

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN DOE,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 17-cv-40151-TSH
JOHNSON & WALES UNIVERSITY,)	
)	
Defendant.)	
)	

**PLAINTIFF, JOHN DOE’S, OPPOSITION TO “DEFENDANT’S MOTION TO
TRANSFER VENUE”
and Plaintiff’s Request for Hearing**

Now comes the Plaintiff (“Doe”), by counsel, and respectfully opposes the “Motion to Transfer Venue” (“Motion”) filed by the Defendant Johnson & Wales University (“JWU”). In support thereof Doe states the following:

This Honorable Court has broad discretion to determine whether transferring to a different venue is warranted under the controlling statute – 28 U.S.C. 1404. The U.S Supreme Court and the First Circuit Court of Appeals have both stated that “Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an ‘individualized, case-by-case consideration of convenience and fairness.’” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988); see also *Astro-Med, Inc. v. Nihon Kohden America, Inc.*, 591 F. 3d 1, 12 (1st Cir. 2009).

Additionally, and importantly, the First Circuit has stated that, “not only does the burden of proof rest with the party seeking transfer, there is a ‘strong presumption in favor of the plaintiff’s choice of forum.’” *Astro-Med, Inc.* at 13.¹

The Massachusetts’ District Court has stated six factors to look at in determining whether a burden is met by a party attempting to transfer Venue: (1) the plaintiff’s choice of forum, (2) the convenience of the witnesses and location of documents, (3) the law to be applied, (4) the connection between the forum and the issues, (5) the state or public interests at stake and (6) the relative convenience of the parties. *World Energy Alternatives, LLC v. Settlemyre Industries, Inc.*, 671 F. Supp. 2d 215, 218 (D. Mass 2009).

JWU in its Motion asks this court to overcome its heavy burden and the presumption in favor of Doe by referring to an analysis delineated in 17 Moore’s Federal Practice § 111.13(1)(a) (3rd ed. 2013). The factors in Moore’s which are listed by JWU include: (1) the plaintiff’s original choice of forum; (2) where the events at issue in the lawsuit took place; (3) the convenience of the parties; (4) the convenience of the witnesses; (5) the comparative availability of compulsory process to compel the attendance of witnesses; (6) the location of the physical evidence; (7) the enforceability of the judgment; (8) in which forum can the case be tried more inexpensively and expeditiously; (9) the relative congestion in the two forums; (10) the public interest in local adjudication of local controversies; (11) the relative familiarity of the court’s with the applicable law; (12) whether transfer is in the “interest of justice”; and (13) which forum would better serve judicial economy.

The vast majority of the above listed factors advise that this Honorable Court should retain control over this case.

¹ There is no question that this Honorable Court has both subject matter and personal jurisdiction in this case and that venue in Massachusetts is valid.

Plaintiff's choice of forum

The plaintiff, John Doe, retains every right to file in the Central District of Massachusetts and did so. It was his choice and he made it.

Convenience of the parties, witnesses, and location of evidence

Despite the assertions made by JWU in its Motion, the convenience of the witnesses advises keeping the case in Massachusetts. The three *main witnesses* in this case, Doe, BK and Mary Smith are not residents of Rhode Island and two of them *live in Massachusetts*. Doe lives in Worcester County, Massachusetts and BK, upon information and belief, resides in Plymouth County, Massachusetts. Mary Smith's legal residence, upon information and belief, is in Gallatin County, Montana.

Many of the other potential witnesses listed by JWU in its affidavit of Elizabeth Gray, quite frankly, may actually live in Massachusetts or live in a location closer to the Donohue Federal Courthouse in Worcester, Massachusetts than the courthouse in Providence, Rhode Island.² Indeed, it is less than a one hour drive from the JWU Providence campus to the Donohue Federal Courthouse (please see the attached Google Maps printout marked as Exhibit A).

Additionally, any and all documents which may be reviewed in this case are electronic in nature and not expected to be voluminous. E-mail communications, copies of formal complaints and training materials are by no means somehow inconvenient to any parties by keeping the case

² Elizabeth Gray's only role at JWU is Director of Student Conduct (Title IX co-ordinator?) and it is not clear why she would be best suited to sign an affidavit regarding location of witnesses or the nature of the Rehoboth facility.

in Massachusetts. They are e-server based and many of the hard copies may not even be in hand in Rhode Island (such as training materials).³

Ability to compel witnesses and enforce judgment

There is no dispute that JWU has a campus, assets and significant contacts with and in Massachusetts. If Doe were to procure a judgment against JWU, he could easily enforce such judgment. Additionally, if any JWU affiliated witnesses felt the need to ignore subpoenas and such things, this Honorable Court would have broad power over such individuals. As stated previously, two of the three main witnesses have legal residences in Massachusetts and many of the JWU affiliated employs more likely than not actually live in Massachusetts.

