

ORIGINAL

FILED
Superior Court Of California
County Of Los Angeles

SEP 15 2015

Sherrill J. ... Executive Officer/Clerk
By Kristina Vargas Deputy

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21 Attorneys for Plaintiff JOHN DOE

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

24 JOHN DOE, *AN Individual*) Case No. **BC 594472**
25 Plaintiff,)
26 v.) **COMPLAINT FOR DAMAGES AND**
27 OCCIDENTAL COLLEGE) **INJUNCTIVE RELIEF**
28 Defendant.)
29 1. Title IX - Hostile Environment
30 2. Title IX - Deliberate Indifference
31 3. Title IX - Erroneous Outcome
32 4. Breach of Contract
33 5. False Promise
34 6. Negligence
35 7. Injunctive Relief

VOLUME II OF II

0011512015

09/15/2015

From: Mark Hathaway
Sent: Wednesday, February 05, 2014 10:17 AM PST
To: 'Cherie Scricca'
CC: 'Lauren Carella'
Subject: RE: Change of Appeals Officer

Cherie, -- Thank you for letting me know of Occidental's change of the designated Appeals Officer. Depending on the appeal determination, I intend to file a Petition for Writ of Mandate in the Los Angeles Superior Court, 111 N. Hill Street, Los Angeles, Dept. 82, 85, or 86 for court review of Occidental's disciplinary proceedings. I will also ask the assigned judge to stay the findings and sanctions while the court reviews the Occidental administrative record and proceedings, a process that may take six to nine months. If Occidental will agree to delay the imposition of the findings and sanctions for about 30 days or so, I will schedule a hearing for the Motion to Stay at the earliest convenience of the court, generally within 30 to 45 days. This would give Occidental time to oppose the stay request and for the stay request to be fully briefed and considered by the court without haste. If Occidental does not agree to delay imposition of the findings and sanctions to allow for a noticed motion, I will ask the court to impose a stay on an *ex parte* application to be heard at 8:30 a.m. the morning following Occidental's notification of the determination on the appeal. Please let me know if Occidental will agree to delay imposition of findings and sanctions against my client so the request for a stay can be heard on a noticed motion rather than on an emergency basis in an *ex parte* application.

Mark M. Hathaway
mhathaway@werksmanlaw.com
213-688-0460

From: Cherie Scricca [mailto:scricca@oxy.edu]
Sent: Wednesday, February 05, 2014 9:33 AM
To: John Doe
Cc: Mark Hathaway; Lauren Carella
Subject: Change of Appeals Officer

Dear John

I write to notify you that on Friday, we were alerted that Mr. Devon MacIver would not be able to fulfill his responsibility as Appeals Officer for this matter. As a result, we have asked Maria Hinton, Asst. Director for Housing Services to assume the role of Appeals Officer. Ms. Hinton has indicated that she will be able to review, consider and make a determination on the appeal by the already established deadline of February 12, 2014.

Please feel free to contact me if you have any questions.

All my best,

--
Cherie A Scricca
Title IX Office
Occidental College
1600 Campus Road
Los Angeles, CA 90041

323-239-1358
scricca@oxy.edu

0011512015

From: Mark Hathaway
Sent: Thursday, February 06, 2014 5:24 PM PST
To: 'Cherie Scricca'
CC: 'Lauren Carella'
BCC: John Doe
Subject: RE: Change of Appeals Officer

Ms. Scricca, -- Per your e-mail, I am requesting further clarification as to the reason for the unusual step of Occidental's reassignment of Assistant Dean of Admissions Mr. Devon MacIver, a month after he was appointed by Dr. Barbara Avery, the Vice President for Student Affairs and Dean of Students. In addition, your email suggests that Ms. Maria Hinton, Assistant Director for Housing Services, was selected as Appeals Officer by the Interim Title IX Coordinator and Title IX Hearing Coordinator rather than designated by the Dean of Students, Dr. Barbara Avery.

Best Regards, Mark Hathaway

Mark M. Hathaway

Admitted in California, New York, and Washington DC
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Please feel free to contact me if you have any questions.

All my best,

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Please feel free to contact me if you have any questions.

All my best,

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001512015

09/15/2015

February 12, 2014

Maria Hinton
Asst. Director for Housing Services
Residential Education and Housing Services
Occidental College
1600 Campus Drive
Los Angeles, CA 90041

RE: Determination on Appeal filed by John Doe

On February 3, 2014, the Hearing Coordinator of the Title IX Office of Occidental College requested that I review the appeal filed by John Doe regarding the complaint of violation of the Sexual Misconduct Policy filed by Ms. Jane Doe against Mr. John Doe. I do not know the Complainant, the Respondent, or the Adjudicator, nor have I previously been involved in this case. The documents reviewed for this appeal are noted below.

Procedural Background

On September 15, 2013, Jane Doe filed a Complaint stating that John Doe had violated the College's Sexual Misconduct Policy. The College began investigation of Jane Doe's complaint on or about October 1, 2013. The investigators completed interviewing witnesses on or about October 28, 2013 and issued a report to the Title IX Office on or about November 14, 2013.

On December 7, 2013, the College conducted a hearing presided over by an external adjudicator, Marilou F. Mirkovich. On or about December 9, 2013, the adjudicator issued a decision on the complaint. In that decision, the adjudicator found by a preponderance of the evidence that John Doe was responsible for sexual assault and non-consensual sexual contact under College policy. On December 13, 2013, the College notified the Complainant and Respondent of the adjudicator's decision. Because of the Winter Break, the parties were given until January 6, 2014 to submit an appeal. On January 6, 2014, the Respondent appealed the adjudicator's decision. An amended appeal was submitted on January 7, 2014.

Stated Basis for Appeal

In his January 7 letter appealing the adjudicator's December 7 decision, the Respondent asserts that the following constitute procedural/substantive errors and/or new evidence

Evidence Reviewed to Determine Whether Standing for the Appeal Exists

In determining whether the Respondent's appeal has standing, the following documents were reviewed:

- The amended appeal and exhibits
- Complainant's response to the appeal
- The outcome letter to the Respondent
- The sanction letter to the Respondent
- The external adjudicator's decision
- The investigation report
- The Occidental College Sexual Misconduct Policy

Timeliness of Appeal

According to the policy, the appeal must be filed in writing within five (5) business days of receiving the written outcome.

The Respondent received the written outcome of the hearing on December 13, 2013. Because of the impending Winter Break, the Respondent was given until January 6, 2014 to submit an appeal. The original appeal is dated January 6, 2014, which was the deadline given to the Respondent in the written outcome of the hearing. As a result, the Respondent's appeal is timely under the Policy.

Standing for Appeal

23(a). No Rights for the Accused

The Respondent claims that there was a procedural error because the proceedings deviated from procedures outlined in the U.N. Universal Declaration of Human Rights, the U.S. Constitution, and the California Constitution. He asserts that the due process rights afforded alleged criminals under those documents were not provided him in this case. The Policy, however, explicitly states that "[t]he hearing is an informal proceeding not comparable to a criminal trial."¹ Thus, the procedures associated with the criminal process are not applicable to proceedings under the Policy. Because the Respondent does not claim that there was an error with regard to the procedures established by the Policy, I find that ground 23(a) lacks standing.

23(b). Lack of Diversity

Here, the Respondent asserts that the lack of gender diversity among those responsible for administering these proceedings constitutes "actual and apparent bias against students of the male gender."² This ground for appeal is not properly

¹ Occidental College Sexual Misconduct Policy, 40.

² Amended Appeal, pg. 9

framed for two reasons. First, the Policy does not mandate a particular gender composition among those administering the proceedings. Secondly, the Policy states that *substantiated* bias is grounds for appeal. In this case, the Respondent does not point to a specific source of bias for any of these administrators, other than their female gender. A person's gender alone is not enough to substantiate bias. Therefore, the gender composition of persons administering the College's policy does not constitute a procedural error. For these reasons, I find that ground 23(b) lacks standing.

23(c). Irrelevant and Prejudicial Materials Presented

The Respondent claims that irrelevant and prejudicial materials in the form of statements made by Professor Danielle Dirks were presented at the hearing and that this constitutes a substantive error that impacted the outcome of the case. I find that this ground was properly stated for appeal and therefore has standing.

23(d). No Hearing Panel Convened

In this case, the matter was heard by an external adjudicator, as opposed to a three-person hearing panel. The Respondent contends that this is a procedural and substantive error. While it is true that sexual misconduct cases are often heard by a three-person panel, the Policy expressly allows for a case to be heard by an external adjudicator at the discretion of the Hearing Coordinator.³ Thus, the fact that this case was heard by an external adjudicator is not a procedural or substantive error.

The Respondent also argues that the Policy itself is unfair, because it allows for certain specific procedures to be determined at the discretion of the College. Challenging the Policy itself is not one of the two grounds for appeal under the Policy, and in any event, this objection to the policy does not raise an issue of procedural or substantive error. For this reason, and the reason stated above, I find that ground 23(d) lacks standing.

23(e). Relevant Questions Not Asked

Here, the Respondent contends that the fact that the external adjudicator failed to ask some of the questions he submitted constitutes a procedural and substantive error. The Policy, however, does not require the hearing panel or external adjudicator to ask every (or any) question submitted by the parties. In fact, the Policy states that the decision to ask questions posed by the parties is left to the discretion of the hearing panel or external adjudicator.⁴ Therefore, I find that ground 23(e) lacks standing.

³ Occidental College Sexual Misconduct Policy, 35.

⁴ Id. at 41

23(f). Misstated Standard of Proof

The Respondent claims that the external adjudicator misstated both the Policy's and the State of California's standards of proof in her decision and that this is a substantive and procedural error. I find that this ground is properly framed for appeal and therefore has standing.

23(g). Findings Not Supported by the Evidence

In this section, the Respondent reevaluates the facts of the case and claims that the external adjudicator came to the wrong conclusions based on these facts. He does not point to a specific procedural or substantive error; rather, the Respondent appears to be questioning the outcome of the case. This is not proper grounds for appeal. The Policy states that "[d]issatisfaction with the outcome of the hearing is not grounds for appeal."⁵ As a result, I find that ground 23(g) lacks standing.

23(h). Decision Not Supported by the Findings

The Respondent contends that the assignment of expulsion as a sanction in the absence of a sanction recommendation from a Hearing Panel or external adjudicator is a procedural error. While it is true that there was no sanction recommendation from the external adjudicator in this case, nothing in the Policy prevents the Hearing Coordinator and Title IX Coordinator from assigning a sanction in the absence of a recommendation. In fact, responsibility for assigning a sanction ultimately lies with the Hearing Coordinator and Title IX Coordinator, even when a recommendation has been made.⁶ Thus, the fact that a sanction was assigned without a recommendation from the external adjudicator is not a procedural error.

The Respondent also challenges the reasoning of the College in assigning expulsion as a sanction. This does not fall under either of the two permissible grounds for appeal under the Policy. As indicated above, the Policy states that "[d]issatisfaction with the outcome of the hearing is not grounds for appeal."⁷ Therefore, I find that ground 23(h) lacks standing.

24(a). New Evidence Unavailable at the Original Hearing: Redacted Evidence

The Respondent claims that the information redacted from the Investigation Report for purposes of the hearing is new evidence that could substantially impact the original finding or sanction. This ground is not properly framed for appeal, because

⁵ Occidental College Sexual Misconduct Policy, 45.

⁶ The Policy states, "The Hearing Coordinator, in consultation with the Title IX Coordinator, will review the recommendations and impose an appropriate sanction," (pg. 42) and "[t]he Hearing Coordinator and Title IX Coordinator will review the panel's recommendations and take reasonable steps to foster consistency for similar violations and circumstances." (pg. 43)

⁷ Id. at 45.

the redacted information is not new evidence. This information was available during the investigation. The Hearing Coordinator chose to redact it prior to the hearing, concluding that it was not relevant or material to the determination of responsibility. Such redaction is permissible under the Policy.⁸ Therefore, ground 24(a) lacks standing.

24(b): New Evidence Unavailable at the Original Hearing: Blood Alcohol Levels and Stages of Acute Alcoholic Influence/Intoxication

The Respondent also claims that Blood Alcohol Charts and Standard Stages of Acute Alcoholic Influence/Intoxication Charts are new evidence unavailable for the hearing. Although it is questionable whether an adequate showing of unavailability of this kind of publicly available information has been made for purposes of standing on appeal, I will review and determine this ground as if standing existed.

In summary, I find that grounds 23(a), 23(b), 23(d), 23(e), 23(g), 23(h), and 24(a) do not have standing under the Policy.

The following have standing under the Policy: 23(c), 23(f), and 24(b). I will address the merits of each to determine whether these might have affected the outcome of the case.

Evaluation of the Merits

23(c). Irrelevant and Prejudicial Materials

When contesting a matter based on a substantive error, the Respondent must first demonstrate that there was an error, and secondly, that this error significantly affected the outcome of the hearing. In this case, the first requirement was not met. I find that there was no substantive error here.

Under the Policy, the Hearing Coordinator is given the discretion to determine whether information contained in the documentary evidence is relevant and material to the determination of responsibility and to redact any information that he/she deems to be irrelevant, more prejudicial than probative, or immaterial. The Hearing Coordinator may also redact statements of personal opinion and statements as to general reputation for any character trait.⁹

Here, it was not unreasonable for the Hearing Coordinator to allow statements made by Professor Dirks to be part of the record and considered for potential relevance, and to be assigned weight (or lack thereof) as the adjudicator deemed appropriate. Among other things, Dirks described the Complainant's demeanor after the incident, which could speak to the Complainant's credibility.

⁸ Occidental College Sexual Misconduct Policy, 38.

⁹ Id.

Even if the Hearing Coordinator erred in not redacting Dirks' statements, there is no indication that this had a significant impact on the outcome of the hearing, or that the exclusion of such statements would have materially impacted the outcome. Indeed, the determination itself strongly suggests the opposite. Though the external adjudicator cited testimony from most of the other witnesses interviewed by the investigators, she did not mention Dirks' statements in her decision. Particularly telling is that Dirks' statements did not factor into any of the external adjudicator's conclusions, while the statements of most of the other witnesses did.

For these reasons, ground 23(c) does not provide a basis for overturning the external adjudicator's decision.

23(f). Misstated Standard of Proof

The Respondent also fails to establish that there was a procedural or substantive error on this ground.

With regard to the standard of proof under the Policy, the external adjudicator quoted the Policy verbatim when stating the standard of proof in her decision.¹⁰ Because the standard of proof was accurately and directly quoted from the Policy, there was no misstatement and therefore no procedural error that impacted the outcome of the case.

The external adjudicator also correctly stated that both the elements and standard of proof under California law do not apply here.¹¹ While it is true that the Policy's definition of sexual assault incorporates both the federal and state definitions of sexual assault, the Policy also makes it clear that all proceedings under the Policy are separate from criminal proceedings. The goal of a hearing is to determine whether the Policy has been violated, not whether state or federal law has been violated.¹² Because the Policy's relationship to state criminal law was correctly stated, there was no substantive or procedural error.

24(b). New Evidence Unavailable at the Original Hearing: Blood Alcohol Levels and Stages of Acute Alcoholic Influence/Intoxication

In the case of new evidence, the Respondent must demonstrate that it could substantially impact the original finding or sanction. The Respondent does not meet

¹⁰ External Adjudicator's Decision, pg. 5.

¹¹ Id. at 5, footnote 4.

¹² "A hearing is not intended to be adversarial; rather, it is intended to be educational and developmental. The hearing is intended to provide a fair and ample opportunity for each side to present his/her account of the incident and for the hearing panel to determine the facts of the case, make a determination as to whether *College policy* was violated, and to recommend appropriate sanctions, if necessary. The hearing is an informal proceeding not comparable to a criminal trial; it is the mechanism by which the College assesses, and as appropriate, takes formal disciplinary action regarding *a violation of College policy*." Occidental College Sexual Misconduct Policy, pg. 40. Emphasis added.

that requirement. The Blood Alcohol Charts and the Stages of Acute Alcoholic Influence/Intoxication are of little help here, as there is no way to know what the Complainant's actual blood alcohol level was on the night in question. Reference to the charts would support little more than speculation and would not shed much more light on the Complainant's state of capacity on the night of September 7, or impact all of the other evidence considered by the adjudicator in reaching a determination on this issue. Thus, the charts would not have substantially impacted the external adjudicator's analysis and decision in my view.

Conclusion

I find that grounds 23(a), 23(b), 23(d), 23(e), 23(g), 23(h), and 24(a) do not have standing under the Policy.

While grounds 23(c) and 23(f) are properly framed grounds for appeal, both grounds fail to demonstrate that there was a procedural or substantive error that significantly affected the outcome of the case. Similarly, though 24(b) is also a properly framed ground for appeal, the Respondent fails to demonstrate that the new evidence would have substantially impacted the original finding or sanction.

Based on all of the above, I find no basis for overturning the external adjudicator's decision in this matter.

Sincerely,

Maria Hinton

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11 Attorneys for Petitioner John Doe

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Superior Court Of California
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Sherri L. Carter, Executive Officer/Clerk
By Kristina Vargas, Deputy
Kristina Vargas

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

14 JOHN DOE, an individual,
15 Petitioner,
16 v.
17 OCCIDENTAL COLLEGE
18 Respondent.

Case No. BS147275

PETITION FOR WRIT OF
ADMINISTRATIVE MANDATE;
VERIFICATION; EXHIBITS

D-82 Luis A. Lavin

19 Petitioner petitions this court for a writ of mandate under Code of Civ. Proc. §
20 1094.5 or alternatively, writ of mandate under Code Civ. Proc. § 1085 directed to
21 Respondent Occidental College and by this verified Petition alleges as follows:

THE PARTIES

- 22 1. Petitioner JOHN DOE is a first-year student at Occidental College;
- 23 2. Respondent OCCIDENTAL COLLEGE is a California corporation
24 formed April 20, 1887 and operates as a private, co-educational liberal arts college
25 located in the Eagle Rock neighborhood of Los Angeles County, California;
- 26 3. Non-party Complainant JANE DOE is a first-year female student at
27 Occidental College and the complainant in the underlying Occidental College
28 administrative disciplinary proceeding at issue in this writ proceeding;
4. Petitioner uses the pseudonyms of "John Doe" and "Jane Doe" in this

PETITION FOR WRIT OF ADMINISTRATIVE MANDATE

RECEIPT #: CCHS17486005
DATE: 02/13/14 08:13 AM
AMOUNT: \$435.00
RECEIVED: CHIEF CLERK
CCHS: CHIEF CLERK
CCHS: CHIEF CLERK
CCHS: CHIEF CLERK

CIT/CASE: BS147275
LEA/DEF#:

1 Petition in order to preserve privacy in a matter of sensitive and highly personal
2 nature, which outweighs the public's interest in knowing the parties' identity. Use
3 of the pseudonyms does not prejudice Respondent because the identities of
4 Petitioner and Complainant are known to Respondent Occidental College. See,
5 *Starbucks Corp. v. Superior Court* (2008) 68 Cal.App.4th 1436 ("The judicial use of
6 'Doe plaintiffs' to protect legitimate privacy rights has gained wide currency,
7 particularly given the rapidity and ubiquity of disclosures over the World Wide
8 Web"); see also *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531; *Johnson v.*
9 *Superior Court* (2000) 80 Cal.App.4th 1050; *Roe v. Wade* (1973) 410 U.S. 113; *Doe*
10 *v. Bolton* (1973) 410 U.S. 179; *Poe v. Ullman* (1961) 367 U.S. 497; *In Does I thru*
11 *XXIII v. Advanced Textile Corp.* (9th Cir. 2000) 214 F.3d 1058.

JURISDICTION AND VENUE

14 5. The Supreme Court, courts of appeal, superior courts, and their judges
15 have original jurisdiction in proceedings for extraordinary relief in the nature of
16 mandamus directed to any inferior tribunal, corporation, board, or person. Cal.
17 Const., art. VI, § 10; see Code Civ. Proc. § 1084 ("mandamus" synonymous with
18 "mandate"); Code Civ. Proc. § 1085.

19 6. Petitioner, an aggrieved college student, must exhaust judicial remedies
20 through this petition for writ of mandate following the administrative appeal, which
21 is now final, before bringing an action for damages and other relief for denial of
22 rights by Occidental College in violation of the Unruh Civil Rights Act, Civ. Code §
23 52, for breach of contract, and other torts:

24 "The doctrine of exhaustion of judicial remedies precludes an action
25 that challenges the result of a quasi-judicial proceeding unless the plaintiff
26 first challenges the decision though a petition for writ of mandamus. (*Johnson*
27 *v. City of Loma Linda* (2000) 24 Cal.4th 61, 70.) Administrative mandamus is
28 available for review of "any final administrative order or decision made as the
result of a proceeding in which by law a hearing is required to be given,
evidence required to be taken, and discretion in the determination of facts is

1 vested in the inferior tribunal, corporation, board, or officer" (Code Civ.
2 Proc., § 1094.5, subd. (a).)

3 "The remedy of administrative mandamus is not limited to public
4 agencies; rather it applies to private organizations that provide for a formal
5 evidentiary hearing. (*Pomona College v. Superior Court* (1996) 45
6 Cal.App.4th 1716, 1722-1723 [§ 1094.5 applicable to private universities].)
7 Moreover, failure to exhaust administrative remedies is a proper basis for
8 demurrer. (*Id.* at pp. 1730-1731.)"
9 *Gupta v. Stanford University* (Cal. App. 6th Dist. 2004) 124 Cal. App. 4th
407, 411. (Code Civ. Proc. § 1094.5 applied to the case of a student who was
subject to university disciplinary proceedings.)

10 7. The Superior Court for the County of Los Angeles, the county where
11 the Respondent is located, is the proper court for the hearing of this action. Code
12 Civ. Proc. § 395. A petition for writ of mandate is to be heard in Departments 82,
13 85, or 86 of the Los Angeles Superior Court. Los Angeles Superior Court Local
14 Rules, Rule 2.7, Rule 3.5.

15 PROCEDURAL HISTORY

16 8. Respondent Occidental College is under federal scrutiny for alleged
17 indifference to sexual violence on campus in violation of Title IX, the federal civil
18 rights law that prohibits discrimination in education on the basis of gender, and for
19 violations of the Clery Act, which requires all colleges and universities that
20 participate in federal financial aid programs to keep and disclose information about
21 crime on and near their respective campuses. Compliance with reporting sexual
22 assaults is monitored by the U.S. Department of Education, which can impose civil
23 penalties, up to \$35,000 per violation, against institutions for each infraction and can
24 suspend institutions from participating in federal student financial aid programs.
25 The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime
26 Statistics Act or Clery Act is a federal statute codified at 20 U.S.C. § 1092(f), with
27 implementing regulations in the U.S. Code of Federal Regulations at 34 C.F.R.
28 668.46.

1 9. President Barack Obama, who attended Occidental College, recently
2 put further pressure on colleges and universities to prevent and police sexual
3 assaults on their campuses by creating a task force of senior administration officials,
4 including the attorney general and the secretaries of the Education, Health and
5 Human Services and Interior Departments, to coordinate federal enforcement
6 efforts.¹

7 10. In April 2013 Occidental College professors Caroline Heldman and
8 Danielle Dirks², in association with 36 alleged victims of rape or sexual assault at
9 Occidental, filed a 250-page complaint with the U.S. Department of Education's
10 Office of Civil Rights alleging that Occidental College maintains a hostile
11 environment for sexual assault victims and their advocates and violated Title IX
12 laws against sexual discrimination and the Clery Act.³

13 11. In September 2013, Occidental College settled with at least ten
14 of the complainants under an agreement negotiated by attorney Gloria Allred. The
15 ten female complainants received cash payments from Occidental College and
16 agreed not to participate in the Occidental Sexual Assault Coalition. Asst. Professor
17 Danielle Dirks criticized attorney Gloria Allred's negotiated settlement stating that
18

19
20 ¹ Obama Seeks to Raise Awareness of Rape on Campus, *The New York Times*,
21 January 22, 2014, Jackie Calmes; Federal Task Force to Target Campus Sexual
Assaults, *Los Angeles Times*, January 22, 2014, Jason Felch and Larry Gordon.

22 ²In February 2012, Occidental College Associate Professor of Politics
23 Caroline Heldman and Assistant Professor of Sociology Danielle Dirks founded the
24 Occidental Sexual Assault Coalition, a campus advocacy group that has pushed the
25 college to address what it calls the "rape culture" on campus and with a "mission is
26 to raise awareness of the sexual assault epidemic."
(<http://oxysexualassaultcoalition.wordpress.com/>)

27 ³ Occidental College Sexual Assault Response Subject Of Federal
28 Complaints, www.huffingtonpost.com 04/19/2013, Updated: 12/03/2013, Tyler
Kingkade, see also USC, Occidental Underreported Sexual Assaults, *Los Angeles*
Times, October 07 , 2013, Jason Song and Jason Felch.

1 requiring "the women to remain silent and not to participate in campus activism
2 could have a chilling effect at Occidental."⁴

3 12. In August 2013, Occidental College implemented a new Sexual
4 Misconduct Policy (Exh. 1; Exh. 6, page 1) that has caused the pendulum to swing
5 far in the other direction, with Occidental now discriminating against male students
6 in order avoid federal penalties and settlement pay-outs for Occidental's past
7 indifference to the plight of female students and the college's failure to address the
8 so-called "rape culture" and "sexual assault epidemic" on campus.

9 13. The Sexual Misconduct Policy was developed with the assistance and
10 recommendations of two former sex crime prosecutors Ms. Lisa M. Gomez and Ms.
11 Gina Maisto Smith, attorneys with the Philadelphia law firm of Pepper Hamilton
12 LLP. The Policy is implemented at Occidental College by Ms. Lauren Carella,
13 Interim Title IX Coordinator, an attorney and former prosecutor in the sex crimes
14 unit of the York County District Attorney's Office in Pennsylvania.

15 14. On September 16, 2013, Petitioner was accused of violating the new
16 Occidental College Sexual Misconduct Policy as follows:

17 [Jane Doe] (a first-year freshman, Class of 2017) alleges that on or about the
18 early morning hours of Sunday, September 8, 2013 between the approximate
19 times of 12:50 A.M. and 2:00 A.M., she and Mr. [John Doe] (a first-year
20 freshman, Class of 2017) had sex. During the investigation, [Jane Doe]
21 recalled performing oral sex on Mr. [Doe], but could not specifically recall
22 having intercourse with Mr. [Doe] in his dormitory room on the second floor
23 of Braun Hall. Ms. [Doe] alleges that she consumed multiple alcoholic
24 beverages in the hours leading up to the sexual contact. See Exh. 2.

25 15. Ms. Jane Doe initially denied that she had been raped or sexually
26 assaulted and did not want to make a formal complaint (Exh. 4, pages 46, 53), but
27 eventually relented a week later because she was told that 90% of rapes are done by
28 repeat offenders and Asst. Professor Dirks told her that "[John Doe] fits the profile

⁴ Rape Settlement at Occidental College: Victims Barred from Campus
Activism, *The Nation*, Jon Wiener, September 19, 2013.

1 of other rapists on campus in that he had a high GPA in high school, was his class
2 valedictorian, was on [a sports] team, and was 'from a good family.'"⁵ Exh 4, page
3 41. Ms. Doe decided to report what had happened when she realized how much it
4 had affected her emotionally, while seeing no apparent reaction from John Doe. She
5 noted that he attended his classes without difficulty, and she "saw that he wasn't
6 fazed by what had happened at all." Exh. 4, page 40.

7 16. Also on or about September 16, 2013, Jane Doe filed a sexual assault
8 report with Los Angeles Police Department. Exh. 4, page 41. Los Angeles Police
9 Department Det. Michelle Gomez was in charge of the LAPD investigation and
10 interviewed Jane Doe and other student witnesses at Occidental. On November 5,
11 2013 the Los Angeles District Attorneys Office, Sexual Crimes Unit declined to
12 prosecute for lack of evidence. Deputy District Attorney Alison Meyers concluded,
13 after meeting with Ms. Doe, that both parties were drunk and "they were both
14 willing participants exercising bad judgment" and "[s]pecifically the facts show the
15 victim was capable of resisting based on her actions." Deputy Meyers also stated
16 that "it would be reasonable for [John Doe] to conclude based on their
17 communications and her actions that, even though she was intoxicated, she could
18 still exercise reasonable judgment." Exh. 3, pages 1-2.

19 17. On November 14, 2013, Occidental's private investigators submitted
20 their investigative report (Exh. 4) that confirmed what law enforcement had found,
21 including that just before going to John Doe's dorm room to have sex, Jane Doe
22 texted to John Doe, "Okay do you have a condom." When John Doe replied, "Yes,"
23 Ms. Doe texted back, "Good give me two minutes." Exh. 4, page 93. Ms. Doe then
24 texted to another friend, "I'mgoingtohave sex now." Exh. 4, page 120. After having
25

26 ⁵ On September 20, 2013, four days after Jane Doe filed her complaint, Asst.
27 Professor Dirks told the LA Times, "I've heard from three students since the
28 beginning of the school year who say they were raped. None of them has been
handled appropriately." (Occidental College Chief Asks for Reconciliation after
Accusations, *Los Angeles Times*, September 20, 2013, Jason Felch and Jason Song.)

02/13/2014

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1 sex, Ms. Doe texted to her friends with a smiley face symbol, :). Exh. 4, pages
2 120, 122, 123, 125, 127.

3 18. In spite of Jane Doe's written confirmation of consensual sex, the
4 LAPD criminal investigation, the District Attorney's rejection for lack of evidence,
5 and Occidental's own investigative report, Occidental was determined to hold John
6 Doe, but not Jane Doe, responsible for violating it's new Sexual Misconduct Policy
7 in order to bolster Occidental's defense against the campus activists and the loss of
8 federal education funding and fines.

9 19. Respondent Occidental College elected to forgo any attempt at an
10 informal resolution of Jane Doe's complaint under their new Policy, and proceeded
11 with "formal resolution," which Respondent claims is a "college process" and "not a
12 legal proceeding." The so-called college process, however, is conducted by
13 Occidental attorneys and includes an investigation report prepared by Occidental's
14 private investigators, a scheduled hearing before Occidental's retained outside
15 counsel acting as adjudicator, the presentation of witnesses and evidence, and the
16 determination by Respondent of the rights of Petitioner to attend the college.

17 20. On December 7, 2013, Respondent conducted a hearing under their
18 formal complaint resolution process. Exh. 5, p. 1.

19 21. On December 13, 2013, Respondent notified Petitioner that although
20 Jane Doe engaged in conduct and made statements that show she consented to
21 intercourse (Exh. 6, page 8) and that there was no force, threat of force, nor coercion
22 involved (Exh. 6, page 6, fn. 5), Respondent would hold Petitioner responsible for
23 Sexual Assault and Non-Consensual Sexual Contact. Respondent also notified
24 Petitioner that he had "the opportunity to submit a written statement about impact of
25 this incident and/ or requested sanctions." Exh. 5, p. 1; see also Exh. 6.

26 22. On December 18, 2013, Petitioner timely submitted his written impact
27 statement. Exh. 7.

28 23. December 20, 2013, issued the sanction of "Permanent Separation from

1 decision are invalid under Code Civ. Proc. § 1094.5, and alternatively Code Civ.
2 Proc. § 1085, for the following reasons:

- 3 (1) Respondent failed to grant Petitioner a fair hearing;
- 4 (2) Respondent committed a prejudicial abuse of discretion, in
5 that Respondent failed to proceed in the manner required
6 by law;
- 7 (3) Respondent's decision is not supported by the findings;
8 and
- 9 (4) Respondent's findings are not supported by the evidence.

10 33. Respondent Occidental College's actions and decision deprive
11 Petitioner of fundamental vested rights, therefore, the reviewing court must exercise
12 it's independent judgment to reweigh the evidence pursuant to Code Civ. Proc. §
13 1094.5(c).

14 34. On information and belief, relevant evidence is available which was
15 improperly excluded or unavailable at the hearing. Petitioner will seek leave to offer
16 said evidence before the reviewing court at the hearing on this Petition.

17 35. Petitioner has exhausted all administrative remedies.

18 36. Petitioner has no plain, speedy and adequate remedy in the ordinary
19 course of law.

20 37. Petitioner is obligated to pay an attorney for legal services to prosecute
21 this action. Petitioner is entitled to recover attorney's fees as provided in Gov. Code
22 § 800 if Petitioner prevails in the within action, on the ground that, on information
23 and belief, Respondent's decision was the result of arbitrary and capricious conduct.

24 38. Petitioner will suffer irreparable harm if this matter is not stayed
25 pending judicial review, because even if the Court subsequently rules in his favor,
26 would have suffered public humiliation and disgrace.

27 39. Each of the exhibits identified in the following paragraphs are true and
28 correct copies of the documents described, however, the attached copies have been

1 redacted where necessary to protect the privacy of Jane Doe and John Doe.

2 40. A true and correct copy of the Occidental College Sexual Misconduct
3 Policy is attached as Exhibit 1 and made a part of this petition.

4 41. A true and correct copy of the Occidental Notice of Charges Letter,
5 dated November 19, 2013, is attached as Exhibit 2 and made a part of this petition.

6 42. A true and correct copy of the Los Angeles District Attorney Charge
7 Evaluation Worksheet is attached as Exhibit 3 and made a part of this petition.

8 43. A true and correct copy of Occidental Investigation Report, PII Case
9 Number: 13-4175 [redacted] is attached as Exhibit 4 and made a part of this petition.

10 44. A true and correct copy of Occidental Outcome Notification Letter,
11 dated December 13, 2013 is attached as Exhibit 5 and made a part of this petition.

12 45. A true and correct copy of Occidental Findings Letter, dated December
13 9, 2013 is attached as Exhibit 6 and made a part of this petition.

14 46. A true and correct copy of John Doe's Response Letter to Hearing
15 Outcome is attached as Exhibit 7 and made a part of this petition.

16 47. A true and correct copy of Occidental Sanctions Letter, dated
17 December 20, 2013 is attached as Exhibit 8 and made a part of this petition.

18 48. A true and correct copy of Three Charts: (1) Stages of Acute Alcoholic
19 Influence/Intoxication; (2) Women Know Your Limit, Approximate Blood Alcohol
20 Content (BAC) In One Hour' (3) Men Know Your Limit, Approximate Blood
21 Alcohol Content (BAC) In One Hour is attached as Exhibit 9 and made a part of this
22 petition.

23 49. A true and correct copy of Respondent Questions, Witness: Jane Doe,
24 is attached as Exhibit 10 and made a part of this petition.

25 50. A true and correct copy of Petitioner's administrative Appeal is
26 attached as Exhibit 11 and made a part of this petition.

27 51. A true and correct copy of Complainant's Response to the
28 administrative Appeal is attached as Exhibit 12 and made a part of this petition.

1 52. A true and correct copy of Petitioner's Reply is attached as Exhibit 13
2 and made a part of this petition.

3 53. A true and correct copy of Respondent's cover letter and final
4 determination on the administrative appeal is attached as Exhibit 14 and made a part
5 of this petition.

6 54. The administrative record of Respondent's disciplinary process against
7 Petitioner will be submitted and made a part of this petition as soon as Respondent
8 provides the administrative record.

9
10 WHEREFORE, Petitioner prays the court for judgment as follows:

11 1. For an alternative writ of mandate directing respondent to set aside its
12 decision dated December 20, 2013, or to show cause why a peremptory writ of
13 mandate to the same effect should not be issued;

14 2. For a peremptory writ of mandate directing respondent to set aside its
15 decision dated December 20, 2013;

16 3. For a stay of Respondent's administrative finding and sanctions under
17 Code Civ. Pro. § 1094.5(g);

18 4. For reasonable attorney's fees and litigation expenses, in addition to
19 any other relief granted or costs awarded;

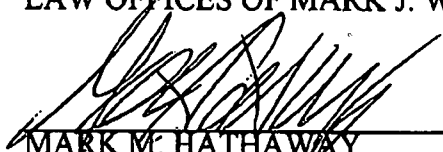
20 5. For all costs of suit incurred in this proceeding; and

21 6. For such other and further relief as the court deems proper.

22 LAW OFFICES OF MARK J. WERKSMAN

23
24 Dated: February 13, 2014

By:

25 
26 MARK M. HATHAWAY
27 Attorneys for Petitioner
28

VERIFICATION

I, John Doe, am the petitioner in this action. I have read the foregoing petition and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

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

Date: February 13, 2014

John Doe
John Doe

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Exhibit 1

Occidental College Sexual Misconduct Policy

www.oxy.edu/sexual-assault-resources-support/policies-procedures

Members of the college community, guests and visitors have the right to be free from sexual violence.

Applies to sexual and gender-based harassment, sexual violence, stalking and intimate partner violence

1. **Introduction: Institutional Values and Community Expectations**
Sets forth the College's values and expectations for community members
2. **Scope of Policy**
Outlines the College's jurisdiction to take action
3. **Notice of Non-Discrimination**
Outlines protected classes and protections under Title IX
4. **Privacy v. Confidentiality**
Delineates the difference between confidential resources and those that will maintain an individual's privacy
5. **Prohibited Conduct and Definitions**
Provides specific definitions for sexual harassment and other forms of prohibited conduct, consent, force and incapacitation; also outlines policy on prohibited relationships by persons in authority
6. **Resources**
Outlines on and off campus resources, including confidential resources
7. **Reporting**
Provides emergency, campus, anonymous and law enforcement reporting options, timeframes, and provisions for amnesty, retaliation and mandatory reporting of suspected child abuse
8. **Interim Measures, Remedies and Accommodations**
Sets forth the range of interim protections available
9. **Options for Resolution**
Provides an overview of how the College will investigate and resolve a report under this policy, including an initial Title IX assessment, informal resolution, and formal resolution.
10. **Appendix A: Resolving Complaints Against a Student**
Provides specific procedures for resolution of a complaint against a student

I. Introduction: Institutional Values and Community Expectations

Occidental College is committed to providing a non-discriminatory and harassment-free educational, living and working environment for all members of the Occidental community, including students, faculty, administrators, staff, and visitors. This policy prohibits all forms of sexual or gender-based harassment, discrimination or misconduct, including sexual violence, sexual assault, stalking and intimate partner violence. Misconduct of this nature is contrary to Occidental's institutional values and prohibited by state and federal law.

Occidental encourages the prompt reporting of any incident of sexual or gender-based misconduct to the College and to local law enforcement or civil rights enforcement agencies. Upon receipt of a report, the College will take prompt and effective action by: providing interim remedies and support for individuals who make a report or seek assistance under this policy (referred to as the "Complainant"); conducting a review of the conduct under Title IX of the Education Amendments of 1972; addressing the safety of individuals and the campus community; and as warranted, pursuing resolution through informal measures or formal disciplinary action against the accused individual (referred to in this policy as the "Respondent"). The policy provides specific procedures for investigation and resolution based on the role of Respondent (student, staff or faculty).

All Occidental community members are strongly encouraged to report information regarding any incident of sexual harassment, sexual violence, stalking or intimate partner violence directly to the Title IX Coordinator or a member of the Title IX team. The College cannot take appropriate action unless an incident of sexual harassment, sexual violence, stalking or intimate partner violence is reported to a "responsible employee" of the College.

All members of the Occidental community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The College will not tolerate sexual harassment, sexual violence, stalking and intimate partner violence. Any individual who is found to have violated this policy may face disciplinary sanctions up to and including expulsion or termination of employment.

This policy has been developed to reaffirm Occidental's institutional values, to define community expectations, to provide recourse for those individuals whose rights have been violated, and to provide for fair and equitable procedures for determining when this policy has been violated. The College is committed to fostering a climate free from sexual harassment, sexual violence, and intimate partner violence through clear and effective policies, a coordinated education and prevention program, and prompt and equitable procedures for resolution of complaints.

Retaliation against any person or group who makes a complaint, cooperates with an investigation, or participates in a grievance procedure is a violation of College policy. Retaliation should be reported promptly to the Title IX Coordinator for investigation, which may result in disciplinary action independent of any sanction or interim measures imposed in response to the underlying allegations of discrimination and/or harassment.

CONFIDENTIAL

The College encourages all members of our community to participate in the process of creating a safe, welcoming and respectful environment on campus. In particular, the College expects that all Occidental community members will take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Taking action may include direct intervention when safe to do so, enlisting the assistance of friends, contacting law enforcement, or seeking assistance from a person in authority. Community members who chose to exercise this positive moral obligation will be supported by the College and protected from retaliation.

II. Scope of Policy

The policy applies to all Occidental community members, including students, faculty, administrators, staff, volunteers, vendors, independent contractors, visitors and any individuals regularly or temporarily employed, studying, living, visiting, conducting business or having any official capacity with the College or on College property.

This policy is intended to protect and guide individuals who have been affected by sexual harassment, sexual violence, stalking or intimate partner violence, whether as a Complainant, a Respondent, or a third party, and to provide fair and equitable procedures for investigation and resolution of reports.

When used in this policy, Complainant refers to the individual who identifies him/herself as being a victim or survivor of sexual harassment, sexual violence, stalking or intimate partner violence. A Respondent refers to the individual who has been accused of prohibited conduct under this policy. A third party refers to any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else.

All Occidental College community members are required to follow College policies and local, state, and federal law. This policy applies to conduct occurring on Occidental College property or at College-sanctioned events or programs that take place off campus, including study abroad and internship programs. In situations in which both the Complainant and Respondent are members of the Occidental College community, this policy will apply regardless of the location of the incident. In particular, off campus conduct that is likely to have a substantial adverse effect on, or poses a threat of danger to, any member of the Occidental College community or Occidental College is covered under this policy.

A Complainant is encouraged to report misconduct regardless of where the incident occurred, or who committed it. Even if the College does not have jurisdiction over the Respondent, the College will still take prompt action to provide for the safety and well-being of the Complainant and the broader campus community.

III. Notice of Non-Discrimination

The College does not permit discrimination or harassment in its programs and activities on the basis of race, color, national origin, ancestry, sex, gender, gender identification, sexual orientation, disability, age, religion, physical and/or mental disability, medical condition, veteran status, marital status or any other characteristic protected by institutional policy or state, local, or federal law.

This policy addresses all forms of sexual discrimination, including sexual harassment, sexual violence and intimate partner violence. Occidental College does not discriminate on the basis of sex in its educational, extracurricular, athletic, or other programs or in the context of employment. Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable statutes.

This policy prohibits sexual harassment, sexual violence, stalking and intimate partner violence against Occidental community members of any gender, gender identity, gender expression or sexual orientation. This policy also prohibits gender-based harassment that does not involve conduct of a sexual nature.

The College, as an educational community, will respond promptly and equitably to reports of sexual harassment, sexual violence, stalking and intimate partner violence in order to eliminate the harassment, prevent its recurrence, and address its effects on any individual or the community.

The College has designated Lauren Carella to serve as the College's interim Title IX Coordinator. The Title IX Coordinator oversees the College's centralized review, investigation, and resolution of reports of sexual harassment, sexual violence and intimate partner violence. The Coordinator also oversees the College's overall compliance with Title IX.

The Title IX Coordinator is:

- Responsible for oversight of the investigation and resolution of all reports of sexual harassment, sexual violence and intimate partner violence involving students, staff, administrators, faculty, vendors, and visitors;
- Assisted by designated Deputy Title IX Coordinators in athletics, student affairs, human resources, and the faculty, and by a Title IX team as detailed in this policy. These Deputy Title IX Coordinators have a shared responsibility for supporting the Title IX Coordinator and are accessible to any member of the community for consultation and guidance;
- Knowledgeable and trained in College policies and procedures and relevant state and federal laws;

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- Available to advise any individual, including a Complainant, a Respondent or a third party, about the courses of action available at the College, both informally and formally, and in the community;
- Available to provide assistance to any College employee regarding how to respond appropriately to a report of sexual harassment, sexual violence, stalking or intimate partner violence;
- Responsible for monitoring full compliance with all procedural requirements and time frames outlined in this policy; and
- Responsible for training, prevention and education efforts and periodic reviews of climate and culture.

The Title IX Coordinator is supported by the Title IX team. Members of this interdepartmental team include the Title IX Coordinator, Title IX Deputy Coordinators, and the Chief of Campus Safety. In addition, based on the role of the Complainant and the Respondent, the members of the team could include the Vice President for Academic Affairs and Dean of the College and a representative from the Dean of Students Office and/or Human Resources. Composition of the team will be limited to a small circle of individuals who "need to know" in order to implement procedures under this policy.

Inquiries or complaints concerning the application of Title IX may be referred to the College's Title IX Coordinator, Deputy Title IX Coordinators and/or to the U.S. Department of Education's Office for Civil Rights:

Lauren Carella
Interim Title IX Coordinator

(323) 259-1338
AGC 108
lcarella@oxy.edu
Web: <http://www.oxy.edu/office-title-ix>

Office for Civil Rights
Beale Street, Suite 7200
San Francisco, CA

(415) 486-5555
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr50>

Inquiries involving employees may also be referred to:

**California Department of Fair Employment
and Housing**

1055 West 7th Street, Ste 1400
Los Angeles, CA 90017
(213) 439-6799

**United States Equal Employment
Opportunity Commission**

Roybal Federal Building
255 East Temple St., 4th Floor
Los Angeles, CA 90012
1-800-699-4000

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IV. Privacy vs. Confidentiality

The College is committed to protecting the privacy of all individuals involved in a report of sexual harassment, sexual violence, stalking or intimate partner violence. All College employees who are involved in the College's Title IX response, including the Title IX Coordinator, investigators, and hearing panel members, receive specific instruction about respecting and safeguarding private information. Throughout the process, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report.

Privacy and confidentiality have distinct meanings under this policy.

Privacy: Privacy generally means that information related to a report of misconduct will only be shared with a limited circle of individuals. The use of this information is limited to those College employees who "need to know" in order to assist in the active review, investigation or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

Confidentiality: Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These campus and community professionals include mental health providers, ordained clergy, rape crisis counselors and attorneys, all of whom have legally protected confidentiality. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others.

An individual who seeks completely confidential assistance may do so by speaking with professionals who have a legally protected confidentiality. On campus, Confidential Resources available to students include psychological counselors in the Emmons Student Wellness Center, ordained clergy in the Office for Religious & Spiritual Life, and the Survivor Advocate. Employees may access confidential assistance through the Employee Assistance Program. Information shared with these resources will remain confidential and will not be shared with the College or anyone else without express permission of the individual seeking services. When a report involves suspected abuse of a minor under the age of 18, these confidential resources are required by state law to notify child protective services and/or local law enforcement.

An individual may also seek assistance from a medical provider. In general, the disclosure of private information contained in medical records is protected by the Health Insurance Portability and Accountability Act (HIPAA). In the context of sexual violence, however, medical providers in California are required to notify law enforcement if a patient tells personnel s/he has experienced sexual assault. The patient has the right to request that a survivor advocate be present and to request that law enforcement not pursue a criminal charge. Neither campus nor community medical providers will notify the College of the report.

Responsible Employees: In general, most College employees do not have legally protected confidentiality. Under Title IX, a College is required to take immediate and corrective action if a "responsible employee" knew or, in the exercise of reasonable care, should have known about

sexual or gender-based harassment that creates a hostile environment. A "responsible employee" includes any employee who:

- Has the authority to take action to redress the harassment;
- Has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or
- A student could reasonably believe has the authority or responsibility to take action.

Using this lens, employees with supervisory and leadership responsibilities on campus are considered "responsible employees." This may include, for example, faculty, coaches, administrators, Resident Advisors and other student employees with a responsibility for student welfare.

The College requires that all "responsible employees" share a report of misconduct with the Title IX Coordinator or a member of the Title IX team.

The Title IX team, under the guidance of the Title IX Coordinator, will conduct an initial assessment of the conduct, the Complainant's expressed preferences, if any, as to course of action, and the necessity for any interim remedies or accommodations to protect the safety of the Complainant or the community.

Request for Confidentiality: Where a Complainant requests that his/her name or other identifiable information not be shared with the Respondent or that no formal action be taken, the College will balance this request with its dual obligation to provide a safe and non-discriminatory environment for all College community members and to remain true to principles of fundamental fairness that require notice and an opportunity to respond before action is taken against a Respondent. In making this determination, the College may consider the seriousness of the conduct, the respective ages and roles of the Complainant and Respondent, whether there have been other complaints or reports of harassment or misconduct against the Respondent, and the rights of the Respondent to receive notice and relevant information before disciplinary action is sought.

The College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. Where the College is unable to take action consistent with the request of the Complainant, the Title IX Coordinator or a member of the Title IX team will inform the Complainant about the chosen course of action, which may include the College seeking disciplinary action against a Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

Timely Warning: If a report of misconduct discloses a serious or continuing threat to the Occidental community, the College may issue a campus wide timely warning (which can take the form of an email to campus) to protect the health or safety of the community. The timely warning will not include any identifying information about the Complainant. Even where there is no imminent threat, the College may send campus-wide e-mail notifications on all reported sexual misconduct.

At no time will the College release the name of the Complainant to the general public without the express consent of the Complainant. The release of the Respondent's name to the general public is guided by Family Educational Rights and Privacy Act (FERPA) and the Clery Act.

All College proceedings are conducted in compliance with the requirements of FERPA, the Clery Act, Title IX, and state and federal law. No information shall be released from such proceedings except as required or permitted by law and College policy.

V. Prohibited Conduct and Definitions

The College prohibits all forms of sexual and gender-based harassment, including sexual violence and intimate partner violence. Each of these terms encompasses a broad range of behavior. In general, sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to incapacitation. Intimate partner violence refers to any act of violence or threatened act of violence, sexual or otherwise, against a person who is or has been involved in a sexual, dating, domestic or other intimate relationship with that person.

Within these broad categories, the College prohibits the following specific conduct:

A. Sexual Harassment

Sexual Harassment: Any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when:

(1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a College program or activity;

or

(2) Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and objective standard.

A single isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.

Sexual harassment also includes gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature.

Sexual harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- May occur in the classroom, in the workplace, in residential settings, or in any other setting.
- May be a one-time event or can be part of a pattern of behavior.
- May be committed in the presence of others or when the parties are alone.
- May affect the Complainant and/or third parties who witness or observe harassment and are affected by it.

Examples of conduct that may constitute sexual harassment as defined above may include a severe, persistent or pervasive pattern of unwelcome conduct that includes one or more of the following:

- Physical conduct:
 - Unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements
 - Unwanted sexual advances within the employment context
- Verbal conduct:
 - Making or using derogatory comments, epithets, slurs or humor
 - Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations
 - Objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes
- Visual conduct:
 - Leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters in a public space or forum
 - Severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading sexually oriented images that are not pedagogically appropriate

- Written conduct: letters, notes or electronic communications containing comments, words, or images described above
- Quid pro quo conduct:
 - Direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists
 - Offering employment benefits in exchange for sexual favors
 - Making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose
 - Making or threatening reprisals after a negative response to sexual advances

B. Other Forms of Prohibited Conduct

The following forms of conduct fall under the broad definition of sexual harassment, and are specifically prohibited under this policy. The College will treat attempts to commit any prohibited conduct as if those attempts had been completed.

Sexual Assault: Having or attempting to have sexual intercourse with another individual:

- By force or threat of force;
- Without effective consent; or
- Where that individual is incapacitated.

Sexual intercourse includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.

This definition tracks the FBI's Uniform Crime Report definition of rape: "the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." Under many state laws, including California, however, rape definitions differ in that they require proof of an element of force or threat of force. Our definition incorporates both.

Non-Consensual Sexual Contact: Having sexual contact with another individual:

- By force or threat of force;
- Without effective consent; or
- Where that individual is incapacitated.

Sexual contact includes intentional contact with the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

Sexual Exploitation: Occurs when an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

- *surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;*
- *non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;*
- *exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances;*
- *knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge;*
- *sexually-based stalking and/or bullying; and*
- *inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.*

Harm to Others: Words or types of conduct that threaten or endanger the health or safety of any person including physical abuse, verbal abuse, threats, intimidation and/or harassment. This behavior is typically treated as a violation of Occidental's Code of Student Conduct. Acts which constitute harm to others that are a form of intimate partner violence, or are based on sex or gender, will be resolved under the Sexual Harassment and Assault Policy.

Stalking: A course of physical or verbal conduct directed at another individual that could be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. A course of conduct consists of at least two acts. The feared harm or injury may be physical, emotional, or psychological, or related to the personal safety, property, education, or employment of that individual. Stalking includes cyber-stalking, a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Retaliation: Acts or attempts to retaliate or seek retribution against the Complainant, Respondent, or any individual or group of individuals involved in the complaint, investigation and/or resolution of an allegation of sexual misconduct. Retaliation can be committed by any individual or group of individuals, not just a Respondent or Complainant. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others.

C. Consent: Force, Coercion, Incapacitation, Drugs and Alcohol

Consent: Under California law, consent means positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

Consent consists of an affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity. The following are essential elements of effective consent:

Informed and reciprocal: All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.

Freely and actively given: Consent cannot be obtained through the use of force, coercion, threats, intimidation or pressuring, or by taking advantage of the incapacitation of another individual.

Mutually understandable: Communication regarding consent consists of mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity. In the absence of clear communication or outward demonstration, there is no consent. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.

Not indefinite: Consent may be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed "no" or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

Not unlimited: Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant.

Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.

In the state of California, consent cannot be given by minors under the age of 18, except where the parties are within three years of age of one another. Under no circumstances may an adult over the age of 21 engage in sexual activity with a minor under the age of 16.

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Coercion: Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against his/her will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

Incapacitation may result from the use of alcohol and/or drugs. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impact an individual's:

- Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known, that the Complainant was incapacitated.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence, stalking or intimate partner violence and does not diminish one's responsibility to obtain consent.

D. Intimate Partner Violence

Intimate partner violence is often referred to as dating violence, domestic violence or relationship violence. Intimate partner violence includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, domestic or other intimate relationship with the Respondent. Intimate partner violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. Intimate partner violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientation and does not discriminate by racial, social, or economic background.

The College will not tolerate intimate partner violence of any form. For the purposes of this policy, the College does not define intimate partner violence as a distinct form of misconduct. Rather, the College recognizes that sexual harassment, sexual assault, sexual exploitation, harm to others, stalking, and retaliation all may be forms of intimate partner violence when committed by a person who is or has been involved in a sexual, dating or other social relationship of a romantic or intimate nature with the Complainant.

Under Clery and the Campus SaVE Act, the College will record and report all relevant incidents of intimate partner violence.

E. Prohibited Relationships by Persons in Authority

Sexual or other intimate relationships in which one party maintains a direct supervisory or evaluative role over the other party are prohibited. In general, this includes all sexual or other intimate relationships between students and their employers, supervisors, professors, coaches, advisors or other College employees. Similarly, College employees (faculty and staff) who supervise or otherwise hold positions of authority over others are prohibited from having a sexual or other intimate relationship with an individual under his/her direct supervision.

The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. However, faculty, administrators, and others who educate, supervise, evaluate, employ, counsel, coach or otherwise guide students should understand the fundamentally asymmetrical nature of the relationship they have with students or subordinates. Intimate or sexual relationships where there is differential in power or authority produce risks for every member of our community and undermine the professionalism of faculty and supervisors. In either context, the unequal position of the parties presents an inherent element of risk and may raise sexual harassment concerns if one person in the relationship has the actual or apparent authority to supervise, evaluate, counsel, coach or otherwise make decisions or recommendations as to the other person in connection with his/her employment or education at the college.

Sexual relations between persons occupying asymmetrical positions of power, even when both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment based on changes in the perspective of the individuals as to the consensual nature of the relationship. Similarly, these relationships may impact third parties based on perceived or actual favoritism or special treatment based on the relationship.

