

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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JOHN DOE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JOHNSON & WALES UNIVERSITY, )  
 )  
 Defendant. )  
\_\_\_\_\_

Civil Action No: 17-40151

**JURY TRIAL DEMANDED**

**VERIFIED COMPLAINT**

Plaintiff John Doe (hereinafter “John”)<sup>1</sup>, by and through his undersigned counsel, files this Complaint and in support thereof alleges as follows:

**INTRODUCTION**

1. This lawsuit arises from the miscarriage of justice caused by the actions taken by Johnson & Wales University (“JWU” or “the University”) against the Plaintiff (“John”) in October and November of 2017. In the Fall of his junior year he was accused having committed sexual assault, when as a sophomore, he had engaged numerous times in consensual sex with a female student who suddenly now claimed to have withdrawn her consent during the course of the sexual conduct. This disciplinary action was taken against a male student with an unblemished academic and disciplinary record in a time of near viral hysteria regarding campus sexual assaults.

2. In just five weeks from the date the complaint was formally filed against him, the plaintiff was found guilty of sexual assault, expelled from the University, removed from the campus and branded a sex offender, with his entire future in ruins. The defendant university’s

<sup>1</sup> Contemporaneously with this Complaint, Plaintiff has filed a Motion for Permission to Proceed under Pseudonym.

actions are the direct result of a foundationally flawed process of investigation and discipline during which the plaintiff was denied the most basic elements of fairness promised to him by JWU in its *Student Handbook*.

3. In filing this lawsuit, the plaintiff seeks to right these grave wrongs, finish his education, restore his reputation and find some semblance of emotional and psychological well-being.

### **JURISDICTION AND VENUE**

4. This action arises out of the University's breach of its contractual and other obligations to the plaintiff, as well as violations of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681).

5. The plaintiff is a resident of Massachusetts.

6. The defendant is a Rhode Island non-profit corporation which is also registered with the Massachusetts Secretary of State and which maintains a campus and educational facility in Rehoboth, Massachusetts and owns land upon which such facility sits.

7. This Court has jurisdiction pursuant to 28 U.S.C. § §1331 and 1332.

8. Venue is proper under 28 U.S.C. § 1391(b) and (c) because both parties reside in Massachusetts under such statute.

### **PARTIES**

9. The Plaintiff, identified here as John Doe, resides in Massachusetts and was formerly

a full-time student at Johnson & Wales University. He was improperly expelled in November of 2017, while in his junior year at the University. The plaintiff began matriculation at JWU in the fall of 2014.

10. The defendant Johnson & Wales University is a federally-funded, private liberal arts University with a campus and educational facility in Rehoboth, Massachusetts.<sup>2</sup>

### **FACTUAL BACKGROUND**

11. The proceeding by JWU against John Doe which gives rise to this lawsuit formally began in September of 2017 when Mary Smith<sup>3</sup> filed a formal Complaint (“Complaint Report”) with JWU accompanied by her boyfriend BK.

12. JWU *never did and would not* give a copy of the formal 18+ page Complaint Report to John Doe and only read it to him in a single pre-disciplinary Hearing meeting with Betsy Gray (the JWU “Director of Student Conduct & Program”). Indeed, JWU refused to give a copy of the Complaint Report to the undersigned counsel when his office requested it when he began representing John Doe in his internal appeal of his expulsion. Undersigned counsel was forced to have it read to him telephonically and told to take notes to the best of his ability. The undersigned facts and quotes come from that report. It is this report that guided the Hearing. Upon information and belief, the testimony of Mary Smith matched her statements in the Complaint Report. Shockingly, JWU failed to make *any record whatsoever* of the Hearing which occurred against John Doe.<sup>4</sup>

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<sup>2</sup> JWU also has a campus in Providence, R.I., along with campuses located in North Miami, FL., Denver, CO. and Charlotte, N.C.

<sup>3</sup> Mary Smith is a pseudonym being used to protect this student’s privacy. This complaint will identify other students through the use of initials, in order to protect their privacy.

<sup>4</sup> JWU, in essence, expelled John Doe leaving him no reasonable ability to appeal internally. How can an accused appeal an expulsion arising from a Hearing when no record of what occurred at the Hearing exists? He can’t. JWU’s

**Mary Smith and John Doe's relationship**

13. Mary Smith and John Doe had become friends since the beginning of the 2016 school year and spent time together. They never dated and, as Mary Smith stated, they were “friends with benefits.” They began having consensual sex together soon thereafter. It also appears that she was dating BK at the same time she was sleeping with John Doe. John Doe had no knowledge of this dating relationship. They had sex together a total of six times. Four of those times occurred at John Doe's dorm and two at her dorm. These sexual encounters occurred during September and October of 2016.

**Asserted sexual assault incident 1 as stated by the complainant Mary Smith (sex session 5)**

14. Mary Smith on or about September 13, 2017 reported to the JWU security office that she had been sexually assaulted. She stated that this assault occurred “one night in October” *of 2016* by John Doe. She stated that she had slept with John Doe earlier that night in his dorm room, was sleeping with him in bed, and woke up to go to the bathroom in the middle of the night. While in the bathroom she said that John Doe followed her into the bathroom pulled down her underwear and had sex with her up against the sink, leaving her with bruising on her hip. She said that this sexual encounter was rougher than she was used to having with him because John Doe was “normally gentle with her” when they had sex.

15. After they finished having sex in the bathroom, Mary Smith and John Doe went back into John Doe's bed and fell asleep together *again*. She woke up later that morning and left the room. As stated in the Complaint Report, one of John Doe's roommates was in the room when

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failure to provide a written copy of the Complaint and make a record of the Hearing is at best bad faith and at worst an intentional cover-up.

this alleged sexual assault occurred and heard nothing. Additionally, according to the Complaint Report, another roommate was walking in when Mary Smith was leaving the building and she seemed to be in good spirits.<sup>5</sup>

16. Mary Smith never took pictures of any bruising, never contacted any official regarding the incident and never went to any medical facility.

**Asserted sexual assault incident 2 as stated by the complainant Mary Smith (sex session 6)**

17. Approximately a week after this alleged first sexual assault by John Doe, Mary Smith *voluntarily came over* to John Doe's dorm room *again* to have sex with him. She stated in the Complaint Report that she began having "consensual sex" with John Doe but stated that "it was normal at first and not rough and at some point during the consensual sex she became less lubricated and it started to hurt." She "voiced this to John Doe and gave him the chance to stop and change positions to see if it continued to hurt. She stated that he moved her onto her hands and knees and continued having sex." It did not hurt anymore in that position but "began to hurt again" and he only stopped when he ejaculated.

18. It is undisputed that the events relayed in Paragraphs 15 and 16 are what the entire assertion of "sexual assault" against John Doe comprises as stated by Mary Smith. Nothing more.

