

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN DOE,	:	
	:	Case No. 4:15-CV-2072
Plaintiff,	:	
	:	Judge: Matthew W. Brann
vs.	:	Mag. Judge:
	:	
THE PENNSYLVANIA STATE	:	Complaint filed: 10/27/2015
UNIVERSITY; ERIC BARRON; and	:	
DANNY SHAHA,	:	<i>Electronically Filed</i>
	:	
Defendants.	:	

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

PARTIES

Defendant The Pennsylvania State University (Penn State) is a state-related university that strives daily to exceed the needs of its student body, consisting of 100,000 students situated at twenty-four campus locations located throughout the Commonwealth of Pennsylvania. Penn State strives to maintain a reasonably safe environment for its university community members. Among other things, Penn State endeavors to maintain an environment that is free from sexual harassment and sexual assault.

In furtherance of this goal, Penn State has promulgated a Code of Conduct that defines behaviors that are inconsistent with the essential values of the University Community. This Code of Conduct also applies to off-campus conduct when a substantial interest of Penn State's is implicated. The Code of Conduct

prohibits acts of sexual misconduct. Penn State has established a process and procedures for determining whether a violation of the Code of Conduct has occurred, and if so, what the appropriate educational disciplinary sanction should be. Importantly, these student conduct procedures are not, and never have been, intended to be judicial proceedings or formal “trials.” These are proceedings that result in academic or administrative sanctions, not incarceration. Penn State utilizes a process that provides due process to the accused, while upholding its own obligation under Title IX to protect its students from sexual misconduct. Because the process was in full conformity with applicable due process requirements, Plaintiff’s Complaint should be dismissed. In further support of this result, Penn State offers the following answers to Plaintiff’s Complaint allegations. In developing its student disciplinary procedures, Penn State has fully considered and provided for the rights of the accused, the complainant and the university community. In addition, Penn State has created a process that provides fair and equitable opportunities to be heard to all parties throughout the process.

1. Admitted in part and denied in part. It is admitted that Plaintiff John Doe is an adult male who, prior to his academic suspension on October 23, 2015, was an enrolled student at The Pennsylvania State University (“Penn State”).

It is further admitted upon information and belief that John Doe resides in State College, Pennsylvania. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to Plaintiff's nationality and the averments regarding same are denied and strict proof thereof demanded. By way of further response, administratively, Plaintiff was not actually suspended, and his academic suspension and sanctions were enjoined by the trial court's Order dated October 28, 2015 (ECF No. 12), subject to further hearing on the preliminary injunction request.

2. Denied. Penn State is a state-related educational institution with a principal place of business located in Old Main, University Park, Pennsylvania. It is denied that Penn State is "operated" by the Commonwealth of Pennsylvania. The remainder of paragraph 2 is denied as a conclusion of law to which no responsive pleading is required.

3. Admitted. It is admitted that Defendant Barron is and was President at all relevant times, and that his office is located in University Park, Pennsylvania. It is admitted that Defendant Barron is being sued in his individual and official capacities, but it is denied that such claims are meritorious.

4. Admitted. It is admitted that Defendant Shaha is and was Senior Director of the Office of Student Conduct and Deputy Title IX Coordinator at all relevant times, and that his office is located in University Park, Pennsylvania. It is

admitted that Defendant Shaha is being sued in his individual and official capacities, but it is denied that such claims are meritorious.

JURISDICTION AND VENUE

5. Admitted in part and denied in part. It is admitted that this court has jurisdiction over Plaintiff's claims. It is denied that such claims are meritorious.

6. Admitted in part and denied in part. It is admitted that this Court has the authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983, and the Federal Rules of Civil Procedure 57 and 65. It is denied that the relief sought by Plaintiff is appropriate, justified or that it should be granted by this Court.

7. Admitted in part and denied in part. It is admitted that venue over Plaintiff's claim properly lies in this district. It is denied that Plaintiff's claims are meritorious.

