



April 8, 2016

Via Email to [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov)

U.S. Department of Education  
Office for Civil Rights  
Chicago Office  
500 W. Madison Street, Ste. 1475  
Chicago, IL 60661-4544  
Tel.: (312) 730-1560  
Fax: (312) 730-1576

**Re: ADMINISTRATIVE COMPLAINT**

Dear Office for Civil Rights:

Gender Justice is a non-profit law firm founded in 2010 that works to eliminate gender barriers. We challenge discrimination by foundational institutions such as schools, workplaces, and health care providers, and we have a particular interest in ensuring that students have full and equal access to education regardless of sex, sexual orientation, gender identity, or status as a survivor of campus sexual assault.

Gender Justice submits this administrative complaint to the Office for Civil Rights on behalf of our client, [REDACTED] (referred to herein as "Complainant"). Complainant is a senior at St. Olaf College in Northfield, Minnesota, who, in May 2015, was the victim of a sexual assault. She reported her assault in September 2015 and while the investigation ensued, was subjected to retaliatory action by the perpetrator of her assault. The college's actions violate her right to an equal education guaranteed by Title IX of the Education Amendments of 1972.

Gender Justice requests that the Office for Civil Rights investigate St. Olaf College and require it to take appropriate actions to protect Complainant's rights and to eliminate every form of discrimination in its provision of a full and equal education to all its students.

## ADMINISTRATIVE COMPLAINT

### Complainant

██████████  
c/o her attorneys below

### Complainant's Counsel

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### Recipient

St. Olaf College  
1520 St. Olaf Avenue  
Northfield, MN 55057

## PRELIMINARY STATEMENT

1. This Complaint is filed pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated pursuant to that Title. See 34 C.F.R. § 106 *et seq.* and policies described below. Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities.
2. As detailed in the Factual and Legal Allegations below, Recipient, ST. OLAF COLLEGE (“the College”), violated Title IX by failing to properly investigate and adjudicate the sexual assault report filed with the College by Complainant and by failing to enforce its policies and procedures to effectively protect Complainant from retaliation and stalking.
3. In order to address these violations, we request that the Chicago Office for Civil Rights (“OCR”) determine whether the College violated its obligations under Title IX by investigating the College’s response to Complainant’s reports of sexual assault and retaliatory stalking. In addition, we request that the OCR undertake a Compliance Review of the College to determine whether its practices, procedures, and training of staff regarding response to student reports of sexual, dating, and gender-based violence and harassment comply with Title IX and remedy any unlawful conduct, practices, and procedures. We ask the OCR to require the College and its employees to undergo ongoing training, review, and monitoring to redress the effects of its discrimination against Complainant.

## JURISDICTION

4. The OCR is responsible for ensuring compliance with Title IX and receiving information about, investigating, and remedying violations of Title IX and its implementing regulations and guidelines.
5. Complainant has not filed this administrative complaint with any other agency or institution.
6. This complaint is timely, because it is being filed within 180 days of the discriminatory conduct. Complainant completed the College's administrative procedure for addressing the sexual assault on December 22, 2015, when she received a rejection of her request for an appeal of the College's Notice of Determination.

