

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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| JONATHAN N. WATERS |) | |
| |) | Civil Action No. 14 CV 1704 |
| Plaintiff, |) | |
| |) | Judge James Graham |
| v. |) | Magistrate Judge Kemp |
| |) | |
| MICHAEL V. DRAKE, M.D., et al. |) | JURY DEMAND |
| |) | <u>ENDORSED HEREON</u> |
| Defendants |) | |

**ANSWER OF DEFENDANTS MICHAEL V. DRAKE, M.D.,
JOSEPH E. STEINMETZ, PH.D. AND THE OHIO STATE UNIVERSITY**

Defendants Michael V. Drake, M.D. (“President Drake”), Joseph E. Steinmetz, Ph.D. (“Dr. Steinmetz”) and The Ohio State University (“Ohio State”) (collectively “defendants”), for their answer to plaintiff Jonathan N. Waters’ Complaint, state the following:

PRELIMINARY STATEMENT

Ohio State is a land grant institution of higher learning founded in 1870. Its mission is “to advance the well-being of the people of Ohio and the global community through the creation and dissemination of knowledge.” In furtherance of that mission, certain of its students participate in The Ohio State University Marching Band (the “Band”). The Band is a class within the School of Music for which Band members receive grades and academic credit. As such, the Band is subject to the same codes of conduct as other academic programs at Ohio State, and its staff and members are required to comply with Ohio State’s policies.

Plaintiff Jonathan N. Waters was an unclassified, at-will employee of Ohio State whose employment could be ended anytime by either him or Ohio State. *See* January 30, 2013 Employment Letter to Jonathan N. Waters (attached as Exhibit A). He was not a tenured professor. Instead, he was an untenured staff member of the School of Music who was paid at a rate of \$150,000 per year for his services as Director of the Marching and Athletic Bands at the time of his termination on July 24, 2014. All amounts owing to him as an at-will employee were fully paid.

Mr. Waters was himself a former member of the Band from 1995-1999. Then, for approximately twelve years, Mr. Waters was part of the Band's leadership or "core power structure." *See* Ex. B to Pl.'s Compl., at Attachment 9, Page ID 442. He was Assistant Director from 2002 to 2012, Interim Director in 2012, and announced as permanent director in October 2012, under terms that were finalized by letter on January 30, 2013 and made effective February 1, 2013. Mr. Waters was both a product, and a leader, of the culture of the Band as it was found to exist at the time of his termination. That culture was permeated by highly sexualized and improper conduct, including hazing and harassment that no student member should be subjected to, legally or morally. Among other things, the following occurred:

- 1) In 2007, a calendar was created in which male Band members were pictured almost fully nude, with strategically placed band equipment, and engaged in what Mr. Waters describes as "seductive poses." *See* Mr. Waters' Complaint at ¶ 33. Mr. Waters kept a copy of the calendar in his personal office on campus, and it was found there after his termination. The first page of the calendar reads "***For Jon Waters' eyes only.***"
- 2) During a Band event known as "Fesler Night," videos were shown to Band students and staff, including Mr. Waters, which had been created by different sections, or "Rows," of the Band. Fesler Night occurs at the start of each new academic year immediately after selection of Band members for the coming season. The event serves to introduce new members to the Marching Band, its staff, and the particular rows and their traditions. In the words of a student speaking to Mr. Waters on camera, "for F-Night, we always have videos, and often those videos have

- inappropriate content.” These videos include passages showing such things as: (1) in 2010 and 2013, male T-Row and H-Row members virtually nude, with strategically placed band equipment, much like the 2007 calendar found in Mr. Waters’ office; (2) in 2012, a topless female Band member opening the door for an unsuspecting pizza deliveryman; (3) in 2011, a video involving inappropriate nicknames and partial nudity being presented for approval to Mr. Waters, who himself appeared in the video; and (4) in 2010, a female Band Member on her knees in front of two male Band members simulating performing oral sex on them, while singing “Hang on Sloopy.” Mr. Waters did not disclose the existence of these videos during the Title IX investigation, and they were only discovered after his termination.
- 3) Members of the Band published and republished a Songbook. The Songbook was titled the “Unofficial OSU Marching Band School Songs.” It contained songs which are grossly sexual, homophobic, and anti-Semitic. One of the songs was actually titled, “*Jon Waters*,” sung to the tune of Green Acres. *See* 2010 Version of “Unofficial OSU Marching Band School Songs” at 25 (attached as Exhibit B); *see also* 2006 Version of “Unofficial OSU Marching Band School Songs” (attached as Exhibit C).
 - 4) Members of the Band gave a “Rookie Midterm” to freshman on bus trips. The Rookie Midterm contained grossly sexual content, including, but not limited to, instructions to “draw female reproductive organs with arrows detailing what each part is used for” and a “Boner Question: List all of the Members of ___ Row in descending order from deepest box to largest penis. Explain your reasoning in 2 to 3 sentences.” *See* “Rookie” Midterm Examination at 3 (attached as Exhibit D).
 - 5) The publication of a “Trip Tic” newsletter for away game trips which included sexually explicit content and identified sexual conduct occurring between Band members.
 - 6) The occurrence of Midnight Ramp, a Band activity in which certain student members wearing only their underwear marched into the football stadium through the ramp. Mr. Waters authorized and watched the Midnight Ramp in 2012 and 2013, as Interim Director and Director, and in prior years. Band staff stated that he canceled the event in June, 2014, after learning of the University’s Title IX investigation into the Marching Band’s culture. Upon seeing the Midnight Ramp event for the first time in 2013, a recently-hired staff member stated he remembered thinking, “I don’t believe I just witnessed that.”
 - 7) In September, 2013, Ohio State played the University of California in football in Berkeley, California. During the Title IX investigation, Mr. Waters denied there had been misconduct at that time. A physical therapist from Student Health Services, who also was a long-time volunteer for the Band, accompanied the Band on the trip in her volunteer role. During the trip, she reported inappropriate conduct to Mr. Waters. Due to the extent of the conduct, and her belief Mr. Waters would not take action to stop it, she resigned her position with the Band after she had volunteered for eighteen

years. Among other things, students were performing “Flying 69’s” on at least one bus. A “Flying 69” consisted of Band members posing in a “69” position while holding themselves in the air from luggage racks. Mr. Waters was on the bus where this conduct occurred.

- 8) The use of nicknames for Band members, 50% of which Mr. Waters estimated were sexual during the 2013-2014 academic year. Nicknames included, but were not limited to, Ballsacagawea, Bater, Captain Dildo, Fleshlight, Jizzy, Pat Fenis, Testicles, Triple Crown, Twat Thumper, and Twinkle Dick. When asked by the investigators whether he thought such nicknames are appropriate, Mr. Waters answered, “No.” When asked why he therefore tolerates such sexual nicknames, Mr. Waters replied, “Good point.”
- 9) The use of “Rookie Introductions.” These occurred at the front of a moving bus enroute to away games and often included sexually explicit questioning and sexual jokes.
- 10) New members were required to perform “Tricks” in connection with nicknames, such as:
 - A Band member, whose nickname was Captain Dildo, chanting, “haaaay, we want some p****aay.”
 - A Band member, whose nickname was Barker, acting as if he was outside a strip club soliciting clientele, saying “girls, girls, we have these types of girls.”
 - A female Band member, whose nickname was Squirt, sitting on male students’ laps and pretending to orgasm. On “make the Band night,” the same female student was asked to sit on her own younger brother’s lap and pretend to orgasm.
 - A male Band member, whose nickname was Jizzy, conducting a full-body demonstration of a flaccid penis becoming erect and spitting candy. This trick was occasionally performed with another female student who pretended to stimulate the male student.
- 11) Immediately following a sexual harassment training for the Band on January 22, 2014, Mr. Waters received a complaint from a female student that she felt harassed by inappropriate, offensive, and sexist comments certain male Band members were tweeting *during* the sexual harassment training session.

Unfortunately, given the sexualized culture of the Band, additional improper conduct occurred, including at least three allegations of sexual assault on female members of the Band and the Athletic Band:

- a. In March, 2012, a female member of the Band reported a sexual assault by a male Band member.

- b. In March, 2013, a female member of the Athletic Band reported to Mr. Waters an incident of sexual assault by a male member of the Athletic Band. Mr. Waters' decision was to punish both the female and male members by preventing them from traveling on an upcoming Athletic Band trip. Ohio State's Office of Legal Affairs and the Compliance Office had to intervene to prevent Mr. Waters from punishing the female student after she reported sexual assault, which would have clearly contravened Title IX.
- c. In October, 2013, a third female Band member reported to Mr. Waters she had been sexually assaulted by a male Band member. The male Band member was ultimately expelled from Ohio State.

Much of the foregoing conduct came to light after the parent of the female student who was sexually assaulted in October, 2013, complained about the sexualized culture of the Band. This legally constituted a Title IX complaint, and prompted Ohio State and its Office of University Compliance and Integrity ("Compliance Office") to conduct the required investigation. As the investigation proceeded, a new President, Dr. Michael V. Drake, M.D., arrived at Ohio State on June 30, 2014. President Drake, after a review of the hazing and harassing culture of the Band, and after consultation with senior leaders of the University and apprising the Board of Trustees, determined Mr. Waters should no longer be the Director of the Band. The Board of Trustees has since firmly supported the decision to terminate Mr. Waters due to his failure to satisfy Ohio State's expectations.

After Mr. Waters' termination, a larger question faced President Drake: What to do going forward? It was in this context that he spoke to the newly installed members of the 2014 Band on August 21, 2014. Consistent with the hazing and intimidation culture which Mr. Waters oversaw, Mr. Waters has now selectively quoted from the tape recording in a transparent attempt to paint President Drake in a false light and in an attempt to intimidate him into reinstating Mr. Waters. When the passage quoted by Mr. Waters is read in context, it is evident President Drake was merely confirming that neither he nor Ohio State would condone the "offensive," "inappropriate," "vulgar," and "demeaning" conduct which prior leadership, including Mr.

Waters, had failed to stop. President Drake further confirmed he and Ohio State are proud of the newly installed members of the 2014 Band and believe they will enjoy success on and off the field. Plaintiff's misuse of President Drake's words and deeds of encouragement to the current members of the Band, which were spoken after the termination of Mr. Waters and focused on the Band's future, is disappointing.

Not content to quote Dr. Drake out of context, Mr. Waters also names him personally in this lawsuit as the first named defendant. In furtherance of his approach, Mr. Waters' Complaint attempts to ridicule Ohio State's Compliance Office by, among other things, calling the legally required Title IX report by the last name of one of its authors and belittling the investigators whose federally required work unearthed the culture of hazing and harassment within the Band.

Additionally uncovered by the investigators, and others, was a pattern of concealment which existed both before and during the investigation, and continues currently. For example, after three reported sexual assaults by male Band members on female Band members, Mr. Waters was asked in October and November of 2013 by multiple persons if problems existed with the Band's culture. He denied the existence of any problems as "rumors" and stated problems existed in the Band's culture fifteen years ago, but no longer did. It was not until confronted with information uncovered by the investigation, that Mr. Waters finally admitted in his July 14, 2014, written culture statement that the Band's culture was in "dire need of change" and "not . . . in a 'good place' currently."

During the investigation, Mr. Waters claimed it was up to the students to change the culture, and not him as a leader of the Band, and now alleges in his Complaint that he did this because he did not want to "damage the morale and feelings" of Band members. He also told investigators that he never yelled or cursed at students. The investigation uncovered this was not

the case. In a tape recording documenting a discussion between Mr. Waters and a Band member, Mr. Waters can be heard yelling at a Band member: “You f***ing better realize who you’re dealing with We tell you to stand on your head . . . you’ll stand on your Godd*** head.” Mr. Waters also claimed during the investigation he had not seen a copy of the Songbook since he was a student. Yet, in a written statement he incorporates into his Complaint, Band Squad Leaders state he saw a copy as late as 2012.

Also in the midst of the investigation, Mr. Waters called the Title IX investigators to inform them that a former Band member, and current high school Band director, had been arrested for having sex with a high school band student. Mr. Waters informed the investigators that one of the Title IX Complainants had posted a comment to a reporter’s Facebook page linking the arrest to the sexualized culture of the Band. Mr. Waters was cautioned not to interfere or contact the reporter. The comment was subsequently removed from Facebook by the reporter. Mr. Waters initially denied to the Title IX investigators that he had contacted the reporter. He subsequently admitted, however, that he had misled the investigators and had in fact contacted the reporter.

Unfortunately, the concealment did not end with the release of the investigation report. Mr. Waters states in his Complaint that the 2007 calendar depicting almost nude male Band members with strategically placed band equipment “was no longer published when [he] became Director.” As discussed above, however, the Fesler Night videos showcase the same partially nude calendar images and sexually suggestive poses with different students in 2010 and 2013.

Hazing is never viewed as objectionable by the leaders of the hazing. Those who are subject to it often come to believe it is proper conduct, and in turn, inflict it upon the next generation of victims. It takes an independent assessment by those not themselves embedded in

the culture to break the chain. Thanks to the work of the Compliance Office, and the courage of President Drake, the Ohio State Board of Trustees, and other University leaders, that chain has now been broken at the Band.

FIRST DEFENSE

1. State that the unnumbered paragraphs pled by Mr. Waters on page 2 of his Complaint, and the unnumbered heading “A” on page 3 of his Complaint, fail to state any allegations which require a response, but, to the extent allegations are being made, defendants deny the same. In response to the allegations in paragraph 1 of the Complaint, defendants admit that Mr. Waters’ position as full-time Director of the Band officially began on February 1, 2013, having been announced by Provost Steinmetz on October 10, 2012. Defendants state that Mr. Waters was not faculty; rather, his position was an unclassified, at-will position. *See* January 30, 2013 Employment Letter to Jonathan N. Waters (attached as Exhibit A). Prior to becoming Director, Mr. Waters was a Band member from 1995 through 1999, a graduate assistant from October 1, 2000 to 2002, Assistant Director from June 1, 2002 through May 31, 2012, Interim Director in 2012, and was announced as permanent director in October, 2012, under terms that were finalized by letter on January 30, 2013 and made effective February 1, 2013. *See* January 30, 2013 Employment Letter to Jonathan N. Waters (attached as Exhibit A). During that entire time, he was part of the Band’s “core power structure.” *See* Ex. B to Pl.’s Compl., at Attachment 9, Page ID 442. Defendants also admit that, throughout its history, including during the period Mr. Waters was Director, the Band received national and international attention for its performances. That attention has continued after Mr. Waters’ termination. Defendants additionally admit that Mr. Waters traveled throughout Ohio and elsewhere to fundraise on behalf of Ohio State, but deny he raised tens of millions of dollars for the *But For Ohio State*

campaign. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 1 of the Complaint, and therefore deny the same.

2. Deny that defendants, or anyone employed by or acting on behalf of Ohio State, “destroy[ed]” Mr. Waters’ good name. Defendants admit Mr. Waters received a performance review signed by Dr. Richard Blatti on or about June 2, 2014, but state Dr. Blatti did not know about the conduct uncovered by the Title IX investigation at that time. Defendants state Mr. Waters was terminated from his unclassified, at-will position on July 24, 2014, after it was discovered that, despite holding leadership positions in the Band for over twelve years, he permitted conduct he now pleads in his Complaint was “offensive,” “inappropriate,” “vulgar,” and “demeaning,” and a culture he admits was “in dire need of change” and “not . . . in a ‘good place’ currently,” in his July 14, 2014 culture statement. *See* July 24, 2014 Termination Letter Addressed to Jonathan N. Waters (attached as Exhibit E); July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, “An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program,” at 1 (attached as Exhibit F). Defendants admit the Band was successful on the field, but state the Band continues to receive accolades after Mr. Waters’ termination. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 2 of the Complaint, and therefore deny the same.

3. State the unnumbered allegations pled by Mr. Waters in heading “B” on page 4 of his Complaint fail to assert any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 3 of the Complaint, defendants deny that “troubling issues were brewing” for Ohio State and that

the United States Department of Education, Office for Civil Rights (“OCR”) had started an investigation of Ohio State on or about May 1, 2014 over the handling of sexual harassment complaints. Instead, defendants state that OCR and Ohio State commenced a proactive compliance review of the University’s Title IX program on June 23, 2010, almost four years before the Title IX investigation of the Band began and over four years before Mr. Waters’ termination. *See* September 11, 2014 Letter from OCR to President Drake at 1 (attached as Exhibit G). Defendants also state that on May 22, 2014, a female Band member and her parent claimed Mr. Waters had retaliated against her for reporting a sexual assault by a male Band member. *See* July 22, 2014 Investigation Report at fns. 2 and 7 (attached as Exhibit H). Defendants admit that on May 23, 2014, the parent spoke with Ohio State’s Compliance Office and requested an investigation into the Band’s culture, citing a sexualized culture, and, by way of example, an activity known as Midnight Ramp, in which certain Band members march into the stadium in their underwear. *Id.* at 3. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 3 of the Complaint, and therefore deny the same.

4. State the allegations made by the Band member and her parent constituted complaints under Ohio State’s Sexual Harassment Policy 1.15 (attached as Exhibit I) and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*, and required an investigation of the complaints as a matter of federal law. Defendants deny the investigation was deeply flawed, incomplete, skewed, contained factual errors or material omissions, was result-driven, was distorted to appease OCR or denied Mr. Waters due process. Defendants admit Chris Glaros, Assistant Vice President of Compliance Operation and Investigations for the Ohio State Compliance Office, and former First Assistant Attorney General in the Ohio Attorney

General's Office, oversaw the Title IX investigation into the Band's culture. Defendants also state that Mr. Glaros formerly assisted with corporate investigations while an attorney with Jones Day and additionally oversaw the part of the Title IX investigation relating to the claim of retaliation lodged against Mr. Waters, which did not find evidence to substantiate the claim of retaliation. Defendants additionally state the Title IX investigation also was overseen by Gates Garrity-Rokous, a former Assistant U.S. Attorney with the United States Department of Justice, with previous experience investigating civil and criminal healthcare fraud in the state of Connecticut. Defendants further state that, after the investigation was complete, and prior to Mr. Waters' termination, Mr. Glaros issued letters to Mr. Waters detailing the findings of the Title IX investigation, as to each Title IX complaint. *See* July 22, 2014 Letters From Christopher Glaros to Jonathan N. Waters (attached as Exhibits J and K).

Further answering, defendants admit Mr. Waters received a performance review signed by Dr. Richard Blatti on or about June 2, 2014, and state Dr. Blatti did not know about the conduct uncovered by the Title IX investigation at that time, but deny Mr. Waters has accurately quoted the review. Instead, Mr. Waters has out of context inserted the phrase "of the OSU Band" into the quote. Defendants also admit Mr. Waters was terminated from his unclassified, at-will position on July 24, 2014, after it was discovered that, despite holding leadership positions in the Band for over twelve years, he failed to eliminate conduct he admits was "offensive," "inappropriate," "vulgar," and "demeaning," and a culture he admits was "in dire need of change" and "not . . . in a 'good place' currently," in his July 14, 2014 culture statement. *See* Plaintiff's Complaint at ¶¶ 25, 33; July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, "An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program," at 1 (attached as Exhibit F). Further answering, defendants state they

are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 4 of the Complaint, and therefore deny the same.

5. Deny the allegations contained in paragraph 5 of Mr. Waters' Complaint, and further answering, state OCR called the Title IX investigation into the Band's culture "comprehensive." See <http://www.ed.gov/news/press-releases/us-department-education-reaches-agreement-ohio-state-university-address-and-prev>. Defendants also state that Mr. Waters, and his attorney, have since confirmed the findings of the report. See Columbus Dispatch, *Ohio State Band Director Jonathan Waters May Fight Firing* (published July 25, 2014) ("Jonathan tried . . . to change that culture."); The Today Show (August 5, 2014) ("Indeed this is a culture, an entrenched culture, that dates back to the 1930's").

6. State Mr. Waters failed to attach the statements to which he refers or to identify the persons making the statements, and accordingly, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint, and therefore deny the same.

7. State Mr. Waters failed to attach the statements to which he refers or to identify the person making the statement, and accordingly, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint, and therefore deny the same.

8. Deny that the investigation was deeply flawed, careless, or executed without concern for the truth. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 8 of the Complaint, and therefore, deny the same.

9. State the unnumbered allegations pled by Mr. Waters in heading "C" on page 6 of

his Complaint fail to assert any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 9 of Mr. Waters' Complaint, defendants admit President Drake stands by the Title IX investigation's findings related to the Band's culture and the decision to terminate Mr. Waters. Defendants also admit President Drake addressed the Columbus Metropolitan Club on August 13, 2014, regarding the termination of Mr. Waters' unclassified, at-will employment with Ohio State, but state that his comments at that time speak for themselves. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 9 of the Complaint, and therefore, deny the same.

10. Admit President Drake spoke to Band squad leaders on August 21, 2014, and state that the transcript attached to the Complaint speaks for itself, but deny Mr. Waters has accurately, and in context, portrayed the statements by President Drake, and deny that this event was a private meeting. Defendants also deny that problems existed with the Title IX investigation or report. Defendants state that, on August 21, 2014, President Drake proactively reached out to the student leaders of the newly constituted 2014 Band to inspire them and convey that the current student members of the Band need not be defined by the culture and actions of the past, so in that sense, the investigation report was "historical" to them. Further answering, defendants deny all remaining allegations contained in paragraph 10 of the Complaint.

11. State the unnumbered allegations pled by Mr. Waters in heading "D" on page 7 of his Complaint fail to assert any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 11 of Mr. Waters' Complaint, defendants deny the Title IX investigation report related to the

Band's culture was deeply flawed and deny that July 23, 2014 was the first time Mr. Waters and his counsel learned of the findings and conclusions of the Title IX investigation into the Band's culture, given that on July 22, 2014, Mr. Glaros issued letters to Mr. Waters outlining the findings related to both Title IX complaints. *See* July 22, 2014 Letters From Christopher Glaros to Jonathan N. Waters (attached as Exhibits J and K). Additionally, defendants state that Mr. Waters was informed of the allegations against him and the possibility of termination prior to July 23, 2014, at a prior meeting with Provost Steinmetz which occurred on July 14, 2014.

Defendants admit Provost Steinmetz met with Mr. Waters on July 23, 2014 related to the findings of the Title IX investigation and offered Mr. Waters the opportunity to resign by 5:00 p.m., and that Mr. Waters' counsel, David Axelrod, was present for the meeting. Defendants also admit Mr. Waters was provided with a copy of the report related to the Title IX investigation of the Band's culture on July 23, 2014. Defendants further admit Mr. Waters' counsel requested an extension of the 5:00 p.m. deadline for Mr. Waters to resign, but deny that request was refused and, instead, state Ohio State extended the time for Mr. Waters to resign to approximately mid-morning on July 24, 2014. Defendants additionally admit a letter was sent to Mr. Waters dated July 24, 2014, which terminated Mr. Waters' unclassified, at-will employment with Ohio State. *See* July 24, 2014 Letter to Jonathan N. Waters. Further answering, defendants deny any remaining allegations contained in paragraph 11 of the Complaint.

12. State the unnumbered allegations pled by Mr. Waters in heading "E" on page 7 of his Complaint fail to assert any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 12 of Mr. Waters' Complaint, defendants deny they embarked on a "calculated public relations campaign" regarding the termination of Mr. Waters' at-will employment, deny they intended to,

or did, disparage Mr. Waters, and deny they “dragged” Mr. Waters’ name “through the mud.” Defendants also deny they “escalated” negative publicity via press releases issued by Chris Davey or that any statements Mr. Davey made were false or incendiary. Defendants state that it was Mr. Waters and his attorneys, not defendants, who engaged in a public relations campaign, including nationally televised appearances on the Today Show and Good Morning America, an appearance in a nationally broadcast Ohio State football game on Band Alumni Weekend, public statements in St. John’s Arena on Ohio State’s campus the same weekend, and public statements in newspapers and press conferences.

Defendants admit that as a public entity subject to the Ohio Public Records Act requirements, the Title IX investigation report into the Band’s culture was a public record, and, thus, publicly available to anyone, and, that Dr. Drake issued a video statement regarding the Title IX investigation findings. Defendants state that Mr. Waters’ allegations about the claimed effect of the Title IX investigation’s findings on the Band, and its current or former members, fail to assert any allegations about defendants which require a response, but to the extent allegations are being made, defendants deny the same. Defendants also state they are without knowledge or information sufficient to form a belief as to the truth of Mr. Waters’ allegation that news reports relating to the Title IX investigation were widely read, and therefore deny the same.

To the extent Mr. Waters refers to the Investigative Committee Report of TBDBITL Alumni Club, Inc., and/or its attachments (the “TBDBITL Report”), attached as Exhibit B to his Complaint, defendants state the Report speaks for itself. Defendants deny any area of the report upon which Mr. Waters relies as a basis for his claims in his Complaint. Defendants state the TBDBITL Report attempts to explain and justify conduct Mr. Waters himself has described as “offensive,” “inappropriate,” “vulgar,” and “demeaning” (for instance, in the alumni club’s view,

nicknames like “Tits McGee” were “not sexual,” *see* Ex. B to Pl.’s Compl. at Page ID 144). As Mr. Waters stated in writing during the Title IX investigation in his July 14, 2014 culture statement, the culture of the Band was “not . . . in a ‘good place’ currently.” *See* July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, “An Analysis & Review of Cultural Change in The Ohio State University Marching & Athletic Band Program,” at 1 (attached as Exhibit F). When compared to Mr. Waters’ own statements about the Band culture, the TBDBITL Report is at odds with Mr. Waters’ own assessment of the Band culture. Further answering, defendants deny any remaining allegations in paragraph 12.

13. State the unnumbered allegations pled by Mr. Waters in heading “F” on page 8 of his Complaint fail to assert any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 13 of the Complaint, defendants deny Mr. Waters was a scapegoat, and deny Mr. Waters’ characterization of OCR’s compliance review. *See* September 11, 2014 Letter From OCR to President Drake at 1 (attached as Exhibit G). Defendants state the review did not end “earlier than expected,” but rather had been going on for four years, starting in 2010, and Ohio State had been discussing a voluntary Resolution Agreement to conclude the compliance review since August, 2013; OCR had been finalizing the Agreement before the investigation of the Marching Band, and then incorporated the Band issues into the Agreement after the investigation report was shared with OCR on July 24, 2014, the day Mr. Waters was terminated; and OCR has never indicated that it was ending the review because of the Band issues. *See* September 11, 2014 Letter From OCR to President Drake at 1 (attached as Exhibit G). Defendants admit the letter sent by OCR, ending the compliance review, referred to the culture of the Band. *See* September 11, 2014 Letter From OCR to President Drake at 20-21 (attached as Exhibit G). Further

answering, defendants deny any remaining allegations contained in paragraph 13 of the Complaint.

14. Deny the allegations stated in paragraph 14.

15. State they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint, and therefore deny the same.

16. Deny Mr. Waters was terminated on July 23, 2014, and state Mr. Waters' termination letter was dated July 24, 2014. *See* July 24, 2014 Letter to Jonathan N. Waters. Defendants admit Mr. Waters was an unclassified, at-will employee of Ohio State who held the position of Director of Marching and Athletic Bands within the School of Music at the time of his termination and that his employment could be ended at any time by either Mr. Waters or Ohio State. *See* Employment Letter to Jonathan N. Waters dated January 30, 2014 (attached as Exhibit A). Defendants also admit Mr. Waters held leadership positions in the Band dating back to 2002, including Assistant Director from 2002 to 2012, Interim Director in 2012, and Director from 2012 to 2014. Further answering, defendants deny any remaining allegations in paragraph 16.

17. Deny President Drake was acting as President of Ohio State at all times material to the Complaint and state President Drake did not become the President of Ohio State until June 30, 2014. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 17 of the Complaint, and therefore deny the same.

18. Deny Joseph E. Steinmetz acted as Executive Vice President and Provost at all times material to the Complaint and state Provost Steinmetz did not become Provost of Ohio

State until July 1, 2013. Prior to that, he was Vice Provost for Arts and Sciences and Executive Dean of the College of Arts and Sciences, which encompassed the School of Music. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 18 of the Complaint, and therefore deny the same.

19. Admit that Ohio State is a federally-funded institution of higher education, and as such, is subject to the parameters of Title IX and the Title IX guidance promulgated by the Office for Civil Rights, which, among other things, requires Ohio State to take “immediate” action to eliminate sexual harassment and any sexually hostile environment in which students learn, work, or live. Further answering, defendants state they are without knowledge or information sufficient to form a belief as the truth of any remaining allegations contained in paragraph 19 of the Complaint, and therefore deny the same.

20. State they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint, and therefore deny the same.

21. Admit this Court has jurisdiction for the claims currently pled in Mr. Waters’ Complaint, but deny any remaining allegations contained in paragraph 21 of the Complaint.

22. Admit venue lies in this Court related to the claims currently pled in Mr. Waters’ Complaint, but deny any remaining allegations contained in paragraph 22 of the Complaint.

23. State the unnumbered allegations pled by Mr. Waters in the unlabeled heading and heading “A” on page 23 of his Complaint fail to assert any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 23 of Mr. Waters’ Complaint, defendants state that Mr.

Waters was announced as Director of the Band on October 10, 2012, with terms further codified through a letter dated January 30, 2013, and effective February 1, 2013; that the letter states Mr. Waters was an unclassified, at-will employee within the School of Music, who, among other things, was expected to “[i]nstill in the students the highest standard for their personal conduct, on and off the field, and in their interactions with internal and external constituencies,” and comply with all policies, including Ohio State’s Sexual Harassment Policy, which specifically includes a “duty to act” and required Mr. Waters to take immediate action and report all sexual harassment and misconduct within five working days of awareness. *See* January 30, 2014 Employment Letter to Jonathan N. Waters (attached as Exhibit A); Sexual Harassment Policy 1.15 (attached as Exhibit I); Office for Civil Rights, 2001 Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties (attached as Exhibit L). Defendants state the Band is an academic program within the School of Music for which students receive course credit and a grade, and that all Band members are required to comply with Ohio State’s Code of Student Conduct. *See* Ex. B to Pl.’s Compl., TBDBITL Report, at Attachment 9, Page ID 441, 444; Office of Student Life, *Code of Student Conduct*, Section 3335-23-02, at 1 (attached as Exhibit M). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 23 of the Complaint, and therefore deny the same.¹

24. Admit Mr. Waters received a performance review signed by Dr. Richard Blatti on or about June 2, 2014, but state that Dr. Blatti did not know about the conduct uncovered by the Title IX investigation at that time. Defendants also admit that throughout the Band’s history, including during the period Mr. Waters was Director, the Band was successful on the field with

¹ All references to Page ID within the TBDBITL Report attached to and incorporated in Mr. Waters’ Complaint, refer to the “Page ID” number identified in the top right corner of the attachment.

its creative performances. Defendants state that the on-the-field success of the Band has continued after Mr. Waters' termination and the investigation did not concern the musical or creative aspects of the Marching Band program. Further answering, defendants deny any remaining allegations contained in paragraph 24 of the Complaint.

25. Admit that activities which were "demeaning" and created a hierarchy among members existed in the Band, that such activities continued during the twelve years Mr. Waters served as Assistant Director, Interim Director, and Director, and, that Mr. Waters had failed to eradicate them at the time of his termination on July 24, 2014. Further answering, defendants deny any remaining allegations contained in paragraph 25 of the Complaint.

26. Admit Mr. Waters received a performance review signed by Dr. Richard Blatti on or about June 2, 2014, but state that Dr. Blatti did not know about the conduct uncovered by the Title IX investigation at that time. Further answering, defendants deny any remaining allegations contained in paragraph 26 of the Complaint.

27. Admit the Band started as a quasi-military entity, but deny it still is. Defendants also state that Mr. Waters, regardless of the methodology he implemented, tolerated and failed to eradicate activities he himself believed were "offensive, "inappropriate," "vulgar," and "demeaning" at the time of his termination on July 24, 2014. Answering further, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 27, and therefore deny the same.

28. Deny Mr. Waters undertook "extensive" efforts to change the Band's culture, and state that despite holding leadership positions in the Band for over twelve years, Mr. Waters failed to eradicate the activities he, himself, pleads in his Complaint were "offensive," "inappropriate," "vulgar," and "demeaning," or that he had changed the culture of the Band

which he admitted in his July 14, 2014 culture statement, submitted during the investigation, was “in dire need of change” and “not . . . in a ‘good place’ currently.” *See* Plaintiff’s Complaint at ¶¶ 25, 33; July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, “An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program,” at 1 (attached as Exhibit F). Defendants also deny the TBDBITL Report in any way establishes that, as of the date of his termination, Mr. Waters had eradicated conduct that Mr. Waters himself admits was “offensive,” “inappropriate,” “vulgar,” and “demeaning,” or changed the culture in the Band which he indicated was “in dire need of change” and “not . . . in a ‘good place’ currently” in his July 14, 2014 culture statement. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 28, and therefore deny the same.

29. Deny Mr. Waters ended hazing in the Band. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29, and therefore deny the same.

30. Deny Mr. Waters “implemented” a policy prohibiting hazing or eradicated hazing in the Band. Defendants state the policy had existed for years, but had not been enforced. By way of example, defendants state that new Band members were assigned “Tricks” and were required to perform them on command, including, but not limited to, in 2013, when one Band member, whose nickname was “Captain Dildo,” was required to chant, “haaaay, we want some p****aay,” and another Band member, whose nickname was “Barker,” was required to act as if he was outside a strip club soliciting clientele, saying “girls, girls, we have these types of girls,” and, in 2006, a female Band member, whose nickname was “Squirt,” was required to sit on male students’ laps and pretend to orgasm. On “make the Band night,” the same female student was

asked to sit on her own younger brother's lap and pretend to orgasm. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 30 of the Complaint, and therefore deny the same.

31. Deny Mr. Waters eradicated inappropriate behavior on buses. Defendants state that in the written statement Mr. Waters provided to Ohio State as part of the Title IX investigation into the Band's culture, Mr. Waters denied that any "questionable behavior" on buses had been reported to him in 2013. *See* Investigation Report at 10-11, 17 (attached as Exhibit H); Pl.'s Compl., Ex. B, Attachment 9, at Page ID 431. Defendants also state that a physical therapist, who had volunteered with the Band for 18 years, stated during the Title IX investigation that bus misconduct, including "Flying 69's" (which involved Band members posing in a "69" position while holding themselves in the air from luggage racks), occurred in 2013 on a trip to the University of California in Berkeley, on a bus being monitored by Mr. Waters. Defendants also state that the physical therapist reported the conduct to Mr. Waters and resigned from the Band due to her belief Mr. Waters would not address the misconduct. *See* Investigation Report at 10-11, 17 (attached as Exhibit H). Defendants additionally state that during the Title IX investigation into the culture of the Band, a witness described the use of "Rookie Introductions," which occurred at the front of a moving bus enroute to away games and often included sexually explicit questioning and dirty jokes. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 31 of the Complaint, and therefore deny the same.

32. Deny that Mr. Waters became aware of Trip Tics for the first time in 2012. Defendants state that as part of the Title IX investigation, a student witness disclosed that Band

members would typically provide Mr. Waters with a copy of Trip Tics. Defendants admit Trip Tics made fun of and insulted students and staff of the Band and that Mr. Waters banned Trip Tics in 2012 and suspended one student related to a Trip Tic in 2012. Defendants state, however, that as part of the Title IX investigation, a student witness disclosed that the only reason Trip Tics were banned in 2012 was because a female student who was disparaged in a 2012 Trip Tic was dating a Band instructor and the instructor asked Mr. Waters to ban them. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 32 of the Complaint, and therefore deny the same.

33. Admit that former members of the Band created and published an “offensive” and “inappropriate” “Boys of T Row Calendar” containing photographs of male members of the Band in various levels of undress, while holding strategically placed band equipment. *See Redacted Version Of “Boys of T Row Calendar”* (attached as Exhibit N). Defendants state the 2007 calendar appears to have been created for Mr. Waters during the time he held the leadership position of Assistant Director, as its first page reads, “*For Jon Waters’ Eyes Only.*” *Id.* Defendants also state that Mr. Waters concealed and failed to disclose the existence of the calendar during the Title IX investigation into the Band’s culture; that Mr. Waters kept this calendar in his on-campus office; and that the calendar was discovered there after his termination. Defendants deny Mr. Waters took steps to prohibit such conduct and state, after his termination, videos were discovered depicting T-Row and H-Row students engaged in similar conduct involving nude male students and strategically placed band equipment. Defendants state that during an event known as “Fesler Night,” those videos, and others created by different sections, or “Rows,” of the Band, were shown, with Mr. Waters’ authorization and knowledge, in

front of students and Band Staff, including Mr. Waters himself. Fesler Night occurs each year around the start of the new academic year, immediately after selection of the new Band for the coming season, and is intended to introduce and orient new members to the Band, its staff, and the particular rows and their “traditions.” Videos played on Fesler Night include such things as: (1) in 2010 and 2013, male H and T-Row members almost nude, with strategically placed band equipment, much like the 2007 calendar found in Mr. Waters’ office; (2) in 2012, a topless female Band member opening the door for an unsuspecting pizza deliveryman; (3) in 2011, a video involving inappropriate nicknames and partial nudity being presented for approval to Mr. Waters, who himself appeared in the video; and (4) in 2010, a female Band Member on her knees in front of two male Band members simulating performing oral sex on them, while singing “Hang on Sloopy.” Mr. Waters concealed and did not disclose the existence of the videos during the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 33 of the Complaint, and therefore deny the same.

34. Deny Mr. Waters banned alcohol during all Band activities before the Title IX complaint related to the Band’s culture was made. Defendants state that during the Title IX investigation, the physical therapist stated that Band members were drinking excessively during the University of California game trip. Defendants also state that, by Mr. Waters’ own admission in the culture statement he submitted to the University for consideration as part of the Title IX investigation, he did not ban alcohol during Band activities until after the Title IX investigation into the culture of the Band began: “Drinking on all band trips *will be* forbidden for anyone, even of legal drinking age for the 2014 season.” See Title IX Statement of Jonathan N. Waters Titled, “An Analysis & Review of Cultural Changes in The Ohio State University

Marching & Athletic Band Program,” at 5 (attached as Exhibit F). Defendants also state that many of the Fesler Night videos from 2012 and 2013, during which time Mr. Waters served as Interim Director and Director, glorify drinking with images such as students passed out. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 34 of the Complaint, and therefore deny the same.

35. Deny Mr. Waters demonstrated firm adherence to the alcohol and substance abuse policy of the Band and Ohio State. Defendants state that Mr. Waters did not ban alcohol during Band activities until after the Title IX investigation into the culture of the Band began: “Drinking on all band trips *will be* forbidden for anyone, even of legal drinking age for the 2014 season.” See Title IX Statement of Jonathan N. Waters Titled, “An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program,” at 5 (attached as Exhibit F). Defendants state students received alcohol and substance abuse training from Ohio State resources. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 35 of the Complaint, and therefore deny the same.

36. Admit that during the over twelve years Mr. Waters held leadership positions in the Band, older Band members created “offensive” nicknames for younger members and, often, the nicknames were published in the Alumni Directory compiled by the TBDBITL Alumni Club, a 501(c)(3) organization separate and distinct from Ohio State. Defendants deny, however, that only “some” of the nicknames were offensive, because Mr. Waters indicated during the Title IX investigation fifty percent of current Band nicknames were inappropriate and should not have been permitted. See July 22, 2014 Investigation Report at 7 (attached as Exhibit H). Defendants

also deny that Mr. Waters took effective steps to eradicate all inappropriate and offensive nicknames and state it was not until after he was confronted with the Title IX investigation that Mr. Waters finally indicated a willingness to take steps to end the use of inappropriate nicknames for the 2014 season. *See* July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, “An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program,” at 3-4 (attached as Exhibit F). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 36 of the Complaint, and therefore deny the same.

37. Defendants admit the version of the Songbook attached to the Title IX investigation report was from 2006, but state, after Mr. Waters’ termination, newer versions of the Songbook were discovered from 2010, 2011, and 2012, which included new songs of an anti-Semitic, homophobic, and highly sexualized nature, including a song titled “*Jon Waters*,” sung to the tune of Green Acres. *See* 2010 Version of “Unofficial OSU Marching Band School Songs” at 25 (attached as Exhibit B). Defendants also state that during the course of the Title IX investigation, Mr. Waters denied having seen a version of the Songbook during his twelve years holding leadership positions in the Band and indicated he would be shocked if the Songbook was still circulated. On August 26, 2014, however, Band Squad Leaders stated Mr. Waters did in fact know about and saw a copy of the Songbook in at least 2012 when he was Director. *See* Ex. B to Pl.’s Compl., Attachment 9, at Page ID 431. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 37 of the Complaint, and therefore deny the same.

38. Deny Mr. Waters eliminated Midnight Ramp on May 9, 2014, and state that Assistant Director Michael Smith and Associate Director Chris Hoch stated during the Title IX

investigation that Mr. Waters did not announce Midnight Ramp would no longer take place until a meeting during the week of June 9, 2014, after Mr. Waters had been informed of the Title IX investigation. *See* Investigation Report at 5 (attached as Exhibit H). Defendants also deny that forms of clothing other than swimwear were eliminated in 2012, as Assistant Director Michael Smith stated during the Title IX investigation that during the 2013 Midnight Ramp event, some students still marched in their underwear and he recalled thinking at the time, “I don’t believe I just witnessed that.” *Id.* Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 38 of the Complaint, and therefore deny the same.

39. Defendants state they are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39, and therefore deny the same.

40. Deny the allegations contained in paragraph 40 of the Complaint. Defendants state Mr. Waters berated at least one student with threatening and profane language and another for giving Mr. Waters a bad review. Defendants also state that Mr. Waters denied ever yelling or cursing at students in the course of the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 40 of the Complaint, and therefore deny the same.

41. Deny that Mr. Waters had shaped the culture of the Band to eradicate the inappropriate culture, and state that Mr. Waters admitted the Band’s culture was “not . . . in a ‘good place’ currently” as of July 14, 2014, in his own written statement. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 41 of the Complaint and its subparts, and therefore deny the same.

42. Deny that Mr. Waters eradicated the inappropriate culture of the Band, and state that Mr. Waters has admitted the Band's culture was "not . . . in a 'good place' currently" as of July 14, 2014. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegation contained paragraph 42 contained in the Complaint, and therefore deny the same.

43. Deny that Mr. Waters eradicated the inappropriate culture of the Band, and state that Mr. Waters has admitted the Band was "not . . . in a 'good place' currently" as of July 14, 2014. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegation contained paragraph 43 of the Complaint, and therefore deny the same.

44. Deny Mr. Waters "instituted" the trainings alleged in paragraphs (a)-(d). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegation contained paragraph 44 of the Complaint and its subparts, and therefore deny the same.

45. Deny Mr. Waters "instituted" the trainings alleged in paragraphs (a)-(c). Defendants also deny the training in paragraph (c) focused on the culture issues identified by the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 45 of the Complaint and its subparts, and therefore deny the same.

46. Deny that Mr. Waters ensured there was a meaningful focus on sexual harassment and misconduct in the training of the Band. Answering further, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegation contained paragraph 46 of the Complaint, and therefore deny the same.

47. Deny Mr. Waters “instituted” the trainings alleged in paragraphs (a)-(b) and state the presentations in paragraphs (a)-(b) refer to the same training session, which was initiated by Andrea Goldblum, Ohio State’s Title IX coordinator at the time, and included presentations by Ms. Goldblum and the Office of Student Life, who initiated and pursued this training, despite Mr. Waters’ unresponsiveness to efforts to schedule such training, even after concerns about sexual assaults had been reported within the Band. Defendants also deny the training in paragraph (c) was instituted by Mr. Waters and state this training was instituted, instead, by the Athletics Department. Defendants additionally deny Mr. Waters instituted the training sessions alleged in paragraphs (d)-(f) and state Mr. Waters initially ignored multiple requests from the Office of Student Life related to such training, and only scheduled the trainings after learning of the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained paragraph 47 of the Complaint and its subparts, and therefore deny the same.

48. Deny Mr. Waters “instituted” the trainings alleged in paragraph (a) and state this training was, instead, instituted by the Athletics Department. Defendants also state that after Mr. Waters was terminated, it was discovered that on January 22, 2014, Mr. Waters received a complaint from a female Band member stating she felt harassed by the conduct of certain male Band members during the training session alleged in paragraph (a). Defendants also deny that Mr. Waters “instituted” the trainings alleged in (b)-(c), and state the trainings alleged in paragraphs (b)-(c) had not yet occurred at the time of the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 48 of the Complaint, and therefore deny the same.

49. Deny that the training alleged in (d) related to sexual harassment training. Defendants also state that the training alleged in (d) did not address the topic of culture issues and instead related to a discussion of the meaning and impact of the Band's performances to Ohio State. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth any remaining allegations contained paragraph 49 of the Complaint and its subparts, and therefore deny the same.

50. Defendants state they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the Complaint and its subparts, and therefore deny the same.

51. Deny that Mr. Waters engaged in "constant monitoring and situational awareness," and state that three reports of sexual assault occurred which involved female Marching and/or Athletic Band members reporting being assaulted by male Marching and/or Athletic Band members. Defendants state that in March, 2012, a female Band member reported a sexual assault by a male Band member. Defendants also state that in March, 2013, a second female Athletic Band member reported to Mr. Waters an incident of sexual assault by a male Athletic Band member and Mr. Waters' decision was to punish both the female and male members by preventing them from traveling on a Band trip. Ohio State's Office of Legal Affairs and the Compliance Office had to intervene to prevent Mr. Waters from punishing this female student for reporting sexual assault, in clear contravention of Title IX. Defendants additionally state that in October, 2013, a third female Band member reported to Mr. Waters she had been sexually assaulted by a male Band member. The male Band member was ultimately expelled from Ohio State. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth any remaining allegations contained paragraph 51 of the

Complaint and its subparts, and therefore deny the same.

52. Admit that Mr. Waters was aware of Ohio State's Sexual Harassment Policy, which requires staff members to report sexual harassment within five working days. Answering further, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained paragraph 52 of the Complaint and its subparts, and therefore deny the same.

53. Defendants state they are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 53 of the Complaint, and therefore deny the same.

54. Deny Mr. Waters requested a culture survey and deny there was no follow-up with Mr. Waters related to the culture of the Band. Further answering, defendants state Mr. Waters met with Provost Steinmetz on November 20, 2013, to discuss Mr. Waters' handling of a reported sexual assault by a female band member in October, 2013, and at that time, was asked about the culture of the Band by Provost Steinmetz. Defendants also state Mr. Waters denied the existence of an inappropriate culture and claimed that such issues existed fifteen years ago but no longer existed, consistent with his prior dismissal of such concerns as "rumors." *See* October 31, 2013 E-mail from Jonathan N. Waters to Gayle Saunders (attached as Exhibit O). Defendants admit the next day, Mr. Waters sent an e-mail to Provost Steinmetz indicating he would go along with Provost Steinmetz's suggestion that a culture survey be conducted. Defendants state that given the 2013 season was almost over, and in reliance on Mr. Waters' statement no culture issues existed, Provost Steinmetz believed it would be better to conduct the survey after the 2014 Band had been selected, and, in the meantime, proceed with sexual harassment training. Defendants also state that Provost Steinmetz believed it would be better to conduct the survey at

a later date to provide adequate time to ensure that the right firm was selected to perform the survey, given the Band's character as an academic program, not an Athletic team. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 54 of the Complaint, and therefore deny the same.

55. Deny Provost Steinmetz instructed Mr. Waters not to make Title IX training mandatory for Band members. Defendants admit Mr. Waters and Provost Steinmetz exchanged e-mails on January 16, 2014 and January 21, 2014. Defendants state Provost Steinmetz expressly stated it was "ok" for Band members to attend Title IX training being conducted by the Athletic Department, but did not want to make the Athletic Department training mandatory as he did not want Band members to miss class. Defendants also state Provost Steinmetz was concerned that Title IX training focused on athletes and athletic teams may not be applicable to the Band. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 55 of the Complaint, and therefore deny the same.

56. State that the unnumbered heading "B" on page 20 of Mr. Waters' Complaint fails to state any allegations which require a response, but to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 56 of Mr. Waters' Complaint, defendants deny OCR started an investigation of Ohio State on or about May 1, 2014, and instead, state Ohio State and OCR initiated a proactive compliance review of Ohio State on June 23, 2010, approximately four years before the Title IX investigation began and over four years before Mr. Waters' termination. *See* September 11, 2014 Letter from OCR to President Drake (attached as Exhibit G). Defendants state Mr. Waters is quoting passages from

OCR out of context and with additional language omitted, and therefore, deny any allegations relating to the OCR statement. For example, defendants state that Mr. Waters omitted from his Complaint additional language indicating that the OCR list contained two kinds of investigations—those opened because of complaints received and those initiated as compliance reviews. *See* September 11, 2014 OCR Statement Titled, “U.S. Department of Education Reaches Agreement with The Ohio State University to Address And Prevent Sexual Assault And Harassment Of Students” available at <http://www.ed.gov/news/press-releases/us-department-education-reaches-agreement-ohio-state-university-address-and-prev> (last visited October 7, 2014). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 56 of the Complaint, and therefore deny the same.

57. Deny OCR started an investigation of Ohio State on or about May 1, 2014, and instead, state Ohio State and OCR initiated a proactive compliance review of Ohio State on June 23, 2010, approximately four years before the Title IX investigation began and over four years before Mr. Waters’ termination. *See* September 11, 2014 Letter from OCR to President Drake (attached as Exhibit G). Defendants state that on May 22, 2014, a female Band member and her parent claimed Mr. Waters had retaliated against the Band member for reporting a sexual assault by a male Band member. *See* July 22, 2014 Investigation Report at fn. 2 (attached as I). Defendants admit that on May 23, 2014, the parent came back and requested an investigation into the Band’s culture, citing sexual misconduct such as Midnight Ramp, an activity where certain Band members march into the stadium in their underwear. *Id.* at 3. Both constituted Title IX complaints and required an investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining

allegations contained in paragraph 57 of the Complaint, and therefore deny the same.

58. Admit one of the Title IX complaints arose from a report that a female Band member had been sexually assaulted by a male Band member, but out of respect for the victim, Ohio State has refrained from describing the assault in detail. Defendants state the male Band member was then expelled from Ohio State. Defendants also state that the other Title IX complaint related to the Band's culture. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 58 of the Complaint, and therefore deny the same.

59. Admit the victim reported the sexual assault to Mr. Waters in October, 2013, and admit that Mr. Waters reported the incident to Ohio State's Title IX Coordinator. Defendants also admit that a Student Conduct inquiry occurred and the male Band member was expelled from Ohio State. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 59 of the Complaint, and therefore deny the same.

60. Admit the Title IX investigation into the culture of the Band was required due to a Title IX complaint made on May 23, 2014, about the sexualized nature of the Band's culture and that Mr. Glaros oversaw the investigation along with Gates Garrity-Rokous. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 60 of the Complaint, and therefore deny the same.

61. Deny the allegations contained in paragraph 61 of the Complaint.

62. Admit the Title IX investigators interviewed sixteen individuals, comprising ten current and former members of the Band, the parent, and five Ohio State staff members. Further

answering, defendants deny the remaining allegations contained in paragraph 62 of the Complaint.

63. Deny the Title IX investigation into the Band's culture was conducted in an inappropriate manner, distorted interviews or ignored information. Defendants also deny that investigation was deeply flawed, careless, or executed without concern for the truth. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 63 of the Complaint, and therefore, deny the same.

64. Deny the Title IX investigation into the Band's culture was conducted in an inappropriate manner, distorted information, or ignored information. Further answering, defendants state Mr. Waters failed to attach the letter to which he refers or to identify the person(s) who wrote the letter, and accordingly, defendants are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 64 of the Complaint, and therefore deny the same.

65. Deny the Title IX investigation into the Band's culture was conducted in an inappropriate manner, distorted information, or ignored information. Further answering, defendants state Mr. Waters failed to attach the letter to which he refers or to identify the person(s) who wrote the letter, and accordingly, defendants are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 65 of the Complaint, and therefore deny the same.

66. Deny the Title IX investigation into the Band's culture was "shoddy" or made assumptions. Further answering, defendants state Mr. Waters failed to attach the letter to which he refers or to identify the person(s) who wrote the letter, and accordingly, defendants are

without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 66 of the Complaint, and therefore deny the same.

67. Deny that Andrea Goldblum, Ohio State's former Title IX and Clery Act Coordinator, indicated in any way that she believed the Title IX investigation's findings related to the Band's culture were incorrect. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 67 of the Complaint, and therefore deny the same.

68. State that the unnumbered heading "C" on page 24 of the Complaint, fails to state any allegations which require a response, but, to the extent allegations are being made, defendants deny the same. In response to the allegations contained in paragraph 68 of Mr. Waters' Complaint, defendants deny problems existed with the manner in which the Title IX investigation into the Band's culture was conducted. Defendants admit that President Drake stands behind the Title IX investigation Report and the termination of Mr. Waters' unclassified, at-will employment. Defendants deny any remaining allegations contained in paragraph 68 of the Complaint.

69. Admit President Drake spoke at the Columbus Metropolitan Club on August 13, 2014, but state that his comments at that time speak for themselves. Further answering, defendants deny any remaining allegations contained in paragraphs 69 of the Complaint.

70. Admit President Drake spoke to Band squad leaders on August 21, 2014 and state the transcript attached to the Complaint speaks for itself, but deny Mr. Waters has accurately, and in context, portrayed the passage by President Drake. Defendants deny President Drake's statements "told an entirely different story" or that President Drake's statement was intended to be private when addressed to all squad leaders and Band leadership. Defendants state that, on

August 21, 2014, President Drake proactively reached out to the student leaders of the newly constituted 2014 Band to inspire them and convey that the current student members of the Band need not be defined by the culture and actions of the past. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 70 of the Complaint, and therefore deny the same.

71. Admit President Drake spoke at the Columbus Metropolitan Club on August 13, 2014, but state that his comments at that time speak for themselves. Further answering, defendants deny any remaining allegations contained in paragraphs 71 of the Complaint.

72. Admit President Drake spoke to Band squad leaders on August 21, 2014, and state the transcript attached to the Complaint speaks for itself, but deny Mr. Waters has accurately, and in context, portrayed the passage by President Drake. Defendants also deny President Drake's statements "told an entirely different story" or that President Drake's statement was intended to be private when addressed to all squad leaders and Band leadership. Defendants state that, on August 21, 2014, President Drake proactively reached out to the student leaders of the newly constituted 2014 Band to inspire them and convey that the current student members of the Band need not be defined by the culture and actions of the past, so in that sense, the investigation report was "historical" to them. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 72 of the Complaint, and therefore deny the same.

73. Admit President Drake spoke at the Columbus Metropolitan Club on August 13, 2014, but state that his comments at that time speak for themselves. Further answering, defendants deny any remaining allegations contained in paragraphs 73 of the Complaint.

74. Admit President Drake spoke to Band squad leaders on August 21, 2014, and

state the transcript attached to the Complaint speaks for itself, but deny Mr. Waters has accurately, and in context, portrayed the statements by President Drake. Defendants also deny President Drake's statements "told an entirely different story" or that President Drake's statement was intended to be private when addressed to all squad leaders and Band leadership. Defendants state that, on August 21, 2014, President Drake proactively reached out to the student leaders of the newly constituted 2014 Band to inspire them and convey that the current student members of the Band need not be defined by the culture and actions of the past. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 74 of the Complaint, and therefore deny the same.

75. Deny that President Drake believes the Title IX investigation report was "biased," "tainted" or "sensationalized." Defendants admit President Drake spoke to Band squad leaders on August 21, 2014, and state the transcript attached to the Complaint speaks for itself, but deny Mr. Waters has accurately, and in context, portrayed the statements by President Drake. Defendants state that, on August 21, 2014, President Drake proactively reached out to the student leaders of the newly constituted 2014 Marching Band to inspire them and convey that the current student members of the Band need not be defined by the culture and actions of the past, but, also, that the totality of the Title IX investigation report required that action be taken. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 75 of the Complaint, and therefore deny the same.

76. State that the unnumbered heading "D" on page 26 of the Complaint, fails to state any allegations which require a response, but to the extent allegations are being made, defendants

deny the same. In response to the allegations contained in paragraph 76 of Mr. Waters' Complaint, defendants deny the allegations contained in paragraph 76 of the Complaint.

77. Deny the allegations contained in paragraph 77 of the Complaint.

78. Deny the allegations contained in paragraph 78 of the Complaint. Defendants state Mr. Waters did order that Midnight Ramp occur immediately after Fesler Night, and, he or his staff oversaw Midnight Ramp, as documented by emails to The Ohio State University Police Department in 2009. *See* September 11, 2009 E-mail from Jonathan N. Waters to Eric Whiteside (attached as Exhibit P). Defendants also state the Title IX investigation report does not state that Midnight Ramp was eliminated on May 9, 2014. Assistant Director Michael Smith and Associate Director Chris Hoch stated during the Title IX investigation that Mr. Waters did not announce Midnight Ramp would no longer take place until a meeting during the week of June 9, 2014, after Mr. Waters had been informed of the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 78 of the Complaint, and therefore deny the same.

79. Deny the allegations contained in paragraph 79 of the Complaint. Defendants state Assistant Director Michael Smith and Associate Director Chris Hoch stated during the Title IX investigation that Mr. Waters did not announce Midnight Ramp would no longer take place until a meeting during the week of June 9, 2014, after Mr. Waters had been informed of the Title IX investigation into the Band culture. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 79 of the Complaint, and therefore deny the same.

80. Deny that the investigators knew about the presence of other Ohio State officials

at the Midnight Ramp. Defendants also deny that Russ Mikkelson witnessed or was aware that Band members were marching in their underwear. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 80 of the Complaint, and therefore deny the same.

81. Deny that the Title IX report misstated that a witness had reported that “Rookie Midterms” were given to new Band members, deny that any statement in the Title IX report related to the Rookie Midterms was misleading, deny that mention of Rookie Midterms in the Title IX report was intended to disparage, or did disparage, Mr. Waters, and deny that the Title IX report failed to mention that Mr. Waters claims to have told Band members that Rookie Midterms needed to stop. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 81 of the Complaint, and therefore deny the same.

82. Deny that the Title IX report misstates that witnesses indicated Band members would prepare a newsletter for away game trips known as “Trip Tic,” deny that mention of the Trip Tic in the Title IX report was intended to disparage, or did disparage, Mr. Waters, deny that the Title IX report was misleading, and deny that the Title IX report failed to mention that Mr. Waters claims to have informed Band members in 2012 that the Trip Tic should no longer be published. Defendants state that as part of the Title IX investigation, a student witness disclosed that Band members would typically provide Mr. Waters with a copy of the Trip Tic. Defendants also state that as part of the Title IX investigation, a student witness disclosed that the reason the Trip Tic was banned was that a female student who was disparaged in a 2012 Trip Tic was dating a Band instructor and the instructor asked Mr. Waters to ban Trip Tic as a result. Further answering, defendants state they are without knowledge or information sufficient to form a belief

as to the truth of any remaining allegations contained in paragraph 82 of the Complaint, and therefore deny the same.

