

No. 22-1056

IN THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

JOHN DOE,

Plaintiff-Appellant,

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,

Defendant-Appellee.

On Appeal from Order of the United States District Court for the District of
Massachusetts

**MOTION OF FAMILIES ADVOCATING FOR CAMPUS
EQUALITY FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN
SUPPORT OF PLAINTIFF-APPELLANT**

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April 14, 2022

Pursuant to 1st Cir. R. 29 (“Rule 29”) and Fed. R. App. 29, Families Advocating for Campus Equality (“FACE”) respectfully moves this Court for leave to file the attached proposed *amicus curiae* brief in support of the Plaintiff-Appellee. No counsel for any party authored any part of this *amicus curiae* brief, and no party or person has made a monetary contribution towards its preparation. The Plaintiff-Appellant, through counsel, has consented to FACE filing this *amicus curiae* brief, and the Defendant-Appellee, through counsel, has stated that they take no position.

Rule 29(a)(3) requires a party seeking to file an amicus brief to, among other things, state “the movant’s interest” and “the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” Here, that is simple: FACE was founded in 2013 by mothers whose sons were put through deeply inequitable Title IX processes, and it exists to offer support to people who have been through what caused them to found the organization in the first place. Organized and operated primarily by women, FACE is the only organization of its kind in the country, having brought together nearly 2,000 accused students, professors, and their families from across the country who were adversely affected by inequitable Title IX disciplinary processes. FACE tells stories few others can or will tell—the stories of accused students who usually have no incentive to tell their own stories publicly, and where the public telling of those

stories can result in severe trauma. FACE hopes with this brief to provide this Court with insight into why students should not be required to suffer the very harm they are suing to vindicate by being forced to sue under their real names, and why students should instead be able to vindicate their rights with additional reputational and emotional damage.

FACE thus respectfully asks this Court to grant its motion to file the attached *amicus curiae* brief.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This Motion complies with the type-volume limitation of Fed. R. App. P.

27(d)(2). This Motion contains 325 words.

/s/ Justin Dillon

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Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2022, I caused to be electronically filed the foregoing Motion and attached *Amicus Curiae* Brief with the United States Court of Appeals for the First Circuit by using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: April 14, 2022

/s/ Justin Dillon

Justin Dillon

Counsel for Amicus Curiae

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CORPORATE DISCLOSURE STATEMENT

Amicus curiae is a non-profit entity that does not have a parent corporation. No publicly held corporation owns 10 percent or more of any stake or stock in *amicus curiae*. To the best of the knowledge of *amicus curiae*, there is no publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome.

/s/ Justin Dillon

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STATEMENT OF INTEREST OF AMICUS CURIAE¹

Families Advocating for Campus Equality (“FACE”), a 501(c)(3) non-partisan non-profit organization, advocates for people affected by biased or procedurally deficient sexual misconduct disciplinary processes.² FACE is the only nonpartisan and gender-neutral organization of its type.³ It supports fair and equitable Title IX rights and protections for *all* parties in sexual misconduct disputes. In support of its mission, FACE leadership and the students it represents have met with hundreds of state and federal legislators and officials from the Department of Education’s Office for Civil Rights (“OCR”) and the Department of Justice.⁴

Since 2013, over 2000 families and students have sought help from FACE. Attached as Exhibit I in the Appendix are 17 accounts of students who have endured inequitable and result-driven campus disciplinary proceedings without adequate process. And that is just the tip of the iceberg. Every week, FACE receives anywhere

¹ No person or entity other than amicus and its counsel assisted in or made a monetary contribution to the preparation or submission of this brief.

² Families Advocating for Campus Equality (“FACE”) has provided support to accused male and female students and accused heterosexual and LGBTQ+ students.

³ FACE, *Homepage*, available at <https://www.facecampusequality.org> (last visited Apr. 11, 2022).

⁴ *See, e.g.*, FACE, *Comment on Proposed Title IX Rulemaking* (Jan. 30, 2019), available at <https://static1.squarespace.com/static/5941656f2e69cffcdb5210aa/t/5ccbd44ff4e1fcdaca50141f/1556862039627/FACE+NPRM+TITLE+IX+COMMENT+Docket+No.+ED-2018-OCR-0064+ed.+copy.pdf> (last visited Apr. 11, 2022).

from four to 20 distraught calls and emails from accused students and their families.⁵ Since 2016, that has included over 100 families of K-12 students, some of whom have been as young as six. Students often believe it when they are told they'll be fine if they just tell the truth.⁶ Many are then blindsided by campus attorneys and administrators who act as overly zealous prosecutors—who have lost sight of achieving a just outcome and focus instead on compiling evidence to establish an accused's guilt while denying them access to an experienced advocate, attorney, or even a parent.⁷ Schools have denied the accused details of the accusations,⁸ access to the evidence relied on to find them responsible,⁹ and the opportunity to question

⁵ Exhibit II, FACE Vice President Shelley Dempsey's report on intake calls and emails, at 3.

⁶ *See, e.g.*, Exhibit I at 12 (Student 8 assumed that “the truth would set [him] free”).

⁷ Complainants have also suffered. *See* Robby Soave, *Here Is Every Crazy Title IX Rape Case Betsy DeVos Referenced, Plus a Bunch More*, Reason (Sept. 7, 2017), <https://reason.com/2017/09/07/devos-title-ix-example-cases-rape/> (An alleged victim said, “When I told the truth, . . . I was stereotyped and was told I must be a ‘battered’ woman, and that made me feel demeaned and absurdly profiled.”); *see also* Kayla Schierbecker, *Athlete accused of rape by Colorado State – not his sex partner – is getting paid to drop the lawsuit*, The College Fix (Jul. 19, 2017), <https://www.thecollegefix.com/athlete-accused-rape-colorado-state-not-sex-partner-getting-paid-drop-lawsuit/> (alleged victim stated that sex was consensual and did not make accusation against student).

⁸ Exhibit I at 14 (Student 9 was not informed of the allegations, allowed to respond, or given a hearing).

⁹ *Id.* at 4-5 (In Student 4's case, the school ignored exculpatory evidence, was biased, and did not probe accuser's story or allow Student 4's attorney to speak.); *id.* at 7 (In Student 5's case, single investigator did not collect available evidence

their accusers and witnesses. Schools have also ignored accused students' lack of harmful intent or good-faith beliefs and dispensed with any presumption they may be innocent.

Justice comes at a high price for those accused of sexual misconduct: at every level of education, disabled students, students of color,¹⁰ first-generation college students, and those without resources to retain legal assistance are more likely to be disadvantaged by inequitable disciplinary procedures.¹¹ Although the 2020 Title IX Regulations ("Final Rules")¹² have likely increased decision-making accuracy, many cases, including the one before this Court, were addressed under pre-2020 regulations and guidance.

or follow up on inconsistencies, and accuser's story was never probed.); *id.* at 24 ("It was the willingness to disregard hard evidence and deceitful behavior of the accuser that led to \$150,000 in direct costs to [Student 13's] family. . . . At every step, there was another person not following their own rules. . . .").

¹⁰ Exhibit III (depicting data from *Plaintiff Demographics in Accused Student Lawsuits*, Title IX for all (Jul. 7, 2020), <https://www.titleixforall.com/wp-content/uploads/2020/07/Plaintiff-Demographics-by-Race-and-Sex-Title-IX-Lawsuits-2020-7-6.pdf>).

¹¹ Exhibit I at 20 (Student 12's mother reported that because theirs was "a middle-class family, we could not afford legal representation. . . . [O]ur son's father had to take off work, travel to the school, get a hotel, and assist him in preparing for and advising him during the investigation.").

¹² Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30026 (May 19, 2020) (codified at 34 C.F.R. Pt. 106) ("Final Rules").

SUMMARY OF ARGUMENT

In this brief, FACE hopes to illustrate the desperate need for students accused of sexual misconduct to file pseudonymous lawsuits, which are often their last hope for justice. Title IX decision-making can be notoriously unreliable, as illustrated by approximately 800 post-2011 lawsuits filed by accused students over schools' flawed disciplinary proceedings,¹³ 224 court rulings in their favor,¹⁴ and 208 federal case settlements.¹⁵

Put plainly, our argument is this: Students should not be required to suffer *the very harm they are suing to vindicate* by being forced to sue under their real names. In this day and age, it is hard to gainsay the fact that when most people hear the phrase “falsely accused rapist,” they ignore the first two words.

¹³ *Title IX Lawsuits Database*, Title IX for All, <https://titleixforall.com/title-ix-legal-database/#title-ix-lawsuits-database/database-gateway/> (last visited Apr. 11, 2022).

¹⁴ KC Johnson, *Post Dear-Colleague Letter Rulings/Settlements, Favorable to Student*, available at https://docs.google.com/spreadsheets/d/1CsFhy86oxh26SgTkTq9GV_BBrv5NA_A5z9cv178Fjk3o/edit#gid=0 (last visited Apr. 11, 2022).

¹⁵ KC Johnson, *Post Dear-Colleague Letter Rulings/Settlements, Fed'l pre-decision settlements*, available at https://docs.google.com/spreadsheets/d/1CsFhy86oxh26SgTkTq9GV_BBrv5NA_A5z9cv178Fjk3o/edit#gid=877378063 (last visited Apr. 11, 2022); KC Johnson, *Post Dear-Colleague Letter Rulings/Settlements, Fed'l post decision settlements*, available at https://docs.google.com/spreadsheets/d/1CsFhy86oxh26SgTkTq9GV_BBrv5NA_A5z9cv178Fjk3o/edit#gid=1506863034 (last visited Apr. 11, 2022).

Without anonymity, falsely accused students will be faced with an impossible choice: sue and be forever known as someone who was accused of sexual misconduct, or walk away and live with the scarlet letter of a false finding. The First Circuit should thus follow the vast majority of district courts that have permitted accused students to proceed pseudonymously.

ARGUMENT

Too often, students who are accused of sexual misconduct or sexual harassment are presumed guilty, and schools then strive to *prove* them guilty, rather than fairly and accurately assess the evidence. A mere accusation can, far too often, be a presumptive guilty verdict.

Today, victimhood often enjoys a privileged status in our culture. “Someone who has been the victim of a crime, especially if that someone is female, is ‘brave’ or ‘determined’ or ‘a survivor.’”¹⁶ In contrast, there is no benefit for accused students to cite a favorable school or court decision as evidence the accusation was false—it will be assumed that he or she just “got off.” There is a “dangerous mob mentality that has stymied meaningful discussion and fostered unbalanced changes. . . . Anecdotes are driving policy. The only ones being told, however, are of alleged

¹⁶ Reggie Yager, *What’s Missing from Sexual Assault Prevention and Response* 99 (Apr. 22, 2015) (working draft), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2697788 (last visited Apr. 11, 2022).

sexual assault victims.”¹⁷

This dichotomy is particularly true in the campus context, where it’s “heads I win, tails you lose” for complainants. If complainants “win,” they are honored for their bravery in speaking out. If they “lose,” they still claim victimhood and accuse the school of ignoring their trauma, often on social media. It is *that* narrative, and not the narratives of the wrongly accused, that dominates the media. FACE cannot begin to remedy the asymmetry in the public narrative with one brief, but we can make the Court aware of the voices of the accused, who go too often unheard.

To that end, Exhibit I includes accounts of 17 FACE students who were wrongly accused of sexual misconduct. In at least eight of the 17 cases, public disclosure of their names contributed to severe trauma and reputation damage.¹⁸ Even absent publicity, trauma resulted in seven cases, including three in which the student was found not responsible.¹⁹

In nine of the 17 cases, either no complaint ever was filed, the student was found not responsible, or the decision was favorably reversed by the school or a

¹⁷ *Id.* at 36-37.

¹⁸ Exhibit I at 1-2 (Student 1), 2-3 (Student 2), 3-4 (Student 3), 7-11 (Student 7), 18-21 (Student 12), 21-24 (Student 13), 25-27 (Student 15), and 28-29 (Student 17).

¹⁹ *Id.* at 4-5 (Student 4), 7 (Student 6), 11-13 (Student 8), 15-17 (Student 10, found not responsible (“NR”)), 17-18 (Student 11, found NR), 18-21 (Student 12, found NR), and 24-25 (Student 14).

court.²⁰ In seven of those nine cases in which students were not responsible or exonerated, the students still suffered both severe trauma and reputational harm based only on the accusation.²¹ Three of those nine students successfully pursued John Doe lawsuits.²²

I. DUBIOUS DECISION-MAKING

A. “Kangaroo Courts”

Before the Final Rules took effect, Title IX investigations were virtually devoid of anything resembling fair process. Accused students were often given little notice of the allegations against them, discouraged from hiring attorneys, and not permitted to question their accusers. **Student 5**’s family referred to their experience as “harrowing” and “wondered out loud ‘how could this happen in America?’”²³

Like the Plaintiff, students in 14 of 17 cases endured discriminatory, biased, or unconstitutional proceedings.²⁴ Ten of those suffered severe reputational harm,

²⁰ *Id.* at 1-2 (Student 1), 2-3 (Student 2), 7 (Student 6), 11-13 (Student 8), 13-15 (Student 9), 15-16 (Student 10), 17-18 (Student 11, found NR), 18-21 (Student 12, found NR), and 21-24 (Student 13, found NR).

²¹ *Id.* at 1-2 (Student 1), 2-3 (Student 2), 3-4 (Student 3), 15-17 (Student 10), 17-18 (Student 11), 18-21 (Student 12), and 21-24 (Student 13, whose case was reversed on appeal).

²² *Id.* at 7 (Student 6), 11-13 (Student 8), and 15-17 (Student 10).

²³ *Id.* at 6.