## FACTUAL ALLEGATIONS

### A. The Assault

7. On the evening of Saturday, May 9, 2015, Complainant joined friends for dinner off-campus. She consumed alcohol with dinner and also later in a friend's dorm room and at a party at a house across the street from campus.
8. The total amount of alcohol Complainant consumed is unclear.
9. Complainant later recalled that she was already "really drunk" before arriving at the party.
10. It was at this house party that Complainant first met the student who later assaulted her ("Student"). She didn't know him before that.
11. In addition to what she recalled already drinking, her friends later informed her that she consumed additional alcohol at the house party that she was unable to remember.
12. It was clear to everyone that she was extremely intoxicated. One friend recalled that Complainant "didn't seem like herself and appeared intoxicated, stumbling and avoided eye-contact." Complainant later texted this friend, "I'm so drunk right now." The friend was concerned even though Complainant denied needing help at that moment. Another friend noted that her speech was slurred. Complainant has no memory of these exchanges with this friend.
13. After talking for a while, Student asked and Complainant agreed to walk back to campus with him, although she has no recollection of this. She remembers almost nothing from a point shortly after she had begun talking to Student at the party until she found herself in his dorm room. Following that point, there are short periods she recalls, but also long periods that she does not or in which her recollection is very unclear.
14. Student took Complainant to his room in the dormitory [REDACTED]. Complainant recalls falling asleep on Student's couch and waking up later, in the early hours of May 10, 2015, with a trash can having been placed near the couch directly in front of where her head was resting.

15. Complainant recalls still feeling very drunk when she awoke but not sick. She then remembers being in Student's bed with some of her clothing removed.
16. She recalls that she had accompanied Student to his room feeling agreeable to "making out" but not to having intercourse, and both she and Student remember her using some language to that effect. Complainant believes that she told Student, "I don't want to have sex." Student confirmed that Complainant made a statement like this when he was interviewed by the College's investigator.
17. Complainant has no clear, consistent memories as to what took place in Student's bed exactly because of her intoxication but does recall kissing and wanting to do nothing more. She has no recollection of kissing Student anywhere but on the mouth and no recollection of performing oral sex on Student as he claims.
18. Complainant does recall Student being on top of her and that she felt too drunk, tired, and weakened by a recent elbow surgery to push him off. She states that she tried repeatedly to do so but was unable and felt that she "didn't really have a choice." She recalls asking Student to use a condom because she wanted to retain as much control as possible under the circumstances, feeling that she "couldn't stop it and couldn't get away." Despite Complainant's lack of consent, Student penetrated her. Complainant does not recall further details.
19. Complainant does not recall how long the assault lasted and tried to divert her attention until it was over. At that point, Complainant was exhausted and still very drunk and fell asleep next to Student. She awoke early in the morning, dressed, and left Student's room. She recalls thinking as she walked back to her dorm that she was still intoxicated.
20. Complainant felt that what had happened to her was "not okay" but felt emotionally incapable at the time of acknowledging that she had been raped, given the pressure of impending final exams, recovery from her surgery, and other responsibilities accompanying the end of the school year.
21. She tried to simply "shut it down" and not think about it over the summer months. She experienced a lot of anxiety when contemplating returning to school the following fall, and it was in exploring these feelings that she realized she needed to confront the fact that the act perpetrated against her had not been consensual and that she had, in fact, been raped.

B. College's Investigation and Adjudication of Report

22. Complainant reported the assault to the College on September 24, 2015.
23. As an interim measure, the College implemented a mutual no-contact order between Complainant and Student. The no-contact order barred Complainant and Student from each other's dorms. Complainant's administrative contact during her complaint indicated that in addition to explicit terms of the no-contact order, he would also contact Student's administrative contact to make sure that Student, [REDACTED] would be told to stay away from a popular off-campus bar so that Complainant would not encounter him there. Later, Complainant's administrative contact admitted that he had not followed through on this.