83. Deny that statements in the Title IX report related to the Band Songbook were misleading and deny that the Songbook was drafted “long ago.” Defendants admit the Songbook contained “misogynistic and alternate sexual lyrics.” Defendants also state that the version attached to the Title IX report was published in 2006, but that after Mr. Waters’ termination, newer versions of the Songbook were discovered which were published in 2010, 2011, and 2012 and which include new songs of a highly sexualized and anti-Semitic nature. *See* 2010 Version of “Unofficial OSU Marching Band School Songs” at 25 (attached as Exhibit B); see also 2006 Version of “Unofficial OSU Marching Band School Songs” (attached as Exhibit C). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 83 of the Complaint, and therefore deny the same.

84. Deny that mention of the Songbook in the Title IX report was intended to disparage, or did disparage, Mr. Waters and deny that attaching the Songbook to the Title IX report was egregious conduct. Defendants admit that the version of the Songbook attached to the Title IX report was published in 2006, when Mr. Waters was Assistant Director, but state that after Mr. Waters’ termination, newer versions of the Songbook were discovered which were published in 2010, 2011, and 2012 and which include new songs of a highly sexualized and anti-Semitic nature. *See* 2010 Version of “Unofficial OSU Marching Band School Songs” at 25 (attached as Exhibit B); see also 2006 Version of “Unofficial OSU Marching Band School Songs” (attached as Exhibit C). Defendants also admit the Title IX report stated that Mr. Waters claimed to have taken action to ban the Songbook, but state that Assistant Director Michael

Smith indicated when interviewed during the Title investigation, that during a Band trip to Put-in-Bay, Ohio on September 1, 2013, Band members were singing inappropriate songs. Defendants additionally state that during the course of the Title IX investigation, Mr. Waters denied having seen a version of the Songbook during his twelve years holding leadership positions in the Band and stated he would be shocked if it was still circulated. On August 26, 2014, however, Band Squad Leaders stated Mr. Waters did in fact see a version of the 2012 Songbook. *See* Ex. B to Pl.'s Compl., Attachment 9, Squad Leaders' Statement, at Page ID 431. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 84 of the Complaint, and therefore deny the same.

85. Deny that any statement in the Title IX report which references Mr. Waters texting dirty limericks to Band members was misleading, gratuitous, or a misstatement, deny that any mention of the texting of dirty limericks in the Title IX report was intended to disparage, or did disparage, Mr. Waters, and deny that Mr. Waters' denial of ever sending dirty limericks was uncontroverted. Defendants admit the Title IX report contained Mr. Waters' claim that he denied "texting dirty limericks." Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 85 of the Complaint, and therefore deny the same.

86. Deny that the Title IX report misstates that a student Band member described Mr. Waters raising his voice and swearing at her in response to her submitting what was supposed to be an anonymous evaluation of Mr. Waters and deny that the Title IX report "intentionally manipulated its presentation of "facts" to defame Mr. Waters." Defendants also state that the student's statements were corroborated by a physical therapist from Student Health Services,

who also was a long-time volunteer for the Band. *See* July 22, 2014 Investigation Report (attached as Exhibit H, at 20). Defendants admit the student has contacted President Drake since her interview, but state that the Title IX report contains facts described by the student and corroborated by others. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 86 of the Complaint, and therefore deny the same.

87. Deny that any statements made or released by Chris Davey were intended to disparage or defame, or did disparage or defame, Mr. Waters, and deny any statements made by Mr. Davey were false, incendiary or omitted key pieces of information. Defendants also deny Mr. Waters was denied a public name-clearing hearing. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 87 of the Complaint, and therefore deny the same.

88. Deny the Title IX report was flawed or that the Title IX report's conclusions are refuted and state the August 27, 2014 Press Release speaks for itself. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 88 of the Complaint, and therefore deny the same.

89. Deny any statements made by Mr. Davey, or any things not stated by Mr. Davey, in the August 27, 2014 Press Release were intended to be, or were, misleading. Admit that the August 27, 2014 Press Release states that "the 'Trip Tic,' a newsletter with sexual content has not been denied." Defendants state that Mr. Waters has himself admitted that the Trip Tic contained language that was "vulgar and inappropriate." *See* July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, "An Analysis & Review of Cultural Changes in The Ohio State

University Marching & Athletic Band Program,” at 5 (attached as Exhibit F). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 89 of the Complaint, and therefore deny the same.

90. Deny any statements made by Mr. Davey, or any things not stated by Mr. Davey, in the August 27, 2014 Press Release were intended to be, or were, misleading. Admit that the August 27, 2014 Press Release stated that “the Songbook, with 124 different songs full of grotesque lyrics, has not been denied . . .” Defendants state that Mr. Waters has himself admitted that the Songbook contained “offensive” lyrics. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 90 of the Complaint, and therefore deny the same.

91. Deny any statements made by Mr. Davey, or any things not stated by Mr. Davey, in his August 27, 2014 Press Release were intended to be, or were, misleading. Admit that the August 27, 2014 Press Release states “Rookie Midterms and Physical Challenges with sexual content have not been denied.” Defendants state Mr. Waters did not deny, either in his written statement or in his interviews during the course of the Title IX investigation, that Rookie Midterms took place during the years of his Band Leadership, and a Rookie Midterm from 2011 was provided to investigators during the Title IX investigation which detailed inappropriate and grossly sexual misconduct, such as:

- Instructions to “draw female reproductive organs with arrows detailing what each part is used for,” *See* Ex. D (Rookie Midterm, at 13).
- A “Boner Question: List all of the Members of ___ Row in descending order from deepest box to largest penis. Explain your reasoning in 2 to 3 sentences;” *See* Ex. D (Rookie Midterm, at 3).
- Fill-In The Blank Section, including “Dirty Sanchez – ‘he gave her a dirty sanchez and she never had anal sex again.’” *See* Ex. D (Rookie Midterm, at 14-15).

- Fill-In The Blank Section, including “Cleveland Steamer – ‘I was afraid of breaking up with Jen face to face, so I gave her a cleveland steamer after she fell asleep and ditched.’” *See* Ex. D (Rookie Midterm, at 15).
- Fill-In The Blank Section, including “Piston Fisting – ‘A double fisting that incorporates both anal and vaginal penetration. Fists are then pumped in and out in manner similar to that of pistons in a engine.’” *See* Ex. D (Rookie Midterm, at 15).
- Fill-In The Blank Section, including “Tossing Salad – ‘the act of placing your tongue in a male or female ass, and probing all around the circumference of the asshole, while aiding the person in masturbation.’” *See* Ex. D (Rookie Midterm, at 16).

See Rookie Midterm, Exhibit A to July 22, 2014 Investigation Report (attached as Exhibit D, at 14-15). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 91 of the Complaint, and therefore deny the same.

92. Deny that the Title IX report was inaccurate, mischaracterized facts, excluded material facts or contained material problems and, to the extent Mr. Waters alleges that the TBDBITL Report exposes inaccuracies in the Title IX investigation, deny the same. Defendants state the TBDBITL Report confirms many of the Title IX report’s factual findings, including, but not limited to, student participation in Midnight Ramp in undergarments and while naked; sexual nicknames; and a female student’s particularly sexualized Trick of sitting on male students’ laps, including her younger brother’s lap, and pretending to orgasm — all of which occurred during the over twelve years of Mr. Waters’ leadership of the Band. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 92 of the Complaint, and therefore deny the same.

93. State that the unnumbered heading “E” on page 32 of Mr. Waters’ Complaint, fails to state any allegations which require a response, but, to the extent allegations are being made, defendants deny the same. Defendants admit that on May 27, 2014, Mr. Glaros notified

Mr. Waters that two Title IX Complaints had been filed against him related to reported retaliation against a female Band member who had reported a sexual assault by a male Band member and a claim about the Band's sexualized culture. Defendants also admit Mr. Glaros told Mr. Waters he would have the opportunity to be interviewed and provide his version of events as part of the required Title IX investigation into the complaints. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 93 of the Complaint, and therefore deny the same.

94. Admit that Mr. Waters emailed Mr. Glaros and inquired about the Title IX investigation. Defendants also admit that Mr. Glaros informed Mr. Waters that Ms. Tobias would be in touch, and that Ms. Tobias did later contact Mr. Waters for an interview and conducted three interviews of Mr. Waters. Defendants also state that on June 5, 2014, a labor and employment partner with a Columbus law firm called the Associate Vice President and Deputy General Counsel with the Ohio State Office of Legal Affairs, on Mr. Waters' behalf, inquiring about the Title IX investigation, although stating he did not represent Mr. Waters. In response to questions from the partner, the Deputy General Counsel told him that Mr. Waters could retain and have legal representation during the investigation and was free to call the Office of Legal Affairs with any questions he had about the investigation process. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 94 of the Complaint, and therefore deny the same.

95. Admit Mr. Waters was interviewed on June 12, 2014, but deny Mr. Waters' allegation that he was not informed he could have an attorney present during the interview, deny Mr. Waters was not asked questions about the culture of the Band and deny Mr. Waters was told

no further interviews would be necessary. Defendants admit Jessica Tobias, a Compliance Investigator who formerly worked for the Ohio State Bar Association and investigated misconduct by attorneys and judges for prosecution in the Ohio Supreme Court, conducted the June 12, 2014 interview. Defendants state that Ms. Tobias also formerly served as staff counsel to the Joint Task Force to Review the Administration of the Death Penalty in Ohio, and has extensive investigations training prior to and including her employment with Ohio State. Defendants also admit Ms. Tobias conducted the interview in the presence of Rebecca Dickson, Program Manager for Title IX and Clery Act compliance at Ohio State, who has extensive Title IX and related Clery Act training, including investigations training. Defendants also state that Ms. Dickson formerly served in the Office of Legal Affairs at Ohio State and as a Paralegal and Legal Investigator for the City of Columbus. Defendants further admit that Ms. Dickson took a second set of notes. Defendants state Mr. Waters asked if he could have counsel present and Ms. Tobias said he could. Defendants admit that Mr. Waters answered questions relating to both Title IX complaints for approximately 2½ hours, and state that on June 13, 2014, at his request, Ms. Tobias e-mailed Mr. Waters a copy of the questions he had been asked. *See* June 13, 2014 E-mail from Ms. Tobias to Jonathan N. Waters and List of Questions Appended Thereto (attached as Exhibit Q). During the interview, Mr. Waters was asked if he wanted the investigators to speak with anyone about the issues related to the Band's culture. He responded they should speak with Associate Director Chris Hoch and Assistant Director Michael Smith. Mr. Hoch and Mr. Smith were interviewed on June 20 and June 23, 2014, respectively.

Defendants also state that on June 13, 2014, Mr. Waters contacted the Compliance Office to inform the Title IX investigators that one of the Complainants had posted a comment to a reporter's Facebook page linking the Band's sexualized culture to the arrest of a TBDBITL

alumni, and current high school band director, for having sex with a high school student. Defendants further state that the post was taken down. Defendants state that Mr. Waters was cautioned not to contact the report. Mr. Waters initially denied to the Title IX investigators that he had contacted the reporter. He subsequently admitted, however, that he had misled the investigators and had in fact contacted the reporter. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 95 of the Complaint, and therefore deny the same.

96. Admit that Mr. Waters participated in a second interview in the course of the Title IX investigation on July 1, 2014, but deny he was not made aware it focused on the culture of the Band and deny the interview was hostile. Defendants admit Ms. Jessica Tobias conducted the interview, which lasted approximately three hours, and Ms. Dickson was present and took a second set of notes. Defendants state Mr. Waters promised at the July 1, 2014 interview that he would provide a list of the efforts he had made to address the Band's culture. Defendants also state that, at the end of the interview, Mr. Waters asked if the Title IX investigation was "career ending." Defendants additionally state that, on the same day, at Mr. Waters' request, he was e-mailed a list of the questions he had been asked at the second personal interview. *See* July 1, 2014 E-mail from Ms. Tobias to Mr. Waters (attached as Exhibit R). Defendants further state that, after the July 1, 2014 interview, the following actions took place:

- a. On July 2, 2014, the labor and employment partner from a Columbus law firm called the Deputy General Counsel for a second time. The Deputy General Counsel confirmed for the partner what Mr. Waters had been told previously, *i.e.*, the Title IX investigation was related to two issues, the claimed retaliation and the Band's culture. The partner asked the Deputy General Counsel if she would speak to Mr. Waters. She reiterated Mr. Waters was welcome to call her.
- b. Later on July 2, 2014, Mr. Waters called the Deputy General Counsel and complained about the number of times he had been interviewed, the length

of the interviews and the number of questions he had been asked. On the same day, Mr. Waters called Ms. Tobias and inquired if he could submit written answers to the questions he had been asked. Ms. Tobias indicated that he could. Mr. Waters, however, never submitted written answers to the questions.

- c. On July 3, 2014, Ms. Tobias e-mailed Mr. Waters to follow-up about the list of things he had done to address the Band's culture, which Mr. Waters had yet to forward. *See* July 3, 2014 E-mail from Ms. Tobias to Jonathan N. Waters (attached as Exhibit S).
- d. On July 11, 2014, Mr. Waters was interviewed for a third time by telephone related to a Songbook which investigators had learned about, but which Mr. Waters had failed to disclose in prior interviews. During the call, he was again asked about the list of cultural changes he had implemented, but had not yet provided. Plaintiff claimed his computer had malfunctioned and he did not have the list.
- e. On July 18, 2014, Mr. Waters' counsel, David Axelrod, contacted Ohio State's Deputy General Counsel to inquire about the investigation and was informed Mr. Waters was an at-will employee. *See* July 18, 2014 E-mail from David Axelrod to Alexandra Schimmer (attached as Exhibit T).

Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 96 of the Complaint, and therefore deny the same.

97. Admit that on July 14, 2014, Mr. Waters submitted a written statement detailing his purported efforts to change the sexualized culture of the Band, in which, he, for the first time, described the culture of the Band as "in dire need of change" when he became Director and "not . . . in a good place' currently." *See* July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, "An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program," at 1 (attached as Exhibit F). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 97 of the Complaint, and therefore deny the same.

98. Admit that on July 14, 2014, Mr. Waters met with Provost Steinmetz regarding

the two Title IX Complaints and Provost Steinmetz again informed Mr. Waters that an assessment of the culture of the Band would take place. Defendants admit Provost Steinmetz told Mr. Waters that he could be fired due to the current culture of the Band and that the Band was to have a zero tolerance policy related to inappropriate conduct, including retaliation against the Title IX complainant or her parent. Defendants deny that Provost Steinmetz presented Mr. Waters with options, *i.e.*, either resign or agree to zero tolerance and adherence to an assessment to be performed by a firm called Sports Conflict Institute. Defendants state the cultural assessment referred to by Provost Steinmetz was the same one he had discussed with Mr. Waters in November, 2013. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 98 of the Complaint, and therefore deny the same.

99. Admit that Mr. Waters was not given a copy of the Title IX investigation report on July 14, 2014, that Provost Steinmetz stated that a cultural assessment was scheduled to be performed and completed by August 25, 2014, and that Mr. Waters emailed a list of his upcoming media and speaking engagements to Provost Steinmetz at Provost Steinmetz's request. Defendants state that Provost Steinmetz told Mr. Waters that his future with Ohio State had not yet been determined and a decision would be made shortly, in light of the culture revealed by the Title IX investigation. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 99 of the Complaint, and therefore deny the same.

100. Admit that on July 23, 2014, Mr. Waters and his counsel, David Axelrod, met with Provost Steinmetz and during that meeting Provost Steinmetz gave Mr. Waters the opportunity to resign in lieu of termination at 5:00 PM. Defendants also admit that Mr. Waters

and his counsel received copies of the Title IX investigation report, which concluded that the Band's culture was not in line with the requirements of Title IX or Ohio State's policies, principles, or values. Defendants deny Mr. Waters was not given additional time to review the Title IX report and state that discussions with one of Mr. Waters' attorneys, James Petro, continued until mid-morning on July 24, 2014. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 100 of the Complaint, and therefore deny the same.

101. Deny that Mr. Waters was not informed of the reasons why he was being terminated. Admit that Mr. Waters refused to resign and received a letter of termination through his counsel on July 24, 2014, and that his counsel was informed Mr. Waters was being terminated for the reasons previously discussed and as set out in the Title IX report. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 101 of the Complaint, and therefore deny the same.

102. Deny the allegations set out in paragraph 102 of the Complaint. Defendants state Mr. Glaros issued the findings of the Title IX investigation to Mr. Waters on July 22, 2014, including, in regard to the Title IX investigation into the Band's culture, stating the following:

Based on all of the facts obtained, we make the following findings:

- 1) The Marching Band's culture facilitated acts of sexual harassment, creating a hostile environment for students.
- 2) Jonathan Waters knew or reasonably should have known about this culture but failed to eliminate the sexual harassment, prevent its recurrence, and address its effects.

See July 22, 2014 Letters From Christopher Glaros to Jonathan N. Waters (attached as Exhibits J and K). Defendants also state Mr. Waters was given notice of the Title IX complaints on May

27, 2014 by Mr. Glaros, and was given a meaningful opportunity to be heard in regard to them in the form of a local attorney calling Ohio State on behalf of Mr. Waters on two occasions (although indicating he did not represent Mr. Waters), including one call before the start of interviews, two personal interviews of Mr. Waters, one telephone interview of Mr. Waters, the written statement Mr. Waters provided setting out his purported changes to the culture of the Band, providing Mr. Waters the questions he was asked at the interviews in writing and giving Mr. Waters the opportunity to provide written responses, which he did not do, and Mr. Waters having retained counsel by at least July 18, 2014. *See* July 18, 2014 E-mail from David Axelrod to Alexandra Schimmer (attached as Exhibit T). Defendants additionally state that Mr. Waters' written statement acknowledges the issues addressed in the Title IX report, including, but not limited to, the Band's "caste system," hazing, bus behavior, alcohol issues during social functions and away game trips, nicknames, Trip Tics, Midnight Ramp and sexual harassment. *See* July 14, 2014 Title IX Statement of Jonathan N. Waters Titled, "An Analysis & Review of Cultural Changes in The Ohio State University Marching & Athletic Band Program," at 3-6 (attached as Exhibit F). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 102 of the Complaint, and therefore deny the same.

103. Deny the allegation set forth in paragraph 103 of the Complaint. Defendants state Mr. Waters never requested a name-clearing hearing from President Drake or Provost Steinmetz. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 103 of the Complaint, and therefore deny the same.

104. Admit that Mr. Waters' counsel, David Axelrod, sent a letter to Ohio State's

counsel on August 27, 2014, demanding that Ohio State provide a two-day hearing and make Ohio State officials and employees available for testimony and to be cross-examined. *See* August 27, 2014 Letter from David F. Axelrod to Fred G. Pressley, Jr. (attached as Exhibit U). Defendants state that Mr. Waters' counsel addressed the letter to Ohio State's counsel and that Mr. Waters did not request such a hearing from President Drake or Provost Steinmetz. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 104 of the Complaint, and therefore deny the same.

105. Deny the allegations set out in paragraph 105 of the Complaint. Defendants state that Ohio State through Mr. Davey issued a press release on August 27, 2014 which indicated the decision to terminate Mr. Waters would not be reconsidered, but deny Mr. Davey denied Mr. Waters' request for a "name-clearing hearing." Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 105 of the Complaint, and therefore deny the same.

106. Deny the allegations in paragraph 106 of the Complaint. Defendants state Ohio State did not deny Mr. Waters a name-clearing hearing and, in fact, on September 11, 2014, offered Mr. Waters a public name-clearing hearing at an on-campus forum. *See* September 11, 2014 Letter from Alexandra Schimmer to David Axelrod (attached as Exhibit V). Defendants also state that Mr. Waters failed to accept Ohio State's offer of a name clearing hearing, and instead, engaged in a public relations campaign which included nationally televised appearances on the Today Show and Good Morning America, an appearance in a nationally broadcast Ohio State football game on Band Alumni Weekend, public statements in St. John's Arena on Ohio State's campus the same weekend and public statements in newspapers and press conferences.

Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 106 of the Complaint, and therefore deny the same.

107. State that the unnumbered heading “F” on page 35 of Mr. Waters’ Complaint, fails to state any allegations which require a response, but, to the extent allegations are being made, defendants deny the same. Admit that, on July 24, 2014, Ohio State, a public entity, made available on its website the Title IX investigation report into the Band’s culture. Defendants also admit that Ohio State made publicly available an audio recording of an abusive exchange between Mr. Waters and a student which had been referenced in the Title IX report, but deny the presentation of the recording was skewed or that making the recording available to the public was intended to disparage, or did disparage, Mr. Waters. *See* July 22, 2014 Investigation Report at 20, fn. 9 (attached as Exhibit H). Defendants state that Mr. Waters can be heard to state on the tape: “You f***ing better realize who you’re dealing with We tell you to stand on your head . . . you’ll stand on your Godd*** head.” *See* July 22, 2014 Investigation Report, at 20 fn. 9 (attached as Exhibit H). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 107 of the Complaint, and therefore deny the same.

108. Deny the allegations contained in paragraph 108 of the Complaint.

109. State the referenced articles speak for themselves. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 109 of the Complaint, and therefore deny the same.

110. State the referenced articles speak for themselves. Further answering, however,

defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 110 of the Complaint, and therefore deny the same.

111. State the referenced articles speak for themselves. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 111 of the Complaint, and therefore deny the same.

112. State the referenced articles speak for themselves. Defendants also state Mr. Waters' counsel, David Axelrod, is quoted in the article identified in paragraph 112. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 112 of the Complaint, and therefore deny the same.

113. State the referenced articles speak for themselves. Defendants also state Mr. Waters' counsel, David Axelrod, is quoted in the article identified in paragraph 113. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 113 of the Complaint, and therefore deny the same.

114. State the referenced articles speak for themselves. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 114 of the Complaint, and therefore deny the same.

115. State the referenced articles speak for themselves. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the

truth of any remaining allegations contained in paragraph 115 of the Complaint, and therefore deny the same.

116. State the referenced articles speak for themselves. Defendants also state Mr. Waters' counsel, David Axelrod, is quoted in the article identified in paragraph 116. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 116 of the Complaint, and therefore deny the same.

117. State the referenced articles speak for themselves. Defendants also state Mr. Waters' counsel, David Axelrod, is quoted in the article identified in paragraph 117. Further answering, however, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 117 of the Complaint, and therefore deny the same.

118. Deny OCR started an investigation of Ohio State on or about May 1, 2014, and instead, state OCR initiated a proactive compliance review of Ohio State on June 23, 2010, approximately four years before the Title IX investigation began and over four years before Mr. Waters' termination. *See* September 11, 2014 Letter from OCR to President Drake at 1 (attached as Exhibit G). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 118 of the Complaint, and therefore deny the same.

119. State they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 119 of the Complaint, and therefore deny the same.

120. Deny the allegations in paragraph 120 of the Complaint. Defendants state Ohio

State had been negotiating a voluntary Resolution Agreement to conclude the proactive compliance review since August, 2013, and finalized that Resolution Agreement in September, 2014, wholly unrelated to Mr. Waters' termination. *See* September 11, 2014 Letter from OCR to President Drake at 1 (attached as Exhibit G). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 120 of the Complaint, and therefore deny the same.

121. State the September 11, 2014 letter forwarded by OCR, which closed the proactive compliance review, speaks for itself. *See* September 11, 2014 Letter From OCR to President Drake at 1 (attached as Exhibit G). Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 121 of the Complaint, and therefore deny the same.

122. State the September 11, 2014 letter forwarded by OCR, which closed the proactive compliance review, speaks for itself. Further answering, state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 122 of the Complaint, and therefore deny the same.

123. Defendants restate, reallege, and incorporate by reference, as if fully set forth herein, paragraphs 1 through 122 of this Answer In response to the allegations contained in paragraph 123 of the Complaint.

124. State the Fifth Amendment speaks for itself. Further answering, state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 124 of the Complaint, and therefore deny the same.

125. State the Fourteenth Amendment speaks for itself. Further answering, state they are without knowledge or information sufficient to form a belief as to the truth of any remaining

allegations contained in paragraph 125 of the Complaint, and therefore deny the same.

126. State they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 126 of the Complaint, and therefore deny the same.

127. Deny Mr. Waters, an unclassified, at-will employee, had any protected property interest in his employment or was deprived of any procedural or substantive due process requirements. Defendants state any due process requirements are imposed by the United States Constitution. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 127 of the Complaint, and therefore deny the same.

128. Deny Mr. Waters, an unclassified, at-will employee, had any protected property interest in his employment or was deprived of any procedural or substantive due process requirements. State any due process requirements are imposed by the United States Constitution. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 128 of the Complaint, and therefore deny the same.

129. Deny Mr. Waters, an unclassified, at-will employee, had any protected property interest in his employment or was deprived of any procedural or substantive due process requirements. Defendants state any due process requirements are imposed by the United States Constitution. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 129 of the Complaint, and therefore deny the same.

130. Deny the allegations in paragraph 130 of the Complaint.

131. Deny the allegations in paragraph 131 of the Complaint.

132. Deny the allegations in paragraph 132 of the Complaint.

133. Deny the allegations in paragraph 133 of the Complaint.

134. Deny the allegations in paragraph 134 of the Complaint.

135. Deny the allegations in paragraph 135 of the Complaint.

136. Deny the allegations in paragraph 136 of the Complaint.

137. Deny the allegations in paragraph 137 of the Complaint.

138. Deny the allegations in paragraph 138 of the Complaint.

139. Restate, reallege, and incorporate by reference, as if fully set forth herein, paragraphs 1 through 138 of this Answer in response to the allegations contained in paragraph 139 of the Complaint.

140. Admit that Ohio State is a public university chartered by the Ohio legislature. Admit that Ohio State is a recipient of federal financial assistance for its educational programs and activities. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 140 of the Complaint, and therefore deny the same.

141. Admit that Mr. Waters is a former unclassified, at-will employee of Ohio State. Further answering, defendants state they are without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 141 of the Complaint, and therefore deny the same.

142. State Title IX, 20 U.S.C. § 1681, *et seq.*, is intended to eliminate discrimination and contains the language quoted by Mr. Waters, but deny Mr. Waters has been subject to any action due to his gender. Further answering, defendants state they are without knowledge or

information sufficient to form a belief as to the truth of any remaining allegations contained in paragraph 142 of the Complaint, and therefore deny the same.

143. State they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 143 of the Complaint, and therefore deny the same.

144. Deny the allegations in paragraph 144 of the Complaint.

145. Deny the allegations in paragraph 145 of the Complaint.

146. Deny the allegations in paragraph 146 of the Complaint.

147. Deny the allegations in paragraph 147 of the Complaint. Defendants state President Drake was not employed by Ohio State until June 30, 2014, and thus, could not have been played any role whatsoever in the decision making related to the termination of the female cheerleading coach which occurred in 2013. Defendants also state that cheerleading or “spirit squad” coaches do not report to the College of Arts or Sciences or the office of the Provost, as Mr. Waters did, but instead, to Gene Smith, Ohio State’s Athletic Director. *See* November 25, 2013 Termination Letter from Eugene Smith to Lenee Buchman (attached as Exhibit W); Athletic Department Organizational Chart (attached as Exhibit X). Defendants additionally state Mr. Smith made the decision to terminate the female cheerleading coach. *Id.*

148. Deny the allegations in paragraph 148 of the Complaint.

149. Deny the allegations in paragraph 149 of the Complaint.

150. Deny the allegations in paragraph 150 of the Complaint.

151. Deny each and every remaining allegation not expressly admitted herein, including any allegation contained in any demand or prayer for relief.

Second Defense

152. State plaintiff fails to state a claim upon which relief can be granted.

Third Defense

153. State actions taken by defendants with respect to plaintiff and his employment, and the terms and conditions of his employment, if any, were taken for legitimate business considerations and have been taken in good faith, without any malice, intent to discriminate, or intent to cause injury or harm, and, therefore, are not in violation of any law.

Fourth Defense

154. State plaintiff is estopped by his own conduct from recovery for part or all of the relief as stated in the Complaint or for any purported cause of action alleged therein.

Fifth Defense

155. State plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

Sixth Defense

156. State plaintiff's claims for lost pay and benefits, compensatory damages, punitive damages, attorneys' fees, costs and other unspecified damages are barred in whole or in part by the limitations imposed by law as to the recovery of such damages.

Seventh Defense

157. State plaintiff has not alleged facts sufficient to entitle him to attorneys' fees or costs.

Eighth Defense

158. State plaintiff has not alleged facts sufficient to entitle him to equitable relief.

Ninth Defense

159. State plaintiff is not entitled to punitive damages and has failed to plead facts sufficient to entitle him to punitive damages.

Tenth Defense

160. State plaintiff's claims are barred in whole or in part as a result of plaintiff's failure to mitigate his alleged damages.

Eleventh Defense

161. State plaintiff's claim for declaratory relief is barred by the Eleventh Amendment.

Twelfth Defense

162. State plaintiff's claim for monetary relief from President Drake and Provost Steinmetz in their official capacities is barred by the Eleventh Amendment.

Thirteenth Defense

163. State plaintiff's claims are barred by a privilege or a qualified privilege.

Fourteenth Defense

164. State defendants exercised their lawful rights and/or ethical obligations in a lawful and permissible manner.

Fifteenth Defense

165. State plaintiff's claims are barred by unclean hands.

Sixteenth Defense

166. State *respondeat superior* liability does not apply, and cannot attach, to one or more claims.

Seventeenth Defense

167. State defendants' actions towards plaintiff were lawful and made in good faith compliance with duties imposed by applicable provisions of law, rules, and regulations.

Eighteenth Defense

168. State some or all of plaintiff's claims are be barred by the doctrine of governmental immunity.

Nineteenth Defense

169. State defendants acted in good faith and with a reasonable belief as to the lawfulness of their conduct.

Twentieth Defense

170. State as to plaintiff's Section 1983 claim, plaintiff has failed to allege any policy and/or practice for which the defendants may be held liable.

Twenty-First Defense

171. State any claim for punitive damages, interest or attorney's fees, is barred and/or limited by the United States Constitution, the Ohio Constitution, Federal law and/or Ohio law.

WHEREFORE, having fully answered plaintiff's Complaint, defendants Michael V. Drake, Joseph E. Steinmetz, and The Ohio State University pray that the same be dismissed with prejudice, that they recover their costs and expenses, including attorneys' fees, incurred herein, and that the Court grant such other and further relief as the Court may deem just and proper.

MICHAEL DeWINE
ATTORNEY GENERAL OF OHIO

By: /s/ Michael H. Carpenter
Michael H. Carpenter (0015733)
Timothy R. Bricker (0061872)
Caitlin E. Murphy (0090665)
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murphy@carpenterlipps.com

Special Counsel for Defendants Michael V. Drake, Joseph E. Steinmetz, and The Ohio State University

JURY DEMAND

Defendants Michael V. Drake, M.D., Joseph E. Steinmetz, Ph.D. and The Ohio State University specifically demand a jury of the maximum number of jurors allowable by law on all issues so triable.

MICHAEL DeWINE
ATTORNEY GENERAL OF OHIO

By: /s/ Michael H. Carpenter
Michael H. Carpenter (0015733)
Timothy R. Bricker (0061872)
Caitlin E. Murphy (0090665)
CARPENTER LIPPS AND LELAND LLP
280 Plaza, Suite 1300
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bricker@carpenterlipps.com
murphy@carpenterlipps.com

Special Counsel for Defendants Michael V. Drake, Joseph E. Steinmetz, and The Ohio State University

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically on October 23, 2014. Notice was also sent by operation of the Court's electronic filing system to all other counsel who have entered an appearance and any parties who have entered an appearance through counsel. The parties may access this filing through the Court's ECF system.

/s/ Michael H. Carpenter

One of the Attorneys for Defendants Michael V. Drake, Joseph E. Steinmetz, and The Ohio State University

599471

Exhibit A



HRA 32743

School of Music

Office of the Director
110 Weigel Hall
1866 College Road
Columbus, OH 43210-1170

Phone (614) 292-7664
Fax (614) 292-1102

January 30, 2013

Jonathan Waters
110 Weigel Hall
1866 College Rd.
Columbus, OH 43210

Dear Jon,

I am pleased to offer you the position of Director of Marching and Athletic Bands with the School of Music in the College of Arts and Sciences at The Ohio State University. The offered position is a full-time appointment beginning on February 1, 2013 at a salary of \$150,000. You will be paid monthly.

As Director of Marching and Athletic Bands you will be responsible for meeting all expectations associated with the position, including the following performance objectives.

- Work within the fiscal parameters as established by the Director of the School of Music, as administered by the OSUMB Operations Manager
- Represent The Ohio State University, the College of Arts and Sciences, and The School of Music with integrity and professionalism
- Uphold and protect the traditions for excellence which have been established by the Marching and Athletic Bands
- Oversee the musical preparation, visual design, instructional methodologies, and personnel decisions required of a nationally recognized athletic band program
- Instill in the students the highest standard for their personal conduct, on and off the field, and in their interactions with internal and external constituencies
- Collaborate with School of Music faculty and staff whenever called upon to support and assist with mutually beneficial projects and fund raising
- Meet regularly with the Director of the School of Music
- Advocate for student academic needs and make informed decisions when committing the band to any and all performances

Your performance will be reviewed on annual basis by the Director of the School of Music and the Dean of Arts and Humanities.

The position offered is an unclassified position, not subject to the provisions of section 124.34 of the Ohio Revised Code. Accordingly your employment is at-will, and may be ended at any time by either you or the university. The Ohio State University Office of Human Resources website <http://hr.osu.edu> contains the university's human resource policies, including those for unclassified employees. The rules, regulations, and policies of The Ohio State University, as

well as applicable state and federal law govern your employment. Please familiarize yourself with these.

In addition, this offer is contingent on the university's verification of credentials and other information required by law, university policies, and/or unit policies, including but not limited to a criminal background check.

You may indicate acceptance of this position by signing below and returning a signed copy of this letter to me at the above address. Please feel free to call me if you have any questions about the department or the terms of this offer. I am delighted to offer you this position and look forward to our continued work together.

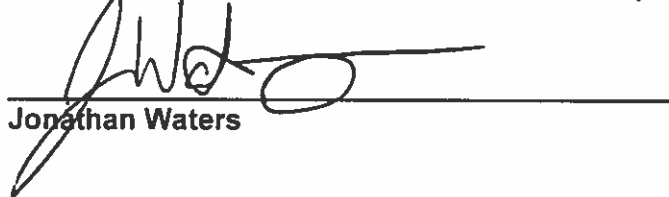
Sincerely,



Richard L Blatti
Professor and Director
The School of Music

cc: Sarah Burson
Jennifer Prak

I acknowledge receipt of this letter and I accept the position offered


Jonathan Waters

February 8, 2013
Date

Exhibit B



School Songs

| | | | |
|--|-------|---------------------------------|----|
| <u>OSU Songs</u> | | | |
| Across the Field | 2 | Silent Night | 15 |
| Beautiful Ohio | 3 | (The) Twelve Days of Christmas | 12 |
| Buckeye Battle Cry | 2 | Whack My Balls | 12 |
| Carmen Ohio | 2 | <u>Oldies Songs</u> | |
| I Wanna Go Back | 3 | All My Semen | 17 |
| Round on the Ends | 3 | Stroking off in Silence | 17 |
| We Don't Give a Damn | 3 | Yesterday | 17 |
| <u>Not Your Usual Ohio State Songs</u> | | <u>Show Tunes</u> | |
| Black on the Ends | 4 | Billy Jean | 23 |
| Carmen Jack | 4 | (The) Bobbitt Hillbillies | 24 |
| Cummin' Ohio | 4 | Brassiere | 21 |
| Don't Wanna Go Back to the Citrus Bowl | 5 | Bring Back My Boner | 21 |
| Fuck You Jack | 5 | Bye-Bye Cherry | 20 |
| Hymen Battle Cry | 5 | Bye-Bye Earle | 20 |
| I Wanna Go Back to Student Staff | 5 | Bye-Bye Woody | 20 |
| Le Regiment | 4 | (The) Cabalero Song | 26 |
| OSUMSlut | 6 | Choke and Puke | 22 |
| <u>College Football Favorites</u> | | Crash and Burn | 22 |
| Brigham Young Fight Song | 11 | Cunnalingus | 20 |
| Come Blow Us Michigan | 7 | Daisy | 18 |
| Hail to Those Mother-Fuckers | 7 | Dr. Woods March | 19 |
| Illinois Fight Song | 8 | Fuck Crockett | 20 |
| Indiana Fight Song | 8 | Jon Waters | 25 |
| Iowa Fight Song | 8,9 | Herpes Family | 18 |
| It's USC | 10 | Hi Ho | 19 |
| Minnesota Fight Song | 9 | I Am Pussy | 26 |
| Moo Purdue | 8 | (The) Impossible Cream | 23 |
| M.S.U. Fight Song | 7 | Jed Clampett | 23 |
| Nebraska Fight Song | 11 | Jon Waters | 25 |
| Northwestern Fight Song | 8 | Last Night | 18 |
| Notre Dame Fight Song | 9 | Let Me Fuck Your Mother | 20 |
| Ohio University Fight Song | 10,11 | Let's Talk Dirty to the Animals | 22 |
| Penn State Fight Song | 7,8 | Maria | 18 |
| Purdue Fight Song | 8 | My Daughter Rebecca | 22 |
| Texas A&M Fight Song | 10 | My Favorite Things | 18 |
| Texas Fight! | 11 | Pubic Hairs | 22 |
| USC Fight Song | 10 | Puff the Magic Tampon | 19 |
| Wisconsin Fight Song | 9 | Sit on My Face | 21 |
| <u>Holiday Songs</u> | | Shepherd Boy | 24 |
| Ahhsome Band | 12 | Somewhere Under Your Pubies | 23 |
| Carwile's a Douchebag | 16 | Twat Valley | 21 |
| Chestnuts | 12 | Under the Sheets | 25 |
| Droste's a Douchebag | 16 | Vagina in the Morning | 26 |
| Holly Jolly Hoe-Bag | 13 | We're Off to See the Wimpy | 21 |
| I'm Dreaming of... | 14 | You Slut, You Whore | 25 |
| It's Beginning to Look a Lot Like Syphllis | 14 | <u>Patriotic Songs</u> | |
| It's the Most Wonderful Time to Drink Beer | 15 | Eternal Bother | 27 |
| Lips of Wonder | 12 | He's a Sweet Gay Fag | 27 |
| O Horny Night | 13 | Proud to be a Homosexual | 28 |
| Over the River and Through the Woods | 14 | Over There | 27 |
| (The) Restroom Door Said Gentlemen | 15 | She's a Grand Old Bag | 27 |
| | | Yank My Doodle | 27 |

~~CONFIDENTIAL~~

Party Songs

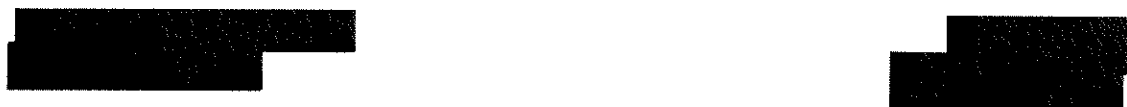
| | |
|-------------------------------|----|
| Ah-Fuck | 37 |
| A Round | 37 |
| Asshole | 34 |
| Balls to Your Partner | 29 |
| Barnacle Bill | 33 |
| Beer Poem | 31 |
| Big Spreader | 35 |
| B-Row Rookie Song | 40 |
| Carwile Sucks Raw Dick | 32 |
| Cock of Ages | 35 |
| Clitoris | 38 |
| Cumblood | 39 |
| Dildo | 37 |
| Dos a Beer | 32 |
| Drink Beer Chant | 32 |
| Eat Bite | 31 |
| Fellatio | 37 |
| Fornicatlon | 37 |
| Gangbang | 30 |
| (The) Hitler Song | 33 |
| Incest | 37 |
| (The) Kotex Factory | 29 |
| Masturbation | 32 |
| Monster Wheel | 32 |
| My Grandfather's Cock | 33 |
| On The Floor Again | 39 |
| Pieces of Baritone Sht | 33 |
| Pun-tang | 37 |
| Roll Out Your Mother | 31 |
| Scrotum | 38 |
| Ten Tons of Titty | 36 |
| There's a Skeeter On My Peter | 38 |
| Tribute to Old S-Row | 35 |
| Whip It Out At The Ballgame | 32 |

Preface

The history of this publication goes back further than any of us will remember. Not quite back to the Stone Age but I am sure it is almost as old as the OSUMB itself. Throughout the history of this book, it has been called many different things, ranging from Band Bible, Song Publication, and even The Unofficial OSUMB Handbook. The songs in this "item that does not exist" have been passed down from generation to generation during I-dots, bus trips, Beer Busts, and the occasional bored sober free time.

This reincarnation of the song book is an effort to reconcile any differences between various rows' versions. While compiling this version, much detail was given to preserve old favorites while introducing new songs, or some just forgotten. This book must continue to grow and change, as does the OSUMB. So, come up with new stuff, modify old stuff and most importantly – Take the dick out of your mouth and sing!!

Represented in the 2010 version of the book are songs from many different versions of the publication. Many hours were spent digitizing this version of the book but it would not have been possible without those who provided their song books and other previously unpublished material. If you contributed new material, congratulations, you are the sickest of us all. Finally, remember to take care of this book. Take it with you on trips and to parties. Plus, it's just fun reading material. But never leave this out of your sight. This book is for OSUMB members only; Past and Present. If they were not out on the field in from of 105,000 crazy fans in black (OK, navy blue) wool uniforms, they do not deserve to see this. Now go forth into the world and become a sick bastard like the rest of us.



P.S. – Some of these may be offensive to you. If so, you can either ignore them, or you can suck it up, act like you got a pair and have a good time singing them. Remember everything in this book was written in good fun. So pull your head out of your ass and sing.

Previous Editions

| | |
|---|------|
| Compiled by [REDACTED] and [REDACTED] | 1979 |
| Revised and re-edited by [REDACTED] | 1982 |
| Addendum by [REDACTED] | 1985 |
| New Shit compiled by [REDACTED] | 1987 |
| Renovations by [REDACTED] | 1990 |
| Recycled by [REDACTED] | 1992 |
| Even More Shit compiled by [REDACTED] | 1996 |
| Final 20 th Century Edition by [REDACTED] and [REDACTED] | 1999 |
| It's Not Annoying, Its Funny Edition by [REDACTED] | 2005 |
| Renewing the Tradition compiled by [REDACTED] | 2006 |
| Here's to Staying WB by [REDACTED] | 2010 |

Across the Field

William A. Dougherty, who graduated from Ohio State in 1917 and received his law degree here in 1920, wrote "Across the Field" while he was a student at the university. As a student manager for the football team and a piano student, he started tinkering with a tune that he thought might capture the spirit of a football game. Dougherty wanted his song to be within one octave so it would be easier for everyone to sing, and he wanted it to be short enough that it could be played during a timeout on the field. It took him almost three years to write the song. It was first performed at the Illinois Game in 1915.

Fight the Team across the field;
Show them Ohio's here.
Set the earth reverberating with a mighty cheer
Rah! Rah! Rah!
Hit them hard and see how they fall;
Never let that team get the ball.
Hail! Hail! The gang's all here,
So let's win that old conference now.

Buckeye Battle Cry

The "Buckeye Battle Cry", written in 1919 by Frank Crumit, has been used since the early 1920's by the OSUMB to conclude its famous rump entrance to Ohio Stadium.

In old Ohio there's a team,
That's known throughout the land;
Eleven warriors brave and bold,
Whose fame will ever stand,
And when the ball goes over,
Our cheers will reach the sky,
Ohio Field will hear again
The Buckeye Battle Cry.

Drive! Drive on down the field,
Men of the scarlet and gray;
Don't let them through that line,
We have to win this game today,
Come on, Ohio!
Smash through to victory,
We cheer you as you go;
Our honor defend,
We will fight to the end for O-HI-O!

Carmen Ohio

*"Carmen Ohio", Ohio State's alma mater, was born in sadness during one of the football team's darkest hours. In 1902, Fred A. Cornell, Class of 1906 and a member of the team, scribbled the words on the back of an envelope as he returned by train to Columbus from Ann Arbor. The Buckeyes had just suffered their worst defeat at the hands of M*ch*g*n, losing 86-0. He wrote the words to the music known as the "Spanish Chant". "Carmen Ohio" was first performed by the Glee Club in 1903, but did not become popular until the words were published in the Lantern for the football rally before the M*ch*g*n game of 1906. It was recognized as the alma mater in 1916. There are three stanzas in the copyrighted version, though generally only the first is sung. The word "Carmen" is Latin for "song".*

Oh come let's sing Ohio's praise,
And songs to Alma Mater raise;
While our hearts rebounding thrill,
With joy which death alone can still.
Summer's heat or winter's cold,
The seasons pass, the years will roll;
Time and change will surely show
How firm thy friendship...O-HI-O!

These jolly days of priceless worth,
By far the gladdest days of earth,
Soon will pass and we not know
How dearly we love Ohio.
We should strive to keep they name
Of fair repute and spotless fame;
So, in college halls we'll grow
To love thee better...O-HI-O!

Though age may dim our mem'ry's store,
We'll think of happy days of yore,
True to friend and frank to foe,
As sturdy sons of Ohio.
In seas of care we roll,
'Neath blackened sky, o'er barren shoal,
Thoughts of thee bid darkness go,
Dear Alma Mater...O-HI-O!

I Wanna Go Back

I wanna go back to Ohio State,
To old Columbus town.
To the stadium to hear the band,
By far the finest in the land.
I wanna go back to Ohio State,
To old Columbus town.
I wanna go back, I gotta go back,
To O-HI-O!

Ohio! Ohio!
The hills send back their cry...O-H!
We're here to do or die! I-O!
Ohio! Ohio!
We'll win the game or know the reason why.

And when we win the game,
We'll buy a keg of booze!
And we'll drink to old Ohio
'til we wobble in our shoes.
Ohio! Ohio!
We'll win the game or know the reason why.
Ohio.

Round on the Ends

It's round on the ends and high in the middle
Tell me if you know.
Don't you think that's a cute little riddle,
Round on the ends and high in the middle?
You can find it on the map if you look high
and low.
The O's are round; it's HI in the middle!
O-H-I-O!
That's the riddle.
Round on the ends and high in the middle.
O-HI-O!

Beautiful Ohio

Drifting with the current down a moonlit
stream,
While above the heavens in their glory gleam.
(And the stars on high—Twinkle in the sky)
Seeming in a Paradise of love divine
Dreaming of a pair of eyes that looked like in
mine.
Beautiful O-hi-o, in dreams again I see,
Visions of what used to be.

We Don't Give a Damn For the Whole State of M*ch*g@n

We don't give a damn,
For the whole state of Michigan;
The whole state of Michigan;
The whole state of Michigan.
We don't give a damn,
For the whole state of Michigan,
Cuz we're from O-HI-O.

We're from O-HI-O;
O-H!
We're from O-HI-O,
I-O!

We don't give a damn,
For the whole state of Michigan,
Cuz we're from O-HI-O!

Not Your Usual Ohio State Songs

Le Regiment

Tune: Take a guess

Le Regiment is full of homos.
They are the guys to whom you would say no.
They're always striking silly poses.
They're always dropping to their knees to blow

Le Regiment (CHOMP! CHOMP! CHOMP!)

Eat me, lick me, fuck me, suck me dry,
You use your lips so well,
You're such a guy. Oh,
Beat me up and tie me to a tree.
Oh Bruce, I love it when you're mean to me.
Domination, Bondage, and Savagery,
Are things they learned back in gay Paree.
They use them on the guys in the band,
The Best Band In The Land---

Onward and deeper in delight.
With teeth that shine with brilliance more than
Dwight's.
But choking doesn't bother them in spite,
'Cause they'll be dropping to their knees tonight

So bite, bite my ass,
Oh bite, bite my ass,
Oh bite, bite my ass,
'Cause they'll be dropping to their knees tonight

Black on the Ends

Tune: Round on the Ends

It's black on the ends and pink in the middle.
Tell me if you know.
Don't you think it's a cute little riddle?
Black on the ends and pink in the middle.
You can find it on her bod' if you look high and
low.

The ends are black, there's pink in the middle.
C-U-N-T that's the riddle.
Black on the ends and pink in the middle.
O-Cunt-Hole

Cummin' Ohio

Tune: Carmen Ohio

Oh come and spread your legs, my dear.
The time to bust your hymen's near.
As we gaily jumped in bed,
You sprang too fast and broke my head.
Asses rise and balls go "SMACK!"
Now listen to your pelvis "CRACK!"
As you scream and moan for more,
You'll always be my fav'rite whore.

Theme Song for Bitter Bandmen

Tune: Carmen Ohio

Courtesy of [REDACTED]

There once was a band that wasn't lame.
The OSUMB was its name.
Now we're the lamest band in the land.
We just want to sit and spank our glands.
Some people say that the band has changed,
Well fuck you all; I'm still the same.
I'd give my balls to have the old band back.
So eat my shit and lick my sack!

Carmen Jack

Tune: Carmen Ohio

Courtesy of F-Row

Chimes:

F, U, C, K, J, A, C, K.

F, U, C, K, J, A, C, K.

Fuck Jack, Fuck Jack, Fuck Jack.

There was a grad-ass whose name was Jack.
To get his job he licked Woods' Crack.
Doerksen helped us buy gray slacks.
But only Assholes make reservations at Rax.
There's too much talking in this room.
I cannot think or even tune.
We'd give our nuts to have Brad back.
So eat my shit and....
Fuck You Jack!

I Wanna Go Back to Student Staff

Tune: I Wanna Go Back
Courtesy of F-Row

I wanna go back to student staff,
To the front of the fucking bus.
We really like to ride with them,
Because we know they'll never cuss.
I wanna go back to student staff,
To the front of the fucking bus,
I wanna go band, I gotta go back,
To Student Staff.

Chorus: Bus one, Bus one,
We're always getting ripped,
We cannot march a script.
Bus one, Bus one,
Tried trombone but got our asses kicked

And when the trip is through,
We'll have a hand of goo.
'Cause we'll stroke our little needle dicks,
Until they're back and blue.

Chorus

Fuck You Jack

Tune: Buckeye Battle Cry

In Old Ohio there's an ass,
That's known throughout the land.
He sniff his fingers and his best friend,
Is his right hand.
And when he wants to get laid,
He simply masturbates.
'Cause he could never fuck a girl,
Unless she's underage.

Fuck, fuck, fuck you Jack,
You tin shit eating troll.
You'll never have a band,
That is under your control.
(Fuck You Jack!)

You are a piece of shit,
When you're dead we'll all be glad.
Cause we know that you suck,
And you'll never conduct,
Like good ole Brad
(You finger sniffing Bastard)

Don't Wanna Go Back to the
Citrus Bowl

Tune: I Wanna Go Back
Courtesy of H & M-Row

Don't wanna go back to the Citrus Bowl,
For the third consecutive year.
To the Sheraton, the pink hotel,
Our rooms aren't ready, we're bored as hell.
Don't wanna go back to the Citrus Bowl.
To march in secret parades.
Don't wanna go back, I gotta go back,
To Or-lan-do.
Orlando, Orlando.
We're second in the Big Ten.
I guess we'll go again.
Orlando, Orlando
We'll go back even if we finish first.
We'll go to 7-11
And buy a case of beer.
And we'll drink to old Ohio
'Til we forget that we are here.
Orlando, Orlando.
No roses for us, we will be back again.
Or-lan-do

The Hymen Battle Cry

Tune: Buckeye Battle Cry

[REDACTED]
T-Row (2006-10)

In virgin pussy, there's a flap,
That guards the happy hole;
A fleshy barrier broken by,
A guy's hard thrusting pole;
And once the cock goes through it,
It cannot re-grow;
She's been had a time or three
And all the guys will know...

She got her cherry popped,
He broke the thing right in half;
Then she bent over,
And took it in the ass;
What a Whore!
She rode his dick all night,
And gave up her V-Card
Never a virgin again.
Cause he broke her hymen then
Nev-Er-Called!

OSUMSlut

Tune: OSUMBlus

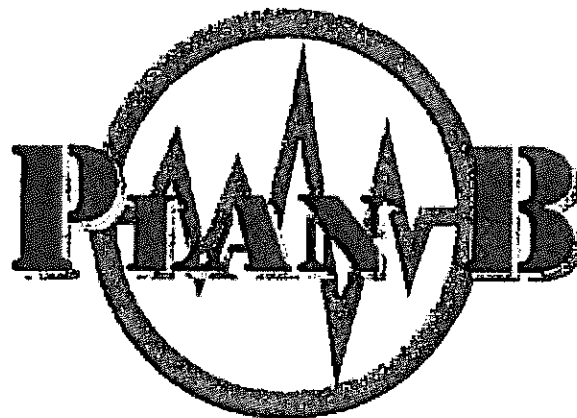
T-Row

Intro

Rookie, Rookie, B-Row Rookie;
So Nice, So Sweet, Now she's easy.
Gets a lot, Give a lot, takes it in the ass.

Melody

One year in band to turn her into a whore;
Spreadin' her legs and askin' for more.
We're talkin' about TITS McGEE!
The rookie that travels the block.
You better watch out cuz she's headed right
for your cock.
They say she's got a few diseases that you
might contract;
STD's like HPV and even the clap.
Don't forget about that great Chlamydia.
So wrap your dick and do her quick;
 You might come out clean.
Just beware it might have hair that's crawling
with crabs;
 WHAT A THRILL!
 2, 3, 4
 Don't fuck that!
She's a skank (skank, skank)
What a tramp (tramp, tramp)
She's a slut (slutin' it up)
What a whore (Big Whore!)
Really loose (loosey goose)
It's TITS.....
 (eastin' and sleepin' and fuckin' all day)
 McGEE!!!



College Football Favorites

Come Blow us M*ch*g*n!

Tune: Buckeye Battle Cry

Come blow us M*ch*g*n.
Our cocks are waiting for you.
Come blow us M*ch*g*an,
It's such a lovely thing to do.
 Suck! Suck! Suck!
Come blow us M*ch*g*an,
'Till your mouth's full of goo,
If you stroke on our gland,
We will come in your hand.
So hey, Fuck You!
 (You dirty motherfuckers!)
(Repeat chorus)

Hail to Those Mother-Fuckers

Tune: The Victors

Hail to those mother-fuckers.
Hail to those big cock-suckers.
Hail! Hail! To M*ch*g*an!
The cesspool of the World!

Hail to those masturbators.
Hail to those fornicators.
Hail! Hail! To M*ch*g*an!
The cesspool of the World!

(Repeat, and make up your own foul verses!)



M.S.U. Fight Song

Tune: M.S.U. Fight Song

Green and White a shitty sight.
It's time to play the Spartans.
They shave their legs those dirty fags
They love to molest little children.
Fags are prancing in East Lansing.
Oh, what a bunch of queers.
So, Fuck You, M.S.U.!
Here's a cock right up your rear.

Maize and Blue is shitty too.
All wolverines are queers bait.
They love to fuck their moms and dads,
They corn-hole all their defense coaches.
All the barbers in Ann Arbor
Give more than just a trim.
So Fuck You, Maize and Blue.
The Bucks'll show you queers don't win.

Penn State Fight Song

Tune: Fight on State
Courtesy of X-Row

Penn State the virgins
Of the Big Ten.
We'll bust your hymen,
And cum in your rear-end.
Cock-Suck-ers from Happy Valley,
Go down on me!
As POP goes your cherry,
We'll watch your pussy bleed.

Oh Nittany Lions,
Get down on all fours!
Bark like you want it,
You little fucking whores!
Arf, Arf, Arf!!
Oh masturbation,
I won't need you tonight,
'Cause when you see my schlong.
You won't put up a fight.

Penn State Fight Song

Courtesy of B-Row

Nittany Lions,
Go down on me,
Swallow my big twig,
And then lick my berries,

You know that Lions are pussies,
Fags wear white and blue,
Here come the Bucks to,
Beat the shit out of you.

Penn State Fight Song

Courtesy of [REDACTED]

Oh Nittany Lions,
We know what you need.
The Bucks are coming to town,
They'll make your pussy bleed.

Your coach is ancient,
We're surprised that he's not dead.
But from what we have heard,
He can still give good head.

Indiana Fight Song

Tune: Indiana, Our Indiana

Indiana, Suck my banana.
Indiana, Oh suck me off.
Indiana, Suck my banana.
And when you swallow, don't choke and cough.
Indiana, Suck my banana.
Indiana, You do it well.
What's a Hoosier? A FUCKING LOSER!
Oh, Indiana just go to Hell.

Purdue Fight Song

Tune: Hail Purdue

Fuck off to old Purdue,
The fags in the old gold and black.
Four hundred shuffling geeks,
For butt-buddies you'll never lack.
Dave Leppla, fag from Hell, young people he
loves to,
Between his knees, the Golden Girl goes down
on old Purdue.

Moo Purdue

Tune: Home on the Range

Moo, moo moo Purdue
It's the school any fool can get through.
Where Chimpanzees can get bachelor's degrees,
And the Golden Girl lives in the zoo.

Illinois Fight Song

Tune: Oskee Wow-Wow

What a pleasure, what a joy,
It's time to beat on Illinois.
Orange and Blue, you piece of shit.
You suck so bad, you just should quit.
YOU SHIT!

You know, one thing's rather plain,
They fuck their dogs in ol' Champaigne.
Eat me, lick me, suck me, gobble, nibble, chew!
Illinois suck 'till you're blue!

Northwestern Fight Song

Tune: Go U. Northwestern

Go U. Northwestern.
Get down on your knees.
Take my cock into your mouth and give my
balls a squeeze.
(UH! UH! Uh!)
Ejaculation...we know you love it so.
So get on your knees Northwestern and give my
cock a blow.

Iowa Fight Song

Tune: The Iowa Fight Song

Why don't you chomp, chomp, chomp me, Iowa
Why don't you suck my great big dick.
Why don't you chomp, chomp, chomp me, Iowa
Why don't you give me a big lick.

Why don't you chomp, chomp, chomp me, Iowa
Just give it up; you know you guys are fucking
dead.

Come on and chomp, chomp, chomp me, Iowa
Fall down and give me head.

Iowa Fight Song

Tune: "New" Iowa Fight Song

Courtesy of [REDACTED] & A-Row

I love it when you suck me Iowa,
I love it when you pull my dick.
I love it when you make me discharge.
I love it when you west my wick, MY WICK!
Spit out my big cock and get up off your knees,
And pick the pubic hair out of your frontal teeth,
Cause there's a hundred bandsmen waiting,
For you to suck their beef!!!

Wisconsin Fight Song

Tune: On Wisconsin

On Wisconsin, play it louder.
Blast! Blast! Blast! Blast! Blast!
You all march like someone shoved a stick right
up your ass.
Yes, my cock is in your mouth,
So Whatcha gonna do?
Eat my rocks and die Wisconsin.
HEY...FUCK... YOU!

Minnesota Fight Song

Tune: Minnesota Rouser

Minnesota, sit on my face,
Your whole band's a fucking disgrace,
Your whole states' full of nuclear waste.
Rah, Rah, Rah, Rah!
Fuck your ma-ma.
Piss off, old U. of M.

Notre Dame Fight Song

Tune: Notre Dame Victory March

Queers cheer for old Notre Dame,
Play in their band and go to their games.
Pointed ears and panty hose,
A Leprechaun's friends are those he blows.