Therefore, persons with direct supervisory or evaluative responsibilities who contemplate beginning or are involved in such relationships are required to promptly: 1) discontinue any supervising role or relationship over the other person; and 2) report the circumstances to his/her own supervisor. Failure to fully or timely comply with these requirements is a violation of this policy, and the person in authority could be subject to disciplinary action, up to and including dismissal from employment by the College.

Any individual may file a complaint alleging harassment or discrimination, including an aggrieved party outside the relationship affected by the perceived harassment or discrimination. Retaliation against persons who report concerns about consensual relationships is prohibited and constitutes a violation of this policy.

VI. Resources

The College is committed to treating all members of the community with dignity, care and respect. Any individual who experiences or is affected by sexual harassment, sexual violence, stalking or intimate partner violence, whether as a Complainant, a Respondent, or a third party, will have equal access to support and counseling services through the College. Interim remedies are also available to all parties (see Section IX).

The College recognizes that deciding whether or not to make a report, either to the College or law enforcement, and choosing how to proceed can be difficult decisions. Making a report means telling someone in authority what happened, in person, by telephone, in writing or by email. All individuals are encouraged to seek the support of campus and community resources. These trained professionals can provide guidance in making decisions, information about available resources and procedural options, and assistance to either party in the event that a report and/or resolution under this policy is pursued. Individuals are encouraged to use all available resources on and off campus, regardless of when or where the incident occurred.

There are many resources available on campus and in the surrounding community. As detailed below, there are Confidential Resources which by law cannot share information without the consent of the individual seeking assistance. There are also a variety of College resources that will be discreet and private, but are not considered confidential. These resources will maintain the privacy of an individual's information within the limited circle of those involved in the resolution of a complaint under this policy. For more information about the difference between privacy and confidentiality, see Section IV.

A. Confidential Resources

The College encourages all community members to make a prompt report of any incident of sexual harassment, sexual violence, stalking or intimate partner violence to local law enforcement and the College. For individuals who are not prepared to make a report, or who may be unsure what happened, but are still seeking information and support, there are several legally-protected confidential resources available as designated below. These confidential resources will not share information with the College or anyone else without the individual's permission.

On Campus Confidential Resources:

- **Sexual Assault Survivor Advocate and Project SAFE Coordinator
Naddia Palacios**
Accessible 24 hours a day to provide highly confidential crisis support and resource options to students who experience sexual assault of any kind. Support includes, but is not limited to advising, case management and accompanying survivors to rape treatment centers or medical services. As the Project SAFE Coordinator, conducts comprehensive outreach and educational programming.
(323) 259-1359
npalacios@oxy.edu
- **Oxy Assault & Advocacy Response Team (OAART)**
Provides a comprehensive support system to sexual assault survivors that includes advocacy, counseling, and medical services, as well as information about and linkage to forensic exams, legal support, and housing and academic accommodations. Team members include Naddia Palacios (Survivor Advocate), Jenny Heetderks (Emmons psychologist), and Bobbi Dacus (Emmons nurse practitioner).
- **Emmons Student Wellness Center**
Provides confidential psychological counseling services. As detailed below, Emmons also provides medical treatment, but under California law medical providers are required to notify law enforcement when they receive a report of sexual assault.
(323) 259-2657
- **Office for Religious & Spiritual Life**
Provides spiritual guidance and in the context of ordained clergy, confidential support.
(323) 259-2621
- **Employee Assistance Program**
Provides confidential telephone consultation or face-to-face meeting with a master's level consultant; also provides educational materials through an online library of downloadable materials and interactive tools.
(800) 854-1446, English
(877) 858-2147, Spanish
www.lifebalance.net (User ID and password: lifebalance)

Off Campus Confidential Resources:

- **LA Rape and Battering Hotline**
Peace Over Violence
A confidential 24-hour crisis line.
(213) 626-3393
- **Peace Over Violence**
Provides comprehensive, free treatment for sexual assault survivors, including 24-hour emergency medical care and forensic services, counseling and psychotherapy, advocacy, and accompaniment services.
(310) 319-4000 Ext. 3
- **Rape, Abuse and Incest National Network (RAINN)**
A confidential, anonymous national sexual assault hotline.
1-(800) 656-4673
- **Santa Monica Rape Treatment Center**
24-hour emergency medical care and forensic services
(310) 319-4000
- **San Gabriel Valley Medical Center**
438 West Las Tunas Dr
San Gabriel, CA 91776
(626) 289-5454

B. Confidential* Medical Resources

*In California, medical providers (but not psychological counselors) are mandated by state law to notify law enforcement if a patient tells personnel s/he has experienced sexual assault. However, the patient has the right to request that a survivor advocate be present when s/he speaks with law enforcement and to request that law enforcement not pursue a criminal charge at that time. Beyond this notification, however, the disclosure of private information contained in medical records is protected by HIPAA. Further, community medical providers will not notify the College.

A medical provider can provide emergency and/or follow-up medical services. The medical exam has two goals: first, to diagnose and treat the full extent of any injury or physical effect (including prevention of sexually transmitted illnesses and pregnancy) and second, to properly collect and preserve evidence. There is a limited window of time (within 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Taking the step to gather evidence immediately does not commit an individual to any particular course of action. The decision to seek timely medical attention and gather any evidence, however, will preserve the full range of options to seek resolution under this policy or through the pursuit of criminal prosecution.

On campus, Emmons Student Wellness Center can provide medical care; however, Emmons is not equipped for forensic examinations. As with off-campus medical personnel, Emmons staff members are required by state law to notify law enforcement if a patient tells them that s/he has experienced a sexual assault.

- **Emmons Student Wellness Center**
Provides medical treatment.
(323) 259-2657

Taxi vouchers are available at Campus Safety, Emmons Student Wellness Center and Residential Education and Housing Services to provide free transportation to local medical centers. The Survivor Advocate is also available to accompany survivors to access off-campus resources.

- **San Gabriel Valley Medical Center***
438 W. Las Tunas Dr., San Gabriel 91776
Provides medical treatment and forensic exams; closest facility to campus.
(877) 209-3049
- **LA County/USC Medical Center***
1200 N. State St., Los Angeles 90033
Provides medical treatment and forensic exams.
(323) 226-3961
- **Rape Treatment Center at Santa Monica-UCLA Medical Center***
Provides comprehensive, free treatment for sexual assault victims, including 24-hour emergency medical care and forensic services, counseling and psychotherapy, advocacy, and accompaniment services.
(310) 319-4000 Ext. 3

*L.A. County designated Sexual Assault Response Team (SART) Center

C. Campus Resources

In addition to the confidential resources listed above, Occidental community members have access to a variety of resources provided by the College. The staff members listed below are trained to support individuals affected by sexual harassment or misconduct and to coordinate with the Title IX Coordinator consistent with the College's commitment to a safe and healthy educational environment. While not bound by confidentiality, these resources will maintain the privacy of an individual's information within the limited circle of those involved in the Title IX resolution process.

- **Interim Title IX Coordinator Lauren Carella**
Available on weekdays during regular office hours to coordinate a fair and equitable response to reports of sexual misconduct.
lcarella@oxy.edu; (323) 259-1338

- **Deputy Title IX Coordinator Richard Ledwin**
Director of Human Resources
Available on weekdays during regular office hours.
ledwin@oxy.edu; (323) 259-2526
- **Deputy Title IX Coordinator**
Position open
- **Campus Safety**
Available as a first option to report an incident of sexual violence or intimate partner violence. Also provides an escort service on campus to any student and can reach the Dean on Duty at any time. Available 24 hours a day, 7 days a week.
(323) 259-2511 (emergency line), or dial 5 from any campus phone.
- **Dean of Students Office/Dean on Duty**
Can provide reasonable accommodations for housing, academic flexibility and stay-away letters. Available on weekdays during regular office hours. Access to Dean on Duty 24 hours a day by calling Campus Safety at (323) 259-2599.
Dean of Students Office (323) 259-2661
- **Emmons Student Wellness Center**
Provides medical treatment and confidential psychological counseling services.
(323) 259-2657
- **Office for Religious & Spiritual Life**
Provides spiritual guidance and in the context of ordained clergy, confidential support.
(323) 259-2621
- **Project SAFE (Sexual Assault Free Environment)**
A prevention and education support program dedicated to ending sexual violence on campus through resources, advocacy, and educational programming related to issues of sexual violence and intimate partner violence.
(323) 341-4750

D. Community Resources

Students, faculty and staff may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention and assistance

in dealing with the criminal justice system. All individuals are encouraged to use the resources that are best suited to their needs, whether on or off campus.

It may be helpful for survivors to have someone who can help them explore their off-campus options and guide them through legal processes; an advocate can provide assistance in this area. Two local resources, Peace Over Violence and the Rape Treatment Center at Santa Monica-UCLA Medical Center offer advocacy support.

- **LAPD**
911 (24 hours)
For dispatch, (877) ASK-LAPD (877-275-5273)
- **LAPD Northeast Division**
3353 North San Fernando Road
Los Angeles, CA 90065
(323) 344-5701
Occidental is located in Northeast Division.
- **Rape Treatment Center at Santa Monica-UCLA Medical Center**
Provides comprehensive, free treatment for sexual assault victims, including 24-hour emergency medical care and forensic services, counseling and psychotherapy, advocacy, and accompaniment services.
(310) 319-4000
- **Peace Over Violence** ("POV")
POV case managers can provide assistance and support with the medical and criminal legal process as well as accompaniment to hospitals, law enforcement agencies, and court appointments.
1015 Wilshire Blvd.
Los Angeles, CA 90017
(213) 626-3393 or (626) 793-3385
- **LA Gay and Lesbian Center**
Provides support and advocacy services for LGBT community members.
1625 Schrader Blvd., Los Angeles 90028
(323) 993-7400

VII. Reporting

The College encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual violence. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response.

The College encourages all individuals to make a report to the College and to local law enforcement. Reporting options are not mutually exclusive. Both internal and criminal reports may be pursued simultaneously.

The College has a strong interest in supporting victims and survivors of sexual harassment, sexual violence, stalking and intimate partner violence and encourages all individuals or third party witnesses to report any incident to the College.

Making a report means telling someone in authority what happened -- in person, by telephone, in writing or by email. At the time a report is made, a Complainant does not have to decide whether or not to request any particular course of action, nor does a Complainant need to know how to label what happened. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The College provides support that can assist each individual in making these important decisions, and to the extent legally possible will respect an individual's autonomy in deciding how to proceed. In this process, the College will balance the individual's interest with its obligation to provide a safe and non-discriminatory environment for all members of the College community.

Any individual who reports sexual harassment, sexual violence, stalking or intimate partner violence can be assured that all reports will be investigated and resolved in a fair and impartial manner. A Complainant, a Respondent and all individuals involved can expect to be treated with dignity and respect. In every report under this policy, the College will make an immediate assessment of any risk of harm to the Complainant or to the broader campus community and will take steps necessary to address those risks. These steps will include interim measures to provide for the safety of the individual and the campus community.

A. Emergency and External Reporting Options

The College encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual misconduct. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response. The College will help any Occidental community member to get to a safe place and will provide transportation to the hospital, coordination with law enforcement, and information about on- and off-campus resources and options for resolution.

- **LAPD**
For Emergencies: 911
For concerning situations
Call dispatch at (877) ASK-LAPD (877-275-5273)
- **LAPD Northeast Division**
3353 North San Fernando Road
Los Angeles, CA 90065
Front desk phone number: (323) 344-5701
Occidental is located in Northeast Division.

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- **San Gabriel Valley Medical Center***
438 W. Las Tunas Dr., San Gabriel 91776
Provides medical treatment and forensic exams; closest facility to campus.
(877) 209-3049
- **LA County/USC Medical Center***
1200 N. State St., Los Angeles 90033
Provides medical treatment and forensic exams.
(323) 226-3961
- **Rape Treatment Center at Santa Monica-UCLA Medical Center***
Provides comprehensive, free treatment for sexual assault victims, including 24-hour emergency medical care and forensic services, counseling and psychotherapy, advocacy, and accompaniment services.
(310) 319-4000 Ext. 3

*These three medical centers are Los Angeles County designated Sexual Assault Response Team (SART) Centers.

B. Campus Reporting Options

The College encourages all individuals to report misconduct to any College employee the Complainant trusts and feels comfortable with. In general, most College employees do not have legally protected confidentiality. Under Title IX, a College is required to take immediate and corrective action if a "responsible employee" knew or, in the exercise of reasonable care, should have known about sexual or gender-based harassment that creates a hostile environment. A "responsible employee" includes any employee who:

- Has the authority to take action to redress the harassment;
- Has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or
- A student could reasonably believe has the authority or responsibility to take action.

Using this lens, employees with supervisory and leadership responsibilities on campus are considered "responsible employees." This may include, for example, faculty, coaches, administrators, Resident Advisors and other student employees with a responsibility for student welfare, including Project SAFE program assistants.

The College requires that all "responsible employees" share a report of misconduct with the Title IX Coordinator or a member of the Title IX team. The Title IX team, under the guidance of the Title IX Coordinator, will conduct an initial assessment of the conduct, the Complainant's expressed preferences, if any, as to course of action, and the necessity for any interim remedies or accommodations to protect the safety of the Complainant or the community.

All Occidental community members, even those who are not obligated to do so by this policy, are strongly encouraged to report information regarding any incident of sexual harassment, sexual violence, stalking or intimate partner violence directly to the Title IX Coordinator or a member of the Title IX team. The College cannot take appropriate action unless an incident is reported to the College.

Members of the interdepartmental Title IX team include the Title IX Coordinator, Title IX Deputy Coordinators, and the Chief of Campus Safety. In addition, based on the role of the Complainant and the Respondent, the members of the team could include the Vice President for Academic Affairs and Dean of the College and a representative from the Dean of Students Office and/or Human Resources.

Campus Reporting Options:

- **Interim Title IX Coordinator Lauren Carella**
Available on weekdays during regular office hours to coordinate a fair and equitable response to reports of sexual misconduct.
lcarella@oxy.edu; (323) 259-1338
- **Deputy Title IX Coordinator Richard Ledwin**
Director of Human Resources
Available on weekdays during regular office hours.
ledwin@oxy.edu; (323) 259-2526
- **Deputy Title IX Coordinator**
Position open
- **Campus Safety**
Available as a first option to report an incident of sexual violence or intimate partner violence. Also provides an escort service on campus to any student and can reach the Dean on Duty at any time. Available 24 hours a day, 7 days a week.
(323) 259-2511 (emergency line), or dial 5 from any campus phone.
- **Dean of Students Office/Dean on Duty**
Can provide reasonable accommodations for housing, academic flexibility and no contact letters. Available on weekdays during regular office hours. Access to Dean on Duty 24 hours a day by calling Campus Safety at (323) 259-2599.
Office: AGC #111 and #112 (Ground floor, north side)
deanofstudents@oxy.edu
(323) 259-2661

C. Anonymous Reporting

Any individual may make an anonymous report concerning an act of sexual harassment, sexual violence, stalking or intimate partner violence. An individual may report the incident without disclosing his/her name, identifying the Respondent or requesting any action. Depending on the

extent of information available about the incident or the individuals involved, however, the College's ability to respond to an anonymous report may be limited. The Anonymous Reporting Form can be found here.

The Title IX Coordinator will receive the anonymous report and will determine any appropriate steps, including individual or community remedies as appropriate, and in consultation with the Director of Campus Safety, compliance with all Clery Act obligations.

D. Reporting Considerations: Timeliness and Location of Incident

Complainants and third-party witnesses are encouraged to report sexual harassment, sexual violence and intimate partner violence as soon as possible in order to maximize the College's ability to respond promptly and effectively. The College does not, however, limit the time frame for reporting. If the Respondent is not a member of the Occidental community, the College will still seek to meet its Title IX obligation by taking steps to end the harassment, prevent its recurrence, and address its effects, but its ability to take disciplinary action against the Respondent may be limited.

An incident does not have to occur on campus to be reported to the College. Off-campus conduct that is likely to have a substantial effect on the Complainant's on-campus life and activities or poses a threat or danger to members of the Occidental community may also be addressed under this policy.

E. Amnesty for Alcohol or Other Drug Use

The college community encourages the reporting of prohibited conduct under this policy. It is in the best interest of this community that as many Complainants as possible choose to report to college officials, and that witnesses come forward to share what they know. To encourage reporting, an individual who reports sexual harassment or misconduct, either as a Complainant or a third-party witness, will not be subject to disciplinary action by the College for his/her own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The College may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

F. Coordination with Law Enforcement

The College encourages Complainants to pursue criminal action for incidents of sexual harassment, sexual violence and intimate partner violence that may also be crimes under California law. The College will assist a Complainant in making a criminal report and cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law.

The College's policy, definitions and burden of proof may differ from California criminal law. A Complainant may seek recourse under this policy and/or pursue criminal action. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this policy has occurred. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

At the request of law enforcement, the College may agree to defer its Title IX fact gathering until after the initial stages of a criminal investigation. The College will nevertheless communicate with the Complainant regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. The College will promptly resume its Title IX fact gathering as soon as it is informed that law enforcement has completed its initial investigation.

G. Statement against Retaliation

It is a violation of College policy to retaliate in any way against an individual because s/he raised allegations of sexual harassment, sexual violence, stalking or intimate partner violence. The College recognizes that retaliation can take many forms, may be committed by or against an individual or a group, and that a Complainant, Respondent or third party may commit or be the subject of retaliation.

The College will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting sexual harassment or misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

H. False Reports

The College will not tolerate intentional false reporting of incidents. The College takes the accuracy of information very seriously as a charge of sexual harassment, sexual violence, stalking or intimate partner violence may have severe consequences. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation of sexual misconduct. However, when a Complainant or third party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Complainant may be subject to disciplinary action. It is a violation of the Code of Student Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

I. Reports Involving Minors or Suspected Child Abuse

Under California law, an individual must make a mandatory report of suspected child abuse and neglect, including sexual assault when that individual, in his/her professional capacity or within the scope of his/her employment, has knowledge of or observes a minor under the age of 18 whom the individual knows or reasonably suspects has been the victim of child abuse or neglect.

All College employees, whether designated as a mandatory reporter under California state law or not, are required to immediately report any suspected child abuse and neglect to the Title IX Coordinator and the Director of Campus Safety. The source of abuse does not need to be known in order to file a report.

The College will report all suspected child abuse and neglect, including sexual assault, to law enforcement and/or to Los Angeles County Department of Child and Family Services. The College must act quickly regarding all reasonable suspicions of sexual or physical abuse. It is not the responsibility of any employee, student, or volunteer to investigate suspected child abuse. This is the role of Child Protective Services and law enforcement authorities.

In addition to notifying the Title IX Coordinator and Director of Campus Safety, any individual may make a direct report as follows:

- If a child is in immediate danger, call 911.
- If there is no immediate danger, contact the Child Protection Hotline 24 hours a day, 7 days a week, at (800) 540-4000. If calling from outside of California, call (213) 639-4500.

VIII. Interim Measures, Remedies and Accommodations

A. Overview

Upon receipt of a report, the College will impose reasonable and appropriate interim measures designed to eliminate the hostile environment and protect the parties involved. The College will make reasonable efforts to communicate with the parties to ensure that all safety, emotional and physical well-being concerns are being addressed. Interim measures may be imposed regardless of whether formal disciplinary action is sought by the Complainant or the College.

A Complainant or Respondent may request a Stay-Away Letter or other protection, or the College may choose to impose interim measures at its discretion to ensure the safety of all parties, the broader College community and/or the integrity of the process.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce a previously implemented measure.

B. Range of Measures

Interim measures will be implemented at the discretion of the College. Potential remedies, which may be applied to the Complainant and/or the Respondent, include:

- Access to counseling services and assistance in setting up initial appointment, both on and off campus
- Imposition of campus "Stay-Away Letter"
- Rescheduling of exams and assignments (in conjunction with appropriate faculty)
- Providing alternative course completion options (with the agreement of the appropriate faculty)
- Change in class schedule, including the ability to take an "incomplete," drop a course without penalty or transfer sections (with the agreement of the appropriate faculty)
- Change in work schedule or job assignment
- Change in on-campus housing
- Arranging to dissolve a housing contract and pro-rating a refund in accordance with campus housing policies
- Assistance from College support staff in completing housing relocation

- Limit an individual or organization's access to certain College facilities or activities pending resolution of the matter
- Voluntary leave of absence
- Providing an escort to ensure safe movement between classes and activities
- Providing medical services
- Providing academic support services, such as tutoring
- Interim suspension or College-imposed leave
- Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

C. Interim Suspension or Separation

Where the report of sexual harassment, sexual violence, stalking or intimate partner violence poses a substantial and immediate threat of harm to the safety or well-being of an individual, members of the campus community, or the performance of normal College functions, the College may place a student or student organization on interim suspension or impose leave for an employee. Pending resolution of the report, the individual or organization may be denied access to campus, campus facilities and/or all other College activities or privileges for which the student might otherwise be eligible, as the College determines appropriate. When interim suspension or leave is imposed, the College will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

The full provisions for Interim Suspension for students are contained in the Code of Student Conduct. Provisions for suspension of faculty members are contained in the Faculty Handbook. Staff may be placed on leave at the discretion of the College.

IX. Options for Resolution

A. Overview

Upon receipt of a report, the College's Title IX team will conduct an Initial Title IX Assessment. The goal of this assessment is to provide an integrated and coordinated response to reports of sexual harassment or misconduct. The assessment will consider the nature of the report, the safety of the individual and of the campus community, and the Complainant's expressed preference for resolution.

At the conclusion of the assessment, the College may choose to pursue Informal Resolution, a remedies-based approach that does not involve disciplinary action against a Respondent, or refer the matter for Investigation. The goal of the Investigation is to gather all relevant facts and determine if there is sufficient information to refer the report to a hearing panel for disciplinary action using the College's Formal Resolution procedures.

The initial steps for resolution of a complaint against a student, an employee or a faculty member will involve the same stages: an initial assessment, investigation, and either informal or formal

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The investigator will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent and any witnesses. The interviews will be supplemented by the gathering of any physical, documentary or other evidence. As part of the investigation, the College will provide an opportunity for the parties to present witnesses and other evidence.

The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial and fair, and all individuals will be treated with appropriate sensitivity and respect. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns.

The College will seek to complete the investigation within 20 (twenty) business days of receiving the complaint, but this time frame may be extended depending on the complexity of the circumstances of each case. At the conclusion of the investigation, the report will be forwarded to the Title IX Coordinator and the Hearing Coordinator responsible for initiating Formal Resolution proceedings.

Information gathered during the review or investigation will be used to evaluate the responsibility of the Respondent, provide for the safety of the Complainant and the College campus community, and impose remedies as necessary to address the effects of the conduct cited in the report. Where there is sufficient information set forth that, if proven, would constitute a violation of policy, the College will have the discretion to institute Formal Resolution proceedings against the Respondent. At the conclusion of the investigation, the College will notify all parties that the investigation is complete and provide information about next steps in the process.

Based on the information gathered in the initial Title IX assessment and/or full investigation, the College will take appropriate measures designed to end the misconduct, prevent its recurrence and address its effects.

The Title IX Coordinator will document each report or request for assistance in resolving a case involving charges of sexual misconduct, whether formal or informal, and will review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law.

E. Informal Resolution

Informal resolution is a remedies-based, non-judicial approach designed to eliminate a hostile environment without taking disciplinary action against a Respondent. Where the Title IX assessment concludes that informal resolution may be appropriate, the College will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant's access to the educational and extracurricular activities at the College and to eliminate a hostile environment. Examples of protective remedies are provided in Section IX: Interim Remedies. Other potential remedies include targeted or broad-based educational programming or training, direct confrontation of the Respondent and/or indirect action by the Title IX Coordinator or the College. Depending on the form of informal resolution used, it may be possible to maintain anonymity.

The College will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of informal resolution. Mediation, even if voluntary, may not be used in cases involving sexual violence or assault. The decision to pursue informal resolution will be made when the College has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in informal resolution is voluntary, and a Complainant can request to end informal resolution at any time.

The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Informal resolution will typically be completed within thirty (30) business days of the initial report.

F. Formal Resolution

Disciplinary action against a Respondent may only be taken through Formal Resolution procedures. Because the relationship of students, staff, and faculty to the College differ in nature, the procedures that apply when seeking disciplinary action necessarily differ as well. Each of the procedures, however, is guided by the same principles of fundamental fairness and respect for all parties, which require notice, an equitable opportunity to be heard, and an equitable opportunity to respond to a report under this policy.

The specific procedures for Formal Resolution will vary based upon the role of the Respondent:

- For a *complaint against a student*, disciplinary action may be taken by the Vice President of Student Affairs and Dean of Students or his/her designee following a finding of responsibility by an Administrator or a Hearing Panel.
- For a *complaint against an employee*, disciplinary action may be taken at the conclusion of the investigation by the Director of Human Resources or the Vice President for Finance and Planning.
- For a *complaint against a faculty member*, disciplinary action may be taken at the conclusion of the investigation by the Vice President for Academic Affairs and Dean of College and the Faculty Council or Advisory Council Hearing Committee pursuant to the "Procedures for Actions Leading to Warning, Reprimand, or Dismissal" in the Faculty Handbook.

G. Time Frame for Resolution

The College seeks to resolve all reports within 60 days of the initial report. All time frames expressed in this policy are meant to be guidelines rather than rigid requirements. Extenuating circumstances may arise that require the extension of time frames, including extension beyond 60 days. Extenuating circumstances may include the complexity and scope of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation, or other unforeseen circumstances.

In general, a Complainant and Respondent can expect that the process will proceed according to the time frames provided in this policy. In the event that the investigation and resolution exceed this time frame, the College will notify all parties of the reason(s) for the delay and the expected adjustment in

time frames. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

Appendix A: Resolving Complaints Against a Student

I. Overview

As outlined in the Reporting section of this policy, an individual who wishes to make a report of sexual harassment, sexual violence, stalking or intimate partner violence is encouraged to make a report directly to the Title IX Coordinator, Deputy Title IX Coordinators, the Dean of Students Office, Campus Safety or Human Resources. In every instance under this policy, the College, through the coordinated efforts of the Title IX team, will conduct an initial Title IX Assessment.

At the conclusion of the Title IX Assessment, the report will be referred for Informal Resolution or Investigation to determine if there is sufficient information to proceed with Formal Resolution. Informal Resolution is a non-judicial, remedies-based approach that does not involve disciplinary action against a Respondent. Formal Resolution is a judicial, sanctions-based approach that may involve discipline up to and including expulsion.

II. Initial Title IX Assessment

Upon receipt of a report, the College, through the coordinated efforts of the Title IX team, will conduct an initial Title IX assessment. The first step of the assessment will usually be a preliminary meeting with the Complainant with the Title IX Coordinator or a member of the Title IX team. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full forensic interview. At this meeting, the Complainant will be provided with information about resources, procedural options and interim remedies.

As part of the initial assessment of the report, the Title IX team will:

- Assess the nature and circumstances of the allegation
- Address immediate physical safety and emotional well-being needs
- Notify the Complainant of his/her right to contact law enforcement and seek medical treatment, including the importance of preservation of evidence
- Enter the report into the College's daily crime log
- Assess the reported conduct for the need for a timely warning under Clery
 - Provide the Complainant with information about:
 - On and off campus resources
 - The range of interim accommodations and remedies
- An explanation of the procedural options, including Informal Resolution and Formal Resolution
- Make available an advisor, advocate, or support person
- Assess for pattern evidence or other similar conduct by Respondent
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding

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IV. Investigation

Following the initial Title IX assessment, the College may initiate a prompt, thorough and impartial investigation. The Title IX Coordinator, in consultation with the Title IX team, will oversee the investigation. At the conclusion of the investigation, if warranted, a Hearing Coordinator will be assigned to facilitate the adjudication through a conduct conference or specially trained conduct hearing panel.

The investigation is designed to provide a fair and reliable gathering of the facts. All individuals in the investigation, including the Complainant, the Respondent and any third-party witnesses, will be treated with appropriate sensitivity and respect. Consistent with the need for a full assessment of the facts, the investigation will safeguard the privacy of the individuals involved.

The College will designate an investigator who has specific training and experience investigating allegations of sexual harassment and sexual misconduct. The investigator may be an employee of the College or an external investigator engaged to assist the College in its fact gathering. The College will typically use a team of two investigators, which may include the pairing of an external investigator with a College employee. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest.

The investigator(s) will coordinate the gathering of information from the Complainant, the Respondent, and any other individuals who may have information relevant to the determination. The investigator(s) will also gather any available physical or medical evidence, including documents, communications between the parties, and other electronic records as appropriate. The investigator(s) may consider prior allegations of, or findings of responsibility for, similar conduct by the Respondent. The Complainant and Respondent will have an equal opportunity to be heard, to submit evidence, and to identify witnesses who may have relevant information.

The investigation will usually be completed within twenty (20) business days. Given the availability of witnesses or complexity of the circumstances, this time frame may be extended as necessary to ensure the integrity and completeness of the investigation.

At the request of law enforcement, the College may agree to defer its Title IX fact gathering until after the initial stages of a criminal investigation. The College will nevertheless communicate with the Complainant regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. The College will promptly resume its Title IX fact gathering as soon as law enforcement has completed its initial investigation.

Information gathered during the investigation will be used to evaluate the appropriate course of action, provide for the safety of the individual and the campus community, and impose remedies as necessary to address the effects of the conduct cited in the report.

A. Threshold Determination and Appeal from Insufficient Threshold

At the conclusion of the investigation, the investigator(s) will prepare a written report synthesizing the facts for review by the Title IX Coordinator and a Hearing Coordinator from the Office of Student Conduct. The investigator(s) are not charged with reaching a

determination as to responsibility, which is a function reserved for the Conduct Conference or Hearing Panel.

Upon receipt of the investigative report, the Hearing Coordinator, in consultation with the Title IX team, will review the report and make a threshold determination as to whether there is sufficient information upon which an adjudicator could find a violation of this policy. This threshold determination does not involve making a determination of responsibility, nor does it involve a credibility assessment. If the threshold has been established, the Hearing Coordinator will issue a Notification Letter to the Respondent and the Complainant and refer the report for Pre-Hearing Procedures.

If the Title IX Coordinator, in consultation with the Title IX team, determines that this threshold has not been reached, the Complainant and Respondent will be notified in writing. The Complainant will have the opportunity to seek review by the Vice President for Student Affairs and Dean of Students (or designee) by submitting a written request for review within five (5) business days of receipt of the notification. If an appeal is filed, the Respondent will be notified and have the opportunity to respond. The Vice President for Student Affairs and Dean of Students (or designee) may affirm the threshold finding, reverse the finding or remand the matter for additional investigation as warranted. The Vice President for Student Affairs and Dean of Students (or designee) will render a decision in writing, to both parties, within ten (10) business days of receipt of the request for review. The decision of the Vice President for Student Affairs and Dean of Students (or designee) is final. Where a designee is chosen, the identity of this individual will be shared with both parties.

V. Formal Resolution

Formal resolution of a complaint under the Sexual Harassment and Assault Policy will occur through the use of a Conduct Conference or a Hearing Panel.

A. Conduct Conference

A Complainant or Respondent may request resolution through an administrative conduct conference, in which the Hearing Coordinator will meet with the Complainant and Respondent to determine responsibility and render a decision as to what sanctions, if applicable, should be implemented. Both parties and the Hearing Coordinator must agree that the matter is appropriate for resolution by a conduct conference. Depending upon the nature and severity of the allegations, the Hearing Coordinator may decline to handle the matter administratively and refer the case to a Hearing Panel.

A conduct conference is particularly appropriate when the Respondent has admitted to the harassment or misconduct and there is no discernible dispute in the relevant facts of the investigation report; however, at the discretion of the Hearing Coordinator, it may also be used when the facts are in dispute. The investigative report will serve as the primary evidence in making a determination of responsibility.

Both parties must have notice, the opportunity to review the investigative report in advance, and the opportunity to present any additional relevant information to the Hearing Coordinator. In reaching a determination as to whether this policy has been violated, the Hearing Coordinator will reach a determination by a preponderance of the evidence, that is, whether the conduct was more likely than not to have occurred as alleged. Based on the outcome of the conduct conference, the Hearing Coordinator will issue an appropriate sanction.

Both a Complainant and Respondent may appeal the determination of the Hearing Coordinator as provided in the Appeal section below.

B. Hearing Panel

The hearing panel typically consists of a three members drawn from a pool of trained faculty and campus administrators. Faculty members of the hearing panel pool are appointed by Faculty Council. Administration members of the hearing panel pool are selected and appointed by the Dean of Students Office. At the discretion of the Hearing Coordinator, the College may engage an external adjudicator to serve as a member of the hearing panel or in lieu of the hearing panel whenever, in the exercise of judgment, doing so will best serve the fair and equitable resolution of the complaint. In making the determination to select an external adjudicator, the Hearing Coordinator will consider, among other factors, the nature of the allegations, the complexity of the case, whether there is any issue of conflict of interest, the availability of trained panel members for the hearing, whether the College is in session or on break, or any other relevant factors.

All hearing panelists must participate in annual training on non-discrimination; the dynamics of sexual harassment, sexual violence and intimate partner violence; the factors relevant to a determination of credibility; the appropriate manner in which to receive and evaluate sensitive information; the manner of deliberation; evaluation of consent and incapacitation; the application of the preponderance of the evidence standard; sanctioning and the College's policies and procedures. The training will be coordinated by the Title IX Coordinator in conjunction with campus and external partners.

The Hearing Panel is supported by the Hearing Coordinator, who is present at hearing panel meetings, but is not be a voting member of the panel. He or she will meet with all involved parties prior to the hearing, be present during the hearing to serve as a resource for the hearing panel on issues of policy and procedure, and to ensure that policy and procedure are appropriately followed throughout the hearing.

In most cases, it should be possible to convene a hearing panel; however if the hearing must be heard at or after the end of the semester or academic year and/or a full hearing panel cannot reasonably be convened, those cases may be heard by the Vice President for Student Affairs and Dean of Students (or designee) or the College may substitute an alternate method of adjudication at its discretion.

C. Advisors, Support Persons, and Attorneys

Advisor: In any hearing, the Complainant and Respondent may choose to be assisted by an advisor. The Dean of Students Office maintains a list of campus community members who have

undergone Title IX training who can guide a student through the pre-hearing and hearing process. The advisor may accompany the student to any College investigative, administrative or adjudicative meeting, including the panel hearing. The advisor may not speak to the panel during the hearing.

Support Person: A Complainant and Respondent may also choose to be assisted by an emotional support person of their choice. The person must be a member of the Occidental community (student, faculty, staff, or administrator). To serve as a support person, the individual will be required to meet with a Hearing Coordinator or the Title IX Coordinator in advance of any participation in the proceedings. The Survivor Advocate may serve as a support person for a Complainant.

The support person cannot be a witness in the proceedings. The support person is a silent and non-participating presence who is there solely to observe and provide moral support during the hearing itself. This person is not to address the hearing panel, except to ask for a short recess if one of the parties requires some time to compose him or herself or collect his or her thoughts. The Hearing Coordinator has the right at all times to determine what constitutes appropriate behavior on the part of a support person and whether the person may remain at the proceedings. While the support person may be present to hear testimony, no written materials are to be shared with support people.

Absent extenuating circumstances, witnesses and others involved in an investigation or hearing are not entitled to have a support person present.

Role of the Attorney/Outside Agreements: The College prohibits outside attorneys, or family members acting as attorneys, from participating in proceedings under this policy. A Complainant or Respondent may choose to seek the advice and assistance of an attorney at his/her own expense, but the attorney may not participate in investigatory interviews, informal resolution proceedings, or formal resolution via administrative hearing or Hearing Panel. Similarly, the College will not recognize or enforce agreements between the parties outside of these procedures.

D. Pre-Hearing Procedures

1. Notice of Charges

Following the threshold determination that there is sufficient information to move forward with a hearing, the Hearing Coordinator will send written Notification Letter to both the Complainant and the Respondent. The Notification Letter provides each party with a brief summary of the conduct at issue and the specific provision of the policy violation(s) that are alleged to have taken place.

2. Pre-Hearing Meeting with Complainant and Respondent

Following the Notification Letter, the Hearing Coordinator will contact the Complainant and Respondent to schedule separate meetings with each party. At this pre-hearing meeting, each party will receive an explanation of the hearing process and have the opportunity to ask any questions. If the Complainant and/or Respondent have elected to have advisors throughout the hearing process, the advisor is encouraged to accompany the Complainant/Respondent to this initial meeting.

3. Notice of Hearing

Once each party has met with the Hearing Coordinator, a Notice of Hearing is sent to the Complainant and the Respondent. In addition, the Notice provides the parties with the date, time, and place of the hearing, as well as the name(s) of the person(s) hearing the case.

In general, the hearing will be scheduled within ten (10) business days of the date of the Notice of Hearing. Under extenuating circumstances, this time frame may be extended.

4. Composition of the Hearing Panel

The Complainant and the Respondent may submit a written request to the Hearing Coordinator that a member of the hearing panel be removed. The request must clearly state the grounds to support a claim of bias, conflict of interest or an inability to be fair and impartial. This challenge must be raised within two (2) business days of receipt of the Notice of Hearing. All objections must be raised prior to the commencement of the hearing. Failure to object prior to the hearing will forfeit one's ability to appeal the outcome based on perceived or actual bias.

5. Pre-Hearing Review of Documents

The Complainant and the Respondent will each have the opportunity to review all investigative documents, subject to the privacy limitations imposed by state and federal law, at least five (5) business days prior to the hearing. The investigative documents will include the investigation report, any witness statements or interviews, statements or interviews by both parties, and any other documentary information that will be presented to the hearing panel.

6. Witnesses

The Complainant, Respondent, and the hearing panel all have the right to call witnesses. Witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character.

In general, neither party will be permitted to call as a witness anyone who was not interviewed by the investigator as part of the College's investigation. If either party wishes to call witnesses, whether or not they were previously interviewed as part of the College's investigation, the following must be submitted no later than five (5) business days before the hearing to the Hearing Coordinator via e-mail or in hardcopy format:

- The names of any witnesses that either party intends to call;
- A written statement and/or description of what each witness observed, if not already provided during investigation;
- A summary of why the witness' presence is relevant to making a decision about responsibility at the hearing; and,
- The reason why the witness was not interviewed by the investigator, if applicable.

The Hearing Coordinator will determine if the proffered witness(es) has relevant information and if there is sufficient justification for permitting a witness who was not interviewed by the investigator. The Hearing Coordinator may also require the investigator to interview the newly proffered witness.

If witnesses are approved to be present, the Respondent and Complainant are provided with a list of witnesses and any relevant documents related to their appearance at the hearing no later than five (5) business days before the hearing. All parties have the opportunity to ask questions of witnesses (through the panel), regardless of who called them to the hearing.

7. Relevance

The Hearing Coordinator will review the investigative report, any witness statements and any other documentary evidence to determine whether the proffered information contained therein is relevant and material to the determination of responsibility given the nature of the allegation. In general, the Hearing Coordinator may redact information that is irrelevant, more prejudicial than probative, or immaterial. The Hearing Coordinator may also redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty.

8. Prior Sexual History and/or Pattern Evidence

Prior Sexual History of a Complainant: In general, a Complainant's prior sexual history is not relevant and will not be admitted as evidence at a hearing. Where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is typically not relevant and will not be permitted.

Pattern Evidence by a Respondent: Where there is evidence of pattern of conduct similar in nature by the Respondent, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant and probative to the panel's determination of responsibility and/or assigning of a sanction. The determination of relevance will be based on an assessment of whether the previous incident was substantially similar to the conduct cited in the report and indicates a pattern of behavior and substantial conformity with that pattern by the Respondent. Where there is a prior finding of responsibility for a similar act of sexual misconduct, there is a presumption of relevance and the finding may be considered in making a determination as to responsibility and/or assigning of a sanction.

The College, through the Hearing Coordinator or Title IX Coordinator, may choose to introduce this information, with appropriate notice to the parties. Alternatively, a party may request in writing that information under this section be admitted. A request to admit such information must be submitted to the Hearing Coordinator. The Hearing Coordinator, in

consultation with the Title IX Coordinator, will assess the relevance of this information and determine if it is appropriate for inclusion at the hearing.

To aid in an advance determination of relevance, the following must be submitted no later five (5) business days before the hearing to the Hearing Coordinator via e-mail or in hardcopy format:

- A written statement and/or description of the proposed information, if not already provided during investigation; and
- A summary of why this information is relevant to making a decision of responsibility at the hearing.

If this information is approved as appropriate for presentation at the hearing, the Respondent and Complainant will be provided with a brief description of the approved information no later than five (5) business days before the hearing.

9. Request to Reschedule Hearing

Either party can request to have a hearing rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted to the Hearing Coordinator with an explanation for his or her request at least three (3) business days prior to the hearing.

10. Consolidation of Hearings

At the discretion of the Hearing Coordinator, in consultation with the Title IX Coordinator, multiple reports may be consolidated against a Respondent in one hearing, if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident. Matters may be consolidated where they involve multiple Complainants, multiple Respondents, or related conduct that would regularly have been heard under the Code of Student Conduct.

E. Hearing Panel Procedures

1. Attendance at Hearing

If a party does not attend a hearing for any non-emergency or compelling reason, the hearing may be held in his/her absence at the discretion of the Vice President of Student Affairs and Dean of Students.

A Respondent will not be permitted to withdraw from the College prior to the conclusion of an investigation or formal resolution under this policy. If a Respondent chooses not to participate, the College will move forward with the hearing and imposition of sanction, if any, in absentia. The Respondent's academic transcript will be marked Withdrawal Pending Disciplinary Action, or, if finally resolved in absentia, with the final outcome in accordance with regular practice under this policy.

A Complainant or Respondent may also request alternative testimony options that would not require physical proximity to the other party. Options include placing a privacy screen in the hearing room, allowing the Complainant or Respondent to speak outside the physical presence of the other by using relevant technology to facilitate participation. Any proposed alternative must be reviewed in advance of the hearing to ensure that it is consistent with the goals of a fair and equitable process. While these options are intended to help make the alleged Complainant or Respondent more comfortable, they are not intended to work to the disadvantage of the other party.

2. Participants in Hearing Procedures

The hearing panel is a closed hearing; it is not open to the public. The individuals who may appear before the hearing panel are: the Complainant; the Respondent; any individual serving as an approved advisor or support person; and any individuals appearing as witnesses. Attorneys, including family members acting as attorneys, are not permitted.

3. Safeguarding of Privacy

All parties involved in a hearing are required to keep the information learned in preparation for the hearing and at the hearing private. No copies of documents provided are to be made or shared with any third parties. All copies provided must be returned to the College at the conclusion of the hearing and any appeals. Any breach of this duty is subject to further disciplinary action by the College.

4. Hearing Panel Procedures

A hearing is not intended to be adversarial; rather, it is intended to be educational and developmental. The hearing is intended to provide a fair and ample opportunity for each side to present his/her account of the incident and for the hearing panel to determine the facts of the case, make a determination as to whether College policy was violated, and to recommend appropriate sanctions, if necessary. The hearing is an informal proceeding not comparable to a criminal trial; it is the mechanism by which the College assesses, and as appropriate, takes formal disciplinary action regarding a violation of College policy.

The hearing panel must review all pertinent information regarding the incident in question prior to the date of the hearing panel. Relevant information supporting the violation(s) alleged may be offered in the form of written statements, documents, items, or oral information from the Complainant, the Respondent, and witnesses.

A member of the panel will be designated as the panel chair. A hearing will be called to order by the panel chair. The Hearing Coordinator serves as a (non-voting) advisor to the hearing panel. The chair will explain the hearing process and will provide an opportunity to all parties to ask procedural questions prior to initial statements and the presentation of information.

The investigator will provide a brief opening statement summarizing the investigation. The opening statement should focus on the areas of agreement and disagreement in order to

assist the hearing panel in prioritizing areas of inquiry. The hearing panel, Complainant, or Respondent may make brief inquiries of the investigator at this juncture, as there will be additional opportunity to ask questions of the investigator after the hearing panel has heard from the Complainant, the Respondent, and any witnesses.

The Complainant may supplement the information provided to the panel with a brief statement. This is not intended to be a retelling of the event. The hearing panel may pose questions to the Complainant, including questions suggested by the Respondent.

After the Complainant is finished, the Respondent will be given an opportunity, and is encouraged, to make a brief statement. The hearing panel may pose questions to the Respondent, including questions suggested by the Complainant.

The panel may hear from witnesses on behalf of the Complainant and the Respondent. Each witness will be questioned by the hearing panel, and, as appropriate, the Complainant and the Respondent. Under some circumstances, the Complainant or Respondent may be asked to present a list of written questions to the panel, who will determine the relevance of the questions and pose any questions deemed relevant.

The hearing panel, Complainant, and Respondent may then question the Investigator. The investigator is not permitted to offer an opinion on the credibility of any individual or as to the ultimate issue.

At the conclusion of the presentation of all witnesses, the Complainant and Respondent will each be given a brief final opportunity to address any outstanding issues of fact.

5. Questioning of Witnesses

It is the responsibility of the hearing panel to assure that the information necessary to make an informed decision is presented. The panel members may play an active role in questioning both parties and witnesses involved in the case. At times, the panel members may need to ask difficult or sensitive questions in order to understand areas of factual dispute or gain a full understanding of the context.

At no time will the complainant or the respondent be permitted to directly question one another. As outlined above, the parties may submit questions to the hearing panel in writing, which may be posed at the discretion of the hearing panel. Similarly, the panel members are under no obligation to allow either party to directly question witnesses, and the panel may require that questions to witnesses be submitted in writing.

Both parties are encouraged to prepare a written list of questions in advance. The parties may also submit questions in writing to the chair throughout the course of the hearing. The chair, in consultation with the panel, will determine the appropriateness and relevance of the questions.

Parties and other individuals who offer information at a hearing are expected to respond honestly, and to the best of their knowledge. The hearing panel reserves the right to recall any

party or witness for further questions and to seek additional information necessary to make a decision.

6. Deliberation

After all of the information has been presented, all parties will be dismissed and the hearing will be formally concluded.

The panel members will conduct their deliberations in private. The panel must complete their deliberations within two (2) business days, but every attempt will be made to complete the deliberations promptly. The Hearing Coordinator may remain for deliberations, but may not participate in the deliberations and may not vote.

The hearing panel will determine a Respondent's responsibility by a preponderance of the evidence. This means that the hearing panel will decide whether it is "more likely than not," based upon all of the relevant information, that the Respondent is responsible for the alleged violation(s). The hearing panel must reach a decision on responsibility by majority vote. Only the decision on responsibility will be shared with the Complainant and the Respondent.

If the panel finds the Respondent responsible, the panel will then recommend appropriate sanctions to the Hearing Coordinator. The Hearing Coordinator, in consultation with the Title IX Coordinator, will review the recommendations and impose an appropriate sanction.

The findings of the hearing panel will be reduced to writing. The findings will detail the findings of fact and the basis/rationale for the decision of the hearing panel, making reference to the evidence that led to the finding.

F. Sanctions

A hearing panel that finds a Respondent responsible for a violation of this policy may recommend appropriate sanctions that may include, but are not limited to, those set forth below. Sanctions may be issued individually, or a combination of sanctions may be imposed. The Complainant and Respondent will each have the opportunity to present a written statement about impact and/or requested sanctions. The hearing panel will review these statements only if the Respondent has been found responsible for one or more violation.

In general:

- Any student who is determined to have committed sexual assault may receive a sanction ranging from suspension to expulsion.
- Any student who is determined to have committed non-consensual sexual contact or any other prohibited form of conduct may receive a sanction ranging from conduct warning to expulsion.

The hearing panel may deviate from the range of recommended sanctions, based upon a full consideration of the following factors: (1) the Respondent's prior discipline history; (2) how the

College has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the Complainant; (5) the impact of the conduct on the community, its members, or its property; (6) whether the Respondent has accepted responsibility for his actions; (7) whether the Respondent is reasonably likely to engage in the conduct in the future; (8) the need to deter similar conduct by others; and (9) any other mitigating or aggravating circumstances, including the College's values.

The hearing panel or Hearing Coordinator may also consider restorative justice outcomes that, taking into account the safety of the community as a whole, allows a Respondent to learn about the origins of his/her behavior, his/her responsibility for this behavior, and how s/he can change this behavior.

In appropriate cases, a panel may determine that the conduct was motivated by bias, insofar as a Complainant was selected on the basis of his or her race, color, ethnicity, national origin, religion, age, disability or other protected class. Where the panel determines that student misconduct was motivated by bias, the panel may elect to increase the sanction imposed as a result of this motivation.

The hearing panel will make a recommendation about the appropriate sanction. The Hearing Coordinator, in consultation with the Title IX Coordinator, may affirm or modify the recommended sanction(s). The Hearing Coordinator and Title IX Coordinator will review the panel's recommendations and take reasonable steps to foster consistency for similar violations and circumstances.

Sanctions that may be imposed under this policy include:

Warning: Notice, in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.

Censure: A written reprimand for violating the Code of Student Conduct or other College policy. This conduct status specifies a period of time during which the student's or organization's good standing with the College may be in jeopardy. The student is officially warned that continuation or repetition of prohibited conduct may be cause for additional conduct action including probation, suspension, or expulsion from the College.

Disciplinary Probation: Exclusion from participation in privileged activities for a specified period of time (privileged activities may include, but are not limited to, elected or appointed ASOC offices, student research, athletics, some student employment, and study abroad). Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other College policy violations may result in further disciplinary action.

Restitution: Repayment to the College or to an affected party for damages resulting from a violation of this Code. To enforce this sanction, the College reserves the right to withhold its transcripts and degrees or to deny a student participation in graduation ceremonies and privileged events.

Removal from Campus Housing: Students may be removed from College housing and/or barred from applying for campus housing due to disciplinary violations of this Code.

Suspension: Exclusion from College premises, attending classes, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Notice of this action will remain in the student's conduct file. Conditions for readmission may be specified in the suspension notice.

Expulsion: Permanent termination of student status and exclusion from College premises, privileges, and activities. This action will be permanently recorded on the student's academic transcript.

Revocation of Admission and/or Degree: Admission to, or a degree awarded by, the College may be revoked for fraud, misrepresentation in obtaining the degree or violation of College policies, the Student Code of Conduct or for other serious violations committed by a student prior to enrollment or graduation.

Withholding Degree: The College may withhold awarding a degree otherwise earned until the completion of the process set forth in this Code, including the completion of all sanctions imposed, if any.

Other sanctions may be imposed instead of, or in addition to, those specified here. Service, education or research projects may also be assigned. More than one of the sanctions listed above may be imposed for any single violation.

G. Outcome Letter

The outcome of the hearing panel will be final and communicated to the Complainant and Respondent in writing, usually within four (4) business days from the date the hearing is concluded. The notification of each party should occur at or near the same time.

Both parties have the right to be informed of the outcome. In addition, the Respondent will be fully informed of any sanctions. For reports involving sexual violence, the Complainant will be fully informed of any sanctions. For all other reports under this policy, the Complainant will be informed of only those sanctions that directly relate to the Complainant, consistent with FERPA and other applicable law.

The imposition of sanctions will take effect immediately and will not be stayed pending the resolution of the appeal.

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is not dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about individual conduct complaints pursuant to FERPA requirements.

H. Appeals

Either party may appeal the final outcome in writing to the Vice President for Student Affairs and Dean of Students or designee (the "Appeals Officer"). The appeal will be conducted in an impartial manner by an impartial decision-maker. The appeal must be filed in writing within five (5) business days of receiving the written outcome. The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal.

The Complainant and/or Respondent may appeal only the parts of final outcome directly relating to him/her. Dissatisfaction with the outcome of the hearing is not grounds for appeal. The only grounds for appeal are:

- A procedural or substantive error occurred that significantly affected the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- New evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction (a summary of this new evidence and its potential impact must be included).

The receipt of the appeal will be acknowledged in writing (which can include email). Each party will be given the opportunity to respond in writing to the other party's appeal. Any response by the opposing party must be submitted to the Appeals Officer within three (3) business days from receipt of the appeal. The appeals documents from each party will be considered together in one appeal review process.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The Appeals Officer shall first consider whether the appeal is timely filed and if so, whether the appeal is properly framed based on the two grounds. If the Appeals Officer determines that the appeal is not properly framed, the appeal will be denied.

If the appeal is based on procedural or substantive error, the Appeals Officer may return the complaint to the original hearing panel with instructions to reconvene to cure the error, or in rare cases where the error cannot be cured, the Appeals Officer can ask that a new hearing occur before a newly constituted hearing panel. In the case of new and relevant information, the Appeals Officer can recommend that the case be returned to the original hearing panel to assess the weight and effect of the new information and render a determination after considering the new facts. The reconsideration of the hearing panel is final.

Appeals are not intended to be full rehearing of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. This is not an opportunity for the Appeals Officer to substitute his/her judgment for that of the original hearing body merely because s/he disagree with its finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error. The Appeals Officer can affirm or alter the original findings, depending on the basis of the requested appeal.

Sanctions imposed are implemented immediately unless the Vice President for Student Affairs and Dean of Students stays implementation in extraordinary circumstances, pending the outcome of the appeal. Pending graduation, study abroad, internships/externships, or other events do not typically constitute extraordinary circumstances. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

The Appeals Officer will render a written decision on the appeal to the Complainant and Respondent within fifteen (15) business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.

I. Integrity of Proceedings

These procedures are entirely administrative in nature and are not considered legal proceedings. Neither party may audio or video record the proceedings, nor is formal legal representation allowed.

At the Hearing Coordinator's discretion, anyone disrupting the hearing may be removed.

J. Records

The Title IX Coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by means of Title IX assessment, informal resolution or formal resolution.

Complaints resolved by means of Title IX assessment or informal resolution are not part of a student's conduct file or academic record or of an employee's personnel record.

Affirmative findings of responsibility in matters resolved through formal resolution are part of a student's conduct record and an employee's personnel record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record or an employee's personnel record.

Generally suspension, expulsion, and withdrawal pending disciplinary action are permanently noted on a student's transcript. The conduct files of students who have been suspended or expelled from the College are maintained in the Dean of Students Office indefinitely. Conduct files of students who have not been suspended or expelled are maintained in the Dean of Students Office for no fewer than seven years from the date of the incident. Further questions about record retention should be directed to the Dean of Students Office.

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EXHIBIT 46

Exhibit 2

November 19, 2013

Mr. *John Doe*

Re: Notice of Charges Letter

Dear Mr. *Doe*

The Interim Title IX Coordinator received the investigation report regarding the complaint of alleged sexual misconduct from the investigators on November 14, 2013.

Threshold Determination

Under the College's Sexual Misconduct Policy, a threshold determination means there is sufficient information upon which an adjudicator could make a finding of responsibility of a violation of the policy. The basis for this threshold determination does not involve a determination of responsibility, nor does it involve a credibility assessment.

Based upon review of the information set forth in the investigation report, I find there is sufficient information upon which an adjudicator could make a determination of a violation of the Occidental College Sexual Misconduct Policy.

Brief Summary of Conduct at Issue

Ms. *Jane Doe* (a first-year freshman, Class of 2017) alleges that on or about the early morning hours of Sunday, September 8, 2013 between the approximate times of 12:50 A.M. and 2:00 A.M., she and Mr. *John Doe* (a first-year freshman, Class of 2017) had sex. During the investigation, Ms. *Jane Doe* recalled performing oral sex on Mr. *Doe* but could not specifically recall having intercourse with Mr. *Doe* in his dormitory room on the second floor of Braun Hall. Ms. *Jane Doe* alleges that she consumed multiple alcoholic beverages in the hours leading up to the sexual contact.