24. The College appointed as an adjudicator [REDACTED]. [REDACTED] The College hired an investigator who interviewed Complainant and Student and several friends of each who had contact with either that night.
25. Soon after the investigation process started, Complainant learned that Student had hired a well-known attorney to act as his “advisor” under Section 10.B of the College’s Sex Discrimination, Sexual Harassment, and Sexual Misconduct Policy (“Policy”). According to the Policy, an advisor “may confer with the person involved, but they may not actively participate in the process.” In addition, an advisor may receive confidential information about the complaint, but this is “subject to the same limitations as those placed upon the parties and conditioned upon the advisor’s agreement to maintain the confidentiality of any student records or other confidential information.”
26. Student’s advisor requested delays in the process and these were granted by the College. Student’s advisor also hired private investigators, a forensic toxicologist, and a second high-powered attorney to consult on the “case” and collect evidence. Student’s representatives spoke for him, filed reports, and contacted the College threatening to file an injunction to prevent the College from enforcing its prohibition against retaliation and stalking.
27. The private investigators collected information about Complainant off of social media and contacted Complainant’s former employer, two former coworkers, two friends, one former boyfriend, and that former boyfriend’s parents. They tried to reach another former boyfriend but were unable to. The individual(s) who contacted the former boyfriend’s parents represented themselves as friends of the Complainant in order to gain trust and information and would not divulge their identity to the others. They then proceeded to inform the individuals contacted of the rape complaint and to ask questions such as whether the Complainant was flirtatious, sexually aggressive, or trustworthy, whether she dressed provocatively, and whom she had dated.
28. [REDACTED] who does not attend the College and knew nothing firsthand about the events of the night in question, notified Complainant on October 15, 2015, that he had been contacted by a private investigator who reportedly portrayed Complainant as clingy and as someone who would “cry wolf,” seeking agreement from [REDACTED]. The private investigator had reached [REDACTED] through his parents, who were falsely told that the private investigator was a friend of Complainant in order to get contact information for [REDACTED].
29. When Complainant learned of the activities of Student’s private investigators, she immediately reported this to the College. Dean of Students [REDACTED] emailed Complainant at 4:27pm CST that same day, October 15, 2015, and included copied text of an email she had earlier emailed Student. In that earlier email, [REDACTED] made clear that the College was aware of the private investigators’ actions, stating to Student that “[i]f it is the case that there is an investigator working on your behalf, the actions taken by this person could violate the anti-retaliation provision of the College’s Sex Discrimination, Sexual Harassment and Sexual Misconduct policy. . . .” [REDACTED] further reminded Student that he had been “specifically warned about the College’s policy prohibiting retaliation” in a September 29, 2015, letter from another dean at the College.
30. At 6:45pm CST on October 15, 2015, after Student was warned by the College to “make certain that actions taken on [his] behalf do not harass, intimidate, or in any other way retaliate against either the Complainant or any other participant in this process[,]” one of

Student's private investigators contacted Complainant's former employer, [REDACTED] and knew nothing about the events of the night in question. The private investigator asked [REDACTED] questions such as whether Complainant wore provocative clothing, whether she was flirtatious, whether she "approached" people at work, whom she dated, and whether she was sexually aggressive. These private investigators, acting on Student's behalf, informed Complainant's former employer that she had made a serious complaint against a young man whose "future was at stake." Two other employees reported speaking to the investigator about Complainant before she was able to reach [REDACTED]

31. The following day, October 16, 2015, Student emailed [REDACTED] in response to her warning to him the previous day defending his right to "investigate" and arguing that there had been no "retaliation" because no one had contacted Complainant specifically.
32. The College subsequently stated, in its correspondence with Student's advisors, that the investigators behaved in a way, if accurately described by Complainant, that the College was "obligated to respond," pursuant to the Policy's prohibitions on retaliation, and that investigation was only allowed as long as it did not include harassment, intimidation, or retaliation.
33. Complainant continued to receive reports from friends, for weeks after these exchanges, that Student's private investigators had contacted them, asked them highly inappropriate and suggestive questions about Complainant, and informed them of the incident and complaint that had been filed. Each time, Complainant again notified the College.
34. Student's advisor provided this inappropriately obtained and irrelevant evidence to the College's investigator and adjudicator. The advisor submitted medical records. The advisor also submitted the report of a forensic toxicologist. The College did not seek out independent or neutral expert evaluations of this report, and Complainant did not have the resources to match the information collected by Student.
35. The College's Policy prohibits sexual contact with a person incapacitated by alcohol.
36. "Sexual Assault" is defined pursuant to the Policy as "any sexual contact, including but not limited to sexual penetration, with another person who does not or cannot give consent. ..."
37. The College defines consent such that it must be "informed and freely and actively given." Furthermore, "a person cannot give consent if that person[] is incapacitated by drugs or alcohol...."
38. Section 4.H of the Policy defines "incapacitation" as follows: "Incapacitation means the physical and/or mental inability to make informed, rational judgments. Where alcohol or drugs are involved, incapacitation is determined by how the substance consumed affects a complainant, including the complainant's decision-making capacity, awareness of consequences, and ability to make informed judgments. This is true regardless of whether the complainant voluntarily or involuntarily consumed the drugs or alcohol. Use of drugs or alcohol by the Student, however, is not a defense against allegations of sexual misconduct and does not diminish personal accountability or criminal liability. The question is whether the Student knew, or a reasonable, sober person in the position of the Student should have known, that the complainant was incapacitated."

