

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

JOHN DOE I  
c/o Engel and Martin, LLC  
5181 Natorp Blvd., Ste. 210  
Mason, Ohio 45040

and

JOHN DOE II  
c/o Engel and Martin, LLC  
5181 Natorp Blvd., Ste. 210  
Mason, Ohio 45040

Plaintiffs

v.

UNIVERSITY OF CINCINNATI  
2600 Clifton Avenue  
Cincinnati, OH 45220

DANIEL CUMMINS  
Suite 745  
Steger Student Life Center  
Cincinnati, Ohio 45221

DENINE M ROCCO  
Suite 745  
Steger Student Life Center  
Cincinnati, Ohio 45221

and

DEBRA MERCHANT  
Van Wormer Hall,  
2614 McMicken Circle  
Cincinnati, OH 45221

Defendants

Case No. **1:15-cv-681**

Judge:

COMPLAINT AND JURY DEMAND

## **INTRODUCTION**

1. Plaintiffs John Doe I and John Doe II bring this action for a declaratory judgment, violation of 42 U.S.C. §1983, violation of Title IX, and injunctive relief
2. This case arises out of the Defendants' decision to discipline the Plaintiffs in violation of their Constitutional and federal statutory rights.
3. This case involves some of the same facts and allegations as in Case No. USDC, S.D. Ohio 1:14-cv-00404-SJD. That case was dismissed without prejudice by Order of the Court.
4. This case also involves some of the same facts and allegations as in Hamilton County Common Pleas Court Case No. A1406907. That case was voluntarily dismissed without prejudice.

## **PARTIES**

5. Plaintiff John Doe I is a former student at the University of Cincinnati. He has a principal residence in [OMITTED].
  - a. John Doe I was a student at UC who has subsequently transferred to another educational institution.
  - b. John Doe I seeks to proceed anonymously. Due to the nature of the allegations in this case, disclosure of his name would be highly prejudicial. This case also involves education records that are generally protected from public disclosure by FERPA.
6. Plaintiff John Doe II is a former law student at the University of Cincinnati. He has a principal residence in [OMITTED].
  - a. John Doe II has graduated.

- b. John Doe II seeks to proceed anonymously. Due to the nature of the allegations in this case, disclosure of their names would be highly prejudicial. This case also involves education records that are generally protected from public disclosure by FERPA.
- 7. 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.
- 8. Defendant Daniel Cummins is the Assistant Dean of Students/Director of the Office of University Judicial Affairs for UC. He has a principal place of business at Suite 745 Steger Student Life Center, Cincinnati, Ohio 45221-10193.
  - a. Cummins is sued in his official capacity for declaratory and injunctive relief, and in his personal capacity for damages.
  - b. On information and belief, Cummins is acting under regulations set forth in the Ohio Administrative Code, as well as the policies, procedures, and practices of UC.
  - c. Cummins is responsible for administering and operating the UC Student Code of Conduct and Judicial System.
- 9. Defendant Debra Merchant is the Vice President for Student Affairs for UC. She has a principal place of business at Van Wormer Hall, 2614 McMicken Circle, Cincinnati, OH 45221.
  - a. Defendant Merchant is sued in her official capacity for declaratory and injunctive relief, and in her personal capacity for damages.
  - b. On information and belief, Merchant is acting under regulations set forth in the Ohio Administrative Code, as well as the policies, procedures, and practices of UC
  - c. Defendant Merchant has responsibility for administering and operating the UC Student Code of Conduct and Judicial System.

10. Defendant Denine M Rocco is the Assistant Vice President and Dean of Students for UC. She has a principal place of business at Suite 745 Steger Student Life Center, Cincinnati, Ohio 45221-10193.

- a. Defendant Rocco is sued in her official capacity for declaratory and injunctive relief, and in her personal capacity for damages.
- b. On information and belief, Rocco is acting under regulations set forth in the Ohio Administrative Code, as well as the policies, procedures, and practices of UC
- c. Defendant Rocco has responsibility for administering and operating the UC Student Code of Conduct and Judicial System.

### **JURISDICTION AND VENUE**

11. This case arises, in part, under the United States Constitution and 42 U.S.C. §§ 1983 and 1988. Accordingly, this Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331 and 1343.
12. This case arises, in part, under the laws of the United States, specifically Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 et seq. Accordingly, this Court has jurisdiction in this matter pursuant to 28 U.S.C. §§ 1331 and 1343.
13. The declaratory and injunctive relief sought in this matter is authorized by 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983, and Federal Rules of Civil Procedure 57 and 65.
14. This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C. § 1391. The defendants are residents 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**

#### **A. The UC Code of Student Conduct**

15. After years of criticism for being too lax on campus sexual assault, colleges and universities are relying on Title IX to crackdown on alleged perpetrators. Unfortunately, this crackdown has

gone too far. Problems include: accused students effectively are presumed guilty; instead of requiring accusers to prove they were assaulted, the accused students have to prove they had consent; and schools apply the very lowest standard of proof — preponderance of the evidence.

16. On April 11, 2011, the U.S. Education Department’s Office of Civil Rights sent a “Dear Colleague” letter to colleges and universities.

- a. The Dear Colleague Letter indicated that, in order to comply with Title IX, colleges and Universities must have transparent, prompt procedures to investigate and resolve complaints of sexual misconduct.
- b. Most notably, the Dear Colleague Letter required schools to adopt the lowest burden of proof—“more likely than not”—in cases involving sexual misconduct, including assault. Several colleges had been using “clear and convincing,” and some, like Stanford, applied the criminal standard, “beyond a reasonable doubt.”
- 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.
- g. The Dear Colleague Letter was not subject to notice-and-comment rulemaking, and therefore its validity as binding law is at best questionable. Nevertheless, universities including UC, treat the Dear Colleague Letter as binding authority. Emails from

Defendant Cummins stated that UC acts “pursuant to” and “in accordance with” the Dear Colleague Letter.

17. The Federal Government, through the Department of Education, Office of Civil Rights, has been pressuring colleges and universities to aggressively pursue investigations of sexual assaults on campuses.

- a. The Dear Colleague letter was a step in the increased enforcement of Title IX at college and universities. NPR described the Dear Colleague Letter as the government’s “first warning shot.” Source: *How Campus Sexual Assaults Came To Command New Attention*, NPR, August 12, 2014.
- b. The Washington Post reported in March 2015 that the Office of Civil Rights was seeking to hire up to 200 more investigators.
- c. In May 2014, the federal Department of Education disclosed for the first time the names of colleges, 55 in all, under investigation for possibly violating federal rules aimed at stopping sexual harassment.
- d. The Federal government, at last report, 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.
- e. The Department has negotiated settlements with many schools. These settlements often require significant concessions from the schools in the process used to adjudicate allegations of sexual assault and sexual harassment on campus.
- f. In February 2014, Catherine E. Lhanon, 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.

- g. Lhamon 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.” Source: 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.

18. Schools are scared of being investigated or sanctioned by the Department of Education.

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

“There is a certain hysteria in the air on this topic . . . . It’s really a surreal situation, I think.” She explained that schools are running so scared of violating the civil rights of alleged victims that they end up violating the due process rights of defendants instead.

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

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

- d. Robert Dana, dean of students at the University of Maine, told NPR that some rush to judgment is inevitable. “I expect that that can’t help but be true,” he says. “Colleges and universities are getting very jittery about it.” Source: *Some Accused of Sexual Assault on Campus Say System Works Against Them*, NPR, September 3, 2014.

19. Probably the best and most obvious example of the pressures faced by schools comes from Ohio State University.

- a. In July 2014, OSU fired its marching band director, Jonathan Waters, after a school investigation that found “sexualized” culture among band members.
- b. Before this, OSU had been on the Education Department’s list of colleges and universities that were being investigated for Title IX violations. After the school fired Waters, Ohio State was removed from the list as a result of an agreement between the school and the Department of Education.



- c. The Department of Education cited the firing of Waters as one of the reasons it stopped investigating the school. “This agreement, and The Ohio State University’s recent response to the culture within the marching band, set clear and vitally important expectations for a community-wide culture of prevention, support, and safety,” said Assistant Secretary of Education for civil rights, Catherine E. Lhamon.
20. UC has felt the same pressures as other schools. A UC spokesperson recently explained the 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.
21. 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.
22. 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. . . .”
23. 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.

24. The UC Title IX policy incorporates “a *full* list of on- and off-campus resources for individuals who have experienced sex discrimination, including sexual misconduct (emphasis in original).”
25. The UC Title IX Policy does not include a list of resources for people accused of violating the Policy.
26. 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](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.
27. The UC Code of Student Conduct governs student behavior and provides for sanctions for violations. Revisions to the Policy were adopted in 2012 in part, on information and belief, as a direct response to pressure from the Department of Education. Further revisions were made in 2015, after the events in this matter.
- a. The UC Code of Conduct is codified in the Ohio Administrative Code. OAC 3361:40-5-04. This Code is incorporated in this Compliant.
  - b. The UC Code of Conduct provides that it is not a contract between UC and students, and UC reserves the right to change the procedural protections in the UC Code of Conduct “at any time during the student’s term of enrollment.” UC Code of Conduct § A(1)(e).