²⁴ *Id.* at 1-2 (Student 1), 4-5 (Student 4), 5-7 (Student 5), 7 (Student 6), 7-11 (Student 7), 11-13 (Student 8), 13-15 (Student 9), 15-16 (Student 10), 17-18 (Student 11), 18-21 (Student 12), 21-24 (Student 13), 24-25 (Student 14), 25-27 (Student 15), and 27-28 (Student 16).

loss of jobs, and other opportunities.²⁵ One student was criminally charged but acquitted, and three were investigated by law enforcement after accusers filed complaints.²⁶

Because the events alleged in Plaintiff’s complaint occurred before 2020, he did not benefit from the 2020 Final Rules’ clarification of previously “vague and inconsistent” policies,²⁷ the scope of conduct that falls under Title IX, and the methods schools must use to reach accurate and equitable resolutions. The Rules require fundamental procedures like respondents be informed of the details of the allegations, a full presentation and consideration of evidence, and an advocate to assist them in questioning other parties or witnesses and in asserting their defenses. All of these procedures facilitate a school’s ability to thoroughly probe allegations, increasing the likelihood of accurate findings.

²⁵ Exhibit I at 1-2 (Student 1), 2-3 (Student 2), 3-4 (Student 3), 7 (Student 6), 7-11 (Student 7), 11-13 (Student 8), 17-18 (Student 11), 21-24 (Student 13), 25-27 (Student 15), and 27-28 (Student 16).

²⁶ *Id.* at 1-2 (Student 1, grand jury issued no bill), 2-3 (Student 2, arrested but not charged), 21-24 (Student 13, not guilty after trial), and 27-28 (Student 16, investigated but not charged).

²⁷ Jake New, *Must vs. Should: Colleges say the Department of Education’s guidance on campus sexual assault is vague and inconsistent*, Inside Higher Ed (Feb. 25, 2016), <https://www.insidehighered.com/news/2016/02/25/colleges-frustrated-lack-clarification-title-ix-guidance>; see also Samantha Harris and KC Johnson, *Campus Courts in Court: The Rise in Judicial Involvement in Campus Sexual Misconduct Adjudications*, 22 NYU J. LEGIS. & PUB. POL’Y 49, 58-62 (2020), available at <https://nyujlpp.org/wp-content/uploads/2019/12/Harris-Johnson-Campus-Courts-in-Court-22-nyujlpp-49.pdf> (last visited Apr. 11, 2022).

B. “Believe the Victim”?

The pre-2020 OCR guidance applied in Plaintiff’s case discouraged cross-examination, required a lower, less reliable standard of proof,²⁸ and minimized process due to the accused.²⁹ The following heightened the likelihood of erroneous findings: gendered and stereotypical assumptions by investigators and decision-makers about how sexual partners interact³⁰ and reliance on policies that excluded

²⁸ John Villasenor, *A probabilistic framework for modeling false Title IX ‘convictions’ under the preponderance of the evidence standard*, 15 LAW, PROBABILITY AND RISK, 223–237 (2016), available at <https://doi.org/10.1093/lpr/mgw006> (last visited Apr. 11, 2022) (estimated risk of error for preponderance standard to be 30%); Catherine Burr, *False Allegations of Sexual Harassment: Misunderstandings and Realities*, Academic Matters (Oct. 1, 2011), <https://academicmatters.ca/false-allegations-of-sexual-harassment-misunderstandings-and-realities/>.

²⁹ For example, “schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.” United States Department of Education, Office of the Assistant Secretary for Civil Rights, Dear Colleague Letter (2011) at 12, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> (last visited Apr. 11, 2022).

³⁰ Examples abound: a court denied motion to dismiss because a plaintiff “plausibly established a causal link between his expulsion and gender bias,” including because “gender bias could be inferred from” a presentation one of the decision-makers had given. *Doe v. Washington & Lee Univ.*, No. 6:14-CV-00052, 2015 WL 4647996, at *10 (W.D. Va. Aug. 5, 2015). In that presentation, the decision maker endorsed an article that “posit[ed] that sexual assault occurs whenever a woman has consensual sex with a man and regrets it because she had internal reservations that she did not outwardly express.” *Id.* at *10. In another case, where the court denied the school’s Motion for Summary Judgment with respect to five claims, the Title IX coordinator said “she ‘just [couldn’t] imagine everything would have played out exactly the same if he were the woman and

potentially exculpatory evidence based on unscientific “trauma-informed” theories.³¹

C. Wrongful Allegations and Inaccurate Findings

While the #MeToo movement has allowed sexual misconduct victims to express their pain and anger, it also has also allowed untested allegations to ruin lives. “The tragedies of wrongly accused are extensive. It begs the question, how has a false accuser been given so much power to create so much harm with just an accusation? That alone accounts for the strong reaction an accusation can generate.”³²

she were the man” because it was “hard for [her] to wrap [her] head around that scenario.” *Doe v. Quinnipiac Univ.*, 404 F. Supp. 3d 643, 659 n.2 (D. Conn. 2019). In another case, a school official “allegedly asked the male student ‘*were you aroused*’ by this unwanted touching? When the student responded, ‘*no*,’ [the official], in apparent disbelief, allegedly asked the male student again, ‘*not at all?*’” *Doe v. Marymount Univ.*, 297 F. Supp. 3d 573, 585–86 (E.D. Va. 2018) (emphases added). The court ruled that this allegation, accepted as true, revealed that the school official’s “decision-making was infected with impermissible gender bias, namely [the] discriminatory view that males will always enjoy sexual contact even when that contact is not consensual.” *Id.* at 586.

³¹ These theories assume that a complainant’s conduct or statements inconsistent with having been assaulted are normal “counterintuitive victim behavior,” and thus disregarded as evidence. Cynthia P. Garrett, *Trauma-Informed Theories Disguised as Evidence* 2-5, FACE (May 2, 2019), available at <https://static1.squarespace.com/static/5941656f2e69cffcdb5210aa/t/5ccbd3c153450a492767c70d/1556861890771/Trauma-Informed+Theories+Disguised+as+Evidence+5-2.pdf> (last visited Apr. 11, 2022).

³² Yager, *supra* n.16, at 36.

False allegations and inaccurate findings of responsibility are more likely to happen on college campuses, where young people often “spread their wings” for the first time and negotiate complicated personal and sexual relationships. FACE student cases have included a “complainant’s attempts to conceal or deny discovered infidelity;”³³ “consensual sexual activity that is subsequently regretted”;³⁴ and “historic complaints following the breakdown of a relationship.”³⁵

Of course, allegations may not be *intentionally* false; there are misperceptions in the interpretation of behavior, such as that almost half of college-age women believe their “nod in agreement” doesn’t indicate consent.³⁶ Additionally, memories can be contaminated, particularly in the 78% of cases involving alcohol,³⁷ and

³³ Exhibit I at 24-25 (Student 14’s case involved an accusation after the breakup, concerning an incident that allegedly occurred months before the breakup).

³⁴ John Erwin, *Missing The Mark; False Allegations in the U.S. Government* (Oct. 10, 2014), available at <https://www.dropbox.com/s/8d55715osghazbp/Erwin%2C%20MISSING%20THE%20MARK%2C%20False%20Allegations%20in%20the%20U.S.%20Government.pdf?dl=0> (last visited Apr. 11, 2022).

³⁵ Candida Saunders, *The Truth, The Half-Truth, and Nothing Like the Truth: Reconceptualizing False Allegations of Rape*, 52 BRIT. J. OF CRIMINOLOGY, 1152–1171 (2012), available at <http://bjc.oxfordjournals.org/content/52/6/1152.full.pdf>.

³⁶ Nick Anderson, and Peyton M. Craighill, *College students remain deeply divided over what consent actually means*, Wash. Post (June 14, 2015), https://www.washingtonpost.com/local/education/americas-students-are-deeply-divided-on-the-meaning-of-consent-during-sex/2015/06/11/bbd303e0-04ba-11e5-a428-c984eb077d4e_story.html.

³⁷ EduRisk, *Confronting Campus Sexual Assault: An Examination of Higher Education Claims* 6, EduRiskSolutions.org (Feb. 2015), available at

distorted by peer influence, social barometers, and ideology,³⁸ which infuses not only the disciplinary process but the entire campus belief system.³⁹

II. SEVERE REPERCUSSIONS AND IRREPARABLE DAMAGE

In today's cultural and political environment, publishing Plaintiff's name will trigger irreparable damage to his reputation and his emotional stability.⁴⁰ Exposing the name of a student who claims to have been wrongly accused, particularly one who is seeking relief from the justice system, ensures that no matter how the court rules, the false accusation will haunt him forever.

Even in cases without widespread name disclosure, innocent FACE students have suffered severe trauma.⁴¹ The stigma of being accused of something so vile that

http://www.ncdsv.org/ERS_Confronting-Campus-Sexual-Assault_2015.pdf (last visited Apr. 11, 2022).

³⁸ Robert A. Nash and James Ost, *False and Distorted Memories* 55 (Kindle ed. 2017).

³⁹ Garrett, *supra* n.31, at 5, 10.

⁴⁰ Yager, *supra* n.16, at 5 (explaining “how devastating false accusations can be and why we should be concerned with protecting the wrongly accused”).

⁴¹ Exhibit I at 1-2 (Student 1), 4-5 (Student 4), 7 (Student 6), 11-13 (Student 8), 14-15 (Student 9), 15-17 (Student 10), 18-21 (Student 12), and 24-25 (Student 14). The majority of FACE students, even when found not responsible, are too frightened to provide an account of their experiences, even anonymously, fearing they will be identified and tormented. This is true whether a student is found responsible. *See, e.g.*, Emily Yoffe, *The Uncomfortable Truth About Campus Rape Policy*, Atlantic (Sept. 6, 2017), <https://www.theatlantic.com/education/archive/2017/09/the-uncomfortable-truth-about-campus-rape-policy/538974/> (“At many schools, the rules intended to protect victims of sexual assault mean students have lost their right to due

it would ruin friendships and derail long-planned educational goals is enough for some FACE students to have considered suicide. The internet is full of stories of students and others who ended their lives, some even after being proven innocent.⁴²

process—and an accusation of wrongdoing can derail a person’s entire college education.”)

⁴² See, e.g., Robby Soave, *Lawsuit: Male Student Accused of Sexual Harassment for Rejecting Gay Advances Commits Suicide After Title IX Verdict*, Reason (Apr. 12, 2017), <https://reason.com/2017/04/12/lawsuit-male-student-accused-of-sexual-h/>; Jonathan Taylor, *Accused student commits suicide in wake of Occidental’s Title IX investigation*, Title IX for All, Mar. 10, 2019, <https://titleixforall.com/accused-student-commits-suicide-in-wake-of-title-ix-investigation/> (student intentionally overdosed after being found responsible); Anemona Hartocollis, *He Was Accused of Enabling Abuse. Then Came a Downward Spiral*, N.Y. Times (Jan. 9, 2020), <https://www.nytimes.com/2020/01/04/us/dartmouth-lawsuit-bucci.html> (“[School official] was blindsided when seven female students later named him in a lawsuit . . . accusing him of looking the other way and intimidating those who had spoken out. He grew deeply distressed, his wife and closest colleagues said, especially after he was advised not to complicate the litigation by defending himself publicly.”); Stephanie Linning, *Sister of a boy, 17, who killed himself after being falsely accused of rape by a girl whose mother said 'I'm going to f***** get him' breaks down as she recalls the night he was found hanging from a tree they played on as children*, Daily Mail (Sept. 10 2020), <https://www.dailymail.co.uk/femail/article-8718345/Sister-boy-17-killed-falsely-accused-rape-shares-ordeal.html> (“The girl dropped the charges after two weeks but by then Jay, who was described as a ‘gentleman’ and ‘intelligent,’ had already ‘spiraled completely”); Tanveer Mann, *Mother of teen who hanged himself over false rape allegations commits suicide*, Metro (Jul. 29, 2016), <https://metro.co.uk/2016/07/29/mother-of-teen-who-hanged-himself-over-false-rape-allegations-commits-suicide-6037994/> (similar); Jen Juneau, *Parents of Stanford Soccer Star Katie Meyer Open Up About Her Death: ‘Worst Nightmare,’* People (Mar. 4, 2022), <https://people.com/sports/stanford-soccer-player-katie-meyer-parents-open-up-about-her-death-today-show/> (According to Katie’s dad Steven, before her death, she “was defending a teammate on campus over an incident and the repercussions of her defending that teammate (were possibly resulting in disciplinary action)”).

Name disclosure compounds this trauma and further isolates the accused. For example, though never formally accused under Title IX, **Student 3**⁴³ was a well-known athlete who had competed nationally, had athletic sponsors, and had a huge social media presence, when an anonymous accuser named him on Instagram along with 75-100 other students after a school rally. Based only on that anonymous allegation, within minutes, **Student 3** “started receiving death threats,” and “[w]ithin 24 hours[,] he had lost his athletic sponsors, reputation, and was suicidal.”⁴⁴ His parents said that the reputational impacts are ongoing and severe, and that **Student 3** has been suicidal:

It’s been almost a year and my son goes into deep depression and has a tremendous amount of anxiety. He moved but still runs into people he knows. He is constantly worried that someone is going to contact his employer with one of the social media posts. He has no idea how to repair the damage that was done to his reputation. This was a happy, confident college student with hundreds of friends and now he wants to hide.⁴⁵

Student 3’s entire family has suffered greatly: “We are a local family so it was the worst day of our lives. My son went from being well liked and looked up to, to a sexual predator and rapist.”⁴⁶

The campus sexual misconduct process itself can cause severe trauma, even

⁴³ Exhibit I at 3-4 (Student 3).