FACTS

A. Penn State adopts and pilots an "Investigative Model" to adjudicate student sexual misconduct claims.¹

8. Admitted in part and denied in part. It is admitted that Penn State formed a Task Force on Sexual Assault and Sexual Harassment. By way of further

¹ For organizational purposes, Defendants utilize the same section headings as those used by Plaintiff in his Complaint. These headings shall not be construed as admissions by Defendants.

response, Exhibit 1 to Plaintiff's Complaint, being a written document, speaks for itself and any expression or implication inconsistent therewith is denied.

9. Admitted in part and denied in part. Exhibit 1 to Plaintiff's Complaint, the Task Force Report (ECF No. 2-1), being a written document, speaks for itself and any expression or implication inconsistent therewith is denied.

10. Admitted that Defendant Barron adopted the recommendations. The recommendations, being in writing, speak for themselves and any expression or implication inconsistent therewith is denied.

11. Admitted in part and denied in part. Exhibit 1, being in writing, speaks for itself and any expression or implication inconsistent therewith is denied.

12. Admitted in part and denied in part. Exhibit 1, being in writing, speaks for itself and any expression or implication inconsistent therewith is denied.

13. Admitted in part and denied in part. The April 29, 2015 *Penn State News* article, being in writing, speaks for itself, and any expression or implication inconsistent therewith is denied. It is further admitted that the revised code of conduct and student conduct procedures are appended as Exhibit 2 to Plaintiff's Complaint (ECF No. 2-2), and that Dr. Barron adopted the Task Force's recommendations.

14. Denied. Prior to the use of the investigative model, not all disciplinary proceedings involving charges of sexual misconduct under the Student Code of

Conduct involved hearings. Many proceedings were resolved without the need for a hearing. The witnesses and complainant were not required to testify in-person, and could instead testify via written submission, appear remotely or behind a partition, or opt-out of the hearing altogether. To the extent the parties wished to cross-examine or ask questions of witnesses, the questions were submitted to the chair of the hearing panel, who then asked the questions to the witness. Some disciplinary proceedings involving charges of sexual misconduct under the Student Code of Conduct involved hearings.

15. Admitted in part and denied in part. It is admitted that the Investigative Model contemplates that witness information will be provided via communication with an investigator rather than via testimony at a hearing, which sometimes occurred under the prior model. However, the Investigative Model does provide for full information to be imparted by witnesses. It further provides for the opportunity for participants in the proceeding to provide responsive or clarifying information, and for the investigator to follow up with parties and witnesses in an effort to allow them to respond to information provided by others. In addition, the complainant and the accused have an opportunity to pose questions, through the investigator, to be asked of the other witnesses, which did occur in this proceeding.

16. Denied as stated. In spring 2015, Penn State committed to utilizing the Investigative Model in all cases involving allegations of sexual intercourse without consent, which would include Plaintiff's case. Defendant Shaha was delegated the discretion to apply his experience and judgment in connection with decisions as to which model to utilize in Title IX cases that do not involve allegations of sexual intercourse without consent.

17. Denied as stated. In spring 2015, Penn State committed to utilizing the Investigative Model in all cases involving allegations of sexual intercourse without consent, which would include Plaintiff's case. Defendant Shaha applies his experience and judgment in connection with decisions as to which model to utilize in sexual misconduct or sexual harassment cases that do not involve allegations of sexual intercourse without consent.

18. Denied. The Investigative Model does provide for live witness appearance before, and interaction with, the investigator, who is a fact-finder in this process. This information is also included in the Investigative Packet for consideration by the Hearing Panel.

19. Admitted in part and denied in part. Defendants incorporate their response to paragraph 18, above, by reference. By way of further response, the text of the procedures applicable to the Investigative Model, being in writing,

speak for themselves and any expression or implication inconsistent therewith is denied.

20. Admitted. By way of further response, the text of the procedures applicable to the Investigative Model, being in writing, speak for themselves and any expression or implication inconsistent therewith is denied.

21. Admitted. By way of further response, the text of the procedures applicable to the Investigative Model, being in writing, speak for themselves and any expression or implication inconsistent therewith is denied.