- c. 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.”
- 28. The UC Code of Conduct provides procedures that are supposed to be employed to resolve allegations of student violations.
- 29. 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 Cummins or another “Title IX” administrator.
  - b. UC begins disciplinary proceedings against students accused of sexual assault or sexual harassment prior to the completion of an investigation.
  - c. UC employees, including Cummins, have stated that UC attempts to comply with its interpretation of the Dear Colleague Letter.
- 30. A student who is accused of sexual assault or sexual harassment is entitled to an Administrative Review Committee Hearing (“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.
- 31. 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. A student may cross-examine an accuser and adverse witnesses 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.
- e. A student does not have the ability to compel other students or UC employees to attend the hearing.
- f. 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 John Doe II Cummins 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 John Doe I, “*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.)

32. 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.
33. 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.

- i. 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”

**Overview: Sexual Misconduct**

- Sexual assault
  - Last year, 38 rapes were reported to the SARC; 4 reported to UCPD.
  - Sexual assault is about POWER & CONTROL.
  - Most are perpetrated by people known and trusted by the victim.
  - Consent is an active, ongoing process.

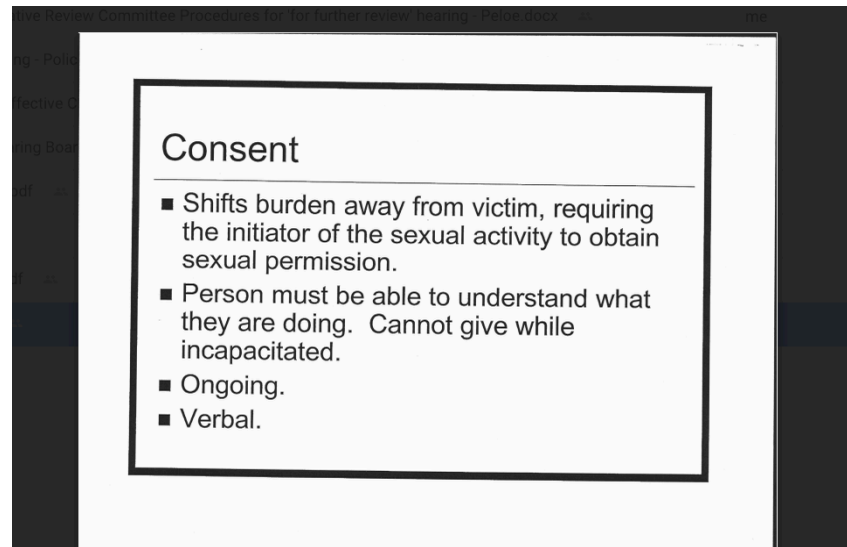
- ii. The training also included descriptions of the “Profile of a sexual Assault Victim” and the “Profile of a Sex Offender.” These “profiles” do not serve to aid in the adjudicatory process but, instead, serve to encourage panel members to find an alleged sex offender responsible before he can commit another sexual assault.

### Profile of a Sex Offender

- Seeking power (NOT about sex)
- Predators target vulnerable persons
- Known to the victim (84% of rape victims know their attacker and 57% of rapes happen on “dates”)
- Most rapists are repeat date rapists; the average rapist rapes 14 people before he ever spends a night in jail.
- Uses alcohol as weapon: “*Undetected Rapist*”

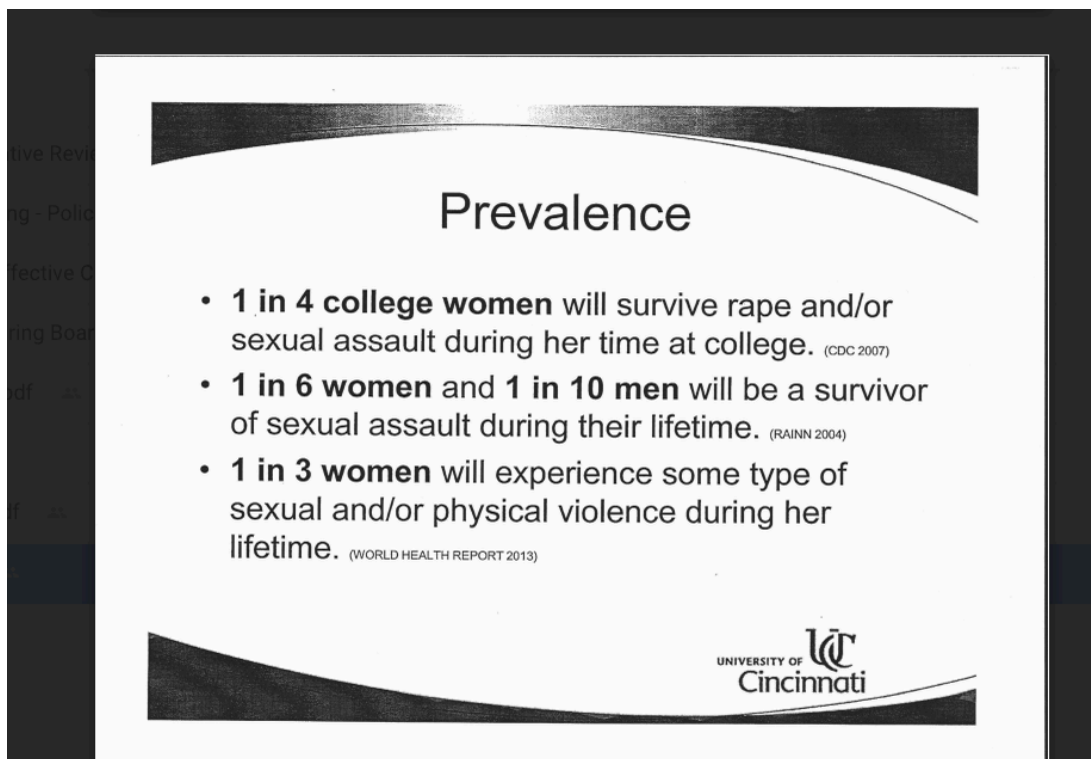


- iii. The training misstated the UC Code of Student Conduct for consent, claiming incorrectly that consent for sexual activity must be “Ongoing [and] Verbal.” In fact, the UC Policy is consistent with Ohio law, which does not require verbal consent. *See UC Policy Statement on Sex Offenses* (Effective August 15, 2012, with prior effective dates in 2011 and 2008.).

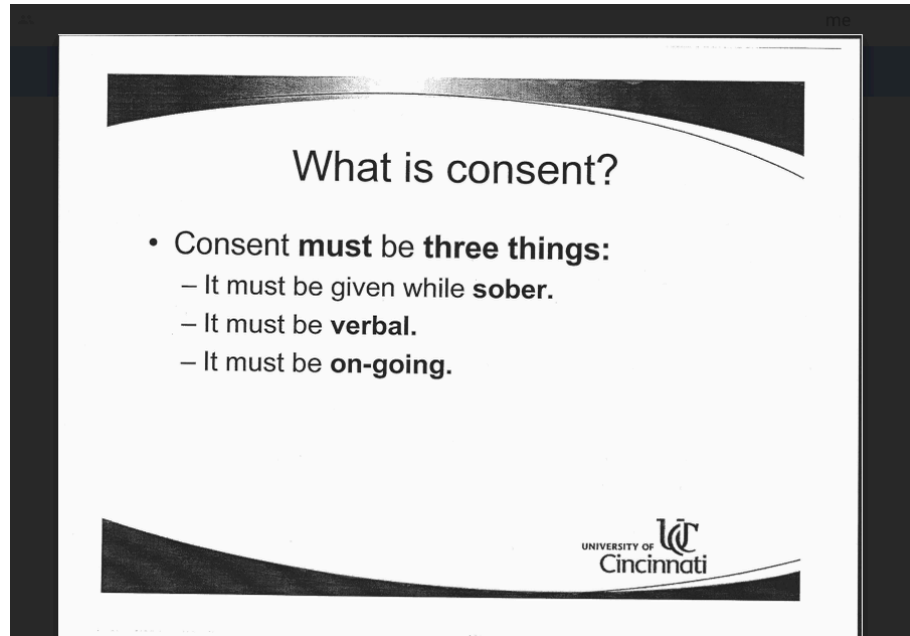


- iv. At no time did the training include any discussion of due process concerns or the idea that those accused of violating the Code of Conduct are presumed to be not guilty.
- v. This training was repeated in 2012.
- b. On an unspecified date the hearing panel members received a training titled, “Sexual Assault & Response. Preventing Sexual & Gender Based Violence.”
- i. This training had the purpose and effect of informing panel members that they had a job to prevent sexual assault on campus, not to fairly and impartially adjudicate allegations of misconduct.

- ii. This training included the controversial statistic that “1 in 4 college women” will be the victim of sexual assault during her time in college.

