

**United States Department of Education
Office for Civil Rights**

DISCRIMINATION COMPLAINT FORM

You do not have to use this form to file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR). You may send OCR a letter or e-mail instead of this form, but the letter or e-mail must include the information in items one through nine and item fourteen of this form. If you decide to use this form, please type or print all information and use additional pages if more space is needed. An on-line version of this form, which can be submitted electronically, can be found at: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.

Before completing this form please read all information contained in the enclosed packet including: Information About OCR's Complaint Resolution Procedures, Notice of Uses of Personal Information and the Consent Form.

1. Name of person filing this complaint:

Please Note: In the questions that follow, in order to protect the privacy of individuals involved in this case of alleged sexual assault, Mr. XXXXX, who is the Pet 88

on aJa-liDoe

3. Please identify the institution or agency that engaged in the alleged discrimination.

Office of Title IX
Occidental College
1600 Campus Rd
Los Angeles, CA 90041

4. The regulations OCR enforces prohibit discrimination on the basis of race, color, national origin, sex, disability, age or retaliation. Please indicate the basis of your complaint:

Discrimination based on sex

As detailed in question 5 below, Occidental College engaged in discrimination based on sex in improperly expelling John Doe, a male, and taking no action against Jane Doe, a female, despite the extensive facts in the case showing that Jane Doe was the initiator of sexual activity and willing participant throughout a sexual encounter. The school's sexual assault policy was misapplied. In this situation where a male student and a female student had sex, and both were intoxicated, the college committed an act of gender discrimination by only charging the male student. Occidental College found John Doe "responsible" for sexual assault because, as a male, Occidental College considers he is solely responsible for the "exercise of poor judgment" of both parties' (as the event was described by the LAPD investigation - Exhibit 3).

Ms. Doe was convinced by Occidental faculty and staff members during the week following the encounter to file a sexual misconduct complaint. John Doe was immediately treated as guilty, his due process rights were repeatedly violated, and his counter-complaint was arbitrarily and summarily dismissed.

Full details are presented in question 5 and 6 below.

5. Please describe each alleged discriminatory act. For each action, please include the date(s) the discriminatory act occurred, the name(s) of each person(s) involved and, why you believe the discrimination was because of race, disability, age, sex, etc. Also please provide the names of any person(s) who was present and witnessed the act(s) of discrimination.

The facts of the case are outlined below.

On September 16, 2013, Petitioner John Doe was accused of violating the Occidental College Sexual Misconduct Policy as follows:

Jane Doe, (a first-year freshman, Class of 2017) alleges that on or about the early morning hours of Sunday, September 8, 2013 between the approximate times of 12:50 A.M. and 2:00 A.M., she and Mr. John Doe (a first-year freshman, Class of 2017) had sex. During the investigation, Jane Doe recalled performing oral sex on Mr. Doe, but could not specifically recall having intercourse

with Mr. Doe in his dormitory room on the second floor of Braun Hall. Ms. Doe alleges that she consumed multiple alcoholic beverages in the hours leading up to the sexual contact. See Exh. 2.

Ms. Jane Doe initially denied that she had been raped or sexually assaulted and did not want to make a formal complaint (Exh. 4, pages 46, 53), but eventually relented a week later because she was told that 90% of rapes are done by repeat offenders and Asst. Professor Dirks told her that “[John Doe] fits the profile of other rapists on campus in that he had a high GPA in high school, was his class valedictorian, was on [a sports] team, and was ‘from a good family.’” Exh 4, page 41. Ms. Doe decided to report what had happened when she realized how much it had affected her emotionally, while seeing no apparent reaction from John Doe. She noted that he attended his classes without difficulty, and she “saw that he wasn't fazed by what had happened at all.” Exh. 4, page 40.

Also on or about September 16, 2013, Jane Doe filed a sexual assault report with the Los Angeles Police Department. Exh. 4, page 41. Los Angeles Police Department Det. Michelle Gomez was in charge of the LAPD investigation and interviewed Jane Doe and other student witnesses at Occidental. On November 5, 2013 the Los Angeles District Attorney's Office, Sexual Crimes Unit declined to prosecute for lack of evidence. Deputy District Attorney Alison Meyers concluded, after meeting with Ms. Doe and conducting a number of witness interviews, that both parties were drunk and “they were both willing participants exercising bad judgment” and “[s]pecifically the facts show the victim was capable of resisting based on her actions.” Deputy Meyers also stated that “it would be reasonable for [John Doe] to conclude based on their communications and her actions that, even though she was intoxicated, she could still exercise reasonable judgment.” Exh. 3, pages 1-2. In rejecting to prosecute the case, the district attorney effectively concluded that alleged sexual assault did not meet the minimum standard of “reasonable suspicion.”

