

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOHN DOE,
c/o Engel & Martin, LLC
5181 Natorp Blvd., Ste. 210
Mason, OH 45040

Plaintiff,

v.

THE UNIVERSITY OF CINCINNATI,
2600 Clifton Avenue
Cincinnati, OH 45220

ANIESHA K. MITCHELL
Office of University Judicial Affairs
Suite 745 Steger Student Life Center,
Cincinnati, Ohio 45221-10193

and

JUAN GUARDIA
Dean of Students
Suite 630, Steger Student Life Center
Cincinnati, OH 45221

Defendants

Case No. **1:16-cv-987**

Judge

COMPLAINT

AND

JURY DEMAND

INTRODUCTION

1. Plaintiff John Doe brings this action for a declaratory judgment, injunctive relief, and violation of Title IX, and other related claims.
2. This case arises out of the decision of the University of Cincinnati (“UC”) to impose disciplinary sanctions against John Doe in violation of constitutional and statutory rights.

PARTIES

3. Plaintiff John Doe (“Doe”) is a graduate student at UC.
 - a. John Doe is an Ohio resident with a residence at [OMITTED]. Doe has completed three semesters of graduate coursework at UC. He is scheduled to graduate from his program with a Master’s Degree in May 2018.
 - b. The disclosure of John Doe’s identity will cause the student irreparable harm as this case involves matters of the utmost personal intimacy, including education records protected from disclosure by the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g; 34 CFR Part 99.
4. Defendant University of Cincinnati (“UC”) is a public university created by the Ohio Legislature. UC has a principal place of business at 2600 Clifton Avenue, Cincinnati, OH 45220. Under Ohio Revised Code 3361.01, the University of Cincinnati’s Board of Trustees is the governing body of the University of Cincinnati.
5. Defendant Aniesha K. Mitchell, is the Director of the Office of University Judicial Affairs at UC. She has an alternate title of Director of Student Conduct and Community Standards. She has a principal place of business at Suite 745 Steger Student Life Center, Cincinnati, Ohio 45221-10193.
 - a. Mitchell is sued in her official capacity for declaratory and injunctive relief.
 - b. On information and belief, Mitchell has been acting under regulations set forth in the Ohio Administrative Code, as well as the policies, procedures, and practices of UC.
 - c. Mitchell is responsible for administering and operating the UC Student Code of Conduct and Judicial System.
6. Defendant Juan Guardia is the Assistant Vice President for Student Affairs and Dean of Students for UC. He has a principal place of business at Steger Student Life Center, Suite 630, Cincinnati, OH 45221.

- a. Guardia is sued in his official capacity for declaratory and injunctive relief.
 - b. On information and belief, Guardia is acting under regulations set forth in the Ohio Administrative Code, as well as the policies, procedures, and practices of UC
 - c. Defendant Guardia has responsibility for administering and operating the UC Student Code of Conduct and Judicial System.
7. On information and belief, Defendants Guardia and Mitchell are authorized to grant all of the injunctive relief sought in the Complaint.

JURISDICTION AND VENUE

8. This case arises, in part, under the laws of the United States, specifically 42 U.S.C. §1983 and Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq. Accordingly, this Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331 and 1343.
9. The injunctive relief sought in this matter is authorized by 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure 57 and 65.
10. This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C. § 1391. The defendant is a resident of the State in which this district is located and a substantial part of the events or omissions giving rise to the claim occurred in this district.

FACTS

THE UC RESPONSE TO THE ISSUE OF SEXUAL MISCONDUCT ON CAMPUSES

11. This case arises amidst a growing national controversy stemming from the Federal Department of Education, Office of Civil Rights' ("OCR") threats to withhold federal education funds to compel colleges and universities to address "sexual violence" on their campuses.
12. After years of criticism for being too lax on campus sexual assault, at the urging of OCR and other high-ranking officials in the Obama Administration, colleges and universities are relying on Title

IX to crackdown on alleged perpetrators. This crackdown has gone too far, as schools are ill-equipped to handle and adjudicate matters of sexual assault. Problems include: accused students effectively are presumed guilty; instead of requiring accusers to prove they were assaulted, the accused students have to prove they had consent; and schools apply the very lowest standard of proof — preponderance of the evidence. The result is that schools treat male students accused of sexual misconduct with a presumption of guilt.

13. On April 11, 2011, OCR sent a “Dear Colleague” letter to colleges and universities.

- a. The Dear Colleague Letter advised that, in order to comply with Title IX, colleges and Universities must have transparent, prompt procedures to investigate and resolve complaints of sexual misconduct.
- b. Most notably, the “Dear Colleague” letter required schools to adopt a relatively low burden of proof—“more likely than not”—in cases involving sexual misconduct, including assault. Several colleges had been using “clear and convincing,” and some, like Stanford, applied the criminal standard, “beyond a reasonable doubt.”
- c. The “Dear Colleague” letter states that schools should “minimize the burden on the complainant,” transferring alleged perpetrators, if necessary, away from shared courses or housing.
- d. The “Dear Colleague” letter, while not completely ignoring due process concerns, suggested that schools should focus more on victim advocacy.
- e. The “Dear Colleague” letter states that schools should give both parties the right to appeal a decision, which amounts to double jeopardy for an accused student.
- f. After the “Dear Colleague” letter was published, many schools changed their sexual assault and sexual harassment policies and procedures.

14. The Obama administration, through OCR, has been pressuring colleges and universities to aggressively pursue investigations of sexual assaults on campuses.

- a. The “Dear Colleague” letter was a step in the increased enforcement of Title IX on colleges and universities. NPR described the Dear Colleague Letter as the government’s “first warning shot.” Source: *How Campus Sexual Assaults Came to Command New Attention*, NPR, August 12, 2014.
- b. The Washington Post reported in March 2015 that the OCR was seeking to hire up to 200 more investigators.
- c. In May 2014, the federal Department of Education disclosed for the first time the names of colleges — 55 in all — under investigation for possibly violating federal rules aimed at preventing sexual harassment.
- d. The federal government is investigating at least 129 schools for possible Title IX violations, including notable schools such as UC Berkeley, Stanford, Harvard, Brown University, Columbia University, Cornell University, Dartmouth College, Johns Hopkins University, the University of Chicago and many top state universities. The Department of Education has negotiated settlements with many schools, including Ohio State.
- e. In February 2014, Catherine E. Lhamon, the assistant secretary of education who heads the department's Office for Civil Rights, told college officials attending a conference at the University of Virginia that schools need to make “radical” change. According to the Chronicle of Higher Education, college presidents suggested afterward that there were “crisp marching orders from Washington.” Source: *Colleges Are Reminded of Federal Eye on Handling of Sexual-Assault Cases*, Chronicle of Higher Education, February 11, 2014.
- f. Lhanon was quoted in the LA Times stating, “We don’t treat rape and sexual assault as seriously as we should, . . . [There is] a need to push the country forward.” David G.

Savage and Timothy M. Phelps, *How a little-known education office has forced far-reaching changes to campus sex assault investigations*, LA Times August 17, 2015.

15. Colleges and Universities, including UC, are scared of being investigated or sanctioned by the Department of Education and/or of potential Title lawsuits by the Department of Justice (“DOJ”).

- a. The Federal government has created a significant amount of pressure on colleges and universities to treat all those accused of sexual misconduct with a presumption of guilt. The Chronicle of Higher Education noted that “Colleges face increasing pressure from survivors and the federal government to improve the campus climate.” Source: *Presumed Guilty: College men accused of rape say the scales are tipped against them*, Chronicle of Higher Education, September 1, 2014. In the same article, the Chronicle noted that different standards were applied to men and women: “Under current interpretations of colleges’ legal responsibilities, if a female student alleges sexual assault by a male student after heavy drinking, he may be suspended or expelled, even if she appeared to be a willing participant and never said no. That is because in heterosexual cases, colleges typically see the male student as the one physically able to initiate sex, and therefore responsible for gaining the woman’s consent.”
- b. Lhamon told a national conference at Dartmouth in the summer of 2014, “I will go to enforcement, and I am prepared to withhold federal funds.” Source: *How Campus Sexual Assaults Came To Command New Attention*, NPR, August 12, 2014. In that same article, Anne Neal of the American Council of Trustees and Alumni was quoted as follows: “There is a certain hysteria in the air on this topic, . . . It's really a surreal situation, I think.” She explained that schools are running so scared of violating the civil rights of alleged victims that they end up violating the due process rights of defendants instead.

- c. Other news reports have suggested that the threat to withdraw federal funding from schools is credible. MSNBC reports:

Speaking at a conference on campus sexual assault held at Dartmouth College, Assistant Secretary for Civil Rights at the Department of Education Catherine Lhamon said that despite the fact it has never been done before, she is prepared to cut off federal funding to schools that violate Title IX, the 1972 gender equity law.

Calling that one enforcement mechanism part of a set of “very, very effective tools,” Lhamon said, “If a school refuses to comply with Title IX in any respect, I will enforce.”

In her 10-month tenure at the Department of Education, Lhamon has threatened to withdraw federal funding from four schools. “It’s not surprising to me that we haven’t gone to the last step,” she said. “It means that so far the process has been working.”

Meredith Clark, *Official to colleges: Fix sexual assault or lose funding*, July 15, 2014

(available at: <http://www.msnbc.com/msnbc/campus-sexual-assault-conference-dartmouth-college#51832>)

- d. The White House issued a report entitled “Not Alone” in April 2014, which includes a warning that if the OCR finds that a Title IX violation, the “school risks losing federal funds” and that the DOJ shares authority with OCR for enforcing Title IX, and may initiate an investigation or compliance review of schools, if a voluntary resolution cannot be reached, the DOJ may initiate litigation.
- e. In June 2014, Lhannon told a Senate Committee, “This Administration is committed to using all its tools to ensure that all schools comply with Title IX . . .” She further told the Committee:

If OCR cannot secure voluntary compliance from the recipient, OCR may initiate an administrative action to terminate and/or refuse to grant federal funds or refer the case to the DOJ to file a lawsuit against the school. To revoke federal funds—the ultimate penalty—is a powerful tool because institutions receive billions of dollars a year from the federal government for student financial aid, academic

resources and many other functions of higher education. OCR has not had to impose this severe penalty on any institution recently because our enforcement has consistently resulted in institutions agreeing to take the steps necessary to come into compliance and ensure that students can learn in safe, nondiscriminatory environments.

- f. Robert Dana, dean of students at the University of Maine, told NPR that some rush to judgment is inevitable. “I expect that that can't help but be true,” he says. “Colleges and universities are getting very jittery about it.” Source: *Some Accused Of Sexual Assault On Campus Say System Works Against Them*, NPR, September 3, 2014.
 - g. In July 2016, Vice President Biden suggested that schools that do not comply with administration guidelines could be stripped of federal funding. Source: *Obama, Biden Won't Visit Universities That Fall Short In Addressing Sexual Assault*, Huffington Post, July 4, 2016 (“The vice president said he'd like to take away federal funding from those universities.”)
16. In response to pressure from OCR, DOJ, and the White House, educational institutions, like UC, are limiting procedural protections afforded to male students, like John Doe, in sexual misconduct cases. This is not a conclusory allegation or speculation, but has been widely reported.
- a. The Association of Title IX Administrators, which on information and belief UC staff members participate in, published “2014 Whitepaper” entitled *Equity is Such a Lonely Word*, includes training materials presented to college Title IX departments and states: “victims have historically been accorded 3/5 of the rights of an accused individual (or less), and **victims are typically women**, equity may require institutions to recalibrate the pendulum to right the historical imbalance.” (emphasis added).
 - b. UC has felt the same pressures as other schools. A UC spokesperson explained the supposedly impossible position of UC. The spokesperson told the New York Post, “college campuses are expected to serve as prosecutors, defense attorneys, judges, juries

and courts of appeals all in one.” Source: Andrea Peyser, *‘Rape Culture’ Leads to Manhunts on Campus*, NY POST, August 11, 2014.

- c. In 2014, UC made several revisions to how it handles sexual assault on campus, including the use of a new online training program for incoming students, the launch of a new Title IX website for the campus community, the hiring of a new Title IX coordinator who would focus on both prevention as well as the resolution of cases involving sexual harassment and sexual misconduct, the hiring of new counselors to assist alleged sexual assault victims, and conducting ongoing campus climate surveys to track student attitudes, awareness and experiences around these issues. A press release noting these changes strongly suggested that the actions were taken in direct response to pressure from the federal government:

The recent release of a White House report on protecting students from sexual assault has raised attention to crimes of sexual violence and their consequences to a new level of national prominence. At the University of Cincinnati, new information, resources and training are or will soon be added to long-standing advocacy and education efforts related to reducing sexual misconduct.

(Available at: <http://www.uc.edu/news/nr.aspx?id=20188>).