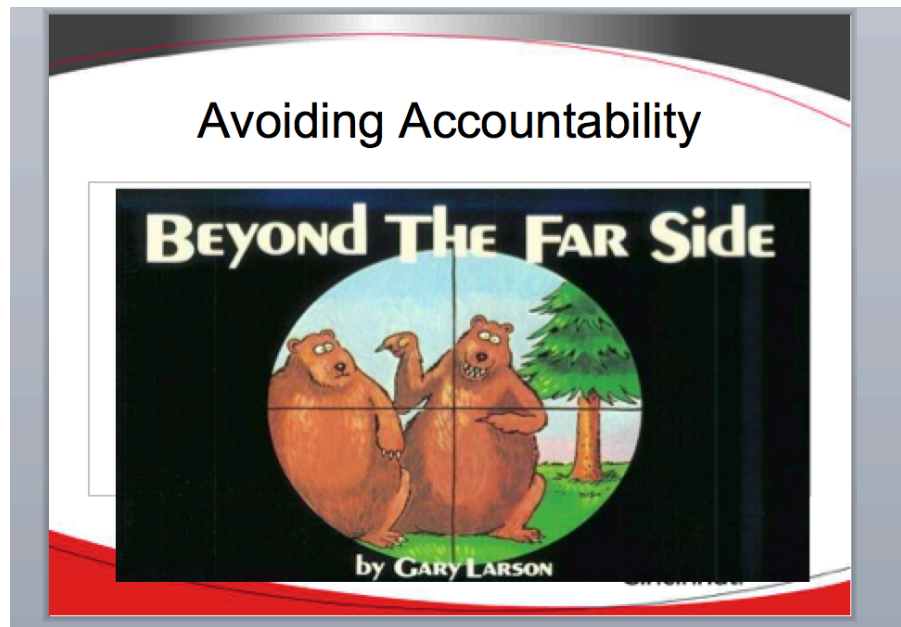


- iii. Similar to the training provided by the UC Women’s Center, this training also misstated the definition of consent at UC pursuant to the Sexual Misconduct Policy. The training told panel members that consent must be “verbal” and “on-going.” In fact, the UC Policy in effect for John Doe I, consistent with Ohio law, does not require verbal consent. *See UC Policy Statement on Sex Offenses* (Effective August 15, 2012, with prior effective dates in 2011 and 2008.).

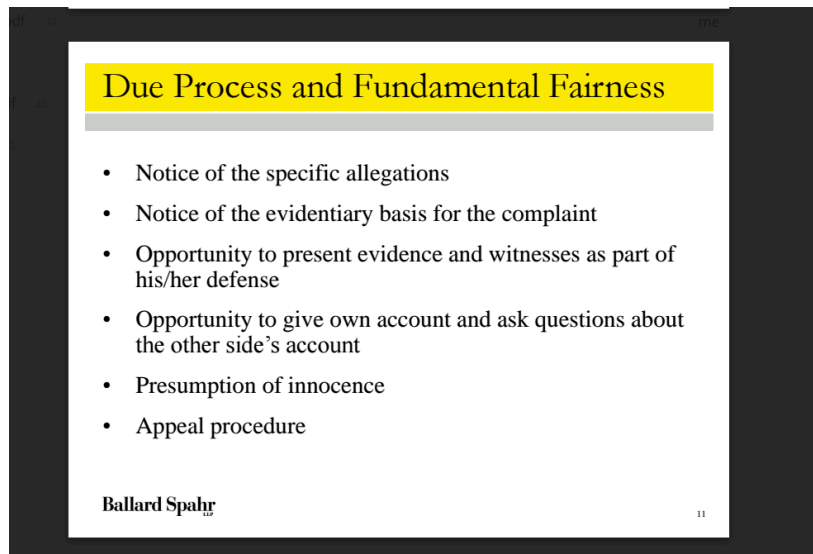


- iv. At no time did the training include any discussion of due process concerns or the idea that those accused of violating the Code of Conduct are presumed to be not guilty.
- c. On June 2, 2014, administrators from public colleges and universities in Ohio attended training from the Ohio Board of Regents. 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.

- d. A training session, entitled, “Topic: Policies & Procedures and Fact Finding” is, on information and belief, provided to hearing panel members by Cummins. This training never suggests that students are presumed to be innocent until proven guilty. In fact, the training includes a slide featuring a “Far Side” cartoon suggesting that goal of hearing panel members is to impose discipline on students who will deny “accountability.”



- e. 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 included the following slide, which suggests that due process includes, inter alia, the opportunity to question the other side and the presumption of innocence.



34. 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 was published by Defendant’s Cummins’ Office, and Cummins is mentioned prominently in the document. 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. Cummins and other allegedly neutral investigators and fact-finders at UC often act as advocates for those who claim to be victims, rendering any investigation biased.
    - i. Cummins and other UC employees advocate for students who make 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. Cummins and other UC employees often schedule ARC Hearings without actually conducting any investigation.
    - iii. Cummins and other UC employees make no effort to obtain and review any physical evidence; do 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, Cummins and other UC employees reach investigatory conclusions by relying heavily on hearsay statements from the friends of the alleged victims.
    - iv. Cummins and other UC employees do not include information in investigative reports that is 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.
35. 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.

36. A review of the recent history of ARC Hearing Panels, obtained through a public records request, 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 nine alleged violations of the Sexual Misconduct Policy that were presented to an ARC Hearing Panel, aside from the cases against John Doe I and John Doe II. In response to the public records request, UC identified these as matters 1, 2, 6, 8, 14, 16, 20, and 28. (One record, #8, involving a 2013 incident, did not indicate a result.)
  - i. In *all eight cases* presented to the ARC Hearing Panel where a result was disclosed, the respondent was found responsible.
  - ii. In four of the cases UC considered an appeal. In all four of the cases the appeal was rejected.

- b. UC provided records for eight allegations (aside from the matters involving the plaintiffs) of sexual contact without consent. In one case, no resolution was disclosed. In all eight cases where there was a resolution, the accused student faced discipline, ranging from probation to suspension or dismissal. The cases involving allegations of sexual contact without consent are summarized here:

<b>UC Report No.</b>	<b>Date</b>	<b>Brief Description</b>	<b>ARC Hearing</b>	<b>Result</b>	<b>Appeal</b>	<b>Final Result</b>
1	2012	Sexual Contact without consent. Other party impaired due to alcohol	2012	Responsible	2012	Dismissal
2	2011	Sexual Contact without consent. Other party impaired due to alcohol	2012	Responsible	2012	Dismissal
6	2010	Sexual Contact without consent. Other party impaired due to alcohol	2012	Responsible	2012	Dismissal
14	2012	Sexual Contact without consent. Other party impaired due to alcohol	2012	Responsible		Probation
16	2012	Sexual Contact without consent. Other party impaired due to alcohol	2012	Responsible	2012	Dismissal
9	2013	Sexual Contact without consent	2013			Dismissal



29	2013	Sexual Contact without consent	
27	2011	Sexual Contact without consent. Other party impaired due to alcohol.	Suspension

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.

d. UC disclosed a total of 32 separate matters. In only 4 of the 32 cases was a student found “not responsible.” None of those cases where a student was found “not responsible” concerned “serious” matters or allegations of sexual abuse. Three of the “not responsible” findings related to a dispute in the dorm over personal belongings, and one involved the driver of a van when the passenger allegedly directed a sexual remark to a passing female.

37. Students 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.
- 38. 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 investigation the allegations against the student.
- 39. A review of the recent history of ARC Hearing Panels, obtained through a public records request, shows UC has a pattern and practice of making it 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
- 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. On information and belief, UC often provides students accused of sexual assault with less than three days to obtain all documents, testimony or other evidence that they wish to present at the hearing.
  - b. 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.
  - c. 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. On information and belief, Cummins orchestrates many of the actions of the ARC Hearing Panels.
44. 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.
45. 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.

46. 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 FACTS INVOLVING JOHN DOE I**

47. John Doe I was a junior at UC. He studied at the Blue Ash campus prior to his transfer to another institution.

48. On or about March 9, 2014, John Doe I was accused by two female UC students of rape, Jane Roe I and Jane Roe II. The allegations include the following:

- a. The students allege that they met John Doe I at a party on West Clifton Avenue and later at another party at the University Park Apartments.
- b. The students allege that John Doe I accompanied them back to their room in Daniels Hall.
- c. The students allege that they were intoxicated. The students admitted to drinking alcohol and smoking marijuana.
- d. One of the students alleges that she went to sleep but was awakened by John Doe I attempting to have sexual intercourse with her. She alleges that she told him no and ran from the room.

- e. The other student alleges that John Doe I then got into bed with her. She alleges that she had passed out and was awakened by John Doe I having sexual intercourse with her.
49. John Doe I vehemently denies the allegations of the two female UC students.
50. John Doe I is innocent of the charges.
51. The case was presented to the Hamilton County Grand Jury. The Grand Jury refused to issue an indictment.
52. The two female UC students gave a number of conflicting statements to UC Officials.
- a. On March 12, 2014 Jane Roe I gave a statement to Cummins.
    - i. In the March 12, 2014 statement she never stated that had smoked marijuana during the evening. However, in later statements she admitted to smoking marijuana.
    - ii. In the March 12, 2014 statement Jane Roe I stated that “I laid down in bed and went to sleep and woke with him on top of me.” However, on March 9, 2014 she told the UC Police that she changed her clothes in front of John Doe I, climbed into bed, and then within a minute John Doe I climbed into bed with her.
  - b. On March 12, 2014 Jane Roe II gave a statement to Cummins.
    - i. In the March 12, 2014 statement she never stated that she was intoxicated. However, she later told Cummins that she could not remember significant events before she passed out and she had previously told the UC Police that she rated her intoxication as “8 of 10.”
    - ii. In the March 12, 2014 statement she stated that after she passed out, she woke up feeling something penetrating her vagina and told John Doe I to get off of her. However, on March 9, 2014 she had told the UC Police that she “passed out again” after feeling John Doe I’s penis inside of her.