19. When she made the formal complaint *approximately a year later*, as stated in the Complaint Report, Mary Smith said that she was not sure it was sexual assault that occurred. She said that "she was confused because he had never gotten rough with her like that before and that

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<sup>5</sup> Very disturbingly, JWU never had these two roommates as witnesses at the Hearing and John Doe was never able to question them, yet their exculpatory statements are in the Complaint Report.

she was not sure if what occurred was considered sexual assault. She stated that ‘this type of sex was new to her.’<sup>6</sup>

20. Soon after this asserted second incident of sexual assault occurred, Mary Smith was on social media platform Instagram liking John Doe’s postings.

### **JWU begins flawed Investigation of John Doe**

21. On or about June 1, 2017 (approximately 8 months after the alleged incidents occurred), Mary Smith’s boyfriend, BK, on his own volition and without any knowledge of Mary Smith went to the JWU security office and stated that his girlfriend “was sexually assaulted on 2 separate occasions during the prior school year.” BK further stated that he and Mary Smith had been dating “exclusively since January of 2017” but had been in a “relationship” prior to that.

22. BK stated that she was assaulted in “late September to early October” but that she never wanted “to get into any details” with him about it. BK stated that he just “found out about the sexual assault in April or May.” BK also stated that he never told Mary Smith that he was going to report anything. BK also stated that Mary Smith would be moving into his apartment for the upcoming school year (beginning in August/September 2017). Officer Eastman of JWU security stated that he was obligated to investigate.

23. BK stated that he did not know the precise name of the person who assault his girlfriend but that his first name was “John Doe” and the dorm that John Doe had lived in.

24. Sgt. Robinson of JWU security proceeded to reach out to Mary Smith and John Doe regarding this alleged complaint filed by BK.

25. Sgt. Robinson spoke telephonically with Mary Smith regarding what allegedly

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<sup>6</sup> John Doe has denied from the beginning that any “sexual assault” occurred and that sex session 6 was not distinct from session 1 through 4. He further has always claimed that the bathroom sex (session 5) never even happened. Indeed, Mary Smith’s complaint and testimony does not even describe sexual assault.

occurred. She stated, as relayed in the Complaint Report, that “she did not want to talk about it at the moment.” Sgt. Robinson persisted and asked if she “would validate the complaint.” Mary Smith would not do so and said that “she had to go.”

26. Sgt. Robinson proceeded to email Mary Smith on June 2, 2017, informing Mary Smith that she was “a victim of sexual assault this past academic year (2016-2017)” and that he “would like her to know that we are here to support you”. Mary Smith responded to that e-mail on June 7, 2017 thanking Sgt. Robinson “for reaching out to her” and that “she did not need any help.”

27. Sgt. Robinson also reached out to John Doe who unequivocally denied that a sexual assault had occurred.

**Mary Smith moves in with BK, Complaint suddenly moves forward and John Doe is expelled with exceptional speed**

28. On or about September 13, 2017, Mary Smith with BK went to the JWU security office and asked to bring a formal complaint against John Doe as a consequence of sex sessions 5 and 6. She relayed the events to have occurred as delineated in the Complaint Report.

29. BK proceeded to state that he first learned about the asserted sexual assaults when he saw the bruises on Mary Smith.<sup>7</sup> Mary Smith never explained why her story changed from June to September (and no inquiry was even attempted by JWU). But Mary Smith did state that the alleged assaults had changed her life in one way – “it had affected her relationship with her boyfriend” (BK).

30. John Doe proceeded to receive a letter dated September 29, 2017 from Betsy Gray

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<sup>7</sup> JWU apparently ignored the fact that BK had previously stated back in June to JWU security that he first found out about the assaults in April or May of 2017. Of course, John Doe had no way to examine this inconsistency because John Doe was not allowed to question BK as a witness; shockingly, BK was actually Mary Smith’s “Advisor” during the expulsion Hearing.

(Director of Student Conduct and Programs at JWU) informing him that he was “being charged” with “Sexual Assault (including rape, fondling, incest and statutory rape)” and “Sexual harassment”. A copy of the September 29<sup>th</sup> letter is attached as Exhibit A.

31. On October, 3, 2017, John Doe appeared at a “Pre-Hearing Conference”. This Conference meeting is the only time that John Doe was actually told what the specific charges in the Complaint Report were against him. But John Doe was not allowed to read the Complaint Report, see a copy of it, or have any copy of it whatsoever.

32. At the Pre-Hearing Conference he was told that he must attend a Hearing on the charges on October 20, 2017. He was never told how the Hearing was conducted. He was never told how and if he could question any witnesses, bring any witnesses, bring and/or submit any evidence, whether there would be opening statements or closing statements. In essence, he was left in the dark about the entire procedure. The one thing he was told was that he could have an “Advisor” who could not participate in any way during the Hearing but could sit next to him. He also was never told the names of the three adjudicating Panelists. He was specifically told that he could not have any legal counsel.

33. John Doe was simply told that the procedure would follow the JWU Student Code of Conduct (“SCC”) and its Conduct Review Process (“CRP”). A copy of the SCC is attached as Exhibit B and a copy of the CRP is attached as Exhibit C.

34. On October 20, 2017, John Doe was placed into an expulsion Hearing with no good faith and equitable due process of any kind in which he was being adjudicated under the absurdly low standard of “preponderance of the evidence”.



35. On October 23, 2017, John Doe received a letter stating that the three adjudicating Panelists has ruled that he had committed sexual assault and he was expelled. A copy of the Dismissal Letter is attached as Exhibit D.

36. John Doe was given only three days to appeal and, according to the CRP, only if “Relevant, new information has come to light since the decision was made” and/or “The Conduct Review Process, as outlined, was not followed.”

37. John Doe, with a limited extension, filed his appeal with counsel. It was denied within a few hours by JWU’s Senior Vice President of Administration with no apparent review.

38. Within a period of approximately four weeks, John Doe went from a happy, healthy, thriving student to a sexual offender who was expelled from college, all without any semblance of equitable due process or procedure.

39. Upon information and belief, nearly all JWU students punished through the CRP for sexual assault and/or sexual harassment have been males.

### **JWU’s Conduct Review Process**

40. The CRP states, among other provisions, the following. It is this statement which foundationally guides the CPR:

“The university administers the Conduct Review Process in good faith, making every reasonable effort to be fair to all involved.”

41. At the Hearing on a complaint, the following are the only statements regarding any actual procedure used at such a Hearing as delineated in the CRP:

The “panel will outline the process”; “review the incident report and/or allegations, and any supplemental information”; “hear any statements relating to the incident”; “hear or review the statements of witnesses with personal, relevant information of the incident (but other witnesses, such as character witnesses, will not be not be allowed to attend or be heard)”; and “hear or review the statements

of other relevant witnesses (and where confidentiality is a consideration, the identity of such witnesses will not be disclosed to the student)”

42. As to sexual assault and harassment claims, the CRP specifically states the following regarding the “rights” of all parties to a complaint:

“The right to an investigation and resolution that is prompt, fair and impartial from the initial investigation to the final result as required by applicable law”

“The right to a hearing conducted by unbiased university officials who receive annual training on issues related to sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence and stalking, and how to conduct an investigation.”

