

June 2, 2022

The Hon. Catherine E. Lhamon,
Assistant Secretary for Civil Rights
U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Bldg
400 Maryland Avenue SW
Washington, DC 20202-1100

Dear Assistant Secretary Lhamon,

We are members of a national consortium of survivor advocates spanning legal, social science, and mental health professional organizations in Title IX. We write to alert you to an alarming practice by Recipients that violates the Title IX rights of students who complain of sexual assault and other unlawful conduct. We ask: 1) to meet with you to discuss these concerns; 2) for OCR to conduct a full investigation; and 3) for OCR to consider the recommendations set forth herein in order to issue guidance as appropriate.

I. A Growing Number of Recipients Mandate Unconscionable Agreements as a Precursor to Providing Complainants with Title IX Process

As advocates representing student survivors of sexual assault, we have become aware of some schools conditioning their sexual misconduct complaint processing on students signing coercive and chilling nondisclosure agreements. Please see the student case examples attached hereto by Equal Rights Advocates (ERA)¹ and the L.L. Dunn Law Firm, PLLC.²

The agreements require, for example, parties and their advisors to agree to not disclose or use *any* information from or about the grievance process, including after its conclusion, and to accept the threat of expulsion or even civil litigation if they should fail to fully comply with all of the school's chosen terms, no matter how unconscionable.

School legal counsel draft these documents. School officials present them to students as a condition precedent to receiving rights and necessary participatory access mandated under Title IX, such as access to supportive measures, evidence, and information about the outcome or

¹ Equal Rights Advocates (“ERA”) national nonprofit dedicated to advancing rights and opportunities for women, girls, and people of all gender identities at work and at school through legal cases and policy advocacy. ERA has decades of experience representing students in Title IX legal matters.

² L.L. Dunn Law Firm, PLLC, is a Washington, D.C.-based for-profit law firm with a national practice advancing and enforcing victim rights and whistleblower protections in campus, criminal, and civil proceedings. Founding Partner Laura L. Dunn, J.D., is a nationally recognized civil rights and victim rights attorney with over 15 years of experience in the field of Title IX. Laura works collaboratively with non-profit organizations and student advocates in Title IX issues. She is also a TED Fellow, and the founder of SurvJustice.

sanctions arising from the grievance process. In other instances, institutions have required parties to sign unconscionable agreements during the grievance process, which have included clauses that force complainants to waive their claims without consideration, allow Recipients to withhold safety measures absent the agreement, or impose terms that increase the likelihood of retaliation by opening the door to claims that the Complainant violated terms of the agreement. Without the benefit of legal counsel, students are signing these agreements and unknowingly waiving their rights. Without the benefit of legal counsel, students are signing these agreements and unknowingly waiving their rights.

The agreements — conditioning access to a school’s grievance process on silence and a forfeiture of other rights or due process — are coercive, unconscionable, and retaliatory. They violate federal law and policy aimed at protecting students, many of whom are minors. Schools engaged in this practice are creating unsafe educational environments which disproportionately impact women, girls, and students in the LGBTQI+ community. Although establishing some degree of confidentiality for sensitive and private information disclosed in the campus grievance process is appropriate, this can be achieved in far better ways than requiring unconditional assent to such agreements.³ The coerced agreements not only violate Title IX, but also the Clery Act by creating improper barriers to the parties’ full and equitable participation in the grievance process.⁴

II. Recommendations

We ask that OCR:

- A) Explicitly prohibit Recipients from using confidentiality agreements and contracts as prerequisites to providing accommodations, investigations, resolutions, or otherwise during the school’s sexual misconduct grievance process, other than where regulations already permit such an agreement.⁵

In the alternative, OCR should:

- B) Require Recipients to attach templates of such possible agreements as appendices to their Title IX-related policies and procedures so that they cannot at random bind unsuspecting students in ways that interfere with their rights simply because the student requested that the school carry out its Title IX obligations in response to a complaint.

Publicly disclosing this information as part of the process promotes transparency and accountability within the school community, makes it less likely for institutions to

³ For example, schools might include the expectation of confidentiality for certain information in their policies without requiring parties to sign separate non-disclosure agreements.

⁴ US Department of Education Financial Student Aid Application, School Eligibility and Delivery Services, Letter by The School Eligibility Channel (2004), available at <https://studentaid.gov/sites/default/files/GUFPRD07162004.PDF>.

⁵ *E.g.*, such as informal resolution options or appropriate no contact agreements that do not require the forfeiture of any interests or rights by the complainant in exchange for the provision or enforcement of the no contact agreement itself.

egregiously deny or confuse students about their rights, and enables more ready review by OCR, making equitable outcomes more likely.

OCR should also:

- C) Require Recipients to include a notice advising parties of their right to seek legal counsel before signing any such agreement to ensure that the Recipient is not using their position of power and interest in obtaining an executed agreement to mislead unsuspecting students and their parents.

Additionally, we ask that OCR:

- 1) Explicitly prohibit contracts of adhesion that alter the federal rights of students participating in the campus grievance process.
- 2) Explicitly prohibit Recipients from requiring assent to agreements or otherwise establishing provisions that may limit a student's access to evidence, supportive measures, or any other right entitled to students under Title IX and/or the Clery Act.
- 3) Issue guidance on best practices for how Recipients can *inform* parties of their rights under federal law, including that the Title IX regulations provide that a recipient institution "cannot condition enrollment, employment, or any other right on the waiver of rights under § 106.45."⁶
- 4) Further elucidate in guidance or regulation the interplay between Recipients' obligations under both FERPA and Title IX.

Specifically, we request that the DOE clarify that Recipients cannot use FERPA as a shield to themselves and that Recipients must provide parties (including their lawyers) with hard or non-expiring digital copies of educational records and investigation documents when requested, not just the opportunity to view them under supervision or for a brief period of time online.⁷

⁶ § 106.45(b)(9) Informal resolution; accessed via Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Education Department, Federal Register, The Daily Journal of the United States Government, May 19, 2020, page 30361, available at <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

⁷ Federal Student Aid, U.S. Department of Education, Clery Group, Letter to ASU General Counsel, April 2021, made available by The State Press (DOE Finds ASU in Violation of Clery Act, Piper Hansen, June 16, 2021 at 2:36pm), letter embedded in article available at <https://www.statepress.com/article/2021/06/spcommunity-department-of-education-finds-asu-in-violation-of-clery-act>, See, e.g., FERPA and the exemptions to it included in the Clery Act exist "for the benefit of the student" and "the authority and responsibility for enforcing FERPA rests with the [DOE]."

III. Conclusion

Recipients and their counsel are increasingly exploiting students who seek to avail themselves of the promised protections of Title IX and the Clery Act. Recipient-created agreements imposed as preconditions to students accessing their federal rights holds these rights hostage in order to put Recipients and, in some cases, powerful Respondents such as faculty members whom Recipients may seek to protect, in an even more powerful position against student survivors.

By presenting these unnecessary and often unconscionable agreements during the grievance process, Recipients are shielding themselves rather than fulfilling their obligations under federal. Recipients are relying on their unlawful conduct not being understood and thereby not reported by the harmed students or their parents. As survivors' advocates and attorneys, we ask the Department of Education to take immediate and meaningful action to prohibit such abuses.

Thank you for your consideration,

Equal Rights Advocates

L.L. Dunn Law Firm, PLLC

Atlanta Women for Equality

C.A. Goldberg, PLLC

California Women's Law Center

Champion Women; Legal Advocacy For Girls And Women in Sport

Chicago Alliance Against Sexual Exploitation (CAASE)

Clearinghouse on Women's Issues

Colorado Coalition Against Sexual Assault

Elizabeth Abdnour Law, PLLC

End Rape On Campus

Faculty Against Rape

Fierberg National Law Group

Gender Violence Program, Harvard Law School

Hach & Rose

Heather Long Law PC

Illinois Coalition Against Sexual Assault

Iowa Coalition Against Sexual Assault

It's On Us

Jewish Women International
Kentucky Association of Sexual Assault Programs
Know Your IX, Advocates for Youth
Legal Momentum, the Women's Legal Defense and Education Fund
Liberty Law
Marsh Law Firm PLLC
Maryland Coalition Against Sexual Assault
McAllister Olivarius
McGowan, Hood, Felder and Phillips, LLC
National Center for Victims of Crime, Inc.
National Women's Law Center
NCCASA
Public Justice
Rebuild, Overcome, and Rise (ROAR) Center at UMB
Rocky Mountain Victim Law Center
SafeBAE
The Every Voice Coalition
Women's Law Project

APPENDIX A: Matters Brought to the Attention of Equal Rights Advocates

I. Example 1: University of Alabama at Birmingham (“Alabama”)

In 2022, Alabama required parties and their advisors in a Title IX process to sign a Confidentiality and Non-Disclosure Agreement (NDA) as a precondition of receiving a copy of all evidence collected and the Final Investigation Report for their review. *See* Attachment A-1 (Confidentiality and Non-Disclosure Agreement).

The NDA prohibited parties and advisors from discussing or disclosing details of the Title IX process *itself*, in addition to strict confidentiality requirements regarding “all matters relating to” the process.

There is some warning of this requirement, as the school’s Title IX policy stated that the parties and their respective advisors “must sign and agree to abide by” an NDA to receive the evidence and Final Investigation Report. However, the document and its terms are not provided to parties until the investigation is well underway.

Violations of the agreement are punishable by disciplinary action up to termination of employment, expulsion, and (for advisors) being barred from participating in the process.

The NDA states that not signing the agreement does not prohibit parties from *gathering and presenting* evidence, however this is a false choice, as prohibiting a party from reviewing evidence collected during the investigation and the Final Investigation Report undermines their ability to introduce any additional responsive relevant evidence in response or fully prepare for the hearing or dispute any inaccuracies in the Report.