53. The incident has been investigated by the UC Police. The UC Police File number is [REDACTED].

54. John Doe I cooperated with the investigation. John Doe I gave a voluntary statement. John Doe I told the UC Police that he was willing to submit to a polygraph examination. John Doe I voluntarily submitted DNA evidence.

55. The UC Police obtained significant physical evidence that exonerated John Doe I. The evidence contradicted significant portions of the statements provided by the two female UC students to Cummins and the ARC Hearing Panel:

- a. Jane Roe I told Cummins on March 12, 2014 that that John Doe I followed Jane Roe I and Jane Roe I into Daniels Hall. Jane Roe I then told the ARC Hearing Panel that she “walked straight to the elevator” at her dorm so that she was “not aware of how [John Doe I] got into the building.”
- b. Jane Roe II told Cummins that Daniels Hall staff let John Doe I into the dorm despite the fact that he did not have identification.
- c. However, a surveillance videotape obtained by the police showed that Jane Roe I waited while Jane Roe II signed John Doe I into the dorm.
- d. Jane Roe II told the ARC Hearing Panel that she was “passed out from intoxication” when she was assaulted by John Doe I. Jane Roe II also indicated that she did not remember walking home with John Doe I “because I was so high and intoxicated.” However, a surveillance videotape obtained by the police showed that Jane Roe I and Jane Roe II did not appear to be intoxicated.
- e. Text messages obtained by a forensic review of the students cell phones called significant portions of the students’ stories into question. For example, although the students

claimed to be passed out, they still sent a number of text messages. In addition, later messages joked about the case.

- f. Another female student was present in the room when the alleged assault occurred. This student did not witness anything illegal.

56. On March 27, 2014, a UC Police Detective told John Doe I's mother that the two female UC students claimed to be unable to recall certain significant facts from that evening. In contrast, the Detective indicated that John Doe I was very forthcoming.

- a. The Detective told John Doe I's Mother that he believed that John Doe I was telling the truth and that the two female UC students had not been fully truthful.
- b. The Detective told John Doe I's Mother that if the criminal charges were eventually dropped, he would support John Doe I in a civil suit against the two female UC students.

57. Rape Kits were submitted to the crime lab for analysis. On information and belief, the results of the analysis of the rape kits are consistent with the version of events provided by John Doe I.

58. High-ranking UC officials attempted to interfere with the criminal investigation.

- a. For example, a March 25, 2014 email from the University of Cincinnati Police Chief to another UC official expressed these concerns. In response to a request by the UC General Counsel, Kenya Faulkner, to view the investigative file, Chief Corcoran wrote:

I still have concerns about this, both for the fact that it distracts the detectives from doing the investigation in order to put this together, as well as the fact that Kenya mentioned she may needed [sic] it in order to discuss with Ryan what is going on with the investigation. I maybe [sic] overly worried here, but *I think it is very important that we are allowed to conduct a thorough and complete investigation without any appearance of influence.*

- b. The Lieutenant who supervised the investigation was asked to defend the conclusions and the investigation to Faulkner and others from some apparent charges from Cummins. On April 2, 2014, the Lieutenant wrote:

There are discrepancies in the girl stories. Their stories changed and cell phone records discount [Jane Roe II] stating she was sleeping [when John Doe I] was in bed with [Jane Roe I]. The SANE report for [Jane Roe II] shows no signs of vaginal trauma. [Jane Roe I's] SANE report had minimal trauma, redness on the outside of the vagina. . . . Both detectives have been fair and impartial from the beginning of this case. They have worked diligently to uncover the truth. We have sought the truth from both of the victims and have yet to completely here the truth. [*Sic* entire message.]

- c. Faulkner apparently contacted the detectives and attempted to steer the investigation in certain directions. During a deposition, one of the detectives testified that the other detective “was upset with the fact that the flow of the investigation was being obstructed.” He later said that the detective was upset that the UC General Counsel “was trying to impede our train of thought and our investigation . . .”
  - d. Faulkner contacted the Hamilton County Prosecutor’s Office to discuss the investigation of this matter.
59. UC promised accommodations to Jane Roe I and Jane Roe II, including the postponement of exams and permission to miss classes.
60. John Doe I faced discipline by UC for an alleged violation of the Student Code of Conduct, in particular the Nonacademic Misconduct: Harassment & Physical Abuse or Harm. John Doe I’s case was forwarded to an Administrative Review Committee Hearing (“ARC Hearing”) as outlined in the UC Code of Student Conduct.
61. Cummins did not conduct any investigation to determine if the allegations against John Doe I were credible before instituting disciplinary proceedings against John Doe I.
- a. Cummins sent an initial letter to John Doe I on March 12, 2014.
  - b. On March 28, 2014, John Doe I met with Cummins to discuss the alleged violation of the Student Code of Conduct. John Doe I denied all of the allegations during this meeting but refused to provide an additional statement on the basis of his constitutional right to remain silent. John Doe I was asked to sign a form that he had received “the



evidence supporting the allegation.” However, John Doe I was not provided with copies of any written statements or other evidence obtained by UC during the investigation.

- c. On April 7, 2014, Cummins sent a letter by email to John Doe I stating that an Administrative Review Committee Hearing (“ARC Hearing”) would be scheduled for Thursday, April 10. This hearing was later postponed until May 2, 2014.
  - d. Cummins did not interview any independent witnesses prior to scheduling the ARC Hearing. A review of Cummins report shows that he interviewed witnesses on April 10, 11, and 14, 2014.
62. Cummins’ job required him to advocate on behalf of Jane Roe I and Jane Roe II to obtain accommodations from the University while at the same time conducting his investigation.
63. On April 28, 2014 Cummins completed an investigative report. Cummins found as a “fact” that John Doe I engaged in sexual activity with Jane Roe I and Jane Roe II without their consent.
- a. The investigative report did not include the review of any physical evidence that had been obtained by the UC Police.
  - b. Cummins attempted to obtain a statement from John Doe I while the criminal investigation was ongoing, despite the fact that John Doe I had a constitutional right to remain silent.
  - c. The investigative report did not include any of the statements provided John Doe I to the UC Police.
64. Cummins failed to include in the April 28, 2014 investigative report significant facts that tended to support John Doe I’s version of the events.
- a. On March 12, 2014, Cummins had been provided with a statement from an Ohio University Student. The statement described Jane Roe I and Jane Roe II as “being pretty flirtatious” with John Doe I and indicated that Jane Roe I and Jane Roe II had “basically

dragg[ed]” John Doe I out of an apartment back to their dorm. Cummins did not mention in the report that he had received this statement from the Ohio University student.

- b. Cummins made no effort to obtain from the UC Police any of the physical evidence that tended to exonerate John Doe I, such as the surveillance videos and text messages.

65. UC has attempted to prevent John Doe I from putting forward a meaningful defense by limiting his ability to prepare for the hearings. For example, the letter setting an ARC Hearing for April 10, 2014 was sent by email at 11:43 pm. on April 7, 2014. UC and Cummins initially intended to provide John Doe I with less than three days to obtain all documents, testimony or other evidence that he wished to present at the hearing. UC and Cummins also required John Doe I to submit any challenges to the participation of “any potential” members of the hearing panel by noon on April 9, 2014—less than two days after notifying John Doe I of the Hearing. Cummins also stated that John Doe I “must submit a written detailed report of what occurred” by noon on April 9, 2014—less than two days after notifying John Doe I of the Hearing.

66. Two ARC Hearings were eventually held on May 2, 2014.

- a. The ARC Hearings were nothing more than “kangaroo courts.” Shortly after the start of the ARC Hearing, it was apparent that the ARC Hearing Committee had reached a conclusion and was biased against John Doe I.
- b. UC never attempted to provide John Doe I with an impartial ARC Hearing Panel. One of the members of the ARC Hearing Panel, Carol Tong-Mack, was copied on various emails seeking academic accommodations for the students. These emails stated, for example, that Jane Roe I “has recently been the victim of a crime.” (March 12, 2014 Email.) Later, Jane Roe I copied Tong-Mack on an email to a professor stating, “On Sunday March 9, I was sexually assaulted in my dorm room.” (March 31, 2014 Email.)

After receiving these emails, it was inappropriate for Tong-Mack to participate in the ARC Hearing Panel. Her participation suggests institutional bias, especially since Tong-Mack was the ARC Hearing Panel member who most aggressively questioned John Doe I.

- c. The ARC Hearing Panel did not even follow its own rules. John Doe I was prohibited from presenting evidence, as permitted under the rules and from otherwise putting forth a meaningful defense.

67. On a number of occasions, John Doe I, through his attorney, requested that the UC Police Officer who conducted the investigation of the allegations against him be present at the hearing. UC never responded to these requests.

68. John Doe I requested a copy of the entire investigative file as a public record. UC responded by providing a heavily redacted copy of the investigative file. John Doe I was able to obtain an unredacted copy of the investigative file through a subpoena in a related case. John Doe I obtained this information less than 48 hours before the ARC Hearing.

69. UC did not provide the results of the rape kit analysis or the SANE examinations.

70. Cummins refused to allow John Doe I to record the ARC Hearing.

- a. Cummins claimed that this was against UC Policy. However, he could not produce a UC Policy that stated this.
- b. The only provision of the UC Policy that concerns recorded hearings states, “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.”