Alleged Policy Violations

The Sexual Misconduct Policy prohibits the following conduct, which is alleged to have happened, under the following sections:

Sexual Assault: Having or attempting to have sexual intercourse with another individual:

- By force or threat of force;
- Without effective consent; or
- Where that individual is incapacitated.

Sexual intercourse includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.

Non-Consensual Sexual Contact: Having sexual contact with another individual:

- By force or threat of force;
- Without effective consent; or
- Where that individual is incapacitated.

Sexual contact includes intentional contact with the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

Formal Resolution of the Complaint

As noted above, based upon the information in the investigation report, there is sufficient evidence to meet a threshold determination. Given the nature and severity of the allegations of this complaint, and according to the policy, I will move forward with a formal hearing to resolve the alleged complaint of violation regarding sexual assault and non-consensual sexual contact of the College's Sexual Misconduct Policy. You will receive information regarding the hearing, as well as, an invitation to a pre-hearing meeting and a copy of the Sexual Misconduct Policy under separate cover.

Please feel free to contact me with questions.

All my best,

Cherie A Scricca
Title IX Hearing Coordinator
323.259.1358
scricca@oxy.edu

Cc: Lauren Carella, Interim Title IX Coordinator

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Exhibit 3

CHARGE EVALUATION WORKSHEET

Page 01

conclude based on their communications and her actions that, even though she was intoxicated, she could still exercise reasonable judgment. That charge is therefore declined based on insufficient evidence.

The misdemeanor PC 261.5 charge is also declined based on insufficient evidence. There is a 4-month age difference between the parties. The victim was 1 month shy of her 18th birthday when this occurred. The victim is enrolled in college and there is no evidence that the suspect knew or should have known she was under age.

COMPLAINT DEPUTY (PRINT)	COMPLAINT DEPUTY (SIGNATURE)	STATE BAR NO.	REVIEWING DEPUTY (SIGNATURE)
ALISON A. W. MEYERS	<i>Alison W. Meyers</i>	178816	<i>[Signature]</i>

I have conveyed all relevant information to the above-named Deputy District Attorney to be used in consideration of a filing decision.

FILING OFFICER (PRINT) M. Gomez FILING OFFICER (SIGNATURE) *[Signature]* SERIAL# 31574

DEPARTMENT OF JUSTICE REASON CODES (FORM 8715)		DISTRICT ATTORNEY'S REASON CODES	
A. Lack of Corpus	D. Victim Unavailable/Declines to Testify	H. Other (indicate the reason in Comments section)	L. Prosecutor Preparing Defense
B. Lack of Sufficient Evidence	E. Witness Unavailable/Declines to Testify	I. Referred to Non-California Jurisdiction	M. Probation Violation in lieu of
C. Inadmissible Search/Seizure	F. Combined with Other Counts/Cases	J. Deferred for Revocation of Parole	N. Referred to City Attorney for Misdemeanor Consideration
	G. Interest of Justice	K. Further Investigation	

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Exhibit 46, Page 68

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US 6344813015

Exhibit 4

CONFIDENTIAL

November 14, 2013

**TO: Lauren Carella
Interim Title IX Coordinator
Occidental College**

**From: Cathleen Watkins
Keith Rohman
Public Interest Investigations, Inc.**

**Re: Sexual Misconduct Policy Complaint
Report of Investigation
PII Case Number: 13-4175**

I. Introduction

On or about October 1, 2013, Public Interest Investigations, Inc., (PII) was retained by Occidental College ("the College") to investigate a complaint filed under its Sexual Misconduct Policy. The complaint was filed on or about September 15, 2013, by *Jane Doe* a freshman at the College. She identified *John Doe*, also a freshman at Occidental, as the Respondent.

Cathleen Watkins and Keith Rohman, both of PII, conducted the investigation. Watkins is a senior investigator, and Rohman is PII's president. Both have specific training and experience investigating allegations of sexual harassment and sexual misconduct, including sexual assault.

Jane Doe alleged that *John* sexually assaulted her when he had sexual intercourse with her in his room in Braun Hall sometime after midnight on September 8, 2013. *Jane Doe* stated that she was intoxicated during the intercourse due to alcohol consumption. *Jane Doe* stated that her level of intoxication was such that it caused her to be incapacitated.

The College's Sexual Misconduct Policy prohibits such conduct. It defines sexual assault as "Having or attempting to have sexual intercourse with another individual: . . . [w]here that individual is incapacitated." The policy addresses consent and incapacitation, specifically related to use of alcohol.

The Bradbury Building
304 S. Broadway, Suite 598
Los Angeles, CA 90013

Phone (213) 482-1780
License #PT19508
www.pii.com

Exhibit 4, Page 1

Occidental College
Report of Investigation
Page 2

The policy states, "Consumption of alcohol . . . alone is insufficient to establish incapacitation. The impact of alcohol . . . varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol . . . impact[s] an individual's:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments, or
- Capacity to appreciate the nature and quality of the act.

According to the College's policy, "Evaluating incapacitation also requires an assessment of whether a Respondent knew, or should have known, that the Complainant was incapacitated."

PII's investigation focused on the facts surrounding *Jane Doe's* complaint as they related to the relevant sections of the College's Sexual Misconduct Policy, as stated above. The report specifically addresses the timeframe of the night of September 7, 2013, leading into the early morning hours of September 8, 2013, and is a synthesis of the information PII collected. We have also attached the summaries of interviews with *Jane Doe* and other witnesses, which provide some additional information on this time period and also refer to events that took place afterwards.

This report does not include the investigators' analyses of, or conclusions regarding, the facts brought forth during investigation. The College's policy states, "The investigator(s) are not charged with reaching a determination as to responsibility, which is a function reserved for the Conduct Conference or Hearing Panel."

II. Investigative Procedures

A. Timeline of Investigation

PII attempted to contact *Jane Doe* on October 3rd, but she was off campus and out of state. PII's investigation began on October 9th, when *Jane Doe* was interviewed by PII on campus. Between October 9th and October 28th, PII conducted fact-finding on campus, interviewing a number of witnesses. Beginning on October 22nd, PII attempted to set up an interview with the Respondent, *John Doe*. *John's* attorney initially informed PII that he would not make *John* available for an interview while there was a pending criminal investigation.

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On October 31, 2013, [REDACTED]

[REDACTED] John had agreed to be interviewed once he obtained an Advisor for the Occidental process. Over the ensuing two weeks, we had repeated contacts with John's attorney. We were told by John's attorney that John was having difficulty finding an Advisor.

[REDACTED]
[REDACTED] On November 14th, Hathaway contacted Cathleen Watkins and stated that John had succeeded in obtaining an Advisor, but Hathaway was still considering whether to permit John to be interviewed. Watkins informed Hathaway that PII's investigation was otherwise completed, and if John were going to make himself available, he should contact PII by 2 p.m. on November 14th. Neither John nor Hathaway contacted PII prior to this report being finalized.

B. Witness Interviews

PII used a team of two investigators for each interview. All interviews were conducted in-person, and Watkins was present for all witness interviews. PII did not record any interviews for this investigation. Witnesses were informed of this at the outset, and all witnesses were asked not to make their own recording.

Jane Doe was accompanied by her advisor, Professor Movindri Reddy, when she met with PII's team. In addition to Jane Doe, PII interviewed nine witnesses. This group included eight freshmen and one professor, all of whom are part of the Occidental community. The witnesses were:

- Genevieve Babcock
- Maddie DiMarco
- Professor Danielle Dirks
- Aidan Dougherty
- Liam Driscoll
- Jamison Hayward
- Angela Peckham
- Gavin Rose
- Chloe Welmond

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C. Documents

PII collected and reviewed documents provided by the Complainant and the Respondent. These included screen shots of text messages and hand-written notes memorialized by Professor Dirks when she was talking with *Jane Doe* in the days following the incident. PII's team also reviewed floor plans for Braun Hall and the Campus Safety report for Saturday, September 7, 2013.

D. Other Investigative Procedures

Watkins and Rohman toured the grounds of the campus, including Braun Hall and Stewart-Cleland Hall, to have a visual framework for the events under investigation. In addition, Watkins reviewed the orientation materials distributed to freshmen related to the Sexual Misconduct Policy.

III. Results of Investigation

A. Background

Jane Doe said that she is assigned to Braun 320, and her roommate is Genevieve Babcock. *Jane Doe* is in the Cultural Studies Program. She said [REDACTED] and that she was 17 years old at the time of the incident.

Jane Doe said that she met *John Doe* on September 2, 2013. *Jane Doe* and *John* were both in the African Revolutions class taught by Professor Movindri Reddy, and both attended a class outing to an African market that day. *Jane Doe* said that she and *John* spoke to one another while at the market.

Jane Doe said that the following Friday, September 6th, she attended a dance party in *John*'s room, Braun 207. She recalled that *John* was "really happy" to see her at the dance party and she thought to herself, "That's weird since *John* did not even know me." On September 6th, the College held its Septemberween celebration, and *Jane Doe* also went to that dance. *Jane Doe* said she saw *John* at Septemberween, but she did not talk with him there.

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B. The Night of September 7, 2013, Leading into September 8, 2013

1. Before and During the Soccer Match

Jane Doe recalled that on September 6th, she drank alcohol, slept until about noon on September 7th, and woke up with a hangover. She said she spent the afternoon studying, working out at the gym, and taking a nap. She recalled having dinner with another student, Harrison Rosenthal, around 7 p.m., and said she ate a turkey burger and fries. After eating, *Jane Doe* said that she went to the men's soccer match on campus. The game began at 7 p.m., and she recalled arriving after half-time at approximately 8 p.m.

Jane Doe said that other students were "pre-gaming" before the soccer game, which meant they were consuming alcohol. *Jane Doe* said that she did not participate in any "pre-gaming" activities.

There was some disagreement in the witness accounts about whether or not *Jane Doe* participated in "pre-gaming." Liam Driscoll, a freshman who lives in Braun 214, recalled that *Jane Doe* was present in his room before the soccer match and was drinking a mixture of vodka and orange juice from a small orange juice bottle. He recalled that Angela Peckham and, possibly, Maddie DiMarco were also among the 10 students who were present in his room before the soccer game.

Angela Peckham's account differed from Driscoll's. Peckham said that she was not with *Jane Doe* or Driscoll before the soccer match. Maddie DiMarco was uncertain of her recollection and said she may have been in Driscoll's room with *Jane Doe* and Peckham on September 7th, but she was not sure of the time.

2. Immediately following the soccer match

Jane Doe recalled that around 9:15 or 9:30 p.m., she went to Liam Driscoll's room where she was with Peckham, DiMarco, Rosenthal, and other three other students. *Jane Doe* recalled that someone took lemon vodka from the freezer, and she drank a shot of the vodka from a shot glass. After this, *Jane Doe* said she went upstairs to her room by herself, and got a small bottle of orange juice which she took back to Driscoll's room.

She recalled mixing vodka into the orange juice bottle to create a mixture of about two-thirds juice to one-third vodka. In addition to drinking her juice mixture, *Jane Doe* stated that she also consumed either one or two more shots of vodka.

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She said that after being in Driscoll's room for a while, she, Peckham, and DiMarco went upstairs to their own rooms to change their outfits. After changing, she recalled returning to Driscoll's room and continuing to drink and play word games. She said, by this point, she had finished her orange juice mixture and was getting tipsy. However, she recalled she could still function well enough to "kick butt" at the games the students were playing. Before leaving Driscoll's room, she recalled holding a red, plastic cup with one to two inches of vodka in it. She said that she drank this in two to three swallows.

As stated above, the witnesses did not recall the events before, or after, the soccer match exactly as *Jane Doe* did. Driscoll stated that after the soccer match, he returned to his room briefly with a few friends, and neither Peckham, nor *Jane Doe*, were present.

Peckham recalled being with *Jane Doe* in a room on the second floor of Braun Hall after the soccer game, and observing *Jane Doe* drink alcohol, but she did not believe this was Driscoll's room.¹ Peckham estimated that ten people were present, and *Jane Doe* drank "more than anyone else." She said that vodka was "going around in straight shots," and she estimated that *Jane Doe* drank five shots. Peckham said, that she, herself, drank "maybe two shots." Peckham also remembered that *Jane Doe* was drinking from a small plastic bottle of orange juice mixed with vodka. Peckham estimated that the juice mixture was 75 percent juice and 25 percent vodka. Peckham's account aligned with *Jane Doe's*. In they both said that after drinking in a dorm room on the second floor of Braun Hall, they went upstairs to their own rooms to change their clothes before going out.

DiMarco's recollection was uncertain, however, she recalled that *Jane Doe* and others were "taking shots" of vodka and estimated that *Jane Doe* had two shots. In DiMarco's view, *Jane Doe* was "a little bit drunk, but still in control of herself." DiMarco described *Jane Doe* as "buzzed." DiMarco said that she was in Driscoll's room for about 30 minutes before she left to join members of the women's swim team. DiMarco, who is a member of the swim team, recalled that the events in Driscoll's room occurred on the same night as the water polo team's initiation.

Genevieve Babcock, *Jane Doe's* roommate, was in their room when *Jane Doe* returned to change her clothes. Babcock recalled that the time was around 9:45 to 10:15 p.m., after the soccer game was over. According to Babcock, *Jane Doe* was drinking from a small bottle of orange juice that held 12 to 16 fluid ounces. Babcock said *Jane Doe* appeared "pretty lucid" at that point and was talking and walking

¹ Peckham was not sure whose room this was.

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Exhibit 4, Page 6

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normally. Babcock recalled Peckham entering their room, and *Jane Doe* and Peckham leaving together.

Neither *Jane Doe* nor any of the witnesses, stated that *John Doe* was with *Jane Doe* during the part of the evening between 7 p.m. and 11p.m. on September 7th.

3. In the Neighborhood

Around 10:15 or 10:30 p.m., *Jane Doe* said that she, Peckham and other students decided to go to a fraternity party in the residential neighborhood around the campus. She said that this was the same night that the College's sports teams were holding initiations and many of the parties were closed to non-team members. By this time, *Jane Doe* said she was "getting more and more drunk." She recalled not being able to walk straight and that she fell while walking down some stairs. According to *Jane Doe* her friends were commenting about how intoxicated she was, and about how she could not walk a straight line and she was "getting loud." She said that Peckham was with her. Others in the group included DiMarco, Rosenthal, James (LNU) and Riley (LNU).

Jane Doe said the group exited the campus on Bird Road and walked down Ridgeview Avenue. She stated that, while in the neighborhood, her group ran into another group of students. She said they were also stopped by campus security, who told them that their group was being too loud and neighbors were complaining.

A Campus Safety report for Saturday, September 7, 2013, included an entry at 10:46 p.m. for 2136 Ridgeview Avenue. The report stated, "Neighbor reports a group of Oxy students making loud noise in front of location. Subjects were gone upon Officer's arrival." Exhibit 2.

Jane Doe said that her roommate, Genevieve Babcock, later told her that she and *Jane Doe* passed each other in the neighborhood and said "hello." *Jane Doe* said she did not recall seeing Babcock at this point.

According to Babcock, she and *Jane Doe* were walking in separate groups looking for parties on the north side of campus on or near Ridgeview Avenue. Babcock recalled that *Jane Doe* was visibly more impaired than she had been in their dorm room earlier. She said *Jane Doe* stumbled as she walked.

Babcock said that *Jane Doe* broke away from her group when she saw Babcock, walked unsteadily towards her and said, "Hi," in a very high pitched voice. Babcock described *Jane Doe's* demeanor at that moment as "out of character,"

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something she attributed to *Jane Doe's* level of intoxication. Babcock estimated the time to be around 11:30 or 11:45 p.m. She said that Peckham was still with *Jane Doe*.

Peckham recalled that the group learned that the party they were looking for had been shut down. Peckham said that *Jane Doe* was "pretty tipsy" while walking in the neighborhood. She described *Jane Doe* as "silly, but [it] seemed like she had a pretty good handle on herself." Peckham said *Jane Doe* was "walking fine" and acted as if she knew where the group was headed and what they were doing.

4. Enroute to Mt. Fiji

Jane Doe said that, after the contact with campus security, the group returned to campus and decided to walk up to Mt. Fiji, which is situated above the soccer fields on the east side of campus. As *Jane Doe* approached the gated entrance to this area of campus, however, she recalled that she could not walk up the steep hill. Her friends encouraged her to keep going, but *Jane Doe* told them she could not.

At this point in the evening, *Jane Doe* recalled that she was with Peckham and Rosenthal. She said that Jamison Hayward had also joined their group.

According to Peckham, after walking the perimeter of campus, she and *Jane Doe* were with a group of about 20 students headed toward Braun Hall. Peckham identified Hayward and Rosenthal as being among this group. Peckham said that she believed Rosenthal was intending to go to Mt. Fiji, but Peckham, herself, was not headed there. When the group reached Braun Hall, Peckham stated that *Jane Doe* said that she could not walk anymore and was too drunk to go further.

Jamison Hayward stated that he joined the group of students that included *Jane Doe*, Peckham and Rosenthal at Gilman Fountain. He estimated that this was sometime before 11 p.m.

Hayward said, "We were all pretty drunk." He described *Jane Doe* as "not falling over drunk. She could still walk, but we were all saying how drunk we were." He said that he did not recall *Jane Doe* falling or tripping; he described her level of intoxication as "not out of the ordinary" with the intoxication of others in their group. As the group walked around campus on September 7th, Hayward said that *Jane Doe* was acting "flirtatious" and walked arm-in-arm with Rosenthal. Hayward did not recall if the group was drinking alcohol as they approached Braun Hall, but said, "We must have had alcohol with us."

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Hayward said that when the group was approximately 50 feet beyond Braun Hall, *Jane Doe* said, "I'm not going. I can't do it," meaning climb to Mt. Fiji. Hayward recalled that Peckham told him they needed "to take care of *Jane*." When interviewed later, Hayward stated that, based on Peckham's concern, "maybe *Jane* was more drunk than I remember it."

5. *Jane Doe* Went to Her Room—First Time

Jane Doe explained that Peckham and Hayward were with her when she decided not to go to Mt. Fiji. However, she said that another friend, Chloe Welmond, walked her back to her room and put her into bed.

According to Peckham, after entering Braun Hall, *Jane Doe* told her and Hayward that she was going to her room to get something, so they waited for her in the Common Room. However, when *Jane Doe* did not return promptly, Peckham began calling *Jane Doe's* cell phone to find her.

In Hayward's recollection, *Jane Doe* ran ahead of him and Peckham shortly after entering Braun Hall, and they lost track of her. He said that Peckham was "a little worried" about *Jane Doe* because she was so intoxicated.

Chloe Welmond said that she did not put *Jane Doe* into bed, as *Jane Doe* recalled. Welmond stated that she saw *Jane Doe* briefly on the night of September 7th a few hours after the soccer match was over. She said that *Jane Doe* was near Braun Hall enroute to Mt. Fiji with a group of students that included Peckham and Hayward. Welmond observed that *Jane Doe* was not able to walk very well. "It was obvious she had been drinking," Welmond said.

Welmond said that Peckham and Hayward "were conscious and aware" of what was happening with *Jane Doe* and how intoxicated she was. She stated that Peckham and Hayward were less intoxicated than *Jane Doe* was. Welmond said that, upon seeing each other, Welmond and *Jane Doe* separated from their groups and approached each other. Welmond said that she walked *Jane Doe* to the main entrance of Braun Hall, where an R.A. opened the door. Welmond remembered that, upon seeing the R.A., *Jane Doe* said, "I have to act normal."

Welmond recalled asking *Jane Doe*, "Do you want me to walk you to your room?" but *Jane Doe* declined. She said they separated at the entrance to Braun Hall, and *Jane Doe* said, "Thank you." Welmond described herself as sober. She said her interaction with *Jane Doe* lasted less than 10 minutes.

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6. John's Sobriety Around 11 p.m.

On September 7, 2013, Aidan Dougherty, a freshman who lives on the second floor of Braun Hall, recalled being in a friend's room in Braun, playing videogames. At around 11:00 p.m., he said he walked past the room shared by John Doe and Gavin Rose. According to Dougherty, John and Rose were with two other students, Marin and Riahanon. Dougherty said that he stopped in the doorway to chat, and saw that John appeared to be intoxicated.

According to Dougherty, John was slurring his words, stumbling over the others when he got up, dancing around and generally moving in a way that indicated that he was inebriated. Dougherty estimated that on a 0-to-10 scale, with 10 being inebriated to the point of not being able to function, John was "maybe a 7." The others present told Dougherty that John was drunk, although Dougherty did not notice any alcohol in the room and did not see John consume any alcohol.

Gavin Rose, John's roommate, stated that around 11 p.m., John returned to their room and appeared to be intoxicated. Rose said he did not know exactly where John had been, but believed that he was at a party. Rose stated that John did not tell him what, or how much, he had drunk, or where he had been. According to Rose, John "acted like a drunk person" and stumbled around, slurred his words, and talked loudly.

Rose recalled staying with John for about an hour. Rose said he had plans to go out with friends, but he decided to cancel these plans and stay in his room, in order to "keep an eye on" John.

Maddie DiMarco also provided some information about John's condition on September 7th. She said that she heard from "a lot of people" that John "was pretty far gone" that night after the water polo team's initiation, meaning that he was very intoxicated. Specifically, DiMarco said that Carolyn John, a member of the swim team, told her that John Doe was "pretty far gone."²

DiMarco said that she was with Carolyn at one point late on that Saturday night or early Sunday morning when Carolyn received a text from John. According to DiMarco, John sent a text saying that he had "never been this drunk before." DiMarco said that John's text also said that he was not sure what was going on, or words to

² DiMarco did not think that John Doe and Carolyn were related. We have used first names for Carolyn and John Doe in this section of the report to avoid confusion.

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that effect. DiMarco estimated that Carolyn received this text message around 12 a.m. or 1 a.m.

In text messages provided by *John*'s attorney, *John* texted Gavin Rose in two separate entries dated at 8:37 p.m., "Bro I'm so drink," and "Drunks." *John* texted a woman named Maya at 9:14 p.m., "I'm so drunk. Jesus fucking Christ." He then texted her twice at 9:28 p.m., "I'm about to blak out," and "Black out."

7. *Jane Doe* Went to *John*'s Room - First Time

Jane Doe said that after being back in her room, she found herself "wired with energy." She said she went downstairs to the second floor, because there were usually people there. Once on the second floor, she heard music and saw Gavin Rose, who is in her African Revolutions class. *Jane Doe* recalled asking Rose about the music, and he told her his roommate, *John Doe*, was having a dance party. *Jane Doe* said that Rose let her into the room he shared with *John*, Braun 206.

According to Rose, around midnight, he left *John* in their dorm room and went upstairs to the third floor to tell his friends that he was not going to go out with them. When he went back downstairs, Rose recalled seeing *Jane Doe* in the hallway. He said she was leaning against the wall, and he asked her either how she was doing, or what she was doing.

Rose recalled that *Jane Doe* said she was going to her room. Rose said he observed that *Jane Doe*'s words were slurred, and he concluded that she was drunk, or had been drinking. Rose recalled that *Jane Doe* asked him if there was a "kickback" in his room, and she started walking with him down the hall. Rose stated that *Jane Doe* appeared to walk normally and he did not notice her staggering. Rose said he replied, "No. *John* is having a dance party by himself." According to Rose, *Jane Doe* responded, "Oh, *John*'s there?"

Rose said that *Jane Doe* was walking slightly in front of him, as they approached Braun 206. The door was ajar, and *Jane Doe* walked in just before Rose. Rose said that by the time he entered the room, *John* and *Jane Doe* were "in an embrace." He described *John* and *Jane Doe* as hugging and, possibly, kissing. Rose said that he then again changed his plans and decided that he would go out, and left immediately. Rose said he did not see anyone else in the room. Rose said he had not fully entered the dorm room.

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Rose said that during the time he was with *John*, before *Jane Doe* arrived, he did not see *John* consume any alcohol. Rose also noted that he (Rose) had not been drinking while still in Braun Hall on September 7th.

8. Inside *John*'s Room—First Time

a. *Jane Doe*'s account

Jane Doe said the lights were off in *John*'s room and three other women were present when she first entered *John*'s room. *Jane Doe* did not know the names of these women, but believed they were friends of Rose. Upon seeing her, *Jane Doe* recalled that *John* called out "*Jane!*" in an excited manner. A short time later, *Jane Doe* said the three women left the room.

Jane Doe said she and *John* began to dance. Around this time, *Jane Doe* said she received three calls in quick succession from Peckham. She said that she did not remember talking to Peckham on the phone, but learned later that Peckham and Hayward were trying to find her because they were concerned about how intoxicated she was. *Jane Doe* noted that there is a "big hole" in her memory of the evening, particularly during this period.

Jane Doe recalled that by the time Peckham and Hayward arrived in *John*'s room, she was dancing with *John*. She said that Hayward was drinking straight from a bottle of Smirnoff vodka and that she also drank straight from the bottle. She recalled that the alcohol did not burn her throat as it usually would, because she was already so intoxicated.

Jane Doe said she was hot and took off her shirt, thinking that she was wearing a bandeau. She did not have a bandeau on, however, and was wearing just her bra. *Jane Doe* said that she started dancing without her shirt, wearing only her bra on the upper half of her body. According to *Jane Doe* Peckham "flip[ped] out" and told her that she needed to put her shirt back on. As *Jane Doe* reached for it, however, she recalled that *John* grabbed the shirt. *Jane Doe* said that Peckham "got really mad" at *John*. *Jane Doe* recalled that *John* grabbed Peckham's wrist as Peckham tried to get *Jane Doe* to put her shirt back on. *Jane Doe* said she eventually put her shirt back on.

At another point, *Jane Doe* stated, *John* pushed her onto the bed, and they "ma[d]e out for a while." While on the bed with *John*, *Jane Doe* said *John* told her to "get rid" of Peckham and Hayward. According to *Jane Doe* *John* told her to let them

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take *Jane Doe* upstairs to her room and then she should return to his room alone. *John* told *Jane Doe* to give him her cell phone number, so he could text her about coming back to his room. *Jane Doe* said that *John* told her to come back down "so he can fuck me."

b. Peckham's account

Peckham said that she and Hayward were separated from *Jane Doe* for about five minutes before finding her in *John*'s room. Peckham described *John*'s room as dark with loud music playing. When Peckham came into the room, she observed that *Jane Doe* was acting "a lot sillier, a lot more crazy" than she (*Jane Doe*) was when they were walking around campus. Peckham noted that, while *Jane Doe* had seemed intoxicated earlier in the evening, she (*Jane Doe*) had still seemed able to understand what they were doing and what they were planning to do. In *John*'s room, *Jane Doe* could not walk well and did not seem to know where she was or what was going to happen next. She said *Jane Doe* was acting "goofy" and "very flirtatious" with *John*, and wanted to dance with him.

Peckham said, in *John*'s room, *Jane Doe* was drinking straight from a bottle of alcohol, but she did not recall what type of alcohol it was. Peckham recalled repeatedly trying to take the bottle away from *Jane Doe* and *Jane Doe* repeatedly saying she was fine and could drink more.

Peckham described *John* as also "pretty intoxicated." Peckham said that *John* and *Jane Doe* were dancing, kissing and "making out." She recalled this happened when they were both standing up, and lying down on *John*'s bed. According to Peckham, *Jane Doe* was grabbing *John* and trying to kiss him. Peckham said that *John* was "somewhat" responsive to *Jane Doe* but "also seemed pretty indifferent" to *Jane Doe*'s advances. Peckham said that *John* was "not at all going for her. . . not like he was grabbing her and pulling her onto the bed."

In Peckham's recollection, *John* would occasionally turn to her (Peckham) and Hayward and ask, "Why are you guys here? I don't even know you." Peckham said that *John* "would grab my wrists and try to pull me out of the room, [but was] never fully aggressive. I was never really afraid." Peckham said that she was not sure why *John* was trying to pull her out of his room. "I don't really understand it. It might have been because he didn't know us [her and Hayward] at all, which he didn't," said Peckham. "It may not have been because he wanted us to leave so he could have sex with *Jane*."

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Peckham stated that she and Hayward were present in *John*'s room because they were worried about how drunk *Jane Doe* was. "We were trying to make sure she didn't do anything she would regret," Peckham said.

Peckham summarized the events of the 30 minutes that she and Hayward were with *John* and *Jane Doe* as: *Jane Doe* trying to kiss *John* and dance with him; *Jane Doe* trying to drink from the bottle of alcohol and Peckham trying to take it away; and *John* trying to get her and Hayward to leave his room.

Peckham said that she never saw *John* touch *Jane Doe*'s breasts or her genital area. At one point, Peckham said that *Jane Doe* took off her shirt, and Peckham made her put it back on. Peckham stated that *John* did not say or do anything to prevent her (Peckham) from getting *Jane Doe* to put her shirt back on.

c. Hayward's account

Hayward recalled that the lighting in *John*'s room was very low and that loud, techno music was playing. Hayward said that he saw a bottle of vodka in the room, but he could not recall if the bottle was "a handle or a fifth."³ The room did not appear as if a party had taken place there, he said, and *John* and *Jane Doe* were alone in the room. He estimated that the time was around midnight.

According to Hayward, *Jane Doe* and *John* were dancing, and "they were both really drunk." Hayward said that he and Peckham also danced with each other a bit. Hayward recalled *John* talking about the water polo team's initiation, which *John* said he participated in earlier that Saturday. *John* told them, "I have been drinking since 1 p.m." According to Hayward, *John* was telling them how much alcohol he drank that day as if to say, "That is why I'm acting like I'm so crazy."

Hayward described *John* as "loud, obnoxious, kind of pushing everyone, going nuts a little bit." He said that *John* was "very bouncy, very touchy" with him and Peckham. Hayward said that from the way *John* was talking and acting, it was obvious he was drunk.

Hayward recalled that *John* and *Jane Doe* were kissing while they danced and that all four of them were taking swigs of vodka directly from the bottle. According to Hayward, Peckham was "a little worried" because she thought *Jane Doe* was not fully aware of what she was doing, and Peckham said to *Jane Doe* "Hey, let's be going."

³ A "handle" of alcohol is a 1.75 liter bottle, while a "fifth" is 750 milliliters.

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At some point, Hayward recalled that *John* took his shirt off and then *Jane Doe* removed her shirt and was wearing her bra. Hayward said that *John* wanted Hayward to remove his shirt, too. Hayward said that he did remove his shirt for a minute, but then put it back on.

According to Hayward, eventually *John* and *Jane Doe* laid down together on *John*'s bed, with *Jane Doe* on top of *John*. When this happened, Hayward recalled that he and Peckham told *Jane Doe* "*Jane*, it's time to go." He recalled that *Jane Doe* was "a little upset and indignant." He described her as "resisting leaving [*John*'s room] a little bit, while at the same time, she was aware that we were doing the right thing" by directing her back to her dorm room.

Hayward said that while *Jane Doe* was on top of *John* on the bed, the two of them were "getting really physical." Hayward recalled that *Jane Doe* "was kind of riding on top of [*John*]. Her hips were moving." Hayward said, "It looked like something [sexual] was going down." He recalled that *John*'s shirt was off at this point, but he could not recall whether *Jane Doe*'s shirt was off or on.

9. *Jane Doe* Went to Her Room—Second Time

Jane Doe stated that she went back up to her dorm room with Peckham and Hayward. She stated she lay there for about five minutes before she started sending text messages to *John* and to a friend from home. (The text messages are discussed below.)

According to Peckham, around midnight, *John* told the group he had something to do, and left his room. At that point, Peckham and Hayward took *Jane Doe* upstairs to Braun 320 and put her to bed. Peckham said *Jane Doe*'s roommate, Genevieve Babcock, was not there. Peckham and Hayward put the blankets over *Jane Doe* but did not undress her. Peckham said *Jane Doe* did not discuss *John* while being put to bed.

Hayward's recollection differed slightly from Peckham's. Hayward stated that he and Peckham got a hold of *Jane Doe* with one of them on either side of her, and maneuvered her out of *John*'s room. He said, "*Jane* really couldn't walk that straight." As this was occurring, Hayward recalled *John* saying, "No, don't do it," meaning don't remove *Jane Doe* from his room, but *John* did not grab *Jane Doe* or otherwise physically try to prevent her from leaving. According to Hayward, *John* called out to *Jane Doe* that it would "be more fun" if *Jane Doe* stayed with him.

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Hayward said that *John* did not exit his room at this point. Hayward never saw *John* anywhere that night other than inside his own room.

According to Hayward, he and Peckham took *Jane Doe* upstairs to her room on the third floor. He described *Jane Doe* as "super drunk," at this point and "talking, but making no sense." He said that she seemed "incoherent." He did not recall her saying anything about *John*. Hayward said that he and Peckham put *Jane Doe* into bed and closed the door. Hayward estimated that this was about 1 a.m. He recalled that *Jane Doe's* roommate was not there.

Peckham and Hayward both agreed that they left *Jane Doe* alone in her room, and then separated from each other. Peckham said she went back to the second floor of Braun to a friend's room, where she stayed for about 45 minutes. Hayward said that he stayed in front of *Jane Doe's* room briefly after Peckham walked away.

a. Text messages

Jane Doe said that shortly after Peckham and Hayward put her to bed, she sent a text message to her friend, Gentry Whittaker, who lived in Tennessee, saying she was going to have sex.

Both *Jane Doe* and *John*'s attorney provided PII with screen shots of text messages sent early September 8th. Exhibit 3, 4, 5 and 6. *Jane Doe* sent a few text messages to Gentry, in this timeframe. Exhibit 5. They said:

12:20 a.m. "I'm wasted" (*Jane Doe* to Gentry)

12:40 a.m. "The worlds moving" and "I'mgoingtohave sex now" (*Jane Doe* to Gentry)

Jane Doe and *John* were also exchanging texts with each other during this timeframe. The documents provided by *John* showed a time-stamp for each text sent, while *Jane Doe's* set of texts did not record the time of each individual message.

John also sent text messages to Gavin Rose and to a woman named Maya during this time period. Exhibit 6.

Some of the messages exchanged between *Jane Doe* and *John*, Rose and *John*, and Maya and *John* were as follows:

12:31 a.m. "The second that you're away from them, come back" (*John* to *Jane Doe*)

12:31 a.m. "Okay" (*Jane Doe* to *John*)

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- 12:35 a.m. "Get the fuck back here." (John to Jane Doe)
- 12:36 a.m. "They're still with me o" (Jane Doe to John)
- 12:36 a.m. "Make them leave. Tell them you want to sleep. I'dc. Just get back here"
(John to Jane Doe)
- 12:37 a.m. "Okay do you have a condom (Jane Doe to John)
- 12:38 a.m. "Yes." (John to Jane Doe)
- 12:39 a.m. "Good give me two minutes" (Jane Doe to John)
- 12:39 a.m. "Stay the fuck out of our room." (John to Rose)
- 12:40 a.m. (Jane Doe sends the two text messages to Gentry Whittaker, described
above, about the world moving and that she is going to have sex now.)
- 12:41 a.m. "Come here." (John to Jane Doe)
- 12:41 a.m. "Coming." (Jane Doe to John)
- 12:42 a.m. "Good girl." (John to Jane Doe)
- 12:42 a.m. "Knock when you're here" (John to Jane Doe)
- 1:57 a.m. "<3 you. Our room is free, go back any time. I'll be there about 2:30"
(John to Rose)
- 2:10 a.m. "Yeah. I don't even know what happened, I'm so fucking out of this world."
(John to Maya)

b. Leaving her room

Jane Doe recalled that after communicating with John by text, she looked out the peep hole of her door and saw Hayward, in addition to one of her R.A.s. and her neighbor, Anna. Jane Doe said, "I am freaking out because I was really drunk, and I don't want the R.A. to see me."

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Between 12:43 a.m. and 12:55 a.m., *Jane Doe* and *John* exchanged another series of text messages about Hayward and the R.A. being outside her door. In one message, *John* told *Jane Doe* to leave her room and say she was going to the bathroom. Exhibits 3 and 4.

Jane Doe stated that upon seeing Hayward outside her door, she thought to herself, "Jamison? Oh crap, what are you doing here?" However, she stated that when she opened the door, she pretended to be more congenial, saying to him, "Whoa, Jamison, what are you doing here?" in a friendly way. She recalled telling Hayward she needed to go to the bathroom and then walked down to the bathroom. *Jane Doe* stated that she did not enter the bathroom, however, but walked past it and down the stairs to the second floor. *Jane Doe* stated that she felt excited that her ruse to get past Hayward and go downstairs to *John*'s room was working.

Hayward recalled that shortly after Peckham left, *Jane Doe* opened her door and came out of her room. Hayward estimated that *Jane Doe* had only been in her room for about 30 seconds before she opened the door.⁴ He said that the next sequence of events is confused in his recollection, but he recalled that *Jane Doe* kissed him on the neck. He said that he did not kiss her in return but hugged her. He said that he did not recall if she was speaking coherently at this point. Next, he recalled that she went down the hall to the bathroom.

Hayward said that he could not follow *Jane Doe* into the girls' bathroom. While she was gone, he passed out on the floor near her door for a few minutes. He recalled that a student who lived across the hall from *Jane Doe* together with an R.A., woke him up and asked, "Why are you in our hall?" He said that he did not know the name of this student, but recognized her as a girl from the track team. He said that he explained to them that *Jane Doe* was in the bathroom, and they assured him that they would assist her. He said that he felt comfortable that they would look out for *Jane Doe* and he left to go to Stewart-Cleland Hall.

10. Returning to *John*'s Room

Jane Doe said that as she walked down the stairs to go back to *John*'s room, she began to feel "really dizzy" and "really sick." She stated she held onto the stair rail. She also felt very nauseous, and, after she got to the second floor, she said she vomited into a trash can. *Jane Doe* recalled that someone came up behind her as she

⁴ Based on the text messages, *Jane Doe* was in her room for about 25 minutes.

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threw up, and held her hair. She said she learned later that this person was Gavin Rose, who also took her into men's bathroom where she finished throwing up.

Rose stated that he returned to the second floor of Braun Hall to get his friend Nick, who lives one or two doors down the hall from Room 206. Rose stated he saw *Jane Doe* walking towards him from the direction of his and *John*'s room. According to Rose, she appeared to have a hard time walking, and was stumbling. He said she was headed towards a trash can in the hall and then she threw up into it.

Rose said that he went to *Jane Doe* and held her hair back, suggested that she go into the bathroom, and she agreed. Rose said they went into the men's room on the second floor of Braun, where *Jane Doe* threw up some more. When *Jane Doe* indicated that she felt better, she and Rose left the restroom.

According to Rose, *Jane Doe* walked back towards room 206, while he went back the way he came, in the opposite direction. Rose said that he believed that *Jane Doe* would go up the stairs and to her room. Because she had just thrown up, Rose said he believed she was "done" for the evening.

11. Inside *John*'s Room – Second Time

a. *Jane Doe*'s account

Jane Doe stated that after vomiting, she walked to *John*'s room. She said that she has a recollection of *John* pulling her into his room.⁵ She stated, "I think I told him I threw up and I think he gave me a piece of gum." She stated she believes she got to his room around 12:50 a.m., and stayed there until around 2:00 a.m. She stated that she has a series of "non linear recollections" about what happened during that period.

Jane Doe stated that she did not think she took her shirt and bra off while having sex with *John*. She remembered asking *John* if he had a condom, because she had not used any birth control. *Jane Doe* stated several times to PII that she "had sex" with *John*. When questioned about this, she said that she only specifically recalled performing oral sex on him and did not remember having sexual intercourse.

Jane Doe said that *John* left the room at one point and returned very quickly. She remembered another point where there was a knock at the door, and the sound of three voices asking her if she was okay. She believed that one of the voices may have

⁵ *Jane Doe* stated that she did not recall who held her hair while she vomited, but has been told by others that it was Rose, and that Rose walked her down to *John*'s room afterwards.

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been Aidan Dougherty, and another was a woman named Megan. *Jane Doe* said she later learned that the third voice was a student named Mia.⁶ She remembered, at another point, *John* saying his roommate had just come in.

Jane Doe said she did not remember how many times she and *John* had sex that night. She stated she remembered that she didn't move very much. She recalled getting her shorts back on, but not her belt, and said that her belt and earrings were in *John*'s room the next day. She stated she remembered *John* telling her to get on the bed, but did not recall any other conversation with him during this period. She stated, "I don't remember him really talking."

Jane Doe stated she could not recall what she was thinking as she went back down to *John*'s room the second time. She stated, "The thing is I have no clue what I was thinking. I would never have done that if I had been sober. . . . I don't know what was going through my head." She described herself as "a hopeless romantic" who wanted the loss of her virginity to be a more special event.

Jane Doe said that at the time she and *John* had intercourse, *John* did not know that she was a virgin and did not know that she was under age 18.

b. Dougherty's account

Dougherty said around 2:00 a.m. on Sunday, September 8th, he saw Gavin Rose with several friends, including Miya and Megan.⁷ Rose told Dougherty that *John* and *Jane Doe* were alone in the room he and *John* shared, and that Rose could not return to the room for that reason. Dougherty stated that he had been in his room playing video games that night and was not intoxicated at this time.

Dougherty noted that he was not friends with *Jane Doe* but had seen her around Braun. However, he stated that he had attended the sexual assault prevention training during orientation, had heard the presentation on consent and alcohol consumption, and therefore asked Rose if both *John* and *Jane Doe* were "okay." According to Dougherty, Rose responded that *Jane Doe* was intoxicated and that she had thrown up earlier in the evening. Rose told Dougherty that he (Rose) had held her head while she vomited. Dougherty said Rose indicated that *Jane Doe* was "very drunk."

When Dougherty expressed concern about *Jane Doe*'s condition, Rose told him something like "You're free to check" and then gave Dougherty the access code to his

⁶ *Jane Doe* did not provide last names for these students.

⁷ Dougherty provided a spelling of Miya with a "y."

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room and the swipe card to open the door. Dougherty said he went to Room 206, where he found a folded up piece of paper in the area for the swipe card, which he removed. Dougherty said he later learned this was a signal between Rose and John to let one another know not to enter the room. He said that he did not re-position the piece of paper later when he left Room 206. According to Dougherty, he punched in the access code and used the swipe card to open the room door.

Dougherty said the lights were off, but he could see John sitting up in the middle of the bed, naked, holding a pair of shorts over his crotch. Dougherty said he could also see Jane Doe under the covers. According to Dougherty, John said, "Yo, get the fuck out." Dougherty said he was "taken aback," and immediately closed the door. He estimated he had stood in the doorway for about 15 seconds.

After closing the door, Dougherty recalled standing outside of Room 206 for about one or two minutes. He said that John came out of the room wearing shorts and a shirt, and went down the hall to the restroom. At this point, Dougherty said he knocked on the door and said, "Jane?" He heard Jane Doe reply, "Yeah?"

Dougherty said he asked if she was okay, and Jane Doe responded, "Yeah." Dougherty said he asked, "Are you sure?" to which she replied, "Yeah. I'm fine." According to Dougherty, he then asked Jane Doe a third time if she was okay, and she answered that she was. Dougherty explained that he asked Jane Doe three times if she were okay because, from her tone of voice, he was not entirely convinced she was okay. He said that Jane Doe responded to him slowly and in a "down way" that was "kind of sad." However, Dougherty stated that, based on Jane Doe's three statement to him, he left the area. "I took her word for it," he said.

c. Rose's account

Rose's account differed in some aspects from Dougherty's account. Rose stated that on September 7th or 8th, he did not give his key card or the access code to his dorm room to anyone. He said he was not aware of anyone other than himself walking in on Jane Doe and John while they were in bed together.

Rose said that after he left Jane Doe with John, but before she vomited, he returned to his friends and they were "milling around in the hallway." At this point, Rose said he saw Aidan Dougherty. Rose said he told Dougherty that John and Jane Doe were in his dorm room and that both were drunk. According to Rose, Dougherty said, "Maybe that isn't a good idea," and went to check on them. When Dougherty returned, he told Rose that Jane Doe said that she was okay.

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Rose said he then left Braun Hall and met up with his friends, who were on the lower part of the campus. When Rose discovered that he did not have any money or a credit card, however, he ran back to his dorm room. He estimated that at this point, it was about 1:00 a.m. According to Rose, when he opened the door to Room 206, he saw *John* and *Jane Doe* having sex in *John*'s bed.

Rose said that *Jane Doe* was on her back with her legs spread, while *John* was on his knees between her legs. No covers were on either of them. Rose said that *John* was "fully naked." Rose recalled that he could only see *Jane Doe* from the waist down, and the lower half of her body was naked. He said he could not see *Jane Doe*'s face because *John*'s torso blocked his view. According to Rose, *Jane Doe*'s legs were moving. Based on this, he said that he believed she was conscious. Rose said that *John* did not appear to be restraining *Jane Doe*.

Rose estimated that he was in the doorway for "a split second," before he quickly closed the door and left. No one said anything during the time Rose was in the doorway.

According to Rose, he and *John* had worked out a system of putting a piece of colored paper in the key swipe if they needed privacy in the room. Rose said no paper was in place when he returned to the room to get money. Rose said he was not aware of any paper being in the key swipe on September 7th or 8th, and did not think that anyone else knew of his and *John*'s system.

Rose said that at about 2:45 a.m., *John* sent him a text message saying that he could go back to their room.

12. Returning to Her Room – Third Time

Jane Doe stated that she left *John*'s room around 2:00 a.m., and walked up the stairs to third floor. As she got to the top of stairs, Peckham saw her and asked where she had been. *Jane Doe* stated that Peckham walked her to her room. By this time, Genevieve Babcock, *Jane Doe*'s roommate, was present. According to *Jane Doe* Peckham left her with Babcock. *Jane Doe* recalled telling Babcock that she had vomited, and Babcock took her to the bathroom. After this, with the help of their neighbor Maddie DiMarco, Babcock put *Jane Doe* into her sleep shorts and put her into bed. According to *Jane Doe* Babcock attempted to take her cell from her, but she (*Jane Doe*) became very angry and Babcock gave it back to her. *Jane Doe* said that after staying with her for a while, Babcock left the room.

Babcock said she returned to her dorm room in the early morning around 2:45 a.m., and found *Jane Doe* and Peckham there. Babcock described *Jane Doe* as "very

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incapacitated" at this point. Babcock stated that *Jane Doe* did not have a lot of control over her motor skills or her speech. Babcock said *Jane Doe* was slurring her words and "just talking drunk." Babcock said she did not recall anything specific that *Jane Doe* said and that *Jane Doe* made random comments. She said that *Jane Doe* did not mention *John Doe* or where she had been that night. Babcock helped *Jane Doe* into bed and gave her some water, but it dribbled out of her mouth.

Babcock said Peckham told her that *Jane Doe* had thrown up earlier. She said that she and Peckham removed *Jane Doe's* shorts and put her into pajamas. After putting *Jane Doe* to bed, Babcock told Peckham that she could leave.

Babcock recalled checking *Jane Doe* for alcohol poisoning because she was concerned about how intoxicated *Jane Doe* appeared. She recalled that *Jane Doe* was conscious and told Babcock that she felt nauseous. Once *Jane Doe* was settled, however, Babcock said she went down the hall to take a 10-minute shower.

Peckham said that around 12:45 a.m., she decided to go to bed and enroute to her room third floor room, she encountered *Jane Doe* coming up the stairs from the second floor. Peckham recalled saying to *Jane Doe* "I put you to bed an hour ago," and *Jane Doe* replying that she was fine and that she was just hanging out. Peckham recalled telling *Jane Doe* "Okay, we are going to tuck you into bed."

Peckham said she walked with *Jane Doe* to Room 320 again and this time, Genevieve Babcock, *Jane Doe's* roommate, was present. She said that she and Babcock changed *Jane Doe* into her pajamas and put her into bed.

13. *Jane Doe* Goes to Stewart-Cleland

Jane Doe stated that, after Babcock left the room, she "didn't feel like going to sleep." *Jane Doe* explained that students usually hung out around Stewart-Cleland Hall, adjacent to Braun Hall. She recalled finding her phone and her key card, and putting on her shoes. She said she walked down the stairs and across the grassy area known as "Stewie Beach" to Stewart-Cleland Hall, walking in the front entrance. Upon entering the common room, she said she saw a student named Danny Stauffer, whom she had met the night before at Septemberween. She recalled that the two of them talked and joked, and *Jane Doe* specifically remembered making fun of NASCAR, which was on a nearby television.

According to *Jane Doe* shortly after arriving at Stewart-Cleland, Babcock called her cell phone. *Jane Doe* said that Babcock ended up talking with Stauffer on *Jane Doe's* phone. *Jane Doe* later learned that Stauffer had joked with Babcock that *Jane Doe* was "going at it with a guy." Soon after this, Babcock appeared at Stewart-

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Cleland and took *Jane Doe* back to Braun Hall. *Jane Doe* recalled that they took a circuitous route to avoid being seen by the R.A.s. Babcock put *Jane Doe* to bed, taking *Jane Doe's* phone from her. *Jane Doe* stated she fell asleep around 3:00 or 3:30 a.m.

Babcock said that when she returned to her room after the shower, *Jane Doe* was gone. Babcock said she called *Jane Doe's* phone and eventually a male student answered. Babcock recalled saying, "Where is *Jane*? Put her on the phone." According to Babcock, the student told her, "She is going at it with some guy." Babcock said the time of the call was 2:45 a.m.

Babcock said she tried talking to *Jane Doe* on the phone, but *Jane Doe* was slurring her speech so badly, Babcock could not understand her. "I was super worried," Babcock said. Babcock eventually ascertained that *Jane Doe* was at Stewart-Cleland, and she went there to retrieve her. Babcock said she found *Jane Doe* in the common room, wearing her pajamas, "sitting on a couch on some guy's lap."

According to Babcock, *Jane Doe* was not able to walk on her own and "buckled under her own weight." Babcock said that a male student, Grayson Burden, stepped in and helped Babcock maneuver *Jane Doe* back to Braun Hall. Babcock described the period around 3 a.m., during the walk back to Braun Hall, as the worst point for *Jane Doe* in terms of mobility, based on the times that Babcock had observed *Jane Doe* that night.

Once back in their room, Babcock recalled that she kept taking *Jane Doe's* cell phone away from her. Babcock said that she waited for *Jane Doe* to fall asleep. Babcock said that she did not see any signs that would indicate alcohol poisoning.

Jamison Hayward also observed *Jane Doe* early Sunday morning at Stewart-Cleland. After leaving Braun Hall, Hayward went to "Stewie Beach" for 15 to 30 minutes before he went inside to the common room. He said that shortly after he went into the common room, *Jane Doe* entered the common room and sat down on the lap of a male student. Hayward described *Jane Doe's* behavior as "Marilyn Monroe-esque" and demonstrated by holding his arms above his head, with his palms facing up. He said that he thought to himself, "Oh, my God." Hayward said that he then saw another girl, who appeared to be with *Jane Doe* the girl was saying, "*Jane*, come back."

According to Hayward, at the point when *Jane Doe* was at Stewart-Cleland in the common room, she was "extremely drunk." He said that she was able to get herself around - to move from point A to point B - but she "was struggling." He described her as "weaving, putting her hands on the couch" for balance.

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Hayward said that *Jane Doe* appeared to be drunker than she was when he had been with her in *John*'s room. Hayward said, "I didn't know it was possible to be more drunk than she was [earlier]."

Maddie DiMarco said she helped Babcock put *Jane Doe* when *Jane Doe* returned from Stewart Cleland.⁸ DiMarco said that she encountered Babcock on the third floor of Braun Hall around 2 or 3 a.m., looking for *Jane Doe*. According to DiMarco, Babcock said that *Jane Doe* was "pretty intoxicated" and was "with a guy." Babcock told DiMarco that she did not know the name of the individual *Jane Doe* was with.

DiMarco recalled that she offered to help look for *Jane Doe* but Babcock said that she could handle it. DiMarco said that she then went into her room. A while later, when she left her room to brush her teeth, DiMarco said she saw *Jane Doe* and Babcock coming back to their room. According to DiMarco, *Jane Doe* was "pretty intoxicated" and Babcock appeared to be "a little upset with *Jane*."

DiMarco said that she helped Babcock get *Jane Doe* into bed. DiMarco recalled that *Jane Doe* was slurring her words and was stumbling. DiMarco said that Babcock told her that *Jane Doe* had vomited earlier.

DiMarco recalled that *Jane Doe* objected to being put into bed and kept trying to get up. After putting *Jane Doe* into bed, DiMarco said she and Babcock walked out of the room. In DiMarco's recollection, Babcock told DiMarco that *Jane Doe* had said that she may have had sex that night. DiMarco said that *Jane Doe* did not tell Babcock who her sexual partner was. DiMarco clarified that she did not recall exactly what was said that night. However, she said that she remembered being surprised because "I just didn't think that [having drunk sex] was something *Jane* did [REDACTED]"

DiMarco characterized Babcock's reaction to what *Jane Doe* told her as "surprised and confused." DiMarco said, "I think that Genevieve was a little annoyed at *Jane* about it." DiMarco recalled Babcock saying, "I can't believe she just did this," in reference to *Jane Doe* getting drunk and possibly having sex.

14. Other Text Messages

Early on September 8, 2013, Chloe Welmond said that she received a text

⁸ *Jane Doe* recalled that DiMarco helped Babcock put her (*Jane Doe*) to bed before she left for Stewart.

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message from *Jane Doe* time-stamped 2:14 a.m.⁹ The text message read as follows:

"thank you. Ypureagoodperson" ☺

Jane Doe and Hayward also sent text messages to each other between approximately 1 a.m. and 2 a.m. on September 8th. They were as follows:

1:04 a.m. "U ok?" (*Hayward to Jane Doe*)¹⁰

1:46 a.m. "Where are you?" (*Jane Doe to Hayward*)

2:05 a.m. "I'm drunk" (*Jane Doe to Hayward*)

Jane Doe also provided a copy of text messages she exchanged with a student named Matt on September 8th. At 2:15 a.m., she sent a text to Matt that said, "I'm do drunk."¹¹

C. Following Days

In the period following her interactions with *John*, *Jane Doe* spoke with several people about what had occurred and her reactions to the events of September 7th and 8th. In addition to her parents, the LAPD, staff at Emmons Health Center, and Professor Reddy, *Jane Doe* also spoke with several witnesses interviewed for this investigation, including Babcock, Dougherty, Rosé, Peckham and Professor Danielle Dirks. She also talked to *John* about what happened and exchanged several text messages with him over a several day period.

Additional information from *Jane Doe* and witnesses about what happened in the days and weeks that followed is included in the summaries of witness interviews.

IV. [REDACTED]

[REDACTED]
[REDACTED]

⁹ Welmond still had the text message from *Jane Doe* on her phone when she was interviewed by investigators. She showed the text message to investigators, and it is presented here exactly as it appeared on Welmond's phone.

¹⁰ Hayward said that he believed he sent this message to *Jane Doe* when she did not return to her room from the bathroom.

¹¹ The text messages between *Jane Doe* and Matt also included a text that *Jane Doe* said she did not write. This message said, "Ah bring the thunder to me babe :)." According to *Jane Doe* when she was at Stewart-Cleland around 2:30 a.m., Danny Stauffer had control of her phone for a period of time and he wrote this text message.

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[REDACTED]

[REDACTED]

[REDACTED]

V. Information from the College

A. Freshmen Orientation

During investigation, Lauren Carella forwarded information to PII that she received from Tamara Rice, Assistant Dean of Students and Director of Student Life, regarding Orientation. Dr. Rice verified that *Jane Doe* and *John* both attended the Orientation sections that dealt with sexual misconduct and the College's policies in this area.