Neither Title IX nor the Clery Act prohibit parties from discussing a school’s process for investigating and adjudicating sexual violence complaints; in fact, under both laws, schools themselves are required to be transparent about their grievance procedures.¹ Alabama’s efforts to restrict parties and their advisors from discussing the Title IX process itself only serves to protect the institution from awareness and oversight concerning how their internal process is conducted in practice and whether practice aligns with policy, in violation of Clery requirements.²

II. Example 2: York College of Pennsylvania (“York”)

In 2022, York required parties and their advisors in a Title IX process to sign an extensive Non-Disclosure Agreement (NDA) as a precondition to accessing and reviewing all evidence collected during the investigation. *See* Attachment A-2 (Non-Disclosure Agreement [Complainant]) and

¹ *See* 34 C.F.R. § 668.46(k)(3)(i)(B)(1) (stating that a prompt, fair, and impartial proceeding is one that is “transparent” to the accuser and accused); 34 C.F.R. § 106.45(b)(2)(A) (requiring recipients to provide written notice of their grievance process to known parties to a Title IX formal complaint)

² *See* 34 C.F.R. § 668.46(k)(3)(i)(B)(1) stating that a prompt, fair, and impartial proceeding is one that is conducted in a manner that is “consistent” with the institution’s policies.

Attachment A-3 (Non-Disclosure Agreement [Advisor]). The NDA permitted both the College and the other party to remedy a potential or threatened breach through civil legal action.

While York's Title IX policy indicates that parties and their advisors will be asked to sign an NDA because they may receive information that would otherwise be protected from disclosure under FERPA, the terms of the agreement are not narrowly tailored to this purpose. The NDA prohibited parties and their advisors from disclosing any "sensitive, private, or confidential" information, with a limited number of highly specific exceptions, or from using it for any purpose other than the Title IX proceedings. Furthermore, parties and their advisors are not given a chance to review the agreement until shortly before their limited window to review the evidence begins.

Under the terms of the agreement, York may seek equitable relief—including an injunction—for any threatened or actual breach by a party or advisor. The NDA further establishes the non-breaching party as a third-party beneficiary and requires the signing party to agree to indemnify the school from any civil claims brought against York by the other party or on their behalf that arises out of, or results from, a breach of any provision of the agreement. No consideration is provided by the school in exchange for a party's agreement to these terms.

The agreement's reliance on the court system for remedies and its requirement that parties will indemnify the school from any civil legal claims related to a breach is an unreasonable and unnecessarily punitive enforcement mechanism that creates undue legal liability for students while buffering the institution. No survivor should be forced to accept the threat of legal action from a Recipient as a condition of their full participation in the Title IX grievance process.

Furthermore, as reasoned above,³ the agreement's statement that it does not prevent the parties from gathering and presenting relevant evidence fails to account for a party's inability to introduce new evidence or prepare for hearing if they should refuse to sign the NDA. Indeed, at least one complainant's attorney advisor was barred from accessing the evidence until the *morning of the scheduled hearing* after she initially refused to sign the provided agreement due to concerns about the NDA's unnecessary and unlawful provisions. Although she presented an alternative signed agreement stating that she would only use FERPA-protected information in her role as the complainant's advisor and attorney, she was denied access to the evidence until she capitulated and signed York's original NDA, an unreasonable infringement on the complainant's federal right to inspect and review evidence from the investigation with his advisor.⁴

III. Example 3: California State University ("CSU")

During the Spring 2021 semester, the Title IX Coordinator for one CSU campus presented an Early Resolution Agreement to parties involved in an ongoing Title IX grievance process between a former student and a professor. The agreement, which was written to bind the two parties, included a full waiver of known and unknown claims against CSU, both related and unrelated to the sexual misconduct allegations. No consideration was offered by the University to the student in exchange for the waiver. While the investigation occurred after the issuance of the current Federal Title IX regulations, the underlying incident had occurred prior to the issuance of the current regulations. Regardless of applicability, the principal of unconscionability as to such agreements can be found in

³ See Example 1: Alabama

⁴ 34 C.F.R. § 106.45(b)(5)(vi)

the current regulations: Recipients are currently prohibited from “offer[ing] or facilitat[ing] an informal resolution process to resolve allegations that an employee sexually harassed a student.”⁵

The Agreement read in relevant part:

“The Parties hereby release and forever discharge the Trustees of the California State University (CSU) and its agents, attorneys, current and former employees, officers, directors, trustees, auxiliary organizations, insurers, representatives and all persons acting by, through, under, or in concert with them (collectively referred to as Released Parties) from any and all manner of claims, actions, obligations, attorneys’ fees, damages or liabilities of any kind whatsoever, whether known or unknown, fixed or contingent, which they have, may have or claim against the CSU, or any of them, including, without limiting the generality of the foregoing, any claims in any way arising out of, based upon, or related to the facts and circumstances [complainant] alleged in her [. . .] complaint against [respondent] including [Respondent’s] hiring, employment, and resignation from employment with the CSU including all interactions with [Complainant], claims under the California Fair Employment and Housing Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, or the Older Worker Benefit Protection Act, that result from [Respondent’s] employment with CSU and his resignation from that employment.”⁶

Settlement agreements—when utilized legally and ethically—have the potential to shield survivors from an emotionally taxing grievance process. However, survivors should not be required to give up rightful legal claims against a Recipient in order to seek justice against their offender within a Recipient’s grievance process or prior to the onset of the grievance process in exchange for nothing from Recipients but the mere observance of rights that were already owed to the complainant under Title IX. Recipients who protect their own interests at the expense of students’ legal rights must be sanctioned to deter such unconscionable practices.

⁵ 34 C.F.R. § 106.45(b)(9)(iii).

⁶ ERA can provide a copy of the resolution agreement itself to OCR upon request.



APPENDIX B

Example 1: Arizona State University (ASU)

In 2020, Arizona State University (ASU) required a student-complainant—who had already filed a sexual assault complaint and had it adjudicated against a fellow student—to execute a non-disclosure agreement (NDA) before it would provide her with the outcome. *See Attachment B-1* (Educational Records Non-Disclosure Acknowledgment). Upon information and belief, ASU systematically used such NDAs to control complainants in sexual misconduct cases counter to longstanding Education Department (ED) rulings that have prohibited any “gag order” being placed upon such students.¹ Following a Clery Act complaint by the student-complainant’s attorney, Laura L. Dunn, the ED investigated ASU for this NDA practice and found it responsible for violating the Clery Act.² In its findings, the ED stated that such attempts to place preconditions on a student-complainant’s federal rights were “*of special concern*.”³ The ED went on to expand its 2008 decision by stating: “*The University cannot place conditions of any kind on a victim of an alleged sexual assault or their advisor, including the execution of a non-disclosure agreement, as a pre-condition to full participation in the disciplinary process.*”⁴

Looking at the experiences of sexual assault complainants at Georgetown (2004), at UVA (2008), and at ASU (2020), a clear pattern emerges. This pattern shows that recipients *will* disregard federal law and regulations when it suits them unless the ED demonstrates constant vigilance to ensure officials will not exploit students by undermining their federal rights.⁵ The ED must ensure that recipients comply with the legal mandates as well as promulgated guidance to combat disturbing trends at educational institutions where officials are curtailing the rights of student-survivors seeking to access Title IX grievance and/or Clery Act disciplinary proceedings on their respective campuses.

Example 2: Villanova University (Villanova)

In 2021, Villanova required the parties involved in the Title IX grievance process to sign an Agreement Regarding Evidence Disclosed in a University Sexual Misconduct Investigation or Hearing (ARED). *See Attachment B-2* (Villanova University Agreement Regarding Evidence Disclosed in a University Sexual Misconduct Investigation or Hearing). Through the ARED,

¹ See Letter from Director M. Geneva Coombs to Georgetown University President Dr. John J. DeGioia (July 16, 2004), available at <https://studentaid.gov/sites/default/files/GUFPRD07162004.PDF>; & Letter from Area Cas Director Nancy Paula Gifford to the University of Virginia (UVA) President Dr. John T. Casteen, II, available at <https://studentaid.gov/sites/default/files/UVAProgramReviewReport11032008.pdf> (Nov. 3, 2008) (stating UVA “cannot require an accuser to agree to its non-disclosure policy, in writing or otherwise, as a precondition of accessing judicial proceeding outcomes and sanction information” resulting from a sexual assault adjudication based largely on the Clery Act’s requirement that schools provide access to outcome and sanction information to complainants “without condition.”).

² See Letter from Senior Advisor James L. Moore, III, to ASU General Counsel Sara L. Trower (Apr. 12, 2021), available at https://s3.documentcloud.org/documents/20891869/20210412_clery_letter_to_asu_copy.pdf.

³ See *Id.*

⁴ See *Id.*

⁵ See also Piper Hansen, *DOE Finds ASU in Violation of Clery Act*, THE STATE PRESS (June 16, 2021), available at <https://www.statepress.com/article/2021/06/spcommunity-department-of-education-finds-asu-in-violation-of-clery-act>.

Villanova sought to impose unconscionable terms on the parties, such that it threatened to obstruct a fair, prompt, impartial, and equitable adjudication of the student-complainant's sexual assault report. *Id.*

The ARED—which Villanova presented as a required agreement made *before* the parties could access any evidence (including a student-complainant's access to her own formal, signed complaint)—prohibited the parties from discussing or disclosing information providing during the campus process in *any* context. As written, this agreement would prevent student-complainants from using information for therapy, medical treatment, law enforcement reports, complaints with federal agencies, etc. Additionally, like ASU's NDA, Villanova's ARED conditioned the parties' access upon their execution of a written agreement by leading the parties to believe that their access was conditioned rather than a matter of federal right. Such conduct is antithetical to the ED's articulated policy position prohibiting federal funding recipients from placing preconditions on parties to a Title IX or Clery Act process before a student-complainant can fully participate and exercise their rights.⁶ In fact, through both campus officials and general counsel, Villanova stated it would withhold the evidence permanently from the parties if they did not sign the ARED. Thankfully the student-complainant's family could afford a lawyer as an advisor, Ms. Dunn, who pushed back against this unconscionable agreement.