Years show that all this is true.
They'll suck a cock 'til it's turning blue.
As long as there's some cock to squeeze,
They'll always be down on their knees.

Notre Dame Fight Song

Come blow us Notre Dame pricks,
You bring your mouths and we'll bring our dicks.
While you Irish beat your meat,
We'll fuck the girls across the street.

Hail Mary good Queen of grace,
Come spread your cheeks and sit on our face.
Then we'll moon the Golden Dome,
And zip up and head for home.

Come blow us Notre Dame pricks,
You bring your mouths and we'll bring our dicks.
When we start to blow our rocks,
Then you can lick and suck our cocks.

Hail Mary good Queen of grace,
Lift up your skirt and sit on our face.
Then we'll moon the Golden Dome,
And zip up and head for home.

Notre Dame Fight Song

On our way to old Notre Dame,
Orthopedic parts was the name of the game.
Metal dicks and plastic tits,
If you've got a problem they'll get you fixed.

Here we are at old Notre Dame,
Where priests fuck their students and gain lots of
fame.
Nuns suck the priests dick,
It tastes like shit!!
So don't root for Notre Dame.

Notre Dame Fight Song

Beers, Beers for ol' Notre Dame,
Bring on the whiskey, we want champagne.
Send the freshmen out for beer,
Don't let the sober sophomores near.

We never stumble, we never fall,
We'll sober up on grain alcohol.
And all our loyal faculty,
Lay passed out on the floor.

USC Fight Song

Tune: Fight On

Fall down upon your knees
And shoot your wad for old S.C.
They fight for noble cause.
They want my cock between their jaws.
They blow, USC, blows me, USC, blows me.

It's USC

Tune: 'Til There Was You

There's a band, on the field,
But I never heard them playing.
No, I never heard them at all.
It's USC.

Fairy flutes, faggy suits, bright red panty hose,
Plastic gold boots on their toes,
It's USC.

And there were flag girls,
Skinny, scrawny, and scraggly.
They tell me with social diseases galore.
Those whores.
There's a fag on a horse,
Trademark of USC,
Mounting him from the rear,
It's Traveler III!

Texas A&M Fight Song

Tune: Aggie War Hymn (last strain)

You'll suck forever Texas A&M.
Your father is a lonely cows best friend.
You all are total assholes end to end.
Fall down upon your knees, and
Give me head again.
Give me head again.
Please won't you give me head again.

Texas A&M Fight Song

Tune: Aggie War Hymn

Courtesy of H-Row

I'm glad I'm not from Texas A&M.
I'm Glad I'm not even a part of them.
Because it's just a big ol' military school,
And they're so brain-washed that they think
they're cool.

The Aggies all stand up at the football games,
Because their fat asses won't fit in the seats.
They have weird traditions and those stupid
bonfires.
Just keep that 12th fag away from me.

Ohio University Fight Song

Tune: Stand up and Cheer

Courtesy of H-Row

Stand up and cheer,
She lost her honor at OU.
She only did it once,
And now she has to pay the price for nine more
months.
Stand up and cheer,
For the baby's on the way.
She lost her shape,
Because of rape.
Down here at ol' OU

Ohio University Fight Song

Tune: Stand Up and Cheer

Courtesy of [REDACTED]

Sit down and shut up.
You're a bunch of dancing faggots.
We're Ohio State, and you're Ohio --
Who the fucking hell are you?
(Bend over) Take it up your cornhole,
We're gonna screw you till you cry.
Come suck our dicks,
You bastard hicks,
The little pussies of OU.
Ba ba-da ba-da.

Blast a little louder,
Have you not heard of decrescendo?
This is the Buckeye State,
It isn't here for only you.
We formed the first diamond Ohio.
How does your fight song go again?
To hell you go!
We're O-HI-O!
The Best Damn Band in the Land!

Brigham Young Fight Song

Tune: BYU Fight Song

Courtesy of [REDACTED] and H-Row

Brigham Young was just an old bum,
Who left his folks and move to Utah.
Made his own religion out there,
And made himself its noble grandpa.

Never smoked or drank in his life,
He passed them off as deeds of sinners.
But he loved his wives,
Had 25
And ruled their lives.
But they named a school after him,
That nasty asshole named Brigham Young.

Brigham Young is a Goddamn Queer

Tune: Turkey in the Straw

(Must be sung in one breath)

Do your balls hang low?
Do they wobble to and fro?
Can you tell me now?
'Cause I really wanna know.
Will you go to Hell,
If you drink a beer?
Brigham Young is a Goddamn Queer.

Texas Fight!

Tune: Same

F-Row Rookie Class ('08)

Hook 'em Horns,
Hook your mom,
I'm Gonna Cum in her fucking eye.
You Bitch!

Fucked her once,
Fucked her twice,
Fucked her cute little ass all night!

Got a Sister,
Make her cream,
I'll fuckin' make her scream!
Ahhh! Ahhh! Ahhh! Ahhh!

Go home and fuck your steers
You Fuckin Jewish Queers!

Nebraska Fight Song

Tune: There's No Place Like Nebraska

Editor's Note: These are the actual words,
Nebraska's joining the Big (10)? and someone has
to come up with something better than this crap!

There is no place like Nebraska;
Dear old Nebraska U.
Where the girls are the fairest,
The boys are the squarest;
Of any old place that I knew.

There is no place like Nebraska;
Where they're all true blue.
We'll all stick together,
In all kinds of weather;
For dear old Nebraska!!

Holiday Songs

Chestnuts

Tune: The Christmas Song

Chestnuts roasting on an open fire.
Jack frost ripping off your clothes.
Old weird Harold being hung by a choir.
And folks dressed up like fags and moes.
Everybody knows some turkey and some
mistletoe
Help to make the season bright.
Tiny tots with their eyes all aglow
Are dropping Mescaline tonight.

They know that Santa's on his way.
He's bringing lots of little girls for them to
lay
And each mother's child is gonna know
Just how far Rudolph the Reindeer will go.

And so I'm offering this simple phrase
To kids from one to ninety-two.
Although it's been said many times, many
ways,
Merry Christmas, Fuck You!

Ahhsome Band

Tune: Silver Bells

Woods is yelling,
Waters whining,
Mike Stewart looks confused,
And Doc Moore's just standing there
smiling.

Woods is screaming,
Waters crying,
Mike Stewart just left,
And we all know that Doc Moore is dead.

Ahhsome band!
Ahhsome band!
Soon it will be the bowl trip.

Lips of Wonder

Tune: We Three Kings

(insert name) suck my dick.
(insert name) do it quick.
With your lips so warm and light
Oh please suck off my cock tonight, Oh-oh

Lips of wonder, lips so tight,
Lips that give my cock delight.
Your tongue will roll around my pole.
Cum give me a dainty bite.

The Twelve Days of Christmas

Tune: Same

12 Twats a-twitching
11 Lesbians licking
10 Testes Throbbing
9 Nipples dripping
8 Assholes gaping
7 Scrotums swinging
6 Sacks of Shit-ta
5 MOTHER-FUCKERS

4 Cock-suckers
3 French ticklers
2 Balls of brass
And a hand job from Jon R. Woods.
(THAT FUCKING TROLL!)

Whack My Balls

Tune: Deck the Halls

Whack my balls and make me jolly,
Fa la la la la la la la la.
Fuck the cat and suck the collie,
Fa la la la la la la la la.
Sodomy and masturbation,
Fa la la la la la la la la.
End it up with copulation.

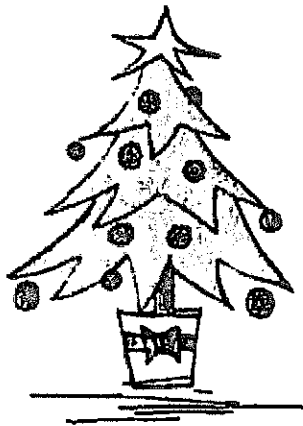
See the throbbing cock before us,
Fa la la la la la la la la.
Bite the penis and clitoris,
Fa la la la la la la la la.
Fill her up with family treasure,
Fa la la la la la la la la.
Fuck your Grandma to a seizure,
Fa la la la la la la la la.

O Horny Night

Tune: O Holy Night

O Horny Night, I'm filled with warm desires;
I'm liquored up and my dick is on fire.
 (Dick is on fire, dick is on fire)
O Horny Night, how do I quell this lust?
I need you now or my penis will bust.
 (Penis will bust, penis will bust)
I need that stuff that dogs and cats fight over,
And I won't stop 'till you go down on me.

Fall on your knees. Oh, put it in your mouth.
Oh, Suck me off, 'tis the night ('tis the night)
I shoot my wad (Crash Boom)
Oh, night, Oh, night, Oh, night.
O Horny Night.



Holly Jolly Hoe-Bag

Tune: Holly Jolly Christmas

She's a holly jolly hoe-bag,
With her lips wrapped 'round your pole.
I don't know how long she'll blow,
When she gets on a roll.

She's a holly jolly hoe-bag,
Cause when she walks down the street,
She will drop to suck the cock,
Of everyone she meets.

Yo, ho! Her shirt hangs low,
So that you can see,
Her tits are hanging out,
Kiss them once for me.

She's a holly jolly hoe-bag,
With her tongue stuck in your ear.
She will do whatever you say,
If you give her some beer.

Yea, Hey! She takes away,
All her skimpy clothes.
Her hole is so big,
You'd lose a fire-truck hose.

She's a holly jolly hoe-bag,
She'll suck and then swallow.
I don't know just where it goes,
The girl must be hollow.

She's a holly jolly hoe-bag,
You can see it in her eyes.
She can't wait to eat your bait,
And open up your thighs.

Yi, hi! Her skirt's up high,
You can see her crack.
She's never seen the ground,
Cause she's always on her back.

She's a holly jolly hoe-bag,
And in case you didn't hear.
Oh, by golly, you can have this,
Jolly hoe-bag, all year!

It's Beginning to Look
a lot Like Syphilis

Tune: take a guess

It's beginning to look a lot like syphilis,
Every time I come,
Take a look at my swollen head,
For the foreskin is turning red
And my shaft is covered from tip to end
with scum;

It's beginning to look a lot like syphilis,
When to piss I go,
Cause my eyesight's a memory,
And the chancres soon will be
At my own backyard.

Over the River and Through the
Woods

Tune: Same

Over the river and through the woods,
To the whorehouse we will go,
The horse knows the way to carry the sleigh,
Across the drifting snow, oh,
Over the river and through the woods,
Thanksgiving time, yo ho,
A great tradition of marching band,
We started long ago.

Chorus:

We fucked a turkey, licked the bone,
We tell the old lady to stuff her own,
We fucked a turkey, a butterball,
We cum some gravy on 'em all.

Over the river and through the woods,
To grandmother's house we go,
She's deaf and blind and lost her mind,
But she still loves to blow, oh,
Granny's lost nearly all her teeth,
But brother she can gum
In twenty minutes,
She can even make my horsey cum.

(Chorus)

Over the river and through the woods,
Granny's on the sauce,
But some toothless rim is better than quim,
All covered up with moss, oh,
Over the river and through the woods,
And you thought I was sick;
My granny makes stew from menstrual goo,
And stirs it with my dick,
Yes, granny makes stew from menstrual
goo,
And stirs it with my dick.

I'm Dreaming of...

Tune: White Christmas

I'm dreaming of (insert name), just like that
slut I used to know,
With her (instrument name) dipping, her
small mouth sipping,
My love juices in the snow.

I'm dreaming of (insert name), just like I did
her mom last night.
When you give head, learn not to bite,
And may all your fetuses be white.

All the guys dream of (insert name), for all
the tricks her tongue can do.
She makes us drive, a hard 8 to 5,
(first name) we love the way you screw.

I'm dreaming of (insert name), just like her
mom the night before.
She loves it up the back door,
Oh dear daughter don't become a whore

My hand smells like (insert name), just like
the fish I had for lunch.
With her legs spread wide, my willy inside,
Her flesh is what I love to munch.

I got herpes from (insert name), from all the
chancre sores she's got.
You may think it's funny – It's not!
Oh (first name), you make me so hot.

Silent Night

Tune: Same

Silent night, horny night,
I'm so hard. She's so tight.
She must be a virgin and I'm her first guy.
I think I'll pull out and cum right in her eye.
But, my cock is stuck in her crease!
My cock is stuck in her crease.

Silent night, horny night,
My dick quakes at the sight.
Blood is streaming from her little split.
I can't cum cause my balls have just split.
And my cock's still stuck in her crease!
My cock's still stuck in her crease.

Silent night, horny night,
I tried to pull out, with all my might.
Trapped in her pussy, I'll never get far.
What I wouldn't give to have a crowbar.
Somebody call the police.
Somebody call the police!

The Restroom Door Said Gentlemen

Tune: God Rest You Merry Gentlemen

The restroom door said gentlemen,
So I just walked inside.
I took two steps and realized,
I'd been taken for a ride.
I heard high voices, turned and found
The place was occupied,
By two nuns three old ladies and a nurse.
What could be worse?
Than two nuns three old ladies and a nurse.

The restroom door said gentlemen,
It must have been a gag.
As soon as I walked in there,
I ran into some old hag.
She sprayed me with a can of mace,
And smacked me with her bag.
I could tell this just wouldn't be my day,
What could I say?
It just wasn't turning out to be my day.

The restroom door said gentlemen,
And I would like to find,
The crummy little creep
Who had the nerve to switch the sign.
Cause I have two black eyes,
And one high heel up my behind.
Now I can't sit with comfort and joy.
Boy oh boy,
No I'll never sit with comfort and joy.

It's the Most Wonderful Time to Drink Beer

Tune: It's the Most Wonderful Time of the Year

Courtesy: Mike Montgomery & Gary Cope

It's the most wonderful time to drink beer.
Only one keg is floating, the others are
holding, so never to fear.
Oh we'll never, ever run out of beer.

Oh how I love Everclear.
190 proof makes you feel so aloof, but
you'll be in good cheer.
I'll probably die from drinking Everclear!

Chorus:

There'll be i-dot attendance,
And kegs thrown for distance,
And caroling out in the road.
There'll be scary rookie stories, and tales of
the glories, sung by alumni who are too
damn old!

Like how I loved my rookie year.
They said "don't make a peep," then they
pulled out the sheep,
but there's nothing to fear.
It was the best damn thing about that year!

(Chorus)

But the worst is when I butt-fucked a steer.
I was really damn drunk, and I passed on the
skunk, and it's been a damn year.
Oh my God, I just butt-fucked,
Oh my God, I just butt-fucked,
Oh my God, I just butt,
Fucked a Steer!

Carwile's a Douchebag

Tune: Frosty the Snowman
C-Row 2008

Carwile's a douchebag he's a big fat
fucking prick
We stole his hat, koch shat on that and
he rubbed it on his dick
When he discovered that hi hat was MIA
He bitched to Woods, they did all they
could to return his hat that day

He Knew there was some substance in
that fucking hat he found
For when he placed it on his head we
were laughing on the ground

OH!
Carwile's a douchebag and he acts that
way by choice
He'd suck Woods' cock all around the
clock just to hear his own damn voice

Chachitty chach chach
Chachitty chach chach
Carwile is a tool
Chachitty chach chach
Chachitty chach chach
His hat was full of stool

Droste's a Douchebag

Tune: Frosty the Snowman
Old Man Studebaker

Droste's a douchebag,
And on the field today;
You can bet on this,
That he will get pissed,
If he doesn't get his way.

If you want to play 1st trumpet,
You will have to suck his balls.
And up you'll go,
Like old x-row,
Who blows him best of all!

Oldies But Goodies

All My Semen

Tune: All My Lovin'

Close your eyes, spread your legs, let me
fertilize your eggs.

Remember, I'll always cum true.

And then while I'm away,

I'll beat off every day,

And I'll send all my semen to you.

I'll pretend that I'm pissing on the hips I am
kissing,

And hope that my dreams will cum true.

And then while I'm away I'll beat off every day,

And I'll send all my semen to you.

All my semen I will send to you.

All my semen, darlin' I'll cum true.

Yesterday

Tune: same

Yesterday, Oh my climax was so far away.

Now it seems that it won't cum today.

Oh, I believe in yesterday.

Suddenly, m cock's not half the cock it used to
be.

Now she'll just have to go down on me.

Oh, it went limp so suddenly.

Why, can't, I keep it hard I just don't know.

It wouldn't stay. Gee whiz,

We've only fucked off and on since yesterday...

Yesterday, thirteen inches she could have all
day.

Now she'll have to know of this delay.

Oh, I do long for yesterday.

I do long for... yesterday

Stroking off in Silence

Tune: The Sound of Silence

Hello pecker, my old friend.

I've come to play with you again.

Because a wet dream softly creeping,

Left it's seeds while I was sleeping,

And your helmet is firmly planted in my hands,

It will expand- stroking off in silence.

In horny dreams I have a bone.

I beat it on the cobblestone.

Beneath the halo of a street lamp,

I see a whore who's gotten very damp.

When I grabbed her thighs, in a flash she was on
her back.

She spread her crack- she twitched her twat in
silence.

Fool said she, "You do not know.

How to make a pecker grow.

Whip it out that I might beat you,

Spread your legs that I might eat you."

But my sperm like silent raindrops fell.

And turned to gel- I stroked off in silence.

And the ants came out and played,

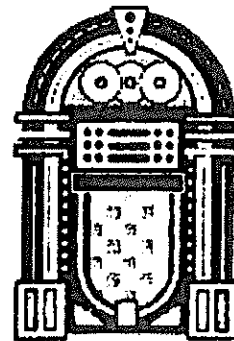
In the fucking mess I made.

And the sign flashed out it's warning.

Mom will find it in the morning!

So I rolled out of bed and rubbed it up in my
shirt,

God, what a squirt, from stroking off in silence!



Show Tunes

Last Night

Tune: Funiculí, Funiculá

Last night I stayed at home and masturbated.
It felt so good. I knew it would.
Last night I stayed at home and masturbated.
It felt so nice. I did it twice.

Oh you should see my up stroke;
It's really grand. I use my hand.
Oh you should see my down stroke;
It's really neat. I use my feet.

Beat it, bang it, up against the wall.
Squirt it, spurt it, all around the hall.
I beat my meat, I beat my meat!
I beat my meat, I beat my meat!
And I wake up in the morning
With a puddle at my feet.

Herpes Family

Tune: Addams Family

They're gooey and they're itchy,
They make your girlfriend bitchy.
They hide right in her snitchy.
The Herpes Family.

You can hardly see 'em,
But when you start a peein',
They'll really start you screamin',
The Herpes Family.



My Favorite Things

Tune: Same

Dildos and ticklers and rods of all sizes,
Gashes and butt cheeks all make me delighted.
Orgies and fuck-fests –
What pleasures they bring.
These are a few of my favorite things.

Trojans and tampons and sponges and douches,
Hard dicks and big tits and small furry pooches.
Cum in my mouth and good head that's got zing.
These are a few of my favorite things.

Broken hymen, open cankers, and bloody
discharge.
I simply remember my favorite things,
And then I don't feel soooooo bad.

Daisy

Tune: Same

Daisy, Daisy, give me a piece or two.
I'm half crazy, wanting to get in you.
Please don't think that I'm a flubber.
I can't afford a rubber.
On a waterbed built for two.

Maria

Tune: Same

Maria, I just fucked a whore named Maria.
Her face is one big zit,
And she only has one tit, I know.
Maria, I just fucked a whore named Maria.
And suddenly I know, how syphilis can grown
in me. Maria...

Hi Ho

Tune: Same

Hi ho, hi ho, it's off to bed we go,
I paid 2 bits to see your tits, hi ho, hi ho, hi ho,
Hi ho, hi ho it's off to bed we go,
Get in that sack and spread your crack, hi ho, hi
ho, hi ho,
Hi ho, hi ho, it's off to bed we go,
Just squeeze your cunt and make me grunt, hi
ho, hi ho, hi ho,
Hi ho, hi ho, it's up your butt I go,
Please wash your butt you fucking slut, hi ho, hi
ho, hi ho,
Hi ho, hi ho, it's time for you to blow,
Please get me hard you tub of lard, hi ho, hi ho,
hi ho,
Hi ho, hi ho, into your bush I'll blow,
I'll make you splash inside your gash, hi ho, hi
ho, hi ho,
Hi ho, hi ho, you're humping me too slow,
I'm going limp you fucking blimp, hi ho, hi ho,
Please give me head my dick is dead, hi ho, hi
ho.

Dr. Woods March

Tune: Mickey Mouse March

Who's the leader of the band
That's made for you and me?
D-O-C T-O-R W-OO-DS
Doctor Woods (Jon Waters)
Doctor Woods (Jon Waters)
For ever we will hold your ladder high! High!
Ohio!

Come along and play a song and join my band-
o-ree!
D-O-C T-O-R W-OO-DS!

Puff the Magic Tampon

Tune: Puff the Magic Dragon

Courtesy of [REDACTED] E-Row

Puff the magic tampon, lived between her knees,
And frolicked in that awful mess, in the land of
yeast and cheese.
Puff the magic tampon, when he first took the
plunge,
He made a splash inside her gash and swelled up
like a sponge.

Now little Jackie's pecker loved that rascal Puff.
He'd fuck till his little head got red, he couldn't
get enough.
They'd screw and screw for hours and just as
they were through,
Little Jackie'd reach his climax and he'd fill
Puff with his goo!

Puff the magic tampon, lived between her knees,
And frolicked in that awful mess, in the land of
yeast and cheese.
Puff the magic tampon; well he just had a blast.
And when Jackie wasn't stuffin' Puff, he was up
that bitch's ass.

Tampons aren't eternal and though I must be
blunt,
It's clear to me that someday soon, he'd leave
that nasty cunt.
So then it finally happened, poor Puff sprang a
leak.
But don't complain, you sleazy bitch, you've
been wearing him a week.

Puff the magic tampon, lived between her knees,
And frolicked in that awful mess, in the land of
yeast and cheese.
Puff the magic tampon was thrown in the
garbage can.
He got recycled and now he's in Kellogg's
Raisin Bran.

Let Me Fuck Your Mother

Tune: Let Me Call You Sweetheart

Let me fuck your mother,
Let me suck her tits.
Let me run my tongue
Along her throbbing clit.

Sucking on my penis
She is so much fun.
Let me fuck your mother,
Like you've always done.

Let me lick your vulva,
I'm in love with you.
Let me eat your pussy,
Like I used to do.

A tongue in the vagina,
Is much better than a screw.
Let me lick your vulva,
I'm in love with you.

Fuck Crockett

Tune: Let Me Call You Sweetheart
Courtesy of F-Row

Hey Crockett where are my pictures,
I already paid you.
Hey Crockett where are my enlargements,
That you promised me too.

I've put up with all your Bull Shit,
And your stupid kids too.
Hey Crockett, give me my pictures,
Before I come kill you.

Bye-Bye Cherry

Tune: Bye-Bye Blackbird

Back your ass against the wall.
Here I come, balls and all.
Bye-bye cherry.
Won't your mother be disgusted,
When she finds your hymen busted?
Bye-bye cherry
Wrap your legs around a little tighter.
I can feel my load is getting tighter.
So shake your ass and wiggle your tits.
'til my pecker splits.
Cherry, Bye-bye.

Bye-Bye Woody

Tune: Bye-Bye Blackbird

Now you've done it you old goat.
Punched that guy right in the throat.
Bye-bye Woody
Now you did it, you got fired.
You dumb shit you could've retired.
Bye-bye Woody.
Now we'll get to go to Pasadena.
Pastures are beginning to look greener.
So goodbye Woody, Now you're through.
It's been swell but.... Fuck You!
Woody, Bye-Bye.

Bye-Bye Earle

Tune: Bye-Bye Blackbird

I read in the paper, and guess what?
They just fired "Jupiter butt."
Bye-Bye Earle.
Jennings did it, what a gas.
Kicked ol' Earle out on his ass.
Bye-bye Earle.
No we'll have no more 9 and 3 seasons.
Y'know there weren't really any reasons.
But, bye-bye Earle, it's kind of sick,
Now our head coach is some dumb hick.
Earle, Bye-Bye.

Cunnalingus

Tune: Oklahoma

Cunnalingus ever night my honey lamb and I,
Sit at home and lick a perfect slit.
While the pubic hairs are rising high.
Cunnalingus spread your legs and sit down on
my face.
With your knees spread wide, my tongue inside,
and a stench that equalizes mace.
With my teeth I pick off all the scabs.
And into my nose jumps the crabs.
And then the smell.... Woooooh!
The pud begins to swell.... Woooooh!
You know she's cuming. You're doing fine
cunnalingus.
Cunnalingus. Eat Out!

Sit on my Face

Tune: Swing On A Star

Chorus:

Oh, how'd you like to sit on my face?
It's a very comfortable place.
Just put your hole right over my nose,
Or would you rather...

....suck my hose?

A hose is an animal that lives in my pants.
It stands up and does a little dance.
His neck is brawny but his head is weak.
So pull down my zipper and take a peek.
Or if you'd rather, for a nickel or a dime,
You can blow me anytime.

Chorus

....eat my balls?

A ball is an animal that lives in a bag.
When its hot out he really tends to sag.
His face is wrinkled and he has lots of hair.
So look in that zipper and peek if you dare.
Or if you'd rather, for a nickel or a dime,
You can blow me anytime.

Oh, how'd you like to sit on my face?
It's a very comfortable place.
Just put your hole right over my nose...then
You'll be much better than you are.
So let's just go out to my car.

Brassiere

Tune: Brazil

Obligato:

Suck those tits, bite the nipples off.

Brassiere, you hold those things we hold so dear.
So round and big and full of cheer.
I wish I had a big pair here, brassiere, brassiere,
brassiere.

Woodsy, we doubt your masculinity.
And though your cock's shaped like a "T"
We've heard that it's so very wee Woodsy,
Woodsy, Woodsy.

Kotex, one smell would stop Tyrannosaurus
Rex.
If not for that old monthly hex,
We could enjoy unlimited sex, Kotex, Kotex,
Kotex.

We're Off to See the Wimpy

Tune: We're off to see the Wizard

We're off to see the Wimpy,
The Wonderful Wimpy that's odd.
We hear the slide trombone is back,
Oh, Droste's a stupid clod.
If ever, oh ever a wimp there was,
The Wimpy is one because, because,
Because, because, because, because...
Because of the wimpy things he does.
We're off to see the Wimpy.
The Wonderful Wimpy that's odd.

Bring Back My Boner

Tune: Bring Back My Bonnie to Me

My boner once spouted with stroking,
My boner once drove between thighs,
My boner was sucked like a cream pop,
But now my poor boner won't rise.

Chorus

Bring back, bring back,
Oh, bring back my boner to me, to me!
Bring back, bring back,
Oh, bring back my boner to me!

My boner was not very particular,
My boner likes both left and right,
But now my poor boner likes nothing,
And leaves me alone for the night.

Chorus

Twat Valley

Tune: Sweet Betsy From Pike

Twat down in the valley where red rivers flow.
Where maidens did flourish and cock-suckers
grow.
That's where I met Lupe, the girl I adore.
She's a hot-fucking cock-fucking Mexican
whore.

She'll blow you. She'll roll you.
She'll screw you. And then
She'll gnaw on your gnuts
And she'll suck out your guts.
She'll wrap her legs 'round you
And squeeze 'til you die.
But I'd rather eat Lupe than sweet cherry pie.

Let's Talk Dirty to the Animals

Tune: Same

A rooster says "Good Morning"
With a cock-a-doodle-doo. (good morning)
A horse's neigh is just his way of saying,
"How are you?"
A lion growls "Hello" and owls
Ask why and where and who.
May I suggest you get undressed
And show them your wazoo. Oh....

The animals, the animals,
Let's talk dirty to the animals.
Up your's, Mr. Hippo.
Piss off, Mr. Fox.
Go tell a chicken, "Suck my dick" and
Give him chicken pox. Oh....

The animals, the animals,
Let's talk dirty to the animals.
From birds in treetops
To snakes in the grass, but
Never tell an Alligator, "bite my..." No!
Never tell an Alligator, "bite my..." Yes!
Never tell an Alligator, "bite my..." Snatch!

My Daughter Rebecca

Tune: See page 40

Question:
Was it you that did the pushin'?
Left the stains upon the cushion?
Footprints on the dashboard upside down?
Do do do
If it was you, you sly woodpecker
Who got into my daughter Rebecca.
If it was, you better leave this town.

Reply:
Yes, 'twas me who did the pushin'.
Left the stains upon the cushion.
Footprints on the dashboard upside down.
Do do do
But since I got into your daughter
I've had trouble passing water.
So, I guess we're even all around.

Crash and Burn

Tune: Baby Face

Crash and burn
See the marching band crash and burn.
As we bank into that final turn, crash and burn.
Listen to that screaming sound as we plummet to
the ground.
Crash and burn.
See the flaming wreckage fall down from the
sky.
We hear the engines cough and then the wings
fall off.
Oh God we're all gonna...
Oh crash and burn...
Oh God we're all gonna die!

Choke and Puke

Tune: Baby Face

Choke and puke
Oh see the marching band choke and puke.
As we guzzle down that last fry, watch us die.
Listen to those dying gasps as we fall down and
then collapse.
Choke and puke.
Oh see the vomit falling down from the sky.
Then as we get the heaves and we fall to our
knees.
Oh God we're all gonna...
Into the toilet...
Oh God we're all gonna die!

Pubic Hairs

Tune: Baby Face

Pubic hairs.
You've got the cutest little pubic hairs.
Nobody else's hair just could compare to your
pubic hairs.
Nothing ever could be finer than to be in your
vagina.
Pubic hairs.
Oh, I'm in heaven when I'm in your underwear.
I love that touch of lace when you sit on my
face.
With those tender little pubic...
Talk about those pubic...
Love those little pubic hairs!

Billy Jean

Tune: Baby Face

Billy Jean.
We used to think that you wre nice and clean.
But now we find that you are obscene, Billy
Jean.
Strapping on that dildo. Just how far will you
go?
Billy Jean.
Your mother never thought that you would lick
vaginas clean.
You used to flick a dick, now you just lick a tit.
You stupid lessie Billy...
Your leather clothes look silly...
You stupid lessie Billy Jean!

Somewhere Under Your Pubies

Tune: Over the Rainbow

Courtesy of [REDACTED] and R-Row

Somewhere under your pubis,
By your side.
There's a crab that I left there,
Singing a lullaby.

Somewhere under your clitora,
There's an itch.
It's a view of his family,
Picnicking in your snatch.

They skip, they jump, they laugh, they sing.
The crabs run races.
Undemeath your pubis.

They crawl, they fight, they drink all night.
They've even got a traffic light,
Inside your asshole.

Somewhere under your pubies,
Crabs do chew.
A bearded clam appetizer,
But mostly they munch on you!

If I get little crabbies,
Bet your fucking ass,
You're gonna get 'em too!!!

Jed Clampett

Tune: Beverly Hillbillies

Let me tell you a story 'bout a man named Jed.
Poor mountaineer always kept his wife in bed.
Then one day he was shootin' at some food,
And up through her cunt came a bubblin' crude.

(Blood, that is..Menstruation..Liquid People)

Well the first thing you know ol' Jed was in her
hair.
Then she said, "Jed stick your cock in there,"
She said, "My vagina is the place you ought to
be,"
So he pumped her fifty times and they raised a
family.

The Impossible Cream

Tune: The Impossible Dream

To cream the impossible cream.
To screw the unscrewable whore.
To lay the unlayable virgin.
To fuck where no man's fucked before.
For this is my quest, and I'll never rest.
I'll fuck on forever cause I am the best.
I'll cum in your cunt and I'll cum in your mouth.
I'll cum to the north and I'll cum to the south.
And I know if I'll only be true to this glorious
quest
That my cock will lie peaceful and calm when
I'm laid to rest.
And my dick will be better for this
To strike down pure and chaste from afar.
To find someone there with the courage to fuck
the exhaust of my car.
For this is my quest, and I'll never rest.
I'll fuck on forever cause I am the best.
I'll cum in your cunt, and I'll cum in your
mouth.
To cream the impossible cream!

The Bobbitt Hillbillies

Tune: Beverly Hillbillies

Courtesy of C-Row

Here's a little story of a man named John.
A poor ex-Marine with a little fraction gone.
It seemed one night after gettin' at his wife.
She lopped off his schlong with the swipe of a
knife.

(Penis, that is...Rodeoed...Fillet-foed)

Well, the next thing you know there's a Ginsu
by his side.
And Lorena's in the car taking willie for a ride.
She soon got tired of her purple-headed friend.
And tossed him out the windo as she rounded a
bend.

(Curve, that is...Pricker shrubs...Wheel hubs)

She went to the cops and confessed to the attack.
And they called out the hounds just to get his
weenie back.

They sniffed and they barked. Then they pointed
"over there."

To John Wayne's Henry that was wavin' in the
air.

(Found, that is...By a fence...Evidence)

Now peter and John couldn't stay apart too long.
So a Dick-Doc said, "Hey, I can fix your dong."
A needle and a thread's just the thing you're
gonna need.

Then the world held its breath till they learned
that Johnny peed.

(Whizzed, that is...Stitched Seam...Straight
Stream)

Well he healed and he hardened, and he took his
case to court.

With a cock-eyed lawyer, since his assets came
up short.

They cleared her of assault, and acquitted him of
rape.

And his pecker was the only one they didn't
show on tape.

(Video, that is...Unexposed...Case closed)

Shepherd Boy

Tune: Same

Said the shepherd boy to David Shanks,
Would you like to fuck sheep? (echo)
Think that you can take it David Shanks?

Said David Shanks to the shepherd boy,
Give me half a dozen (echo)

Chorus

A lamb, a lamb, soft with lots of wool.
And now I'll insert my tool.
And now I'll insert my tool. (Shanks sucks)
My tool. (Shanks sucks)

Said the shepherd boy to the Magistrate,
Do you see what I see? (echo)
Some nut in that herd fucking sheep.
Do you see what I see? (echo)

Chorus

Said the Magistrate to the mighty Judge.
You Honor have you heard? (echo)
He's been fucking your herd.

My flock! That cock! I'll send him to the rock.
And although that's too good for you,
We'll see what we can do. (Shanks sucks)
Can do. (Shanks sucks)

Said the executioner to David Shanks,
Have you any last wish? (echo)
Before I cut your cock off, David Shanks.
Have you any last wish? (echo)

Chorus

Under the Sheets

Tune: Under the Sea

The pussy is always pinker.
In somebody else's cunt.
You dream about going in there,
And that would be quite a stunt.
Unless she's a lifelong virgin,
Perhaps you will see the day,
When she'll spread her legs wide for you,
And you'll get a damn good lay.
Under the sheets,
Under the sheets,
Darling it's better,
Down where it's wetter,
Take it from me!
Down in the bush the crabs they play,
And all the sperm they swim away,
If you be lucky,
Then you can fuck me,
Under the sheets!

Jon Waters

Tune: Green Acres

Anonymous

Jon Waters is a fucking dick.
He likes to get his asshole licked.
Falls on his knees really quick.
Says that Woods' pubes are really thick.

You Slut, You Whore

Tune: New York, New York

Courtesy of [REDACTED]

Start spreading your legs.
I'm cumming tonight.
I want to be inside of you.
You Fucking Whore.

These empty long necks,
Have lowered your guard.
I'm gonna break right through it,
Your Hymen.

I wanna wake up,
In a bitch that doesn't sleep.
And find I'm on top of her hills,
And king of her heap.

These little town whores,
I've all fucked dry.
I'll make a brand new start of it,
In the Marching Band.

If I can--Do them here,
I'll do them--Anywhere.
It's up to me,
R-Row, Beware.

You Slut, you whore.

When I wake up in the morning from my sleep
I'll roll over and start the day right,
With a dawning delight,
Quick morning lay,
It starts the day off right.

You better be good,
I've paid in advance.
I may not have a 12 inch dick,
But say I'm huge.

If I can--Stick it here,
Turn around bitch cause I'm gonna--stick it
there.
It's up to me,
You Slut, You Whore.

The Cabalero Song

Tune: Same (by [REDACTED])

Oh, I'm a gay cabalero.
I'm going to Rio de Janeiro.
I'm taking with me
My La Trombilee
And both of my La Trombilo-hos.

I'm seeking a fair seniorita.
An exceedingly fair seniorita.
I'll show her the end of
My La Trombilee
And both of my La Trombilo-hos

I've found a fair seniorita.
An exceedingly fair seniorita.
I put in the end of my La Trombilee
And one of my La Trombilo-hos.

Now, damn that fair seniorita.
She game me a dose of claprita.
Right on the end of my La Trombilee
And one of my La Trombilo-hos.

I'm seeking a fair physiestos.
An exceedingly fair physiestos.
I'll show him the end of my La Trombilee
And one of my La Trombilo-hos.

I found a fair physiestos.
He pulled out a sharp stilettos.
He cut off the end of my La Trombilee and one
of my La Trombilo-hos.

Now I'm a sad cabalero.
I'm leaving Rio de Janeiro.
Minus the end of my La Trombilee
And one of my La Trombilo-hos.

Now each night as I lay on my pillow.
I reach down to play with my willow.
But all I find there is a hand full of hair
And one of my La Trombilo-hos.

Vagina in the Morning

Tune: Carolina in the Morning

Nothing could be finer than to be in your vagina
in the morning.
Nothing could be sweeter than to pork you with
my peter in the morning.
If I had a prostitute for only a day,
I'd lay her out and eat her out and here's what I
say, (oh lordy)
Nothing could be finer than to be in your vagina
in the... Morning.

I Am Pussy

Tune: I Am Woman

I am pussy, hear me roar!
My tits are too big to ignore,
And if I don't reach orgasm, I pretend.
Because I've jerked them off before,
I've even banged them on the floor,
But, no one's ever going to dry-hump me again.

Oh, yes, I am wide.
It's the perfect place to hid.
Yes, when I get wet, they say it's like a tide.
But, if I have to, I can fuck anything!
I am stronger; (strong) I am so stretchable;
(stretchable)
I am pussy!

I am pussy, eat me out.
My cunt is turning inside out.
And my labia is frothing at the hole,
And I'll hump you even stronger; not a novice
any longer.
Because you've deepened the construction of
my hole.

Oh, yes, I'm a slut
I'm an Ohio slut,
And if you tongue my twat, I'll let you fuck me
twice.
If I have to, I can fuck anything!
I am stronger; (strong) I am so stretchable; (so
stretchable)
I am Pussy!

PATRIOTIC SONGS

She's a Grand Old Bag

Tune: You're a Grand Old Flag

She's a grand old bag, she's a low-flying hag.
You can tell by the dick in her hand.
On your cock she'll suck 'til she's filled with
muck.
Because she thinks cum is so grand.
Oh, her hands beat you 'til your cock's turning
blue.
With never a cry of a nag.
When all the other girls are shot
We'll all fuck the grand old bag.

Over There

Tune: Same

Over there, over there.
Send a hand on my gland over there.
A yank and I'm cumming, a yank and I'm
cumming.
Two more yanks and I'll be there.
Over there, over there.
Send a hand on my gland over there.
You know we're coming, we're coming over.
And we won't be back 'til we're cumming over
there.

He's a Sweet Gay Fag

Tune: You're a Grand Old Flag

He's a sweet gay fag, he's a purse-toting fag.
You can tell by the lace on his gland.
As he smiles I know, that he's not shy.
He's reamed every guy in the band.
Yes, He'll blow you too, if you're gay or true
blue.
As long as you pay in advance,
With maize and blue, his fav'rite hue,
He's a fucked up old M*ch*g*n fag.

Eternal Bother

Tune: The Navy Hymn

Eternal bother concerts gave,
With four-part singing we did slave;
The "Band-O-Rama," we did weep,
Because no profits we did keep.

The School of Music tells us we,
Are one big happy family.

Yank My Doodle

Tune: Yankee Doodle

Yank my doodle, it's a dandy,
Yank my doodle, it's a joy.
Get a real blow job from your Uncle Sam.
A bang on the Fourth of July.
Screw a yankee doodle sweetheart,
Fuck a yankee doodle whore.
Yank my doodle up and down
And yank my doodle sideways.
I think my doodle's getting sore.

Proud to be a Homosexual

Tune: God Bless the USA

Courtesy of F-Row

If tomorrow the Eagle Bar was gone,
It'd be the worst day of my life.
So I'd have to start again with just my butt-plugs
and Bill, my wife.

I'd thank my lucky stars to be in the band of
today.

Cause the rainbow stands for freedom,
And they can't take that away.

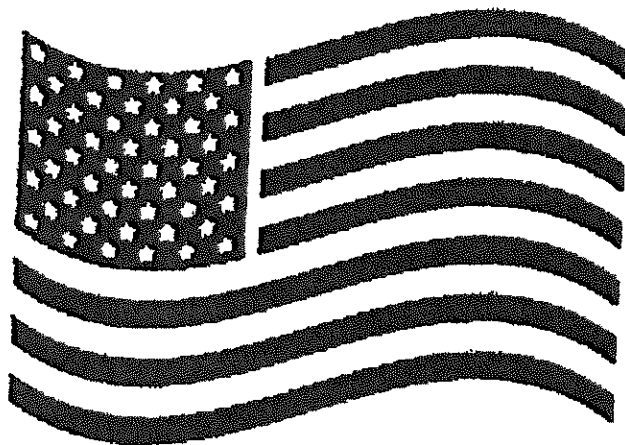
Chorus

And I'm proud to be a homosexual,
Where at least I can run free.
And I won't forget the fags with AIDS,

Who gave that right to me.
And I'll gladly bend over,
and spread my cheeks,
So you may sodomize me.
Cause there ain't no doubt, I love male glands.
God bless the OSUMB.

Harassed in Minnesota,
Thrown out of Tennessee.
Drug behind a truck through Texas,
Oppressed from seat to shining sea.
Then we were exiled to Ohio,
And found a band that would take us.
It's the most P.C. band in the land,
And it's bad in Co-lum-bus.

Chorus



Party Songs

The Kotex Factory

Tune: Caissons Go Rolling Along

You can tell by the smell
That she isn't feeling well,
When the end of the month rolls around.

You can tell by her walk
That tonight you'll only talk,
When the end of the month rolls around.

CHORUS:

For it's "HI-HI-HEE", in the Kotex Factory.
Small, medium, large, or bail of hay.
Well, you're out of luck,
If you're looking for a fuck.
When the end of the month rolls around.

You can tell by her pout
That her eggs are falling out,
When the end of the month rolls around.

You can tell by the stench
That there's blood up in her trench,
When the end of the month rolls around.

CHORUS

Then she sucks on your tube
And gives a real good lube,
When the end of the month rolls around.

Then you reach for her box
'Cause you want to shoot your rocks,
When the end of the month rolls around.
CHORUS

And you take her to bed
But her pussy is all red,
When the end of the month rolls around.

Then she sits on your head
And you wish that you were dead,
When the end of the month rolls around.
CHORUS

But your balls, they still ache
So a chance you now must take,
When the end of the month rolls around.

So she opens her thighs
And you have to shut your eyes,
When the end of the month rolls around.
CHORUS

But your problem's still there
As the blood drips off her hair,
When the end of the month rolls around.

So you get down to the job
As the juice flows off your knob,
When the end of the month rolls around.
CHORUS

With a "HI-HI-HEE"
You shoot so merrily,
Though the end of the month rolls around.

So you suck and bite and eat her
For the good she's done your peter,
When the end of the month rolls around.

Balls to Your Partner

Tune: See page 39

CHORUS:

Balls to your partner,
Ass against the wall.
If you never get laid on Saturday night,
You'll never get laid at all.

The village Smitty, he was there,
His balls were made of brass.
And every time they clanged and banged,,
The sparks flew out his ass, singin'
CHORUS

The village cripple, he was there,
He wasn't up to much.
He lined 'em up against the wall,
And fucked 'em with his crutch, singin'
CHORUS

The village whore, she was there,
Lying on the floor.
And every time she spread her legs,
The vacuum slammed the door, singin'
CHORUS

If you never get laid on a Saturday night,
You'll never get laid at all.

Gangbang

Tune: Billboard

Solo: Knock-Knock

Chorus: Who's there?

Solo: I wanna.

Chorus: I wanna who?

All: I wanna gangbang, I always will.
'Cause the gangbang gives me such a thrill.
When I was younger and in my prime,
I used to gangbang all the time.
But now I'm older and turning gray,
I only gangbang twice a day.

Sheila.
Sheila who?
She loves a gangbang.

Olive.
Olive who?
I love a gangbang.

Tijuana.
Tijuana who?
Tijuana bring your mother to the gangbang?

Gladiator.
Gladiator who?
Gladiator out before the gangbang.

Urine.
Urine who?
Urine for sloppy seconds at the gangbang.

Joe.
Joe who?
Joe mama loves a gangbang.

Jeff.
Jeff who?
Jeffather loves a gangbang.

Charlie Pride.
Charlie Pride who?
Charlie Pride her legs apart at the gangbang.

Emerson.
Emerson who?
Emerson nice tits, Bitch!

Urinate.
Urinate who?
Urinate, but if you had bigger tits you'd be a ten!

Eileen.
Eileen who?
Eileen'd her against the wall and fucked her in the ass.

Eileen.
Eileen who?
Eileen'd her over the oven and ate her cake.



Eat Bite

By: [REDACTED]

Well, I went to a party and what did they do?
They took off their socks and they took off there shoes,
They took off their coats, and they took off their pants.
I had a hunch, they weren't gonna dance.

(Chorus)

Oh, eat, bite, fuck, suck, gobble, nibble, chew,
Nipple, bosom, hairpie, fingerfuck, screw,
moose-piss, cat-pud, orangutan-tit,
sheep-pussy, camel-crack, pig and lion shit.

Awww-shit.

Well, everybody-everybody's ass was bare,
No broads left, just a queer over there,
But the whole damn thing didn't faze me a bit.
I just jumped on the pile, and grabbed some tit.

Chorus again and again; faster and faster (et cetera).

Well, my baby's not a sports fan,
But she plays with balls
Whenever she can,
Because her favorite sport you see,
Is playing tonsil hockey

Beer Poem

By: [REDACTED]

The ice house was rocking cause the shitliz was all there guys were popping silver bullets there was bush in the air while Labats blew a Canadian Jenny creamed up tot Dave southern comfort to Samuel Adams while Molson licked her golden spot Papst put up and Blue Ribbon and said we will have a competition to see which lady's Honey Brown was truly fuckin' bitching Killion's Red the results Mrs. Miller won we laughed but when she spread her legs we felt a Genuine Draft the orgy's that followed was a real Wild Turkey I was Smirnoff the juice with my little beef jerky Johnny Walker blacked out and woke up to find Pete's wicked Moosehead shoved up his behind, Foster's had a Spanish bitch but when he went to eat em he found her way to salty her name was Margarita St. Pauly's Girl was on the floor her stats filled to the

rim Bud yelled out if her tot cant hold it I bet her Hieny can and next to her lay Old Milwaukee his face down in some piss gargling like a pig it just doesn't get any better then this so when your wild little wide mouth and your brewing needs some head have a Amstel Light the side that hangs above my bed lick her in the rear SUCK MY FUCKING DICK BITCH AND SPIT IT IN MY BEER.

Roll Out Your Mother

Tune: Roll Out the Barrel

Roll out your mother,
We'll have a barrel of fun.
Roll out your mother,
We'll bring her back when we're done.
Roll out your mother,
We'll have her beggin' for more.
Everybody loves your mother,
'Cause she's a big fat stinky whore.

feel
your
boobies.

Dos a Beer

Tune: Do-Re-Me

Dos, a beer, a Mexican beer.

Ray, the guy who bought me beer.

Me, the person he bought beer for.

Fa, a long, long way for beer.

So, I think I'll have a beer.

La, la la la la la

Ti, no thanks I'll have a beer!

Which brings us back to Dos, Dos, Dos, Dos.
(Repeat to infinity)

Whip It Out At The Ballgame

Tune: Take Me Out To The Ballgame

Whip it out at the ballgame.

Wave it around at the crowd.

Dip it in peanuts and Cracker Jacks,

I don't care if I give it a whack!

For it's spank your frank at the ballgame,

If you don't spurt it's a shame,

Cause it's one, two, you're covered with goo,

At the old ballgame!

Carwile Sucks Raw Dick!

Tune: Camptown Ladies

In the band for 30 years

Carwile, Carwile.

He won't let us drink our beers,

Oh Fucking A!

Gonna drink all night,

Gonna drink all day.

Even if we're not allowed,

We'll drink them anyway.

Drink Beer Chant

By: [REDACTED]

Drink beer, drink beer,

Drink beer Goddamn drink beer.

I won't drink beer with any man,

Who won't drink beer with a Buckeye Fan.

Ohio once, Ohio twice,

Holy jumpin' Jesus Christ.

Drink, Fuck, Cock, Suck...Go Bucks!!

Monster Wheel

Tune: see page 39

There once was a sailor who since has died.
I'm beginning to think that the old man had lied.
He spoke of a women whose cunt was so wide,
That she could never be satisfied.

And so they invented the Monster Wheel.
And to it they attached a great prick of steel.
Two balls of brass all filled with cream.
The whole damn thing was run by steam.

CHORUS:

Round and round went the Monster Wheel.

In and out went the big prick of steel.

Until at last the maiden cried,

"Stop! Stop! I'm satisfied!"

But the Monster Wheel, there was no stopping it
It ripped her open from the twat to the tit.
The whole damn thing was blown to shit.
Revealing (insert name) inside of it.

Masturbation

Tune: Alouette

Masturbation, self-ejaculation.

Masturbation, this is how it's done.

First you take your jock off,

Then you beat your cock off.

Very fast, make it last, Oh---

Masturbation, self-ejaculation.

Masturbation, that is F-Row's fame.

Barnacle Bill

Tune: Someone will know

“Who’s that knocking at my door?”
“Who’s that knocking at my door?”
“Who’s that knocking at my door?”
Said the fair young maiden.

WELL! “Open the door you fucking whore!”
Said Barnacle Bill the Sailor.
“Open the door you fucking whore!”
Said Barnacle Bill the Sailor.

Maiden Verses: (In ball-wrenching falsetto)

2. “Are we going to the dance?”
3. “What’s that thing between your legs?”
4. “What’s that growing ‘round your pole?”
5. “What’s that dripping down your leg?”
6. “What if we should have a boy?”
7. What if we should have a girl?” (Note: one time only)
8. “What if Ma and Pa should come home early?”

Bill’s Responses: (Muy Macho con mucho testosterone)

2. “Fuck the dance and lower your pants!”
3. “It’s just a pole to fill your hole!”
4. “It’s only some grass to tickle your ass!”
5. “It’s only a shot that missed your twat!”
6. “He’ll go to sea and fuck like me!”
7. *(Interrupts maiden) “We’ll dig a ditch and bury the bitch!”
8. “I’ll fuck your Ma and blow your Pa!”

Pieces of Baritone Shit

Tune: Across the Field

Courtesy of [REDACTED]

Bite my ass and lick my balls you mother fucking queers,
Get on your knees and tell me how the megaphone fits up your mother-fucking ass YOU GAY FAGS!
Lick my balls and lube up your ass,
Anal sex gives you nasty gas.
Fuck you, you big gay fags.
You pieces of Baritone shit!

The Hitler Song

Courtesy of [REDACTED]

Hitler (Hitler)
Hitler (Hitler)
H-I-T-L-E-R, ba dum dum dum
Hitler (Hitler)
Hitler (Hitler)

Well, he doesn’t even drive a car.

Oh, he’s short and he’s fat and he kills the Jews.
He lives at Gayfer’s and he’s got no shoes.

SPOKEN:

‘Cause it’s hard to get shoes when you don’t have a car, and it’s hard to buy car when you don’t have a job, and it’s hard to get a job when you’re...

Hitler (Hitler)
Hitler (Hitler)
H-I-T-L-E-R, ba dum dum dum

Nazi’s here, Nazi’s there, Nazi’s Nazi’s everywhere!

Hitler lives in Tampa Bay, doo dah, doo dah.
Hitler lives in Tampa Bay, Oh Fucking A.
Kill the Jews all night, Kill the Jews all day.
Hitler lives in Tampa Bay, Oh Fucking A.

Note: Spoken part could be some variation of what is written above. Words are usually made up by whoever is leading the song.

My Grandfather’s Cock

Tune: My Grandfather’s Clock

My grandfather’s cock was too large for his spouse,
So it spent ninety years in a big whore.
It was longer by half than the old man himself,
Yet it weighed not a pennyweight more.
‘Twas erect on the morn of the day that he was born.
It was always his pleasure and his pride.
But it went (Shit!) limp (Fuck!) never to rise again,
When the old man died.

Asshole by [REDACTED]

Folks, I'd like to sing a song about the American Dream.
About me, about you, about the way our American hearts beat way down in the bottom of our chests, About that special feeling we get, way down in the cockles of our hearts.
Maybe below the cockles,
Maybe in the sub-cockle area,
Maybe in the liver,
Maybe in the kidneys,
Maybe in the colon.
We don't know.

I'm just a regular Joe with a regular job.
I'm your average white suburbanite slob.
I like football and porno and books about war.
I got an average house with a nice hardwood floor.
My wife and my job, my kids and my car,
My feet on the table, and a Cuban cigar.

But sometimes that just ain't enough,
To keep a man like me interested.
(Oh no)
No Way
(Uh uh)
No, I gotta go out and have fun at somebody else's expense.
(Oh yeah)
Yeah, yeah
Yeah, yeah

I drive really slow in the ultra fast lane
While people behind me are going insane.

CHORUS:
I'm an asshole (asshole)(I'm an asshole)
I'm an asshole (asshole)(I'm an asshole)

I use public toilets and I piss on the seat
I walk around in the summertime saying, "how about this heat?"

CHORUS

Sometimes I park in handicap spaces
While handicapped people make handicapped faces.

CHORUS

Maybe I shouldn't be singing this song
Ranting and raving and carrying on
Maybe they're right when they tell me I'm wrong....Nah.

CHORUS

You what I'm gonna do?
I'm gonna get myself a 1967 Cadillac Eldorado convertible. Hot pink with whale skin hubcaps and all leather cow interior and big round baby seal eyes for headlights.
Yeah, and I'm gonna drive 'round that baby, At 115 MPH, getting one mile per gallon,
Sucking down quarter pounder cheeseburgers from McDonalds, in the old fashioned non-biodegradable Styrofoam containers
And when I'm down sucking down those grease ball burgers, I'm gonna wipe my mouth with the American flag, and then I'm gonna toss the Styrofoam container right out the side, and there ain't a Goddamn thin anyone can do about it. You know why?

Because we got the bombs, that's why.
Two words, "nuclear fucking weapons", OK?
Russia, Germany, Romania
They can all have the democracy they want; they can have a big democracy cakewalk, right through the middle of Tiananmen Square. And it won't make a lick of difference.
Because we've got the bombs, okay?
John Wayne's not dead, he's frozen,
And as soon as we find a cure for cancer,
We're gonna thaw out the Duke and he's gonna be pretty pissed off. You know why?
Have you ever taken a cold shower?
Well multiply that by fifteen million times,
That's how pissed off the Duke's gonna be.
I'm gonna get the Duke, and John Cassavettes, Lee Marvin, and Sam Beckamore, and a case of whiskey and drive down to Czech.....
(Hey, hey, hey, hey, hey, hey, hey)
(You know what? You really are an asshole)
Why don't you shut up and sing the song pal?

CHORUS

A-S-S-H-O-L-E
A-S-S-H-O-L-E
(Woo, ooh)
A-S-S-H-O-L-E
A-S-S-H-O-L-E
I'm an asshole and I'm proud of it!

Tribute to Old S-Row

Tune: The Trolley Song

I saw her sitting on a bar stool,
I wanted her for my own,
"Oh, my God please, honey,"
As I asked her to come home.

Up and down went her tushy,
Back and forth went her tits,
"Oh my God," said my honey..
As I gave her a few more licks.

Squeak, squeak, squeak, went the bed springs,
Bang, bang, bang went the bed,
"Oh my God," said my honey,
As she went down on my head.

Squish, squish, squish went her pussy,
Squirt, squirt, squirt went my dick,
"Oh my God," said my honey,
As I put in my big, fat prick.

In and out went my member,
Arch, arch, arch went my back,
"Oh my God," said my honey,
As she felt underneath my sack.

Slurp, slurp, slurp went my penis,
Suck, suck, suck went her cunt,
"Oh my God," said my honey,
As she let out a big, fat grunt.

Rip, rip, rip went her hymen,
Drip, drip, drip went the blood,
"Oh my God," said my honey,
As I came in one hell of a flood.

Slap, slap, slap went our bellies,
Squirt, squirt, squirt went my cum,
"Oh my God," said my honey,
"Is it true that we're finally done?"

Buzz, buzz, buzz went the dildo,
Hap, hap, hap went her clit.
"Oh my God," said my honey,
"Don't you think that it's time to quit?"

Fart, fart, fart went her asshole,
Smell, smell, smell went my nose,
"Oh my God," said my honey,
As I butt plugged her with my toes.

Grow, grow, grow went the fetus.
Small, small, small went my tube.
"Oh my God," said my honey,
As she gave me one more lube.

Clamp, clamp, clamp went the doctor,
Stretch, stretch, stretch went her crack,
"Oh my God," said my honey,
As she looked at her embryo sack.

Suck, suck, suck went the vacuum,
Out her crack came the goop,
"Oh my God," said my honey,
"It looks like vegetable soup."

Cock of Ages

Tune: Rock of Ages

Cock of ages up for me.
Let my shoot my wad in thee.
18 inches cut in half.
Yesterday I fucked a calf.
Now I'm worried as can be.
Cause I think I've got VD.

Cock of ages, cum for me,
For my balls could just burst free.
My best whore is hot tonight.
Her twat fits me nice and tight.
Hear me moan in grateful pain.
Faithful cock you've cum again.

Big Spreader

Tune: Big Spender

The minute you sat on my face,
I could tell you were a broad with distinction.
A real big spreader.
Pubic hairs well defined,
I knew you weren't the ordinary cock-sucking
kind.
So why don't you insert my tool?
Now I feel that you will fuck every guy that you
see.
Hey, Big Spreader! (Hey Big Spreader!)
Spread your lips and go down on me.

Ten Tons of Titty

Tune: These Things Remind Me of You

Ten tons of titty, in a loose brazier,
A twat that twitches like a moose's ear,
Ejaculation in my glass of beer.

Chorus
These things remind me of you.

A toothless blowjob in a taxi cab,
A bloody fetus on a marble slab,
A ring of puss around a crust scab.