B. Pattern Evidence

According to the College's Sexual Misconduct Policy, investigators "may consider prior allegations of, or findings of responsibility for, similar conduct by the Respondent." During investigation, Lauren Carella stated that the College had no reports of prior allegations against *John Doe*.

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VI. List of Exhibits

1. [REDACTED]
[REDACTED]
2. Watch Supervisor Observation Report, Saturday, September 7, 2013
3. Text messages between E. Jane Doe and D. John (provided by E. Jane Doe)
4. Text messages between D. John and E. Jane Doe (provided by D. John). 12
5. Text messages between E. Jane Doe and others (provided by E. Jane Doe)
6. Text messages between D. John and G. Rose; Text messages between D. John and Maya (LNU).
7. Floor plans, second and third floors, Braun Hall
8. Hand-written notes prepared by D. Dirks of Jane Doe's recollection of the events.

12. John spelled Jane Doe's last name phonetically as [REDACTED]

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Witness Statements

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TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of *Jane Doe*

Jane Doe was interviewed on October 9, 2013, at Occidental College by Cathleen Watkins and Keith Rohman.¹ *Jane Doe* was accompanied by her Advisor, Professor Movindri Reddy.

Background Information

Jane Doe a freshman, turned 18 on October 6, 2013. She arrived on campus on August 22, 2013, and resides in Braun with her roommate, Genevieve Babcock. There are two RAs on her floor, Emily Applewhite and Rachel (LNU). Braun Hall is organized single sex floors, with women on the first and third floors and men on the second floor. While access from the exterior requires swipe cards, once students are inside the building, they can access all the floors without any swipe cards.

At the time of the incident, *John Doe* lived on the second floor of Braun, and *Jane Doe* and *John* were both in the Cultural Studies Program (CSP) and in the African Revolutions class taught by Professor Movindri Reddy. *Jane Doe* stated that she did not have much interaction with *John* during the first weeks of school. She recalled sitting one seat away from him in one class, with another student, Matt, sitting between them.

She said that classes started on the August 28th, and, on the following Monday, the class attended an African Market where she and *John* met for the first time. She

¹ Throughout her account *Jane Doe* referred to all of the participants in these events by their first names. In some cases, she did not know their last names. This summary uses the individual's last name, if known. Otherwise, first names are used.

stated that they were introduced, and had some initial conversation about subjects like where they were from.

On Friday night, September 6th, the school held its annual Septemberween Party, and, at some point that night, *Jane Doe* recalled being in *John*'s room for a dance party. *Jane Doe* said that when *John* saw her that night, he was "really happy to see me, but I thought that was weird since you don't even know me." *Jane Doe* was in *John*'s room with a group of friends who may have included Charles Baxter. She said *John*'s room was very crowded, and the party was quickly shut down by the RAs who said fewer people needed to be there.

Jane Doe said that aside from her conversation with *John* at the African Market, and their brief conversation in his room on September 6th, she did not recall speaking with him any other time that week. She recalled seeing him at the Septemberween Dance, but did not believe she spoke with him. *Jane Doe* said that she was Derrick (LNU) almost all of that night.

Evening of September 7, 2013

Jane Doe stated she was hung over on the morning of September 7th from the Septemberween Party and slept until noon. She recalled going to the gym to work out, and getting some food before going to the library to study. When she got to the library, she realized she was having difficulty focusing on her work, so she returned to her room to take a nap. She stated that she took some Motrin during the day, but took no other medication that day or night, either prescription or non-prescription.

She said a soccer match was scheduled for that evening and many of the freshmen were planning to attend. *Jane Doe* planned to attend as well. She stated that many freshmen were "pre-gaming," which she described as getting drunk before the game. *Jane Doe* said that she was "very determined" to eat some dinner before she starting drinking, however, so she went with her friend Harrison Rosenthal to eat around 7 p.m. She recalled having a turkey burger and fries. She stated that the game started at 7 p.m., and she and Rosenthal arrived after half time. The game ended around 8:45 or 9 p.m.

Drinking at Braun Hall

After the game, *Jane Doe* said she and Rosenthal met up with some friends, including her friend Angela "Angie" Peckham. *Jane Doe* said Liam Driscoll may have been with her group at this point, or she may have run into him later. *Jane Doe* was unsure about this. She noted that, at this point in the evening, her memory of events was less clear.

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Jane Doe said she eventually ended up in Driscoll's room with other friends. She recalled that Peckham, Rosenthal, Maddie DiMarco, James, Reese, and Riley were present, all of whom lived in Braun Hall.² Jane Doe recalled getting to Driscoll's room around 9:15 or 9:30 p.m. Jane Doe said someone pulled out some lemon vodka from the freezer, and she took her first shot from a shot glass.

According to Jane Doe she went up to her room by herself at some point to get some orange juice to mix with the vodka. She said she filled her orange juice bottle with a mixture of two-thirds orange juice and one-third vodka. Jane Doe stated that she could not remember if she also took another shot at that time, but recalled having had either one or two shots of vodka. She went back to Driscoll's room, but eventually left again with Peckham and DiMarco to go to their rooms on the third floor in order to change their clothes before going out again. She stated that, by this time, she had drunk about half of the orange juice-vodka mixture.

Jane Doe recalled that the three women returned to Driscoll's room, and continued to drink and play games. Jane Doe recalled playing an iphone game in which you have a word stuck on your phone, which you are holding up to your head. She stated that she realized she was getting "tipsy" at that point, and had finished the orange juice mixture. Nonetheless, while she was intoxicated, she could "still kick butt at the game."

Soon after this, Jane Doe recalled having one to two inches of vodka poured into a red plastic cup, which consumed in two or three swallows.

Leaving Braun Hall

Around 10:15 to 10:30 p.m., Jane Doe said the group decided to go into the neighborhood to one of the frat parties in the area. Jane Doe recalled that September 7th was initiation night for most of the sports teams at Occidental.

Jane Doe stated that, by this point, she "was getting more and more drunk." She said that she could not walk straight, and while walking down the steps, she slipped and hurt her knee, even though she did not realize this until she saw the cut on her knee later. She described the sensation of being intoxicated as getting "light around my head" and recalled getting that feeling that night. She said several of the friends in her group commented that Jane Doe could not walk in a straight line, and was getting a little loud.

She said the group included Peckham, DiMarco, Rosenthal, James, and Riley. She thought that Driscoll may have been with them as well. Jane Doe stated that

² No last names were provided for James, Reese, or Riley.

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everyone, except perhaps James, had been drinking. At one point, Jane Doe said she got a piggy back ride from Rosenthal because she was having difficulty walking.

She said that the group exited the campus on Bird Road, and walked down Ridgeview Avenue. At some point, she said James and Riley turned back to campus to take care of a friend. According to Jane Doe, when the group was a couple of houses away from campus, they ran into another group of students. She also recalled their group being approached by Campus Security, who told them that about a neighbor complaint that their group was being too loud.

Jane Doe said that she saw her roommate, Genevieve Babcock, one time that evening while Jane Doe was away from Braun Hall. This happened when she and Babcock were both walking around off campus, and Jane Doe saw Babcock with another group of students. Jane Doe said she did not recall this herself, but was told by Babcock later that Jane Doe ran over to Babcock and said, "Hello."

Enroute to Mt. Fiji

After the contact with Campus Security, the group returned to campus and decided to walk up to Mt. Fiji. Jane Doe stated Mt. Fiji has a great view, but at the top of a steep hill. Jane Doe recalled she got halfway to the gate entrance below Mt. Fiji when she realized she could not make it up the hill. She said told her friends she was having trouble walking and did not want to go up the hill. According to Jane Doe, her friends encouraged her to keep going and said they would carry her, but Jane Doe said she could not continue. Jane Doe recalled that Peckham and Jamison Hayward were with her. However, Jane Doe recalled that another student, Chloe Welmond, walked her back to her room and helped her get into bed.

Going to John's room—First time

Jane Doe stated that after being back in her room, she realized that she was bored. She stated, "I [was] wired with energy." She said she went downstairs to the second floor of Braun Hall, because there were usually people there. She said she heard the sound of music from one of the rooms and ran into Gavin Rose, who is in her African Revolutions class. She asked Rose where the music was coming from, and he said his roommate was having a dance party. Jane Doe noted that she has always loved dancing, particularly when she is drunk. She said that she was drunk at this point. Jane Doe said that Gavin unlocked his room for Jane Doe and let her in.

Jane Doe said that when she entered the room, she found the lights off, and three women in the room with John. Jane Doe said she did not know the women's names. According to Jane Doe, when John saw her, he called out to her excitedly, "Jane!" Jane Doe stated that in her recollection, she believed that John pulled her

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into his room at some point in the evening. She said that she was not sure if this happened at this point, or later.

Jane Doe said that the three women left John's room "very quickly" after she arrived. She stated the women were Rose's friends. Once the women left, Jane Doe and John began dancing together. While dancing with John, Jane Doe said she received three calls in quick succession on her cell phone, but she did not recall the conversations. She later learned that the calls were from Peckham and Hayward, who realized she was really intoxicated, and that they should not have left her alone. While she did not recall the conversation, she stated the two soon came looking for her.

Jane Doe noted there was "a big hole" in her memories of the evening, particularly during this period. She remembered dancing with John and that Peckham and Hayward were sitting on John's bed. According to Jane Doe, Hayward took out a bottle of vodka, which she drank from, and then she danced more. She said she was drinking straight from the bottle, and remembered alcohol spilling on her. She stated that she knew she was drinking Smirnoff and it should have burned her throat going down, but it didn't because she was so intoxicated at the time.

As Jane Doe continued to dance with John, she recalled feeling hot and took off her shirt. She stated that she thought she had a bandeau on over my bra, but this was not the case. She said that she was dancing wearing only her bra on the upper half of her body. Jane Doe stated that when she took off her shirt, "Angie flip[p]ed out and [said], 'You need to get your shirt on.'" Jane Doe stated she reached to get her shirt off the floor, but as she did this, John grabbed the shirt. At this point, Jane Doe said, "Angie got really mad" at John. She stated that at one point, John grabbed Peckham's wrist as Peckham tried to get Jane Doe to put her shirt on. Jane Doe said she eventually put her shirt back on.

At another point, Jane Doe stated, John pushed her on to the bed and "we ma[d]e out for a while." She said that the two also talked about what type of music to listen to. Jane Doe stated that, looking back on what was happening, she realized that Peckham and Hayward "were getting really worried about me," and were trying to figure out a way to get her out of the room.

While Jane Doe and John were on the bed "making out," Jane Doe recalled, John told her to get rid of Peckham and Hayward. He told her to let them take her up to her room and then come back to his room. Jane Doe said John also told her to give him her number, so he could text her to come back down. She stated that John told her to come back down "so he can fuck me."

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Early Morning, September 8, 2013

Returning to her dorm room

Jane Doe stated that after Peckham and Hayward put her to bed, she lay there for about five minutes. She recalled sending a text to best friend in Tennessee, stating, "I'm going to have sex now," without any spaces between the words.

Meanwhile, Jane Doe stated that John was texting her asking where she was. Jane Doe said she looked out the peek hole in the door and saw Hayward's head. She said she could also see her neighbor, Anna, and was one of the R.A.s. Jane Doe said she was very concerned about this. She said, "I am freaking out because I am really drunk and I don't want the RA to see me." She stated that John was still texting her, and she texted back that her RA and Hayward were there. Jane Doe stated that John told her to say she had to go to the bathroom.

Jane Doe stated that when she saw Hayward's head through her peep hole, she thought to herself, "Jamison? Oh crap, what are you doing here?" Jane Doe expressed this as if her internal thought was upset and frustrated. However, she stated that when she opened the door, she was more congenial with him and said, "Whoa, Jamison, what are you doing here" in a friendly way. Jane Doe said she did not remember what Hayward said in response. (She noted that Hayward has acted "very awkward" with her since that night.)

Jane Doe stated that she told Hayward she had to go to the bathroom. She said she walked down the hall to the bathroom, but did not enter it. She said she walked past the bathroom and down the stairs. She stated she remembered feeling excited that she had succeeded in sneaking past the bathroom. However, as she walked down the stairs, Jane Doe said she did not feel well. She stated she was holding onto the rail as she walked down, and was feeling "really dizzy" and "really sick." She also felt very nauseous, and, after she got to the second floor, she threw up in a trash can. She said someone came up behind her as she vomited and held her hair. She stated she was later told this was Gavin Rose, who also took her into the men's bathroom where she finished throwing up.

Inside John's room--Second time

Jane Doe stated she then walked to John's room, and she believed that this was when John pulled her into the room. She stated, "I think I told him I threw up and I think he gave me a piece of gum." She stated she believed she got to his room around 12:50 a.m., and stayed there until around 2:00 a.m. She stated that she has a series of "non linear recollections" about what happened during that period.

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Jane Doe stated that she did not think she took her shirt or her bra off. She remembered asking John if he had a condom as she had not used any birth control. She stated she remembered having sex with John. When questioned about this, however, she said she could not specifically recall having intercourse with him. She stated she did recall performing oral sex on him. She remembered John leaving the room at one point and returning very quickly. She also remembered hearing a knock at the door, and the sound of three voices asking her if she was ok. She believed that one of the voices may have been Aidan Dougherty, and another was a woman named Megan. (In a follow-up conversation with Lauren Carella, Jane Doe said that the third voice was Mia's. Carella forward this information to PII.) Jane Doe said that she also recalled John, saying that his roommate just came in.

Jane Doe stated that the next day, Dougherty told her about walking in the room and finding her and John together. Dougherty also said that Rose walked in the room.

Jane Doe stated she did not recall how many times she and John had sex that night. She stated she remembered that she did not move very much. She recalled getting her shorts back on, but not her belt, and said that her belt and earrings were in John's room the next day. She stated she remembered John telling her to get on the bed, but did not recall any other conversation with him during this period. She stated, "I don't remember him really talking."

Jane Doe stated she could not recall what she was thinking as she went back down to John's room the second time. She stated, "The thing is I have no clue what I was thinking. I would never have done that if I had been sober. . . . I don't know what was going through my head." She described herself as "a hopeless romantic" who wanted the loss of her virginity to be a more special event.

Since that evening, Jane Doe stated, others have told her that John was not as drunk as she was that night. She had heard that he had his water polo initiation that night, but she did not know how much he drank that night. She noted that John did not give her alcohol that night.

Returning to her room -- Third time

Jane Doe stated that she left John's room around 2:00 a.m., and walked up the stairs to her floor. As she got to the top of stairs, she said Peckham saw her and asked where she had been. She stated that Peckham then walked her to her room, and Babcock was there. She said Peckham then left, and Jane Doe told Babcock that she had thrown up. She said Babcock took her to the bathroom where Jane Doe felt she had to urinate but could not. She said Babcock then walked Jane Doe back to their room, and, with the help of Maddie DiMarco, changed Jane Doe into her sleep shorts and put her to bed. Jane Doe stated that her bed is a "semi-loft," and she needed a

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step stool to get up into her bed. At one point, Babcock took *Jane Doe* cell phone, but *Jane Doe* became very angry and Babcock gave it back to her. After staying with *Jane Doe* for about ten minutes, Babcock left her alone.

Going to Stewart-Cleland Hall

Jane Doe stated that once Babcock left, she got out of bed. She stated, "I didn't feel like going to sleep," and noted that students usually hung out around at Stewart-Cleland Hall. She found her phone and her key card, and put on her shoes. She stated she walked down the stairs and across the area known as "Stewie Beach" to Stewart-Cleland, walking in the front entrance. *Jane Doe* stated that she entered the common room and saw a student named Danny Stauffer, whom she met the night before at Septemberween. She said the two of them were talking and joking, and *Jane Doe* remembered making fun of NASCAR which was on television nearby.

Very soon after *Jane Doe* got to Stewart-Cleland, she said Babcock called her. *Jane Doe* stated that somehow Babcock ended up talking with Stauffer. *Jane Doe* stated that she later heard that Stauffer had joked with Babcock that *Jane Doe* was "going at it" with a guy. *Jane Doe* stated that soon after this, Babcock went to Stewart-Cleland, and walked her back to Braun. She stated that they tried to take a circuitous route to avoid being seen by the R.A.s. *Jane Doe* said Babcock eventually got her back to her room and into bed. *Jane Doe* stated Babcock would not allow her to keep her phone, and would not leave until *Jane Doe* fell asleep. *Jane Doe* stated she fell asleep around 3:00 or 3:30 a.m.

September 8, 2013 -- During the day

Jane Doe stated she woke up the next morning at 9:00 a.m. She stated she still felt drunk with a lightheaded feeling and was dehydrated. Soon after this, she said she looked at her phone, and saw a number of calls and "freaked out voice mails" from her best friend in Tennessee. She stated that at this point she thought something had happened with *John* the previous night. She stated that she saw the text messages, but did not recall having sex with *John* at that point. She stated, "I thought there was a possibility that I had sex with him" because of what she saw in the text messages. Around this time, she said she was communicating with her brother on Skype and realized she was having difficulty typing.

Later, *Jane Doe* said she saw DiMarco in the bathroom and told DiMarco she was still drunk. She said this was around 9:15 to 9:30 a.m. She said DiMarco walked her back to her room and told her to "find something stupid to watch on TV and go back to sleep." However, *Jane Doe* was unable to sleep, and ended up meeting her friend Rayne for some coffee and a croissant. She said she had difficulty eating and felt

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nauseous. She said she then returned to her room, where she met up with Peckham. *Jane Doe* said she told Peckham that she may have had sex with *John*.

As the day went on, *Jane Doe* said, she continued to feel at least slightly intoxicated, including "that little bit of lightness." She decided to try and get some school work done so went to the gym in an attempt to "sweat it out," but her workout lasted only ten minutes. *Jane Doe* said she eventually went to the library around 5:00 p.m., and tried to study until around 7:00 p.m. when she went to get dinner with Anna, a neighbor on her floor. Around 8:30 or 9:00 p.m. on Sunday, she said that she went back to her dorm room to get her glasses.

Earlier that day, *Jane Doe* said she had texted *John* to ask if he had her belt because she realized it was missing. He replied, saying that he found her earrings but not her belt.

Realizing she had sex the night before

While at the library, *Jane Doe* stated, she had been online and friended Aidan Dougherty on Facebook. He sent *Jane Doe* a message asking her how she was doing, which struck her as an odd question. She stated that she realized that he may have seen her the night before. She said that in her discussions with Peckham, they accounted for all of *Jane Doe*'s activities the previous night, except for one hour.

Dougherty then asked if she was alone and if he could talk with her. At that moment, Babcock walked in, and *Jane Doe* told her that she was afraid that Dougherty was going to tell her what happened the night before. She said Babcock left the dorm room and Dougherty arrived. *Jane Doe* stated that Dougherty told her that she and *John* had sex the night before and he knew this because he and Rose had walked in on them. *Jane Doe* stated that she had been a virgin, so when she heard this, she was "very in shock," because until then, having sex with *John* had not been confirmed. She said that, upon hearing this, "I felt in a daze."

Jane Doe said she found Babcock and told her what Dougherty had said. *Jane Doe* said that Babcock organized *Jane Doe* with a series of tasks, including going to a nearby drug store to get Plan B. Babcock also told *Jane Doe* she needed to go into Emmons Health Center the next morning. *Jane Doe* stated after going to the drug store, she returned to campus around 11:00 or 11:20 p.m. While walking on campus with her friend Anna, *Jane Doe* said she ran into *John* for the first time. Anna asked *Jane Doe* if she was ok, and *Jane Doe* said she was, and told Anna she would meet her upstairs in the dorm.

Jane Doe said she asked *John* if they could talk, and they sat down together. She stated, "I asked him bluntly, 'Did we have sex last night?'" He told her that they did,

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but when she asked how he knew, he said he did not remember having sex with her. He said that he concluded they had sex, because he found her belt and earrings, he saw his text messages, and he found a used condom. He said he was piecing together what had happened from that. Jane Doe said she asked John if he used a condom, and he confirmed he had. She then went to his room to retrieve her belt and earrings. During this conversation, she told John that she had gotten Plan B from the drug store. Before Jane Doe left his room, John told her to text him if she wanted to talk about it.

After leaving John's room, Jane Doe stated, "I felt really awful." When she got back to her room, John texted her to say he was available to talk with her again, if she wanted to. Jane Doe stated she went outside the dorm, and the two of them talked again. According to Jane Doe, John said he lost his virginity at age 16, when he was drunk.

Jane Doe stated that John's demeanor during her two conversations about the events of that night was apologetic. She stated that he was particularly apologetic about the fact that this was how she lost her virginity.

Sexual Assault Complaint

Jane Doe stated, "Genevieve realized very quickly that what had happened was legally considered rape." Jane Doe said that at first, she "didn't process that." She went to Emmons Health Center on Monday, and made both counseling and medical appointments. She told the counselor, James, what had happened, and he responded, "That sucks a lot." She described James as "awful," in his treatment of her, noting he stated, over and over again, "That sucks," a comment that she found harmful for her to hear. James eventually asked her if she felt safe in Braun, and asked her if she wanted medical attention. Jane Doe said that James told her he had to call her parents to inform them she was in counseling.

According to Jane Doe, James told her if she told the doctor in any detail about what happened, the doctor be required to call LAPD because she was under 17. Jane Doe said she did not want to go to LAPD at that point. She said James asked if she wanted to talk to the Survivor Advocate, Nadia. Jane Doe said she then met with Nadia, and told Nadia all the details of what had happened with John. Jane Doe said Nadia told her she should go to Santa Monica and get a rape kit.

While Jane Doe was still at Emmons, she said she received a text from John telling her that when she returned to the African Revolutions class, she would be in his small group. Following this text, Jane Doe went to see Professor Reddy and told her what had happened with John. She said they first had a brief discussion, and then met again at 5:00 p.m. when Jane Doe told her everything that had occurred. She told Professor Reddy that she had sex with John, and didn't remember what happened.

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Jane Doe said she did not have any bruises from Saturday night, but had a scratch on her knee from falling while walking around campus. She also had scratches on her back, which were documented with photographs. Jane Doe said that the shirt she was wearing that night draped open in the back, and the scratch marks were where her shirt fell open. Jane Doe said there was no blood or semen in her clothing, but she had also done laundry before she put her clothing from that night in a plastic bag.

She said that Professor Reddy put her in touch with Professor Danielle Dirks. On Tuesday night, Jane Doe said, she met with Professor Dirks for three hours, and told her the entire story. She said that around this time, screen shots were taken of all relevant texts on her phone.

Jane Doe stated she struggled for some time over the question of whether to report what had happened to her. She said she has put a lot of blame on Rose, noting that as freshmen, they received training on being an active bystander in these situations. She said she was angry at him for initially opening the door to his room for her to join John at the dance party, for holding her hair while she vomited, for walking her down the hall to John's room after she vomited, and for not taking action when he walked in as she was having sex with John. She stated, "I still carry anger about that."

Jane Doe stated that she decided to report what had happened when she realized how much it had affect her emotionally, while seeing no reaction from John. She noted that he attended his classes without difficulty, and she "saw that he wasn't fazed by what had happened at all."

During this period, Jane Doe stated, she went to see Professor Reddy every day to talk about what had happened, and how she was dealing with it. Jane Doe stated that Babcock also pushed her to realize that she had been sexually assaulted.

Jane Doe stated that she was not going to report the incident as a rape, but she began to have more and more emotional difficulties. She stated she had difficulty concentrating, and would often "zone out" for five or ten minutes at a time. She said she would periodically flash back to the knocking at John's door, as well as other "random bits and pieces" from her memories of that night. She stated she was having nightmares, and intrusive thoughts. She noted that she tried to go to yoga, something which she was usually able to focus on, but found she could not concentrate. She stated, "It honestly scared me."

Jane Doe stated that during this period, she continued to try to remember the events of that night, stating, "That [missing] hour still freaks me." She said she would see people on campus who looked like John, and her "heart would start racing," and

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she would feel very frightened. When she actually saw *John*, she said she felt nauseous for hours. She stated, since the incident with *John*, navigating around corners with right angles "scare[d] the hell out of me [because] I don't know what is around the corner." She said she went for a week and a half without talking to her parents, which was unusual for her.

One week after the events with *John*, *Jane Doe* said she told her mother what had happened. Her mother asked for her permission to tell her father, and he immediately flew to Los Angeles to see her. *Jane Doe* said her mother wanted her to report the incident to LAPD, and she and Prof. Dirks drove to Northeast Division, where she began to tell the desk officer her account. She said the police officer asked her if *John* forced her into his room, and when she said, "No," the officer stated, "Well then, it's not rape." *Jane Doe* stated she broke down in tears when he said this, and decided she did not want to file a police report. *Jane Doe* was later contacted on campus by administration and told that that LAPD were on campus and they needed to talk to her.

Jane Doe stated, "I have spent a lot of sleepless nights on whether I should pursue this or not." She stated that she has learned that 90 percent of rapes are done by repeat offenders. She stated that another reason she decided to report this incident was because, based on what *Jane Doe* was told by Professor. Dirks, *John* fit the profile of other rapists on campus in that he had a high GPA in high school, was his class valedictorian, was on the water polo team, and was "from a good family." She noted that she was also told that [REDACTED] but *Jane Doe* cannot recall who told her this.

Jane Doe stated that after the incident, *John* texted her that he was not going to drink anymore. [REDACTED] She also heard that *John* was [REDACTED] "going on about how much he hates women."

College's Response

Jane Doe stated that Occidental put in place interim measures, including removing *John* from Braun Hall and her study group. However, she noted that Occidental is a small campus. She said, "I did not want to have to feel scared whenever I turn a corner and don't know who is there." She said that she wanted "to be able to walk around at night." She noted that two weeks before our interview with her, she could not sleep all night, and stayed in bed in a "semi-catatonic" state. After that, she said she decided to travel home for a week because she could not function any more. She stated she was missing classes because she only felt safe in her own room.

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Jane Doe stated she did not wish for John to continue to attend Occidental, noting that, "It scares me that he still goes out and still goes to party. I don't think anyone should have to go through what I have gone through."

In addition to her criticism of James at Emmons, Jane Doe's father was reportedly upset that when James contacted him, he did not give him much information, while at the same time assured him that Jane Doe was in a safe environment.

Jane Doe stated that she assumed that Nadia and James made a report to the campus Title IX office. Jane Doe said she was most afraid of reporting to LAPD and when James or Nadia talked about that as a possibility, she said, "I really didn't want to go there."

Miscellaneous

When asked for the names of witnesses, Jane Doe stated that she had reviewed the potential witnesses with Professor Dirks, and PII should get those names from her.

She noted that she was drunk in the past in high school, but had never drunk as much as she did on September 7 and 8. She stated she had never been so intoxicated that she did not remember what she had done while she drinking. She noted that she is only 5'2" tall, and it did not take much alcohol for her to get drunk. She said that when she drank in high school she was the "baby" of her social group, so others watched over her when she drank and kept her out of trouble.

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MEMORANDUM

PRIVILEGED AND CONFIDENTIAL

ATTORNEY-CLIENT AND

WORK-PRODUCT PRIVILEGED

TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Genevieve Babcock

Genevieve Babcock was interviewed on October 21, 2013, at Occidental College by Cathleen Watkins and Keith Rohman. She is an 18-year-old freshman from Corbett, Oregon. She is *Jane Doe's* roommate and is housed in Braun 320.

Background Information

Babcock said she met *Jane Doe* on August 24, 2013, when freshmen orientation took place.

Events of September 7th and 8th

In Braun 320, after the soccer game

Babcock said she saw *Jane Doe* at three different times over the course of Saturday night and early Sunday morning (September 7-8). According to Babcock, the first time she saw *Jane Doe* that night was in their room at around 9:45 p.m. or 10 p.m., before *Jane Doe* and Angie Peckham went out. Babcock said this was after the soccer game had ended.

Babcock recalled that *Jane Doe* was drinking from a bottle of orange juice that

held between 12 and 16 ounces of fluid. Babcock said that she did not know the quantity of alcohol that was mixed into *Jane Doe's* orange juice container. She recalled that *Jane Doe* was "pretty lucid" and "was talking and walking normally." Babcock said that she, herself, had not consumed any alcohol at this point in the evening. She said that *Jane Doe* did not discuss her plans and she did not know where *Jane Doe* and Peckham were headed or what they were planning to do.

In the Neighborhood

Babcock said that the second time she saw *Jane Doe* on Saturday night was at about 11:30 to 11:45 p.m. She said that *Jane Doe* was walking with a group of students who were looking for a party in the residential neighborhood adjacent to the north side of campus near Ridgeview Avenue. Babcock was also walking in the same area with a different group of students.

According to Babcock, both she and *Jane Doe* broke off from their respective groups when they saw each and talked for a few minutes. Babcock recalled that, at this point, *Jane Doe* was visibly more intoxicated than she was at 10 p.m. when they were in their dorm room. Babcock said *Jane Doe* was stumbling when she walked and greeted Babcock by saying "hi" in a high-pitched voice, which was different from *Jane Doe's* typical demeanor.

Babcock said that she saw Peckham among the people in *Jane Doe's* group, but she did not know anyone else. Babcock estimated that *Jane Doe* was with six to 12 other people.

Babcock said that she returned to Braun Hall around 11:45 p.m. or midnight and went to her neighbor's room, where she hung out. Later that night, Babcock recalled going downstairs to take a photo of some artwork of a dinosaur made of condoms. She said that the photos showed they were taken at 1:38 a.m.

During the evening, Babcock said she consumed about two alcoholic drinks around 11 p.m. She said that she was sober by 1:30 a.m. when she went to see the dinosaur art.

In Braun 320 around 2:45 a.m.

According to Babcock, the third time she saw *Jane Doe* was early Sunday morning about 2:45 a.m. when she returned to her room and found *Jane Doe* and Peckham there. Babcock described *Jane Doe* as "very incapacitated." Babcock stated that *Jane Doe* did not have a lot of control over her motor skills or her speech. Babcock said *Jane Doe* was slurring her words and "just talking drunk." Babcock said she did not recall anything specific that *Jane Doe* said as *Jane Doe* was only making

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"comments." She said that Jane Doe did not mention John Doe or where she had been that night. Babcock helped Jane Doe into bed and gave her some water, but it dribbled out of her mouth.

According to Babcock, Peckham said that Jane Doe had thrown up earlier. She said that she and Peckham removed Jane Doe's shorts and put her into pajamas. After putting Jane Doe to bed, Babcock told Peckham that she could leave.

Babcock was concerned about Jane Doe's level of intoxication, and checked Jane Doe for alcohol poisoning. She said that she checked Jane Doe's breathing and her skin temperature to see if Jane Doe was cool or clammy. She said that she made sure Jane Doe was lying on her side. Babcock recalled that Jane Doe was conscious and told Babcock that she felt nauseous. Once Jane Doe was settled, however, Babcock said she went down the hall to take a 10-minute shower.

At Stewart-Cleland Hall

Babcock said that when she returned from her shower, Jane Doe was gone. Babcock said she called Jane Doe's phone and eventually a male student answered. Babcock recalled saying, "Where is Jane? Put her on the phone." According to Babcock, the student told her, "She is going at it with some guy." Babcock said the time of the call was 2:45 a.m.

Babcock said she tried asking Jane Doe where she was, but Jane Doe was slurring her speech so badly, Babcock could not understand her. "I was super worried," Babcock said. Babcock eventually ascertained that Jane Doe was at Stewie and she went there to retrieve her. At Stewie, Babcock said she found Jane Doe wearing her pajamas, "sitting on a couch on some guy's lap."

Babcock stated that she tried to help her up, but Jane Doe "buckled under her own weight." When this happened, Babcock said that a male student, Grayson Burden, stepped in to help them. According to Babcock, she and Burden each got on one side of Jane Doe and, together, they carried her back to Braun Hall. "She was not walking on her own," Babcock said. She described the period around 3 a.m., during the walk from Stewie to Braun, as worst point for Jane Doe in terms of mobility, based on the times that Babcock had observed Jane Doe that night.

Babcock said that she did not know Grayson Burden and that her only interaction with him, either before or since, was when he helped her transport Jane Doe back to Braun Hall around 3 a.m.

Upon getting back to their room, Babcock recalled that Jane Doe wanted to keep using her cell phone, and Babcock "kept taking it away from her." Babcock said

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that she waited for Jane Doe to fall asleep and then checked that Jane Doe was lying on her side. Babcock said that she did not see any signs that would indicate alcohol poisoning.

During the Day and Evening on Sunday

Babcock said she woke up around 10 a.m. She said that Jane Doe was already up and had made contact with Angie Peckham. Babcock recalled that Peckham came to their room, and Peckham and Jane Doe were trying to piece together the events of the previous night. According to Babcock, Jane Doe was confused about what happened and was worried that she did not have a definitive memory of everything.

Babcock described Jane Doe as appearing "tired and haggard" on Sunday, with dark circles around her eyes. She said that Jane Doe also had scratches on her lower back and explained that the shirt Jane Doe wore on Saturday night was open in the back and did not cover the wearer's lower back.

On Sunday evening, Babcock recalled that a student named Aidan [Dougherty], who also lived in Braun Hall, went to their room around 8 p.m. or 9 p.m. Babcock said that she excused herself and left Jane Doe and Dougherty alone. According to Babcock, Dougherty told Jane Doe that she had had sex with John Doe the previous night. Babcock said that, immediately following this conversation with Dougherty, Jane Doe sent Babcock a text to meet her in the quad at 9 p.m. Babcock said that when they met in the quad, Jane Doe told her what Dougherty had said. Jane Doe was upset and crying.

Babcock said that she responded by asking if Jane Doe used birth control and suggested they get Plan B. She said that they asked a student in their dorm who had a car to drive them to CVS Pharmacy, which he did.

According to Babcock, Jane Doe may have talked with John Doe later on Sunday.

Over the Next Few Days

During the next few days, Babcock recalled that Jane Doe was "really doing badly." Babcock described Jane Doe at that time as "depressed, scared, really confused." She said that Jane Doe attended some of her classes, but missed others. Babcock said that Jane Doe was not sleeping well during this period, and that neither was Babcock. Babcock said that this time period was also traumatic for her.

According to Babcock, Jane Doe did not initially make a formal complaint against John, because Jane Doe was "in denial and not really realizing what had

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happened." She said that *Jane Doe* did not want to tell her parents, but Babcock said that she encouraged *Jane Doe* to do so. Babcock recalled that *Jane Doe* talked to Professor Reddy about the events between her and *John*, and *Jane Doe* and Professor Reddy, together, explained what had happened to *Jane Doe's* parents.

Babcock stated that *Jane Doe* was correct to pursue a complaint against *John*. According to Babcock, *Jane Doe* had sex that she did not remember and was intoxicated to the point of having impaired speech and not being able to control her motor skills. Babcock said, "The girl I helped that night was not my roommate in any sense." Babcock also noted the emotional toll that *Jane Doe* experienced following the events with *John*. "It seemed pretty obvious to me that it was a rape," Babcock said.

Contact with *John*

Babcock said that she has never spoken to *John Doe* and they have had no interactions. Babcock recalled that *Jane Doe* told her that *John* was also drunk on the night *Jane Doe* and *John* had sex.

Other Witnesses

Babcock said Maddie DiMarco was their neighbor in Braun Hall and must have seen or heard Babcock bringing *Jane Doe* back to their room.

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CONFIDENTIAL REPORT

TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Maddie DiMarco

Maddie DiMarco was interviewed on October 21, 2013, at Occidental College by Cathleen Watkins and Keith Rohman.

Background

She is an 18-year-old freshman from the Seattle area. Her housing assignment is Braun 319, which is next door to *Jane Doe's* room. DiMarco said she first met *Jane Doe* in their "Revolutions in Africa" class, which is the only class they have together.

Events of September 7th and 8th

In Braun 214

On the night of September 7th, DiMarco said she may have been in the dorm room assigned to Liam Driscoll and Ben Scott (Braun 214).¹ DiMarco said that on the night she is thinking of, *Jane Doe* Angie Peckham and another friend were there with Driscoll and Scott. She said that the group was drinking vodka and had some music on.

She said, "I saw *Jane* drinking. I think we were taking shots." DiMarco said that she did not recall *Jane Doe* taking that many shots and estimated that *Jane Doe* may have had two shots of vodka. DiMarco, who is on the swim team, said that she was in Braun 214 for about 30 minutes before she left to hang out with other members of the

¹ DiMarco was never certain that the events she described in Braun 214 took place on September 7th or on another night.

swim team. In her recollection, the night that she saw Jane Doe drinking vodka in Braun 214 was the same night as the water polo team's initiation.²

DiMarco said that when she left Jane Doe to join the swimmers, Jane Doe was "a little bit drunk, but still in control of herself." She was buzzed." DiMarco said that John Doe was not present in Braun 214.

Around 2 a.m.

DiMarco said that she saw Genevieve Babcock, Jane Doe's roommate, around 2 a.m. or 3 a.m. on Sunday. She said that Babcock was worried about Jane Doe and was looking for her. According to DiMarco, Babcock said that Jane Doe was "pretty intoxicated" and was "with a guy." Babcock told DiMarco that she did not know the name of the guy who was with Jane Doe.

DiMarco said that her conversation with Babcock took place in the hallway of the third floor of Braun Hall. DiMarco offered to help look for Jane Doe but Babcock said that she could handle it. DiMarco said that she then went into her room.

DiMarco said that a while later, when she left her room to brush her teeth, she saw Jane Doe and Babcock coming back to their room. According to DiMarco, Jane Doe was "pretty intoxicated" and Babcock appeared to be "a little upset with Jane."

DiMarco said that she helped Babcock get Jane Doe into bed. DiMarco recalled that Jane Doe was slurring her words and was stumbling. DiMarco said that Babcock told her that Jane Doe had vomited earlier.

DiMarco recalled that Jane Doe objected to being put into bed and kept trying to get up. According to DiMarco, Jane Doe told them that she wasn't tired and she didn't want to go to bed. DiMarco recalled that Jane Doe was dressed in her street clothes. She also recalled something about Babcock wanting to take Jane Doe's cell phone.

After putting Jane Doe into bed, DiMarco said she and Babcock walked out of the room. In DiMarco's recollection, Babcock told DiMarco that Jane Doe had said that she may have had sex that night. Jane Doe did not tell Babcock who her sexual partner was. DiMarco clarified that she did not recall exactly what was said that night. However, she said that she remembered being surprised because "I just didn't think that [having drunk sex] was something Jane did based on how she appeared."

DiMarco characterized Babcock's reaction to what Jane Doe told her as "surprised and confused." DiMarco said, "I think that Genevieve was a little annoyed at

² Other witnesses have stated that the water polo initiation was on September 7.

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Jané about it." DiMarco recalled Babcock saying, "I can't believe she just did this," in reference to *Jane Doe* getting drunk and possibly having sex.

DiMarco said that her conversation with Babcock ended with DiMarco saying if Babcock needed any further help with *Jane Doe* to knock on her door.

DiMarco stated that she did not recall seeing *Jané Doe* at any other time that night. She said that she, herself, was intoxicated that night, although not in any extreme manner.

Water Polo Initiation

DiMarco said that she and *John* have only had a couple of conversations. She described him as a "pretty normal guy" and said that *John* has not talked to her about the events with *Jane Doe*.

DiMarco said that she heard about the water polo team's initiation. She said that she heard from "a lot of people" that *John* was very intoxicated that night. Specifically, DiMarco said that Carolyn, a member of the swim team, told her that *John* described himself as "pretty far gone."³

DiMarco said that she was with Carolyn at one point late on that Saturday night or early Sunday morning when Carolyn received a text from *John*. According to DiMarco, *John* sent a text saying that he had never been this drunk before. DiMarco said that *John*'s text also said that he was not sure what was going on, or words to that effect. DiMarco estimated that Carolyn received this text message around 12 a.m. or 1 a.m.

DiMarco stated that, at the water polo team's initiation, she heard that a lot of freshmen team members were drunk on beer and hard alcohol.

The Next Few Days

The next day, Sunday, DiMarco said that she talked more to Genevieve Babcock. According to DiMarco, Babcock seemed to have a lot going on emotionally. DiMarco recalled that Babcock shared with her that *Jane Doe* identified *John Doe* as the person she had sex with. DiMarco recalled that Babcock, herself, said that she had stayed in the dorms and had a low-key night.

DiMarco said that word spread among the students about *Jane Doe* and *John*, partly because *Jane Doe* was missing from class. DiMarco said that she has not talked to *Jané Doe* about the events of September 7th and 8th.

³ DiMarco did not think that *John Doe* and Carolyn were related. For clarity in this section, the first names of *John* and Carolyn are used.

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Other Witnesses

DiMarco said that Ben Scott may be someone with information about John's intoxication because he is on the water polo team.

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TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Professor Danielle Dirks

Professor Danielle Dirks was interviewed by Cathleen Watkins and Keith Rohman on October 21, 2013, at Occidental College.

Initial Contacts with *Jane Doe*

Dirks stated that she had her first contact with *Jane Doe* on Monday, September 9, 2013, when she exchanged text messages with *Jane Doe*. Dirks called *Jane Doe* that night to talk about *Jane Doe's* options in dealing with the incident, and to make sure that *Jane Doe* "felt safe and secure on campus." Dirks stated that, during that phone conversation, she used the phrase "rape" to describe the incident, and *Jane Doe* responded, "Oh, I am not calling it rape yet." Dirks stated that in her later conversations with *Jane Doe* she was careful only to use language that reflected *Jane Doe's* understanding of the event.

Dirks stated she told *Jane Doe* that there was a pattern at the College of male students who repeatedly engaged in the practice of having sex with highly intoxicated women. *Jane Doe* told Dirks that the student with whom she had sex was a freshman.

Dirks said she met with *Jane Doe* on September 10th from approximately 10:00 a.m. to 1:00 p.m. at Dirks's office. During that meeting, *Jane Doe* told Dirks her account of the incident, and Dirks took notes. Dirks also made copies of screen shots of text messages that were on *Jane Doe's* cell phone.¹

¹ Dirks provided PII with a 44-page PDF file with a scanned copy of those notes. PII reviewed these notes with Dirks in-person.

Over the next week, Dirks said she continued to stay in touch with *Jane Doe*. At one point, *Jane Doe* contacted Dirks to say she had run into *John Doe* on campus "a couple of times," including on September 11th around 5:00 or 5:30 p.m. *Jane Doe* reportedly said she was "kind of freaking out" about having seen *John*. Dirks said that she was not available to meet with *Jane Doe* so *Jane Doe's* Advisor, Professor Movindri Reddy, met with *Jane Doe*. Dirks stated that she suggested to Reddy that Reddy request an interim suspension of *John*, stating, "I know how jarring it is for me to see him [*John*] on campus, so how it is for *Jane*?" Dirks said she had run into *John* as she came out of another Title IX misconduct hearing.

Dirks said that on Sunday, September 15th, Reddy texted Dirks to say that *Jane Doe's* parents wanted her to go to the police. Dirks was out of town at the time, and Reddy accompanied *Jane Doe* to the Northeast Division of the Los Angeles Police Department. According to Dirks, the police officer who spoke with *Jane Doe* was not sympathetic to her. Dirks said that it was not until several days later that LAPD detectives came to campus to take *Jane Doe's* report and begin a criminal investigation.

Jane Doe's Emotional State

Dirks stated that she has had many conversations with *Jane Doe* since their first meeting during which *Jane Doe* "sounds like she is wreck." Dirks stated that she believed that *Jane Doe* was experiencing Post-Traumatic Stress Disorder (PTSD), noting that neither *Jane Doe* nor *Jane Doe's* roommate, Genevieve Babcock, was sleeping well.² According to Dirks, *Jane Doe* has told her that she was having trouble focusing on her school work, and at one point sat unable to move for 20 minutes on a bench on campus. Dirks said she has had late-night phone conversations with *Jane Doe* and has received emails from *Jane Doe* sent late at night or early in the morning. She observed *Jane Doe* to have a flat affect. Dirks stated that *Jane Doe's* symptoms are like "the dozens of other survivors [of sexual assault] I have met with on campus."

Dirks stated that *Jane Doe* appeared to be "in a strong state of denial" about the events, and told her at one point that she was not yet able to call the incident "rape." The fact that *Jane Doe* learned about the sex from someone else was "really jarring" for *Jane Doe*, said Dirks. Dirks noted that *Jane Doe's* reluctance to call what had happened to her "rape" was consistent with other victims of sexual assault whom Dirks has talked to on campus.

² Dirks stated that she understood that Babcock is "doing a lot of work" caring for *Jane Doe*

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Text Messages

Dirks stated that she reviewed the text messages that *John* and *Jane Doe* exchanged sometime after midnight on September 8th and also following the incident. She stated that *John*, by trying to appear nice, "seemed like he was trying to manage" *Jane Doe* with his text messages. Dirks noted that when *Jane Doe* did not show up for the class she and *John* both attended, *John* texted her. Dirks said she believed *John* was doing this because he was wondering if she was going to report him for rape. [REDACTED]

Dirks stated that, based on her experience [REDACTED] *John* was "acting in the same way all these other young men [involved in sexual assaults] have acted" by checking in on *Jane Doe* after the incident, and seeking to manage her (*Jane Doe* by being nice in a manner that Dirks described as "disingenuous." She noted that she has seen other men involved in sexual assaults on campus attempt to "paint themselves as the victim."

Dirks noted that *John*'s texts on the night of the incident were further evidence to her that *John* was attempting to control *Jane Doe*. She noted there were text messages "commanding her to come to his room." She also noted *John*'s use of the phrase "good girl" and other language in the text messages as further indication that he was in control of *Jane Doe* and seeking to dominate her by manipulating her.

Possible Witnesses

Dirks stated that when she interviewed *Jane Doe* she had a lengthy list of people who may have had contact with *Jane Doe* that evening. However, Dirks identified a list of five witnesses whom she believed were key to an investigation: Genevieve Babcock, Angela Peckham, Gavin Rose, Aidan Dougherty, and Jamison Hayward.

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CONFIDENTIAL REPORT

TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: October 28, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Aidan Dougherty

Aidan Dougherty was interviewed by Cathleen Watkins and Barbara Dalton on October 28, 2013.

Background Information

Dougherty is 18 years old. He is a freshman majoring in Physics. Dougherty lives at Braun 208.

Dougherty stated that prior to September 7, 2013, he was only familiar with *Jane Doe* from seeing her in the common room at Braun. Dougherty said he had met *John Doe* once before school started, at an event in Northern California, but did not really know him.

Evening of September 7, 2013

On the evening of September 7, 2013, Dougherty said he was in a friend's room in Braun, playing videogames. At around 11:00 p.m., Dougherty walked past the room shared by *John Doe* and Gavin Rose. According to Dougherty, *John*, Rose, and two women named Riahannon, and Marin were in the dorm room. Dougherty said he stopped in the doorway to chat, and saw that *John* appeared to be intoxicated. Dougherty described *John*'s level of intoxication as a "shit show."

According to Dougherty, *John* was slurring his words, stumbled over the others when he got up, and danced around and generally moved in a way that indicated that he was inebriated. Dougherty estimated that on a 0 to 10 scale, with 10 being inebriated to the point of not being able to function, *John* was "maybe a 7." The others

present told Dougherty that *John* was drunk. Dougherty said he did not notice any alcohol in the room and did not see *John* consume any alcohol. Dougherty recalled that the others in the room "seemed to be buzzed" but not to *John*'s level. Dougherty said that he, himself, was sober.

Dougherty estimated that he stood in the doorway for about a minute and a half before returning to his friend's room.

Early Morning of September 8, 2013

Dougherty said he left his friend's room at about 2:00 a.m. on Sunday morning, September 8th, and went to the lobby. Dougherty saw Rose with several friends, including Miya and Megan. Rose indicated to Dougherty that *John* and *Jane Doe* were alone in the dorm room Rose and *John* shared, and Rose could not return to the room for that reason.

Dougherty stated that he had attended the sexual assault prevention training during orientation, had heard the presentation on consent and alcohol consumption, and therefore asked Rose if both *John* and *Jane Doe* were "okay." According to Dougherty, Rose responded that *Jane Doe* was intoxicated. Rose told Dougherty that *Jane Doe* had thrown up earlier in the evening and that he (Rose) had held her hair while she vomited. Dougherty said Rose also stated that when *Jane Doe* had seen *John*, she had become excited, said, "Oh, *John*," and had gone into *John*'s and Rose's room. Rose told Dougherty that he left the dorm room at that point.

Dougherty said Rose indicated that *Jane Doe* was "very drunk." When Dougherty expressed concern about *Jane Doe*'s condition, Rose told Dougherty something like "You're free to check." According to Dougherty, Rose gave him the code to the room and a swipe card to open the room door.

Dougherty said he went to the dorm room and found a folded up piece of paper in the area for the swipe card, which he removed. Dougherty stated that he found out later that this was a signal Rose and *John* had worked out to let one another know not to enter the room. According to Dougherty, he punched in the code and used the swipe card to open the room door.

Dougherty stated that inside the room, the lights were off but he could see *John* sitting up in the middle of the bed, naked, holding a pair of shorts over his crotch. Dougherty said he could also see *Jane Doe* in bed, under the covers. According to Dougherty, *John* said, "Yo, get the fuck out." Dougherty said he was "taken aback,"

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and immediately closed the door. He estimated he had stood in the doorway for about 15 seconds.

Dougherty said he stood outside of the *John*'s room for about one or two minutes. *John* came out of the room wearing shorts and a shirt, and went down the hall to the restroom. Dougherty stated he knocked on the door and said, "*Jane*?" He heard *Jane Doe* reply, "Yeah?" Dougherty said he asked if she was okay. *Jane Doe* responded, "Yeah." Dougherty said he asked, "Are you sure?" *Jane Doe* replied, "Yeah. I'm fine." Dougherty said he asked *Jane Doe* a third time if she was okay, and she answered that she was.

Dougherty stated that he asked *Jane Doe* three times if she was okay because, she had answered "kind of unconvincingly." He said that the tone of her voice was "kind of sad." Dougherty said *Jane Doe* responded to him slowly and in a "down way." However, Dougherty stated that after the third time she said she was okay, "I took her word for it."

Dougherty said that Miya and Megan were in the general area of *John*'s room when he opened the door to *John*'s room and when he asked *Jane Doe* how she was doing through the closed door a few minutes later. He said that shortly after this, *John* returned to the room, opened the door, and went inside.

Dougherty said he went upstairs and outside to a seating area, where he found Rose, Miya, and Megan. Dougherty stated that the four of them spoke, and he was "trying to process what was happening." During this conversation, Dougherty said Rose stated that he had also gone in the room, and had seen *John* on top of *Jane Doe*. Dougherty stated that, during this conversation, Rose spoke about him (Rose) and *John* using a piece of paper in the key swipe area of the door as a signal not to enter the room. Dougherty said that he must have removed the paper that would have been a signal to Rose not to enter.

After about 30 minutes, Dougherty said he went back to the second floor of Braun. When Dougherty reached the second floor, he saw *Jane Doe* just going into the stairwell and starting to walk up the stairs. Dougherty had the impression that *Jane Doe* had just left *John*'s and Rose's room, and was going upstairs to her own room. Dougherty said he also saw *John* standing outside of room 206, in front of the door, wearing shorts and no shirt. According to Dougherty, no one said anything.

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Evening of September 8, 2013

Later on September 8th, in the evening, Dougherty sent *Jane Doe* a message, and the two conversed electronically. Dougherty asked *Jane Doe* if she remembered what had happened the night before, and she responded that she did not. Dougherty suggested that they speak in person, and *Jane Doe* agreed, indicating it would be all right for Dougherty to go up to her dorm room.

Dougherty stated he went to *Jane Doe's* dorm room and spoke with her. No one else was present. *Jane Doe* told Dougherty she did not remember much, and was trying to piece together what had happened. Dougherty said he told *Jane Doe* "I think you may have slept with *John* ." According to Dougherty, *Jane Doe* took a deep breath and told him, "Yeah, I figure that might've happened." Dougherty described *Jane Doe's* reaction as "when someone expects the worst, and then [the person] hears that was what happened."

Dougherty said *Jane Doe* told him she did not remember much of anything and was not sure what exactly had happened. According to Dougherty, he and *Jane Doe* did not discuss drinking, the details of *Jane Doe's* condition, or details of her interactions with *John* . He described her as appearing "stunned."

Dougherty said he told *Jane Doe* she may have slept with *John* because he "figured no one else would, and I could . . . I figured I can be the someone to tell her, because someone should tell her." Dougherty stated he believed *Jane Doe* did not know whether she had slept with *John* , because when he asked her if she remembered what had happened the night before, she had answered, "No."

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CONFIDENTIAL REPORT

TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Liam Driscoll

Liam Driscoll was interviewed on October 22, 2013, at Occidental College by Cathleen Watkins and Alan Canterbury.

Background

Driscoll is a freshman at Occidental College and he lives in Braun Hall. Driscoll is most recently from the Bay Area. Driscoll's roommate is Ben Scott, a freshman from Los Angeles who plays on the water polo team.

Driscoll stated he remembered the night of September 7 to September 8, (Saturday night to Sunday morning), because it was the night after "Septemberween," and it was the same day as the water polo team's "Initiation Night" ("I-night").

Driscoll said that prior to our interview with him, he had spoken with *Jane Doe* about the events that led to the investigation.

Pre-Gaming in Driscoll's Room

Driscoll said his first contact with *Jane Doe* that night was during the earlier part of the night when there were several students "pre-partying" in Driscoll's room prior to the men's soccer game. Driscoll said there were up to thirteen people in his room over the course of an hour and a half they were in his room. These included Jamison Hayward, Angie Peckham, and *Jane Doe*. Driscoll said that his roommate, Scott, and another friend of *Jane Doe's* Maddie DiMarco, may have also been there. Driscoll said that *Jane Doe* did not arrive until the second half of the pre-party, sometime around 6:30 p.m. Driscoll said that his roommate, Scott, left for the water polo initiation

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sometime around 8:00 p.m.

Driscoll said that during the "pre-gaming" in his room, people mostly drank beer, and nobody was drinking very heavily. "People were pacing themselves," said Driscoll. However, Driscoll said there were some bottles of hard alcohol there. Driscoll thought *Jane Doe* had a mixed drink of vodka and orange juice. Driscoll saw that *Jane Doe* had a half full orange juice bottle she was carrying around with her, and into which she poured vodka. Driscoll said that was all he saw her drink. Driscoll said there was also another group of girls that took shots occasionally but he was not sure if *Jane Doe* took a shot.

Driscoll said that there were more people in his room than he wanted, and the RA had asked him to move his party elsewhere. According to Driscoll, the RA came back a second time and told everyone to leave, but Driscoll was outside on a phone call at the time.

Party in *John Doe's* Room

Driscoll also recalled seeing *John Doe* that night because there was a party in *John's* room, which Driscoll visited briefly prior to the soccer game. Driscoll was with Reina, Eva, and a few others, in Quentin's room, next door to *John's* room. Driscoll said that *John* came over to Quentin's room to get everyone to join the party in *John's* room, so they all went. Driscoll said there appeared to be a lot of alcohol in *John's* room, the lights were dim, and the music was very loud. Driscoll said he looked into the room "momentarily."

Driscoll said that *John* had a handle of alcohol in his hand (Driscoll thought it might have been vodka), and there were lots of bottles of hard alcohol around the room - on the desk, on the dresser, or in people's hands. Driscoll said there were various types of alcohol; he saw a bottle of a "cheap college vodka," a smaller bottle of Bacardi Rum, and maybe some other bottles. Driscoll recalled seeing a few beer cans in the room, as well. Some people were drinking red Solo cups with mixed drinks inside.