⁴⁴ *Id.* at 3.

⁴⁵ *Id.* at 4.

⁴⁶ *Id.*

without a finding of responsibility. For example, though **Student 1** was not found responsible, he was subjected to three different adjudication processes over the same allegation. **Student 1** was so traumatized by the accuser's relentless harassment (three sequential complaints in different venues) and the school's refusal to protect him from vindictive accusations, that he attempted suicide by drug overdose.⁴⁷ His psychiatrist has diagnosed him with PTSD and extreme anxiety, which causes "panic attacks so severe often he cannot function."⁴⁸ His condition "directly resulted from the multiple, unfair, and unequal campus adjudications held without a presumption of innocence and social pressure of rumors that he is a rapist."⁴⁹

Student 6,⁵⁰ who filed a successful lawsuit, "was dragged through a university disciplinary process that shocked me to my core."⁵¹ **Student 6** was unable to present witnesses, and his pre-submitted questions were denied:

I was not allowed to question my accuser or any of her witnesses personally or through an advisor, I was not allowed to even question parts of my accuser's story, and the university refused to provide any details of the accusation until after the investigation had concluded.⁵²

⁴⁷ *Id.* at 1-2 (Student 1).

⁴⁸ *Id.* at 2.

⁴⁹ *Id.*

⁵⁰ *Id.* at 7 (Student 6).

⁵¹ *Id.*

⁵² *Id.*

According to **Student 11**'s parent,⁵³ though he was found not responsible, “[t]he havoc it wreaked and the emotional toll it took on our family and community was mind blowing to all that hear about it.”⁵⁴ The family “never expected to pay thousands of dollars to exonerate our son from something that would have taken 30 minutes in a real investigation with people who are trained in this sort of thing to figure out.”⁵⁵

Student 12⁵⁶ was accused by a “disturbed and delusional” complainant who had also accused five other men, and “harassed, stalked, and attempted to publicly humiliate our son and his fiancée,” which “the university was unwilling to address.”⁵⁷ The experience took “an emotional, physical, and monetary toll” on **Student 12**, his family, and his fiancée.⁵⁸ While he was found not responsible, “what our son went and continues to go through is similar to the emotional trauma that a rape victim experiences. Our son is the actual victim of Title IX and the April 4, 2011, Dear Colleague Letter.”⁵⁹

The parent of **Student 10**,⁶⁰ who pursued a successful lawsuit, reports that

⁵³ Exhibit I at 17-18 (Student 11).

⁵⁴ *Id.* at 18.

⁵⁵ *Id.*

⁵⁶ *Id.* at 18-21 (Student 12).

⁵⁷ *Id.* at 19-20.

⁵⁸ *Id.* at 21.

⁵⁹ *Id.* at 21.

⁶⁰ *Id.* at 15-17 (Student 10).

even though their son was found not responsible, the process was traumatic and “the effects of the process [have] been life altering for our entire family.”⁶¹

Student 7’s case⁶² was “*he said she said*,” without drugs, alcohol, or even sexual intercourse, yet a “no contact order” was served “in the middle of the night” because of an allegation of “inappropriate touching.”⁶³ His “friends watch[ed] [him] be escorted away like a criminal. You don’t even know why this is happening, you only know an accusation was made and no one wants to hear your side of the story.”⁶⁴ **Student 7** was not even “allowed to know who was on his hearing panel.”⁶⁵ He was found responsible. His mom explained “[t]he effects and impact of being wrongly accused are real. The stigma and vilification of being labeled a ‘sex offender’ cannot be underestimated.”⁶⁶

The inability to fully clear one’s name can cause extreme pain and embarrassment. Being accused changes your ability to return trust and it is difficult to return to being the valued person you were before the accusations. . . . Self-blame, suicidal thoughts, paranoia, anxiety, mistrust, social withdrawal, and isolation are all commonly seen in many who have gone through similar [‘]educational processes.[’]⁶⁷

⁶¹ Exhibit I at 17.

⁶² *Id.* at 7-11 (Student 7).

⁶³ *Id.* at 7-8.

⁶⁴ *Id.* at 8.

⁶⁵ *Id.* at 10.

⁶⁶ *Id.*

⁶⁷ *Id.*

When **Student 7**'s family expressed their shock at the unfairness of the process, the Title IX director admitted, "There was a lot of pressure from the Federal Government and that this is just how things work."⁶⁸

Student 2⁶⁹ had his name "published in local newspapers, and rumors spread around our high school where my daughter is a student and the town where I am a teacher. . . . There were marches on campus where he was named as part of the school's 'rape culture.'"⁷⁰ His mother reports:

I cannot express how traumatic this false accusation has been to him and our family as a whole. We've had many tearful days and hearing him say that he'll be explaining this false allegation for the rest of his life just breaks our hearts. He has had to rethink his entire life journey and we have learned that this is a rollercoaster and we have to take it one day at a time. In our darkest moments, all of us would be crying at the same time about the nightmare we never could have imagined. He sees a therapist for trauma, as do the other members of our family. I can only hope that in time, he heals and he can resume his positive outlook on life once again.⁷¹

In today's society, publication of Plaintiff's name will trigger irreparable damage to his reputation and emotional stability.⁷² Even without name disclosure,⁷³

⁶⁸ Exhibit I at 9.

⁶⁹ *Id.* at 2-3 (Student 2).

⁷⁰ *Id.*

⁷¹ *Id.* at 3.

⁷² Yager, *supra* n.16, at 5.

⁷³ The information may be communicated to employers, transfer schools, and the like, causing the student to be fired, expelled, and otherwise prevented from being a contributing member of society.

innocent students suffer unimaginable trauma, many despite having been found not responsible.⁷⁴

Numerous reports can be found online about wrongly accused students and others who have attempted to end or succeeded in ending their lives, some despite being proven innocent. FACE students are no different—many have considered suicide, including at least eight of the 17 in Exhibit I.⁷⁵ Three have attempted,⁷⁶ and we know some have succeeded.⁷⁷

Student 8,⁷⁸ also driven to attempt suicide, says “the impact of this ordeal on my life and my psyche cannot be overstated.”⁷⁹

After I was found Responsible and removed from campus, I quickly descended into what my good friend Joseph Roberts described in his recent article in *USA Today* as the ‘all-too-familiar pattern for the falsely accused: isolation from friends and family, loss of reputation, depression, substance abuse, [and a] suicide attempt.’⁸⁰

Though **Student 8** “was eventually able to prove [his] innocence in a court of law after spending thousands of dollars,” he worked “five long years” to do so.⁸¹ “That’s

⁷⁴ Yoffe, *supra* n.41; Linning, *supra* n.42.

⁷⁵ Exhibit I at 1-2 (Student 1), 3-4 (Student 3), 7-11 (Student 7), 11-13 (Student 8), 13-15 (Student 9), 24-25 (Student 14), 25-27 (Student 15), and 27-28 (Student 16).

⁷⁶ *Id.* at 1-2 (Student 1), 11-13 (Student 8), and 13-15 (Student 9).

⁷⁷ *See, supra* n.42, for examples of suicide cases following false allegations.

⁷⁸ Exhibit I at 11-13 (Student 8).

⁷⁹ *Id.* at 11.

⁸⁰ *Id.*

⁸¹ *Id.*

half a decade of total professional stagnation and unrelenting psychological turmoil.”⁸² Even though **Student 8**’s lawsuit succeeded, “much of the damage to my reputation and spirit remained. One spurious allegation and a small handful of complicit university administrators was all that it took to irreparably alter my life trajectory.”⁸³

Student 9⁸⁴ suffered through a single investigator process in which he was not informed of the allegations or allowed to respond. He was ultimately hospitalized for attempted suicide spurred by retaliation from his accuser, “in the form of another accusation by one of the accuser’s friends for having presented an appeal that raised procedural irregularities and was subject to another equally flawed and procedurally corrupt process.”⁸⁵ As a result of “what was happening to him,” **Student 9** attempted suicide and “was Baker Acted and hospitalized for 3 days.”⁸⁶ Unlike the complainant, he had to pay for his own support, and the single-income family spent “\$25,000 just to defend our son from an overzealous and unfair process that threatened not only [his] educational and professional future but also his very life.”⁸⁷

Student 15⁸⁸ was also driven to attempt suicide, and his description of the

⁸² Exhibit I at 11.

⁸³ *Id.* at 11.

⁸⁴ *Id.* at 13-15 (Student 9).

⁸⁵ *Id.* at 15.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 25-27 (Student 15).

repercussions he suffered *before having even been found responsible* illustrates the trauma that results when accusations are taken as fact:

What followed were two weeks of personal hell. I was threatened, assaulted, cut off, and ostracized. My friends were stopped by people I hardly knew in the cafeteria, and still other friends refused to hang out with me in public, specifically citing fear of social retribution. I left the school, and returned home, not out of guilt but out of a fear I have not experienced before or since. I have spent the past 10 months trying to bring my life back together. Despite the promise from the school that process would only take 45 days max, it took eight months. Eight months of waiting, interviews, written statements, and a deep, lasting trauma. Trauma that drove me towards substance abuse, suicide, and an ingrained fear in my psyche. I am no longer a fearless public speaker, nor is a masters' program likely on the table. Instead, everything I worked so hard for was destroyed the moment I left the school.⁸⁹

Student 15 admitted, "I am shaking writing just this."⁹⁰

The mother of **Student 13**,⁹¹ who was found innocent in a court of law and whose Title IX case was reversed on appeal, says, "[w]hat my son went through, no one should have to go through, the depression caused by the process is heart wrenching."⁹²

On Christmas Eve 2016 I held my son while he cried non-stop for 2 hours after he left work due to his anxiety, he lost his job a week later. He lived in fear while being on bond for 15 months. Fear of people finding out. He lost all his friends and his educational opportunities. It was the rush to believe by the college TIX administrators, Dean of Students office, and the Campus Police that caused my son and my

⁸⁹ Exhibit I at 26.

⁹⁰ *Id.* at 26.

⁹¹ *Id.* at 21-24 (Student 13).

⁹² *Id.* at 23.

family to live the surreal experience of facing a criminal trial while concurrently dealing with a TIX kangaroo court.⁹³

The trauma does not go away: “This process has cost us in so many ways; our health, welfare, trust, happiness, and a significant financial set back.”⁹⁴

Student 17⁹⁵ was originally “accused almost 6 months after a night of consensual sex followed by a second night that the accuser admits was consensual.”⁹⁶ Though the accuser continued to pursue him, including “initiating sex and . . . returning the following day for what she calls consensual sex,” he was still found responsible “because one of her witnesses stated she had been drinking.”⁹⁷

Sexual misconduct allegations have staying power. In **Student 17**’s case, a #MeToo campaign was waged years after the original accusation when he was named on Instagram in three anonymous posts.

The word spread through our neighborhood and his high school. His new school was contacted. His high school was contacted. His phone number and our address were all over Instagram. Our younger daughter, then at the same high school, was threatened. I was threatened. My son lost every single friend he had. Every single one.⁹⁸

Student 17’s family was forced to move. They know this will come up again, so they don’t post on social media: “We live in fear that someone in our new community

⁹³ Exhibit I at 23-24.

⁹⁴ *Id.* at 23.

⁹⁵ *Id.* at 28-29 (Student 17).

⁹⁶ *Id.* at 28.

⁹⁷ *Id.*

⁹⁸ *Id.* at 29.

will have a tie to our old. Instagram finally took down the posts but the damage is done and irreparable. For him, for his sister and for us.”⁹⁹

Student 14¹⁰⁰ was accused by an ex-girlfriend from whom he had recently separated. The accusation, for an alleged incident that took place one month into what would become their *seven-month relationship*, was for “digital penetration without consent.”¹⁰¹ **Student 14** was found responsible and “has been suicidal, withdrawn, angry, sad, embarrassed, isolated, and shocked that a relationship turned sour could potentially ruin his life.”¹⁰² His parents “are absolutely shocked and outraged” at what their son was forced to endure.¹⁰³

CONCLUSION

Campus sexual misconduct proceedings are often rife with bias and procedural defects—especially under the pre-Final Rules processes that were applied in Plaintiff’s case and are still applied in many cases. If Plaintiff had been provided the kind of process he would have received in a court of law, the District Court’s decision to deny him use of a pseudonym might make sense. But campus tribunals are *not* courts of law, and hundreds of court decisions across the country

⁹⁹ Exhibit I at 29.

¹⁰⁰ *Id.* at 24-25 (Student 14).

¹⁰¹ *Id.* at 24.

¹⁰² *Id.* at 25.

¹⁰³ *Id.*

have ruled that such decisions were discriminatory, unsupported by the weight of the evidence, or used inadequate or unconstitutional procedures.

Exposing the name of an innocent student, particularly one who is seeking relief from the justice system, ensures that, *no matter how the court rules*, the false accusation will haunt the accused forever. For the foregoing reasons, FACE thus respectfully urges this Court to allow Plaintiff's use of a pseudonym so he may seek to vindicate his rights without additional damage to his reputation and emotional stability.

Dated: April 14, 2022

Respectfully submitted,

/s/ Cynthia P. Garrett

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) and Federal Rule of Appellate Procedure 32(a)(7) because it contains 5,823 words, excluding the parts of the brief exempted by the Rules.
2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

Dated: April 14, 2022

/s/ Justin Dillon

Justin Dillon

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2022, I caused to be electronically filed the foregoing with the United States Court of Appeals for the First Circuit by using the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: April 14, 2022

/s/ Justin Dillon

Justin Dillon

Counsel for Amicus Curiae

No. 22-1056

IN THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

JOHN DOE,

Plaintiff-Appellant,

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,

Defendant-Appellee.