“The right to a hearing process that protects the safety of the parties and promotes accountability. Hearing officers and panels use the ‘more likely than not’ standard to evaluate alleged violations.”

“The right to present relevant materials and witnesses with personal, relevant knowledge of the incident as outlined above.”

“The right to be accompanied to the hearing and any related meeting by an advisor of their choice. The advisor may accompany the student, but may not participate in any manner. If there is a legitimate conflict of interest related to the advisor, Student Conduct reserves the right to disqualify an advisor.”

43. The conduct review process under its own terms is supposed to be, at the very least, impartial and balanced such that the burden is not shifted against and onto the accused. It is supposed to be a “good faith” proceeding which provides a fair, delineated and honest chance for the accused to defend himself from the charges leveled against him for sexual assault and sexual harassment. A dismissal from a university for “sexual assault” has life-long significant negative consequences against a student and the procedure must be in good faith with such reality in mind.<sup>8</sup>

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<sup>8</sup> The Secretary of the U.S. Department of Education within the last month has announced that the procedures similar to those delineated in JWU’s CRP violate a student’s due process rights through Title IX. It is expected that the Department will be promulgating new rules that universities who receive Federal funds (such as JWU) will have to implement. This will, most assuredly, include the right to an attorney and the use of the “clear and convincing” standard of proof.

44. JWU failed to abide by its own above delineated procedure. First, John Doe was not provided any precise guidance whatsoever as to how he could defend himself at the Hearing. Second, the burden was hopelessly unbalanced as John Doe was foundationally presumed to have committed the acts laid out in the incident report and the complainant was presumed to be telling the truth. Third, even using the unquestionably unfair “more likely than not” standard, the facts simply do not support a decision against John Doe and the Panelists ignored this standard. Additionally, new evidence buttresses the fact that the complainant simply was never assaulted or harassed.

**JWU Employed an Unbalanced Procedure for John Doe’s Hearing on Sexual Assault/Harassment Complaints.**

45. JWU’s own CRP did not and does not lay out how John Doe was to present his defense at the Hearing. He was a young shy student confronted with serious claims he denied and was (by JWU policy) alone, scared and in the dark. As a matter of fact, he was actually placed in a nearly bare room with a telephone speaker on the table and an “advisor” next to him who, according to the CRP, could “not participate in any manner.”

46. John Doe was *never* provided any written or oral guidance as to how he could bring evidence to the Hearing (i.e. Instagram postings, texts, ect.) or if he could even bring any at all. He was never provided any written or oral guidance as to how he could bring a witness in his defense and have such witness questioned by him. Indeed, he was never told orally or in writing whether he could question the complainant’s witnesses or the complainant herself.

47. He was never told whether he could/should prepare an opening statement or closing remarks and, even if he could, how long he could speak for. Shockingly, he was never even given a copy of the 18+ page incident report/ complaint brought against him (not even a *redacted*

copy). He was never even reasonably allowed to take notes while the 18+ page statement was read to him. Quite frankly, this failure alone is inherently discriminatory to an accused who understands and learns better from reading.

48. The above failures of internal procedural due process reasonably shock the conscience because even the most rudimentary contractual relationship between parties requires a fair playing field. JWU in the case of John Doe did not follow this basic premise and the promise of good faith of the CRP.

**The Burden was Fully Placed on John Doe as the Complainant was Presumed from the Beginning to be Telling the Truth**

49. The promise of good faith, fair dealing and a reasonable effort to be fair to all parties as stated in the CRP requires that JWU not assume that the complainant is telling the truth (i.e. is a victim of sexual assault/harassment) and that John Doe is the perpetrator. The CRP states clearly that John Doe has “the right to an investigation and resolution that is prompt, fair and impartial from the initial investigation to the final result as required by applicable law.”

50. From the beginning of the investigation JWU assumed that the Mary Smith was telling the truth and was presumed to be a victim. John Doe was assumed to be at fault. Sgt. Robinson of JWU campus security, the initial primary *investigating officer*, does not even deny this fact. He wrote in the 18+ page Complaint Report that he e-mailed Mary Smtih on June 2, 2017, the following as his initial communication: “I tried reaching out to you earlier but I was unable to leave a voice message. I emailed you instead. I did not want to delay this matter any longer so I am supplying you with some resources as it has been brought to my attention that you

were a victim of sexual assault this past academic year (2016-2017). I want you to know that we are here to support you...”

51. Any reasonable good faith investigation does not begin with the primary investigator stating that “you were a victim of sexual assault” as Sgt. Robinson does and pledge his support. Balance and reasonableness requires a statement such as “a complaint regarding an asserted incident of sexual assault was filed” (or some derivation therein). Further, the Complaint Report reveals that when Sgt. Robinson first spoke with Mary Smith, she said that “she did not want to talk about it” and that she was “ok”. Sgt. Robinson, rather than even discussing the nature of the complaint or facts in response to the complainant’s denials, simply persisted and stated to the complainant that “she would validate the complaint.” Objectivity be damned, apparently.

52. Additionally, the CRP specifically states that the three (3) Panelists who are judge, jury and executioner in John Doe’s hearing process are “unbiased university officials who receive annual training on issues related to sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence and stalking, and how to conduct an investigation.”

53. Intriguingly, JWU would not provide the names of the Panelists to John Doe before his hearing. This failure by JWU alone denied John Doe the ability to investigate and determine whether the Panelists were prejudiced, biased or had an inherent conflict of interest. Most importantly, JWU does not provide any information on what precisely the “annual training” the Panelists receive encompasses or includes.<sup>9</sup> Upon information and belief, it appears that JWU actually provides training which is inherently biased and teaches a belief that a female complainant almost always tells the truth. It is a training regime which is inherently unbalanced against the accused such as John Doe.

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<sup>9</sup> The undersigned counsel requested this training material while handling John Doe’s internal appeal and he was refused access to this information.

54. Importantly, the Dismissal Letter itself reveals the bias in the decision making. The Dismissal Letter states that, “The panelists noted that throughout the hearing, the respondent was not able to articulate specific ways in which he gained consent. Rather, he only noted that the complainant never stated that she was uncomfortable after the alleged incidents occurred. The complainant provided very specific information regarding the words and behaviors she used to convey that she did not give consent or withdrew consent.” This reasoning for ruling against John Doe shows that he never had a chance. JWU ruled against him because he could not articulate a negative while the complainant simply reiterated her story. She says it happened and John Doe could not state how he gained consent. How does an accused show evidence of consent when he says it never happened? It cannot be done. She never had to provide evidence that the events actually occurred. The burden was all on him and that burden shift is in violation of the CRP.

**The Facts Do Not Support a Decision Against John Doe Even Under the “More Likely Than Not” Standard**

55. The testimony of Mary Smith at the expulsion Hearing apparently matched almost precisely her alleged facts stated in the Complaint Report. The Complaint Report shows the following to encompass the facts she claims rise to the level of “sexual assault” and “sexual harassment”.

