasis added). *See generally, Exhibit B,* pgs.17 (containing SMP §§IX, XIV); *See also, Exhibit A1,* p.4-5 (containing Doe's Mar. 13, 2016 Letter discussing evidence of anti-male gender bias at within CCC's SMP which cause CCC to unlawfully find him responsible for Roe's false allegations).

As detailed in this Complaint, CCC enthusiastically took remedial actions against Doe, requiring him to move out of his dorm room on several hours' notice and then banning him from his former residence hall altogether – despite the fact that he had had no contact with Roe since December 2015 and there were no other factors that could reasonably suggest that Doe was a threat to Roe. In contrast, when Doe requested academic accommodations following CCC's failure to take action against students who conducted a retaliatory defamation campaign against him, CCC dragged its feet in responding to the request, placed the burden on Doe to make all arrangements, and refused to intervene when certain professors were unresponsive.

85. Other than give Doe until April 8, 2016 to raise "conflict of interest" challenges to Shaaban, CCC ignored Doe's repeated requests for documents and related information which Doe maintained would expose gender bias at CCC. *See e.g.,* (Anderson's April 4th and 5th Letters). So, on April 8, 2016 Doe sent Anderson a letter asking: "what steps is the College willing to take to remedy the gender-bias concerns addressed in my March 13th letter?" *Exhibit A1,* p.33 (containing Doe's April 8, 2016 letter to Anderson). Regarding Anderson's scant direction regarding "conflict of interest" challenges to Shaaban, Doe wrote:

> "can the April 8th deadline be extended until after the College provides me the [Title IX training] materials and information [related to gender bias issues such as OCR's investigations of CCC]? If not, why not?" *Id.*

86. Regarding the gender bias concerns addressed in ¶85, Anderson stated: "[CCC]

does not understand how access to the investigator training materials or information about an OCR investigation is necessary for [Doe] to determine whether" a conflict of interest exists for individuals involved in Doe's discipline. *Id.,* p.29. In response, Doe sent Anderson a letter on April 8, 2016 stating:

> "I request the aforementioned training materials and information about an OCR investigation because it could prove individuals such as Ms. Shaaban are motivated to discriminate against male students. For, as you might imagine, most people are smart enough to *not* explicitly telegraph the intent to discriminate on the basis of gender. Instead, people often hide discriminatory intent behind the pretext of facially neutral statements. As a result, plaintiffs advancing discrimination based lawsuits can expose this pretext via indirect/circumstantial evidence. *See e.g., Waldo v. Consumers Energy Co*., 726 F.3d 802, 815 (6th Cir. 2013). In Title IX cases, plaintiffs can do this by presenting: "statements by pertinent university officials, *or* patterns of decision-making that [] *tend to show* the influence of gender.'" *Sahm* v. *Miami Univ.*, 2015 U.S. Dist. LEXIS 1404, *11-12 (S.D. Ohio, Jan. 7, 2015)(emphasis added). Similarly, Title IX plaintiffs can establish gender bias by showing a university "react[ed] against" a male student "to demonstrate to [a federal agency] that [a university] would take action, as [it] had failed to in the past, against males accused of sexual assault." *Wells v. Xavier Univ*., 7 F. Supp. 3d 746, 751 (S.D. Ohio 2014)." *Id.*, p.35.

87. In raising these issues, Doe echoed the gender bias concerns contained in his March 13, 2016 letter which stated he was concerned about his:

> " . . . . inability to raise potential bias and/or conflicts of interest of concerns. Specifically, since I am a freshman, I do not know much about the investigators or adjudicators (or) the training they received. To partly remedy this prejudice, I request access to the "training materials" SMP §XIV(A)(2) states the investigators and adjudicators received. Similarly, I request information about whether the investigators or adjudicators have any involvement in either: (1) the events being currently investigated by OCR in response to a Title IX complaint filed against the College; and/or (2) the College's response to the OCR investigation.
>
> I request this information in part because I fear the College is pursuing a gender biased disciplinary action against me in part because of pressure from OCR and/or other constituencies demanding the College more firmly discipline male students accused of sexual misconduct." *Id.,* p.6 (containing Doe's Mar. 13, 2016 Letter).

88. On April 19, 2016, Anderson responded to gender bias concerns raised by Doe by

alleging Doe had: "not provide[d] any specific allegations that demonstrate a causal link between [his] gender and what [he had] alleged as mistreatment by the College." *Id.,* p.55 (containing Anderson's April 19, 2016 letter to Doe). Anderson also stated Doe did not "have the right to review the College's training materials or submissions to the Department of Education (except where required by law). The College denies your request to extend [the] deadline" for submitting conflict of interest challenges. *Id.*

89. On April 22, 2016, Doe replied to Anderson's letter in ¶88 by stating:

> "I respectfully disagree that my previous letters – and this letter - do not demonstrate a causal link between my gender and the College's mishandling of the [Roe's] false allegations against me . . . [my] April 8th letter discussed my request for copies of all 'training materials SMP §XIV(A)(2) states the investigators and adjudicators received. My letter also requested information about any Department of Education's Office of Civil Rights investigation ('OCR') 'because it could prove individuals such as Ms. Shaaban are motivated to discriminate against male students. . . .' Your letter did not explicitly address my request . . . will the College provide me: (a) copies of any and all to the 'training materials' provide to College investigators and adjudicators pursuant to the SMP; and (b) information about OCR complaint and/or investigation related to the College. If the College will not provide this information, what is the basis for withholding it from me? *Id.,* p.58 (containing Doe's April 22, 2016 letter to Anderson).

90. Upon information and belief, OCR's investigations of CCC referenced in ¶89 involved complaints filed by female CCC students who made unfounded allegations that CCC was not sufficiently protecting female students who alleged sexual misconduct by male students. Information supporting this belief includes, but is not limited to, OCR's investigations of colleges other than CCC which primarily involve complaints by females alleging their universities condone sexual harassment and/or sexual violence by males. These complaints by female students have triggered OCR investigations of academic institutions that include, but are not limited to: (i) the University of Virginia; (ii) Southern Methodist University; (iii) Yale University; (iv) George Washington University; (v) Tufts University; and (vi) the University of

Montana in Missoula. *See generally,* http://www2.ed.gov/documents/press-releases/university-virginia-letter.pdf (containing OCR's letter to the University of Virginia regarding OCR's Title IX investigation (accessed 1/4/17); http://www2.ed.gov/documents/press-releases/southern-methodist-university-letter.pdf (containing OCR's letter to Southern Methodist University regarding OCR's Title IX investigation accessed 1/7/14); http://www2.ed.gov/about/offices/list/ocr/docs/investigations/01112027-a.html (containing OCR's letter to Yale University regarding OCR's Title IX investigation accessed 1/7/14). http://www2.ed.gov/about/offices/list/ocr/docs/investigations/11112079-a.pdf (containing OCR's letter to George Washington University regarding OCR's Title IX investigation (accessed 1/4/17); and http://www2.ed.gov/about/offices/list/ocr/docs/investigations/01102089-a.html (containing OCR's letter to Tufts University regarding OCR's Title IX investigation (accessed 1/4/17).

91. Upon information and belief, at least two female students filed OCR complaints against CCC students which included unfounded allegations that CCC was not sufficiently protecting female students who alleged sexual misconduct by male students. CCC and OCR reached a "resolution" regarding the first complaint on or about February 4, 2015. *See, Exhibit M,* (containing: (a) OCR's Feb. 4, 2014 letter to CCC President Kwang-Wu Kim; and (b) OCR's Resolution Agreement with CCC regarding OCR Case Nu. 05-13-2459). This complaint involved a female student who alleged CCC engaged in Title IX retaliation, discrimination, and the creation of a hostile environment. *Id.,* p.6 (identifying OCR complainant as a female student). OCR's heavily redacted documents related to this investigation suggest the female CCC student alleged CCC engaged in these prohibited activities in response to the student's pro-female and/or anti-male campus positions taken in a CCC class. *Id.,* p.7-17. As a result, CCC

entered into a "Resolution Agreement" which required, among other things, that CCC: (a) "refrain from retaliating against individuals who engage in protected activities or interfering in a right or privilege secured by the civil rights enforced by OCR . . . ."; (b) "respond promptly and effectively to complaints of retaliation;" and (c) implement certain "training" for "any personal charge with investigating complaints of retaliation . . . ." *Id.,* p.19-20.