17. In April 2014, UC hired Jyl Schaffer as the Title IX coordinator. A press release on the hiring strongly suggested that the actions were taken in response to pressure from the federal government:

The recent release of a White House report and the White House’s ‘It’s On Us’ campaign, both designed to help protect students from sexual assault, has raised attention to crimes of sexual violence and their consequences to a new level of national prominence. The University of Cincinnati, along with colleges and universities across the country, is working to find better ways of addressing sexual assaults on campus . . .

(Available at: <http://www.uc.edu/profiles/profile.asp?id=20791>.)

- a. Schaffer has since resigned from UC.
- b. In October 2015, Schaffer contributed to a report entitled, *Changing Campus Culture: Preventing and Responding to Sexual Violence*. (Available at:

https://www.ohiohighered.org/sites/ohiohighered.org/files/uploads/ccc/Changing-Campus-Culture-Report_102015.pdf) In this report, Shaffer and others recommended that a school system should not be aimed at determining whether a sexual assault has occurred, but should, instead, assume that a sexual assault did occur. The report recommended, “Survivors of sexual assault should feel they are believed and trust that the system works for them.”

18. In April 2015, UC hired a new Title IX program coordinator, Remy Barnett, to work with Schaffer. Similar to the hiring of Shaffer, a press release noting the addition of the new staff member strongly suggested that the actions were taken in direct response to pressure from the federal government:

The recent release of a White House report and the White House’s “It’s On Us” campaign, both designed to help protect students from sexual assault, has raised attention to crimes of sexual violence and their consequences to a new level of national prominence.

(Available at: <http://www.uc.edu/profiles/profile.asp?id=21643>).

19. In recent years, and during the period preceding the disciplinary actions against John Doe there was substantial criticism of UC, both in the student body and in the public media, accusing UC of not taking seriously complaints of female students alleging sexual assault by male students.

- a. In 2014, the Cincinnati Enquirer highlighted steps colleges and Universities were taking in response to pressure from the Department of Education and others to crack down on campus sexual assaults. Cincinnati Enquirer *Hushing Up Sex Assaults On Campus Gets Tougher*, May 19, 2014 (available at: <http://www.cincinnati.com/story/news/2014/05/18/hushing-sex-assaults-campus-gets-tougher/9266855/>).

- i. The article said, “From the White House to the courthouse, criticism is raining down on colleges for how they handle cases that often combine drinking, late-night violence, legal liability and sex.”
 - ii. The article mentioned that at UC, the school had temporarily stopped that “Reclaim peer advocacy program,” which used trained student counselors. However, UC Provost Beverly Davenport told the paper that the school was “staffing up” and counseling center and the associate director of the Women’s Center said that the program “might restart . . . after a White House report.”
 - iii. On September 15, 2015 City Councilmember PG Sittenfeld, along with leadership from area Universities, Women Helping Women, and Law Enforcement announced the creation of a task force to reduce campus gender-based violence in the City of Cincinnati. the public eye. Representatives from UC participated in the Task Force. In announcing the Task Force Sittenfeld said, “To date, the voice and leadership of local governments across the nation has been in the background at best and silent at worst. . . .” Available at: <http://www.womenhelpingwomen.org/news/cincinnati-task-force-to-reduce-campus-gender-based-violence/>
- b. On November 1, 2015 a number of students staged a walk on the UC campus to combat the so-called rape culture at UC and demand changes. Tiffany Walker, *UC Feminist’s Walk Of No Shame Combats Slut-Shaming, Campus Rape Culture*, NewsRecord, Nov. 1, 2015 (available at: http://www.newsrecord.org/college_life/uc-feminist-s-walk-of-no-shame-combats-slut-shaming/article_26b4cc76-80de-11e5-a422-f305c9f263b0.html)
 - i. “Especially around Halloween season, rape culture and relation is a huge issue here on campus,” said one student. “We wanted to take a stand against that but we also

wanted to be very cultural specific because now here at UC we are having a crisis with our sexual assault programs.”)

- ii. One former UC advocate noted in the comments to the article that “sexual assault is a gendered crime where most perpetrators are male-identified regardless of the gender identity of the survivor.”
- c. On September 15, 2016, the Cincinnati Enquirer Editorial Board published an editorial entitled *What's Happening On Campus Cannot Be Ignored*. Available at <http://www.cincinnati.com/story/opinion/editorials/2016/09/15/rape-culture-cannot-ignored/90255390/>. In the Editorial, the Board wrote:

Universities must continue to develop strong policies and programs and investigate allegations of sexual assault thoroughly. Institutions of higher learning can no longer sweep these incidents under the rug to protect high-profile athletes or to avoid negative publicity. They must pursue cases, hold students accountable with discipline and work hand-in-hand with police to pursue criminal charges if necessary.
- d. In August 2016, UC announced an agreement between UC’s Division of Student Affairs and Women Helping Women, the community organization will provide an on-call, confidential campus advocate/response to alleged victims of sexual assault. The press release from UC announcing the new agreement emphasized that the services to be provided would be “focused on the survivor” and would include “campus reporting assistance, [and] accompany[ing] students through Title IX and law enforcement or legal processes . . .” (Available at: <http://www.uc.edu/news/NR.aspx?id=23764>.)
- e. A 21 year old finance student at UC has publicly complained that she was raped at an off-campus party. She helped form a student group called "Not On My Campus" to get students to talk about the issue of sexual violence. She said that the focus of the student group at UC is on the behavior of men. “The majority of men are not rapists. The majority of men will never rape ... But ... we need the male gender to speak up about it ...”

(available at: <http://learningenglish.voanews.com/a/incidents-of-sexual-assault-at-us-college-unreported/3326278.html>.)

- f. On September 5, 2016, UC launched an investigation into who was behind an offensive banner that was hung from the window of an off-campus housing unit. The banner led to criticism that UC was soft on “rape culture.” *See* <http://michaelbaisden.com/university-cincinnati-investigates-sexually-explicit-misogynistic-sign-off-campus-home/>

- i. A UC student posted the image on her Facebook account, which generated significant reaction. The student wrote that the home in question ‘is riddled with misogynists’ and that she was hopeful the university would ‘swiftly discipline the residents.’ Purdy subsequently filed a Title IX complaint with UC.

- ii. According to media reports, some of those responding to the social media post say that UC has become excessively tolerant of a ‘rape culture’ on campus:

I am ashamed to be associated with these people through my alma mater, not to mention an environment that appropriates rape culture. Waiting for your response, University of Cincinnati.

As an alum who was raped in a UC dorm...this is not surprising. ‘You call me up to ask for my money, but where is that interest in your current students’ lives, who pay thousands to live on a campus defined by rape culture?’

- iii. In a Cincinnati Enquirer article mentioning the issue, one student said, “They don’t take it as seriously, and I think that’s one of the core tenets of rape culture is that you can start to forgive these little occurrences.” *Students: America Doesn’t Know What Rape Is*, Cincinnati Enquirer, September 12, 2016 (available at <http://www.cincinnati.com/story/opinion/editorials/2016/09/10/ending-rape-culture-college-campuses/89357346/>).

- g. In July 2016, a pre-med student filed a federal lawsuit alleging that UC had a discriminatory practice of restricting men and women from working together in physics labs. *Helmicki v. University of Cincinnati et al.* S.D. Ohio No. 1:16-cv-00728. The case alleges that the former Title IX Coordinator at UC, Jyl Shaffer, supported the actions of a professor and teaching assistant who had told the female student that “women shouldn’t be working with men in science.” This was done out of a belief that “having all-female groups is better.” Shaffer backed the discriminatory policy multiple times in emails.
- h. In 2015, two UC students filed a complaint in this Court. Civil Action No. 1:15-cv-681. That case arose out of the decision of UC to impose disciplinary sanctions against the two UC students in violation of their Constitutional and federal statutory rights. The case was dismissed by this Court (Beckwith, J.) and is currently pending on appeal. *Doe et al v. Cummins et al.*, Sixth Circuit No. 16-3334.
20. UC has adopted certain policies and procedures for the investigation and adjudication of alleged sexual misconduct, as required by Title IX. These policies and procedures are available at <http://www.uc.edu/titleix/policies-procedures.html>.
21. The UC Code of Student Conduct governs student behavior and provides for sanctions for violations. Since 2014, revisions to the Policy have been adopted in part, on information and belief, as a direct response to pressure from the Department of Education.
22. The UC Code of Conduct is codified in the Ohio Administrative Code. OAC 3361:40-5-04. According to the Ohio Legislative Service Commission, the UC Code of Student Conduct has been revised a number of times since 2014, with effective dates for new policies in July 2012, September 2015, July 2016 and August 2016. Pursuant to OAC 3361:40-5-03, UC is required to employ procedures that are “consistent with both the customs of a free society and the nature and function of an institution of higher learning.”

23. The alleged misconduct by John Doe occurred on September 6-7, 2015. As a result, his conduct would be covered by the UC Code of Student Conduct that was effective on July 15, 2012. A copy of the Code of Student Conduct filed with the Ohio Legislative Services Commission is attached as Exhibit A.
24. In general, when a complaint of sexual misconduct is made, a Deputy Title IX Coordinator or designee will initiate a meeting with the accused student. A Deputy Title IX Coordinator or designee will begin interviewing witnesses, as appropriate, and review relevant evidence. The complainant and the accused student are supposed to have an equal opportunity to provide documents and witnesses during the investigation and adjudication of the complaint. At the conclusion of the investigation, the Deputy Title IX Coordinator prepares an investigatory report which is provided to an Administrative Review Committee (“ARC”). The ARC holds an administrative hearing applying the preponderance of the evidence standard.
25. In practice, a student accused of sexual misconduct under the UC policies faces a system that is biased at every step towards finding the student “responsible” and imposing significant discipline. At the beginning of the process, UC often imposes restrictions and punishments—sometimes referred to as “interim measures”—based solely on an allegation without allowing for any hearing or even conducting any investigation. The investigatory process focuses on hearsay statements instead of physical evidence and is aimed at finding evidence to support the charges; worse, UC investigators have even suppressed evidence helpful to the accused. The ARC members receive biased training designed to encourage findings against accused student and often seek to pursue an independent political agenda.
26. UC has adopted certain policies and procedures for the investigation and adjudication of alleged violations of Title IX. These policies and procedures are available at

<http://www.uc.edu/titleix/policies-procedures.html> and are incorporated herein. These procedures include the following:

- a. Within seven days of the filing of a complaint, a Deputy Title IX Coordinator or designee will generally initiate a meeting with the respondent. During this meeting, the respondent will receive notice of the complaint allegations, a copy of the university's Title IX policies and procedures, and information about the Title IX process. The respondent also will be provided an opportunity to discuss the nature of the complaint allegations.
- b. Within 14 days of the filing of a complaint, a Deputy Title IX Coordinator or designee will begin interviewing witnesses, as appropriate, and review relevant evidence. The complainant and the respondent will have an equal opportunity to provide documents and witnesses during the investigation and adjudication of the complaint.
- c. At the conclusion of the investigation, the Deputy Title IX Coordinator will prepare an interim investigatory report for review by the complainant and respondent. The complainant and respondent will be provided an equal opportunity to review, ask written questions about, and comment in writing on the report. Written input from the complainant and respondent will be incorporated into the report. If necessary, the Deputy Title IX Coordinator will conduct additional investigation prior to finalizing the report.
- d. Adjudication of complaint under this procedure will take place as set forth in the UC Student Code of Conduct. The complainant and respondent have equal rights to file an appeal.
- e. UC applies the preponderance of the evidence or "more likely than not" standard in investigating, adjudicating, and resolving complaints of sex discrimination, including allegations of sexual harassment or violence.

27. The UC Title IX Policy defines consent as follows: “Consent is informed, freely given, mutual, and can be withdrawn at any time. A person cannot give consent if he or she is mentally or physically incapacitated or impaired such that the person cannot understand the fact, nature or extent of the sexual situation; this includes impairment or incapacitation due to age, alcohol or drug consumption, or being asleep or unconscious. . . .”
28. Under the UC Title IX Policy, so called “interim measures” are available to a complainant solely by the making of a report of sex discrimination prior to the resolution of a complaint. These interim measures often include restrictions and sanctions on the respondent. The interim measures are often imposed prior to any investigation and without any determination as to the reliability of the allegations. The respondent is not given any opportunity to seek a review or appeal of these interim measures.
29. On August 15, 2012 UC Adopted a Policy Statement on Sexual Violence. The Policy Statement is available at:
http://www.uc.edu/content/dam/uc/sas/docs/Policy_Statement_on_Sex_Offenses.pdf and is incorporated herein.
 - a. The Policy Statement provides that “Allegations of sexual assault will be processed according to the disciplinary procedures described in the Student Code of Conduct if the accused is a student . . .”
 - b. The Policy statement incorporates definitions of key terms, such as “rape” and “Sexual imposition” from Chapter 2907 of the Ohio Revised Code.
30. UC applies different rules to allegations of sexual assault or sexual harassment than to other alleged violations of the UC Code of Student Conduct.
 - a. Allegations of sexual assault or sexual harassment are investigated by a “Title IX” administrator.

