

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**JOHN DOE,** )  
) )  
**Plaintiff,** )  
) )  
**v.** ) )  
) )  
**THE RECTORS AND VISITORS OF** )  
**GEORGE MASON UNIVERSITY, ANGEL** )  
**CABRERA,** *President of George Mason* )  
*University, sued in his official capacity, and* )  
**BRENT ERICSON and JULIET BLANK-** )  
**GODLOVE,** *employees of George Mason* )  
*University, sued in his or her official and* )  
*individual capacity, jointly and severally,* )  
) )  
**Defendants.** )  
\_\_\_\_\_ )

**Case No. 1:15-cv-00209-TSE/TRJ**

**AMENDED COMPLAINT**

John Doe<sup>1</sup>, by and through his undersigned attorney, files this complaint for gender-based discrimination in violation of Title IX (20 U.S.C. § 1681), violations of the due process and equal protection requirements of the Fourteenth Amendment to the United States Constitution, and the Equal Rights and Due Process Clauses of the Virginia Constitution, as well as for common law negligence, including negligence per se and negligent hiring, training, and supervision. In support of this complaint, John Doe states as follows:

**PARTIES**

1. Plaintiff John Doe is, and at all times relevant to this Complaint has been, a resident of the Commonwealth of Virginia. Between August of 2012 and December 5, 2014

---

<sup>1</sup> “John Doe” is not the Plaintiff’s real name. Due to the nature of the allegations in this lawsuit, Mr. Doe is proceeding under a pseudonym to will protect his privacy and that of his accuser, who is identified as “Jane Roe”.

Plaintiff was an undergraduate student at George Mason University in Fairfax County, Virginia. John Doe was charged by George Mason with violating its sexual misconduct policy based on sex he had with Jane Roe, a student at another school in the area, in the course of a BDSM (or bondage and discipline, dominance and submission, sadism and masochism) relationship. He was found not responsible on September 12, 2014. Jane Roe filed an appeal, and on October 10, 2014, her appeal was granted and Doe was expelled from the University. Unless overturned, the sentence will remain a part of Plaintiff's permanent educational records and will substantially limit his ability to transfer to another undergraduate institution, attend graduate school, or secure future employment.

2. Defendant The Rectors and Visitors of George Mason University (hereafter the "University" or "George Mason University" or "The Board of Visitors") is the corporate body which controls George Mason University, a public university incorporated, and with its principal place of business located, in the Commonwealth of Virginia. Va. Code Ann. § 23-91.24. The Board of Visitors is the chief policy-making and oversight authority for George Mason University. Va. Code Ann. §23-91.29.

3. Defendant Angel Cabrera (hereafter "Defendant Cabrera") is the President and chief executive officer of George Mason University whose office is located in Fairfax County in the Commonwealth of Virginia. Va. Code Ann. §23-91.29. He is tasked with the general management authority to carry out institutional policies and strategic plans of the Board of Visitors in achieving the stated goals and objectives of the University, and to establish policies and procedures for the effective and efficient operation of the University. Art. IV, §9(a), Bylaws of the Board of Visitors.

4. Defendant Brent Ericson (hereafter “Defendant Ericson”) is or was at pertinent times Assistant Dean of Students and Director of the Office of Student Conduct at George Mason University and upon information and belief resides in the Eastern District of Virginia.

5. Defendant Juliet Blank-Godlove (hereafter “Defendant Blank-Godlove”) is or was at pertinent times Assistant Dean of Students at George Mason University and upon information and belief resides in the Eastern District of Virginia.

### **JURISDICTION AND VENUE**

6. The Court has federal question and supplemental jurisdiction pursuant to 28 U.S.C. § 1331 and under 28 U.S.C. § 1367 because Doe’s claims arise under the United States Constitution, brought pursuant to 42 U.S.C. §1983, and under laws of the United States, including Title IX of the Education Amendments of 1972, 20 U.S.C. §§1681-88. The state law claims are so closely related to the federal law claims as to form the same case or controversy under Article III of the United States Constitution.

7. Venue properly lies in this Court under 28 U.S.C. § 1391. The Defendant is a public school created under Virginia Code Title 23, Chapter 9.1, incorporated in and with its principal place of business in the Commonwealth of Virginia, and is considered to reside in this judicial district. The individual defendants are officers and employees of George Mason University. In addition, the events and omissions giving rise to Plaintiff’s claims occurred within this judicial district.

### **STATEMENT OF FACTS**

8. John Doe was accused of various sexual misconduct violations by Jane Roe, but was found not responsible after a full investigation and hearing. Jane Roe appealed and on October 10, 2014, John Doe was expelled from the University based on an erroneous finding that

he had violated the University's Code of Student Conduct ("the Code"). Doe appealed that decision, but the appeal was denied on December 5, 2014. The University reached this erroneous result through a negligent process that did not comply with the University's own procedures, violated Plaintiff's rights to due process, and discriminated against him based on his gender.

### **UNIVERSITY POLICIES AND PROCEDURES**

9. In August of 2012, John Doe matriculated as a freshman at the University. Upon his enrollment, Doe received from the University a copy of the Code of Student Conduct (the "Code"). The Code described the rights afforded students by the University and their corresponding responsibilities as members of the University. It specifically established the University's standards for acceptable conduct, and also described the procedures by which the University would investigate and adjudicate any alleged violations of the Code.

10. The Code contained special provisions for alleged violations of sexual misconduct, and incorporates by reference University Policy Number 1202, the sexual harassment and misconduct policy (the "Policy"). The Policy applies to all University "faculty, staff, students, university contractors, and visitors."

11. In consideration for his tuition and attendance at the University, John Doe received and was given assurances by the University that it would follow and comply with numerous policies and procedures adopted and put forth by the school, including those contained in the Code and the Policy.

12. The Policy states that "[s]exual misconduct, which is a form of gender discrimination and incorporates a range of behaviors, is contrary to the standards and mission of the University." Sexual misconduct is defined as "any attempt or actual unwanted sexual contact, physical or nonphysical, in the absence of clear and voluntary consent."