56. Mary Smith stated that she had consensual sex with John Doe approximately six times over a six to seven-week period of time during September through November, 2016. Two of the sexual intercourse experiences occurred at her dorm-room and the remaining events occurred at John Doe’s dorm-room. The complainant conceded that every single time she

consented to the sex and that he was, using her words, “a gentle” sex partner. Two of the times (experiences 5 & 6) she stated that the sex was far rougher than she claims she was used to with John Doe.

57. The *only* facts in dispute were the nature of those two sexual intercourse sessions (5 & 6), nothing more. Mary Smith stated that during the fifth experience of sexual intercourse, John Doe came into the bathroom and with force had sexual intercourse with her facing forward in the bathroom causing her bruising. She stated that she was not used to having “rough sex” like this with John Doe and did not know how to react to it. John Doe for his part says that the sexual intercourse never happened like that.

58. What is *not* in dispute about that fifth sexual intercourse session (even if it did happen at all) is that Mary Smith had had sex with John Doe very soon before the alleged fifth sex in the bathroom that night and had fallen asleep in John Doe’s bed after that fourth sex session. It is also not in dispute that Mary Smith voluntarily went right back into John Doe’s bed and fell asleep with him after the alleged “rough sex” in the bathroom. It is also not in dispute that at least one of John Doe’s roommates was in the same dorm-room when the alleged fifth session “rough sex” occurred in the bathroom. It is also not in dispute that another roommate saw Mary Smith leave John Doe’s room later that morning and she seemed to be in very good spirits.

59. And, very importantly, it is not in dispute that Mary Smith went back over to John Doe’s dorm-room approximately one week after the alleged “rough sex” fifth session and voluntarily and consensually had sex with John Doe *again* (this is the alleged sixth sex session – and the second incident of sexual assault). It is not in dispute that she had consensual sex with John Doe. Her only alleged complaint was that mid-way through the sex it began to “hurt” and

she wanted him to change positions. It is undisputed that John Doe changed positions as she requested and finished the sex.

60. Taking the facts as stated by the complainant at face value (which John Doe did not and does not), sexual intercourse sessions 5 & 6 do not rise under any standard as acts of sexual assault or harassment. It is simply unreasonable to believe that the female complainant suffered an assault during consensual sex and then voluntarily entered into further sexual intercourse. It is unreasonable to believe that John Doe's roommate would not hear anything occurring. And it is not reasonable for the complainant to go back to sleep with John Doe in his bed when she could have easily left the room. Additionally, the Complaint Report stated without equivocation that Mary Smith specifically sent an e-mail message to Sgt. Robinson on June 7, 2017, thanking "him for reaching out to her" and "indicating that she did not need any help."

**New Evidence came to light which demanded a new Hearing and which JWU ignored**

61. The CRP specifically states that relevant new evidence is a basis for appeal and should lead to a new Hearing. John Doe in his appeal procured an Instagram posting from a few weeks after the so-called second sexual assault occurred (the sixth sexual intercourse session) wherein Mary Smith on her own volition liked a posting John Doe put on-line of a meal he prepared. On December 10, 2016, she wrote "that looks bomb" with an emoji of fire with "#lookatthatsear" after it.

62. If the fifth and sixth sexual sessions were indeed sexual assaults, it is not reasonable that the complainant would reach out on her own to communicate with John Doe in a jovial friendly manner. But she did because the alleged incidents were not sexual assaults.



63. Additionally, BK threatened the life of John Doe on October 21, 2017 (the day after John Doe's JWU hearing). Since that time, a restraining Order has been issued against BK and, upon information and belief, BK was removed from all JWU campuses.

64. BK's actions are extremely relevant because it is BK who has been with Mary Smith since she came to campus security in September to file a complaint against John Doe and BK was her "Advisor" at the Hearing.

65. As the Complaint Report says, Mary Smith stated without equivocation in June of 2017 that she was fine and had no complaint against John Doe. But, starting in September when she moved in with BK, the complainant suddenly determined that she had been assaulted and came to campus security. When asked how the alleged assaults had affected her, the complainant stated that it "had affected her relationship with her boyfriend" (BK). A new Hearing, allowing the questioning of BK, will reveal if BK has actually unduly influenced the testimony of the Mary Smith. BK has revealed a high level of violent uncontrolled behavior and his effect upon the proceedings against John Doe is of core relevance.

### **COUNT I – BREACH OF CONTRACT**

66. Plaintiff restates each of the foregoing paragraphs as if fully restated herein.

67. At all times relevant hereto, a contractual relationship exists between JWU and John Doe through its student handbook and related Student Code of Conduct and Conduct Review Process.

68. JWU is required to act in accordance with the student handbook and SCC and CRP in adjudicating reports of alleged violations of student conduct standards. With respect to these disciplinary matters, John Doe and JWU had mutual expectations, and the contract required that

the university would follow its own rules, provide a fair and reliable fact-finding procedure, and not act arbitrarily or capriciously.

69. For all the reasons set forth above, JWU has materially breached its contracts with John Doe by failing to comply with its obligations, standards, policies, and procedures set forth in the student handbook and related SCC and CRP.

70. As a direct, proximate, and foreseeable consequence of JWU's numerous material breaches, John Doe's academic and career prospects, earning potential, and reputation have been severely harmed. He has sustained significant damages, including but not limited to, damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and professional opportunities, loss of future career prospects, and other direct and consequential damages. As a result of the foregoing, John Doe is entitled to recover damages in an amount to be determined at trial, plus prejudgment interest and attorneys' fees and costs.

## **COUNT II – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

71. Plaintiff restates each of the foregoing paragraphs as if fully restated herein.

72. Based on the foregoing facts, JWU breached and violated the covenant of good faith and fair dealing implied in its contracts with John Doe.

73. JWU has breached its obligation of good faith and fair dealing in its investigation and response to Mary Smith's allegations, in its hearing and sanction of John Doe, and in its response to the new evidence presented by John Doe.

74. As a result of the foregoing John Doe is entitled to recover damages in an amount to be determined at trial, plus prejudgment interest and attorneys' fees and costs.

**COUNT III – ESTOPPEL AND RELIANCE**

75. Plaintiff restates each of the foregoing paragraphs as if fully restated herein.

76. JWU's various standards, policies and procedures constitute representations and promises that JWU expected or should have reasonably expected would induce action or forbearance by John Doe.

77. JWU expected or should have expected John Doe to accept the JWU's offer of admission, incur tuition and fee expenses, and choose not to attend other colleges based on its express and implied promises, including that JWU would provide John Doe with a fundamentally fair process should he be accused of a violation of the SCC.

78. John Doe relied to his detriment on JWU's express and implied promises and representations.

79. As a direct, proximate, and foreseeable consequence of the above-identified conduct, John Doe's academic and career prospects, earning potential, and reputation have been severely harmed. He has sustained significant damages, including but not limited to, damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and professional opportunities, loss of future career prospects, and other direct and consequential damages.

80. As a result of the foregoing, John Doe is entitled to recover damages in an amount to be determined at trial, plus prejudgment interest and attorneys' fees and costs.