- b. UC may begin disciplinary proceedings against students accused of sexual assault or sexual harassment prior to the completion of an investigation.
 - c. UC employees have stated that UC attempts to comply with its interpretation of the Dear Colleague Letter.
31. A student who is accused of sexual assault or sexual harassment is entitled to an ARC Hearing prior to the imposition of discipline. However, in practice UC often imposes restrictions and punishments—sometimes referred to as “interim measures”—based solely on an allegation without allowing for any hearing or even conducting any investigation.
32. A number of these provisions of the UC Code of Conduct concerning the ARC Hearings for students accused of sexual assault or sexual harassment raise significant due process and self-incrimination concerns, including:
- a. UC does not undertake a full, complete and impartial investigation prior to the institution of disciplinary proceedings for allegations of sexual assault or sexual harassment
 - b. A student is permitted to have an attorney present at the hearing, but the attorney may “not actively participate as a spokesperson or vocal advocate in the hearing.”
 - c. The hearing board may review written statements without providing the student with the opportunity for cross-examination.
 - d. UC does not require witnesses to be present at the hearing. Instead, the SCOC provides that “Witnesses are strongly encouraged to be present for hearings.” The SCOC further provides that a witness is “unable to attend, notarized statements may be submitted.”
 - e. A student may cross-examine witnesses who appear at the ARC Hearing only through the use of written questions. However, the hearing chair has the right to review and determine which written questions will be asked. This process does not allow for effective cross-

examination, particularly through the use of follow-up questions and impeachment through prior inconsistent statements.

- f. A student does not have the ability to compel other students or UC employees to attend the hearing.
- g. UC does not place the burden of proof at an ARC Hearing on the University or the complainant.

- i. In effect, this means that students are not considered “innocent until proven guilty.” On information and belief, no part of the UC Code of Student Conduct or any policy or procedure contains this statement or an equivalent statement.

- ii. In effect, this means that a student must prove his or her innocence if accused of sexual assault or sexual harassment. In an email to a student in a separate case, a UC administrator explained, “a preponderance of the evidence burden of proof applies. *Neither the complainant nor the respondent bears this burden of proof* in an ARC hearing.” (Emphasis supplied.)

- iii. In another correspondence, a UC administrator wrote to a student in another case, “*Neither party has any burden of proof.* Instead, the ARC uses the hearing to investigate what happened and then makes a finding based on the preponderance of evidence.” (Emphasis supplied.)

33. Sanctions for violations of the UC Code of Student Conduct range from a reprimand to suspension or dismissal from UC. Sanctions may also include restrictions on the right of access to campus facilities, restitution, and a psychological or psychiatric evaluation.

34. At UC, administrators and hearing panel members have been trained that the prevention of sexual misconduct is of primary concern following the receipt of the “Dear Colleague Letter.” Notably,

the same administrators have not received comparable training about the importance of protecting the due process rights of the accused.

- a. On October 6, 2011, the head of the UC Women's Center, Amy Howton, provided training to hearing panel members. This training was biased, as it was presented by the head of a campus organization responsible for aiding alleged victims of sexual assault. The training included statistics about the prevalence of sexual assaults on campus and included topics irrelevant to the decision making process, such as "Sexual assault is about POWER & CONTROL"
- b. On June 2, 2014, administrators from public colleges and universities in Ohio attended training from the Ohio Board of Regents. This training included presentations titled "Context and theory of change" and "Creating Safer Campuses in Action." The administrators heard presentations from the Director of the Ohio Alliance to End Sexual Violence, the Rape Prevention Coordinator of the Ohio Department of Health, and the Prevention Director of the Cleveland Rape Crisis Center. No presentations were made by any attorneys or others with the responsibility of ensuring that students accused of sexual misconduct receive due process.
- c. On or about May 14, 2015, UC administrators and hearing panel members attended training from Ballard Spahr titled, "Considerations in Adjudicating Sexual Misconduct Allegations." This training suggested that due process includes, a number of protections that are not, in actuality, afforded to UC students. These protections include, *inter alia*, the opportunity to question the other side and the presumption of innocence.

35. In practice, the UC system is biased against those accused of misconduct, thereby preventing students from having a full and fair opportunity to defend against these charges.

- a. On information and belief, high-ranking administrators at UC are determined to find students accused of misconduct responsible in order to “look good” for the Department of Education.
- b. On December 28, 2011, UC published a “Resource Guide [for] Student Survivors of Sexual Assault.” The Resource Guide illustrates the bias inherent in the UC system by failing to mention the due process rights of those accused of sexual assault.
 - i. In the document, persons who make accusations are considered to be “survivors” and the veracity of their accusation is not questioned. The consistent use of the term “survivor” implies that UC has pre-decided all claims of alleged sexual assault.
 - ii. In contrast, the Department of Education, Office of Civil Rights uses the more neutral terms, “complainant” and “alleged perpetrator.”
- c. Previously, allegedly neutral investigators and fact-finders at UC often acted as advocates for those who claimed to be victims, rendering any investigation biased. Bias is seen in a number of ways:
 - i. UC employees involved in the investigation of claims of sexual assault would advocate for students who made allegations of sexual assault with faculty members in order to obtain accommodations in the form of changes in homework deadlines, grades, class, schedules, and examination schedules.
 - ii. UC would schedule ARC Hearings prior to actually conducting any investigation.
 - iii. UC employees would make no effort to obtain and review any physical evidence; did not attempt to interview any witnesses or obtain any evidence that might corroborate the alleged victims’ version of the events or contradict the statements provided by the alleged victims. Instead, UC employees reached investigatory

conclusions by relying heavily on hearsay statements from the friends of the alleged victims.

- iv. UC employees would not include information in investigative reports that was favorable to those accused of sexual assault.
- v. High-ranking UC employees have attempted to interfere with investigations of allegations of sexual assault being conducted by the UC Police.

36. The ARC Hearing Panels for allegations of sexual assault or sexual harassment is often composed of biased members.

- a. On information and belief, members of the ARC Hearing Panel are sometimes seeking to pursue a political agenda. This is demonstrated by aggressive questioning of those accused of sexual assault, in contrast to the sympathetic questions of the alleged victims.
- b. Members of the ARC Hearing Panel have been requested to assist in obtaining academic accommodations for alleged victims prior to the Hearing.
- c. The ARC Hearings Panels receive biased training aimed at encouraging findings of responsibility even when insufficient or unreliable evidence is presented. In a number of training sessions, the concept of “protecting the rights of the accused” is presented as part of a “values exercise” along with other concepts and, even is presented with a question mark. In other training sessions, the idea that a person is innocent until proven guilty is not even included.

37. A review of the history of ARC Hearing Panels, obtained through a public records request in 2014, shows that it is nearly impossible for a student to be found not responsible. In other words, if a student is accused of sexual misconduct, it is almost certain that the student will face discipline.

- a. UC provided records for eleven alleged violations of the Sexual Misconduct Policy that were presented to an ARC Hearing Panel. (One record, involving a 2013 incident, did not

indicate a result.) In every case presented to the ARC Hearing Panel where a result was disclosed, the respondent was found responsible. In cases where UC considered an appeal, even if a matter was remanded for a new or further hearing, the accused student was ultimately found responsible for some violation.

- b. UC provided records for ten allegations of sexual contact without consent. In one case, no resolution was disclosed. In every cases where there was a resolution, the accused student faced discipline, ranging from probation to suspension or dismissal.
- c. A 2012 case illustrates how difficult it is for a student accused of sexual misconduct to be found not responsible by the ARC Hearing panel. In that case, the student was alleged to have had sex with a student who was unable to consent because she was intoxicated. The student presented the ARC Hearing Panel with four sworn affidavits stating that the alleged victim was not intoxicated. The ARC Hearing Panel apparently ignored this evidence and still found the student “responsible” and imposed disciplinary sanctions.

38. On information and belief, students at UC who make allegations of sexual assault or sexual harassment obtain accommodations in the form of changes in homework deadlines, grades, class, schedules, and examination schedules.

- a. These accommodations create a significant incentive for students to fabricate allegations of sexual assault.
- b. These accommodations create a significant incentive for students to continue to pursue allegations of sexual assault even if the evidence does not support the allegations.
- c. These accommodations are not disclosed to the ARC Hearing Panel, even though the accommodations are relevant to the credibility of the testimony.

39. On information and belief, UC “advocates” spend hours helping alleged victims of sexual assault prepare for ARC Hearings. No such accommodations or assistance have been offered in any

meaningful way to those accused of sexual assault in the past. Recently, UC has stated that accused students may obtain an advisor from UC, but accused students must obtain that advisor through the same Title IX coordinator who is responsible for investigating the allegations against the student.

40. UC attempts to prevent those accused of sexual assault or sexual harassment from putting forward a meaningful defense by limiting their ability to prepare for the hearings.
 - a. UC often restricts the ability of students accused of sexual assault to obtain copies of statements and other evidence to be used against the student.
 - b. UC restricts the ability of students to record hearings, even though Ohio law specifically permits such recordings.
41. The ARC Hearings are nothing more than mock hearings in which the principles of law and justice are disregarded or perverted. The ARC Hearings are characterized by irresponsible, unauthorized, or irregular status or procedures in which students are prevented from putting forth a meaningful defense.
42. The ARC Hearing Panel members approach the ARC Hearings with the foregone conclusion that the student accused of sexual assault will be found responsible.
 - a. The ARC Hearings Panels often rely on unreliable hearsay evidence.
 - b. The ARC Hearing Panels prohibit from effective cross-examination of the complainants and witnesses. All questions must be submitted through the Chair of the ARC Hearing; no follow-up questions are permitted.
43. Although students have a right to appeal the decision of the ARC Hearing Panel, the UC Code of Conduct strictly limits the permissible grounds for appeal. Moreover, any appeal by students accused of sexual assault or sexual harassment is futile because of the bias inherent in the UC system.

- a. Even if an appeal is initially successful, the imposition of discipline is inevitable at a new ARC Hearing because of the bias inherent in the system.
 - b. If a matter is reversed on appeal, UC may appoint the same ARC Hearing Panel to review the matter, even though members of the Hearing Panel have already reached a decision or been exposed to improper evidence.
 - c. Requiring students to prove, because of the improper shifting of the burden of proof, that they have not committed a sexual assault or engaged in sexual harassment makes any new hearing futile because it is often difficult to prove a negative.
 - d. Historically, this has been shown to be accurate.
 - i. In response to a public records request, UC was unable to produce a single example of a case where a student, following an appeal, was ultimately found “not responsible.”
 - ii. In upholding penalties, the appeal administrator in a number of cases referred to the Department of Education crackdown on schools to justify harsh penalties such as the dismissal of students.
44. The ARC Hearing Panel, as an administrative body, is not permitted under Ohio law to consider the constitutionality of the UC Student Code of Conduct.

THE FALL 2015 INCIDENT

45. John Doe is facing a one-year suspension from UC for events that allegedly occurred beginning on the evening of September 6-7, 2015 (the “Incident”)
46. John Doe met Jane Roe on Tinder, a social media ap. They spoke on line for two or three weeks until they met face to face. They engaged in small talk and flirtation.
47. Jane Roe came to John Doe’s apartment in the late evening. They hung out in his room – she was on his bed and he was sitting at his desk working on his computer. They started to kiss and make

out. The encounter “escalated fairly quickly.” Both John Doe and Jane Roe removed their clothing and John Doe retrieved a condom.

- a. Jane Roe asked John Doe to “hold on” before they engaged in intercourse. The two talked for a bit and then engaged in consensual sex.
- b. After they had sex, they hung out for longer in his room.

48. Jane Roe said that she did not want their encounter to be a “one-night stand.” However, John Doe did not call her again and was unable to contact her again through Tinder.

THE DISCIPLINARY PROCEEDINGS AGAINST JOHN DOE

49. Jane Roe, over a month later, reported to UC that she had been sexually assaulted by John Doe.

50. On October 30, 2015, Jane Roe was interviewed by Shaffer.

- a. Jane Roe told the interviewer that the Incident occurred on August 30, 2015.
- b. Jane Roe did not mention John Does’ name. Jane Roe told the interviewer that she had met John Doe via Tinder. Jane Roe told Shaffer that she agreed to meet John Doe for dinner.
- c. Jane Roe told the interviewer that she planned to study on campus after the dinner. John Doe suggested that she work at his apartment. Jane Roe told the interviewer that she went to John Doe’s apartment and sat on his bed doing work and had a glass of wine. She said as they worked they talked and flirted. She said during this conversation they did talk about sexuality, and she said having the wine “lowered her inhibitions” about the conversation topics.
- d. Jane Roe told the interviewer that she and John Doe started kissing and that John Doe began taking her dress off. She said John Doe “kept progressing” in their physical contact but she did not say no. She said that they engaged in oral sex and digital penetration. Jane

Roe told the interviewer that John Doe retrieved a condom and later engaged in vaginal sex with her and tried to engage in anal sex.