Chorus
A real quick hand-job in a grocery store,
A licking session with the les next door,
Using a Kotex that you've used before.
Chorus

Eating dead bat shit off an old cave wall,
A crusty spear stuck through an elephant's balls,
Sucking some vomit through a clear glass straw.
Chorus

Watching your cock bleed from a paper cut,
Fucking a pregnant woman in the butt,
Picking the scabs off of a two-bit slut.
Chorus

Sticking your finger up an old man's ass,
Eating your girlfriend out when she has gas,
Hem'roidal bleeding while you're sitting in class.
Chorus

A sliced off scrotum in formaldehyde,
Syphilitic semen shot in your eye,
Eating the pussy of a girl that's died.
Chorus

Raping the woman from United Way,
A nearby boner on a closet gay,
Eating the afterbirth of Doris Day.
Chorus

A ruptured hymen that was nice and thick,
Licking an asshole 'til you're wretchedly sick,
Malignant tumors on a bloody prick.
Chorus

Two massive mammaries that swing and sag,
Finding out that Walter Cronkite's a fag,
Fucking a dead man 'til you start to gag.
Chorus

A dead ba-by wrapped in a highway map,
Having a bag of shit dropped in your lap,

Doing cunnalingus on a girl with the clap.
Chorus

Being buried in a pile of shit,
A load of semen in your catchers mitt,
A flaming faggot on a mafia hit.
Chorus

A makeshift Trojan of electrical tape,
A girl who fucks you and then cries, "Rape!"
A dozen homos and there's no escape.
Chorus

A man in traction thinking thoughts incarnate,
A rash that spreads at an incredible rate,
Having your cock crushed 'tween two slabs made
of slate.
Chorus

(Christmas related verses)

Ten turds of penguin shit lined up in a row,
A neutered reindeer giving Santa a blow,
A Christmas bowl game in the sand with no snow.

Chorus: These things remind me of Yuletide

A real-life rim-job 'round a wreath made of shit,
A frothing Rudolph in a nicotine fit,
An elfish fuck in an industrial pit.
Chorus

Female effluvium on Santa's sleeve,
The scent of penguin pussy that won't leave,
A flaming airplane wreck on Christmas eve.
Chorus

A sleigh and reindeer wreck on top of a hill,
A Christmas stocking that you'd love to fill,
Finding that Mrs. Claus is on the pill.
Chorus

A fruity elf with an incredible gland,
Salvation Army Santas mugged by the band,
Eight tiny reindeer dead of thirst in the sand.
Chorus

A Round

Tune Frer Jacques

Mother-fucker, mother-fucker,
Eat my shorts, eat my shorts.
How'd you like to blow me?
How'd you like to blow me?
Suck me off, suck me off.

Dildo

Tune: Bingo

There was a man who bit his wong,
And Dildo was his name-o
D-I-L-D-O, D-I-L-D-O, D-I-L-D-O,
And Dildo was his name-o.

Incest

Tune: Row Your Boat

Fuck, fuck, fuck your mom,
Fuck your daddy twice.
Have your sister suck your dick,
Oh, isn't incest nice.

Fellatio

Tune: Harrigan or The Lollypop Song

F-E-double L-A, T-I-O spells fellatio.
Now that you have all heard all about it,
With R-Row around how could we doubt it?
F-E-double L-A, T-I-O you see,
With your lips around my gland,
You'll see quite soon I'm feeling grand,
Fellatio's for me!

Pun-tang

Tune: Oscar Meyer Theme

My Pun-tang has a first name,
It's P-U-S-S-Y.
My Pun-tang has an address,
It's upstairs near her thigh.

Oh, I love to eat it everyday,
And if you ask me why I'll say,
Cause tuna spread tastes OK,
With B-O-L-O-G-N-A.

Ah-Fuck!

Tune: Unknown

Chorus:

Eat, bite, fuck, suck, gobble, nibble, chew,
Nipple, bosom, hair-pie, finger-fuck, screw,
Moose piss, cat pud, orangutan tit,
Sheep pussy, camel crack, pig 'n' lion shit,
Ah-Fuck, Ah-Fuck, Ah-Fuck!

Well, I went to party, and what did they do?
They took off their socks and they took off their shoes.
They took off their shirts and they took off their pants,
I had a hunch that they wasn't gonna dance.

Chorus

Well, everybody, everydodies ass was bare,
No broads left, but a queer over there.
But the whole damn thing didn't phase me a bit.
I jumped on the pile and grabbed me some tit.

Chorus

Well, my baby's not a sports fan,
But she plays with my balls whenever she can.
Because her favorite sport, you see,
Is playing tonsil hockey.

Chorus

Fornication

Tune: Celebration

There's an orgy going on right here.
A fornication that lasts throughout the year.
So bring leather, and your whips and chains.
We gonna fornicate, gonna fuck out your brains.
Come on now...
FOR-NI-CA-TION
Let's all fornicate and have a good time.
FOR-NI-CA-TION
You bring the rubbers and I'll bring the wine.
It's time to come together,
It's up to you, what's your pleasure?
Doggie style or 69, Come on!

Clitoris

Tune: Oscar Meyer Theme

My clitoris has a first name,
It's J-U-I-C-Y!
My clitoris has a second name,
It's P-U-S-S-Y!
Oh, it must be eaten everyday,
And if it's not I masturbate.
So, Eat me, lick me, suck me,
Fuck me, chew me, swallow me, OK!

There's a Skeeter on my Peter

Tune: If You're Happy and You Know It

There's a skeeter on my peter, whack it off.
There's another on my brother's, whack it off.
There's another half-a-dozen just a-buzzin'
round my cousin's.
There's a skeeter on my peter, whack it off.

There's a wimpy on my ass, get him off.
There's a wimpy on my ass, get him off.
I think he's kind of crass, it's because he has no
class.
There's a wimpy on my ass, get him off.

There's a tympani on the field, get it off.
There's a tympani on the field, get it off.
You can blame old Doctor Moore, he thinks
we're going corps.
There's a tympani on the field, get it off.



Scrotum

Tune: Ja-Da

Scrotum, Scrotum,
S-C-R-O-T-U-M (ba-dum-dum-dum)
Scrotum, Scrotum,
It's what you keep your testicles in.
Well it's wrinkled and it's hairy, and it's shaped
like a bag.
If you didn't have one you would be a fag.
Scrotum, Scrotum,
S-C-R-O-T-U-M

Asshole, Asshole,
A-S-S-H-O-L-E (ba-dum-dum-dum)
Asshole, Asshole,
Right behind the place where you pee.
Well, it's round and it's wrinkled and it smells
like shit.
What would you do if you didn't have it?
Asshole, Asshole,
A-S-S-H-O-L-E

Cunt-lips, Cunt-lips,
C-U-N-T-L-I-P-S (ba-dum-dum-dum)
Cunt-lips, Cunt-lips,
Touch them and you'll make her say yes.
Well, they're slimy and they're gooey and they
smell like fish.
Put them on a plate, it makes a tasty dish.
Cunt-lips, Cunt-lips,
C-U-N-T-L-I-P-S.

Boobies, Boobies,
B-O-O-B-I-E-S (ba-dum-dum-dum)
Boobies, Boobies,
They'll entertain you all night long.
Well, they're round and they're smooth and they
have a nip.
They might give you milk if you suck on it.
Boobies, Boobies,
B-O-O-B-I-E-S

Cumblood

Tune: Beer Run
Courtesy: F-Row

C-U-M-B-L-double O-D Cumblood, Cumblood
C-U-M-B-L-double O-D Cumblood, Cumblood
One is red and one is white, put them together
what a delight
C-U-M-B-L-double O-D Cumblood

C-U-M-B-L-double O-D Cumblood, Cumblood
C-U-M-B-L-double O-D Cumblood, Cumblood
One is white and one is red, you get them both
from real bad head
C-U-M-B-L-double O-D Cumblood

C-U-M-B-L-double O-D Cumblood, Cumblood
C-U-M-B-L-double O-D Cumblood, Cumblood
One is thin and one is thick, and they both come
out of your dick
C-U-M-B-L-double O-D Cumblood

C-U-M-B-L-double O-D Cumblood, Cumblood
C-U-M-B-L-double O-D Cumblood, Cumblood
One gets you pregnant, they both give you
AIDS, mix 'em together in so many ways
C-U-M-B-L-double O-D Cumblood

C-U-M-B-L-double O-D Cumblood, Cumblood
C-U-M-B-L-double O-D Cumblood, Cumblood
Cut your hand and masturbate, your hand really
hurts but your dick feels great
C-U-M-B-L-double O-D Cumblood

Tag ending (slower):

If you're sitting in your room, and you're
dreamin'
Of period blood and pure white semen
C-U-M-B-L-double O-D Cumblood

On the Floor Again

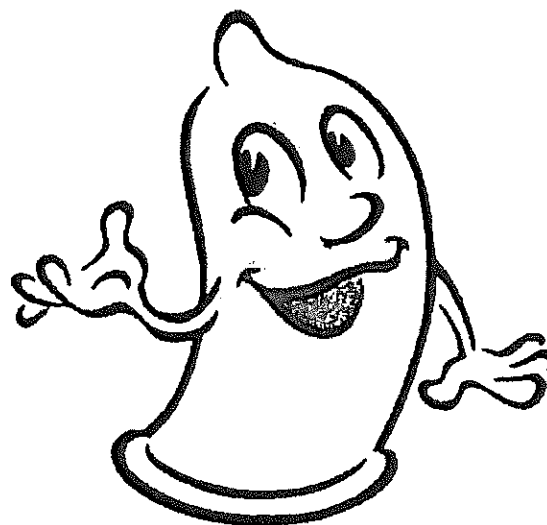
Tune: On the Road Again

On the floor again,
My fucking wife is on the floor again,
Her ass has worn the floor boards right down to
the tacks,
She's been on more floors than Goddamn
Johnson's Wax.

In her pants again,
I just can't wait to get in her pants again,
I just can't wait to get down and munch between
her thighs,
I just can't wait to hear all those moans and
sighs.

In her mouth again,
She's got lockjaw but between her teeth is my
favorite place.
And in the end, there's a sticky river flowin' on
her piller case, That bitch moved her face.

On the rag again,
My little girl is on the rag again,
And it don't matter much to me how long it's
been,
When she's on the rag, I'm on the road again.



B-Row Rookie (2005-2006) Song
[Sing along to "We're an American Band"
and "Taking Care of Business"]

Jizz in your mouth
Come on and gargle it up
Suck my cock, lick my balls
Come on, take it in the ass.

Showtunes...went...to...easy street and
Liz...was...standing...on the corner
And then they went back to Liz's place
(Liz's place, oooooooooo)
And then they had lots of wild sex
(Lots of wild sex, seeexxx)

She, She, She, She
Took, Took, Took, Took
His, His, His, His, Cock-and-balls
And put, put, put, put
It in, in, in, in
Her, Her, Her, Her...

[Build a B Major Chord]
Vagina, Vagina, Vagina, Vagina

Jizz in your mouth
Come on and gargle it up
Suck my cock, lick my balls
Come on, take it in the ass....Snowball

Zak woke up in the morning
To the alarm clock's warning
His penis was still fuckin' bleeding
So he rolls right out of bed
And gives himself a check
Last night he took a big, bad beating

'Cause he's taking care of business
(On the field)
Taking care of business
Zak sucks at life
Yes, he's taking care of business
(On the field)
Taking care of business
Zak's a piece of shit, word out...

Balls to Your Partner

Chorus

5

15

Solo

Musical score for 'Balls to Your Partner' in G major, 4/4 time. The score consists of three staves. The first staff is labeled 'Chorus' and contains measures 1-4. The second staff is labeled '5' and contains measures 5-8. The third staff is labeled '15' and contains measures 15-18, with the word 'Solo' written above it.

Monster Wheel

Chorus

7

2nd Verse

14

Chorus

21

2nd Verse

28

2nd Verse

Musical score for 'Monster Wheel' in G major, 4/4 time. The score consists of six staves. The first staff is labeled 'Chorus' and contains measures 1-6. The second staff is labeled '7' and contains measures 7-13, with '2nd Verse' written above. The third staff is labeled '14' and contains measures 14-20, with 'Chorus' written above. The fourth staff is labeled '21' and contains measures 21-27, with '2nd Verse' written above. The fifth staff is labeled '28' and contains measures 28-34, with '2nd Verse' written above. The sixth staff is labeled '28' and contains measures 35-41, with '2nd Verse' written above.

Was it you? (My daughter Rebecca)



Exhibit C



School Songs

| | | | |
|---------------------------------------|----|----------------------------------|-------|
| <u>OSU Songs</u> | | | |
| Across the Field, | 3 | Iowa Fight Song | 8 |
| Beautiful Ohio | 4 | Iowa Fight Song | 9 |
| Buckeye Battle Cry | 3 | Jed Clampett | 22 |
| Carmen Ohio | 3 | Kotex Factory | 28 |
| I Wanna Go Back | 4 | Last Night | 17 |
| Round on the Ends | 4 | Le Regiment | 5 |
| | | Let Me Fuck Your Mother | 19 |
| | | Let's Talk Dirty to the Animals | 21 |
| <u>The Rest of the Shit</u> | | Lips of Wonder | 12 |
| A Round | 36 | Maria | 17 |
| Ah-Fuck! | 36 | Masturbation | 31 |
| Ahhsome Band | 12 | Michigan State Fight Song | 7 |
| All my Semen | 16 | Minnesota Fight Song | 9 |
| Asshole | 33 | Monster Wheel | 31 |
| Balls to Your Partner | 28 | Moo Purdue | 8 |
| Barnacle Bill | 32 | My Daughter Rebecca | 21 |
| Beer Poem | 30 | My Favorite Things | 17 |
| Big Spreader | 34 | My Grandfather's Cock | 32 |
| Billy Jean | 22 | Northwestern Fight Song | 8 |
| Black on the Ends | 5 | Notre Dame Fight Song | 9 |
| Brassiere | 20 | O Horny Night | 13 |
| Brigham Young University Fight Song | 11 | Ohio University | 10-11 |
| Bring Back My Boner | 20 | On the Floor Again | 38 |
| Bye-bye Cherry | 19 | Over the River and Through | 14 |
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| Bye-bye Woody | 19 | Penn State Fight Song | 7-8 |
| Carmen Jack | 5 | Pieces of Baritone Shit | 32 |
| Carwile Sucks Raw Dick | 31 | Proud to be a Homosexual | 27 |
| Chestnuts | 12 | Pubic Hairs | 21 |
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| Clitoris | 37 | Pun-tang | 36 |
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| Come Blow Us Michigan | 7 | Roll Out Your Mother | 30 |
| Crash and Burn | 21 | Scrotum | 37 |
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| Cumin Ohio | 5 | Shepherd Boy | 23 |
| Cunnalingus | 19 | Silent Night | 15 |
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| Doctor Woods March | 18 | Stroking Off in Silence | 16 |
| Don't Wanna Go Back to the Citrus Bow | 16 | Ten Tons of Titty | 35 |
| Dos a Beer | 31 | Texas A&M Fight Song | 10 |
| Drink Beer Chant | 31 | Texas Fight | 11 |
| Eat Bite | 30 | The Bobbit Hillbillies | 23 |
| Eternal Bother | 26 | The Cabalero Song | 25 |
| Fellatio | 36 | The Hitler Song | 32 |
| Fornication | 36 | The Impossible Cream | 22 |
| Fuck Crockett | 19 | The Restroom Door Said Gentlemen | 15 |
| Fuck you Jack | 6 | Theme Song for Bitter Bandsmen | 5 |
| Gangbang | 29 | There's a Skeeter on My Peter | 37 |
| Hail to Those Mother-Fuckers | 7 | Tribute to Old S-Row | 34 |
| He's a Sweet Gay Fag | 26 | Twat Valley | 20 |
| Herpes Family | 17 | Twelve Days of Christmas | 12 |
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| Holly Jolly Hoe-Bag | 13 | USC Fight Song | 10 |
| I am Pussy | 25 | Vagina in the Morning | 25 |
| I Wanna Go Back to the Student Staff | 6 | We're Off to See the Wimpy | 20 |
| I'm Dreaming of | 14 | Whack My Balls | 12 |
| Incest | 36 | Whip It Out at the Ballgame | 31 |
| It's Beginning to Look A Lot Like | 14 | Wisconsin Fight Song | 9 |
| It's the Most Wonderful Time | 15 | Yank My Doodle | 26 |
| It's USC | 10 | Yesterday | 16 |
| Illinois Fight Song | 8 | You Slut, You Whore | 24 |
| Indiana Fight Song | 8 | | |

Preface

The history of this publication goes back further than any of us will remember. Not quite back to the Stone Age but I am sure it is almost as old as the OSUMB itself. Throughout the history of this book, it has been called many different things, ranging from Band Bible, Song Publication, and even The Unofficial OSUMB Handbook. The songs in this "item that does not exist" have been passed down from generation to generation during I-dots, bus trips, Beer Busts, and the occasional bored sober free time.

This reincarnation of the song book is an effort to reconcile any differences between various rows' versions. While compiling this version, much detail was given to preserve old favorites while introducing new songs, or some just forgotten. This book must continue to grow and change, as does the OSUMB. So, come up with new stuff, modify old stuff and most importantly – Take the dick out of your mouth and sing!!

Represented in the 2006 version of the book are songs from many different versions of the publication. Many hours were spent digitizing this version of the book but it would not have been possible without those who provided their song books and other previously unpublished material. If you contributed new material, congratulations, you are the sickest of us all. Finally, remember to take care of this book. Take it with you on trips and to parties. Plus, it's just fun reading material. But never leave this out of your sight. This book is for OSUMB members only; Past and Present. If they were not out on the field in from of 105,000 crazy fans in black (OK, navy blue) wool uniforms, they do not deserve to see this. Now go forth into the world and become a sick bastard like the rest of us.



P.S. – Some of these may be offensive to you. If so, you can either ignore them, or you can suck it up, act like you got a pair and have a good time singing them. Remember everything in this book was written in good fun. So pull your head out of your ass and sing.

Previous Editions

| | |
|---|------|
| Complied by [redacted] and [redacted] | 1979 |
| Revised and re-edited by [redacted] | 1982 |
| Addendum by [redacted] | 1985 |
| New Shit compiled by [redacted] | 1987 |
| Renovations by [redacted] | 1990 |
| Recycled by [redacted] | 1992 |
| Even More Shit compiled by [redacted] | 1996 |
| Final 20 th Century Edition by [redacted] and [redacted] | 1999 |
| It's Not Annoying, Its Funny Edition by [redacted] | 2005 |
| Renewing the Tradition compiled by [redacted] | 2006 |

Across the Field

William A. Dougherty, who graduated from Ohio State in 1917 and received his law degree here in 1920, wrote "Across the Field" while he was a student at the university. As a student manager for the football team and a piano student, he started tinkering with a tune that he thought might capture the spirit of a football game. Dougherty wanted his song to be within one octave so it would be easier for everyone to sing, and he wanted it to be short enough that it could be played during a timeout on the field. It took him almost three years to write the song. It was first performed at the Illinois Game in 1915.

Fight the Team across the field;
Show them Ohio's here.
Set the earth reverberating with a mighty cheer
Rah! Rah! Rah!
Hit them hard and see how they fall;
Never let that team get the ball.
Hail! Hail! The gang's all here,
So let's win that old conference now.

Buckeye Battle Cry

The "Buckeye Battle Cry", written in 1919 by Frank Crumit, has been used since the early 1920's by the OSUMB to conclude its famous ramp entrance to Ohio Stadium.

In old Ohio there's a team,
That's known throughout the land;
Eleven warriors brave and bold,
Whose fame will ever stand,
And when the ball goes over,
Our cheers will reach the sky,
Ohio Field will hear again
The Buckeye Battle Cry.

Drive! Drive on down the field,
Men of the scarlet and gray;
Don't let them through that line,
We have to win this game today,
Come on, Ohio!
Smash through to victory,
We cheer you as you go;
Our honor defend,
We will fight to the end for O-HI-O!

Carmen Ohio

*"Carmen Ohio", Ohio State's alma mater, was born in sadness during one of the football team's darkest hours. In 1902, Fred A. Cornell, Class of 1906 and a member of the team, scribbled the words on the back of an envelope as he returned by train to Columbus from Ann Arbor. The Buckeyes had just suffered their worst defeat at the hands of M*ch*g*n, losing 86-0. He wrote the words to the music known as the "Spanish Chant". "Carmen Ohio" was first performed by the Glee Club in 1903, but did not become popular until the words were published in the Lantern for the football rally before the M*ch*g*n game of 1906. It was recognized as the alma mater in 1916. There are three stanzas in the copyrighted version, though generally only the first is sung. The word "Carmen" is Latin for "song".*

Oh come let's sing Ohio's praise,
And songs to Alma Mater raise;
While our hearts rebounding thrill,
With joy which death alone can still.
Summer's heat or winter's cold,
The seasons pass, the years will roll;
Time and change will surely show
How firm thy friendship...O-HI-O!

These jolly days of priceless worth,
By far the gladdest days of earth,
Soon will pass and we not know
How dearly we love Ohio.
We should strive to keep they name
Of fair repute and spotless fame;
So, in college halls we'll grow
To love thee better...O-HI-O!

Though age may dim our mem'ry's store,
We'll think of happy days of yore,
True to friend and frank to foe,
As sturdy sons of Ohio.
In seas of care we roll,
'Neath blackened sky, o'er barren shoal,
Thoughts of thee bid darkness go,
Dear Alma Mater...O-HI-O!

I Wanna Go Back

I wanna go back to Ohio State,
To old Columbus town.
To the stadium to hear the band,
By far the finest in the land.
I wanna go back to Ohio State,
To old Columbus town.
I wanna go back, I gotta go back,
To O-HI-O!

Ohio! Ohio!
The hills send back their cry...O-H!
We're here to do or die! I-O!
Ohio! Ohio!
We'll win the game or know the reason why.

And when we win the game,
We'll buy a keg of booze!
And we'll drink to old Ohio
'til we wobble in our shoes.
Ohio! Ohio!
We'll win the game or know the reason why.
Ohio.

Round on the Ends

It's round on the ends and high in the middle
Tell me if you know.
Don't you think that's a cute little riddle,
Round on the ends and high in the middle?
You can find it on the map if you look high
and low.
The O's are round; it's HI in the middle!
O-H-I-O!
That's the riddle.
Round on the ends and high in the middle.
O-HI-O!

Beautiful Ohio

Drifting with the current down a moonlit
stream,
While above the heavens in their glory gleam.
(And the stars on high—Twinkle in the sky)
Seeming in a Paradise of love divine
Dreaming of a pair of eyes that looked like in
mine.
Beautiful O-hi-o, in dreams again I see,
Visions of what used to be.

Not Your Usual Ohio State Songs

Le Regiment

Tune: Take a guess

Le Regiment is full of homos.
They are the guys to whom you would say no.
They're always striking silly poses.
They're always dropping to their knees to blow

Le Regiment (CHOMP! CHOMP! CHOMP!)

Eat me, lick me, fuck me, suck me dry,
You use your lips so well,
You're such a guy. Oh,
Beat me up and tie me to a tree.
Oh Bruce, I love it when you're mean to me.
Domination, Bondage, and Savagery,
Are things they learned back in gay Pareae.
They use them on the guys in the band,
The Best Band In The Land----

Onward and deeper in delight.
With teeth that shine with brilliance more than
Dwight's.
But choking doesn't bother them in spite,
'Cause they'll be dropping to their knees tonight

So bite, bite my ass,
Oh bite, bite my ass,
Oh bite, bite my ass,
'Cause they'll be dropping to their knees tonight

Black on the Ends

Tune: Round on the Ends

It's black on the ends and pink in the middle.
Tell me if you know.
Don't you think it's a cute little riddle?
Black on the ends and pink in the middle.
You can find it on her bod' if you look high and
low.

The ends are black, there's pink in the middle.
C-U-N-T that's the riddle.
Black on the ends and pink in the middle.
O-Cunt-Hole

Cummin' Ohio

Tune: Carmen Ohio

Oh come and spread your legs, my dear.
The time to bust your hymen's near.
As we gaily jumped in bed,
You sprang too fast and broke my head.
Asses rise and balls go "SMACK!"
Now listen to your pelvis "CRACK!"
As you scream and moan for more,
You'll always be my fav'rite whore.

Theme Song for Bitter Bandmen

Tune: Carmen Ohio

Courtesy of [REDACTED]

There once was a band that wasn't lame.
The OSUMB was its name.
Now we're the lamest band in the land.
We just want to sit and spank our glands.
Some people say that the band has changed,
Well fuck you all; I'm still the same.
I'd give my balls to have the old band back.
So eat my shit and lick my sack!

Carmen Jack

Tune: Carmen Ohio

Courtesy of F-Row

Chimes:

F, U, C, K, J, A, C, K.

F, U, C, K, J, A, C, K.

Fuck Jack, Fuck Jack, Fuck Jack.

There was a grad-ass whose name was Jack.
To get his job he licked Woods' Crack.
Doerksen helped us buy gray slacks.
But only Assholes make reservations at Rax.
There's too much talking in this room.
I cannot think or even tune.
We'd give our nuts to have Brad back.
So eat my shit and....
Fuck You Jack!

I Wanna Go Back to Student Staff

Tune: I Wanna Go Back
Courtesy of F-Row

I wanna go back to student staff,
To the front of the fucking bus.
We really like to ride with them,
Because we know they'll never cuss.
I wanna go back to student staff,
To the front of the fucking bus,
I wanna go band, I gotta go back,
To Student Staff.

Chorus: Bus one, Bus one,
We're always getting ripped,
We cannot march a script.
Bus one, Bus one,
Tried trombone but got our asses kicked

And when the trip is through,
We'll have a hand of goo.
'Cause we'll stroke our little needle dicks,
Until they're back and blue.

Chorus

Fuck You Jack

Tune: Buckeye Battle Cry

In Old Ohio there's an ass,
That's known throughout the land.
He sniff his fingers and his best friend,
Is his right hand.
And when he wants to get laid,
He simply masturbates.
'Cause he could never fuck a girl,
Unless she's underage.

Fuck, fuck, fuck you Jack,
You tin shit eating troll.
You'll never have a band,
That is under your control.
(Fuck You Jack!)

You are a piece of shit,
When you're dead we'll all be glad.
Cause we know that you suck,
And you'll never conduct,
Like good ole Brad
(You finger sniffing Bastard)

Don't Wanna Go Back to the
Citrus Bowl

Tune: I Wanna Go Back
Courtesy of H & M-Row

Don't wanna go back to the Citrus Bowl,
For the third consecutive year.
To the Sheraton, the pink hotel,
Our rooms aren't ready, we're bored as hell.
Don't wanna go back to the Citrus Bowl.
To march in secret parades.
Don't wanna go back, I gotta go back,
To Or-lan-do.
Orlando, Orlando.
We're second in the Big Ten.
I guess we'll go again.
Orlando, Orlando
We'll go back even if we finish first.
We'll go to 7-11
And buy a case of beer.
And we'll drink to old Ohio
'Til we forget that we are here.
Orlando, Orlando.
No roses for us, we will be back again.
Or-lan-do

College Football Favorites

Come Blow us M*ch*g*n!

Tune: Buckeye Battle Cry

Come blow us M*ch*g*n,
Our cocks are waiting for you.
Come blow us M*ch*g*an,
It's such a lovely thing to do.

Suck! Suck! Suck!

Come blow us M*ch*g*an,
'Till your mouth's full of goo,
If you stroke on our gland,
We will come in your hand.

So hey, Fuck You!

(You dirty motherfuckers!)

(Repeat chorus)

Hail to Those Mother-Fuckers

Tune: The Victors

Hail to those mother-fuckers.
Hail to those big cock-suckers.
Hail! Hail! To M*ch*g*an!
The cesspool of the World!

Hail to those masturbators.
Hail to those fornicators.
Hail! Hail! To M*ch*g*an!
The cesspool of the World!

(Repeat, and make up your own foul verses!)



M.S.U. Fight Song

Tune: M.S.U. Fight Song

Green and White a shitty sight.
It's time to play the Spartans.
They shave their legs those dirty fags
They love to molest little children.
Fags are prancing in East Lansing.
Oh, what a bunch of queers.
So, Fuck You, M.S.U.!
Here's a cock right up your rear.

Maize and Blue is shitty too.
All wolverines are queers bait.
They love to fuck their moms and dads,
They corn-hole all their defense coaches.
All the barbers in Ann Arbor
Give more than just a trim.
So Fuck You, Maize and Blue.
The Bucks'll show you queers don't win.

Penn State Fight Song

Tune: Fight on State
Courtesy of X-Row

Penn State the virgins
Of the Big Ten.
We'll bust your hymen,
And cum in your rear-end.
Cock-Suck-ers from Happy Valley,
Go down on me!
As POP goes your cherry,
We'll watch your pussy bleed.

Oh Nittany Lions,
Get down on all fours!
Bark like you want it,
You little fucking whores!
Arf, Arf, Arf!!
Oh masturbation,
I won't need you tonight,
'Cause when you see my schlong,
You won't put up a fight.

Penn State Fight Song

Courtesy of B-Row

Nittany Lions,
Go down on me,
Swallow my big twig,
And then lick my berries,

You know that Lions are pussies,
Fags wear white and blue,
Here come the Bucks to,
Beat the shit out of you.

Penn State Fight Song

Courtesy of [REDACTED]

Oh Nittany Lions,
We know what you need.
The Bucks are coming to town,
They'll make your pussy bleed.

Your coach is ancient,
We're surprised that he's not dead.
But from what we have heard,
He can still give good head.

Indiana Fight Song

Tune: Indiana, Our Indiana

Indiana, Suck my banana.
Indiana, Oh suck me off.
Indiana, Suck my banana.
And when you swallow, don't choke and cough.
Indiana, Suck my banana.
Indiana, You do it well.
What's a Hoosier? A FUCKING LOSER!
Oh, Indiana just go to Hell.

Purdue Fight Song

Tune: Hail Purdue

Fuck off to old Purdue,
The fags in the old gold and black.
Four hundred shuffling geeks,
For butt-buddies you'll never lack.
Dave Leppla, fag from Hell, young people he
loves to,
Between his knees, the Golden Girl goes down
on old Purdue.

Moo Purdue

Tune: Home on the Range

Moo, moo moo Purdue
It's the school any fool can get through.
Where Chimpanzees can get bachelor's degrees,
And the Golden Girl lives in the zoo.

Illinois Fight Song

Tune: Oskee Wow-Wow

What a pleasure, what a joy,
It's time to beat on Illinois.
Orange and Blue, you piece of shit.
You suck so bad, you just should quit.
YOU SHIT!

You know, one thing's rather plain,
They fuck their dogs in ol' Champaigne.
Eat me, lick me, suck me, gobble, nibble, chew!
Illinois suck 'till you're blue!

Northwestern Fight Song

Tune: Go U. Northwestern

Go U. Northwestern.
Get down on your knees.
Take my cock into your mouth and give my
balls a squeeze.
(UH! UH! Uh!)
Ejaculation...we know you love it so.
So get on your knees Northwestern and give my
cock a blow.

Iowa Fight Song

Tune: The Iowa Fight Song

Why don't you chomp, chomp, chomp me, Iowa
Why don't you suck my great big dick.
Why don't you chomp, chomp, chomp me, Iowa
Why don't you give me a big lick.

Why don't you chomp, chomp, chomp me, Iowa
Just give it up; you know you guys are fucking
dead.
Come on and chomp, chomp, chomp me, Iowa
Fall down and give me head.

Iowa Fight Song

Tune: "New" Iowa Fight Song

Courtesy of [REDACTED] & A-Row

I love it when you suck me Iowa,
I love it when you pull my dick.
I love it when you make me discharge,
I love it when you west my wick, MY WICK!
Spit out my big cock and get up off your knees,
And pick the pubic hair out of your frontal teeth,
Cause there's a hundred bandmen waiting,
For you to suck their beef!!!

Wisconsin Fight Song

Tune: On Wisconsin

On Wisconsin, play it louder.
Blast! Blast! Blast! Blast! Blast!
You all march like someone shoved a stick right
up your ass.
Yes, my cock is in your mouth,
So Whatcha gonna do?
Eat my rocks and die Wisconsin.
HEY...FUCK...YOU!

Minnesota Fight Song

Tune: Minnesota Rouser

Minnesota, sit on my face,
Your whole band's a fucking disgrace,
Your whole states' full of nuclear waste.
Rah, Rah, Rah, Rah!
Fuck your ma-ma.
Piss off, old U. of M.

Notre Dame Fight Song

Tune: Notre Dame Victory March

Queers cheer for old Notre Dame,
Play in their band and go to their games.
Pointed ears and panty hose,
A Leprechaun's friends are those he blows.

Years show that all this is true.
They'll suck a cock 'til it's turning blue.
As long as there's some cock to squeeze,
They'll always be down on their knees.

Notre Dame Fight Song

Come blow us Notre Dame pricks,
You bring your mouths and we'll bring our dicks.
While you Irish beat your meat,
We'll fuck the girls across the street.

Hail Mary good Queen of grace,
Come spread your cheeks and sit on our face.
Then we'll moon the Golden Dome,
And zip up and head for home.

Come blow us Notre Dame pricks,
You bring your mouths and we'll bring our dicks.
When we start to blow our rocks,
Then you can lick and suck our cocks.

Hail Mary good Queen of grace,
Lift up your skirt and sit on our face.
Then we'll moon the Golden Dome,
And zip up and head for home.

Notre Dame Fight Song

On our way to old Notre Dame,
Orthopedic parts was the name of the game.
Metal dicks and plastic tits,
If you've got a problem they'll get you fixed.

Here we are at old Notre Dame,
Where priests fuck their students and gain lots of
fame.
Nuns suck the priests dick,
It tastes like shit!!
So don't root for Notre Dame.

Notre Dame Fight Song

Beers, Beers for ol' Notre Dame,
Bring on the whiskey, we want champagne.
Send the freshmen out for beer,
Don't let the sober sophomores near.

We never stumble, we never fall,
We'll sober up on grain alcohol.
And all our loyal faculty,
Lay passed out on the floor.

USC Fight Song

Tune: Fight On

Fall down upon your knees
And shoot your wad for old S.C.
They fight for noble cause.
They want my cock between their jaws.
They blow, USC, blows me, USC, blows me.

It's USC

Tune: 'Til There Was You

There's a band, on the field,
But I never heard them playing.
No, I never heard them at all.
It's USC.

Fairy flutes, faggy suits, bright red panty hose,
Plastic gold boots on their toes,
It's USC.

And there were flag girls,
Skinny, scrawny, and scraggly.
They tell me with social diseases galore.
Those whores.
There's a fag on a horse,
Trademark of USC,
Mounting him from the rear,
It's Traveler III!

Texas A&M Fight Song

Tune: Aggie War Hymn (last strain)

You'll suck forever Texas A&M.
Your father is a lonely cows best friend.
You all are total assholes end to end.
Fall down upon your knees, and
Give me head again.
Give me head again.
Please won't you give me head again.

Texas A&M Fight Song

Tune: Aggie War Hymn
Courtesy of H-Row

I'm glad I'm not from Texas A&M.
I'm Glad I'm not even a part of them.
Because it's just a big ol' military school,
And they're so brain-washed that they think
they're cool.

The Aggies all stand up at the football games,
Because their fat asses won't fit in the seats.
They have weird traditions and those stupid
bonfires.
Just keep that 12th fag away from me.

Ohio University Fight Song

Tune: Stand up and Cheer
Courtesy of H-Row

Stand up and cheer,
She lost her honor at OU.
She only did it once,
And now she has to pay the price for nine more
months.
Stand up and cheer,
For the baby's on the way.
She lost her shape,
Because of rape.
Down here at ol' OU

Ohio University Fight Song

Tune: Stand Up and Cheer

Courtesy of [REDACTED]

Sit down and shut up.
You're a bunch of dancing faggots.
We're Ohio State, and you're Ohio --
Who the fucking hell are you?
(Bend over) Take it up your cornhole,
We're gonna screw you till you cry.
Come suck our dicks,
You bastard hicks,
The little pussies of OU.
Ba ba-da ba-da.

Blast a little louder,
Have you not heard of decrescendo?
This is the Buckeye State,
It isn't here for only you.
We formed the first diamond Ohio.
How does your fight song go again?
To hell you go!
We're O-HI-O!
The Best Damn Band in the Land!

Brigham Young Fight Song

Tune: BYU Fight Song

Courtesy of [REDACTED] and H-Row

Brigham Young was just an old bum,
Who left his folks and move to Utah.
Made his own religion out there,
And made himself its noble grandpa.

Never smoked or drank in his life,
He passed them off as deeds of sinners.
But he loved his wives,
Had 25
And ruled their lives.
But they named a school after him,
That nasty asshole named Brigham Young.

Brigham Young is a Goddamn Queer

Tune: Turkey in the Straw

(Must be sung in one breath)

Do your balls hang low?
Do they wobble to and fro?
Can you tell me now?
'Cause I really wanna know.
Will you go to Hell,
If you drink a beer?
Brigham Young is a Goddamn Queer.

Texas Fight!

Tune: Same

Editor's Note: These are the actual words,
someone *has* to come up with something better
than this crap!

Texas Fight, Texas Fight,
And it's goodbye to A&M.
Texas Fight, Texas Fight,
And we'll put over one more win.
Texas Fight, Texas Fight,
For it's Texas that we love best.
Hail, Hail, The gang's all here,
And it's good-bye to all the rest!

(YELL)
Yea Orange! Yea White!
Yea Longhorns! Fight! Fight! Fight!
Texas Fight! Texas Fight,
Yea Texas Fight!
Texas Fight! Texas Fight,
Yea Texas Fight!

The Eyes of Texas are upon you,
All the livelong day.
The Eyes of Texas are upon you,
You cannot get away.
Texas Fight, Texas Fight,
For it's Texas that we love best.
Hail, Hail, The gang's all here,
And it good-bye to all the rest!

Note: The line, "Hail, Hail, the gang's all here"
is usually replaced with "Give 'em hell, Give 'em
hell, Go Horns Go!"

Holiday Songs

Chestnuts

Tune: The Christmas Song

Chestnuts roasting on an open fire.
Jack frost ripping off your clothes.
Old weird Harold being hung by a choir.
And folks dressed up like fags and moes.
Everybody knows some turkey and some
mistletoe
Help to make the season bright.
Tiny tots with their eyes all aglow
Are dropping Mescaline tonight.

They know that Santa's on his way.
He's bringing lots of little girls for them to
lay
And each mother's child is gonna know
Just how far Rudolph the Reindeer will go.

And so I'm offering this simple phrase
To kids from one to ninety-two.
Although it's been said many times, many
ways,
Merry Christmas, Fuck You!

Ahhsome Band

Tune: Silver Bells

Woods is yelling,
Waters whining,
Mike Stewart looks confused,
And Doc Moore's just standing there
smiling.

Woods is screaming,
Waters crying,
Mike Stewart just left,
And we all know that Doc Moore is dead.

Ahhsome band!
Ahhsome band!
Soon it will be the bowl trip.

Lips of Wonder

Tune: We Three Kings

(insert name) suck my dick.
(insert name) do it quick.
With your lips so warm and light
Oh please suck off my cock tonight, Oh-oh

Lips of wonder, lips so tight,
Lips that give my cock delight.
Your tongue will roll around my pole.
Cum give me a dainty bite.

The Twelve Days of Christmas

Tune: Same

12 Twats a-twitching
11 Lesbians licking
10 Testes Throbbing
9 Nipples dripping
8 Assholes gaping
7 Scrotums swinging
6 Sacks of Shit-ta
5 MOTHER-FUCKERS

4 Cock-suckers
3 French ticklers
2 Balls of brass
And a hand job from Jon R. Woods.
(THAT FUCKING TROLL!)

Whack My Balls

Tune: Deck the Halls

Whack my balls and make me jolly,
Fa la la la la la la la.
Fuck the cat and suck the collie,
Fa la la la la la la la.
Sodomy and masturbation,
Fa la la la la la la la.
End it up with copulation.

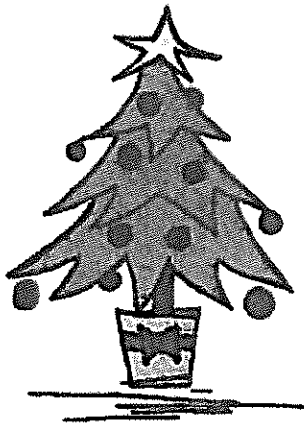
See the throbbing cock before us,
Fa la la la la la la la.
Bite the penis and clitoris,
Fa la la la la la la la.
Fill her up with family treasure,
Fa la la la la la la la.
Fuck your Grandma to a seizure,
Fa la la la la la la la.

O Horny Night

Tune: O Holy Night

O Horny Night, I'm filled with warm
desires;
I'm liquored up and my dick is on fire.
(Dick is on fire, dick is on fire)
O Horny Night, how do I quell this lust?
I need you now or my penis will bust.
(Penis will bust, penis will bust)
I need that stuff that dogs and cats fight
over,
And I won't stop 'till you go down on me.

Fall on your knees. Oh, put it in your
mouth.
Oh, Suck me off, 'tis the night ('tis the
night)
I shoot my wad (Crash Boom)
Oh, night, Oh, night, Oh, night.
O Horny Night.



Holly Jolly Hoe-Bag

Tune: Holly Jolly Christmas

She's a holly jolly hoe-bag,
With her lips wrapped 'round your pole.
I don't know how long she'll blow,
When she gets on a roll.

She's a holly jolly hoe-bag,
Cause when she walks down the street,
She will drop to suck the cock,
Of everyone she meets.

Yo, ho! Her shirt hangs low,
So that you can see,
Her tits are hanging out,
Kiss them once for me.

She's a holly jolly hoe-bag,
With her tongue stuck in your ear,
She will do whatever you say,
If you give her some beer.

Yea, Hey! She takes away,
All her skimpy clothes.
Her hole is so big,
You'd lose a fire-truck hose.

She's a holly jolly hoe-bag,
She'll suck and then swallow.
I don't know just where it goes,
The girl must be hollow.

She's a holly jolly hoe-bag,
You can see it in her eyes.
She can't wait to eat your bait,
And open up your thighs.

Yi, hi! Her skirt's up high,
You can see her crack.
She's never seen the ground,
Cause she's always on her back.

She's a holly jolly hoe-bag,
And in case you didn't hear.
Oh, by golly, you can have this,
Jolly hoe-bag, all year!

It's Beginning to Look
a lot Like Syphilis

Tune: take a guess

It's beginning to look a lot like syphilis,
Every time I come,
Take a look at my swollen head,
For the foreskin is turning red
And my shaft is covered from tip to end
with scum;

It's beginning to look a lot like syphilis,
When to piss I go,
Cause my eyesight's a memory,
And the chancres soon will be
At my own backyard.

Over the River and Through the
Woods

Tune: Same

Over the river and through the woods,
To the whorehouse we will go,
The horse knows the way to carry the sleigh,
Across the drifting snow, oh,
Over the river and through the woods,
Thanksgiving time, yo ho,
A great tradition of marching band,
We started long ago.

Chorus:

We fucked a turkey, licked the bone,
We tell the old lady to stuff her own,
We fucked a turkey, a butterball,
We cum some gravy on 'em all.

Over the river and through the woods,
To grandmother's house we go,
She's deaf and blind and lost her mind,
But she still loves to blow, oh,
Granny's lost nearly all her teeth,
But brother she can gum
In twenty minutes,
She can even make my horsey cum.

(Chorus)

Over the river and through the woods,
Granny's on the sauce,
But some toothless rim is better than quim,
All covered up with moss, oh,
Over the river and through the woods,
And you thought I was sick;
My granny makes stew from menstrual goo,
And stirs it with my dick,
Yes, granny makes stew from menstrual
goo,
And stirs it with my dick.

I'm Dreaming of...

Tune: White Christmas

I'm dreaming of (insert name), just like that
slut I used to know,
With her (instrument name) dipping, her
small mouth sipping,
My love juices in the snow.

I'm dreaming of (insert name), just like I did
her mom last night.
When you give head, learn not to bite,
And may all your fetuses be white.

All the guys dream of (insert name), for all
the tricks her tongue can do.
She makes us drive, a hard 8 to 5,
(first name) we love the way you screw.

I'm dreaming of (insert name), just like her
mom the night before.
She loves it up the back door,
Oh dear daughter don't become a whore

My hand smells like (insert name), just like
the fish I had for lunch.
With her legs spread wide, my willy inside,
Her flesh is what I love to munch.

I got herpes from (insert name), from all the
chancre sores she's got.
You may think it's funny – It's not!
Oh (first name), you make me so hot.

Silent Night

Tune: Same

Silent night, horny night,
I'm so hard. She's so tight.
She must be a virgin and I'm her first guy.
I think I'll pull out and cum right in her eye.
But, my cock is stuck in her crease!
My cock is stuck in her crease.

Silent night, horny night,
My dick quakes at the sight\
Blood is streaming from her little split.
I can't cum cause my balls have just split.
And my cock's still stuck in her crease!
My cock's still stuck in her crease.

Silent night, horny night,
I tried to pull out, with all my might.
Trapped in her pussy, I'll never get far.
What I wouldn't give to have a crowbar.
Somebody call the police.
Somebody call the police!

The Restroom Door Said Gentlemen

Tune: God Rest You Merry Gentlemen


The restroom door said gentlemen,
So I just walked inside.
I took two steps and realized,
I'd been taken for a ride.
I heard high voices, turned and found
The place was occupied,
By two nuns three old ladies and a nurse.
What could be worse?
Than two nuns three old ladies and a nurse.

The restroom door said gentlemen,
It must have been a gag.
As soon as I walked in there,
I ran into some old hag.
She sprayed me with a can of mace,
And smacked me with her bag.
I could tell this just wouldn't be my day,
What could I say?
It just wasn't turning out to be my day.

The restroom door said gentlemen,
And I would like to find,
The crummy little creep
Who had the nerve to switch the sign.
Cause I have two black eyes,
And one high heel up my behind.
Now I can't sit with comfort and joy.
Boy oh boy,
No I'll never sit with comfort and joy.

It's the Most Wonderful Time to Drink Beer

Tune: It's the Most Wonderful Time of the
Year

Courtesy: 

It's the most wonderful time to drink beer.
Only one keg is floating, the others are
holding, so never to fear.
Oh we'll never, ever run out of beer.

Oh how I love Everclear.
190 proof makes you feel so aloof, but
you'll be in good cheer.
I'll probably die from drinking Everclear!

Chorus:

There'll be i-dot attendance,
And kegs thrown for distance,
And caroling out in the road.
There'll be scary rookie stories, and tales of
the glories, sung by alumni who are too
damn old!

Like how I loved my rookie year.
They said "don't make a peep," then they
pulled out the sheep,
but there's nothing to fear.
It was the best damn thing about that year!

(Chorus)

But the worst is when I butt-fucked a steer.
I was really damn drunk, and I passed on the
skunk, and it's been a damn year.
Oh my God, I just butt-fucked,
Oh my God, I just butt-fucked,
Oh my God, I just butt,
Fucked a Steer!

Oldies Songs

All My Semen

Tune: All My Lovin'

Close your eyes, spread your legs, let me
fertilize your eggs.

Remember, I'll always cum true.

And then while I'm away,

I'll beat off every day,

And I'll send all my semen to you.

I'll pretend that I'm pissing on the hips I am
kissing,

And hope that my dreams will cum true.

And then while I'm away I'll beat off every day,

And I'll send all my semen to you.

All my semen I will send to you.

All my semen, darlin' I'll cum true.

Yesterday

Tune: same

Yesterday, Oh my climax was so far away.

Now it seems that it won't cum today.

Oh, I had love in yesterday.

Some man cock's not half the cock it used to
be.

Now she'll just have to go down on me.

Oh, it went limp so suddenly.

Why, can't, I keep it hard I just don't know,

It wouldn't stay. Gee whiz,

We've only fucked off and on since yesterday...

Yesterday, thirteen inches she could have all
day.

Now she'll have to know of this delay.

Oh, I do long for yesterday.

I do long for... yesterday

Stroking off in Silence

Tune: The Sound of Silence

Hello pecker, my old friend.

I've come to play with you again.

Because a wet dream softly creeping,

Left it's seeds while I was sleeping,

And your helmet is firmly planted in my hands,

It will expand- stroking off in silence.

In horny dreams I have a bone.

I beat it on the cobblestone.

Beneath the halo of a street lamp,

I see a whore who's gotten very damp.

When I grabbed her thighs, in a flash she was on
her back.

She spread her crack- she twitched her twat in
silence.

Fool said she, "You do not know.

How to make a pecker grow.

Whip it out that I might beat you,

Spread your legs that I might eat you."

But my sperm like silent raindrops fell.

And turned to gel- I stroked off in silence.

And the ants came out and played,

In the fucking mess I made.

And the sign flashed out it's warning.

Mom will find it in the morning!

So I rolled out of bed and rubbed it up in my
shirt,

God, what a squirt, from stroking off in silence!

Show Tunes

Last Night

Tune: Funiculí, Funiculá

Last night I stayed at home and masturbated.
It felt so good. I knew it would.
Last night I stayed at home and masturbated.
It felt so nice. I did it twice.

Oh you should see my up stroke;
It's really grand. I use my hand.
Oh you should see my down stroke;
It's really neat. I use my feet.

Beat it, bang it, up against the wall.
Squirt it, spurt it, all around the hall.
I beat my meat, I beat my meat!
I beat my meat, I beat my meat!
And I wake up in the morning
With a puddle at my feet.

Herpes Family

Tune: Addams Family

They're gooey and they're itchy,
They make your girlfriend bitchy.
They hide right in her snitchy.
The Herpes Family.

You can hardly see 'em,
But when you start a peein',
They'll really start you screamin',
The Herpes Family.

My Favorite Things

Tune: Same

Dildos and ticklers and rods of all sizes,
Gashes and butt cheeks all make me delighted.
Orgies and fuck-fests –
What pleasures they bring.
These are a few of my favorite things.

Trojans and tampons and sponges and douches,
Hard dicks and big tits and small furry pooches.
Cum in my mouth and good head that's got zing.
These are a few of my favorite things.

Broken hymen, open cankers, and bloody
discharge.
I simply remember my favorite things,
And then I don't feel soooooo bad.

Daisy

Tune: Same

Daisy, Daisy, give me a piece or two.
I'm half crazy, wanting to get in you.
Please don't think that I'm a flubber.
I can't afford a rubber.
On a waterbed built for two.

Maria

Tune: Same

Maria, I just fucked a whore named Maria.
Her face is one big zit,
And she only has one tit, I know.
Maria, I just fucked a whore named Maria.
And suddenly I know, how syphilis can grown
in me. Maria...

Hi Ho

Tune: Same

Hi ho, hi ho, it's off to bed we go,
 I paid 2 bits to see your tits, hi ho, hi ho, hi ho,
 Hi ho, hi ho it's off to bed we go,
 Get in that sack and spread your crack, hi ho, hi
 ho, hi ho,
 Hi ho, hi ho, it's off to bed we go,
 Just squeeze your cunt and make me grunt, hi
 ho, hi ho, hi ho,
 Hi ho, hi ho, it's up your butt I go,
 Please wash your butt you fucking slut, hi ho, hi
 ho, hi ho,
 Hi ho, hi ho, it's time for you to blow,
 Please get me hard you tub of lard, hi ho, hi ho,
 hi ho,
 Hi ho, hi ho, into your bush I'll blow,
 I'll make you splash inside your gash, hi ho, hi
 ho, hi ho,
 Hi ho, hi ho, you're humping me too slow,
 I'm going limp you fucking blimp, hi ho, hi ho,
 Please give me head my dick is dead, hi ho, hi
 ho.

Dr. Woods March

Tune: Mickey Mouse March

Who's the leader of the band
 That's made for you and me?
 D-O-C T-O-R W-OO-DS
 Doctor Woods (Jon Waters)
 Doctor Woods (Jon Waters)
 For ever we will hold your ladder high! High!
 Ohio!

Come along and play a song and join my band-
 o-ree!
 D-O-C T-O-R W-OO-DS!

Puff the Magic Tampon

Tune: Puff the Magic Dragon

Courtesy of [REDACTED] E-Row

Puff the magic tampon, lived between her knees,
 And frolicked in that awful mess, in the land of
 yeast and cheese.

Puff the magic tampon, when he first took the
 plunge,
 He made a splash inside her gash and swelled up
 like a sponge.

Now little Jackie's pecker loved that rascal Puff.
 He'd fuck till his little head got red, he couldn't
 get enough.

They'd screw and screw for hours and just as
 they were through,
 Little Jackie'd reach his climax and he'd fill
 Puff with his goo!

Puff the magic tampon, lived between her knees,
 And frolicked in that awful mess, in the land of
 yeast and cheese.

Puff the magic tampon; well he just had a blast.
 And when Jackie wasn't stuffin' Puff, he was up
 that bitch's ass.

Tampons aren't eternal and though I must be
 blunt,

It's clear to me that someday soon, he'd leave
 that nasty cunt.

So then it finally happened, poor Puff sprang a
 leak.

But don't complain, you sleazy bitch, you've
 been wearing him a week.

Puff the magic tampon, lived between her knees,
 And frolicked in that awful mess, in the land of
 yeast and cheese.

Puff the magic tampon was thrown in the
 garbage can.

He got recycled and now he's in Kellogg's
 Raisin Bran.

Let Me Fuck Your Mother

Tune: Let Me Call You Sweetheart

Let me fuck your mother,
Let me suck her tits.
Let me run my tongue
Along her throbbing clit.

Sucking on my penis
She is so much fun.
Let me fuck your mother,
Like you've always done.

Let me lick your vulva,
I'm in love with you.
Let me eat your pussy,
Like I used to do.

A tongue in the vagina,
Is much better than a screw.
Let me lick your vulva,
I'm in love with you.

Fuck Crockett

Tune: Let Me Call You Sweetheart
Courtesy of F-Row

Hey Crockett where are my pictures,
I already paid you.
Hey Crockett where are my enlargements,
That you promised me too.

I've put up with all your Bull Shit,
And your stupid kids too.
Hey Crockett, give me my pictures,
Before I come kill you.

Bye-Bye Cherry

Tune: Bye-Bye Blackbird

Back your ass against the wall.
Here I come, balts and all.
Bye-bye cherry.
Won't your mother be disgusted,
When she finds your hymen busted?
Bye-bye cherry
Wrap your legs around a little tighter.
I can feel my load is getting tighter.
So shake your ass and wiggle your tits.
'til my pecker splits.
Cherry, Bye-bye.

Bye-Bye Woody

Tune: Bye-Bye Blackbird

Now you've done it you old goat.
Punched that guy right in the throat.
Bye-bye Woody
Now you did it, you got fired.
You dumb shit you could've retired.
Bye-bye Woody.
Now we'll get to go to Pasadena.
Pastures are beginning to look greener.
So goodbye Woody, Now you're through.
It's been swell but.... Fuck You!
Woody, Bye-Bye.

Bye-Bye Earle

Tune: Bye-Bye Blackbird

I read in the paper, and guess what?
They just fired "Jupiter butt."
Bye-Bye Earle.
Jennings did it, what a gas.
Kicked ol' Earle out on his ass.
Bye-bye Earle.
No we'll have no more 9 and 3 seasons.
Y'know there weren't really any reasons.
But, bye-bye Earle, it's kind of sick,
Now our head coach is some dumb hick.
Earle, Bye-Bye.

Cunnalingus

Tune: Oklahoma

Cunnalingus ever night my honey lamb and I,
Sit at home and lick a perfect slit.
While the pubic hairs are rising high.
Cunnalingus spread your legs and sit down on
my face.
With your knees spread wide, my tongue inside,
and a stench that equalizes mace.
With my teeth I pick off all the scabs.
And into my nose jumps the crabs.
And then the smell....Wooooooh!
The pud begins to swell....Woooooh!
You know she's cuming. You're doing fine
cunnalingus.
Cunnalingus. Eat Out!

Sit on my Face

Tune: Swing On A Star

Chorus:

Oh, how'd you like to sit on my face?
It's a very comfortable place.
Just put your hole right over my nose,
Or would you rather...

....suck my hose?

A hose is an animal that lives in my pants.
It stands up and does a little dance.
His neck is brawny but his head is weak.
So pull down my zipper and take a peek.
Or if you'd rather, for a nickel or a dime,
You can blow me anytime.

Chorus

....eat my balls?

A ball is an animal that lives in a bag.
When its hot out he really tends to sag.
His face is wrinkled and he has lots of hair.
So look in that zipper and peek if you dare.
Or if you'd rather, for a nickel or a dime,
You can blow me anytime.

Oh, how'd you like to sit on my face?
It's a very comfortable place.
Just put your hole right over my nose...then
You'll be much better than you are.
So let's just go out to my car.

Brassiere

Tune: Brazil

Obligato:

Suck those tits, bite the nipples off.

Brassiere, you hold those things we hold so dear.
So round and big and full of cheer.
I wish I had a big pair here, brassiere, brassiere,
brassiere.

Woodsy, we doubt your masculinity.
And though your cock's shaped like a "T"
We've heard that it's so very wee Woodsy,
Woodsy, Woodsy.

Kotex, one smell would stop Tyrannosaurus
Rex.
If not for that old monthly hex,
We could enjoy unlimited sex, Kotex, Kotex,
Kotex.

We're Off to See the Wimpy

Tune: We're off to see the Wizard

We're off to see the Wimpy,
The Wonderful Wimpy that's odd.
We hear the slide trombone is back,
Oh, Droste's a stupid clod.
If ever, oh ever a wimp there was,
The Wimpy is one because, because,
Because, because, because, because...
Because of the wimpy things he does.
We're off to see the Wimpy.
The Wonderful Wimpy that's odd.

Bring Back My Boner

Tune: Bring Back My Bonnie to Me

My boner once spouted with stroking,
My boner once drove between thighs,
My boner was sucked like a cream pop,
But now my poor boner won't rise.

Chorus

Bring back, bring back,
Oh, bring back my boner to me, to me!
Bring back, bring back,
Oh, bring back my boner to me!

My boner was not very particular,
My boner likes both left and right,
But now my poor boner likes nothing,
And leaves me alone for the night.

Chorus

Twat Valley

Tune: Sweet Betsy From Pike

Twat down in the valley where red rivers flow.
Where maidens did flourish and cock-suckers
grow.
That's where I met Lupe, the girl I adore.
She's a hot-fucking cock-fucking Mexican
whore.

She'll blow you. She'll roll you.
She'll screw you. And then
She'll gnaw on your gnuts
And she'll suck out your guts.
She'll wrap her legs 'round you
And squeeze 'til you die.
But I'd rather eat Lupe than sweet cherry pie.

Let's Talk Dirty to the Animals

Tune: Same

A rooster says "Good Morning"
With a cock-a-doodle-doo. (good morning)
A horse's neigh is just his way of saying,
"How are you?"
A lion growls "Hello" and owls
Ask why and where and who.
May I suggest you get undressed
And show them your wazoo. Oh....

The animals, the animals,
Let's talk dirty to the animals.
Up your's, Mr. Hippo.
Piss off, Mr. Fox.
Go tell a chicken, "Suck my dick" and
Give him chicken pox. Oh....

The animals, the animals,
Let's talk dirty to the animals.
From birds in treetops
To snakes in the grass, but
Never tell an Alligator, "bite my..." No!
Never tell an Alligator, "bite my..." Yes!
Never tell an Alligator, "bite my..." Snatch!

My Daughter Rebecca

Tune: See page 40

Question:
Was it you that did the pushin'?
Left the stains upon the cushion?
Footprints on the dashboard upside down?
Do do do
If it was you, you sly woodpecker
Who got into my daughter Rebecca.
If it was, you better leave this town.

Reply:
Yes, 'twas me who did the pushin'.
Left the stains upon the cushion.
Footprints on the dashboard upside down.
Do do do
But since I got into your daughter
I've had trouble passing water.
So, I guess we're even all around.