**COUNT IV – 20 U.S.C. § 1681 (Title IX)**

81. Plaintiff restates each of the foregoing paragraphs as if fully restated herein.

82. Pursuant to Title IX of the Education Amendments of 1972, plaintiff has a right not to be subjected to university discipline where sex is a motivating factor in the decision to enforce and to impose sanctions.

83. Title IX states in pertinent part: “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” 20. U.S.C. § 1681(a).

84. JWU receives federal funding under Title IX, 20 U.S.C. §§ 1681-1688.

85. As a Title IX recipient, JWU is required to comply with the requirements of Title IX as well as those regulations promulgated thereunder by the Department of Education.

86. Title IX requires that federally funded colleges, like JWU, adopt and follow grievance procedures that provide for an “equitable” resolution of Title IX complaints. 34 CFR §106.8(b). The regulations further require that “a school’s procedures must accord due process to both parties involved...” See Title IX (2001) “Revised Sexual Harassment Guidance” at 22 (notice of publication at 66 Fed. Reg. 5512, January 19, 2001).

88. Pursuant to Title IX, JWU is prohibited from subjecting John Doe to a process where his sex is a motivating factor in the Defendants’ decision to impose sanctions.

89. Pursuant to Title IX, JWU is prohibited from providing a disciplinary proceeding that is not adequate, reliable, impartial, and equitable, and which allows John Doe the equal opportunity to present witnesses and other evidence.

90. JWU violated John Doe’s right to be free from discrimination on the basis of sex by subjecting him to an investigation and pending disciplinary proceeding marked by the aforementioned procedural flaws.

100. Such conduct is in violation of Title IX, as it is discriminatory towards John Doe on the account of his sex.

101. As a direct and proximate result of JWU's violation of Title IX, John Doe suffered the harms described above, including, without limitation, emotional distress, loss of educational opportunities, economic injuries, and other direct and consequential damages, including physical, psychological, emotional and reputational damages.

**COUNT V – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

102. Plaintiff restates each of the foregoing paragraphs as if fully restated herein.

103. The conduct of JWU, as described above, was extreme, outrageous and beyond the scope of common decency and was intended to cause John Doe severe emotional distress.

104. As a result of JWU's conduct, John Doe has suffered severe emotional distress for conduct which no reasonable person should be expected to endure.

**COUNT VI - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

105. Plaintiff restates each of the foregoing paragraphs as if fully restated herein.

106. Alternatively, JWU acted negligently in breach of duties of care owed to John Doe as set out above.

**COUNT VII – INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT**

107. Plaintiff restates each of the foregoing paragraphs as if fully restated herein.

108. JWU has committed numerous violations of its contractual obligations and of federal and state law.

109. John Doe's educational and career opportunities have been severely damaged. Without appropriate redress, the unfair outcome to JWU's deeply flawed process will continue to label John Doe as a predatory sexual offender, destroying his future career and life prospects, with no end in sight.

110. By reason of the foregoing, John Doe requests a declaration that: (a) the findings and sanction against John Doe made by JWU be reversed; (b) John Doe's disciplinary record be expunged and removed from his education record at JWU; (c) JWU shall provide John Doe with a notarized letter confirming that the findings and sanction have been reversed and expunged from John Doe's records; (d) JWU shall make all reasonable efforts to restore John Doe's reputation; (e) JWU shall allow John Doe to continue and finish his education at JWU.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff John Doe respectfully requests that this Honorable Court grant him the following relief:

1. Enter the requested permanent injunction and declaratory judgment;
2. Enter judgment for the plaintiff on each count of the Complaint and award him damages in an amount determined at trial, including attorney's fees, costs and interest; and
3. Grant such other relief as the Court deems just and equitable.

#### **JURY DEMAND**

Plaintiff John Doe hereby demands a trial by jury on all claims so triable.

Respectfully submitted,  
JOHN DOE,  
By his attorney,

/s/ James P. Ehrhard  
James P. Ehrhard, Esq.  
BBO # 651797  
Ehrhard & Associates, P.C.  
250 Commercial Street, suite 250  
Worcester, MA 01608  
(508) 791-8411  
ehrhards@ehrhardslaw.com

Dated: November 15, 2017

#### **VERIFICATION**

I declare and affirm, under the pains and penalties of perjury, that to the best of my knowledge the allegations set forth above are true and correct.

November 15, 2017

/s/ John Doe  
JOHN DOE

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

John Doe

(b) County of Residence of First Listed Plaintiff Worcester, MA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James P. Ehrhard, Esq., Ehrhard & Associates, P.C. 250 Commercial Street, suite 410, Worcester, MA 01608 508.791.8411

DEFENDANTS

Johnson & Wales University

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Steven M. Richard, Esq. Jeffrey S. Brenner, Esq, Nixon Peabody One Citizens Plaza, suite 500, Providence, R.I. 02903 401.454.1020

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 20 U.S.C. sec. 1681. Brief description of cause: Violation of 20 U.S.C. sec. 1681; Breach of Contract; Infliction of Emotional Distress

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/15/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ James P. Ehrhard

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) John Doe v. Johnson & Wales University

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830\*, 835\*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820\*, 840\*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME James P. Ehrhard, Esq., Ehrhard & Associates, P.C.

ADDRESS 250 Commercial Street, suite 410, Worcester, MA 01608

TELEPHONE NO. 508.791.8411



**JOHNSON & WALES**  
UNIVERSITY

September 29, 2017

**PERSONAL AND CONFIDENTIAL**

Dear \_\_\_\_\_

Student Conduct has received a report regarding an incident that you were allegedly involved in. As a result, you are being charged with the following violations of the Student Code of Conduct:

- *3a. Sexual assault (including rape, fondling, incest and statutory rape)*
- *3c. Sexual harassment*

You must appear at a **Pre-Hearing Conference on Tuesday, October 3, 2017, at 8:45 AM** in the Student Conduct office, located in the Friedman Center on the Harborside Campus.

Any unexcused failure to attend a hearing or conference may result in the hearing or conference being held in the student's absence. I consulted your academic schedule when I determined the time for your hearing. If you have a legitimate need to reschedule, you must contact me as soon as possible at 401-598-2885 or [betsy.gray@jwu.edu](mailto:betsy.gray@jwu.edu).

Student Conduct is a professional office. It is expected that your demeanor and actions throughout the Conduct Review Process will be professional. Please dress appropriately, silence your cell phone and maintain a polite and respectful attitude at all times.

We encourage you to review the Student Code of Conduct, the Conduct Review Process, and possible sanctions prior to your hearing.

Students requesting reasonable accommodations should contact the Center for Academic Support. Johnson & Wales University prohibits retaliation against any individual who has made a good faith complaint against another individual or who has participated in the Conduct Review Process.

Sincerely,

Betsy Gray  
Director of Student Conduct and Programs

# Student Code of Conduct

The purpose of the Student Code of Conduct and the Conduct Review Process that supports it is to help the university maintain a safe, healthy and positive campus community and online environment for living, learning and working where individuals act lawfully and in compliance with university policies and rules, and act with honesty, integrity, civility and respect for themselves and others and for the university community and the communities in which we live. Any behavior that is inconsistent with these goals, whether on or off campus, is prohibited and constitutes a violation of the Student Code of Conduct.

