

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

IN THE VANDERBURGH CIRCUIT COURT

JOHN DOE)
 Plaintiff)
)
 v.) CAUSE NO.
)
UNIVERSITY OF SOUTHERN INDIANA)
 Defendant)

COMPLAINT

COMES NOW the Plaintiff, by counsel, and for his Complaint against the Defendant, University of Southern Indiana (“USI”), alleges and states as follows:¹

1. Plaintiff, a nineteen-year-old black male, is currently a sophomore student at USI; he receives several scholarships and is studying towards a major in Business Administration.
2. USI is a state public educational institution located in Evansville, Vanderburgh County, Indiana.
3. This Court has jurisdiction over the subject matter and persons hereto, and venue is proper herein.
4. Plaintiff began his freshman year of education at USI during the 2020-2021 academic school year.
5. During the first semester of his freshman year, Plaintiff met a certain white, female freshman student (hereinafter referred to as “Jane Doe”).

¹ Plaintiff, as set forth herein, received notice from USI of the sanction suspending him from school less than three (3) days from the imposition of the sanction. As a result of such a short time period, the within pleading is not as organized as the undersigned counsel would want—or could normally present to the Court.

6. Jane Doe lived in a USI residence hall with three other white, female students.
7. Plaintiff's USI residence hall and Jane Doe's residence hall were located next to each other.
8. Plaintiff and Jane Doe became friends and spent considerable time together with mutual friends and Jane Doe's roommates.
9. Plaintiff and Jane Doe also communicated numerous times during any given week in person, by phone or through social media platforms, such as Instagram, Snapchat and TikTok.
10. On November 13, 2020, Jane Doe, her roommates, and friends began drinking alcohol in her USI residence hall apartment.
11. Jane Doe drank alcohol heavily and at approximately 2:00 a.m. on November 14, 2020, Jane Doe texted Plaintiff and invited him to their party.
12. Plaintiff thereafter went to Jane Doe's residence apartment, where she continued to drink heavily.
13. At one point in the evening Jane Doe began vomiting and then abruptly ran out of her apartment to go to another male friend's USI residence hall apartment.
14. At some point in the early morning of November 14, 2020, Jane Doe returned to her apartment where the party was continuing, and she continued drinking alcohol until she ended up in the bathroom where she began vomiting again.
15. Plaintiff and Jane Doe's roommate helped get Jane Doe into her bed.
16. Jane Doe fell out of bed and thereafter returned to the common area of the apartment where Plaintiff and others were socializing.

17. At approximately 5:30 a.m. on November 14, 2020, Jane Doe went to the McDonald's at 115 Rosenberger Avenue with her roommates and other friends from the party; the fast-food restaurant is less than three (3) miles from the USI campus.

18. Plaintiff did not go to McDonalds but instead slept in the common area of Jane Doe's apartment until later in the day, and then he went back to his USI residence hall.

19. After November 14, 2020, Plaintiff and Jane Doe continued to communicate numerous times each week.

20. After November 14, 2020, Plaintiff and Jane Doe went to at least one party together off USI's campus, and Jane Doe visited Plaintiff's residence hall apartment on occasion.

21. After the first semester of 2020 was completed, Plaintiff went to his home for break and Jane Doe went to her home for break.

22. During break, Plaintiff and Jane Doe continued to communicate through text and social media platforms numerous times a day and week.

23. Plaintiff returned to USI in January 2021 after the break, but Jane Doe did not immediately return to campus because of COVID issues.

24. On January 7, 2021, and while home, Jane Doe posted a TikTok video she created, that included her dancing, and contained text for the video saying "I kissed Seth," with a sexually graphic rap song by Kevin Gates called "Me Too" in the background, including the lyrics:

She say, bae, I'm nasty, I say, me too

I like fucking you in public, she say, me too

She don't like using no rubber, I say, me too

She wanna fuck me 'cause I'm thuggin', I say, me too

25. When Jane Doe returned to USI, she continued to communicate with Plaintiff regularly by text and social media.

26. Plaintiff had borrowed less than One Hundred Dollars (\$100) from Jane Doe during the 202 First Semester. During the break and thereafter, Jane Doe sent angry communications to Plaintiff demanding repayment of the money.

27. On February 11, 2021, Jane Doe got high smoking marijuana, proceeded to have a panic attack and then told her roommates that Plaintiff had “fingered her” without her consent during the early morning of November 14, 2020.

28. While high on marijuana on February 11, 2021, and after her panic attack, Jane Doe did not tell her roommates that Plaintiff had kissed her or touched her breasts on November 14, 2020.

29. One of Jane Doe’s three white roommates called USI’s Public Safety Office during the evening of February 11, 2021, to report that Jane Doe had been sexually assaulted by Plaintiff on November 14, 2020.

30. On February 11, 2021, at approximately 8:30 p.m., a USI public safety officer (“Officer”) and a Vanderburgh County Sheriff’s Deputy (“Deputy”) interviewed Jane Doe at her apartment.

31. The Officer and the Deputy each prepared a written report based on the interview with Jane Doe.

32. Each report stated that Jane Doe “did not tell her roommates about what happened until this week.”

33. Despite the voluminous documented communications between Plaintiff and Jane Doe after November 14, 2020, Jane Doe told the Officer and Deputy that she had no communication with Plaintiff between November 15, 2020, and February 10, 2021.

34. Jane Doe also told the Officer and Deputy that she was wearing a hoodie and no bra at the time of the alleged sexual assault.

35. Jane Doe did not tell the Officer or Deputy that she was drinking alcohol on November 14, 2020, or that she was drunk to the point of vomiting multiple times.