Driscoll said it was dark inside the room; there were Christmas lights on but the main lights were off. Driscoll said the music was very loud inside the room. Driscoll said there were maybe 16 to 18 people in *John's* room when he was there, but three people left soon after with him. Driscoll thought that eventually the RA, Stewart, "busted" the party in *John's* room.

Driscoll said there were no drugs used that night that he was aware of. He said that freshmen do not use a lot of hard drugs, and pot is too obvious to detect so people

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do not usually smoke inside dorms. Driscoll said that he "had a few shots" that night, but that he was good at "pacing" himself and he was also staying more sober because he was looking after his friend, Zane, who was staying with him that night.

However, Driscoll recalled seeing the people in *John*'s room and thinking to himself, "These people are drunk." Driscoll said some people were dancing and looked "wasted." Driscoll described *John* as "exuberant," as if he had been drinking "a good amount." Driscoll said *John* had a handle of some alcohol in his hand and was dancing around the room. Driscoll said *John* had "definitely consumed enough to make him in a more outgoing stage, not sloppy but a shot or two past tipsy."

Driscoll had no other contact with *John* that night.

After the Soccer Game

After he left *John*'s room, Driscoll went to the soccer game. Driscoll placed the time he went to the soccer game around 7:40 p.m. Driscoll estimated this time based on a text message he received that night from Scott, informing him the location of I-night.

Driscoll said that after the soccer game, he and some friends went back to their room and made the "judgment call" of whether to continue drinking and try to find a party. Driscoll said that after the soccer game, the only thing really going on was his roommate, Scott, was participating in the I-night. Driscoll said Scott knew he would be drinking at the I-night, so Scott told Driscoll he would call him later during the night to check in.

Driscoll said he and his friend, Zane, drank some Fireball whisky Driscoll had, and then they decided to try to go out and find a party. Driscoll said it was a "weird night" because there was never a "stationary party" so they spent much of the night walking around looking for a party.

Driscoll said he and his friends went "wandering around the neighborhood" off-campus looking for a party. Driscoll said *Jane Doe* was not with them at this point, but said Peckham might have been. Driscoll thought Riley and DiMarco were with them at this time, also. Driscoll did not see *Jane Doe* during the time he was walking off campus.

Driscoll said everyone was heading towards the girls' water polo house because people had thought I-night was an open party but it was not. Driscoll said they met some people heading back from the girl's water polo house so they joined this new

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group to look for another party. Driscoll said they went by the football house, but it was dark. At that point, Riley and DiMarco suggested they all go back to the Cooler to meet up with Scott.

Driscoll said that at the Cooler, Scott told Driscoll about I-night.¹ According to Driscoll, Scott said that the freshmen water polo players had to finish a lot of beers and a "good amount" of vodka too. Scott told Driscoll that the freshman, a group of only four or five people, had to finish a handle of vodka by themselves. Driscoll said that because of Scott's size, he was able to handle the I-night, and was starting to "come down" when Driscoll met him at the Cooler. Driscoll got the impression that all the players who participated in I-night handled it fine. Driscoll said, "It didn't sound too chaotic or abusive of anyone. Ben didn't make it sound like anyone was really bad or sick or ready to be hospitalized."

Late Night

Driscoll said later that night, he saw Peckham, who came to Driscoll's room with Riley. Peckham told Driscoll that she had just returned to Braun with *Jane Doe* and Hayward who both were "pretty drunk," though Hayward was less drunk than *Jane Doe*. Driscoll asked Peckham whether *Jane Doe* was okay, and Peckham replied that she was. However, Peckham added that she did not enjoy being around people that were so drunk they were "sloppy." Soon after, Driscoll went up to the third floor with some friends for a while and then came back to his room and went to bed.

Aftermath

Driscoll said that a few days later, he heard from Peckham that *Jane Doe* and *John* had sex that night, and that *Jane Doe* did not feel that it was consensual or that she was in the right state of mind.

Driscoll said that prior to that, his roommate, Scott, told him that *John* said he had been "way too drunk" the night of September 7. *John* reportedly told Scott that he was going to "slow down [his drinking]," and "start taking it easier." Driscoll thought *John* had told Scott this before the rumor got out about having sex with *Jane Doe* without her consent. Driscoll also said that prior to the investigation, Peckham told him that *John* said "Hi" to her and *Jane Doe* one day and asked them how they were. Driscoll said Peckham thought it did not seem as if *John* knew he was under investigation.

¹ As a freshman water polo player, *John* participated in I-night, as well.

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[REDACTED]
[REDACTED]
[REDACTED] Driscoll also said that the water polo team and the football team are "singled out" as having a bad reputation, but Driscoll did not think that was fair.

[REDACTED]
[REDACTED]
[REDACTED] He said he did not know *Jane Doe* very well, but had talked about *Jane Doe's* drinking with Peckham, who is friends with *Jane Doe*

Driscoll said that Peckham told him that on the night of September 7, *Jane Doe* seemed like she was expecting others to watch out for her when she got too drunk, yet she continued to go to *John's* room and continued to drink a lot. Driscoll said Peckham felt annoyed that *Jane Doe* was expecting people to look after her. Based on Peckham's comments to him, Driscoll said he had the sense that *Jane Doe* had drank this heavily before. He thought that in the past, *Jane Doe* probably got herself into these situations and then would expect help from others.

[REDACTED]
[REDACTED]
[REDACTED]

Driscoll suggested we speak with the following other witnesses: Gavin (*John's* roommate), and Ben Scott (Driscoll's roommate).

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TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Jamison Hayward

Jamison Hayward was interviewed on October 21, 2013, at Occidental College by Cathleen Watkins and Keith Rohman.

Background

Hayward is an 18-year-old freshman from Palo Alto, California. His dorm assignment is in Stewart-Cleland Hall, Room 131.¹

Early Evening on September 7

Hayward said he was with *Jane Doe* at different times during the night of September 7th and the early morning hours of September 8th. Hayward stated that he participated in "pre-gaming" at Braun Hall on September 7th in advance of the men's soccer game that evening.² He said that he may have "pre-gamed" in Liam Driscoll's room at Braun Hall, where students drank "a lot of hard alcohol," including shots of vodka. He stated that he did not recall *Jane Doe* being part of the pre-game events in Driscoll's room.

Hayward recalled seeing *Jane Doe* at the soccer game. "I am not sure I talked to her at the game," he said, but he remembered seeing her with a group of about 20 students in the stadium.

According to Hayward, the soccer game ended around 9 p.m., and following this he and a "couple of good friends" were preparing to go to an off-campus party. Hayward described being at the Gilman Fountain at the entrance to campus when his

¹ This dorm is referenced throughout the remainder of this summary by its common name, Stewie.

² Pre-gaming is the term students use for consuming alcohol in advance of a school sporting event.

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At this point, Hayward recalled that he, Peckham and *Jane Doe* went into Braun Hall's main entrance and that *Jane Doe* ran ahead of them. He said that he and Peckham did not know where *Jane Doe* was for a brief period, and they began looking for her, including checking her room on the third floor of Braun. He recalled that Peckham was "a little worried" about *Jane Doe's* condition and wanted to find her. Hayward stated that a short time later, they either ran into *Jane Doe* or she called them to say where she was. He said that they reconnected with *Jane Doe* at *John Doe's* room, Braun 206.

At *John's* Room

Hayward said that the door to *John's* room was open, and *Jane Doe* stepped out into the hall and saw him and Peckham. Hayward recalled that the lighting in *John's* room was very low and that loud, techno music was playing. Hayward said that he saw a bottle of vodka in the room, but he could not recall if the bottle was "a handle or a fifth."⁴ The room did not appear as if a party had taken place there, he said, and *John* and *Jane Doe* were alone in the room. He estimated that the time was around midnight.

According to Hayward, *Jane Doe* and *John* were dancing, and "they were both really drunk." Hayward said that he and Peckham felt "a little uncomfortable" and then they started dancing with each other. Hayward recalled that *John* was talking about the water polo team's initiation, which he participated in earlier that Saturday, and *John* told them he had been drinking since 1 p.m. According to Hayward, *John* was telling them how much alcohol he drank that day as if to say, "That is why I'm acting like I'm so crazy." Hayward described *John* as "loud, obnoxious, kind of pushing everyone, going nuts a little bit." He said that *John* was "very bouncy, very touchy" with him and Peckham. Hayward said that from the way *John* was talking, it was obvious he was drunk.

Hayward recalled that *John* and *Jane Doe* were kissing while they danced and that all four of them were taking swigs of vodka directly from the bottle. According to Hayward, Peckham was "a little worried" because she thought *Jane Doe* was not fully aware of what she was doing, and Peckham said to *Jane Doe* "Hey, let's be going."

At some point, Hayward recalled that *John* took his shirt off and then *Jane Doe* removed her shirt and was wearing her bra. Hayward said that *John* wanted Hayward to remove his shirt, too. Hayward said that he did remove his shirt for a minute, but then put it back on.

4 A "handle" of alcohol is a 1.75 liter bottle, while a "fifth" is 750 milliliters.

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According to Hayward, eventually [John] and [Jane Doe] laid down together on [John]'s bed, with [Jane Doe] on top of [John]. When this happened, Hayward recalled that he and Peckham told [Jane Doe], "It's time to go." He recalled that [Jane Doe] was "a little upset and indignant." He described her as "resisting leaving [John]'s room] a little bit, while at the same time, she was aware that we were doing the right thing" by directing her back to her dorm room.

Hayward said that while [Jane Doe] was on top of [John] on the bed, the two of them were "getting really physical." Hayward recalled that [Jane Doe] "was kind of riding on top of [John]. Her hips were moving." Hayward said, "It looked like something was going down." He recalled that [John]'s shirt was off at this point, but he could not recall whether [Jane Doe's] shirt was off or on.

Bringing [Jane Doe] to Her Room

Hayward stated that he and Peckham got a hold of [Jane Doe] with one of them on either side of her, and maneuvered her out of [John]'s room. He said, "[Jane] really couldn't walk that straight." As this was occurring, Hayward recalled [John] saying, "No, don't do it," meaning don't remove [Jane Doe] from his room, but [John] did not grab [Jane Doe], or otherwise physically try to prevent her from leaving. According to Hayward, [John] said that it would "be more fun" if [Jane Doe] stayed with him.

Hayward said that [John] did not exit his room at this point, and he never saw [John] anywhere that night other than inside his own room.

According to Hayward, he and Peckham took [Jane Doe] upstairs to her room on the third floor. He recalled that her roommate was not there. He described [Jane Doe] as "super drunk," at this point and "talking but making no sense." He said that she seemed "incoherent." He did not recall her saying anything about [John]. Hayward said that he and Peckham put [Jane Doe] into bed and closed the door. Hayward estimated that this was about 1 a.m.

He said that Peckham wanted to hang out with friends at Braun, and he wanted to go back to Stewie, so they decided to separate at this point. However, before departing, they agreed not to talk to others about how [Jane Doe] had acted that night and to keep the matter between them.

Hayward recalled that Peckham left, but before he, himself, walked away, [Jane Doe] opened her door and came out of her room. Hayward estimated that [Jane Doe] had only been in her room for about 30 seconds before she opened the door. He said that the next sequence of events is confused in his recollection, but he recalls that [Jane Doe] kissed him on the neck. He said that he did not kiss her in return.

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but hugged her. He said that he did not recall if she was speaking coherently at this point. Next, he recalled that she went down the hall to the bathroom.

He said that he could not follow *Jane Doe* into the girls' bathroom, so he "passed out" on the floor near her door for a few minutes. He recalled that a student who lives across the hall from *Jane Doe* together with an R.A., woke him up and asked, "Why are you in our hall?" He said that he did not know the name of this student, but recognized her as a girl who was on the track team. He said that he explained to them that *Jane Doe* was in the bathroom, and they assured him that they would assist her. He said that he felt comfortable that they would look out for *Jane Doe* and that he could return to Stewie.

Hayward said that around 1 a.m., he sent a text message to *Jane Doe* ask if she was okay.⁵ In retrospect, he said he probably sent this while she was in the bathroom.

At Stewie

After leaving Braun Hall, Hayward recalled going to "Stewie Beach" and hanging out there for 15 to 30 minutes before going inside to Stewie's common room.⁶ He said that shortly after he entered the common room, he observed *Jane Doe* come into the common room and sit down on the lap of a male student. Hayward described *Jane Doe* as "Marilyn Monroe-esque," and demonstrated by holding his arms above his head, with his palms facing up. He said that he thought to himself, "Oh, my God." Then, he saw another girl who appeared to be with her, saying "*Jane*, come back."

Hayward said that at the point *Jane Doe* was in the Stewie common room, she was "extremely drunk." He said that she was able to get herself around – to move from point a to point b – but she "was struggling." He described her as "weaving, putting her hands on the couch" for balance.

Hayward said that *Jane Doe* appeared to be even more than drunk than when she was in *John*'s room. He said, "I didn't know it was possible to be more drunk than she was [earlier]." He said, "I kind of assumed that she was doing some other drugs, a little more of a stimulant."

Mid-day Sunday and Subsequent Events

Hayward said that he saw *Jane Doe* on Sunday around 11 a.m. He said that she approached him and apologized, saying, "I'm sorry for putting you in that kind of

⁵ According to text messages that *Jane Doe* provided, she received a text from "Jameson" at 1:04 a.m. on September 8th that said "U ok?"

⁶ The grassy area outside of Stewart-Cleland Hall is commonly referred to as "Stewie Beach."

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situation." Hayward said she looked "like her normal self" at this point on Sunday. Hayward described *Jane Doe's* typical demeanor as "straightforward, academic."

Hayward said that he did not know that *Jane Doe* and *John* had sex that night until he learned this weeks later from LAPD. According to Hayward, two to three weeks after the events of September 7th and 8th, he was off campus having a meal when he was contacted by the college that LAPD wanted to speak with him. He said that he learned later that other students were aware of them having sex, but Hayward said, "I had no idea."

Hayward said that he has not talked to *John* since September 7-8. "*John* is not really in my circle," Hayward said. According to Hayward, based on what *John* told him on September 7th or 8th, *John* was "hammered." Hayward also said that *John* "appeared drunk" that night and was "acting aggressively." In Hayward's view, *John's* judgment was impaired that night, but not to the level that *John* lacked awareness of what he was doing. He added, "I am not sure he [*John*] was aware of how drunk *Jane* was because he [*John*] was so drunk."

Hayward stated, "What I remember about his room that night was that it wasn't a good atmosphere, but it wasn't dangerous or ludicrous."

He said that from what he knew of *Jane Doe* she would not have behaved as she did if she were sober.

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TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Angela Peckham

Angela "Angie" Peckham was interviewed on October 21, 2013, at Occidental College by Cathleen Watkins and Keith Rohman.

Background

Peckham is an 18-year-old freshman from Sacramento. Her dorm assignment is Braun 310. Peckham said that she and *Jane Doe* became good friends when the semester started. She said they got coffee together and sometimes ate meals together.

Drinking After Soccer Match

Peckham said that she went to the soccer match that evening on campus, but she was not with *Jane Doe* during the game. After the match, Peckham recalled going to Braun Hall to one of the dorm rooms on the second floor (the boys' floor) around 10 p.m. She said that this dorm room is where she first encountered *Jane Doe* that night. Peckham said she did not know whose room she and *Jane Doe* were in, and they both ended up there by chance.¹

Peckham estimated that about 10 people were in the room, a combination of males and females. She said that *John Doe* was not present, and neither was Jamison Hayward, nor Harrison.² She said that Liam Driscoll was in this room as some

¹ She stated that she was sure they were not in Liam Driscoll's room.

² Peckham did not know Harrison's last name. However, *Jane Doe* later identified him as Harrison Rosenthal.

point. Peckham recalled that *Jane Doe* was drinking alcohol and appeared to be drinking heavily. Peckham said, "Vodka was going around in straight shots."

Peckham said, while she did not know exactly how much *Jane Doe* drank, "it was definitely more than anyone else." Peckham estimated that *Jane Doe* consumed five shots of vodka. Peckham said that she, herself, drank "maybe two shots" of vodka.

Peckham recalled that after being in this dorm room for a while, she, *Jane Doe* and possibly other girls all returned to their rooms to change their outfits before going out for the evening. She said that she recalled that around this time, *Jane Doe* was carrying with her a small plastic bottle of orange juice mixed with vodka. Peckham estimated the mixture was 75 percent juice to 25 percent vodka.

Walking Off-Campus

Peckham stated that she and *Jane Doe* next went with a large group that planned to walk to a party a little ways off campus, but they learned the party was shut down. She recalled that the group walked the perimeter of the campus. She said they had no contact with campus security.

Peckham described *Jane Doe* as "pretty tipsy" while walking the campus perimeter. She said *Jane Doe* was "silly, but seemed liked she had a pretty good handle on herself." Peckham recalled that *Jane Doe* was "walking fine" and acted as if she knew where the group was going and what they were doing.

Peckham said that after walking around the campus, the group headed back up to Braun Hall. According to Peckham, when *Jane Doe* arrived in front of Braun, she told *Jane Doe* said, "No, I can't walk anymore" and told Peckham and the other that she was too drunk to go further.

Peckham recalled that before the group arrived at Braun Hall, Harrison Rosenthal and Jamison Hayward had joined the group, which now numbered about 20 students. She said that she thought Rosenthal was headed to Mt. Fiji, but this was never her own plan.

Entering Braun

Peckham recalled that she, *Jane Doe* and Hayward separated from the group and went into Braun Hall. Peckham said that *Jane Doe* told them she was going to get something from her room, so Peckham and Hayward waited for her in the common room. When *Jane Doe* did not return promptly, Peckham said that she called *Jane Doe's* phone three times, and *Jane Doe* answered the third call.

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Peckham said that she was tracking Jane Doe because Jane Doe "did not seem like she was in a sober state." "We were trying to make sure she didn't do anything she would regret" because of how intoxicated she was, Peckham said. During freshmen orientation, Peckham said, the freshmen were told they were supposed to watch out for their friends when they were partying. "I know it sounds corny," she said, "but I was trying to be a good person and be there for Jane Doe as much as I could."

According to Peckham, Jane Doe told Peckham that she was in John Doe's room on the second floor and Peckham and Hayward should go there. Peckham estimated that she was separated from Jane Doe for about five minutes and, in this period, Jane Doe had made her way to John's room.

In John's Room

Peckham recalled that she and Hayward went to the second floor and found Jane Doe with John in his room. Peckham described Jane Doe as "a lot sillier, a lot more crazy than she was" previously when they were walking around campus. Peckham noted that, while Jane Doe had seemed intoxicated earlier in the evening, she (Jane Doe) had still seemed able to understand what they were doing and what they were planning to do. In John's room, Jane Doe could not walk well and did not seem to know where she was or what was going to happen next. Peckham said that Jane Doe was "very goofy, and acting "very flirtatious" with John and wanting to dance with him.

Peckham described John's room as dark with music blaring. She said that John had a bottle of alcohol in his room and Jane Doe was drinking straight from it. Peckham recalled trying to take the bottle away from Jane Doe and Jane Doe telling her that she (Jane Doe) was fine and could drink more. Peckham said she did not recall what type of alcohol was in John's room.

Peckham stated that John "seemed like he was already pretty intoxicated." According to Peckham, John had attended the water polo team's initiation for freshmen players earlier that night. Peckham said that she was under the impression that a team's initiation was "a ridiculous time for all the freshmen [team members] to get really intoxicated." She described John's behavior at this point as "very intoxicated and acting somewhat aggressive."

Peckham said that John and Jane Doe were dancing and Jane Doe also continued to drink from the bottle of alcohol. While in John's room, Peckham recalled repeating the cycle of taking the alcohol bottle away from Jane Doe and putting it up on the dresser, but Jane Doe reaching for the bottle again.

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Peckham said that both John and Jane Doe were trying to get her and Hayward to join them in dancing, however, the only reason that she and Hayward were in John's room was to watch Jane Doe because they were worried about how drunk she was.

Peckham said that John and Jane Doe were dancing, kissing and "making out." She recalled that, at different times, John and Jane Doe were standing up and also lying down on John's bed. According to Peckham, Jane Doe was grabbing John and trying to kiss him. Peckham said that John was "somewhat" responsive to Jane Doe but "also seemed pretty indifferent" to Jane Doe's advances. Peckham said she observed that John was "not at all going for her . . . [it was] not like he was grabbing her and pulling her onto the bed."

In Peckham's recollection, John would occasionally turn to her (Peckham) and Hayward and ask, "Why are you guys here? I don't even know you." Peckham said that John "would grab my wrists and try to pull me out of the room, [but] never fully aggressive. I was never really afraid." Peckham said that she was not sure why John was trying to pull her out of his room. "I don't really understand it. It might have been because he didn't know us [she and Hayward] at all, which he didn't," said Peckham.³ "It may not have been because he wanted us to leave so he could have sex with Jane Doe."

Peckham said that the 30-minute period while she and Hayward were in John's room mostly passed with Jane Doe trying to kiss John and dance with him, Jane Doe trying to drink from the bottle of alcohol and Peckham trying to take it away, and John trying to get her and Hayward to leave his room. She said that during the times when Jane Doe and John were kissing on his bed, Jane Doe was sometimes on top of John and John was sometimes on top of Jane Doe.

Peckham said that she never saw John touch Jane Doe's breasts or otherwise touch her in an inappropriate manner. At one point, Peckham said that Jane Doe took off her shirt, but Peckham made Jane Doe put it back on. Peckham stated that John did not say or do anything to prevent her (Peckham) from putting Jane Doe's shirt back on her.

Taking Jane Doe to Her Room

Peckham recalled that, around midnight, John said he had something to do and he left his room. Peckham said that she and Hayward then took Jane Doe to the third floor and put Jane Doe to bed in Room 320, Jane Doe's room. Jane Doe's

³ Peckham and John are both from the Sacramento area. However, Peckham confirmed that she did not know John before attending Occidental College.

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roommate was not there, and Peckham recalled putting blankets over Jane Doe, but not undressing her. Peckham said it was her impression that Jane Doe was going to stay in her bed. Peckham said she did not recall any conversation with Jane Doe about her phone or about Jane Doe having sex with John. She said that Jane Doe did not say anything about John while she was being put to bed.

Peckham said that after this, she went back to the second floor to a friend's room. She said that when she separated from Hayward, he was still on the third floor. Peckham stated that she learned, subsequently, that Hayward stood outside of Jane Doe's room for a while.

Around 12:45 a.m., Peckham said that she decided to go to bed, and she encountered Jane Doe coming up the stairs from the second floor. Peckham recalled saying to Jane Doe, "I put you to bed an hour ago," and Jane Doe replying that she was fine and that she was just hanging out. Peckham recalled telling Jane Doe, "Okay, we are going to tuck you into bed."

Peckham said she walked with Jane Doe to Braun 320 again and this time, Genevieve Babcock, Jane Doe's roommate was present. She said that she and Babcock changed Jane Doe into her pajamas and put her into bed for the second time.

Peckham said she went to her own room (310) for a while, but stepped into the hallway later to go to the bathroom to brush her teeth. She said that she saw Babcock, wearing a bathrobe, coming from the main entrance of Braun Hall, leading Jane Doe by the hand. Jane Doe was wearing her pajamas. Peckham recalled saying to Babcock, "What, again?" According to Peckham, Babcock told her, "I took a shower and, when I got back, Jane Doe wasn't there." Babcock explained to Peckham that she called Jane Doe's phone and a student named Danny Stouffer answered and said that Jane Doe was at Stewart-Cleland Hall. Babcock told Peckham that she went to Stewie and got Jane Doe.

The Next Day

The next morning, Peckham recalled waking up around 10 a.m. and seeing a text message from Jane Doe asking that Peckham come to her room to talk. Peckham went to Jane Doe's room, and Jane Doe said, "I think I had sex with John." Peckham said that her first reaction was, "When?" According to Peckham, Jane Doe had looked at her text messages and found a text from John that said, "Come to my room" and another message from Jane Doe to John that said, "Jamison is outside of my room." Peckham said that Jane Doe had also sent a text to John that said, "Do you have a condom?"

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05/14/2014 10:45

Peckham said she confirmed for Jane Doe that the timing of the text about the condom was right after Peckham had put Jane Doe to bed. Peckham also told Jane Doe that she saw her (Jane Doe) coming up the stairs from the second floor about 45 minutes later.

According to Peckham, Jane Doe said she did not remember the events with John the previous night. Jane Doe also told Peckham that she was not sure she had sex and seemed "pretty scared." Jane Doe stated she regretted the events of the previous night.

When asked if she was aware that Jane Doe had vomited that night, Peckham said that Jane Doe did not say anything to her about vomiting until the following Monday or Tuesday. According to Peckham, Jane Doe was offended that John's roommate, Gavin Rose, had helped her vomit and then took her back to John's room.

Peckham's Assessment of the Events and Subsequent Contact with Jane Doe

In retrospect, Peckham said Jane Doe was "pretty drunk, but pretty persistent" about going to John's room. According to Peckham, Jane Doe's demeanor did not appear as if she knew what was going on, but her text messages and her physically going to John's room seem to indicate that Jane Doe had some idea of where she was, of what was taking place, and of what would happen if she went to John's room.

Peckham described Jane Doe as "horrified" that the incident with John occurred. Following the events of September 7th and 8th, Peckham said she asked Jane Doe once how she was doing and Jane Doe broke down in tears.

Peckham stated, "I think Jane was just as much a part of this as John. I wouldn't say that it is was just John coming on to her, or forcing her. She could have said, 'No,' or she could have just not responded to his texts, or just not gone back down to his room."

When asked about other witnesses, Peckham said the only other people who know anything are Babcock and Hayward. Peckham said that, with the exception of about five minutes, she was with Jane Doe continuously from around 10 p.m. until around midnight on September 7th.

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Exhibit 4, Page 75

20170913 09:50

CONFIDENTIAL REPORT

TO: Lauren Carella
Interim Title IX Coordinator
Occidental College

FROM: Public Interest Investigations, Inc.

DATE: October 28, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Gavin Rose

Gavin Rose was interviewed by Cathleen Watkins and Barbara Dalton on October 28, 2013.

Background Information

Gavin Rose is an 18 year old freshman. He is majoring in Diplomacy and World Affairs. Rose lives in Braun 206. He formerly shared that room with *John Doe*. Rose said that he and *Jane Doe* shared a class, but he did not know her outside of the class. According to Rose, *John* was also in the same class.

Evening of September 7, 2013 to Early Morning of September 8, 2013

Rose stated that on the evening of September 7th, at close to 11:00 p.m., he was in his dorm room getting ready to go out when his roommate, *John Doe*, returned to the room. According to Rose, *John* appeared to be intoxicated. Rose said *John* stumbled around, slurred his words, and talked loudly. In short, Rose said, *John* "acted like a drunk person" and "looked like he had been to a party." Rose said that he, himself, was sober and at that point had not yet gone out.

Rose stated that he did not know where exactly *John* had been. He said he was only aware that *John* had gone to a party. Rose did not know what party or where it occurred. Rose said that he had heard about the water polo team's initiation, but he was not sure that was where *John* had been. According to Rose, *John* did not tell him where he had gone or indicate how much alcohol, or what kind of alcohol, he had consumed.

Rose said that *John* turned on music after returning to the room. The music was loud enough so that someone outside of the room could have heard it. Rose said that he hung out with *John* for roughly an hour, and during which he decided not to go out, so that he could "keep an eye on" *John*. During this period, and throughout the evening and into the next morning, Rose said he did not see *John* consume any alcohol. Around midnight, Rose left the room and went to the third floor to tell his friends he would not be going out with them.

When Rose returned to the second floor and was walking towards his room, he saw *Jane Doe* in the hallway, leaning against the wall. Rose said he asked *Jane Doe* either how she was doing or what she was doing. *Jane Doe* responded that she was going to her room. Rose said he noticed that *Jane Doe*'s speech was slurred, and concluded that she had been drinking or was drunk.

According to Rose, *Jane Doe* asked him if there was a party or a "kickback" in his room, and started walking with him down the hall. Rose stated that *Jane Doe* appeared to walk normally and he did not notice her staggering. Rose said he answered, "No. *John* is having a dance party by himself." Rose said *Jane Doe* said, "Oh, *John* 's there?"

Rose stated that as they got to room 206, *Jane Doe* was in front of him, and walked into the room ahead of him. When Rose entered the room, he said he saw *Jane Doe* and *John* "in some sort of embrace." Rose stated that it appeared to him that *Jane Doe* and *John* were hugging, and may have been kissing. He said he decided to leave, and left the room immediately.

Rose said he went back to where his friends were. While he and his friends were "milling around in the hallway," they saw Aidan Dougherty. Rose said he told Dougherty that *John* and *Jane Doe* were in his dorm room and that both were drunk. According to Rose, Dougherty said, "Maybe that isn't a good idea," and went to check on them. When Dougherty returned, he told Rose and his friends that *Jane Doe* had said that she was okay. According to Rose, based on Dougherty's temperament, if *Jane Doe* had not indicated that she was fine, Dougherty would have interceded.

Rose recalled that he left his friends and returned to the second floor of Braun to get his friend Nick, who lives one or two doors down the hall from room 206. Rose stated that he saw *Jane Doe* walking towards him from the direction of his and *John*'s room. Rose said he could not hear music coming from room 206.

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Exhibit 4, Page 77

Rose said it appeared that *Jane Doe* was having a hard time walking, and was stumbling. Rose said he could tell that *Jane Doe* was heading towards a trash can in the hall, and he met her there. According to Rose, *Jane Doe* threw up into the trash can. He said that he held her hair back, and suggested that she go into the bathroom, to which she agreed. Rose said he and *Jane Doe* then went into the men's room on the second floor of Braun, where *Jane Doe* threw up some more.

When *Jane Doe* indicated that she felt better, she and Rose left the restroom. Rose said that *Jane Doe* walked back towards room 206, while he went back the way he came, in the opposite direction. Rose stated that he assumed that *Jane Doe* was going back to her room, because she had just thrown up, and, from that, he believed she was "done" for the evening.

Rose stated that he left Braun Hall and met up with his friends, who were on the lower part of the campus. When Rose discovered that he did not have any money or a credit card, he ran back to his dorm room. Rose estimated that at this point, it was about 1:00 a.m. According to Rose, when he opened the door to his dorm room, he saw *John* and *Jane Doe* having sex in *John*'s bed.

Rose said that *Jane Doe* was on her back with her legs spread, while *John* was on his knees between *Jane Doe*'s legs. No covers were on either of them. Rose said he could see that *John* was "fully naked." Rose said he could only see *Jane Doe* from the waist down, and the lower half of her body was naked. Rose said that he could not see *Jane Doe*'s face because *John*'s torso blocked his view. According to Rose, *Jane Doe*'s legs were moving. From this, he said he believed she was conscious. Rose stated that *John* did not appear to be restraining *Jane Doe*.

Rose estimated that he was in the doorway for "a split second," before he quickly closed the door and left. No one said anything during the time Rose was in the doorway.

Rose stated that he and *John* had worked out a system of putting a piece of colored paper in the key swipe if they needed privacy in the room. According to Rose, no paper was in place when he returned to the room to get money. Rose said he was not aware of any paper being in the key swipe on September 7th or 8th, and did not think that anyone else knew of his and *John*'s system.

Rose said that at about 2:45 a.m., *John* sent him a text message saying that he could return to the room.

CONFIDENTIAL REPORT

Sunday Afternoon, September 8, 2013

Rose stated that on Sunday afternoon, between roughly 2:00 and 3:00 p.m., *Jane Doe* roommate, Genevieve Babcock, asked him to go with her to her and *Jane Doe* dorm room. Rose did so.

Rose said that *Jane Doe* told him she could not remember what had happened the night before, and asked him what had happened. According to Rose, *Jane Doe* asked him, "Did you see me having sex with *John*," because I can't remember if I did or not." Rose said that he told *Jane Doe* "Yes."

Rose said he overheard *Jane Doe* and Babcock discussing a health card and a phone number, and thought from this that perhaps *Jane Doe* was going to file a sexual assault report. Rose said he did not say anything about this to *John*. About a week after his conversation with *Jane Doe* and Babcock, Rose recalled that Babcock told him that *Jane Doe* had filed a sexual assault complaint.

Additional Information

Rose stated that on September 7th and 8th, he did not give his key card or the code to his dorm room door to anyone. He said he was not aware of anyone other than himself walking in on *Jane Doe* and *John* while they were in bed together.

Rose stated that during the time he and *John* were roommates, he had no bad experiences with *John*. Rose described *John* as "really courteous," and said *John* did not seem any more interested in socializing with women than any of the other men at college.

Rose volunteered his view that, based on what he saw, he did not believe a sexual assault had occurred. He said that this was because he had seen *John* and *Jane Doe* in a "voluntary embrace"; because *Jane Doe* did not appear to be resisting *John* while they were having intercourse; and because he believed from seeing her legs moving, *Jane Doe* was conscious while she had intercourse with *John*.

In addition, Rose stated that on the following Monday, September 9, 2013, *Jane Doe* voluntarily sat next to *John* in class. "I thought that was weird after I learned of the complaint," Rose said. "Why sit next to him if he assaulted you?" Rose said that things between *Jane Doe* and *John* appeared to be "normal" on Monday, and it appeared to him that they were getting along.

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Rose noted that he had attended sexual assault prevention training during orientation, and had been told what to do if he witnessed a sexual assault. "This didn't look like one to me," he said.

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Exhibit 4, Page 80

Exhibit 46, Page 150

65-4181-1234-24015

CONFIDENTIAL REPORT

TO: Lauren Carella
Interim Title IX Coordinator

FROM: Public Interest Investigations, Inc.

DATE: November 13, 2013

RE: Sexual Misconduct Policy Complaint
PII Case No. 13-4175

SUBJECT: Interview Summary of Chloe Welmond

Chloe Welmond was interviewed on October 24, 2013, at Occidental College by Cathleen Watkins and Nora Rohman.

Background

Welmond is an 18-year-old freshman from Rockville, Maryland. Her dorm assignment is in Stewart-Cleland Hall, Room 244.¹

Welmond met *Jane Doe* during freshmen orientation when they were assigned to the same "O" team, which are small, break-out discussion groups. In the first weeks of the semester, Welmond said that she and *Jane Doe* had dinner together a few times, but more recently their contact has been just saying "Hi" to each other.

Welmond said that she was not aware that *Jane Doe* filed a complaint under the College's Sexual Misconduct Policy.

September 7, 2013

Welmond recalled seeing *Jane Doe* briefly on the night of September 7, 2013. Welmond said that she attended the end of the soccer match, but did not see *Jane Doe* there. However, she recalled seeing *Jane Doe* a few hours later outside of Braun Hall.

Welmond said that she was with Gemma Lurie and Pinkie Young, and they were headed to Mt. Fiji. She recalled seeing *Jane Doe* with Angie Peckham and Jamison

¹ This dorm is referenced throughout the remainder of this summary by its common name, Stewie.

Hayward, who were also headed to Mt. Fiji. Welmond also said she may have seen Harrison (LNU) and possibly Vivian (LNU) with *Jane Doe's* group, but she was not sure of this.

Welmond observed that *Jane Doe* was not able to walk very well because *Jane Doe* was drunk. Welmond said that Peckham and Hayward were encouraging her to go to Mt. Fiji, telling *Jane Doe* "You're fine. You can do it."

Welmond said that *Jane Doe's* group was "kind of up the road a little bit" from Braun Hall, when *Jane Doe* said she was going to turn back. Welmond estimated that the time was around midnight. Welmond described *Jane Doe* as "stumbling a little bit. I don't think she could have made it to Fiji." She said that *Jane Doe* "looked tired."

Welmond said she does not recall having a conversation with *Jane Doe* or anyone else about what, or how much, alcohol *Jane Doe* had consumed that night. "It was obvious she had been drinking," Welmond said.

According to Welmond, Peckham and Hayward "were conscious and aware" of what was happening and were not as intoxicated as *Jane Doe*.

Welmond said that she and *Jane Doe* saw each other and separated from their respective groups. Welmond recalled walking *Jane Doe* to the main entrance of Braun Hall. Welmond stated that an R.A. and another person were at the entrance to Braun. Upon seeing the R.A., *Jane Doe* told Welmond, "I have to act normal" in front of the R.A. Welmond said she could not recall anything about the R.A. and could not provide a physical description of this person, including whether the R.A. was a male or a female.

Welmond said she asked *Jane Doe*, "Do you want me to walk you to your room?" *Jane Doe* declined and told Welmond, "Thank you." Welmond said that she left *Jane Doe* at the door of Braun and then rejoined her friends. Welmond said, "I think *Jane Doe* said she was going to go to bed." Welmond said that she did not put *Jane Doe* to bed or go to *Jane Doe's* room.

Welmond estimated that her interaction with *Jane Doe* lasted less than 10 minutes.

Welmond described her own condition as sober.

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Exhibit 4, Page 82

Exhibit 46, Page 152

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535
MAY 19 1994

Exhibit 1

Exhibit 4, Page 83

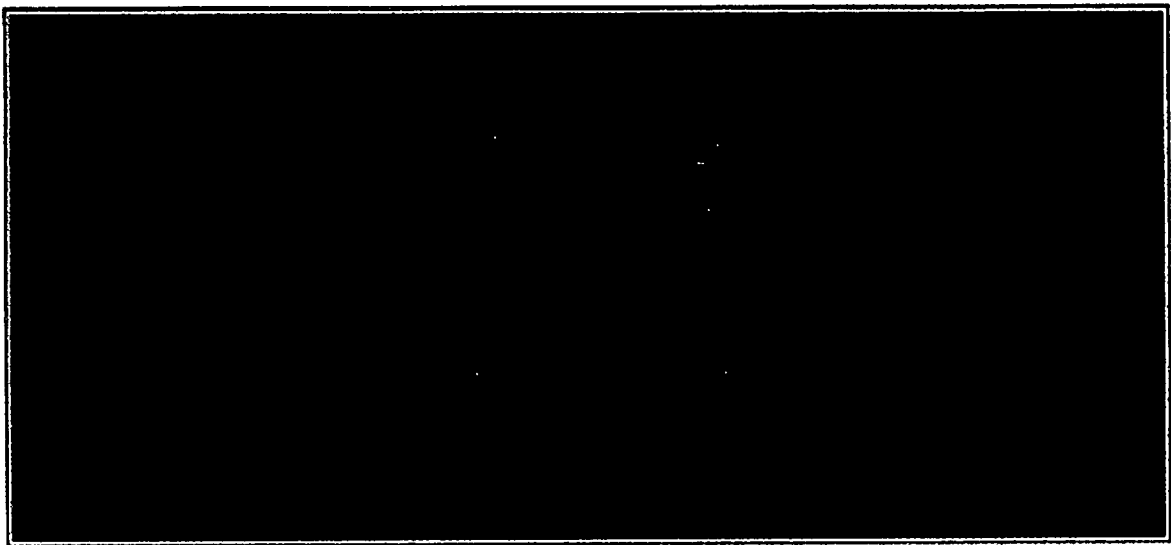
Exhibit 46, Page 153

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Exhibit 4, Page 84

Exhibit 46, Page 154

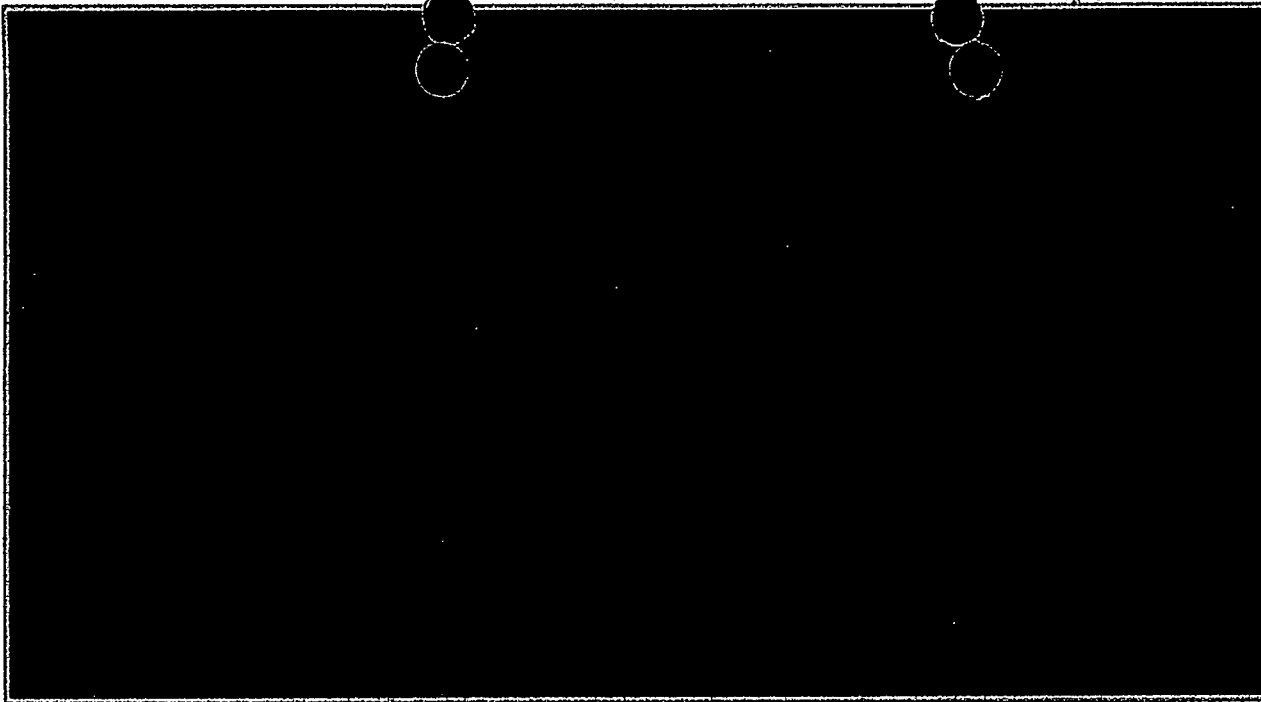


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Exhibit 4, Page 85

Exhibit 46, Page 155

1507



510 E 165th St
Seattle, WA 98148

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Exhibit 4, Page 87

Exhibit 2

5108171/080759

Exhibit 4, Page 88

Exhibit 46, Page 158

Occidental College
Campus Safety
1600 Campus Road.
Los Angeles, Ca. 90041
(323) 259-2599

September 07, 2013
Saturday

Watch Supervisor
Observation Report

Time:	Event:	Incident Location:	Narrative of Event:
0000hrs	Information	Campus	Morning watch reports;
0000hrs	Information	Sycamore Glen	"Septemberween" continues with about 275 participants.
0000hrs	Disturbance	4576 Paulhan Ave.	Neighbor reports loud party involving Oxy students at the location. Responding Officers contacted the student tenants and advised of complaint. Students complied by dispersing approximately 450 persons from the location. No further complaints received.
0034hrs	Information	Samuelson Pavilion	Staff requests assistance due to a large crowd. Responding Officers remained at the location until the crowd diminished.
0054hrs	Alcohol Abuse	Pauley Hall	Received report of a male student who consumed unknown amounts of alcohol and was in need of medical attention. Incident report submitted
0100hrs	Information	Sycamore Glen	"Septemberween" concludes with no incidents to report.
0214hrs	Information	1500 block of Campus Rd.	Observed several subjects sitting on the street near a parked vehicle. Officers contacted the subjects (locals) and determined they had left a nearby party. No further action required.
0330hrs	Information	Alumni Circle	Observed two subjects acting suspiciously in a vehicle. Officers contacted the subjects (locals) who were lost and looking for a student. Officers assisted the subjects in finding their friend.

0800hrs	Information	Campus	Day watch reports;
0905hrs	Information	Academic Commons	
	Library staff reports an alarm beeping. Responding Officer found the fire panel beeping in supervisory mode. Panel showed "ac fail power supply panel 2". Officer cleared and reset the panel. Message left for Bruce Steele on his voicemail.		
1130hrs	Information	E. Norris Hall	
	Received report of a beeping "tone" emitting from the fire alarm panel. Panel displayed, "Trouble network verify." Silenced tone and acknowledged panel.		
1300hrs	Information	Academic Commons	
	Library staff reports an alarm beeping. Responding Officer found the fire panel beeping in supervisory mode. Panel showed 'ac fail power supply panel 2". Officer cleared and reset the panel. Work Request submitted.		
1600hrs	Information	Campus	Night watch reports;
2000hrs	Information	Jack Kemp Stadium	
	Oxy men's soccer game in progress with approximately 300 persons in attendance. No incidents to report.		
2246hrs	Disturbance	2136 Ridgeview Ave	
	Neighbor reports a group of Oxy students making loud noise in front of location. Subjects were gone upon Officer's arrival.		
2305hrs	Disturbance	4556 Alumni Ave	
	Neighbor reports a loud noise coming from location. Responding Officers determined there was a party at 1542 Tonawanda Ave which is not affiliated with the college.		

05/01/2014 15:01:24

© 2015, 2015, 2015

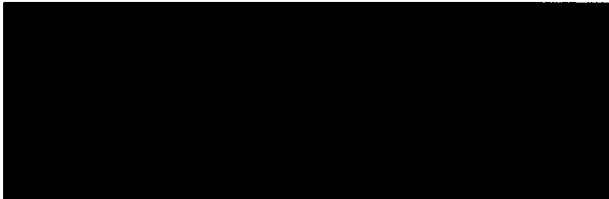
**United States Department of Education
Office for Civil Rights**

DISCRIMINATION COMPLAINT FORM

You do not have to use this form to file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). You may send OCR a letter or e-mail instead of this form, but the letter or e-mail must include the information in items one through nine and item fourteen of this form. If you decide to use this form, please type or print all information and use additional pages if more space is needed. An on-line version of this form, which can be submitted electronically, can be found at: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.

Before completing this form please read all information contained in the enclosed packet including: Information About OCR's Complaint Resolution Procedures, Notice of Uses of Personal Information and the Consent Form.

1. Name of person filing this complaint:



Please Note: In the questions that follow, in order to protect the privacy of individuals involved in this case of alleged sexual assault, Mr. XXXXX, who is the Petitioner in this Title IX filing, is referred to pseudonymously as John Doe. The female student, who is the original complainant of sexual assault, is referred to as Jane Doe. This is consistent with ongoing legal actions related to the case (described in question 9), and the identities of John Doe and Jane Doe are well known to Occidental College.

Additional contact:

Mark M. Hathaway
Law Offices of Mark J. Werksman
888 West Sixth Street, Fourth Floor
Los Angeles, CA 90017
Phone (213) 688-0460
mhathaway@werksmanlaw.com

2. Name of person discriminated against:



3. Please identify the institution or agency that engaged in the alleged discrimination.

Office of Title IX
Occidental College
1600 Campus Rd
Los Angeles, CA 90041

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

☐ Discrimination based on sex

As detailed in question 5 below, Occidental College engaged in discrimination based on sex in improperly expelling John Doe, a male, and taking no action against Jane Doe, a female, despite the extensive facts in the case showing that Jane Doe was the initiator of sexual activity and willing participant throughout a sexual encounter. The school's sexual assault policy was misapplied. In this situation where a male student and a female student had sex, and both were intoxicated, the college committed an act of gender discrimination by only charging the male student. Occidental College found John Doe "responsible" for sexual assault because, as a male, Occidental College considers he is solely responsible for the "exercise of poor judgment" of both parties' (as the event was described by the LAPD investigation - Exhibit 3).

Ms. Doe was convinced by Occidental faculty and staff members during the week following the encounter to file a sexual misconduct complaint. John Doe was immediately treated as guilty, his due process rights were repeatedly violated, and his counter-complaint was arbitrarily and summarily dismissed.

Full details are presented in question 5 and 6 below.

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

The facts of the case are outlined below.

On September 16, 2013, Petitioner John Doe was accused of violating the Occidental College Sexual Misconduct Policy as follows:

Jane Doe, (a first-year freshman, Class of 2017) alleges that on or about the early morning hours of Sunday, September 8, 2013 between the approximate times of 12:50 A.M. and 2:00 A.M., she and Mr. John Doe (a first-year freshman, Class of 2017) had sex. During the investigation, Jane Doe recalled performing oral sex on Mr. Doe, but could not specifically recall having intercourse

with Mr. Doe in his dormitory room on the second floor of Braun Hall. Ms. Doe alleges that she consumed multiple alcoholic beverages in the hours leading up to the sexual contact. See Exh. 2.

Ms. Jane Doe initially denied that she had been raped or sexually assaulted and did not want to make a formal complaint (Exh. 4, pages 46, 53), but eventually relented a week later because she was told that 90% of rapes are done by repeat offenders and Asst. Professor Dirks told her that "[John Doe] fits the profile of other rapists on campus in that he had a high GPA in high school, was his class valedictorian, was on [a sports] team, and was 'from a good family.'" Exh 4, page 41. Ms. Doe decided to report what had happened when she realized how much it had affected her emotionally, while seeing no apparent reaction from John Doe. She noted that he attended his classes without difficulty, and she "saw that he wasn't fazed by what had happened at all." Exh. 4, page 40.

Also on or about September 16, 2013, Jane Doe filed a sexual assault report with the Los Angeles Police Department. Exh. 4, page 41. Los Angeles Police Department Det. Michelle Gomez was in charge of the LAPD investigation and interviewed Jane Doe and other student witnesses at Occidental. On November 5, 2013 the Los Angeles District Attorney's Office, Sexual Crimes Unit declined to prosecute for lack of evidence. Deputy District Attorney Alison Meyers concluded, after meeting with Ms. Doe and conducting a number of witness interviews, that both parties were drunk and "they were both willing participants exercising bad judgment" and "[s]pecifically the facts show the victim was capable of resisting based on her actions." Deputy Meyers also stated that "it would be reasonable for [John Doe] to conclude based on their communications and her actions that, even though she was intoxicated, she could still exercise reasonable judgment." Exh. 3, pages 1-2. In rejecting to prosecute the case, the district attorney effectively concluded that alleged sexual assault did not meet the minimum standard of "reasonable suspicion."

On November 14, 2013, Occidental's private investigators submitted their investigative report (Exh. 4) that confirmed what law enforcement had found using extensive text message evidence and witness testimony. It found the following facts:

Jane Doe initially met with John Doe in his dorm room in the presence of witnesses and removed her shirt while dancing with Mr. Doe. Ms. Doe was grabbing Mr. Doe and trying to kiss him while Mr. Doe was "somewhat responsive" to Ms. Doe but "also seemed pretty indifferent to [Jane Doe's] advances." (Exh. 4, page 73.) She was "getting really physical" on his bed, riding on top of him and grinding her hips. Ms. Doe's friends tried to shepherd her back to her dorm, but before she left Mr. Doe's room, she gave him her cell phone number so that they could coordinate her return for sex, which Jane had verbally agreed to. When she arrived at her own dorm room, Mr. Doe texted her, "The second that you away from them, come back." Ms. Doe responded, "Okay." Mr. Doe wrote back, "Just get back here." Ms. Doe responded, "Okay do you have a condom." Mr. Doe replied, "Yes." Ms. Doe texted back, "Good, give me two minutes." Exh. 4, page 93.

Before leaving her dorm room, Jane Doe texted a friend from back home: "I'mgoingtohavensex now[sic]." Ms. Doe walked down a flight of stairs to Mr. Doe's room at approximately 1 a.m., knocked on his door, went in, took off her earrings, performed oral sex, and had sexual

intercourse with him. In her statements, she never claimed that she was forced, intimidated, physically harmed, nor resisted in any way. When an acquaintance knocked on Mr. Doe's door to check up on her, Ms. Doe called out: "Yeah, I'm fine." The acquaintance asked twice more and Ms. Doe gave the same reply. During these questions Mr. Doe had stepped out of his room and gone down the hall to use the restroom. He was not present during this exchange to exert any influence upon her affirmations. Shortly before 2 a.m., Ms. Doe dressed herself and returned to her room. On her way there, she texted her friends smiley faces Exh. 4, pages 120, 122, 123, 125, 127. She then walked to a different dorm where she sat on the lap of another male student whom she had met the night before, talking and joking. The next day she texted Mr. Doe asking if she had left her earrings and belt in his room and asked to come by to pick them up.

In spite of Jane Doe's written confirmation of consensual sex, the LAPD criminal investigation, the District Attorney's rejection for lack of evidence, and Occidental's own investigative report, Occidental was determined to hold John Doe, but not Jane Doe, responsible for violating its new Sexual Misconduct Policy in order to bolster Occidental's defense against campus activists and the loss of federal education funding and fines.

Occidental College elected to forgo any attempt at an informal resolution of Jane Doe's complaint under their new Policy, and proceeded with "formal resolution," which the college claims is a "college process" and "not a legal proceeding." This so-called campus process, however, includes an investigation report prepared by Occidental's private investigators, a scheduled hearing before Occidental's retained outside counsel acting as adjudicator, the presentation of witnesses and evidence, and the determination by the school of the rights of Petitioner to attend the college.

On December 7, 2013, The College conducted a hearing under their formal complaint resolution process Exh. 5, p. 1.

On December 13, 2013, Occidental College notified John Doe that although Jane Doe engaged in the same conduct that John Doe was accused of and although she made statements that show she consented to intercourse (Exh. 6, page 8) and that there was no force, threat of force, nor coercion involved (Exh. 6, page 6, fn. 5), the school would hold John Doe, but not Jane Doe, responsible for Sexual Assault and Non-Consensual Sexual Contact.

On December 20, 2013, issued the sanction of "Permanent Separation from the College." Exh. 8, p. 1.

On January 6, 2014, Petitioner filed his timely appeal to the college. Exh. 11.

On February 12, 2014, Respondent issued its findings on appeal confirming the findings and sanctions. Exh. 14.

In fact, there was no sexual assault, no non-consensual sexual contact, and no violation of Occidental's Policy and the findings and sanctions are invalid. Indeed, Jane Doe perpetrated exactly the same conduct against John Doe when she walked back to his dorm room and

performed oral sex on him and had sexual intercourse with him while he was intoxicated. John Doe was expelled because he is male; Jane Doe was not sanctioned because she is female.

Petitioner alleges the following violations of due process with intent to discriminate on the basis of sex:

A. Denial of Due Process Rights

Occidental College's 46-page Sexual Misconduct Policy denies accused male students the most basic due process recognized by UN Universal Declaration of Human Rights, the U.S. Constitution, and the California Constitution, including the assistance of counsel, the right to remain silent in the face of criminal accusations, and the presumption of innocence. Occidental claims that their Policy is fair and balanced because both sides are treated equally, however, in practice Occidental pits accused male students (with only high school educations) against Occidental's sophisticated, well-organized institutional process designed by former criminal prosecutors and run by academics, a professional and experienced staff, private investigators, outside consultants, and attorneys, while the female student is supported by Occidental's Sexual Assault Coalition and the National Women's Law Center and given access to advisors and advocates. In contrast, Mr. Doe was unable to secure an advisor for several months, until mid-November. This denial of basic due process is a procedural error that is discriminatory, unfair, devoid of good faith, in violation of students' civil rights, and significantly affected the outcome.

B. Lack of Diversity

The male student Petitioner had great difficulty in obtaining an 'adviser' from within the campus community. His first choice of advisor, a male, refused to participate, and John Doe was eventually assigned a female advisor. The hearing process was conducted and administered entirely by women, in fact no males other than the Petitioner were present at the administrative hearing. The lack of any gender diversity among Occidental personnel, advisors, outside contractors, adjudicator, and consultants involved in this disciplinary proceeding reflects actual and apparent bias against students of the male gender. This lack of diversity is discriminatory, unfair, devoid of good faith, in violation of students' civil rights, and significantly affected the outcome.