Crash and Burn

Tune: Baby Face

Crash and burn
See the marching band crash and burn.
As we bank into that final turn, crash and burn.
Listen to that screaming sound as we plummet to
the ground.
Crash and burn.
See the flaming wreckage fall down from the
sky.
We hear the engines cough and then the wings
fall off.
Oh God we're all gonna...
Oh crash and burn...
Oh God we're all gonna die!

Choke and Puke

Tune: Baby Face

Choke and puke
Oh see the marching band choke and puke.
As we guzzle down that last fry, watch us die.
Listen to those dying gasps as we fall down and
then collapse.
Choke and puke.
Oh see the vomit falling down from the sky.
Then as we get the heaves and we fall to our
knees.
Oh God we're all gonna...
Into the toilet...
Oh God we're all gonna die!

Pubic Hairs

Tune: Baby Face

Pubic hairs.
You've got the cutest little pubic hairs.
Nobody else's hair just could compare to your
pubic hairs.
Nothing ever could be finer than to be in your
vagina.
Pubic hairs.
Oh, I'm in heaven when I'm in your underwear.
I love that touch of lace when you sit on my
face.
With those tender little pubic...
Talk about those pubic...
Love those little pubic hairs!

Billy Jean

Tune: Baby Face

Billy Jean.
We used to think that you wre nice and clean.
But now we find that you are obscene, Billy
Jean.
Strapping on that dildo. Just how far will you
go?
Billy Jean.
Your mother never thought that you would lick
vaginas clean.
You used to flick a dick, now you just lick a tit.
You stupid lessie Billy...
Your leather clothes look silly...
You stupid lessie Billy Jean!

Somewhere Under Your Pubies

Tune: Over the Rainbow

Courtesy of [REDACTED] and R-Row

Somewhere under your pubis,
By your side.
There's a crab that I left there,
Singing a lullaby.

Somewhere under your clitora,
There's an itch.
It's a view of his family,
Picnicking in your snatch.

They skip, they jump, they laugh, they sing.
The crabs run races.
Underneath your pubis.

They crawl, they fight, they drink all night.
They've even got a traffic light,
Inside your asshole.

Somewhere under your pubies,
Crabs do chew.
A bearded clam appetizer,
But mostly they munch on you!

If I get little crabbies,
Bet your fucking ass,
You're gonna get 'em too!!!

Jed Clampett

Tune: Beverly Hillbillies

Let me tell you a story 'bout a man named Jed.
Poor mountaineer always kept his wife in bed.
Then one day he was shootin' at some food,
And up through her cunt came a bubblin' crude.

(Blood, that is..Menstruation..Liquid People)

Well the first thing you know ol' Jed was in her
hair.
Then she said, "Jed stick your cock in there."
She said, "My vagina is the place you ought to
be,"
So he pumped her fifty times and they raised a
family.

The Impossible Cream

Tune: The Impossible Dream

To cream the impossible cream.
To screw the unscrewable whore.
To lay the unlayable virgin.
To fuck where no man's fucked before.
For this is my quest, and I'll never rest.
I'll fuck on forever cause I am the best.
I'll cum in your cunt and I'll cum in your mouth.
I'll cum to the north and I'll cum to the south.
And I know if I'll only be true to this glorious
quest
That my cock will lie peaceful and calm when
I'm laid to rest.
And my dick will be better for this
To strike down pure and chaste from afar.
To find someone there with the courage to fuck
the exhaust of my car.
For this is my quest, and I'll never rest.
I'll fuck on forever cause I am the best.
I'll cum in your cunt, and I'll cum in your
mouth.
To cream the impossible cream!

The Bobbitt Hillbillies

Tune: Beverly Hillbillies

Courtesy of C-Row

Here's a little story of a man named John.
A poor ex-Marine with a little fraction gone.
It seemed one night after gettin' at his wife.
She lopped off his schlong with the swipe of a
knife.

(Penis, that is...Rodeoed...Fillet-foed)

Well, the next thing you know there's a Ginsu
by his side.
And Lorena's in the car taking willie for a ride.
She soon got tired of her purple-headed friend.
And tossed him out the windo as she rounded a
bend.

(Curve, that is...Pricker shrubs... Wheel hubs)

She went to the cops and confessed to the attack.
And they called out the hounds just to get his
weenie back.

They sniffed and they barked. Then they pointed
"over there."

To John Wayne's Henry that was wavin' in the
air.

(Found, that is...By a fence...Evidence)

Now peter and John couldn't stay apart too long.
So a Dick-Doc said, "Hey, I can fix your dong."
A needle and a thread's just the thing you're
gonna need.

Then the world held its breath till they learned
that Johnny peed.

(Whizzed, that is...Stitched Seam...Straight
Stream)

Well he healed and he hardened, and he took his
case to court.

With a cock-eyed lawyer, since his assets came
up short.

They cleared her of assault, and acquitted him of
rape.

And his pecker was the only one they didn't
show on tape.

(Video, that is...Unexposed...Case closed)

Shepherd Boy

Tune: Same

Said the shepherd boy to David Shanks,
Would you like to fuck sheep? (echo)
Think that you can take it David Shanks?

Said David Shanks to the shepherd boy,
Give me half a dozen (echo)

Chorus

A lamb, a lamb, soft with lots of wool.
And now I'll insert my tool.
And now I'll insert my tool. (Shanks sucks)
My tool. (Shanks sucks)

Said the shepherd boy to the Magistrate,
Do you see what I see? (echo)
Some nut in that herd fucking sheep.
Do you see what I see? (echo)

Chorus

Said the Magistrate to the mighty Judge.
You Honor have you heard? (echo)
He's been fucking your herd.

My flock! That cock! I'll send him to the rock.
And although that's too good for you,
We'll see what we can do. (Shanks sucks)
Can do. (Shanks sucks)

Said the executioner to David Shanks,
Have you any last wish? (echo)
Before I cut your cock off, David Shanks.
Have you any last wish? (echo)

Chorus

Under the Sheets

Tune: Under the Sea

The pussy is always pinker,
In somebody else's cunt.
You dream about going in there,
And that would be quite a stunt.
Unless she's a lifelong virgin,
Perhaps you will see the day,
When she'll spread her legs wide for you,
And you'll get a damn good lay.
Under the sheets,
Under the sheets,
Darling it's better,
Down where it's wetter,
Take it from me!
Down in the bush the crabs they play,
And all the sperm they swim away,
If you be lucky,
Then you can fuck me,
Under the sheets!

You Slut, You Whore

Tune: New York, New York
Courtesy of [REDACTED]

Start spreading your legs.
I'm cumming tonight.
I want to be inside of you.
You Fucking Whore.

These empty long necks,
Have lowered your guard.
I'm gonna break right through it,
Your Hymen.

I wanna wake up,
In a bitch that doesn't sleep.
And find I'm on top of her hills,
And king of her heap.

These little town whores,
I've all fucked dry.
I'll make a brand new start of it,
In the Marching Band.

If I can—Do them here,
I'll do them—Anywhere.
It's up to me,
R-Row, Beware.

You Slut, you whore.

When I wake up in the morning from my sleep
I'll roll over and start the day right,
With a dawning delight,
Quick morning lay,
It starts the day off right.

You better be good,
I've paid in advance.
I may not have a 12 inch dick,
But say I'm huge.

If I can--Stick it here,
Turn around bitch cause I'm gonna--stick it
there.
It's up to me,
You Slut, You Whore.

The Cabalero Song

Tune: Same (by [REDACTED])

Oh, I'm a gay cabalero.
I'm going to Rio de Janeiro.
I'm taking with me
My La Trombilee
And both of my La Trombilo-hos.

I'm seeking a fair seniorita.
An exceedingly fair seniorita.
I'll show her the end of
My La Trombilee
And both of my La Trombilo-hos

I've found a fair seniorita.
An exceedingly fair seniorita.
I put in the end of my La Trombilee
And one of my La Trombilo-hos.

Now, damn that fair seniorita.
She game me a dose of claprita.
Right on the end of my La Trombilee
And one of my La Trombilo-hos.

I'm seeking a fair physiestos.
An exceedingly fair physiestos.
I'll show him the end of my La Trombilee
And one of my La Trombilo-hos.

I found a fair physiestos.
He pulled out a sharp stilettos.
He cut off the end of my La Trombilee and one
of my La Trombilo-hos.

Now I'm a sad cabalero.
I'm leaving Rio de Janeiro.
Minus the end of my La Trombilee
And one of my La Trombilo-hos.

Now each night as I lay on my pillow.
I reach down to play with my willow.
But all I find there is a hand full of hair
And one of my La Trombilo-hos.

Vagina in the Morning

Tune: Carolina in the Morning

Nothing could be finer than to be in your vagina
in the morning.
Nothing could be sweeter than to pork you with
my peter in the morning.
If I had a prostitute for only a day,
I'd lay her out and eat her out and here's what I
say, (oh lordy)
Nothing could be finer than to be in your vagina
in the... Morning.

I Am Pussy

Tune: I Am Woman

I am pussy, hear me roar!
My tits are too big to ignore,
And if I don't reach orgasm, I pretend.
Because I've jerked them off before,
I've even banged them on the floor,
But, no one's ever going to dry-hump me again.

Oh, yes, I am wide.
It's the perfect place to hid.
Yes, when I get wet, they say it's like a tide.
But, if I have to, I can fuck anything!
I am stronger; (strong) I am so stretchable;
(stretchable)
I am pussy!

I am pussy, eat me out.
My cunt is turning inside out.
And my labia is frothing at the hole,
And I'll hump you even stronger; not a novice
any longer.
Because you've deepened the construction of
my hole.

Oh, yes, I'm a slut
I'm an Ohio slut,
And if you tongue my twat, I'll let you fuck me
twice.
If I have to, I can fuck anything!
I am stronger; (strong) I am so stretchable; (so
stretchable)
I am Pussy!

PATRIOTIC SONGS

She's a Grand Old Bag

Tune: You're a Grand Old Flag

She's a grand old bag, she's a low-flying hag.
You can tell by the dick in her hand.
On your cock she'll suck 'til she's filled with
muck.
Because she thinks cum is so grand.
Oh, her hands beat you 'til your cock's turning
blue.
With never a cry of a nag.
When all the other girls are shot
We'll all fuck the grand old bag.

Over There

Tune: Same

Over there, over there.
Send a hand on my gland over there.
A yank and I'm cumming, a yank and I'm
cumming.
Two more yanks and I'll be there.
Over there, over there.
Send a hand on my gland over there.
You know we're coming, we're coming over.
And we won't be back 'til we're cumming over
there.

He's a Sweet Gay Fag

Tune: You're a Grand Old Flag

He's a sweet gay fag, he's a purse-toting fag.
You can tell by the lace on his gland.
As he smiles I know, that he's not shy.
He's reamed every guy in the band.
Yes, He'll blow you too, if you're gay or true
blue.
As long as you pay in advance,
With maize and blue, his fav'rite hue,
He's a fucked up old M*ch*g*n fag.

Eternal Bother

Tune: The Navy Hymn

Eternal bother concerts gave,
With four-part singing we did slave;
The "Band-O-Rama," we did weep,
Because no profits we did keep.

The School of Music tells us we,
Are one big happy family.

Yank My Doodle

Tune: Yankee Doodle

Yank my doodle, it's a dandy,
Yank my doodle, it's a joy.
Get a real blow job from your Uncle Sam.
A bang on the Fourth of July.
Screw a yankee doodle sweetheart,
Fuck a yankee doodle whore.
Yank my doodle up and down
And yank my doodle sideways.
I think my doodle's getting sore.

Proud to be a Homosexual

Tune: God Bless the USA

Courtesy of F-Row

If tomorrow the Eagle Bar was gone,
It'd be the worst day of my life.
So I'd have to start again with just my butt-plugs
and Bill, my wife.
I'd thank my lucky stars to be in the band of
today.
Cause the rainbow stands for freedom,
And they can't take that away.

Chorus

And I'm proud to be a homosexual,
Where at least I can run free.
And I won't forget the fags with AIDS,

Who gave that right to me.
And I'll gladly bend over,
and spread my cheeks,
So you may sodomize me.
Cause there ain't no doubt, I love male glands.
God bless the OSUMB.

Harassed in Minnesota,
Thrown out of Tennessee.
Drug behind a truck through Texas,
Oppressed from seat to shining sea.
Then we were exiled to Ohio,
And found a band that would take us.
It's the most P.C. band in the land,
And it's bad in Co-lum-bus.

Chorus

Party Songs

The Kotex Factory

Tune: Caissons Go Rolling Along

You can tell by the smell
That she isn't feeling well,
When the end of the month rolls around.

You can tell by her walk
That tonight you'll only talk,
When the end of the month rolls around.

CHORUS:

For it's "HI-HI-HEE", in the Kotex Factory.
Small, medium, large, or bail of hay.
Well, you're out of luck,
If you're looking for a fuck.
When the end of the month rolls around.

You can tell by her pout
That her eggs are falling out,
When the end of the month rolls around.

You can tell by the stench
That there's blood up in her trench,
When the end of the month rolls around.

CHORUS

Then she sucks on your tube
And gives a real good lube,
When the end of the month rolls around.

Then you reach for her box
'Cause you want to shoot your rocks,
When the end of the month rolls around.
CHORUS

And you take her to bed
But her pussy is all red,
When the end of the month rolls around.

Then she sits on your head
And you wish that you were dead,
When the end of the month rolls around.
CHORUS

But your balls, they still ache
So a chance you now must take,
When the end of the month rolls around.

So she opens her thighs
And you have to shut your eyes,
When the end of the month rolls around.
CHORUS

But your problem's still there
As the blood drips off her hair,
When the end of the month rolls around.

So you get down to the job
As the juice flows off your knob,
When the end of the month rolls around.
CHORUS

With a "HI-HI-HEE"
You shoot so merrily,
Though the end of the month rolls around.

So you suck and bite and eat her
For the good she's done your peter,
When the end of the month rolls around.

Balls to Your Partner

Tune: See page 39

CHORUS:

Balls to your partner,
Ass against the wall.
If you never get laid on Saturday night,
You'll never get laid at all.

The village Smitty, he was there,
His balls were made of brass.
And every time they clanged and banged,,
The sparks flew out his ass, singin'
CHORUS

The village cripple, he was there,
He wasn't up to much.
He lined 'em up against the wall,
And fucked 'em with his crutch, singin'
CHORUS

The village whore, she was there,
Lying on the floor.
And every time she spread her legs,
The vacuum slammed the door, singin'
CHORUS

If you never get laid on a Saturday night,
You'll never get laid at all.

Gangbang

Tune: Billboard

Solo: Knock-Knock

Chorus: Who's there?

Solo: I wanna.

Chorus: I wanna who?

All: I wanna gangbang, I always will.
'Cause the gangbang gives me such a thrill.
When I was younger and in my prime,
I used to gangbang all the time.
But now I'm older and turning gray,
I only gangbang twice a day.

Sheila.

Sheila who?

She loves a gangbang.

Olive.

Olive who?

I love a gangbang.

Tijuana.

Tijuana who?

Tijuana bring your mother to the gangbang?

Gladiator.

Gladiator who?

Gladiator out before the gangbang.

Urine.

Urine who?

Urine for sloppy seconds at the gangbang.

Joe.

Joe who?

Joe mama loves a gangbang.

Jeff.

Jeff who?

Jeffather loves a gangbang.

Charlie Pride.

Charlie Pride who?

Charlie Pride her legs apart at the gangbang.

Emerson.

Emerson who?

Emerson nice tits, Bitch!

Urinate.

Urinate who?

Urinate, but if you had bigger tits you'd be a ten!

Eileen.

Eileen who?

Eileen'd her against the wall and fucked her in the ass.

Eileen.

Eileen who?

Eileen'd her over the oven and ate her cake.

Make your own in the space below!

Eat Bite

By: [REDACTED]

Well, I went to a party and what did they do?
They took off their socks and they took off there shoes,
They took off their coats, and they took off their pants.
I had a hunch, they weren't gonna dance.

(Chorus)

Oh, eat, bite, fuck, suck, gobble, nibble, chew,
Nipple, bosom, hairpie, fingerfuck, screw,
moose-piss, cat-pud, orangutan-tit,
sheep-pussy, camel-crack, pig and lion shit.

Awww-shit.

Well, everybody-everybody's ass was bare,
No broads left, just a queer over there,
But the whole damn thing didn't faze me a bit.
I just jumped on the pile, and grabbed some tit.

Chorus again and again; faster and faster (et cetera).

Well, my baby's not a sports fan,
But she plays with balls
Whenever she can,
Because her favorite sport you see,
Is playing tonsil hockey

Beer Poem

By: [REDACTED]

The ice house was rocking cause the shitliz was all there guys were popping silver bullets there was bush in the air while Labats blew a Canadian Jenny creamed up tot Dave southern comfort to Samuel Adams while Molson licked her golden spot Papst put up and Blue Ribbon and said we will have a competition to see which lady's Honey Brown was truly fuckin' bitching Killion's Red the results Mrs. Miller won we laughed but when she spread her legs we felt a Genuine Draft the orgy's that followed was a real Wild Turkey I was Smirnoff the juice with my little beef jerky Johnny Walker blacked out and woke up to find Pete's wicked Mooshead shoved up his behind, Foster's had a Spanish bitch but when he went to eat em he found her way to salty her name was Margarita St. Pauly's Girl was on the floor her stats filled to the rim Bud yelled out if her tot cant hold it I bet her

Hieny can and next to her lay Old Milwaukee his face down in some piss gargling like a pig it just doesn't get any better then this so when your wild little wide mouth and your brewing needs some head have a Amstel Light the side that hangs above my bed lick her in the rear SUCK MY FUCKING DICK BITCH AND SPIT IT IN MY BEER.

Roll Out Your Mother

Tune: Roll Out the Barrel

Roll out your mother,
We'll have a barrel of fun.
Roll out your mother,
We'll bring her back when we're done.
Roll out your mother,
We'll have her beggin' for more.
Everybody loves your mother,
'Cause she's a big fat stinky whore.

Dos a Beer

Tune: Do-Re-Me

Dos, a beer, a Mexican beer.

Ray, the guy who bought me beer.

Me, the person he bought beer for.

Fa, a long, long way for beer.

So, I think I'll have a beer.

La, la la la la la

Ti, no thanks I'll have a beer!

Which brings us back to Dos, Dos, Dos, Dos.
(Repeat to infinity)

Whip It Out At The Ballgame

Tune: Take Me Out To The Ballgame

Whip it out at the ballgame.

Wave it around at the crowd.

Dip it in peanuts and Cracker Jacks,

I don't care if I give it a whack!

For it's spank your frank at the ballgame,

If you don't spurt it's a shame,

Cause it's one, two, you're covered with goo,

At the old ballgame!

Carwile Sucks Raw Dick!

Tune: Camptown Ladies

In the band for 30 years

Carwile, Carwile.

He won't let us drink our beers,

Oh Fucking A!

Gonna drink all night,

Gonna drink all day.

Even if we're not allowed,

We'll drink them anyway.

Drink Beer Chant

By: [REDACTED]

Drink beer, drink beer,

Drink beer Goddamn drink beer.

I won't drink beer with any man,

Who won't drink beer with a Buckeye Fan.

Ohio once, Ohio twice,

Holy jumpin' Jesus Christ.

Drink, Fuck, Cock, Suck...Go Bucks!!

Monster Wheel

Tune: see page 39

There once was a sailor who since has died.

I'm beginning to think that the old man had lied.

He spoke of a women whose cunt was so wide,

That she could never be satisfied.

And so they invented the Monster Wheel.

And to it they attached a great prick of steel.

Two balls of brass all filled with cream.

The whole damn thing was run by steam.

CHORUS:

Round and round went the Monster Wheel.

In and out went the big prick of steel.

Until at last the maiden cried,

"Stop! Stop! I'm satisfied!"

But the Monster Wheel, there was no stopping it

It ripped her open from the twat to the tit.

The whole damn thing was blown to shit.

Revealing (insert name) inside of it.

Masturbation

Tune: Alouette

Masturbation, self-ejaculation.

Masturbation, this is how it's done.

First you take your jock off,

Then you beat your cock off.

Very fast, make it last, Oh---

Masturbation, self-ejaculation.

Masturbation, that is F-Row's fame.

Barnacle Bill

Tune: Someone will know

“Who’s that knocking at my door?”
“Who’s that knocking at my door?”
“Who’s that knocking at my door?”
Said the fair young maiden.

WELL! “Open the door you fucking whore!”
Said Barnacle Bill the Sailor.
“Open the door you fucking whore!”
Said Barnacle Bill the Sailor.

Maiden Verses: (In ball-wrenching falsetto)

2. “Are we going to the dance?”
3. “What’s that thing between your legs?”
4. “What’s that growing ‘round your pole?”
5. “What’s that dripping down your leg?”
6. “What if we should have a boy?”
7. What if we should have a girl?” (Note: one time only)
8. “What if Ma and Pa should come home early?”

Bill’s Responses: (Muy Macho con mucho testosterone)

2. “Fuck the dance and lower your pants!”
3. “It’s just a pole to fill your hole!”
4. “It’s only some grass to tickle your ass!”
5. “It’s only a shot that missed your twat!”
6. “He’ll go to sea and fuck like me!”
7. *(Interrupts maiden) “We’ll dig a ditch and bury the bitch!”
8. “I’ll fuck your Ma and blow your Pa!”

Pieces of Baritone Shit

Tune: Across the Field

Courtesy of [redacted] and [redacted]

Bite my ass and lick my balls you mother fucking queers,
Get on your knees and tell me how the megaphone fits up your mother-fucking ass YOU GAY FAGS!
Lick my balls and lube up your ass,
Anal sex gives you nasty gas.
Fuck you, you big gay fags.
You pieces of Baritone shit!

The Hitler Song

Courtesy of [redacted]

Hitler (Hitler)
Hitler (Hitler)
H-I-T-L-E-R, ba dum dum dum
Hitler (Hitler)
Hitler (Hitler)

Well, he doesn’t even drive a car.

Oh, he’s short and he’s fat and he kills the Jews.
He lives at Gayfer’s and he’s got no shoes.

SPOKEN:

‘Cause it’s hard to get shoes when you don’t have a car, and it’s hard to buy car when you don’t have a job, and it’s hard to get a job when you’re...

Hitler (Hitler)
Hitler (Hitler)
H-I-T-L-E-R, ba dum dum dum

Nazi’s here, Nazi’s there, Nazi’s Nazi’s everywhere!

Hitler lives in Tampa Bay, doo dah, doo dah.
Hitler lives in Tampa Bay, Oh Fucking A.
Kill the Jews all night, Kill the Jews all day.
Hitler lives in Tampa Bay, Oh Fucking A.

Note: Spoken part could be some variation of what is written above. Words are usually made up by whoever is leading the song.

My Grandfather’s Cock

Tune: My Grandfather’s Clock

My grandfather’s cock was too large for his spouse,
So it spent ninety years in a big whore.
It was longer by half than the old man himself,
Yet it weighed not a pennyweight more.
‘Twas erect on the morn of the day that he was born.
It was always his pleasure and his pride.
But it went (Shit!) limp (Fuck!) never to rise again,
When the old man died.

Asshole by [REDACTED]

Folks, I'd like to sing a song about the American Dream.

About me, about you, about the way our American hearts beat way down in the bottom of our chests, About that special feeling we get, way down in the cockles of our hearts.

Maybe below the cockles,
Maybe in the sub-cockle area,
Maybe in the liver,
Maybe in the kidneys,
Maybe in the colon.
We don't know.

I'm just a regular Joe with a regular job.
I'm your average white suburbanite slob.
I like football and porno and books about war.
I got an average house with a nice hardwood floor.
My wife and my job, my kids and my car,
My feet on the table, and a Cuban cigar.

But sometimes that just ain't enough,
To keep a man like me interested.
(Oh no)
No Way
(Uh uh)
No, I gotta go out and have fun at somebody else's expense.
(Oh yeah)
Yeah, yeah
Yeah, yeah

I drive really slow in the ultra fast lane
While people behind me are going insane.

CHORUS:
I'm an asshole (asshole)(I'm an asshole)
I'm an asshole (asshole)(I'm an asshole)

I use public toilets and I piss on the seat
I walk around in the summertime saying, "how about this heat?"

CHORUS

Sometimes I park in handicap spaces
While handicapped people make handicapped faces.

CHORUS

Maybe I shouldn't be singing this song

Ranting and raving and carrying on
Maybe they're right when they tell me I'm wrong....Nah.

CHORUS

You what I'm gonna do?
I'm gonna get myself a 1967 Cadillac Eldorado convertible. Hot pink with whale skin hubcaps and all leather cow interior and big round baby seal eyes for headlights.
Yeah, and I'm gonna drive 'round that baby, At 115 MPH, getting one mile per gallon, Sucking down quarter pounder cheeseburgers from McDonalds, in the old fashioned non-biodegradable Styrofoam containers
And when I'm down sucking down those grease ball burgers, I'm gonna wipe my mouth with the American flag, and then I'm gonna toss the Styrofoam container right out the side, and there ain't a Goddamn thin anyone can do about it. You know why?

Because we got the bombs, that's why.
Two words, "nuclear fucking weapons", OK?
Russia, Germany, Romania
They can all have the democracy they want; they can have a big democracy cakewalk, right through the middle of Tiananmen Square. And it won't make a lick of difference.
Because we've got the bombs, okay?
John Wayne's not dead, he's frozen,
And as soon as we find a cure for cancer,
We're gonna thaw out the Duke and he's gonna be pretty pissed off. You know why?
Have you ever taken a cold shower?
Well multiply that by fifteen million times,
That's how pissed off the Duke's gonna be.
I'm gonna get the Duke, and John Cassavettes, Lee Marvin, and Sam Beckamore, and a case of whiskey and drive down to Czech.....
(Hey, hey, hey, hey, hey, hey, hey)
(You know what? You really are an asshole)
Why don't you shut up and sing the song pal?

CHORUS

A-S-S-H-O-L-E
A-S-S-H-O-L-E
(Woo, ooh)
A-S-S-H-O-L-E
A-S-S-H-O-L-E
I'm an asshole and I'm proud of it!

Tribute to Old S-Row

Tune: The Trolley Song

I saw her sitting on a bar stool,
I wanted her for my own,
"Oh, my God please, honey,"
As I asked her to come home.

Up and down went her tushy,
Back and forth went her tits,
"Oh my God," said my honey,,
As I gave her a few more licks.

Squeak, squeak, squeak, went the bed springs,
Bang, bang, bang went the bed,
"Oh my God," said my honey,
As she went down on my head.

Squish, squish, squish went her pussy,
Squirt, squirt, squirt went my dick,
"Oh my God," said my honey,
As I put in my big, fat prick.

In and out went my member,
Arch, arch, arch went my back,
"Oh my God," said my honey,
As she felt underneath my sack.

Slurp, slurp, slurp went my penis,
Suck, suck, suck went her cunt,
"Oh my God," said my honey,
As she let out a big, fat grunt.

Rip, rip, rip went her hymen,
Drip, drip, drip went the blood,
"Oh my God," said my honey,
As I came in one hell of a flood.

Slap, slap, slap went our bellies,
Squirt, squirt, squirt went my cum,
"Oh my God," said my honey,
"Is it true that we're finally done?"

Buzz, buzz, buzz went the dildo,
Hap, hap, hap went her clit.
"Oh my God," said my honey,
"Don't you think that it's time to quit?"

Fart, fart, fart went her asshole,
Smell, smell, smell went my nose,
"Oh my God," said my honey,
As I butt plugged her with my toes.

Grow, grow, grow went the fetus,
Small, small, small went my tube,
"Oh my God," said my honey,
As she gave me one more lube.

Clamp, clamp, clamp went the doctor,
Stretch, stretch, stretch went her crack,
"Oh my God," said my honey,
As she looked at her embryo sack.

Suck, suck, suck went the vacuum,
Out her crack came the goop,
"Oh my God," said my honey,
"It looks like vegetable soup."

Cock of Ages

Tune: Rock of Ages

Cock of ages up for me.
Let my shoot my wad in thee.
I 8 inches cut in half.
Yesterday I fucked a calf.
Now I'm worried as can be.
Cause I think I've got VD.

Cock of ages, cum for me,
For my balls could just burst free.
My best whore is hot tonight.
Her twat fits me nice and tight.
Hear me moan in grateful pain.
Faithful cock you've cum again.

Big Spreader

Tune: Big Spender

The minute you sat on my face,
I could tell you were a broad with distinction.
A real big spreader.
Pubic hairs well defined,
I knew you weren't the ordinary cock-sucking
kind.
So why don't you insert my tool?
Now I feel that you will fuck every guy that you
see.
Hey, Big Spreader! (Hey Big Spreader!)
Spread your lips and go down on me.

Ten Tons of Titty

Tune: These Things Remind Me of You

Ten tons of titty, in a loose brazier,
A twat that twitches like a moose's ear,
Ejaculation in my glass of beer,

Chorus

These things remind me of you.

A toothless blowjob in a taxi cab,
A bloody fetus on a marble slab,
A ring of puss around a crust scab.

Chorus

A real quick hand-job in a grocery store,
A licking session with the les next door,
Using a Kotex that you've used before.

Chorus

Eating dead bat shit off an old cave wall,
A crusty spear stuck through an elephant's balls,
Sucking some vomit through a clear glass straw.

Chorus

Watching your cock bleed from a paper cut,
Fucking a pregnant woman in the butt,
Picking the scabs off of a two-bit slut.

Chorus

Sticking your finger up an old man's ass,
Eating your girlfriend out when she has gas,
Hem'roidal bleeding while you're sitting in class.

Chorus

A sliced off scrotum in formaldehyde,
Syphilitic semen shot in your eye,
Eating the pussy of a girl that's died.

Chorus

Raping the woman from United Way,
A nearby boner on a closet gay,
Eating the afterbirth of Doris Day.

Chorus

A ruptured hymen that was nice and thick,
Licking an asshole 'til you're wretchedly sick,
Malignant tumors on a bloody prick.

Chorus

Two massive mammaries that swing and sag,
Finding out that Walter Cronkite's a fag,
Fucking a dead man 'til you start to gag.

Chorus

A dead ba-by wrapped in a highway map,
Having a bag of shit dropped in your lap,

Doing cunnalingus on a girl with the clap.

Chorus

Being buried in a pile of shit,
A load of semen in your catchers mitt,
A flaming faggot on a mafia hit.

Chorus

A makeshift Trojan of electrical tape,
A girl who fucks you and then cries, "Rape!"
A dozen homos and there's no escape.

Chorus

A man in traction thinking thoughts incarnate,
A rash that spreads at an incredible rate,
Having your cock crushed 'tween two slabs made
of slate.

Chorus

(Christmas related verses)

Ten turds of penguin shit lined up in a row,
A neutered reindeer giving Santa a blow,
A Christmas bowl game in the sand with no snow.

Chorus: These things remind me of Yuletide

A real-life rim-job 'round a wreath made of shit,
A frothing Rudolph in a nicotine fit,
An elfish fuck in an industrial pit.

Chorus

Female effluvium on Santa's sleeve,
The scent of penguin pussy that won't leave,
A flaming airplane wreck on Christmas eve.

Chorus

A sleigh and reindeer wreck on top of a hill,
A Christmas stocking that you'd love to fill,
Finding that Mrs. Claus is on the pill.

Chorus

A fruity elf with an incredible gland,
Salvation Army Santas mugged by the band,
Eight tiny reindeer dead of thirst in the sand.

Chorus

A Round

Tune Frer Jacques

Mother-fucker, mother-fucker,
Eat my shorts, eat my shorts.
How'd you like to blow me?
How'd you like to blow me?
Suck me off, suck me off.

Dildo

Tune: Bingo

There was a man who bit his wong,
And Dildo was his name-o
D-I-L-D-O, D-I-L-D-O, D-I-L-D-O,
And Dildo was his name-o.

Incest

Tune: Row Your Boat

Fuck, fuck, fuck your mom,
Fuck your daddy twice.
Have your sister suck your dick,
Oh, isn't incest nice.

Fellatio

Tune: Harrigan or The Lollypop Song

F-E-double L-A, T-I-O spells fellatio.
Now that you have all heard all about it,
With R-Row around how could we doubt it?
F-E-double L-A, T-I-O you see,
With your lips around my gland,
You'll see quite soon I'm feeling grand,
Fellatio's for me!

Pun-tang

Tune: Oscar Meyer Theme

My Pun-tang has a first name,
It's P-U-S-S-Y.
My Pun-tang has an address,
It's upstairs near her thigh.

Oh, I love to eat it everyday,
And if you ask me why I'll say,
Cause tuna spread tastes OK,
With B-O-L-O-G-N-A.

Ah-Fuck!

Tune: Unknown

Chorus:

Eat, bite, fuck, suck, gobble, nibble, chew,
Nipple, bosom, hair-pie, finger-fuck, screw,
Moose piss, cat pud, orangutan tit,
Sheep pussy, camel crack, pig 'n' lion shit,
Ah-Fuck, Ah-Fuck, Ah-Fuck!

Well, I went to party, and what did they do?
They took off their socks and they took off their shoes.
They took off their shirts and they took off their pants,
I had a hunch that they wasn't gonna dance.

Chorus

Well, everybody, everydodies ass was bare,
No broads left, but a queer over there.
But the whole damn thing didn't phase me a bit.
I jumped on the pile and grabbed me some tit.

Chorus

Well, my baby's not a sports fan,
But she plays with my balls whenever she can.
Because her favorite sport, you see,
Is playing tonsil hockey.

Chorus

Fornication

Tune: Celebration

There's an orgy going on right here.
A fornication that lasts throughout the year.
So bring leather, and your whips and chains.
We gonna fornicate, gonna fuck out your brains.
Come on now...
FOR-NI-CA-TION
Let's all fornicate and have a good time.
FOR-NI-CA-TION
You bring the rubbers and I'll bring the wine.
It's time to come together,
It's up to you, what's your pleasure?
Doggie style or 69, Come on!

Clitoris

Tune: Oscar Meyer Theme

My clitoris has a first name,
It's J-U-I-C-Y!
My clitoris has a second name,
It's P-U-S-S-Y!
Oh, it must be eaten everyday,
And if it's not I masturbate.
So, Eat me, lick me, suck me,
Fuck me, chew me, swallow me, OK!

There's a Skeeter on my Peter

Tune: If You're Happy and You Know It

There's a skeeter on my peter, whack it off.
There's another on my brother's, whack it off.
There's another half-a-dozen just a-buzzin'
round my cousin's.
There's a skeeter on my peter, whack it off.

There's a wimpy on my ass, get him off.
There's a wimpy on my ass, get him off.
I think he's kind of crass, it's because he has no
class.
There's a wimpy on my ass, get him off.

There's a tympani on the field, get it off.
There's a tympani on the field, get it off.
You can blame old Doctor Moore, he thinks
we're going corps.
There's a tympani on the field, get it off.

Scrotum

Tune: Ja-Da

Scrotum, Scrotum,
S-C-R-O-T-U-M (ba-dum-dum-dum)
Scrotum, Scrotum,
It's what you keep your testicles in.
Well it's wrinkled and it's hairy, and it's shaped
like a bag.
If you didn't have one you would be a fag.
Scrotum, Scrotum,
S-C-R-O-T-U-M

Asshole, Asshole,
A-S-S-H-O-L-E (ba-dum-dum-dum)
Asshole, Asshole,
Right behind the place where you pee.
Well, it's round and it's wrinkled and it smells
like shit.
What would you do if you didn't have it?
Asshole, Asshole,
A-S-S-H-O-L-E

Cunt-lips, Cunt-lips,
C-U-N-T-L-I-P-S (ba-dum-dum-dum)
Cunt-lips, Cunt-lips,
Touch them and you'll make her say yes.
Well, they're slimy and they're gooey and they
smell like fish.
Put them on a plate, it makes a tasty dish.
Cunt-lips, Cunt-lips,
C-U-N-T-L-I-P-S.

Boobies, Boobies,
B-O-O-B-I-E-S (ba-dum-dum-dum)
Boobies, Boobies,
They'll entertain you all night long.
Well, they're round and they're smooth and they
have a nip.
They might give you milk if you suck on it.
Boobies, Boobies,
B-O-O-B-I-E-S

Cumblood

Tune: Beer Run

Courtesy: F-Row

C-U-M-B-L-double O-D Cumblood, Cumblood

C-U-M-B-L-double O-D Cumblood, Cumblood

One is red and one is white, put them together
what a delight

C-U-M-B-L-double O-D Cumblood

C-U-M-B-L-double O-D Cumblood, Cumblood

C-U-M-B-L-double O-D Cumblood, Cumblood

One is white and one is red, you get them both
from real bad head

C-U-M-B-L-double O-D Cumblood

C-U-M-B-L-double O-D Cumblood, Cumblood

C-U-M-B-L-double O-D Cumblood, Cumblood

One is thin and one is thick, and they both come
out of your dick

C-U-M-B-L-double O-D Cumblood

C-U-M-B-L-double O-D Cumblood, Cumblood

C-U-M-B-L-double O-D Cumblood, Cumblood

One gets you pregnant, they both give you
AIDS, mix 'em together in so many ways

C-U-M-B-L-double O-D Cumblood

C-U-M-B-L-double O-D Cumblood, Cumblood

C-U-M-B-L-double O-D Cumblood, Cumblood

Cut your hand and masturbate, your hand really
hurts but your dick feels great

C-U-M-B-L-double O-D Cumblood

Tag ending (slower):

If you're sitting in your room, and you're
dreamin'

Of period blood and pure white semen

C-U-M-B-L-double O-D Cumblood

On the Floor Again

Tune: On the Road Again

On the floor again,
My fucking wife is on the floor again,
Her ass has worn the floor boards right down to
the tacks,
She's been on more floors than Goddamn
Johnson's Wax.

In her pants again,
I just can't wait to get in her pants again,
I just can't wait to get down and munch between
her thighs,
I just can't wait to hear all those moans and
sighs.

In her mouth again,
She's got lockjaw but between her teeth is my
favorite place.
And in the end, there's a sticky river flowin' on
her piller case, That bitch moved her face.

On the rag again,
My little girl is on the rag again,
And it don't matter much to me how long it's
been,
When she's on the rag, I'm on the road again.

Balls to Your Partner

Chorus

Verse

Singin'

Monster Wheel

1st Verse

2nd Verse

Chorus

Fine 3rd Verse

Optional D.S. al Fine

Was it you? (My daughter Rebecca)



Exhibit D

Welcome, Rookies!!

'Tis the time of the quarter for your band final!

The purpose of this examination is to test your knowledge of The Ohio State University Marching Band and what you have learned thus far from your vets.

Throughout the examination there is to be **absolute silence!!** If we catch so much as a **peep out of you, (unless it is specifically asked for in this test), be prepared to lose what little personal space you possess.**

Cell phones will be limited to emergencies only! If we catch you texting....especially to each other, there will be consequences!

Answer all questions completely and to the best of your ability.

If you lack KNOWLEDGE, use CREATIVITY!

Strive for perfection and, as always, Go Bucks!

Sincerely,
Your -Row Vets

Where will ____ be in 20 years?



Rookie Predictions and Burns...

Now's your chance take your best shot at your fellow horns!

(Each name may only be used once and all must be used)

■ Row

■ Row

Who gets around more than a town bicycle?

Who is the biggest nerd?

Who is the most unfortunate looking?

Who acts like a little bitch all the time?

Who is the most annoying drunk-Mcdrunkereson?

Who has the smallest wang/tits?

Who would you want to slap in the face?

Who can't play in tune worth a damn?

Who needs to get a fucking clue on the field?

Who desperately needs a breath mint?

Who should have an instruction manual for their genitals?

Who will get the fattest in 10 years?

Whose jokes are the worst you've ever heard?

Whose driver's license should be revoked?

PHYSICAL CHALLENGE

A vet in █Row has a task for the four of you. You must discover the vet that has the task by using the password Lemon Sherbert.

Boner Question: List all the Members of █Row in descending order from deepest box to largest penis. Explain your reasoning in 2 to 3 sentences.

Get up and give every █-row member a HUG

Rookies, as a member of the OSUMB you are expected to know some of the rich history behind our prestigious organization. Here are a few questions that will test your knowledge.

What year was the OSUMB established?

How many members were in the first band?

How many members are in the current band?

How many march in the block?

What instruments make up that block and how many of each are there?

What is the story behind the 'Gold Pants'?

Who gave the band the name TBDBITL? What's the story behind it?

Who and what is the band's mascot?

What was the previous mascot and what was his name?

What award did the band receive for being one of the top bands in the country?

What are some of the marching band innovations that were first tried and developed at Ohio State? (There are at least 5)

When was the first Script Ohio performed?

Which marching band director left for war and then returned post-war?

In what year were women allowed in the band?

Who was the director at that time?

How did Skull Session get its name?

True or False: The band has performed a triple script.

True or False: Capes were once a part of the OSUMB uniform.

In what year was Hang On Sloopy first performed?

Write out the tryout drill:

Calculate in days, hours, minutes, and seconds (all separately) the countdown to the M*ch*gan game.

Questions about [REDACTED]-row, not your row....

If you were chosen to be on a game show and could pick one person from the row to live with on a stranded island for a month, who would it be and why?

What animal best matches [REDACTED]?

Describe [REDACTED] in one word.

What kind of pet would you pair each member of [REDACTED] row with?

What is Fourth Paw?

Which members have their belly button pierced?

Name an alumnus of ■-row, including their rookie name.

'Tis good to be in ■-row because...(finish the sentence)

How many members of ■-Row have pooped their pants in their lives?
Name them

Who's the last ■-Row member you've wanted to punch in the face?

Stop!!!!

FOLLOW THE INSTRUCTIONS

The first person to reach this stand up and yell what time it is, in the appropriate manner because of the week.

-The second person to reach this, stand up and sing 'Its round on the ends...'

---The third person to reach this, stand up and fake an orgasm.

----The fourth person to reach this, go sit on ■'s lap and talk dirty to him.

Out of [REDACTED]-Row, who is the...

Funniest

Shyest

Most Forgiving

Most Unforgiving

Best Friend

Most likely to pass out drunk

Most likely to poop their pants

Most likely to succeed

Most interesting

Most ADD

Scariest

One you will miss the most

Most likely to tell you to fuck off

Person who you want to be

List each member of [REDACTED] Row and write down what instrument they played before they started playing mellophone!

Which members have the worst field awareness?

Which member of [REDACTED]-row would you vote off the island?

Which vet would you pick to win in a fight?

Skittles vs. HAM

Pickles vs. Totem

Dartboard vs. Bill

Minnie vs. Patty

Spatss vs. Patty

Kiki vs. Muffin

Kenneth vs. Powerthirst

The Rest of the Band.....

What creature does Dr. Woods most resemble?

What does the drum major yell after post-game?

Describe █ row in a haiku poem.

What would you do if you were █ for a day?

How many gay guys are in band? How many lesbians? Name them and their row.

If one of the rookies became infected with Leptospirosis, how long would it take our rookies to become infected? What signs and symptoms would there be? Where did the Index case pick up the disease? How would you prevent spread of Lepto to other rookies? Why are vets immune to the disease?

If you were gay (or straight if you are already gay) who in the band would you be gay (or straight) with? Why?

Who is Fessler, and why should you be scared of him?

Name all the rows in the band. Include mascot, squad leaders, instrumentation, and a fun fact about the row.

PHYSICAL CHALLENGE

See [REDACTED] and he will give you your task. Enjoy and be creative!!

How many people have you had sex with? (or kissed if u still have your V-card)

Why would you drive your Chevy to the levy if the levy was dry?

What color are your underoos?

Who smells like fart the most?

Have you ever peed in a swimming pool?

Have you ever cried about something band related? When was the last time?

Are you a grower or a shower? (if you don't know what this means ask a neighbor)

What did you dream last night?

A pet you want to have

Why does M[^]ch*G&n suck?

In what shape would you create a device capable of destroying the Earth, and where would you keep it?

If people ate and shat out of their mouths, what would the anus be used for?

When dog food is new and improved tasting, who tests it?

If Americans throw rice at weddings, what do Asians throw?

Word Association

Given the following words, write the first thing that comes to mind.

Rubber - _____

Salt - _____

Gun - _____

Liberal - _____

Conservative - _____

Red - _____

Remote - _____

Bus - _____

Zebra - _____

Stick - _____

Treble - _____
Pillow - _____

Dingo - _____
Panama - _____

Provide a detailed account of “The Epic Rise of John Waters” on the remainder of this page (or any other space you can find if your story is that good).

Name all the Big Ten Schools, their mascots, record as of today, and their current Big Ten ranking.

Write a short story using the following words/phrases:

BOX, hammy situation, lettuce, navy hymn, virgin, brown noise, snookie, special place, Aahsome, syphilis, cumblood, bale of hay, flash mob, Elvis, "Give 'em Hell!", to be late..., Jerry Sandusky, twat, face

Please draw the female reproductive organs with arrows detailing what each part is used for. Be as clear as possible

Draw your favorite halftime formation we have done this year. Make sure you include all 192 dots in this formation to make it as accurate

as possible.

Create and draw a sex position for fat people. Use detailed images (including facial expressions), words (sound effects) descriptions, etc. There should be steps to the process, as if teaching someone your sex position.

Fill in the Definition or Create an example sentence:

69 –

“I 69’ed with this chick TWICE last night! Then she 69’ed her roommate Katie.”

Dirty Sanchez –

“he gave her a dirty sanchez and she never had anal sex again.”

Cooter – the holiest of holies, the place all men aspire to be. Often paired with large, flappy labia known as "Beef Curtains." The appearance of the Cooter is usually heralded by the distinct reek of low tide.

“ “

Cleveland Steamer –

“I was afraid of breaking up with Jen face to face, so I gave her a cleveland steamer after she fell asleep and ditched.”

Piston Fisting - A double fisting that incorporates both anal and vaginal penetration. Fists are then pumped in and out in manner similar to that of pistons in a engine.

“ “

Fellatio - The term use in polite company which refers to the subservient act of orally stimulating the male sex organ with, but not limited to, the lips, mouth and tongue, during which suction pressure is applied to the male organ, usually resulting in the need to shampoo.

“ “

Blumpkin –

“Suzie saw Dave on the shitter and, in her state of drunkenness, gave nick a most excellent blumpkin.”

Rusty Trombone –

“While receiving a rusty trombone I lost control of my bowels.”

Cunnilingus - The art of orally making sweet love to a vagina.

“ “

Spiderman –

“Dude, I gave that broad a Spiderman Peter Parker would be proud about!”

Space Docking –

“Sally didn't much appreciate Charlie's failure to disclose that he ate three bowls of chili before space docking with her last night.”

Pink Sock –

“Stop taking pictures, and take me to the hospital, you gave me a pink sock, you mother fucker!!!!”

Shocker - The act of inserting 2 fingers into the vaginal opening (normally the index and middle fingers), and 1 into the anus (normally the "pinky" finger). This is usually performed when she is laying back, in the "deep thrust" position (see "deep thrust" for more hardcore info). Commonly described a numerous number of ways, e. g. 2 in the pink, 1 in the stink; two in the grass one in the ass; two in the slut one in the butt; two in the koot, one in the boot; goin to town with one in the brown; and many more, this method of sexual gratification is one sought out by people of all levels. But only grand masters, like the Big Johnson have perfected it.

“

“

Heteroflexible -

“It's not my fault. I was drunk and it was fun. What can I say? I'm heteroflexible.”

Tossing Salad - the act of placing your tongue in a male or females ass, and probing all around the circumference of the asshole, while aiding the person in masturbation.

“

“

Determine what each statement is describing.

1. When I go in I might cause pain. I cause you to spit and ask you not to swallow. I can fill your hole. What am I?

2. A finger goes in me. You fiddle with me when you're bored. The best man always has me first. What am I?

3. I'm spread before I'm eaten. Your tongue gets me off. People sometimes lick my nuts. What am I?

4. I go in hard. I come out soft. You blow me hard. What am I?

5. All day long, it's in and out. I discharge loads from my shaft. Both men and women go down on me. What am I?

6. I come in many sizes. When I'm not well, I drip. When you blow me, you feel good. What am I?

7. If I miss, I hit your bush. It's my job to stuff your box. When I come, it's news. What am I?

8. I offer protection. I get the finger ten times. You use your fingers to get me off. What am I?

9. I assist an erection. Sometimes big balls hang from me. I'm called a big swinger. What am I?

10. This useful tool, commonly found in the range of 6 inches long. The functioning of which is enjoyed by members of both sexes, is usually found hung, dangling loosely, ready for instant action. It boasts of a clump of little hairy things at one end and a small hole at the other. In use, it is quickly inserted, almost always willingly, some-times slowly sometime quickly, into a warm, fleshy, moist opening where it is thrust in and drawn out again and again many times in succession, often quickly and accompanied by squirming bodily movements. Anyone found listening in will most surely recognize the rhythmic, pulsing sound, resulting from the well lubricated movements. When finally withdrawn, it leaves behind a juicy, frothy sticky white substance, some of which will need cleaning from the outer surfaces of the opening and some from its long glistening shaft. After everything is done and the flowing and cleansing liquids have ceased emanating, it is returned to its freely hanging state of rest, ready for yet another bit of action, hopefully reaching its bristling climax twice or three times a day, but often much less. What is it????

Please rank the rows in the band in order of their attractiveness, giving a detailed explanation of their rank. Remember to be creative!

In your most extensive sexual and musical terminology, please explain a “rusty trombone.”

Please explain the best way to achieve a “soaked reed.”

Please stand and sing (in your most impressive big black gospel voice) the corresponding line of Amazing Grace as each of you come to this question. Melismatic runs and embellishment are encouraged.

1st person to get to the question: Amazing grace, how sweet the sound

2nd person: That saved a wretch, like me

3rd person: I once was lost

4th person: But now I'm found

5th person: Was blind, but now I see

Please compose a brief melody or rap including at least 5 of the following words. Now, stand up and sing it.

Clams Casino

Plume

Lettuce

Baton

Mary Magdalene

Hot chicken

Drill

Fluffer

Shocker

Boner

Spats

lube

BOXed lunch

cabbage case

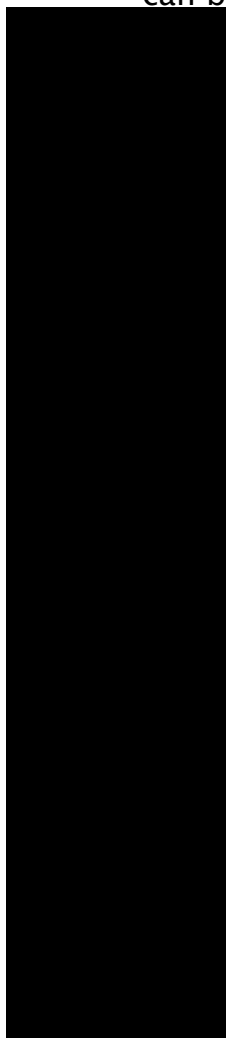
Video

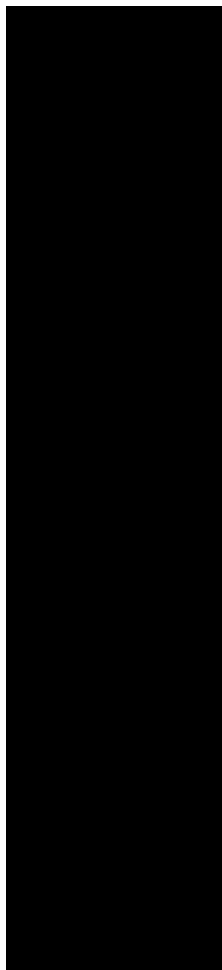
Rookie

History of the World: Part I

Welcome to the History portion of your Midterm! This portion of the examination will test your general knowledge about American and World History from any time period. Serious, yet, funny answers are encouraged! This is a serious examination just as History is a serious subject. Remember those who do not remember the events of the past are doomed to repeat them. Have Fun and Carpe Diem!

1. History is all around us, President Lincoln had a secretary named Kennedy and President Kennedy had a secretary named Lincoln. For your first task you must take each member of █Row and pair him or her with a historical figure that they most represent in looks, attitude or policy. Once each member of █Row is paired write 2-3 sentences explaining why you paired them with that figure. Men can be paired with women and vice versa.





Do something related to your rookie trick. NOW!!!! TAP, TAP, TAP, HI.....!!!

Write out another formation of Script Ohio. Be sure to include all 192 (or 224 for a double version) members and explain what pre-game (or post-game) show this would be used for.

Define and explain WB and what it means in your life.

Exhibit E



EXECUTIVE VICE PRESIDENT AND PROVOST

July 24, 2014

Jonathan N. Waters
110 Weigel Hall
1866 College Road
Columbus, Ohio 43210

Dear Jon:

Pursuant to our conversation yesterday, we regret to inform you of your termination from university employment effective July 24, 2014.

If you have not done so already, you must return all university property, such as keys, BuckID, computer, files, etc., on your last day of work. The Office of Human Resources will be in contact with you to collect these items.

Upon termination from The Ohio State University, you may be eligible to:

1. Convert your Long-Term Disability (LTD) coverage into a Group LTD conversion policy through Unum. Premiums must be paid by you and will no longer be paid for by the University. The completed application must be received by Unum within 31 days of your benefit termination. For more information, contact the Unum at 1-800-421-0344.
2. Convert your Group-Term Life Insurance (GTLI) coverage to an individual policy, the completed application and first month's payment must be received by Minnesota Life within 31 days of your benefit termination. For more information contact Minnesota Life at 866-293-6047.
3. Enroll in continuation health coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) due to your loss of University health coverage. You may contact NGS, which administers COBRA continuation coverage, at 800-521-1555 for further eligibility and coverage information. COBRA rate information can be found at <http://www.hr.osu.edu/benefits/rates/2014/rates-cobra.aspx>
4. Enroll in health insurance offered through the Health Insurance Marketplace (Marketplace). For more information about the Marketplace, visit www.HealthCare.gov or call 1-800-318-2596.

Sincerely,

A handwritten signature in black ink that reads "Joseph E. Steinmetz".

Joseph Steinmetz, PhD
Executive Vice President and Provost

Exhibit F

An Analysis & Review of Cultural Change in The Ohio State University Marching & Athletic Band Program

Introduction to the Issue:

The internal student culture of The Ohio State University Marching Band is in a state of change. A number of aspects of the current band culture are vestiges representing cultural norms from eras gone by. During the past 20 months, upon being named director of The OSU Marching and Athletic Bands and inheriting a band culture in dire need of change, I began a process with our band staff of concentrated pressure for real, lasting change within the organization. We believe this process is one that requires steady, constant pressure, coupled with a firm approach in situations that require it.

It is important for those in positions of authority and evaluation to understand that our prevailing philosophy for instituting cultural change is that the *best* and *most permanent* change occurs from *within* the organization, and it is fostered by the students. The students are the individuals participating in and creating the culture of the band. We firmly believe that these changes must be instilled by the leadership of the band and cultivated by the students who participate in it. I believe that our staff's role is to combine different methodologies in managing the change. It is our duty to frame the discussion and to plant the seeds for change, but also to take immediate action when necessary. This document will outline the changes that we have made with regard to negative cultural aspects of The OSU Marching and Athletic Bands.

We are not insinuating that the culture of the Marching Band is in a 'good place' currently, nor are we making excuses for current situations. Simply, we are providing a snapshot of the current state of affairs, knowing that 135 years of band history has come before us. We are providing information regarding the negative aspects of the culture, and regarding the actions that we have taken in response to these issues. We provide this background information so that resources within and outside of the university can be applied to best assist the students and staff in shaping the culture and driving the change.

Leadership Training:

The student leadership of the Marching Band is carefully selected through a combination of peer voting and an interview session with the directing staff. All squad leader selections are ultimately made at the discretion of the director. The following questions were asked of each of our squad leader candidates during the interview:

- *Why do you want to be a squad leader?*
- *What do you feel you can contribute to your row to make them better marchers and players?*
- *How would you approach having a more unified row [section]?*
- *What do you consider to be the strengths and weaknesses of your row [section]?*
- *How do you perceive your role in supporting and improving rehearsal discipline both inside and outside rehearsals?*

- *What are your thoughts on improving summer sessions and recruiting?*
- *Define "servant leadership." Did it take place within your row and within the band? How can you ensure that it continues to thrive?*
- *What would you change about the culture in the OSUMB?*

After the selection of the squad leaders, the staff and student leadership of the Band underwent extensive training at a number of leadership retreats and events. These leadership training events could be classified as *internal training*, which was facilitated by the Band staff, and *external training*, which was facilitated by sources outside of the Band staff. The retreats were hosted at on-campus locations as well as off-campus venues, and they included the following:

Internal training for student leaders and staff

- Squad leader retreat at Cedar Point in May of 2013 and 2014
 - Issues discussed: hazing, first-year member treatment, and gender equity in addition to on-field issues
- Squad leader tryouts (every fall)
 - Includes sessions on leadership and on the marching band's "policies and procedures" document, which includes information about hazing, sexual harassment, alcohol, and other substance abuse
- Squad Leader Meetings, weekly during the football season
 - Constant monitoring, evaluation and discussion takes place at these weekly meetings
- Students and staff are educated by the director annually about our collective 'duty to report' incidents to the university and to support systems contained therein.

External training for student leaders and staff

- Information and training on hazing provided by the Office of Student Life; Summer 2012-2013
- Information and training on the abuse of alcohol by the Office of Student Life; Summer 2012
- Culture change training at Aileron in Dayton, OH, facilitated by TD Hughes, Chairman & CEO of LaRosa's; Summer 2013-2014

In addition to the squad leaders and staff of the band, the entire student population of both The OSU Marching Band *and* The OSU Athletic Bands underwent training and attended sessions on a number of topics relevant to culture change. The following sessions were attended by all students:

External training for all Marching Band Students

- Training session for alcohol abuse by the Office of Student Conduct, Autumn, 2013
- Training session for gender equity by the Office of Student Conduct, Autumn, 2013
- Training session on sexual harassment and sexual assault by The OSU Athletic Department through an external presenter, Winter, 2014
- Training session for alcohol & substance abuse by the Office of Student Life, Summer/Autumn, 2014

- Training session for sexual harassment and abuse by the Office of Student Life, Summer/Autumn, 2014
- Training session for time and stress management by the Office of Student Life, Summer/Autumn, 2014

External training for all Athletic Band students

- Training session on sexual harassment and sexual assault by the Athletic Department through an external presenter, Winter, 2014
- Training session for alcohol & substance abuse by the Office of Student Life, Autumn, 2014
- Training session for sexual harassment and abuse by the Office of Student Life, Autumn, 2014

Internal training for all marching band students

- Training session for alcohol and drug abuse, hazing, social behavior, and attitude by the Marching Band Staff, Autumn 2012, 2013, (2014)
- Review of policies & procedures document by the marching band staff and squad leaders with the band, Autumn 2012, 2013, (2014)
- Talk given to Marching Band on responsibility by Director of Athletics, Autumn, 2013

Internal training for all athletic band students

- Training session for alcohol and drug abuse, hazing, social behavior, and attitude by the Marching/Athletic Band Staff, Autumn 2012, 2013, (2014)
- Review of policies & procedures document with the band, Autumn 2012, 2013, (2014)

In addition to the internal and external training for the leadership and students, constant monitoring and situational awareness is important. Our policy has been to shape culture through student education and training, internal steering of policy and opinion by Band staff, and the monitoring and mitigation of events as they occur and as our staff is made aware of them. During the last 20 months, our staff has addressed (and continues to address) the following cultural negatives surrounding the Marching Band:

The Caste System

For decades, the band has operated on a quasi-military system based upon seniority. I feel that this has created a caste system, in which a hierarchy of classes within the student population was formed. The most disadvantaged of these classes was the "rookie" class, which consisted of the first-year members of the band. In an attempt to break down the barriers created by this caste system, we introduced an educational campaign, based on the tenets of servant leadership and other methodologies. This campaign was designed in part to avoid damage to the students' morale and feelings, especially in the case of the younger students. Significant progress was made in this area during the 2012 and 2013 seasons, and will continue in 2014. (Ex. whereas first-year members were once expected to buy food for their entire row every game day, now every row member chips in. Where first-year members were required to wait outside buses for older members to board first, class no longer determines boarding order. In addition, the band leadership has

been educated that ANY action requested of a student for the sole reason that he/she is a first-year member is not permissible.)