36. Jane Doe also told the Deputy that she did not want to pursue criminal charges against Plaintiff.

37. Jane Doe has stated that she cannot remember events from November 14, 2020.

38. On February 25, 2021, Jane Doe submitted a written complaint to USI's Title IX Officer accusing Plaintiff of sexual assault on November 14, 2020, and included certain alleged facts relating thereto (the "Title IX Complaint").

39. Upon receipt of the Title IX Complaint, USI purportedly began operating under its written sexual assault policy (the "Policy"). A true and correct copy of the Policy is attached hereto as Exhibit 1.

40. The Policy is intended to comply with the requirements of Title IX (20 U.S.C. § 1681, *et seq.*) and its applicable regulations (the "Regulations").

41. Once the Title IX Complaint was filed, USI was obligated under the Policy and the Regulations to give Plaintiff notice of the facts then known as to the identity of the accuser, the conduct allegedly constituting sexual harassment, and the date and time of the alleged incident.

42. USI's written notice to Plaintiff did not include all the facts then known by USI and as outlined in the Title IX Complaint.

43. When Plaintiff subsequently requested a copy of the Title IX Complaint, USI advised Plaintiff that no written complaint had been filed by Jane Doe.

44. USI thereafter retained a lawyer from a Kansas City, Missouri, firm to act as the investigator for the Title IX Complaint (the "Investigator").

45. The Investigator was told by USI that the Title IX Complaint involved accusations that Plaintiff sexually assaulted Jane Doe on November 14, 2020, by kissing her, touching her breasts and digitally penetrating her all without her consent.

46. Under the Policy and Regulations, USI is obligated to and responsible for gathering the evidence as to the investigation of the Title IX Complaint.

47. The Investigator interviewed Jane Doe on April 15, 2021, and May 18, 2021, but she did not produce any photos, social media posts or any other evidence relating to communications with Plaintiff on or after November 14, 2020.

48. Jane Doe stated that she might have something from November 14, 2020, but the Investigator never demanded that she produce any such evidence.

49. Contrary to what she told the Officer and Deputy on February 11, 2021, Jane Doe told the Investigator that she first told her roommate on November 14, 2020, that Plaintiff allegedly fingered her; but she did not tell them that it was allegedly nonconsensual.

50. The Investigator interviewed Plaintiff on April 27, 2021, and he produced more than fifty (50) printed pages of communications between Plaintiff and Jane Doe from November 15, 2020, to February 10, 2021.

51. Plaintiff also produced to the Investigator photos from November 14, 2020, including one showing that Jane Doe was not wearing a hoodie as represented to the Officer and Deputy; but rather, she was wearing a jacket and camisole top.

52. The Investigator also interviewed two of Jane Doe's roommates who stated that they might have photos from November 14, 2020, but the Investigator did not demand copies of any such evidence.

53. During the Investigator's interview with one of Jane Doe's roommates, the roommate advised the Investigator that she had filed a sexual assault complaint against Plaintiff with USI after Jane Doe filed the Title IX Complaint.

54. It was later learned that the roommate's sexual assault complaint was based on Plaintiff allegedly slapping her once on the butt on November 14, 2020.

55. Under USI's Policy and Regulations, any such alleged sexual assault complaint by the roommate was not relevant to the investigation of the Title IX Complaint.

56. If, in fact, Jane Doe's roommate had filed a sexual assault complaint against Plaintiff, USI was obligated under the Policy and Regulations to give Plaintiff written notice of the same and allow him to defend himself.

57. USI has never given Plaintiff notice of a sexual assault complaint filed by Jane Doe's roommate.

58. If USI received a sexual assault complaint from Jane Doe's roommate against Plaintiff, USI must have summarily dismissed such complaint without advising Plaintiff.

59. USI provided the Investigator with evidence for the Title IX Complaint investigation but it did not disclose to the Investigator any information relating to Jane Doe's roommate's alleged sexual assault complaint or a dismissal thereof.

60. The Investigator is required to limit his investigation to relevant information as to the Title IX Complaint.

61. Under the Policy and Regulations, prior sexual acts of Plaintiff or Jane Doe were not relevant to the investigation of the Title IX Complaint.

62. Plaintiff advised the Investigator that he denied the accusations of the Title IX Complaint because he never kissed Jane Doe, touched her breasts or fingered her on November 14, 2020.

63. The Investigator completed his investigation and then submitted his report and evidentiary materials to USI's "decision-makers," who would conduct a hearing on the Title IX Complaint.

64. Per the Policy and Regulations, the Investigator is not to include or provide evidentiary materials that are not relevant to the Title IX Complaint to the decision-makers.

65. The Investigator did not redact irrelevant information from the evidentiary materials produced to the decision-makers for the hearing; this included testimony from Jane Doe's roommate that she had filed a sexual assault complaint with USI against Plaintiff.

66. In April of 2021, Jane Doe contacted the Vanderburgh County Sheriff's Office and stated that she wanted to file criminal charges against Plaintiff relating to the alleged sexual assault on November 14, 2020.

67. The Sheriff's Office began an investigation and requested that Jane Doe produce her phone for downloading since she stated that she had photos on her phone that were relevant to the allegations.

68. Jane Doe told the Sheriff's Office that she would bring her phone in for downloading and a date and time was set.

69. Jane Doe did not show on the scheduled date and time to allow the Sheriff's Office to download her phone.

70. Jane Doe thereafter communicated to the Sheriff's Office that she no longer wanted to pursue criminal charges against Plaintiff for the alleged sexual assault, and the Sheriff's Office closed its investigation.