13. The Policy states that one of its purposes is “to resolve sexual misconduct complaints in a fair, impartial and timely manner.” Further, the Code sets as a goal in every student conduct case “the fair, objective, and humane approach to the resolution of all incidents of misconduct.”

14. Also to that end, the Code establishes a formal adjudicative process, including pre-hearing meetings for both the complainant and the respondent to discuss the charges and the process.

15. To ensure fairness in its sexual misconduct hearings, George Mason requires each hearing board to have three professional staff and faculty members who are specially trained in adjudicating sexual misconduct cases. These members are appointed by the Office of Student Conduct in collaboration with the Title IX Coordinator. For each hearing, the board will have both male and female board members, meaning that no more than two of the members on any given panel will be of the same sex.

16. The panel has broad powers to reach a just result. For example, the board has the ability to disallow, limit, or end the presentation of evidence “based on the relevancy, unfair prejudice, redundancy, inappropriate behavior, or harassment/delay tactics.” The hearing board also has the ability to question witnesses beyond the parties’ questioning to obtain a complete understanding of the facts.

17. The Code makes assurances and guarantees to both parties to ensure basic fairness and due process. These include having access to an advisor of the party’s choosing throughout the process, and the ability to provide narrative statements, pose and answer questions, to be present throughout the hearing, to be informed of the outcome and sanction, and the opportunity to appeal.

18. “A finding of responsibility for a violation of sexual misconduct policies requires an affirmative vote of a majority of the members of the sexual misconduct hearing board. In all sexual misconduct cases, the ‘preponderance of information’ standard (i.e. more likely than not) will apply.”

19. The Code also provides an appeals process, which either the claimant or the respondent may utilize after the panel renders its reasoned decision. The Code identifies only three narrow grounds for appellate review, and “requests for appeal will be considered only when based on one or more of the following: 1. Information not available at the hearing which, had it been available, would in all reasonable likelihood have produced a different finding (responsible v. not responsible); 2. Substantial procedural irregularity with respect to applicable procedures as determined by the conduct officer; 3. Perceived hearing officer bias (or bias by a board member) based on factors other than the hearing officer’s decision and rationale for such decision.” Thus, disagreement with the panel’s decision is explicitly excluded as a ground for appeal. In addition, in sexual misconduct cases, the severity of the sanction can be appealed.

20. The stated purpose for appellate review is “to ensure all parties that the original findings of fact, the reasoned integration of them, and an opinion and imposition of sanctions or other solutions...are consistent with University policies and procedures.

21. Appeals are heard by the Director of Student Conduct or special designee, who shall determine the final outcome of any sexual misconduct incident. The appeal officer must “first determine if the student...has grounds for appeal.” Only if there are grounds to appeal may the appeal officer “modify the finding of responsibility, modify the sanctions, or modify both; remand the case for a new hearing; or uphold the original decision.”

### **JANE ROE AND JOHN DOE'S RELATIONSHIP**

22. John Doe and Jane Roe went to high school together, but did not begin a dating relationship until November 2012, after they graduated. John Doe had begun classes at George Mason University and Jane Roe had moved out of state with her girlfriend. The two began talking through Facebook messenger and text messages.

23. In late 2012, realizing that they were interested in each other romantically, John Doe and Jane Roe planned trips to visit each other.

24. Prior to those visits, and before they ever engaged in a sexual relationship, Doe and Roe discussed their sexual desires at length. Jane Roe had suggested the dominant-submissive relationship based on having been in such a relationship in the past, and she asked John Doe to incorporate BDSM actions into their sexual relationship, some of which he was not entirely comfortable with at the beginning of the relationship.

25. Some of the things Jane Roe asked John Doe to do included choking, biting, slapping, spanking, whipping, and restraining her.

26. Very early in the relationship, John Doe and Jane Roe also implemented a safe word, "red," for use during sex. The safe word was meant to prevent injury and respect boundaries while maintaining the feel of the dominant-submissive relationship. Jane Roe told John Doe that if she said "stop" during sex, he was not to stop because that was part of the game. However, if she used the safe word, their agreement was that John Doe should stop the sexual activity.

27. Jane Roe and John Doe visited each other on various occasions and engaged in the sexual conduct described above. During those visits, they would go on walks and to the movies, visit museums, and have dinner together. The BDSM (bondage and discipline,

dominance and submission, sadism and masochism) aspects of their relationship were confined to the bedroom.

28. After their visits, John Doe and Jane Roe would talk online about their sexual encounters, discussing what they had done and what they would like to try next. The two were very open about what they did—and more importantly did not—want to do in the bedroom. The conversations that preceded their sexual encounters set the limits for what would happen. And the safe word existed as a backup to ensure that boundaries were not crossed.

29. For example, when they were apart in this period in the relationship – when Roe was far out of the area and Doe was here in Virginia – they engaged in highly explicit Facebook chats that shows Roe was aware of, and often set the tone for, their highly sexual relations, and she showed she could draw limits.

30. Eventually Jane Roe moved back to Virginia, allowing her to spend more time with John Doe.

31. Their sexual relationship continued until late January 2014—three months after the alleged sexual misconduct—when John Doe decided to pursue a relationship with another woman.

32. Months after their breakup, Jane Roe first reported her allegations of sexual misconduct from an event that occurred on October 27, 2013.

### **THE INCIDENT**

33. In October 2013, Jane Roe and John Doe were still romantically and sexually involved with one another.

34. Roe went to Doe's room on the University campus to spend the night on October 27, 2013. Prior to coming to John Doe's apartment, Jane Roe had played video games with another friend on campus. John Doe had performed in a theater production.

35. When John Doe arrived back at his room, he informed his roommate that he and Jane Roe were planning on having sex. Doe's roommate left the room as Jane Roe walked in.

36. They began engaging in foreplay, and after a little while, John Doe initiated vaginal intercourse. At no point did Jane Roe say no, but she did push against John Doe with her hand. John Doe moved her hand away and held her hands down to the mattress. John Doe did this not as an act of non-consensual sex, but because of the dominant-submissive sexual relationship.