92. Then, on or about December 15, 2015, OCR opened a second investigation of CCC. *Exhibit N* (containing CCC's web posting regarding OCR's Dec. 15, 2015 investigation and hotlinks linked to articles referenced in this web posting). Upon information and belief, this OCR investigation involved complaints by female CCC student(s) who raised unfounded allegations that CCC was not sufficiently protecting female students who alleged sexual misconduct by male students. Information supporting this belief includes, but is not limited to, documents linked to CCC's announcement of OCR's December 15, 2015 investigation which included the following:

a) An article entitled *A Closer Look at 7 Common Requirements in Resolving Federal Sex-Assault Inquires* which discusses a "student [who confide[d] in a professor that a guy took advantage of her while she was drunk and asks her not to tell anyone." *Id.,* p.7

b) A CCC petition entitled *Change the Sexual Assault Policy at Columbia College Chicago* which was signed by 405 supporters. This petition sought changes to CCC's Policies in part because the petition's drafters alleged CCC's SMP allowed CCC to "suspend[] or expel[]" students for "lying" if they did not present "enough evidence" of a sexual assault. *Id.,* p.6.[31];

c) A female's allegations that CCC's then existing SMP appeared to reflect a: "mediaevel [sic] misogynic rule . . . [l]aws like that exist in Afahanistan. [sic] Pakistan. Saudi Arabia." *Id.,* p.9;

d) A female's assertion that when she reported to the school that her "roommates' ex-boyfriend tried to climb into my bunk bed with me when I was sleeping . . . [she] was told there wasn't anything I could do." *Id.,* p.12;

[31] It should be noted, CCC's Policies do not suggest CCC will "suspend[] or expel[]" students for "lying" if they did not present "enough evidence" of a sexual assault. *See generally, B,* (containing SMP).

e) An ex-CCC student who maintained CCC's SMP involved: "victim blaming and lack of support for victims [which cast] a dark cloud over the CCC name." *Id.*, p.15; and

f) An article from *The Chronical of Higher Education* which profiled OCR's "stricter enforcement" of Title IX allegations after a "wave" of complaints alleging "violations of gender-equity law involving alleged sexual violence." *Id.*, p.2.

93. The "wave" detailed in ¶92(f) began on April 11, 2011 when the United States Department of Education's ("DOE") Office of Civil Rights ("OCR") sent a "Dear Colleague" letter to colleges and universities with instructions on how to comply with Title IX when investigating and resolving complaints of sexual misconduct. ("2011 Dear Colleague Letter") (available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html accessed 1/4/17). This letter echoes the mandates of President Obama's Administration that Colleges like CCC equate "victim/complainants" in sexual misconduct proceedings as being females who must receive preferential treatment. For instance, the 2011 Dear Colleague Letter:

a) states: "1 in 5 ***women*** are victims of completed or attempted sexual assault while in college' . . . [t]he Department is deeply concerned about this problem . . . ." *2011 Dear Colleague Letter*, p.2 (emphasis added);

b) warns that "the majority of campus sexual assaults occur when ***women*** are incapacitated, primarily by alcohol." *Id.*, (emphasis added);

c) suggests educational institutions seek grants from the U.S. Department of Justice's Office on Violence against ***Women*** which require institutions "develop victim service programs and campus policies that ensure victim safety, [and] offender accountability. . . ." *Id.*, p.19 (emphasis added); and

d) warns education institutions that they must "never" view the "victim at fault for sexual violence" if she has been using "alcohol or drugs." In fact, OCR asks "schools to consider" providing students who violate alcohol or drug policies with amnesty if they allege they were sexually assaulted while consuming alcohol or drugs. *Id.* p.15;

94. The 2011 Dear Colleague Letter also imposed numerous mandates to make it more difficult for males accused of sexual misconduct to defend themselves. For example, the 2011 Dear Colleague Letter required schools adopt the lowest 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." The 2011 Dear Colleague Letter also mandated schools "minimize the burden on the complainant." *The 2011 Dear Colleague Letter*, pp.15-16.

95. Similarly, on April 29, 2014, OCR published a document signed by OCR's assistant secretary of education Catherine E. Lhanon ("Sec. Lhanon") titled "Questions and Answers on Title IX and Sexual Violence." ("OCR's 2014 Q&A") (available at http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf (accessed 1/4/17). OCR's 2014 Q&A continued OCR's quest to hamper students' ability to defend themselves by reducing or eliminating the ability to expose credibility flaws in the allegations made against them. For example, OCR's 2014 Q&A states schools:

a) "[M]ust not require a complainant to be present" at sexual misconduct disciplinary hearings." *OCR's 2014 Q&A*, p.30;

b) May decide to eliminate all opportunities for "cross-examination." *Id.*, p.31; and

c) Must avoid "revictimization" by minimizing the number of times a victim is interviewed so "complainants are not unnecessarily required to give multiple statements about a traumatic event." *Id.*, pp.30, 38.

96. Neither OCR's 2014 Q&A nor the 2011 Dear Colleague Letter were subject to notice-and-comment rulemaking, and therefore their validity as binding law is at best questionable. Thus, Senator James Lankford wrote to the DOE on January 7, 2016 to express his concerns that the DOE's Dear Colleague letters are not interpretive, but are unlawfully altering

the regulatory and legal landscape of Title IX and the U.S. Constitution. *See, Exhibit DD* (containing Senator Lankford's Jan. 7, 2016 letter to ODE Acting Secretary John King). Following Senator Lankford's letter, Representative Earl Ehrhart from Georgia filed a lawsuit against the DOE on April 21, 2016 in the United States District Court for the Northern District of Georgia alleging that the DOE's implementation of the 2011 Dear Colleague letter was unconstitutional and unlawful. *See* http://www.saveservices.org/wp-content/uploads/Ehrhart-v.-DOE-2016.pdf (accessed 1/7/14).

97. Similar allegations were made against DOE in two federal lawsuits. The first is *Neal v. Colorado State Univ.-Pueblo, et al., Case No. 1:16-cv-00873,* which was filed on April 19, 2016 in the United States District Court for the District of Colorado. The second is *Doe v. Lhamon et al.,* which was filed in United States District Court for the District of Columbia. *See, Exhibit O* (containing *Doe v. Lhamon et al.,* Complaint). This Complaint contains the following information about how OCR is pressuring colleges around the county to make it more difficult for male students accused of sexual misconduct to defend themselves:

a) "Princeton University . . . continue[d] to use a 'clear and persuasive evidence' standard after publication of the [2011 Dear Colleague Letter. As a result] OCR informed Princeton in a letter dated November 5, 2014 that its policy 'did not provide for an adequate, reliable and impartial investigation.' In a 'Resolution Agreement' accompanying that letter, OCR required Princeton to adopt 'the proper standard of review of allegations of sexual misconduct (preponderance of the evidence).'"

b) " . . . in a letter dated December 30, 2014, OCR informed Harvard Law school (HLS) that the sexual misconduct policy it continued to use after publication of the [2011 Dear Colleague Letter] ***improperly*** used a 'clear and convincing' evidence standard of proof in its Title IX grievance procedures, ***in violation of Title IX***. [emphasis in original]. The letter confirmed elsewhere that '[t]his higher standard of proof was inconsistent with preponderance of the evidence standard required by Title IX for investigating allegations of sexual harassment or violence,' by January 15, 2015, procedures 'that comply with the applicable Title IX regulations and OCR policy,' which procedures must include, among other

things, '[a]n explicit statement that the preponderance of evidence standard will be used for investigating allegations of sexual harassment or violence."

c) "In a letter dated October 31, 2013, OCR notified the State University of New York (SUNY) System that '[t]he grievance procedures used by' Buffalo State 'do not specify whether the arbitrator should use the preponderance of evidence standard in investigating allegations of sexual harassment' and further that Morrisville State College 'fail[ed] to . . use the preponderance of the evidence standards to investigate allegations of sexual assault." It ordered the SUNY System to 'revise the SUNY system grievance procedures to ensure that these comply with the requirements of Title IX; including using the preponderance of evidence standard to investigate allegations of sexual misconduct.'"

d) "OCR has ordered at least two schools to adopt grievance procedures that explicitly forbid parties from directly cross-examining each other in sexual misconduct disciplinary proceedings despite the fact that the [2011 Dear Colleague Letter] states that personal cross-examination is only 'strongly discouraged.'"

e) "in a Resolution Agreement with Rockford University signed on April 24, 2015, OCR required Rockford University to present to OCR for review a draft Title IX policy that stated, among other things, that 'the parties may not personally question or cross-examine each other during the hearing.'"

f) " . . . . in a resolution agreement with Southern Virginia University entered on or around December 23, 2014, OCR required Southern Virginia University to draft, by March 31, 2015, Title IX grievance procedures that stated, 'if cross-examination of parties is permitted . . . the parties will not be permitted to personally question or cross-examine each other.'" *Id.*, pp. 13-15, ¶¶47-52.