71. Because of its policy related to sexual assault investigations, the Sheriff's Office would not provide Plaintiff with a copy of its investigation file as to the allegations of Jane Doe against Plaintiff.

72. Upon information and belief, because of an agreement with USI, the Sheriff's Office did produce its investigation file as to the allegations of Jane Doe against Plaintiff to USI, who in turn produced it to the Investigator.

73. Upon information and belief, there is an interview of Jane Doe's roommate by the Sheriff's Office that was given to the Investigator but he did not produce a copy of the same to Plaintiff or include it with his investigation file given to the decision-makers.

74. After the Investigator completed his investigation and report, USI retained three people to act as the decision-makers under the Policy to conduct a hearing on the Title IX Complaint, and reach a determination thereon.

75. USI retained three white persons, who were physically located throughout the country and all employed by the same California company, to act as decision-makers (the "Decision-Makers").

76. The Policy states that, "Decision-Makers" means members of the three-person panel of trained faculty, staff, and/or administrative officials who are assigned by the Title IX Coordinator or designee"

77. USI did not appoint a panel of USI faculty, staff or administrative officials.
78. Two of the three Decisions-Makers had no experience with acting as decision-makers in a Title IX proceeding.
79. One of the Decision-Makers was a “Senior Solution Specialist” who acted as the Hearing Officer under the Policy (the “Hearing Officer”).
80. One of the Decision-Makers had just started working for the company.
81. Per the Policy and Regulations, the Decision-Makers could only consider relevant evidence as to the Title IX Complaint.
82. Per the Policy and Regulations, Plaintiff and Jane Doe were allowed to have an advisor assist them during the investigation and hearing.
83. Per its Policy, USI imposed a “Statement of Rights and Process” for the hearing which expressly prohibited Plaintiff’s advisor from raising objections or making statements or arguments during the hearing (defined below).
84. If the advisor failed to comply with the Policy hearing rules, the advisor would be expelled from the hearing.
85. Under the Policy and Regulations, only the advisor can cross-examine witnesses at a Title IX hearing.
86. If Plaintiff’s advisor failed to comply with the Policy hearing rules and was expelled, Plaintiff would be alone at the hearing and he could not cross-examine witnesses.
87. The Regulations and Policy provide that questions and evidence about a Jane Doe’s prior sexual behavior are not relevant, unless (i) such questions and evidence are offered to prove that someone other than the accused committed the conduct the Jane Doe alleges, or (ii)

if the questions and evidence concern the specific incidents of the Jane Doe’s prior sexual behavior with the accused and are offered to prove consent.

88. Neither of these exceptions applied to the Title IX Complaint.

89. On July 26, 2021, USI issued to Plaintiff a Notice of Administrative Hearing which stated that “[Jane Doe] alleges that . . . [Plaintiff] kissed [Jane Doe], touched her breast, and digitally penetrated her vagina *without her consent.*”

90. On August 4, 2021, the Decision-Makers conducted a Zoom hearing on the Title IX Complaint (the “Hearing”).

91. For purposes of the Title IX Complaint, the Policy defines “relevancy” as:

Having some reasonable connection to and having some value or tendency to prove or disprove a matter of factual significance. Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

92. At the Hearing, only the Hearing Officer asked questions of witnesses.

93. The other two Decision-Makers sat silently and never asked a question or had a discussion of the relevancy of any question or evidence.

94. The Hearing Officer never addressed the relevancy of any question or evidence.

95. Within the first hour of testimony at the Hearing, the Decision-Makers allowed Jane Doe to testify about:

- Alleged sexual assaults by Plaintiff of other female students.
- Rape by Plaintiff of at least two other female students.
- Nonconsensual sexual interactions between Plaintiff and other female students.
- Prior sexual acts between Plaintiff and Jane Doe.

96. The Decision-Makers allowed Jane Doe to testify about “other girls that [Plaintiff] had gotten with and stuff,” that she then talked to those girls and they allegedly said “I

had a similar experience with [Plaintiff], or he did that to me, too,” and “oh, [Plaintiff] did this to a girl at a party when she was drunk,” and “this is affecting a lot of girls now.”

97. The Decision-Makers never stopped Jane Doe or any witness from offering irrelevant testimony of Plaintiff allegedly sexually assaulting and raping *other* girls.

98. In fact, the Hearing Officer repeatedly asked questions down this path, such as, but in no way limited to:

- Asking Jane Doe about Plaintiff allegedly sexually assaulting her roommate.
- Asking Jane Doe, “Back in October, [Jane Doe’s roommate] told . . . who that [Plaintiff] had sexually assaulted her?”
- Asking Jane Doe if Plaintiff allegedly “Take advantage of girls generally, or take advantage of her friend?”
- Asking Jane Doe, “Did you know about all of these girls” that Plaintiff allegedly sexually assaulted?
- Asking Jane Doe, “Did you know about all of these girls before you told [your roommates]?”
- Asking Jane Doe, “But you personally talked to those girls from the time you told your roommates until the time you made the report?”
- Asking Jane Doe, “But when you talked about these other girls that you heard about, what did they say?”
- In asking Jane Doe how the other girls’ stories about Plaintiff were allegedly similar to Jane Doe’s claim at issue, she asks “In what way was it similar?”

99. Those answers included, but were not limited to, Jane Doe testifying that Plaintiff allegedly:

- Sexually assaulted other girls.
- Made-out with her friend when the friend was “black-out drunk.”
- Take advantage of girls.
- That Plaintiff “did stuff to other girls when they were really drunk.”
- That other girls “had stuff done to them [by Plaintiff] that they did not consent to.
- That Plaintiff “raped” a girl “when she was high.”