37. Jane Roe never used the safe word during this encounter.

38. Because Jane Roe did not use the safe word, John Doe continued engaging in sexual intercourse until Jane Roe had an orgasm. They cuddled in John Doe's bed after they had intercourse.

39. Eventually Doe's roommate came back into the room and turned on the tv. John Doe then began digitally stimulating Jane Roe under the covers. Doe asked if she wanted to have another orgasm, and she replied "I don't know." Because of their dominant-submissive relationship, John Doe continued the sexual activity because Jane Roe never said "red." Roe again had an orgasm and then fell asleep in John Doe's arms.

40. This sexual encounter was typical for John Doe and Jane Roe. Although there were times in the past when Jane Roe had used their safe word, it was not unusual if the entire sexual event occurred without her saying "red." Jane Roe never indicated to John Doe that he had crossed boundaries or had not respected her wishes.

41. The two continued dating, and continued engaging in a dominant-submissive sexual relationship, for three months following the alleged sexual misconduct, until they broke up in late January 2014.

42. In the months following their break-up, Doe and Roe had minimal contact. John Doe texted Jane Roe a few times asking if she would like to play video games or to ask Jane Roe how she was doing. Jane Roe did not respond. In March, 2014, John Doe texted Jane Roe that he would shoot himself if she did not contact him by the following day to let him know she was still alive. At no point did John Doe threaten Jane Roe.

43. Jane Roe's father read the message and took Roe's cell phone to the local authorities. Jane Roe's parents spoke with John Doe's mother, who said she would speak to John Doe.

#### **JANE ROE FILES COMPLAINTS**

44. On April 15, 2014, Jane Roe, who attended another local college, first reported the October 27, 2013 incident to campus police at her college. She said she reported John Doe at that time because Doe had texted her asking to play video games. At some point, Jane Roe's school chose not to pursue any action against John Doe.

45. Later, on May 2, 2014, Jane Roe also reported the October 27, 2013 events to the George Mason University police. Roe alleged that she had not consented to sexual intercourse that night, and that she had asked Doe to stop. Roe reported that she did not leave Doe's bed because "she could not move and felt troubled by the video game she was playing earlier." When she first reported the incident to University police, she was unsure if she wanted them to pursue the complaint.

46. On May 19, 2014, Roe again met with University Police and provided more information. At that point, she was still unsure if she wanted to pursue criminal charges. However, pursuant to University policy, the University police report was referred to the Dean of Students Office.

47. Jane Roe's counselor from her college later explained in an email to the University Office of Student Conduct that "there are many errors on the Mason police report which may prove to be a problem," and that Jane Roe "would rather just have the panel know she made two reports... First to [campus police at Jane Roe's college] then to Mason."

48. In the summer of 2014, before the University had taken any official action against John Doe, Jane Roe filed for a permanent protective order. During that hearing, Jane Roe admitted that she had previously told John Doe not to stop even if she said "stop" during sex because that was part of the BDSM relationship. She also testified that she and Doe had discussed the parameters of their sexual relationship prior to engaging in sex. Nonetheless, a two-year protective order was granted.

49. On August 19, 2014, John Doe received an email from Brent Ericson, the University's Assistant Dean of Students and Director of the office of Student Conduct and the man who would later single-handedly and without explanation find that Doe committed sexual assault and expel him from the University, stating that he was accused of violating University's sexual misconduct policy. Specifically, John Doe was alleged to have violated:

- a. Code 2013.7.A – Infliction of physical harm to any person(s) including self
- b. Code 2013.8.A – Deliberate touching or penetration of another person without consent.
- c. Code 2013.8.C – Conduct of a sexual nature

- d. Code 2013.9.B – Communication that may cause injury, distress, or emotional or physical discomfort.

50. John Doe was placed on an interim housing suspension on August 22, 2014, which prohibited him from moving into his on-campus housing for the fall 2014 semester.

51. Pursuant to University policy, John Doe had a pre-hearing conference with the Office of Student Conduct on August 22, 2014, and submitted his response by August 28, 2014. His hearing was scheduled for September 5, 2014.

### **THE HEARING AND DECISION**

52. The hearing was convened at 10:15AM on September 5, 2014 and lasted over ten hours including multiple breaks for Jane Roe to speak with her advisor.

53. As required by the Code, the hearing panel was comprised of three professional staff and faculty members who had received specialized training in adjudicating sexual misconduct cases: David Atkins, Lori Cohen Scher, and Joya Crear.

54. Jane Roe testified, expounding upon her police statements and narrative statement to the panel in detail. Jane Roe claimed that she had indicated she wanted John Doe to stop the sexual encounter by pushing him away on October 27, 2013, but he did not stop. She also testified that, when asked if she wanted John Doe to continue digitally manipulating her, her response of “I don’t know” did not constitute consent.

55. Finally, Jane Roe testified that she had called John Doe at the direction of University Police, and, during that phone call, John Doe had apologized for not stopping when she had asked. Roe also called a police officer as a witness who testified about the timeline of when she filed a report with George Mason police, and her demeanor when she filed that report.

56. John Doe testified and also called two other University students as witnesses. John Doe agreed with Jane Roe's description of the facts on October 27, 2013.

57. He did not contest that she had pushed him away, or that she had said she "didn't know" if she wanted to continue with the sexual activity. John Doe did, however, explain that this encounter, like many others in their relationship, was part of a consensual BDSM sexual encounter. John Doe testified about their use of a safe word and that Jane Roe did not use the safe word on October 27, 2013. John Doe told the panel that he believed Jane Roe filed these allegations against him because she became upset with him when he revealed past infidelities as a part of their break up.

58. John Doe explained that the BDSM relationship continued after the October 27, 2013 incident, and the BDSM sexual relationship ended in early 2014.

59. John Doe also presented screenshots of messages between himself and Jane Roe discussing the limits of their BDSM relationship and determining in advance what they would like to do during their future sexual encounters. These messages showed that Jane Roe was a willing participant in the BDSM sexual relationship.

60. Thus, the panel's decision was essentially a credibility determination about whether the October 27, 2013 encounter was part of Doe and Roe's BDSM sexual relationship. If so, the panel had to determine if Roe's failure to use the safe word meant she actually consented to the sexual encounter that evening.