39. Despite this policy, ultimately, the adjudicator concluded that no violation of the Policy had occurred. The adjudicator claimed to be using a “more likely than not” standard for this determination.
40. The Notice of Determination, however, indicated that Student’s version of events was more credible in part because he “appeared to have a clear memory of the events on May 10.” Because Complainant was highly intoxicated at the time, she did not have a clear memory of these events. Using the standard in this way makes it impossible to fairly adjudicate claims regarding sexual assault with an intoxicated victim.
41. Other parts of the Notice of Determination indicate that the adjudicator failed to insist on a complete investigation and credited Student’s version of accounts even when his statements were unlikely.
42. Student’s claim that Complainant straddled him and that he asked her to get off of him so he could retrieve a condom before she straddled him again is not consistent with the physical layout of the room and very limited space above the lofted bed, none of which was addressed in the adjudicator’s Notice of Determination.
43. The adjudicator noted that Student agreed that Complainant had indicated clearly that she did not want intercourse and never changed her position by verbally giving consent later, yet this admission was ignored by the adjudicator.
44. The adjudicator also did not follow up on evidence that Student knew Complainant was intoxicated because he had placed a trash can right next to her head while she was on his couch. Student incredibly claimed that this was where the trash can always was, and the College did not seek out any further evidence on this crucial point.
45. The adjudicator’s analysis includes the following internally contradictory statement summarizing an interview with one of Complainant’s friends: “[The friend] describes Complainant as ‘intoxicated but wasn’t falling over or anything like that’ that the [sic] she ‘didn’t pick up on’ any signs of Complainant being intoxicated.”
46. Complainant appealed the Notice of Determination on December 13, 2015. She cited as grounds (1) the College’s failure to complete the investigation within 60 days or to notify Complainant that this time had been extended and why (it took 77 days); (2) Student’s retaliation and stalking of Complainant after the investigation had ensued; and (3) the College’s inclusion in the investigation file of the information collected by Student’s hired outside advisor. For example, the investigation file included Student’s medical history, outside opinions by alleged experts, and information provided by Student’s agents as a result of stalking Complainant. Inclusion of this information was improperly prejudicial, with much of it obtained by means in violation of the College’s own Policy.
47. Even though the entire Notice can be seen as contradicting itself in critical ways and, more importantly, supports a contrary finding that Complainant was unable to consent as defined in the College’s Policy, the College denied the appeal on December 22, 2016, finding the procedural challenges inconsequential and the retaliation claim improperly included as grounds for appeal.