98. As detailed in part in ¶45 above, CCC has treated the 2011 Dear Colleague Letter as law and revised CCC policies accordingly. This likely occurred in part because in February 2014, Sec. Lhanon 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." *See, Colleges Are Reminded of Federal Eye on Handling of Sexual-Assault Cases, Chronicles of*

Higher Education, February 11, 2014, located at http://chronicle.com/article/Colleges-Are-Reminded-of/144703/ (accessed 1/4/17).

99. Upon information and belief, OCR's February 2015 investigation of CCC was ongoing during Doe's disciplinary proceedings in 2016.

100. Upon information and belief, during its two investigations, OCR pressured CCC to equate "complainants" in sexual misconduct proceedings as being females who must receive preferential treatment. Unfortunately, CCC is only one of dozens of colleges subject to these types of OCR investigations. *See e.g.*, http://projects.chronicle.com/titleix/cases (containing database of information related DOE's Title IX investigations of colleges and universities since 2011) (accessed 01/04/17).

101. Many academics and organizations have raised alarms that DOE/OCR's worthwhile goal of protecting college students from sexual misconduct has evolved into an unlawful example of federal governmental overreach that violates the rights of male students who never engaged in misconduct. *See e.g.*, Emily D. Safko, *Are Campus Sexual Assault Tribunals Fair?: The Need For Judicial Review and Additional Due Process Protections In Light of New Case Law*, 84 Fordham L. Rev. 2289 (2016), pgs. 2304-5 (discussing universities' concerns regarding OCR enforcement actions that commentators believe "incentivizes schools to hold accused students accountable by implementing and conducting proceedings that are unfairly stacked against the accused."). *Id.*, pgs.2320-24 (addressing same); *Exhibit P* (containing *Open Letter From Sixteen Members of Penn Law School Faculty* (Feb. 17. 2014) which states in part: "Although we appreciate the efforts of Penn and other universities to implement fair procedures, particularly in light of the financial sanctions threatened by OCR, we believe that OCR's approach exerts improper pressure upon universities to adopt procedures that do not afford

fundamental fairness."); Barclay Sutton Hendrix, *A Feather On One Side, A Brick On The Other: Tilting The Scale Against Males Accused of Sexual Assault In Campus Disciplinary Proceedings*, 47 Ga. L. Rev. 591, (2013); Stephen Henrick, *A Hostile Environment for Student Defendants*: *Title IX and Sexual Assault on College Campuses*, 40 N. Ky. L. Rev. 49 (2013); *Exhibit Q* (containing *Rethink Harvard's Sexual Harassment Policy,* LETTER TO EDITOR, BOSTON GLOBE, Oct. 15, 2015); Janet Halley, *Trading the Megaphone for the Gravel Gavel in Title IX Enforcement,* HARV. L. REV. F. 103, 103-17, (2014); Samantha Harris, *Campus Judiciaries on Trial: An Update from the Court,* HERITAGE FOUNDATION, Oct. 6. 2015; http://www.heritage.org/research/reports/2015/10/campus-judiciaries-on-trial-an-update-from-the-courts (accessed 1/4/17); Janet Napolitano, "*Only Yes Means Yes": An Essay on University Policies Regarding Sexual Violence and Sexual Assault,* Yale Law and Policy Review Volume 33; Issue 2 (2015); Robin Wilson, *Presumed Guilty,* CHRONICLE OF HIGHER EDUCATION (Sept. 3. 2014) http://chronicle.com/article/Presumed-Guilty/148529/?cid=a&utm_medium=en (accessed 1/4/17) (noting: "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."); *Dershowitz and Other Professors Decry 'Pervasive and Severe Infringement' of Student Rights,* Jacob Gershman (May 18, 2016), http://blogs.wsj.com/law/2016/05/18/dershowitz-and-other-professors-decry-pervasive-and-severe-infringement-of-student-rights/ (accessed 1/4/17).

102. As detailed in many of the publications cited above, OCR's investigations put millions of dollars in federal student aid at risk. This is because DOE/OCR can impose civil

penalties and/or suspend institutions from participating in federal student financial aid programs if DOE/OCR finds a university, such as CCC, did not do enough to discipline males alleged to have engaged in sexual misconduct with female students. Sec. Lhanon confirmed this risk of losing federal funds at a national conference at Dartmouth in the summer of 2014 when she said, "I will go to enforcement, and I am prepared to withhold federal funds." *See, How Campus Sexual Assaults Came to Command New Attention,* NPR, August 12, 2014 located at http://www.npr.org/2014/08/12/339822696/how-campus-sexual-assaults-came-to-command-new-attention (accessed 1/4/17).

103. In June 2014, Sec. Lhanon told a Senate Committee, "This Administration is committed to using all its tools to ensure that all schools comply with Title IX . . . ." In addition, Sec. Lhanon noted:

> "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."

104. For CCC, the withdrawal of federal funding would be catastrophic in part because, CCC's undergraduate students received approximately $14,265,275.00 in Pell Grants and over $46,962,656.00 in Federal Student Loans during the 2014-15 academic year. *See,* http://nces.ed.gov/collegenavigator/?q=columbia+college+chicago&s=all&id=144281 (accessed 1/3/17).

105. As detailed in some of the publications cited above, OCR investigations put immediate and tremendous pressure upon universities and CCC to: (a) severely discipline male

students alleged to have engaged in sexual misconduct regardless of their innocence, and (b) equate "victim/complainants" in sexual misconduct proceedings as being females who receive preferential treatment over the males they accuse of sexual misconduct.

106. Upon information and belief, OCR pressured CCC to toughen its burden of proof for sexual misconduct offenses to a preponderance of the evidence standard. Upon information and belief, CCC agreed to this change to make it easier for CCC employees to: (a) find accused male students responsible in sexual misconduct cases, even if it meant depriving these accused male students of their rights under Title IX and/or CCC's Policies; and (b) equate "complainants" in sexual misconduct proceedings as being females who must receive preferential treatment in part because of pressure from the federal government.

107. The use of the preponderance of the evidence standard has also been challenged in a paper submitted by the American Association of University Professors in March 2016, shortly before Doe was found responsible. *See Exhibit R* (containing AAUP's March 24, 2016 publication entitled: *Executive Summary: The History, Uses, and Abuses of Title IX*).

108. Therefore, upon information and belief, pressure from governmental agencies such as OCR/DOE and/or internal forces at CCC, caused CCC to take unlawful and gender biased disciplinary actions against male students like Doe.

109. In addition, upon information and belief, CCC adopted gender-biased policies and procedures for addressing complaints of sexual assault to avoid negative publicity that CCC did not adequately handle sexual assault investigations. As detailed in part in ¶¶8-11 above, CCC's unlawful discipline of Doe was motivated in part to avoid negative publicity by female CCC students who heard Roe's false allegations against Doe.

110. In addition, based on the information detailed in this Complaint and upon information and belief, CCC' unlawful discipline of Doe occurred in part because of CCC's archaic assumptions that female students do not sexually assault fellow male students because females are less sexually promiscuous than males. Evidence supporting this belief, includes, but is not limited to, CCC's: (a) unlawful rejection of the preponderance of evidence which proved Roe voluntarily initiated and/or consented to all physical contact with Doe when Roe was not incapacitated by alcohol; (b) decision to ignore testimony that established Doe's innocence in part because that testimony proved Roe's allegations were internally inconsistent and lacking in credibility; and (c) unlawful discipline of Doe for accepting Roe's offer to engage in promiscuous behavior that Roe, in retrospect, later regretted engaging in.