On November 14, 2013, Occidental's private investigators submitted their investigative report (Exh. 4) that confirmed what law enforcement had found using extensive text message evidence and witness testimony. It found the following facts:

Jane Doe initially met with John Doe in his dorm room in the presence of witnesses and removed her shirt while dancing with Mr. Doe. Ms. Doe was grabbing Mr. Doe and trying to kiss him while Mr. Doe was “somewhat responsive” to Ms. Doe but “also seemed pretty indifferent to [Jane Doe's] advances.” (Exh. 4, page 73.) She was “getting really physical” on his bed, riding on top of him and grinding her hips. Ms. Doe's friends tried to shepherd her back to her dorm, but before she left Mr. Doe's room, she gave him her cell phone number so that they could coordinate her return for sex, which Jane had verbally agreed to. When she arrived at her own dorm room, Mr. Doe texted her, “The second that you away from them, come back.” Ms. Doe responded, “Okay.” Mr. Doe wrote back, “Just get back here.” Ms. Doe responded, “Okay do you have a condom.” Mr. Doe replied, “Yes.” Ms. Doe texted back, “Good, give me two minutes.” Exh. 4, page 93.

Before leaving her dorm room, Jane Doe texted a friend from back home: “I'mgoingtohavensex now[sic].” Ms. Doe walked down a flight of stairs to Mr. Doe's room at approximately 1 a.m., knocked on his door, went in, took off her earrings, performed oral sex, and had sexual

intercourse with him. In her statements, she never claimed that she was forced, intimidated, physically harmed, nor resisted in any way. When an acquaintance knocked on Mr. Doe's door to check up on her, Ms. Doe called out: "Yeah, I'm fine." The acquaintance asked twice more and Ms. Doe gave the same reply. During these questions Mr. Doe had stepped out of his room and gone down the hall to use the restroom. He was not present during this exchange to exert any influence upon her affirmations. Shortly before 2 a.m., Ms. Doe dressed herself and returned to her room. On her way there, she texted her friends smiley faces Exh. 4, pages 120, 122, 123, 125, 127. She then walked to a different dorm where she sat on the lap of another male student whom she had met the night before, talking and joking. The next day she texted Mr. Doe asking if she had left her earrings and belt in his room and asked to come by to pick them up.

In spite of Jane Doe's written confirmation of consensual sex, the LAPD criminal investigation, the District Attorney's rejection for lack of evidence, and Occidental's own investigative report, Occidental was determined to hold John Doe, but not Jane Doe, responsible for violating its new Sexual Misconduct Policy in order to bolster Occidental's defense against campus activists and the loss of federal education funding and fines.

Occidental College elected to forgo any attempt at an informal resolution of Jane Doe's complaint under their new Policy, and proceeded with "formal resolution," which the college claims is a "college process" and "not a legal proceeding." This so-called campus process, however, includes an investigation report prepared by Occidental's private investigators, a scheduled hearing before Occidental's retained outside counsel acting as adjudicator, the presentation of witnesses and evidence, and the determination by the school of the rights of Petitioner to attend the college.

On December 7, 2013, The College conducted a hear-1(-eb.15115 T0070.0002 Tc-.0018 Tw.0007 Tc-.9k.0001

performed oral sex on him and had sexual intercourse with him while he was intoxicated. John Doe was expelled because he is male; Jane Doe was not sanctioned because she is female.

Petitioner alleges the following violations of due process with intent to discriminate on the basis of sex:

A. Denial of Due Process Rights

Occidental College's 46-page Sexual Misconduct Policy denies accused male students the most basic due process recognized by UN Universal Declaration of Human Rights, the U.S. Constitution, and the California Constitution, including the assistance of counsel, the right to remain silent in the face of criminal accusations, and the presumption of innocence. Occidental claims that their Policy is fair and balanced because both sides are treated equally, however, in practice Occidental pits accused male students (with only high school educations) against Occidental's sophisticated, well-organized institutional process designed by former criminal prosecutors and run by academics, a professional and experienced staff, private investigators, outside consultants, and attorneys, while the female student is supported by Occidental's Sexual Assault Coalition and the National Women's Law Center and given access to advisors and advocates. In contrast, Mr. Doe was unable to secure an advisor for several months, until mid-November. This denial of basic due process is a procedural error that is discriminatory, unfair, devoid of good faith, in violation of students' civil rights, and significantly affected the outcome.

B. Lack of Diversity

The male student Petitioner had great difficulty in obtaining an 'adviser' from within the campus

iv. “[John Doe] was "acting in the same way all these other young men [involved in sexual assaults] have acted" by checking in on [Jane Doe] after the incident, and seeking to manage [Jane] by being nice in a manner... described as "disingenuous." (Exhibit 4, Page 54.)