- e. Jane Roe told Shaffer that she left the apartment and that John Doe walked her to his car.

51. On November 6, 2015 Jane Roe was again interviewed by Jyl Shaffer.

- a. The interviewer sought to ask more specific questions. Jane Roe told the interviewer that John Doe had been forceful with her.
- b. Jane Roe made a number of statements that would have caused an experienced sex crimes investigator to doubt her credibility or to doubt that a sexual assault had occurred.
 - i. She told the interviewer that she did not recall where on the timeline John Doe had penetrated her. She said that the encounter lasted perhaps two to three hours with “breaks” in between sexual contact.
 - ii. Jane Roe told the interviewer that she flirted with John Doe and kissed him. She said there was no explicit conversation about having sex. Jane Roe told the interviewer that said she felt that John Doe was making her feel guilty but that she never said “Flat out, no. I don’t owe you sex,” but, instead, would respond with ambiguous statements such as, “I don’t know.”
 - iii. Jane Roe told the interviewer that she and John Doe engaged in sexual intercourse in several different positions. She said at one point she got on top of him and then later he penetrated her vaginally from behind.
 - iv. Jane Roe told the interviewer that she performed oral sex on John Doe.
 - v. Jane Roe told the interviewer that John Doe did not ejaculate.
 - vi. Jane Roe told the interviewer that she asked John Doe to walk her to her car.

52. On December 18, 2015 Jane Roe reported the alleged assault to the UC Police

- a. The police report states that the police responded to the UC Title IX Office to take the report. Jane Roe stated that on September 6, 2015 she she went to a house around 2350 Ohio Ave. after a date with someone she met online, later identified as John Doe.
 - b. Jane Roe made a number of statements that would have caused an experienced sex crimes investigator to doubt her credibility or to doubt that a sexual assault had occurred.
 - i. She reported that she and John Doe began kissing and flirting on the bed but that Jane Roe “set a line for herself for no sex.”
 - ii. Jane Roe stated that John Doe started to become forceful while making out. Yet, the police narrative noted that Jane Roe was able to move about freely in the room; going to the restroom and texting her friends.
 - iii. Jane Roe alleged that John Doe got up and got a condom from the dresser in the bedroom and put it on. She then alleges John Doe engaged in vaginal sex with her and attempted anal sex. She said that he did not ejaculate. She asked John Doe to walk her to her car, which he did without further incident.
 - iv. Jane Roe told the police that there was no bruising or marks on her.
 - c. The investigation by the UC Police was reported to Cincinnati PD and closed. A copy of the report was requested to be sent to UC student affairs.
53. On February 19, 2016 Barnett informed John Doe about the allegations and requested an interview.
54. On February 22-23, 2016, Barnett and John Doe exchanged a number of emails about the investigation.
- a. On February 22, 2016, John Doe said:

I am deeply hurt that anyone would accuse me of this. I am nothing but respectful to everyone, especially women. On Campus I am completely professional and since I don't leave the [REDACTED] build EVER and none of my friends and fellow [REDACTED] students have said anything

to me about this I am now upset that such a huge mistake could be made.
[Sic.]

- b. On Feb 23, 2016, Barnett described part of the investigatory process, stating that she was looking for evidence and witnesses to the Fall Incident. She wrote:

Just so you're aware, we do not assess character in these cases, and that may not be relevant to the investigation. If you have any documentation about where you were during the incident alleged in the complaint or witnesses that can speak with me about that, please let me know. I can contact the witnesses and review any documentation you can provide.

55. On February 24, 2016 Barnett conducted a follow-up interview with Jane Roe.

- a. Jane Roe told Shaffer a few times that John Doe was “strange” or “creepy”
- b. Jane Roe told repeated much of the same story and made a number of statements that would have caused an experienced sex crimes investigator to doubt her credibility or to doubt that a sexual assault had occurred.
 - i. Jane Roe told the interviewer that she sat on John Doe’s lap while they were kissing. She acknowledged that consent for sexual activity after he removed her dress was “gray.”
 - ii. Jane Roe told the interviewer that she performed oral sex on John Doe.

56. On March 7, 2016 Barnett and Shaffer conducted an interview with John Doe.

- a. John Doe stated that the sexual encounter was completely consensual. John Doe denied that he had engaged in sexual activity with Jane Roe without her consent.
- b. Unlike the interview with Jane Roe, the interview notes for John Doe by Shaffer contained editorial comments from the investigator. For example, the investigator wrote:

Several times during the interview [John Doe] appeared to be processing to himself out loud. He made comments about [Jane Roe’s] perspective possibly being different from his when it came to how their encounter went. He also referenced himself as being aggressive or assertive during the encounter.

57. On March 15, 2016 Barnett conducted a follow-up interview with Jane Roe.

a. Jane Roe told repeated much of the same story. Jane Roe made a number of statements that would have caused an experienced sex crimes investigator to doubt her credibility or to doubt that a sexual assault had occurred.

i. Jane Roe acknowledged that after John Doe retrained a condom, she did not indicate that she did not consent to sexual activity but, instead, tried to “redirect” John Doe.

ii. Jane Roe acknowledged that she consented to sex acts, including oral sex and digital penetration.

58. Despite Barnett’s claims that the investigation was seeking documents or witnesses concerning where John Doe was “during the incident alleged,” she interviewed a number of friends of Jane Roe who had no first hand knowledge about the Incident.

a. On February 23, 2016 Barnett interviewed J.J., a friend of Jane Roe. J.J. told the interviewer that in November or December Jane Roe had said that she had been sexually assaulted “several days beforehand.” J.J. told the interviewer that Jane Roe had identified John Doe as the perpetrator of a sexual assault.

b. On March 17, 2016 Barnett re-interviewed J.J. During this interview, J.J. changed his story about the timing of Jane Roe’s disclosure, stating only that he “did not recall” when he had met Jane Roe for the dinner when she disclosed a sexual assault.

c. On March 2, 2016 Barnett interviewed M.W., Jane Roe’s roommate. M.W. told the interviewer that Jane Roe had stated the day after the Incident that John Doe had pressured her to engage in sexual activity.

d. On March 3, 2016 Barnett interviewed A.F., Jane Roe’s former boyfriend. A.F. told the interviewer that Jane Roe had disclosed a non-consensual sexual encounter with John Doe.

This disclosure took place at the end of the summer; she said she had been assaulted a few days before they spoke.

- e. On March 14, 2016 Barnett interviewed R.M., a friend of Jane Roe. R.M. told the interviewer that Jane Roe had disclosed a sexual assault during a dinner shortly after Labor Day. R.M. said that Jane Roe claimed she had told John Doe she did not want to “engage in sexual activity with [John Doe] and told him so. R.M. further claimed that “[Jane Roe] told her [John Doe] did not stop when she asked him to stop.”

59. On April 1, 2016 Jane Roe sent an email to Barnett. In this email she provided “edits for the file.”

Jane Roe was permitted to respond to claims made by John Doe in this manner.

60. Barnett gathered the interview summaries, complaint forms, police reports, and email correspondence into an “Investigation File.”

61. On June 27, 2016, UC conducted an ARC Hearing to determine if John Doe had violated the Student Code of Conduct. John Doe was found “guilty” at the hearing.

- a. Jane Roe did not appear at the ARC Hearing. As a result, John Doe was never provided any opportunity to confront and question the witness who had made the charges against him. John Doe was not told prior to the hearing that Jane Roe would not appear.
- b. Had John Doe been able to question Jane Roe, he would have been able to demonstrate that she was not credible. Specifically, John Doe would have been able to question Jane Roe about inconsistencies in her statements. He would also have been able to question Jane Roe about the accommodations Jane Roe received from UC, such as changes in homework deadlines, grades, class, schedules, and examination schedules or, in certain instances, job opportunities. In that situation, the ARC Hearing Panel would have heard that the accommodations provided to Jane Roe created a significant incentive for her to fabricate the allegation of sexual assault. The accommodations provided to Jane Roe were

not otherwise disclosed to the ARC Hearing Panel, even though the accommodations are relevant to the credibility of her statements.

62. The conduct of entire process treated John Does as if he was guilty from the start and did not permit him a full and fair opportunity to defend himself. UC did not permit John Doe to be represented by Counsel. There was no physical evidence or witness to support the allegations that John Doe was guilty. The only evidence presented against John Doe was the material in the Investigation Report.

63. On July 14, 2016, John Doe submitted an appeal through the UC appeals process.

- a. John Doe was limited in his ability to prepare for the appeal because UC refused to allow him to have a copy of the record or a copy of the recording of the ARC Hearing. Instead, John Doe was told that he needed to schedule a time to review the record at the student conduct offices.
- b. John Doe appealed the decision of the ARC Hearing on a number of grounds, including:
 - i. The Hearing Panel improperly considered the investigative report prepared by the Title IX office.
 - ii. John Doe was not provided the opportunity to confront Jane Roe.
 - iii. The ARC panel, during training and the hearing process, was not instructed that a student is innocent until proven guilty or that the complainant bears the burden of proof by a preponderance of the evidence.
 - iv. The ARC hearing procedure permitted the Hearing Panel to hear the “impact statement” or any other evidence about the effect of the alleged violation on the complainants prior to making a determination that a violation of the Code of Student Conduct occurred.

- v. Delays in the investigative and hearing process impacted John Doe's ability to have a fair hearing.

64. On September 22, 2016 the UC Appeals Administrator rejected John Doe's appeal. The letter, dated September 22, 2016, was not provided to John Doe until October 4, 2016. The Appeals Administrator did not address most of the procedural issues John Doe raised, except to suggest in a conclusory manner that "the procedural safeguards he argues were missing are safeguards typically found in criminal court actions and are not required for university hearings." In particular, the Appeals Administrator never addressed the claim that John Doe was denied the opportunity to confront his accuser.

65. On September 23, 2016, John Doe received a letter from Guardia.

- a. The letter indicated that Guardia had accepted the recommendation of the appeals office to modify the sanction.
- b. The letter indicated that John Doe would be suspended from UC effective December 10, 2016 and that he would be eligible to re-enroll on January 2, 2018.
- c. The letter indicated, "This decision is final and concludes the conduct process."

66. On information and belief, UC, from the outset, presumed that John Doe was guilty in order to look good for the Department of Education and advocates.

- a. On information and belief, the UC administration was cognizant of, and sensitive to, criticisms of a possible "rape culture" by students and the media (including the Internet). As a result, UC's decision-makers and its investigator were motivated to favor the accusing female over the accused male, so as to protect themselves and UC from accusations that they had failed to protect female students from sexual assault.
- b. UC was heavily invested in protecting female accusers even when there is no evidence of wrongdoing by males in order to avoid scrutiny from the Department of Education. This

is illustrated, in part, by the persistence of UC in pursuing the investigation of the Incident even though the matter occurred months prior to any report and Jane Roe did not appear at the ARC Hearing.

- c. On information and belief, UC imposed sanctions on John Doe because it was afraid of an investigation from the Department of Education and/or a Title IX lawsuit from the complainant.

67. The Defendants' continued actions against John Doe are causing substantial, immediate, and continuing damages. Suspension from UC will cause John Doe to be denied the benefits of education at his chosen school, damaged his academic and professional reputations, and may affect his ability to enroll at other institutions of higher education and to pursue a career.

**COUNT I
(DECLARATORY JUDGMENT – VIOLATION OF DUE PROCESS PROVISIONS
OF UNITED STATES AND OHIO CONSTITUTIONS)**

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

69. This Count is brought against the Individual Defendants.

70. The Fifth Amendment to the United States Constitution, made applicable to the State of Ohio by the Fourteenth Amendment, provides that no person shall "be deprived of life, liberty, or property, without due process of law."

71. The Fourteenth Amendment to the United States Constitution provides that no state shall deprive "any person of life, liberty, or property, without due process of law."

72. Section 16, Article I, Ohio Constitution, guarantees that every person injured in his lands, goods, person or reputation shall have remedy by "due course of law."

73. The Due Process Clauses of the Ohio and United States Constitutions are implicated by higher education disciplinary decisions, including the disciplinary decisions under the UC Code of Student Conduct.