March to Pay Forward:

As a tool to shape culture in a positive way, I set about to create a program of community involvement and volunteerism. We call it "March to Pay Forward" and through this program, we are proud to state that our students have logged over 5,000 collective hours of community service. Our Band members served at food pantries, volunteered for the Gladden Community House, volunteered for the Boy Scouts/Girl Scouts, performed for Honor Flights, run blood drives for the Red Cross, played for hospice patients, done performances and instrument demonstrations for hundreds of area elementary school students, volunteered community service time while on their bowl trip, performed and volunteered at Nationwide Children's Hospital, and performed at scores of other community and statewide events. The band has even done formations, dedicated portions of shows, and allowed i-dots at rehearsals to honor and comfort people with life-threatening illnesses.

In addition, our two student service organizations, Kappa Kappa Psi and Tau Beta Sigma, have given countless hours for the betterment of our campus-wide band facilities and the service of our campus bands and our community.

Hazing

No form of hazing is tolerated in the Marching and Athletic Bands. Hazing was at the forefront of the 'band world' when a student in the Florida A&M University Marching Band was killed because of a hazing incident on a band trip. Students in the Ohio State bands are frequently educated about hazing. In part because of the importance of this issue, our band staff hosted a national collegiate marching and athletic band symposium in 2012, with representatives from over 150 universities in attendance. The event included sessions conducted by hazing prevention experts because I felt it vital that all collegiate band directors from around the country evaluate and address hazing in their own programs. Our Band staff annually conducts open and honest conversations with the band and the student leaders about hazing, and we are ever-vigilant about dealing with hazing-related issues.

Bus Behavior

Students are instructed that inappropriate behavior is not tolerated on buses. The band's policies and procedures document also includes language about bus behavior. Situations arise on buses where participation in any activity cannot be avoided, due to the closed space and close proximity of others. All forms of inappropriate behavior, including singing songs with inappropriate lyrics, the use of vulgarity, watching inappropriate movies, and the playing of dangerous games – which could result in physical injury – were forbidden. The band staff is instructed not to allow such behaviors on buses. Before each trip, bus rules are outlined with students, student leaders, and staff, and after each trip, all students are invited to inform the

staff of any inappropriate behavior while on a trip. No questionable behavior was reported, and as a result, no disciplinary action for inappropriate bus behavior was taken in 2013.

Band Dance:

Each year, Kappa Kappa Psi, the Band service fraternity, hosts a formal dance. In past years, alcohol has been an issue. Steps were taken in consult with the leadership of Kappa Kappa Psi, the student squad leaders, and the Band staff to create a safe and alcohol-free environment. No alcohol was served at the event and those who entered the event while under the influence were threatened with removal from the Band. It is reasonable to assume that, as a result of the new policies regarding the Band Dance, no incidents of the misuse of alcohol were reported in 2013.

"Trip-Tic"

The "Trip-Tic" was an underground publication, which aimed to make fun of and insult some students and staff in the band. The language contained therein was vulgar and inappropriate. In 2012, I intercepted a copy of the "Trip-Tic," and with our staff, took corrective action to see that this underground publication was never seen again. One student was suspended for a portion of the season, and through a campaign of squad leaders and talks with the band, the publication was banned.

Drinking Alcohol on Trips

Drinking alcohol under the age of 21 is illegal and students are reminded of this fact as part of their training. Drinking alcohol on buses is strictly forbidden for anyone, even of legal drinking age. Drinking in hotel rooms, or anywhere on hotel premises is strictly forbidden for anyone, even of legal drinking age. Drinking on all band trips will be forbidden for all members regardless of age for the 2014 season. Penalties for this activity are outlined in the policies and procedures document and include suspension or expulsion from the band. The Band will continue to receive internal and external training on alcohol and substance abuse. In the past, corrective actions – including but not limited to – the removal of a squad leader from his position, the suspension of band members from performing in a bowl game, and the expulsion of a student from the band have occurred as a result of the staff's firm adherence to the alcohol and substance abuse policy.

Nicknames

The Marching Band has had a long history of older members creating nicknames for younger band members. This practice dates to the 1930's, which is evidenced by the fact that those nicknames are published alongside the member's name in the Alumni Band directory. While many of these nicknames were not offensive, some were tremendously offensive. Over the last two seasons, we have set about to expel all inappropriate nicknames. Discussions and introspection with squad leaders

yielded fewer inappropriate nicknames, but did not eliminate the tradition of all inappropriate nicknames. After review of the status of this process to expel inappropriate nicknames, the use of all nicknames will cease beginning with the 2014 season. Vigilant monitoring of this cultural change will be required of staff and students.

“Midnight Ramp”:

The Marching Band has had a tradition dating back to the 1960’s, whereby the Band marches into the stadium in their undergarments at midnight. The stadium superintendent and staff, as well as the OSU Police, are aware of this “tradition” and are asked each year by the Band staff if it may continue. Upon taking over the leadership of the Band, I have felt uneasy about this event and because of that discomfort, I, with our staff, initiated conversations with squad leaders to stop the midnight ramp. I feel proud of the fact that because of the way our staff and I framed the conversation, the student leaders of the band were unanimous in their support of removing this tradition. This fact supports our philosophy regarding cultural change from the inside-out. In 2014, the midnight ramp will be replaced with a first year member welcome event in the stadium.

Gender Equity

There are more male students than female students in the OSU Marching Band. This is because the band is all-brass. Typically, in high school bands, more girls than boys play woodwind instruments (flutes, clarinets, saxophones), and more boys than girls play brass and percussion instruments. Because of the fact that the band is all-brass and has no woodwind instruments, we have more males than females. Furthermore, the band has no color guard, which is typically made up of more girls than boys at the high school level. Our staff is especially careful to not take a student’s gender into account when choosing the membership. The ratio of females to males in The OSU Athletic Bands is more even because of the fact that those bands have woodwind instruments.

Athletic Bands

Most of the activity covered in this document is concerned with The OSU Marching Band, however, we feel it is important to include the Athletic Band program as well in the above discussion. Until my assumption of the duties of head director in October of 2012, there was no statement of any consequence regarding “Policies & Procedures” for the Athletic Bands. In 2012, we instituted a set of policies modeled on those of the Marching Band.

Sexual Harassment—Romantic and/or Sexual Relationships

In the spring of 2013, I was made aware of a relationship between the percussions instructor at the time and a student in the percussion section. Upon review of the university’s Sexual Harassment Policy, it was determined that the relationship was

inappropriate. After consulting with the School of Music leadership, the College of Arts and Sciences human resources personnel, as well as the university's Office of Human Resources, it was decided that an alternate arrangement could not be made and the instructor was replaced.

Training and Policy Changes for the 2014 Season

For the 2014 Marching and Athletic Bands season, we will consult with the Office of Student Life, the Office of Human Resources, The Department of Women's Studies, the Office of Legal Affairs, as well as external consulting vendors to design a Band-specific training program for culture change within the Bands. We will work with the College of Arts and Sciences human resources personnel to assist us in this process.

Our current Marching and Athletic Bands Policies and Procedures will be reviewed with the offices named above and revisions will be made to adopt a zero tolerance policy for any inappropriate behavior as outlined herein.

In summation, the items outlined above represent the acumen of action taken to change a negative culture that was built over many decades. The staff and students are acutely aware of the need for change and continue together to endeavor to create a better, more inclusive, safe, and open environment in The Ohio State University Marching and Athletic Bands.

Exhibit G



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

September 11, 2014

Dr. Michael V. Drake
President
Ohio State University
205 Bricker Hall
190 North Oval Mall
Columbus, Ohio 43210

Re: OCR Docket #15-10-6002

Dear Dr. Drake:

This is to advise you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education, Office for Civil Rights (OCR), on June 23, 2010. The compliance review examined whether The Ohio State University (the University) responded promptly and equitably to complaints, reports and any other notice to the University of incidents of sexual harassment, sexual assault and other forms of sexual violence and whether any failure to respond appropriately allowed for the creation and/or continuation of a sexually hostile environment.

OCR initiated this review under Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex in programs and activities that receive Federal financial assistance from the U.S. Department of Education. OCR had jurisdiction to proceed in this case because the University is a recipient of such Federal financial assistance.

This letter summarizes the facts and conclusions found by OCR during its investigation and resolution of this review. OCR determined that the University's notice of nondiscrimination complies with the Title IX requirements and that the University has taken several important steps during the course of this investigation to bring its practices, as well as its policies and procedures, more fully in line with Title IX requirements. However, OCR determined that the University violated Title IX in that OSU's written grievance policies and procedures failed to comply with the requirements of Title IX.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

www.ed.gov

Page 2 – Dr. Michael V. Drake

During the course of this compliance review, the University conducted an investigation of alleged sexual harassment within its Marching Band and found that there was a sexually hostile environment for students in the Marching Band of which the University had notice and failed to adequately address. The University requested to resolve the review with a resolution agreement prior to the completion of OCR's investigation of all the issues in the review. As such, OCR is not making any further compliance determinations under Title IX, including whether the University has complied with the Title IX requirements for the prompt and equitable resolution of sexual harassment and sexual violence complaints in the implementation of its sexual harassment policies and procedures. On September 8, 2014, the University signed the enclosed resolution agreement (the Agreement), which when fully implemented, will address all of the issues in this compliance review. OCR incorporates in the Resolution Agreement the University's own corrective action steps for the Marching Band as requirements.

The University is the largest university in the state of Ohio with approximately 61,000 students, including 48,000 undergraduates and 13,000 graduate and professional students. The student body is comprised of slightly more male than female students -- approximately 50.4% male and 49.6% female. The majority of University students (approximately 56,000) attend classes at the main campus located in Columbus, Ohio. The remaining students attend classes at one of the five Ohio regional campuses located in Lima, Mansfield, Marion, Newark, and Wooster.¹

OCR's investigation in this compliance review included reviewing the University's policies and procedures related to sexual harassment and sexual violence, review of internal case investigation files from academic years 2008-2009 and 2009-2010 and then also from the 2012-2013 academic year to January 2014, interviews of relevant University personnel, interviews of students through focus groups, written interview questions of various student constituencies and interviews of resident advisors (RAs) in the University's student housing.

Legal Authority

The Title IX regulation at 34 C.F.R. § 106.31 provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex be excluded from participation in, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance.

Under Title IX, colleges and universities that receive Federal financial assistance are responsible for providing students with a nondiscriminatory educational environment. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault

¹ Information obtained from the University's spring 2014 term enrollment report: http://oesar.osu.edu/student_enrollment.aspx. OSU has informed OCR that currently it enrolls 63,000 students.

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or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program.²

OCR considers a variety of related factors to determine if a sexually hostile environment has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct affected one or more students' education; the type, frequency, and duration of the misconduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment, the size of the school, location of the incidents, and the context in which they occurred; and other incidents at the school. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment. A single instance of rape is sufficiently severe to create a hostile environment.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that sexual harassment created a hostile environment, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility, regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. A recipient has notice of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject the student to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial sexual harassment and the effects of the recipient's failure to respond promptly and appropriately. A recipient's obligation to respond appropriately to sexual harassment complaints is the same irrespective of the sex or sexes of the parties involved.

Even if the sexual harassment did not occur in the context of an education program or activity, a recipient must consider the effects of the off-campus sexual harassment when evaluating whether there is a hostile environment on campus or in an off-campus

² The applicable legal standards described herein are more fully discussed in OCR's 2011 Dear Colleague letter on Sexual Violence, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (April 4, 2011); for further clarification on this topic, *see* "Questions and Answers on Title IX and Sexual Violence," at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (April 29, 2014). *See also* OCR's 2010 Dear Colleague letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html> (October 26, 2010), and OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (January 19, 2001).

Page 4 – Dr. Michael V. Drake

education program or activity because students often experience the continuing effects of off-campus sexual harassment while at school or in an off-campus education program or activity.

In situations where reported sexual harassment may constitute a criminal act, a recipient should notify a complainant³ of the right to file a criminal complaint, and should not dissuade a complainant from doing so either during or after the recipient's internal Title IX investigation. Recipients should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the complainant in the educational setting. A law enforcement investigation does not relieve the recipient of its independent Title IX obligation to investigate the conduct.

Sexual harassment of a student by a faculty member or other school employee also violates Title IX. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in sexual harassment, the recipient is responsible for remedying any effects of the harassment on the complainant, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has notice of the harassment.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assault. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints, including sexual assault complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment or sexual assault, including disciplinary proceedings, must afford the complainant a prompt and equitable resolution.

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- 1) notice to students and employees of the procedures, including where complaints may be filed;
- 2) application of the procedure to complaints alleging discrimination and harassment carried out by employees, other students, or third parties;
- 3) provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;

³ The term "complainant" as used throughout this letter refers to an individual who is the subject of alleged sexual harassment, sexual assault or other forms of sexual violence.

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- 4) designated and reasonably prompt timeframes for the major stages of the complaint process;⁴
- 5) written notice to both parties of the outcome of the complaint and any appeal; and
- 6) assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the recipient processes complaints, the recipient's Title IX grievance procedures should also include the following in writing:

1. a statement of the recipient's jurisdiction over Title IX complaints;
2. adequate definitions of sexual harassment (which includes sexual assault) and an explanation as to when such conduct creates a hostile environment;
3. reporting policies and protocols, including provisions for confidential reporting;
4. identification of the employee or employees responsible for evaluating requests for confidentiality;
5. notice that Title IX prohibits retaliation;
6. notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
7. notice of available interim measures that may be taken to protect the student in the educational setting;
8. the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint;
9. notice of potential remedies for students;

⁴ OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. OCR has noted that, based on its experience in typical cases, there is a 60-calendar day timeframe for investigations. "Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks. A school may need to stop an investigation during school breaks or between school years, although a school should make every effort to try to conduct an investigation during these breaks unless so doing would sacrifice witness availability or otherwise compromise the process." See F-8, in "Questions and Answers on Title IX and Sexual Violence."

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10. notice of potential sanctions against perpetrators; and
11. sources of counseling, advocacy and support.

The procedures for addressing and resolving complaints of sexual harassment should be written in language that is easily understood, should be easily located, and should be widely distributed.

Pending the outcome of an investigation of a report or complaint, Title IX requires a recipient to take steps to ensure equal access to its education programs and activities and to protect the complainant and ensure his or her safety as necessary, including taking interim measures before the final outcome of an investigation. The recipient should take these interim measures promptly once it has notice of the harassment allegation and should provide the complainant with periodic updates on the status of the investigation. The recipient should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow the complainant to change academic and extracurricular activities or his or her living, transportation, dining, and working situation as appropriate. The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. In general, when taking interim measures, recipients should minimize the burden on the complainant. Recipients should also check with complainants to ensure that the interim measures are effective and, if ineffective, identify alternatives. Recipients should also ensure that the complainant is aware of his or her Title IX rights and any available resources, such as advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement.

In addition, recipients should provide training to employees about the applicable grievance procedures and their implementation. All persons involved in implementing a recipient's grievance procedures (*e.g.*, Title IX coordinators, investigators and adjudicators) must have training or experience in handling complaints of sexual harassment, and in the recipient's grievance procedures as well as applicable confidentiality requirements. In sexual assault cases in particular, the fact-finder and the decision-maker also should have adequate training or knowledge regarding sexual assault. Recipients should also provide training about its grievance procedures and their implementation to any employees likely to witness or receive reports of sexual harassment; including faculty, recipient law enforcement unit employees, recipient administrators, recipient counselors, general counsels, health personnel, and resident advisors. Recipients need to ensure that their employees are trained so that they know to report sexual harassment to appropriate officials, and so that employees with the authority to address sexual harassment know how to respond properly.

Throughout the recipient's investigation and in any hearing, both parties must have equal opportunity to present relevant witnesses and other evidence and to otherwise participate in the grievance process. Also, the recipient must use a preponderance of the evidence

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standard for investigating allegations of sexual harassment. If a recipient provides for appeal of the findings, it must do so for both parties. The recipient must maintain documentation of all proceedings.

For Title IX purposes, if a student requests that his or her name not be revealed to the accused or asks that the recipient not investigate or seek action against the accused, the recipient should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the accused. The recipient should notify students of the information that will be disclosed, to whom it will be disclosed, and why. The recipient should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. If the student still requests that his or her name not be disclosed to the accused or that the recipient not investigate or seek action against the accused, the recipient will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the harassment. If the school determines that it can respect the student's request not to disclose his or her identity to the accused, it should take all reasonable steps to respond to the complaint consistent with the request.

When a recipient knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate and appropriate steps to investigate or otherwise determine what occurred. OCR has advised recipients to be aware that complaints of sexual harassment/assault may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to name-calling and taunting. Title IX requires recipients to protect the complainant and witnesses and ensure their safety as necessary. At a minimum, this includes making sure that complainants and witnesses know how to report retaliation by university officials, other students, or third parties by making follow-up inquiries to see if any retaliation or new incidents of harassment have occurred and respond promptly and appropriately to address any new problems.

Grievance procedures generally may include voluntary informal mechanisms (*e.g.*, mediation) for resolving some types of sexual harassment complaints; however, it is improper for a complainant alleging harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the recipient (*e.g.*, participation by a trained counselor, a trained mediator, or, if appropriate, a university faculty member or administrator). The complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault/violence, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault/violence complaints.

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The Title IX implementing regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. The recipient is further required, by the Title IX implementing regulation at 34 C.F.R. § 106.9(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s). In addition, OCR's 2011 Dear Colleague Letter on Sexual Violence states that recipients should notify all students and employees of the electronic mail (email) address of the Title IX Coordinator. The coordinator's responsibilities include overseeing the recipient's response to Title IX reports and complaints of sexual harassment/assault, and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. The coordinator or designee should be available to meet with students, as needed. The Title IX coordinator should not have other job responsibilities that may create a conflict of interest. Also, as noted above, recipients must ensure that employees designated to serve as Title IX coordinators have training or experience in handling sexual harassment and sexual violence complaints, and in the operation of the recipient's grievance procedures.

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires that recipients notify applicants for employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its education programs or activities, and that it is required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

Factual Information

A. Title IX Coordinator

When OCR initiated this compliance review in 2010, the University identified several points of contact for Title IX compliance, including the Student Judicial Affairs (SJA) Director, the Human Resources (HR) Director, and the General Counsel. In 2012, the University created a new centralized compliance office, the Office of University Compliance and Integrity (Compliance/Integrity Office). The Office addresses, among other issues, Title IX compliance and houses the Title IX Coordinator, who is responsible for overseeing the University's efforts to prevent and address sexual harassment and sexual assault. In addition, the University delegated Title IX investigatory responsibilities to three Deputy Title IX Coordinators, one each for students, faculty and staff, and athletics. In May 2014, the University named a new Title IX Coordinator, whose name and contact information, along with the names and contact information for the three Deputy Coordinators, can be found on the University's website.

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The University also established a Sexual Violence Consultation Team (SVCT). The SVCT is a group of first responders that generally meets biweekly to discuss all sexual harassment/violence complaints received by the University to determine whether the correct responder is investigating the complaint and that the appropriate resources are being provided, to ensure that correct referrals are being made, and to provide review and input on related issues and inquires.

The University informed OCR that the Title IX Coordinator regularly meets and communicates with constituent offices and is regularly apprised of developing issues, including during meetings of the University's SVCT. In addition, an electronic notification system is used to alert the Title IX Coordinator of student conduct matters involving allegations of sexual harassment/assault and the Title IX Coordinator is provided with copies of reports of all Title IX matters reported to the University police.

B. Notice of Nondiscrimination

When OCR initiated this compliance review, the University's notice of nondiscrimination did not meet the Title IX requirements, at 34 C.F.R. § 106.9, in that, although some of the University's professional schools (*e.g.*, the Moritz College of Law) had individual notices of nondiscrimination on the basis of sex, not all schools within the University had a notice of nondiscrimination and there was not a general University-wide notice. During the review, the University established a University-wide notice of nondiscrimination that covers sex discrimination and meets the Title IX requirements.⁵ The University posted the nondiscrimination notice on the University's main web page and the Title IX webpage.⁶ The University also created a web link to the nondiscrimination statement on the footer banner on many of the University web pages. The notice provides the names and contact information for the Title IX Coordinator and the Deputy Coordinators.

C. Sexual Harassment Complaint Investigation Process and Procedures

At the start of OCR's investigation, the University's policies and procedures addressing sex discrimination, including sexual harassment against students, included guidelines posted on the Office of Student Life's Student Conduct (Student Conduct) website titled "General Information: Sexual Harassment by Students" and the University's Code of Student Conduct (the Code). The policies and procedures did not include designated timeframes for the completion of the major stages of an investigation. In addition, although the University used its disciplinary Code to address complaints of sexual harassment against students, the Code did not ensure that the complainant was provided an equal opportunity to participate in the grievance process.

⁵ See <http://hr.osu.edu/public/documents/policy/resources/110nondiscrimnotice.pdf?t=20148111348>.

⁶ See <http://www.osu.edu> and <http://titleix.osu.edu/>.

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Of the students who responded to OCR's request for information in 2011, a minority reported having knowledge or personal experience with incidents of sexual harassment/assault. Some students expressed concerns about the University not having taken sufficient or any action to respond to reports of sexual assaults that had occurred, and about the University not sufficiently addressing retaliation fears for complainants. The majority of students interviewed by OCR in 2011 stated that they believed the University takes complaints of sexual harassment/assault seriously and is responsive. The majority of students reported they feel comfortable reporting sexual harassment/assault; however, there was substantial confusion among students, including RAs, regarding how and where to report incidents of sexual harassment/assault. RAs are required to inform the Housing Directors of any sexual harassment reports or complaints they receive and inform the student of his or her rights to file with the Title IX Coordinator and Student Conduct, and law enforcement. Nearly a quarter of the RAs who responded to OCR's request for information in 2011 indicated that they were unaware of a process for responding to complaints of sexual harassment/assault. Additionally, there seemed to be a correlation between the level of training received and the awareness of policies and procedures for responding to complaints of sexual harassment/assault. Over 20% of the RAs reported having received little or no training to address complaints of sexual harassment/assault and a majority of those individuals also reported being unaware of a complaint process for sexual harassment/assault.

After the initiation of OCR's investigation and issuance of OCR's 2011 Dear Colleague Letter on Sexual Violence, the University revised its sexual harassment/violence policies and procedures. In 2012, the University also created the new Compliance/Integrity Office.

In December 2013, University officials launched a new and dedicated Title IX website within the University website that contains a compilation of resources and is designed to be a "one-stop shop" for information on Title IX and sex discrimination.⁷ University officials indicated that the website is designed to provide easier access to information about Title IX issues, including the ability to file a complaint directly on that site. The Title IX web page is located within the site for the University's Compliance/ Integrity Office. The main page includes the University's nondiscrimination statement, names and contact information for the current Title IX Coordinator and the three Deputy Coordinators, and a link ("Submit a Complaint/Report") to an electronic complaint form. The website states that the complaint form is not required to make a complaint and that a complaint can be made through the University's anonymous reporting line ("EthicsPoint"), by phone, or by web, or by contacting the University police, Student Conduct, HR, or the Title IX Coordinator directly. This page indicates the Title IX Coordinator will oversee the investigation of the complaint and that the University prohibits sexual harassment by "vendors, contractors, volunteers, and third parties acting as agents for the University." The page also states that "conduct alleged to constitute harassment is evaluated from the perspective of a reasonable person." The website also includes links to a "Title IX Program Statement" dated May 13, 2014, which provides an

⁷ The Title IX web page can be found at <http://titleix.osu.edu/>.

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outline of the resources available at the University, links to five University sexual harassment/violence policies, as well as reporting and complaint procedures, policies, education and training, and support services.

The Title IX page includes a link to “Accommodations,” which states that OSU will assist students who report sexual harassment and sexual violence in obtaining medical support and information regarding available legal and Student Conduct resources, as well as counseling and support services, and will also assist students in notifying the University Police or other local police if the assistance of law enforcement is requested. The available “accommodations” listed include changing the complainant’s living situation, including obtaining emergency housing or moving into another residence facility, assisting the complainant with exploring options to address academic concerns, such as transferring class sections, taking an incomplete in a class or filing a grade grievance and assisting the complainant with financial concerns, including providing financial aid guidance. The statement directs students to make requests for accommodations “to the department in which the accommodation is sought.”

Currently, there are five university policies that address sexual assault and sexual harassment:

1. Code of Student Conduct, which prohibits all types of sexual misconduct;⁸
2. Policy Guidelines: “Sexual Harassment by Students in the Non-Employment Context Policy;”⁹
3. HR Policy 1.15, “Sexual Harassment Policy;”¹⁰
4. HR Policy 1.10, “Affirmative Action, Equal Employment Opportunity and Nondiscrimination/Harassment Policy;”¹¹ and
5. HR Policy 7.05, “Workforce and Family Relationship Violence Policy.”¹²

1. Code of Student Conduct (Code)

The University identified its Code as its grievance procedure for student Title IX complaints. The Code can be found on the University’s Student Conduct and Title IX websites. University officials stated that the Code is reviewed every three years, and in August 2011, the University conducted a review of the Code to address the points in OCR’s April 2011 Dear Colleague letter on sexual violence. Subsequently, the University notified OCR that the Code was revised on June 18, 2012; this is the version currently posted on the University’s website.

⁸ <http://studentlife.osu.edu/csc/>

⁹ <http://studentconduct.osu.edu/page.asp?id=35>.

¹⁰ <http://hr.osu.edu/public/documents/policy/policy115.pdf?t=201482793124>.

¹¹ <http://hr.osu.edu/public/documents/policy/policy110.pdf?t=201482793225>.

¹² <http://hr.osu.edu/public/documents/policy/policy705.pdf?t=20148279343>.

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The Code prohibits sexual misconduct, which it defines as physical contact or other non-physical conduct of a sexual nature in the absence of clear, knowing and voluntary consent, including but not limited to: non-consensual sexual intercourse or contact, sexual exploitation, sexual harassment as defined in applicable University policy, and indecent exposure. The Code defines consent as the act of knowingly and affirmatively agreeing to engage in a sexual activity and states that consent must be voluntary. The Code provides that an individual cannot consent who: is substantially impaired by any drug or intoxicant; has been compelled by force, threat of force, or deception; is unaware that the act is being committed; whose ability to consent is impaired because of a mental or physical condition; or who is coerced by supervisory or disciplinary authority. The Code provides that consent may be withdrawn at any time, and that prior sexual activity or relationship does not, in and of itself, constitute consent. The same definitions of sexual misconduct and consent appear on the Title IX web page.

The Code states that anyone who has witnessed what the person believes to be a possible code violation should notify an authorized University official and provides a number of choices about where to make the initial report: the residence hall director if it occurred in the residence halls; the director of student conduct if it is a non-residence hall incident; the coordinator of the committee on academic misconduct if related to academic misconduct; and the University police or other appropriate law enforcement agency if it involves a violation of a criminal law in addition to a code violation.

The Code states that the University may proceed with disciplinary action under the Code independently of any criminal proceeding and may impose sanctions for violation of the Code, even if such criminal proceeding is not yet resolved or is resolved in the student's favor. Under the Student Conduct procedures section, the Code states that University police or other appropriate law enforcement has primary responsibility for the investigation of acts that involve suspected violation of federal, state, or local laws, while residence hall directors, assistant hall directors, and the Director of Student Conduct are authorized to investigate alleged violations other than those involving academic misconduct. The Code states in the Hearing Procedures section that it uses the preponderance of the evidence standard to determine if a particular student violated the Code. Upon completion of an investigation, the investigator will decide upon an appropriate course of action, which may include: taking no action; deferring further action with or without conditions; or initiating charges with the appropriate University student conduct body.

2. Policy Guidelines: "Sexual Harassment by Students in the Non-Employment Context"

The Policy Guidelines state that the University will maintain an environment for "work and study" free from sexual harassment through prompt corrective measures taken to stop sexual harassment whenever it occurs. The Policy Guidelines define sexual harassment in the same manner as other documents listed on the Title IX web page. The Policy Guidelines further provide examples of behavior that may be considered sexual harassment and describes the variety of relationships where sexual harassment can occur

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(peer on peer, faculty and student, staff and student, supervisor and employee). The Guidelines state that filing a complaint with Student Conduct does not preclude the individual from filing a complaint with an external agency. The Guidelines also state that the University prohibits retaliation against an individual for reporting sexual harassment or for participating in an investigation and that allegations of retaliation should be directed to Student Conduct.

3. HR Policy 1.15: “Sexual Harassment Policy”

HR Policy 1.15 is the most commonly referenced HR document in the University’s Title IX materials. This policy, dated April 24, 2014, states that it applies to faculty, staff, student employees, graduate associates, students, and volunteers. However, the policy also states that cases involving student-on-student sexual harassment not in the employment setting will be handled by Student Conduct pursuant to the Code of Student Conduct. It does not state where complaints against third parties may be filed. It states that sexual harassment is prohibited and that prompt corrective measures will be taken to stop sexual harassment whenever it occurs. The policy defines sexual harassment the same as it is defined on the Title IX web page. It provides examples of sexual harassment.

HR Policy 1.15 requires any HR professional, supervisor, chair/director, or faculty to report sexual harassment of which they become aware to HR by using the HR discrimination/harassment complaint form or other appropriate documentation within five working days. It states that HR and the relevant unit’s HR personnel will determine how to proceed with the complaint. HR Policy 1.15 states that, when it is determined that sexual harassment has occurred, steps will be taken to ensure the harassment is stopped immediately. It further states that “corrective measures consistent with the severity of the offense will be imposed consistent with applicable university procedures and may include sanctions,” and lists types of sanctions that might be imposed. HR Policy 1.15 states that “sexual harassment concerns can often be resolved by the person being harassed addressing the matter directly with the alleged harasser.” It states that “when such resolution is not feasible” then a faculty or staff member, student, or volunteer may bring an allegation.

The policy states that complaints of sexual harassment may be made with the HR professional within the department or unit, a HR consultant, or any supervisor, faculty member, or faculty or staff administrator. The policy states that these designated individuals will be given training by HR on handling sexual harassment allegations.

HR Policy 1.15 indicates that the procedures for filing and investigating allegations of sexual harassment are addressed in HR “Guidelines for Investigating Complaints of Discrimination and Harassment” (Guidelines).¹³ The Guidelines are dated January 1, 2013, and state that they apply to faculty, staff, students, student employees, and volunteers, and that HR is “ultimately responsible for investigating all complaints of discrimination and harassment.” The Guidelines state that complaints should be filed

¹³ <http://hr.osu.edu/public/documents/hrpubs/guidelinesdiscrim.pdf?t=201482793140>.

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within 180 days. They state that the individual should talk with the responsible party or seek to resolve the situation in consultation with the supervisor and/or college or unit HR professional and indicate that only if this step is taken and the issue is not resolved may the individual file a complaint.

The Guidelines indicate that the method of investigation may range along a continuum from “a one-on-one conversation with the accused with an agreement as to further interactions” to “an inquiry with several witness interviews.” The Guidelines state that the investigator might conduct interviews and gather relevant documents, but do not explicitly state that the parties will be given the opportunity to identify witnesses or evidence. The Guidelines state that written notice of the outcome will be provided to both parties. There is no appeal process. No specific timeframe is provided for the stages of the investigation, although the Guidelines state that investigations should be concluded “within a reasonable timeframe from the date the complaint was filed.”

The Guidelines state that, if discrimination, including harassment, is found to have occurred, the University will take necessary action steps to correct the behavior. Only sanctions are listed as potential action steps. There is no provision for interim measures or systemic or individual remedies.

The Title IX Coordinator is not mentioned in the Guidelines as having any role in the process at any stage. The Guidelines state that all investigation records will stay within HR, although records of corrective action taken might appear in employing unit’s files.

4. HR Policy 1.10: “Affirmative Action, Equal Employment Opportunity & Non-Discrimination/Harassment Policy”

HR Policy 1.10, dated September 1, 2013, applies to faculty, staff, student employees, graduate associates, volunteers, and applicants. The policy only applies to employment discrimination. HR Policy 1.10 states that the Guidelines described above are the procedures for the filing and management of discrimination and harassment complaints under the policy.

5. HR Policy 7.05, “Workforce and Family Relationship Violence Policy”

HR Policy 7.05, which was updated on April 15, 2014, applies to faculty, staff and students that are graduate associates and student employees. The policy was promulgated to promote a safe work environment and to prevent workplace violence.

In addition to the University’s new Title IX dedicated website, OCR’s investigation revealed that information about the University’s sexual harassment policies and procedures is included on several other University websites, including the websites for 1) Student Conduct; 2) Campus Police; 3) The Office of Diversity and Inclusion, 4) The Student Wellness Center, and 5) HR.

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For example, on the Student Conduct website, the University in 2014 added various resources, including the Student Code of Code and under the section titled “Sexual Violence,” information about sexual harassment and sexual violence, including the definitions of misconduct, consent, filing complaints, the standard of proof used to investigate allegations of sexual harassment and sexual violence, available resources, the law enforcement process and availability of no contact and protection orders , The link titled “Title IX Compliance” states that the University will provide a timely and thorough investigation and, barring exigent circumstances, cases of sexual misconduct or sexual harassment will be resolved within 60 days. This page also states that all parties will be informed of the decision of the hearing officer or a University Conduct Board in writing, and all parties have the right to appeal and will be notified of any appeals. Appeals must be filed within 5 business days and any responses to an appeal by the other party must be filed within 5 business days from notice of the appeal. The University also provides pages titled “Victim’s Rights” and “Accused’s Rights,” which both provide similar information about both parties’ rights during the Title IX complaint process, including but not limited to the University conducting a timely and thorough investigation, the right for both parties to be informed of the University’s process and possible outcomes, available resources, the right to one advisor throughout the process, and the right to be updated throughout the investigation and informed of the outcome.

The University’s campus police web page includes a link titled “Reporting Sexual Assault” that has information about reporting sexual assault, the relationship between the University police and Student Conduct, the University’s disciplinary procedures as they relate to complaints of sexual assault, contact information, criminal and civil options, and victim resources, both on and off campus. The site also has a section titled “The Ohio State University Survivor’s Rights Guarantee.”

The Student Conduct process is governed by the guidelines and policies described above. While students are directed to file complaints with the Title IX Coordinator, Deputy Coordinators and Student Conduct, students may also first report sexual harassment to Sexual Violence Education and Support (SVES,) Wellness Center, and Residence Life, who forward complaints to the Title IX Coordinator. OCR asked University officials about the fact that complaints could be filed in several different places and about efforts made by the University to coordinate complaint investigations. For example, the Code provides that the Student Conduct Board for residential life only hear cases involving Code violations that occur within University housing. The Board is required to refer cases back to Office of Student Conduct if it appears that the violation may be serious enough to warrant suspension or dismissal. The University explained that this would happen by an RA elevating the matter to the assistant hall director, and then the hall director for a decision. The University said there is a great deal of collaboration between those offices on an as-needed basis. SVES and the Wellness Center are required to report any complaints to the Title IX Coordinator. In addition, the SVCT ensures coordination across the campus.

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The former SJA Director advised OCR that she trained residence hall staff on residence hall staff on the connection between Title IX and sexual harassment/sexual assault and resources for students. There is a web-based document system (CIF), in which housing staff reports are stored and to which Student Conduct has access. Student Conduct reviews the CIF reports to ensure the residence halls are not keeping a matter that should be referred to Student Conduct.

Student Conduct Sexual Harassment Investigation. According to OCR interviews with University officials and review of the applicable policies and procedures, Student Conduct does the fact-finding for Student Conduct sexual harassment investigations. The complainant does not have the burden of presenting his or her case or providing the sexual harassment allegations. Student Conduct interviews complainants, explains the process, provides interim relief and provides information regarding available resources. If the complainant is not willing to speak with the Student Conduct investigator, Student Conduct still makes a determination about whether to move forward with its investigation. Student Conduct also interviews the accused, other relevant witnesses, and gathers reports and other information. It then determines if there is cause to charge a student with a violation of the Code. Student Conduct may encourage the complainant to report to police or may make a third-party report; Student Conduct can report the matter to the University police if the matter is within its jurisdiction (*i.e.*, if the incident giving rise to the complaint occurred on campus). The accused can accept responsibility, ask for an administrative hearing with an officer (who did not participate in the investigation), or request a hearing before a judicial panel (faculty, staff, students). Faculty and staff have three-year rotations on the Student Conduct hearing panel, while students have two-year rotations.¹⁴ An administrative hearing can be quicker than a judicial panel, which takes the longest. Both the complainant and the accused may have a support person or advisor present during hearings. The SJA Director stated that the panel can have expert consultants (*e.g.*, on medical issues). The expert is not a witness, but acts as consultant to interpret facts or issues in which the panel lacks expertise. However, OCR's review of the hearing files did not indicate the use of an expert in any hearings.

Under the Code, there are a minimum of four panel members for a hearing panel, and a staff member sits in *ex officio*. Neither the hearing officer nor the chair is permitted to have been involved with the investigation. Investigators would not be on the panel or act as chair. The *ex officio* staff member manages the flow of the hearing, and determines relevance of the evidence to be presented. During a hearing, complainants do not directly confront the accused and the accused is not permitted to directly question the complainant. The chair makes opening remarks, the complainant can make an opening statement, and then the accused can make a statement. The Student Conduct packet includes information about the written complaint, police report, interviews, and witness

¹⁴ The Code provides that a hearing quorum shall include no fewer than four voting members, including two student members. The University informed OCR that students will no longer serve on Student Conduct or Residential Life hearing boards in cases that involve sexual violence. This practice will be consistent with OCR policy, which discourages recipients from allowing students to serve on hearing boards in cases involving sexual violence. *See* OCR 2014 "Questions and Answers on Title IX and Sexual Violence," at n. 30.

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statements. The hearing panel members all have a copy of the packet of the information obtained during the investigation, as do the complainant and the accused. It is not given to the complainant and accused to keep, but they can review it in advance of the administrative hearing, and are provided a copy during the hearing. University witnesses speak first, then the accused's witnesses. While it is not the complainant's burden to prove his or her case as part of the hearing, the complainant is provided several opportunities to speak during the hearing. The parties can ask questions of each other, but only funneled through the chair, and they each can make closing remarks. The complainant can also make an impact statement. The presence of the complainant is not required, but University officials stated that they believe it weakens the case if he or she is not present and there are no other witnesses. The University has made provisions for complainants to attend conduct hearings via Video Teleconference (VTC).

During the investigation, Student Conduct maintains regular communication with the parties to keep them informed of the process. Prior to the initiation of a hearing, there are meetings with both the complainant and the accused to review the process and procedures and share information. At the end of the process, both parties are informed of the outcome in writing.

The Student Conduct process provides penalties ranging from informal reprimand to dismissal. Conduct dismissals are permanent. There is no limit on the sanction range (*e.g.*, community service, writing a paper, meeting with officials). However, since September 2013, almost all students found to have committed sexual misconduct have been permanently dismissed. In some cases where dismissal is not an appropriate penalty, the violator might meet with the SVES coordinator for appropriate training.

Based on interviews with University officials and the review of sexual assault complaint files from the 2008-2009 and 2009-2010 academic years, OCR determined that, when a complaint was filed with Student Conduct, the University usually completed the investigation of the complaint within one quarter or 10 weeks. Timing depended in part on witness availability. If the complaint was filed immediately before a summer or other academic break, and, as a result, witnesses were not available, the complaint process might take longer. The University also advised that the completion timeframe also depended on whether the accused accepts responsibility or how the case will be heard.

Coordination with Law Enforcement. While there is no written protocol, University officials indicated that there is strong coordination between University police and Student Conduct regarding the handling of sexual harassment and sexual assault complaints. This coordination is described in the Title IX Program Statement discussed above.

All allegations of sexual assault are investigated by the University's Department of Public Safety, which includes the University police, to determine if criminal charges are warranted. When University police receive information about any sexual assault, the police forward that information to Student Conduct. In addition, in instances where police receive complaints that have no criminal component (*e.g.*, sexual harassment

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complaints that do not involve violence), the police also refer the complaints to Student Conduct. This process was confirmed through interviews with University officials (although OCR noted that information on the campus police website indicates that it is the responsibility of the students who report incidents of sexual assault to the campus police to also report the incident to Student Conduct, University Housing, or SVES in the Wellness Center). Student Conduct may encourage a complainant to report to the police or may opt to file a third-party complaint with University police if the alleged conduct is believed to be also a criminal matter within the University police's jurisdiction. Police tell students about resources and also share information with Student Advocacy, which will reach out to students.

In cases where law enforcement does not pursue a criminal investigation, Student Conduct still conducts Title IX investigations. The University is not guided by the outcome of the police investigation. When there is an ongoing criminal investigation, the police keep the appropriate University individuals updated on the status of the investigation, for example by sharing the results of the preliminary investigation with Student Conduct or HR. The University may coordinate timing of witness interviews with the police. The University advised OCR that it continues with its Title IX investigation to the extent that it does not interfere with the criminal investigation. The University also explains on its website the difference between the criminal process and the Student Conduct process.¹⁵ Both the Student Conduct Director and the Deputy Police Chief indicated that they participate on the SVCT to ensure the correct entity has the case and prevent cases from "falling through the cracks." The Director of Student Conduct gets SVCT reports on all matters referred to police.

OCR reviewed police reports provided by the University for complaints from the 2008-2009 and 2009-2010 academic years; however, most of the names of the accused were blacked out and OCR was unable to determine whether incidents were referred to Student Conduct. The documents confirmed that the police provided students with sexual assault pamphlets and referrals for medical and counseling services.

Confidentiality. Both the "Victim's Rights" and "Accused Rights" sections on the Student Conduct website state that the University will make reasonable efforts to protect confidentiality within the parameters of FERPA¹⁶ and the University Student Conduct process, as described above. In addition, the Title IX website contains a specific "Confidentiality" page, which states that the University is obligated to follow up on all sexual harassment allegations and that in some situations "it may be necessary to reveal the complainant's identity to conduct an investigation." Finally, the University's policy titled "Sexual Harassment by Students" states, "To the extent possible, all information received in connection with the filing, investigation, and resolution of allegations will be

¹⁵ See <http://studentconduct.osu.edu/page.asp?id=11> ("There are significant differences between the campus conduct process and the criminal justice procedures. The processes are not mutually exclusive. A student may be arrested and charged in the criminal justice system as well as under the Code. Alternatively, charges can occur for alleged violations of the Code, which may not be violations of the law.")

¹⁶ Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

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treated as confidential except to the extent it is necessary to disclose particulars in the course of the investigation or when compelled to do so by law. All individuals involved in the process should observe the same standard of discretion and respect for the reputation of everyone involved in the process.”

D. Response to Sexual Harassment/Violence Incidents

OCR reviewed eighty-seven sexual harassment files from 2008-2009 and 2009-2010. These files consisted of files from the campus police, from Student Conduct, and the Housing Office. While the files contain detailed information about the incidents giving rise to the cases, they were often unclear or incomplete with regard to the completion of the investigation, including any sanctions and/or interim and final remedies taken. In many cases, the complainants declined to pursue charges; however, there was no indication in the files that the University pursued further actions in the cases where the accused could be identified. The files demonstrated that complainants were routinely provided sexual assault resource and counseling information. Many of the files include handwritten notes of investigators that were illegible and not transcribed into a legible format; therefore, it was difficult to determine in some cases whether the University took any action to address the incident. OCR’s investigation revealed that the University did not always maintain complete records with regard to complaints that arose in student housing. As such, OCR was unable to determine whether every complaint of sexual harassment that arose in student housing and could possibly result in suspension or dismissal was referred to Student Conduct. OCR also noted information in the files indicating that the process took over 60 days in some cases without additional explanation in the file as to the reason for the length of time.

The University also provided OCR with files for Title IX complaints filed with the University since the creation of the new compliance office and the naming of the Title IX Coordinator in September 2012. OCR’s review of these files, which included cases from September 2012 to January 2014, noted a significant improvement in the University’s documentation and recording of these investigations. The University uses a software tracking system to track all Title IX investigations. The file review found that witnesses were properly identified, located and interviewed, charges were clearly set forth and findings were clearly identified, and both parties were notified of the outcome in writing. These complaint files show that the University completed the majority of the investigations and hearings within the 60 days, as is now required by the University’s policies. For those that took longer than 60 days, the reporting of the incident and investigation usually occurred at the beginning of, or during, a semester break or when witnesses were not otherwise available for questioning.

OCR noted that in the more recent complaint files, almost all students found to have committed sexual assault or engaged in non-consensual sex were permanently dismissed from the University with no opportunity to reenroll in the future. The case files showed that the University used interim measures such as moving the accused out of the residence hall, immediate suspensions during an investigation, and no contact orders, and offered complainants information for counseling services. OCR did find clear

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documentation in the files regarding other remedies such as academic support. OCR noted that in cases where the accused was found not to have violated the Code, the University still imposed no contact orders. The files reviewed showed that both parties received notices of appeals and opportunities to respond to an appeal.

On May 23, 2014, the University received a complaint against the Director of the University's Marching Band alleging that the Band's culture facilitated acts of sexual harassment, creating a sexually hostile environment for students. The complaint cited a culture that was "sexualized" and that its members were made to swear secrecy oaths about objectionable traditions and customs. The University's Marching Band has 225 members. The Band Members receive academic credit for their participation through the College of Arts and Sciences. The University conducted an investigation of the matter within 60 days, interviewing current students, alumni, and staff. The investigation found a culture that included numerous objectionable, secret traditions, and misconduct including excess alcohol consumption that contributed to a sexual assault. On July 22, 2014, the University issued a report regarding the investigation, in which the University concluded that there was a sexually hostile environment for students in the Marching Band and that the Band's Director "failed to eliminate the sexual harassment, prevent its recurrence and address its effects."¹⁷ Additionally, the University concluded that the Marching Band's Director, knew or reasonably should have known about this culture but failed to eliminate the sexual harassment, prevent its recurrence, and address its effects.

The University announced a number of steps that it was committing to take in response that include evaluating and strengthening the Marching Band leadership, revisions to policies and procedures, counseling and training for students and staff and climate surveys and controls. The University also issued the following statement on "Ohio State Marching Band Culture," which is posted on the band's website and includes remarks from you, as President of the University, stating:

The Ohio State University takes very seriously its responsibility to provide a world class education, which is enriched by a positive campus culture, diverse academic experience and opportunities for personal growth. Those responsibilities are built on the University's core values of integrity, personal accountability, openness and trust.

While the Ohio State Marching Band has embraced a tradition of excellence and become a source of enormous pride for the entire Buckeye family, a recent review of the Marching Band culture and practices revealed conduct by members of the band and staff that is inconsistent with the University's values and Title IX requirements.

A thorough investigation by the Office of University Compliance over the past two months revealed serious cultural issues and an environment conducive to sexual harassment within the Marching Band. In addition, the investigation

¹⁷ While the finding was limited to sexual harassment, OCR notes that the University's report states that sexual assault allegations were also made.

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determined that Director Waters was aware or reasonably should have known about this culture but failed to eliminate it, prevent its recurrence and address its effects.

Jon Waters has been terminated from his position as Director of the Marching Band.

‘Nothing is more important than the safety of our students,’ said The Ohio State University President Michael Drake. ‘We expect every member of our community to live up to a common standard of decency and mutual respect and to adhere to university policies.’

Moving forward, we must abide by a zero tolerance policy at the University—both with the Marching Band and the entire campus community—for any behavior that creates a hostile culture at Ohio State. I view this as a new day and an opportunity for the Ohio State community to come together and embrace the values and behavior that have made this University great.’

In addition to changing the leadership of the Marching Band, the University immediately has taken additional steps to ensure that change is swift and impactful. This begins with the appointment of Betty Montgomery, former Ohio

Attorney General, to lead an independent task force, reporting directly to President Drake and the Chairman of the Board of Trustees, to review this matter in its entirety. . .

At this time, the Ohio State Marching Band season will continue under new leadership and steps are being taken to swiftly identify an interim band director. Additional training and guidance will be developed with new band leadership to create a proper culture, and nurturing environment.

E. Training/Outreach and Student/Climate Information

OCR’s investigation revealed that the University has provided training for University officials responsible for handling the University’s compliance with Title IX, the former Title IX Coordinator, the SJA Director and the HR Compliance Manager. The training addressed the investigation of complaints of sexual harassment and sexual assault. In addition, HR has provided regular ongoing training offered for faculty and staff, and they often call on SVES to present at these trainings. The former SJA Director stated that she trained the Student Conduct hearing officers, who also receive training at national conferences and academies. The hearing officers also receive annual training from SVES, which covers the dynamics of sexual harassment and assault, power differences, consent, alcohol and drugs, consent and coercion, defenses that the accused may use, rape myths, the impact of rape trauma syndrome on memory, and power and privilege issues.

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The University police have received sexual harassment training through HR. The Police Chief also trains security officers at the local hospital, which includes sexual harassment training and explaining the difference between sexual harassment and sex crimes. The Chief is also a member of a core group of individuals at the University who provide sexual harassment training at the University. In addition, many of the University police officers have gone through sexual assault training provided through the Sexual Assault Response Network of Central Ohio (SARNCO).

In 2011, some of the RAs who responded to OCR's request for information stated that they had not received any training that specifically referenced Title IX. However, a majority of RAs did respond that they had received some training by the University regarding sexual harassment. Most of the responses indicated that RAs were trained prior to the beginning of the school year through a program called "Behind Closed Doors." This program included role-playing situations and discussed the emotional needs for students subjected to sexual harassment/assault. Generally, most RAs responded that the training taught them to report incidents of sexual harassment/assault to their supervisor. In March 2012, the University provided OCR with Title IX training materials that were used to train residence hall staff for the 2011-2012 school year. Specifically, the University provided OCR with copies of pre- and post-tests administered to Resident Advisors and Resident Managers; PowerPoint presentations used for the Resident Advisor training, Resident Manager training, and the hourly office assistant trainings; and a list of the Office Assistants that had been trained from desk staff across the residence halls. The training made clear the connection between Title IX and sexual harassment/sexual assault and it provided the residence hall staff with a number of resources to which to direct students; however, because the University had not yet named an official Title IX Coordinator at the time, the materials did not identify any person designated as the Title IX Coordinator.

Since September 2012, the Title IX Coordinator has been responsible for training members of the University community and providing broader oversight for training initiatives by other areas that play a key role in the University's Title IX programs and processes, such as Residence Life.

In addition, during orientation for new students, the University created a website that includes a section titled "Alcohol and Sexual Violence" that provides an introductory video advocating bystander intervention. This section of the orientation website also includes links to resources regarding bystander intervention, counseling and student health services, and sexual violence. In addition, links are provided to direct students to the Sexual Violence Education and Support (SVES) at the Wellness Center, the Student Advocacy Center, and Student Conduct.¹⁸ Furthermore, on the Student Wellness Center's website, under the "Sexual Violence" section, there is a page with a list of seven presentations addressing sexual assault and related issues, such as the relationship between alcohol and sex, consent, myths of sexual violence, and bystander intervention.¹⁹

¹⁸ See <http://studentlife.osu.edu/orientation/>.

¹⁹ See <http://swc.osu.edu/sexual-violence/presentations-for-sexual-violence-education-support>.

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These presentations can be requested through the Student Wellness Center. The majority of students interviewed by OCR in 2011 consistently identified the Student Wellness Center as a helpful resource.

The University's Assessment of Climate

The University stated that it regularly assesses campus climate with regard to sexual harassment and related issues, and added that the University's Center for the Study of Student Life conducts ongoing climate surveys, which touch on many areas pertinent to Title IX.²⁰ One survey from September 2012 assessed topics of general health, health-related impediments to academic performance, relationships, alcohol and other drug use, sexual behavior, nutrition, exercise, mental health, and sleep. This survey asked students if they had sex with someone without giving the other person their consent (1.9% responded they did), or if they had sex with someone without getting the other person's consent (1.3%). Another survey from August 2011 (findings from 2009) about sexual behavior, but this survey did not include questions about sexual harassment/assault, consent, or other related issues.

Analysis and Conclusions

- **Title IX Coordinator (34 C.F.R. §§ 106.8 and 106.9(a))**

OCR's investigation determined that the University has designated a Title IX Coordinator and named three Deputy Coordinators, and it has provided their names and contact information in multiple locations on the University's website. Prior to the completion of OCR's investigation of the training provided to the current Title IX Coordinator and Deputy Coordinators, OCR entered the Agreement with OSU, which requires the University to provide adequate training to the Coordinators on what constitutes sexual harassment, including sexual assault, and that they understand how the recipient's grievance procedures operate.

- **Notice of Non-Discrimination (34 C.F.R. § 106.9)**

The University's previous notice of nondiscrimination did not fully meet the requirements of 34 C.F.R. § 106.9 in that, although some of the colleges within the University had individual notices, not all of the colleges had individual notices and OSU did not have a general notice that applied to all of the colleges within the University. During the review, the University established a University-wide notice of nondiscrimination that covers sex discrimination, includes contact information for its Title IX Coordinator, and has been broadly disseminated and posted, and the notice therefore meets the Title IX requirements. Based on the information obtained, OCR finds that the University is currently in compliance with the Title IX requirement at 34 C.F.R. § 106.9 regarding its notice of nondiscrimination.²¹

²⁰ See <http://cssl.osu.edu/>.

²¹ OCR noted that the University's other notices of nondiscrimination were inconsistent with respect to references to other statutes enforced by OCR, including 34 C.F.R. § 100.6(d), 34 C.F.R. § 104.8, 34 C.F.R.

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- **Sexual Harassment Policies and Procedures and Responses (34 C.F.R. §§ 106.8(b) and 106.31)**

OCR found that the policies and procedures in place at the start of OCR’s review in 2010 did not comply with Title IX in several respects, including that the policies and procedures did not designate reasonable timeframes for the major stages of the process and, in using Code of Student Conduct as its grievance process for student complaints of sexual harassment, the University did not ensure that the complainant was provided an equal opportunity to participate in the grievance process. Information obtained in OCR’s investigation revealed that students, including RAs, were confused as to the process on how to report sexual harassment.

OCR’s investigation revealed that, during the course of the review, OSU undertook a number of steps to improve its efforts to prevent and respond to sexual harassment, including establishing a new centralized “Office of University Compliance and Integrity,” which addresses Title IX compliance; creating a “one-stop shop” Title IX webpage for information about Title IX and sex discrimination; and forming its “Sexual Assault Consultation Team” to discuss and ensure coordination in the University’s response to all sexual assault complaints; and developing on-line training modules for students on bystander intervention.

OCR’s review of the University’s current policies found that the University has published five sets of policies and procedures relating to sexual harassment and sexual assault, including the Student Code, Sexual Harassment Policy Guidelines (for students in the non-employment context) and several HR policies. These are all linked to the “one-stop shop” discussed above and are also located on other University websites.

The University’s current sexual harassment policies and procedures are easily located and widely distributed. However, the policies and procedures continue to be confusing due to inconsistent definitions and omissions from version to version. For example, it is not sufficiently clear which listed policy would apply to which type of complaint, and the descriptions overlap in some instances (*e.g.*, “Sexual Harassment by Students in the Non-Employment Context” is described as applying to sexual harassment in the work and study context, as is HR Policy 1.15 titled “Sexual Harassment Policy.”) Some additional examples of inconsistencies are that the “Victim’s Rights” page states that this process will be timely and thorough, and barring foreseen circumstances, will be completed within 60 days. The “Accused Rights” page only states that the process will be “timely and thorough.” The notice to the parties is outlined in the “Victim’s Rights” and “Accused Rights” sections; however, it does not state that it will be in writing.

With respect to the application of the procedure to complaints alleging discrimination and harassment carried out by employees, other students, or third parties, OCR found that the University’s procedures do not comply with Title IX requirement that grievance procedures apply to third parties. The University’s description of its Sexual Harassment

§ 110.25, and 28 C.F.R. § 35.106. OCR has provided technical assistance to OSU on revising these non-Title IX nondiscrimination notices.

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Policy on the Title IX website states that it applies to students, employees, vendors, contractors, volunteers, and “third parties acting as agents for the university.” The applicable sexual harassment HR policies do not state that they apply to third parties. In addition, the University’s Title IX website states that conduct alleged to constitute harassment is evaluated from the perspective of a reasonable person. Under OCR policy, in determining whether a hostile environment has been created, the conduct in question must be considered from both a subjective and an objective perspective of a reasonable person in the alleged victim’s position, considering all the circumstances.

With one exception, the University’s policies and procedures provide for adequate, reliable, and impartial investigation of complaints, including equal opportunity for both the complainant and respondent to present witnesses and other evidence and to otherwise participate in the grievance process. The exception is that the University’s procedures inappropriately suggest and, in some instances, seem to require that parties work out alleged sexual harassment directly with the accused harasser prior to filing a complaint with the University. With respect to student peer harassment, the Policy Guidelines recommend that in “simple situations” (a term that is not defined), the complainant should talk to the responsible party or seek to resolve the situation. If the situation is not resolved, then the complainant should contact Student Conduct. The HR Guidelines state that the individual should talk with the responsible party or seek to resolve the situation in consultation with the supervisor and/or college or unit HR professional and indicate that only if this step is taken and the issue is not resolved may the individual file a complaint.

The procedures do comply with Title IX requirements in stating the standard for review, specifically that the preponderance of the evidence standard will be used for investigating allegations of sexual harassment or assault. The procedures also allow the parties access to information used at a hearing and provide similar and timely access to both parties; and properly notify the complainant of the right to proceed with a criminal investigation and a Title IX complaint simultaneously.

With respect to the requirement for designated and reasonably prompt timeframes for the major stages of the complaint process, the University’s procedures are not in compliance with Title IX. The HR 1.15 policy states only that the process will be completed within a “reasonable timeframe.” OCR also noted the following inconsistencies between the policies relating to timeframes. The Student Conduct procedures, in the section entitled “Title IX Compliance,” state that both the complainant and the accused are provided five days for filing an appeal. In the section entitled “Victim’s Rights,” the five-day timeframe is again clearly described. This specificity is omitted from the “Accused Rights” page.

With respect to written notice to both parties of the outcome of the complaint and any appeal, OCR noted that HR 1.15 is silent regarding the University’s obligation to provide written notice of the outcome of complaints to both parties; however, this requirement is described in the Code of Conduct.

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With respect to providing assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate, OCR noted that this language was included in many of the policies. Multiple documents state that the University has a compelling interest in taking steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others, if appropriate. Information is provided to complainants about sources of counselling, advocacy and other support.