61. Although the Code limits testimony and evidence about the "complainant or respondent's past behavioral histories (including sexual history) not directly related to the alleged incident," the hearing panel, in its discretion, allowed evidence about Doe and Roe's

BDSM relationship. The panel determined such evidence was relevant to this credibility determination.

62. On September 12, 2014, the panel issued its decision finding John Doe not responsible on each of the four charges. The panel chose to believe John Doe over Jane Roe, and found that Doe and Roe had “mutually entered into a BDSM relationship in Dec. 2012,” and that they had “engaged in sexual contact on 10/27/13.” The use of a safe word impacted what constituted consent in Doe and Roe’s sexual relationship.

63. The panel therefore found that Doe did not deliberately “touch or penetrate [Roe] without consent.” They explained that Doe “did not inflict harm to [Roe] outside the boundaries of BDSM.” In addition, the panel explained that Doe “did not engage in sexual misconduct that would prevent [Roe] from engaging in any aspect of university life.” Finally, the panel found that the communication between Doe and Roe “was not in such a way that would cause a reasonable person injury, distress, emotional or physical discomfort.”

64. The notice to John Doe told him he had “no further responsibility in this matter.” Had Mr. Doe been found responsible, he would “have the opportunity to provide an impact statement along with [his] sanction recommendations.”

#### **JANE ROE’S APPEAL**

65. There are three grounds for appeal: “1. Information not available at the hearing which, had it been available, would in all reasonable likelihood have produced a different finding (responsible v. not responsible); 2. Substantial procedural irregularity with respect to applicable procedures as determined by the conduct officer; 3. Perceived hearing officer bias (or bias by a board member) based on factors other than the hearing officer’s decision and rationale for such decision.”

66. Jane Roe's appeal, filed on September 19, 2014, focused on "procedural irregularities." The main basis for her claim was that John Doe "confessed to each [of the charges] during the hearing process itself."

67. Jane Roe claimed that John Doe should have been found responsible for 2013.7.A (infliction of physical harm to any person) because he "confessed to sadistic sexual acts that he did not stop doing when I told him to on several different occasions." She said John Doe "left many marks on [her] body that lasted for weeks." Roe also pointed to the taped phone call, which was submitted as evidence during the hearing, where Roe called Doe at the suggestion of University police to try to make him admit to the charges. Finally, Roe adds that Doe "confessed to [her] personally that he took his anger out on [her] sexually."

68. Jane Roe's appeal for the first charge relied on information that was "mentioned during the hearing," or "was submitted as evidence for the hearing." Thus, her appeal did not present new information, it did not note a procedural irregularity, and it did not claim bias on behalf of the hearing board. Instead, the appeal only attacked the board's final decision.

69. Jane Roe challenged the second finding of not responsible too. In her challenge to the second charge under 2013.8.A (for deliberate touching or penetration of another person without consent), Jane Roe again points to facts the members of the panel heard during the hearing. She quotes John Doe's narrative that was submitted to the panel, and thus considered by the panel in rendering its decision. She also discusses the police reports she filed at both her college and the University. Again, she explains that this information was presented at the hearing. She concludes that "[d]uring the course of the hearing, the respondent confessed to not stopping sexually when he was told to by me on several different occasions." Jane Roe herself

admits that the hearing panel had considered all of the information she now presents in support of her appeal.

70. For the third claim on appeal, “Conduct of a Sexual Nature” under Code 2013.9.B, Jane Roe pointed to John Doe’s narrative and opening statements, and quoted the Code of Student Conduct definition for force and coercion. She again claimed that John Doe admitted to the conduct that should result in a finding of responsibility. Jane Roe did not assert any new facts, did not indicate what procedural irregularity existed, and did not claim that any of the hearing members were biased.

71. Jane Roe’s appeal on the fourth charge was similarly lacking. Her appeal for Code 2013.9.B (communication that may cause injury, distress, or emotional or physical discomfort) was merely a recitation of the facts that the panel heard during the hearing and the assumption that the panel should have found Doe responsible based on the facts presented to it.

72. Jane Roe attempts to disguise her disagreement with the panel’s final decision by saying that “the panel did not use the standard of ‘preponderance of evidence’ during their deliberation.”

73. The procedural irregularities noted by Jane Roe revolved around the panel’s decision to allow John Doe to ask questions she believed were “irrelevant” including whether she visited John Doe at his dorm on different occasions and who initiated the sexual relationship between Roe and Doe. Jane Roe also argued that the panel should not have allowed one witness—John Doe’s roommate—to testify because he did not know about the October 27, 2013 incident.

74. The hearing panel, of course, had the benefit of hours of testimony and an in person evaluation of the credibility of the witnesses before it. By contrast, Mr. Ericson, who

evaluated the appeal, had only paper and audio. His decision to overturn the panel without written input from Doe when no basis for appeal under University's rules applied is fundamentally unfair and violates the school's Code of Student Conduct.

75. The appeals process was further tainted by Mr. Ericson's prior involvement in this case. Mr. Ericson was the person who coordinated with both Roe and Doe in preparation for the panel hearing. Mr. Ericson had detailed email communications with both Jane Roe and John Doe, and already knew some of the facts of the case. Mr. Ericson had also been contacted multiple times during the adjudication process by a counselor at Jane Roe's school who was helping Jane Roe. That counselor had told Mr. Ericson that the first police report from Jane Roe's campus was "more accurate," that the University police report contained "many errors," and that it "may prove to be a problem." Despite these prior interactions with the parties, Mr. Ericson was assigned the appeal.

76. Mr. Ericson emailed John Doe, notifying him of the appeal, and met with him to discuss the appeal, though Doe was not allowed to file anything opposing the appeal.

77. On October 10, 2014, Mr. Ericson issued his appeal decision finding John Doe responsible for the second and third charges: 2013.8.A (deliberate touching or penetration of another person without consent) and 2013.9.B (communication that may cause injury, distress, or emotional or physical discomfort). Without providing any reasoning or explanation, Mr. Ericson stated "After careful consideration and a thorough review of the information, I have decided to modify the original decision of responsibility. Specifically I find that you are responsible for 2013.8.A and 2013.9.B."