111. In engaging in the conduct detailed in ¶110, CCC violated OCR's guidance regarding the credibility of the parties and the presence of corroborating evidence. *See generally, Exhibit S* (containing *OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* ("OCR's Sexual Harassment Guide") (January 2001). For example, OCR's Sexual Harassment Guide recommends evaluating the "relative credibility" of evidence by looking at the level of detail and consistency of each person's account . . . in an attempt to determine who is telling the truth. Another way to assess credibility is to see if corroborative evidence is lacking where it should logically exist." *Id.,* p.9.

112. Upon information and belief, CCC ignored the exculpatory evidence establishing Doe's innocence in part because of fear that President Obama's Administration might cut off CCC's access to federal funding if CCC did not provide preferential treatment to females such as Roe. Evidence supporting this belief includes The White House's April 2014 report entitled "Not Alone" which threatens the elimination of federal funds by stating:

> If OCR finds a Title IX violation, the school risks losing federal funds. www.whitehouse.gov/sites/default/files/docs/report_0.pdf (accessed 1/4/17)

113. The White House publication in ¶112 also noted that: "The Justice Department (DOJ) . . . shares authority with OCR for enforcing Title IX, and may initiate an investigation or compliance review of schools receiving DOJ financial assistance. If schools are found to violate Title IX and a voluntary resolution cannot be reached, DOJ can . . . seek to terminate DOJ funds. *Id.*, p.17

114. President Obama's federal funding threats dovetail with his Administration's repeated allegation that: "[a]n estimated one in five women has been sexually assaulted during her college years. . . ." *See e.g.*, https://www.whitehouse.gov/blog/2014/09/19/president-obama-launches-its-us-campaign-end-sexual-assault-campus (accessed 1/4/17); https://www.whitehouse.gov/the-press-office/2014/04/29/fact-sheet-not-alone-protecting-students-sexual-assault (accessed 1/4/17).

115. Regarding these initiatives, Vice President Joe Biden has made it clear that the purpose of the "It's On Us" campaign is to protect female students from male students. *See e.g.*, https://www.osu.edu/buckeyesact/vpbidenvideo.html (accessed 1/4/17). VP Biden also made it clear that President Obama's Administration and the DOE used Title IX investigations and potential loss of federal funding to encourage university presidents to join the campaign. *Id.* VP Biden also encourages "guys" to take the "It's On Us" pledge to combat the fact that 1 in 5 college women are the victim of sexual assault while attending college. *Id.*

116. In taking actions such as these, the Obama administration has unfortunately portrayed male students as sexual predators in part by:

a. Distributing promotional materials of its "It's on us" campaign that state: "It's on us to make sure *guys* know that if *she* doesn't or can't consent to sex, it's sexual assault." *See generally,* http://itsonus.org/index.html#pledge (accessed 1/4/17);

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCMQFjABahUKEwjW2vihqpbJAhUI02MKHeaeC94&url=http%3A%2F%2Fitsonus.org%2Fassets%2Ffiles%2FIt%27s_On_Us_Organizing_Guide_Fall_2015.pdf&usg=AFQjCNGy24MM2vn7-N7HwwUnshc6d6q0gQ&sig2=nlpOPMfxwODg7eSMWYrbxA&cad=rja (accessed 1/4/17) (emphasis added);

b. Suggesting individuals videotape themselves "[s]ay[ing] to a camera…it's on us to recognize that if a *woman* doesn't or can't consent to sex, it's rape." *Id.,* (emphasis added); and

c. Stating: "*Never* blame the victim," "*always* be on the side of the survivor," and "*trust* the survivor." *Id.,* (emphasis added);

117. In response to pressure from the federal government, CCC embraced President Obama's "It's On Us" Campaign in September of 2014. *See e.g. Exhibit T* (containing Columbia Chronicle's Sept. 29, 2016 article entitled *Obama Campaign is Right Approach to Sexual Assault* discussing President Obama's "It's on Us" campaign). Thus, upon information and belief, the current Title IX enforcement at CCC is being largely driven by federal directives which incorrectly portray large percentages of male college students as being the perpetrators of sexual assault.

118. However, CCC and the Obama Administration's allegations that 20% of America's female college students are being sexually assaulted by their male counterparts is false. For example, a report issued by The American Association of University Women noted that over 90% of the colleges and universities in the United States reported *none* of their students were raped in 2014. *See,* http://www.aauw.org/article/clery-act-data-analysis/ (assessed 1/4/17)

119. Similarly, from 2013-2015, CCC reported 16 instances of rape, fondling, and sex offenses by CCC's student population of approximately 10,000 students per year. *See, Exhibit U,* p.45 (containing *CCC's 2015-16 Annual Security And Fire Safety Report*); *Exhibit V*

(containing article entitled *Columbia College Chicago Stats, Info, and Facts*). Even assuming a significant rate of underreporting, these statistics suggest that the 20% rate is highly inflated.

120. In fact, even though academic studies suggest a high percentage of rape allegations are false,[32] CCC routinely portrays a large portion of their male students as sexual predators. For example, beginning in 2014-15 academic year, CCC sanctioned "Presence of Yes" web postings that created a hostile environment for CCC's male students like Doe. These web postings, which include, but are not limited to the postings below, portray male CCC students like Doe as going unpunished for sexually assaulting female students:

a) "1 in 5 undergraduate women experience sexual assault while in college." *Exhibit WW*, p.9 (containing CCC's "Presence of Yes" web postings);

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[32] *See e.g.*, Edward Greer, *The Truth behind Legal Dominance Feminism's Two-Percent False Rape Claim Figure*, 33 Loy. L.A.L. Rev. 947(2000); http://r.search.yahoo.com/_ylt=A0LEVrdNvHZXx3UAa7AnnIlQ;_ylu=X3oDMTEyY241aGc1BGNvbG8DYmYxBHBvcwMxBHZ0aWQDQjIzNDFfMQRzZWMDc3I-/RV=2/RE=1467428045/RO=10/RU=http%3a%2f%2fdigitalcommons.lmu.edu%2fcgi%2fviewcontent.cgi%3farticle%3d2216%26context%3dllr/RK=0/RS=.kUz8FO96RCLAQlabKJBDnbww1g- For example, Greer writes, "It is indisputably true that, largely through the efforts of legal dominance feminists, there now exists a consensus among legal academics that only two percent of rape complaints are false. This purportedly empirical statement is ubiquitously repeated in legal literature. Dozens of law review articles reiterate that no more than one in fifty rape complaints is false. This empirical fact, however, is an ideological fabrication." *Id.* Then, in an extremely detailed study of "academic archeology" Greer shows how this 2% figure is not based on known academic studies at all but rather it is based on, "feminist publicist Susan Brownmiller's interpretation of some data, now a quarter-century old (1974), of unknown provenance from a single police department unit. There are no other published studies that this author could find...Whether that original source was a press release, a more formal report, or simply an oral statement to a reporter, remains lost in antiquity." *Id. See also,* Eugene J. Kanin, *False Rape Allegations* Archives of Sexual Behavior, Vol. 23 No.1 (1994) available https://archive.org/details/FalseRapeAllegations (accessed 6/29/16). Kanin's report appears in a peer reviewed journal. In summary, his study found that in a small Midwestern city, 41% of all rape charges were false accusations, that is, admittedly false by the complainants themselves. There is an addendum to the article describing how they then repeated their study at two Midwestern universities and found the number to be 50%. The report goes on to note: "[i]n 1988, we gained access to the police records of two large Midwestern state universities. With the assistance of the chief investigating officers for rape offenses, all forcible rape complaints during the past 3 years were examined. Since the two schools produced a roughly comparable number of rape complaints and false rape allegations, the false allegation cases were combined, n = 32. This represents exactly 50% of all forcible rape complaints reported on both campuses. Quite unexpectedly then, we find that these university women, when filing a rape complaint, were as likely to file a false as a valid charge."

b) "Teach boys that they are not entitled to women's bodies." *Id.*, p.1

c) "One in Five women is sexually assaulted in college. Just one percent of attackers are punished." *Id.* p.9[33]

d) "This is rape culture: 'A girl worth kissing in not easily kissed.' All girls are worth kissing. Girls who kiss 'easily' are not worth less than girls who don't. A Women's worth is not determined by her sexual experience." *Id.*, p.7;

e) " . . . . what men fear most about prison is what women fear most about walking down the sidewalk." *Id.*, p.1;

f) "Feminism Fact #127 Misogyny kills: the sexual entitlement that many men have and the ways in which they objectify women are behind the high rates of sexual violence, abuse, and harassment that women experience." *Id.* p.12;

g) "Girls are not machines that you put kindness coins into until sex falls out." *Id.*, p.14; and

h) "More than one in five women and 5 percent of men are sexually assaulted while at college. Some survivors are coming forward; others are not . . . [b]uy the book . . . We-Believe-You-Survivors – Assault." *Exhibit X*, p.6 (containing web postings from "facebook.com/cccpresenceofyes).