- c. The prohibition of recording of the ARC Hearing is contrary to Revised Code 2933.52 (“An individual who is a party to either an in-person conversation or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record it or disclose its contents, unless the person is doing so for the purpose of committing a criminal or tortious act”).

71. At the ARC Hearing, John Doe I was prohibited from presenting evidence in support of his case. Specifically:

- a. The Chair of the ARC Hearing initially declared that all evidence had to be submitted 24 hours in advance of the ARC Hearing. This requirement did not appear in the UC Code of Conduct, which governed the hearing. When pressed on this issue, the Chair of the ARC Hearing left the room to consult, on information and belief, with Cummins. When the Chair of the ARC Hearing returned, he no longer claimed that there was a 24 hour notice rule, but instead stated that the admission of evidence was in his “discretion” and that he would not permit John Doe I to present any evidence.
- b. John Doe I sought to have questions asked of a witness who presented only hearsay evidence. John Doe I wished to ask questions that would call the credibility of this witness (who is the complainant’s boyfriend) into account, and to suggest that he had no first-hand knowledge of the events. The Chair of the ARC Hearing refused to permit these questions.
- c. John Doe I sought to present the surveillance video obtained by the UC Police. This video supported his claim that Jane Roe I and Jane Roe I were not intoxicated, and that they had invited him up to their room. At first the Chair of the ARC Hearing stated that there was no equipment to play the video. John Doe I pointed out that there was a

computer with a large screen present in the room. The Chair then declared that the video was irrelevant.

- d. John Doe I sought to submit the investigation conducted by the UC Police. The investigation by the UC Police essentially cleared John Doe I of the charges. This investigation included detailed statements by all of the parties, witnesses, and other physical evidence. The ARC Hearing Chair stated that the investigation was “irrelevant.”
- e. John Doe I sought to submit the text messages to and from Jane Roe I’s and Jane Roe II’s cell phones. These text messages supported John Doe I’s version of the events. The ARC Hearing Chair stated that the text messages were “irrelevant.”
- f. John Doe I sought to submit the results of the rape kit analysis and the SANE examination. These reports are in the possession of UC. The ARC Hearing Chair stated that this evidence was irrelevant,
- g. John Doe I submitted questions for the witnesses. The ARC Hearing Chair rejected most of the questions as “irrelevant.”
- h. John Doe I requested that the ARC Hearing Chair take steps to obtain the presence of the UC Police Officers. The ARC Hearing Chair refused this request.

72. At the end of the ARC Hearing, John Doe I stated that he had a binder of evidence that supported his version of the events. He tendered this evidence to the ARC Hearing Panel. The ARC Hearing Panel refused to consider any of this evidence.

73. On information and belief, Cummins was orchestrating many of the actions of the ARC Hearing Panel. On a number of occasions, the chair of the ARC Hearing panel left the room, stating that he had to confer with Cummins.

74. The ARC Panel determined that John Doe I had violated the University’s Code of Conduct in regards to the claims of one of the female students.

75. John Doe I left before the conclusion of the case brought by the second female student when it became clear that he would not be afforded due process.
76. John Doe I instituted a case in Hamilton County Common Pleas Court. Judge Metz issued a Temporary Restraining Order prohibiting further disciplinary actions against John Doe I. The case was removed to Federal Court, U.S.D.C., S.D. Ohio. The Federal Court (Dlott, J.) subsequently dismissed the case without prejudice, concluding, in effect, that UC was entitled to complete its appellate process prior to the initiation of any litigation. (“The Court will dismiss as premature the procedural due process claim against the University and Cummins in his official capacity without prejudice to re-filing.”).
77. Less than one week after the dismissal of the John Doe I lawsuit, UC determined that substantial procedural errors had occurred and permitted John Doe I to have a new hearing.
78. On May 18, 2015 and May 19, 2015, John Doe I appeared for new ARC Hearings. While these ARC Hearings were not the same “kangaroo courts” as the original hearing, the ARC Hearing Panels still did not provide John Doe I with a meaningful opportunity to defend against the allegations against him in a number of ways:
- a. The Hearing Panel improperly considered the investigative report prepared by Daniel Cummins. This biased report, prepared by a high-ranking UC administrator, likely had a substantial impact on the panel.
  - b. The ARC panel, during training, was never instructed that Mr. John Doe I is innocent until proven guilty or that the complainant bears the burden of proof by a preponderance of the evidence. This could have led to confusion by the panel, especially in a case like this where the panel was compelled to decide the case in large part based on the credibility of the witnesses.

- c. John Doe I submitted approximately 50 written questions to the panel. (The full list of submitted questions should have been retained by the chair of the panel.) While there is no right to “unlimited” cross-examination, John Doe I was not permitted to have the complainant answer numerous questions designed to elicit the truth about the facts and events in issue.
  - i. Significant questions that the panel did not ask include a large number of questions aimed at highlighting inconsistencies in Jane Roe I’s and Jane Roe II’s story. John Doe I submitted a number of questions to the Panel designed to illustrate that the story told to the panel was not the same story told to the UC Police, Dean Cummins, or when under oath at a deposition.
  - ii. The panel also did not require Jane Roe I and Jane Roe II to answer other questions aimed at discovering whether their alcohol consumption and drug use affected their ability to remember the events of the evening clearly.
- d. John Doe I requested the ability to make his own recording in accordance with Ohio law permitting any party to record a proceeding when they are present. UC’s internal policy violates Ohio Law and, in light of the rapid deadline for an appeal, works to substantially interfere with John Doe I’s appeal rights. The fact that UC has made a recording is insufficient because John Doe I is able to only “review” the recording at UC’s offices.
- e. On information and belief, Jane Roe I and Jane Roe II were offered or provided with significant institutional support at UC, including “advocates” to help them prepare for the ARC hearing. John Doe I requested that if UC had made a UC employee who may serve as an “advocate” or other advisor available to assist the complainants (regardless of whether they choose to use the person or choose to retain private counsel), that similar

and comparable resources be made available to John Doe I. John Doe I was given the name of an individual to contact on the Friday before a Monday hearing.

- f. The ARC Hearing Panel heard an “impact statement” and other evidence about the effect of the alleged violation on Jane Roe I and Jane Roe II prior to making a determination that a violation of the Code of Student Conduct occurred. This evidence was irrelevant to the determination of responsibility. Moreover, it was unduly prejudicial and likely had the effect of allowing the panel to make a decision based on emotions and claimed injury rather than the acts of the matter.
- g. John Doe I requested written clarification in advance of the hearing on the rules governing the admissibility of evidence, including relevance and the use of character evidence. This was not provided, likely because such procedures do not exist. The absence of any such procedures results in substantial error because it places unlimited discretion in the hands of the chair of the panel. Decisions on the admission of evidence, and in particular the admission of irrelevant evidence by the Complainant, were arbitrary and capricious as a result.
- h. Jane Roe I and Jane Roe II, on information and belief, received various accommodations from UC, including the rescheduling of assignments and consideration in exam schedules. These accommodations constitute benefits offered to Jane Roe I and Jane Roe II that were not available to other students and were received by Jane Roe I and Jane Roe II only because they had asserted that they were victims.
  - i. The presence of these accommodations could adversely impact the credibility of Jane Roe I and Jane Roe II. For example, if one of the students later retracted her story, she could face adverse impact on her grades if the schoolwork related accommodations were deemed to have been improperly obtained.



- ii. Without knowing the exact nature of the accommodations offered to the Complainant, it is impossible for John Doe I to detail the exact nature of the prejudice. Regardless of this, however, the ARC Hearing Panel should have been provided with this information in order to draw its own conclusions about the credibility of Jane Roe I and Jane Roe II.

79. The ARC Hearing Panel found John Doe I “Responsible” for a violation of the UC Code of Student Conduct in regards to Jane Roe I, but “Not Responsible” in regards to Jane Roe I. No explanation was provided for this inconsistent decision.

80. John Doe I appealed the decision of the ARC Hearing Panel.

81. On June 11, 2015, the University Appeal Administrator rejected John Doe I’s appeal.

- a. The University Appeal Administrator did not address any of the suggestions that the process employed by UC violated the due process rights of John Doe I. Instead, as a *non sequitur*, the Appeals administrator often simply repeated that UC policy allows the improper process. For example, in regards to the claims about the ARC Panel not permitting sufficient questioning of Jane Roe I and Jane Roe I, the Appeals Administrator wrote:

The ARC did not commit procedural error by selecting the questions to ask the Complainant. The Student Code of Conduct (SCOC) allows the parties to submit written questions for the adverse witnesses. However, the hearing chair, in consultation with the ARC, has the authority to determine which written questions to ask. Discretion rests with the ARC to choose the questions that are helpful for its investigation.

- b. The Appeal Administrator confirmed that an accused student is not presumed to be innocent and that the Complainant is not required to meet any burden of proof before the student is found to be “responsible.” She wrote, “You incorrectly claim that the complainant bears the burden of proof. 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.”

82. The decision against John Doe I was affirmed by Rocco on July 23, 2015. As a result, John Doe I now faces a three year suspension from UC. The letter states, “this decision is final.”