78. Mr. Ericson did not remand the case for further proceedings. Instead, he reversed the panel's finding and sanctioned John Doe to the harshest penalty available—expulsion from the University.

79. There is no indication that Mr. Ericson reviewed the many hours of testimony, nor that his decision was based on a finding of substantial procedural irregularity, hearing board member bias, or upon consideration of new evidence.

80. Had John Doe been found responsible by the hearing panel, he would have at least been given the opportunity to argue about the appropriate sanction. But here, there was no meaningful opportunity to respond to Jane Roe's appeal.

#### **JOHN DOE'S APPEAL**

81. John Doe immediately appealed Mr. Ericson's decision. He explained that Jane Roe's appeal was improperly granted because it "did not meet any of the requirements for an appeal to be taken for consideration."

82. First, John Doe explained that Jane Roe was provided with a fair process and that Jane Roe's appeal failed to allege, let alone establish, any procedural irregularity; that her appeal was a thinly veiled attempt to challenge the not responsible finding.

83. Second, John Doe's appeal explained that Jane Roe presented "no evidence of new information that was not available to the board when making their determination," as she "specifically relies on information the board was aware of and communicated about during the hearing."

84. Finally, John Doe's appeal argues that "finding [John Doe's] side of the story more credible than [Jane Roe's] is not a procedural matter" at all. It was a "substantive" decision

that Jane Roe did not properly challenge under the three narrow criteria for appeal detailed in the Code.

85. John Doe explained that the modification of the panel decision was “improper and inappropriate and violates the University’s guidelines for an appeal process.” He asked for Jane Roe’s appeal to be dismissed.

86. Without providing any reasoning—and relying only on the partial record in existence from Brent Ericson’s appeal—Dean of Students Juliet Blank-Godlove summarily affirmed the modification and expulsion on December 5, 2014, stating only that she “cannot find a valid reason for modification or revision of the original decision.” She affirmed the expulsion stating only that the “sanctions imposed were compatible with past practice of the University and proportionate to the offense.”

**COUNT I – VIOLATION OF THE DUE PROCESS CLAUSE OF THE  
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION  
PURSUANT TO 42 U.S.C. §1983**

*(Against all Defendants, including Defendants Cabrera, Ericson, and Blank-Godlove in their official capacities, and Defendant George Mason University for injunctive relief; and against Defendants Ericson and Blank-Godlove in their personal capacities for money damages)*

87. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

88. 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.”

89. Fourteenth Amendment due process protections are required in higher education disciplinary proceedings.

90. A person has a protected liberty interest in his good name, reputation, honor, and integrity, of which he cannot be deprived without due process.

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

92. A person has a protected property interest in his education, of which he cannot be deprived without due process.

93. Plaintiff had a constitutionally protected liberty interest in his good name, reputation, honor, and integrity.

94. Plaintiff had a constitutionally protected liberty interest in pursuing his education, as well as future educational and employment opportunities.

95. Plaintiff had a constitutionally protected property interest in continuing his education at George Mason University.

96. Plaintiff was entitled to process commensurate with the seriousness of the allegations and the potential discipline, sanctions, and repercussions he was facing. The allegations in this case could result in the harshest sanction available at the University, have lifelong ramifications for Plaintiff, and are quasi-criminal in nature.

97. Plaintiff was entitled to fundamentally fair procedures to determine whether he was responsible for the alleged sexual misconduct.

98. Plaintiff was disciplined, expelled, and sanctioned by the Defendants, depriving him of his liberty and property interests, without being afforded basic due process, including, but not limited to, notice and the opportunity to be heard.

99. Plaintiff was never given notice of the full extent of the appeal, nor was he afforded an opportunity to respond to Jane Roe's appeal in writing.

100. After Jane Roe submitted her appeal, she was given the opportunity to speak to Mr. Ericson, *ex parte*, in his office. Plaintiff had no way to determine the full substance of Jane Roe's appeal since her conversation with Mr. Ericson was not recorded in any way. This deprived John Doe of notice of the claims asserted in the appeal.

101. After Mr. Ericson reversed the finding of no responsibility and expelled Plaintiff, Plaintiff could not meaningfully appeal because there was no record, written or otherwise, which had the complete arguments presented and the facts and reasons on which the decision was based.

102. Defendant Ericson reviewed Jane Roe's appeal without providing full notice or a meaningful opportunity to be heard to John Doe.

103. Defendant Blank-Godlove reviewed John Doe's appeal of Defendant Ericson's decision without giving John Doe the opportunity to review the full record and with no way for John Doe to know the basis on which he was sanctioned in the first place.

104. Plaintiff was denied review by an impartial decision maker.

105. Plaintiff was denied a meaningful opportunity to clear his name.

106. Plaintiff was denied his liberty and property interests by Defendants in an arbitrary and irrational manner.

107. Proper procedures would have proven that the misconduct at issue had not occurred.

108. Defendant Ericson and the Office of Student Conduct created a policy, pattern, and practice which deprived Plaintiff of any meaningful response on appeal.

109. Defendants agreed to, approved, and ratified this unconstitutional conduct.

110. Defendants had a custom and practice of disregarding and violating students' constitutional rights in evaluating and determining appeals, which resulted in the absolute failure to afford basic due process protections to students accused of quasi criminal sexual misconduct.

111. Defendants Ericson and Blank-Godlove, and other agents, representatives, and employees of George Mason University were acting under color of state law when they showed intentional, outrageous, and reckless disregard for Plaintiff's constitutional rights.

112. As a result of these due process violations, Plaintiff was expelled and suffers ongoing harm, including to his reputation, and numerous damages as a result. He was forced to move out of his on-campus housing, is unable to enroll in University courses for the spring semester, is unable to transfer to another comparable undergraduate institution, and is marred by the erroneous mark on his transcript labeling him as having committed sexual misconduct.