Specifically, Title IX regulation entitles the parties in a sexual misconduct proceeding to each have access to evidence collected by recipients as part of the grievance process.⁷ As such, recipients must ensure the parties and their advisors have an equal opportunity to inspect, review, and respond to the evidence gathered during the investigation.⁸ In fact, recipients are prohibited from “restrict[ing] the ability of either party to . . . gather and present relevant evidence.”⁹ By withholding evidence, the institution is inhibiting that part of the grievance process that is akin to discovery. Withholding evidence from one party would unlawfully impede his/her/their equitable access to the disciplinary process, which is counter to the explicitly articulated requirements of the grievance process.¹⁰ Like Title IX, the Clery Act's regulations also require that the parties have “equal access... to any information that will be used during informal and formal disciplinary meetings and hearings.”¹¹ Access to the evidence directly ties to the parties' claims and defenses, thus making it central to ensuring a fair, prompt, impartial, and equitable adjudication process.¹²

Despite these federal rights, Villanova's general counsel initially tried to strongarm the student-complainant and Ms. Dunn to sign the ARED by giving only the respondent and his attorney-advisor access to the evidence even *after* the complainant's advisor provided a copy of the ED's

⁶ US Department of Education Financial Student Aid Application, School Eligibility and Delivery Services, Letter by The School Eligibility Channel (2004), available at <https://studentaid.gov/sites/default/files/GUFPRD07162004.PDF>; Clery Act Final Determination (2008), available at <https://studentaid.gov/sites/default/files/UVAProgramReviewReport11032008.pdf> (previous findings prohibit university action that undercuts the spirit and intention behind the Clery Act).

⁷ 34 C.F.R. § 106.45.

⁸ 34 C.F.R. § 106.45(b)(5)(vi).

⁹ 34 C.F.R. § 106.45(b)(5)(iii).

¹⁰ 34 C.F.R. § 106.8(c).

¹¹ 34 C.F.R. § 668.46(k)(3)(i)(B)(3).

¹² 34 C.F.R. § 106.8(c); 34 C.F.R. § 668.46(k)(3).

finding against ASU to deter the unlawful requirement of the ARED. After filing a federal Clery Act complaint with the ED and providing notice of the same to Villanova's general counsel to escalate the dispute, the recipient compromised and allowed the student-complainant and Ms. Dunn to execute a Family Educational Rights and Privacy Act (FERPA)-compliance agreement so that they could (eventually) have access to the evidence.¹³ By withholding evidence, and implicitly threatening never to provide it to a party, Villanova effectively violated both Title IX and the Clery Act by denying a student-complainant equal access to the process.¹⁴

Worst still, the ARED threatened to violate the federal rights of the parties during the sexual assault hearing if they signed the agreement and then breached it in any way, such as through filing a federal complaint against Villanova under Title IX or the Clery Act with the ED regarding any information contained within that evidence. The ARED differs notably from other examples recounted in this appendix because Villanova used it to threaten both parties with an egregious punishment. Specifically, the ARED stated in relevant part:

“[W]here a party violates this Agreement by disclosing confidential records obtained during the investigation or hearing, the University’s hearing panel may draw an adverse inference as to that party’s credibility in making a determination regarding responsibility should such disclosure demonstrate the party’s consciousness of responsibility.”

See Attachment B-2 (emphasis added). Under this term, Villanova is threatening to potentially find against a victim-complainant during a sexual assault allegation if she discloses any evidence to law enforcement for a criminal case, a therapist for treatment, the ED for enforcement, etc. Since sexual assault proceedings on such serious matters as campus sexual assault often turn on credibility, the threat for the recipient to put a “thumb on the scale” is shocking and simply unconscionable.¹⁵

The ED should find that Villanova's ARED is analogous to a contract of adhesion between an employer and an employee since the parties cannot negotiate its terms when recipients threaten and then withhold the legal rights of students unless they agree to unconscionable terms.¹⁶ The unconscionability of such a contract is evident from the sophistication of the recipient and the lack of bargaining power by the students involved. Thankfully, unlike most campus sexual assault cases, the student-complainant in this matter could afford an advisor with a law degree who knew that this agreement was unlawful to take legal action that forced Villanova into negotiating the terms of the ARED. Students should not have to obtain attorney-advisors at personal expense before their federal rights are safeguarded. However, this is increasingly becoming the norm because the ED has not been issuing any sanctions or other consequences to sufficiently penalize intransigent recipients for their abuse of power.

¹³ Notably, this still allowed the respondent and his advisor more time to process the evidence.

¹⁴ See *Id.*

¹⁵ This term also would seemingly violate the due process or fundamental fairness rights of respondents to such cases.

¹⁶ See, e.g., *Vitale v. Schering-Plough Corp.*, 146 A.3d 162, 169 (N.J. App. 2016), cert. granted, 157 A.3d 842 (N.J. Dec. 5, 2016).

Example 3: Colleyville Heritage High School of Grapevine-Colleyville Independent School District (GCISD)

In 2021, the Grapevine-Colleyville Independent School District (GCISD) issued a Stay Away Agreement (SAA) to the minor parties and parents involved in a K-12 case at Colleyville Heritage High School. *See Attachment B-3* (Grapevine-Colleyville Independent School District, *Stay Away*). This case involved an on-campus sexual assault in an unmonitored band practice room during the school day.¹⁷ Through its issuance of the SAA, GCISD misrepresented the state of federal law by claiming that the parties had to sign it *before* the district would issue any stay away order to protect the minor student victims.¹⁸ Specifically, the SAA begins: “*In an effort to provide supportive measures to both students, this agreement is being initiated.*” *Id.* (emphasis added). This contradicts Title IX’s regulations, which require that GCISD to offer supportive measures to victims immediately and without condition.¹⁹

Under Title IX, supportive measures “are designed to restore or preserve equal access to the recipient's education program or activity . . . including measures designed to protect the safety of all parties or the recipient's educational environment or deter sexual harassment.”²⁰ Victims are entitled to supportive measures without requiring that they even make a formal complaint.²¹ Through the SAA’s framing and presentation to the student-victims, GCISD sought to disarm the minors (and the parents if they were involved at all) by hiding the fact that the district was seeking to condition the student’s federal right to equal educational access under Title IX through the SAA. Notably, the SAA does not indicate what rights exist under Title IX or that the agreement would affect such rights upon agreement.

Of additional concern, the SAA intentionally included a vague term that would have created and facilitated the potential for abuse and retaliation by GCSID. Specifically, the SAA stated:

*“Failure to abide by the terms or **spirit** of this agreement, or engaging in any retaliatory conduct, made directly or indirectly towards any other person, student or adult, involved in this matter may result in disciplinary actions.”*

¹⁷ Notably, in the SAA’s “description,” GCISD showed its bias by defaming the minor student-complainant by implying that the sexual activity was mutual and being investigated as potentially “consensual” despite the complainant reporting it as a sexual assault along with two other student-victims whom the accused student had sexually harassing (and one whom he had also sexually assaulted in the Colleyville Middle School band practice room years earlier to show a concerning pattern of serial predation).

¹⁸ Upon information and belief, GCSID asked the other students to sign SAAs and did so as minors without the knowledge or support of their parents or an advisor due to their fear of reporting the assailant who continued to attend school alongside them even after their report.

¹⁹ 34 C.F.R. § 106.44(a).

²⁰ *See Id.*

²¹ 34 C.F.R. § 106.44 (“[A] recipient's response must treat parties equitably by offering supportive measures as defined in § 106.30 to a complainant...”).

See Attachment B-3 (emphasis added). Despite the student-complainant's family hiring a lawyer, Ms. Dunn, as an advisor to negotiate this unenforceable term, GCISD refused to do so.²² In response, upon advice of their advisor, the family refused to sign the SAA and threatened legal action unless the district abided by Title IX to provide safety measures. This resulted in a compromise such that the victim-complainant and her family signed an acknowledgment regarding the SAA signed only by the respondent and his parents.

Notably, GCISD still exploited the concerning SAA provision on the "spirit" of the stay away by bringing a retaliation allegation against the victim-complainant after her friend (not her) requested that a fellow student to support the survivor during the pending Title IX process. Despite repeated objections by Ms. Dunn, GCISD maintained these claims against the victim throughout the process until the final adjudication to place her in the position of a respondent (not just a complainant) the entire process. This case highlights how a recipient's use of such broad and vague language in these bogus agreements is aimed at undermining federal rights, not to enforcing them.

Like Villanova with its ARED, GCISD sought to manipulate unsophisticated parties (minor victims and their parents) by imposing the SAA on them without any information about their federal rights to the contrary. Such parties often access the Title IX grievance process on campus without legal representation, leaving them at a well-known disadvantage against recipients who seek to abuse their vulnerable position of desperation. GCISD shamelessly tried to make the minor parties and their parents feel obligated to sign the SAA by misleading them to believe such an agreement would be necessary before it would implement safety measures counter to Title IX.²³ Thankfully, the family of this student-survivor could afford a lawyer as an advisor to prevent them from blindly believing the district and signing an agreement that would alter and undermine their federal rights.

Example 4: University of Maryland – College Park (UMD)

During an ongoing campus sexual assault process, the University of Maryland (UMD) issued a document to the advisors for the parties entitled Participation Agreement for Support (PAS). See Attachment B-5 (University of Maryland, *Participation Agreement for Support Persons/Advisors*). This agreement underscores how recipients are currently abusing FERPA, 20 U.S.C. § 1232g, to protect their own interests over those of the students involved in sexual assault proceedings by expanding upon FERPA's limited provisions about disclosing records. Specifically, and, upon information and belief, systematically, UMD strategically leverages FERPA by seeking to bind advisors (who are often also serving in a dual role as attorneys) under the PAS from using any information learned from records during the process without providing prior notice to UMD.

FERPA is one of the *most poorly written federal laws* in existence today. Congress has left this statute unamended for decades to allow recipients to willfully abuse this federal law in an effort to avoid transparency and accountability for campus crimes and civil rights violations. Among other things, FERPA lacks modernization regarding the use of technology, inexplicably leaves unchecked

²² Concerningly, GCISD claims that such an unenforceable agreement is "modeled off a template provided in the *Anti-Bullying Toolkit* by Walsh Gallegos," which is a local law firm that it identifies as "an industry leader in this field that works with school districts throughout Texas." See Attachment B-4.