In addition, OCR's review of the files from hearings revealed that the University does maintain documentation of the proceedings; does not appear to allow conflicts of interest by those handling the procedures; and informs students at regular intervals of the status of the investigation. The University also outlines steps available to protect the complainant as necessary, including interim steps before the final outcome of the recipient's investigation (*e.g.*, no contact order; change in academic or living situations as appropriate; counseling; health and mental services; escort services). The University also provides specifics regarding academic support and the ability to retake a course or withdraw without penalty, although as noted above, OCR did not find documentation of these types of remedies being offered in the files that it reviewed.

The Code covers a range of sanctions that can be levied against the accused. Sanctions include a formal written letter of reprimand, disciplinary probation, suspension, and dismissal. The Code outlines other sanctions as well that can be imposed by a hearing officer or board in conjunction with the above sanctions such as reassignment of rooms, restriction of access to campus locations, community service, and referral to counseling. OCR's review of the files found a range of sanctions imposed, including dismissal from the University.

The University has clear guidelines for addressing confidentiality for the complainant (although OCR recommends that the University specifically identify the employee who will be responsible for evaluating requests for confidentiality), and OCR's review of file documentation relating to the hearings suggest that the University disallows evidence of past relationships. Some policies also make clear that this evidence is disallowed. Some but not all of the University's procedures contain a section prohibiting retaliatory harassment. The University policies do not suggest that sexual assault complaints be mediated; however, the policies do not explicitly state that sexual assault complaints are not to be mediated even on a voluntary basis.

Based on its review of the University's current policies and procedures, OCR has determined that, while the University has made substantial improvements in its written policies and procedures, the current policies and procedures do not comply with Title IX. The critical deficiencies, as described, are that the policies do not apply to all third parties, that the policies include an inappropriate definition of sexual harassment that does not include a subjective (as well as objective) perspective, and that the policies do not uniformly include designated and reasonable timeframes for the major stages of the grievance process.

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As noted above, the University requested to resolve this review with a voluntary resolution agreement prior to the completion of OCR's investigation of all the issues in the review.

As such, OCR is not making a compliance determination under Title IX regarding whether the University's implementation of its policies and procedures complies with the Title IX requirements for prompt and equitable resolution of sexual assault complaints. With respect to whether the University provided prompt and equitable responses to the sexual harassment complaints reviewed by OCR, OCR identified some deficiencies in our file reviews from 2008-2009 and 2009-2010, including incomplete information about the interim and final remedies taken and final outcomes/determination for cases, and information suggesting that the University did not pursue the Title IX investigation if the complainant did not want to pursue the complaint. OCR found that the complaint files reviewed earlier in its investigation did not include sufficient documentation to make a Title IX compliance determination as to whether the University provided prompt and equitable responses to the complaints OCR reviewed.

OCR reviewed files for complaints filed in the 2012-2013 academic year to January 2014 because they were generated after the University created a centralized compliance office and revised its policies and procedures. OCR found that the more recent complaint files included more complete documentation of the information considered by the University and steps it had taken in investigating the complaints. The files do not have a full documentation of the range of any interim and final remedies provided to complainants but did have documentation of the full range of sanctions imposed on accused students.

Also, the University conducted an investigation of alleged sexual harassment within its Marching Band and found that there was a sexually hostile environment for students in the Marching Band of which the University had notice and failed to adequately address.

On September 8, 2014, the University agreed to implement the enclosed Agreement. When fully implemented, the Agreement entered into by the University will resolve the above-cited Title IX compliance issues. The agreement requires that OSU address sexual assault and sexual harassment on its campuses in a prompt and equitable manner, including by taking effective steps to stop sexual harassment, prevent its recurrence, eliminate any hostile environment, and remedy its discriminatory effects on the complainant and any others as appropriate. Specifically the University will take the following actions:

Under the terms of the Agreement, the University will:

1. Develop a statement of the roles and responsibilities and mandatory training requirements for its Title IX Coordinator.
2. Disseminate information to ensure students and staff members are aware of Title IX's prohibition against sexual assault and sexual harassment, including how to recognize it when it occurs, and how to report incidents.

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3. Revise its policies and procedures to provide a clear and internally consistent grievance procedure that ensures prompt and equitable resolution of sexual assault and harassment allegations and does not require students to work out sexual harassment complaints directly with the accused.
4. Provide timely and effective interim relief for complainants, including academic adjustments, housing changes, counseling, and health and mental services, as necessary, and document this relief in investigative files; the Title IX Coordinator or other specifically designated University employee will coordinate the provision of interim measures so that complainants are not required to arrange such measures by themselves through multiple University departments and offices and the University must the burden on the complainant in providing the interim relief;
5. Provide mandatory sexual assault and harassment training to all members of the university community – including students, faculty, administrators and university police.
6. Conduct annual climate checks with students to assess the effectiveness of steps taken, pursuant to the agreement, or otherwise, to achieve its goal of a campus free of sexual harassment, in particular sexual assault.
7. Establish a campus focus group consisting of representative leaders from the student community (*e.g.*, women's groups, athletes, residential assistants, student government leaders, fraternity and sorority leaders, etc.) and University officials to provide input regarding strategies for ensuring that students understand their rights under Title IX, how to report possible violations of Title IX, and the University's obligation to promptly and equitably respond to Title IX complaints.
8. Review the files of reports made of sexual harassment/assault during and since academic year 2011-2012, to determine whether the University investigated each complaint appropriately under Title IX. The University will take appropriate action to address any problems identified in the manner in which these complaints were handled, including providing appropriate remedies that may still be available for the complainants, such as counseling or academic adjustments.
9. Maintain comprehensive documentation of its receipt, investigation, and resolution of all oral and written complaints, reports or other notice of sexual harassment, including any interim measures provided to complainants pending the completion of an investigation and, where sexual harassment is found to occur, documentation fully detailing all of the steps, individual and systematic, taken by OSU.

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10. Implement the University's recommendations and corrective actions from its investigative report pertaining to the Marching Band, which have been specifically incorporated into the Agreement. Submit to OCR for review and approval (1) its proposed timetable for implementing the steps outlined in the report and any additional proposed recommendations and findings, and (2) the specific individual remedies that OSU proposes to provide to individual band members subjected to the sexually hostile environment, including the basis and timetable for providing the remedies.

OCR will monitor the University's implementation of the Agreement. As stated in the Agreement, if the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the University written notice of the alleged breach and a minimum of 60 calendar days to cure the alleged breach. Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has participated in an OCR investigation. If this happens, the harmed individual may file a complaint alleging such treatment.

We appreciate the University's cooperation during OCR's compliance review and resolution of this complaint. If you have any questions regarding resolution of this compliance review, please contact Kelly Marie Johnson, Team Leader, at 216-522-2675 or by email at Kelly.M.Johnson@ed.gov. The OCR staff person responsible for the monitoring of the University's implementation of the agreement is Erin Barker Brown, OCR Attorney, who can be reached at 216-522-4978 or at Erin.Barker-Brown@ed.gov. Should you choose to submit future monitoring reports electronically, please send them to OCRCleMonitoringReports@ed.gov.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure

cc: Christopher M. Culley
Senior Vice President and General Counsel

Exhibit H



July 22, 2014

INVESTIGATION REPORT

Complaint against Jonathan Waters, Director of the OSU Marching Band

EXECUTIVE SUMMARY

On May 23, 2014, a parent of a Marching Band member reported information about the Band's culture to the Office of University Compliance and Integrity. The parent was concerned that the Band's culture was sexualized and that its members were made to swear secrecy oaths about objectionable traditions and customs. The information provided constituted a complaint under university policy and Title IX, and the parent requested an investigation of these allegations.

This Office, which oversees Title IX compliance, investigated these issues, as required by university policy and federal law. We make the following findings:

- 1) The Marching Band's culture facilitated acts of sexual harassment, creating a hostile environment for students.
 - 2) Jonathan Waters, the Marching Band's Director, knew or reasonably should have known about this culture but failed to eliminate the sexual harassment, prevent its recurrence, and address its effects.
-

This investigation report details these issues in the following sections:

- I. Relevant Background
- II. Scope of this Investigation
- III. Culture Allegations and Findings
- IV. Findings Regarding Response to Culture
- V. Additional Factors
- VI. Conclusion and Recommendations for Corrective Action

I. RELEVANT BACKGROUND

The Ohio State University Marching Band is nationally recognized for its traditions and innovative programs. Well known by its nickname, TBDBITL, the Marching Band plays at all home football games and travels to some away games.

More than 400 students try out each year for the Band's 225 spots. Women were first admitted into the Band in 1973, after Congress enacted Title IX. Today, approximately 21% of its members are women. Each member practices approximately 30 hours per week during football season to learn the music and the field formations. As a result of spending so much time together, members of the Band often describe its atmosphere as "a family" with strong bonds formed between students. The TBDBITL alumni club is very active and alumni often interact with current students.

Marching Band members are grouped by instruments, which are organized by row, and members are further organized within the row. Each row has a student squad leader and student assistant squad leader who, according to the Marching Band Statement of Policies and Procedures, are charged with:

[A]ssisting the Directing Staff in conducting marching drills and grading candidates during tryout week; assisting with the weekly challenges and music checks; uniforms and instrument inspections; recruiting; facilitate with [sic] row communications; providing on-the-field and off-the-field leadership to members of the row; and assuming responsibility for the actions of the row during all rehearsals, performances, and trips.

Michael Smith joined Ohio State as Assistant Director of Marching and Athletic Bands in August 2012. Smith has 30 years of prior experience in music education, teaching at every level, from kindergarten to universities.

Dr. Christopher Hoch has served as the Associate Director of Marching and Athletic Bands since August 2012. He served on the Band's directing staff from 2000 to 2002 as a Graduate Assistant Director, and returned as a Graduate Assistant Director in 2009. Hoch played trombone in the Band from 1995 to 1999.

Jonathan Waters has been Director of the Marching and Athletic Bands¹ since October 10, 2012. Before that he served as Interim Director from June 2012 to October 9, 2012, Assistant Director from January 2002 to June 2012, and Graduate Assistant from 2000 to 2002. Waters was a sousaphone player and member of K-L row in the Band from 1995 to 1999.

¹ The Athletic Band performs at all varsity sporting events, with the exception of fall football games. The number of participants in Athletic Band each semester varies between 250-300 members and anyone is welcome to participate. Directed by Waters, both the Marching and Athletic Bands report administratively through the School of Music. None of the facts in this report with the exception of footnote 7 relate to the Athletic Band.

II. SCOPE OF THIS INVESTIGATION

On May 23, 2014 a parent of a Marching Band member visited the Office of University Compliance and Integrity and reported that she had concerns about whether the Marching Band's culture was sexualized, and stated that its members were made to swear secrecy oaths about objectionable traditions and customs. The parent specifically described an annual tradition of members marching across the field in their underwear under the supervision of the Marching Band directors and staff, including Jonathan Waters.

The information provided by the parent constitutes a complaint under the university's Sexual Harassment Policy 1.15 and Title IX; the parent requested an investigation of these issues, which implicate university policy and federal prohibitions on sexual harassment and raise the possibility of a hostile environment in the Marching Band.²

At the direction of the Office of Legal Affairs, the Office of University Compliance and Integrity, which oversees Title IX compliance, investigated these issues, as required by university policy and federal law. Compliance Investigator Jessica Tobias and Program Manager Rebecca Dickson conducted an investigation in accordance with guidelines and requirements set forth by the Office for Civil Rights for Title IX investigations. Their efforts were overseen by Chris Glaros, Assistant Vice President for Compliance Operations and Investigations. Conclusions were made using a preponderance of the evidence standard. Witnesses interviewed include current students, alumni, and staff.³

- Complainant – Parent of Marching Band member
- Complainant's Child – Marching Band member
- Richard Blatti – School of Music Director
- Pam Bork – Senior Physical Therapist, Student Health Services
- Christopher Hoch – Associate Marching Band Director
- Michael Smith – Assistant Marching Band Director
- Jonathan Waters – Marching and Athletic Bands Director
- Witness 1 – Marching Band member
- Witness 2 – Marching Band member

² At the same time, a separate allegation was made involving Jonathan Waters' treatment of a specific student in 2013. That allegation was also investigated by this Office. Based on the evidence available, the claim could not be substantiated. That finding was presented to university leadership under attorney-client privilege but is not included in this report given protections afforded the student by the Family Educational Rights and Privacy Act (FERPA). Among other protections, FERPA requires redaction or other protection of any information that is "linked or linkable" to students in any way that "would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty." The United States Department of Education's Office for Civil Rights, which enforces Title IX, likewise advises universities to protect the confidentiality of Title IX complainants whenever possible. These protections, designed to maintain students' privacy, also help reduce the risk of retaliation by peers and others against those who raise these concerns.

³ The complainant and witnesses recommended specific people to interview and we have talked with or tried to contact each of them. As of July 15, 2014, we were still receiving information from some of the witnesses interviewed. One of our recommendations discussed in Section VI is that the Marching Band membership be surveyed regularly and anonymously about the Band's climate and culture; we did not randomly interview current Band members for this investigation.

- Witness 3 – Marching Band member
 - Witness 4 – Former Marching Band member
 - Witness 5 – Former Marching Band member
 - Witness 6 – Former Marching Band member
 - Witness 7 – Former Marching Band member
 - Witness 8 – Former Marching Band member
 - Witness 9 – Marching Band member
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III. CULTURE ALLEGATIONS AND FINDINGS

The Marching Band’s culture facilitated acts of sexual harassment, creating a hostile environment for students.

The complainant reported concerns about whether the Marching Band’s culture was sexualized. The parent further stated that the Band’s members were made to swear secrecy oaths concealing objectionable traditions and customs. The parent specifically described an annual tradition of members marching across the field in their underwear under the supervision of the Marching Band directors and staff, including Jonathan Waters.

Our interviews explored this allegation, which led to witnesses describing numerous activities that relate to the Band’s culture. These activities are organized in the following topics:

- Midnight Ramp
- Nicknames
- Tricks
- Rookie Introductions
- Rookie Midterms and Physical Challenges
- Trip Tic
- Songbook
- Other Misconduct on Buses
- Changing Clothes on Buses
- General Culture Statements

This information comes from current students, former students, and staff. Unless noted otherwise, specific facts were corroborated by multiple witnesses.

Midnight Ramp

Witnesses described an event called “Midnight Ramp,” which they explained was a longstanding tradition involving Marching Band members wearing only their underwear marching into the football stadium through the ramp. Staff members, including Jonathan Waters, are present and oversee the activity. In recent years and under Waters’ direction, Midnight Ramp has been held immediately following Fesler night, which is a semi-formal evening event where members learn about Marching Band traditions and, according to one witness, take oaths not to tell about Fesler.

Before 2010, students left the stadium after the Fesler night semi-formal event ended and returned at midnight to perform Midnight Ramp, without staff supervision.

Multiple witnesses provided similar descriptions of students stripping down to their underwear and entering the stadium through the ramp. Two witnesses indicated that a few Band members get completely naked. According to one female witness, more senior members of the Band warn new members to wear comfortable (fuller coverage) underwear before Midnight Ramp. She also stated that female members have gone shopping together at Victoria's Secret to buy underwear for the event.

Most witnesses indicated that participation in Midnight Ramp was not required. Some witnesses stated that students not participating in the tradition would receive negative treatment from other students and staff. Other witnesses stated that there were no consequences for not participating, while one witness stated that she was "told not to talk about it outside of the Band."

Assistant Director Michael Smith witnessed Midnight Ramp for the first time in August 2013 and was surprised by the tradition. He stated that he recalled thinking at the time, "I don't believe I just witnessed that." He stated that some students wore pajamas or shorts instead of underwear. Smith added that participation was not required and he recalled a female who did not participate. Smith said that Waters announced during a meeting that occurred the week of June 9, 2014 that Midnight Ramp would no longer take place.

Associate Director Christopher Hoch recalled that a student had alcohol poisoning during Midnight Ramp four or five years ago. After this incident, staff committed to being present at Midnight Ramp and since then this tradition has been in a state of transition. Hoch confirmed that Waters announced during a meeting the week of June 9, 2014 that Midnight Ramp would no longer take place.

During his interview on June 12, 2014, Waters stated that in May 2014 he initiated a conversation with student squad leaders about whether this tradition was still necessary. He said that Marching Band leadership decided to eliminate this tradition and replace it with something more appropriate. When pressed specifically about the timing of this decision, Waters wavered on whether it occurred in May. Notably, Waters learned of this investigation on May 26, 2014, when he was told that it involved allegations about the Band's culture.

Nicknames

Each new Band member (traditionally called a "Rookie") is assigned a nickname by upperclassmen. Multiple witnesses noted that many such nicknames are sexually explicit or have an implicit sexual meaning. One witness said that in 2013, all three new members of one row had sexual nicknames: "Captain Dildo," "Barker," and "Pat Fenis."

Various examples of sexual nicknames⁴ include:

- Ballsacagawea
- Bater

⁴ There are various Internet sites that attempt to define these slang terms. See, e.g., www.urbandictionary.com.

- Boob Job
- Donk
- ERV (“E” Row Vibrator)
- Fleshlight
- Gīna
- Jewoobs (given to a Jewish student with large breasts)
- Jizzy
- Mushroom Stamp
- Squirt
- Sugar Bush
- Swoob
- Taint Brush
- Testicles
- Tiggles
- Tits Mcgee
- Triple Crown
- Tulsa
- Twat Thumper
- Twinkle Dick

Waters stated that the Marching Band’s alumni network publishes an annual directory that includes nicknames for some members, and he provided its latest version. Many of the printed nicknames included in the new June 2014 TBDBITL directory are sexually explicit, including some names given to new members in 2013.

Such nicknames have also been printed on T-Shirts that are sometimes worn during Band practice.

Most witnesses indicated that staff did not call students by their nicknames. However, two witnesses stated that nicknames were used by Waters (sometimes when he was upset), including at least one sexual nickname (“Tiggles”). One witness indicated that Waters sought to discover assigned nicknames. According to one witness, Waters addressed nicknames in 2012 when he stated to the Marching Band as a whole to go “easy on the offensive nicknames.” However, the practice did not change thereafter.

Assistant Director Smith stated that everyone gets a nickname and acknowledged that they are often “pretty dirty” or involve sexual innuendo. He added that every row is different, but one particular row always had dirty names. He was not sure if the directors had said anything to correct the use of nicknames, but not all nicknames are used as much as others. Smith stated that he does not know many of the students by their nicknames.

According to Associate Director Hoch, nicknames happen, but the use of offensive nicknames is lessening. He stated that the nicknames are occasionally used in front of staff and any use of offensive nicknames is disciplined. He recalled one student being disciplined two or three years ago for using a new member’s nickname and treating the new member disrespectfully.

When asked, Waters denied using the nicknames. He confirmed that some nicknames were shared with the entire Band on Fesler night, but said there is no “official sharing.”

When asked to estimate how many current nicknames are sexual or offensive, Waters responded that “fifty percent” probably were “questionable.” When asked whether he thought such sexual nicknames are appropriate, Waters answered, “No.” When asked why he then tolerates such sexual nicknames, Waters replied, “Good point.”

Waters went on to rhetorically question whether nicknames should be outlawed altogether or if they should be tolerated on a “cleanliness level.” He stated that the Marching Band is still in a “transformative stage” regarding nicknames. Waters said that he reprimanded a student for using the nickname “Dr. Faggot” in 2011 when he was assistant director. He further stated that he was appalled by this nickname and he spoke with the squad leaders about it.

Tricks

Witnesses stated that “tricks” are acts individual Band members perform, either on command or at their own volition. Several witnesses described how tricks are assigned to rookies, and often are performed throughout their entire tenure in the Band. The tricks are usually connected to the students’ assigned nicknames. Several witnesses provided examples of sexually explicit tricks assigned to and performed by new Band members given sexually explicit nicknames. Examples of tricks include:

- A female student sitting on laps and pretending to orgasm. This included her sitting on her younger brother’s lap and pretending to orgasm on “make the Band night.” Her nickname was “Squirt.”
- A female student thumping the ground with her foot and pretending to orgasm. Her nickname was “Thumper.”
- Two females rubbing their chests together. Their nicknames were “Jewoobs” and “Tiggles.”
- A male student conducting a full-body demonstration of a flaccid penis becoming erect and spitting candy. This trick was also occasionally performed with another female student who pretended to stimulate the male student. His nickname was “Jizzy.”
- A student would act as if he was outside a strip club soliciting clientele, saying “girls, girls, we have these types of girls.” His nickname was “Barker.”
- A male student scooting across the floor on his hindquarters. His nickname was “Taint Brush.”
- A male student stamping other students’ foreheads with a penis stamp. His nickname was “Mushroom Stamp.”
- A male student chanting, “haaaay, we want some pussaay.” His nickname was “Captain Dildo.”
- A female student pretending to be a vibrating sex toy. Her nickname was “ERV”, which stood for “E Row Vibrator.”
- A female student would sing sexually explicit songs about someone. Her nickname was “Tulsa.”

Several witnesses stated that sexually explicit tricks were not performed in front of staff. They were

instead performed at student house parties, dinners sponsored by alumni, and during down time on trips. Some witnesses stated that non-offensive tricks were occasionally performed in front of staff.

Smith was not aware of any sexually explicit tricks being performed by students in the recent past. Smith stated that he had heard of sexually explicit tricks being performed in the distant past (twenty plus years). Hoch stated that tricks have been performed in front of staff but they were never inappropriate.

Waters stated that he never witnessed nor heard of any of the tricks listed above, and does not believe that such tricks are “performed on Band time.” According to Waters, most tricks were on the clean side and involved singing a theme song or a fight song. He shared that his nickname as a student was “Clark Kent” and his trick was to sing the Superman theme song. Waters could not recall any sexually explicit tricks from when he was in the Band.

Rookie Introductions

Several witnesses indicated that new Band members were subject to “Rookie Introductions,” which occurred at the front of a moving bus en route to away games. These sometimes included sexually explicit questioning and dirty jokes. A witness stated that one such episode entailed using a dildo as a microphone. Another witness confirmed that sexually explicit Rookie Introductions occurred in the Fall of 2013.

Two witnesses indicated that following Rookie Introductions, new Band members were made to march to the back of the bus while other students attempted to remove articles of clothing. These witnesses also stated that they had seen or heard of students being groped during the march. One male student was described to have had his pants taken down and fondled at the back of the bus after such an episode.

Smith acknowledged hearing harmless rookie questions on the bus, but denied hearing anything offensive. Hoch stated that he allows Rookie Introductions on his bus, but does not allow any offensive questions.

According to Waters, Rookie Introductions were prevalent in the ‘90s and started to dwindle throughout the years. Waters stated that he was not aware of students’ clothes being removed since becoming Director. He said that when this behavior was prevalent in the 90’s, students may have only torn off crossbelts and berets. Waters stated that he addressed Rookie Introductions when he became Director by asking the squad leaders if they still needed to do them.

Rookie Midterms and Physical Challenges

One witness stated that upperclassmen subject new Band members to “Rookie Midterms” on long bus trips that would contain written questions and physical challenges. The witness stated some questions involved “connecting the dots” activity to form a picture of a sexual position or sexual act. The witness provided a copy of the “Rookie Midterm” that was used in 2011 with students who are still currently in the Band. **See Exhibit A.**

The witness also stated that one physical challenge included in a midterm required new Band members to either place a condom on a banana, place a banana in his or her mouth and place a condom on it, or place a banana between a graduate assistant's legs and place a condom on the banana. Another example included "Find Mr. Big," in which students were asked to locate a hidden dildo on the bus.

Waters stated that he was aware of "Rookie Midterms," but did not know of any sexual content or behavior associated with them. He stated that he told the Marching Band that this behavior needed to stop. He believes the Rookie Midterms no longer occur.

Trip Tic

Multiple witnesses stated that a special newsletter named "Trip Tic" was produced by an anonymous member for away game trips. Two copies of the newsletter were distributed to each marching row. According to most witnesses, this publication included disparaging information about members and sexually explicit content, including sexual activities of members. Two witnesses stated that some issues included females and males listed by attractiveness ratings. One witness stated that an issue included a "Marry, Fuck, Kill" list.

Several witnesses stated that staff members knew about Trip Tic and often read it despite the fact that they were not supposed to see it. According to one witness, the X row members would typically give a copy to Waters.

Most witnesses indicated that Waters banned Trip Tic in 2012 after a female student was severely berated in an article. Two witnesses stated that the female student was in a romantic relationship with the percussion instructor at the time of the article. One student stated that the only reason Waters banned Trip Tic was because the percussion instructor asked him to ban it when it had cruelly disparaged the instructor's girlfriend.⁵

Smith and Hoch were not aware of the Trip Tic still being published.

Waters explained that he found the October 2012 issue of Trip Tic on the bus floor and read it. After finding the article about the female student, he made an inquiry into who published the newsletter, disciplined the student responsible, and required him to make a public apology. He also spoke to the entire Marching Band and emphatically stated that this was not acceptable and would not continue. Trip Tic has apparently stopped.

Songbook

Witnesses discussed a Songbook containing misogynistic and alternate sexual lyrics to Ohio State and numerous other collegiate songs, which were sung on bus trips. Many witnesses indicated that the Songbook is no longer distributed. One witness, however, provided a copy of the publication, a version written in 2006. **See Exhibit B.** The preface states:

⁵ It is unclear whether this relationship violated the University's Sexual Harassment Policy 1.15, which outlines expectations and parameters surrounding such relationships. We did not investigate the issue, as we were advised that the instructor is no longer employed by OSU.

The history of this publication goes back further than any of us will remember....Throughout the history of this book, it has been called many different things, ranging from Band Bible, Song Publication, and even The Unofficial OSUMB Handbook. The songs in this “item that does not exist” have been passed down from generation to generation during I-dots, bus trips, Beer Busts, and the occasional bored sober free time....Take it with you on trips and to parties....But never leave this out of your sight.

Recalling that women (always a distinct minority of the Band’s membership) were subjected to these songs while confined on buses, one witness observed that some of the songs went so far as to glorify violence against women.

Smith stated that students were singing dirty songs on a Band trip to Put-in-Bay on September 1, 2013, but he made them stop.

Hoch stated that alumni may have given students copies of the Songbook. He said that inappropriate songs are still sung on occasion but staff stops them when they are heard.

Waters stated that, as Assistant Director four or five years ago, he had heard students singing inappropriate, but not sexually explicit, lyrics set to Big Ten fight songs. He stated that not all the lyrics are “sexually derived.” He went on to say that he had no idea about the lyrics because he does not know them, but then admitted that some lyrics may have been sexual. He stated that, as Assistant Director, he addressed students singing inappropriate songs by speaking to the Band and squad leaders and by directing staff to not allow this behavior to continue. Waters stated that in 2013 a staff member reported stopping students from singing “inappropriate” songs on a bus. According to Waters, he has continued to address this behavior as Director by addressing it in the context of general bus behavior.

When asked if he had actually seen the Songbook, Waters said he had seen it as a student. He further stated that he has never seen the Songbook as a staff member. He added that he would be shocked if it was still circulated; however, he said that he is “not privy to the underground.” He stated that his impression is that the songs are passed down verbally and that the Songbook has been gone for years. He also speculated that it is possible that alumni may circulate it to current members at parties, but he has never seen it on Band time. Waters added that if he or any other staff members did see it they “would certainly deal with it.”

Other Misconduct on Buses

One witness indicated that students brought a box of pornography on the bus and shared these magazines with other students. Neither Smith, Hoch, nor Waters witnessed pornography being distributed.

Several witnesses stated that a “flying 69” formation was performed on the buses. This involved two students posing in the “69” position while holding themselves in the air from the luggage racks or allowing other students to hold them in the air. Pam Bork, a physical therapist from Student Health

Services who volunteered with the Band for 18 years, stated that she witnessed the “flying 69” performed on Waters’ bus during the September 14, 2013 Cal game trip. Waters denied seeing a “flying 69” as a Director or in recent years.

One witness stated that Waters texted dirty limericks to students. Waters acknowledged having cell phone numbers for squad leaders but denied ever texting dirty limericks.

Witnesses also described a longtime game called “roller bus” in which students would attempt to reach the front or back of a moving bus while other students tried to inhibit them. Pam Bork stated that Waters participated in this game as Director. Waters acknowledged doing so but said that the game was significantly toned down from previous years and was no longer dangerous.

Changing Clothes on Buses

Several witnesses stated that they routinely change clothes on the bus in front of members of the opposite sex. Many witnesses stated that this is a common practice for bands and happens in high school. One witness stated that she complained to Waters about having to change clothes on the bus and he ignored her.

Smith stated that students are usually able to change in a restroom if they are uncomfortable changing on the bus. He also said that he has not been asked for alternative accommodations but would assist students in finding alternatives if asked.

Hoch stated that under rare circumstances, changing on the bus is unavoidable. He also stated that no one has asked him for alternative accommodations, but if they did he would assist them in finding an alternative. Hoch added that students sometimes change in shifts to provide more room for changing; however, the shifts are not divided by gender.

Waters acknowledged that students often change clothes on buses in front of members of the opposite sex. He stated that they are at the mercy of the athletic department scheduling and do not always have alternative accommodations. He denied being asked by a student for an alternative accommodation.

General Culture Statements

Many witnesses expressed that being a member of the Marching Band was a lifelong dream. Several student witnesses shared with us that they considered the Marching Band to be their family and that row members often protected and stood up for each other. Witnesses also described a highly stressful environment where students were under pressure to learn extensive programs and maintain their row position each week.

One witness described the Band’s long-term culture as “sexualized.” The witness stated that during his first year in the Marching Band (circa 2007), an upperclassman shared a story about his new girlfriend, a cheerleader, who was very sexually conservative. According to the witness, the upperclassman played “just the tip,” which involved the upperclassman telling his girlfriend that he would only insert the tip of his penis into her vagina. The upperclassman told the witness that instead of doing that, he fully penetrated his girlfriend. The witness believed that this “sounded like rape.” After relating this story, the witness stated that the culture had not changed during his tenure (2007 –

2011) and “absolutely needs to be fixed.”⁶

Another witness described her first year in the Marching Band as “culture shock” and cited alcohol consumption at away football games as an example. Several students stated that alcohol use and abuse is a large part of the Marching Band’s culture. Another witness described the Marching Band as operating under a “culture of intimidation.” One student stated that the Marching Band is an “old guys” club where all-male rows are celebrated; however, another student stated that his row celebrated its history of being the first all-female row at one point.

Smith described the Marching Band’s culture as a work in progress. He stated that all large bands develop specific cultures. Smith added that OSU’s Marching Band is unique in that it has a large, active, proud, and at times stubborn alumni base that can be resistant to change. Smith stated that in 2012 the Marching Band leadership acknowledged that some things about the culture needed to change and he added, “things are so much better now.” When asked what has changed, Smith cited the increased acceptance of women over time and the improvement in students’ attitudes about hazing, which has resulted in fewer instances of hazing. Smith also recalled a speech to the Marching Band made by Waters after a Florida A&M hazing incident that resulted in the death of its band’s drum major. According to Smith, Waters discussed the incident and stated that this would not happen at OSU.

According to Hoch, the Marching Band’s culture is not perfect, but is moving in the right direction. He stated that dramatic changes have occurred over the past few years. Hoch said that no one has worked harder to address the culture than Waters.

During his first interview, Waters stated that the culture and treatment of women in the Band has been a work in progress. He said that the culture is not anti-women; however, the Marching Band’s roots are in the military and the term “rookie” is a pejorative. He noted that former Title IX Coordinator Andrea Goldblum and Student Conduct Director Justin Moses conducted a training session last November as a result of a sexual assault and that he believes this led to open and honest conversation, without citing specifics.⁷ According to Waters, alcohol consumption is a “big problem” and contributed to that assault.

⁶ This witness did not provide details regarding this incident, including whether a sexual assault had actually occurred or whether any OSU employee was aware of it. The witness suggested that the upperclassman’s ease in describing such purported conduct revealed the sexualized nature of the Band’s culture.

⁷ There are two prior incidents relevant to this report. First, in the Fall of 2013, a Marching Band member sexually assaulted a fellow Band member, leading to the former student’s expulsion following an investigation and adjudication by Student Conduct at that time. Second, an incident of sexual harassment by an Athletic Band member of a fellow Athletic Band member occurred in March 2013. Significant concerns were raised at the time about the manner in which Waters responded to the March 2013 incident. Both Legal Affairs and this Office had to intervene with Waters to ensure Waters reverse a decision that, if not corrected, would have led to a possible violation of Title IX. Specifically, a female Band member alleged sexual harassment by a male Band member, and Waters initially decided that both individuals would be excluded from the next Band trip. As this decision could have been construed as retaliation against a student for raising a Title IX complaint, Waters was advised that the female student must be allowed to take part in the trip. Both Legal Affairs and the Title IX Coordinator then offered additional consultation, training, and resources to the Band. An in-person meeting was held with Waters to discuss Title IX issues, and additional trainings were recommended. Although he agreed at the time, Waters made no effort to schedule any training until after a sexual assault in Fall 2013, when the Title IX Coordinator again stated that such training was required.

During his second interview, Waters stated that the culture is evolving and that changing the culture is still a process. He stated that he would not describe the culture as sexualized and that sexual harassment is not a part of the culture. He also said that sexual innuendo is found in much of what college students do.

Relevant Policy and Law Prohibiting Sexual Harassment

The university's Sexual Harassment Policy 1.15 makes clear that such "harassment is unlawful and impedes the realization of the university's mission of distinction in education, scholarship and service." Moreover, sexual harassment "violates the dignity of individuals and will not be tolerated." The Policy states that examples of sexual harassment include, but are not limited to:

A pattern of conduct that unreasonably interferes with the work or academic environment (not legitimately related to the subject matter of a course) including:

1. Sexual comments or inappropriate references to gender.
2. Sexually explicit statements, questions, jokes or anecdotes regardless of the means of communication (oral, written, electronic [e.g. email, social media, phone, etc.], etc.).
3. Unwanted touching, patting, hugging, brushing against a person's body or staring.
4. Inquiries and commentaries about sexual activity, experience or orientation.
5. The display of inappropriate sexually oriented materials in a location where others can view them.

The Office for Civil Rights (OCR) in the United States Department of Education is responsible for enforcing Title IX, which states:

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.

In 2001 OCR highlighted "longstanding legal authority establishing that sexual harassment of students can be a form of sex discrimination covered by Title IX." See Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (2001). OCR explained that:

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program. Sexual harassment of students is, therefore, a form of sex discrimination prohibited by Title IX under the circumstances described in this guidance.

* * *

Conduct is unwelcome if the student did not request or invite it and "regarded the conduct as undesirable or offensive." Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome. For example, a student may decide not to resist sexual advances of another student or may not file a complaint out of fear. In addition, a student may not object to a pattern of demeaning comments directed at him or her by a group of students out of a concern that objections might cause the harassers to make more comments. The fact that a student may have accepted the conduct does not mean that he or she welcomed it. Also, the fact that a student willingly participated in conduct on one occasion does not prevent him or her from indicating that the same conduct has become unwelcome on a subsequent occasion. On the other hand, if a student actively participates in sexual banter and discussions and gives no indication that he or she objects, then the evidence generally will not support a conclusion that the conduct was unwelcome.

* * *

A student may be sexually harassed by a school employee, another student, or a non-employee third party (e.g., a visiting speaker or visiting athletes). Title IX protects any "person" from sex discrimination. Accordingly, both male and female students are protected from sexual harassment engaged in by a school's employees, other students, or third parties. Moreover, Title IX prohibits sexual harassment regardless of the sex of the harasser, i.e., even if the harasser and the person being harassed are members of the same sex.

More recently, OCR's April 4, 2011 Dear Colleague Letter states that: "Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature."

OCR's 2001 guidance also states that sexual harassment can occur that does not explicitly or implicitly condition a decision or benefit on submission to sexual conduct, and explains that this type of harassment is generally referred to as hostile environment harassment. The 2001 guidance lists factors to determine if a hostile environment has been created, including:

- The degree to which the conduct affected one or more students' education.
- The type, frequency, and duration of the conduct.
- The identity of and relationship between the alleged harasser and the subject or subjects of the harassment.
- The number of individuals involved.
- The age and sex of the alleged harasser and the subject or subjects of the harassment.
- The size of the school, location of the incidents, and the context in which they occurred.
- Other incidents at the school.
- Incidents of gender-based, but nonsexual harassment.

In assessing these factors, OCR states:

It is the totality of the circumstances in which the behavior occurs that is critical in determining whether a hostile environment exists. Consequently, in using the factors discussed previously to evaluate incidents of alleged harassment, it is always important to use common sense and reasonable judgment in determining whether a sexually hostile environment has been created.

Analysis

Each of the allegations about the Marching Band's culture discussed above implicates university policy and federal prohibitions on sexual harassment. While some of the students may have engaged in such behavior and gave no indication that they objected, the interviews highlighted multiple situations in which students did not welcome this misconduct. In a culture so sexualized for so long, students' acquiescence and failure to complain cannot be taken as evidence that the range of this misconduct was welcome.

As for the factors listed by OCR's 2001 guidance indicating the existence of a hostile environment:

- The misconduct described above affected many students' musical education through the Marching Band, some to a significant degree, as evidenced by feelings of regret and shame that were communicated in our interviews.
- The misconduct described is highly sexual, frequent, and longstanding as part of the Marching Band's culture.
- Much of the misconduct was directed by upperclassmen towards newer members of the Band. Some of this misconduct was directly witnessed and permitted by Band staff.
- The subjects of the sexual harassment were impressionable and developing students.
- The misconduct occurred in multiple locations involving the Marching Band, including practice at the stadium, bus trips, alumni events, and off-campus parties. Much of the misconduct occurred during official Marching Band activities when students were under the supervision of staff.

For these reasons, we find that the Marching Band's culture facilitated acts of sexual harassment under both university policy and Title IX, creating a hostile environment for students.

IV. FINDINGS REGARDING RESPONSE TO CULTURE

University policy and Title IX both require that individuals who know or reasonably should know about sexual harassment that creates a hostile environment must take action to eliminate the harassment, prevent its recurrence, and address its effects. Information gathered shows Waters knew

about the Marching Band's hostile environment and did not take adequate measures to address it as required.

Relevant Requirements

The university's Sexual Harassment Policy 1.15 states:

The university administration, faculty, staff, student employees and volunteers are responsible for assuring that the university maintains an environment for work and study free from sexual harassment.

The policy specifically includes a "duty to act," which requires the reporting of sexual harassment within five working days of awareness.

In 2001, the Office for Civil Rights set forth a university's responsibility "to respond promptly and effectively to sexual harassment" as follows:

If a student sexually harasses another student and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the program, and if the school knows or reasonably should know about the harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence. As long as the school, upon notice of the harassment, responds by taking prompt and effective action to end the harassment and prevent its recurrence, the school has carried out its responsibility under the Title IX regulations. On the other hand, if, upon notice, the school fails to take prompt, effective action, the school's own inaction has permitted the student to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program on the basis of sex. In this case, the school is responsible for taking effective corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had it responded promptly and effectively.

See Department of Education Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (2001).

OCR's 2011 Dear Colleague Letter further reiterated a university's responsibility to students under Title IX as follows:

If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.

Analysis

Waters knew or reasonably should have known about sexual harassment that created a hostile environment.

As detailed in Section III above, Waters was aware of extensive sexual harassment.⁸ In particular:

- Waters knew about Midnight Ramp, and observed and monitored it as staff. Almost every witness stated that he was present and witnessed the annual Midnight Ramp tradition.
- Waters admitted that fifty percent of rookie nicknames are considered offensive or sexual in nature. Moreover, Waters provided a copy of the TBDBITL Alumni Directory, which was updated in June 2014 and lists sexually explicit nicknames, including some given to new members in 2013. Waters also stated that he knows that “tricks” exist in connection with nicknames.
- Witnesses stated that Waters would receive copies of Trip Tics on bus trips. According to one witness, the X row members would typically give a copy to Waters.
- One witness stated that she complained to Waters about changing on the bus in front of members of the opposite sex and he ignored her.

In addition, as recently as September 2013, a series of events related to the University of California game demonstrate Waters’ notice of a hostile environment. Pam Bork, Physical Therapy Manager with Student Health Services who volunteered for 18 years with the Band, resigned from the Band after the game because of students’ alcohol abuse and Waters’ reluctance to address the problem. Bork reported to Waters that students were drinking excessively on the trip. She stated that Waters did not want to discuss the topic of drinking with the Marching Band and suggested that she should do so. On that bus trip, she said to Waters: “If I have to hear the word ‘penis’ or ‘vagina’ one more time, I’m going to scream.” According to Bork, she also witnessed a “flying 69” being performed on her bus, which is also the bus Waters monitored. Bork relayed that other students (non-Band members) who were on this bus were “horrified” by this atmosphere.

Bork added that she was concerned that someone would get hurt and that she quit the Band because she believed “something bad was going to happen.” Bork then referenced a sexual assault that had occurred as what she feared could come to pass.

The staff interpreted Bork’s concern as being limited to drinking. Smith stated that the students’ alcohol consumption bothered Bork. He added that she was concerned she would lose her license if someone became seriously ill because of alcohol poisoning. Hoch stated that they followed up on

⁸ The complainant’s allegation in this investigation was against Jonathan Waters; therefore, we considered all of the relevant information as it related to him. We address the separate knowledge and actions of Associate Director Christopher Hoch and Assistant Director Michael Smith throughout this report and, in Section VI, recommend their responsibility be considered separately.

Bork's report of alcohol consumption and did not find any problems.

Waters stated that he checked with staff and squad leaders to see if they had witnessed any excessive drinking on the Cal trip. He could not find any proof of drinking and could not see how the students could have had time to drink given the busy schedule. Waters stated that he told Bork that he "would love to have her speak" to the Marching Band about alcohol and when given the chance to do so, she quit her position mid-speech. Waters described Bork as "emotionally up and down" and someone who "stirs dissent."

After Bork's resignation from the Band, Smith acknowledged her assessment of its culture in two emails:

Thursday, September 19, 2013 (five days after the Cal game)

Pam,

I just want to drop you a note of thanks for all that you have done for the marching band. In the short time that I have known you, I have been in awe of you [sic] dedication to the well-being of all of us who are associated with the band. You are tireless in your efforts, and I don't quite know what the band is going to do without you. But I also want you to know that I totally respect and understand your decision. Perhaps it will be seen as a wake-up call.

On a personal note, I have come to think of you as a good friend, and I hope to see you again sometime soon. Perhaps coffee some day can work.

Please be happy and healthy!

Mike

Monday, October 28, 2013

Hi Pam,

It was great seeing you the other day. Let's do it on a regular basis!

I want to clarify something; I do believe that both Jon [Waters] and Chris [Hoch] really understand how important that you were to this band. I don't for a minute doubt that. I do, however, believe that they began looking at your concerns as a kind of blowing off steam on your part, as opposed to serious, thoughtful concerns that they should heed and act upon. And I have no doubt that they are starting to understand how correct your assessments of the band's culture is [sic].

As I said the other day, I desperately want to see you back with this band. I am going to see if we can get those changes to happen.

Mike

The information provided by Bork demonstrates that the Marching Band's physical therapist put Waters on notice of issues concerning alcohol consumption and the Band's sexualized culture in September 2013.

Given the nature and volume of the information available to Waters, he had knowledge of sexual harassment that created a hostile environment.

Waters failed to take action to eliminate the harassment, prevent its recurrence, and address its effects.

Waters claims taking some steps to address these issues, which included not allowing Trip Tic and disciplining a student for using an offensive nickname. However, he described the culture as evolving and stated that changing the culture "is still a process." His philosophy was demonstrated by the fact that he allowed Midnight Ramp to occur for two years under his direction before he ended it, only in June 2014. He also discussed generally addressing the Band about cultural issues in a "heavy handed" manner by telling members "this will not happen again." Yet Waters stated that the best initiation of change comes from student leaders.

During his second interview on July 1, Waters said he would provide a list of efforts he has made to address the Band's culture. We subsequently emailed him on July 3 to remind him that such a list would be helpful in this investigation. On July 11, Waters stated that his computer malfunctioned and the list that he was preparing was lost. On July 14, Waters provided a document describing his thoughts about the Band's culture and his efforts to improve it; the document does not change the analysis in this report.

Witnesses did not, however, report any significant change, or effort to change. In fact, only one witness stated that there had been transition in the culture of any kind. Another witness stated that speaking with Band directors about the culture was futile. She added that Waters "wants to be a cool guy in the Band." Similarly, Bork stated that Waters "just wants to be [the students'] friend."

OSU policy requires faculty and directors to report sexual harassment within five working days. Similarly, under Title IX and related OCR guidance, university staff is required to take action to eliminate sexual harassment. Intending to eliminate sexual harassment over a period of years does not constitute sufficiently prompt or effective action.

For these reasons, we find that Waters knew or reasonably should have known about this sexualized culture but failed to eliminate the harassment, prevent its recurrence, and address its effects.

V. ADDITIONAL FACTORS

The investigation revealed additional issues relevant to the allegations raised by the complainant.

Abusive Conduct by Waters

One issue that was raised during this investigation was whether Waters was sometimes abusive towards students. Two situations in which Waters yelled and cursed at students were corroborated—the first by a recording, the second by multiple witnesses.

First, a witness shared that he was called into Waters' office with Associate Director Christopher Hoch after a disagreement during practice the week of September 23, 2013. This witness provided us with a recording of Waters yelling and cursing at him in a private meeting also attended by Hoch, which he has also shared with other students and Pam Bork.⁹ The witness had been previously suspended from the Band for violating its policies. According to Waters and Hoch, he had a history of attitude problems. The witness remains upset about Waters' treatment towards him and asked that this situation be investigated separately.

A second witness described an incident following her submission of an evaluation of Waters when he was Assistant Director. The mid-term evaluation was intended to be anonymous. But she hand delivered the evaluation to the student secretary because she was late in turning it in. According to the witness, Waters contacted her later that evening and asked her to come to his office the next day to discuss her evaluation, despite its supposed anonymity. She stated that Waters raised his voice and swore at her because she indicated in her evaluation that he tends to favor certain students. The witness could not remember the exact words Waters used with her, but she recalls not being able to stop crying. Her account was relayed contemporaneously to others, including physical therapist Pam Bork, who provided corroboration.

We asked the Associate and Assistant Directors about these issues. Hoch recalled being present for the first situation above and recalled Waters saying something about the witness "standing on his head" if told to do so by Waters. But he did not recall that the conversation was laced with profanity. When told that we had credible evidence that Waters did yell and curse at the witness, Hoch stated that he was not necessarily comfortable in the meeting, but the witness' behavior needed to be dealt with. When pressed, Hoch said he did not agree with the language and did not know if it was warranted. But Hoch said he did "not want to throw him [Waters] under the bus."

Smith stated that Waters occasionally raises his voice during rehearsal to get students' attention. He added that this is a common practice for most band directors.

During his first interview, Waters stated, "in all my years I've never yelled, screamed, or cursed" at a student. During his second interview, when asked about these accounts, Waters stated that he might raise his voice on occasion when warranted and he may have raised his voice with the first witness above. Waters then admitted to sometimes cursing in front of students, but never at them.

Waters' Reaction to Social Media Content

On June 13, 2014, Waters contacted our office to inform us of a comment posted by the complainant

⁹ The audio recording of this incident was provided to the university on July 9, 2014, and the Office of Legal Affairs maintains the university's copy. Among other things, Waters is heard saying: "You fucking better realize who you're dealing with We tell you to stand on your head . . . you'll stand on your Goddamn head."

to a reporter's personal Facebook page. The reporter is a Marching Band alumnus and had posted a story about a Lakewood High School Band Director (another Band alumnus) who had been arrested for having sex with one of his students. Waters noted that in the mug shot posted online, the accused is wearing a TBDBITL t-shirt. The complainant's comment on the Facebook page linked the Marching Band's culture to the alleged sexual assault in Lakewood. Waters said that he just wanted us to be aware that this was "out there." We cautioned him not to respond.

We subsequently learned from a witness, who is friends with the reporter, that Waters called the reporter and asked him to remove the complainant's comment from the Facebook page. The comment was removed.

When asked about this in his second interview, Waters originally said that he did not know the reporter and did not contact him. Later in the interview, Waters recanted his statement and said that he was "not forthright." Waters then acknowledged that he did contact the reporter, but denied asking him to remove any comments. He stated that he asked the reporter to "let the news be the news." When asked why he did not express concern about other negative comments on the Facebook page about the Band's culture, he stated that he did not see any.

Waters stated that the news story regarding the Lakewood band director was also posted to the TBDBITL alumni social media account and he asked for it to be removed. Waters stated he believed he was protecting the reputation of the Marching Band by addressing both of these situations. Waters said the Band's "image reflects leadership."

VI. CONCLUSION AND RECOMMENDATIONS FOR CORRECTIVE ACTION

For the reasons described above, we make the following findings:

- 1) The Marching Band's culture facilitated acts of sexual harassment, creating a hostile environment for students.
- 2) Jonathan Waters knew or reasonably should have known about this culture but failed to eliminate the sexual harassment, prevent its recurrence, and address its effects.

University policy places a "duty to act" on the university administration. Similarly, the Office for Civil Rights states that a university has a responsibility to take "prompt and effective steps to respond to sexual harassment" and that "if a school determines that sexual harassment that creates a hostile environment has occurred, it must take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects." See April 4, 2011 Dear Colleague Letter.

Many of the recommendations below are derived from OCR guidance and Resolution Agreements OCR has made with other institutions that were found to have a hostile environment for students. Each of these corrective actions should be developed, implemented, and monitored by the university's Title IX Coordinator and other appropriate leaders.

Evaluate and Strengthen Marching Band Leadership

- Realign the values of the Marching Band to the university's academic mission.
- Assess the effectiveness of Marching Band staff's leadership and management.
- Take appropriate personnel action to address all concerns.
- Review the organizational oversight of the Marching Band, clarify accountability for its operations and activities, and establish expectations for an independent view of the Band's activities.
- Create a committee of Marching Band members, staff, and alumni to identify strategies for changing the Band's culture (based on an anonymous benchmark survey discussed below) and ensuring that its members:
 - Understand the university's prohibition against sex discrimination, including sexual harassment and violence, and retaliation;
 - Recognize sex discrimination, sexual harassment, and sexual violence when they occur;
 - Understand how and to whom to report any incidents;
 - Understand the connection between alcohol and drug abuse and sexual harassment or violence; and
 - Feel comfortable that university officials will respond promptly and equitably to reports of sexual harassment, sexual violence, and retaliation

Policies and Procedures

- Review and revise as necessary all Marching Band policies and procedures to ensure compliance with Title IX and university policies; highlight expectations and options for concern reporting; and align Band values to the university's academic mission.
- Communicate regularly that the Marching Band will not tolerate sexual harassment and violence and will respond to any incidents and to any student who reports such incidents.

Counseling and Training

- Continue to offer counseling, health, mental health, or other holistic and comprehensive victim services to all members of the Marching Band affected by sexual harassment, and notify students of all Title IX related services and supports available in the university.
- Require annual training for all Marching Band members and staff about sexual harassment, sexual violence, hazing, retaliation, and alcohol abuse.
- Require annual training for all Marching Band staff on recognizing and appropriately addressing allegations of sexual harassment or sexual violence under Title IX, including

prohibitions on retaliation.

- Require regular culture training that focuses on adherence to university values and the need to replace negative culture with positive culture.
- Require annual leadership and management training for all Marching Band staff.
- Provide annually to all Marching Band members and staff written materials on sexual harassment and sexual violence, which should include but not be limited to:
 - What constitutes sexual harassment or sexual violence;
 - What to do if a student has been the victim of sexual harassment or sexual violence;
 - Contact information for counseling and victim services;
 - How to file a complaint with the university and the options and means to do so, including through EthicsPoint, the university's anonymous reporting line;
 - The role of the university's Title IX Coordinator and how to contact her; and
 - What the university will do to respond to allegations of sexual harassment or sexual violence, including interim measures that can be taken
- Ensure that the annual anonymous culture surveys described below serve to measure the effectiveness of the trainings provided.

Climate Surveys and Controls

- Conduct "climate checks" of Marching Band members and staff to:
 - Anonymously collect specific data and establish a 2014 baseline about the Band's culture and the concerns of students and staff;
 - Measure change through annual and anonymous follow-up surveys;
 - Assess the effectiveness of efforts to ensure that the Band is free from sexual harassment, sexual violence, and alcohol abuse;
 - Plan proactive steps to replace negative culture with positive culture;
 - Identify any additional matters that need to be investigated and addressed; and
 - Share data as appropriate with the Marching Band alumni community and seek its assistance to improve the Band's culture
- Establish independent monitoring and review of information gathered and the steps taken to reverse an insular culture with external accountability.

Exhibit I



**THE OHIO STATE
UNIVERSITY**

**Sexual Harassment
Policy 1.15**
Office of Human Resources

Applies to: Faculty, staff, student employees, graduate associates, students and volunteers

POLICY

Issued: 10/01/1980
Edited: 04/24/2014

The university administration, faculty, staff, student employees and volunteers are responsible for assuring that the university maintains an environment for work and study free from sexual harassment. Sexual harassment is unlawful and impedes the realization of the university's mission of distinction in education, scholarship and service. Sexual harassment violates the dignity of individuals and will not be tolerated. The university community seeks to eliminate sexual harassment through education and by encouraging faculty, staff, student employees and volunteers to report concerns or complaints. Prompt corrective measures will be taken to stop sexual harassment whenever it occurs.

Definitions

| Term | Definition |
|--------------------------|--|
| Sexual harassment | <p>Sexual harassment includes unwelcome sexual advances, requests for sexual favors and other physical or verbal conduct of a sexual nature when it meets any of the following:</p> <ul style="list-style-type: none"> A. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status. B. Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual. C. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or offensive environment for working, learning or living on campus. Sexual harassment can occur between any individuals associated with the university, e.g., an employee and a supervisor; coworkers; faculty members; a faculty, staff member or student and a customer, vendor or contractor; students; or a student and a faculty member. |

Policy Details

I. Examples of Sexual Harassment

Examples of sexual harassment include, but are not limited to:

- A. Some incidents of physical assault.
- B. Direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, grades or letters of recommendation.
- C. Direct propositions of a sexual nature and/or subtle pressure for sexual activity that is unwanted and unreasonably interferes with a person's work or academic environment.
- D. A pattern of conduct that unreasonably interferes with the work or academic environment (not legitimately related to the subject matter of a course) including:
 - 1. Sexual comments or inappropriate references to gender.
 - 2. Sexually explicit statements, questions, jokes or anecdotes regardless of the means of communication (oral, written, electronic [e.g. email, social media, phone, etc.], etc.).
 - 3. Unwanted touching, patting, hugging, brushing against a person's body or staring.
 - 4. Inquiries and commentaries about sexual activity, experience or orientation.



Applies to: Faculty, staff, student employees, graduate associates, students and volunteers

5. The display of inappropriate sexually oriented materials in a location where others can view them.

II. Romantic and/or Sexual Relationships

- A. Romantic and/or sexual relationships between individuals in a supervisory, teaching, evaluation, advising, coaching or counseling relationship constitute a conflict of interest. The person in the position of higher institutional authority has the responsibility to eliminate the conflict of interest. The conflict of interest must be eliminated in a way which minimizes potential for harming the person with lower institutional authority.
- B. Faculty, staff and students who are in the position to influence academic or employment decisions about others with whom they are in a romantic and/or sexual relationship should recuse themselves from such decisions.
- C. In the event of an allegation of sexual harassment, the university will strictly scrutinize a defense based upon consent when the facts establish that an institutional power differential existed within the relationship.
- D. Prohibited relationships
 1. Romantic and/or sexual relationships between faculty/staff/graduate associates/undergraduate TAs and students and between attending physicians and medical residents/interns/fellows, cannot continue whenever there are supervisory, teaching, evaluation, advising, coaching or counseling responsibilities for the student. Alternative academic/supervisory arrangements must be made to avoid being in a prohibited relationship; if acceptable alternative arrangements are not feasible, the relationship cannot continue.
 2. Romantic and/or sexual relationships between supervisor and employee are prohibited. No person involved in a romantic and/or sexual relationship will have direct responsibility for evaluating the performance or for making decisions regarding the hiring, promotion, tenure, compensation or termination of the other party to the relationship. Supervisors, including faculty supervisors, must take immediate steps to make acceptable alternative arrangements regarding their supervisory responsibility for the other party to avoid an actual or apparent conflict of interest. If acceptable alternative arrangements are not feasible, the relationship cannot continue.
 3. Notification responsibilities to avoid prohibited relationships
 - a. University faculty/staff/graduate associates/undergraduate TAs must notify their supervisor (e.g. dean, chair, vice president, direct supervisor, etc.) of any prohibited relationship in which they are involved; and, have a duty to cooperate in making acceptable alternative arrangements. The Office of Human Resources is available to facilitate or consult with parties about notification and making acceptable alternative arrangements.
 - b. Individuals who engage in prohibited relationships (i.e., who do not notify their supervisors and do not make acceptable alternative arrangements) are in violation of this policy. Supervisors, including faculty supervisors, who obtain information that would lead a reasonable person to believe that the Romantic and/or Sexual Relationships section of this policy has been violated, have an institutional duty to report the violation to the Office of Human Resources.
 - c. Individuals in positions of power, who engage in a series of exploitive sexual or romantic relationships, whether or not notification has occurred, may be held in violation of the romantic and/or sexual relationship policy.
 4. Making acceptable alternative arrangements means removing any supervisory, teaching, evaluation, advising, coaching or counseling responsibilities between the person with institutional power and the student or employee. The alternative arrangements should avoid negative consequences for the student or employee; if acceptable alternative arrangements are not feasible, the relationship cannot continue.
- E. Corrective action

After a thorough review of the facts, corrective action will be taken with any faculty/staff/ student employee who violates the romantic and/or sexual relationship section of this policy by:



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1. Entering into or engaging in a prohibited relationship without notification and without making immediate acceptable alternative arrangements or
 2. Failing to follow any part of this policy or
 3. Failing to implement any responsibility of supervisors as identified in this policy. This applies to all supervisors, including faculty who serve in supervisory roles.
 4. The corrective action process will be in accordance with university policies, faculty rules or Code of Student Conduct.
 5. An individual who promptly provides notification of a prohibited relationship and cooperates in making acceptable alternative arrangements in a timely manner will not be held in violation of the romantic and/or sexual relationship section of this policy.
- F. Important advisory statement on romantic/sexual relationships
1. Individuals in positions of power must be aware that romantic or sexual relationships with students are fraught with danger for exploitation and pose a legal risk to both the individual and the institution.
 2. There are special risks in any sexual or romantic relationship between individuals in inherently unequal positions of power. These relationships may be subject to concerns about the validity of consent and unfair treatment of other students or employees. Such relationships can undermine the atmosphere of trust essential to the educational process and the employment relationship. They may, moreover, be less consensual than the individual whose position confers power believes. The apparent consensual nature of the relationship is inherently suspect due to the fundamental asymmetry of power in the relationship and it thus may be difficult to establish consent as a defense to a charge. Even when both parties consented at the outset to a romantic or sexual involvement, this past consent does not remove grounds for or preclude a charge or subsequent finding of sexual harassment based upon subsequent unwelcome conduct.
 3. The greater the institutional power differential that exists the greater risk there is for exploited consent. Exploited consent exists when consent to a relationship is given as a function of the position of power one occupies over another within an institution.
 4. Many international students, faculty and staff come from cultures in which deference to any authority figure is important and sexual harassment laws do not exist. Some individuals may be especially vulnerable to exploitive relationships given cultural, language and immigration/visa issues. Faculty, staff and students should be very careful to avoid relationships that may be exploitive in nature.
 5. The university discourages romantic and/or sexual relationships between faculty and students, for all the reasons provided above.
 6. The university strongly discourages romantic and/or sexual relationships between faculty and graduate students when in the same department; between faculty and undergraduate students majoring in the faculty member's area of expertise; when the faculty member has any influence over academic judgments about the student; and, in any context when the perceived power differential may be significant.
 7. Finally, it is important to be aware that in some cases non-consensual relations may constitute sexual harassment and allegedly consensual relations that "go bad" may later result in allegations of sexual harassment.