100. The Decision-Makers allowed Jane Doe to testify that other girls were “in danger,” that Plaintiff was “hurting people” and “that needs to stop.”

101. Despite it being in direct conflict with the Regulations and the Policy, the Hearing Officer asked Jane Doe about her knowledge of Plaintiff allegedly being sexually involved with specifically named persons, to which Jane Doe proceeded to testify that Plaintiff “slept with” one of the girls, “forced [Plaintiff] on” another and proceeded to “rape” one of these girls “while she was high.”

102. Aside from the irrelevance of these questions and answers, they are completely false and defamatory.

103. The Hearing Officer further asked questions of Plaintiff about his prior sexual activity with Jane Doe despite its prohibition under the Policy and Regulations as to the Title IX Complaint.

104. As a result of the Policy and USI’s Statement of Rights and Process for the Hearing, there was no means for Plaintiff to stop the flow of irrelevant and prejudicial questioning and testimony at the Hearing.

105. USI never advised Plaintiff that any other student ever accused him or filed a complaint of sexual assault against him.

106. Upon information and belief, USI never advised the Investigator that any other student ever accused Plaintiff of sexual misconduct or filed a complaint of sexual assault against him.

107. Upon receipt of the Title IX Complaint and at any time thereafter, USI had the right, under the Policy and Regulations, to remove Plaintiff from its educational program or activity if it believed he posed a threat to the health or safety of any student or USI community member.

108. From the time of filing of the Title IX Complaint through the Hearing, USI never exercised its right under the Policy or the Regulations to remove Plaintiff from USI's campus or prohibit his involvement in USI events.

109. Plaintiff has never been advised by USI that any person in any location or at any time has accused him of sexual assault other than Jane Doe.

110. Allowing such irrelevant testimony was contrary to the Policy and Regulations, showed the bias of the Decision-Makers against Plaintiff, and created a tainted proceeding that affected the outcome of the Hearing.

111. The procedural and evidentiary irregularities of the Decision-Makers at the Hearing were numerous and resulted in a proceeding which was in violation of the requirements of the Policy and Regulations.

112. Despite stating at the Hearing that certain photos referred to by Jane Doe and her roommate witness were "not in evidence," the Hearing Officer nonetheless proceeded to rely on Jane Doe and her roommate's testimony regarding said photos and used such non-evidence to further ask leading questions regarding the same.

113. The Hearing Officer never asked for such "non-evidence" to be produced, and none were produced to the Investigator by Jane Doe or her roommates.

114. The Decision-Makers subsequently used the testimony of the "non-evidence" to create their own timeline set forth in the Decision (defined below) as to when the alleged sexual assault could have occurred.

115. For example, in her formal, written complaint to USI, dated February 25, 2021, Jane Doe said that the alleged sexual assault occurred between "2-4 in the morning on Saturday, November 14th."

116. In her interview with the Investigator on April 15, 2021, Jane Doe did not specify a time; but, during her second interview with Investigator on May 18, 2021, she said it was sometime after 3:30-4:00 a.m. but before 4:45 a.m.

117. The Hearing Officer asked Jane Doe the leading question – “could that have been about 4:30 [am],” to which Jane Doe replied that it occurred “a bit earlier,” “maybe like 4-4:15 [a.m.]” The Hearing Officer proceeds to ask this leading question: “But it could have been later than [4-4:15 am]?” The Hearing Officer, then states “**I am just trying to create a time line here.**” and further leads Jane Doe to the created timeline, asking – “Would that mean the incident that happened with [Plaintiff] occurred between 4:36 and 4:50 [a.m.]?”

118. Again relying on the non-evidence to establish a timeline, it should come as no surprise that 4:36 – 4:50 a.m. is the exact “window of time” established by the Decision-Makers in the Decision as to the alleged sexual assault which formed the basis for finding that Jane Doe’s version was “plausible.”

119. These photos were neither part of the July 15, 2021, Investigative Report, nor were they produced at the Hearing to prove their existence or any other fact.

120. The Hearing Officer never asked Jane Doe and her roommate to submit the alleged photos as evidence to actually prove they existed or to show those photos provided relevant evidence.

121. After the Hearing, the Decision-Makers issued their written Title IX Hearing Summary and Decision (the “Decision”) on August 4, 2021.

122. The Decision first stated:

Hearing Overview: Allegations of Title IX Sexual Harassment

This hearing was conducted to determine whether [Plaintiff], (“Respondent”) engaged in prohibited conduct in violation of the University of Southern Indiana’s

Sexual Harassment Policy by committing Sexual Assault, defined as a forcible sex offense, that occurred on November 14, 2020 on the University's campus in . . . Specifically, [Jane Doe] alleged that while in her residence hall room, Respondent kissed her, touched her breast, and digitally penetrated her vagina without her consent.

123. The Decision concluded:

Considering the totality of the evidence in the record, the Decision-makers find that [Jane Doe's] account is more credible than Respondent's. Because Jane Doe's account is more credible than Respondent's, the Decision-makers further find that it is more likely than not that in the early morning hours of November 14, 2020, Respondent touched Jane Doe's breasts and vagina, and digitally penetrated her, without her consent.

Because it is more likely than not that he engaged in these actions, the Decision-Makers find that Respondent violated University policy against Sexual Harassment, specifically Rape and Forcible Fondling.