²³ This and other allegations are currently being investigated by OCR as part of Complaint No. 06-21-1668.

discretion to schools about whether to show students their own records (while prohibiting their attorneys from seeing them as well), fails to fully consider the needs of student-victims seeking justice after abuse, and lacks any meaningful enforcement mechanisms. In short, FERPA is *basically useless* to students but *exceedingly beneficial* to educational institutions that routinely abuse the law for their own purposes.

Of note, FERPA fails to give student's a right to access a physical copy of their own education records when containing information about other students, which every student-on-student disciplinary matter does.²⁴ While FERPA allows students to request that recipients release a copy of their records to third parties,²⁵ which is how many attorneys seek information about campus-based incidents, recipients often (and wrongly) treat these attorneys as third parties rather than legal representatives of the students' interest entitling them to the same access as the student they serve.²⁶ By treating attorneys as third parties rather than legal extensions of students, recipients use FERPA to require the attorneys not to disclose information from education records beyond use in the current campus proceeding.²⁷ It should be obvious (and unacceptable) to any policymaker aware of the historical fact of educational institutions often covering up campus crimes and civil rights violations that this misuse of FERPA is a way to shield recipients from their own liability. Regardless of how recipients misuse FERPA, it should be uncontroversial that students should maintain a federal right to access and use information from their own education records as a public policy matter.

While FERPA allows recipients to prohibit third party redisclosure of education records without limitation, UMD's PAS goes further to potentially interfere with attorney-client and work product privilege, as well as an attorneys ethical obligations to their clients.²⁸ Specifically, the PAS requires advisors to provide notice to UMD's Title IX Coordinator "in writing . . . of the purpose for the intended disclosure so that the University may take appropriate and necessary action, including, but not limited to, informing the other Party." *Id.* By going beyond FERPA, UMD is creating additional protections for itself to insulate against potential legal action that an attorney-advisor may take on behalf of a student party to hold the educational institution accountable should the disclosed records indicate that a party's rights have been violated.

Additionally, per the terms of the PAS, UMD also unlawfully requires advisors to submit the signed agreement prior to *any* involvement in proceedings, which is counter to the Clery Act regulation prohibiting recipients from limiting the involvement of an advisor (only their participation

²⁴ See 20 U.S.C. § 1232g(a)(1)(A) ("If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review *only such part of such material or document as relates to such student* or to be informed of the specific information contained in such part of such material.") (Emphasis added).

²⁵ 20 U.S.C. § 1232g(b)(4)(B).

²⁶ With regards to most third parties, it is prudent to require a student's consent before the recipient discloses their records to a third party and to limit third party redisclosure thereafter. However, when an advisor is also a student's attorney, and thus a legal representative (not a separate third party), such requirements do not make any sense and instead may impede an attorney's ethical duties to their client.

²⁷ 20 U.S.C. § 1232g(b)(4)(B) ("[P]ersonal information shall only be transferred to a third party *on the condition that such party will not permit any other party to have access to such information* without the written consent of the parents of the student") (emphasis added).

²⁸ ABA Model Rule 1.3 (Diligence).

during the process).²⁹ In requiring the PAS to be signed, UMD also seeks to interfere with Title IX rights entitling parties to have assistance from advisors when reviewing evidence and otherwise participating in the process.³⁰ Thus, UMD's conduct resembled that of ASU (2020), UVA (2008), and Georgetown (2004) by placing "a pre-condition to full participation in the disciplinary process."³¹

Under FERPA, recipients can and should redact personal identifying information of other students from education records when the same may be redisclosed to third parties. However, recipients, should not be able to deny access to the same by a student or their legal representatives without it first being notified about its potential use in legal action taken by that student against the recipient. Placing any condition that aims to alert a federal right to access conflicts with Clery Act enforcement and the current Title IX regulation requiring recipients to provide parties and advisors with the same opportunity to review and inspect evidence regarding serious matters, such as campus sexual assault.³² It is clear recipients are creating such provisions to protect themselves at the expense of the federal rights of the students they are meant to serve. Again, student-complainants like the one in this example should not have to retain a lawyer at personal expense; instead, the ED should want to systematically deter and penalize such unlawful practices by recipients to protect all students.

While Congress continues to fail students by leaving FERPA as written, the ED must act to stop recipients from abusing federal laws meant to protect students. Specifically, the ED must clarify - through guidance, regulation, enforcement actions, or other mean – that the attorneys who represent students as advisors are not "third parties" but rather legal representatives and thus an extension of the clients that they serve. The ED must also prohibit recipients from placing any precondition that would impede such attorneys' legal obligations to their clients. If such abuses remain unchecked by the ED, the purposes of Title IX and the Clery Act will be undermined by recipients and their legal counsel (who should know better). The ED must ensure recipients center student safety and educational access rather than thinking primarily, if not solely, about their own liability.

Example 5: University of Pittsburgh

In February 2022, "Jane Doe" reported that a fellow student sexually assaulted her on campus. Contemporaneous to this report, Ms. Doe requested an advisor for the Title IX process. Although the University informed Jane Doe that they would appoint an advisor for her, several months went by with no such appointment. Jane Doe repeated her request for an advisor several times. Repeatedly, the University told her that an advisor was not yet available. Eventually, the University informed Jane Doe that the Title IX investigation was complete, but the final investigation report and hearing would be delayed until it could locate an advisor for her.

With no advisors available, the Title IX Investigator suggested that Jane Doe reach out to local non-profits to find her own advisor. Ms. Doe got connected to a private attorney from Marsh Law that handles Title IX matters and requested that the University pay the attorney's fees on her

²⁹ 34 C.F.R. § 668.46(k)(2)(iv).

³⁰ See generally 34 C.F.R. § 106.45.

³¹ See Letter from Area Cas Director Nancy Paula Gifford to the University of Virginia (UVA) President Dr. John T. Casteen, II, *supra*, n. 2.

³² 34 C.F.R. § 106.45(b)(5)(vi).

behalf since they had been unable to provide an advisor for her. The University agreed to pay a reduced rate for the private attorney's fees and said it would develop a contract for this attorney.

In the interim, Jane Doe requested that the alleged perpetrator's degree be withheld until the Title IX process was resolved since these delays were caused by the University. Despite this, the University allowed the alleged perpetrator to graduate. It is unclear if the alleged perpetrator will still participate in the Title IX process of what if any sanctions are still available.

After several delays, the University provided a proposed contract to Ms. Doe's private attorney. Attachment B-6. The University's proposed contract (1) required both Ms. Doe and her attorney-advisor to agree that the University would have access to and ***own all communications between them***; (2) required the attorney-advisor to indemnify the University; (3) prohibited them from speaking publicly about the Title IX process or outcome, and (4) required them to agree that the University can record any part of the Title IX process and use all recordings and any communications as they see fit without limitation. Such requirements violate not only attorney-client privilege, but they are unethical for an attorney to accept in exchange for third-party payment of fees. Additionally, they seek to remove the limitation and protections of federal law on the institution.

The attorney informed the University that she was unable to sign the proposed contract, so Jane Doe is still waiting for the University's decision regarding whether they will pay the attorney-advisor's fee as promised to move the Title IX process forward.

The University of Alabama at Birmingham Title IX Confidentiality and Non-Disclosure Agreement

As a party and/or advisor in a Title IX investigation and/or adjudication (the “Title IX process”), you will have access to confidential information. As a party, you have a right to receive a copy of any evidence obtained as part of the investigation that is directly related to the allegations and a copy of the draft and final investigation report. As a party, you also have a right to inspect and review any audio or visual recording or transcript of the live grievance hearing. As an advisor, you may be shown or receive evidence related to a Complainant and/or Respondent, or be present to see or hear evidence in a proceeding conducted pursuant to the Title IX Policy. The University considers the entire Title IX process to be confidential in nature, including any materials, testimony, comments, discussions, and recommendations made in connection with the Title IX investigation and hearing, unless the University is otherwise required by applicable law and/or UAB policy to disclose certain information. Because of the confidential and sensitive nature of the Title IX process, you have an affirmative responsibility not to discuss or disclose any information, documents, statements, or evidence relating to the Title IX process to persons or parties who are not authorized to be privy to such information. Please sign the statement below indicating your agreement to keep all matters relating to the Title IX process confidential.

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

1. I agree to keep confidential all matters relating to the Title IX process, and I further agree not to discuss or disclose any information about the Title IX process itself, nor any testimony or documents received in connection with the Title IX process, with persons or parties who are not authorized to be privy to such information to the extent possible consistent with applicable law. I acknowledge and understand I am not permitted to make any audio, photographic, or video recording of any kind of any Title IX proceeding, including documentary information and evidence.
2. I agree not to disseminate the evidence I obtain or review during the Title IX process and will only use it for purposes of the Title IX process.
3. As a party, I understand that signing this Confidentiality and Non-disclosure Agreement does not prohibit me from discussing the allegations under investigation or from obtaining the assistance of family members, counselors, therapists, clergy, doctors, attorneys, or other resources, or discussing the allegations under investigation, or gathering and presenting evidence, including communicating with witnesses or potential witnesses.
4. I understand that if I violate this Confidentiality and Non-disclosure Agreement that I may be subject to disciplinary action up to and including termination of my employment and/or expulsion from the University. As an advisor, I understand that if I violate this agreement, I will not be allowed to participate in the Title IX process and the party will have to obtain a new advisor and/or the University will assign a new advisor.

 NAME

 Date

 Advisor Signature

 Date

NON-DISCLOSURE AGREEMENT

As of [REDACTED] York College of Pennsylvania and [REDACTED] agree as follows.