121. Upon information and belief, beginning in the 2014-15 academic year, CCC encouraged, condoned, and/or tolerated, a hostile environment for male students like John Doe in part because around that time CCC "came under scrutiny when 10 students were accused of sexual assault during the 2013-14 school year, but no students were convicted, causing people to question [CCC's] policy according to a Sept. 23. [2015] university report." *See Exhibit T* (containing Columbia Chronicle's Sept. 29, 2016 article entitled *Obama Campaign is Right Approach to Sexual Assault*).

122. During this time frame, CCC sponsored a showing of the film "The Hunting Ground." In promoting the film CCC detailed how "The Hunting Game:" "captur[ed] stories of undergraduate rape survivors pursuing . . . justice in the face of an endemic system of

[33] *See also, Exhibit Y* (containing Loyola Phoenix's March 14, 2016 article entitled *Sexual assault still a concern on college campuses* which reports "1 in 5 college females are sexually assaulted" at Columbia College Chicago).

institutionalized cover-ups and victim blaming on college campuses." *Exhibit Z* (containing CCC's notice of April 28, 2016 screening of Hunting Ground). The film's showing was "followed by a facilitated discussion" of the issues raised in the film. *Id.* But, as detailed in items 1-4 below, "The Hunting Ground" has been widely criticized for anti-male bias:

(1) Nineteen Harvard University professors denounced the film as "*propaganda*" that paints "a seriously false picture of general sexual assault phenomenon at universities and or our student Branon Winston in part because "Harvard University School Faculty concluded after extensive review of the facts that there was insufficient evidence to support the [sexual assault] charges made against him" by the female profiled in the Hunting Ground. *See, Exhibit* AA (containing *Harvard University Law School's Nov. 11, 2015 Press Release);*

(2) The National Review noted the film was "highly misleading if not dishonest" in its portrayal of sexual assaults of female students by their male counterparts. In discussing this anti-male bias, the article states: *"[w]e don't operate the same way as journalists — this is a film project very much in the corner of advocacy for victims, so there would be no insensitive questions or the need to get the perpetrator's side." See, The Hunting Ground co-producer Amy Herdy;* http://www.nationalreview.com/article/427166/hunting-ground-smoking-gun-e-mail-exposes-filmmaker-bias-against-accused (accessed 1/4/17);

(3) Numerous news outlets detailed in part how the file features three women, whose claims of sexual assault were later largely discredited, including in one case fabricating evidence (a bloody condom that when eventually tested contained DNA of another male who was not the alleged assailant); *See,* http://www.slate.com/articles/news_and_politics/doublex/2015/06/the_hunting_ground_a_closer_look_at_the_influential_documentary_reveals.html (accessed 1/4/17); http://www.nationalreview.com/article/415269/cinematic-railroading-jameis-winston-stuart-taylor-jr (accessed 1/4/17), and http://www.thedailybeast.com/articles/2015/02/03/columbia-student-i-didn-t-rape-her.html (accessed 1/4/17); and

(4) The film repeats the false claim that one in five college women are sexually assaulted in college even though the U.S. Department of Justice reports a woman's risk is less than one percent (0.61%) each year. *Infra,* ¶127 (discussing the U.S. Department of Justice's finding that only .61% of female college students are sexually assaulted during their college years).

123. CCC also "hosted events like the Sept. 25 [2015] 'Consent Rocks' concert to encourage students to discuss consent. The college shared assault statistics and showcased

murals like 'Stop Telling Women to Smile' . . . to strengthen awareness of sexual harassment." *See, Exhibit BB,* p.2 (containing *Columbia Chronicle's Sept. 28, 2015* article entitled *Participation low in 'mandatory' sexual misconduct webinar*).

124. Similarly, in encouraging CCC students to complete CCC's sexual assault webinar entitled "Think about it," CCC noted: "[e]ducation and dialogue about consent and sexual violence are more necessary than ever considering that one in five women and one in 16 men are sexually assaulted in college, according to the National Sexual Violence Resource Center." *See, Exhibit CC,* p.1 (containing *Columbia Chronicle's Sept. 28, 2015* article entitled *'Mandatory' sexual misconduct webinar should be enforced*).

125. But, according to CCC's website, 5,047 of CCC's 9,066 full time students are females. *Exhibit V* (containing article entitled *Columbia College Chicago Stats, Info, and Facts*). Therefore, if the one in five statistic were applicable, approximately 1009 female CCC students would be sexually assaulted during their four-year stay at CCC. Yet, as detailed above, CCC reported 16 sexual offenses from 2013 through 2015. *Exhibit U,* p.45-46 (containing *CCC's 2015-16 Annual Security And Fire Safety Report*).

126. Emily Yoffe's 2014 article in *Slate* refutes sexual assault statistics relied on by President Obama and/or CCC. Emily Yoffe, *The College Rape Overcorrection*, SLATE, Dec. 7,2014,http://www.slate.com/articles/double_x/doublex/2014/12/college_rape_campus_sexual_assault_is_a_serious_problem_but_the_efforts.html (accessed 1/4/17). Ms. Yoffe asked Christopher Krebs - the lead author of the study cited by President Obama - whether his study represented the experience of the approximately 12 million female students in America. *Id.* Mr. Krebs stated those involved in the study, "don't think one in five is a nationally representative statistic." *Id.* This was because Mr. Krebs stated his sampling of only two schools "[i]n no way .

. . make[s] our results nationally representative." *Id. See also*, Heather MacDonald, *An Assault on Common Sense*, The Weekly Standard, Nov. 2, 2105, http://www.weeklystandard.com/an-assault-on-common-sense/article/1051200 (accessed 1/4/17) (detailing why a recent survey conducted by Association of American Universities has been improperly distorted to falsely suggest large percentages of female college students are being sexually assaulted on America's college campuses).

127. Ms. Yoffe also noted that if the "one-fifth to one-quarter assertion [regarding sexual assaults on college campuses were accurate that] would mean that young American college women are raped at a rate similar to women in Congo, where rape has been used as a weapon of war." Emily Yoffe, *The College Rape Overcorrection*, SLATE, December 7, 2014, http://www.slate.com/articles/double_x/doublex/2014/12/college_rape_campus_sexual_assault_is_a_serious_problem_but_the_efforts.html (accessed 1/4/17). And, Ms. Yoffe debunked the sexual assault statistics relied on by President Obama and/or CCC by discussing a:

> "special report from the Bureau of Justice Statistics title 'Rape and Sexual Assault Victimization Among College-Age Females, 1995-2013' . . . [which] found that contrary to frequent assertions by some elected officials, about the particular dangers female college students face, they are less likely to be victims of sexual assault than their peers who are not enrolled in college. The report found . . . the incidence [of sexual assault] . . . was far lower than anything approaching 1 in 5: 0.76 percent for nonstudents and 0.61 percent for students." Emily Yoffe, *The Problem with Campus Sexual Assault Surveys*, SLATE, Sept. 24, 2015. *http://www.slate.com/articles/double_x/doublex/2015/09/aau_campus_sexual_assault_survey_why_such_surveys_don_t_paint_an_accurate.html (accessed 1/4/17)*

128. CCC's legitimate goal of preventing sexual assault is *not* the issue in, nor is it the basis for, this Complaint. Rather, this Complaint addresses CCC's unlawful and/or gender biased discipline of innocent male students like Doe via sexual misconduct proceedings that afford females preferential treatment in violation of Title IX and/or CCC's Policies.

129. CCC's unlawful actions and/or gender bias has created a hostile environment which in turn creates an adverse educational setting in violation of Title IX in part because CCC engages in sex stereotyping discrimination based on unlawful notions of masculinity and femininity. This hostile environment causes innocent males on CCC's campus to be unlawfully disciplined and interferes with males' ability to participate in or benefit from various activities including learning on campus.

130. Although CCC may allege CCC Policies are gender neutral, this is a pretext for CCC's anti-male discrimination implemented to discipline innocent male students like Doe via sexual misconduct proceedings that afford females preferential treatment in violation of Title IX and/or CCC's Policies.