124. The Decision then imposed a "Sanction" as follows:

- Suspension, effective fall semester 2021 and eligible to return spring semester 2023
- Title IX Sexual Harassment education following return from suspension

125. The Decision-Makers' procedural irregularities and bias are further evidenced in the Decision where they rely upon the photos admittedly "not in evidence" to create their own timeline, and then note that the lack of evidence did not allow for "a reliable chronology of events."

126. Nonetheless, the Decision then concludes that Jane Doe's account was plausible because of the 4:36 – 4:50 a.m. timeline "created" by the Hearing Officer.

127. Thus, the Decision-Makers relied upon photos "not in evidence" to admittedly create their own timeline which they then admitted was unreliable, but this timeline formed as the basis for the Decision.

128. The Decision-Makers' bias, procedural irregularity and deficiency is further evidenced in the Decision, where they state:

[Jane Doe's] account is specific and detailed and has been consistent over time. [Jane Doe] has consistently maintained that Respondent helped her into bed, *kissed* her, touched her bare breast under her clothing despite her telling him that she did not want to engage in that activity . . .

129. Jane Doe's account has been anything but consistent over time, as she told the Investigator that she was too intoxicated to give consent.

130. Despite filing the Title IX Complaint, in part, based on sexual assault from Plaintiff allegedly kissing her without her consent on November 14, 2020, less than twenty minutes into her testimony at the Hearing, Jane Doe testified that the alleged sexual assault as to "kissing" was "consensual."

131. This is evidence of a false report made by Jane Doe in violation of USI's Student Rights and Responsibilities, Section 5.10A.

132. Under the Policy, the Decision-Makers are required to include in their written determination "A statement of, and rationale for, the result as to each allegation, including any finding of responsibility and sanctions or remedies."

133. The Title IX Complaint included a specific allegation of sexual assault as to Plaintiff kissing Jane Doe on November 14, 2020.

134. The Decision, however, failed to give a decision as to Plaintiff's responsibility as to this kissing allegation.

135. By ignoring its obligation under the Policy as to the kissing allegation, the Decision-Makers were able to advance the clearly false conclusion that Jane Doe's story was consistent over time.

136. At the Hearing and in the Decision, the Decision-Makers simply ignored this inconsistency and Jane Doe's admission of filing a false sexual assault claim as to kissing under her totally false and fabricated theory of events on November 14, 2020.

137. The Decision-Makers' bias, procedural irregularity and deficiency is further evidenced by their conclusion in the Decision that Jane Doe's account is "corroborated" by testimony of Jane Doe's roommate.

138. Jane Doe's roommates each testified that they did not see Plaintiff engage in any conduct to support the sexual assault allegations.

139. "Corroboration" means to confirm with other evidence, and here, at the Hearing, the roommate witness merely repeated what Jane Doe told her which is nothing more than the roommate regurgitating the false story that Jane Doe told her when Jane Doe was high on marijuana and after having experienced a panic attack on February 11, 2021.

140. Another critical example of the Decision-Makers' bias and procedural irregularity involved the standard applied to determine "credibility."

141. The Decision states that the determination of credibility was based, in part, on the factor that Plaintiff "has a motivation to falsify information" because he "will likely face a sanction if found responsible."

142. The Regulations expressly prohibit such assessment, stating that "credibility determinations may not be based on a person's status as a respondent."

143. The Decision-Makers applied a prohibited standard in assessing factors which directly resulted in and affected the outcome.

144. In USI's communication of August 25, 2021, giving notice of the Decision, USI advised Plaintiff that he would face "disciplinary action up to and including dismissal from the University," if he copied or distributed the Decision to anyone other than his advisor.

145. Such restriction is not authorized under the Policy or the Regulations, and has the effect of preventing Plaintiff from providing the same to his parents or others to assist him with the irregularities, violations and deficiencies outlined, in part, herein, to help him protect his right and reputation, and to help him deal with the stress and emotional trauma of the false allegations and process deficiencies.

146. USI's threat of discipline further impacted Plaintiff's ability to protect his rights, prevent injustice and equitably present an appeal of the Decision fully establishing the irregularities and bias affecting the outcome.

147. Plaintiff was prepared to submit the Decision and related documents to an outside Title IX expert, who preliminarily opined that if certain scenarios occurred in a Title IX hearing or decision, the same would violate the Regulations.

148. If Plaintiff had been able to share the Decision and related documents to the Title IX expert, it is believed that he would have issued an opinion, based on the actual events relating to the Title IX Complaint, that the Hearing and Decision was tainted with bias, prejudicial and contrary to the Regulations and the Policy, and that numerous substantive and procedural irregularities affected the outcome.

149. On September 1, 2021, Plaintiff submitted a written appeal of the Decision to USI in accordance with the Policy and Regulations which outlined numerous procedural irregularities in the investigation and Hearing, and the bias of the Decision-Makers.

150. USI appointed an Indianapolis lawyer as the appellate officer ("Appeal Officer").

151. Jane Doe had the opportunity to submit a written response to Plaintiff's appeal but she did not.

152. On September 22, 2021, the Appeal Officer issued his appeal decision denying Plaintiff's appeal and affirming the Decision-Makers' Sanctions (the "Appeal Decision").

153. In the Appeal Decision, the Appeal Officer, in response to issues relating to the Decision-Makers, stated:

USI certified that these individuals received the proper training in accordance with the law. *See* § 106.45(b)(10)(i)(D); <https://www.usi.edu/sexual-assault-prevention-and-response>.