*For purposes of the Student Code of Conduct and the Conduct Review Process only, any person subject to the Student Code of Conduct will be referred to as a "student" regardless of whether the person is registered for classes. Additionally, during the Conduct Review Process, the person making the complaint will be referred to as the "complainant," and the student responding to the complaint will be referred to as the "respondent." All students (including online students) are subject to the Student Code of Conduct and Student Conduct has the authority to proceed with the Conduct Review Process at any time after a student has been accepted to the university, even after a student leaves, withdraws and/or graduates.*

Conduct that violates the Student Code of Conduct includes:

## 1. Harming or Endangering

- a. Use of physical force or violence
- b. Threatened use of physical force or violence
- c. Dating violence or domestic violence
- d. Fighting (physical or verbal)
- e. Endangering or threatening health or safety
- f. Intentional possession of a dangerous article or substance that may be used to injure or cause discomfort to any person

g. Possession of firearms, ammunition, shell casings, BB guns, air guns, airsoft guns, fireworks, incendiary devices, explosives and items that resemble a firearm

h. Initiating or circulating a report or warning of an impending bombing, fire or other crime, emergency or catastrophe, knowing that the report is false

i. Intentionally or recklessly starting a fire

j. Misuse of or tampering with fire safety equipment (e.g., fire extinguishers, smoke detectors, exit signs and pull stations)

k. Hazing

l. Aiding, abetting, encouraging or participating in a riot, commotion or disturbance, or other disorderly conduct

m. Possession of weapons, including, but not limited to, knives with a blade of 3 inches or longer (excluding university-issued culinary knives), brass knuckles, swords and items that resemble a weapon

n. Animal abuse or neglect

- If Student Conduct assigns a charge of dating violence or domestic violence, the university is required by law to inform the complainant of the Conduct Review Process outcome.
- For more information on dating violence or domestic violence, see the university's [Sexual Assault and Relationship Violence Policy](#).
- For more information on Hazing, see the university's [Hazing Policy](#).

## **2. Bias and Harassment**

a. Any Student Code of Conduct violation against another person committed with bias, hatred or animus based on the person's actual or perceived race, religion, color, national origin, age, sex, sexual orientation, gender identity or expression, genetic information, disability, status as a protected veteran, pregnancy, marital status, or any other category protected by law

- b. Harassment or the creation of a hostile environment based on race, religion, color, national origin, age, sex, sexual orientation, gender identity or expression, genetic information, disability, status as a protected veteran, pregnancy, marital status, or any other category protected by law
  - c. Physical, verbal, nonverbal, written, electronic or technological harassment of another person, including harassment on social networking sites and other online forums
  - d. Stalking
  - e. Intimidation
- If Student Conduct assigns the charge of stalking, the university is required by law to inform the complainant of the Conduct Review Process outcome.
  - For more information about discrimination and harassment, see the university's Prohibited Discrimination and Harassment (including Sexual Harassment) Policy.

### **3. Sexual Misconduct**

- a. Sexual assault (including rape, fondling, incest and statutory rape)
  - b. Sexual exploitation
  - c. Sexual harassment
  - d. Lewd, indecent or obscene behavior
  - e. Illegal possession of pornography
  - f. Illegal distribution of pornography
- If Student Conduct assigns a charge of sexual assault, sexual exploitation or sexual harassment, the university is required by law to inform the complainant of the Conduct Review Process outcome.
  - For more information on what constitutes sexual assault (including the university's definition of consent) and sexual exploitation, see the university's Sexual Assault and Relationship Violence Policy.

- For more information about sexual harassment, see the university's Prohibited Discrimination and Harassment (including Sexual Harassment) Policy.

## 4. Drugs

a. Possession of drug paraphernalia (such as bongs, scales, pipes, etc.)

b. The actual or intended purchase, possession or use of illegal drugs, narcotics, controlled substances or prescription drugs without a prescription

c. The actual or intended sale, distribution, cultivation or manufacture of illegal drugs, narcotics, controlled substances or prescription drugs

d. Presence at a gathering where there is obvious illegal drug use

- A finding of responsibility for intended or actual sale or distribution can be based on the mere presence of a distributable quantity of illegal drugs, narcotics, controlled substances or prescription drugs or the presence of paraphernalia used for the sale or distribution of illegal drugs, narcotics, controlled substances or prescription drugs.
- Students can be found responsible for a drug violation based on the presence of residue or paraphernalia alone.
- The university may inform local police of illegal drug violations.
- The university will report drug violations to the student's parents or guardians if the student is under the age of 21.
- If drugs are found in a residence hall room or other campus location, the university may find all occupants of the room or other campus location responsible for the drug violation if it is unable to ascertain which student(s) possessed and/or used the drugs.
- For more information on drugs, narcotics and controlled substances, see the university's Drug and Alcohol Policy.
- Any person who makes a good-faith report related to physical violence, dating violence, domestic violence, stalking and/or sexual exploitation, either as a complainant, respondent or a third-party witness, will not be subject to disciplinary action by the university for his/her own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. However, the university may initiate an educational discussion and/or educational sanction regarding alcohol or other drugs.

## 5. Alcohol

- a. Possession or use of alcohol anywhere on university property, except for legal use at events, operations, programs, premises or facilities sanctioned by the university
  - b. The actual or intended purchase, possession or use of alcohol by anyone under the applicable legal drinking age
  - c. Selling alcohol to or buying alcohol for anyone under the applicable legal drinking age
  - d. Presence at a gathering where there is obvious illegal drinking
  - e. Use of drinking paraphernalia typically used or associated with excessive drinking (such as drinking funnels, kegs, beer balls, trash can punches, beer bong, beer pong tables or taps)
  - f. Possession of drinking paraphernalia typically used or associated with excessive drinking (such as drinking funnels, kegs, beer balls, trash can punches, beer bong, beer pong tables or taps)
  - g. Violation of the Residential Life alcohol guidelines applicable for students who are 21 years of age or older and who have received permission to consume alcohol on campus
- Alcohol includes powdered alcohol.
  - The university will report alcohol violations to the student's parents or guardians if the student is under the applicable legal drinking age.
  - Students can be found responsible for an alcohol violation based on evidence of intoxication alone.
  - If alcohol or drinking paraphernalia is found in a residence hall room or other campus location, the university may find all occupants of the room or location responsible for the alcohol violation if it is unable to ascertain which student(s) possessed and/or used the alcohol or paraphernalia.
  - For more information on alcohol, see the university's [Drug and Alcohol Policy](#).
  - Any person who makes a good-faith report related to physical violence, dating violence, domestic violence, stalking and/or sexual exploitation, either as a complainant, respondent or a third party witness, will not be subject to disciplinary action by the university for his/her own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or

safety of any other person at risk. However, the university may initiate an educational discussion and/or educational sanction regarding alcohol or other drugs.