Admitting statements of opinion by Danielle Dirks, an Occidental professor and founder of the Sexual Assault Coalition, that refer to Mr. Doe as a “rapist,” stating that he acts like other sex assault perpetrators, is far more prejudicial than probative. Allowing such statements into evidence while at the same time excluding rele

These findings, which are supported by the evidence, should have concluded the hearing in Mr. Doe's favor. To obtain its desired result, however, Occidental made the further unsupported and erroneous findings that Ms. Jane Doe was incapacitated when she engaged in the conduct because Ms. Jane Doe "did not have the capacity to appreciate the nature and quality of the act." (Exh. 6, page 11.) As stated in Occidental's Sexual Assault Policy:

"Incapacitation: Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because s/he lacks conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) and/or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if s/he is asleep, unconscious, or otherwise unaware that sexual activity is occurring." (Exh. 1, page 13.)

Doe's accuser would be guilty of sexually assaulting [John] Doe. There does not appear to be any dispute that Doe was intoxicated; the accounts of witnesses found on pages 13–15 of the investigative report make clear that both Doe and his accuser were intoxicated. Also, on page 10 of Mirkovich's report, Mirkovich points out that the accuser "subsequently recalled giving the Respondent [Doe] oral sex; however, the Respondent does not recall this act," indicating that Doe (like his accuser) experienced a "blackout" during the night... Thus, based upon Occidental's findings under the standard it applied to [Mr.] Doe (which differs from its actual, written standard), Occidental should have no choice but to determine that Doe's accuser also committed sexual assault against [John] Doe.

John Doe objected to Mr. MacIver's appointment as the appeals officer because Mr. MacIver had responsibilities for student life at Occidental, including the failure to address under-age drinking and hazing, and was a subordinate to the Occidental personnel responsible for the findings against John Doe. Occidental College rejected John Doe's objections and insisted that Mr. MacIver was a proper appeals officer.

Occidental College, however, later notified John Doe that as of January 31, 2014, Mr. Devon MacIver was no longer the appeals officer due to his workload at Occidental College, and that another Occidental employee Ms. Maria Hinton, Asst. Director for Housing Services, would serve as Respondent's administrative appeals officer.

The fact that the only male participant in the entire Title IX process withdrew is consistent with a prejudicial lack of gender diversity and is discriminatory.

The appeal response is purportedly prepared by, though not signed by Maria Hinton, the Asst. Director for Housing Services (Exh. 14, page 10). John Doe was denied his right to an independent appeals officer and John Doe's Appeal was rejected.

J. Petitioner's Counter Complaint of Sexual Misconduct by Jane Doe Was Dismissed Arbitrarily

In court filings, Occidental College stated that the college had taken no action concerning Jane Doe's behavior because John Doe never presented a formal complaint. On March 7, 2014, John Doe filed a complaint of sexual misconduct against Jane Doe as Occidental College required.

Ruth Jones, Occidental's Title IX Coordinator, interviewed John Doe on March 13, 2014 with consent of his counsel, however, on April 1, 2014, she wrote directly to John Doe without consent of counsel and advised him that she had secured an "external investigator" to investigate his Title IX complaint. The "external investigator" was an attorney and former O'Melveny & Meyers partner, Larry A. Walraven. She also told Mr. Doe that she had given attorney Walraven all the case documents and that Mr. Walraven was to interview Mr. Doe yet again in order to "to find facts which will allow [her] to determine if [Mr. Doe's] complaint may move forward through our process." It is difficult to imagine what possible additional facts, not already disclosed in the 183-page investigation report (Exh. 4), the December 7th hearing transcript, and the appeal and court records, could require Occidental's attorney to interview Mr. Doe in order to determine whether his report could move past the "initial assessment" of Occidental College's Title IX process.

Also, since Mr. Doe and Occidental College are opposing parties in pending litigation, Mr. Doe's counsel was concerned about Occidental's attempt to communicate directly with Mr. Doe without consent of counsel. California Rules of Professional Conduct Rule 2-100, Communication With a Represented Party, states that "a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer." See also American Bar Association Model Rules of Professional Conduct, Rule 4.2.