On Appeal from Order of the United States District Court for the District of
Massachusetts

**APPENDIX FOR *AMICUS CURIAE* BRIEF FOR FAMILIES
ADVOCATING FOR CAMPUS EQUALITY IN SUPPORT OF
PLAINTIFF-APPELLANT**

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April 14, 2022

Exhibit I

EXHIBIT I

The following student accounts are reproduced as closely as possible to the originals.

Student 1

She levied the accusation of non-consensual sex against him. They were both just 19 years old and in the 7th week of their first year in college.

Detectives interviewed him and witnesses and declined to arrest and charge him.

He fought for survival; he didn't understand how far this would lead. Finally, to preserve a crumbling educational record and protect what few emotional and psychological reserves remained at a point in time, he withdrew from all but one class; his GPA was the single thing they could not take from him.

He spent the rest of his time on campus behind a locked bathroom door, lying naked on the bathtub floor with the shower water running to mask his sobs. For hours. For days on end.

She fed the rumor mill; it lifted the bandwagon promoting her cause. She found him; she stood uncomfortably close at the event, sat at the library table beside him, enjoyed meals within feet away from him – whispering to members of the mill. She didn't stop.

He appeared under Grand Jury Referral without the right to counsel present; two prosecutors represented the state on her behalf. He received a No Bill of Indictment. It wouldn't matter.

She was just getting started with him. She continued to hunt him down. The rumor mill took on a life of its own and raged. In 2013, she took her same accusation to the school's Title IX Coordinator's Office. They investigated him for the sexual assault allegation under the school's not-yet-published Title IX school policy overseen by then Assistant Secretary to Office for Civil Rights) Catherine Lhamon. Despite all odds, the office found him not responsible of the allegation, yet the gag order they imposed, threatening severe sanctions up to expulsion should he violate restrictions, remained.

The mill's rage turned hostile. Its members stole everything from him, of him. Finally, he attempted suicide by an intentional drug overdose.

Her business was unfinished.

She then turned to the Dean of Student's Office, claiming the same accusation of sexual assault against him. He refused to acknowledge responsibility for the behavior, which ignited a second school investigation of the original allegations, now under the school's Code of Conduct. After five months, the school held a disciplinary hearing. Again, hearing adjudicators found him not responsible.

Her parents withdrew her from school; she didn't want to leave. Yet, on the other hand, he faced an ongoing threat of triple jeopardy.

School administrators led the one-a-half-year process against him, which destroyed his

emotional and psychological capabilities.

He remained enrolled until he could no longer exist there; it was only a matter of months before the mob and its leaders ran him off campus despite numerous determinations finding him not responsible.

He walked away from his college career on a Wednesday, mid-semester, sobbing, defeated, and friendless.

Doctors diagnosed him with Post Traumatic Stress Disorder (PTSD), Authoritative Anxiety, Anticipatory Anxiety, and Social Anxiety, which cause panic attacks so severe often he cannot function. The diagnosis directly resulted from the multiple, unfair, and unequal campus adjudications held without a presumption of innocence and social pressure of rumors that he is a rapist.

Seven years later, the same administrators reported his involvement in disciplinary action to other transfer schools, which did not admit him.

He is now nearly 29 years old. He believes he is only 40 percent back physically and emotionally; testing will soon begin to assess indications of permanent brain damage believed to be caused by the trauma.

His future is uncertain. No positive determination can restore his good name; the rumor mill is more reliable than truth and findings. No medical or psychiatric therapies have restored his psychological, emotional, and good health.

Six weeks ago, she took to social media again, stoking the rumor mill flame, which consistently simmers just under the surface. He remains isolated and a social outcast.

What, exactly, did a Grand Jury, two school adjudications of the same allegation with pending triple jeopardy get wrong? The processes failed to protect him in every possible way. Rumor and innuendo prevailed.

Student 2

Our son was falsely accused on a Saturday in the fall around 7pm. He called us within minutes of the girl accusing him after he told her he had dinner plans. He was hysterical and kept repeating that he had done everything right and it was consensual. They had had previous consensual encounters. We immediately got in the car and were at his side by 1 that morning and he was arrested a few days later. Luckily, we were able to get him out of jail on bail and returned with him to our home in another state. His name was published in the university's newspaper, was linked to the just booked website and was picked up by a local newspaper.

Our local paper soon picked it up, and rumors spread around our high school where my daughter is a student and the town where I am a teacher. Not only was our son just devastated by what this young women did, but we became virtual hermits in our home, literally afraid to be out in the community. There were marches on campus where he was

named as part of the school's "rape culture". We all felt isolated, not being able to discuss it with anyone and just kept repeating that it was consensual, it was as a false allegation, we were confident the truth would be found out.

He missed his friends at college and his home friends as they were all still in school and he was at home alone and isolated. He feared that given the political climate with #MeToo that he might be sent to prison for something he did not do. We fully expected that we would be shunned in our community and both he and we as a family, would lose friends. Luckily, he has amazing friends, as do we, and we did not lose any close friends. Thank goodness his criminal case was dropped early on, but his name remains highly Google-able due to the press coverage.

He loved his school and was just devastated that this young women would do such a thing. However, he obviously cannot return to his university, and has been in limbo as we fight the title 9 accusation. He desperately wants to continue his college career and has accepted his life as he knew it is over as he prepares to apply as a transfer student with a Title 9 allegation still open.

I cannot express how traumatic this false accusation has been to him and our family as a whole. We've had many tearful days and hearing him say that he'll be explaining this false allegation for the rest of his life just breaks our hearts. He has had to rethink his entire life journey and we have learned that this is a rollercoaster and we have to take it one day at a time. In our darkest moments, all of us would be crying at the same time about the nightmare we never could have imagined. He sees a therapist for trauma, as do the other members of our family. I can only hope that in time, he heals and he can resume his positive outlook on life once again.

Student 3

His name was put out on Instagram with 75 – 100 male students after a school rally. He was a well-known student and athlete with a heavy presence on social media. The posts about him were seen by thousands of students, members in the sports community, athletic sponsors, kids he coached, professors, family friends, this list goes on and on. The accusers attached a Google doc to all the posts that went out that night titled "Sexual Predators ...," with almost 300 names on it. The women were anonymous and put men's names, dates and details of their alleged sexual experiences with him.

Within minutes he started receiving death threats, people were going to beat him up. The girls copied and posted the posts about him to everyone on his Instagram page, employers, sponsors, local businesses. He was known all over the US since he was in a competitive sport and had competed nationally. Within 24 hours he had lost his athletic sponsors, reputation, and was suicidal.

We were advised to let it drop because he was never charged and never been found responsible. It's been almost a year and he wants the posts down and to fight the women who

did this to him. We all need closure, especially my son. He switched to online school and moved because the harassment was so bad.

We are a local family so it was the worst day of our lives. My son went from being well liked and looked up to, to a sexual predator and rapist. Nothing has come out about him in the last year and the school has had several rallies since. Since April is #Survivor month we are holding our breath.

My son is doing well but knows that this will come up again, as do we. We never post pictures or news about him on social media. We don't share his glories. We live in fear that someone in our new community will have a tie to our old. Instagram finally took down the posts but the damage is done and irreparable. For him, for his sister and for us.

It's been almost a year and my son goes into deep depression and has a tremendous amount of anxiety. He moved but still runs into people he knows. He is constantly worried that someone is going to contact his employer with one of the social media posts. He has no idea how to repair the damage that was done to his reputation. This was a happy, confident college student with hundreds of friends and now he wants to hide.

Student 4

I am a parent of four children, three boys and one girl between the ages of 19 and 26, all of whom have attended college or are still enrolled. Our oldest, a son, was wrongly accused of sexual assault in 2015 and expelled from school. It was a traumatic experience for our son and entire family in which the university ignored significant exculpatory evidence in their quest to believe "victims". In the wake of this experience my husband and I felt more comfortable sending our daughter to college than our younger sons. We were pleased to hear that first steps have finally been taken to begin bringing due process to campus sexual assault cases. I believe that some of the new regulations, had they been in place in 2015, would have made a difference in the outcome of our son's case.

One of the new regulations is the requirement of a "presumption of innocence" letter that will be sent to the accused. This letter lays the groundwork for investigations where presumption of innocence has been completely missing when it comes to disciplinary hearings involving sexual assault on college campuses. Title IX offices have been staffed with people and have educated people to presume guilt. Our son's hearing panel included two young female employees of the university who had been trained with presumption of guilt. They chose not to look at evidence they had access to that was exculpatory for our son. By starting with a presumption of innocence, it at least reminds people hearing these difficult "he said she said" cases that we must presume a person is innocent. Without this, our entire American approach to determining someone's guilt or innocence is up-ended.

Another change that I believe would have affected the outcome of our son's hearing is allowing for cross examination. His accuser did not have to answer any questions about her

story and her words were taken as fact. I understand it is traumatic for a true rape victim to relive the details of a rape, but unfortunately this is a necessary evil that upholds presumption of innocence.

Furthermore, allowing each party to have an advisor be an active part of the hearing would have been extremely helpful to our son. While his accuser took part in the hearing via phone with her advisor by her side (most likely speaking and giving advice) our son was only allowed to have an attorney there for support – she was not allowed to speak to him, witnesses, the accuser, or the hearing panel. Our 21 year old son had to navigate this highly stressful and critical proceeding on his own. There were several areas of dispute that his attorney would have known how to address given the opportunity, but our son didn't have the knowledge or experience to do so.

The new regulations are a good start to change the adjudication process on college campuses, but there is still more work to be done. We need to ensure that our Title IX offices are a place of fairness for all students.

Student 5

The path and outcomes our son experienced under the Obama-era “guilty upon accusation standard” is extraordinarily, and tragically, different when compared to what would have occurred under the current new rule of how colleges investigate and respond to allegations of sexual harassment and assault.

The single investigator model included a one-on-one interview with our son (about 45 minutes) and an interview with the complainant. Interviews were conducted with “witnesses” but NO witnesses were witnesses to the alleged event – only to hearsay conversations. In addition, none of the hearsay witnesses heard the complainant allege any assault immediately after or within the first 48 hours. The single investigator did not pursue available physical evidence that would have corroborated our son's testimony. Nor did the Investigator follow-up or pursue numerous inconsistencies in the complainant's testimony and version of events.

From the investigation, thirty-six undisputed facts and one “disputed” fact were generated. The disputed fact was “whether complainant affirmatively consented to perform oral sex on respondent.” Non-disputed facts include the following:

- Respondent asked complainant to engage in sex.
- Complainant said “no.”
- Respondent asked complainant to perform oral sex on him.
- Complainant performed oral sex on respondent.
- Complainant stopped performing oral sex after about 5- 10 seconds.
- Complainant and respondent resume kissing and holding for several minutes.
- Respondent's phone rang and after answering and a brief telephone

conversation, respondent left.

Through the investigative process, the single investigator proclaimed both complainant and respondent were deemed “credible, responsive and non-evasive.”

The single investigator was given the authority to adjudicate and found in favor of the complainant based on two apparent items:

- 1) Our son spoke to fewer people immediately following the encounter (he spoke to only one person after he had left the encounter because a friend has become very ill at a party and he was asked to assist in care). The investigator found that while the complainant never alleged assault to the “witnesses” and none of the witnesses could recount any wrongdoing by the respondent, the complainant’s allegations were more credible because, in the end, more people were spoken to.
- 2) While the complainant was able to say “no” to sex and stopped performing oral sex after 5-10 was never found or proven that our son exerted pressure – only that the complainant could claim after the fact that pressure was felt..

The process adhered to – which Betsy De Vos called a “kangaroo court” which follows arbitrary rules and offers inadequate protections to the involved – combined with the “guilty upon accusation” culture on our son’s college campus, resulted in an experience that can only be described as “un-American.” During the harrowing experience we consistently wondered out loud “*how could this happen in America?*”

Our son’s case would have followed a completely different trajectory and outcome if the new rules had been in place at that time because the new rules would have provided for the following:

- The accused (and accuser) are allowed to submit evidence. The investigator in our son’s case was not required to and was completely not interested in collecting any evidence. Evidence which was available and never sought/accepted included telephone and text messages (and corresponding time stamps) and key card time stamps to the dorm room.
- Participation in live cross examinations. The complainant never elucidated how she was “pressured” into performing oral sex on our son and the investigative report could not provide any description of our son’s actions leading to “pressure.” A cross-examination process would have quickly revealed that there had been no malfeasance in our son’s actions. It also would have made clear that consent was given in the form of acquiescing to our son’s request for oral sex to be performed on him.

The above notwithstanding, absolutely and without a doubt, the single biggest hindrance to a fair process was the lack of transparency. The process was hidden as the single investigator performed a superficial and flawed investigation and allowed to adjudicate and determine guilt or innocence based on an extremely cursory and indefensible assessment of “evidence.” To be in

a process in which the accused cannot speak for himself beyond what the investigator allowed during a short interview performed at the onset of the process and not be allowed to present evidence that would refute the claims of the complainant is abjectly un-American. The process unfolded hidden and essentially drew its power from the phenomenon – if Americans, legislators, governors, council-persons and even college professors had an inkling of how these investigations really proceed, it would be a stunning revelation.

Student 6

I was an accused male student at a private university. I was falsely accused, and was dragged through a university disciplinary process that shocked me to my core. I was not permitted to present my own evidence or witnesses without arbitrary administration approval (the administration had no criteria and they provided no explanation), I was not allowed to question my accuser or any of her witnesses personally or through an advisor, I was not allowed to *even question* parts of my accuser's story, and the university refused to provide any details of the accusation until after the investigation had concluded. Furthermore, the university violated its own policies by denying all but one of my fact witnesses late on the night before the hearing, while allowing her character witnesses (prohibited by the policy) to testify. The university also declined to ask any of my hundreds of pre-written questions.