22. Admitted. By way of further response, the text of the procedures applicable to the Investigative Model, being in writing, speak for themselves and any expression or implication inconsistent therewith is denied. As communicated during the investigative process, the ability to respond includes the opportunity to ask questions of other parties or witnesses through the investigator.

23. Admitted. By way of further response, the text of the procedures applicable to the Investigative Model, being in writing, speak for themselves and any expression or implication inconsistent therewith is denied.

24. Admitted. By way of further response, the text of the procedures applicable to the Investigative Model, being in writing, speak for themselves and any expression or implication inconsistent therewith is denied.

25. Admitted. If charges are assigned, the parties charged receive written notice of the charges against them. By way of further response, the text of the procedures applicable to the Investigative Model, being in writing, speak for themselves and any expression or implication inconsistent therewith is denied.

26. Admitted. By way of further response, the text of the procedures applicable to the Investigative Model, being in writing, speak for themselves and any expression or implication inconsistent therewith is denied.

27. Denied. The Investigative Packet is forwarded to the Title IX Decision Panel when the investigator concludes that all relevant information has been received and included in the Investigative Packet. By way of further response, the text of the procedures applicable to the Investigative Model, being in writing, speak for themselves and any expression or implication inconsistent therewith is denied.

28. Admitted.

29. Admitted. By way of further response, the text of the procedures applicable to the Investigative Model, being in writing, speak for themselves and any expression or implication inconsistent therewith is denied.

30. Admitted in part and denied in part. It is admitted that the Investigative Model does not contemplate witnesses appearing before the Title IX Decision Panel. However, the Investigative Model does contemplate live witness

interaction with the investigator and that information is presented for consideration by the Title IX Decision Panel.

31. Denied. To the contrary, the respondent is offered an opportunity to respond to information at all stages in the fact-finding process and may also suggest questions to the investigator to be asked of the complainant and/or other witnesses.

32. Admitted in part and denied in part. Admitted that the panel makes its determination based on the Investigative Packet. Denied that the panel “decides the facts.” The investigator, who is a fact-finder in the process, submits the Investigative Packet to the panel to determine whether a violation of the Student Code of Conduct occurred.

33. Admitted in part and denied in part. It is denied that the materials are instructions to be followed by the panel, or that the materials are provided to the panel in connection with specific cases. Admitted only that Title IX panels are provided with materials for general training and consideration. At this time, Defendants are without sufficient information to admit or deny which of the specific documents identified in paragraph 33 were provided to the panel. By way of further response, the training materials are sometimes revised and the panel refers only to the latest version, and the panel has access to the materials as a reference but they are not binding instructions.

34. Denied. See paragraph 33. By way of further response, the 2% reference cited by Plaintiff is one of numerous “considerations” relating to the victim, the accused and the Title IX Decision Panel, that may or may not have been available to this panel. It is not an “instruction.” (ECF No. 2-3). Even if available, by way of further response, the contents of Exhibit 3 to Plaintiff’s Complaint, ECF No. 2-3, being in writing, speaks for itself and any expression or implication inconsistent therewith is denied.

B. The Investigative Model is used to suspend Plaintiff from Penn State for receiving oral sex from a female student.

35. Admitted upon information and belief.

36. Admitted upon information and belief.

37. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 37.

38. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 38.

39. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 39.

40. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 40.

41. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 41.

42. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 42.

43. Admitted.

44. Admitted upon information and belief that Plaintiff is studying engineering. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 44.

45. Admitted in part and denied in part. It is admitted that architectural engineering/mechanical engineering option is a highly specialized program. By way of further response, Answering Defendants are, after reasonable investigation, without knowledge or information sufficient to form a belief as to the remainder of Plaintiff's averments. The same are therefore denied and strict proof thereof demanded.

46. Admitted upon information and belief.

47. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 47.

48. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 48.

49. Admitted upon information and belief.

50. Admitted.

51. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 51.

52. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 52.

53. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 53.

54. Admitted, upon information and belief based upon the Investigative Packet.

55. Admitted, upon information and belief based upon the Investigative Packet.

56. Admitted in part and denied in part. Admitted that the Investigative Packet references a “formal” on that date. Denied that it was officially registered as such with Fraternity and Sorority Life.