113. Accordingly, all Defendants are liable to John Doe for violations of the Due Process Clause of the Fourteenth Amendment and Defendants Ericson and Blank-Godlove, in their personal capacities, are liable to John Doe for all damages arising therefrom.

**COUNT II – VIOLATION OF THE DUE PROCESS CLAUSE  
OF THE VIRGINIA CONSTITUTION**

*(Against all Defendants, including Defendants Cabrera, Ericson, and Blank-Godlove in their official capacities, and Defendant George Mason University for injunctive relief; and against Defendants Ericson and Blank-Godlove in their personal capacities for money damages)*

114. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

115. The Virginia Constitution states that “no person shall be deprived of his life, liberty, or property without due process of law.” Va. Const. art. I, § 11.

116. For the reasons stated under Count I, the University deprived John Doe of various liberty and property interests without due process of law.

117. Accordingly, all Defendants are liable to John Doe for violations of the Virginia Constitution and Defendants Ericson and Blank-Godlove are liable, in their personal capacities, for all damages arising out of those violations.

**COUNT III – NEGLIGENCE**  
*(Against all Defendants)*

118. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

119. In its interactions with Plaintiff, in its adoption of the Code, and in conducting its investigation and adjudication of Jane Roe’s complaint, George Mason University owed a duty to Plaintiff to exercise reasonable care, with due regard for the truth, established procedures, and the important and irreversible consequences of its actions, in addition to Plaintiff’s various liberty and property rights and interests generally.

120. Through the acts set forth above, the University, acting through its agents, servants and/or employees, breached that duty by carelessly, improperly, and negligently performing its assigned duties, mischaracterized the truth, and facilitated a process that violated Plaintiff’s rights and other protected interests.

121. As a direct and proximate result of the University’s negligence, carelessness, and breach of due care, Plaintiff has suffered financial losses, including room and board payment, and will continue to suffer financial losses, including, but not limited to, lost earning potential due to his inability to transfer to other undergraduate institutions, be admitted to graduate schools, or be hired for positions for which he was competitive before the disciplinary hearing but is no longer.

122. As a direct and proximate result of the University's negligence, Plaintiff will also lose a survivor annuity he should be receiving from his father's death. Unfortunately, the survivor annuity is conditioned on Plaintiff remaining enrolled in college on a full-time basis.

123. As a further direct and proximate result of the University's negligence, carelessness and breach of due care, Plaintiff also has suffered and will continue to suffer from mental and emotional injuries, all of which are permanent in nature, for which compensation is warranted.

124. Accordingly, Defendants are liable to Plaintiff for negligence and for all damages arising therefrom.

**COUNT IV – NEGLIGENT HIRING, TRAINING, AND SUPERVISION**  
*(Against Defendant George Mason University and Defendant Cabrera)*

125. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

126. Brent Ericson and Juliet Blank-Godlove were employees of the University at all times relevant to this Complaint.

127. As alleged above, these employees lacked the training and/or supervision needed to adequately execute their duties under the disciplinary process mandated by the Code. These employees committed negligent and/or intentionally tortious acts that caused injury to Plaintiff.

128. Mr. Ericson, for instance, adjudicated Jane Roe's appeal despite his prior involvement in the case as a representative for the Office of Student Conduct. Mr. Ericson also reversed the decision and imposed the harshest sanction available without John Doe having a meaningful opportunity to respond to the appeal. This denied Plaintiff his rights afforded him by the Code, specifically to right to a fair process and the opportunity to be heard.

129. Ms. Blank-Godlove denied Plaintiff several rights afforded him by the Code, including the absolute failure to uphold the main purpose of an appeal: “to ensure all parties that the original findings of fact, the reasoned integration of them, and an opinion and imposition of sanctions or other solutions directed by the hearing officer or board are consistent with University policies and procedures.”

130. The University knew, or in the exercise of reasonable care, should have known of these employees’ lack of the proper training and/or supervision required to execute their duties.

131. The University’s negligent failure to train and/or supervise these employees directly and foreseeably caused injury to Plaintiff, including by failing to afford Plaintiff adequate appeals rights or to uphold the minimal rights provided in the Code. Had the University taken appropriate steps to train and/or supervise these employees, such steps would, more likely than not, have prevented these injuries to Plaintiff.

132. The University’s breach of its duty to ensure proper training and/or supervision of these employees proximately caused Plaintiff substantial injury, damage and loss, including, but not limited to, mental anguish, emotional distress, injury to reputation, future economic loss, and loss of future educational and career opportunities.

133. Accordingly, Defendants George Mason University and Cabrera are liable to Plaintiff for negligently training and supervising its employees and all damages arising therefrom.

**COUNT V – NEGLIGENCE PER SE**  
*(Against All Defendants)*

134. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

135. The United States Department of Education Office for Civil Rights (“OCR”) requires schools that receive federal funds to adhere to Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex.

136. OCR publishes guidance and mandates that regulates proper compliance with Title IX.

137. Legislative enactments and administrative regulations can be the basis of a negligence per se claim, establishing the standard of conduct just as a statute can. Restatement (Second) Torts § 286 (1965).

138. OCR requires schools to “adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee sex discrimination complaints.” Implicit in the requirement to implement those policies and procedures is that the school will abide by them.

139. OCR requires schools to engage in “prompt, thorough, and impartial” investigations of allegations of sexual misconduct.

140. OCR requires that the “rights established under Title IX must be interpreted consistently with any federally guaranteed due process rights.”

141. OCR requires that schools use a preponderance of the evidence standard.

142. OCR requires that schools that have an appeals process ensure that “the entire grievance process, including any appeals, provides prompt and equitable resolutions of sexual violence complaints...”

143. OCR requires that the campus officials involved in implementing the school’s grievance procedures be properly and regularly trained in, or have experience with, both the

handling of complaints and the school's investigation and adjudication procedures. This includes training in evaluating credibility and weighing evidence in an impartial manner.

144. The OCR requirements, including the obligation of schools to implement (and abide by) policies and procedures for sexual misconduct cases, are meant to protect all students attending schools which receive federal funding. The OCR Guidance protects men and women, accusers and the accused.