In order to resolve these concerns, Mr. Doe's attorney called Mr. Walraven in response to a letter Walraven had sent. Mr. Walraven told Mr. Doe's counsel that Walraven had indeed been given all the case documents, including December 7, 2013 hearing transcript, which Occidental College still refuses to give to John Doe in violation of FERPA. Following the conversation, John Doe's counsel wrote to Mr. Walraven with several questions (Exh.16). In response Mr. Doe's counsel received a letter from attorney Jonathan Brenner of Sidley Austin, who represents Occidental College in the pending Superior Court litigation. Mr. Brenner told Mr. Doe's counsel that counsel was to have no further communication with Mr. Walraven, that attorney Walraven would communicate directly with John Doe. In addition, Mr. Doe's counsel was barred from representing his client during the process (Exh. 17). Under those circumstances, John Doe's counsel could not consent to his client being interviewed by Occidental's counsel as a condition of Occidental considering whether to move the student's report forward through Occidental College's Title IX process.

On June 24, 2014, Occidental's Title IX Coordina

In addition, Jane Doe was exposed to an atmosphere of female victimhood by other students on campus, including her roommate. (Exh. 4, page 46)

Jane Doe was pressured into accepting a victim mentality instead of accepting responsibility for her own actions, her poor personal judgment, and later her regret for her actions. She filed a complaint based on the counseling she received from Occidental College faculty instead of the facts and circumstances of the sexual encounter with John Doe.

6. What is the most recent date you were discriminated against?

The most recent date of discrimination occurred on June 24, 2014, when Occidental arbitrarily rejected John Doe's complaint of sexual assault against Jane Doe.

7. If this date is more than 180 days ago, you may request a waiver of the filing requirement.

Not applicable.

8. Have you attempted to resolve these allegations with the institution through an internal grievance procedure, appeal or due process hearing?

YES, as described above.

Please describe the allegations in your grievance or hearing, identify the date you filed it, and tell us the status. If possible, please provide us with a copy of your grievance or appeal or due process request and, if completed, the decision in the matter.

Petitioner complied with the internal Title IX hearing, and filed an appeal on 2/12/2014 covering points A through H described in question 5. See Exhibit 11.

9. If the allegations contained in this complaint have been filed with any other Federal, state or local civil rights agency, or any Federal or state court, please give details and dates. We will determine whether it is appropriate to investigate your complaint based upon the specific allegations of your complaint and the actions taken by the other agency or court.

Agency or Court: Superior Court of the State of California, Los Angeles

Date Filed: 2/18/2014


Case Number or Reference: BS147275

Results of Investigation/Findings by Agency or Court: Trial date set for January, 2015

After an Ex Parte request, the court granted a Motion of Stay that required Occidental College to refrain from stamping John Doe's transcript 'Expelled.' (Exh. 20)

10. If we cannot reach you at your home or work, we would like to have the name and telephone number of another person (relative or friend) who knows where and when we

CONSENT FORM - FOR REVEALING NAME AND PERSONAL INFORMATION TO OTHERS

Your Name: 

Name of School or Other Institution That You Have Filed This Complaint Against:
Occidental College

This form asks whether the Office for Civil Rights (OCR) may share your name and other personal information when OCR decides that doing so will assist in investigating and resolving your complaint.

For example, to decide whether a school discriminated against a person, OCR often needs to reveal that person's name and other personal information to employees at that school to verify facts or get additional information. When OCR does that, OCR informs the employees that all forms of retaliation against that person and other individuals associated with the person are prohibited. OCR may also reveal the person's name and personal information during interviews with witnesses and consultations with experts.

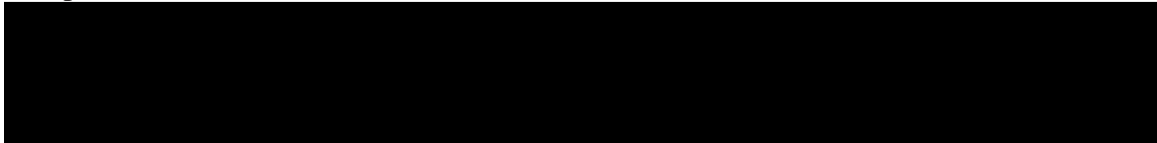
If OCR is not allowed to reveal your name or personal information as described above, OCR may decide to close your complaint if OCR determines it is necessary to disclose your name or personal information in order to resolve whether the school discriminated against you.

EXCEPTION: If the complaint was filed on behalf of a specific person who is younger than 18 years old or a legally incompetent adult, this form must be signed by the parent or legal guardian of that person.

A. I give OCR my consent to reveal my identity (and that of my minor child/ward on whose behalf the complaint is filed) to others to further OCR's investigation and enforcement activities.

OR

B. I do not give OCR my consent to reveal my identity (and that of my minor child/ward on whose behalf the complaint is filed) to others. I understand that OCR may have to close my complaint.



I declare under penalty of perjury that it is true and correct that I am the person named above; and, if the complaint is filed on behalf of a minor child/ward, that I am that person's parent or legal guardian. This declaration only applies to the identity of the persons and does not extend to any of the claims filed in the complaint.