## **6. Theft and Abuse of Property**

- a. Actual or intended theft or unauthorized use or possession of the resources, property or services of the university or of another person, business or government
  - b. Unauthorized use of the university's name, logo or seal
  - c. Unauthorized use of ATM cards, cellphones, credit cards, checks, long distance accounts, identification cards, key combinations, passwords, PIN numbers or other property, equipment or accounts belonging to the university or another person, business or government
  - d. Possession, use or sale of resources, property or services which the student knows or should know have been stolen
  - e. Unauthorized entry (including forcible entry), use, presence in or occupancy of any premises or facilities
  - f. Vandalism
  - g. Reckless damage to or destruction of university property or the property of others
  - h. Disposal of trash, garbage or refuse anywhere on the campus except in designated trash receptacles
  - i. Unauthorized removal of food or other items from the dining halls
  - j. Throwing food or other objects in the dining halls
- It is the university's practice to cooperate with local, state and federal law enforcement authorities in their investigation of theft, identify theft, computer/internet crimes and other similar crimes, including providing copies of incident reports and other evidence to these authorities.



## 7. Failure to Comply and Interference

- a. Failure to comply with the directions of a university representative (including residence directors and resident assistants) acting in the performance of their duties
  - b. Failure to participate in the university's Conduct Review Process
  - c. Failure to comply with any university policy or rule
  - d. Failure to evacuate any building in which a fire or other emergency alarm has been sounded or when directed to evacuate by a university representative
  - e. Failure to comply with the Good Neighbor Policy and/or the Guide to On-Campus Living
  - f. Failure to present a student identification card upon request from a university representative
  - g. Interference with university representatives carrying out their duties or other university business
  - h. Interference with any member of the university community in the pursuit of the university's mission or purposes
  - i. Actions which obstruct, disrupt or physically interfere with the use of university equipment (including safety and security equipment), premises, buildings, rooms or passages
  - j. Retaliation against any individual who has made a good faith complaint against another individual or who has participated in the Conduct Review Process, including cooperation with the investigation of the complaint
- If a student violates a No Contact Order or the directions of a university representative to avoid another person, the student will be charged with a violation of the Student Code of Conduct for failure to comply, and may be interimly suspended until the completion of the Conduct Review Process.

## **8. Dishonesty**

- a. Violation of academic integrity, including, but not limited to, cheating, plagiarism and unauthorized collaboration
  - b. Knowingly furnishing false information
  - c. Forgery, alteration or unauthorized use of student or university documents, records, identification, passwords, library materials or property
  - d. Misrepresentation, fraud or deceit
  - e. Possession or use of falsified forms of identification
  - f. Knowingly bringing a false complaint against another person
  - g. Falsification, distortion or misrepresentation of information before a panel or hearing officer in the Conduct Review Process
- For more information about academic integrity violations, see [Academic Integrity](#).

## **9. Other Prohibited Conduct**

- a. Illegal gambling, wagering, betting or bookmaking
- b. Participating in or accepting members into any organization that the university has not approved for recognition or that has been withdrawn or suspended from university recognition
- c. Associating with or facilitating the existence of any organization that has been withdrawn or suspended from university recognition
- d. Unauthorized operation of a business on university property or use of university resources
- e. Any conduct by a guest of a student that violates university rules or policies including the Student Code of Conduct (Note: Students are responsible for the behavior of their guests.)
- f. Behavior that would offend or frighten a reasonable person

- g. Conduct that interferes with student learning or with the mission of the university
- h. Unauthorized use of the university's name, logo or seal for crowdfunding purposes
- i. Conduct that adversely affects the security of the university community, local residents or property, the name of the university, or the integrity of the educational process

# Conduct Review Process

The Johnson & Wales Conduct Review Process, like the Student Code of Conduct, is designed to help the university maintain a safe, healthy and positive environment for living, learning and working, where individuals act lawfully and in compliance with university policies and rules, and act with honesty, integrity, civility and respect for themselves and others and the university community and the communities in which we live. The Conduct Review Process is used to support and enforce the Student Code of Conduct by providing procedures for determining whether a student is responsible or not responsible for a violation of the Student Code of Conduct.

The university administers the Conduct Review Process in good faith, making every reasonable effort to be fair to all involved. Students have the right to participate in the Conduct Review Process without having past student conduct violations discussed or used when a decision of responsibility is being made concerning a current alleged violation; however, past violations may be considered when determining a sanction for an individual found to be responsible for a violation of the Student Code of Conduct. All students have the obligation to participate in the Conduct Review Process, as a witness or otherwise, when asked by a university representative.

Student Conduct generally follows the procedures under JWU Communications with Students whenever contact with students is necessary.

The university's Conduct Review Process does not serve as an extension of or replacement for the local, state or federal civil or criminal court system. In addition, the outcome of civil or criminal proceedings concerning a violation will not control or be binding on the outcome of the Conduct Review Process for the same violation.

All students should be aware that it is the policy of the university to cooperate with local, state and federal law enforcement authorities in the investigation of crime. The university will not provide a sanctuary against criminal prosecution.

## How the Conduct Review Process Works

### Reports of Violations and Notification

Any individual who witnesses or becomes aware of an alleged violation of the Student Code of Conduct should report the violation to Campus Safety & Security, any member of the Residential Life staff, the dean of students or Student Conduct. Once an alleged violation is reported, an incident report will be prepared by Campus Safety & Security (or by a faculty member when appropriate) describing the nature and circumstances of the incident and the parties involved. Campus Safety & Security may conduct further investigation if additional or supplemental information is needed. All incident reports are reviewed

in Student Conduct and those that warrant action are then referred for either an educational conversation or a hearing, depending upon the nature of the alleged violation.

There are 2 types of hearings at Johnson & Wales: administrative hearings and panel hearings. Administrative hearings are held before a single hearing officer from Residential Life or Student Conduct, depending on the nature of the violation. Panel hearings are conducted in front of a panel made up of 3 trained panelists. In both cases, the role of the hearing officer or panel is to consider information provided from the investigation, respondent and, to the extent necessary, any complainants or witnesses, in order to make a finding of "responsible" or "not responsible." More serious violations that may result in a sanction of dismissal or suspension, and violations of academic integrity, are referred to a panel hearing, while less serious violations are referred for an administrative hearing.

When an incident report is referred for a hearing, the student will receive a notification describing the alleged violation and indicating the time and place for the hearing or pre-hearing conference. Students have the right to access their education records under certain conditions (see Family Educational Rights and Privacy Act for university policies on access to and release of student records).

Student Conduct will consult the student's academic schedule prior to scheduling any conferences or hearings. Any unexcused failure to attend a hearing or conference will result in the hearing being held in the student's absence, at which the hearing officer or panel will not have heard the student's side of the story. If there is a legitimate need to reschedule a hearing or conference, the student must contact the hearing officer as early as possible before the scheduled date to request rescheduling.