57. Admitted in part and denied in part. Admitted that the Investigative Packet references Complainant attempting to go back to the fraternity house after December 5, 2014. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 57.

58. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 58.

59. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 59.

60. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 60.

61. Admitted, upon information and belief based upon the Investigative Packet.

62. Admitted upon information and belief.

63. Admitted.

64. Admitted. By way of further response, Exhibit 8 is in writing, speaks for itself and any expression or implication inconsistent therewith is denied.

65. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 65.

66. Admitted. By way of further response, Exhibit 9 is in writing, speaks for itself and any expression or implication inconsistent therewith is denied.

67. Admitted in part and denied in part. To the extent this paragraph is addressing the Notice of Investigation, the Notice of Investigation, being in writing, speaks for itself and any expression or implication inconsistent therewith is denied.

68. – 70. Admitted in part and denied in part. The Notice of Investigation, being in writing, speaks for itself and any expression or implication inconsistent therewith is denied.

71. Admitted.

72. Admitted. By way of further response, Plaintiff was treated consistently with Penn State's policies regarding review of student misconduct

reports and Plaintiff was treated consistently with similarly situated individuals in Plaintiff's position.

73. Admitted in part and denied in part. It is admitted that Plaintiff submitted a written statement of his position with respect to the events of December 4-5, 2014 on or about August 11, 2015 and after the preliminary report was prepared by the investigator and was reviewed by Plaintiff. Said statement, being in writing, speaks for itself and any expression or implication inconsistent therewith is denied.

74. Admitted in part and denied in part. Plaintiff's written statement, being in writing, speaks for itself and any expression or implication inconsistent therewith is denied.

75. Admitted in part and denied in part. It is admitted that the Investigative Packet contains statements from the complainant that are substantially similar to those averred. By way of further response, the Investigative Packet, being in writing, speaks for itself and any expression or implication inconsistent therewith is denied. Complainant was too intoxicated to consent to oral sex, based upon the findings of the Title IX Decision Panel.

76. Admitted in part and denied in part. By way of further response:

- a. It is admitted that complainant reported that she had eaten a cheesesteak, that she was "hanging out" and that at a point in time

in the evening she was functioning “pretty fine.” It is denied that said statements necessarily related to the point in time that was “just prior to the incident.”

- b. It is admitted that complainant related that she did not vomit.
- c. The Investigative Packet, being in writing, speaks for itself and any expression or implication inconsistent therewith is denied.
- d. Admitted in part and denied in part. It is admitted that Plaintiff’s friend, identified as W2 in the Investigative Packet, stated that complainant “appeared fine,” was aware of her location, walked without assistance and communicated appropriately during a walk to another fraternity. It is denied that these averments related to a point in time “immediately prior to the incident.”
- e. Admitted.
- f. Admitted in part and denied in part. It is admitted that complainant told W2 that she did not want to leave the fraternity. It is denied that this statement was made “just prior to the incident.”
- g. Admitted.
- h. Admitted.

77. Admitted in part and denied in part. It is admitted that Mr. Peters presented an Investigative Packet to the Title IX Decision Panel in connection with

its consideration of Plaintiff's student misconduct allegations. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to what is meant by Plaintiff's use of the words "the foregoing" and/or "other material". These allegations are denied and strict proof thereof demanded.

78. Admitted in part and denied in part. Admitted that the Panel reviewed the report and issued its decision. By way of further response, Exhibit 11, being in writing, speaks for itself and any expression or implication inconsistent therewith is denied.

79. Admitted in part and denied in part. It is admitted that the Panel specifically referenced the complainant's experiences of blackout moments, falling on the floor and needing to be helped by others and exhibition of outrageous and unusual behavior as supporting its conclusion that the Complainant was incapacitated at the time of the incident. To the extent paragraph 79 avers that those were the only facts considered by the Panel in this regard, the averment is denied. To the contrary, it is believed that the Panel considered all information contained in the Investigative Packet in its entirety, in forming its conclusions relative to this misconduct case.