C. Student's Retaliatory Stalking of Complainant

48. The actions by Student's advisor and private investigators were in clear violation of section 13 of the Policy prohibiting retaliation against a good faith Complainant as defined in Section 4.L.
49. They also clearly constituted stalking as defined in the same Policy, which is prohibited as a form of sexual misconduct. Specifically, agents acting on behalf of the Student stalked the Complainant by "unreasonably obtaining personal information about the complainant by accessing public records, using internet search services, hiring private investigators, going through the complainant's garbage, following the complainant, contacting complainant 's friends, family, work, or neighbors, etc." Policy, Section 4.K.
50. Other than "warnings" issued to Student to essentially use caution as he stalked Complainant, the College took no investigatory or disciplinary action that would have protected Complainant from this continued victimization, even after Complainant addressed these actions in her appeal of the adjudicator's finding.
51. The College's response at that time was that it was procedurally inappropriate for Complainant to bring up in an appeal. While this may be true, by this point the College had received notice multiple times about conduct of Student that violated the Policy and had failed to open an investigation.
52. The College's Title IX authorities could and should have identified and acted upon the Student's retaliatory stalking from its first notice in October, but it did nothing until Complainant insisted in December that the College investigate her complaint as a separate incident.
53. At that point, the College inappropriately categorized Complainant's concerns regarding the retaliatory stalking from Student as a standard student misconduct complaint with none of the procedural requirements connected with a sexual misconduct complaint.
54. The College initiated, and then withdrew, a mediation process between Complainant and Student regarding the retaliatory stalking. The College also told Complainant that she would not be informed of the outcome of the investigation.
55. Throughout this process, Dean of Students [REDACTED] was inconsistent in her communications with Complainant. For example, [REDACTED] was not clear about whom Complainant should speak with in the Student Life Office and initially told Complainant that Complainant would get a copy of the investigation report, only to subsequently rescind that statement.
56. It was only after the Complainant herself pointed out in February that Student's actions violated the sexual misconduct policy that the College began an appropriate investigation into this conduct.
57. In March, following its investigation, the College determined that Student's actions in hiring private investigators to stalk and intimidate Complainant violated the Policy. This determination is not final and is currently being appealed.



## LEGAL ALLEGATIONS

### A. Legal Framework

58. Title IX provides in relevant part that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a).

59. The United States Supreme Court has recognized that a funding recipient's inappropriate response to a student's report of being sexually harassed or assaulted by another student can constitute a violation of the recipient's responsibilities under Title IX. *See generally Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246 (2009); *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999).

60. The OCR is responsible for enforcing Title IX and the Department of Education's implementing regulations, which prohibit sex discrimination in education programs and activities operated by educational institutions that receive federal financial assistance. *See* 34 C.F.R. § 106.1.

61. The OCR has instructed funding recipients, through a series of policies issued over the course of many years, regarding their obligations under Title IX when responding to students' reports of sexual harassment and sexual violence by fellow students. These policies include but are not limited to:

- U.S. Dept. of Educ. OCR, "Revised Sexual Harassment Guidance: Harassment of Students by school employees, other students, or third parties," (Jan. 2001) ("2001 Guidance");
- U.S. Dept. of Educ. OCR, "Dear Colleague" letter concerning sexual harassment (Jan. 25, 2006) ("2006 Dear Colleague Letter");
- U.S. Dept. of Educ. OCR, "Sexual Harassment: It's Not Academic" (Sept. 2008) ("2008 Guidance");
- U.S. Dept. of Educ. OCR, "Dear Colleague" letter discussing schools' obligations to respond appropriately to incidents of sexual violence (Apr. 4, 2011) ("2011 Dear Colleague Letter"); and
- U.S. Dept. of Educ. OCR, "Dear Colleague" letter concerning retaliation (Apr. 24, 2013) ("2013 Dear Colleague Letter").

62. Together, these OCR publications set forth the standards for Title IX compliance for funding recipients when responding to reports of sexual violence at school, including instructions about what funding recipients may and may not do. The relevant principles are outlined below.