74. UC has a constitutional obligation to provide a fundamentally fair and reliable hearing process.
75. UC has an additional obligation under the Ohio Administrative Code to provide a hearing process that is consistent with the customs of a free society, which includes recognition of the basic due process rights of students.
76. John Doe is entitled under the Constitutions of Ohio and the United States, as well as under the Ohio Administrative Code, to the opportunity to be heard in a meaningful manner at the ARC Hearing.
77. John Doe's interests in the results of the ARC Hearing are significant.
 - a. Suspension from UC would deny him the benefits of education at his chosen school.
 - b. Suspension and other sanctions would also damage John Doe's academic and professional reputation.
 - c. Suspension and other sanctions are likely to affect the John Doe's ability to enroll at other institutions of higher education and to pursue a career.
78. The Defendants have violated John Doe's due process rights in the following manner:
 - a. UC conducted a biased investigation, which was then provided to the ARC Hearing Panel.
 - b. The ARC Hearing Panel was biased against students accused of sexual assault.
 - c. UC administrators involved in the adjudicatory and appeal process were biased against students accused of sexual assault.
 - d. UC permitted the use of hearsay evidence at the ARC Hearing without providing John Doe the opportunity to effectively cross-examine witnesses. In particular, John Doe was not permitted to cross-examine Jane Roe.
 - e. John Doe was denied the effective assistance of an attorney or other advisor. An advisor was permitted to be present, but the advisor was not permitted to participate.

- f. The Plaintiffs were not presumed to be “innocent until proven guilty” Instead, UC determined that the party seeking to impose responsibility on a student does not have the burden of proof.
79. The Plaintiff and the Individual Defendants acting in their official capacity have a dispute about whether the UC Code of Conduct, as applied to John Doe, violates the Due Process Clauses of the United States Constitution, the Due Course of Law Clause of the Ohio Constitution, and the requirement of the OAC that any hearing process be consistent with the customs of a free society.
80. The Individual Defendants have both a duty to enforce the provisions of the UC Student Code of Conduct and have actually enforced those provisions against John Doe.
81. John Doe is entitled to a declaration that the UC Code of Conduct, as applied to John Doe, violates the Due Process Clauses of the United States Constitution, the Due Course of Law Clause of the Ohio Constitution, and the requirement of the OAC that any hearing process be consistent with the customs of a free society.
82. Pursuant to 42 U.S.C. §1988, John Doe is entitled to his attorney’s fees incurred in bringing this action.

COUNT II
(42 U.S.C. §1983 -- VIOLATION OF DUE PROCESS PROVISIONS OF UNITED STATES CONSTITUTION)

83. Plaintiffs repeat and incorporate all of the allegations of this Complaint, as if fully set forth herein.
84. This count is brought against the Individual Defendants for injunctive relief.
85. The Defendants have acted under color of law in violating the Plaintiff’s rights under the Fifth and Fourteenth Amendments to the United States Constitutions.
86. The Defendants have acted intentionally and with callous disregard for the Plaintiff’s clearly established constitutional rights.

87. As a direct and proximate result of the Defendants' violations of the Plaintiffs' constitutional rights, John Doe, in the absence of injunctive relief will suffer severe and substantial damages. These damages include diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress, and other compensatory damages, in an amount to be determined by a jury and the Court.
88. The Defendants continued actions against the Plaintiff under the UC Code of Student Conduct are causing substantial, immediate, and continuing damage to the Plaintiffs.
89. Pursuant to 42 U.S.C. §1983, the Plaintiff is entitled to an Injunction from this Court prohibiting the imposition of, or reporting of, any disciplinary actions under the UC Code of Student Conduct against the Plaintiff.
90. Pursuant to 42 U.S.C. §1988, the Plaintiff is entitled to his attorney's fees incurred in bringing this action.

**COUNT III
(TITLE IX)**

91. Plaintiffs repeat and incorporate all of the allegations of this Complaint, as if fully set forth herein.
92. This count is brought against UC.
93. Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Title IX provides in pertinent part: "No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."
94. Defendant UC is an education program or activity operated by recipients of Federal financial assistance.

95. Title IX bars the imposition of university discipline where gender is a motivating factor in the decision to discipline.
96. UC committed impermissible gender bias against the Plaintiff in the investigation and adjudication of Jane Roe's accusations.
97. Particular circumstances suggest that gender bias was a motivating factor behind the erroneous findings and the decision to impose discipline upon John Doe. These circumstances include:
- a. A general atmosphere at UC and the Office of University Judicial Affairs where those who lodge a complaint of sexual assault are immediately treated as "survivors."
 - b. Training of ARC Hearing Panels from victims' advocates in an inappropriate manner.
 - c. The decision in some cases of UC to institute judicial proceedings prior to the completion of an investigation.
 - d. The failure of UC in certain instances to conduct full and fair investigations, including the failure to include significant evidence that tended to exonerate accused students.
 - e. Improper pressure and interference from the UC General's Counsel's Office on UC police officers who conduct criminal investigations.
 - f. The failure of the ARC Hearing Panel to afford accused to effectively cross-examine their accusers under the auspices of "protecting" victims.
 - g. The failure of UC to require the presence of key witnesses or the accuser at the ARC Hearing.
 - h. The failure of UC to inform ARC hearing panels that accused students are innocent until proven guilty and to require that the party seeking to impose discipline bear the burden of proof.
98. UC committed impermissible gender bias against John Doe in the investigation and adjudication of the Complainant's accusations.

- a. The investigator, the panel, and the reviewing administrators reached conclusions that were incorrect and contrary to the weight of the evidence.
 - b. There has been substantial criticism of UC, both in the student body and in the public media (including the Internet), accusing UC of not taking seriously complaints of female students alleging sexual assault by male students. On information and belief, the UC administration was cognizant of, and sensitive to, these criticisms. As a result, UC's decision-makers and its investigator were motivated to favor the accusing female over the accused male, so as to protect themselves and UC from accusations that they had failed to protect female students from sexual assault.
 - c. On information and belief, having been severely criticized in the student body and in the public press for toleration of sexual assault of female students, UC was motivated in this instance to accept the female's accusation of sexual assault so as to show the student body and the public that UC is serious about protecting female students from sexual assault by male student. The investigator, hearing panel, and administration adopted a biased stance in favor of the accusing female and against the defending male in order to avoid further fanning the criticisms that UC turned a blind eye to such assaults.
99. UC, encouraged by federal officials, has instituted solutions to sexual violence against women that abrogate the civil rights of men and treat men differently than women.
100. UC officials and administrators who had the authority to institute corrective measures had actual notice of and failed to correct the misconduct. The imposition of discipline on John Doe is the result of a flawed and biased hearing process. This resulted in a deprivation of access to educational opportunities at UC.
101. The decisions of the hearing process and the appeal process for John Doe were erroneous outcomes which were the direct result of a flawed and biased proceeding.

- a. In a fair and unbiased system, whether someone is a “victim” is a conclusion to be reached at the end of a fair process, not an assumption to be made at the beginning. UC has reversed this process and assumed that John Doe was guilty because he was a male accused of sexual assault rather than evaluating the case on its own merits.
 - b. On information and belief, women rarely, if ever, are accused of sexual harassment by UC.
102. UC has discriminated against John Doe because of sex.
- a. This discrimination is intentional and is a substantial or motivating factor for UC’s actions in this case.
103. As a direct and proximate result of UC’s violations of John Doe’s rights under Title IX, John Doe has suffered severe and substantial damages. These damages include diminished earnings capacity, lost career and business opportunities, litigation expenses including attorney fees, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress and other compensatory damages, in an amount to be determined by a jury and the Court.
104. UC is liable to John Doe for his damages.
105. Pursuant to 42 U.S.C. §1988, John Doe is entitled to his attorney’s fees incurred in bringing this action.

PRAYER FOR RELIEF

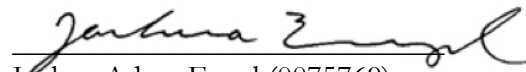
Plaintiff respectfully requests the following relief:

- On Count I, Judgment Declaring that the UC Code of Conduct, as applied to John Doe, violates the Due Process Clauses of the United States Constitution, the Due Course of Law Clause of the Ohio Constitution, and the requirement of the OAC that any hearing process be consistent with the customs of a free society.
- On Count II, an Injunction restoring John Doe as a student and prohibiting further disciplinary proceedings in a manner that violates the contract between the parties.
- On Count III, Judgment in favor of John Doe awarding damages in an amount to be determined at trial;
- Court costs and other reasonable expenses incurred in maintaining this action, including reasonable attorney's fees as authorized by 42 U.S.C. §1988.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

Respectfully submitted,



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3361:40-5-05 Conduct, rights and responsibilities: student code of conduct.

(A) Introduction

(1) Preamble

- (a) The Student Code of Conduct (“SCOC”) is intended to provide broad guidance in identifying and discouraging behavior that conflicts with the building of a strong and just community that respects and protects the diverse interests and goals of all students, all student organizations, and the university of Cincinnati’s mission “to provide the highest-quality learning environment, world-renowned scholarship, innovation and community service, and to serve as a place where freedom of intellectual interchange flourishes.”
- (b) The SCOC is administered consistently with the university’s policy entitled “Conduct, rights and responsibilities: Statement of student conduct, policies and procedures,” rule 3361:40-5-03 of the Administrative Code. Paragraph (A)(1)(b) of that rule states: “In a university, the paramount value involved in student conduct should be self-governance with each student bearing the responsibility for his/her own behavior. Although it is thus assumed that students are mature and responsible individuals and that the university does not occupy a parental role, formal disciplinary sanctions nonetheless may be imposed whenever student conduct interferes with the university's duty to afford its members an opportunity to attain educational and other stated institutional objectives. In pursuance of the goals of the university, disciplinary policies, procedures, and standards should be primarily educational rather than punitive in nature and should be consistent with both the customs of a free society and the nature and function of an institution of higher learning.”
- (c) The authority for the SCOC is contained in rule 3361:40-5-04 of the Administrative Code and section 3345.21 of the Revised Code. The university may proceed through the

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disciplinary process as outlined in the SCOC, regardless of any action by other authorities including city or state police, or local, state, or federal courts.

- (d) Ten representatives of the administration, faculty and students constituting a SCOC review committee provide a democratic mechanism for the review of student conduct standards, as required by rule 3361:40-5-03 of the Administrative Code.
- (e) It is each student's responsibility to know and comply with the university's SCOC and other rules and policies of the university of Cincinnati. The provisions of the SCOC are not to be regarded as a contract between the university and the student. The university reserves the right to change the SCOC at any time during the student's term of enrollment, but no ex post facto rule of misconduct will be applied.
- (f) It is the university's responsibility to make reasonable efforts to make the SCOC available for students. Toward that end, the division of student affairs and services will regularly circulate the SCOC along with other rules, regulations, and policies, which directly affect students at the university of Cincinnati. The SCOC will be available for review in the following locations: the office of the university ombuds, the university judicial affairs office, and the university web page.

(2) Charter of student rights and responsibilities

- (a) Application of the SCOC shall be consistent with rule 3361:40-5-01 of the Administrative Code. Paragraph (A) of that rule states: "Students are members of society as well as members of the academic community. As members of society, students have the same responsibilities as other members of society and enjoy the same freedom of speech and peaceful assembly, and the right of petition that other members of society enjoy. As members of the academic community, they shall have the rights and be subject to the responsibilities which accrue to them by virtue of this membership. Institutional authority shall not be employed

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to inhibit such intellectual and personal development of students as is often promoted by the exercise of their rights and responsibilities both on and off the campus.”

- (b) Paragraph (D) of rule 3361:40-5-01 states: “Students shall be free from unreasonable searches and seizures by university personnel.”
- (c) The first sentence of paragraph (E) of rule 3361:40-5-01 states: “Students shall be responsible for maintaining established standards of scholarship and conduct essential to the educational mission and community life of the university.”

(3) Jurisdiction

The university of Cincinnati reserves the right to take reasonable action to engage conduct that undermines, interferes with, or obstructs the safety and security of the university community or that adversely affects the integrity or interests of the educational mission or functions of the university.

(a) Students

- (i) Undergraduate and graduate students who violate the SCOC shall be subject to appropriate disciplinary sanctions. Law and medical students are only subject to their respective honor codes for conduct covered under such codes. Conduct not covered under such codes shall be subject to the SCOC. All other colleges with licensure or professional codes governing conduct shall adhere to the procedural requirements of this SCOC.
- (ii) By admission to or attendance at the university, a student accepts the responsibility to comply with the SCOC and the rules and policies of the university of Cincinnati. The term “student” as used in the SCOC means an individual who has been accepted for admission to the university, registered for classes, enrolled at the university, or

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otherwise entered into any other relationship with the university to take or audit instruction and is pursuing undergraduate, graduate, or professional studies either on a full- or part-time basis. Student status lasts until an individual graduates, withdraws from the university, is dismissed, or is not in attendance for two complete quarters.