80. Denied. The specific reference by the Panel was "by comparing C's testimony with the rest of the testimonies in the Investigative Packet, the Panel agreed that C's account was in good agreement with most of said testimonies."

81. Admitted. By way of further response, the panel relied on all information in the Investigative Packet.

82. Admitted.

83. Admitted.

84. Admitted. By way of further response, based upon this Court's Order dated October 28, 2015 (ECF No. 12), the suspension was enjoined pending the outcome of this litigation.

85. Denied. As previously stated, the sanction has been enjoined by Court Order pending the outcome of this litigation. Moreover, the sanctions imposed included, *inter alia*, a two semester suspension which would have allowed Plaintiff to re-enroll at Penn State in the summer of 2016 and therefore Plaintiff's life would not "have been placed on hold for a year." As to Plaintiff's speculative inability to find employment, join the armed services, or transfer to another university, said averments are denied in that Answering Defendant is, after reasonable investigation, without knowledge or information sufficient to form a belief as to the truth of the averments.

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

86. Admitted.

87. Denied. The averments of paragraph 87 constitute a conclusion of law to which no responsive pleading is required. The same are therefore denied and strict proof thereof demanded. By way of further response, Penn State has in no way prohibited Plaintiff from finishing or continuing his education at Penn State University. To the contrary, Penn State has imposed a two semester suspension for violations of the Student Code of Conduct. It is further denied that there is controlling precedent establishing that an undergraduate student has a property interest in an uninterrupted continuation of his undergraduate education that is protected by the due process clause of the Fourteenth Amendment of the United States Constitution.

88. Denied. The averments of paragraph 88 constitute a conclusion of law to which no responsive pleading is required. The same are therefore denied and strict proof thereof demanded. By way of further response, Penn State has, to the maximum extent possible, maintained the confidentiality of the student misconduct charges and proceedings against Plaintiff and therefore has refrained, to the maximum extent possible, from negatively impacting Plaintiff's name, reputation, honor or integrity.

89. Admitted in part and denied in part. It is admitted that the Title IX Decision Panel was tasked with determining a number of facts associated with the charges of misconduct against Plaintiff. It is further admitted that some witnesses

provided differing accounts of the events of the evening in question. However, it is believed, and therefore averred, that the Complainant's capacity to consent to sexual activity was the principal issue for the Panel to resolve.

90. Denied. The averments of paragraph 90 constitute conclusions of law to which no responsive pleading is required. To the extent a response is required, it is admitted that, in any dispute, the determination of who is a credible and truthful witness is an important determination. However, the possibility that witnesses may be untruthful or mistaken is a risk that is present in all forms of witness accounts.

91. Denied. The averments of paragraph 91 constitute Plaintiff's opinion and nothing more. Furthermore, it is denied that personal observation of a witness necessarily results in accurate assessments of witness credibility, as the potential for error is present in any fact-finding process. Moreover, many important determinations in the Commonwealth of Pennsylvania are made by individuals, boards or panels who do not hear live testimony.

92. Denied. The averments of paragraph 92 constitute Plaintiff's opinions, and nothing more. By way of further response, it is denied that observation of cross-examination necessarily results in accurate witness credibility assessment. Furthermore, the process utilized in this case permitted Plaintiff to submit questions to the investigator to be asked of witnesses.

93. Denied. The allegations in paragraph 93 constitute conclusions of law to which no responsive pleading is required. The same are therefore denied and strict proof thereof demanded. By way of further response, it is denied that the due process clause of the Fourteenth Amendment affords the Plaintiff a right to personally appear and testify before the Title IX Decision Panel under these circumstances. Plaintiff was provided all process that was constitutionally due to him as a student in the disciplinary process.

94. Denied. The allegations in paragraph 94 constitute conclusions of law to which no responsive pleading is required. The same are therefore denied and strict proof thereof demanded. By way of further response, it is denied that the Due Process Clause of the Fourteenth Amendment afforded Plaintiff a right to insist upon the personal appearance of witnesses who provided information against him. Plaintiff was provided all process that was constitutionally due to him as a student in the disciplinary process.