154. The USI link leads to a page where it lists persons who apparently provided training to USI on Title IX issues.

155. This link not only includes the Hearing Officer, the other two Decision-Makers and the company they work for as providing Title IX training to USI, it also identifies the Appeal Officer as having provided training to USI.

156. USI never disclosed to Plaintiff that the Hearing Officer, and all Decision-Makers through the same company, had a clear conflict of interest in sitting as Decision-Makers.

157. If USI's duties under the Policy and Regulations and in advancing the Title IX Complaint were deficient, the Decision-Makers had no incentive to point those out or correct such deficiencies because the same could lead to claims against the Hearing Officer and her company for negligent training of USI.

158. Had USI disclosed such conflict of interest of the Decision-Makers, Plaintiff would have objected to such Decision-Makers.

159. Such undisclosed conflict of interest is a further violation of the Policy and Regulations.

160. In addition, the Appeal Officer has a clear conflict of interest in assessing the appeal on the Title IX Complaint.

161. If USI's duties under the Policy and Regulations and in advancing the Title IX Complaint were deficient, the Investigator's and/or the Decision-Makers' actions were deficient and/or contrary to the Policy and Regulations, the Appeal Officer had an incentive to avoid an objective review of any deficiencies because the same could lead to a claim against the Hearing Officer and/or his law firm for negligent training of USI.

162. USI did not disclose the Appeal Officer's conflict of interest to Plaintiff.

163. Had USI disclosed such conflict of interest of the Appeal Officer, Plaintiff would have objected to such Appeal Officer.

164. Such undisclosed conflict of interest is further inconsistent with the Policy and Regulations.

165. The Appeal Decision is also deficient and is contrary to the Policy and Regulations.

166. The Appeal Decision repeats the threat that the Appeal Decision cannot be shared with anyone but Plaintiff or his advisor.

167. Plaintiff is facing a life altering "rape" determination, and USI prevents him from sharing the Title IX Complaint related decisions and documents to address the emotional trauma he is experiencing and to protect his rights.

168. The Appeal Decision finds no error at the Hearing in allowing the testimony of other alleged rape and sexual assaults by Plaintiff because:

Here, at the hearing, [Jane Doe's] testimony about prior acts between the parties was clearly focused on consent—their consensual acts on prior occasions, how similar consensual acts began on November 14, and how things then advanced abruptly and were no longer consensual.

169. This completely ignores the fact that the Title IX Complaint was based on Jane Doe's assertion that the kissing, touching and penetrating was **not consensual**.

170. While asserting that USI's withholding of Jane Doe's written complaint was not wrongful, the Appeal Decision states, [Plaintiff] and his advisor consistently understood exactly what [Jane Doe] alleged."

171. As the Appeal Decision refers to consensual acts occurring on November 14, 2020, the Appeal Officer clearly did not understand what Jane Doe alleged in the Title IX Complaint.

172. Plaintiff did not raise the issue of consent because he denied that the alleged kissing, touching and penetrating ever occurred on November 14, 2020.

173. The Appeal Decision's rationale is contrary to the Policy and Regulations.

174. The Appeal Decision also denies the appeal on the basis that Plaintiff and his advisor did not object to any question or other matter at the Hearing.

175. This basis directly conflicts with the Policy and USI's Statement of Rights and Process" for the Hearing which expressly prohibits such objections

176. The Appeal Decision advances a required course of action that would have resulted in the removal of Plaintiff's advisor from the Hearing and further prejudiced Plaintiff.

177. The Appeal Decision's rationale is further contrary to the Policy and Regulations.

178. The Appeal Decision does not address the Decision's deficient and clearly erroneous reliance on Jane Doe's roommates alleged "corroboration."

179. Such omission acknowledges this clear irregularity and procedural defect which was part of the rational for the outcome holding Plaintiff responsible.

180. The Appeal Decision further ignores the Policy’s obligation imposed on USI by the Policy to gather relevant evidence, and seeks to improperly impose that burden on Plaintiff by holding that Plaintiff should have somehow gathered evidence in the possession of Jane Doe and her roommates, and thus, attempts to deflect USI’s deficient gathering and disclosure.

181. The Appeal Decision refers to Plaintiff as changing his story at the Hearing as to “his and Jane Doe’s sexual past.”

182. Not only was Plaintiff not asked about the same during the investigation as to create any change in story, but he was never asked in the Hearing about any change in story.

183. The Appeal Decision acknowledges that there is “traction” to Plaintiff’s appeal assertion that the Decision-Makers violated the Regulations by using an improper standard to determine credibility.

184. In finding no procedural irregularity, the Appeal Decision states that the “Preamble” to the Regulations “confronts and resolves the ambiguity.”

185. In its analysis, the Appeal Decision relies on the last sentence in the section of the Preamble but wholly ignores the actual content preceding that sentence which expressly rejects the interpretation in the Appeal Decision:

The Department agrees with commenters who noted the inappropriateness of investigators and decisionmakers drawing conclusions about credibility based on a party's status as a complainant or respondent. While the Department appreciates the concerns by commenters advocating that the final regulations should permit status-based inferences as to a person's credibility, the Department believes that to do so would invite bias and partiality. To that end, we disagree with commenters who opposed categorical bars on the factors that investigators or decision-makers may consider, and who want to partially judge a person's credibility based on the person's status as a complainant, respondent, or witness. A process that permitted credibility inferences or conclusions to be based on party status would inevitably prejudice the facts at issue rather than determine facts based on the objective evaluation of evidence, and this would decrease the likelihood that the outcome reached would be accurate. The Department disagrees that § 106.45(b)(1)(ii) conflicts with the presumption of non-responsibility; in fact, § 106.45(b)(1)(ii)

helps to ensure that the presumption is not improperly applied by recipients. Section 106.45(b)(1)(iv) affords respondents a presumption of non-responsibility until the conclusion of the Determinations of credibility, including of the respondent, must be based on objective evaluation of relevant evidence—not on inferences based on party status. Both the presumption of non-responsibility and this provision are designed to promote a fair process by which an impartial fact-finder determines whether the respondent is responsible for perpetrating sexual harassment. Every determination regarding responsibility must be based on evidence, not assumptions about respondents or complainants. The Department disagrees that disregarding party status poses problems for investigators or adjudicators or directs them to ignore central factors in reaching credibility determinations.