C. Irrelevant and Prejudicial Materials Presented in the Title IX Hearing

Mr. Doe had the right to have only evidence that is relevant and nonprejudicial presented at the hearing. (See, Exhibit 1, Page 38.) Occidental redacted information favorable to Mr. Doe from its Investigation Report, which was presented at the hearing, but left intact in the Investigation Report statements of personal opinion that are highly prejudicial and are neither direct observations nor reasonable inferences from the facts, including the following:

- i. "[John Doe] fits the profile of other rapists on campus in that he had a high GPA in high school, was his class valedictorian, was on [a sports] team, and was 'from a good family.'" (Exhibit 4, Page 41.)
- ii. "[Jane Doe]'s symptoms are like 'the dozens of other survivors [of sexual assault] I have met with on campus.'" (Exhibit 4, Page 53.)
- iii. "[Jane Doe]'s reluctance to call what had happened to her 'rape' was consistent with other victims of sexual assault... on campus." (Exhibit 4, Page 53.)

iv. "[John Doe] was "acting in the same way all these other young men [involved in sexual assaults] have acted" by checking in on [Jane Doe] after the incident, and seeking to manage [Jane] by being nice in a manner... described as "disingenuous." (Exhibit 4, Page 54.)

Admitting statements of opinion by Danielle Dirks, an Occidental professor and founder of the Sexual Assault Coalition, that refer to Mr. Doe as a "rapist," stating that he acts like other sex assault perpetrators, is far more prejudicial than probative. Allowing such statements into evidence while at the same time excluding relevant evidence favorable to Mr. Doe is a substantive error that significantly affected the outcome. These errors were committed in order to prejudicially find the accused male responsible. Indeed, nearly any male accused of sexual assault that was involved in any consensual sexual activity, would be found responsible. These prejudices are applied exclusively to males.

D. No Hearing Panel Convened.

Formal resolution of a complaint is to occur through the use of a Conduct Conference or a Hearing Panel. (Exhibit 1, Page 34.) The Hearing Panel typically consists of three members drawn from a pool of trained faculty and campus administrators (Exhibit 1, Page 35) and the Hearing Panel Procedures are set forth at pages 39 through 42 of the Policy. (Exhibit 1, Page 39-42.) These policies and procedures give only the outward appearance of fairness and impartiality. In fact, under its "policy" Occidental may hire an external adjudicator to serve as a member of the Hearing Panel or in lieu of the Hearing Panel altogether, or have the Vice President for Student Affairs and Dean of Students decide a case, or have the case decided by a designee of the Vice President for Student Affairs and Dean of Students, or Occidental "may substitute an entirely different method of adjudication at its discretion." (Exh. 1, page 35.) Webster's Dictionary definition of Policy states:

Policy: a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions. Merriam-Webster.com. Merriam-Webster, n.d. Web. 5 Jan. 2014.

<<http://www.merriam-webster.com/dictionary/policy>>.

A "policy" that Occidental may unilaterally modify at anytime is no policy.

In this case, Occidental refused to convene a Hearing Panel. The facts so clearly show affirmative consent, that Occidental could not rely on a three-member panel to hold the male student responsible. Occidental's failure to hold the typical three-member Hearing Panel is a procedural and substantive error that significantly affected the outcome.

E. Relevant Questions Not Asked in the Title IX Hearing

According to Occidental's Policy, all parties in the Title IX hearing have the opportunity to ask questions of witnesses through the Hearing Panel (Exh. 1, page 38) and are encouraged to prepare a list of written questions in advance. (Exh. 1, page 41.) Mr. Doe presented written questions for the witnesses at the hearing, as he was encouraged, but questions were not asked that go to the heart of Ms. Doe's complaint that "Ms. Doe recalled performing oral sex on Mr. Doe, but could not specifically recall having intercourse with Mr. Doe in his dormitory room" because "Ms. Doe alleges that she consumed multiple alcoholic beverages in the hours leading up to the sexual contact." (Exh. 2, page 1; see Exh 10.) Occidental did not confront Ms. Doe

concerning her selective memory when she remembers significant details about her actions that night but not during the "missing hour" when she went back to Mr. Doe's room to have sex. "That [missing] hour still freaks me," Ms. Doe told Occidental. (Exh. 4, page 40.) But Ms. Jane Doe's memory of the hour is not "missing," merely highly selective (and convenient). For instance, Ms. Doe remembered agreeing to come back down to Mr. Doe's room to have sex, remembered giving Mr. Doe her cell phone number so he could text her when to come back, remembered texting her friend back home "I'mgoingtohavesexnow," remembered being excited to sneak out of her room to get back to Mr. Doe's room, remembered throwing up, remembered getting a piece of gum, remembered asking Mr. Doe if he had a condom because she had not used any birth control, remembered that while Mr. Doe was out of the room someone knocked on the door and asked if she was ok, remembered responding three times to her friend that she was fine, remembered performing oral sex on Mr. Doe, remembered Mr. Doe saying that his roommate had just come in the room while they were having sexual intercourse. (Exh. 4, pages 33-36, 78.) Occidental ignores these facts in its findings because the relevant questions prepared by Mr. Doe weren't asked, contrary to what Occidental states in its findings letter. (See, Exh. 6, page 3, fn. 2; Exh. 10.)

Occidental's refusal and failure to pose the relevant questions to confront Ms. Jane Doe concerning the heart of her complaint are substantive and procedural errors that significantly affected the outcome of the hearing, and were performed in order to find the accused male responsible despite the facts of the case.

F. Discrepancy in Standard of Proof between LAPD Investigation and Occidental's Findings

The test in California for the government to hold a citizen to answer for a crime is "a strong suspicion," which is less than the "preponderance of the evidence" standard applied by Occidental's Policy. The LAPD District Attorney was unable to prosecute John Doe because the case did not even meet the lower standard of a strong suspicion that a crime had occurred. In an attempt to justify Occidental's improper Findings under a higher standard of proof, Occidental's Finding misstates the prosecutor's finding that there is no "strong suspicion" that a sexual assault occurred.

The school refused to allow presentation of the highly relevant result of the LAPD investigation (Exh. 3), and refused to acknowledge that law enforcement found insufficient evidence of a crime, even at the lower standard of proof. The college rejected the presentation of this relevant information, and misrepresented the standard of proof, in order to find the accused male responsible.

G. Findings Not Supported by the Evidence.

It would be difficult to imagine a better documented case of affirmative consent for sexual activity than this case, where the female student initiates the sexual contact, asks for a condom in writing, tells a friend she is going to have sex in writing, tells friends she is "fine" when she is having sex, willingly performs oral sex, is interrupted by a roommate while having sexual intercourse and continues, and then sends smiley faces to friends right after having sex. In fact, Occidental made findings that Ms. Jane Doe engaged in conduct and made statements that would indicate she consented to sexual intercourse with Mr. Doe (Exh. 6, page 8) and there was no force, threat of force, or coercion involved. (Exh. 6, page 6, fn. 5.)

These findings, which are supported by the evidence, should have concluded the hearing in Mr. Doe's favor. To obtain its desired result, however, Occidental made the further unsupported and erroneous findings that Ms. Jane Doe was incapacitated when she engaged in the conduct because Ms. Jane Doe "did not have the capacity to appreciate the nature and quality of the act." (Exh. 6, page 11.) As stated in Occidental's Sexual Assault Policy:

"Incapacitation: Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because s/he lacks conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) and/or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if s/he is asleep, unconscious, or otherwise unaware that sexual activity is occurring." (Exh. 1, page 13.)

As stated by Foundation for Individual Rights in Education (FIRE) in a letter to the college dated April 10, 2014:

The [text] messages demonstrate that Doe's accuser understood what she was planning to do (she told a friend she was going to have sex), with whom she was going to have sex (she asked Doe if he had a condom), when she would do it (she told a friend that she was going to have sex "now"), and where it would take place (her texts with Doe discussed how she would sneak out of her room to a specific, known place—Doe's room). While her texts did not discuss exactly why or how she would choose to have sex with Doe, the investigative report goes into some detail on pages 13–15 about the accuser's sexual advances towards Doe. The text messages and the accuser's concerted and deliberate effort to sneak out of her room for the purpose of having sex, described in text messages sent over 24 minutes, eliminate any possibility that she was physically helpless, asleep, unconscious, or unaware that sexual activity would occur. (Exh. 15, page 4)

Occidental also confuses appreciation of the nature and quality of the act with appreciation of the *consequences* of the act, and wrongly equates *intoxication* with *incapacitation*. Clearly both parties were drunk and they were both willing participants exercising bad judgment, but neither was incapacitated under the Policy definition. Occidental's reasoning is entirely circular and misstates its own definition of "Incapacitation". Occidental attempts impossible mental gymnastics in maintaining that while Ms. Doe was consciously performing voluntary acts that indicate she consented to sexual intercourse, she did not have the capacity to perform the very acts that she was in fact performing. (See, Exh. 1, page 13.)

The FIRE letter continues:

The possibility that one's judgment might be impaired or one's memories might fail while intoxicated does not strip students of the ability or right to make judgments about their activities while intoxicated, nor does it extinguish their ability to reason or make decisions. Occidental's written policy reflects that reality by recognizing that "[c]onsumption of alcohol or other drugs alone is insufficient to establish incapacitation." ... However, this is clearly not the standard that was applied in this case.

In fact, the weakened definition of incapacitation applied by Occidental in Doe's case is so faulty and unfair that, using the same applied definition and given the same evidence,

Doe's accuser would be guilty of sexually assaulting [John] Doe. There does not appear to be any dispute that Doe was intoxicated; the accounts of witnesses found on pages 13–15 of the investigative report make clear that both Doe and his accuser were intoxicated. Also, on page 10 of Mirkovich's report, Mirkovich points out that the accuser "subsequently recalled giving the Respondent [Doe] oral sex; however, the Respondent does not recall this act," indicating that Doe (like his accuser) experienced a "blackout" during the night.... Thus, based upon Occidental's findings under the standard it applied to [Mr.] Doe (which differs from its actual, written standard), Occidental should have no choice but to determine that Doe's accuser also committed sexual assault against [John] Doe.

The fact that the applied definition of incapacitation would make both parties guilty of sexually assaulting one another brings into stark relief the fundamental unfairness and lack of substantive due process present in Occidental's actions against [Mr.] Doe. (Exh. 15, page 6-7)

H. Influence of Blood Alcohol Levels and Stages of Acute Alcoholic Influence/Intoxication Not Considered

The level of Ms. Doe's blood alcohol over the course of the evening of September 7, 2013 and morning of September 8, 2013 is central to any determination of incapacitation due to her voluntary alcohol consumption. Occidental noted in its findings the evidence of Ms. Doe's height and weight and alcohol consumption that night, but makes no reference to any standard Blood Alcohol Content (BAC) Charts or the standard Stages of Acute Alcoholic Influence/Intoxication. (See Exh. 9.) Without reference to the standard BAC reference charts, Occidental's conclusions are speculative, if not intentionally false. Jane Doe had extensive, if 'fuzzy' memories of the events of the evening including details of the sexual encounter. Ms. Jane Doe also remembered going back to her own room afterwards, remembered meeting her friends again, remembered having her phone taken away, and remembered going to bed. She remembered that as soon as her roommate left her alone, Ms. Jane Doe got out of bed again because, "I didn't feel like going to sleep." (Exh. 4, page 37.) She remembered finding her phone and her key card, and putting on her shoes, walking down the stairs and across the grassy area known as "Stewie Beach" to Stewart-Cleland Hall. Ms. Jane Doe remembered going to the common room, seeing a male student whom she met the night before, and remembered sitting on his lap, talking and joking about a NASCAR program on the television. (Exh. 4, pages 37.)

Based on standard Blood Alcohol Level Charts and the standard Stages of Acute Alcoholic Influence/Intoxication, which were not available at the original hearing, Ms. Jane Doe's symptoms and behavior reflect that she was at the Euphoria or Excitement Stage of Alcoholic Influence and was not incapacitated.

I. Appeal Officer Assigned, and Withdrew

On January 8, 2014, Respondent designated its employee, Mr. Devon MacIver, Assistant Dean of Admissions, as Respondent's administrative appeals officer.

John Doe objected to Mr. MacIver's appointment as the appeals officer because Mr. MacIver had responsibilities for student life at Occidental, including the failure to address under-age drinking and hazing, and was a subordinate to the Occidental personnel responsible for the findings against John Doe. Occidental College rejected John Doe's objections and insisted that Mr. MacIver was a proper appeals officer.

Occidental College, however, later notified John Doe that as of January 31, 2014, Mr. Devon MacIver was no longer the appeals officer due to his workload at Occidental College, and that another Occidental employee Ms. Maria Hinton, Asst. Director for Housing Services, would serve as Respondent's administrative appeals officer.

The fact that the only male participant in the entire Title IX process withdrew is consistent with a prejudicial lack of gender diversity and is discriminatory.

The appeal response is purportedly prepared by, though not signed by Maria Hinton, the Asst. Director for Housing Services (Exh. 14, page 10). John Doe was denied his right to an independent appeals officer and John Doe's Appeal was rejected.

J. Petitioner's Counter Complaint of Sexual Misconduct by Jane Doe Was Dismissed Arbitrarily

In court filings, Occidental College stated that the college had taken no action concerning Jane Doe's behavior because John Doe never presented a formal complaint. On March 7, 2014, John Doe filed a complaint of sexual misconduct against Jane Doe as Occidental College required.

Ruth Jones, Occidental's Title IX Coordinator, interviewed John Doe on March 13, 2014 with consent of his counsel, however, on April 1, 2014, she wrote directly to John Doe without consent of counsel and advised him that she had secured an "external investigator" to investigate his Title IX complaint. The "external investigator" was an attorney and former O'Melveny & Meyers partner, Larry A. Walraven. She also told Mr. Doe that she had given attorney Walraven all the case documents and that Mr. Walraven was to interview Mr. Doe yet again in order to "to find facts which will allow [her] to determine if [Mr. Doe's] complaint may move forward through our process." It is difficult to imagine what possible additional facts, not already disclosed in the 183-page investigation report (Exh. 4), the December 7th hearing transcript, and the appeal and court records, could require Occidental's attorney to interview Mr. Doe in order to determine whether his report could move past the "initial assessment" of Occidental College's Title IX process.

Also, since Mr. Doe and Occidental College are opposing parties in pending litigation, Mr. Doe's counsel was concerned about Occidental's attempt to communicate directly with Mr. Doe without consent of counsel. California Rules of Professional Conduct Rule 2-100, Communication With a Represented Party, states that "a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer." See also American Bar Association Model Rules of Professional Conduct, Rule 4.2.

In order to resolve these concerns, Mr. Doe's attorney called Mr. Walraven in response to a letter Walraven had sent. Mr. Walraven told Mr. Doe's counsel that Walraven had indeed been given all the case documents, including December 7, 2013 hearing transcript, which Occidental College still refuses to give to John Doe in violation of FERPA. Following the conversation, John Doe's counsel wrote to Mr. Walraven with several questions (Exh. 16). In response Mr. Doe's counsel received a letter from attorney Jonathan Brenner of Sidley Austin, who represents Occidental College in the pending Superior Court litigation. Mr. Brenner told Mr. Doe's counsel that counsel was to have no further communication with Mr. Walraven, that attorney Walraven would communicate directly with John Doe. In addition, Mr. Doe's counsel was barred from representing his client during the process (Exh. 17). Under those circumstances, John Doe's counsel could not consent to his client being interviewed by Occidental's counsel as a condition of Occidental considering whether to move the student's report forward through Occidental College's Title IX process.

On June 24, 2014, Occidental's Title IX Coordinator rejected John Doe's complaint: "Based on your inconsistent assertions, the timing of your complaint, and your failure to cooperate in the initial assessment process, I have concluded that your complaint against [Jane Doe] does not state a violation of the College's Sexual Misconduct Policy and for that reason the College will not process your complaint." (Exh. 18)

Occidental engaged in a double standard by engaging attorneys to handle every aspect of the college's Title IX process and yet refusing Occidental students the right and ability to have legal representation during an important life-altering administrative proceeding. Occidental effectively made it impossible for further interviews to be conducted in regards to John Doe's complaint against Jane Doe. (Exh. 19)

Occidental already had a "well-developed record of events" that did not require a further interview by an external legal counsel just to determine whether Occidental should formally investigate.

Occidental College's double standard held only the male student, and not the female student, responsible their consensual sexual encounter.

K. Unethical Unlicensed Psychological Counseling of Jane Doe by Occidental Faculty

During the week period between the sexual encounter and the filing of the complaint, Jane Doe received extensive counseling by non-licensed Occidental faculty members Professor Danielle Dirks and Professor Movindri Reddy. Professor Dirks is a member of the Oxy Sexual Assault Coalition, and Professor Reddy is a co-signer of An Open Letter to the Faculty Members Who Helped to Pass the No Confidence Vote (<https://oxysexualassaultcoalition.wordpress.com/page/2/>). These staff members were not an impartial audience attempting to help Ms. Doe, but over the course of the week overcame her objections to file the complaint.

Instead of obtaining more than cursory counseling by the Emmons Health Center staff, Jane Doe spent many hours with Professor Reddy. According to her testimony: "She said that Professor

Jane Doe was pressured into accepting a victim mentality instead of accepting responsibility for her own actions, her poor personal judgment, and later her regret for her actions. She filed a complaint based on the counseling she received from Occidental College faculty instead of the facts and circumstances of the sexual encounter with John Doe.

The most recent date of discrimination occurred on June 24, 2014, when Occidental arbitrarily rejected John Doe's complaint of sexual assault against Jane Doe.

Not applicable.

YES, as described above.

Petitioner complied with the internal Title IX hearing, and filed an appeal on 2/12/2014 covering points A through H described in question 5. See Exhibit 11.

13

CONSENT FORM - FOR REVEALING NAME AND PERSONAL INFORMATION TO OTHERS

Your Name: [REDACTED]

Name of School or Other Institution That You Have Filed This Complaint Against:
Occidental College

This form asks whether the Office for Civil Rights (OCR) may share your name and other personal information when OCR decides that doing so will assist in investigating and resolving your complaint.

For example, to decide whether a school discriminated against a person, OCR often needs to reveal that person's name and other personal information to employees at that school to verify facts or get additional information. When OCR does that, OCR informs the employees that all forms of retaliation against that person and other individuals associated with the person are prohibited. OCR may also reveal the person's name and personal information during interviews with witnesses and consultations with experts.

If OCR is not allowed to reveal your name or personal information as described above, OCR may decide to close your complaint if OCR determines it is necessary to disclose your name or personal information in order to resolve whether the school discriminated against you.

EXCEPTION: If the complaint was filed on behalf of a specific person who is younger than 18 years old or a legally incompetent adult, this form must be signed by the parent or legal guardian of that person.

A. I give OCR my consent to reveal my identity (and that of my minor child/ward on whose behalf the complaint is filed) to others to further OCR's investigation and enforcement activities.

OR

B. I do not give OCR my consent to reveal my identity (and that of my minor child/ward on whose behalf the complaint is filed) to others. I understand that OCR may have to close my complaint.

[REDACTED]

I declare under penalty of perjury that it is true and correct that I am the person named above; and, if the complaint is filed on behalf of a minor child/ward, that I am that person's parent or legal guardian. This declaration only applies to the identity of the persons and does not extend to any of the claims filed in the complaint.



BLUEBIRD (888) 477-0700
OFFICE SUPPLIES www.bluebirdonline.com



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Plaintiff has requested written confirmation from the Office for Civil Rights of the dismissal of his Title IX complaint due to the pending Petition for Writ of Mandate in state court and will provide OCR's written confirmation as soon as it is available.

09/15/2015

09/15/2015

AG 151

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Superior Court of California
County of Los Angeles

APR 06 2015

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D-86 O'Donnell

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

JOHN DOE, an individual,
Petitioner,
v.
OCCIDENTAL COLLEGE,
Respondent.

Case No.

BS155004

PETITION FOR WRIT OF
ADMINISTRATIVE MANDATE;
VERIFICATION; EXHIBITS

Petitioner, a 22-year-old college student, petitions this court for a Writ of
Mandate under Code of Civ. Proc. § 1094.5 or alternatively, under Code Civ. Proc. §
1085, directed to Occidental College in order to redress his immediate expulsion for
an alleged instance of unwanted heavy petting of a former girlfriend, age 22, at an
off-campus, private house party in San Diego, California, and for the improper
findings of "sexual assault" and "sexual misconduct" under the Occidental College
Sexual Misconduct Policy (Exhibit 1) through the college's private Title IX
investigation and adjudication process.

By this verified Petition, Petitioner further alleges as follows:

04/06/2015
09/15/2015

CIT/CLERK: BS155004
LEA/DEF#: _____
RECEIVED: CCH24860027
DATE FILED: 04/06/15 10:49 AM
FILING: \$435.00
FEE: \$0.00
TOTAL: \$435.00

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04/06/2015 09/15/2015

1 mandamus directed to any inferior tribunal, corporation, board, or person. Cal.
2 Const., art. VI, § 10; see Code Civ. Proc. § 1084 ("mandamus" synonymous with
3 "mandate"); Code Civ. Proc. § 1085.

4 6. Petitioner, an aggrieved college student, must exhaust judicial remedies
5 through this petition for writ of mandate following the private university's appeal
6 process, before bringing an action in state court for damages and other relief for
7 denial of rights by Occidental College in violation of the Unruh Civil Rights Act, Civ.
8 Code § 52, for breach of contract, libel per se, breach of good faith and fair dealing,
9 and other torts:

10 "The doctrine of exhaustion of judicial remedies precludes an action that
11 challenges the result of a quasi-judicial proceeding unless the plaintiff first
12 challenges the decision through a petition for writ of mandamus. (*Johnson v.*
13 *City of Loma Linda* (2000) 24 Cal.4th 61, 70.) Administrative mandamus is
14 available for review of "any final administrative order or decision made as the
15 result of a proceeding in which by law a hearing is required to be given,
16 evidence required to be taken, and discretion in the determination of facts is
vested in the inferior tribunal, corporation, board, or officer" (Code Civ.
Proc., § 1094.5, subd. (a).)

17 "The remedy of administrative mandamus is not limited to public
18 agencies; rather it applies to private organizations that provide for a formal
19 evidentiary hearing. (*Pomona College v. Superior Court* (1996) 45
20 Cal.App.4th 1716, 1722–1723 [§ 1094.5 applicable to private universities].)
Moreover, failure to exhaust administrative remedies is a proper basis for
21 demurrer. (*Id.* at pp. 1730–1731.)"
22 *Gupta v. Stanford University* (Cal. App. 6th Dist. 2004) 124 Cal. App. 4th
23 407, 411. (Code Civ. Proc. § 1094.5 applied to the case of a student who was
subject to university disciplinary proceedings.)¹

24 7. The Superior Court for the County of Los Angeles, the county where the
25 Respondent is located, is the proper court for the hearing of this action. Code Civ.

26
27 ¹ Stanford University has recently taken the position that Code Civ. Proc. § 1094.5
28 does not apply to Title IX proceedings because, *inter alia*, neither Title IX nor
U.S. Dept. of Education guidelines require a hearing. *Doe v. Stanford University*, Santa
Clara Superior Court Case No. 115CV275851 (demurrer filed February 20, 2015).

1 Proc. § 395. A petition for writ of mandate is to be heard in Departments 82, 85, or
2 86 of the Los Angeles Superior Court. Los Angeles Superior Court Local Rules,
3 Rule 2.7, Rule 3.5.

4
5 PROCEDURAL HISTORY AND BACKGROUND

6 8. This case arises amidst a growing national controversy about the
7 responses of colleges and universities to alleged sexual violence on college and
8 university campuses.²

9 9. The Federal Government, through the U.S. Department of Education,
10 has been pressuring colleges and universities to aggressively pursue investigations of
11 sexual violence on campuses under Title IX, the federal civil rights law that prohibits
12 discrimination in education on the basis of gender, and for violations of the Clery Act,
13 which requires all colleges and universities that participate in federal financial aid
14 programs to keep and disclose information about crime on and near their respective
15 campuses. Compliance with reporting sexual violence is monitored by the U.S.
16 Department of Education, which can impose civil penalties for each infraction and
17 can suspend institutions from participating in federal student financial aid programs.
18 The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics
19 Act or Clery Act is a federal statute codified at 20 U.S.C. § 1092(f), with
20 implementing regulations in the U.S. Code of Federal Regulations at 34 C.F.R.
21 668.46.

22 10. On April 4, 2011, the Office for Civil Rights ("OCR") in the U.S.
23 Department of Education issued a Dear Colleague Letter on student-on-student
24 sexual harassment and sexual violence. Exhibit 2. "Sexual violence" refers to
25 physical sexual acts perpetrated against a person's will or where a person is incapable
26

27 ² Richard Dormont, *Occidental Justice*, (April 2015) Esquire; Teresa Watanabe,
28 *More College Men Are Fighting Back Against Sexual Misconduct Cases* (June 7, 2014)
Los Angeles Times.

1 of giving consent, including rape, sexual assault, sexual battery, sexual abuse, and
2 sexual coercion. All such acts of sexual violence are forms of sex discrimination
3 prohibited by Title IX. Exhibit 2, p. 1.

4 11. Under Title IX, federally funded schools, such as Occidental College,
5 must ensure that students are not denied or limited in their ability to participate in or
6 benefit from the school's educational programs or activities on the basis of sex. A
7 school violates a student's rights under Title IX regarding student-on-student sexual
8 violence when the following conditions are met: (1) the alleged conduct is sufficiently
9 serious to limit or deny a student's ability to participate in or benefit from the
10 school's educational program, i.e. creates a hostile environment; and (2) the school,
11 upon notice, fails to take prompt and effective steps reasonably calculated to end the
12 sexual violence, eliminate the hostile environment, prevent its recurrence, and, as
13 appropriate, remedy its effects. See Exhibit 3, April 29, 2014, OCR Questions and
14 Answers on Title IX and Sexual Violence, sections A-1 and A-2. Exhibit 3, p. 8.

15 12. The Dear Colleague Letter also indicated that, in order to comply with
16 Title IX, colleges and universities must have transparent, prompt procedures to
17 investigate and resolve complaints of sexual misconduct. Most notably, the Dear
18 Colleague Letter required schools to adopt a relatively low burden of proof — "more
19 likely than not"— in cases involving sexual misconduct, including assault, and
20 suggested that schools should focus more on victim advocacy. Exhibit 2, p. 11.

21 13. Respondent Occidental College is one of at least 74 colleges and
22 universities under federal scrutiny for alleged indifference to "sexual violence" on
23 campus in violation of Title IX as of May 2014.³

24 14. In April 2013 Occidental College professors Caroline Heldman and
25
26
27

28 ³ U.S. Department of Education Releases List of Higher Education Institutions with Open
Title IX Sexual Violence Investigations, (May 1, 2014) U.S. Dept. Of Education, press@ed.gov.

04/06/2015
09/15/2015

1 Danielle Dirks⁴, in association with 36 alleged victims of rape or sexual assault at
2 Occidental, filed a 250-page complaint with the U.S. Department of Education's
3 Office of Civil Rights alleging that Occidental College maintains a hostile
4 environment for sexual assault victims and their advocates and violated Title IX laws
5 against sexual discrimination and the Clery Act.⁵

6 15. In September 2013, Occidental College settled with at least ten
7 of the complainants under an agreement negotiated by attorney Gloria Allred. The
8 ten female complainants received cash payments from Occidental College and agreed
9 not to participate in the Occidental Sexual Assault Coalition. Asst. Professor
10 Danielle Dirks criticized attorney Gloria Allred's negotiated settlement stating that
11 requiring "the women to remain silent and not to participate in campus activism could
12 have a chilling effect at Occidental."⁶

13 16. In January 2014, President Barack Obama, who attended Occidental
14 College, put further pressure on colleges and universities to prevent and police sexual
15 assaults on their campuses by creating a task force of senior administration officials,
16 including the attorney general and the secretaries of the Education, Health and
17
18
19

20 ⁴ In February 2012, Occidental College Associate Professor of Politics Caroline
21 Heldman and Assistant Professor of Sociology Danielle Dirks founded the Occidental
22 Sexual Assault Coalition, a campus advocacy group that has pushed the college to address
23 what it calls the "rape culture" on campus and with a "mission is to raise awareness of the
24 sexual assault epidemic." (<http://oxysexualassaultcoalition.wordpress.com/>) Asst. Prof.
25 Danielle Dirks told a female student in another Title IX case that "[the male student] fits
26 the profile of other rapists on campus in that he had a high GPA in high school, was his
27 class valedictorian, was on [a sports] team, and was 'from a good family.'" See *Doe v.*
28 *Occidental College*, LASC Case No. BS147275, petition pending in Dept 82.

⁵ Tyler Kingkade, *Occidental College Sexual Assault Response Subject Of Federal*
Complaints (04/19/2013, Updated: 12/03/2013), www.huffingtonpost.com;

⁶ Jon Wiener, *Rape Settlement at Occidental College: Victims Barred from Campus*
Activism (September 19, 2013) The Nation.

Human Services and Interior Departments, to coordinate federal enforcement efforts.⁷

17. In February 2014, Catherine E. Lhamon, the Assistant Secretary of Education who heads the department's Office for Civil Rights, told college officials attending a conference at the University of Virginia that schools need to make "radical" change. According to the Chronicle of Higher Education, college presidents suggested afterward that there were "crisp marching orders from Washington."⁸

18. The Federal government has created a significant amount of pressure on colleges and universities to treat all those accused of sexual misconduct with a presumption of guilt. The Chronicle of Higher Education noted that "Colleges face increasing pressure from "survivors" and the federal government to improve the campus climate."⁹ In the same article, the Chronicle noted that different standards were applied to men and women: "Under current interpretations of colleges' legal responsibilities, if a female student alleges sexual assault by a male student after heavy drinking, he may be suspended or expelled, even if she appeared to be a willing participant and never said no. That is because in heterosexual cases, colleges typically see the male student as the one physically able to initiate sex, and therefore responsible for gaining the woman's consent." Title IX sexual misconduct personnel are under pressure to act more as advocates for women and focus on validating the initial allegations of sexual misconduct, rather than arriving at a fair and impartial determination of the facts.

19. After years of criticism for being too lax, the pendulum has now swung far in the other direction with Occidental College discriminating against male students

⁷ Jackie Calmes, *Obama Seeks to Raise Awareness of Rape on Campus* (January 22, 2014) New York Times; Jason Felch and Larry Gordon, *Federal Task Force to Target Campus Sexual Assaults* (January 22, 2014) Los Angeles Times.

⁸ *Colleges Are Reminded of Federal Eye on Handling of Sexual-Assault Cases* (February 11, 2014) Chronicle of Higher Education.

⁹ *Presumed Guilty: College men accused of rape say the scales are tipped against them* (September 1, 2014) Chronicle of Higher Education.

1 in order avoid federal penalties and settlement pay-outs for Occidental College's
2 failure to address the so-called "rape culture" and "sexual assault epidemic" on
3 campus.¹⁰

4 20. Petitioner is unable to present any documents from the Occidental
5 College Title IX process with his Petition because Occidental College does not allow
6 Petitioner to possess copies of the investigation reports, witness statements, nor any
7 of the evidence against him. Sharing of any documents with third parties, including
8 filing with the California Superior Court, would subject Petitioner to further discipline
9 by Occidental College.

10
11 House Party in San Diego, 3 a.m. Sunday Morning, October 12, 2014

12 21. Jane Roe and John Doe, who had been good friends and classmates for
13 the past three years, had consensual sexual intercourse six to eight times, at least
14 once when, according to Jane Roe, she was an 8 out of 10 on a ten-point scale for
15 intoxication. The casual "hook-up" relationship fizzled out about a month before the
16 San Diego party. Jane Roe does not object to the prior sexual intercourse.

17 22. On the weekend of October 10, 2014, thirty Occidental College students
18 and friends rented a large luxury house San Diego for a private, off-campus party
19 called "Cabo San Diego 2014." The San Diego house party was not an education
20 program nor school activity and occurred 128 miles or so off campus.¹¹

21 23. Around 3:00 a.m. Sunday morning Jane Roe and John Doe lay down
22 together to sleep on a sectional couch in the living room, with other students nearby.

23
24 ¹⁰ U.S. Dept. of Education data shows that Occidental College's reported rate of
25 sexual misconduct is *16 times higher* than the next ten California schools combined.
<http://ope.ed.gov/security/>

26 ¹¹ OCR states that regardless of where the conduct occurred, the school must
27 determine whether "the conduct occurred in the context of an education program or activity
28 or had continuing effects on campus or in an off-campus education program or activity."
Exhibit 3. In this case, the house party was not a school activity not education program,
nor was there any hostile environment since John Doe was no longer on campus.

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1 John Doe and Jane Roe were both inebriated and started making out. A friend of Ms.
2 Roe's, who was lying on another section of the couch, heard Jane Roe moaning and
3 then saw her get up from the couch and walk towards the bathroom and then return to
4 lie back down next to John Doe. When Jane Roe returned to the couch, John Doe
5 started to rub her buttocks and between her legs.

6 24. Jane Roe said she was aware of being kissed and touched, and thought
7 "If I just lay here he will stop," which is what happened. When Jane Roe failed to
8 respond, John Doe stopped touching her and left the sectional couch to go sleep
9 elsewhere.

10 25. The next morning Jane Roe told friends that John Doe had sexually
11 assaulted her. A week later, on October 20, 2014, Jane Roe filed a formal complaint
12 with Occidental College's Title IX office. After the Title IX report was filed, John
13 Doe voluntarily withdrew from campus life.

14 26. Following the Title IX campus hearing on January 30, 2015, John Doe
15 was found responsible by attorney Marilou Mirkovich¹² for "sexual assault" and
16 "non-consensual sexual contact."

17 27. On February 5, 2015 John Doe was ordered expelled immediately by
18 Cherie Scricca, Occidental College Title IX Hearing Coordinator.¹³

19 _____
20 ¹² Petitioner objected to Occidental College's attorney Marilou Mirkovich serving as
21 adjudicator in his case. Previous Title IX decisions by Ms. Mirkovich are the subject of at
22 least two other Occidental College Title IX cases that are pending court review. See *Doe v.*
23 *Occidental College*, LASC Case No. BS147275 pending in Dept 82, and *Doe v. Occidental*
24 *College*, LASC Case No. BS150532 pending in Dept 85. In addition, Ms. Mirkovich was
25 hired by the University of Southern California to act as a Title IX investigator in another
26 case that is also on appeal to the Los Angeles Superior Court. See *John Doe v. University*
27 *of Southern California*, LASC Case No. BS152306.

28 ¹³ The immediate expulsion sanction is inconsistent with the spirit and purpose of
Title IX, which is to prohibit discrimination on the basis of sex in federally funded
education programs and activities. The expulsion sanction is not reasonably calculated to
end sexual violence, eliminate a hostile environment, prevent the recurrence of sexual
violence, and remedy its effects. Lesser sanctions would accommodate the female student's
concerns and yet not deny the male student the ability to participate in or benefit from

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1 28. Petitioner appealed the findings and sanctions to Occidental College's
2 designated Appeals Officer, Occidental College employee Timothy Chang.

3 29. On March 5, 2015, Petitioner was notified that Mr. Chang had denied
4 his appeal.

5
6 Retaliation Against Petitioner for Filing Administrative Appeal.

7 30. After John Doe submitted his appeal to Occidental College, Jane Roe's
8 best friend texted John Doe and scolded him for appealing the Title IX decision,
9 writing that his appeal was causing Jane Roe a lot of stress. John Doe responded
10 that, though he sympathized with Jane Roe, he would not withdraw his appeal.

11 31. Jane Roe then filed a Domestic Violence Temporary Restraining Order
12 against John Doe in Los Angeles Superior Court, with the assistance and advice of
13 Occidental College personnel. Jane Roe's TRO application placed confidential
14 information into the public record, including John Doe's name, address, and private,
15 embarrassing, personal information that had been presented to Occidental College in
16 confidence. Jane Roe was never in a domestic relationship with John Doe and there
17 was no justification for such an order.

18 32. Prior to the TRO hearing, an attorney with the California Women's Law
19 Center contacted Petitioner's counsel to resolve the domestic violence restraining
20 order matter. Ultimately Jane Roe did not appear in court for the domestic violence
21 hearing and her request for a restraining order was dismissed.

22 33. Thereafter Occidental College contacted the California Women's Law
23 Center to complain that the woman attorney who assisted Jane Roe was "not feminist
24 enough" and objected to whatever advice the woman attorney had given to resolve
25 the TRO. In response, the California Women's Law Center fired the woman
26 attorney.

27 34. Pursuant to Occidental College Sexual Misconduct Policy, John Doe
28 _____
educational programs and complete his degree at Occidental College or elsewhere.

1 reported the retention and breach of confidentiality to Occidental College's Title IX
2 Office, which is conducting an initial review of the complaint.

3
4 OCCIDENTAL COLLEGE'S ACTIONS AND DECISION ARE INVALID

5 35. On information and belief, Respondent's actions, sanctions, and decision
6 are invalid under Code Civ. Proc. § 1094.5, and alternatively Code Civ. Proc. § 1085,
7 for the following reasons:

- 8 (1) Respondent failed to grant Petitioner a fair hearing;
9 (2) Respondent committed a prejudicial abuse of discretion, in
10 that Respondent failed to proceed in the manner required
11 by law;
12 (3) Respondent's findings are not supported by the evidence;
13 and
14 (4) Respondent's decision is not supported by the findings.

15 36. Respondent Occidental College's actions and decision deprive Petitioner
16 of fundamental vested rights, therefore, the reviewing court must exercise it's
17 independent judgment to reweigh the evidence pursuant to Code Civ. Proc. §
18 1094.5(c).

19
20 No Presumption of Correctness.

21 37. Respondent Occidental College is a private corporation and not an
22 administrative or public agency entitled to the "official duty presumption" of
23 correctness under Code Civ. Proc. § 1094.5. The notion that an administrative
24 decision is be presumed correct is based on the "official duty presumption" in
25 California Evidence Code § 664, which states, "It is presumed that official duty has
26 been regularly performed."

27 "The findings of a board where formal hearings are held should
28 and do come before the courts with a strong presumption in their favor
based primarily on the [rebuttable] presumption contained in section

1 1963, sub section 15, of the Code of Civil Procedure [currently
2 Evidence Code section 664] 'That official duty has been regularly
3 performed.' Obviously, considerable weight should be given to the
4 findings of experienced administrative bodies made after a full and
5 formal hearing, especially in cases involving technical and scientific
6 evidence." *Fukuda v. City of Angels* (1999) 20 Cal. 4th 805, 812 citing
7 *Drummey v. State Board of Funeral Directors & Embalmers* (1939) 13
8 Cal. 2d 75, 86.

9 Although Code Civ. Proc. § 1094.5 has been made applicable to faculty tenure
10 and student disciplinary matters conducted by private colleges and universities,¹⁴ the
11 "official duty presumption" set forth in Evid. Code § 664 has not been made
12 applicable to such private entities, or private parties. Respondent Occidental College
13 serves it's own financial and institutional interests, not the interests of the public or
14 People of the State of California and is not entitled to the "official duty presumption"
15 in California Evid. Code § 664.

16 *Doctrine of Judicial Non-Intervention Does Not Apply.*

17 38. The doctrine of judicial nonintervention into the academic affairs of
18 schools does not apply in instances of non-academic affairs, such as this Title IX
19 investigation and hearing process for alleged violation of the Occidental College
20 sexual misconduct policy. See *Banks v. Dominican College* (Cal. App. 1st Dist.
21 1995) 35 Cal. App. 4th 1545; *Paulsen v. Golden Gate University* (1979) 25 Cal. 3d
22 803.

23 39. On information and belief, relevant evidence is available which was
24 improperly excluded or unavailable at the hearing. Petitioner will seek leave to offer
25 said evidence before the reviewing court at the hearing on this Petition.

26 40. Petitioner has exhausted all administrative remedies.

27
28 ¹⁴ *Pomona College v. Superior Court* (1996) 45 Cal.App.4th 1716, 1722- 1723; *Gupta v. Stanford University* (Cal. App. 6th Dist. 2004) 124 Cal. App. 4th 407.

1 41. Petitioner has no plain, speedy and adequate remedy in the ordinary
2 course of law.

3 42. Petitioner is obligated to pay an attorney for legal services to prosecute
4 this action. Petitioner is entitled to recover attorney's fees as provided in Gov. Code §
5 800 if Petitioner prevails in the within action, on the ground that, on information and
6 belief, Respondent's decision was the result of arbitrary and capricious conduct.

7 43. Petitioner will suffer irreparable harm if this matter is not stayed pending
8 judicial review, because even if the Court subsequently rules in his favor, will have
9 irreparably lost over a year of his education, be unable to continue his education at
10 another institution, and will have suffered public humiliation and disgrace from an
11 improper determination of sexual assault and sexual misconduct.

12 44. Each of the exhibits identified in the following paragraphs are true and
13 correct copies of the documents described.

14 45. A true and correct copy of the Occidental College Sexual Misconduct
15 Policy is attached as Exhibit 1 and made a part of this petition.

16 46. A true and correct copy of the April 4, 2011 Dear Colleague Letter
17 issued by the Office for Civil Rights, U.S. Department of Education is attached as
18 Exhibit 2 and made a part of this petition.

19 47. A true and correct copy of the April 29, 2014, OCR Questions and
20 Answers on Title IX and Sexual Violence, issued by the Office for Civil Rights, U.S.
21 Department of Education is attached as Exhibit 3 and made a part of this petition.

22 48. The administrative record of Respondent's disciplinary process against
23 Petitioner will be submitted and made a part of this petition as soon as Respondent
24 provides the administrative record.

25
26 WHEREFORE, Petitioner prays the court for judgment as follows:

27 1. For an alternative writ of mandate directing respondent to set aside the
28 findings and sanctions in the Summery Administrative Review, or to show cause why

1 a peremptory writ of mandate to the same effect should not be issued;

2 2. For a peremptory writ of mandate directing respondent to set aside its
3 findings and sanctions in the Summery Administrative Review;

4 3. For a stay of Respondent's administrative finding and sanctions under
5 Code Civ. Pro. § 1094.5(g);

6 4. For reasonable attorney's fees and litigation expenses, in addition to any
7 other relief granted or costs awarded;

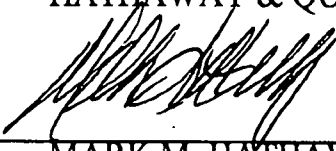
8 5. For all costs of suit incurred in this proceeding; and

9 6. For such other and further relief as the court deems proper.

10
11 WERKSMAN JACKSON
HATHAWAY & QUINN LLP

12
13 Dated: April 4, 2015

By:


14 MARK M. HATHAWAY
Attorneys for Petitioner

04 / 06 / 2015

09 / 15 / 2015

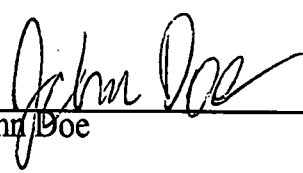
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VERIFICATION

I, John Doe, am the petitioner in this action. I have read the foregoing petition and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California and of the United States that the foregoing is true and correct. Signed on the date below at Los Angeles, California.

Date: April 4, 2015



John Doe

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Exhibit 1

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Policies & Procedures

Members of the college community, guests and visitors have the right to be free from sexual violence.

Occidental College Sexual Misconduct Policy

Applies to sexual and gender-based harassment, sexual violence, stalking and intimate partner violence

1. **Introduction: Institutional Values and Community Expectations**
Sets forth the College's values and expectations for community members
2. **Scope of Policy**
Outlines the College's jurisdiction to take action
3. **Notice of Non-Discrimination**
Outlines protected classes and protections under Title IX
4. **Privacy v. Confidentiality**
Delineates the difference between confidential resources and those that will maintain an individual's privacy
5. **Prohibited Conduct and Definitions**
Provides specific definitions for sexual harassment and other forms of prohibited conduct, consent, force and incapacitation; also outlines policy on prohibited relationships by persons in authority
6. **Resources**
Outlines on and off campus resources, including confidential resources
7. **Reporting**
Provides emergency, campus, anonymous and law enforcement reporting options, timeframes, and provisions for amnesty, retaliation and mandatory reporting of suspected child abuse
8. **Interim Measures, Remedies and Accommodations**
Sets forth the range of interim protections available
9. **Options for Resolution**

Provides an overview of how the College will investigate and resolve a report under this policy, including an initial Title IX assessment, informal resolution, and formal resolution.

10. **Appendix A: Resolving Complaints Against a Student**

Provides specific procedures for resolution of a complaint against a student

I. Introduction: Institutional Values and Community Expectations

Occidental College is committed to providing a non-discriminatory and harassment-free educational, living and working environment for all members of the Occidental community, including students, faculty, administrators, staff, and visitors. This policy prohibits all forms of sexual or gender-based harassment, discrimination or misconduct, including sexual violence, sexual assault, stalking and intimate partner violence. Misconduct of this nature is contrary to Occidental's institutional values and prohibited by state and federal law.

Occidental encourages the prompt reporting of any incident of sexual or gender-based misconduct to the College and to local law enforcement or civil rights enforcement agencies. Upon receipt of a report, the College will take prompt and effective action by: providing interim remedies and support for individuals who make a report or seek assistance under this policy (referred to as the "Complainant"); conducting a review of the conduct under Title IX of the Education Amendments of 1972; addressing the safety of individuals and the campus community; and as warranted, pursuing resolution through informal measures or formal disciplinary action against the accused individual (referred to in this policy as the "Respondent"). The policy provides specific procedures for investigation and resolution based on the role of Respondent (student, staff or faculty).

All Occidental community members are strongly encouraged to report information regarding any incident of sexual harassment, sexual violence, stalking or intimate partner violence directly to the Title IX Coordinator or a member of the Title IX team. The College cannot take appropriate action unless an incident of sexual harassment, sexual violence, stalking or intimate partner violence is reported to a "responsible employee" of the College.

All members of the Occidental community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The College will not tolerate sexual harassment, sexual violence, stalking and intimate partner violence. Any individual who is found to have violated this policy may face disciplinary sanctions up to and including expulsion or termination of employment.

This policy has been developed to reaffirm Occidental's institutional values, to define community expectations, to provide recourse for those individuals whose rights have been violated, and to provide for fair and equitable procedures for determining when this policy has been violated. The College is committed to fostering a climate free from sexual harassment, sexual violence, and

intimate partner violence through clear and effective policies, a coordinated education and prevention program, and prompt and equitable procedures for resolution of complaints.

Retaliation against any person or group who makes a complaint, cooperates with an investigation, or participates in a grievance procedure is a violation of College policy. Retaliation should be reported promptly to the Title IX Coordinator for investigation, which may result in disciplinary action independent of any sanction or interim measures imposed in response to the underlying allegations of discrimination and/or harassment.

The College encourages all members of our community to participate in the process of creating a safe, welcoming and respectful environment on campus. In particular, the College expects that all Occidental community members will take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Taking action may include direct intervention when safe to do so, enlisting the assistance of friends, contacting law enforcement, or seeking assistance from a person in authority. Community members who chose to exercise this positive moral obligation will be supported by the College and protected from retaliation.

II. Scope of Policy

The policy applies to all Occidental community members, including students, faculty, administrators, staff, volunteers, vendors, independent contractors, visitors and any individuals regularly or temporarily employed, studying, living, visiting, conducting business or having any official capacity with the College or on College property.

This policy is intended to protect and guide individuals who have been affected by sexual harassment, sexual violence, stalking or intimate partner violence, whether as a Complainant, a Respondent, or a third party, and to provide fair and equitable procedures for investigation and resolution of reports.

When used in this policy, Complainant refers to the individual who identifies him/herself as being a victim or survivor of sexual harassment, sexual violence, stalking or intimate partner violence. A Respondent refers to the individual who has been accused of prohibited conduct under this policy. A third party refers to any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else.

All Occidental College community members are required to follow College policies and local, state, and federal law. This policy applies to conduct occurring on Occidental College property or at College-sanctioned events or programs that take place off campus, including study abroad and internship programs. In situations in which both the Complainant and Respondent are members of the Occidental College community, this policy will apply regardless of the location of the incident. In particular, off campus conduct that is likely to have a substantial adverse effect on, or poses a threat of danger to, any member of the Occidental College community or Occidental College is covered

under this policy.

A Complainant is encouraged to report misconduct regardless of where the incident occurred, or who committed it. Even if the College does not have jurisdiction over the Respondent, the College will still take prompt action to provide for the safety and well-being of the Complainant and the broader campus community.

III. Notice of Non-Discrimination

The College does not permit discrimination or harassment in its programs and activities on the basis of race, color, national origin, ancestry, sex, gender, gender identification, sexual orientation, disability, age, religion, physical and/or mental disability, medical condition, veteran status, marital status or any other characteristic protected by institutional policy or state, local, or federal law.

This policy addresses all forms of sexual discrimination, including sexual harassment, sexual violence and intimate partner violence. Occidental College does not discriminate on the basis of sex in its educational, extracurricular, athletic, or other programs or in the context of employment. Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable statutes.

This policy prohibits sexual harassment, sexual violence, stalking and intimate partner violence against Occidental community members of any gender, gender identity, gender expression or sexual orientation. This policy also prohibits gender-based harassment that does not involve conduct of a sexual nature.

The College, as an educational community, will respond promptly and equitably to reports of sexual harassment, sexual violence, stalking and intimate partner violence in order to eliminate the harassment, prevent its recurrence, and address its effects on any individual or the community.

The College has designated Ruth Jones to serve as the College's Title IX Coordinator. The Title IX Coordinator oversees the College's centralized review, investigation, and resolution of reports of sexual harassment, sexual violence and intimate partner violence. The Coordinator also oversees the College's overall compliance with Title IX.

The Title IX Coordinator is:

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- Responsible for oversight of the investigation and resolution of all reports of sexual harassment, sexual violence and intimate partner violence involving students, staff, administrators, faculty, vendors, and visitors;
- Assisted by Deputy Title IX Coordinators, and by a Title IX team as detailed in this policy. These Deputy Title IX Coordinators have a shared responsibility for supporting the Title IX Coordinator and are accessible to any member of the community for consultation and guidance;
- Knowledgeable and trained in College policies and procedures and relevant state and federal laws;
- Available to advise any individual, including a Complainant, a Respondent or a third party, about the courses of action available at the College, both informally and formally, and in the community;
- Available to provide assistance to any College employee regarding how to respond appropriately to a report of sexual harassment, sexual violence, stalking or intimate partner violence;
- Responsible for monitoring full compliance with all procedural requirements and time frames outlined in this policy; and
- Responsible for training, prevention and education efforts and periodic reviews of climate and culture.

The Title IX Coordinator is supported by the Title IX team. Members of this interdepartmental team include the Title IX Coordinator, Title IX Deputy Coordinators, and the Chief of Campus Safety. In addition, based on the role of the Complainant and the Respondent, the members of the team could include the Vice President for Academic Affairs and Dean of the College and a representative from the Dean of Students Office and/or Human Resources. Composition of the team will be limited to a small circle of individuals who "need to know" in order to implement procedures under this policy.

Inquiries or complaints concerning the application of Title IX may be referred to the College's Title IX Coordinator, Deputy Title IX Coordinators and/or to the U.S. Department of Education's Office for Civil Rights:

Ruth Jones
Title IX Coordinator

(323) 259-1338
Trailer D, Office 2
ruthjones@oxy.edu
Web: <http://www.oxy.edu/office-title-ix>

Office for Civil Rights
Beale Street, Suite 7200
San Francisco, CA

(415) 486-5555
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr50>

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Jacalyn Feigelman
Deputy Title IX Coordinator

(323) 259-2614
jacalynf@oxy.edu
Web: <http://www.oxy.edu/office-title-ix>

Alison Haehnel
Deputy Title IX Coordinator (Athletics)

(323) 259-2632
haehnel@oxy.edu
Web: <http://www.oxy.edu/office-title-ix>

Inquiries involving employees may also be referred to:

**California Department of Fair Employment
and Housing**

1055 West 7th Street, Ste 1400
Los Angeles, CA 90017
(213) 439-6799

**United States Equal Employment
Opportunity Commission**

Roybal Federal Building
255 East Temple St., 4th Floor
Los Angeles, CA 90012
1-800-699-4000

IV. Privacy vs. Confidentiality

The College is committed to protecting the privacy of all individuals involved in a report of sexual harassment, sexual violence, stalking or intimate partner violence. All College employees who are involved in the College's Title IX response, including the Title IX Coordinator, investigators, and hearing panel members, receive specific instruction about respecting and safeguarding private information. Throughout the process, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report.

Privacy and confidentiality have distinct meanings under this policy.

Privacy: Privacy generally means that information related to a report of misconduct will only be shared with a limited circle of individuals. The use of this information is limited to those College employees who "need to know" in order to assist in the active review, investigation or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

Confidentiality: Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These campus and community professionals include mental health providers, ordained clergy, rape crisis counselors and attorneys, all of whom have legally protected confidentiality. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others.

An individual who seeks completely confidential assistance may do so by speaking with professionals who have a legally protected confidentiality. On campus, Confidential Resources available to students include psychological counselors in the Emmons Student Wellness Center, ordained clergy in the Office for Religious & Spiritual Life, and the Survivor Advocate. Employees may access confidential assistance through the Employee Assistance Program. Information shared with these resources will remain confidential and will not be shared with the College or anyone else without express permission of the individual seeking services. When a report involves suspected abuse of a minor under the age of 18, these confidential resources are required by state law to notify child protective services and/or local law enforcement.

An individual may also seek assistance from a medical provider. In general, the disclosure of private information contained in medical records is protected by the Health Insurance Portability and Accountability Act (HIPAA). In the context of sexual violence, however, medical providers in California are required to notify law enforcement if a patient tells personnel s/he has experienced sexual assault. The patient has the right to request that a survivor advocate be present and to request that law enforcement not pursue a criminal charge. Neither campus nor community medical providers will notify the College of the report.

Responsible Employees: In general, most College employees do not have legally protected confidentiality. Under Title IX, a College is required to take immediate and corrective action if a "responsible employee" knew or, in the exercise of reasonable care, should have known about sexual or gender-based harassment that creates a hostile environment. A "responsible employee" includes any employee who:

- Has the authority to take action to redress the harassment;
- Has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or
- A student could reasonably believe has the authority or responsibility to take action.

Using this lens, employees with supervisory and leadership responsibilities on campus are considered "responsible employees." This includes, for example, faculty, coaches, administrators, Resident Advisors and other student employees with a responsibility for student welfare.

The College requires that all "responsible employees" share a report of misconduct with the Title IX Coordinator or a member of the Title IX team.

The Title IX team, under the guidance of the Title IX Coordinator, will conduct an initial assessment of the conduct, the Complainant's expressed preferences, if any, as to course of action, and the necessity for any interim remedies or accommodations to protect the safety of the Complainant or the community.

Request for Confidentiality: Where a Complainant requests that his/her name or other identifiable information not be shared with the Respondent or that no formal action be taken, the College will balance this request with its dual obligation to provide a safe and non-discriminatory environment for

all College community members and to remain true to principles of fundamental fairness that require notice and an opportunity to respond before action is taken against a Respondent. In making this determination, the College may consider the seriousness of the conduct, the respective ages and roles of the Complainant and Respondent, whether there have been other complaints or reports of harassment or misconduct against the Respondent, and the rights of the Respondent to receive notice and relevant information before disciplinary action is sought.