131. Altogether, this Complaint manifests CCC's pattern and practice of: (a) providing preferential treatment to females – like Roe – who falsely allege they were sexually assaulted by male students; (b) imposing presumptions against male students – like Doe – who are falsely accused of sexual misconduct; (c) creating an unlawful hostile environment for male students like Doe based on their gender and/or (d) discriminating and/or allowing Title IX retaliation against male students to appease pressure from the federal government, CCC's female student body, and/or the general public to discipline males students like Doe even though the preponderance of the evidence proves these male students did not engage in sexual misconduct.

Count 1 – Defamation Per Se
(Against Roe Only)

132. Doe hereby incorporates by reference the aforementioned allegations contained in this complaint as though fully set forth herein.

133. Roe knew and intended Roe's Non-Privileged Defamation, detailed in part in ¶¶7-15, to be heard and/or read by persons in the city of Chicago, and the state of Illinois, and

intended Roe's Non-Privileged Defamation to damage the professional and personal reputation of Doe.

134. Upon information and belief, Roe's Non-Privileged Defamation includes defamatory statements other than those detailed in part in ¶¶7-15 which Roe knew and intended to be heard and/or read by persons in the city of Chicago, and the state of Illinois, and intended Roe's Non-Privileged Defamation to damage the professional and personal reputation of Doe.

135. Roe made and published Roe's Non-Privileged Defamation with actual malice and reckless disregard of their falsity, or with knowledge of their falsity.

136. Roe's Non-Privileged Defamation related to this count were not made by Roe in support of any complaint she filed against Doe with CCC or any governmental or quasi-governmental body. Rather, Roe's Non-Privileged Defamation related to this count are: (a) completely unrelated to any complaint Roe made about Doe to CCC or any governmental or quasi-governmental body; and (b) were not made in the presence of CCC employees or any other governmental or quasi-governmental body involved in an action against Doe.

137. As a direct and proximate result of Roe's Non-Privileged Defamation, Doe has suffered actual damage of a pecuniary nature, including medical fees for therapy and legal fees in defending Doe's reputation.

138. As a direct result of Roe's Non-Privileged Defamation, the character and reputation of Doe at CCC and in the community at large was impaired and he suffered and will continue to suffer mental anguish, personal humiliation, and a great loss of reputation.

139. As a further direct and proximate cause of Roe's Non-Privileged Defamation, Doe suffered consequences and damages, loss of employment opportunities and/or wages, loss of educational opportunities, difficulty in gaining entrance to another university comparable to

CCC, reduced future earning capacity, and attorneys' fees.

Count 2 – Defamation *Per Quod*
(Against Roe Only)

140. Doe hereby incorporates by reference the aforementioned allegations contained in this complaint as though fully set forth herein.

141. Roe knew and intended Roe's Non-Privileged Defamation, detailed in part in ¶¶7-15, to be heard and/or read by persons in the city of Chicago, and the state of Illinois, and intended Roe's Non-Privileged Defamation to damage the professional and personal reputation of Doe.

142. Upon information and belief, Roe's Non-Privileged Defamation includes defamatory statements other than those detailed in part in ¶¶7-15 which Roe knew and intended to be heard and/or read by persons in the city of Chicago, and the state of Illinois, and intended Roe's Non-Privileged Defamation to damage the professional and personal reputation of Doe

143. Roe made and published Roe's Non-Privileged Defamation with actual malice and reckless disregard of their falsity, or with knowledge of their falsity.

144. Roe's Non-Privileged Defamation related to this count were not made by Roe in support of any complaint she filed against Doe with CCC or any governmental or quasi-governmental body. Rather, Roe's Non-Privileged Defamation related to this count are: (a) completely unrelated to any complaint Roe made about Doe to CCC or any governmental or quasi-governmental body; and (b) were not made in the presence of CCC employees or any other governmental or quasi-governmental body involved in an action against Doe.

145. As a direct and proximate result of Roe's Non-Privileged Defamation, Doe has suffered actual damage of a pecuniary nature, including medical fees for therapy and legal fees in

defending Doe's reputation.

146. As a direct result of Roe's Non-Privileged Defamation, the character and reputation of Doe at CCC and in the community at large was impaired and he suffered and will continue to suffer mental anguish, personal humiliation, and a great loss of reputation.

147. As a further direct and proximate cause of Roe's Non-Privileged Defamation, Doe suffered consequences and damages, loss of employment opportunities and/or wages, loss of educational opportunities, difficulty in gaining entrance to another university comparable to CCC, reduced future earning capacity, and attorneys' fees.

WHEREFORE, with regard to Counts 1-2, Doe demands judgment against Roe as follows:

(a) For actual, special, and compensatory damages, including Doe's medical fees and legal fees, in an amount to be determined at trial but in no event less than $75,000.00;

(b) For punitive damages in an amount sufficient to deter Roe from conducting similar future conduct but in no event less than $100,000;

(c) Judgment for attorneys' fees, pursuant any applicable statute;

(d) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;

(e) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or; and

(f) Such other and further relief as this Court finds just and equitable.

Count 3:
Violation of Title IX –Hostile environment sexual harassment and/or discrimination
(against CCC only)

148. Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

149. Pursuant to 20 U.S.C. § 1681, Title IX is a federal statute designed to prevent sexual discrimination and/or harassment in educational institutions receiving federal funding.

150. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, applies to all public and private educational institutions that receive federal funds, including colleges and universities. The statute prohibits discrimination based on sex in a school's "education program or activity," which includes all of the school's operations. Title IX provides in pertinent part: "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). The United States Supreme Court has held that Title IX authorizes private suits for damages in certain circumstances.

151. CCC receives federal financial assistance and is thus subject to Title IX.

152. Title IX includes an implied private right of action, without any requirement that administrative remedies, if any, be exhausted. An aggrieved plaintiff may seek money damages and other relief.

153. Both the DOE and the DOJ have promulgated regulations under Title IX that require a school to "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. 34 C.F.R. § 106.8(b) (Department of Education); 28 C.F.R. § 54.135(b) (Department of Justice).

154. Title IX mandates CCC afford equitable procedures and due process to Doe which includes, but is not limited to: (a) having proper jurisdictional authority to conduct an

investigation; (b) providing adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence, and/or (c) that CCC employees involved in the conduct of the procedures have adequate training.

155. CCC knew, or in the exercise of due care should have known, that CCC lacked jurisdiction under CCC's Policies to investigate and/or discipline Doe for a physical encounter Roe initiated with Doe.

156. Upon information and belief, CCC knew, or in the exercise of due care should have known, CCC Adjudicators received gender biased training regarding Title IX which caused them to violate Doe's rights under Title IX and/or CCC's Policies in part by equating "complainants" in sexual misconduct proceedings as being females who must receive preferential treatment.

157. CCC's policies fail to meet the standards required by Title IX and/or Constitutional safeguards as interpreted by United States' courts regarding how institutions of higher education conduct disciplinary proceedings.

158. Upon information and belief, in virtually all cases of campus sexual misconduct by CCC students occurring - after the start of CCC's 2014-15 academic year - the accused student is male and the accusing student is female.

159. Since the start of CCC's 2014-15 academic year, CCC created an environment in which male students accused of sexual assault, such as Doe, are fundamentally denied their rights under Title IX and/or CCC's Policies so as to be virtually assured of a finding of guilt. Such a biased and one-sided process deprives male CCC students like Doe of educational opportunities based on their gender.

160. Upon information and belief, CCC's investigation and/or discipline of Doe was taken to demonstrate to DOE, DOJ, OCR, President Obama's Administration, and/or the general public that CCC: (a) is aggressively disciplining male students accused of sexual assault; and (b) providing females involved in sexual misconduct proceedings with preferential treatment not provided to males.

161. CCC had actual or constructive knowledge that CCC's investigation and/or discipline of Doe posed a persuasive and unreasonable risk of gender discrimination with regard to Doe.

162. CCC's actions and inactions detailed above and below set in motion a series of events that CCC knew, or reasonably should have known, would cause male CCC students, such as Doe, to suffer unlawful gender discrimination.