## **THE FACTS INVOLVING JOHN DOE II**

83. John Doe II has been disciplined by UC for an alleged violation of the UC Code of Student Conduct.

84. The allegation against John Doe II was filed on March 6, 2014. John Doe II was alleged to have sexually assaulted a woman, Jane Roe III. Jane Roe III never reported this allegation to the UC police.

85. John Doe II denies the allegation. John Doe II did not sexually assault the alleged victim. John Doe II did not violate the UC Code of Student Conduct.

86. No physical evidence supports the allegations against John Doe II.

87. The alleged misconduct by John Doe II did not occur on the UC campus. The UC Code of Student Conduct is generally not applied to conduct which does not occur on the UC campus or at UC sponsored activities unless there has been a police report.

a. In an effort to obtain jurisdiction over these allegations, Defendant Cummins filed a police report with the UC Police Department. He then sent John Doe II a letter on April 8, 2014 stating, he had “received an [*sic*] UCPD Report or Incident Report documentation that you have allegedly violated the Student Code of Conduct.”

i. In other words, Cummins “received” this police report because *he is the person who made it.*

ii. Cummins' actions were apparently contrary to the wishes of Jane Roe III.

Cummins' investigation notes suggest that Jane Roe III did not want the allegations reported to police.

- b. The Student Code of Conduct only applies the jurisdictional rule requiring law enforcement involvement to events that happened within 2600 feet of campus: "The SCOC applies to off-campus conduct under the following circumstances: . . . 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 . . . ."
- c. Events that take place outside of the 2600 foot radius are subject to the Code of Conduct's jurisdiction only "when the student, in the university's sole judgment, poses an *obvious* threat of *serious* harm to any member of the university community." (emphasis added).
- d. On April 8, 2014, John Doe II confronted Mr. Cummins about the jurisdictional issues. Mr. Cummins stated only, "This case is being brought under the Code of Conduct." When pressed for an answer to John Doe II's question about jurisdiction, Cummins snapped, "This case *is* being brought under the Code of Conduct. Draw your own conclusions."

88. The allegation against John Doe II was filed three days after the University's student newspaper stated: "Decisions and conversations that transpired in a matter of weeks will transform the way the University of Cincinnati . . . handles sexual assaults and supports survivors who are raped during their academic career."

89. Jane Roe III, when making the allegations against John Doe II requested or received significant accommodations.

- a. In particular, on information and belief, Jane Roe III requested additional time to complete her graduate thesis. This was suspicious because Jane Roe III had previously confided with John Doe II that she was behind and need some additional time.
  - b. Jane Roe III was provided with a job at the UC Women's Center.
90. Cummins—who was supposed to act as a neutral investigator and administrator—assisted the alleged victim in obtaining accommodations from faculty members even prior to conducting or completing his investigation. For example, on Mar. 13, 2014, prior to contacting John Doe II or conducting any investigation into the allegations, Cummins wrote to Jane Roe III's thesis advisor that Jane Roe III "has recently been the victim of behavior that violates our sexual harassment policy." The email continued: "It is hoped that you will work with [Roe IV] and the university to provide accommodations . . . . Feel free to contact me . . . for more information about the general Title IX process and the *requirement* for accommodations." (emphasis added).
91. On March 17, 2014—eleven days after the complaint was filed—John Doe II was informed by Cummins about the allegations against him. Cummins requested a meeting with John Doe II.
92. John Doe II was, solely on the basis of an allegation, prohibited from entering a number of campus buildings, including the Steger Student Life Center, French Hall, and Langsam Library, and buildings on the University's Clifton Campus. These restrictions were placed on John Doe II without any evidence that John Doe II had ever been near any of these locations.
93. John Doe II met with Cummins on March 26, 2014 to discuss the allegations.
94. Cummins completed an investigatory report.
- a. In the report, Cummins misrepresented the content of John Doe II's statements.
  - b. John Doe II was denied access to Defendant Cummins' handwritten investigation notes, despite the fact that such notes (at a minimum with personal identifying information redacted) are considered public records under Ohio Law.

- c. John Doe II was denied the ability to obtain a copy of the investigative report in order to prepare for his ARC Hearing.
95. On April 7, 2014, at 11:41 p.m.—*two minutes before he sent a near identical email to John Doe I*—Cummins informed John Doe II that the allegations would be forwarded to an ARC Hearing. On information and belief, Cummins decided to initiate the disciplinary proceedings against John Doe II before completing an investigation of this matter.
- a. The ARC Hearing for John Doe II was originally scheduled for less than sixty hours later, on April 10, 2014 at 10 a.m.
  - b. John Doe II was informed that he could challenge the presence of any committee members, but Cummins did not state which committee members would be present.
  - c. John Doe II was informed that he must submit a written statement within 36 hours, by noon on April 9, 2014.
96. Cummins agreed to reschedule the ARC Hearing.
- a. The initial time and date offered John Doe II conflicted with John Doe II's course schedule. This is evidence of disparate treatment for John Doe II and Jane Roe III, as emails reveal that Cummins reviewed Jane Roe III's course schedule before scheduling appointments with her.
  - b. The rescheduled time presented a conflict for John Doe II's advisor. Defendant Cummins refused to accommodate the conflict.
97. The ARC Hearing for John Doe II occurred on April 22, 2014.
98. Because of a conflict, John Doe II's advisor was forced to leave the hearing early. The result was that Doe II was placed at a significant and unfair disadvantage..
99. The ARC Hearing Panel was biased against John Doe II and had pre-determined the outcome. For example:

- a. The ARC Hearing Panel heard an “impact statement” from the alleged victim before even determining that a violation of the UC Code of Student Conduct had occurred. Prior to the hearing, Cummins and the ARC Hearing Chair were in the waiting room explaining how the hearing would proceed. Cummins said that Jane Roe III would “get to read a statement about how these events have impacted her.” John Doe II’s advisor said, “you mean ALLEGED events.” Cummins replied, “no, this HAS impacted her.” The advisor replied, “but these are just allegations at this point, right?” Cummins just awkwardly stared at John Doe II’s advisor for a moment, then continued without responding.
- b. The ARC Hearing Panel did not apply the definition of consent as set forth in the UC Title IX Policy. An ARC Hearing Panel member asked John Doe II if he had obtained explicit verbal consent from the alleged victim for sexual contact, even though neither the law nor University policy required that such consent be obtained.
- c. The ARC Hearing Panel did not apply the appropriate definitions of key legal terms set forth in the UC Policy Statement or Revised Code Chapter 2907.
- d. A witness for Jane Roe III at the hearing repeatedly stated that John Doe II “raped” the complainant and repeatedly referred to the event as an “assault.” The use of these legal terms, when the witness had no knowledge of the technical definitions, nor first-hand knowledge of the alleged events, created a prejudicial atmosphere.
- e. The notes on one panel member on the testimony provided by a witness on behalf of John Doe II included the phrase, “*Well, rapists can be quite charming.*” Other notes taken by panel members indicate that the panel members did not take John Doe II’s due concerns seriously. One wrote: “Also ->this is NOT a court. We don’t have to do things like in law school.”

- f. The ARC Hearing Panel did not operate with adequate definitions of “consent” and “intoxication.” John Doe II was not provided with an adequate opportunity to prepare for a claim of nonconsensual sexual contact throughout the encounter due to intoxication. In particular, John Doe II was not prepared to offer facts relating to the Complainant’s level of intoxication and was not prepared to offer questions for the alleged victim on this topic.
100. The alleged victim was permitted to argue that John Doe II failed to get explicit consent at each stage of their sexual encounter. However, UC’s policies are silent on, and thus do not require that, consent be verbal at all stages of a sexual encounter. A witness, a constitutional law professor and recognized Title IX expert, was not permitted to testify about the proper legal definition of terms such as “consent.”
101. John Doe II was not permitted to effectively cross-examine adverse witnesses. All questions had to be submitted through the ARC Hearing Panel Chair, and no follow-up was possible.
102. John Doe II 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.
103. The ARC Hearing Panel relied on unreliable hearsay evidence, such as a statement from the friend of the alleged victim who was not present during the incident. When John Doe II’s advisor made an objection to this evidence, he was threatened with removal from the hearing.
104. Jane Roe III changed her allegations at the start of the ARC Hearing. Instead of alleging that she had consented to some sexual activity, as she did in her written statement, she alleged for the first time that, upon reflection, she has realized that she was too intoxicated to have consented to anything. However, Jane Roe III did not provide, and the Hearing Panel did not receive, any evidence that she was “physically incapacitated or impaired such that the person cannot understand the fact, nature or extent of the sexual situation.”