63. When harassing conduct is sufficiently serious, it creates a hostile environment and adversely affects a student's ability to participate in or benefit from the school's program. 2001 Guidance at vi. It is widely recognized that a single incident of rape or sexual assault of a student constitutes conduct sufficiently severe and pervasive to deprive a student of equal access to education. 2011 Dear Colleague Letter at n.10 (citing case law from the Fourth,

- Sixth, and Seventh Circuits as well as district courts); 2001 Guidance at 6; 2008 Guidance at 7.
64. Once a school knows of behavior that creates a hostile environment, it must, under Title IX, “take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.” 2001 Dear Colleague Letter at 4. “The school must conduct a prompt, impartial, and thorough investigation to determine what happened and must take appropriate steps to resolve the situation.” 2008 Guidance at 9.
  65. When conducting an investigation into allegations of sexual misconduct, “the school’s inquiry must in all cases be prompt, thorough, and impartial.” 2011 Dear Colleague Letter at 5.
  66. Title IX also requires that, with regard to the burden of proof applied during adjudication of a complaint, “in order for a school’s grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (*i.e.*, it is more likely than not that sexual harassment or violence occurred).” *Id.* at 11. This is based soundly on the Supreme Court’s application of a preponderance standard in civil claims of discrimination brought under Title VII. *Id.* at 10-11. The school is not in compliance with Title IX if it applies a higher standard, e.g., a “clear and convincing” standard (*i.e.*, it is highly probable or reasonably certain that the sexual harassment or violence occurred)[.]” *Id.* at 11.
  67. During the investigation, Title IX requires that the parties have “equal opportunity to present relevant witnesses and other evidence [and] must be afforded similar and timely access to any information that will be used at the hearing.” *Id.* A school should not hold pre-hearing meetings with only the alleged perpetrator or allow character witnesses at a hearing. If a school allows lawyers to participate at all, “it must do so equally for both parties.” *Id.* A school should also not allow the other party to have access to “information regarding the complainant’s sexual history.” 2011 Dear Colleague Letter at 11, fn. 29.
  68. Proper remedial measures that a recipient may take to eliminate the hostile environment may include: providing an escort to ensure that the complainant can move safely between classes and activities; ensuring that the complainant and alleged perpetrator do not attend the same class; moving the complainant or alleged perpetrator to a different residence hall; providing counseling services; providing medical services; and providing academic support services. 2011 Dear Colleague Letter at 16-17. While there is no specific measure that must be taken in any given situation, the school’s response must be calculated to “eliminate the harassment, prevent its recurrence, and address its effects.” 2011 Dear Colleague Letter at 4. “If harassment has occurred, doing nothing is always the wrong response.” 2011 Guidance at iii.
  69. OCR has made clear that victims must not be required to “work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school.” 2011 Dear Colleague Letter at 8; 2001 Guidance at 21; *see also* 2001 Dear Colleague Letter; *S.S. v. Alexander*, 177 P.3d 724, 730, 740 (Wash. App. Div. 1 2008) (finding a jury question on the question of Title IX liability where the school’s only remedial action was to have the rape victim engage in mediation with her attacker).
  70. It is widely recognized that any remedial measures taken to stop the harassment, including separating the harassed student and the harasser, should minimize the burden on the student who was harassed. 2001 Guidelines at 16. Schools and funding recipients “should not, as a matter of course, remove complainants from classes or housing.” 2011 Dear Colleague

Letter at 16-17; *see also S.S. v. Alexander, supra*, at 740 (school repeatedly suggested that student victim raped by student football player leave her job with the football team). Schools may not respond to sexual violence by further depriving reporting victims of access to education, and they must take steps to eliminate any hostile environment.

71. If the initial action that a school takes is insufficient to end the harassment, the school must employ a series of escalating consequences, as necessary, including taking action to further separate the harasser and the harassed student. 2008 Guidance at 13.
72. Title IX prohibits retaliation against students for reporting sexual harassment. Schools must “take steps . . . to prevent any retaliation against the student who made the complaint.” 2001 Guidance at 17. Schools must “review any disciplinary actions taken against the complainant to see if there is causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.” 2011 Dear Colleague Letter at 17. The school is required to inform the complainant that Title IX prohibits retaliation. If the harasser retaliates against the complainant, the school should take “stronger responsive actions.” 2008 Guidance at 15. Naturally, the recipient may not itself engage in retaliation against the reporting student. 2013 Dear Colleague Letter.
73. Schools also must take steps to remedy the effects of sexual harassment and any resulting exclusion from educational opportunities. 2001 Guidance at 17. This may include counseling and other services. *Id.*