- (b) On and off campus behavior
 - (i) The SCOC applies to student conduct that occurs on campus or on university owned, leased, or controlled premises. University campuses include university of Cincinnati uptown campus, college of engineering and applied science, Raymond Walters college, Clermont college and UC East – UC Clermont college.
 - (ii) The SCOC applies to off-campus conduct under the following circumstances:
 - (a) when the student is on academic assignment, attending a university event or an event of a registered student group, or acting as a representative of the university at an off-campus event; or,
 - (b) when the university is notified by an arresting or prosecuting authority of misconduct within 2600 feet of any university campus resulting in a police report being filed, an arrest being made, summons being issued, or an indictment being returned against the student including but not limited to: a crime of violence as defined by division (A)(9) of section 2901.01 of the Revised Code; for corrupting another with drugs as defined by section 2925.02 of the Revised Code; for trafficking in drugs or aggravated trafficking in drugs as defined by section 2925.03 of the Revised

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Code; for underage persons offenses concerning as defined by section 4301.69 of the Revised Code; for opened container of beer or intoxicating liquor prohibited at certain premises as defined by section 4301.62 of the Revised Code; for purchase of beer or intoxicating liquor by persons under twenty-one as defined by section 4301.63 of the Revised Code; for prohibition against consumption of beer or intoxicating liquor in motor vehicle as defined by section 4301.64 of the Revised Code; for disorderly conduct as defined by section 2917.11 of the Revised Code; for resisting arrest as defined by section 2921.33 of the Revised Code; for possession of controlled substances as defined by section 2925.11 of the Revised Code; or, for violating substantially equivalent laws of other jurisdictions.

- (iii) The university also reserves the right to take disciplinary action for conduct that occurs beyond the 2600 feet boundary only when the student, in the university's sole judgment, poses an obvious threat of serious harm to any member of the university community.

(c) Riotous behavior

- (i) Section 3333.38 of the Revised Code focuses on the riotous behavior of students on and around university campuses. The law has two separate penalty provisions—denial of financial aid and expulsion.
- (ii) Regarding financial aid, division (B) of section 3333.38 of the Revised Code generally provides that an individual who is convicted of, pleads guilty to, or is adjudicated a delinquent child for committing aggravated riot, riot, failure to disperse,

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or misconduct at an emergency, shall be ineligible to receive any student financial assistance supported by state funds for two calendar years from the time the individual applies for financial assistance.

- (iii) Regarding expulsion, division (C) of section 3333.38 of the Revised Code generally provides that a student who is convicted of, pleads guilty to, or is adjudicated a delinquent child for committing aggravated riot or riot, shall immediately be dismissed from the university. Moreover, no Ohio public university or college shall admit an individual who has been convicted of either aggravated riot or riot for one academic year after the individual applies for admission.
- (iv) Action taken as a result of section 3333.38 of the Revised Code does not limit or affect the university of Cincinnati's ability to otherwise discipline students under the SCOC.

(d) Division of student affairs and services

- (i) If it is not self-evident whether an alleged violation constitutes academic or nonacademic misconduct, the dean of the student's home college or designee and the dean of students/AVP for student life or designee shall confer to determine whether the matter shall be handled as academic or nonacademic misconduct, and shall notify the appropriate administrator and all parties.
- (ii) Without unnecessary delay from the date of discovery of the alleged offense, all nonacademic misconduct shall be reported to the office of university judicial affairs ("OUJA") and all instances of academic misconduct shall be reported to the college conduct administrator as well as to the OUJA.
- (iii) At the start of each academic year, the vice

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president for student affairs and services will appoint a university appeals administrator (“UAA”).

- (iv) When a student organization is charged with a violation of the SCOC, the director of student activities and leadership development or the appropriate administrators at Raymond Walters college, Clermont college, UC East – UC Clermont college or the college of engineering and applied science will consult with the appropriate student organizations and activities governing board to determine whether the case should be referred to the appropriate governing body or handled administratively and whether specific individuals should be referred for disciplinary action under the SCOC.
- (e) Academic divisions: baccalaureate & graduate education and health affairs
 - (i) Each college dean shall appoint a college conduct administrator (“CCA”) who shall be responsible for the administration of undergraduate academic misconduct procedures. The head of each graduate program or CCA will oversee the administration of academic misconduct procedures for graduate students in that graduate program. Undergraduate program directors may have departmental responsibility for advising instructors and students with misconduct issues.
 - (ii) Any case involving academic misconduct shall originate with the instructor in whose course the alleged misconduct occurred. The instructor will report sanctions for academic misconduct to the CCA who will report that misconduct to the CCA of the student’s home college and to the OUJA. College hearing panels (each a “CHP”) make disciplinary recommendations to the college dean, except in cases of dismissal from the university which must be approved by the senior vice president

for academic affairs and provost.

(4) Procedural overview

(a) Timelines

All listed timelines (i.e., fifteen days, forty-eight hours) exclude weekends, holidays, and term breaks when the university is not in session.

(b) Notification

All written notices to students shall be considered received upon delivery to a student's current local or permanent address on record with the university, by United States or campus mail, by bearcat on-line electronic messaging with delivery notification, or to the student in person. Such notice shall be deemed adequate unless the student shows just cause why the receipt of notice substantially impaired his or her ability to prepare for any hearing. It is the responsibility of the student to have his or her current local address on record with the university.

(c) Standard of proof

The standard of proof used to determine whether a student has violated the SCOC shall be based on a preponderance of evidence.

(d) Diminished capacity

Being under the influence of drugs or alcohol will not diminish or excuse a violation of the SCOC.

(e) Sanctions for violations

A student found to have violated the SCOC will be subject to sanctions ranging from university disciplinary academic action to university disciplinary dismissal. More than one sanction may be imposed for a single violation. A single act may constitute a violation of more than one regulation.

(f) Disciplinary records file

All disciplinary records and files, including those resulting in a finding of “responsible,” are maintained in the OUJA for a period of six years from the date of resolution. Records relating to a disciplinary action for academic misconduct are maintained by the director of the OUJA and CCAs as educational records separate from a student’s academic record and are subject to the protections and release provisions by the Family Educational Rights and Privacy Act (FERPA) of 1974 as it may be amended from time to time.

(g) Home college

The home college is the college in which the student is matriculated at the time of the alleged misconduct.

(h) Withdrawal

If a student withdraws from the university before a disciplinary process has been completed, the process may proceed in the absence of the student and a block may be placed on the student’s future registration requiring that the disciplinary action would have to be completed before the student would be allowed to register again.

(i) Refund

In the event of a suspension or dismissal from the residence halls or university, the regular refund schedule outlined in university publications will apply.

(j) Policy on amnesty

The university community encourages the reporting of conduct code violations and crimes by victims, especially sexual misconduct. Sometimes, victims are hesitant to report such conduct to university officials because they fear that they themselves may be accused of policy violations,

such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims as possible choose to report code violations to university officials. To encourage reporting, the university of Cincinnati does not charge victims with non-violent violations, such as unauthorized use of alcoholic beverages or drugs or narcotics, related to the incident. The university may impose educational responses rather than sanctions, in such cases, at the discretion of the department of student life.

(B) Academic misconduct

(1) Academic integrity and honor pledge

- (a) In pursuit of its teaching, learning and research goals, the university of Cincinnati aspires for its students, faculty and administrators to attain the highest ethical standards defined by the center for academic integrity as “a commitment, even in the face of adversity, to five fundamental values: honesty, trust, fairness, respect, and responsibility.” (www.academicintegrity.org/). Although not all students are subject to a college honor code or pledge, every student is bound by the academic misconduct provisions of this code which are enforced, in part, to assure academic integrity. When dishonest students cheat to gain unfair competitive advantage over other students, they cheat themselves out of a decent education.
- (b) Some faculty members and academic units may require students before taking tests or when submitting assignments to sign a pledge. The pledge may contain language such as: “On my honor I pledge that this work of mine does not violate the University of Cincinnati Student Code of Conduct provisions on cheating and plagiarism.” Honor pledges serve primarily as a teaching tool; unless a college has a mandatory honor code, pledges are used at the discretion of the instructor without imposition of a disciplinary sanction for students who honestly do passing work but object to a signed affirmation. Alternative pledges

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as well as information about the academic integrity campaign can be obtained from the OUJA and online at <http://www.uc.edu/conduct>.

(2) Academic misconduct definitions

(a) Aiding and abetting academic misconduct

Knowingly helping, procuring or encouraging another person to engage in academic misconduct.

(b) Cheating

Any dishonesty or deception in fulfilling an academic requirement such as:

- (i) Use or possession of unauthorized material or technological devices during an examination, an “examination” meaning any written or oral work submitted for evaluation or grade.
- (ii) Obtaining assistance with or answers to examination questions from another person with or without that person’s knowledge.
- (iii) Furnishing assistance with or answers to examination questions to another person.
- (iv) Possessing, using, distributing or selling unauthorized copies of an examination or computer program.
- (v) Representing as one’s own an examination taken by another person.
- (vi) Taking an examination in place of another person.
- (vii) Obtaining unauthorized access to the computer files of another person or agency or altering or destroying those files.

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(c) Fabrication

The falsification of any information, research statistics, lab data, or citation in an academic exercise.

(d) Plagiarism

(i) Submitting another's published or unpublished work in whole, in part or in paraphrase, as one's own without fully and properly crediting the author with footnotes, quotation marks, citations, or bibliographic references.

(ii) Submitting as one's own original work, material obtained from an individual, agency, or the internet without reference to the person, agency or webpage as the source of the material.

(iii) Submitting as one's own original work material that has been produced through unacknowledged collaboration with others without release in writing from collaborators

(3) Procedures for academic misconduct

Students suspected of academic misconduct, whether acknowledging involvement or not, shall be allowed to continue in the course without prejudice pending completion of the disciplinary process.

(a) Faculty-student resolution

(i) Allegation

(a) The original jurisdiction of any case involving academic misconduct shall be with the instructor in whose course the alleged misconduct occurred. An instructor who suspects a student of academic misconduct or receives a complaint alleging misconduct that raises suspicion may

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consult the CCA to learn whether there is any record of prior academic misconduct. The instructor will inform the student verbally or in writing within ten days of discovering the misconduct and give the student five days to respond. If needed, the instructor may arrange a review meeting with the student, and both the student and the instructor may have an adviser at that meeting.

- (b) If the student fails to respond within five days of notification, the instructor may impose a final academic sanction with a formal notice of action to the CCA and to the student. If the instructor takes no action within five days, the allegations shall be considered dismissed.

(ii) Notice

- (a) Within three days of the student's response or a meeting the instructor will notify the student in writing of the sanctions and the college hearing options. Failure on the assignment may be reported to the CCA at the discretion of the instructor and may not be disputed if the student admits responsibility. Failure for the course must be reported to the CCA.
- (b) If the student fails to respond to the sanction notice within three days after responding or meeting with the instructor, the academic sanction is final.

(iii) Response to notice

- (a) No later than three days from the time of the notice, the accused student shall notify the instructor in writing whether the student:

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- (i) Accepts responsibility to the violations and agrees to accept the sanctions;
 - (ii) Accepts responsibility but challenges a sanction; or
 - (iii) Denies responsibility and requests resolution by the College Hearing Panel (“CHP”).
 - (b) If the student denies responsibility or challenges the sanction, the instructor will ask the CCA of the college in which the misconduct occurred to convene a CHP.
 - (c) If the student accepts responsibility and the sanction the instructor will notify the CCA of the college in which the misconduct occurred of how the matter was resolved and the action taken. The CCA will record that resolution and provide a copy to the director of the OUJA and to the CCA of the student’s home college.
- (b) College hearing panel resolution
 - (i) College hearing panel members
 - (a) When a faculty-student resolution is not possible, the CCA, without unnecessary delay, shall convene a CHP of the college in which the alleged misconduct occurred. The charge to this CHP shall be to investigate the alleged misconduct and to recommend appropriate sanctions.
 - (b) The CHP shall consist of: the hearing chair, one representative selected by the college faculty and one representative selected

either by the college tribunal or student government for undergraduates, or by the graduate college tribunals or graduate student governance association for graduate students. The hearing chair shall be the CCA. The hearing chair shall vote only in the event of a tie.

- (c) Either the student charged or the instructor alleging misconduct may challenge participation of any panel member on the grounds of conflict of interest. Challenges must be submitted in writing to the hearing chair within three days after the parties have been notified of the panel composition. The challenge must specify reasons that would prevent the individual from being unbiased with respect to the hearing proceedings. The hearing chair shall decide whether the challenge has merit. If the challenge is granted, a substitute will be appointed and the same option to challenge shall exist. If the hearing chair is challenged, the dean of the college or his or her designee shall determine the validity of the challenge and either replace or retain the hearing chair.

(ii) Hearing participants

- (a) Presence at hearings shall be restricted to those individuals involved except as otherwise noted.
- (b) The student may elect to have an adviser present who may counsel, but not actively participate as a spokesperson or vocal advocate in the hearing. Students are required to notify the hearing chair 24 hours prior to the hearing if the adviser is an attorney. A student should select an advisor whose schedule allows attendance at the

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scheduled date and time for the CHP resolution because delays will not normally be allowed due to the scheduling conflicts of an advisor.