I am innocent, and I could have proven my innocence in the campus proceeding had the Regulations been in effect at the time. I could have cross examined my accuser (through my advisor) and her witnesses and called attention to clear inconsistencies and outright lies that permeated her allegations. I could have presented my own witnesses that would have contradicted by eyewitness testimony key portions of her allegations. I would have received notice of the details of the allegation when I was interviewed, so I could more effectively rebut her false claims. But I was not able to do any of these things, and I was erroneously suspended for two and a half years, a punishment that permanently altered my life and career trajectories.

It took thousands of dollars and the intervention of a court to vindicate the rights I should have received from my school.

Student 7

A young woman (Jane) walks into campus security at 10:45pm on a Sunday night and makes an accusation that she was sexually assaulted six days prior. She was offered medical attention, to talk with the police and refused both. She was allowed to have her previous boyfriend and friend(s) with her for support. The counselor on call was contacted and spoke with the young woman. Various people she interacted with offered her more help/counseling on multiple occasions through that night and the next day, which she refused.

This was a he said she said case, no drugs, no alcohol, no sexual intercourse. A

no contact order was delivered to John Doe in the middle of the night. The next morning the young man met with Associate Dean of Students/ Senior Deputy TIX director's in his office. The dean said, "you are being charged with sexual misconduct" and you can make a statement at a later date. We know this to be true because this call was legally recorded four days later when the Dean reiterated what he previously had said. He then explained to John there was ""inappropriate touching" and he "did not get affirmative consent."

Shortly after this meeting John was abruptly pulled out of his lab class and told he was suspended. He was escorted to his room by three security men to gather his belongings, while signs are being hung on all the buildings that there was a campus sexual assault. A mass email warning was sent to everyone on campus, asking them to report information.

That night the assault was on the news and in the newspaper. John was treated as guilty the moment he was accused! This was not the fair and equal process the college promised. Imagine how you would feel, your friends watching you be escorted away like a criminal. You don't even know why this is happening, you only know an accusation was made and no one wants to hear your side of the story.

Jane's roommate's statement talked about the night of the supposed incident. Her roommate reported Jane "was mostly annoyed" "upset and frazzled ... The roommate states the next day Jane "told me that she had been thinking about the night before and she told me the more she had been thinking about it the more it bothered her...She was not thinking about reporting it at that point and I brought up the counseling center. She wasn't opposed to it but she didn't think she would need the counseling center.

The next day everyone was home on break and Jane texted her roommate:

- Jane; "I tried to talk to my mom today about the John thing. That conversation did not go how I thought it would."
- Roommate; "what happened?"
- Jane; "She told me I need to be more careful with guys."
- Roommate; "I'm sorry she didn't react well sometimes parents need time to process before they come to terms and react the way you want."
- Jane; "I thought she would get upset or mad or something like that but instead she made it seem like it was my fault. You know it wasn't right?"
- Roommate; "I am sorry she did not react well..."
- Jane; "I was teasing him earlier that day and I did kiss him and stuff..." "Does this count as sexual assault?"
- Roommate; "According to Department of Justice: Sexual assault is any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault."
- Jane; "So Yes?"
- Roommate; "Honestly, yes I would think it would count."

The incident report states Jane "tried to tell her mother that she had been sexually

assaulted.” And she reported her mother told her “that because it was not rape, Jane just needed to be more careful with boys.”

John and his father were allowed to return to the campus pick up more belongings two days after the accusation. They spoke with the Title IX director about the unfair treatment, being labeled guilty without any presumption of innocence, and the fact that no one wanted to hear his side of the story. They asked how was it that he was just suspended and they simply believed her? How is it that she alleged something happened and was immediately given the title “victim/survivor” What process had already determined she had “survived” something? **The Title IX director stated, “There was a lot of pressure from the Federal Government and that this is just how things work.”**

John and his father started to drive home with most of his belongings when the Title IX director called less than thirty minutes after they left. She said John could return now to the college to attend classes but he could not return to his townhouse. This one interaction, John and his father talking reasonably with the Title IX director seemed to make a difference in how John was perceived. Maybe he was not the “serial rapist” they were treating him as. This was the only glimmer that John might be heard. It did not last long.

The school said there would be an investigation. Shouldn’t an investigation occur before someone is charged? In this case the college had it covered, when deciding if they would be moving forward with a case they only accepted “evidence in support of the complaint.” It definitely seemed like John’s guilt was predetermined.

John was told on a Thursday afternoon at 4:30pm he had to submit a statement no later than Monday knowing only the accusers name, date, place and that he was “charged” with “rape” and “inappropriate touching.” While this was “only an educational process” per the college you still have to consider anything you say can be used against you in a court of law. It was clear the college itself had not treated John fairly and there was no presumption of innocence.

Try to find a lawyer in one day.

A few other key facts learned along the way;

- Jane’s story changed and the story grew worse with each person she spoke. When she finally reported she would only do it with the ex-boyfriend at her side ...
- The Title IX director’s summary of events falsely stated that the “complainant indicated that she was very angry and when respondent texted her and said “I had fun tonight” that Jane’s responding text was, “you can’t do that stuff. You can’t hold me down and force yourself on me.” The only text messages that were supplied at all for evidence were from John and the actual text on the night in question after he walked her back to her dorm was, “I really enjoyed spending time with u (smiley face emoji) and Jane’s response to that was “Thanks”

The Dean/Deputy "Selects, trains and advises the student Conduct Review Board"

but it was the Dean/Deputy who had decided John was guilty by accusation ... The Dean/Deputy was trained to “believe the victim,” a trauma informed approach that is “based on flawed science,” “loosely constructed,” and “makes unfounded claims about its effectiveness, and has never once been tested, studied, researched or validated.”¹

- The investigating officer’s daughter was a friend with the complainant. This officer also wrote a chapter in the Previous Title IX directors book who showcased John’s college campus as a premier example of how a college can “eradicate” sexual violence.”²

- 10 days after the accusation John’s roommate received notice that he would be getting a new roommate. Its sure feels like the school predetermined John’s guilt.

John submitted his statement and waited. After some time he was allowed to view what we think was most of the “investigative” materials. The investigation only consisted of statements against John by Jane and her friends. John was then allowed to write one more statement in response to what he had viewed.

John had NO hearing to attend, NO cross-examination in person or written, John was not allowed to know who was on his hearing panel judging him. There was no verbal questioning of John by the college or the investigator at any time. How does a hearing panel make a life altering decision without ever meeting, talking, or interacting with the accused? They made a judgment based solely on information that the college required be supportive of the complainant.

Even within a system that states it is “educational,” it seems when you are labeling someone as a “sex offender” or “rapist” it would be important to hear him or her speak ... how do you come to a conclusion without ever meeting or interacting with one side?

I do believe cross-examination would have made a difference in the outcome of this case, as it is the best tool for determining credibility! Written questions are never an effective substitute for live cross-examination. I think this case is a prime example of why cross-examination is a needed requirement in the new Title IX regulations.

John was found responsible by the college. *The effects and impact of being wrongly accused are real. The stigma and vilification of being labeled a “sex offender” cannot be underestimated.* The inability to fully clear one’s name can cause extreme pain and embarrassment. Being accused changes your ability to return trust and it is difficult to return to being the valued person you were before the accusations. There are definably changes in personality and social behavior due to the loss of a previously untainted reputation, a loss that cannot be repaired in the absence of clear exculpatory evidence of innocence. Self-blame, suicidal thoughts, paranoia, anxiety, mistrust, social withdrawal and isolation are all commonly seen in many who have gone through similar “educational processes. “It is not only the person accused that suffers this is a life altering event for the whole family and even friends.

Please ask yourselves What is the difference between being labeled “guilty” in a civil or criminal proceeding or being found “responsible” on your college campus of “rape?” Because the consequences of being suspended or expelled, having marks on your

records, being judged and labeled by your college campuses has caused irrevocable harm to many students!

Betsy DeVos has taken the time and done her homework on this! It is clear the previous system was broken. Please be supportive of the new regulations and give them the opportunity they deserve!

Sincerely,

Anonymous and forever changed

1. <http://www.prosecutorintegrity.org/sa/trauma-informed/>
2. Sexual Harassment in Education and Work Settings Current Research and Best Practices for Prevention by Michele A. Paludi, Jennifer L Martin, James E. Gruber and Susan Fineran and Bullies in the Workplace by Michele A. Paludi Praeger (August 26, 2015)

Student 8

My name is John Doe. I am 28-years-old. I was falsely accused of sexual assault during my senior year of college. I will never forget when I first received the email notifying me of the allegation against me.

Although receiving this news was predictably jarring, I was actually not overly concerned or worried about entering the investigative process. I obviously understood that any allegation of sexual misconduct is extremely serious, but I (naively) believed that my innocence would protect me from harm. I assumed that “the truth would set me free.” I assumed that I was entering an adjudication process that was neutral, fair, and balanced. I assumed that the investigation would reveal that the allegation against me lacked merit, and that the case against me would eventually be dismissed. I even attended my first meeting with the school’s investigator without a lawyer! However, despite overwhelming evidence supporting my innocence, I was eventually found “Responsible” for sexual assault and suspended from school for the rest of the year.

While I was eventually able to prove my innocence in a court of law after spending thousands of dollars, the impact of this ordeal on my life and my psyche cannot be overstated. After I was found Responsible and removed from campus, I quickly descended into what my good friend Joseph Roberts described in his recent article in *USA Today* as the “all-too-familiar pattern for the falsely accused: isolation from friends and family, loss of reputation, depression, substance abuse, [and a] suicide attempt.” It took me five long years to clear my name. That’s half a decade of total professional stagnation and unrelenting psychological turmoil. And even after winning my lawsuit against my university, much of the damage to my reputation and spirit remained. One spurious allegation and a small handful of complicit university administrators was all that it took to irreparably alter my life trajectory.

Education is a civil right, and thus no one should be denied access to education without meaningful due process. The updated Title IX regulations are a historic step in the

right direction to ensuring due process for all students. Had this new guidance been in place when I went through the adjudication process, it is possible that I would have been spared this injustice. I have outlined five specific provisions of the new regulations that might have protected me from the false accusation.

1. MORE DISCRETION IN WHICH CASES THE SCHOOL INVESTIGATES

Under the previous guidance, schools were required to investigate virtually every allegation of sexual misconduct – regardless of where the conduct occurred, whether the individuals involved were students at the school, or even if those allegations were received second-hand. For example, the allegation against me was made in relation to a sexual encounter that occurred hundreds of miles from campus, over summer break, with a girl who was not even a student at my university. Considering that Title IX is ostensibly about protecting access to education, it is very difficult to understand how this kind of conduct was investigated and adjudicated under the auspices of Title IX. The new guidance is a step in the right direction because it allows schools to focus on incidents that actually pose a threat of interfering with the campus environment and students’ access to education.

2. STUDENTS ARE ENTITLED TO REVIEW ALL EVIDENCE

The ability to review the adverse evidence/testimony is absolutely essential to crafting an effective defense. In my case, my accuser submitted fabricated evidence to the hearing panel in order to bolster her false claims. Unfortunately, that fabricated evidence was withheld from me until the very last minute, so I didn’t even get to review it until I showed up for my hearing, and thus I had no way to defend myself. So there I was, a 22-year-old kid, sitting in front of a panel of university administrators, clumsily attempting to prove that the evidence was fake, but with no real way of doing so. Had I been presented that false evidence prior to the hearing I would have had an opportunity to develop a strategy for demonstrating that it was fraudulent.

3. STUDENTS ARE ENTITLED TO REPRESENTATION AT THE HEARING

When I went through this, the norm on college campuses was that students were required to represent themselves during the adjudication process. This rule did not only apply to accused students like me, but also to accusing students. First of all, the idea that a complaining student who has come forward with an allegation of *rape* would have to represent himself or herself in an adversarial process is self-evidently absurd. Furthermore, the idea that accused individuals should have to represent themselves is equally inappropriate. A student accused of a Title IX violation has his entire educational and professional future hanging in the balance. Expecting him to defend himself under such circumstances is not only cruel, but incongruous with the stated goal of a fair and effective process.

I remember during my hearing I was very concerned with coming off as polite and amicable to the hearing board. I did not want to come off as insensitive or aggressive. However, I

believe that this prevented me from vigorously defending myself. I would have been much better off with a trained representative advocating on my behalf. A system in which both accusing students and accused students have representation allows for a fairer process for everyone involved.

4. LIVE HEARING WITH CROSS-EXAMINATION

The new regulations require that there be a hearing that includes an opportunity for some form of “live cross examination.” This is one of the more controversial provisions of the new regulations, but it is absolutely necessary. It is not a coincidence that the appellate courts are increasingly requiring schools to allow some kind of live cross-examination in cases where credibility is at issue – it is because, as described by the Supreme Court, cross-examination is “beyond any doubt the greatest legal engine ever invented for the discovery of truth.” In my case, my accuser had a very well documented history of pathological dishonesty.

However, because there was no opportunity for live cross-examination, I was severely limited in my ability to raise this issue during the hearing. Had I been able to explore this line of questioning, it is very possible that I would not have been found Responsible.

5. PRESUMPTION OF INNOCENCE

The presumption of innocence is the bedrock of our justice system. However, for the last several years, university students accused of sexual misconduct have regularly been denied this right. Misguided (albeit well-intentioned) policies such as “affirmative consent” and “trauma-informed investigations” have resulted in the reversal of the presumption of innocence and created an environment where accused individuals are presumed to be guilty and then expected to prove their innocence. The new regulations ensure that all accused individuals are presumed to be not guilty until the evidence demonstrates otherwise.