163. CCC's investigation and/or discipline of Doe is discriminatory and based upon or motivated by Doe's male gender.

164. CCC's Adjudicators unlawfully failed to exercise the authority to institute corrective measures to remedy: (a) CCC's violations of Doe's rights under CCC Policies, Title IX, and/or guidance promulgated by OCR; and/or (b) CCC's unlawful determination that Doe violated CCC Policies which CCC adopted pursuant to federal laws and regulations related to Title IX.

165. CCC's Adjudicators exhibited deliberate indifference by refusing to remedy: (a) CCC's violations of Doe's rights under CCC Policies, Title IX, and/or guidance promulgated by OCR; and/or (b) CCC's erroneous determination that Doe violated CCC Policies which CCC adopted pursuant to federal laws and regulations related to Title IX.

166. CCC's deliberate indifference caused Doe to suffer sexual harassment and/or discrimination so severe, pervasive or objectively offensive that it deprived Doe of access to educational opportunities or benefits (and) caused other harms detailed in this Complaint.

167. Upon information and belief, CCC possess additional documentation evidencing their unlawful pattern of gender-biased decision making which provides preferential treatment to female students who falsely accused male students like Doe of sexual misconduct. Evidence supporting this allegation includes, but is not limited to CCC's rejection of Doe's requests for information and documentation during his disciplinary proceeding.

168. Upon information and belief, CCC possess additional documentation evidencing their refusal to discipline female students who were alleged to have sexually assaulted male students. Evidence supporting this allegation includes, but is not limited to CCC's rejection of Doe's requests for information and documentation during his disciplinary proceeding.

169. As a direct result of CCC's violations of Doe's rights under Title IX and/or CCC's Policies, the character and reputation of Doe at CCC and in the community at large was impaired and he suffered and will continue to suffer mental anguish, personal humiliation, and a great loss of reputation.

170. CCC's violations of Doe's rights under Title IX and/or CCC's Policies detailed in this Complaint caused Doe to seek medical help to address profound and ongoing psychological and mental anguish.

171. As a further direct and proximate cause of CCC's violations of Doe's rights under Title IX and/or CCC's Policies, John Doe was unlawfully disciplined by CCC, which has or will result in, among other consequences and damages, loss of employment opportunities and/or

wages, loss of educational opportunities, difficulty in gaining entrance to another university comparable to CCC, reduced future earning capacity, and attorneys' fees.

172. CCC's hostile environment, sexual harassment and/or discrimination caused Doe to be damaged in an amount to be determined at trial.

Count 4:
Violation of Title IX – Deliberate Indifference
(against CCC only)

173. Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

174. CCC's Adjudicators acted with deliberate indifference towards Doe because of his male gender.

175. CCC's Adjudicators unlawfully failed to exercise the authority to institute corrective measures to remedy: (a) CCC's violations of Doe's rights under CCC Policies, Title IX, and/or guidance promulgated by OCR; and/or (b) CCC's erroneous determination that Doe violated CCC's policies which CCC adopted pursuant to federal laws and regulations related to Title IX.

176. CCC's Adjudicators exhibited deliberate indifference by refusing to remedy: (a) CCC's violations of Doe's rights under CCC Policies, Title IX, and/or guidance promulgated by OCR; and/or (b) CCC's erroneous determination that Doe violated CCC Policies which CCC adopted pursuant to federal laws and regulations related to Title IX.

177. Upon information and belief, CCC possess additional documentation evidencing their gender based deliberate indifference towards Doe and/or other similarly situated male students. Evidence supporting this allegation includes, but is not limited to, CCC's refusal to provide Doe information and documentation he requested during his disciplinary proceeding.

178. CCC's deliberate indifference caused Doe to be damaged in an amount to be determined at trial.

Count 5
Violation of Title IX – Erroneous Outcome
(against CCC only)

179. Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

180. CCC's Adjudicators unlawfully disciplined Doe because of his male gender.

181. By erroneously disciplining Doe, CCC violated CCC Policies, Title IX, and/or guidance promulgated by OCR regarding Title IX.

182. CCC's Adjudicators unlawfully failed to exercise the authority to institute corrective measures to remedy: (a) CCC's violations of Doe's rights under CCC Policies, Title IX, and/or guidance promulgated by OCR; and/or (b) CCC's erroneous determination that Doe violated CCC Policies which CCC adopted pursuant to federal laws and regulations related to Title IX.

183. CCC's Adjudicators exhibited deliberate indifference by refusing to remedy: (a) CCC's violations of Doe's rights under CCC Policies, Title IX, and/or guidance promulgated by OCR; and/or (b) CCC's erroneous determination that Doe violated CCC Policies which CCC adopted pursuant to federal laws and regulations related to Title IX.

184. CCC's conduct detailed in this Complaint involved arbitrary and capricious violations of Illinois law.

185. Upon information and belief, CCC possesses additional communications evidencing CCC's unlawful discipline of Doe based on his gender. Evidence supporting this

allegation includes, but is not limited to, CCC's refusal to provide Doe document and information he requested during his disciplinary proceeding.

186. CCC's wrongful discipline of Doe caused Doe to be damaged in an amount to be determined at trial.

Count 6:
Violation of Title IX – Selective Enforcement
(against CCC only)

187. Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

188. As detailed in this Complaint, CCC violates Title IX's prohibitions against engaging in the "selective enforcement" of CCC's Policies on the basis of gender. *See e.g., Marshall v. Indiana Univ.*, Case No. 1:15-cv-00726, 2016 U.S. Lexis 32999, *19 (S.D. Ind. Mar. 15, 2016) (emphasis in original) (citing *Routh v. Univ. of Rochester*, 981 F. Supp. 2d 184, 211-12 (W.D.N.Y. 2013) (stating that "selective enforcement" liability under Title IX occurs when a plaintiff "allege[s] facts sufficient to give rise to the inference that the school intentionally discriminated against the plaintiff *because of* his or her sex"). In addressing a selective enforcement claim raised by a male student in a similar situation to Doe, the Second Circuit noted "selective enforcement" theory requires that the school's "decision to initiate the proceeding" or the "severity of the penalty" "was affected by the student's gender" without regard to guilt. *Yusuf v. Vassar College*, 35 F. 3d 709, 715 (2d Cir. 1994).

189. The facts detailed in this Complaint establish that CCC's decision to initiate the proceeding against Doe and/or or the severity of the penalty imposed on Doe was affected by the Doe's male gender - without regard to his guilt.

190. CCC's Title IX liability to Doe caused Doe to be damaged in an amount to be determined at trial.

Count 7
Violation of Title IX – Retaliation
(against CCC only)

191. Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

192. As described in this Complaint, Doe's Title IX protected activities included, but were not limited to: (a) defending himself in the disciplinary proceeding triggered by Roe's false allegations; (b) filing complaints with CCC regarding Roe's retaliation which included, but was not limited to, Roe's violations of CCC's Policies by: (i) initiating physical and verbal attacks on Doe; and/or (ii) falsely telling third parties that Doe had sexually assaulted Roe; and/or by (c) requesting CCC students be disciplined for violating CCC's Policies because these students: (i) physically assaulted Doe; (ii) threatened to physically assault Doe; and/or (iii) published false and defamatory statements on CCC's campus and/or social media accounts alleging Doe sexually assaulted Roe.

193. CCC Adjudicators possessed actual or constructive knowledge of Doe's protected activities under Title IX.

194. Because of Doe's protected activities, CCC imposed adverse actions against Doe which included, but were not limited to: (a) allowing Roe's retaliation detailed in part in ¶192 to continue by not subjecting Roe to discipline; (b) creating a hostile environment for Doe by refusing to discipline CCC students who (i) physically assaulted Doe; (ii) threatened to physically assault Doe; and/or (iii) published false and defamatory statements on CCC's campus and/or social media accounts alleging Doe sexually assaulted Roe; (c) caused Doe to seek

medical care to address profound and ongoing psychological and mental anguish; and/or (d) unlawfully disciplining Doe which has and will result in, among other consequences and damages, loss of employment opportunities and/or wages, loss of educational opportunities, difficulty in gaining entrance to another university comparable to CCC, reduced future earning capacity, and attorneys' fees.

195. Upon information and belief, Defendants possess communications evidencing Defendants' Title IX retaliation against Doe. Information supporting this belief includes, but is not limited to CCC's refusal to provide Doe information and documentation he requested during his disciplinary proceeding regarding CCC's discipline of Roe and/or the CCC students discussed in ¶192.