## Hearing Procedures

A student may bring any relevant materials and witnesses with personal, relevant knowledge of the incident to the hearing. A student may also bring an advisor. Advisors may attend the hearing with the student, but cannot participate in any manner. If there is a legitimate conflict of interest related to the advisor, Student Conduct reserves the right to disqualify an advisor. The student would then be required to obtain a new advisor. When possible, the hearing officer will make reasonable adjustments in order to accommodate an advisor's schedule. However, the hearing officer is not obligated to reschedule meetings and/or hearings to accommodate the advisor. A student may select a new advisor in the event of a scheduling conflict. Except for witnesses and advisors, additional people may not attend the hearing with the student.

At a pre-hearing conference (for panel hearings) or before the hearing gets underway (for administrative hearings), the student may be asked whether the student wishes to waive the hearing by acknowledging responsibility. If the student acknowledges responsibility, sanctions will be imposed and the student will not be entitled to an appeal. If the student does not acknowledge responsibility, the hearing will proceed and the hearing officer or panel will

1. outline the process
2. review the incident report and/or allegations, and any supplemental information
3. hear any statements relating to the incident
4. hear or review the statements of witnesses with personal, relevant knowledge of the incident (but other witnesses, such as character witnesses, will not be allowed to attend or be heard)
5. hear or review the statements of other relevant witnesses (and where confidentiality is a consideration, the identity of such witnesses will not be disclosed to the student)
6. either defer the decision or render a decision of "responsible" or "not responsible." Hearing officers and panels use the "more likely than not" standard to evaluate alleged violations.
7. if the student is found responsible, recommend 1 or more sanctions to the director of student conduct

The director of student conduct will review the recommendation and make a final determination of appropriate sanction(s) (taking into consideration prior conduct violations). The student will receive a final written decision, which will set forth the final result and the sanction(s) imposed. The written decision will include information regarding the appeal process and the deadline for filing an appeal.

### **Appeal**

The decision of the hearing officer (for administrative hearings) or the panel (for panel hearings) is final unless it can be demonstrated that 1 of the following has occurred:

1. Relevant, new information has come to light since the decision was made.
2. The Conduct Review Process, as outlined, was not followed.

To request an appeal, a student must submit a request in writing to Student Conduct. The request must be submitted within 3 business days after the date of notification of the outcome of the hearing and must state clearly the basis for the appeal. The appeal will be reviewed upon receipt, and a decision concerning the appeal will be available within a reasonable time. The appeal will either be granted, remanding the case back for a new hearing, or denied. The decision of the appeal officer will be final.

The student will receive a final written decision from the appeal officer, which will set forth the outcome of the appeal.

## **Rights of the Complainant and Respondent (the "Parties") for Complaints of Sexual Harassment, Sexual Assault, Sexual Exploitation, Dating Violence, Domestic Violence and Stalking**

For complaints of sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence and stalking, the parties will have the following rights in connection with the Conduct Review Process:

- The right to an investigation and resolution that is prompt, fair and impartial from the initial investigation to the final result as required by applicable law
- The right to a hearing conducted by unbiased university officials who receive annual training on issues related to sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence and stalking, and how to conduct an investigation
- The right to a hearing process that protects the safety of the parties and promotes accountability. Hearing officers and panels use the "more likely than not" standard to evaluate alleged violations.
- The right to present relevant materials and witnesses with personal, relevant knowledge of the incident as outlined above
- The right to be accompanied to the hearing and any related meeting by an advisor of their choice. The advisor may accompany the student, but may not participate in any manner. If there is a legitimate conflict of interest related to the advisor, Student Conduct reserves the right to disqualify an advisor.
- The right to be informed in writing of the outcome of the hearing and any appeal, including when such results become final. This includes disclosure to the parties of any sanction imposed that pertains to a sex offense and any sanction imposed that directly relates to the complainant with respect to other alleged sexual harassment violations. The parties do not need to submit a request for such information. In addition, for any crime of violence, the university will, upon written request and in accordance with applicable law, disclose to the complainant all sanctions imposed against the respondent. If the complainant is deceased as a result of the crime of violence, the outcome of the hearing and sanctions will be provided to the complainant's next of kin if so requested.
- The right to request an appeal as outlined above (Under Appeal). A student who acknowledges responsibility will not be entitled to an appeal.

The university will take steps to prevent the recurrence of any harassment, correct any discriminatory effects on the complainant and others, and implement protective or interim measures (such as No Contact Orders, room relocations, classroom relocations, interim suspensions, etc.) as requested and required by law. The university will complete the Conduct Review Process within a reasonably prompt time frame, usually within 60 days, but will allow for the extension of time frames for good cause with written notice to the complainant and respondent of the delay and the reason for the delay.

*Retaliation, including intimidation, threats, coercion or discrimination, against any individual who has made a good faith complaint, or who has participated in the Conduct Review Process, is unlawful and in*

violation of university policy. Anyone found to have engaged in retaliation will be subject to disciplinary action up to and including dismissal or termination from the university.

## Questions?

For questions regarding the Student Code of Conduct, the Conduct Review Process or Sanctions for Individuals, please contact Student Conduct at your campus:

- 401-598-2885 (Providence Campus)
- 305-892-7602 (North Miami Campus)
- 303-256-9591 (Denver Campus)
- 980-598-1820 (Charlotte Campus)





**JOHNSON & WALES**  
UNIVERSITY

October 23, 2017

Sent electronically to

**PERSONAL AND CONFIDENTIAL**

Dear

After completion of the Conduct Review Process, it has been determined that, based on a preponderance of the evidence, you are:

- **Responsible** for 3a. *Sexual assault*
- **Responsible** for 3c. *Sexual harassment*

We have based this decision upon a review of all relevant information provided, and based upon a preponderance of the evidence. The panelists found that it was more likely than not that the two alleged incidents of sexual assault occurred. This determination was made after considering information from the Campus Safety & Security report and statements made during the Panel Hearing by both the complainant and respondent. The panelists noted that throughout the hearing, the respondent was not able to articulate specific ways in which he gained consent. Rather, he only noted that the complainant never stated she was uncomfortable after the alleged incidents occurred. The complainant provided very specific information regarding the words and behaviors she used to convey that she did not give consent or withdrew consent.

As a result, you have been given the following sanctions:

1. You have received the sanction of **University Dismissal**, effective October 20, 2017. University Dismissal is defined as: permanent dismissal from the university (noted in the student's education records), which prohibits the student from attending the university (at any campus or learning site) or any university events and from entering or being present without permission on any property of the university. A student who is dismissed from the university will still be responsible for certain tuition and housing charges, subject to any applicable refund policy.

You may appeal this decision in accordance with the Appeal section set forth in the Conduct Review Process. To request an appeal, you must submit a request in writing to Student Conduct **no later than October 26, 2017**.

Please be reminded that Johnson & Wales University prohibits retaliation against any individual who has made a good faith complaint against another individual or who has participated in the Conduct Review Process.

If you have any questions, please contact me at 401-598-2885 or [betsy.gray@jwu.edu](mailto:betsy.gray@jwu.edu).

Sincerely,

Betsy Gray  
Director of Student Conduct and Programs