In my case, the evidence overwhelmingly supported my innocence. My accuser claimed that she was unable to consent due to incapacitation. However, throughout the entire disciplinary process, there was not a single piece of evidence presented to corroborate this claim. There were roughly a dozen witnesses who interacted with my accuser in the moments leading up to our encounter, including two of her best friends who were literally in the room with us during the encounter, and every single one testified that nothing in my accuser’s behavior/demeanor indicated that she was blacked out, incapacitated, or otherwise unable to consent. However, despite this total dearth of corroborating evidence, I was still found “Responsible” on nothing more than my accuser’s word. The codification of the presumption of innocence would have ensured that students like me were not denied access to our education until the evidence firmly demonstrated that he was guilty of misconduct.

Student 9

In April 2017, 2 weeks before his last final exam, my college age son was summoned by the Title IX office and informed that he was “charged” with sexual assault contact and sexual assault intercourse. The charge stemmed from a consensual encounter that occurred 6 months prior and was determined by the person who was to investigate and make the ultimate decision of responsibility. In this single person, the university Title IX officer, lay my son’s academic and professional future, as well as much of his emotional and psychological stability.

Under the regulations promulgated by the current Department of Education, this would have never been acceptable. The presumption of innocence, a basic right for all people, would have precluded a situation where a person was charged, thus presumptively responsible in the charging body’s eyes, for an offense, before an investigative process even commenced. A presumption of innocence throughout the process, with the burden of proof on the school, requires that there be evidence upon which a decision is based, and that the accused be given the opportunity to know and challenge the evidence in his or her own defense.

In my son’s case there was no reliable independent evidence upon which to base a decision. There was no physical evidence indicating assault; on the contrary, all available physical evidence, including photographs, show a smiling young lady immediately after her encounter with my son and before her personally recounted 2 other sexual encounters that same night.

The only ‘evidence’ held against my son were the statements of the accuser and her friends, which contained many contradictions and indications of unreliability.

Nonetheless a decision of responsibility was made on the sole basis of ‘credibility.’ The decision was made through a single- investigator model in which the investigator makes a decision regarding responsibility in lieu of a hearing before a neutral panel of decision makers. This injustice was compounded because the investigator was accountable to no one but herself as she was also the Title IX director and coordinator. Having made public Facebook posts deriding neutrality and promoting a video likening college campus to hunting grounds for sexual predators, there was little chance she would conduct a fair process.

My son was charged, investigated, and questioned without ever having been informed of the allegations made against him and given the opportunity to respond. The new regulations would have ensured his right to defend himself against allegations by requiring he be informed with sufficient precision of what he was accused of. Without a hearing and the ability to cross examine adverse witnesses and

testimony in real time, he had no means to defend himself against false accusations.

The regulations requiring equal opportunity for parties and their advisors to review the evidence would have protected my son's rights in the same measure as those of the accuser. While his statement was included verbatim in the evidentiary file, only the investigator's summarized narrative of her impressions of witness testimony was presented for my son's review. He had no opportunity to hear or even read the actual testimonies of the parties to challenge them and assert his credibility in contrast to theirs. It was obvious from the reported summarized statements that either the accuser was given access to my son's statement before she "finalized" her statement (after the investigation concluded) or that the investigator, in her summaries and reports, manipulated the accusers statement to address my son's statement regarding the encounter. With a live hearing this could not have happened.

In the whole process, my son was interviewed once, and was the last person to be interviewed. How would an investigator be able to examine claims of the accuser against those of the respondent if without questioning her considering the respondent's statement? My son was branded a sexual predator, with no live hearing or impartial decision making panel, on the mere whim of a biased and incompetent employee who, despite her law degree indicative of knowledge of basic rules of evidence and procedural fairness, violated the governing guidance issued by the OCR in September of 2017, as well as institutional procedures and promises of fairness, timeliness and adherence to obligations to Title IX and the Cleary Act. There was no semblance of investigative thoroughness, neutrality, opportunity to prepare a defense, procedural due process guaranteed to both parties.

My son was subject to retaliation in the form of another accusation by one of the accuser's friends for having presented an appeal that raised procedural irregularities and was subject to another equally flawed and procedurally corrupt process. The realization of what was happening to him provoked a suicide attempt. He was Baker Acted and hospitalized for 3 days.

Unlike the female complaint who had the free support and advisory services of Project Safe, under the direction of a self-proclaimed feminist activist juris doctor, our single income family had to spend \$25k to defend our son from an overzealous and unfair process that threatened not only my son's educational and professional future, but also his very life.

Student 10

My son went through the TIX process while he was a college student and the experience

has forever changed our entire family. Compared to other accused students we have come to know, he was one of the fortunate ones. It was the *process* that was the most devastating and life altering. I will try to be brief in giving you key details and how the Department of Education's new regulations would have provided for a fair process for both my son and his accuser. I have included in red text parts of the new regs that would have had a positive impact on how the process played out.

My son was on the track and cross country teams. In September 2016, he received an email from the TIX coordinator stating that she had gotten notice that he *may* have been involved in a sexual assault involving another male student (a person my son has never met and my son is not gay). He had no idea what this was about and thought it must be a mistake, so his reply was "I don't understand. Have I done something wrong?" At this point, he was not overly concerned. The response to him said that his name was given as the perpetrator and the incident took place in 2014- OVER TWO YEARS FROM THE TIME HE GOT THIS NOTICE. My son was told he needed to meet with the TIX coordinator and the school would provide an advocate for him.

The coordinator was an employee of the school's women's center and a victim's advocate. The new Title IX regulations would have required that the coordinator, investigator or any person designated to facilitate an informal resolution process to be free from conflicts of interest or bias for or against complainants or respondents.

My son received the investigative report, which he sent to me. We were confident that this could not move forward. I will highlight some of the reasons why:

- The report said the alleged sexual assault took place between March and April of 2014. Due to the broad range of dates and two years that had passed, this made it impossible for my son to have any witnesses or an alibi. How can this even make sense? A person has a traumatic experience and they can only narrow it down to a TWO MONTH time period?
- No investigator could pursue this as a legitimate claim, so we thought. However, we did not realize the money the school could lose by dismissing this claim.

The accuser offered 3 witnesses, 2 of whom stopped responding to the TIX investigator. The 3rd "witness" was a past friend and stated in the interview that the accuser DID NOT CALL THE ENCOUNTER A SEXUAL ASSAULT. The interviewer asked what the perpetrator's name was and his reply was that he did not remember. THE INVESTIGATOR THEN ASKED THIS WITNESS IF THE NAME WAS "JOHN DOE". THE WITNESS SAID-YES THAT SOUNDS RIGHT. This is leading the witness to get a desired response. The new regs require training on how to conduct an investigation, how to serve impartiality, including how to avoid prejudgment of the facts, conflicts of interest and bias. There must be a presumption of not responsible.

This is just a small portion of what we went through. Can you imagine a 20 year old having to read a report to his mother about a completely fabricated event that contained details of a

sexual encounter with another male? My son is not gay; this was humiliating. However, we live in the United States where there is supposed to be due process. We did not see any way this could move forward. How can anyone be expected to defend themselves from an incident that allegedly occurred almost 2-1/2 years prior in a two month time period?

I called a local attorney to reassure myself that we indeed did not need legal counsel. My heart dropped when he told me that schools care about losing hundreds of thousands of federal dollars more than they do about the students & that he would not be able to speak at the hearing, so we would be wasting our money to hire an attorney. It's a hopeless feeling knowing that the truth is not a priority. The new regs require that the decision maker must permit each party's advisor to ask the other party and witnesses all relevant questions & follow up questions, including those challenging credibility. Parties can be in separate rooms and only relevant questions may be asked.

We were extremely fortunate that the accuser did not show up at the hearing and we learned that he was not even a student at the college at the time. My son was found not responsible, but the effects of the process have been life altering for our entire family. He could not have the option for dismissal or mediation of his complaint. The new regulations provide for dismissal of a formal complaint, at the school's discretion, if the complainant informs the TIX coordinator in writing that he/she desires to withdraw the formal complaint or allegation. The new regs also have the option of mediation.

I am hopeful that because of the changes made by the department, all parties will feel that they had a fair process. Because my son's investigator was a victims' advocate for the Women's Center, there was bias from the beginning. Had the new regulations been in place, my son would have at the least been on an equal playing field. The new regulations require that the coordinator, investigator or any person delegated to facilitate an informal resolution process must be free of conflicts of interest or bias for or against complainants or respondents. This protects all students.

My son has given his consent to tell this story anonymously.
Sincerely,

A Mom

Student 11

I am writing on behalf of my family to express our deep concern for the process by which the Title IX violations are handled. I say on behalf of my family because it didn't just affect my son but included siblings, aunts, uncles, cousins and grandparents. It also included his friends, teammates both past and present and all of the parents who have been following him for years. This is a big deal and not just for our son.

As with most of the other families in this situation, it began with an early morning phone call with

our son in tears. His coach text him to say he was suspended from this team for a sexual harassment complaint and that he could not tell him any more information. Needless to say, he was blown away.

Thank god my daughter works for another university and was privy to a flier on the subject of sexual harassment that included a link to the FACE website. I called to find out if I needed to talk to a lawyer before or after the school rendered a decision. They strongly advised I find someone immediately.

Again, thank god we did because our lawyer was a lifesaver for us and our son.

My son was able to prove almost immediately that he did not initiate the email chain where the girl said she was harassed. In fact, he was able to prove that SHE started it but, as we came to find out, with the kangaroo court that handles these complaints at the university level, there is no common sense allowed in the process.

The people at the university that handled the situation were all 'interim' ; we never knew what was going on, when he met with the 'investigator' for the first time the advocate assigned on his behalf told him he was 'screwed'. Once we hired an attorney the proceedings were amazingly elevated to a school lawyer showing up at the 'hearings' but only to protect the university and still not a process you would find in a real court of law. As it turned out, when it came down to the final 'hearing' the people on the panel had not even read the investigator's report!

It is a broken system. I do not expect that sexual harassment and other sexual violations were what was expected when Title XI was implemented. We never expected to pay thousands of dollars to exonerate our son from something that would have taken 30 minutes in a real investigation with people who are trained in this sort of thing to figure out. The havoc it wreaked and the emotional toll it took on our family and community was mind blowing to all that hear about it.

There has to be a better way

Student 12

We are writing to you about the violation of both civil and constitutional rights occurring to many of our outstanding male students on college campuses nationwide due to the Obama administration's Department of Education's (DoE) Dear Colleague Letter (April 4, 2011), which lowered Title IX standards for colleges to receive federal funding. In order to receive federal funding, this DoE guidance (in reality a directive) forces colleges to aggressively pursue sexual misconduct allegations, strips the accused of both their civil and constitutional rights, and lowers the standard of responsibility from beyond a

reasonable doubt to only "a preponderance of the evidence/information"; however, how the standard is being applied, with a lack of due process, it is even lower than preponderance of the evidence/information, i.e., you are assumed guilty or responsible until you prove your innocence.

In February of 2020, our son was falsely accused of serious sexual misconduct allegations by a disturbed and delusional lesbian girl who has been documented as having intrusive thoughts and memories and has claimed the same sexual misconduct allegations concerning five other men. These false allegations against our son were claimed to have occurred off-campus; however, the University's Dean's office (a.k.a., Title IX Office) informed our son that he was being investigated for potentially violating their Code of Student Conduct prior to having official approval to investigate by the University's Vice President of Student Affairs.

University "investigators" summoned our son to appear before them for questioning. An advisor of his choice could be present during the questioning, but could not speak during the process. The cost of legal representation for this ranged from \$5,000 to \$25,000 just for the attorney to be present during the "investigation" or, as the attorneys kept calling it, a "kangaroo court." Being a middle class family, we could not afford legal representation; therefore, our son's father, had to take off work, travel to the school, get a hotel, and assist him in preparing for and advising him during the investigation.

Despite our son having receipts, character statements, information from his fiancée, and other items to prove his innocence, and the fact that his accuser, the complainant changed her story drastically three times during the investigation process (which we learned through the investigator's report), the university charged our son with serious sexual misconduct allegations (sexual contact, sexual harassment, and physical abuse, which was later changed to dating violence) just to, as the Title IX officer said, "be fair to her." Additionally, our son's bishop (we are members of the Church of Jesus Christ of Latter-Day Saints) knew the story and the truth about the complainant (as she went to our son's bishop with the intent to create issues between our son and his fiancée) and the bishop requested to be contacted by the investigators. The investigators stated in their report that they saw no need to contact the bishop. As our son's accuser said, as we discovered during this time, her "words are proof enough" as to what she was falsely accusing our son of doing.

Despite the fact that the complainant drastically changed her story and the fact that our son presented hard evidence to prove the accusations were false, our son was

summoned to appear before a Disciplinary Panel. Between the time of the investigation and the Disciplinary Panel, the complainant harassed, stalked, and attempted to publicly humiliate our son and his fiancée, while the university was unwilling to address this conduct with her because “that is her right”; however, our son was not allowed to address her behavior because “that would be intimidating to her.”

With the Disciplinary Panel, again, an advisor of our son’s choice could be present during the conduct panel, but could not speak during the process. And, again, the cost of legal representation for this ranged from \$5,000 to \$25,000 just for the attorney to be present during the conduct panel, or as the attorneys (including the local County attorney’s office that we later visited who called the process an embarrassment) again kept calling it a “kangaroo court.”