145. John Doe, as a student at a school which received federal funding, falls within the class of people protected by the OCR guidance and, more generally, Title IX.

146. Defendant George Mason University breached at least the following duties owed to Plaintiff as proscribed by OCR:

- a. The duty to adopt and publish grievance procedures which could provide a prompt and equitable resolution to Jane Roe's complaint against John Doe;
- b. The duty to abide by the school's published policies and procedures regarding sexual misconduct;
- c. The duty to afford an impartial process with an equitable resolution;
- d. The duty to implement its OCR-compliant policies and procedures consistently with federally guaranteed due process rights;
- e. The duty to apply a preponderance of the evidence standard; and
- f. The duty to properly train campus officials who implement and participate in the school's sexual misconduct grievance procedures.

147. Defendant Ericson breached at least the following duties owed to Plaintiff as proscribed by OCR:

- a. The duty to evaluate Jane Roe's appeal in a prompt, thorough, and impartial manner and reach an equitable resolution;
- b. The duty to implement George Mason's policies and procedures consistent with John Doe's federally guaranteed due process rights; and
- c. The duty to apply a preponderance of the evidence standard.

148. Defendant Juliet Blank-Godlove breached at least the following duties owed to Plaintiff as proscribed by OCR:

- a. The duty to evaluate John Doe's appeal in a prompt, thorough, and impartial manner to reach an equitable resolution; and
- b. The duty to implement George Mason's policies and procedures consistent with John Doe's federally guaranteed due process rights.

149. The breaches described above were in violation to the OCR guidance as well as the University's own policies and procedures set forth in the Student Code of Conduct, which constitutes negligence *per se*.

150. Each of these breaches proximately caused injury to Plaintiff, namely his expulsion from the University, the gap in his education record, and the erroneous mark on his transcript that labels Plaintiff as a sex offender.

**COUNT VI – VIOLATION OF TITLE IX (20 U.S.C. § 1681)**  
*(Against Defendant George Mason University and Defendant Cabrera)*

151. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

152. Upon information and belief, George Mason University receives federal funding, including in the form of federal student loans given to students.

153. Because it receives federal funding, the University is subject to the requirements of Title IX.

154. Title IX prohibits discrimination in the education setting based on a student's gender. Unlawful gender discrimination also occurs when a university disciplines students based on archaic assumptions about gender roles and preferences.

155. Both the Department of Education and the Department of Justice have promulgated regulations under Title IX that require a school to "adopt and publish grievance procedures providing for the prompt and equitable resolution of student...complaints alleging any action which would be prohibited by" Title IX or its regulations. 34 C.F.R. § 106.8(b) (Department of Education); 28 C.F.R. § 54.135(b) (Department of Justice).

156. A claim of sex-based discrimination exists when a person's sex was simply one motivating factor among many behind the discriminatory act. *See University of Texas Southwestern Medical Center v. Nassar*, 133 S. Ct. 2517, 2525-26 (2013).

157. Mr. Ericson's decision reflects his failure to consider the evidence and witness statements which supported John Doe's defense and contradicted Jane Roe's claims. The findings of responsibility on appeal can be based only on the unjustified and discriminatory decision to credit Jane Roe's testimony, as the complaining female, over the testimony of John Doe, the responding male.

158. The panel, which heard hours of testimony and questioned the witnesses, issued a reasoned opinion finding that Doe and Roe had "mutually entered into a BDSM relationship in Dec. 2012." That decision was supported by evidence at the hearing, including screenshots of messages between Roe and Doe where *both* discuss the contours and limits of their sexual relationship.

159. Jane Roe's appeal was not based on one of the three grounds for appeal. Instead, it was clearly an attempt to have the decision reversed because of her disagreement with the ultimate result. Jane Roe admits that the appeal was not based on new evidence, but rather was based on the evidence before the panel. She does not once allege board member bias. And the only procedural irregularities she describes—allowing certain evidence against objection—is completely within the board's discretion to allow.

160. In contrast to the hearing panel—which heard hours of evidence and observed the parties during their testimony—Mr. Ericson had only paper and audio. Even if he reviewed the entire record—and there is no evidence that he did—his ability to properly judge credibility would be greatly diminished.

161. Mr. Ericson reviewed the panel's decision without written input from John Doe: Doe was never given the opportunity to provide a written explanation about why Jane Roe's appeal should be denied *until after* the appeal was granted.

162. The appeals process was tainted by Mr. Ericson's prior involvement in the case, including, but not limited to, discussions with both Jane Roe and John Doe, as well as advocates on their behalf.

163. Despite these deficiencies, Mr. Ericson completely reversed the panel's decision—finding John Doe responsible and expelling him. The only explanation for such a rash, unreasoned, and unsupported decision is Mr. Ericson's desire to help a complaining female when the system had found a respondent male not responsible. If Jane Roe were not a female complaining of sexual assault, her testimony would not have been credited over John Doe's given the evidence corroborating John Doe's explanation of their BDSM relationship and the material concessions Jane Roe made at the hearing.

164. Unlawful gender discrimination also occurs when a university subjects a student to a disciplinary process that has a disparate impact upon members of that student's gender.

165. The procedural protections afforded respondents in sexual misconduct appeals proceedings by the University are unfair and inadequate.

166. Sexual misconduct violations are more likely than others to result in the most severe sanctions the University may impose. That is exactly what happened here. And even worse, John Doe was given the harshest possible sanction without a meaningful opportunity to be heard about the merits of the appeal or the appropriate sanction.

167. Claims of sexual misconduct, more often than others, are decided solely or primarily based on the parties' credibility, because sexual contact typically takes place in private.

168. The vast majority of respondents in the University's sexual misconduct investigations and disciplinary proceedings are male.

169. Respondents charged with Sexual Misconduct at the University are historically and systematically discriminated against.

170. The University's inadequate appellate procedures therefore have a disparate impact upon male students. The University knows that yet is deliberately indifferent to it.

171. The University's inadequate and unfair procedures directly and proximately prevented John Doe receiving a fair process, including the application of some unknown and lesser standard for Jane Roe's appeal just because she was a female and the male she accused of sexual assault had been found not responsible.