186. The Preamble expressly rejects the Appeal Decision’s rationale attempting to salvage the Decision-Makers’ reliance on an improper and clearly rejected credibility standard.

187. The Appeal Decision notice states:

You are suspended effective 12:00 PM Central Time September 25, 2021, through January 1, 2023. During this time, you are not allowed on University property

188. USI’s handling of the Title IX Complaint was contrary to the Policy and Regulations.

189. USI’s investigation of the Title IX Complaint, its conduct of Hearing and its appeal process, including the Decision and Appeal Decision, were contrary to and in violation of the Policy and Regulations, were arbitrary and capricious, were clear error, and were intentionally in disregard of Plaintiff’s rights and due process.

COUNT I:
VIOLATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972
ERRONEOUS OUTCOME

190. Plaintiff repeats and realleges paragraphs 1-189 of this Complaint as if fully asserted herein.

191. Title IX states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be deprived the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

192. USI receives federal financial assistance and is therefore subject to Title IX.

193. As an institution covered by Title IX, USI must comply with all of its requirements and the requirements of its applicable regulations.

194. The facts alleged in this Complaint demonstrate that USI failed to comply with Title IX and its accompanying regulations in multiple respects.

195. USI has created a campus environment in which Plaintiff, an accused black male student, will be denied the benefits of an education at USI and discriminated against because of his sex.

196. USI’s investigation, hearing, decisions, appeal, appeal decision and the entire disciplinary process was conducted in a manner that was permeated by bias against Plaintiff, and causing Plaintiff to be unjustly deprived of educational opportunities on the basis of his sex.

197. As a direct result of USI’s discriminatory practices, Plaintiff was denied a fundamentally fair investigation, hearing, decision, appeal and appeal decision, and USI reached an erroneous outcome in finding against Plaintiff.

198. USI violated Plaintiff’s Title IX right to be free from discrimination by sanctioning, tolerating, and endorsing procedures and policies which deprived Plaintiff, a male student, rights and privileges provided to female students.

COUNT II:
VIOLATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972
DELIBERATE INDIFFERENCE

199. Plaintiff repeats and realleges paragraphs 1-198 of this Complaint as if fully asserted herein.

200. USI had actual notice of the irresponsible, improper, and sexually biased manner in which the allegations against Plaintiff were investigated and adjudicated.

201. Despite notice of the failures of its investigative and adjudicative processes, USI, its employees and agents failed to correct the deficiencies in the investigation and process and were deliberately indifferent to the known failings of its employees and agents responsible for those processes.

202. USI's deliberate indifference was motivated by Plaintiff's gender, and likely his race.

203. USI sanctioned, tolerated, and endorsed procedures and policies which deprived Plaintiff, a black male student, of the rights and privileges provided to female students.

COUNT III:
42 U.S.C. § 1983: VIOLATION OF RIGHTS SECURED BY THE DUE PROCESS
CLAUSE OF THE FOURTEENTH AMENDMENT

204. Plaintiff repeats and realleges paragraphs 1-203 of this Complaint as if fully asserted herein.

205. Section 1983 of Title 42 of the U.S. Code provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

206. The Fourteenth Amendment to the United States Constitution prohibits states from depriving “any person of life, liberty, or property, without due process of law.”

207. It is well established that Fourteenth Amendment due process protections are required in higher education disciplinary proceedings.

208. A person who has been admitted to a public university has a protected liberty interest in continuing his education at that university until he has completed his course of study. The state cannot deprive a person of this interest without due process of law.

209. USI and its employees and agents are state actors subject to the Fourteenth Amendment.

210. The Due Process Clause of the United States Constitution is implicated by USI’s investigation, hearing, appeals, and disciplinary process.

211. USI and its employees and agents have a duty to provide USI’s students due process of law by and through any and all policies and procedures set forth by USI.

212. Plaintiff has a protected liberty interest in pursuing his education, as well as in future educational and employment opportunities and occupational liberty, of which he cannot be deprived without due process.

213. Plaintiff has a constitutional right to be free from arbitrary suspension, dismissal, or restrictions on his ability to enter the USI campus.

214. Plaintiff’s constitutionally protected liberty interest in his right to continued enrollment at USI also arises from the policies, courses of conduct, practices, and understandings established by USI.

215. As a direct and proximate result of USI's investigation, hearing, decision appeals, appeal decision and disciplinary process detailed above, USI under color of law deprived Plaintiff of the minimal requirements of procedural fairness.

216. Accordingly, USI violated Plaintiff's clearly established rights under the Due Process Clause of the Fourteenth Amendment enforceable by 42 U.S.C. § 1983.

COUNT IV:
42 U.S.C. § 1983: VIOLATION OF RIGHTS SECURED BY THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

217. Plaintiff repeats and realleges paragraphs 1-216 of this Complaint as if fully asserted herein.

218. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits states from denying "to any person . . . the equal protection of the laws."