The College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. Where the College is unable to take action consistent with the request of the Complainant, the Title IX Coordinator or a member of the Title IX team will inform the Complainant about the chosen course of action, which may include the College seeking disciplinary action against a Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

Timely Warning: If a report of misconduct discloses a serious or continuing threat to the Occidental community, the College may issue a campus wide timely warning (which can take the form of an email to campus) to protect the health or safety of the community. The timely warning will not include any identifying information about the Complainant. Even where there is no imminent threat, the College may send campus-wide e-mail notifications on all reported sexual misconduct.

At no time will the College release the name of the Complainant to the general public without the express consent of the Complainant. The release of the Respondent's name to the general public is guided by Family Educational Rights and Privacy Act (FERPA) and the Clery Act.

All College proceedings are conducted in compliance with the requirements of FERPA, the Clery Act, Title IX, and state and federal law. No information shall be released from such proceedings except as required or permitted by law and College policy.

V. Prohibited Conduct and Definitions

The College prohibits all forms of sexual and gender-based harassment, including sexual violence and intimate partner violence. Each of these terms encompasses a broad range of behavior. In general, sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to incapacitation. Intimate partner violence refers to any act of violence or threatened act of violence, sexual or otherwise, against a person who is or has been involved in a sexual, dating, domestic or other intimate relationship with that person.

Within these broad categories, the College prohibits the following specific conduct:

A. Sexual Harassment

Sexual Harassment: Any unwelcome sexual advance, request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when:

(1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a College program or activity;

or

(2) Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and objective standard.

A single isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical.

Sexual harassment also includes gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature.

Sexual harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- May occur in the classroom, in the workplace, in residential settings, or in any other

setting.

- May be a one-time event or can be part of a pattern of behavior.
- May be committed in the presence of others or when the parties are alone.
- May affect the Complainant and/or third parties who witness or observe harassment and are affected by it.

Examples of conduct that may constitute sexual harassment as defined above may include a severe, persistent or pervasive pattern of unwelcome conduct that includes one or more of the following:

- Physical conduct:
 - Unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements
 - Unwanted sexual advances within the employment context
- Verbal conduct:
 - Making or using derogatory comments, epithets, slurs or humor
 - Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations
 - Objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes
- Visual conduct:
 - Leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters in a public space or forum
 - Severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading sexually oriented images that are not pedagogically appropriate
- Written conduct: letters, notes or electronic communications containing comments, words, or images described above
- Quid pro quo conduct:
 - Direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists
 - Offering employment benefits in exchange for sexual favors
 - Making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose
 - Making or threatening reprisals after a negative response to sexual advances

B. Other Forms of Prohibited Conduct

The following forms of conduct fall under the broad definition of sexual harassment, and are specifically prohibited under this policy. The College will treat attempts to commit any prohibited conduct as if those attempts had been completed.

Sexual Assault: Having or attempting to have sexual intercourse with another individual:

- By force or threat of force;
- Without effective consent; or
- Where that individual is incapacitated.

Sexual intercourse includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.

This definition tracks the FBI's Uniform Crime Report definition of rape: "the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." Under many state laws, including California, however, rape definitions differ in that they require proof of an element of force or threat of force. Our definition incorporates both.

Non-Consensual Sexual Contact: Having sexual contact with another individual:

- By force or threat of force;
- Without effective consent; or
- Where that individual is incapacitated.

Sexual contact includes intentional contact with the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

Sexual Exploitation: Occurs when an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

- *surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;*
- *non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;*
- *exposing one's genitals or inducing another to expose their own genitals in non-*

consensual circumstances;

- *knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge;*
- *sexually-based stalking and/or bullying; and*
- *inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.*

Harm to Others: Words or types of conduct that threaten or endanger the health or safety of any person including physical abuse, verbal abuse, threats, intimidation and/or harassment. This behavior is typically treated as a violation of Occidental's Code of Student Conduct. Acts which constitute harm to others that are a form of intimate partner violence, or are based on sex or gender, will be resolved under the Sexual Harassment and Assault Policy.

Stalking: A course of physical or verbal conduct directed at another individual that could be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. A course of conduct consists of at least two acts. The feared harm or injury may be physical, emotional, or psychological, or related to the personal safety, property, education, or employment of that individual. Stalking includes cyber-stalking, a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Retaliation: Acts or attempts to retaliate or seek retribution against the Complainant, Respondent, or any individual or group of individuals involved in the complaint, investigation and/or resolution of an allegation of sexual misconduct. Retaliation can be committed by any individual or group of individuals, not just a Respondent or Complainant. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others.

C. Consent: Force, Coercion, Incapacitation, Drugs and Alcohol

Consent: Under California law, consent means positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

Consent consists of an affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity. The following are essential elements of effective consent:

Informed and reciprocal: All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.

Freely and actively given: Consent cannot be obtained through the use of force, coercion, threats, intimidation or pressuring, or by taking advantage of the incapacitation of another individual.

Mutually understandable: Communication regarding consent consists of mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity. In the absence of clear communication or outward demonstration, there is no consent. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.

Not indefinite: Consent may be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed "no" or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

Not unlimited: Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant.

Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.

In the state of California, consent cannot be given by minors under the age of 18, except where the parties are within three years of age of one another. Under no circumstances may an adult over the age of 21 engage in sexual activity with a minor under the age of 16.

Force: Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. For the use of force to be demonstrated, there is no requirement that a Complainant resists the sexual advance or request. However, resistance by the Complainant will be viewed as a clear demonstration of non-consent.

Coercion: Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against his/her will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

Incapacitation: Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because s/he lacks conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) and/or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if s/he is asleep, unconscious, or otherwise unaware that sexual activity is occurring.

Incapacitation may result from the use of alcohol and/or drugs. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impact an individual's:

- decision-making ability;
- awareness of consequences;
- ability to make informed judgments; or
- capacity to appreciate the nature and the quality of the act.

Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known, that the Complainant was incapacitated.

Alcohol and Other Drugs: In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence, stalking or intimate partner violence and does not diminish one's responsibility to obtain consent.

D. Intimate Partner Violence

Intimate partner violence is often referred to as dating violence, domestic violence or

relationship violence. Intimate partner violence includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, domestic or other intimate relationship with the Respondent. Intimate partner violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. Intimate partner violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientation and does not discriminate by racial, social, or economic background.

The College will not tolerate intimate partner violence of any form. For the purposes of this policy, the College does not define intimate partner violence as a distinct form of misconduct. Rather, the College recognizes that sexual harassment, sexual assault, sexual exploitation, harm to others, stalking, and retaliation all may be forms of intimate partner violence when committed by a person who is or has been involved in a sexual, dating or other social relationship of a romantic or intimate nature with the Complainant.

Under Clery and the Campus SaVE Act, the College will record and report all relevant incidents of intimate partner violence.

E. Prohibited Relationships by Persons in Authority

Sexual or other intimate relationships in which one party maintains a direct supervisory or evaluative role over the other party are prohibited. In general, this includes all sexual or other intimate relationships between students and their employers, supervisors, professors, coaches, advisors or other College employees. Similarly, College employees (faculty and staff) who supervise or otherwise hold positions of authority over others are prohibited from having a sexual or other intimate relationship with an individual under his/her direct supervision.

The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. However, faculty, administrators, and others who educate, supervise, evaluate, employ, counsel, coach or otherwise guide students should understand the fundamentally asymmetrical nature of the relationship they have with students or subordinates. Intimate or sexual relationships where there is differential in power or authority produce risks for every member of our community and undermine the professionalism of faculty and supervisors. In either context, the unequal position of the parties presents an inherent element of risk and may raise sexual harassment concerns if one person in the relationship has the actual or apparent authority to supervise, evaluate, counsel, coach or otherwise make decisions or recommendations as to the other person in connection with his/her employment or education at the college.

Sexual relations between persons occupying asymmetrical positions of power, even when

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both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment based on changes in the perspective of the individuals as to the consensual nature of the relationship. Similarly, these relationships may impact third parties based on perceived or actual favoritism or special treatment based on the relationship.

Therefore, persons with direct supervisory or evaluative responsibilities who contemplate beginning or are involved in such relationships are required to promptly: 1) discontinue any supervising role or relationship over the other person; and 2) report the circumstances to his/her own supervisor. Failure to fully or timely comply with these requirements is a violation of this policy, and the person in authority could be subject to disciplinary action, up to and including dismissal from employment by the College.

Any individual may file a complaint alleging harassment or discrimination, including an aggrieved party outside the relationship affected by the perceived harassment or discrimination. Retaliation against persons who report concerns about consensual relationships is prohibited and constitutes a violation of this policy.

VI. Resources

The College is committed to treating all members of the community with dignity, care and respect. Any individual who experiences or is affected by sexual harassment, sexual violence, stalking or intimate partner violence, whether as a Complainant, a Respondent, or a third party, will have equal access to support and counseling services through the College. Interim remedies are also available to all parties (see Section IX).

The College recognizes that deciding whether or not to make a report, either to the College or law enforcement, and choosing how to proceed can be difficult decisions. Making a report means telling someone in authority what happened, in person, by telephone, in writing or by email. All individuals are encouraged to seek the support of campus and community resources. These trained professionals can provide guidance in making decisions, information about available resources and procedural options, and assistance to either party in the event that a report and/or resolution under this policy is pursued. Individuals are encouraged to use all available resources on and off campus, regardless of when or where the incident occurred.

There are many resources available on campus and in the surrounding community. As detailed below, there are Confidential Resources which by law cannot share information without the consent of the individual seeking assistance. There are also a variety of College resources that will be discreet and private, but are not considered confidential. These resources will maintain the privacy of an individual's information within the limited circle of those involved in the resolution of a complaint under this policy. For more information about the difference between privacy and confidentiality, see Section IV.

A. Confidential Resources

The College encourages all community members to make a prompt report of any incident of sexual harassment, sexual violence, stalking or intimate partner violence to local law enforcement and the College. For individuals who are not prepared to make a report, or who may be unsure what happened, but are still seeking information and support, there are several legally-protected confidential resources available as designated below. These confidential resources will not share information with the College or anyone else without the individual's permission.

On Campus Confidential Resources:

- **Sexual Assault Survivor Advocate and Project SAFE Coordinator**
Naddia Palacios
Accessible 24 hours a day to provide highly confidential crisis support and resource options to students who experience sexual assault of any kind. Support includes, but is not limited to advising, case management and accompanying survivors to rape treatment centers or medical services. As the Project SAFE Coordinator, conducts comprehensive outreach and educational programming.
(323) 259-1359
npalacios@oxy.edu
- **Oxy Assault, Advocacy & Case Management Team (OAACM)**
Provides a comprehensive support system to sexual assault survivors that includes advocacy, counseling, and medical services, as well as information about and linkage to forensic exams, legal support, and housing and academic accommodations. Team members include Naddia Palacios (Survivor Advocate), Jenny Heetderks (Emmons psychologist) and Ann Martella (physician assistant).
- **Emmons Student Wellness Center**
Provides confidential psychological counseling services. As detailed below, Emmons also provides medical treatment, but under California law medical providers are required to notify law enforcement when they receive a report of sexual assault.
(323) 259-2657
- **Office for Religious & Spiritual Life**
Provides spiritual guidance and in the context of ordained clergy, confidential support.
(323) 259-2621
- **Employee Assistance Program**
Provides confidential telephone consultation or face-to-face meeting with a master's level consultant; also provides educational materials through an online library of downloadable materials and interactive tools.
(800) 854-1446, English

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(877) 858-2147, Spanish

www.lifebalance.net (User ID and password: lifebalance)

Off Campus Confidential Resources:

- **LA Rape and Battering Hotline**
Peace Over Violence
A confidential 24-hour crisis line.
(213) 626-3393
- **Peace Over Violence**
Provides comprehensive, free treatment for sexual assault survivors, including 24-hour emergency medical care and forensic services, counseling and psychotherapy, advocacy, and accompaniment services.
(310) 319-4000 Ext. 3
- **Rape, Abuse and Incest National Network (RAINN)**
A confidential, anonymous national sexual assault hotline.
1-(800) 656-4673
- **Santa Monica Rape Treatment Center**
24-hour emergency medical care and forensic services
(310) 319-4000
- **San Gabriel Valley Medical Center**
438 West Las Tunas Dr.
San Gabriel, CA 91776
(626) 289-5454

B. Confidential* Medical Resources

*In California, medical providers (but not psychological counselors) are mandated by state law to notify law enforcement if a patient tells personnel s/he has experienced sexual assault. However, the patient has the right to request that a survivor advocate be present when s/he speaks with law enforcement and to request that law enforcement not pursue a criminal charge at that time. Beyond this notification, however, the disclosure of private information contained in medical records is protected by HIPAA. Further, community medical providers will not notify the College.

A medical provider can provide emergency and/or follow-up medical services. The medical exam

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has two goals: first, to diagnose and treat the full extent of any injury or physical effect (including prevention of sexually transmitted illnesses and pregnancy) and second, to properly collect and preserve evidence. There is a limited window of time (within 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Taking the step to gather evidence immediately does not commit an individual to any particular course of action. The decision to seek timely medical attention and gather any evidence, however, will preserve the full range of options to seek resolution under this policy or through the pursuit of criminal prosecution.

On campus, Emmons Student Wellness Center can provide medical care; however, Emmons is not equipped for forensic examinations. As with off-campus medical personnel, Emmons staff members are required by state law to notify law enforcement if a patient tells them that s/he has experienced a sexual assault.

- **Emmons Student Wellness Center**

Provides medical treatment.

(323) 259-2657

Taxi vouchers are available at Campus Safety, Emmons Student Wellness Center and Residential Education and Housing Services to provide free transportation to local medical centers. The Survivor Advocate is also available to accompany survivors to access off-campus resources.

- **San Gabriel Valley Medical Center***

438 W. Las Tunas Dr., San Gabriel 91776

Provides medical treatment and forensic exams; closest facility to campus.

(877) 209-3049

- **LA County/USC Medical Center***

1200 N. State St., Los Angeles 90033

Provides medical treatment and forensic exams.

(323) 226-3961

- **Rape Treatment Center at Santa Monica-UCLA Medical Center***

Provides comprehensive, free treatment for sexual assault victims, including 24-hour emergency medical care and forensic services, counseling and psychotherapy, advocacy, and accompaniment services.

(310) 319-4000 Ext. 3

*L.A. County designated Sexual Assault Response Team (SART) Center

C. Campus Resources

In addition to the confidential resources listed above, Occidental community members have access

to a variety of resources provided by the College. The staff members listed below are trained to support individuals affected by sexual harassment or misconduct and to coordinate with the Title IX Coordinator consistent with the College's commitment to a safe and healthy educational environment. While not bound by confidentiality, these resources will maintain the privacy of an individual's information within the limited circle of those involved in the Title IX resolution process.

- **Title IX Coordinator Ruth Jones**
Available on weekdays during regular office hours to coordinate a fair and equitable response to reports of sexual misconduct.
ruthjones@oxy.edu; (323) 259-1338
- **Deputy Title IX Coordinator Jacalyn Feigelman**
Available on weekdays during regular office hours.
jacalynf@oxy.edu; (323) 259-2614
- **Deputy Title IX Coordinator (Athletics) Alison Haehnel**
Available on weekdays during regular office hours.
haehnel@oxy.edu; (323) 259-2632
- **Campus Safety**
Available as a first option to report an incident of sexual violence or intimate partner violence. Also provides an escort service on campus to any student and can reach the Dean on Duty at any time. Available 24 hours a day, 7 days a week.
(323) 259-2511 (emergency line), or dial 5 from any campus phone.
- **Dean of Students Office/Dean on Duty**
Can provide reasonable accommodations for housing, academic flexibility and stay-away letters. Available on weekdays during regular office hours. Access to Dean on Duty 24 hours a day by calling Campus Safety at (323) 259-2599.
Dean of Students Office (323) 259-2661
- **Emmons Student Wellness Center**
Provides medical treatment and confidential psychological counseling services.
(323) 259-2657
- **Office for Religious & Spiritual Life**
Provides spiritual guidance and in the context of ordained clergy, confidential support.
(323) 259-2621

- **Project SAFE (Sexual Assault Free Environment)**

A prevention and education support program dedicated to ending sexual violence on campus through resources, advocacy, and educational programming related to issues of sexual violence and intimate partner violence.

(323) 341-4750

D. Community Resources

Students, faculty and staff may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention and assistance in dealing with the criminal justice system. All individuals are encouraged to use the resources that are best suited to their needs, whether on or off campus.

It may be helpful for survivors to have someone who can help them explore their off-campus options and guide them through legal processes; an advocate can provide assistance in this area. Two local resources, Peace Over Violence and the Rape Treatment Center at Santa Monica-UCLA Medical Center offer advocacy support.

- **LAPD**

911 (24 hours)

For dispatch, (877) ASK-LAPD (877-275-5273)

- **LAPD Northeast Division**

3353 North San Fernando Road

Los Angeles, CA 90065

(323) 344-5701

Occidental is located in Northeast Division.

- **Rape Treatment Center at Santa Monica-UCLA Medical Center**

Provides comprehensive, free treatment for sexual assault victims, including 24-hour emergency medical care and forensic services, counseling and psychotherapy, advocacy, and accompaniment services.

(310) 319-4000

- **Peace Over Violence ("POV")**

POV case managers can provide assistance and support with the medical and criminal legal process as well as accompaniment to hospitals, law enforcement agencies, and court appointments.

1015 Wilshire Blvd.

Los Angeles, CA 90017

(213) 626-3393 or (626) 793-3385

- **LA Gay and Lesbian Center**

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VII. Reporting

The College encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual violence. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response.

The College encourages all individuals to make a report to the College and to local law enforcement. Reporting options are not mutually exclusive. Both internal and criminal reports may be pursued simultaneously.

The College has a strong interest in supporting victims and survivors of sexual harassment, sexual violence, stalking and intimate partner violence and encourages all individuals or third party witnesses to report any incident to the College.

Making a report means telling someone in authority what happened -- in person, by telephone, in writing or by email. At the time a report is made, a Complainant does not have to decide whether or not to request any particular course of action, nor does a Complainant need to know how to label what happened. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The College provides support that can assist each individual in making these important decisions, and to the extent legally possible will respect an individual's autonomy in deciding how to proceed. In this process, the College will balance the individual's interest with its obligation to provide a safe and non-discriminatory environment for all members of the College community.

Any individual who reports sexual harassment, sexual violence, stalking or intimate partner violence can be assured that all reports will be investigated and resolved in a fair and impartial manner. A Complainant, a Respondent and all individuals involved can expect to be treated with dignity and respect. In every report under this policy, the College will make an immediate assessment of any risk of harm to the Complainant or to the broader campus community and will take steps necessary to address those risks. These steps will include interim measures to provide for the safety of the individual and the campus community.

A. Emergency and External Reporting Options

The College encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual misconduct. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response. The College will help any Occidental community member to get to a safe place and will provide transportation to the

hospital, coordination with law enforcement, and information about on- and off-campus resources and options for resolution.

- **LAPD**
For Emergencies: 911
For concerning situations
Call dispatch at (877) ASK-LAPD (877-275-5273)

- **LAPD Northeast Division**
3353 North San Fernando Road
Los Angeles, CA 90065
Front desk phone number: (323) 344-5701
Occidental is located in Northeast Division.

- **San Gabriel Valley Medical Center***
438 W. Las Tunas Dr., San Gabriel 91776
Provides medical treatment and forensic exams; closest facility to campus.
(877) 209-3049

- **LA County/USC Medical Center***
1200 N. State St., Los Angeles 90033
Provides medical treatment and forensic exams.
(323) 226-3961

- **Rape Treatment Center at Santa Monica-UCLA Medical Center***
Provides comprehensive, free treatment for sexual assault victims, including 24-hour emergency medical care and forensic services, counseling and psychotherapy, advocacy, and accompaniment services.
(310) 319-4000 Ext. 3

*These three medical centers are Los Angeles County designated Sexual Assault Response Team (SART) Centers.

B. Campus Reporting Options

The College encourages all individuals to report misconduct to any College employee the Complainant trusts and feels comfortable with. In general, most College employees do not have legally protected confidentiality. Under Title IX, a College is required to take immediate and corrective action if a "responsible employee" knew or, in the exercise of reasonable care, should

have known about sexual or gender-based harassment that creates a hostile environment. A "responsible employee" includes any employee who:

- Has the authority to take action to redress the harassment;
- Has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or
- A student could reasonably believe has the authority or responsibility to take action.

Using this lens, employees with supervisory and leadership responsibilities on campus are considered "responsible employees." This may include, for example, faculty, coaches, administrators, Resident Advisors and other student employees with a responsibility for student welfare, including Project SAFE program assistants.

The College requires that all "responsible employees" share a report of misconduct with the Title IX Coordinator or a member of the Title IX team. The Title IX team, under the guidance of the Title IX Coordinator, will conduct an initial assessment of the conduct, the Complainant's expressed preferences, if any, as to course of action, and the necessity for any interim remedies or accommodations to protect the safety of the Complainant or the community.

All Occidental community members, even those who are not obligated to do so by this policy, are strongly encouraged to report information regarding any incident of sexual harassment, sexual violence, stalking or intimate partner violence directly to the Title IX Coordinator or a member of the Title IX team. The College cannot take appropriate action unless an incident is reported to the College.

Members of the interdepartmental Title IX team include the Title IX Coordinator, Title IX Deputy Coordinators, and the Chief of Campus Safety. In addition, based on the role of the Complainant and the Respondent, the members of the team could include the Vice President for Academic Affairs and Dean of the College and a representative from the Dean of Students Office and/or Human Resources.

Campus Reporting Options:

- **Title IX Coordinator Ruth Jones**
Available on weekdays during regular office hours to coordinate a fair and equitable response to reports of sexual misconduct.
ruthjones@oxy.edu; (323) 259-1338
- **Deputy Title IX Coordinator Jacalyn Feigelman**
Available on weekdays during regular office hours.
jacalynf@oxy.edu; (323) 259-2614

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- Deputy Title IX Coordinator (Athletics) Alison Haehnel

Available on weekdays during regular office hours.

haehnel@oxy.edu; (323) 259-2632

- Campus Safety

Available as a first option to report an incident of sexual violence or intimate partner violence. Also provides an escort service on campus to any student and can reach the Dean on Duty at any time. Available 24 hours a day, 7 days a week.

(323) 259-2511 (emergency line), or dial 5 from any campus phone.

- Dean of Students Office/Dean on Duty

Can provide reasonable accommodations for housing, academic flexibility and no contact letters. Available on weekdays during regular office hours. Access to Dean on Duty 24 hours a day by calling Campus Safety at (323) 259-2599.

Office: AGC #111 and #112 (Ground floor, north side)

deanofstudents@oxy.edu

(323) 259-2661

C. Anonymous Reporting

Any individual may make an anonymous report concerning an act of sexual harassment, sexual violence, stalking or intimate partner violence. An individual may report the incident without disclosing his/her name, identifying the Respondent or requesting any action. Depending on the extent of information available about the incident or the individuals involved, however, the College's ability to respond to an anonymous report may be limited. The Anonymous Reporting Form can be found here.

The Title IX Coordinator will receive the anonymous report and will determine any appropriate steps, including individual or community remedies as appropriate, and in consultation with the Clery Team, compliance with all Clery Act obligations.

D. Reporting Considerations: Timeliness and Location of Incident

Complainants and third-party witnesses are encouraged to report sexual harassment, sexual violence and intimate partner violence as soon as possible in order to maximize the College's ability to respond promptly and effectively. The College does not, however, limit the time frame for reporting. If the Respondent is not a member of the Occidental community, the College will still seek to meet its Title IX obligation by taking steps to end the harassment, prevent its recurrence, and address its effects, but its ability to take disciplinary action against the Respondent may be limited.

An incident does not have to occur on campus to be reported to the College. Off-campus conduct

that is likely to have a substantial effect on the Complainant's on-campus life and activities or poses a threat or danger to members of the Occidental community may also be addressed under this policy.

E. Amnesty for Alcohol or Other Drug Use

The college community encourages the reporting of prohibited conduct under this policy. It is in the best interest of this community that as many Complainants as possible choose to report to college officials, and that witnesses come forward to share what they know. To encourage reporting, an individual who reports sexual harassment or misconduct, either as a Complainant or a third-party witness, will not be subject to disciplinary action by the College for his/her own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The College may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

F. Coordination with Law Enforcement

The College encourages Complainants to pursue criminal action for incidents of sexual harassment, sexual violence and intimate partner violence that may also be crimes under California law. The College will assist a Complainant in making a criminal report and cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law.

The College's policy, definitions and burden of proof may differ from California criminal law. A Complainant may seek recourse under this policy and/or pursue criminal action. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this policy has occurred. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

At the request of law enforcement, the College may agree to defer its Title IX fact gathering until after the initial stages of a criminal investigation. The College will nevertheless communicate with the Complainant regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. The College will promptly resume its Title IX fact gathering as soon as it is informed that law enforcement has completed its initial investigation.

G. Statement against Retaliation

It is a violation of College policy to retaliate in any way against an individual because s/he raised allegations of sexual harassment, sexual violence, stalking or intimate partner violence. The College recognizes that retaliation can take many forms, may be committed by or against an individual or a group, and that a Complainant, Respondent or third party may commit or be the subject of retaliation.

The College will take immediate and responsive action to any report of retaliation and will pursue

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disciplinary action as appropriate. An individual reporting sexual harassment or misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

H. False Reports

The College will not tolerate intentional false reporting of incidents. The College takes the accuracy of information very seriously as a charge of sexual harassment, sexual violence, stalking or intimate partner violence may have severe consequences. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation of sexual misconduct. However, when a Complainant or third party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Complainant may be subject to disciplinary action. It is a violation of the Code of Student Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

I. Reports Involving Minors or Suspected Child Abuse

Under California law, an individual must make a mandatory report of suspected child abuse and neglect, including sexual assault when that individual, in his/her professional capacity or within the scope of his/her employment, has knowledge of or observes a minor under the age of 18 whom the individual knows or reasonably suspects has been the victim of child abuse or neglect.

All College employees, whether designated as a mandatory reporter under California state law or not, are required to immediately report any suspected child abuse and neglect to the Title IX Coordinator and the Director of Campus Safety. The source of abuse does not need to be known in order to file a report.

The College will report all suspected child abuse and neglect, including sexual assault, to law enforcement and/or to Los Angeles County Department of Child and Family Services. The College must act quickly regarding all reasonable suspicions of sexual or physical abuse. It is not the responsibility of any employee, student, or volunteer to investigate suspected child abuse. This is the role of Child Protective Services and law enforcement authorities.

In addition to notifying the Title IX Coordinator and Director of Campus Safety, any individual may make a direct report as follows:

- If a child is in immediate danger, call 911.
- If there is no immediate danger, contact the Child Protection Hotline 24 hours a day, 7 days a week, at (800) 540-4000. If calling from outside of California, call (213) 639-4500.

VIII. Interim Measures, Remedies and Accommodations

A. Overview

Upon receipt of a report, the College will impose reasonable and appropriate interim measures designed to eliminate the hostile environment and protect the parties involved. The College will make reasonable efforts to communicate with the parties to ensure that all safety, emotional and physical well-being concerns are being addressed. Interim measures may be imposed regardless of whether formal disciplinary action is sought by the Complainant or the College.

A Complainant or Respondent may request a Stay-Away Letter or other protection, or the College may choose to impose interim measures at its discretion to ensure the safety of all parties, the broader College community and/or the integrity of the process.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce a previously implemented measure.

B. Range of Measures

Interim measures will be implemented at the discretion of the College. Potential remedies, which may be applied to the Complainant and/or the Respondent, include:

- Access to counseling services and assistance in setting up initial appointment, both on and off campus
- Imposition of campus "Stay-Away Letter"
- Rescheduling of exams and assignments (in conjunction with appropriate faculty)
- Providing alternative course completion options (with the agreement of the appropriate faculty)
- Change in class schedule, including the ability to take an "incomplete," drop a course without penalty or transfer sections (with the agreement of the appropriate faculty)
- Change in work schedule or job assignment
- Change in on-campus housing
- Arranging to dissolve a housing contract and pro-rating a refund in accordance with campus housing policies
- Assistance from College support staff in completing housing relocation
- Limit an individual or organization's access to certain College facilities or activities pending resolution of the matter
- Voluntary leave of absence
- Providing an escort to ensure safe movement between classes and activities
- Providing medical services
- Providing academic support services, such as tutoring
- Interim suspension or College-imposed leave
- Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

C. Interim Suspension or Separation

Where the report of sexual harassment, sexual violence, stalking or intimate partner violence poses a substantial and immediate threat of harm to the safety or well-being of an individual, members of the campus community, or the performance of normal College functions, the College may place a student or student organization on interim suspension or impose leave for an employee. Pending resolution of the report, the individual or organization may be denied access to campus, campus facilities and/or all other College activities or privileges for which the student might otherwise be eligible, as the College determines appropriate. When interim suspension or leave is imposed, the College will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

The full provisions for Interim Suspension for students are contained in the Code of Student Conduct. Provisions for suspension of faculty members are contained in the Faculty Handbook. Staff may be placed on leave at the discretion of the College.

IX. Options for Resolution

A. Overview

Upon receipt of a report, the College's Title IX team will conduct an Initial Title IX Assessment. The goal of this assessment is to provide an integrated and coordinated response to reports of sexual harassment or misconduct. The assessment will consider the nature of the report, the safety of the individual and of the campus community, and the Complainant's expressed preference for resolution.

At the conclusion of the assessment, the College may choose to pursue Informal Resolution, a remedies-based approach that does not involve disciplinary action against a Respondent, or refer the matter for Investigation. The goal of the Investigation is to gather all relevant facts and determine if there is sufficient information to refer the report to a hearing panel for disciplinary action using the College's Formal Resolution procedures.

The initial steps for resolution of a complaint against a student, an employee or a faculty member will involve the same stages: an initial assessment, investigation, and either informal or formal resolution. There are specific procedures for resolving complaints against a student, faculty or staff respondent.

B. The Role of the Title IX Team

The Title IX team, led by the Title IX Coordinator, assists in the review, investigation and resolution of reports. Members of this interdepartmental team include the Title IX Coordinator, Title IX Deputy Coordinators, and the Chief of Campus Safety. In addition, based on the role of the Complainant and the Respondent, the members of the team could include the Vice President for Academic Affairs and

Dean of the College and a representative from the Dean of Students Office and/or Human Resources. Composition of the team will be limited to a small circle of individuals who "need to know" in order to implement procedures under this policy.

Although a report may be made to any College employee, the College seeks to ensure that all reports are referred to the Title IX team to ensure consistent application of the policy to all individuals and allow the College to respond promptly and equitably to eliminate the harassment, prevent its recurrence and address its effects.

The members of this team oversee the resolution of a report under this policy. Resources are available for both students and employees, whether as Complainants or Respondents, to provide guidance throughout the investigation and resolution of the complaint. Interim Remedies are also available to provide protection and security.

C. Initial Title IX Assessment

In every report of sexual harassment or misconduct, the College will make an immediate assessment of any risk of harm to individuals or to the campus community and will take steps necessary to address those risks. These steps may include interim protective measures to provide for the safety of the individual and the campus community.

The initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made. Thereafter, the investigation may be initiated depending on a variety of factors, such as the Complainant's wish to pursue disciplinary action, the risk posed to any individual or the campus community by not proceeding, and the nature of the allegation.

D. Investigation

Where the Title IX assessment concludes that disciplinary action may be appropriate, the College will initiate an investigation. The College will designate an investigator who has specific training and experience investigating allegations of sexual harassment and sexual misconduct. The investigator may be an employee of the College or an external investigator engaged to assist the College in its fact gathering. The College will typically use a team of two investigators, which may include the pairing of an external investigator with a College employee. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest.

The investigator will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent and any witnesses. The interviews will be supplemented by the gathering of any physical, documentary or other evidence. As part of the investigation, the College will provide an opportunity for the parties to present witnesses and other evidence.

The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial and fair, and all individuals will be treated with appropriate sensitivity and

respect. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns.

The College will seek to complete the investigation within 20 (twenty) business days of receiving the complaint, but this time frame may be extended depending on the complexity of the circumstances of each case. At the conclusion of the investigation, the report will be forwarded to the Title IX Coordinator and the Hearing Coordinator responsible for initiating Formal Resolution proceedings.

Information gathered during the review or investigation will be used to evaluate the responsibility of the Respondent, provide for the safety of the Complainant and the College campus community, and impose remedies as necessary to address the effects of the conduct cited in the report. Where there is sufficient information set forth that, if proven, would constitute a violation of policy, the College will have the discretion to institute Formal Resolution proceedings against the Respondent. At the conclusion of the investigation, the College will notify all parties that the investigation is complete and provide information about next steps in the process.

Based on the information gathered in the initial Title IX assessment and/or full investigation, the College will take appropriate measures designed to end the misconduct, prevent its recurrence and address its effects.

The Title IX Coordinator will document each report or request for assistance in resolving a case involving charges of sexual misconduct, whether formal or informal, and will review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law.

E. Informal Resolution

Informal resolution is a remedies-based, non-judicial approach designed to eliminate a hostile environment without taking disciplinary action against a Respondent. Where the Title IX assessment concludes that informal resolution may be appropriate, the College will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant's access to the educational and extracurricular activities at the College and to eliminate a hostile environment. Examples of protective remedies are provided in Section IX: Interim Remedies. Other potential remedies include targeted or broad-based educational programming or training, direct confrontation of the Respondent and/or indirect action by the Title IX Coordinator or the College. Depending on the form of informal resolution used, it may be possible to maintain anonymity.

The College will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of informal resolution. Mediation, even if voluntary, may not be used in cases involving sexual violence or assault. The decision to pursue informal resolution will be made when the College has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in informal resolution is voluntary, and a Complainant can request to end informal resolution at any time.

The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Informal resolution will typically be completed within thirty (30) business days of the initial report.

F. Formal Resolution

Disciplinary action against a Respondent may only be taken through Formal Resolution procedures. Because the relationship of students, staff, and faculty to the College differ in nature, the procedures that apply when seeking disciplinary action necessarily differ as well. Each of the procedures, however, is guided by the same principles of fundamental fairness and respect for all parties, which require notice, an equitable opportunity to be heard, and an equitable opportunity to respond to a report under this policy.

The specific procedures for Formal Resolution will vary based upon the role of the Respondent:

- For a *complaint against a student*, disciplinary action may be taken by the Vice President of Student Affairs and Dean of Students or his/her designee following a finding of responsibility by an Administrator or a Hearing Panel.
- For a *complaint against an employee*, disciplinary action may be taken at the conclusion of the investigation by the Director of Human Resources or the Vice President for Finance and Planning.
- For a *complaint against a faculty member*, disciplinary action may be taken at the conclusion of the investigation by the Vice President for Academic Affairs and Dean of College and the Faculty Council or Advisory Council Hearing Committee pursuant to the "Procedures for Actions Leading to Warning, Reprimand, or Dismissal" in the Faculty Handbook.

G. Time Frame for Resolution

The College seeks to resolve all reports within 60 days of the initial report. All time frames expressed in this policy are meant to be guidelines rather than rigid requirements. Extenuating circumstances may arise that require the extension of time frames, including extension beyond 60 days. Extenuating circumstances may include the complexity and scope of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation, or other unforeseen circumstances.

In general, a Complainant and Respondent can expect that the process will proceed according to the time frames provided in this policy. In the event that the investigation and resolution exceed this time frame, the College will notify all parties of the reason(s) for the delay and the expected adjustment in time frames. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

Appendix A: Resolving Complaints Against a Student

I. Overview

As outlined in the Reporting section of this policy, an individual who wishes to make a report of sexual harassment, sexual violence, stalking or intimate partner violence is encouraged to make a report directly to the Title IX Coordinator, Deputy Title IX Coordinators, the Dean of Students Office, Campus Safety or Human Resources. In every instance under this policy, the College, through the coordinated efforts of the Title IX team, will conduct an initial Title IX Assessment.

At the conclusion of the Title IX Assessment, the report will be referred for Informal Resolution or Investigation to determine if there is sufficient information to proceed with Formal Resolution. Informal Resolution is a non-judicial, remedies-based approach that does not involve disciplinary action against a Respondent. Formal Resolution is a judicial, sanctions-based approach that may involve discipline up to and including expulsion.

II. Initial Title IX Assessment

Upon receipt of a report, the College, through the coordinated efforts of the Title IX team, will conduct an initial Title IX assessment. The first step of the assessment will usually be a preliminary meeting with the Complainant with the Title IX Coordinator or a member of the Title IX team. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full forensic interview. At this meeting, the Complainant will be provided with information about resources, procedural options and interim remedies.

As part of the initial assessment of the report, the Title IX team will:

- Assess the nature and circumstances of the allegation
- Address immediate physical safety and emotional well-being needs
- Notify the Complainant of his/her right to contact law enforcement and seek medical treatment, including the importance of preservation of evidence
- Enter the report into the College's daily crime log
- Assess the reported conduct for the need for a timely warning under Clery
 - Provide the Complainant with information about:
 - On and off campus resources
 - The range of interim accommodations and remedies
- An explanation of the procedural options, including Informal Resolution and Formal Resolution
- Make available an advisor, advocate, or support person
- Assess for pattern evidence or other similar conduct by Respondent
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding
- Explain the College's policy prohibiting retaliation

This initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made. Thereafter, an investigation may continue depending on a variety of factors, such as the Complainant's wish to pursue disciplinary action, the

risk posed to any individual or the campus community by not proceeding, and the nature of the allegation.

At the conclusion of the Title IX assessment, the Title IX team will determine the appropriate manner of resolution and, if appropriate, refer the report for further Investigation, Informal Resolution or Formal Resolution.

The determination as to how to proceed will be communicated to the Complainant in writing. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution. A Respondent will be notified when the College seeks action that would impact a Respondent, such as protective measures that restrict his/her movement on campus, the initiation of an investigation or the decision to involve the Respondent in Informal Resolution.

III. Informal Resolution

Informal resolution is a remedies-based, non-judicial approach designed to eliminate a hostile environment without taking disciplinary action against a Respondent.

Where the Title IX assessment concludes that informal resolution may be appropriate, the College will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant's access to the educational and extracurricular activities at the College and to eliminate a hostile environment. Examples of protective remedies are provided in Section IX: Interim Remedies. Other potential remedies include targeted or broad-based educational programming or training, direct confrontation of the Respondent and/or indirect action by the Title IX Coordinator or the College. Depending on the form of informal resolution used, it may be possible to maintain anonymity.

The College will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of informal resolution. Mediation, even if voluntary, may not be used in cases involving sexual violence or assault. The decision to pursue informal resolution will be made when the College has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in informal resolution is voluntary, and a Complainant can request to end informal resolution at any time.

The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Informal resolution will typically be completed within thirty (30) business days of the initial report.

IV. Investigation

Following the initial Title IX assessment, the College may initiate a prompt, thorough and impartial investigation. The Title IX Coordinator, in consultation with the Title IX team, will oversee the investigation. At the conclusion of the investigation, if warranted, a Hearing Coordinator will be assigned to facilitate the adjudication through a conduct conference or specially trained conduct

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hearing panel.

The investigation is designed to provide a fair and reliable gathering of the facts. All individuals in the investigation, including the Complainant, the Respondent and any third-party witnesses, will be treated with appropriate sensitivity and respect. Consistent with the need for a full assessment of the facts, the investigation will safeguard the privacy of the individuals involved.

The College will designate an investigator who has specific training and experience investigating allegations of sexual harassment and sexual misconduct. The investigator may be an employee of the College or an external investigator engaged to assist the College in its fact gathering. The College will typically use a team of two investigators, which may include the pairing of an external investigator with a College employee. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest.

The investigator(s) will coordinate the gathering of information from the Complainant, the Respondent, and any other individuals who may have information relevant to the determination. The investigator(s) will also gather any available physical or medical evidence, including documents, communications between the parties, and other electronic records as appropriate. The investigator(s) may consider prior allegations of, or findings of responsibility for, similar conduct by the Respondent. The Complainant and Respondent will have an equal opportunity to be heard, to submit evidence, and to identify witnesses who may have relevant information.

The investigation will usually be completed within twenty (20) business days. Given the availability of witnesses or complexity of the circumstances, this time frame may be extended as necessary to ensure the integrity and completeness of the investigation.

At the request of law enforcement, the College may agree to defer its Title IX fact gathering until after the initial stages of a criminal investigation. The College will nevertheless communicate with the Complainant regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. The College will promptly resume its Title IX fact gathering as soon as law enforcement has completed its initial investigation.

Information gathered during the investigation will be used to evaluate the appropriate course of action, provide for the safety of the individual and the campus community, and impose remedies as necessary to address the effects of the conduct cited in the report.

A. Threshold Determination and Appeal from Insufficient Threshold

At the conclusion of the investigation, the investigator(s) will prepare a written report synthesizing the facts for review by the Title IX Coordinator and a Hearing Coordinator from the Office of Student Conduct. The investigator(s) are not charged with reaching a determination as to responsibility, which is a function reserved for the Conduct Conference or Hearing Panel.

Upon receipt of the investigative report, the Hearing Coordinator, in consultation with the Title

IX team, will review the report and make a threshold determination as to whether there is sufficient information upon which an adjudicator could find a violation of this policy. This threshold determination does not involve making a determination of responsibility, nor does it involve a credibility assessment. If the threshold has been established, the Hearing Coordinator will issue a Notification Letter to the Respondent and the Complainant and refer the report for Pre-Hearing Procedures.

If the Title IX Coordinator, in consultation with the Title IX team, determines that this threshold has not been reached, the Complainant and Respondent will be notified in writing. The Complainant will have the opportunity to seek review by the Vice President for Student Affairs and Dean of Students (or designee) by submitting a written request for review within five (5) business days of receipt of the notification. If an appeal is filed, the Respondent will be notified and have the opportunity to respond. The Vice President for Student Affairs and Dean of Students (or designee) may affirm the threshold finding, reverse the finding or remand the matter for additional investigation as warranted. The Vice President for Student Affairs and Dean of Students (or designee) will render a decision in writing, to both parties, within ten (10) business days of receipt of the request for review. The decision of the Vice President for Student Affairs and Dean of Students (or designee) is final. Where a designee is chosen, the identity of this individual will be shared with both parties.

V. Formal Resolution

Formal resolution of a complaint under the Sexual Harassment and Assault Policy will occur through the use of a Conduct Conference or a Hearing Panel.

A. Conduct Conference

A Complainant or Respondent may request resolution through an administrative conduct conference, in which the Hearing Coordinator will meet with the Complainant and Respondent to determine responsibility and render a decision as to what sanctions, if applicable, should be implemented. Both parties and the Hearing Coordinator must agree that the matter is appropriate for resolution by a conduct conference. Depending upon the nature and severity of the allegations, the Hearing Coordinator may decline to handle the matter administratively and refer the case to a Hearing Panel.

A conduct conference is particularly appropriate when the Respondent has admitted to the harassment or misconduct and there is no discernible dispute in the relevant facts of the investigation report; however, at the discretion of the Hearing Coordinator, it may also be used when the facts are in dispute. The investigative report will serve as the primary evidence in making a determination of responsibility.

Both parties must have notice, the opportunity to review the investigative report in advance, and the opportunity to present any additional relevant information to the Hearing Coordinator. In reaching a

determination as to whether this policy has been violated, the Hearing Coordinator will reach a determination by a preponderance of the evidence, that is, whether the conduct was more likely than not to have occurred as alleged. Based on the outcome of the conduct conference, the Hearing Coordinator will issue an appropriate sanction.

Both a Complainant and Respondent may appeal the determination of the Hearing Coordinator as provided in the Appeal section below.

B. Hearing Panel

The hearing panel typically consists of a three members drawn from a pool of trained faculty and campus administrators. Faculty members of the hearing panel pool are appointed by Faculty Council. Administration members of the hearing panel pool are selected and appointed by the Dean of Students Office. At the discretion of the Hearing Coordinator, the College may engage an external adjudicator to serve as a member of the hearing panel or in lieu of the hearing panel whenever, in the exercise of judgment, doing so will best serve the fair and equitable resolution of the complaint. In making the determination to select an external adjudicator, the Hearing Coordinator will consider, among other factors, the nature of the allegations, the complexity of the case, whether there is any issue of conflict of interest, the availability of trained panel members for the hearing, whether the College is in session or on break, or any other relevant factors.

All hearing panelists must participate in annual training on non-discrimination; the dynamics of sexual harassment, sexual violence and intimate partner violence; the factors relevant to a determination of credibility; the appropriate manner in which to receive and evaluate sensitive information; the manner of deliberation; evaluation of consent and incapacitation; the application of the preponderance of the evidence standard; sanctioning and the College's policies and procedures. The training will be coordinated by the Title IX Coordinator in conjunction with campus and external partners.

The Hearing Panel is supported by the Hearing Coordinator, who is present at hearing panel meetings, but is not be a voting member of the panel. He or she will meet with all involved parties prior to the hearing, be present during the hearing to serve as a resource for the hearing panel on issues of policy and procedure, and to ensure that policy and procedure are appropriately followed throughout the hearing.

In most cases, it should be possible to convene a hearing panel; however if the hearing must be heard at or after the end of the semester or academic year and/or a full hearing panel cannot reasonably be convened, those cases may be heard by the Vice President for Student Affairs and Dean of Students (or designee) or the College may substitute an alternate method of adjudication at its discretion.

C. Advisors, Support Persons, and Attorneys

Advisor: In any hearing, the Complainant and Respondent may choose to be assisted by an advisor. The Title IX Office maintains a list of campus community members who have undergone

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Title IX training who can guide a student through the pre-hearing and hearing process. The advisor may accompany the student to any College investigative, administrative or adjudicative meeting, including the panel hearing. The advisor may not speak to the panel during the hearing.

Support Person: A Complainant and Respondent may also choose to be assisted by an emotional support person of their choice. The person must be a member of the Occidental community (student, faculty, staff, or administrator). To serve as a support person, the individual will be required to meet with a Hearing Coordinator or the Title IX Coordinator in advance of any participation in the proceedings. The Survivor Advocate may serve as a support person for a Complainant.

The support person cannot be a witness in the proceedings. The support person is a silent and non-participating presence who is there solely to observe and provide moral support during the hearing itself. This person is not to address the hearing panel, except to ask for a short recess if one of the parties requires some time to compose him or herself or collect his or her thoughts. The Hearing Coordinator has the right at all times to determine what constitutes appropriate behavior on the part of a support person and whether the person may remain at the proceedings. While the support person may be present to hear testimony, no written materials are to be shared with support people.

Absent extenuating circumstances, witnesses and others involved in an investigation or hearing are not entitled to have a support person present.

Role of the Attorney/Outside Agreements: The College prohibits outside attorneys, or family members acting as attorneys, from participating in proceedings under this policy. A Complainant or Respondent may choose to seek the advice and assistance of an attorney at his/her own expense, but the attorney may not participate in investigatory interviews, informal resolution proceedings, or formal resolution via administrative hearing or Hearing Panel. Similarly, the College will not recognize or enforce agreements between the parties outside of these procedures.

D. Pre-Hearing Procedures

1. Notice of Charges

Following the threshold determination that there is sufficient information to move forward with a hearing, the Hearing Coordinator will send written Notification Letter to both the Complainant and the Respondent. The Notification Letter provides each party with a brief summary of the conduct at issue and the specific provision of the policy violation(s) that are alleged to have taken place.

2. Pre-Hearing Meeting with Complainant and Respondent

Following the Notification Letter, the Hearing Coordinator will contact the Complainant and Respondent to schedule separate meetings with each party. At this pre-hearing meeting, each party will receive an explanation of the hearing process and have the opportunity to ask any questions. If the Complainant and/or Respondent have elected to have advisors throughout the hearing process, the advisor is encouraged to accompany the Complainant/Respondent to this initial meeting.

3. Notice of Hearing

Once each party has met with the Hearing Coordinator, a Notice of Hearing is sent to the Complainant and the Respondent. In addition, the Notice provides the parties with the date, time, and place of the hearing, as well as the name(s) of the person(s) hearing the case.

In general, the hearing will be scheduled within ten (10) business days of the date of the Notice of Hearing. Under extenuating circumstances, this time frame may be extended.

4. Composition of the Hearing Panel

The Complainant and the Respondent may submit a written request to the Hearing Coordinator that a member of the hearing panel be removed. The request must clearly state the grounds to support a claim of bias, conflict of interest or an inability to be fair and impartial. This challenge must be raised within two (2) business days of receipt of the Notice of Hearing. All objections must be raised prior to the commencement of the hearing. Failure to object prior to the hearing will forfeit one's ability to appeal the outcome based on perceived or actual bias.

5. Pre-Hearing Review of Documents

The Complainant and the Respondent will each have the opportunity to review all investigative documents, subject to the privacy limitations imposed by state and federal law, at least five (5) business days prior to the hearing. The investigative documents will include the investigation report, any witness statements or interviews, statements or interviews by both parties, and any other documentary information that will be presented to the hearing panel.

6. Witnesses

The Complainant, Respondent, and the hearing panel all have the right to call witnesses. Witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character.

In general, neither party will be permitted to call as a witness anyone who was not interviewed by the investigator as part of the College's investigation. If either party wishes to call witnesses, whether or not they were previously interviewed as part of the College's investigation, the following must be submitted no later than five (5) business days before the hearing to the Hearing Coordinator via e-mail or in hardcopy format:

- The names of any witnesses that either party intends to call;
- A written statement and/or description of what each witness observed, if not already provided during investigation;
- A summary of why the witness' presence is relevant to making a decision about responsibility at the hearing; and,
- The reason why the witness was not interviewed by the investigator, if applicable.

The Hearing Coordinator will determine if the proffered witness(es) has relevant information and if there is sufficient justification for permitting a witness who was not interviewed by the investigator. The Hearing Coordinator may also require the investigator to interview the newly proffered witness.

If witnesses are approved to be present, the Respondent and Complainant are provided with a list of witnesses and any relevant documents related to their appearance at the hearing no later than five (5) business days before the hearing. All parties have the opportunity to ask questions of witnesses (through the panel), regardless of who called them to the hearing.

7. Relevance

The Hearing Coordinator will review the investigative report, any witness statements and any other documentary evidence to determine whether the proffered information contained therein is relevant and material to the determination of responsibility given the nature of the allegation. In general, the Hearing Coordinator may redact information that is irrelevant, more prejudicial than probative, or immaterial. The Hearing Coordinator may also redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty.

8. Prior Sexual History and/or Pattern Evidence

Prior Sexual History of a Complainant: In general, a Complainant's prior sexual history is not relevant and will not be admitted as evidence at a hearing. Where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is typically not relevant and will not be permitted.

Pattern Evidence by a Respondent: Where there is evidence of pattern of conduct similar in nature by the Respondent, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant and probative to the panel's determination of responsibility and/or assigning of a sanction. The determination of relevance will be based on an assessment of whether the previous incident was substantially similar to the conduct cited in the report and indicates a pattern of behavior and substantial conformity with that pattern by the Respondent. Where there is a prior finding of responsibility for a similar act of sexual misconduct, there is a presumption of relevance and the finding may be considered in making a determination as to responsibility and/or assigning of a sanction.

The College, through the Hearing Coordinator or Title IX Coordinator, may choose to introduce this information, with appropriate notice to the parties. Alternatively, a party may

request in writing that information under this section be admitted. A request to admit such information must be submitted to the Hearing Coordinator. The Hearing Coordinator, in consultation with the Title IX Coordinator, will assess the relevance of this information and determine if it is appropriate for inclusion at the hearing.

To aid in an advance determination of relevance, the following must be submitted no later five (5) business days before the hearing to the Hearing Coordinator via e-mail or in hardcopy format:

- A written statement and/or description of the proposed information, if not already provided during investigation; and
- A summary of why this information is relevant to making a decision of responsibility at the hearing.

If this information is approved as appropriate for presentation at the hearing, the Respondent and Complainant will be provided with a brief description of the approved information no later than five (5) business days before the hearing.

9. Request to Reschedule Hearing

Either party can request to have a hearing rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted to the Hearing Coordinator with an explanation for his or her request at least three (3) business days prior to the hearing.

10. Consolidation of Hearings

At the discretion of the Hearing Coordinator, in consultation with the Title IX Coordinator, multiple reports may be consolidated against a Respondent in one hearing, if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident. Matters may be consolidated where they involve multiple Complainants, multiple Respondents, or related conduct that would regularly have been heard under the Code of Student Conduct.

E. Hearing Panel Procedures

1. Attendance at Hearing

If a party does not attend a hearing for any non-emergency or compelling reason, the hearing may be held in his/her absence at the discretion of the Vice President of Student Affairs and Dean of Students.

A Respondent will not be permitted to withdraw from the College prior to the conclusion of an investigation or formal resolution under this policy. If a Respondent chooses not to participate, the College will move forward with the hearing and imposition of sanction, if any, in absentia.

The Respondent's academic transcript will be marked Withdrawal Pending Disciplinary Action, or, if finally resolved in absentia, with the final outcome in accordance with regular practice under this policy.

A Complainant or Respondent may also request alternative testimony options that would not require physical proximity to the other party. Options include placing a privacy screen in the hearing room, allowing the Complainant or Respondent to speak outside the physical presence of the other by using relevant technology to facilitate participation. Any proposed alternative must be reviewed in advance of the hearing to ensure that it is consistent with the goals of a fair and equitable process. While these options are intended to help make the alleged Complainant or Respondent more comfortable, they are not intended to work to the disadvantage of the other party.

2. Participants in Hearing Procedures

The hearing panel is a closed hearing; it is not open to the public. The individuals who may appear before the hearing panel are: the Complainant; the Respondent; any individual serving as an approved advisor or support person; and any individuals appearing as witnesses. Attorneys, including family members acting as attorneys, are not permitted.

3. Safeguarding of Privacy

All parties involved in a hearing are required to keep the information learned in preparation for the hearing and at the hearing private. No copies of documents provided are to be made or shared with any third parties. All copies provided must be returned to the College at the conclusion of the hearing and any appeals. Any breach of this duty is subject to further disciplinary action by the College.

4. Hearing Panel Procedures

A hearing is not intended to be adversarial; rather, it is intended to be educational and developmental. The hearing is intended to provide a fair and ample opportunity for each side to present his/her account of the incident and for the hearing panel to determine the facts of the case, make a determination as to whether College policy was violated, and to recommend appropriate sanctions, if necessary. The hearing is an informal proceeding not comparable to a criminal trial; it is the mechanism by which the College assesses, and as appropriate, takes formal disciplinary action regarding a violation of College policy.

The hearing panel must review all pertinent information regarding the incident in question prior to the date of the hearing panel. Relevant information supporting the violation(s) alleged may be offered in the form of written statements, documents, items, or oral information from the Complainant, the Respondent, and witnesses.

A member of the panel will be designated as the panel chair. A hearing will be called to order by the panel chair. The Hearing Coordinator serves as a (non-voting) advisor to the hearing

panel. The chair will explain the hearing process and will provide an opportunity to all parties to ask procedural questions prior to initial statements and the presentation of information.

The investigator will provide a brief opening statement summarizing the investigation. The opening statement should focus on the areas of agreement and disagreement in order to assist the hearing panel in prioritizing areas of inquiry. The hearing panel, Complainant, or Respondent may make brief inquiries of the investigator at this juncture, as there will be additional opportunity to ask questions of the investigator after the hearing panel has heard from the Complainant, the Respondent, and any witnesses.

The Complainant may supplement the information provided to the panel with a brief statement. This is not intended to be a retelling of the event. The hearing panel may pose questions to the Complainant, including questions suggested by the Respondent.