95. Denied. The allegations in paragraph 95 constitute conclusions of law to which no responsive pleading is required. The same are therefore denied and strict proof thereof demanded. By way of further response, it is denied that the Due Process Clause of the Fourteenth Amendment affords Plaintiff a right to present live witness testimony for witnesses appearing on his behalf. Plaintiff was

provided all process that was constitutionally due to him as a student in the disciplinary process.

96. Denied. The allegations in paragraph 96 constitute conclusions of law to which no responsive pleading is required. The same are therefore denied and strict proof thereof demanded. By way of further response, it is denied that Plaintiff was prohibited from cross-examining or questioning the witnesses who provided information against him. Rather, Plaintiff was free to submit additional information and/or questions to be posed to said witnesses. It is further denied that the Due Process Clause of the Fourteenth Amendment affords Plaintiff, in every instance, an opportunity to appear in person to cross-examine witnesses who provide information against him. Plaintiff was provided all process that was constitutionally due to him as a student in the disciplinary process.

97. Admitted in part and denied in part. Denied that the documents provided to the Panel for consideration were instructions. Admitted that Plaintiff was not provided with such documents prior to the Panel's decision-making process.

98. Denied. The allegations in paragraph 98 constitute conclusions of law to which no responsive pleading is required. The same are therefore denied and strict proof thereof demanded. Plaintiff was provided all process that was constitutionally due to him as a student in the disciplinary process.

99. Denied. The allegations in paragraph 99 constitute conclusions of law to which no responsive pleading is required. The same are therefore denied and strict proof thereof demanded. By way of further response, the Panel was in no way biased against respondents in sexual misconduct cases and Plaintiff's accusation in this regard is wholly unfounded and unsupported. Plaintiff's case received fair and appropriate consideration from an unbiased and impartial Panel.

100. Denied. The allegations in paragraph 100 constitute conclusions of law to which no responsive pleading is required. The same are therefore denied and strict proof thereof demanded. By way of further response, the Due Process Clause of the Fourteenth Amendment does not provide Plaintiff with a right to control or dictate the content of written materials that do not relate to the facts of the case that are provided to Panel members by Penn State.

101. Denied. The allegations in paragraph 101 constitute conclusions of law to which no responsive pleading is required. The same are therefore denied and strict proof thereof demanded. By way of further response, the Due Process Clause of the Fourteenth Amendment does not afford Plaintiff a right to demand personal appearances by the authors in question.

102. Admitted in part and denied in part. It is admitted that Penn State's Office of Student Conduct administers the Code of Student Conduct. It is denied, however, that the Office of Student Conduct functioned in a prosecutorial role

relative to the consideration of the Investigative Packet by the Title IX Decision Panel in Plaintiff's case. It is further denied that disciplinary proceedings function in the same manner as courts of law, or that disciplinary proceedings include a "prosecutorial" function.

103. Admitted in part and denied in part. It is admitted that Defendant Barron adopted the Task Force's recommendations. Denied that Defendant Shaha was delegated "unfettered authority" to choose which model to use. By way of further response, in spring 2015, Penn State committed to utilizing the Investigative Model in all cases involving allegations of sexual intercourse without consent, which would include Plaintiff's case. Defendant Shaha applies his experience and judgment in connection with decisions as to which model to utilize in Title IX cases that do not involve allegations of sexual intercourse without consent.

104. Admitted.

105. Denied. The investigator does not make a finding that the allegations "support" violations of the Code of Student Conduct. Instead, the investigator initiates the charge upon a reasonable belief that a violation occurred, but the Panel applies its own judgment utilizing a preponderance of the evidence standard.

106. Denied. The allegations in paragraph 106 constitute conclusions of law to which no responsive pleading is required. The same are therefore denied

and strict proof thereof demanded. By way of further response, it is denied that the Title IX Decision Panel was in any way unfair or partial. To the contrary, Plaintiff received more process than he was constitutionally due. Student disciplinary proceedings are not trials and they do not involve prosecutorial and judicial functions as do courts of law.