This Honorable Court is well acquainted with Title IX cases such as the above captioned, relative congestion of court, most inexpensive venue and Rhode Island law

JWU in its Motion implies that the federal court in Rhode Island has a level of experience above that of this Honorable Court regarding Title IX cases making it more suited to the task of handling this case. Without in any way questioning the abilities of the Rhode Island court, this Honorable Court in Worcester, Massachusetts has itself faced the tragic issue of young men being kicked off of campuses with no due process and in utter disregard of contractual fairness (see *Doe v. Clark University, et al.*, civil action case no. 4:15-cv-40113-TSH).

JWU also discusses the relative time in which cases are disposed in Rhode Island versus Massachusetts. JWU states that Massachusetts averages 16.8 months from filing of lawsuit until final disposition while Rhode Island averages 10.5 months. As a threshold, those numbers are pretty impressive for both courts and the difference is *de minimis* without delving deeper into the complexities of the nature of the cases handled.

³ Ironically, JWU refused to give a number of documents to Doe before the lawsuit was filed and during the internal appeals process.

As for the issue of cost, the counsel who has appeared on behalf of JWU retains offices in both Massachusetts and Rhode Island and any cost difference would, seemingly, be minimal. As stated above, the Donohue Federal Courthouse in Worcester is less than one hour from the center of the JWU campus meaning that any increase in cost to JWU would be minimal. Additionally, the hard truth is that Worcester, Massachusetts is a relatively cheap place to do business. For example, parking costs no more than \$12.00 for a whole day at the most central lots.

To the extent that Rhode Island state law in any way controls some of the claims made in the lawsuit, this Honorable Court is more than capable of evaluating, applying and adjudicating such claims.

Where the events took place

JWU makes the argument in its Motion that “all conduct and events alleged in the Complaint took place in Rhode Island. Moreover, JWU is a Rhode Island based university. Therefore, this factor heavily favors transferring this lawsuit to Rhode Island.” This argument is misplaced and wrong. As a threshold matter, a number of events in this case did not occur in Rhode Island. The key initial investigatory discussion with Doe occurred while Doe was in Massachusetts. Additionally, upon information and belief, the key initial investigatory discussion with Mary Smith occurred while she was out of state. Further, while JWU may have a campus in Providence, it works very hard to brand itself as a multi-city university not necessarily grounded in Rhode Island. Attached to this Opposition and noted as Exhibit B is a screen shot of the home page for JWU on this date showing its campus locations of Providence, North Miami, Denver, Charlotte and On-line in equal prominence (see www.jwu.edu).

Public interests at stake and the “interest of justice”

The public interest in what occurred to John Doe and its adjudication is clearly of public interest, and it is an interest which is deep not only in the cities of Providence and Worcester, but also in Rehoboth, MA and all towns in between. The Title IX and contract violations elucidated in Doe’s complaint are at the forefront of the national debate as to how the issue of campus sexual assault and due process merge. It is not some localized Rhode Island issue; it is regional and national in scope. Having the lawsuit continue in Worcester, Massachusetts in no way negatively effects public interest in the issues at the center of the lawsuit and the interests of justice central to it.

WHEREFORE, the plaintiff John Doe, respectfully asks that this Honorable Court deny the Defendant’s “Motion to Transfer Venue”, and for all other just relief.