Background:

A formal complaint has been filed against Respondent alleging violation of York College of Pennsylvania's Sexual Misconduct Policy. The College will conduct an investigation of that formal complaint. Complainant and Respondent are both entitled to a meaningful opportunity to respond to evidence obtained as part of the College's investigation.¹ However, the evidence may include sensitive, private, or confidential information. For that reason, in the interest of both Complainant and Respondent, the College desires to limit the dissemination and re-disclosure of this information in accordance with this Agreement.

Definitions:

A. The term "the College" means York College of Pennsylvania and its subsidiary and affiliated entities, and all of their respective directors, officers, trustees, shareholders, employees, representatives, agents, attorneys, insurers, successors, and assigns.

B. The term "Complainant" means [REDACTED]

C. The term "Respondent" means [REDACTED]

D. The term "Agreement" means this non-disclosure agreement, signed by the College and Complainant.

E. The term "Confidential Information" means any evidence, provided to Complainant, including his or her agent, attorney, or advisor, by the College in the course of the Proceeding that is sensitive, private, or confidential in nature, including personally identifiable information, medical information (including medical history and medical treatment), education records, or incident reports. The term "Confidential Information" does not include information that,

(i) is or becomes generally available to the public, other than as a result of a disclosure by Complainant,

(ii) is or becomes available to Complainant on a non-confidential basis from a source other than the College, unless Complainant knows that the third-party source is prohibited from disclosing the information,

(iii) was known by Complainant, as established by documentary evidence, before the College provided it to Complainant, or

¹ See 34 C.F.R. 106.45(b)(5)(vi).

(iv) is or may become part of Complainant's education record.

F. The term "the Incident" means the incident or incidents alleged by Complainant in the complaint filed with the College against Respondent.

G. The term "Legal Order" means any applicable federal, state, or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction.

H. The term "the Proceeding" means the grievance procedure being conducted as a result of the formal complaint filed against Respondent regarding the Incident.

Terms:

1. Purpose of Disclosure. Complainant agrees that the purpose of the College's disclosure of evidence directly related to the Incident is to provide both Complainant and Respondent the opportunity to prepare for any additional steps in the Proceeding.

2. Complainant's Obligations. Complainant agrees to,

- (a) protect and safeguard the confidentiality of any Confidential Information,
- (b) use any Confidential Information only for the necessary purposes of the Proceeding,
- (c) not disclose any Confidential Information to any person or entity outside of the Proceeding, except to the Complainant's advisor who,
 - (i) needs to know the Confidential Information to assist the Complainant, or act on Complainant's behalf, in relation to the Proceeding, and
 - (ii) has executed and provided to the College's Title IX Coordinator a confidentiality agreement that affords, at a minimum, the same level of protection to the Confidential Information as this Agreement,
- (d) not use Confidential Information to intimidate, threaten, coerce, or otherwise retaliate against any person or entity,
- (e) notify the College, as soon as possible, of any unauthorized disclosure of Confidential Information or breaches of this Agreement by Complainant, and
- (f) fully cooperate with the College in its efforts to enforce its rights related to any unauthorized disclosure.

3. Permitted Uses of Confidential Information.

- (a) Despite any other provision in this Agreement, Complainant is permitted to,

- (i) use the Confidential Information for any purpose that is directly related to the Proceeding, and
 - (ii) discuss the allegations being investigated during the Proceeding,
- (b) No provision in this Agreement may be construed as,
- (i) restricting Complainant's ability to gather and present relevant evidence in connection to the Proceeding,
 - (ii) restricting Complainant's ability to use supportive measures² offered by the College, or
 - (iii) limiting Complainant's rights under applicable law or regulation, including Title IX of the Education Amendments of 1972.

4. Required Disclosure Pursuant to a Legal Order. Despite any other provision in this agreement, Complainant may disclose Confidential Information to the extent that disclosure is required by a Legal Order if, and only if, before disclosure Complainant provides prompt notice of the Legal Order to the College and Complainant fully cooperates with the College in its efforts to secure a protective order against such disclosure.

5. Return or Destruction of Confidential Information. At the College's request at any time, the Complainant must either,

- (a) return to the College, as soon as possible, all copies of any Confidential Information, whether in written, electronic or other form or media, or
- (b) destroy all copies of any Confidential Information and provide assurance to the College in writing that the Confidential Information has been destroyed, unless destroying the Confidential Information would violate federal, state, or local law or regulation.

6. The College's Obligations. The College will,

- (a) disclose any evidence directly related to the Incident that the Title IX Coordinator has obtained through their investigation, unless disclosure is prohibited by law or regulation,
- (b) protect the rights of individuals to the formal complaint to gather and present evidence during the Proceeding, including discussing the allegations in the formal complaint, and
- (c) apply non-disclosure requirements equally to Complainant, Respondent, and between their respective advisors.

² See 34 C.F.R. 106.30

7. Indemnification. The Complainant agrees to indemnify the College from any civil claims brought by Respondent, or on Respondent's behalf, against the College (including attorneys' fees and costs) that arise out of, or result from, Complainant's breach of any provision of this Agreement.

8. Remedies.

(a) If the Complainant breaches or threatens to breach this Agreement, the College may seek equitable relief, including an injunction. Nothing in this Agreement may be construed as limiting any other rights or remedies available, at law or otherwise, to the College.

(b) Complainant agrees that the Respondent benefits from this Agreement, as a third-party beneficiary, and nothing in this Agreement may be construed as restricting Respondent's available remedies.

9. Survival. The parties understand and agree that the terms of this Agreement will survive the conclusion or termination of the Proceeding, meaning that the terms of this Agreement will remain enforceable after the Proceeding concludes or terminates.

10. Governing Law. Pennsylvania law will govern this Agreement.

11. Severability. The Agreement's promises are severable, meaning that if a court were to find any promise invalid or unenforceable, the court will modify or adjust that promise. The Agreement's other promises and terms, though, would remain fully enforceable if that were to occur.

12.

13. Entire Agreement. This Agreement constitutes the entire agreement between Complainant and the College. Because the Agreement contains the entire agreement between Complainant and the College, neither Complainant or the College will be bound by any other promises or representations not contained in this Agreement. Only a written agreement by both Complainant and the College will alter or terminate this Agreement or any of its individual terms.

14. Counterparts. This Agreement may be executed in several counterparts, each of which will be considered an original. All such counterparts will constitute one and the same document.

15. Waiver. Complainant and the College agree that this Agreement may not be changed or waived (either in whole or in part) orally, by conduct, by informal writings, or by any combination of this conduct. No waiver of any term of this Agreement will waive any other terms of this Agreement.

[Signature Page to Follow]

Executed by:

YORK COLLEGE OF PENNSYLVANIA

By:_____

Name:_____

Title:_____

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this “**Agreement**”), effective as of [REDACTED] (the “**Effective Date**”), is entered into by and between YORK COLLEGE OF PENNSYLVANIA, with a principal place of business at 441 Country Club Road, York, Pennsylvania (the “**College**”) and [REDACTED] an adult individual (“**Advisor**”).

BACKGROUND

The College is required under the Family Educational Rights and Privacy Act (“**FERPA**”) to keep confidential personally identifiable information maintained by the College in education records.

FERPA requires certain re-disclosure limitations when an education record is permitted or required to be disclosed.

The College is required to investigate formal complaints alleging discrimination on the basis of sex, as defined by Title IX of the Education Amendments Act of 1972 and its implementing regulations. Those regulations define the term “discrimination on the basis of sex” as including sexual assault, sexual harassment, and retaliation.

The College is required to provide parties to a formal complaint of sex discrimination with notice and a meaningful opportunity to respond to evidence obtained as part of the College’s investigation into allegations raised in a formal complaint.¹

The evidence obtained and provided for review as part of the Title IX investigation may include personally identifiable information from education records as well as other sensitive, private, or confidential information.

A formal complaint has been filed by [REDACTED] (“**Complainant**”) with the College against [REDACTED] (“**Respondent**”) regarding one or more alleged incidents (“**the Incident**”). The College is conducting an investigation into those allegations, and both Respondent and Complainant are entitled to receive evidence gathered during that investigation which directly relates to the allegations. The “**Proceeding**” means the grievance procedure being conducted as a result of the formal complaint filed against Respondent regarding the Incident.

All parties to a formal complaint are permitted to seek advice and assistance from an advisor of the party’s choice.² The Complainant has selected [REDACTED] (“**Advisor**”) to act as advisor to him or her in connection with the Proceeding.

The College desires to limit the dissemination and re-disclosure of the evidence described above, subject to the terms and conditions of this Agreement.

¹ See 34 C.F.R. 106.45(b)(5)(vi).

² See *id.* at § 106.45(b)(5)(iv).

The College and Complainant's Advisor agree to the following:

1. **Confidential Information.** Except as provided in Section 2 below, “**Confidential Information**” means any evidence obtained by the College, including its affiliates, employees (not including Advisor), officers, directors, agents, attorneys or advisors and provided to Advisor, or both, including their agents, attorneys, or advisors, that is sensitive, private, or confidential in nature, including the following:

- (a) personally identifiable information;
- (b) medical information, including medical history and medical treatment (if that information is authorized to be disclosed);
- (c) education records; or
- (d) incident reports.

2. **Exclusions from Confidential Information.** Except as required by applicable federal, state, or local law or regulation, the term “**Confidential Information**” as used in this Agreement does not include information that,

- (a) at the time of disclosure is, or becomes, generally available to and known by the public other than as a result of a direct or indirect breach of this Agreement or any act or omission by Advisor,
- (b) at the time of disclosure is, or becomes, available to Advisor on a non-confidential basis from a third-party source, not including the Complainant/Respondent, provided that such third-party is not and was not prohibited from disclosing such Confidential Information to Advisor by any legal, fiduciary, or contractual obligation,
- (c) was known by or in the possession of Advisor, as established by documentary evidence, before disclosure by the College, pursuant to this Agreement, or
- (d) is, or may become, part of Complainant/Respondent's education record.

3. **Purpose of Disclosure.** Advisor agrees that the purpose of the College's disclosure of evidence directly related to the Incident is to provide both the Respondent and Complainant the opportunity to prepare adequately for any additional steps in the Proceeding.