107. Denied. The allegations in paragraph 107 constitute conclusions of law to which no responsive pleading is required. To the contrary, Plaintiff encountered a disciplinary process that takes very seriously the charges made against Plaintiff and the magnitude of the interests at stake both for the accused and for the victim.

108. Denied. The allegations in paragraph 108 constitute conclusions of law to which no responsive pleading is required. It is denied that Plaintiff has suffered due process deprivations, that Plaintiff has been wrongly disciplined, or that Plaintiff is suffering any harm or adverse impact that was not justified by his misconduct.

WHEREFORE, Defendants The Pennsylvania State University, Eric Barron and Danny Shaha respectfully request that this Honorable Court deny and dismiss Plaintiff's Complaint in its entirety, with prejudice, affirm and declare the validity and constitutionality of the student conduct procedures at issue, deny and dismiss or dissolve Plaintiff's claims for declaratory and injunctive relief, and award

Defendants costs of this suit, attorneys' fees as appropriate, and such other relief as may be just and appropriate.

AFFIRMATIVE DEFENSES

109. Defendants incorporate herein by reference its responses to paragraphs 1 through 108 of their Answer as though set forth at length herein.

110. Plaintiff's Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

111. Plaintiff's Complaint is barred, in whole or in part, by the applicable statute of limitations and/or timeliness.

112. Plaintiff's Complaint is barred, in whole or in part, by Plaintiff's failure to exhaust administrative remedies.

113. Plaintiff's Complaint is barred, in whole or in part, by the doctrines of waiver, estoppel, and/or laches.

114. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

115. Plaintiff's Complaint fails, in whole or in part, to establish a right to trial by jury.

116. Plaintiff's claims are subject to all limitations on damages available under the relevant statutes and other provisions of law, including failure to mitigate.

117. Plaintiff's Complaint fails, in whole or in part, because Plaintiff's conduct has been the superseding causal factor in any harm Plaintiff has suffered relating to the Defendants' challenged conduct.

118. Plaintiff's Complaint fails, in whole or in part, because he lacks the constitutional right to the additional process he seeks and/or because the process provided to Plaintiff was constitutionally adequate and because he suffered no actionable deprivation of rights.

119. Plaintiff's Complaint is barred, in whole or in part, by the doctrines of absolute immunity, qualified immunity, or conditional immunity.

120. Plaintiff's Complaint is barred, in whole or in part, by the doctrines of absolute or conditional privilege and/or justification.

121. Plaintiff's Complaint is barred, in whole or in part, by the doctrines of abstention, preemption and/or preclusion.

122. Plaintiff's claims are barred in whole or in part by the doctrines of license and/or sound contractual basis or privilege.

123. Plaintiff's claims are barred in whole or in part by the absence of irreparable harm and/or by the availability of an adequate remedy at law.

124. It is denied that the relief sought by Plaintiff is relief to which he is legally entitled, even assuming, hypothetically, that his Due Process claims are meritorious.

125. Defendants reserve the right to assert additional Affirmative Defenses as this matter moves forward.

WHEREFORE, Defendants request that this Honorable Court enter an appropriate Order declaring that: (a) Plaintiff received all due process to which he was constitutionally due; (b) Denying and dismissing Plaintiff's request for injunctive relief with prejudice; (c) Denying and dismissing Plaintiff's Complaint, with prejudice; (d) Entering judgment in favor of Defendants and against Plaintiff; (e) Awarding Defendants all reasonable monetary relief to which they may be entitled, including attorneys' fees, interest, costs of this suit, and such other relief as may be just and appropriate.

Respectfully submitted,

McQUAIDE BLASKO, INC.

Dated: November 19, 2015

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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN DOE,

Plaintiff,

vs.

THE PENNSYLVANIA STATE
UNIVERSITY; ERIC BARRON; and
DANNY SHAHA,

Defendants.

:
: Case No. 4:15-CV-2072
:
: Judge: Matthew W. Brann
: Mag. Judge:
:
: Complaint filed: 10/27/2015
: *Electronically Filed*
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendants’ Answer to Plaintiff’s Complaint in the above-captioned matter was served via ECF this 19th day of November, 2015, to the attorneys/parties of record as follows:

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