105. The ARC Hearing Panel found that John Doe II was responsible for violating the UC Code of Student Conduct. The recommendation of the ARC Hearing Panel was adopted by the Dean.
106. John Doe II appealed the finding. Five months later the appeal was granted and a new ARC Hearing was ordered. The Appeal officer identified six separate areas of error in the process.
107. A second ARC Hearing was held on October 28, 2014. However, the second ARC Hearing did not address most, if not all, of the issues raised by the appeal decision.
- a. At the second ARC hearing, the Hearing Panel again did not receive any evidence that the alleged victim was “physically incapacitated or impaired such that the person cannot understand the fact, nature or extent of the sexual situation.”
  - b. The second ARC Hearing Panel, like the first panel, was biased against John Doe II and had pre-determined the outcome.
  - c. John Doe II objected to the inclusion of panel members who handled the initial hearing; this objection was overruled.
  - d. John Doe II 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.
  - e. Before the hearing began, John Doe II raised several objections regarding procedural defects to the panel. These objections were ignored by the panel members
  - f. Jane Roe III directly addressed John Doe II, and the panel chair informed the parties that they were prohibited from addressing each other during the hearing. Despite this admonition, Jane Roe III was then permitted to read a lengthy prepared statement addressed directly to John Doe II. The statement began “[John Doe II], you are a rapist.” And included derogatory and defamatory remarks, including that John Doe II was a rapist and that he was going to Hell.



g. Jane Roe III's advisor, UC Women's Center Director Amy Howton (also Jane Roe III's work supervisor), did not discourage Jane Roe III from making these remarks and sat silent while she did so.

h. Jane Roe III concluded her statement by stating: "And now I'm going to leave, because this process is a joke." She then stormed out of the hearing, followed by Howton.

Because Jane Roe III left the ARC Hearing, John Doe II was denied any opportunity for cross-examination.

108. The second ARC Hearing Panel found John Doe II responsible. No appeal of this decision was allowed.

109. The decision against John Doe II was affirmed by Rocco on November 10, 2014. As a result, John Doe II was banned from several buildings on campus until November 2015 and was placed on university disciplinary probation. John Doe II was also required to submit a seven-page research paper. The letter states, "This decision is final."

110. Even though John Doe II has graduated and his probation has terminated, the finding of responsibility has a significant negative impact on John Doe II.

a. Cummins, in one email, stated, "A concern has also been raised that should you be found responsible, UC no longer has the authority to enforce any sanctions against you, as you have already graduated. While it is true that after a student graduates, certain sanctions may no longer be available, a finding of responsibility could result in significant discipline, as appropriate such as, a ban from campus, limitations on participation in UC activities, and notation of a finding of responsibility in an academic record."

b. Doe III may have difficulty in obtaining employment as a result of the allegations. In addition, he would be required to report the finding of responsibility to any additional

state bar if he seeks admission, which may affect his ability to become an attorney in other states.

- c. The finding has damaged John Doe II's reputation and severely affected his mental health.

## **GENDER DISCRIMINATION**

111. UC's actions against John Doe I and John Doe II was motivated, in part, by the gender of John Doe I and John Doe II.

- a. Partly out of concern for the Department of Education enforcement, UC imposed discipline on John Doe I and John Doe II in circumstances when discipline would not be imposed on female students.
- b. UC reached an erroneous outcome on the basis of sex when it decided to impose discipline on John Doe I and John Doe II. This decision was flawed due to gender. UC was reacting against John Doe I and John Doe II, as male students, to demonstrate to the Department of Education that Defendants would take action against males accused of sexual harassment.

112. Gender bias is demonstrated by the fact that ARC Hearing Panels often permit complainants to make derogatory remarks about the accused student and to rely upon statistical evidence about the incidence of sexual assaults against females on college campuses. This encourages the ARC Hearing Panels to make decisions based on statistical assumptions about males or evidence that is irrelevant to the issue before the panel.

113. Gender bias is demonstrated by the fact that ARC Hearing Panels permit complainants to provide an "impact statement" about the effects of the alleged misconduct before making any determination of whether a rule was violated. This encourages the ARC Hearing Panels to make

decisions based on archaic assumptions about males or evidence that is irrelevant to the issue before the panel.

114. Gender bias is demonstrated by the fact that Complainants receive various accommodations from UC, including, the rescheduling of assignments and consideration in exam schedules simply because they have claimed to be victims of sexual assault. These accommodations constitute benefits offered to complainants that are not available to other students.

- a. The presence of these accommodations could adversely impact the credibility of complainants. For example, if a student later retracts her story, she could face adverse impact on her grades if the schoolwork related accommodations were deemed to have been improperly obtained.
- b. The ARC Hearing Panels are not provided with this information in order to draw their own conclusions about the credibility of complainants.

115. Gender bias is demonstrated by the fact that Cummins’s job, and the job of the subsequently hired UC Title IX administrator, requires them to advocate on behalf of the alleged victim to obtain accommodations from the University while at the same time conducting an investigation.

- a. The Department of Education has warned that having the Title IX coordinator wear different hats can create an impermissible conflict of interest. “Dear Colleague Letter” at 7 (“The Title IX Coordinators should not have other job responsibilities that may create a conflict of interest.”).
- b. On September 23, 2015, Shaffer submitted an affidavit in another matter. In the affidavit (¶2) Shaffer claims that “Title IX investigators serve as neutral fact-finders.” However, in the very next paragraph (¶4), Shaffer acknowledges that her job includes “provid[ing] interim measures to students upon the receipt of a report of sexual harassment or sexual misconduct.”

116. Gender bias is demonstrated by the fact that UC has attempted to obtain statements from accused students while criminal investigations were ongoing, despite the fact that the students have a constitutional right to remain silent.
117. Gender bias is demonstrated by the fact that UC investigators have hidden or failed to include in investigative reports information that is favorable to accused students.
118. UC has a pattern of decision-making that has ultimately resulted in the imposition of discipline on John Doe I and John Doe II.
- a. Since 2010, UC has produced records indicating that it conducted thirty-three (33) investigations into allegations that students or staff members have engaged in sexual misconduct. These investigations concern 28 separate incidents (different individuals are alleged to have violated the Sexual Misconduct Policy in some incidents). These investigations range from serious, such as rape allegations, to “less serious,” such as disputes over property.
  - b. The results and targets of these investigations indicate that the hearing process and discipline imposed on members of the UC community are flawed because of gender bias.
  - c. In the 2014-2015 school year, UC had an enrollment of 43,691. *See* <https://www.uc.edu/about/ucfactsheet.html> . Of the entire student population, 19,975, or approximately 46%, were male.
  - d. The gender of the complainant, or alleged victim, could be identified in 28 matters. In only three of the 28 cases (approximately 11%) was the complainant male. Notably, in all three of these cases, the respondent was also male.
  - e. The gender of the respondent, or student accused of misconduct, could be identified for 29 matters. In 28 of the 29 matters, or approximately 97%, the respondent was male. In the one case involving a female respondent, there appeared to be multiple complainants.

119. Comparing cases that more closely match the fact pattern of the John Doe I and John Doe II matters, according to the public records provided by UC, since 2011, UC has investigated nine charges of sexual assaults involving students (including the John Doe , and John Doe II matters).
- a. In every one of these cases, or 100%, the respondent was male. And, in every case where the sex of the complainant could be determined (8 of the 9 matters), the complainant was female.
  - b. In every one of these cases, or 100%, the respondent was found to be responsible.
    - i. UC has never had a situation where an allegation of sexual contact without consent was made by a female student against a male student and the male student was subsequently exonerated.
    - ii. In other words, if a male student is alleged to have engaged in sexual conduct with a female student without consent, the data suggests that a finding of responsibility and the imposition of discipline ranging from suspension to dismissal is inevitable.
  - c. In five or six matters (two appear to be based on the same underlying facts), UC investigated matters where one or more of the students were allegedly unable to consent to sexual activity because a student was impaired due to alcohol.
    - i. In all six of these cases, the complainant was female and the respondent was male.
    - ii. In all six cases, the male respondent was ultimately found to be responsible.
  - d. UC has engaged in selective enforcement when it comes to cases where one or both parties are intoxicated.

- i. Although the facts of these cases are not easy to discern, it appears that in some of the matters all parties were drinking, yet UC identified the male participant in drunken sexual encounters as the initiator, notwithstanding the comparable intoxication of both participants.
- ii. For example, in a 2010 matter, the male respondent told Cummins “There is no question in my mind that things would not be so confusing now *if we had both been sober than*. The fact that she and I had been drinking that night sits near the top of my list of regrets.” Yet despite receiving information that both the male and female student were intoxicated, UC only investigated and imposed discipline on the male student.

120. The view of males incorporated into UC’s practices and procedures relies on viewing men as “predators” and women as “guardians” of virtue. Based on a review of all investigations, the UC practices and procedures appear to not necessarily be hostile to men, but can be seen as biased in favor of unfairly protecting “vulnerable” and “virtuous” females.

- a. UC has never imposed discipline on a female student in a case involving only a male complainant.
- b. UC has ignored the likely presence of situations on campus where men are the victims and, instead, has focused in efforts on protecting females. Based on campus crime surveys, UC should have investigated a significant number of cases involving male victims of sexual assault, perhaps as many as the number of cases involving female victims.
  - i. “Federal surveys detect a high prevalence of sexual victimization among men—in many circumstances similar to the prevalence found among women.” Lara

Stemple and Ilan H. Meyer, *The Sexual Victimization of Men in America: New Data See Challenge Old Assumptions*, AM. J. OF PUB. HLTH: June 2014, 104:6 pp. e19-e26.

- ii. A survey by Bureau of Justice Statistics, National Crime Victimization Survey, 1995–2013, suggests that the rate of rape and sexual assault victimization was lower for males ages 18 to 24 than for females. This study suggested that college-age male victims accounted for 17% of rape and sexual assault victimizations against students. *See National Crime Victimization Survey, 1995–2013, cited in Sofi Sinozich and Lynn Langton, Rape and Sexual Assault Victimization Among College-Age Females, 1995–2013* (Dec. 2014).
- iii. Regardless of which figure is accepted, the number of investigations by UC where there is a male victim of an alleged sexual assault is far below what would be expected.