Before the panel hearing we, the mother and father, had to take off work for several days a week for several weeks, travel to the school, get a hotel, and assist our son in preparing for the conference panel and provide our son with much-needed emotional support (as well as his fiancée providing emotional support) during this entire ordeal. Due to our son facing suspension or expulsion, our son’s, his fiancée’s, and our health suffered (lack of sleep, the loss of appetite, as well as, the emotional and physiological stress at home, work, and school). We collected an enormous amount of evidence that would have beyond a reasonable doubt shown that our son was not responsible for any of the false charges brought against him by the complainant. All of the evidence (including character statements) that we had collected for my son to present had to be submitted to the Title IX office prior to the conduct hearing for their review.

On the day of the conduct hearing our son’s father had to serve as our son’s advisor; however, he was not allowed to speak during the conduct hearing. Our son, who is 19 years old, had to represent himself while his accuser, who our son was not even allowed to face or cross-examine for “her protection” and for the “emotional stress” that would be inflicted on her, was represented by the Title IX Officer and the Title IX Attorney Coordinator, both seasoned professionals.

Three university panel members were chosen to hear and determine our son’s case. When our son was provided back the evidence (including character statements which were not allowed in the conduct panel hearing) that he had to submit to the Title IX office for review, to our surprise, a great deal of it was redacted, according the Title IX Attorney Coordinator, to provide his accuser (actually the Title IX Officer/Attorney Coordinator that represented the accuser), a “fair chance” and not have her “past reviled” (which

according to the Title IX Attorney Coordinator her troubled past is irrelevant) and to “maintain her reputation” and not “assassinate her character.” Our son’s accuser, on the other hand, was given the option to present anything she desired or have the Title IX personnel to present, if she chose to. With the amount of evidence that was redacted and with what our son was not allowed to say, what should have been a very short panel hearing turned into an over 11-hour very emotional and stressful ordeal (8:00 am to approximately 7:30 pm) to convey the complainant’s lies and mental instability. It is by God’s grace alone that our son did not give up in his attempt to show he was “not responsible” for what he was being accused of and charged with.

In the end, our son was one of the few lucky individuals to be found not responsible; however, even to this day, it has taken an emotional, physical, and monetary toll on our son, his fiancée, and us as a family. The university’s lack of concern for due process resulted in my son’s civil rights being violated and his rights guaranteed by the Constitution being violated. Unfortunately, our family is not in the position monetarily to take legal action against his accuser or the university. As our son's mother says, what our son went and continues to go through is similar to the emotional trauma that a rape victim experiences. Our son is the actual victim of Title IX and the April 4, 2011 Dear Colleague Letter.

Thank you for taking the time to read to our concerns and hopefully stopping this unjust epidemic happening to our outstanding male students on college campuses nationwide.

Parents of a wrongfully accused student

Student 13

This is a hard letter to write. The accusation against my son happened on Oct 2015 and lasted till December 2017. My son was simultaneously dealing with the TIX and criminal justice processes. It is difficult to separate the two and at times may seem confusing. Imagine being a college student and parents that are not lawyers trying to navigate. A brief synopsis for context purposes; there was no alcohol, no drugs, fully clothed, and no sex, kissing, fondling. There was an unfounded accusation taken at face value. My son was found Not Guilty of a criminal charge and Not Responsible for the TIX accusation.

Flaws in the process began with the first letter. It stated someone would contact him in a few days to talk about an alleged violation. He was instructed not to contact the complainant. A few days later he was contacted by the

Campus Detective. The Detective did not tell my son he was a police officer investigating a criminal complaint. My son met with the Detective a few days later with one purpose, figure out what he was being accused of. The Detective told my son that the TIX process was separate from what he was investigating. In early November the school TIX investigator finally sent the second letter to my son to schedule a meeting. This meeting was to discuss “the basis for the belief that you engaged in misconduct and afford you the opportunity to respond”. The decision of guilt was made before any attempt to get my son’s side of the story. It was 33 days, not a few days as the original letter suggested, that he was finally contacted by the TIX investigator about the policy violation in question, still nothing about the accusation itself.

The TIX process at his University included the single investigator model. The investigator’s initial finding was one of Responsibility based on her one sided “belief”. In the code of conduct, since the sanction recommended suspension, the process required a hearing. The panel would be constructed of 3 faculty and 2 students. The hearing was originally scheduled for the week of finals in December. The code of conduct stated the hearing had to be conducted within 45 days after receiving the initial Responsibility finding. The hearing was rescheduled to mid-January. In a strange move, the University scheduled a pre-hearing meeting with my son, his attorney, the Dean of Students, and the University Lawyer to review how the TIX hearing was to be conducted.

Prior to the school hearing the TIX investigator did not notify or provide all witness materials, which were to be provided 5 days before. Notes written by the school investigator were shared after the hearing. At the hearing the school administrators did not follow their own established rules. The hearing itself was a farce. My son and his lawyers were informed that it was scheduled for 2 hours, with the school taking up much of the time either explaining the process or presenting the accusers claim. The school held firm to their time commitment, leaving very little time for my son’s attorney to do just about anything. As the time came to an end, the panel still had questions, but were told they were out of time. My son’s accuser was in the same room with him along with her mother, her sister in law, and her school advocate. My son had his two lawyers

It was communicated to them the Assistant District Attorney was not permitting the school to use the results from the DNA test for the TIX complaint. Due to the criminal investigation, the DNA results that led to the Felony 2 charge came back negative, exculpatory. At one point the TIX investigator used one of my son’s friend’s statement to represent his

statement, since he had invoked the 5th and 14th amendments. When is it acceptable to use hearsay, as a statement for the respondent?

Not surprising he was again found Responsible. The school did provide a recording and we paid to have the recording transcribed. My son now needed to appeal to the University his rejection of the appeal went as far as to say: "I accept the investigating officers' argument that In 2016 my son's school's TIX process had one more appeal to the Board of Regents, it was not time bound. We waited until after his Not Guilty finding in January 2017 to work on this final appeal. It took till October 2017 to file this last appeal to clear his name. It was 16 pages long with 198 pages of exhibits. Every element of her salacious accusation was disputed with evidence. DNA was on our side. The inconsistencies, the omissions of attempts to destroy evidence, the lies or misrepresentations to police officers and SANE nurse was included. All the evidence overlooked and disregarded by the school administrations.

On Oct 12th, 2017 the Chancellor was contacted by the Board of Regents "I am remanding this matter to Chancellor for reconsideration. I am requesting Chancellor to carefully review all of the new evidence presented and determine whether the discipline met the standards required by [university] chapter_. The Chancellor should expunge the disciplinary record if the discipline is not sustainable. Regardless of outcome, Chancellor must provide a full explanation of his decision. [My son] may seek the Board's discretionary review of Chancellor Schmidt's reconsidered final decision." – signed by Regent.

In December 2017 – the Chancellor's final decision: "In addition, the DNA evidence, which was unavailable at the time of my 2015 decision, raises new questions, and does not lend additional credibility to the complainant's account. Upon reconsideration, I am unable to find by a preponderance of the evidence that [my son] sexually assaulted the complainant. Similarly, I am unable to find, by clear and convincing evidence that [my son] engaged in dangerous conduct."

My son struggles dealing with the false accusation. The arrest record does not go away, nor can the stain on his character be erased. What my son went through, no one should have to go through, the depression caused by the process is heart wrenching. On Christmas Eve 2016 I held my son why he cried non-stop for 2 hours after he left work due to his anxiety, he lost his job a week later. He lived in fear while being on bond for 15 months. Fear of people finding out. He lost all his friends and his educational opportunities. It was the rush to believe by the college TIX administrators, Dean of Students

office, and the Campus Police that caused my son and my family to live the surreal experience of facing a criminal trial while concurrently dealing with a TIX kangaroo court.

It was the willingness to disregard hard evidence and deceitful behavior of the accuser that led to \$150,000 in direct costs to my family. My son was firm in his innocence from the beginning. At every step, there was another person not following their own rules. On one of the challenging days, he asked why was he the only one following the rules.

This process has cost us in so many ways; our health, welfare, trust, happiness, and a significant financial set back.

With humble regards,

A Mother

Student 14

He was a junior when subjected a Title IX investigation for violation of the Student Code for Sexual Misconduct. The initial charge was digital penetration without consent alleged to have happened in her dorm room on campus. They were in a consensual and on-going sexual relationship for approximately seven months. It was when the relationship was ended that the upset young lady filed the complaint. The incident in question occurred a month in to that seven month relationship.

Our son when contacted by the Title IX Office responded immediately and was interviewed by an investigator the next morning. He was certain that it was a misunderstanding and therefore felt no danger in being interviewed. Bad decision.

The process at the school is the single investigator model with investigators using informed trauma methods. The accuser and her story were never vetted. She was assumed to be telling the truth the entire time. Further, we believe she had undiagnosed/untreated PTSD as her parents died as a result of a violent murder/suicide.

He was not once assumed to be innocent of the allegations. His interview, conducted by a professionally trained former prosecutor (a licensed attorney,) was recorded for the record and was not permitted to be amended, whereas the accuser's story and key facts changed multiple times during the course of the investigation. Witness interviews in support of him were entered as "interpretations " by the investigator rather than actual transcripts. Some key witness testimony was left out until we found out and

complained.

The "advocate" assigned to the accuser helped craft a story to meet her often changing memory of events. In fact, when the accuser found out that we retained legal counsel she added a second charge of rape she was alleged to have occurred at my son's off-campus apartment. The accuser's language went from initially suggesting that she wanted no discipline for our son to "he is a monster and needs to be expelled".

These scurrilous allegations and resulting investigation have wreaked havoc on my son and family's life. The investigation, according to the university's handbook, was to be adjudicated in 60 days, however it took just over 8 months and tens of thousands of dollars in attorneys' fees.

He was ultimately found responsible for the initial charge. In the second charge the accuser was not deemed credible. We appealed the decision and lost.

He was given a one semester suspension, in the middle of Spring semester. The result of which meant the 18 credits he was currently taking were to be lost and he was not welcome back to campus until 01/01/2020, essentially a 3 semester suspension if you include the summer courses/lab job he had lined up for that summer.

We appealed the sanction and sort of won. He was given a deferred suspension where he could have full access to the campus and follow a program instituted by the Title IX office. He successfully completed the program and graduated a semester early in December of 2019.

The whole process resulted very significant costs, in addition to the money we put out travel, hotel and legal fees. He has been suicidal, withdrawn, angry, sad, embarrassed, isolated, and shocked that a relationship turned sour could potentially ruin his life. We are absolutely shocked and outraged with this entire process.

Student 15

A year ago I was preparing to go back to college. I was recruited to a D-III athletic team, fulfilling a long time personal goal of playing sports on a collegiate team. I was going to be a Resident Assistant, and was thinking about long term aspirations such as a masters' program, a potential Juris Doctorate, and thoughts as to what I may want to do after college. I (admittedly) lacked clarity as to what I wanted to do, knowing only that I wanted to help people. I was outgoing, a strong public speaker, and, if I'm allowed to be a touch self-aggrandizing, an intelligent political science student, who had had professors base multiple classes off of research papers I had written. I had worked hard for everything I accomplished, and prided myself upon that.

These aspirations came to a shocking halt mere weeks after my return to school. I heard I was going to be involved in a Title IX investigation not from the school itself, nor from the other party involved, but instead through my friends. Indeed, it appeared that I was one of the last people on campus to be notified ...

What followed were two weeks of personal hell. I was threatened, assaulted, cut off, and ostracized. My friends were stopped by people I hardly knew in the cafeteria, and still other friends refused to hang out with me in public, specifically citing fear of social retribution. I left the school, and returned home, not out of guilt but out of a fear I have not experienced before or since. I have spent the past 10 months trying to bring my life back together. Despite the promise from the school that the process would only take 45 days max, it took eight months. Eight months of waiting, interviews, written statements, and a deep, lasting trauma. Trauma that drove me towards substance abuse, suicide, and an ingrained fear in my psyche. I am no longer a fearless public speaker, nor is a masters' program likely on the table. Instead, everything I worked so hard for was destroyed the moment I left the school.

I was found responsible at the start of quarantine. I stand by my innocence, and will do so for the rest of my life, but I am not going to argue the specifics of my case. Every time I talk about the case I am in a state of perpetual anxiety for days, and the more specific I get the worse it is.

I am shaking writing just this.

I became a political science major for one reason: I knew where my skills lie, and I want to help people. I saw political science as the best track to line those two facts towards a successful career of doing good. In class, we learned about justice being blind, about the unerring neutrality of the American justice system. After all, isn't that fundamental to American ideals? That no matter how distasteful the statement, the act, the alleged crime, you will be guaranteed a fair hearing. The Title IX process shatters that illusion.

The head of Title IX was actively unhelpful, to a degree which would shock even those who wish to revoke the new Title IX changes. He broke policy on multiple occasions to allow my accuser to write a character assassination against me, in which she attempted to deeply analyze my supposed character flaws, theorizing how these led to me committing the supposed act. That is not justice, it is not even a poor facsimile of the word. It is instead a pipeline, a system which funnels in young men, disregards any and all legitimate claims to innocence, and equates a homogenous end result of expulsion or severe punishment with a fair process.

Title IX is one of the most important pieces of American legislation for equity in colleges ever introduced. It has allowed women who have experienced the horrors of assault to speak their truths in a comfortable, safe environment. As a survivor of rape and a victim of sexual assault as a 12 year old I see the importance of Title IX, and had either of these situations occurred

between myself and a college classmate, I promise you I would have used Title IX. But it is unacceptable to allow Title IX to continue the way it has.