- (c) The university ombuds may be present as an observer.
 - (d) Witnesses are strongly encouraged to be present for hearings. However, if they are unable to attend, notarized statements may be submitted.
 - (e) If the student, faculty or staff member chooses not to attend the hearing, his or her written statements shall be reviewed at that time and evaluated based on the information available. No adviser may be present for any party who does not attend the hearing.
- (iii) Hearing procedures
 - (a) The hearing chair and the CHP shall have the right to determine the acceptability of testimony and other evidence during the hearing and may place time limitations on testimony and on closing comments.
 - (b) When more than one student is involved in an allegation of misconduct, any involved student may request a separate hearing. Such requests shall be made to the hearing chair at least two days (48 hours) prior to the scheduled hearing.
 - (c) CHP hearings but not deliberations shall be recorded by the university. Any record of the hearing shall remain the property of the university. Either party may have post-hearing access to the recorded hearing. However, to maintain confidentiality,

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students are not permitted an audio copy of the recorded hearing.

- (d) The CHP may alter or recommend to the dean sanctions of a disciplinary reprimand, probation, suspension or dismissal.

(iv) Post-hearing procedures

- (a) Within three days after the conclusion of the hearing, the hearing chair shall send the panel's recommendation to the college dean and to the student. When students outside their home college are involved in an academic misconduct case, the hearing chair shall also forward a copy of the panel's recommendation to each student's home college dean or university dean within ten days after the hearing.
- (b) Within five days after receipt of the panel's recommendation, the dean of the college or his or her designee shall concur with, modify, or reject the panel's recommendation and shall notify all parties in writing. Notification to the student shall include information about the appeal process and the name and address of the university appeals administrator. If the student does not file an appeal within five days, the decision of the dean shall be final.
- (c) Records relating to a disciplinary action are maintained by the director of the OUJA and the appropriate college office as educational records separate from a student's academic record and are subject to the protections and release provisions by the FERPA.

(4) Disciplinary sanctions for academic misconduct

Sanctions shall be imposed according to the severity of the misconduct. Multiple sanctions may be imposed should the behavior call for the imposition of a more severe penalty. In all cases, the university reserves the right to require counseling or testing of students as deemed appropriate. Definitions of disciplinary sanctions include the following:

(a) Academic action

Includes altering a grade or assigning a failing grade for the assignment, examination, or course.

(b) Disciplinary report reprimand

Notifies the student in writing that the misconduct and sanction will be recorded in a disciplinary file and if misconduct recurs may be taken into consideration in determining further sanctions.

(c) Probation

Imposes specific restrictions or places extra requirements on the student for a specified period. These may vary with each case and may include action not academically restrictive in nature, such as restriction from participation in college activities or other requirements. Disciplinary action should be consistent with the philosophy of providing constructive learning experiences as a part of the probation. A student may be required to meet periodically with designated persons. Any further misconduct on the student's part during the period of probation may result in disciplinary suspension or dismissal.

(d) College or university suspension

Prohibits the student from attending the college or university. University suspension prohibits the student from being present on specified university owned, leased, or controlled property without permission of the sanctioning administrator or his or her designee for a specified period of time. The sanctioning administrator

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shall determine the effective beginning and ending date of the suspension. Students placed on university disciplinary suspension must comply with all suspension requirements. A student seeking to attend the university after the conclusion of his or her suspension shall first request permission to re-enroll from the OUJA and then apply for readmission to his or her college.

(e) College or university dismissal

Permanently prohibits the student from attending classes in that college or permanently prohibits the student from re-enrolling at the university.

(f) Other disciplinary educational sanctions

Sanction designed to develop the student's behavior. This includes service to the college and restrictions on the right of access to the college or university.

(C) Nonacademic misconduct

(1) Report nonacademic misconduct

All instances of alleged nonacademic misconduct shall be reported to the director of the OUJA. Any student found to have engaged in prohibited conduct, as defined in this SCOC, while within the university's jurisdiction shall be subject to disciplinary action by the university.

(2) Nonacademic misconduct definitions

(a) Aiding and abetting misconduct

Helping, procuring, or encouraging another person to engage in nonacademic misconduct.

(b) Alcoholic beverages, unauthorized use

Possessing or consuming alcoholic beverages on campus in unlicensed facilities, except during events or in

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circumstances authorized by university officials; failing to comply with state law or university policy regarding use, transportation, or sale of alcoholic beverages.

(c) Destruction of property

Damaging, destroying, defacing, or altering the property of the university or the property of another person or entity.

(d) Dishonesty and misrepresentation

Furnishing false written or oral information including false identification to university officials, faculty, or staff; forgery, alteration, or misuse of university documents or records.

(e) Disruption or obstruction

Disrupting, obstructing, or interfering with university functions, activities, or the pursuit of the university mission, including, teaching, research, administration, or disciplinary proceedings.

(f) Disturbing the peace

Disturbing the peace of the university, including disorderly conduct, failure to comply with an order to disperse, fighting, or public intoxication.

(g) Drugs or narcotics

Manufacturing, distributing, buying, selling, offering for sale, or possessing any illegal drug or narcotic including: anabolic steroids, barbiturates, hallucinogens, amphetamines, cocaine, opium, heroin, or marijuana. Proper use of substances as prescribed to a student by a physician is exempt.

(h) Failure to comply or identify

Failure to comply with the directions of a university official

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or any law enforcement officer acting in the performance of their duties or posted or written rules; includes failure to evacuate during an emergency and failing to identify oneself to any of these persons when requested to do so.

(i) Failure to comply with sanctions

Failure to comply with sanctions imposed in accordance with the procedures described herein.

(j) False charges or statements

Making false charges or allegations including statements made at university judicial hearings.

(k) False report of emergency

Causing, making, or circulating a false report or warning of a fire, explosion, crime or other catastrophe or emergency; includes activating a false fire alarm.

(l) Harassment

Conduct that has the purpose or foreseeable effect of unreasonably interfering with an identifiable individual's work or academic performance or of creating an intimidating, hostile or offensive work or learning environment for that individual; includes conduct that violates either the institutional policy on sexual harassment (Administrative Memo #60) or the policy statement on discriminatory harassment (Administrative Memo #108).

Both can be found at:

<http://www.uc.edu/about/documents/ucrighttoknow.pdf>.

(m) Hazing

Failure to comply with rule 3361:40-3-12 of the Administrative Code, or state law regarding hazing where hazing generally means any act which endangers the mental or physical health or safety of a student, for the purpose of initiation, admission into, affiliation with, or as a condition

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of continued membership in a group or organization.

(n) Identification, misuse of

Unauthorized transferring, lending, using or altering a university identification card or any other record or instrument of identification.

(o) Information technology, misuse of

Theft, misuse or illegal use of information technology such as computer hardware or software, electronic mail or information, podcasts, voice mail, telephone, fax, including:

(i) Unauthorized entry into a file to use, read or change the contents, or for any other purpose.

(ii) Unauthorized transfer or distribution of a file.

(iii) Unauthorized use of another individual's identification and password.

(iv) Use of information technology to interfere with the work of another student, faculty member, or university official or with normal operations of the university.

(v) Use of information technology for unauthorized posting of copyrighted materials or obscenities.

(p) Law, violation of

Violation of any federal, state, or local law where the effect is interference with university activities or an identifiable individual's university work or academic activities.

(q) Physical abuse or harm

Acts which cause or could cause physical harm to any person or to oneself are prohibited. Actions that threaten or

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cause a person to believe that the offender may cause physical harm are also prohibited. Examples of prohibited behavior include sex offenses, assault, battery, stalking, telephone harassment, sexual assault, sexual harassment, rape, threats, intimidation, physical abuse of one's self or another, verbal abuse, and any other conduct which threatens the health or safety of any person.

(r) Probation, violation of

Violating the SCOC while on university disciplinary probation or violating the specific terms of that probation.

(s) Property or services, unauthorized use

Unauthorized use or possession of property or resources of the university or of any person or entity.

(t) Public endangering

Actions endangering others, including: dropping objects from buildings, activating a false fire alarm, or tampering with safety equipment.

(u) Residence hall rules and regulations

Violating the terms and conditions of the university housing agreement or of published rules and regulations of the office of resident education and development, or the office of housing or its dining facilities.

(v) Retaliation, intimidation

Threats or acts of retaliation or intimidation made to another person in response to the implementation of the SCOC or university rules and policies.

(w) Safety equipment, misuse of

Unauthorized use or alteration of fire fighting equipment, safety devices, fire alarms, fire extinguishers or other

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emergency safety equipment.

(x) Smoking policy

Violating the university smoking regulations set forth in rule 3361:10-17-06 of the Administrative Code. Paragraph (B)(1) of that rule states: “Effective January 1, 2006, smoking shall be prohibited inside buildings, athletic facilities, and vehicles owned, operated or leased by the university of Cincinnati. Smoking shall also be prohibited within twenty-five feet of all university building entrances, exits, air intakes and operable windows. Smoking shall not be permitted on any bridge, overpass or enclosed walkway.” (www.uc.edu/trustees/rules).

(y) Theft or receipt of stolen property

Theft of property or services of the university or of any person or entity. Unauthorized possession of property known to be stolen or that may be identified as property of the university or of any person or entity.

(z) Trespass and unauthorized access

Unauthorized access into or onto any university building, room, structure or facility, or property of the university or any other entity.

(aa) University keys, misuse of

Unauthorized use, distribution, duplication or possession of any keys issued for any university building, laboratory, facility, room, or vehicles.

(bb) University policies or rules

Any violation of published university Rules or Policies. University Rules can be found at: <http://www.uc.edu/trustees/rules/>. University Policies can be found at: www.uc.edu/about/policies/default.html.

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(cc) Weapons

Use, storage, or possession of a firearm, explosive device of any description, ammunition or anything used to threaten, harm, or disrupt the university community including but not limited to, firecrackers, compressed air or spring activated guns, pellet guns, BB guns, paintball guns, water guns, nurf guns and knives of any type or items deemed threatening by the university.

(3) Hearing procedures for nonacademic misconduct

(a) Complaint and notice

(i) Complaint

Any person, department, organization or entity may file a complaint with the OUJA alleging a violation of the SCOC by a student. Complaints filed against a student organization shall be filed in the office of student activities and leadership development. The OUJA, upon receipt of a citation by the university of Cincinnati police department or Cincinnati police department, may initiate a complaint on its own.

(ii) Notice

After reviewing a complaint, the director of the OUJA or designee initiates the disciplinary process by giving the student written notice of the alleged violations. The written notice shall describe the day, time, and location of the alleged violations and inform the student about the reported circumstances underlying the alleged violations. The notice shall state the date, time, location of the procedural review, and the name of the review administrator.

(iii) Procedural review

(a) The purpose of the procedural review is to

review the alleged violations, provide an explanation of the disciplinary process, discuss the student's options, and advise the student of the review administrator's recommended sanctions for the alleged violations. The accused may elect to have an adviser present who may counsel but not actively participate as a spokesperson or vocal advocate in the proceeding. The accused student is required to notify the review administrator 24 hours prior to the procedural review if the adviser is an attorney.

- (b) Procedural reviews may be rescheduled at the discretion of the review administrator.
 - (c) If an accused student fails to appear at the procedural review, the director of the OUJA may schedule an administrative review committee (ARC) hearing.
 - (d) Notwithstanding the provisions above, the director of the OUJA may schedule an ARC without conducting the procedural review.
- (iv) Selection of hearing option
 - (a) No later than three days from the review administrator's written notice of the recommended sanction, the accused student shall notify the review administrator in writing whether the student:
 - (i) Admits responsibility to the violations and agrees to accept the sanctions imposed by the review administrator; or
 - (ii) Admits responsibility but disputes the proposed sanction and requests

that the sanction be determined by an
ARC; or

- (iii) Denies responsibility and requests a hearing before an ARC.
 - (b) If the accused student fails to notify the review administrator of the option selected within three days of the procedural review, an ARC hearing will be scheduled.
 - (c) The OUJA encourages students charged in the same incident and who choose to have an ARC Hearing, to have their cases consolidated. The OUJA reserves the right to require consolidation of hearings.
- (b) Resolution by administrative review committee hearing
- (i) ARC members
 - (a) The hearing chair shall be the director of the OUJA or the director's designee.
 - (b) The committee shall consist of the hearing chair, two faculty or staff selected from the ARC pool, and four undergraduate student representatives selected from the ARC student pool for undergraduate cases or two graduate students selected from the ARC student graduate pool for graduate cases.
 - (c) The ARC pool shall consist of twelve faculty and staff selected by the director of the OUJA in consultation with faculty senate or academic colleges, no fewer than ten student representatives selected by the OUJA in consultation with student government, and no fewer than four graduate or professional students selected by the OUJA in consultation with the graduate

student governance association.