196. CCC's violations of Title IX caused Doe to be damaged in an amount to be determined at trial.

WHEREFORE, regarding Counts 3-7, Doe demands judgment and relief against CCC as follows:

a. Damages in an amount in excess of Seventy-Five Thousand Dollars ($75,000.00) to compensate Doe's past and future pecuniary and/or non-pecuniary damages caused by Defendants' conduct;

b. Order(s) requiring CCC to expunge Doe's official CCC files of all information related to his interactions with Roe;

c. Order(s) requiring Doe's reinstatement to CCC;

d. Judgment for attorneys' fees, pursuant to any applicable statute;

e. Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;

f. Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or

g. Such other and further relief as this court may deem just, proper, equitable, and appropriate.[34]

Count 8 – Declaratory Judgment -
(Against CCC)

197. Doe realleges and incorporates all the allegations contained in the preceding paragraphs of the Complaint as though fully rewritten herein.

198. As detailed in this Complaint, Doe has a legal tangible interest in requiring CCC to administer CCC Policies, Title IX, and/or OCR guidelines in a lawful manner.

199. As detailed in this Complaint, CCC is opposing Doe's aforementioned legal tangible interest in part because of CCC's violations of Doe's rights under Title IX and/or CCC's Policies.

200. Therefore, an actual controversy exists between Doe and CCC concerning said legal tangible interests.

[34] For example, Doe is entitled to injunctive relief in part because CCC's discipline of Doe is unlawful and violates Doe's rights under CCC's Policies, federal and/or state laws. In addition, as detailed in this Complaint, CCC's unlawful discipline of Doe will cause irreparable harm that is certain, great, actual and not theoretical. Moreover, CCC's discipline cannot be remedied by an award of monetary damages because of difficulty or uncertainty in proof or calculation. The granting of injunctive relief will cause no harm to CCC because CCC has no cognizable interest in the unlawful discipline of Doe. The granting of an injunctive relief will also advance a significant and appreciable public interest by protecting members of the public – like Doe –from having their fundamental rights threatened by unlawful government action. Therefore, Doe is entitled to injunctive relief which includes, but is not limited to an Order requiring CCC:(a) expunge Doe's official CCC student file of all information related his encounter with Roe; (b) be barred from disclosing CCC's aforementioned discipline of Doe to third parties in the future; and/or (c) allow Doe to immediately re-enroll at Columbia.

201. Judicial intervention is required because unless CCC is enjoined, CCC's unlawful acts will cause irreparable harm to Doe which includes, but is not limited to: (a) denying Doe the benefits of his education at CCC; (b) damage to Doe's academic and professional reputation; and/or (c) Doe's inability to to enroll at other institutions of higher education and to pursue his chosen career.

Count 9 – Promissory Estoppel

(against CCC only / in the alternative to Doe's Breach of Contract Claim)

202. Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

203. As described in this Complaint: (a) Doe detrimentally relied on CCC's promises to adjudicate Roe's false allegations of sexual misconduct in accordance with CCC's Policies; and (b) Doe's detrimental reliance on these promises and subsequent damages for CCC's breach of these promises were foreseeable to CCC.

204. As described in this Complaint: (a) Doe detrimentally relied on CCC's promises to subject Roe and/or other students to discipline for violating CCC's Policies that prohibited, among other things (i) retaliation against Doe for engaging in protected activities, (ii) disclosure of confidential information related to CCC's investigation of Roe's false allegations against Doe; (iii) a physical assault on Doe, (iv) a threatened physical assault on Doe; and/or (v) defamatory statements which falsely alleged Doe sexually assaulted Roe; and (b) Doe's detrimental reliance on these promises and subsequent damages for CCC's breach of these promises were foreseeable to CCC.

205. CCC's breaches caused Doe to be damaged in an amount to be determined at trial.

Count 10 – Negligence
(against CCC only)

206. Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

207. As described in this Complaint: (a) CCC owed Doe a duty to honor the provisions of CCC's Policies; (b) CCC breached that duty by, among other things: (i) conducting disciplinary proceedings that violated Doe's rights under CCC's Policies; (ii) disciplining Doe even though CCC knew or should have known Roe's allegations against Doe were false; (iii) inflicting irrevocable harm on Doe by refusing to discipline Roe and/or other CCC students who disclosed confidential information related to CCC's investigation of Roe's false allegations against Doe, assaulted Doe, threatened to assault Doe, and/or made defamatory statements about Doe in violation of Title IX and/or CCC's Policies; and (c) CCC's breaches of these duties is the cause in fact and legal cause of Doe's injuries detailed above.

208. CCC's negligence caused Doe to be damaged in an amount to be determined at trial.

WHEREFORE, with regard to Counts 9-10, Doe demands judgement against CCC as follows:

(a) For actual, special, and compensatory damages, including Doe's medical fees and legal fees, in an amount to be determined at trial but in no event less than $75,000.00;

(b) For punitive damages in an amount sufficient to deter CCC from conducting similar future conduct but in no event less than $100,000;

(c) Order(s) requiring CCC to expunge Doe's official CCC files of all information related to his interactions with Roe;

(d) Order(s) requiring Doe's reinstatement to CCC;

(e) Judgment for attorneys' fees, pursuant to any applicable statute;

(f) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;

(g) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or

(h) Such other and further relief as this court may deem just, proper, equitable, and appropriate.

Count 11 – Intentional Infliction of Emotional Distress
(against Roe and CCC)

209. Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

210. Roe's conduct detailed in Counts 1-2 was truly extreme and outrageous.

211. CCC's conduct detailed in Counts 9-10 was truly extreme and outrageous.

212. Roe intended her conduct detailed in Counts 1-2 to inflict severe emotional distress, or knew there was at least a high probability that her conduct would cause severe emotional distress to Doe.

213. CCC intended its conduct detailed in Counts 9-10 to inflict severe emotional distress, or knew there was at least a high probability that CCC's conduct would cause severe emotional distress to Doe.

214. Roe's conduct detailed in Counts 1-2 caused Doe severe emotional distress which included, among other things, Doe seeking assistance from healthcare professionals and other damages detailed in this Complaint.

215. CCC's conduct detailed in Counts 9-10 caused Doe severe emotional distress which included, among other things, Doe seeking assistance from healthcare professionals and other damages detailed in this Complaint.

216. CCC and/or Roe's aforementioned conduct caused Doe to be damaged in an amount to be determined at trial.

Count 12 – Negligent Infliction of Emotional Distress
(against Roe and CCC)

217. Doe realleges and incorporates all the allegations contained in preceding paragraphs of this Complaint as though fully rewritten herein.

218. Roe owed Doe a duty to not engage in the conduct detailed in Counts 1-2.

219. UC owed Doe a duty to not engage in the conduct in Counts 9-10.

220. Roe breached the duties she owed Doe to not engage in the conduct detailed in Counts 1-2 (and) this breach was the proximate cause of Doe's damages which include, but were not limited to, severe emotional distress which caused, among other things, Doe to seek assistance from healthcare professionals and other damages detailed in this Complaint.

221. CCC breached the duties it owed Doe to not engage in the conduct detailed in Counts 9-10 (and) this breach was the proximate cause of Doe's damages which include, but were not limited to, severe emotional distress which caused, among other things, Doe to seek assistance from healthcare professionals and other damages detailed in this Complaint.

222. CCC and/or Roe's aforementioned conduct caused Doe to be damaged in an amount to be determined at trial.

WHEREFORE, with regard to Counts 10-11, Doe demands judgement against CCC and Roe as follows:

(a) For actual, special, and compensatory damages, including Doe's medical fees and legal fees, in an amount to be determined at trial but in no event less than $75,000.00;

(b) For punitive damages in an amount sufficient to deter Roe and/or CCC from conducting similar future conduct but in no event less than $100,000;

(c) Order(s) requiring CCC to expunge Doe's official CCC files of all information related to his interactions with Roe;

(d) Order(s) requiring Doe's reinstatement to CCC;

(e) Judgment for attorneys' fees, pursuant to any applicable statute;

(f) Judgment for all other reasonable and customary costs and expenses that were incurred in pursuit of this action;

(g) Pre-judgment interest and post judgment interest as may be permitted by law and statute; and/or

(h) Such other and further relief as this court may deem just, proper, equitable, and appropriate.

Respectfully submitted,
Attorney for Doe

By: /s/ Eric J. Rosenberg – pending *Pro Hac Vice*

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