Respectfully submitted,
JOHN DOE,
By his attorney,

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Dated: December 11, 2017

CERTIFICATE OF SERVICE

I, James P. Ehrhard, hereby certify that I served the above Opposition to the following parties on today's date via U.S. Mail postage prepaid if not noted as having received copies via ECF:

Jeffrey S. Brenner, Esq., VIA ECF

Steven M. Richard, Esq., VIA ECF

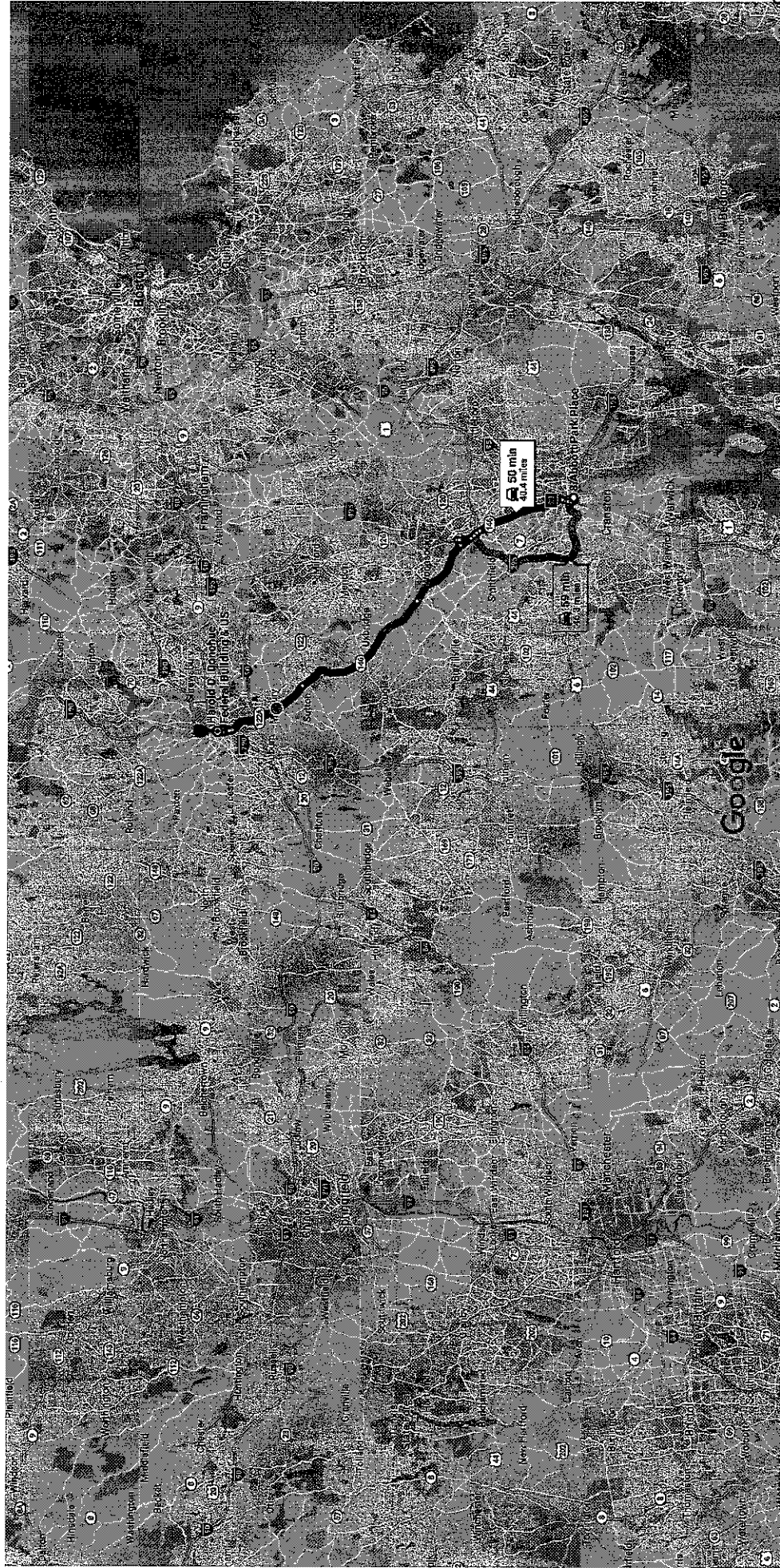
/s/ James P. Ehrhard
James P. Ehrhard, Esq.

Dated: December 11, 2017

Google Maps

8 Abbott Park Pl, Providence, RI 02903 to Harold D. Donohue Federal Building & U.S. Courthouse

Drive 40.4 miles, 50 min



Map data ©2017 Google 5 mi

Experience. Success.

from Hilton Share Career Expertise

ton Day, Hilton representatives (many of whom are JWU alumni) career advice at the College of Hospitality Management.



Explore JWU Campuses

dence

North Miami

Denver

Charlotte