4. **Assurance by Advisor.** Advisor represents that he or she, as of the signing of this Agreement, is acting in the role of an advisor to the Respondent in connection with the Proceeding.

5. **Advisor's Obligations.** As conditions for receipt of Confidential Information, Advisor agrees to the following:

- (a) Advisor will use a reasonable degree of care to protect and safeguard the confidentiality of all such Confidential Information;
- (b) Advisor shall not use the Confidential Information, or permit it to be accessed or used, for any purpose other than during the Proceeding;
- (c) Advisor shall not disclose any such Confidential Information to any person or entity outside of the Proceeding, except to the Respondent,
- (d) Advisor shall not use any such Confidential Information to intimidate, threaten, coerce, or otherwise retaliate against any person or entity for the purposes of chilling the exercise of their rights under federal, state, or local law or regulation;
- (e) Advisor must promptly notify the College of any unauthorized disclosure of Confidential Information or other breaches of this Agreement by Advisor; and
- (f) Advisor must fully cooperate with the College in any effort undertaken by the College to enforce its rights related to any such unauthorized disclosure.

6. The College's Obligations. The College will,

- (a) disclose any evidence directly related to the Incident that the Title IX Coordinator has obtained through the corresponding investigation, unless disclosure is prohibited by federal, state, or local law or regulation,
- (b) protect the rights of individuals to the formal complaint to gather and present evidence related to the resolution of the formal complaint, including discussing the allegations in the formal complaint, and
- (c) apply non-disclosure requirements related to Confidential Information equally to Complainant, Respondent and between their advisors.

7. Required Disclosure Pursuant to a Legal Order. Advisor may not disclose any of the Confidential Information pursuant to applicable federal, state, or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (a “**Legal Order**”), unless Advisor first uses reasonable efforts to provide the College with:

- (a) prompt written notice of such requirement so that the College may seek a protective order or other remedy, if necessary, and
- (b) reasonable assistance in opposing such disclosure or seeking a protective order or other limitations on disclosure.
- (c) If, after providing such notice and assistance as required under this section, Advisor remains subject to a Legal Order to disclose any Confidential Information, Advisor will disclose no more than that portion of the Confidential Information that such Legal Order specifically requires. Advisor shall use reasonable

efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

8. Permitted Uses of Confidential Information.

(a) Notwithstanding anything to contrary in this Agreement, Advisor is permitted to,

(i) use the Confidential Information for any purpose that is directly related to the Proceeding, and

(ii) discuss the allegations being investigated during the Proceeding, regardless of whether such allegations fall within the meaning of Confidential Information.

(b) Nothing in this Agreement may be construed as restricting the ability of Advisor to gather and present relevant evidence in connection to the Proceeding.

(c) Nothing in this Agreement may be construed as limiting the rights of Advisor under federal, state, or local law or regulation, including Title IX of the Education Amendments of 1972.

9. Return or Destruction of Confidential Information. At the College's request at any time, including during the duration of the Proceeding or following the Proceeding, Advisor must either,

(a) promptly return to the College all copies, whether in written, electronic or other form or media, of the Confidential Information, or

(b) destroy all such copies of Confidential Information and certify in writing to the College that such Confidential Information has been destroyed, unless such destruction would violate federal, state, or local law or regulation.

10. Remedies.

(a) In the event of any breach or threatened breach of this Agreement by Advisor, the College may seek any and all equitable relief, including an injunction. Nothing in this Agreement may be construed as limiting any other rights or remedies available, at law or otherwise, to the College.

(b) Advisor agrees that Complainant and Respondent are third-party beneficiaries to this Agreement and nothing in this Agreement may be construed as restricting Complainant's or Respondent's available remedies.

11. Survival. The parties understand and agree that the terms of this Agreement will survive the conclusion or termination of the Proceeding.

12. Governing Law. Pennsylvania law will govern this Agreement.

13. Severability. The Agreement's promises are severable, meaning that if a court were to find any promise invalid or unenforceable, the court will modify or adjust that promise. The Agreement's other promises and terms, though, would remain fully enforceable if that were to occur.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained in this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by both the College and Advisor.

15. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

16. Waiver. No waiver of any term of this Agreement will waive any other term of this Agreement.

Executed by:

By: _____

Name: _____

YORK COLLEGE OF PENNSYLVANIA

By: _____

Name: _____

Title: _____

EDUCATIONAL RECORDS NON-DISCLOSURE ACKNOWLEDGEMENT

Records: Student Conduct File Materials

Purpose: ☐ University Hearing Board Binder ☐ Other _____

The records being released contain educational records which are covered by the Family Educational Rights and Privacy Act (FERPA). Any violation of the terms of this release shall result in Arizona State University declining to release any future records to the violator for a term of no shorter than 5 years, will be considered to be a violation of the ABOR Student Code of Conduct, and may violate criminal laws.

Please indicate by initialing below you are acknowledging and agreeing to the following:

- _____ Federal and State laws, including but not limited to the Family Educational Rights and Privacy Act (FERPA), protect the disclosed educational records and must be treated with complete confidentiality.
- _____ The educational records contain confidential information and can be shared only with those authorized to use it.
- _____ The educational records cannot be reproduced/republished.
- _____ At the completion of the process, the records will be appropriately destroyed (shredded) Office in accordance with university and ABOR policy.
- _____ I am not to retaliate against any individual who participates in the Student Rights and Responsibility investigation process.

STUDENT (Please Print)

Signature

Date

ADVISOR (Please Print)

Signature

Date

For Office Use Only

Party declined to sign Non-Disclosure Acknowledgement and not records were released ☐

Request fulfilled by:

STAFF (Please Print)

Signature

Date

Villanova University
Agreement Regarding Evidence Disclosed in a University Sexual
Misconduct Investigation or Hearing

This Agreement is made between Villanova University and _____ (Party or Advisor) in Case IR2021-000342.

Scope of Agreement

This Agreement governs access to evidence granted by the University to the Parties and Advisors in this case under the University's Sexual Misconduct Policy and related grievance procedures.

The Parties may not discuss or disseminate information that does not consist of the allegations under investigation, including evidence related to the allegations that has been collected and exchanged between the Parties and their Advisors during the investigation, or the investigative report summarizing relevant evidence that will be made available to the Parties and their Advisors.

The Agreement does not, however, prohibit the Parties from generally discussing the allegations under investigation with a parent, friend, or other source of emotional support, or with an advocacy organization, nor otherwise prohibit the Parties from consulting with their Advisors about the facts and evidence of this case.

This Agreement shall survive any amendments to or withdrawal of University policy, the end of the University's administrative process, and any termination of a Party or Advisor's role in this case. It is binding upon heirs and assigns. It may not be revoked.

Responsibilities of Parties

Parties are responsible for ensuring that they, their respective Advisors, and anyone who accesses the Party's or their Advisor's computers or other devices that may be used to access the evidence and records covered by this case, adhere to the confidentiality requirements in this Agreement. Penalties for violations, whether knowing or negligent, may include sanctions under other provisions of the Code of Student Conduct or other University policies, as applicable. For advisors, penalties may include ineligibility to continue as the Party's Advisor of Choice in the current case, and/or temporary or permanent ineligibility to serve as an Advisor of Choice in future cases.

In addition to these sanctions, where a party violates this Agreement by disclosing confidential records obtained during the investigation or hearing, the University's hearing panel may draw an adverse inference as to that party's credibility in making a determination regarding responsibility should such disclosure demonstrate the party's consciousness of responsibility.

These rules and standards apply equally to all Parties and their Advisors, regardless of whether they are in the role of Complainant or Respondent.

Evidence Sharing Process

Consistent with the University's Sexual Misconduct Policy and related procedures, Villanova will provide the Parties and their Advisors access to evidence and the investigative report prior to and during the hearing. These records are protected by federal privacy laws (including FERPA and others) and may be covered under State law as well. Parties and Advisors may access and use the records only and strictly for the purposes of the University's Sexual Misconduct Grievance Process.

Access to the records will be provided via OneDrive, a secure file hosting platform. Parties and Advisors are prohibited from downloading, printing, copying, taking photos or videos of the screen, audio or video recording a reading of the material, or otherwise using any analog or technological methods to capture the content of the records.

Security and Confidentiality Protocols

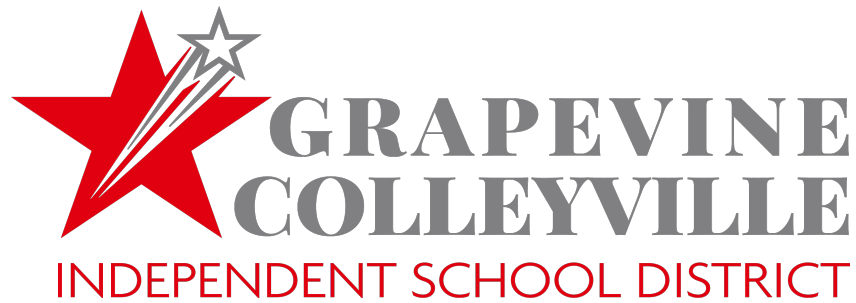
By signing below, the Party or Advisor agrees:

- to maintain a password or other security process on any device that they use to access the records;
- not to re-share or re-disclose access to the records, or their password or security process used to access the records, to any person, including but not limited to family, friends, those with whom they live, witnesses, other parties, or their own Advisor/Advisee. Each Party and Advisor shall receive a separate link to access the records, and links should not be re-shared or forwarded to anyone.
- not to physically share the space in which they review the records with any other person, except that a Party and their Advisor may review records together, and Advisors may review the records with other persons who are assisting them in a professional capacity to prepare for their role as an Advisor in this case (for instance, an associate in a law firm). The Advisor, and the Party in turn, is responsible for ensuring that the records are kept confidential by any additional person(s) who access the records alongside the Advisor.

Name (printed or typed)

Signature (or electronic signature)

Date



STAY AWAY AGREEMENT

Name of Students: [REDACTED]

The Students named above were involved in a conflict with each other. To ensure that there are no further incidents, the Campus Administration and the Students, together with the Students' parents/guardians, have entered into this Stay Away Agreement.