B. Application of Legal Framework to Complainant’s Allegations

74. The College violated its Title IX obligations by using an inappropriate standard of proof when it initially determined in December that Student had not violated the sexual misconduct policy. Though it claimed to be using a “preponderance of the evidence” standard, the standard used systematically discredits intoxicated victims and is, in application, a higher standard and therefore inconsistent with Title IX requirements. 2011 Dear Colleague Letter at 11.
75. The College subjected Complainant to an inherently unfair and biased investigation when Student was permitted to bring in advisors and consultants that ignored the College’s guidelines regarding advisors. These guidelines are in place to ensure a fair process when one party has access to far more resources than the other, and the College’s failure to enforce these guidelines meant that the process was no longer impartial as required by Title IX. *See* 2011 Dear Colleague Letter at 5. The goal of Title IX with regard to conducting investigations is clearly to ensure that all proceedings are equitable for both parties.
76. The College violated its Title IX obligations when it, upon learning of the retaliatory stalking that Complainant faced, failed to “take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.” 2011 Dear Colleague Letter at 4.
77. The College took virtually no action to address the retaliatory stalking or to prevent future harassment. Upon learning of the sexual assault committed by Student against Complainant, the College took no action to protect Complainant pending the investigation and further, allowed Student to retaliate against Complainant by having his investigators stalk her for a month into the investigation by monitoring her social media accounts and tracking down multiple friends and associates of Complainant and misrepresent themselves in order to gain

personal information about her. This is in clear violation of OCR's Guidelines, which state that Title IX recipients must take all necessary interim measures to protect Complainant from harassment pending an investigation by the College. 2011 Dear Colleague Letter. Complainant was forced to demonstrate to the College that the retaliatory stalking engaged in by Student was in violation of its policy prohibiting sexual misconduct rather than the College proactively identifying and ending these behaviors and acting to discipline Student further. This clearly violates OCR's 2008 Guidance stating that the burden of preventing further harassment, even pending a university investigation, should never fall on the Complainant. "Regardless of whether the victim files a formal complaint or requests action, the school must conduct a prompt, impartial, and thorough investigation to determine what happened and must take appropriate steps to resolve the situation." 2008 Guidance at 9.

78. The College's inaction violates its mandate that when a school finds harassment to exist, it must respond in a way that is reasonably calculated to end the harassment and prevent it from recurring. 2011 Dear Colleague Letter at 4. Courts have found that simply requiring a student to continuously face her attacker on campus can constitute "severe and pervasive" harassment in violation of Title IX. *See Doe v. Derby Bd. of Educ.*, 451 F. Supp. 2d 438, 444 (D. Conn. 2006); *Kelly v. Yale University*, 2003 WL 1563424 (D. Conn. 2003). The College's failure to do anything other than warn Student in the face of his repeated violations of the stalking and retaliation provisions of the Policy put Complainant at unnecessary risk of re-victimization in violation of Title IX.
79. The imposition of a mutual no-contact order used as an interim measure against Complainant and Student violates Title IX because it constitutes impermissible retaliation against Complainant for reporting sexual harassment. OCR's 2013 Dear Colleague Letter clearly states that if "an individual brings concerns about possible civil rights problems to a school's attention, it is unlawful for the school to retaliate against that individual for doing so." *Id.* Since the no-contact order required Complainant to stay away from Student's dorm, the College effectively punished Complainant for reporting a sexual assault. A mutual no-contact order contradicts longstanding best practices as recognized by experts because it permits the perpetrator to use the order as a tool to exert control or retaliation against the victim. Among the problems with issuing a mutual no-contact order is that it "encourage[s] society to trivialize the abuse, to consider the abuse too minor to determine the identity of the real abuser. At the same time, such orders also encourage people to blame the victim rather than hold the abuser accountable." Joan Zorza, *What's Wrong with Mutual Orders of Protection?*, in Domestic Violence Rep. (1999). Furthermore, mutual no-contact orders actually function to empower the abuser rather than the victim. Mutual orders reward the abuser empower him, enabling him to focus the system's attention on the victim rather than on himself. *Id.* Mutual no-contact orders can increase the danger to the victim by confusing police as to who the truly dangerous party is and giving the batterer "a sense of legitimacy to her violence." Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 1074 (1993).
80. The College also violated its Title IX obligations by failing to take more effective measures once it became clear that the initial sanction of a no-contact order was insufficient to prevent Student from further harassing Complainant. OCR has clearly stated that a Title IX recipient must employ "a series of escalating consequences" when it is clear that the initial remedial measures that it put in place do not adequately prevent future harassment against Complainant. 2008 Guidance at 13. As stated above, Student engaged in retaliatory stalking of