121. The gender bias by UC is illustrated by a 2014 investigation of harassment.

- a. In this matter, a male student was investigated for an alleged violation of the Sexual Misconduct Policy after he threatened to punch a Female staff member in the uterus.
- b. The 2014 incident began when the female staff member was walking through a male bathroom. The male student was upset at this invasion of his privacy and made the inappropriate threat. The male student was found “responsible” and placed on probation.
- c. The bias in the UC system is seen by the fact that the male student was subject to an investigation and discipline, while the female staff member who entered the male bathroom was not subject to any investigation or discipline.
- d. Cummins was aware of this gender bias but failed to take any corrective action. He wrote an email about this incident in which he mentions possible gender differentiation. In this

email, he stated he was “concerned about the decision of the opposite sex walking through the bathroom just for a shortcut (pass through). If this was a male walking through a female, it would generate a big buzz.”

- e. This 2014 matter stands in stark gender-based contrast to a 2012 matter where a male student was, in fact, disciplined for inappropriate conduct (peeping) in the male bathroom.

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

- 122. Plaintiff repeats and incorporates all of the allegations of this Complaint, as if fully set forth herein.
- 123. This Count is brought against all defendants.
- 124. 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.”
- 125. 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.”
- 126. 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.”
- 127. 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.
- 128. UC has a constitutional obligation to provide a fundamentally fair and reliable hearing process.



129. 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.
130. The Plaintiffs are 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.
131. The Plaintiffs' interests in the results of the ARC Hearing are significant.
- a. Dismissal or suspension from UC would deny the Plaintiffs the benefits of education at their chosen school.
  - b. Dismissal and other sanctions would also damage the Plaintiffs' academic and professional reputation.
  - c. Dismissal or other sanctions are likely to affect the Plaintiffs' ability to enroll at other institutions of higher education and to pursue a career.
132. The Defendants have violated the Plaintiffs' due process rights in the following manner:
- a. UC conducted biased investigations, which were then provided to the ARC Hearing Panel.
  - b. UC permitted the use of hearsay evidence at the ARC Hearing without providing the Plaintiffs with the opportunity to effectively cross-examine witnesses.
  - c. The ARC Hearing Panel heard "impact statements" from the alleged victims before even determining that a violation of the UC Code of Student Conduct had occurred.
  - d. The ARC Hearing Panel did not apply the UC rules properly, including the definition of consent as set forth in the UC Title IX Policy and did not apply the appropriate definitions of key legal terms set forth in the UC Policy Statement or Revised Code Chapter 2907.

- e. The Plaintiffs were not permitted to effectively cross-examine adverse witnesses. All questions had to be submitted through the ARC Hearing Panel Chair, and no follow-up was possible.
  - f. The Plaintiffs were 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.
  - g. 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.
  - h. An ARC Hearing Panel has never failed to recommend that a student be found responsible and significant discipline be imposed.
133. The Plaintiffs and the Defendants have a dispute about whether the UC Code of Conduct, as applied to John Doe I and John Doe II 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.
134. The Plaintiffs are entitled to a declaration that the UC Code of Conduct, as applied to John Doe I and John Doe II, 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.
135. Pursuant to 42 U.S.C. §1988, John Doe I and John Doe II are entitled to their attorney’s fees incurred in bringing this action.

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

136. Plaintiffs repeat and incorporate all of the allegations of this Complaint, as if fully set forth herein.

137. This count is brought against Cummins, Rocco, and Merchant in their individual capacities for damages.

138. The Defendants have acted under color of law in violating the Plaintiffs' rights under the Fifth and Fourteenth Amendments to the United States Constitutions.

139. The Defendants have acted intentionally and with callous disregard for the Plaintiffs' clearly established constitutional rights.

140. As a direct and proximate result of the Defendants' violations of the Plaintiffs' constitutional rights, the Plaintiffs have 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.

141. Pursuant to 42 U.S.C. §1983, Defendants Cummins, Rocco, and Merchant are liable to the Plaintiff for his damages.

142. Pursuant to 42 U.S.C. §1988, the Plaintiffs are entitled to their attorney's fees incurred in bringing this action.

### **COUNT III (DECLARATORY JUDGMENT -- TITLE IX)**

143. Plaintiffs repeat and incorporate all of the allegations of this Complaint, as if fully set forth herein.

144. This count is brought against UC.

145. 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.”

146. Defendant UC is an education program or activity operated by recipients of Federal financial assistance.

147. Title IX bars the imposition of university discipline where gender is a motivating factor in the decision to discipline.

148. UC committed impermissible gender bias against the Plaintiffs in the investigation and adjudication of Jane Roe I’s, Jane Roe I’s, Jane Roe II’s and Jane Roe III’s accusations.

149. The decisions of the ARC Hearing Panels for John Doe I and John Doe II were erroneous outcomes which were the direct result of a flawed and biased proceeding.

150. Particular circumstances suggest that gender bias was a motivating factor behind the erroneous findings and the decision to impose discipline upon John Doe I and John Doe II.

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 of UC to institute judicial proceedings prior to the completion of an investigation.
- d. The failure of UC 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 Panels to follow their own rules and procedures.

- g. The failure of the ARC Hearing Panel to afford accused students the opportunity to present evidence in their defense and to effectively cross-examine their accusers under the auspices of “protecting” victims.
- h. The failure of UC to require the presence of key witnesses at the ARC Hearing.
- i. 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.
- j. The role of the Cummins and the Title IX Investigator as both investigator and advocate for alleged victims.

151. UC has discriminated against John Doe I and John Doe II because of sex. This discrimination is intentional and is a substantial or motivating factor for UC’s actions in this case. This is demonstrated by the following facts:

- a. 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.
- a. UC has provided biased training to ARC Hearing Panel members, completed flawed investigations, denied John Doe I and John Doe II of access to equal institutional support during the hearing process, applied flawed or incorrect legal standards, denied John Doe I and John Doe II the support of counsel, denied John Doe I and John Doe II the ability to effectively cross-examine adverse witnesses, and imposed the burden of proof upon the accused because John Doe I and John Doe II were males accused of sexual assault
- b. 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 I and John Doe II is the a result of a flawed and biased hearing process.

This resulted in a deprivation of access to educational opportunities at UC.

152. UC has a pattern of pattern and practice of discriminatory decision-making that tends to show the influence of gender on the investigative and discipline process. This is shown, in part, by the imposition of investigations and sanctions for sexual assault and sexual harassment under the Sexual Misconduct Policy predominantly against males.

153. UC applies archaic assumptions in reviewing allegations against male students.

154. The circumstances of the Investigatory process and the ARC Hearings cast doubt on the accuracy of the outcome of the disciplinary proceeding.

155. The Plaintiffs and UC have a dispute about whether the UC policies and practices for adjudicating allegations that students have committed sexual assault or sexual harassment in violation of the UC Code of Conduct violates Title IX.

156. The Plaintiffs are entitled to a declaration that the UC policies and practices for adjudicating allegations that students have committed sexual assault or sexual harassment in violation of the UC Code of Conduct violates Title IX.

157. Pursuant to 42 U.S.C. §1988, John Doe I and John Doe II are entitled to their attorney's fees incurred in bringing this action.

#### **COUNT IV (TITLE IX)**

158. Plaintiffs repeat and incorporate all of the allegations of this Complaint as if fully set forth herein.

159. This count is brought against UC.

160. As a direct and proximate result of the UC's violations of the Plaintiffs' rights under Title IX, the Plaintiffs have 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.

161. UC is liable to the Plaintiffs for their damages.

162. Pursuant to 42 U.S.C. §1988, John Doe I and John Doe II are entitled to their attorney's fees incurred in bringing this action.

**COUNT V  
(INJUNCTIVE RELIEF)**

163. Plaintiffs repeat and incorporate all of the allegations of this Complaint, as if fully set forth herein.

164. This claim is brought against Cummins, Rocco, and Merchant in their official capacities for the injunctive relief sought for violations of constitutional rights, and against UC for injunctive relief sought for claims under Title IX.

165. The Defendants continued actions under the UC Code of Student Conduct against the Plaintiffs violates the United States Constitution, the Ohio Constitution, and the Ohio Administrative Code.

166. The Defendants continued actions under the UC Code of Student Conduct against the Plaintiffs violate Title IX.

167. The Defendants continued actions against the Plaintiffs under the UC Code of Student Conduct are causing substantial, immediate, and continuing damage to the Plaintiffs.

168. The Plaintiffs are 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 Plaintiffs.

*Wherefore*, Plaintiff seeks the following relief from the Court:

- On Counts I and III, Judgment in favor of the Plaintiffs declaring that the Defendants have violated the United States Constitution, the Ohio Constitution, the Ohio Administrative Code, and Title IX;
- On Counts II and IV, damages in an amount to be determined at trial;
- On Count V, an Injunction prohibiting the imposition of, or reporting of, any disciplinary actions under the UC Code of Student Conduct against the Plaintiffs.
- Court costs, other reasonable expenses incurred in maintaining this action, including reasonable attorney's fees as provided for by 42 U.S.C. § 1988 and otherwise.

### **JURY DEMAND**

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

Respectfully submitted,

\_\_\_\_\_/s/ Joshua Adam Engel  
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