Had [the Final Rules] been introduced when I was going through this process, I would have been able to defend myself, I would have been able to speak my truth, and I would have been presumed innocent, something which is a cornerstone of any developed nation's justice system. I don't deal with what ifs, so I will not say that the final outcome would have been different, because I simply do not know, and doubt I ever will. However, what I can say is that I would have been able to stand on my own two feet, speak my truth, and defend myself the way every person deserves a right to do.

Justice is not Title IX, but it can be and should be, for those accused, but more importantly for those who have been raped and assaulted on campuses, because it will allow them to speak their truths without existing in a phony court, so that they can leave a Title IX hearing with the full confidence that, no matter what, the decision made was just.

Student 16

My son was attending a football game at another university in a nearby state. When he found a place to sit on the bleachers five girls behind him were irritated and told him it was reserved seating and he couldn't sit there. He knew this was untrue, so he didn't move - there were over 100k fans at this game and not a lot of palaces to move. Next the girls called over a state trooper to tell him my son was not allowed there, but the trooper said he was allowed.

The five girls continued to harass him to get him to move. At one point everyone was standing on the bleachers cheering and he accidentally stumbled and fell backward onto one of the girls, and immediately apologized. Another accused him of touching her "boob," and they then managed to contact the local police who came to them. The police removed him from the stands, but did nothing else.

One month later the police from the state where the incident occurred asked him to come in – at that point he had no idea why. We immediately called a lawyer.

We discovered there were criminal charges in the state where the incident had occurred, for misdemeanor indecent assault, harassment, underage drinking, and disorderly conduct. Specifically three of the girls claimed he was groping them during the game. Two others said he was striking them: one claimed when he hit her on her head with his pom pom when they were all standing and cheering, and the other claimed his elbow hit her temple when cheering with the pom pom. Yet another "thinks he touched her butt" – apparently her friend told her he did. He apologized for both incidents, which his accusers admit. Though he been charged and arraigned,

the case has been pending since last year.

For the next week to 10 days, article after article after article came out about my son, with my son smiling in his university football photo, his name, and the accusations all over the internet, the university and our community. The horror of being falsely accused, was still fresh and this article was shocking and absolutely devastating. This experience has been so severe that my son refused to leave his room, would not socialize, his hair has fallen out, he has lost weight and he has constant panic and anxiety attacks.

My son went from a happy, well-adjusted college student with no history of depression, a high average, playing on his D1 sports team, to deep dark suicidal thoughts as a direct result of having his name disclosed. Tragic. Absolutely tragic. He only entertained suicide ...but when at one point he locked himself in his room crying for 50 minutes we were very concerned. He didn't leave his room for 4-5 days, didn't speak for days, just withdrew into himself.

Our son is now heavily medicated. He has seen 4-6 doctors, and has been on 4-5 different medications. His psychiatrist is treating him with a drug for bipolar disorder – she said he is not bipolar and he had no history of depression, but the trauma of his experience is causing bipolar episodes.

My hands still shake just typing about it now. It is not just my son's reputation damaged, which is irreversible, but when his name was disclosed, the accusations alone caused unimaginable emotional damage. Unimaginable. It is the kind of distress that no one should endure. It is a dreadful combination of embarrassment, anger and constant, constant worry. I believe if there had been no disclosure of his name he'd be a different person today.

Student 17

My son was accused almost 6 months after a night of consensual sex followed by a second night that the accuser admits was consensual. Though the accuser admits to pursuing my son, to initiating sex and to returning the following day for what she calls consensual sex, my son was found responsible because one of her witnesses stated she had been drinking.

He was found responsible and expelled - his appeal was denied and his OCR complaint still has not been adjudicated. My son worked hard to get admitted to another university and graduated with honors.

Two years after transferring and cutting all ties with friends he had

made at the first school, a #MeToo Instagram campaign was waged. My son was called out by name on Instagram in three anonymous posts. Though he had been out of that school for two years the word spread immediately through our neighborhood and his high school. His new school was contacted.

His high school was contacted. His phone number and our address were plastered all over Instagram. Our younger daughter, then at the same high school, was threatened. I was threatened. My son lost every single friend he had. Every single one. They were terrified of being cancelled themselves so cut ties with him. With us.

My daughter started therapy and is on meds, We moved. My amazing son is doing well but knows that this will come up again, as do we. We never post any pictures or news about him on social media. We don't share his glories. We live in fear that someone in our new community will have a tie to our old.

Instagram finally took down the posts but the damage is done and irreparable. For him, for his sister and for us.

Exhibit II

Shelley Dempsey, FACE Vice President & Intake/Outreach Chair

July 2020

The Final Rule amending Title IX of the Education Amendments of 1972, 34 CFR Part 106, must go into effect, as promulgated, on August 14, 2020.

My concerns are both personal and professional, since I write not only as the parent of a son who was falsely accused and then cleared during the 2010/2011 academic year at a top university, but also, as a former federal regulatory attorney for the Federal Communications Commission and later as an attorney in private practice for a large DC firm with regulatory matters before the FCC, EPA, FERC, and EEOC.

Currently, I serve as the Vice President and Intake/Outreach Chair for Families Advocating for Campus Equality (FACE) a 501 (c)(3) Non-Profit Organization that supports and advocates for equal treatment and due process for those affected by inequitable Title IX campus disciplinary processes. Consequently, I followed closely the Notice of Proposed Rulemaking, submitted personal Comments and eagerly awaited the Department of Education Office of Civil Rights' Final Rule.

Neither the 2011 Dear Colleague Letter (DCL) nor the 2014 Guidance under the prior Administration were subject to rigorous public debate through statutory notice and comment requirements under the Administrative Procedure Act (APA); they also lacked the force of law.

Prior guidance created a draconian punitive system holding students responsible for myriad minor infractions or other ill-defined offenses deemed sexual harassment or misconduct. The quasi-judicial "campus courts" became a dragnet that ensnared many innocents falsely or wrongfully accused students while never satisfying "survivors" nor actually tackling the root causes of sexual harassment and sexual misconduct on campus. Lives have been irreparably harmed with life altering consequences on both sides of this debate. While this Final Rule is not perfect it goes a long way toward correcting the confusing and unfair past guidance that dissatisfied complainants and respondents alike.

In my role as Vice President of FACE and especially as Chair of the Intake/Outreach Committee, I am privy to the stories of hundreds of families whose children have been through horrific experiences at the hands of biased campus administrators resulting in life altering consequences and debilitating ongoing critical emotional health issues. You doubtless will be reviewing many of these stories. The number of families reaching out to FACE has increased exponentially. Since September of 2014, we have been contacted by nearly 2000 families. All of these families have been caught in the DCL web of ridiculously vague definitions of sexual misconduct, lack of due process and low burden of proof and often investigated, judged and sanctioned by a single individual.

Educations have been lost, job offers and admissions to graduate schools rescinded and professional licenses unattainable even in cases where the accused student ultimately is found not responsible. Many of the FACE families are unable to afford legal counsel and, for those who can, the cost of defending against a false accusation in a Title IX disciplinary proceeding can prove financially devastating. Without counsel or a specially trained Title IX experienced advocate, the chances of a falsely accused student being found not responsible is frighteningly low. Frankly, it has been absolutely heartbreaking to hear these stories day after day.

While numerous groups supporting the rights of survivors abhor the new regulatory scheme and falsely assert that instances of false or wrongful accusations are “exceedingly rare”, FACE knows from documented experience that there is another equally compelling argument that false/wrongful accusations are actually quite common and hopefully will be better addressed under the Final Rule. The DCL and its vague definitions of sexual misconduct and harassment resulted in myriad Title IX complaints for conduct ranging from innocent hugs or kisses without prior permission even if well meaning, to regretted sexual encounters, to coverups for infidelity, to revenge for difficult relationship breakups, to foggy memories due to drug or alcohol use, to failure to ask for consent for each and every act according to unworkable affirmative consent rules, etcetera, often days, weeks, months, or years after they actually occurred.

FACE Experience With Families of Students Subjected to False or Wrongful Accusations and Resulting Life Altering Consequences

FACE Intake Vetting Process: FACE has a rigorous vetting process for families who call or email the organization for support requiring personal contact information and a statement of their situation before gaining access to its information and outreach. The stories almost always follow a pattern of accusations as described above and disciplinary processes that are utterly lacking in due process or fairness as well as sanctions that often clearly are entirely out of line with the behavior alleged by the complainant. While there have been a few instances where FACE has declined support, the vast majority of cases do have the hallmarks of false or wrongful accusations.

FACE by the Numbers: Face receives call or emails from accused student families at an average rate of 4-5 per week. Following new student orientation (Sept/Oct), Finals weeks (December/May), Take Back the Night activities and events (January), Sexual Assault Awareness Month activities (Late Mar/Apr) FACE can tally up to 20 new families per week. While the heightened awareness from these programs encourages reporting for all the right reasons, it also leads to reports that are misleading, false or wrongful. Since the release of new guidance and rescission of the DCL, hundreds of lawsuits have been filed against Colleges and Universities and numerous courts have and are continually ruling in favor of

accused students whose rights have been denied. In some cases, the complainants have been held civilly or criminally liable for false accusations. Since 2017, nearly 1000 new families have sought FACE support with over 100 since January 3, 2020.

Title IX Accusations at the K-12 Level: Before 2016, FACE was aware of perhaps a dozen cases of younger students accused, suspended or expelled for behavior that never should have risen to such procedures or sanctions. Since that time over 100 families of K-12 students have sought support from FACE. These stories, too, are heart wrenching, and currently average 4 or 5 contacts per month. These cases have involved students as young as 6 where typical playground games have been recast as disturbing accusations of sexual misconduct. “ Tag” and “Hide and Go Seek “ can suddenly become described as sexual assault and stalking and, as ridiculous as that sounds, these cases actually exist at FACE. At the high school level, the allegations are very similar to those in Higher Education and similarly the schools have provided little to no due process and generally are biased in favor of complainants. The #Metoo era and “Start By Believing” campaigns have led to unfair outcomes for this generation of students resulting in damage to reputation, education and emotional/mental stability. The Final Rule should lead to better and more equitable procedures and protection for both complainants and respondents at the K-12 level.

Students with Disabilities: Another disturbing trend in FACE intake cases involves students with various disabilities (ADD, ADHD, Autism Spectrum) who are accused of harassment, stalking, unwanted touching, or simply being “creepy”, thus leading to complainants making accusations of feeling uncomfortable or unsafe on campus. Under the prior guidance and school procedures, these students often were subjected to processes they could not navigate without coordination with advocates trained under the Americans With Disabilities Act (ADA) and in compliance with the Individuals with Disabilities Education Act (IDEA) requirements. FACE families have experienced extraordinarily difficult procedures that almost ensured that their student would face crushing sanctions and untold emotional distress. The new rules provide for compliance when there is an intersection of provisions of the Civil Rights Act of 1964, the ADA and the IDEA that should protect these students and ensure fair procedures.

Diversity, Equity and Inclusion (DEI): The prior Title IX regime and current arguments against the Final Rule actually fly in the face of DEI. Cases at FACE have taught us that students of color, first generation students for whom English is not their first language, international students who are accustomed to varying and unfamiliar cultural norms, as well as students in the LGBTQ+ community are more likely to be disadvantaged by not implementing the Final Rules. Without access to advocates who can actively participate

and guide them through their often complex fact sets achieving a fair outcome is extremely difficult.

Students enrolled in Graduate or Professional Schools: False accusations or flawed procedures leading to wrongful sanctions under Title IX have disastrous consequences for students whose graduate educations have been earned over many years and are subject to licensing authorities for entry into their chosen fields. Title IX notations on their academic records are often an absolute barrier to entry into their careers. Therefore it is imperative that any accusations are subjected to rigorous investigation and ability to judge credibility before causing life altering and career ending consequences. FACE receives call and emails from numerous students each year whom are at the end of their educational paths and even days before graduation or taking professional exams are suddenly upended by unwarranted accusations under Title IX.

Faculty, Employees, Administrators accused of Title IX and Title VII Violations: At both K-12 and College/University institutions, faculty members, teaching assistants, coaches and administrators have been accused of Title IX misconduct and subjected to the same flawed procedures under prior guidance. While horrible stories of abuse have made headline news over the past few years by a few members of this cohort, there is also another side of this issue that has largely been ignored by media and social activists. Title IX (often accompanied by Title VII issues) disciplinary proceedings involving this group of accused have been equally flawed and have resulted in life altering career ending consequences following biased, unfair procedures under the prior guidance. FACE has been contacted by dozens of these accused individuals and their numbers are now exploding in the #Metoo era and especially now among those who seek to “cancel” individuals with whom they disagree and claim that such disagreements create hostile educational or unsafe environments under Title IX. FACE expects to see a flood of new cases involving this group of accused individuals.

After 10 years of personal and professional experience with the adverse effects of flawed campus disciplinary proceedings, educational harm, reputational harm and potential lifelong effects on future employment, I am passionate about the need for final implementation of the Final Rules amending Title IX of the Education Amendments of 1972. It is clear that the DCL and guidance recommended under the Obama Administration served neither complainants nor respondents. Rules that require equitable procedures, rigorous investigations and the ability to test credibility of all parties according to the rule of law are urgently needed. Therefore, I urge removing any barriers to the August 14, 2020 effective date for implementation of the Final Rule.

Respectfully,

Shelley S. Dempsey

Exhibit III

Plaintiff Demographics in Accused Student Lawsuits

Based on an Analysis of 645 Lawsuits

Produced by Title IX For All, 7/6/2020

Source Data at <https://www.titleixforall.com/wp-content/uploads/2020/07/Plaintiff-Demographics-by-Race-and-Sex-Title-IX-Lawsuits-2020-7-6.pdf>