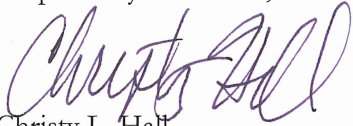
Complainant for a month before the College took any action to stop him, and the action they took was simply to advise him to stop because he might be at risk of violating the College's prohibitions on retaliation and stalking. This occurred even after the no-contact order was in place, indicating that the no-contact order was insufficient to prevent Student from harassing Complainant. When it became clear to the College that the no-contact order was unsuccessful in preventing Student from harassing Complainant, the College was required to take more effective measures, which it failed to do. Instead, the burden was placed on Complainant to pursue a full disciplinary hearing, which would further subject her to trauma and which she had no basis to believe would result in effective remedies.

## **RELIEF REQUESTED**

81. The OCR should fully investigate the College's response to Complainant's report that she was sexually assaulted by another student at school. The OCR should issue a determination describing the College's Title IX violations.
82. The OCR should require the University to remedy the effects of its actions, particularly to prevent Student from further harassing Complainant. The College should implement new remedies that prevent Student from further contacting or harassing Complainant and do not place the burden on Complainant to avoid the harassment. Even though Student is not currently at the College, there should be a record on file with the College of his violations that can be easily accessed and referenced should there be future violations involving Complainant or any other student.
83. The OCR should require the College to implement and enforce stronger policies and procedures governing student safety at school and the schools' response to sexual assault. These policies and procedures should require the College to implement remedies that are likely to prevent future harassment and retaliation, including stalking, against complainants who report sexual abuse and to ensure that the burden of preventing such is never placed on the victim of sexual assault. The College should further be required to implement meaningful measures to remedy the effects that sexual harassment has on victims by providing counseling services and ensuring that victims of sexual harassment are able to participate fully in student life without experiencing future harassment.
84. The College should be required to implement measures to ensure that it correctly follows a preponderance of the evidence standard in its sexual misconduct investigations.
85. The College should ensure that the investigative process is fair and unbiased even if one party has resources far greater than those of the other party. It should enforce its existing policy regarding the role of advisors for students in a sexual misconduct investigation.
86. The College should ensure that any new and existing policies and procedures are enhanced as needed, including by assigning a Title IX Coordinator and a committee of qualified, independent individuals to investigate and adjudicate complaints of sex discrimination in any form, including sexual assault, harassment, or misconduct; differential treatment; gender-based harassment; or retaliation as defined in the College's policies.
87. The College's attempts to meet the requirements of Title IX in remedying the effects of sexual assault and preventing future harassment failed. Accordingly, Complainant respectfully requests that, in addition to the remedies requested above, the OCR (1)

undertake a systematic Compliance Review of the College's compliance with Title IX, (2) appoint an independent monitor to review the College's procedures, and (3) require the College to undergo monitoring and reporting for a period of five years.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Christy L. Hall".

Christy L. Hall  
Jill R. Gaulding  
Lisa C. Stratton

Gender Justice  
Attorneys for Complainant