After the Complainant is finished, the Respondent will be given an opportunity, and is encouraged, to make a brief statement. The hearing panel may pose questions to the Respondent, including questions suggested by the Complainant.

The panel may hear from witnesses on behalf of the Complainant and the Respondent. Each witness will be questioned by the hearing panel, and, as appropriate, the Complainant and the Respondent. Under some circumstances, the Complainant or Respondent may be asked to present a list of written questions to the panel, who will determine the relevance of the questions and pose any questions deemed relevant.

The hearing panel, Complainant, and Respondent may then question the Investigator. The investigator is not permitted to offer an opinion on the credibility of any individual or as to the ultimate issue.

At the conclusion of the presentation of all witnesses, the Complainant and Respondent will each be given a brief final opportunity to address any outstanding issues of fact.

5. Questioning of Witnesses

It is the responsibility of the hearing panel to assure that the information necessary to make an informed decision is presented. The panel members may play an active role in questioning both parties and witnesses involved in the case. At times, the panel members may need to ask difficult or sensitive questions in order to understand areas of factual dispute or gain a full understanding of the context.

At no time will the complainant or the respondent be permitted to directly question one another. As outlined above, the parties may submit questions to the hearing panel in writing, which may be posed at the discretion of the hearing panel. Similarly, the panel members are under no obligation to allow either party to directly question witnesses, and the panel may require that questions to witnesses be submitted in writing.

Both parties are encouraged to prepare a written list of questions in advance. The parties may also submit questions in writing to the chair throughout the course of the hearing. The chair, in consultation with the panel, will determine the appropriateness and relevance of the questions.

Parties and other individuals who offer information at a hearing are expected to respond honestly, and to the best of their knowledge. The hearing panel reserves the right to recall any party or witness for further questions and to seek additional information necessary to make a decision.

6. Deliberation

After all of the information has been presented, all parties will be dismissed and the hearing will be formally concluded.

The panel members will conduct their deliberations in private. The panel must complete their deliberations within two (2) business days, but every attempt will be made to complete the deliberations promptly. The Hearing Coordinator may remain for deliberations, but may not participate in the deliberations and may not vote.

The hearing panel will determine a Respondent's responsibility by a preponderance of the evidence. This means that the hearing panel will decide whether it is "more likely than not," based upon all of the relevant information, that the Respondent is responsible for the alleged violation(s). The hearing panel must reach a decision on responsibility by majority vote. Only the decision on responsibility will be shared with the Complainant and the Respondent.

If the panel finds the Respondent responsible, the panel will then recommend appropriate sanctions to the Hearing Coordinator. The Hearing Coordinator, in consultation with the Title IX Coordinator, will review the recommendations and impose an appropriate sanction.

The findings of the hearing panel will be reduced to writing. The findings will detail the findings of fact and the basis/rationale for the decision of the hearing panel, making reference to the evidence that led to the finding.

F. Sanctions

A hearing panel that finds a Respondent responsible for a violation of this policy may recommend appropriate sanctions that may include, but are not limited to, those set forth below. Sanctions may be issued individually, or a combination of sanctions may be imposed. The Complainant and Respondent will each have the opportunity to present a written statement about impact and/or requested sanctions. The hearing panel will review these statements only if the Respondent has been found responsible for one or more violation.

In general:

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- Any student who is determined to have committed sexual assault may receive a sanction ranging from suspension to expulsion.
- Any student who is determined to have committed non-consensual sexual contact or any other prohibited form of conduct may receive a sanction ranging from conduct warning to expulsion.

The hearing panel may deviate from the range of recommended sanctions, based upon a full consideration of the following factors: (1) the Respondent's prior discipline history; (2) how the College has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the Complainant; (5) the impact of the conduct on the community, its members, or its property; (6) whether the Respondent has accepted responsibility for his actions; (7) whether the Respondent is reasonably likely to engage in the conduct in the future; (8) the need to deter similar conduct by others; and (9) any other mitigating or aggravating circumstances, including the College's values.

The hearing panel or Hearing Coordinator may also consider restorative justice outcomes that, taking into account the safety of the community as a whole, allows a Respondent to learn about the origins of his/her behavior, his/her responsibility for this behavior, and how s/he can change this behavior.

In appropriate cases, a panel may determine that the conduct was motivated by bias, insofar as a Complainant was selected on the basis of his or her race, color, ethnicity, national origin, religion, age, disability or other protected class. Where the panel determines that student misconduct was motivated by bias, the panel may elect to increase the sanction imposed as a result of this motivation.

The hearing panel will make a recommendation about the appropriate sanction. The Hearing Coordinator, in consultation with the Title IX Coordinator, may affirm or modify the recommended sanction(s). The Hearing Coordinator and Title IX Coordinator will review the panel's recommendations and take reasonable steps to foster consistency for similar violations and circumstances.

Sanctions that may be imposed under this policy include:

Warning: Notice, in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.

Censure: A written reprimand for violating the Code of Student Conduct or other College policy. This conduct status specifies a period of time during which the student's or organization's good standing with the College may be in jeopardy. The student is officially warned that continuation or repetition of prohibited conduct may be cause for additional conduct action including probation, suspension, or expulsion from the College.

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Disciplinary Probation: Exclusion from participation in privileged activities for a specified period of time (privileged activities may include, but are not limited to, elected or appointed ASOC offices, student research, athletics, some student employment, and study abroad). Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other College policy violations may result in further disciplinary action.

Restitution: Repayment to the College or to an affected party for damages resulting from a violation of this Code. To enforce this sanction, the College reserves the right to withhold its transcripts and degrees or to deny a student participation in graduation ceremonies and privileged events.

Removal from Campus Housing: Students may be removed from College housing and/or barred from applying for campus housing due to disciplinary violations of this Code.

Suspension: Exclusion from College premises, attending classes, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Notice of this action will remain in the student's conduct file. Conditions for readmission may be specified in the suspension notice.

Expulsion: Permanent termination of student status and exclusion from College premises, privileges, and activities. This action will be permanently recorded on the student's academic transcript.

Revocation of Admission and/or Degree: Admission to, or a degree awarded by, the College may be revoked for fraud, misrepresentation in obtaining the degree or violation of College policies, the Student Code of Conduct or for other serious violations committed by a student prior to enrollment or graduation.

Withholding Degree: The College may withhold awarding a degree otherwise earned until the completion of the process set forth in this Code, including the completion of all sanctions imposed, if any.

Other sanctions may be imposed instead of, or in addition to, those specified here. Service, education or research projects may also be assigned. More than one of the sanctions listed above may be imposed for any single violation.

G. Outcome Letter

The outcome of the hearing panel will be final and communicated to the Complainant and Respondent in writing, usually within four (4) business days from the date the hearing is concluded. The notification of each party should occur at or near the same time.

Both parties have the right to be informed of the outcome. In addition, the Respondent will be fully informed of any sanctions. For reports involving sexual violence, the Complainant will be fully informed of any sanctions. For all other reports under this policy, the Complainant will be informed of only those sanctions that directly relate to the Complainant, consistent with FERPA and other applicable law.

The imposition of sanctions will take effect immediately and will not be stayed pending the resolution of the appeal.

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is not dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about individual conduct complaints pursuant to FERPA requirements.

H. Appeals

Either party may appeal the final outcome in writing to the Vice President for Student Affairs and Dean of Students or designee (the "Appeals Officer"). The appeal will be conducted in an impartial manner by an impartial decision-maker. The appeal must be filed in writing within five (5) business days of receiving the written outcome. The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal.

The Complainant and/or Respondent may appeal only the parts of final outcome directly relating to him/her. Dissatisfaction with the outcome of the hearing is not grounds for appeal. The only grounds for appeal are:

- A procedural or substantive error occurred that significantly affected the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- New evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction (a summary of this new evidence and its potential impact must be included).

The receipt of the appeal will be acknowledged in writing (which can include email). Each party will be given the opportunity to respond in writing to the other party's appeal. Any response by the opposing party must be submitted to the Appeals Officer within three (3) business days from receipt of the appeal. The appeals documents from each party will be considered together in one appeal review process.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The Appeals Officer shall first consider whether the appeal is timely filed and if so, whether the appeal is properly framed based on the two grounds. If the Appeals Officer determines that the appeal is not properly framed, the appeal will be denied.

If the appeal is based on procedural or substantive error, the Appeals Officer may return the complaint to the original hearing panel with instructions to reconvene to cure the error, or in rare

cases where the error cannot be cured, the Appeals Officer can ask that a new hearing occur before a newly constituted hearing panel. In the case of new and relevant information, the Appeals Officer can recommend that the case be returned to the original hearing panel to assess the weight and effect of the new information and render a determination after considering the new facts. The reconsideration of the hearing panel is final.

Appeals are not intended to be full rehearing of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. This is not an opportunity for the Appeals Officer to substitute his/her judgment for that of the original hearing body merely because s/he disagree with its finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error. The Appeals Officer can affirm or alter the original findings, depending on the basis of the requested appeal.

Sanctions imposed are implemented immediately unless the Vice President for Student Affairs and Dean of Students stays implementation in extraordinary circumstances, pending the outcome of the appeal. Pending graduation, study abroad, internships/externships, or other events do not typically constitute extraordinary circumstances. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

The Appeals Officer will render a written decision on the appeal to the Complainant and Respondent within fifteen (15) business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.

I. Integrity of Proceedings

These procedures are entirely administrative in nature and are not considered legal proceedings. Neither party may audio or video record the proceedings, nor is formal legal representation allowed.

At the Hearing Coordinator's discretion, anyone disrupting the hearing may be removed.

J. Records

The Title IX Coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by means of Title IX assessment, informal resolution or formal resolution.

Complaints resolved by means of Title IX assessment or informal resolution are not part of a student's conduct file or academic record or of an employee's personnel record.

Affirmative findings of responsibility in matters resolved through formal resolution are part of a student's conduct record and an employee's personnel record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record or an employee's personnel record.

Generally suspension, expulsion, and withdrawal pending disciplinary action are permanently noted

on a student's transcript. The conduct files of students who have been suspended or expelled from the College are maintained in the Dean of Students Office indefinitely. Conduct files of students who have not been suspended or expelled are maintained in the Dean of Students Office for no fewer than seven years from the date of the incident. Further questions about record retention should be directed to the Dean of Students Office.

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Exhibit 2

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime.

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. In order to assist recipients, which include school districts, colleges, and universities (hereinafter "schools" or "recipients") in meeting these obligations, this letter¹ explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and lays out the specific Title IX requirements applicable to sexual violence.² Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape,

¹ The Department has determined that this Dear Colleague Letter is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), *available at*:

http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf. OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

² Use of the term "sexual harassment" throughout this document includes sexual violence unless otherwise noted. Sexual harassment also may violate Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c), which prohibits public school districts and colleges from discriminating against students on the basis of sex, among other bases. The U.S. Department of Justice enforces Title IV.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victims of completed or attempted sexual assault while in college.³ The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college.⁴ According to data collected under the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), in 2009, college campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act.⁵ This problem is not limited to college. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools.⁶ Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.⁷ The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities.

This letter begins with a discussion of Title IX's requirements related to student-on-student sexual harassment, including sexual violence, and explains schools' responsibility to take immediate and effective steps to end sexual harassment and sexual violence. These requirements are discussed in detail in OCR's *Revised Sexual Harassment Guidance* issued in 2001 (*2001 Guidance*).⁸ This letter supplements the *2001 Guidance* by providing additional guidance and practical examples regarding the Title IX requirements as they relate to sexual violence. This letter concludes by discussing the proactive efforts schools can take to prevent sexual harassment and violence, and by providing examples of remedies that schools and OCR may use to end such conduct, prevent its recurrence, and address its effects. Although some examples contained in this letter are applicable only in the postsecondary context, sexual

³ CHRISTOPHER P. KREBS ET AL., *THE CAMPUS SEXUAL ASSAULT STUDY: FINAL REPORT* xiii (Nat'l Criminal Justice Reference Serv., Oct. 2007), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>. This study also found that the majority of campus sexual assaults occur when women are incapacitated, primarily by alcohol. *Id.* at xviii.

⁴ *Id.* at 5-5.

⁵ U.S. Department of Education, Office of Postsecondary Education, Summary Crime Statistics (data compiled from reports submitted in compliance with the Clery Act), available at <http://www2.ed.gov/admins/lead/safety/criminal2007-09.pdf>. Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. 34 C.F.R. Part 668, Subpt. D, App. A.

⁶ SIMONE ROBERS ET AL., *INDICATORS OF SCHOOL CRIME AND SAFETY: 2010* at 104 (U.S. Dep't of Educ. & U.S. Dep't of Justice, Nov. 2010), available at <http://nces.ed.gov/pubs2011/2011002.pdf>.

⁷ ERIKA HARRELL & MICHAEL R. RAND, *CRIME AGAINST PEOPLE WITH DISABILITIES, 2008* (Bureau of Justice Statistics, U.S. Dep't of Justice, Dec. 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/capd08.pdf>.

⁸ The *2001 Guidance* is available on the Department's Web site at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>. This letter focuses on peer sexual harassment and violence. Schools' obligations and the appropriate response to sexual harassment and violence committed by employees may be different from those described in this letter. Recipients should refer to the *2001 Guidance* for further information about employee harassment of students.

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harassment and violence also are concerns for school districts. The Title IX obligations discussed in this letter apply equally to school districts unless otherwise noted.

Title IX Requirements Related to Sexual Harassment and Sexual Violence

Schools' Obligations to Respond to Sexual Harassment and Sexual Violence

Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment prohibited by Title IX.⁹

As explained in OCR's *2001 Guidance*, when a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.¹⁰

Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program

⁹ Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. The Title IX obligations discussed in this letter also apply to gender-based harassment. Gender-based harassment is discussed in more detail in the *2001 Guidance*, and in the 2010 Dear Colleague letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

¹⁰ See, e.g., *Jennings v. Univ. of N.C.*, 444 F.3d 255, 268, 274 n.12 (4th Cir. 2006) (acknowledging that while not an issue in this case, a single incident of sexual assault or rape could be sufficient to raise a jury question about whether a hostile environment exists, and noting that courts look to Title VII cases for guidance in analyzing Title IX sexual harassment claims); *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 259 n.4 (6th Cir. 2000) ("[w]ithin the context of Title IX, a student's claim of hostile environment can arise from a single incident" (quoting *Doe v. Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d 57, 62 (D. Me. 1999))); *Soper v. Hoben*, 195 F.3d 845, 855 (6th Cir. 1999) (explaining that rape and sexual abuse "obviously qualify[] as...severe, pervasive, and objectively offensive sexual harassment"); see also *Berry v. Chi. Transit Auth.*, 618 F.3d 688, 692 (7th Cir. 2010) (in the Title VII context, "a single act can create a hostile environment if it is severe enough, and instances of uninvited physical contact with intimate parts of the body are among the most severe types of sexual harassment"); *Turner v. Saloon, Ltd.*, 595 F.3d 679, 686 (7th Cir. 2010) (noting that "[o]ne instance of conduct that is sufficiently severe may be enough," which is "especially true when the touching is of an intimate body part" (quoting *Jackson v. Cnty. of Racine*, 474 F.3d 493, 499 (7th Cir. 2007))); *McKinnis v. Crescent Guardian, Inc.*, 189 F. App'x 307, 310 (5th Cir. 2006) (holding that "the deliberate and unwanted touching of [a plaintiff's] intimate body parts can constitute severe sexual harassment" in Title VII cases (quoting *Harvill v. Westward Commc'ns, L.L.C.*, 433 F.3d 428, 436 (5th Cir. 2005))).

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sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.¹¹

If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.¹² Schools also are required to publish a notice of nondiscrimination and to adopt and publish grievance procedures. Because of these requirements, which are discussed in greater detail in the following section, schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly. Training for employees should include practical information about how to identify and report sexual harassment and violence. OCR recommends that this training be provided to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors.

Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. For example, if a student alleges that he or she was sexually assaulted by another student off school grounds, and that upon returning to school he or she was taunted and harassed by other students who are the alleged perpetrator's friends, the school should take the earlier sexual assault into account in determining whether there is a sexually hostile environment. The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.

Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. As discussed later in this letter, the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct. The specific steps in a school's

¹¹ Title IX also protects third parties from sexual harassment or violence in a school's education programs and activities. For example, Title IX protects a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in a school's on-campus residence hall. Title IX also protects employees of a recipient from sexual harassment. For further information about harassment of employees, see *2001 Guidance* at n.1.

¹² This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See *2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643, 648 (1999).

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investigation will vary depending upon the nature of the allegations, the age of the student or students involved (particularly in elementary and secondary schools), the size and administrative structure of the school, and other factors. Yet as discussed in more detail below, the school's inquiry must in all cases be prompt, thorough, and impartial. In cases involving potential criminal conduct, school personnel must determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified.¹³

Schools also should inform and obtain consent from the complainant (or the complainant's parents if the complainant is under 18 and does not attend a postsecondary institution) before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited.¹⁴ The school also should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

As discussed in the *2001 Guidance*, if the complainant continues to ask that his or her name or other identifiable information not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.¹⁵ The school should inform the complainant if it cannot ensure confidentiality. Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence. Examples of such steps are discussed later in this letter.

Compliance with Title IX, such as publishing a notice of nondiscrimination, designating an employee to coordinate Title IX compliance, and adopting and publishing grievance procedures, can serve as preventive measures against harassment. Combined with education and training programs, these measures can help ensure that all students and employees recognize the

¹³ In states with mandatory reporting laws, schools may be required to report certain incidents to local law enforcement or child protection agencies.

¹⁴ Schools should refer to the *2001 Guidance* for additional information on confidentiality and the alleged perpetrator's due process rights.

¹⁵ For example, the alleged harasser may have a right under FERPA to inspect and review portions of the complaint that directly relate to him or her. In that case, the school must redact the complainant's name and other identifying information before allowing the alleged harasser to inspect and review the sections of the complaint that relate to him or her. In some cases, such as those where the school is required to report the incident to local law enforcement or other officials, the school may not be able to maintain the complainant's confidentiality.

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nature of sexual harassment and violence, and understand that the school will not tolerate such conduct. Indeed, these measures may bring potentially problematic conduct to the school's attention before it becomes serious enough to create a hostile environment. Training for administrators, teachers, staff, and students also can help ensure that they understand what types of conduct constitute sexual harassment or violence; can identify warning signals that may need attention, and know how to respond. More detailed information and examples of education and other preventive measures are provided later in this letter.

Procedural Requirements Pertaining to Sexual Harassment and Sexual Violence

Recipients of Federal financial assistance must comply with the procedural requirements outlined in the Title IX implementing regulations. Specifically, a recipient must:

- (A) Disseminate a notice of nondiscrimination;¹⁶
- (B) Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX;¹⁷ and
- (C) Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints.¹⁸

These requirements apply to all forms of sexual harassment, including sexual violence, and are important for preventing and effectively responding to sex discrimination. They are discussed in greater detail below. OCR advises recipients to examine their current policies and procedures on sexual harassment and sexual violence to determine whether those policies comply with the requirements articulated in this letter and the *2001 Guidance*. Recipients should then implement changes as needed.

(A) Notice of Nondiscrimination

The Title IX regulations require that each recipient publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to discriminate in such a manner.¹⁹ The notice must state that inquiries concerning the application of Title IX may be referred to the recipient's Title IX coordinator or to OCR. It should include the name or title, office address, telephone number, and e-mail address for the recipient's designated Title IX coordinator.

The notice must be widely distributed to all students, parents of elementary and secondary students, employees, applicants for admission and employment, and other relevant persons. OCR recommends that the notice be prominently posted on school Web sites and at various

¹⁶ 34 C.F.R. § 106.9.

¹⁷ *Id.* § 106.8(a).

¹⁸ *Id.* § 106.8(b).

¹⁹ *Id.* § 106.9(a).

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locations throughout the school or campus and published in electronic and printed publications of general distribution that provide information to students and employees about the school's services and policies. The notice should be available and easily accessible on an ongoing basis.

Title IX does not require a recipient to adopt a policy specifically prohibiting sexual harassment or sexual violence. As noted in the *2001 Guidance*, however, a recipient's general policy prohibiting sex discrimination will not be considered effective and would violate Title IX if, because of the lack of a specific policy, students are unaware of what kind of conduct constitutes sexual harassment, including sexual violence, or that such conduct is prohibited sex discrimination. OCR therefore recommends that a recipient's nondiscrimination policy state that prohibited sex discrimination covers sexual harassment, including sexual violence, and that the policy include examples of the types of conduct that it covers.

(B) Title IX Coordinator

The Title IX regulations require a recipient to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with Title IX.²⁰ The coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The Title IX coordinator or designee should be available to meet with students as needed. If a recipient designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities (e.g., who will handle complaints by students, faculty, and other employees). The recipient should designate one coordinator as having ultimate oversight responsibility, and the other coordinators should have titles clearly showing that they are in a deputy or supporting role to the senior coordinator. The Title IX coordinators should not have other job responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest.

Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. Because sexual violence complaints often are filed with the school's law enforcement unit, all school law enforcement unit employees should receive training on the school's Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school's Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint, and to report incidents of sexual violence to the Title IX coordinator if the complainant consents. The school's Title IX coordinator or designee should be available to provide assistance to school law enforcement unit employees regarding how to respond appropriately to reports of sexual violence. The Title IX coordinator also should be given access to school law enforcement unit investigation notes

²⁰ *Id.* § 106.8(a).

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and findings as necessary for the Title IX investigation, so long as it does not compromise the criminal investigation.

(C) Grievance Procedures

The Title IX regulations require all recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints.²¹ The grievance procedures must apply to sex discrimination complaints filed by students against school employees, other students, or third parties.

Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and sexual violence complaints. Therefore, a recipient may use student disciplinary procedures or other separate procedures to resolve such complaints. Any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary procedures, however, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution.²² These requirements are discussed in greater detail below. If the recipient relies on disciplinary procedures for Title IX compliance, the Title IX coordinator should review the recipient's disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX.²³

Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints. OCR has frequently advised recipients, however, that it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school (e.g., participation by a trained counselor, a trained mediator, or, if appropriate, a teacher or administrator). In addition, as stated in the *2001 Guidance*, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints.

²¹ *Id.* § 106.8(b). Title IX also requires recipients to adopt and publish grievance procedures for employee complaints of sex discrimination.

²² These procedures must apply to all students, including athletes. If a complaint of sexual violence involves a student athlete, the school must follow its standard procedures for resolving sexual violence complaints. Such complaints must not be addressed solely by athletics department procedures. Additionally, if an alleged perpetrator is an elementary or secondary student with a disability, schools must follow the procedural safeguards in the Individuals with Disabilities Education Act (at 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500-300.519, 300.530-300.537) as well as the requirements of Section 504 of the Rehabilitation Act of 1973 (at 34 C.F.R. §§ 104.35-104.36) when conducting the investigation and hearing.

²³ A school may not absolve itself of its Title IX obligations to investigate and resolve complaints of sexual harassment or violence by delegating, whether through express contractual agreement or other less formal arrangement, the responsibility to administer school discipline to school resource officers or "contract" law enforcement officers. See 34 C.F.R. § 106.4.

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Prompt and Equitable Requirements

As stated in the 2001 Guidance, OCR has identified a number of elements in evaluating whether a school's grievance procedures provide for prompt and equitable resolution of sexual harassment complaints. These elements also apply to sexual violence complaints because, as explained above, sexual violence is a form of sexual harassment. OCR will review all aspects of a school's grievance procedures, including the following elements that are critical to achieve compliance with Title IX:

- Notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- Application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
- Designated and reasonably prompt time frames for the major stages of the complaint process;
- Notice to parties of the outcome of the complaint;²⁴ and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

As noted in the 2001 Guidance, procedures adopted by schools will vary in detail, specificity, and components, reflecting differences in the age of students, school sizes and administrative structures, State or local legal requirements, and past experiences. Although OCR examines whether all applicable elements are addressed when investigating sexual harassment complaints, this letter focuses on those elements where our work indicates that more clarification and explanation are needed, including:

(A) Notice of the grievance procedures

The procedures for resolving complaints of sex discrimination, including sexual harassment, should be written in language appropriate to the age of the school's students, easily understood, easily located, and widely distributed. OCR recommends that the grievance procedures be prominently posted on school Web sites; sent electronically to all members of the school community; available at various locations throughout the school or campus; and summarized in or attached to major publications issued by the school, such as handbooks, codes of conduct, and catalogs for students, parents of elementary and secondary students, faculty, and staff.

(B) Adequate, Reliable, and Impartial Investigation of Complaints

OCR's work indicates that a number of issues related to an adequate, reliable, and impartial investigation arise in sexual harassment and violence complaints. In some cases, the conduct

²⁴ "Outcome" does not refer to information about disciplinary sanctions unless otherwise noted. Notice of the outcome is discussed in greater detail in Section D below.

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may constitute both sexual harassment under Title IX and criminal activity. Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.

A school should notify a complainant of the right to file a criminal complaint, and should not dissuade a victim from doing so either during or after the school's internal Title IX investigation. For instance, if a complainant wants to file a police report, the school should not tell the complainant that it is working toward a solution and instruct, or ask, the complainant to wait to file the report.

Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime. Any agreement or Memorandum of Understanding (MOU) with a local police department must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete its fact-finding for the Title IX investigation.²⁵ Moreover, nothing in an MOU or the criminal investigation itself should prevent a school from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the school community while the law enforcement agency's fact-gathering is in progress. OCR also recommends that a school's MOU include clear policies on when a school will refer a matter to local law enforcement.

As noted above, the Title IX regulation requires schools to provide equitable grievance procedures. As part of these procedures, schools generally conduct investigations and hearings to determine whether sexual harassment or violence occurred. In addressing complaints filed with OCR under Title IX, OCR reviews a school's procedures to determine whether the school is using a preponderance of the evidence standard to evaluate complaints. The Supreme Court has applied a preponderance of the evidence standard in civil litigation involving discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e et seq. Like Title IX,

²⁵ In one recent OCR sexual violence case, the prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances.

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Title VII prohibits discrimination on the basis of sex.²⁶ OCR also uses a preponderance of the evidence standard when it resolves complaints against recipients. For instance, OCR's Case Processing Manual requires that a noncompliance determination be supported by the preponderance of the evidence when resolving allegations of discrimination under all the statutes enforced by OCR, including Title IX.²⁷ OCR also uses a preponderance of the evidence standard in its fund termination administrative hearings.²⁸ Thus, in order for a school's grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred). The "clear and convincing" standard (i.e., it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.

Throughout a school's Title IX investigation, including at any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and the alleged perpetrator must be afforded similar and timely access to any information that will be used at the hearing.²⁹ For example, a school should not conduct a pre-hearing meeting during which only the alleged perpetrator is present and given an opportunity to present his or her side of the story, unless a similar meeting takes place with the complainant; a hearing officer or disciplinary board should not allow only the alleged perpetrator to present character witnesses at a hearing; and a school should not allow the alleged perpetrator to review the complainant's

²⁶ See, e.g., *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003) (noting that under the "conventional rule of civil litigation," the preponderance of the evidence standard generally applies in cases under Title VII); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 252-55 (1989) (approving preponderance standard in Title VII sex discrimination case) (plurality opinion); *id.* at 260 (White, J., concurring in the judgment); *id.* at 261 (O'Connor, J., concurring in the judgment). The 2001 Guidance noted (on page vi) that "[w]hile *Gebser* and *Davis* made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the *Davis* Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX." See also *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007) ("We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.").

²⁷ OCR's Case Processing Manual is available on the Department's Web site, at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.html>.

²⁸ The Title IX regulations adopt the procedural provisions applicable to Title VI of the Civil Rights Act of 1964. See 34 C.F.R. § 106.71 ("The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference."). The Title VI regulations apply the Administrative Procedure Act to administrative hearings required prior to termination of Federal financial assistance and require that termination decisions be "supported by and in accordance with the reliable, probative and substantial evidence." 5 U.S.C. § 556(d). The Supreme Court has interpreted "reliable, probative and substantial evidence" as a direction to use the preponderance standard. See *Steadman v. SEC*, 450 U.S. 91, 98-102 (1981).

²⁹ Access to this information must be provided consistent with FERPA. For example, if a school introduces an alleged perpetrator's prior disciplinary records to support a tougher disciplinary penalty, the complainant would not be allowed access to those records. Additionally, access should not be given to privileged or confidential information. For example, the alleged perpetrator should not be given access to communications between the complainant and a counselor or information regarding the complainant's sexual history.

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statement without also allowing the complainant to review the alleged perpetrator's statement.

While OCR does not require schools to permit parties to have lawyers at any stage of the proceedings, if a school chooses to allow the parties to have their lawyers participate in the proceedings, it must do so equally for both parties. Additionally, any school-imposed restrictions on the ability of lawyers to speak or otherwise participate in the proceedings should apply equally. OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment. OCR also recommends that schools provide an appeals process. If a school provides for appeal of the findings or remedy, it must do so for both parties. Schools must maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings.

All persons involved in implementing a recipient's grievance procedures (e.g., Title IX coordinators, investigators, and adjudicators) must have training or experience in handling complaints of sexual harassment and sexual violence, and in the recipient's grievance procedures. The training also should include applicable confidentiality requirements. In sexual violence cases, the fact-finder and decision-maker also should have adequate training or knowledge regarding sexual violence.³⁰ Additionally, a school's investigation and hearing processes cannot be equitable unless they are impartial. Therefore, any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed.

Public and state-supported schools must provide due process to the alleged perpetrator. However, schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.

(C) Designated and Reasonably Prompt Time Frames

OCR will evaluate whether a school's grievance procedures specify the time frames for all major stages of the procedures, as well as the process for extending timelines. Grievance procedures should specify the time frame within which: (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal, if applicable. Both parties should be given periodic status updates. Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint. Whether OCR considers complaint resolutions to be timely, however, will vary depending on the complexity of the investigation and the severity and extent of the harassment. For example, the resolution of a complaint involving multiple incidents with multiple complainants likely would take longer than one involving a single incident that

³⁰ For instance, if an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner.

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occurred in a classroom during school hours with a single complainant.

(D) Notice of Outcome

Both parties must be notified, in writing, about the outcome of both the complaint and any appeal,³¹ i.e., whether harassment was found to have occurred. OCR recommends that schools provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. Title IX does not require the school to notify the alleged perpetrator of the outcome before it notifies the complainant.

Due to the intersection of Title IX and FERPA requirements, OCR recognizes that there may be confusion regarding what information a school may disclose to the complainant.³² FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student's "education record." However, as stated in the *2001 Guidance*, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.³³ Disclosure of other information in the student's "education record," including information about sanctions that do not relate to the harassed student, may result in a violation of FERPA.

Further, when the conduct involves a crime of violence or a non-forcible sex offense,³⁴ FERPA permits a postsecondary institution to disclose to the alleged victim the final results of a

³¹ As noted previously, "outcome" does not refer to information about disciplinary sanctions unless otherwise noted.

³² In 1994, Congress amended the General Education Provisions Act (GEPA), of which FERPA is a part, to state that nothing in GEPA "shall be construed to affect the applicability of title VI of the Civil Rights Act of 1964, title IX of Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." 20 U.S.C. § 1221(d). The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. See *2001 Guidance* at vii.

³³ This information directly relates to the complainant and is particularly important in sexual harassment cases because it affects whether a hostile environment has been eliminated. Because seeing the perpetrator may be traumatic, a complainant in a sexual harassment case may continue to be subject to a hostile environment if he or she does not know when the perpetrator will return to school or whether he or she will continue to share classes or a residence hall with the perpetrator. This information also directly affects a complainant's decision regarding how to work with the school to eliminate the hostile environment and prevent its recurrence. For instance, if a complainant knows that the perpetrator will not be at school or will be transferred to other classes or another residence hall for the rest of the year, the complainant may be less likely to want to transfer to another school or change classes, but if the perpetrator will be returning to school after a few days or weeks, or remaining in the complainant's classes or residence hall, the complainant may want to transfer schools or change classes to avoid contact. Thus, the complainant cannot make an informed decision about how best to respond without this information.

³⁴ Under the FERPA regulations, crimes of violence include arson; assault offenses (aggravated assault, simple assault, intimidation); burglary; criminal homicide (manslaughter by negligence); criminal homicide (murder and

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disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed.³⁵ Additionally, a postsecondary institution may disclose to anyone—not just the alleged victim—the final results of a disciplinary proceeding if it determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution's rules or policies.³⁶

Postsecondary institutions also are subject to additional rules under the Clery Act. This law, which applies to postsecondary institutions that participate in Federal student financial aid programs, requires that "both the accuser and the accused must be informed of the outcome"³⁷ of any institutional disciplinary proceeding brought alleging a sex offense.³⁸ Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on redisclosure of information do not apply to information that postsecondary institutions are required to disclose under the Clery Act.³⁹ Accordingly, postsecondary institutions may not require a complainant to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of this information.

Steps to Prevent Sexual Harassment and Sexual Violence and Correct its Discriminatory Effects on the Complainant and Others

Education and Prevention

In addition to ensuring full compliance with Title IX, schools should take proactive measures to prevent sexual harassment and violence. OCR recommends that all schools implement preventive education programs and make victim resources, including comprehensive victim services, available. Schools may want to include these education programs in their (1) orientation programs for new students, faculty, staff, and employees; (2) training for students who serve as advisors in residence halls; (3) training for student athletes and coaches; and (4) school assemblies and "back to school nights." These programs should include a

non-negligent manslaughter); destruction, damage or vandalism of property; kidnapping/abduction; robbery; and forcible sex offenses. Forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include rape, sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses are incest and statutory rape. 34 C.F.R. Part 99, App. A.

³⁵ 34 C.F.R. § 99.31(a)(13). For purposes of 34 C.F.R. §§ 99.31(a)(13)-(14), disclosure of "final results" is limited to the name of the alleged perpetrator, any violation found to have been committed, and any sanction imposed against the perpetrator by the school. 34 C.F.R. § 99.39.

³⁶ 34 C.F.R. § 99.31(a)(14).

³⁷ For purposes of the Clery Act, "outcome" means the institution's final determination with respect to the alleged sex offense and any sanctions imposed against the accused. 34 C.F.R. § 668.46(b)(11)(vi)(B).

³⁸ 34 C.F.R. § 668.46(b)(11)(vi)(B). Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person's will, or not forcibly or against the person's will where the person is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses include incest and statutory rape. 34 C.F.R. Part 668, Subpt. D, App. A.

³⁹ 34 C.F.R. § 99.33(c).

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discussion of what constitutes sexual harassment and sexual violence, the school's policies and disciplinary procedures, and the consequences of violating these policies.

The education programs also should include information aimed at encouraging students to report incidents of sexual violence to the appropriate school and law enforcement authorities. Schools should be aware that victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of school or campus rules were involved.⁴⁰ As a result, schools should consider whether their disciplinary policies have a chilling effect on victims' or other students' reporting of sexual violence offenses. For example, OCR recommends that schools inform students that the schools' primary concern is student safety, that any other rules violations will be addressed separately from the sexual violence allegation, and that use of alcohol or drugs never makes the victim at fault for sexual violence.

OCR also recommends that schools develop specific sexual violence materials that include the schools' policies, rules, and resources for students, faculty, coaches, and administrators. Schools also should include such information in their employee handbook and any handbooks that student athletes and members of student activity groups receive. These materials should include where and to whom students should go if they are victims of sexual violence. These materials also should tell students and school employees what to do if they learn of an incident of sexual violence. Schools also should assess student activities regularly to ensure that the practices and behavior of students do not violate the schools' policies against sexual harassment and sexual violence.

Remedies and Enforcement

As discussed above, if a school determines that sexual harassment that creates a hostile environment has occurred, it must take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. In addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant, as well as changes to the school's overall services or policies. Examples of these actions are discussed in greater detail below.

Title IX requires a school to take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. The school should undertake these steps promptly once it has notice of a sexual harassment or violence allegation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the school may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school's investigation. When taking steps to separate the complainant and alleged perpetrator, a school should minimize the burden on the

⁴⁰ The Department's Higher Education Center for Alcohol, Drug Abuse, and Violence Prevention (HEC) helps campuses and communities address problems of alcohol, other drugs, and violence by identifying effective strategies and programs based upon the best prevention science. Information on HEC resources and technical assistance can be found at www.higheredcenter.org.

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complainant, and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain. In addition, schools should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement.⁴¹

Schools should be aware that complaints of sexual harassment or violence may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to name-calling and taunting. As part of their Title IX obligations, schools must have policies and procedures in place to protect against retaliatory harassment. At a minimum, schools must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

When OCR finds that a school has not taken prompt and effective steps to respond to sexual harassment or violence, OCR will seek appropriate remedies for both the complainant and the broader student population. When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department or refer the case to the U.S. Department of Justice for litigation.

Schools should proactively consider the following remedies when determining how to respond to sexual harassment or violence. These are the same types of remedies that OCR would seek in its cases.

Depending on the specific nature of the problem, remedies for the complainant might include, but are not limited to:⁴²

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes;
- moving the complainant or alleged perpetrator to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;

⁴¹ The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to notify proper law enforcement authorities, including campus and local police, and the option to be assisted by campus personnel in notifying such authorities. The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community. 20 U.S.C. §§ 1092(f)(8)(B)(v)-(vi).

⁴² Some of these remedies also can be used as interim measures before the school's investigation is complete.

- arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.⁴³

Remedies for the broader student population might include, but are not limited to:

Counseling and Training

- offering counseling, health, mental health, or other holistic and comprehensive victim services to all students affected by sexual harassment or sexual violence, and notifying students of campus and community counseling, health, mental health, and other student services;
- designating an individual from the school's counseling center to be "on call" to assist victims of sexual harassment or violence whenever needed;
- training the Title IX coordinator and any other employees who are involved in processing, investigating, or resolving complaints of sexual harassment or sexual violence, including providing training on:
 - the school's Title IX responsibilities to address allegations of sexual harassment or violence
 - how to conduct Title IX investigations
 - information on the link between alcohol and drug abuse and sexual harassment or violence and best practices to address that link;
- training all school law enforcement unit personnel on the school's Title IX responsibilities and handling of sexual harassment or violence complaints;
- training all employees who interact with students regularly on recognizing and appropriately addressing allegations of sexual harassment or violence under Title IX; and
- informing students of their options to notify proper law enforcement authorities, including school and local police, and the option to be assisted by school employees in notifying those authorities.

Development of Materials and Implementation of Policies and Procedures

- developing materials on sexual harassment and violence, which should be distributed to students during orientation and upon receipt of complaints, as well as widely posted throughout school buildings and residence halls, and which should include:
 - what constitutes sexual harassment or violence
 - what to do if a student has been the victim of sexual harassment or violence
 - contact information for counseling and victim services on and off school grounds
 - how to file a complaint with the school
 - how to contact the school's Title IX coordinator

⁴³ For example, if the complainant was disciplined for skipping a class in which the harasser was enrolled, the school should review the incident to determine if the complainant skipped the class to avoid contact with the harasser.

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- what the school will do to respond to allegations of sexual harassment or violence, including the interim measures that can be taken
- requiring the Title IX coordinator to communicate regularly with the school's law enforcement unit investigating cases and to provide information to law enforcement unit personnel regarding Title IX requirements;⁴⁴
- requiring the Title IX coordinator to review all evidence in a sexual harassment or sexual violence case brought before the school's disciplinary committee to determine whether the complainant is entitled to a remedy under Title IX that was not available through the disciplinary committee;⁴⁵
- requiring the school to create a committee of students and school officials to identify strategies for ensuring that students:
 - know the school's prohibition against sex discrimination, including sexual harassment and violence
 - recognize sex discrimination, sexual harassment, and sexual violence when they occur
 - understand how and to whom to report any incidents
 - know the connection between alcohol and drug abuse and sexual harassment or violence
 - feel comfortable that school officials will respond promptly and equitably to reports of sexual harassment or violence;
- issuing new policy statements or other steps that clearly communicate that the school does not tolerate sexual harassment and violence and will respond to any incidents and to any student who reports such incidents; and
- revising grievance procedures used to handle sexual harassment and violence complaints to ensure that they are prompt and equitable, as required by Title IX.

School Investigations and Reports to OCR

- conducting periodic assessments of student activities to ensure that the practices and behavior of students do not violate the school's policies against sexual harassment and violence;
- investigating whether any other students also may have been subjected to sexual harassment or violence;
- investigating whether school employees with knowledge of allegations of sexual harassment or violence failed to carry out their duties in responding to those allegations;
- conducting, in conjunction with student leaders, a school or campus "climate check" to assess the effectiveness of efforts to ensure that the school is free from sexual harassment and violence, and using the resulting information to inform future proactive steps that will be taken by the school; and

⁴⁴ Any personally identifiable information from a student's education record that the Title IX coordinator provides to the school's law enforcement unit is subject to FERPA's nondisclosure requirements.

⁴⁵ For example, the disciplinary committee may lack the power to implement changes to the complainant's class schedule or living situation so that he or she does not come in contact with the alleged perpetrator.

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- submitting to OCR copies of all grievances filed by students alleging sexual harassment or violence, and providing OCR with documentation related to the investigation of each complaint, such as witness interviews, investigator notes, evidence submitted by the parties, investigative reports and summaries, any final disposition letters, disciplinary records, and documentation regarding any appeals.

Conclusion

The Department is committed to ensuring that all students feel safe and have the opportunity to benefit fully from their schools' education programs and activities. As part of this commitment, OCR provides technical assistance to assist recipients in achieving voluntary compliance with Title IX.

If you need additional information about Title IX, have questions regarding OCR's policies, or seek technical assistance, please contact the OCR enforcement office that serves your state or territory. The list of offices is available at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. Additional information about addressing sexual violence, including victim resources and information for schools, is available from the U.S. Department of Justice's Office on Violence Against Women (OVW) at <http://www.ovw.usdoj.gov/>.⁴⁶

Thank you for your prompt attention to this matter. I look forward to continuing our work together to ensure that all students have an equal opportunity to learn in a safe and respectful school climate.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary for Civil Rights

⁴⁶ OVW also administers the Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program. This Federal funding is designed to encourage institutions of higher education to adopt comprehensive, coordinated responses to domestic violence, dating violence, sexual assault, and stalking. Under this competitive grant program, campuses, in partnership with community-based nonprofit victim advocacy organizations and local criminal justice or civil legal agencies, must adopt protocols and policies to treat these crimes as serious offenses and develop victim service programs and campus policies that ensure victim safety, offender accountability, and the prevention of such crimes. OVW recently released the first solicitation for the Services, Training, Education, and Policies to Reduce Domestic Violence, Dating Violence, Sexual Assault and Stalking in Secondary Schools Grant Program. This innovative grant program will support a broad range of activities, including training for school administrators, faculty, and staff; development of policies and procedures for responding to these crimes; holistic and appropriate victim services; development of effective prevention strategies; and collaborations with mentoring organizations to support middle and high school student victims.

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Exhibit 3

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

Questions and Answers on Title IX and Sexual Violence¹

Title IX of the Education Amendments of 1972 ("Title IX")² is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. All public and private elementary and secondary schools, school districts, colleges, and universities receiving any federal financial assistance (hereinafter "schools", "recipients", or "recipient institutions") must comply with Title IX.³

On April 4, 2011, the Office for Civil Rights (OCR) in the U.S. Department of Education issued a Dear Colleague Letter on student-on-student sexual harassment and sexual violence ("DCL").⁴ The DCL explains a school's responsibility to respond promptly and effectively to sexual violence against students in accordance with the requirements of Title IX.⁵ Specifically, the DCL:

- Provides guidance on the unique concerns that arise in sexual violence cases, such as a school's independent responsibility under Title IX to investigate (apart from any separate criminal investigation by local police) and address sexual violence.

¹ The Department has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf. The Office for Civil Rights (OCR) issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

² 20 U.S.C. § 1681 *et seq.*

³ Throughout this document the term "schools" refers to recipients of federal financial assistance that operate educational programs or activities. For Title IX purposes, at the elementary and secondary school level, the recipient generally is the school district; and at the postsecondary level, the recipient is the individual institution of higher education. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that the law's requirements conflict with the organization's religious tenets. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office.

⁴ Available at <http://www.ed.gov/ocr/letters/colleague-201104.html>.

⁵ Although this document and the DCL focus on sexual violence, the legal principles generally also apply to other forms of sexual harassment.

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- Provides guidance and examples about key Title IX requirements and how they relate to sexual violence, such as the requirements to publish a policy against sex discrimination, designate a Title IX coordinator, and adopt and publish grievance procedures.
- Discusses proactive efforts schools can take to prevent sexual violence.
- Discusses the interplay between Title IX, the Family Educational Rights and Privacy Act ("FERPA"),⁶ and the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act ("Clery Act")⁷ as it relates to a complainant's right to know the outcome of his or her complaint, including relevant sanctions imposed on the perpetrator.
- Provides examples of remedies and enforcement strategies that schools and OCR may use to respond to sexual violence.

The DCL supplements OCR's *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, issued in 2001 (*2001 Guidance*).⁸ The *2001 Guidance* discusses in detail the Title IX requirements related to sexual harassment of students by school employees, other students, or third parties. The DCL and the *2001 Guidance* remain in full force and we recommend reading these Questions and Answers in conjunction with these documents.

In responding to requests for technical assistance, OCR has determined that elementary and secondary schools and postsecondary institutions would benefit from additional guidance concerning their obligations under Title IX to address sexual violence as a form of sexual harassment. The following questions and answers further clarify the legal requirements and guidance articulated in the DCL and the *2001 Guidance* and include examples of proactive efforts schools can take to prevent sexual violence and remedies schools may use to end such conduct, prevent its recurrence, and address its effects. In order to gain a complete understanding of these legal requirements and recommendations, this document should be read in full.

Authorized by

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights

April 29, 2014

⁶ 20 U.S.C. §1232g; 34 C.F.R. Part 99.

⁷ 20 U.S.C. §1092(f).

⁸ Available at <http://www.ed.gov/ocr/docs/shguide.html>.

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**Notice of Language Assistance
Questions and Answers on Title IX and Sexual Violence**

Notice of Language Assistance: If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

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A. A School's Obligation to Respond to Sexual Violence

A-1. What is sexual violence?

Answer: Sexual violence, as that term is used in this document and prior OCR guidance, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

A-2. How does Title IX apply to student-on-student sexual violence?

Answer: Under Title IX, federally funded schools must ensure that students of all ages are not denied or limited in their ability to participate in or benefit from the school's educational programs or activities on the basis of sex. A school violates a student's rights under Title IX regarding student-on-student sexual violence when the following conditions are met: (1) the alleged conduct is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program, *i.e.* creates a hostile environment; and (2) the school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.⁹

A-3. How does OCR determine if a hostile environment has been created?

Answer: As discussed more fully in OCR's *2001 Guidance*, OCR considers a variety of related factors to determine if a hostile environment has been created; and also considers the conduct in question from both a subjective and an objective perspective. Specifically, OCR's standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all the circumstances. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. Indeed, a single or isolated incident of sexual violence may create a hostile environment.

⁹ This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See *2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See *Davis v. Monroe Cnty Bd. of Educ.*, 526 U.S. 629, 643 (1999).

A-4. When does OCR consider a school to have notice of student-on-student sexual violence?

Answer: OCR deems a school to have notice of student-on-student sexual violence if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual violence. See question D-2 regarding who is a responsible employee.

A school can receive notice of sexual violence in many different ways. Some examples of notice include: a student may have filed a grievance with or otherwise informed the school's Title IX coordinator; a student, parent, friend, or other individual may have reported an incident to a teacher, principal, campus law enforcement, staff in the office of student affairs, or other responsible employee; or a teacher or dean may have witnessed the sexual violence.

The school may also receive notice about sexual violence in an indirect manner, from sources such as a member of the local community, social networking sites, or the media. In some situations, if the school knows of incidents of sexual violence, the exercise of reasonable care should trigger an investigation that would lead to the discovery of additional incidents. For example, if school officials receive a credible report that a student has perpetrated several acts of sexual violence against different students, that pattern of conduct should trigger an inquiry as to whether other students have been subjected to sexual violence by that student. In other cases, the pervasiveness of the sexual violence may be widespread, openly practiced, or well-known among students or employees. In those cases, OCR may conclude that the school should have known of the hostile environment. In other words, if the school would have found out about the sexual violence had it made a proper inquiry, knowledge of the sexual violence will be imputed to the school even if the school failed to make an inquiry. A school's failure to take prompt and effective corrective action in such cases (as described in questions G-1 to G-3 and H-1 to H-3) would violate Title IX even if the student did not use the school's grievance procedures or otherwise inform the school of the sexual violence.

A-5. What are a school's basic responsibilities to address student-on-student sexual violence?

Answer: When a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E). If an investigation reveals that sexual violence created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its

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effects. But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

Title IX requires a school to protect the complainant and ensure his or her safety as necessary, including taking interim steps before the final outcome of any investigation.¹⁰ The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. If the school determines that the sexual violence occurred, the school must continue to take these steps to protect the complainant and ensure his or her safety, as necessary. The school should also ensure that the complainant is aware of any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. For additional information on interim measures, see questions G-1 to G-3.

If a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to a hostile environment. If it does, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately. For example, if a school's ignoring of a student's complaints of sexual assault by a fellow student results in the complaining student having to remain in classes with the other student for several weeks and the complaining student's grades suffer because he or she was unable to concentrate in these classes, the school may need to permit the complaining student to retake the classes without an academic or financial penalty (in addition to any other remedies) in order to address the effects of the sexual violence.

A-6. Does Title IX cover employee-on-student sexual violence, such as sexual abuse of children?

Answer: Yes. Although this document and the DCL focus on student-on-student sexual violence, Title IX also protects students from other forms of sexual harassment (including sexual violence and sexual abuse), such as sexual harassment carried out by school employees. (Sexual harassment by school employees can include unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, including but not limited to sexual activity.) Title IX's prohibition against

¹⁰ Throughout this document, unless otherwise noted, the term "complainant" refers to the student who allegedly experienced the sexual violence.

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sexual harassment generally does not extend to legitimate nonsexual touching or other nonsexual conduct. But in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment. Early signs of inappropriate behavior with a child can be the key to identifying and preventing sexual abuse by school personnel.

A school's Title IX obligations regarding sexual harassment by employees can, in some instances, be greater than those described in this document and the DCL. Recipients should refer to OCR's *2001 Guidance* for further information about Title IX obligations regarding harassment of students by school employees. In addition, many state and local laws have mandatory reporting requirements for schools working with minors. Recipients should be careful to satisfy their state and local legal obligations in addition to their Title IX obligations, including training to ensure that school employees are aware of their obligations under such state and local laws and the consequences for failing to satisfy those obligations.

(With respect to sexual activity in particular, OCR will always view as unwelcome and nonconsensual sexual activity between an adult school employee and an elementary school student or any student below the legal age of consent in his or her state.) In cases involving a student who meets the legal age of consent in his or her state, there will still be a strong presumption that sexual activity between an adult school employee and a student is unwelcome and nonconsensual. When a school is on notice that a school employee has sexually harassed a student, it is responsible for taking prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects. Indeed, even if a school was not on notice, the school is nonetheless responsible for remedying any effects of the sexual harassment on the student, as well as for ending the sexual harassment and preventing its recurrence, when the employee engaged in the sexual activity in the context of the employee's provision of aid, benefits, or services to students (e.g., teaching, counseling, supervising, advising, or transporting students).

A school should take steps to protect its students from sexual abuse by its employees. It is therefore imperative for a school to develop policies prohibiting inappropriate conduct by school personnel and procedures for identifying and responding to such conduct. For example, this could include implementing codes of conduct, which might address what is commonly known as grooming – a desensitization strategy common in adult educator sexual misconduct. Such policies and procedures can ensure that students, parents, and

school personnel have clear guidelines on what are appropriate and inappropriate interactions between adults and students in a school setting or in school-sponsored activities. Additionally, a school should provide training for administrators, teachers, staff, parents, and age-appropriate classroom information for students to ensure that everyone understands what types of conduct are prohibited and knows how to respond when problems arise.¹¹

B. Students Protected by Title IX

B-1. Does Title IX protect all students from sexual violence?

Answer: Yes. Title IX protects all students at recipient institutions from sex discrimination, including sexual violence. Any student can experience sexual violence: from elementary to professional school students; male and female students; straight, gay, lesbian, bisexual and transgender students; part-time and full-time students; students with and without disabilities; and students of different races and national origins.

B-2. How should a school handle sexual violence complaints in which the complainant and the alleged perpetrator are members of the same sex?

Answer: A school's obligation to respond appropriately to sexual violence complaints is the same irrespective of the sex or sexes of the parties involved. Title IX protects all students from sexual violence, regardless of the sex of the alleged perpetrator or complainant, including when they are members of the same sex. A school must investigate and resolve allegations of sexual violence involving parties of the same sex using the same procedures and standards that it uses in all complaints involving sexual violence.

Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations. Indeed, lesbian, gay, bisexual, and transgender (LGBT) youth report high rates of sexual harassment and sexual violence. A school should investigate and resolve allegations of sexual violence regarding LGBT students using the same procedures and standards that it

¹¹ For additional informational on training please see the Department of Education's Resource and Emergency Management for Schools Technical Assistance Center – Adult Sexual Misconduct in Schools: Prevention and Management Training, available at http://rems.ed.gov/Docs/ASM_Marketing_Flyer.pdf.

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uses in all complaints involving sexual violence. The fact that incidents of sexual violence may be accompanied by anti-gay comments or be partly based on a student's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy those instances of sexual violence.

If a school's policies related to sexual violence include examples of particular types of conduct that violate the school's prohibition on sexual violence, the school should consider including examples of same-sex conduct. In addition, a school should ensure that staff are capable of providing culturally competent counseling to all complainants. Thus, a school should ensure that its counselors and other staff who are responsible for receiving and responding to complaints of sexual violence, including investigators and hearing board members, receive appropriate training about working with LGBT and gender-nonconforming students and same-sex sexual violence. See questions J-1 to J-4 for additional information regarding training.

Gay-straight alliances and similar student-initiated groups can also play an important role in creating safer school environments for LGBT students. On June 14, 2011, the Department issued guidance about the rights of student-initiated groups in public secondary schools under the Equal Access Act. That guidance is available at <http://www2.ed.gov/policy/elsec/guid/secletter/110607.html>.

B-3. What issues may arise with respect to students with disabilities who experience sexual violence?

Answer: When students with disabilities experience sexual violence, federal civil rights laws other than Title IX may also be relevant to a school's responsibility to investigate and address such incidents.¹² Certain students require additional assistance and support. For example, students with intellectual disabilities may need additional help in learning about sexual violence, including a school's sexual violence education and prevention programs, what constitutes sexual violence and how students can report incidents of sexual

¹² OCR enforces two civil rights laws that prohibit disability discrimination. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits disability discrimination by public or private entities that receive federal financial assistance, and Title II of the American with Disabilities Act of 1990 (Title II) prohibits disability discrimination by all state and local public entities, regardless of whether they receive federal funding. See 29 U.S.C. § 794 and 34 C.F.R. part 104; 42 U.S.C. § 12131 *et seq.* and 28 C.F.R. part 35. OCR and the U.S. Department of Justice (DOJ) share the responsibility of enforcing Title II in the educational context. The Department of Education's Office of Special Education Programs in the Office of Special Education and Rehabilitative Services administers Part B of the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. 1400 *et seq.* and 34 C.F.R. part 300. IDEA provides financial assistance to states, and through them to local educational agencies, to assist in providing special education and related services to eligible children with disabilities ages three through twenty-one, inclusive.

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