- (d) A quorum is present for undergraduate cases when the hearing chair, one faculty or staff, and three student representatives are present. A quorum is present for graduate cases when the hearing chair, one faculty or staff, and two student representatives are present. The hearing chair will only vote in the case of a tie by the committee.
 - (e) The complainant or accused may challenge participation of any committee member on the grounds of conflict of interest. Challenges must be submitted in writing to the hearing chair within three days of notice of the committee composition. The challenge must specify reasons that would prevent the individual from being unbiased with respect to the hearing proceedings. The hearing chair shall decide whether the challenge has merit. If the challenge is granted, a substitute will be appointed and the same option to challenge shall exist. If the hearing chair is challenged, the dean of students/AVP for student life shall determine the validity of the challenge and either replace or retain the hearing chair.
 - (ii) Hearing participants
 - (a) Presence at hearings shall be restricted to the complainant and accused involved except as otherwise noted. The ARC hearing shall be closed to the public.
 - (b) The complainant and accused may elect to have an adviser present who may counsel but not actively participate as a spokesperson or vocal advocate in the hearing. The complainant and the accused

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are required to notify the hearing committee chair 24 hours prior to the hearing if the adviser is an attorney. A student should select an advisor whose schedule allows attendance at the scheduled date and time for the ARC hearing because delays will not normally be allowed due to the scheduling conflicts of an advisor.

- (c) The university ombuds may be present as an observer.
 - (d) If either party chooses not to attend the hearing, his or her notarized written statements shall be reviewed and evaluated based on the information available.
 - (e) Witnesses are strongly encouraged to be present for hearings. The hearing chair, in consultation with the ARC, reserves the right to limit the number of witnesses. Witnesses shall be present only when giving testimony. However, if they are unable to attend, notarized statements may be submitted.
 - (f) The hearing chair reserves the right to make appropriate accommodations to secure the safety and comfort of all witnesses during a judicial proceeding.
 - (g) If the hearing chair elects to accept a witness's notarized written statement in lieu of in-person testimony, the identity of the witness and his or her statements shall be fully disclosed to the other party and they shall be given the opportunity to respond to such statements.
- (iii) Hearing procedures

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- (a) Committee hearings shall be recorded by the university. Committee deliberations shall not be recorded. Any record of the hearing shall remain the property of the university. Either party may have post-hearing access to the recorded hearing. However, to maintain confidentiality, students are not permitted an audio copy of the recorded hearing.
 - (b) The hearing chair, in consultation with the ARC, shall have the right to determine the acceptability of testimony and other evidence during the hearing, and may place time limitations on testimony and on closing comments.
 - (c) The accused and the complainant shall have the right to submit evidence and written questions to be asked of all adverse witnesses who testify in the matter. The hearing chair, in consultation with the ARC, has the right to review and determine which written questions will be asked.
 - (d) Both sides shall be given an opportunity to present a closing statement. At the close of the hearing, the ARC shall deliberate privately to determine whether the accused violated the SCOC.
- (iv) Post-hearing procedures
 - (a) The ARC will seek to reach consensus in adjudicating cases. In the event there is no consensus, a majority vote will determine the outcome. In the event of tie votes, the hearing chair will render a vote.
 - (b) The hearing chair shall send the ARC's final recommendation to the dean of students/AVP for student life and to the

student within three days after the hearing.

- (c) Within three days after receipt of the ARC's recommendations, the dean of students/AVP for student life shall provide written notice to all parties and the director of the OUJA of the decision to:
 - (i) concur,
 - (ii) modify sanction or,
 - (iii) send back to the ARC for further review and recommendation.
- (d) If the student does not appeal a sanction within five days, the sanctions approved by the dean of students/AVP for student life shall take effect.
- (e) Records relating to a disciplinary action are maintained by the director of the OUJA as educational records and are protected by FERPA.
- (f) Upon written request, victims of violent crimes, as defined in the section 2901.01 of the Revised Code, may be informed of results of the campus disciplinary proceedings.

(4) Sanctions for nonacademic misconduct

- (a) Sanctions shall be imposed according to the severity of the misconduct. Multiple sanctions may be imposed should the behavior call for the imposition of a more severe penalty. In all cases, the university reserves the right to require counseling and testing of students as deemed appropriate. The university may impose interim restrictions (i.e., cease and desist, restriction from dining halls, residence halls or specific buildings, no contact) to protect the rights and

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ensure the safety or address the concerns of students, staff, faculty, and the university community.

- (b) Implementation of sanctions is immediate or as defined.
- (c) Alcohol or drug possession disclosure
 - (i) The university of Cincinnati may notify the parents or guardians of any student who is under the age of 21 and who has been found to be in violation of the SCOC with respect to any federal, state, or local law or university policy governing the use or possession of alcohol or a controlled substance.
 - (ii) Students will receive copies of notification letters sent to their parents or guardians.
 - (iii) The university also reserves the right to make any other parental disclosures as permitted by FERPA.
- (d) Definitions of disciplinary sanctions include the following:
 - (i) University disciplinary reprimand

Notifies the student in writing that his or her behavior is unacceptable and that any other violation may warrant further sanctions.
 - (ii) University disciplinary probation

Imposes specific restrictions or places extra requirements on the student for a specified period. These may vary with each case and may include restrictions related to participation in intercollegiate athletics, extracurricular and residence life activities. Such restrictions may also involve other requirements not academically restrictive in nature. They should be consistent with the philosophy of providing constructive learning experiences as a part of the probation. A student may be required to meet periodically with designated persons. Any

further misconduct on the student's part during the period of probation may result in disciplinary suspension or dismissal.

(iii) University disciplinary suspension

Prohibits the student from attending the university and from being present without permission of the director of the OUJA or his or her designee on any university owned, leased, or controlled property for a specified period of time. University disciplinary suspensions shall have effective beginning and ending dates. Students placed on university disciplinary suspension must comply with all suspension requirements. A student seeking to attend the university after the conclusion of his or her suspension shall first request permission to re-enroll from the OUJA.

(iv) University disciplinary dismissal

Permanently prohibits the student from attending the university and from being present, without permission, on any university owned, leased, or controlled property.

(v) Other disciplinary educational sanctions

Sanctions designed to develop the student's behavior include: service to the university or university community; restrictions on the right of access to campus facilities, events, and student organizations; restitution for damage or expenses caused by the misconduct; and referral for psychological or psychiatric evaluation or other educational or developmental programs.

(vi) Interim or emergency suspension

(a) An interim or emergency suspension is an interim action, effective immediately,

designed to prohibit the presence of the student on campus and participating in any university-related activities, registered student organization activities, and academic coursework until the student's disciplinary case can be resolved in accordance with prescribed disciplinary procedures. Such action shall be taken when the vice president for student affairs and services or his or her designee has reasonable cause to believe that the student's presence on university owned, leased, or controlled property or at a university-related or registered organization activity poses a substantial threat to the health or safety of others or to property. An interim or emergency suspension begins immediately upon written notice by the vice president for student affairs and services or designee and restricts a student's physical access to campus if deemed necessary in order to:

- (i) Maintain order on university property and campuses.
- (ii) Preserve the orderly functioning of the university and the pursuit of its mission.
- (iii) Stop interference in any manner with the rights of citizens while on university owned, leased, or controlled property, while on professional practice assignment or while representing the university.
- (iv) Stop actions that threaten the health or safety of any person including oneself.
- (v) Stop actions that destroy or damage

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property of the university or of any member of its community.

- (b) Interim or emergency suspension may be imposed pending the application of the disciplinary process. A disciplinary hearing shall be scheduled by the university without undue delay. The student may, within three (3) business days of the imposition of the suspension, petition the vice president for student affairs and services for reinstatement. The petition must be in writing, and must include supporting documentation or evidence that the student does not pose, or no longer poses, a significant risk of substantial harm to the health or safety of others or to property. A hearing on such petition will be conducted without undue delay by the vice president for student affairs and services or his or her designee. The purpose of this hearing will be to determine if the interim suspension shall remain in effect, be modified, or be revoked pending a disciplinary hearing.
- (5) Sanctioning of student organizations
 - (a) When a student organization is charged with a violation of the SCOC, the director of student activities and leadership development or the appropriate administrators at Raymond Walters college, Clermont college, UC East – UC Clermont college and the college of engineering and applied science will consult with the appropriate student organizations and activities governing board to determine whether the case should be referred to the appropriate governing body or handled administratively. They may also determine that specific members or officers of the organization should be referred for disciplinary action under the SCOC procedures.
 - (b) Student organizations in violation of SCOC shall be subject to sanctions including termination of university

registration, restriction on or suspension of the use of university facilities or services, suspension of the privilege to sponsor fundraising events, the loss of university funds, and restitution for damage. These sanctions may be imposed by the student organization's governing board or by the appropriate administrative unit.

- (c) When a social Greek organization is charged with a violation of the SCOC, the director of the OUJA and the director of student activities and leadership development shall consult with the Greek affairs adviser to determine whether the case should be referred to the appropriate judicial body (e.g., interfraternity council, panhellenic) or handled administratively. If a case is referred to a judicial body and it is determined that a violation has occurred, the judicial body may recommend to the Greek affairs adviser a sanction which may include a written reprimand, probation, denial of pledging rights, restitution for damages, or termination of university registration. The Greek affairs adviser shall consult with the director of student activities and leadership development to determine the sanction to be imposed. The Greek affairs adviser shall send written notice of the sanction to the Greek organization and shall send written notice of the charges and the sanction to the national organization.

(D) Appeal process

(1) Filing an appeal

A student found to be responsible for either an academic or nonacademic violation of the SCOC shall have the right to appeal. An appeal must be submitted in writing to the director of the OUJA within five days of receipt of the sanction decision letter. Upon receipt of the appeal, the director of the OUJA will forward the appeal along with the student's file to the university appeals administrator (UAA), appointed by the vice president for student affairs and services.

A student may challenge participation in the UAA on grounds of conflict of interest. Challenges must be submitted in writing to the

director of the OUJA along with the appeal within the five days. The challenge must specify reasons that would prevent the individual from being unbiased with respect to the hearing proceedings. The director of the OUJA, in consultation with the dean of students/AVP for student life, shall decide whether the challenge has merit. If the challenge is granted or if there is an inherent conflict of interest with the UAA, a substitutes will be appointed by the vice president for student affairs and services, and the same option to challenge shall exist.

- (2) Grounds for appeal. The only permissible grounds for appeal shall be that:
 - (a) New information was discovered, which was not available at the time of the hearing, and such evidence could affect the decision in the case;
 - (b) A substantial procedural error occurred in the process, which affected the decision in the case; or
 - (c) A sanction of suspension or dismissal was imposed and is not commensurate with the violation. Lesser sanctions cannot be appealed.
- (3) Procedure.
 - (a) The UAA shall review all appeals. All steps in the appeal process shall occur without unnecessary delay.
 - (b) The UAA shall review the appeal for appropriate grounds and shall reject and return to the student any appeal deemed groundless, with a brief written explanation of the reason the appeal was rejected. That decision shall be final.
 - (c) If the UAA determines that the new information described in the appeal was not available earlier and could affect the decision or that a substantial procedural error occurred in the process which could have affected the decision in the case, the UAA shall charge the ARC or CHP to hold a limited hearing for the sole purpose of reviewing the new information or correcting the procedural error. The hearing

shall be limited in scope. It shall not include any review of evidence or testimony or modification of factual conclusions reached in the original hearing, unless they are affected by the new information or by the procedural error. The appeal and complete hearing file shall be provided to the ARC or CHP. If the UAA determines that the sanction of suspension and dismissal is not commensurate with the violation, then the UAA shall review the file and submit a recommended sanction to the appropriate vice president.

- (d) If members of the ARC or CHP, which initially heard the complaint, are not available for continued service, substitute members will be selected by the director of the OUJA from the original pool or by the CCA. The UAA is not a member of the ARC or CHP and does not participate in the review process.
- (e) Following this limited hearing, the ARC or CHP shall submit a report and possibly a revised recommendation to the UAA. The UAA shall review the file and recommendation. If it is the opinion of the UAA that the new evidence was considered or the procedural error corrected, the UAA shall forward the recommendation to the appropriate dean. If the UAA determines that the ARC or CHP failed to correct the procedural error or failed to consider the new evidence, the UAA shall return the matter to the ARC or CHP with instructions to reconsider.
- (f) For appeals of suspension based on a claim that the sanction is not commensurate to the violation, the UAA shall review the file and issue a final decision to concur with or modify the sanction, then send the file to the appropriate dean. For appeals of dismissal based on a claim that the sanction is not commensurate to the violation, the UAA shall review the file and issue a final decision to concur with or, modify the sanction, then send to file to the appropriate vice president.

(4) Final Decision

The appropriate vice president or dean shall accept, reject or

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modify the recommended sanction and notify all parties in writing of the final decision. The final decision vests with: the dean of students/AVP for student life for nonacademic misconduct sanctions other than dismissal; the vice president for student affairs and services for nonacademic misconduct sanctions of dismissal; the college deans for academic misconduct sanctions other than dismissal; the senior vice president for academic affairs and provost will review academic misconduct sanctions of dismissal.

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