This agreement is initiated: May 11, 2021

This status of this agreement will be reviewed: At the beginning of each semester

Background Information:

Date(s) of Incident: Feb. 2021

Location(s) of the Incident: CHHS Band Hall

Description of conduct involved in the incident(s):

Students engaged in inappropriate sexual contact during the school day utilizing a band practice room. Whether the contact was consensual is being investigated through the Title IX formal grievance process. In an effort to provide supportive measures to both students, this agreement is being initiated.

To the Student(s):

In order to protect the rights and safety of all members of our school community, the students agree to stay away from each other at all times during the school day and at any school-sponsored event. This means that you will not approach, talk to, sit by, or have any contact while at school, on school property, on school buses, at bus stops, or at school-related activities. You also will not direct or encourage others to engage in such conduct on your behalf.

In addition, the following agreed interventions are effective immediately:

Schedule:

- Students currently do not attend any classes together.
- Students do sometimes see each other in the hallway outside band as one is leaving class and the other is entering.

[REDACTED]

Lunch:

- There is no overlap during lunch. While previously the students shared A lunch on B Days; [REDACTED] now has A lunch on B Days and [REDACTED] has D lunch on B Days.

Extracurricular Activities:

- [REDACTED]
 - [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]

Enforcement:

Failure to abide by the terms or spirit of this agreement, or engaging in any retaliatory conduct, made directly or indirectly towards any other person, student or adult, involved in this matter may result in disciplinary actions.

Your compliance with this agreement will be monitored by CHHS Administration. Please report any alleged violations to Assistant Principal Ross Nelson on campus or Tiffany Cunningham, Title IX Coordinator.

Assurances:

By signing below you acknowledge you have read, and had an opportunity to ask questions about, this agreement.

Signatures:

[REDACTED] _____ Date: _____

Parent/guardian: _____ Date: _____

[REDACTED]: _____ Date: _____

Parent/guardian: _____ Date: _____

Administrator: _____ Date: _____

Copies of this Agreement provided to:

☐ Principal ☐ Assistant Principal ☐ Counselor ☐ SRO ☐ Teachers

Periodic Review of Stay Away Agreement:

[illegible]

**Fwd: question**

3 messages

----- Forwarded message -----

From: **Craig Civale** <craig.civale@gcisd.net>

Date: Fri, May 6, 2022 at 5:01 PM

Subject: Re: question

To: <saraganim@gmail.com>

Sarah

I didn't hear back on the waiver to discuss some of your specific questions.

In light of that, I have the following information for you.

As I stated on our call, we cannot address some of the questions regarding specific students due to FERPA guidelines, but I can share additional information with you concerning GCISD's Stay Away agreement.

The agreement is a good-faith document the District uses to increase the safety and protection for students who have been involved in a conflict with another student including as the target of bullying, sexual harassment, dating violence, or other misconduct. Our agreement is modeled off a template provided in the *Anti-Bullying Toolkit* by Walsh Gallegos, an industry leader in this field that works with school districts throughout Texas. GCISD uses the agreement as a supportive and corrective measure when addressing misconduct or allegations of misconduct to facilitate student access to campus and extracurricular activities.

When the District receives a complaint that falls under Title IX, it sets a series of processes and procedures into motion. The Stay Away agreement is one example of supportive measures that can be provided as it is a detailed plan developed by campus administration and designated Title IX staff. The intent of this agreement is to outline and ensure that both parties clearly understand the expectation to stay away from each other at all times during the school day and at any school-sponsored events. A Stay Away agreement is just that, an agreement between parties as to a course of action, not an order. The agreement is reviewed and discussed with the students, their families, and campus administration, and all parties are given an opportunity to review, raise concerns, make suggestions, and sign should they choose to do so. Once more, the intent of the meeting to discuss the agreement is to make sure all parties clearly understand the expectations going forward and have an opportunity to actively participate in the development of those expectations.

In order for an agreement to be effective, both parties must comply with its terms and be held accountable to those terms. The campus monitors the plans and will address any allegations of violations through investigation. Disciplinary action is only considered when an intentional failure to abide by the terms of the agreement occurs. This is clearly communicated to each party during the review of the plan with families.

It sounds like you've done some digging around on Stay Away policies in other districts. You'll find they have similar templates in place, and use stronger language than what we use at GCISD.

[https://pol.tasb.org/Policy/Download/1146?filename=FFH\(XHIBIT\).pdf](https://pol.tasb.org/Policy/Download/1146?filename=FFH(XHIBIT).pdf)

Thanks

Craig

On Thu, May 5, 2022 at 4:34 PM Craig Civalo <craig.civalo@gcisd.net> wrote:

Hey Sara

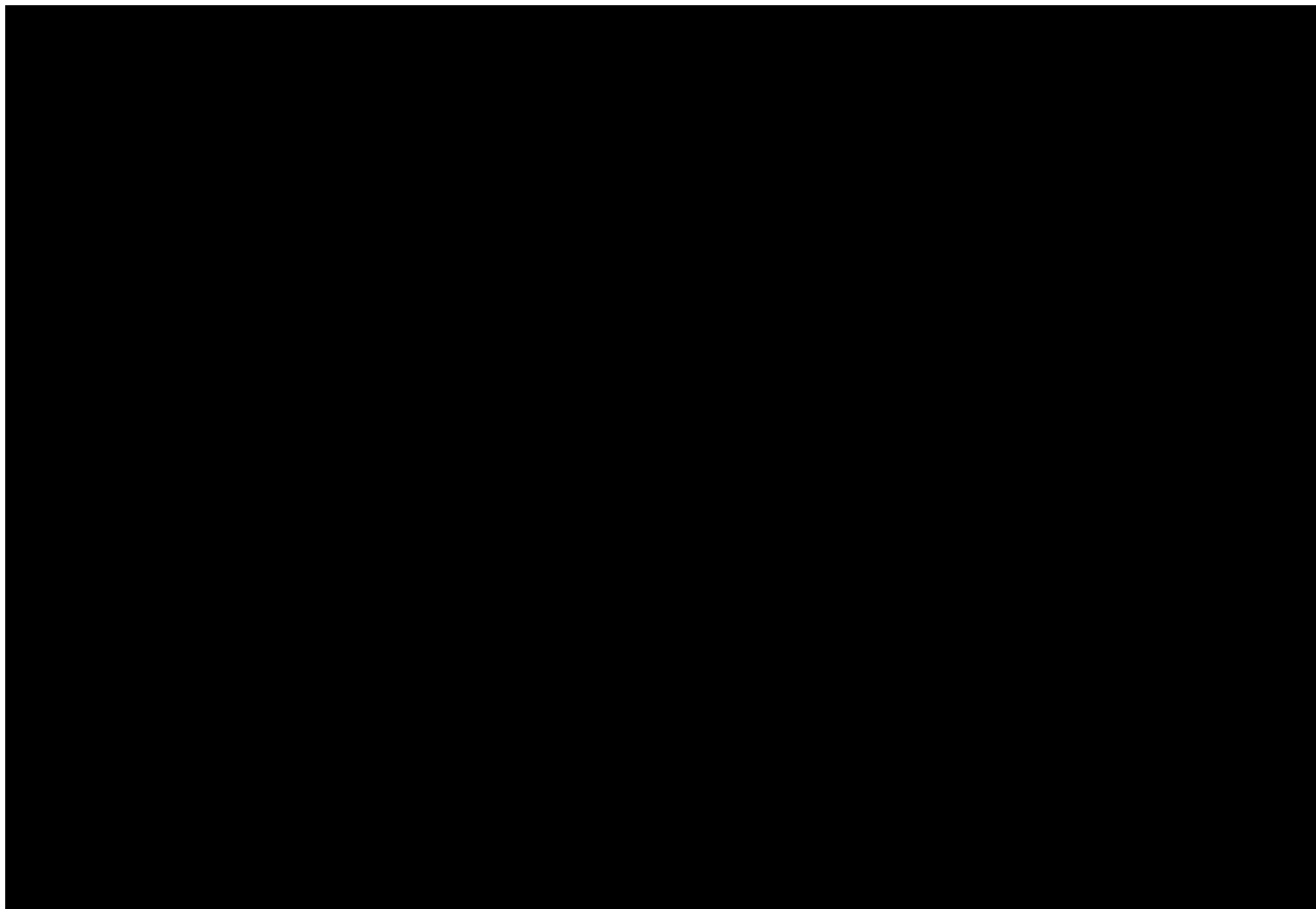
Quick question. Would the family you are conversing with be willing to sign a waiver to allow the district to fully answer your specific questions?

Craig

CONFIDENTIALITY NOTICE: This email message, including all attachments, is for the sole use of the intended recipient(s) and may contain confidential student and/or employee information. Unauthorized use and/or disclosure is prohibited under the federal Family Education & Privacy Act (20 U.S.C. section 1232g, 34 CFS Part 99, 19TAC 247.2, Texas Government Code 552.023, Texas Education Code 21.355, 29 CFR 1630.14(b)(c)). If you are not the intended recipient, you may not use, disclose, copy or disseminate this information. Please call the sender immediately or reply by email and destroy all copies of the original message, including attachments.