172. Accordingly, Defendants George Mason University and Cabrera are liable to John Doe for violation of Title IX and for all damages arising out of that violation.

**COUNT VI – VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE  
FOURTEENTH AMENDMENT TO THE UNITED STATES CONSITUTION**

*(Against all Defendants, including Defendants Cabrera, Ericson, and Blank-Godlove in their official capacities, and Defendant George Mason University for injunctive relief; and against Defendants Ericson and Blank-Godlove in their personal capacities for money damages)*

173. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

174. The Fourteenth Amendment to the United States Constitution prohibits gender discrimination unless it is substantially related to an important governmental interest.

175. Gender improperly played a role in Mr. Ericson’s decision. Mr. Ericson held Plaintiff responsible for the mutual and willing BDSM sexual relationship, but provided no reasoning for his reversal of the panel’s reasoned decision. Because the evidence corroborated John Doe’s assertion that Jane Roe was a willing participant in the BDSM sexual relationship, and because Jane Roe had previously told John Doe only to stop if the safe word was used, Mr. Ericson’s decision was based, in part, on John Doe’s gender.

176. Gender also played a role in Defendant Blank-Godlove’s decision to affirm the finding on appeal of responsibility. In his appeal, John Doe clearly explained that Jane Roe’s appeal was entirely improper, that it was not based on any of the enumerated grounds for appeal, and that it should never have been considered, much less granted. Despite the proof that Defendant Ericson erroneously granted Jane Roe’s appeal, Defendant Blank-Godlove affirmed his decision. Again, the only possible explanation for such an action, when it is contrary to the weight of the evidence and the University’s own requirements for an appeal, is that it was based on Plaintiff’s status as a male accused of sexual misconduct.

177. Gender discrimination may be employed in the present to compensate for past gender discrimination “only if members of the gender benefited by the classification actually

suffer a disadvantage related to the classification.” *Mississippi University of Women v. Hogan*, 458 U.S. 718, 728 (1982) (O’Connor, J.) (holding that, despite history of discrimination against women generally, the school could not ban admission of men because there had been no history of discrimination against women in obtaining training or employment as nurses).

178. Women suffer no historical disadvantage regarding the discernment of consent in personal relationships or the ability to choose an atypical dominant-submissive sexual relationship, in compensation for which it might now be permissible to discriminate against men.

179. Plaintiff brings these claims pursuant to 42 U.S.C. § 1983 because these actions were taken by Defendants Ericson and Blank-Godlove under color of state law.

180. Because of these violations, Plaintiff has suffered considerable emotional distress, loss of present and future earnings, humiliation, and damage to his reputation as a result of their actions.

181. Accordingly, all Defendants are liable to Plaintiff for violations of the Equal Protection Clause, and Defendants Ericson and Blank-Godlove are liable, in their personal capacities, for all damages arising out of those violations.

**COUNT VII - VIOLATION OF THE EQUAL RIGHTS CLAUSE**  
**OF THE VIRGINIA CONSTITUTION**

*(Against all Defendants, including Defendants Cabrera, Ericson, and Blank-Godlove in their official capacities, and Defendant George Mason University for injunctive relief; and against Defendants Ericson and Blank-Godlove in their personal capacities for money damages)*

182. Plaintiff incorporates by reference all of the preceding paragraphs of this Complaint as though fully set forth herein.

183. The Virginia Constitution states that “all men are by nature equally free and independent and have certain rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity.” Va. Const. art. I, § 1.

184. The Virginia Constitution also provides the “right to be free from any governmental discrimination upon the basis of sex...” Va. Const. art. I, § 11.

185. For the reasons stated under Count IV, the University discriminated against John Doe based on his gender.

186. Accordingly, all Defendants are liable to John Doe for violations of the Virginia Constitution and Defendants Ericson and Blank-Godlove, in their personal capacities, are liable for all damages arising out of that violation.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully prays that this Court enter judgment on behalf of Plaintiff and against Defendants, and order relief against the Defendant as follows:

- a. That this Court issue preliminary and permanent injunctive relief restraining George Mason University (1) from continuing to enforce any punishment against Plaintiff, and (2) from making any notation on Plaintiff’s transcript, or keeping any record related to his disciplinary hearing in Plaintiff’s educational records, as its sanctions were the product of an erroneous finding that Plaintiff violated the Code, which was itself the product of a flawed disciplinary process.
- b. That Defendants be ordered to pay compensatory damages as appropriate to compensate Plaintiff for his losses caused by the University’s misconduct, in the amount of \$1,000,000; and
- c. That Defendants be ordered to pay punitive damages, in the amount of \$2,000,000; and
- d. That this Court award Plaintiff his costs and expenses incurred in this action, as well as such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury as to all issues herein presented.

Dated: February 26, 2015

/s/

Allison M. Lansell (VA Bar No. 84087)  
Matthew G. Kaiser (DC Bar No. 486272)\*  
Kaiser, LeGrand & Dillon, PLLC  
1400 Eye Street NW, Suite 525  
Washington, DC 20005  
(202) 640-2850  
(202) 280-1034 (facsimile)  
alansell@kaiserlegrand.com  
mkaiser@kaiserlegrand.com  
\*admitted *pro hac vice*

*Attorneys for Plaintiff John Doe*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 26, 2015, Plaintiff's First Amended Complaint was filed with the court's electronic filing system and served on all counsel of record. It was also served on Assistant University Counsel, David Drummey, by electronic mail at ddrummey@gmu.edu, and on the following parties by U.S. Mail:

The Rectors and Visitors of George Mason University  
c/o Angel Cabrera, President and CEO  
Mason Hall, Room D103  
4400 University Drive  
Fairfax, VA 22030

Angel Cabrera  
George Mason University  
Office of the President  
4400 University Drive  
Fairfax, VA 22030

Brent Ericson  
George Mason University  
4211 Student Union Building I, MSN: 6C9  
Fairfax, VA 22030

Juliet Blank-Godlove  
George Mason University  
4211 Student Union Building I, MSN: 2A4  
Fairfax, VA 22030

/s/  
Allison Lansell