219. It is well established that the Equal Protection Clause prohibits discrimination against individuals on the basis of sex.

220. As detailed above, USI, acting under color of law, violated Plaintiff's clearly established right not to be discriminated against on the basis of sex, in violation of the Fourteenth Amendment.

COUNT V:
BREACH OF CONTRACT – SPECIFIC PERFORMANCE

221. Plaintiff repeats and realleges paragraphs 1-220 of this Complaint as if fully asserted herein.

222. Indiana law imposes an implied contract on the relationship between students and universities.

223. USI's written sexual assault policy is intended to comply with the requirements of Title IX and its applicable regulations, and gives students accused of sexual misconduct certain

rights and outlines the procedures USI must follow in the investigation, hearing, and appeal process of sexual misconduct allegations.

224. Plaintiff reviewed and relied on USI's promises in USI's Policy and in doing so, Plaintiff understood he needed to comply with his obligations detailed in the Policy.

225. Plaintiff obeyed all institutional rules set forth in the Policy.

226. Nevertheless, USI breached its contract with Plaintiff when it failed to follow its own policies and procedures and in suspending Plaintiff from USI, as set out in detail above.

227. USI acted illegally, arbitrarily, capriciously, and in bad faith when it condoned and supported the discriminatory investigation, hearing procedures, and ultimate decision, and by affirming the decision on appeal.

228. Damages are inadequate to compensate Plaintiff for USI's wrongful conduct.

229. Unless specific performance of the Policy is granted, USI's material breaches will irreparably injure Plaintiff.

230. USI's breaches contributed and will continue to contribute to the ongoing violations of Plaintiff's constitutional rights.

231. As a result of USI's breaches, Plaintiff will be denied the benefits of education at his chosen school, he will suffer permanent damage to his reputation and the loss of future educational and employment opportunities.

232. Accordingly, Plaintiff seeks specific performance of USI's Policy.

COUNT VI:
JUDICIAL REVIEW

233. Plaintiff repeats and realleges paragraphs 1-232 of this Complaint as if fully asserted herein.

234. The Appeal Decision was a final agency action specifically directed to the Plaintiff, making it ripe for judicial review by this Court.

235. As evidenced by the final sentence of the Appeal Decision which states, “[p]lease be advised that this is the final decision regarding this incident and no further appeals will be considered,” Plaintiff has exhausted his administrative remedies.

236. Plaintiff is entitled to judicial review of USI’s action as it was:

- arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- contrary to constitutional right, power, privilege, or immunity;
- in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- without observance of procedure required by law; and
- unsupported by substantial evidence.

237. Plaintiff submits this request for judicial review within thirty (30) days of USI’s issuance of the Appeal Decision. Accordingly, Plaintiff’s request is timely.

238. Plaintiff will provide the Court with the agency record for review within thirty (30) days of the date of this filing.

**COUNT VII:
PRELIMINARY AND PERMANENT INJUNCTION**

239. Plaintiff repeats and realleges paragraphs 1-238 of this Complaint as if fully asserted herein.

240. USI, through its investigation, hearing, appeals, and disciplinary process detailed above, violated Title IX and the United States Constitution and materially breached its contract with Plaintiff.

241. Plaintiff has no adequate remedy at law and will suffer irreparable harm unless and until USI is enjoined from sanctioning Plaintiff with a year and one-half suspension from USI.

242. Accordingly, Plaintiff seeks a preliminary and permanent injunction enjoining USI from enforcing sanctions imposed upon Plaintiff by its Decision.

COUNT VIII:
TEMPORARY RESTRAINING ORDER

243. Plaintiff repeats and realleges paragraphs 1-242 of this Complaint as if fully asserted herein.

244. Plaintiff incorporates herein by reference the relief requested in his Verified Application for T.R. 65(B) Temporary Restraining Order, which is filed contemporaneously herewith.

245. Plaintiff will suffer immediate and irreparable injury, loss, or damage before USI can be heard in opposition to Plaintiff's said application.

246. As set forth fully in Plaintiff's said application and the separately filed Attorney's Affidavit, Plaintiff and his attorney have met all of the procedural requirements set forth in T.R. 65(B).

247. Plaintiff thus seeks a temporary restraining order restraining USI from enforcing sanctions imposed upon Plaintiff.

WHEREFORE, Plaintiff John Doe respectfully requests that this Court:

- (a) Enter a Temporary Restraining Order that immediately and without notice enjoins the USI from enforcing the sanctions issued against Plaintiff on September 22, 2021;
- (b) Set a hearing for a preliminary injunction;
- (c) For an order compelling performance of the USI's written sexual assault Policy;
- (d) Vacate and set aside the Decision and Appeal Decision and the resulting sanctions and remand the matter to USI to conduct proceedings that adhere to the Policy, Regulations and Plaintiff's constitutional rights;
- (e) For actual and consequential damages in an amount to be determined at trial;

- (f) For an award of Plaintiff's reasonable attorneys' fees and costs incurred in prosecuting this action to enforce 42 U.S.C. § 1983 (*see*, 42 U.S.C. § 1988);
- (g) Ultimately, reinstate Plaintiff John Doe at USI immediately and expunge his suspension from his record; and
- (h) All other just and appropriate relief.

Respectfully submitted,

ZIEMER, STAYMAN, WEITZEL & SHOULDERS, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September, 2021, the foregoing pleading or paper was electronically filed using the Indiana E-filing System (IEFS).

/s/ Keith W. Vonderahe

Keith W. Vonderahe