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Sara Ganim



University of Maryland
Participation Agreement for Support Persons/Advisors

Submitted on October 13, 2020 at 7:27:16 pm EDT

Nature: **Attorney**
Urgency: **.**
Incident Date and Time: **2020-10-13**
Incident Location: **.**

Reported by

Name: **Laura Dunn**
Title: **Advisor**
Email: **ldunn@lldunnlawfirm.com**
Phone: **608-217-0600**
Address: **Complainant**
[UNAUTHENTICATED]

Support Person/Advisor Participation Agreement

I understand that the Complainant/Respondent agreed to the following: 1) When a Party wishes to have a Support Person/Advisor accompany them to a meeting or proceeding, the Party must provide advance notification to OCRSM. 2) All official OCRSM communications (both verbal and written) will be between OCRSM and the Party directly. OCRSM will not communicate with a Support Person/Advisor seeking to speak on behalf of a Party, except that an Advisor may conduct cross-examination at a live Hearing in accordance with the Policy. 3) During any proceeding, a Party may request a recess to speak privately with their Support Person/Advisor, as appropriate and necessary. Such recesses shall not serve to unduly delay any proceedings, and the relevant Office reserves the right to refuse such requests if deemed to be unreasonable. 4) All Parties and Support Persons/Advisors are expected to understand their roles and adhere to the University's expectations regarding decorum and privacy considerations. 5) The Party previously requested if they wanted their Support Person/Advisor to be copied/included in all correspondence pertaining to their case. They are able to change their selection at any time by notifying OCRSM in writing.

OK

I understand as a Support Person/Advisor for a Party, my responsibilities are as follows: 1) I am a non-participant in the Policy and Procedures and cannot be a witness or provide evidence in a case. 2) I cannot speak for or on behalf of a Party. Advisors are only permitted to be an active participant in the University's adjudication process for the purposes of cross-examination in a live Hearing on behalf of a party, as the Policy and Procedures permits. See Procedure Section IV.D. (page 34). 3) I may not delay or otherwise interfere with University processes. 4) I am expected to respect the privacy of the individuals and witnesses involved and keep information about the case confidential. 5) I may assist my Party by taking notes, organizing documentation, and consulting directly with the Party in a way that does not disrupt or cause any undue delays to University processes. 6) As was noted to the Party: Advisors generally provide advice and consultation, whereas Support Persons generally provide emotional, logistical, or other kinds of assistance. 7) I must submit this online Participation Agreement prior to my involvement in any meetings or proceedings.

Please type your initials to confirm.

LLD

For purposes of the agreement, Confidential Information shall include all information or documents obtained throughout the course of my role as a Support Person/Advisor in providing assistance to a Party in relation to a matter under this Policy and Procedures. This includes assistance with a Party during any and all meetings, communications, and other activities related to the case.

Please type your initials to confirm.

LLD

I agree to keep all Confidential Information related to the Policy case confidential and not to disclose or publish such Confidential Information to others except in the context of the resolution processes related to the case or as otherwise provided by law, including court order, subpoena, or other valid legal process. In the event of a need to disclose or

publish some or all of the Confidential Information, I agree to notify the Director of OCRSM/Title IX Officer at titleixcoordinator@umd.edu in advance, in writing, and to inform OCRSM of the purpose for the intended disclosure so that the University may take appropriate and necessary action, including, but not limited to, informing the other Party.

Please type your initials to confirm.

LLD

I understand my obligation under the Agreement survives the termination of my role as a Support Person/Advisor following the final outcome of this matter.

Please type your initials to confirm.

LLD

I will explain my above choice of "Other" here, and/or I have the following questions or concerns regarding any of the above information:

LLD

By submitting this form, I electronically verify that I have received this information.

Please type your initials to confirm.

LLD

Pending IR #00020531

Submitted from 68.227.68.220 and routed to Jamie Brennan (Senior Investigator, Office of Civil Rights and Sexual Misconduct). No routing rule matched. Routed to default recipient.

Services Agreement (Short Form)

This Services Agreement (the "Agreement") is entered into as of April 19, 2022 (the "Effective Date") by the University of Pittsburgh – Of the Commonwealth System of Higher Education, a Pennsylvania non-profit corporation, (the "University") and the Provider named below.

PROVIDER:

Name of Provider:
Marsh Law Firm PLLC

Address:
140 N Main Street

City/State/Zip Code:
Carnegie, PA 15106

Phone/Fax/email:
412.315.4848

UNIVERSITY OF PITTSBURGH:

School or Department:
Office for Equity, Diversity, and Inclusion

Address:
31st Floor, Cathedral of Learning, 4200 Fifth Avenue

City/State/Zip Code:
Pittsburgh, PA 15260

Phone/Fax/email:
412.648.7860

Scope of Services. Provider shall perform the following services (the "Services"):

Name of Project: Title IX Advisory Services for University student, [REDACTED]

Locations: Services shall be performed at locations to be determined and agreed upon by the University and Provider.

Description of Services and Deliverables: Provider's Katie Shipp shall provide Title IX advisory services for University student, [REDACTED].

Dates and Deadlines): Services shall be performed on a schedule to be determined and agreed upon by the University and Provider.

Times: Services shall be performed on a schedule to be determined and agreed upon by the University and Provider

1. **Fees; Taxes; Payment Terms.** Provider will be paid as follows: \$125 hourly rate. Provider's fees shall include all expenses, and Provider, as an independent contractor, shall be responsible for all such expenses and taxes incurred in connection with providing the Services. The University shall pay the fees by processing and issuing a payment in US dollars 30 days from the date of an undisputed invoice on the condition that the Services have been completed.

2. **Term and Termination.** This Agreement shall commence as of the Effective Date and shall continue thereafter for a period of 1 year (the "Term"). This Agreement may be terminated by the University at any time and without cause upon written notice. If terminated by the

University without cause, the University shall pay Provider for the Services provided up to the date of termination set forth in the written notice.

3. **Representations and Warranties.** Provider represents and warrants that: (a) Provider will comply with all applicable laws, rules and regulations in performing the Services, (b) the Services will be performed in a professional and workmanlike manner using such care and skill as is customary for the provision of similar services in the location(s) where the Services are performed, (c) all Services will meet any specifications and requirements set forth in this Agreement, (d) Provider has, and shall maintain in effect for the duration of this Agreement, all licenses, permits, qualifications and approvals

that are legally required for Provider to render the Services, (e) none of the Services or Work Product, and the University's use thereof, infringe or will infringe any intellectual property right of any third party, and (f) if this Agreement is being procured with funds from a Federal government contract or grant (or funds from a subcontract at any tier relating to a Federal government contract or grant), Provider shall comply with the applicable Federal Flowdown provisions set forth at <http://www.cfo.pitt.edu/farsched.pdf>, which are incorporated into this Agreement by reference.

4. **Work Product.** Any and all deliverables, reports, documentation, files, media and other materials created by Provider in connection with the Services shall be considered "Work Product." The Work Product shall constitute works-made-for-hire belonging exclusively to the University. To the extent that any Work Product does not constitute a work-made-for-hire owned by the University, Provider agrees to assign and hereby does assign and transfer all of its right, title and interest in such Work Product to the University.
5. **Confidentiality.** All non-public, confidential or proprietary information of the University ("Confidential Information"), including, but not limited to, information about its business affairs, specifications, samples, patterns, designs, plans, drawings, documents, research or data, disclosed by the University to Provider, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for Provider's use in performing this Agreement and may not be disclosed or copied unless authorized by the University in writing. Upon the University's request, Provider shall promptly return all documents and other materials received from the University or destroy all such copies and certify in writing to the University that such Confidential Information has been destroyed.
6. **Indemnity.** Provider shall indemnify, defend and hold harmless the University, its trustees, officers, employees, agents and representatives

(collectively, the "University Indemnitees") from and against any and all losses, liability, cost and expenses, including attorney's fees and costs, awards, judgments, damages, fines, penalties, claims and causes of action (collectively, "Claims") arising out of or related to the negligent acts or omissions or willful misconduct of the Provider or any of its officers, directors, employees, agents, representatives, contractors, successors, assigns or anyone acting on any of their behalf in connection with, arising from or related to the performance of obligations under this Agreement, including Claims for (a) personal injury, including death, and damage to property, (b) the breach by the Provider of any term, representation, warranty or covenant under this Agreement, or (c) defective, unsafe or non-conforming goods supplied by Provider.

7. **Independent Contractor.** The University and Provider shall each be and remain an independent contractor with respect to all rights and obligations arising under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a relationship of employment, principal and agent, partnership, co- or joint employer or joint venture.
8. **Insurance.** The University may require proof of applicable insurance prior to performance of the Services in accordance with the attached Schedule B.
9. **Entire Agreement; Amendments; Assignment.** This Agreement, including any schedules, exhibits, attachments and documents referenced herein, constitutes the final agreement between the parties. No change or rescission of this Agreement shall be valid unless it is made in a written amendment signed by the parties. Neither party may assign this Agreement or any of its rights under this Agreement nor delegate any performance under this Agreement, except with the prior written consent of the other party.
10. **Publicity.** Neither party shall (a) issue a press release or make any other public statement that references this Agreement, or (b) use the other party's names or trademarks for publicity or advertising purposes, except with the prior written consent of the other party which may be withheld in that party's sole discretion.

11. **Survivability.** The terms of this Agreement which by their nature and for any reason are intended to survive and extend beyond the termination, cancellation or expiration of this Agreement, shall remain in effect and be binding upon the parties beyond such time. Such terms shall include without limitation those that confer rights based on prior breaches or performance.

12. **Choice of Law; Venue.** This Agreement and all related documents, and all matters arising out of or relating to this Agreement, are governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the conflict of laws provisions thereof. Any controversy, claim or dispute arising out of or relating to this Agreement shall be adjudicated in the Court of Common Pleas of Allegheny County, Pennsylvania or the United States District Court for the Western District of Pennsylvania.

13. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which is

deemed an original and all of which constitute one and the same agreement. The signatures of all of the parties need not appear on the same counterpart. Delivery of an executed counterpart of this Agreement, by facsimile, portable document format (.pdf) or by any other electronic means, has the same effect as delivery of an executed original of this Agreement.

14. Speaker/Participant permits the University to record the Engagement in audio, video or other media format. Speaker/Participant warrants that it is the sole owner of (or has the rights to use) the content and materials presented and grants the University a limited, free, perpetual, non-exclusive, irrevocable license to use and commercialize the text and recordings of the content and materials in any medium as the University desires.

This Agreement has been duly executed by the authorized representatives of the parties hereto as of the Effective Date set forth above.

University of Pittsburgh:

By:

Name:

Title:

AVC Civil Rights and Title IX

Provider:

By:

Name:

Title:

Katie Shipp