III. Duty to Act

Any Human Resource Professional (HRP); supervisor, including faculty supervisors; chair/director; or faculty member who becomes aware of information that would lead a reasonable person to believe that sexual harassment has occurred will notify the Office of Human Resources by ensuring that a [Discrimination & Harassment Complaint Form](#) or other appropriate documentation is filed within five working days of



Applies to: Faculty, staff, student employees, graduate associates, students and volunteers

becoming aware of the information. The Complaint Form/documentation will initiate collaboration between the Office of Human Resources and the unit HRP to determine how to proceed with resolving the complaint.

IV. Regulations

A. Confidentiality and non-retaliation

1. The university will make every reasonable effort to conduct all proceedings in a manner that will protect the confidentiality of all parties. Parties to the complaint should treat the matter under investigation with discretion and respect for the reputation of all parties involved.
2. University policy and state and federal law prohibit retaliation against an individual for reporting sexual harassment or for participating in an investigation. Retaliation is a serious violation that can subject the offender to sanctions independent of the merits of the sexual harassment allegation.
3. The university has a compelling obligation to address allegations and suspected instances of sexual harassment when it obtains information that would lead a reasonable person to believe that this policy has been violated. The university is not precluded from taking any action it deems appropriate, including informing the alleged harasser of the complaint and pursuing an investigation even in cases when the complainant is reluctant to proceed. The complainant will be notified in advance when such action is necessary.

B. Corrective measures

1. When it has been determined that sexual harassment has occurred, steps will be taken to ensure the harassment is stopped immediately. Corrective measures consistent with the severity of the offense will be imposed consistent with applicable university procedures and may include sanctions.
2. Sanctions imposed on the harasser may include, but are not limited to, a reprimand, suspension or dismissal from the university. In the event that a record of such sanctions will become a part of the harasser's personnel records, prior notice will be given to the harasser. Sanctions also may be imposed on any individual with a duty to act (under this policy and associated procedures) who fails to respond to a complaint of sexual harassment in a manner consistent with the provisions of this policy and the associated procedures. The complainant will be informed of the corrective measures taken.

C. False allegations

It is a violation of this policy for anyone to knowingly or with reckless disregard for the truth make false accusations of sexual harassment. Failure to prove a claim of sexual harassment is not equivalent to a false allegation. Sanctions may be imposed on individuals who knowingly or with reckless disregard for the truth make false accusations of sexual harassment.

D. Use of sexual harassment allegations in employment actions

When making decisions affecting an individual's employment or academic status, allegations of sexual harassment may be considered only if they have been addressed through this policy or procedure, a court of law or other administrative proceeding. Whenever such an allegation is discussed as part of a determinant in the terms and conditions of an employment or academic status, the affected party should be given notice.

V. Policy and Procedure Administration

The Office of Human Resources is responsible for the administration of this policy and the associated procedures. The president and each vice president, dean, department chair, director, administrator, faculty member and supervisor is responsible for assuring compliance with this policy. Any such individual who obtains information that would lead a reasonable person to believe that this policy has been violated must refer the matter to the appropriate individual for investigation or, if so authorized, initiate a prompt and thorough investigation.



Applies to: Faculty, staff, student employees, graduate associates, students and volunteers

PROCEDURE

Issued: 10/01/1980

Edited: 04/24/2014

I. Educational Program Goals and Objectives

The university is committed to eliminating and preventing sexual harassment of faculty, staff, students, student employees and volunteers and to fostering an environment of respect for all individuals. The university promotes educational programs coordinated by the Office of Human Resources to meet the following goals:

- A. Informing all individuals about their rights through training and dissemination of the sexual harassment policy.
- B. Including the sexual harassment policy in orientation materials for new faculty, staff, students and volunteers.
- C. Notifying persons of prohibited conduct.
- D. Informing all individuals of the appropriate procedures and reporting mechanisms for addressing concerns of sexual harassment.
- E. Informing the community about the problems caused by sexual harassment.
- F. Addressing issues of sexual harassment from a multicultural perspective.

II. Who Can Make Allegations

Sexual harassment concerns can often be resolved by the person being harassed addressing the matter directly with the alleged harasser. When such resolution is not feasible, any faculty, staff, student or volunteer may bring an allegation against any member of the university community or any customer, vendor or contractor of the university.

III. Confidentiality

To the extent possible, all information received in connection with the filing, investigation and resolution of allegations will be treated as confidential except to the extent it is necessary to disclose particulars in the course of the investigation or when compelled to do so by law. All individuals involved in the process should observe the same standard of discretion and respect for the reputation of everyone involved in the process.

IV. Retaliation

University policy and state and federal law prohibit retaliation against an individual for reporting sexual harassment or for participating in an investigation. The university will not tolerate retaliation in any form against any faculty, staff, student or volunteer, who files an allegation, serves as a witness, assists an alleged or participates in an investigation of sexual harassment. Retaliation is a serious violation that can subject the offender to sanctions independent of the merits of the sexual harassment allegation. Allegations of retaliation should be directed to the Office of Human Resources.

V. Counseling and Support

A person seeking counseling or support may contact any of the following units:

- A. [The Ohio State Employee Assistance Program](#)
- B. [Student Wellness Center, Sexual Violence Education and Support](#)
- C. [University Housing](#)
- D. [Counseling and Consultation Service](#)
- E. [Office of Student Life](#)

The role of the above offices is not to investigate allegations but to provide counseling and support.



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VI. Receipt and Referral of Allegations

- A. An alleged violation of the university's sexual harassment policy may be taken to any of the following designated individuals:
 1. The human resource professional within a department or unit.
 2. A consultant in the Office of Human Resources, Employee Relations.
 3. Any supervisor, faculty member or faculty or staff administrator.
- B. If the alleged harasser is the alleged's supervisor, the alleged should directly contact either a higher level administrator in the college/unit or the Office of Human Resources.
- C. Cases involving student on student sexual harassment not in the employment setting will be handled in accordance with the Code of Student Conduct and are not covered under this procedure. The Office of Student Life will be responsible for the investigation and resolution of such allegations.
- D. When the above individuals receive an allegation of sexual harassment, they will promptly refer the matter to the appropriate individual for investigation or, if so authorized, initiate a prompt and thorough investigation.
- E. The Office of Human Resources is available to provide consultation to any person who has a potential sexual harassment concern. Likewise, consultants are available to assist any administrator in handling an allegation.
- F. All individuals who are designated to receive allegations are expected to participate in training provided by the Office of Human Resources related to handling sexual harassment allegations.

VII. Complaints

Procedures for filing and the investigation of allegations of sexual harassment are addressed in Guidelines for Investigating Complaints of Discrimination and Harassment.

Resources

For more information:

- Code of Student Conduct, studentaffairs.osu.edu/resource_csc.asp
- Corrective Action & Involuntary Termination, Policy 8.15, hr.osu.edu/policy/policy815.pdf
- Discrimination & Harassment Complaint Form, hr.osu.edu/Forms/shdisccomplaint.pdf
- Frequently Asked Questions: General, hr.osu.edu/policy/resources/115faq-general.pdf
- Frequently Asked Questions: Romantic and/or Sexual Relations, hr.osu.edu/policy/resources/115faq-relations.pdf
- General Records Retention Schedule, library.osu.edu/documents/records-management/general-schedule.pdf
- Guidelines for Investigating Complaints of Ohio State Discrimination and Harassment, hr.osu.edu/hrpubs/guidelinesdiscrim.pdf
- Notice of Non-Discrimination, hr.osu.edu/policy/resources/110nondiscrimnotice.pdf
- Rules for Classified Civil Service, hr.osu.edu/ccsrules/ccsrule1.htm
- Rules of the University Faculty, 3335-5-04, trustees.osu.edu/rules/university-rules/rules5
- Student Employment, Policy 10.10, hr.osu.edu/policy/policy1010.pdf
- Task Force Examining the Policy on Consensual Relationships Report and Recommendations, hr.osu.edu/policy/resources/115report.pdf



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For counseling and support:

- Counseling and Consultation Service, 614-292-5766, ccs.ohio-state.edu
- Office of Student Life 614-292-9334, studentlife.osu.edu
- Student Wellness Center, Sexual Violence Education and Support, 614-292-4527, swc.osu.edu/sexual-violence-education-support
- The Ohio State Employee Assistance Program, 614-292-4472, osuhealthplan.com/OhioStateEAP
- University Housing, 614-292-3930, housing.osu.edu

For issues of academic freedom:

- Council on Academic Freedom and Responsibility (CAFR), senate.osu.edu/committees/CAFR/CAFR.html

Contacts

| Subject | Office | Telephone | E mail/URL |
|--|---|--------------|--|
| Policy consultation and report of harassment | Employee Relations, Office of Human Resources | 614-292-2800 | ohrc@hr.osu.edu hr.osu.edu/elr |
| Faculty issues | Office of Academic Affairs | 614-292-5881 | |
| Title IX | Title IX Coordinator, Office of University Compliance and Integrity | 614-247-5838 | titleix@osu.edu titleix.osu.edu |

History

Issued: 10/01/1980
 Revised: 01/06/1983
 Revised: 11/05/1993
 Edited: 01/15/1997
 Edited: 10/31/1007
 Revised: 07/08/2000
 Revised: 01/01/2004
 Revised: 07/01/2006
 Edited: 12/01/2013
 Edited: 04/24/2014

Exhibit J



July 22, 2014

Jonathan Waters, Director of OSU Marching Band
Via email: waters.33@osu.edu

Re: Complaint against Jonathan Waters, Director of the OSU Marching Band

Dear Mr. Waters:

Thank you very much for your cooperation in our investigation of an allegation made by a parent of a Marching Band member that the Band's culture is sexualized and involves objectionable traditions and customs.

The Office of University Compliance and Integrity, which oversees Title IX compliance at Ohio State, investigated these issues promptly and thoroughly, as required by university policy and federal law. We have reviewed evidence and interviewed witnesses, including current students, alumni, and staff. Based on all of the facts obtained, we make the following findings:

- 1) The Marching Band's culture facilitated acts of sexual harassment, creating a hostile environment for students.
- 2) Jonathan Waters knew or reasonably should have known about this culture but failed to eliminate the sexual harassment, prevent its recurrence, and address its effects.

We will separately provide you a copy of our investigative report, which includes recommended corrective actions.

Pursuant to our obligations under university policy and Title IX, we are also providing the complainant today with the same written notice of the investigation's findings. Please note that the complainant's identity is protected by the Family Educational Rights and Privacy Act (FERPA). Furthermore, records related to this investigation may contain information that is protected by federal law and should not be released without appropriate legal review.

As you know, university policy and federal law prohibit retaliation against an individual for reporting sexual harassment or participating in an investigation.

Thank you again for your assistance.

Sincerely,

Chris Glaros, Assistant Vice President
Compliance Operations and Investigations

Exhibit K



THE OHIO STATE UNIVERSITY

Office of University Compliance and Integrity
1534 North High Street
Columbus, OH 43201-2190
compliance.osu.edu

July 22, 2014

Jonathan Waters, Director of OSU Marching Band
Via email: waters.33@osu.edu

Re: Complaint against Jonathan Waters, Director of the OSU Marching Band

Dear Mr. Waters:

Thank you very much for your cooperation in our investigation of an allegation that you and students retaliated against a member of the Marching Band following a reported sexual assault in the Fall of 2013.

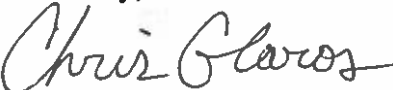
The Office of University Compliance and Integrity, which oversees Title IX compliance at Ohio State, investigated these issues promptly and thoroughly, as required by university policy and federal law. We have reviewed evidence and interviewed witnesses, including current students, alumni, and staff.

Based on all of the facts obtained, the available evidence does not substantiate claims of retaliation against either Jonathan Waters or the complainant's fellow students.

Pursuant to our obligations under university policy and Title IX, we are also providing the complainant today with the same written notice of the investigation's finding. Please note that the complainant's identity is protected by the Family Educational Rights and Privacy Act (FERPA). Furthermore, records related to this investigation may contain information that is protected by federal law and should not be released without appropriate legal review.

As you know, university policy and federal law prohibit retaliation against an individual for reporting sexual harassment or participating in an investigation.

Thank you again for your assistance.

Sincerely,


Chris Glaros, Assistant Vice President
Compliance Operations and Investigations

Exhibit L

**REVISED SEXUAL HARASSMENT GUIDANCE:
HARASSMENT OF STUDENTS
BY SCHOOL EMPLOYEES, OTHER STUDENTS,
OR THIRD PARTIES**

TITLE IX



January 2001

**U.S. Department of Education
Office for Civil Rights**

PREAMBLE

Summary

The Assistant Secretary for Civil Rights, U.S. Department of Education (Department), issues a new document (revised guidance) that replaces the 1997 document entitled “Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties,” issued by the Office for Civil Rights (OCR) on March 13, 1997 (1997 guidance). We revised the guidance in limited respects in light of subsequent Supreme Court cases relating to sexual harassment in schools.

The revised guidance reaffirms the compliance standards that OCR applies in investigations and administrative enforcement of Title IX of the Education Amendments of 1972 (Title IX) regarding sexual harassment. The revised guidance re-grounds these standards in the Title IX regulations, distinguishing them from the standards applicable to private litigation for money damages and clarifying their regulatory basis as distinct from Title VII of the Civil Rights Act of 1964 (Title VII) agency law. In most other respects the revised guidance is identical to the 1997 guidance. Thus, we intend the revised guidance to serve the same purpose as the 1997 guidance. It continues to provide the principles that a school¹ should use to recognize and effectively respond to sexual harassment of students in its program as a condition of receiving Federal financial assistance.

Purpose and Scope of the Revised Guidance

In March 1997, we published in the Federal Register “Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties.” 62 FR 12034. We issued the guidance pursuant to our authority under Title IX, and our Title IX implementing regulations, to eliminate discrimination based on sex in education programs and activities receiving Federal financial assistance. It was grounded in longstanding legal authority establishing that sexual harassment of students can be a form of sex discrimination covered by Title IX. The guidance was the product of extensive consultation with interested parties, including students, teachers, school administrators, and researchers. We also made the document available for public comment.

Since the issuance of the 1997 guidance, the Supreme Court (Court) has issued several important decisions in sexual harassment cases, including two decisions specifically addressing sexual harassment of students under Title IX: Gebser v. Lago Vista Independent School District (Gebser), 524 U.S. 274 (1998), and Davis v. Monroe County Board of Education (Davis), 526 U.S. 629 (1999). The Court held in Gebser that a school can be liable for monetary damages if a teacher sexually harasses a student, an

¹ As in the 1997 guidance, the revised guidance uses the term “school” to refer to all schools, colleges, universities, and other educational institutions that receive Federal funds from the Department.

official who has authority to address the harassment has actual knowledge of the harassment, and that official is deliberately indifferent in responding to the harassment. In Davis, the Court announced that a school also may be liable for monetary damages if one student sexually harasses another student in the school's program and the conditions of Gebser are met.

The Court was explicit in Gebser and Davis that the liability standards established in those cases are limited to private actions for monetary damages. See, e.g., Gebser, 524 U.S. 283, and Davis, 526 U.S. at 639. The Court acknowledged, by contrast, the power of Federal agencies, such as the Department, to "promulgate and enforce requirements that effectuate [Title IX's] nondiscrimination mandate," even in circumstances that would not give rise to a claim for money damages. See, Gebser, 524 U.S. at 292.

In an August 1998 letter to school superintendents and a January 1999 letter to college and university presidents, the Secretary of Education informed school officials that the Gebser decision did not change a school's obligations to take reasonable steps under Title IX and the regulations to prevent and eliminate sexual harassment as a condition of its receipt of Federal funding. The Department also determined that, although in most important respects the substance of the 1997 guidance was reaffirmed in Gebser and Davis, certain areas of the 1997 guidance could be strengthened by further clarification and explanation of the Title IX regulatory basis for the guidance.

On November 2, 2000, we published in the Federal Register a notice requesting comments on the proposed revised guidance (62 FR 66092). A detailed explanation of the Gebser and Davis decisions, and an explanation of the proposed changes in the guidance, can be found in the preamble to the proposed revised guidance. In those decisions and a third opinion, Oncale v. Sundowner Offshore Services, Inc. (Oncale), 523 U.S. 75 (1998) (a sexual harassment case decided under Title VII), the Supreme Court confirmed several fundamental principles we articulated in the 1997 guidance. In these areas, no changes in the guidance were necessary. A notice regarding the availability of this final document appeared in the Federal Register on January 19, 2001.

Enduring Principles from the 1997 Guidance

It continues to be the case that a significant number of students, both male and female, have experienced sexual harassment, which can interfere with a student's academic performance and emotional and physical well-being. Preventing and remedying sexual harassment in schools is essential to ensuring a safe environment in which students can learn. As with the 1997 guidance, the revised guidance applies to students at every level of education. School personnel who understand their obligations under Title IX, e.g., understand that sexual harassment can be sex discrimination in violation of Title IX, are in the best position to prevent harassment and to lessen the harm to students if, despite their best efforts, harassment occurs.

One of the fundamental aims of both the 1997 guidance and the revised guidance has been to emphasize that, in addressing allegations of sexual harassment, the good judgment and common sense of teachers and school administrators are important elements of a response that meets the requirements of Title IX.

A critical issue under Title IX is whether the school recognized that sexual harassment has occurred and took prompt and effective action calculated to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. If harassment has occurred, doing nothing is always the wrong response. However, depending on the circumstances, there may be more than one right way to respond. The important thing is for school employees or officials to pay attention to the school environment and not to hesitate to respond to sexual harassment in the same reasonable, commonsense manner as they would to other types of serious misconduct.

It is also important that schools not overreact to behavior that does not rise to the level of sexual harassment. As the Department stated in the 1997 guidance, a kiss on the cheek by a first grader does not constitute sexual harassment. School personnel should consider the age and maturity of students in responding to allegations of sexual harassment.

Finally, we reiterate the importance of having well-publicized and effective grievance procedures in place to handle complaints of sex discrimination, including sexual harassment complaints. Nondiscrimination policies and procedures are required by the Title IX regulations. In fact, the Supreme Court in Gebser specifically affirmed the Department's authority to enforce this requirement administratively in order to carry out Title IX's nondiscrimination mandate. 524 U.S. at 292. Strong policies and effective grievance procedures are essential to let students and employees know that sexual harassment will not be tolerated and to ensure that they know how to report it.

Analysis of Comments Received Concerning the Proposed Revised Guidance and the Resulting Changes

In response to the Assistant Secretary's invitation to comment, OCR received approximately 11 comments representing approximately 15 organizations and individuals. Commenters provided specific suggestions regarding how the revised guidance could be clarified. Many of these suggested changes have been incorporated. Significant and recurring issues are grouped by subject and discussed in the following sections:

Distinction Between Administrative Enforcement and Private Litigation for Monetary Damages

In Gebser and Davis, the Supreme Court addressed for the first time the appropriate standards for determining when a school district is liable under Title IX for money damages in a private lawsuit brought by or on behalf of a student who has been sexually harassed. As explained in the preamble to the proposed revised guidance, the Court was explicit in Gebser and Davis that the liability standards established in these cases are limited to private actions for monetary damages. See, e.g., Gebser, 524 U.S. at 283, and Davis, 526 U.S. at 639. The Gebser Court recognized and contrasted lawsuits for money damages with the incremental nature of administrative enforcement of Title IX. In Gebser, the Court was concerned with the possibility of a money damages award against a school for harassment about which it had not known. In contrast, the process of administrative enforcement requires enforcement agencies such as OCR to make schools

aware of potential Title IX violations and to seek voluntary corrective action before pursuing fund termination or other enforcement mechanisms.

Commenters uniformly agreed with OCR that the Court limited the liability standards established in Gebser and Davis to private actions for monetary damages. See, e.g., Gebser, 524 U.S. 283, and Davis, 526 U.S. at 639. Commenters also agreed that the administrative enforcement standards reflected in the 1997 guidance remain valid in OCR enforcement actions.² Finally, commenters agreed that the proposed revisions provided important clarification to schools regarding the standards that OCR will use and that schools should use to determine compliance with Title IX as a condition of the receipt of Federal financial assistance in light of Gebser and Davis.

Harassment by Teachers and Other School Personnel

Most commenters agreed with OCR's interpretation of its regulations regarding a school's responsibility for harassment of students by teachers and other school employees. These commenters agreed that Title IX's prohibitions against discrimination are not limited to official policies and practices governing school programs and activities. A school also engages in sex-based discrimination if its employees, in the context of carrying out their day-to-day job responsibilities for providing aid, benefits, or services to students (such as teaching, counseling, supervising, and advising students) deny or limit a student's ability to participate in or benefit from the schools program on the basis of sex. Under the Title IX regulations, the school is responsible for discrimination in these cases, whether or not it knew or should have known about it, because the discrimination occurred as part of the school's undertaking to provide nondiscriminatory aid, benefits, and services to students. The revised guidance distinguishes these cases from employee harassment that, although taking place in a school's program, occurs outside of the context of the employee's provision of aid, benefits, and services to students. In these latter cases, the school's responsibilities are not triggered until the school knew or should have known about the harassment.

One commenter expressed concern that it was inappropriate ever to find a school out of compliance for harassment about which it knew nothing. We reiterate that, although a school may in some cases be responsible for harassment caused by an employee that occurred before other responsible employees of the school knew or should have known about it, OCR always provides the school with actual notice and the opportunity to take appropriate corrective action before issuing a finding of violation. This is consistent with the Court's underlying concern in Gebser and Davis.

Most commenters acknowledged that OCR has provided useful factors to determine whether harassing conduct took place "in the context of providing aid, benefits, or services." However, some commenters stated that additional clarity and examples regarding the issue were needed. Commenters also suggested clarifying

² It is the position of the United States that the standards set out in OCR's guidance for finding a violation and seeking voluntary corrective action also would apply to private actions for injunctive and other equitable relief. See brief of the United States as Amicus Curiae in Davis v. Monroe County.

references to quid pro quo and hostile environment harassment as these two concepts, though useful, do not determine the issue of whether the school itself is considered responsible for the harassment. We agree with these concerns and have made significant revisions to the sections “Harassment that Denies or Limits a Student’s Ability to Participate in or Benefit from the Education Program” and “Harassment by Teachers and Other Employees” to clarify the guidance in these respects.

Gender-based Harassment, Including Harassment Predicated on Sex-stereotyping

Several commenters requested that we expand the discussion and include examples of gender-based harassment predicated on sex stereotyping. Some commenters also argued that gender-based harassment should be considered sexual harassment, and that we have “artificially” restricted the guidance only to harassment in the form of conduct of a sexual nature, thus, implying that gender-based harassment is of less concern and should be evaluated differently.

We have not further expanded this section because, while we are also concerned with the important issue of gender-based harassment, we believe that harassment of a sexual nature raises unique and sufficiently important issues that distinguish it from other types of gender-based harassment and warrants its own guidance.

Nevertheless, we have clarified this section of the guidance in several ways. The guidance clarifies that gender-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the program. Thus, it can be discrimination on the basis of sex to harass a student on the basis of the victim’s failure to conform to stereotyped notions of masculinity and femininity. Although this type of harassment is not covered by the guidance, if it is sufficiently serious, gender-based harassment is a school’s responsibility, and the same standards generally will apply. We have also added an endnote regarding Supreme Court precedent for the proposition that sex stereotyping can constitute sex discrimination.

Several commenters also suggested that we state that sexual and non-sexual (but gender-based) harassment should not be evaluated separately in determining whether a hostile environment exists. We note that both the proposed revised guidance and the final revised guidance indicate in several places that incidents of sexual harassment and non-sexual, gender-based harassment can be combined to determine whether a hostile environment has been created. We also note that sufficiently serious harassment of a sexual nature remains covered by Title IX, as explained in the guidance, even though the hostile environment may also include taunts based on sexual orientation.

Definition of Harassment

One commenter urged OCR to provide distinct definitions of sexual harassment to be used in administrative enforcement as distinguished from criteria used to maintain private actions for monetary damages. We disagree. First, as discussed in the preamble to the proposed revised guidance, the definition of hostile environment sexual harassment used by the Court in Davis is consistent with the definition found in the proposed guidance. Although the terms used by the Court in Davis are in some ways different from

the words used to define hostile environment harassment in the 1997 guidance (see, e.g., 62 FR 12041, “conduct of a sexual nature is sufficiently severe, persistent, or pervasive to limit a student’s ability to participate in or benefit from the education program, or to create a hostile or abusive educational environment”), the definitions are consistent. Both the Court’s and the Department’s definitions are contextual descriptions intended to capture the same concept — that under Title IX, the conduct must be sufficiently serious that it adversely affects a student’s ability to participate in or benefit from the school’s program. In determining whether harassment is actionable, both Davis and the Department tell schools to look at the “constellation of surrounding circumstances, expectations, and relationships” (526 U.S. at 651 (citing Oncale)), and the Davis Court cited approvingly to the underlying core factors described in the 1997 guidance for evaluating the context of the harassment. Second, schools benefit from consistency and simplicity in understanding what is sexual harassment for which the school must take responsive action. A multiplicity of definitions would not serve this purpose.

Several commenters suggested that we develop a unique Title IX definition of harassment that does not rely on Title VII and that takes into account the special relationship of schools to students. Other commenters, by contrast, commended OCR for recognizing that Gebser and Davis did not alter the definition of hostile environment sexual harassment found in OCR’s 1997 guidance, which derives from Title VII caselaw, and asked us to strengthen the point. While Gebser and Davis made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the Davis Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX. We also believe that the factors described in both the 1997 guidance and the revised guidance to determine whether sexual harassment has occurred provide the necessary flexibility for taking into consideration the age and maturity of the students involved and the nature of the school environment.

Effective Response

One commenter suggested that the change in the guidance from “appropriate response” to “effective response” implies a change in OCR policy that requires omniscience of schools. We disagree. Effectiveness has always been the measure of an adequate response under Title IX. This does not mean a school must overreact out of fear of being judged inadequate. Effectiveness is measured based on a reasonableness standard. Schools do not have to know beforehand that their response will be effective. However, if their initial steps are ineffective in stopping the harassment, reasonableness may require a series of escalating steps.

The Relationship Between FERPA and Title IX

In the development of both the 1997 guidance and the current revisions to the guidance, commenters raised concerns about the interrelation of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and Title IX. The concerns relate to two issues: (1) the harassed student’s right to information about the outcome of a sexual harassment complaint against another student, including information about sanctions imposed on a student found guilty of harassment; and (2) the due process rights of

individuals, including teachers, accused of sexual harassment by a student, to obtain information about the identity of the complainant and the nature of the allegations.

FERPA generally forbids disclosure of information from a student's "education record" without the consent of the student (or the student's parent). Thus, FERPA may be relevant when the person found to have engaged in harassment is another student, because written information about the complaint, investigation, and outcome is part of the harassing student's education record. Title IX is also relevant because it is an important part of taking effective responsive action for the school to inform the harassed student of the results of its investigation and whether it counseled, disciplined, or otherwise sanctioned the harasser. This information can assure the harassed student that the school has taken the student's complaint seriously and has taken steps to eliminate the hostile environment and prevent the harassment from recurring.

The Department currently interprets FERPA as not conflicting with the Title IX requirement that the school notify the harassed student of the outcome of its investigation, i.e., whether or not harassment was found to have occurred, because this information directly relates to the victim. It has been the Department's position that there is a potential conflict between FERPA and Title IX regarding disclosure of sanctions, and that FERPA generally prevents a school from disclosing to a student who complained of harassment information about the sanction or discipline imposed upon a student who was found to have engaged in that harassment.³

There is, however, an additional statutory provision that may apply to this situation. In 1994, as part of the Improving America's Schools Act, Congress amended the General Education Provisions Act (GEPA) -- of which FERPA is a part -- to state that nothing in GEPA "shall be construed to affect the applicability of ... title IX of the Education Amendments of 1972..."⁴ The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between requirements of FERPA and requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. The Department is in the process of developing a consistent approach and specific factors for implementing this provision. OCR and the Department's Family Policy Compliance Office (FPCO) intend to issue joint guidance, discussing specific areas of potential conflict between FERPA and Title IX.

³ Exceptions include the case of a sanction that directly relates to the person who was harassed (e.g., an order that the harasser stay away from the harassed student), or sanctions related to offenses for which there is a statutory exception, such as crimes of violence or certain sex offenses in postsecondary institutions.

⁴ 20 U.S.C. 1221(d). A similar amendment was originally passed in 1974 but applied only to Title VI of the Civil Rights Act of 1964 (prohibiting race discrimination by recipients). The 1994 amendments also extended 20 U.S.C. 1221(d) to Section 504 of the Rehabilitation Act of 1973 (prohibiting disability-based discrimination by recipients) and to the Age Discrimination Act.

FERPA is also relevant when a student accuses a teacher or other employee of sexual harassment, because written information about the allegations is contained in the student's education record. The potential conflict arises because, while FERPA protects the privacy of the student accuser, the accused individual may need the name of the accuser and information regarding the nature of the allegations in order to defend against the charges. The 1997 guidance made clear that neither FERPA nor Title IX override any federally protected due process rights of a school employee accused of sexual harassment.

Several commenters urged the Department to expand and strengthen this discussion. They argue that in many instances a school's failure to provide information about the name of the student accuser and the nature of the allegations seriously undermines the fairness of the investigative and adjudicative process. They also urge the Department to include a discussion of the need for confidentiality as to the identity of the individual accused of harassment because of the significant harm that can be caused by false accusations. We have made several changes to the guidance, including an additional discussion regarding the confidentiality of a person accused of harassment and a new heading entitled "Due Process Rights of the Accused," to address these concerns.

**REVISED SEXUAL HARASSMENT GUIDANCE:
HARASSMENT OF STUDENTS¹
BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES**

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- IV. Title IX Regulatory Compliance Responsibilities
- V. Determining a School's Responsibilities
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 - 1. Factors Used to Evaluate Hostile Environment Sexual Harassment
 - 2. Welcomeness
 - B. Nature of a School's Responsibility to Address Sexual Harassment
 - 1. Harassment by Teachers and Other Employees
 - 2. Harassment by Other Students or Third Parties
 - C. Notice of Employee, Peer, or Third Party Harassment
 - D. The Role of Grievance Procedures
- VI. OCR Case Resolution
- VII. Recipient's Response
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- XI. First Amendment

I. Introduction

Title IX of the Education Amendments of 1972 (Title IX) and the Department of Education's (Department) implementing regulations prohibit discrimination on the basis of sex in federally assisted education programs and activities.² The Supreme Court, Congress, and Federal executive departments and agencies, including the Department, have recognized that sexual harassment of students can constitute discrimination prohibited by Title IX.³ This guidance focuses on a school's⁴ fundamental compliance responsibilities under Title IX and the Title IX regulations to address sexual harassment of students as a condition of continued receipt of Federal funding. It describes the regulatory basis for a school's compliance responsibilities under Title IX, outlines the circumstances under which sexual harassment may constitute discrimination prohibited by the statute and regulations, and provides information about actions that schools should take to prevent sexual harassment or to address it effectively if it does occur.⁵

II. Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.⁶ Sexual harassment of a student can deny or limit, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the school's program. Sexual harassment of students is, therefore, a form of sex discrimination prohibited by Title IX under the circumstances described in this guidance.

It is important to recognize that Title IX's prohibition against sexual harassment does not extend to legitimate nonsexual touching or other nonsexual conduct. For example, a high school athletic coach hugging a student who made a goal or a kindergarten teacher's consoling hug for a child with a skinned knee will not be considered sexual harassment.⁷ Similarly, one student's demonstration of a sports maneuver or technique requiring contact with another student will not be considered sexual harassment. However, in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher's repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment.

III. Applicability of Title IX

Title IX applies to all public and private educational institutions that receive Federal funds, i.e., recipients, including, but not limited to, elementary and secondary schools, school districts, proprietary schools, colleges, and universities. The guidance uses the terms "recipients" and "schools" interchangeably to refer to all of those institutions. The "education program or activity" of a school includes all of the school's operations.⁸ This means that Title IX protects students in connection with all of the academic, educational, extra-curricular, athletic, and other programs of the school,

whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere.

A student may be sexually harassed by a school employee,⁹ another student, or a non-employee third party (e.g., a visiting speaker or visiting athletes). Title IX protects any “person” from sex discrimination. Accordingly, both male and female students are protected from sexual harassment¹⁰ engaged in by a school’s employees, other students, or third parties. Moreover, Title IX prohibits sexual harassment regardless of the sex of the harasser, i.e., even if the harasser and the person being harassed are members of the same sex.¹¹ An example would be a campaign of sexually explicit graffiti directed at a particular girl by other girls.¹²

Although Title IX does not prohibit discrimination on the basis of sexual orientation,¹³ sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student’s ability to participate in or benefit from the school’s program constitutes sexual harassment prohibited by Title IX under the circumstances described in this guidance.¹⁴ For example, if a male student or a group of male students target a gay student for physical sexual advances, serious enough to deny or limit the victim’s ability to participate in or benefit from the school’s program, the school would need to respond promptly and effectively, as described in this guidance, just as it would if the victim were heterosexual. On the other hand, if students heckle another student with comments based on the student’s sexual orientation (e.g., “gay students are not welcome at this table in the cafeteria”), but their actions do not involve conduct of a sexual nature, their actions would not be sexual harassment covered by Title IX.¹⁵

Though beyond the scope of this guidance, gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping,¹⁶ but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond, if it rises to a level that denies or limits a student’s ability to participate in or benefit from the educational program.¹⁷ For example, the repeated sabotaging of female graduate students’ laboratory experiments by male students in the class could be the basis of a violation of Title IX. A school must respond to such harassment in accordance with the standards and procedures described in this guidance.¹⁸ In assessing all related circumstances to determine whether a hostile environment exists, incidents of gender-based harassment combined with incidents of sexual harassment could create a hostile environment, even if neither the gender-based harassment alone nor the sexual harassment alone would be sufficient to do so.¹⁹

IV. Title IX Regulatory Compliance Responsibilities

As a condition of receiving funds from the Department, a school is required to comply with Title IX and the Department’s Title IX regulations, which spell out prohibitions against sex discrimination. The law is clear that sexual harassment may constitute sex discrimination under Title IX.²⁰

Recipients specifically agree, as a condition for receiving Federal financial assistance from the Department, to comply with Title IX and the Department’s Title IX regulations. The regulatory provision requiring this agreement, known as an assurance of

compliance, specifies that recipients must agree that education programs or activities operated by the recipient will be operated in compliance with the Title IX regulations, including taking any action necessary to remedy its discrimination or the effects of its discrimination in its programs.²¹

The regulations set out the basic Title IX responsibilities a recipient undertakes when it accepts Federal financial assistance, including the following specific obligations.²² A recipient agrees that, in providing any aid, benefit, or service to students, it will not, on the basis of sex—

- Treat one student differently from another in determining whether the student satisfies any requirement or condition for the provision of any aid, benefit, or service;²³
- Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;²⁴
- Deny any student any such aid, benefit, or service;²⁵
- Subject students to separate or different rules of behavior, sanctions, or other treatment;²⁶
- Aid or perpetuate discrimination against a student by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students;²⁷ and
- Otherwise limit any student in the enjoyment of any right, privilege, advantage, or opportunity.²⁸

For the purposes of brevity and clarity, this guidance generally summarizes this comprehensive list by referring to a school's obligation to ensure that a student is not denied or limited in the ability to participate in or benefit from the school's program on the basis of sex.

The regulations also specify that, if a recipient discriminates on the basis of sex, the school must take remedial action to overcome the effects of the discrimination.²⁹

In addition, the regulations establish procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment. These requirements include issuance of a policy against sex discrimination³⁰ and adoption and publication of grievance procedures providing for prompt and equitable resolution of complaints of sex discrimination.³¹ The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance.³²

To comply with these regulatory requirements, schools need to recognize and respond to sexual harassment of students by teachers and other employees, by other students, and by third parties. This guidance explains how the requirements of the Title IX regulations apply to situations involving sexual harassment of a student and outlines measures that schools should take to ensure compliance.

V. Determining a School's Responsibilities

In assessing sexually harassing conduct, it is important for schools to recognize that two distinct issues are considered. The first issue is whether, considering the types of harassment discussed in the following section, the conduct denies or limits a student's ability to participate in or benefit from the program based on sex. If it does, the second issue is the nature of the school's responsibility to address that conduct. As discussed in a following section, this issue depends in part on the identity of the harasser and the context in which the harassment occurred.

A. Harassment that Denies or Limits a Student's Ability to Participate in or Benefit from the Education Program

This guidance moves away from specific labels for types of sexual harassment.³³ In each case, the issue is whether the harassment rises to a level that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. However, an understanding of the different types of sexual harassment can help schools determine whether or not harassment has occurred that triggers a school's responsibilities under, or violates, Title IX or its regulations.

The type of harassment traditionally referred to as quid pro quo harassment occurs if a teacher or other employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct.³⁴ Whether the student resists and suffers the threatened harm or submits and avoids the threatened harm, the student has been treated differently, or the student's ability to participate in or benefit from the school's program has been denied or limited, on the basis of sex in violation of the Title IX regulations.³⁵

By contrast, sexual harassment can occur that does not explicitly or implicitly condition a decision or benefit on submission to sexual conduct. Harassment of this type is generally referred to as hostile environment harassment.³⁶ This type of harassing conduct requires a further assessment of whether or not the conduct is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program based on sex.³⁷

Teachers and other employees can engage in either type of harassment. Students and third parties are not generally given responsibility over other students and, thus, generally can only engage in hostile environment harassment.

1. Factors Used to Evaluate Hostile Environment Sexual Harassment

As outlined in the following paragraphs, OCR considers a variety of related factors to determine if a hostile environment has been created, i.e., if sexually harassing conduct by an employee, another student, or a third party is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on sex. OCR considers the conduct from both a subjective³⁸ and objective³⁹ perspective. In evaluating the severity and pervasiveness of the conduct, OCR considers all relevant circumstances, i.e., "the constellation of surrounding circumstances, expectations, and relationships."⁴⁰ Schools should also use these factors to evaluate conduct in order to draw commonsense distinctions between conduct that constitutes

sexual harassment and conduct that does not rise to that level. Relevant factors include the following:

- The degree to which the conduct affected one or more students' education. OCR assesses the effect of the harassment on the student to determine whether it has denied or limited the student's ability to participate in or benefit from the school's program. For example, a student's grades may go down or the student may be forced to withdraw from school because of the harassing behavior.⁴¹ A student may also suffer physical injuries or mental or emotional distress.⁴² In another situation, a student may have been able to keep up his or her grades and continue to attend school even though it was very difficult for him or her to do so because of the teacher's repeated sexual advances. Similarly, a student may be able to remain on a sports team, despite experiencing great difficulty performing at practices and games from the humiliation and anger caused by repeated sexual advances and intimidation by several team members that create a hostile environment. Harassing conduct in these examples would alter a reasonable student's educational environment and adversely affect the student's ability to participate in or benefit from the school's program on the basis of sex.

A hostile environment can occur even if the harassment is not targeted specifically at the individual complainant.⁴³ For example, if a student, group of students, or a teacher regularly directs sexual comments toward a particular student, a hostile environment may be created not only for the targeted student, but also for others who witness the conduct.

- The type, frequency, and duration of the conduct. In most cases, a hostile environment will exist if there is a pattern or practice of harassment, or if the harassment is sustained and nontrivial.⁴⁴ For instance, if a young woman is taunted by one or more young men about her breasts or genital area or both, OCR may find that a hostile environment has been created, particularly if the conduct has gone on for some time, or takes place throughout the school, or if the taunts are made by a number of students. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. For instance, if the conduct is more severe, e.g., attempts to grab a female student's breasts or attempts to grab any student's genital area or buttocks, it need not be as persistent to create a hostile environment. Indeed, a single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment.⁴⁵ On the other hand, conduct that is not severe will not create a hostile environment, e.g., a comment by one student to another student that she has a nice figure. Indeed, depending on the circumstances, this may not even be conduct of a sexual nature.⁴⁶ Similarly, because students date one another, a request for a date or a gift of flowers, even if unwelcome, would not create a hostile environment. However, there may be circumstances in which repeated, unwelcome requests for dates or similar conduct could create a hostile environment. For example, a person, who has been refused previously, may request dates in an intimidating or threatening manner.
- The identity of and relationship between the alleged harasser and the subject or subjects of the harassment. A factor to be considered, especially in cases involving allegations of sexual harassment of a student by a school employee, is the identity of

and relationship between the alleged harasser and the subject or subjects of the harassment. For example, due to the power a professor or teacher has over a student, sexually based conduct by that person toward a student is more likely to create a hostile environment than similar conduct by another student.⁴⁷

- The number of individuals involved. Sexual harassment may be committed by an individual or a group. In some cases, verbal comments or other conduct from one person might not be sufficient to create a hostile environment, but could be if done by a group. Similarly, while harassment can be directed toward an individual or a group,⁴⁸ the effect of the conduct toward a group may vary, depending on the type of conduct and the context. For certain types of conduct, there may be “safety in numbers.” For example, following an individual student and making sexual taunts to him or her may be very intimidating to that student, but, in certain circumstances, less so to a group of students. On the other hand, persistent unwelcome sexual conduct still may create a hostile environment if directed toward a group.
- The age and sex of the alleged harasser and the subject or subjects of the harassment. For example, in the case of younger students, sexually harassing conduct is more likely to be intimidating if coming from an older student.⁴⁹
- The size of the school, location of the incidents, and context in which they occurred. Depending on the circumstances of a particular case, fewer incidents may have a greater effect at a small college than at a large university campus. Harassing conduct occurring on a school bus may be more intimidating than similar conduct on a school playground because the restricted area makes it impossible for students to avoid their harassers.⁵⁰ Harassing conduct in a personal or secluded area, such as a dormitory room or residence hall, can have a greater effect (e.g., be seen as more threatening) than would similar conduct in a more public area. On the other hand, harassing conduct in a public place may be more humiliating. Each incident must be judged individually.
- Other incidents at the school. A series of incidents at the school, not involving the same students, could — taken together — create a hostile environment, even if each by itself would not be sufficient.⁵¹
- Incidents of gender-based, but nonsexual harassment. Acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex, but not involving sexual activity or language, can be combined with incidents of sexual harassment to determine if the incidents of sexual harassment are sufficiently serious to create a sexually hostile environment.⁵²

It is the totality of the circumstances in which the behavior occurs that is critical in determining whether a hostile environment exists. Consequently, in using the factors discussed previously to evaluate incidents of alleged harassment, it is always important to use common sense and reasonable judgement in determining whether a sexually hostile environment has been created.

2. Welcomeness

The section entitled “Sexual Harassment” explains that in order for conduct of a sexual nature to be sexual harassment, it must be unwelcome. Conduct is unwelcome if

the student did not request or invite it and “regarded the conduct as undesirable or offensive.”⁵³ Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.⁵⁴ For example, a student may decide not to resist sexual advances of another student or may not file a complaint out of fear. In addition, a student may not object to a pattern of demeaning comments directed at him or her by a group of students out of a concern that objections might cause the harassers to make more comments. The fact that a student may have accepted the conduct does not mean that he or she welcomed it.⁵⁵ Also, the fact that a student willingly participated in conduct on one occasion does not prevent him or her from indicating that the same conduct has become unwelcome on a subsequent occasion. On the other hand, if a student actively participates in sexual banter and discussions and gives no indication that he or she objects, then the evidence generally will not support a conclusion that the conduct was unwelcome.⁵⁶

If younger children are involved, it may be necessary to determine the degree to which they are able to recognize that certain sexual conduct is conduct to which they can or should reasonably object and the degree to which they can articulate an objection. Accordingly, OCR will consider the age of the student, the nature of the conduct involved, and other relevant factors in determining whether a student had the capacity to welcome sexual conduct.

Schools should be particularly concerned about the issue of welcomeness if the harasser is in a position of authority. For instance, because students may be encouraged to believe that a teacher has absolute authority over the operation of his or her classroom, a student may not object to a teacher’s sexually harassing comments during class; however, this does not necessarily mean that the conduct was welcome. Instead, the student may believe that any objections would be ineffective in stopping the harassment or may fear that by making objections he or she will be singled out for harassing comments or other retaliation.

In addition, OCR must consider particular issues of welcomeness if the alleged harassment relates to alleged “consensual” sexual relationships between a school’s adult employees and its students. If elementary students are involved, welcomeness will not be an issue: OCR will never view sexual conduct between an adult school employee and an elementary school student as consensual. In cases involving secondary students, there will be a strong presumption that sexual conduct between an adult school employee and a student is not consensual. In cases involving older secondary students, subject to the presumption,⁵⁷ OCR will consider a number of factors in determining whether a school employee’s sexual advances or other sexual conduct could be considered welcome.⁵⁸ In addition, OCR will consider these factors in all cases involving postsecondary students in making those determinations.⁵⁹ The factors include the following:

- The nature of the conduct and the relationship of the school employee to the student, including the degree of influence (which could, at least in part, be affected by the student’s age), authority, or control the employee has over the student.
- Whether the student was legally or practically unable to consent to the sexual conduct in question. For example, a student’s age could affect his or her ability to do so. Similarly, certain types of disabilities could affect a student’s ability to do so.

If there is a dispute about whether harassment occurred or whether it was welcome — in a case in which it is appropriate to consider whether the conduct would be welcome — determinations should be made based on the totality of the circumstances. The following types of information may be helpful in resolving the dispute:

- Statements by any witnesses to the alleged incident.
- Evidence about the relative credibility of the allegedly harassed student and the alleged harasser. For example, the level of detail and consistency of each person's account should be compared in an attempt to determine who is telling the truth. Another way to assess credibility is to see if corroborative evidence is lacking where it should logically exist. However, the absence of witnesses may indicate only the unwillingness of others to step forward, perhaps due to fear of the harasser or a desire not to get involved.
- Evidence that the alleged harasser has been found to have harassed others may support the credibility of the student claiming the harassment; conversely, the student's claim will be weakened if he or she has been found to have made false allegations against other individuals.
- Evidence of the allegedly harassed student's reaction or behavior after the alleged harassment. For example, were there witnesses who saw the student immediately after the alleged incident who say that the student appeared to be upset? However, it is important to note that some students may respond to harassment in ways that do not manifest themselves right away, but may surface several days or weeks after the harassment. For example, a student may initially show no signs of having been harassed, but several weeks after the harassment, there may be significant changes in the student's behavior, including difficulty concentrating on academic work, symptoms of depression, and a desire to avoid certain individuals and places at school.
- Evidence about whether the student claiming harassment filed a complaint or took other action to protest the conduct soon after the alleged incident occurred. However, failure to immediately complain may merely reflect a fear of retaliation or a fear that the complainant may not be believed rather than that the alleged harassment did not occur.
- Other contemporaneous evidence. For example, did the student claiming harassment write about the conduct and his or her reaction to it soon after it occurred (e.g., in a diary or letter)? Did the student tell others (friends, parents) about the conduct (and his or her reaction to it) soon after it occurred?

B. Nature of the School's Responsibility to Address Sexual Harassment

A school has a responsibility to respond promptly and effectively to sexual harassment. In the case of harassment by teachers or other employees, the nature of this responsibility depends in part on whether the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

1. Harassment by Teachers and Other Employees

Sexual harassment of a student by a teacher or other school employee can be discrimination in violation of Title IX.⁶⁰ Schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student who was harassed. The extent of a recipient's responsibilities if an employee sexually harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aid, benefits, or services to students.

A recipient is responsible under the Title IX regulations for the nondiscriminatory provision of aid, benefits, and services to students. Recipients generally provide aid, benefits, and services to students through the responsibilities they give to employees. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out these responsibilities over students engages in sexual harassment – generally this means harassment that is carried out during an employee's performance of his or her responsibilities in relation to students, including teaching, counseling, supervising, advising, and transporting students – and the harassment denies or limits a student's ability to participate in or benefit from a school program on the basis of sex,⁶¹ the recipient is responsible for the discriminatory conduct.⁶² The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has "notice" of the harassment. (As explained in the section on "Notice of Employee, Peer, or Third Party Harassment," for purposes of this guidance, a school has notice of harassment if a responsible school employee actually knew or, in the exercise of reasonable care, should have known about the harassment.) Of course, under OCR's administrative enforcement, recipients always receive actual notice and the opportunity to take appropriate corrective action before any finding of violation or possible loss of federal funds.

Whether or not sexual harassment of a student occurred within the context of an employee's responsibilities for providing aid, benefits, or services is determined on a case-by-case basis, taking into account a variety of factors. If an employee conditions the provision of an aid, benefit, or service that the employee is responsible for providing on a student's submission to sexual conduct, i.e., conduct traditionally referred to as quid pro quo harassment, the harassment is clearly taking place in the context of the employee's responsibilities to provide aid, benefits, or services. In other situations, i.e., when an employee has created a hostile environment, OCR will consider the following factors in determining whether or not the harassment has taken place in this context, including:

- The type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally;
- the degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place;
- where and when the harassment occurred;
- the age and educational level of the student involved; and

- as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student, even if the employee was not.

These factors are applicable to all recipient educational institutions, including elementary and secondary schools, colleges, and universities. Elementary and secondary schools, however, are typically run in a way that gives teachers, school officials, and other school employees a substantial degree of supervision, control, and disciplinary authority over the conduct of students.⁶³ Therefore, in cases involving allegations of harassment of elementary and secondary school-age students by a teacher or school administrator during any school activity,⁶⁴ consideration of these factors will generally lead to a conclusion that the harassment occurred in the context of the employee's provision of aid, benefits, or services.

For example, a teacher sexually harasses an eighth-grade student in a school hallway. Even if the student is not in any of the teacher's classes and even if the teacher is not designated as a hall monitor, given the age and educational level of the student and the status and degree of influence of teachers in elementary and secondary schools, it would be reasonable for the student to believe that the teacher had at least informal disciplinary authority over students in the hallways. Thus, OCR would consider this an example of conduct that is occurring in the context of the employee's responsibilities to provide aid, benefits, or services.

Other examples of sexual harassment of a student occurring in the context of an employee's responsibilities for providing aid, benefits, or services include, but are not limited to -- a faculty member at a university's medical school conditions an intern's evaluation on submission to his sexual advances and then gives her a poor evaluation for rejecting the advances; a high school drama instructor does not give a student a part in a play because she has not responded to sexual overtures from the instructor; a faculty member withdraws approval of research funds for her assistant because he has rebuffed her advances; a journalism professor who supervises a college newspaper continually and inappropriately touches a student editor in a sexual manner, causing the student to resign from the newspaper staff; and a teacher repeatedly asks a ninth grade student to stay after class and attempts to engage her in discussions about sex and her personal experiences while they are alone in the classroom, causing the student to stop coming to class. In each of these cases, the school is responsible for the discriminatory conduct, including taking prompt and effective action to end the harassment, prevent it from recurring, and remedy the effects of the harassment on the victim.

Sometimes harassment of a student by an employee in the school's program does not take place in the context of the employee's provision of aid, benefits, or services, but nevertheless is sufficiently serious to create a hostile educational environment. An example of this conduct might occur if a faculty member in the history department at a university, over the course of several weeks, repeatedly touches and makes sexually suggestive remarks to a graduate engineering student while waiting at a stop for the university shuttle bus, riding on the bus, and upon exiting the bus. As a result, the student stops using the campus shuttle and walks the very long distances between her classes. In this case, the school is not directly responsible for the harassing conduct because it did not occur in the context of the employee's responsibilities for the provision

of aid, benefits, or services to students. However, the conduct is sufficiently serious to deny or limit the student in her ability to participate in or benefit from the recipient's program. Thus, the school has a duty, upon notice of the harassment,⁶⁵ to take prompt and effective action to stop the harassment and prevent its recurrence.

If the school takes these steps, it has avoided violating Title IX. If the school fails to take the necessary steps, however, its failure to act has allowed the student to continue to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program. The school, therefore, has engaged in its own discrimination. It then becomes responsible, not just for stopping the conduct and preventing it from happening again, but for remedying the effects of the harassment on the student that could reasonably have been prevented if the school had responded promptly and effectively. (For related issues, see the sections on "OCR Case Resolution" and "Recipient's Response.")

2. Harassment by Other Students or Third Parties

If a student sexually harasses another student and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the program, and if the school knows or reasonably should know⁶⁶ about the harassment, the school is responsible for taking immediate effective action to eliminate the hostile environment and prevent its recurrence.⁶⁷ As long as the school, upon notice of the harassment, responds by taking prompt and effective action to end the harassment and prevent its recurrence, the school has carried out its responsibility under the Title IX regulations. On the other hand, if, upon notice, the school fails to take prompt, effective action, the school's own inaction has permitted the student to be subjected to a hostile environment that denies or limits the student's ability to participate in or benefit from the school's program on the basis of sex.⁶⁸ In this case, the school is responsible for taking effective corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had it responded promptly and effectively.

Similarly, sexually harassing conduct by third parties, who are not themselves employees or students at the school (e.g., a visiting speaker or members of a visiting athletic team), may also be of a sufficiently serious nature to deny or limit a student's ability to participate in or benefit from the education program. As previously outlined in connection with peer harassment, if the school knows or should know⁶⁹ of the harassment, the school is responsible for taking prompt and effective action to eliminate the hostile environment and prevent its recurrence.

The type of appropriate steps that the school should take will differ depending on the level of control that the school has over the third party harasser.⁷⁰ For example, if athletes from a visiting team harass the home school's students, the home school may not be able to discipline the athletes. However, it could encourage the other school to take appropriate action to prevent further incidents; if necessary, the home school may choose not to invite the other school back. (This issue is discussed more fully in the section on "Recipient's Response.")

If, upon notice, the school fails to take prompt and effective corrective action, its own failure has permitted the student to be subjected to a hostile environment that limits

the student's ability to participate in or benefit from the education program.⁷¹ In this case, the school is responsible for taking corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the victim that could reasonably have been prevented had the school responded promptly and effectively.

C. Notice of Employee, Peer, or Third Party Harassment

As described in the section on "Harassment by Teachers and Other Employees," schools may be responsible for certain types of employee harassment that occurred before the school otherwise had notice of the harassment. On the other hand, as described in that section and the section on "Harassment by Other Students or Third Parties," in situations involving certain other types of employee harassment, or harassment by peers or third parties, a school will be in violation of the Title IX regulations if the school "has notice" of a sexually hostile environment and fails to take immediate and effective corrective action.⁷²

A school has notice if a responsible employee "knew, or in the exercise of reasonable care should have known," about the harassment.⁷³ A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.⁷⁴ Accordingly, schools need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

A school can receive notice of harassment in many different ways. A student may have filed a grievance with the Title IX coordinator⁷⁵ or complained to a teacher or other responsible employee about fellow students harassing him or her. A student, parent, or other individual may have contacted other appropriate personnel, such as a principal, campus security, bus driver, teacher, affirmative action officer, or staff in the office of student affairs. A teacher or other responsible employee of the school may have witnessed the harassment. The school may receive notice about harassment in an indirect manner, from sources such as a member of the school staff, a member of the educational or local community, or the media. The school also may have learned about the harassment from flyers about the incident distributed at the school or posted around the school. For the purposes of compliance with the Title IX regulations, a school has a duty to respond to harassment about which it reasonably should have known, i.e., if it would have learned of the harassment if it had exercised reasonable care or made a "reasonably diligent inquiry."⁷⁶

For example, in some situations if the school knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents.⁷⁷ In other cases, the pervasiveness of the harassment may be enough to conclude that the school should have known of the hostile environment — if the harassment is widespread, openly practiced, or well-known to students and staff

(such as sexual harassment occurring in the hallways, graffiti in public areas, or harassment occurring during recess under a teacher's supervision.)⁷⁸

If a school otherwise knows or reasonably should know of a hostile environment and fails to take prompt and effective corrective action, a school has violated Title IX even if the student has failed to use the school's existing grievance procedures or otherwise inform the school of the harassment.

D. The Role of Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish grievance procedures providing for prompt and equitable resolution of sex discrimination complaints, including complaints of sexual harassment, and to disseminate a policy against sex discrimination.⁷⁹ (These issues are discussed in the section on "Prompt and Equitable Grievance Procedures.") These procedures provide a school with a mechanism for discovering sexual harassment as early as possible and for effectively correcting problems, as required by the Title IX regulations. By having a strong policy against sex discrimination and accessible, effective, and fairly applied grievance procedures, a school is telling its students that it does not tolerate sexual harassment and that students can report it without fear of adverse consequences.

Without a disseminated policy and procedure, a student does not know either of the school's policy against and obligation to address this form of discrimination, or how to report harassment so that it can be remedied. If the alleged harassment is sufficiently serious to create a hostile environment and it is the school's failure to comply with the procedural requirements of the Title IX regulations that hampers early notification and intervention and permits sexual harassment to deny or limit a student's ability to participate in or benefit from the school's program on the basis of sex,⁸⁰ the school will be responsible under the Title IX regulations, once informed of the harassment, to take corrective action, including stopping the harassment, preventing its recurrence, and remedying the effects of the harassment on the victim that could reasonably have been prevented if the school's failure to comply with the procedural requirements had not hampered early notification.

VI. OCR Case Resolution

If OCR is asked to investigate or otherwise resolve incidents of sexual harassment of students, including incidents caused by employees, other students, or third parties, OCR will consider whether — (1) the school has a disseminated policy prohibiting sex discrimination under Title IX⁸¹ and effective grievance procedures;⁸² (2) the school appropriately investigated or otherwise responded to allegations of sexual harassment;⁸³ and (3) the school has taken immediate and effective corrective action responsive to the harassment, including effective actions to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.⁸⁴ (Issues related to appropriate investigative and corrective actions are discussed in detail in the section on "Recipient's Response.")

If the school has taken, or agrees to take, each of these steps, OCR will consider the case against the school resolved and will take no further action, other than monitoring compliance with an agreement, if any, between the school and OCR. This is true in cases

in which the school was in violation of the Title IX regulations (e.g., a teacher sexually harassed a student in the context of providing aid, benefits, or services to students), as well as those in which there has been no violation of the regulations (e.g., in a peer sexual harassment situation in which the school took immediate, reasonable steps to end the harassment and prevent its recurrence). This is because, even if OCR identifies a violation, Title IX requires OCR to attempt to secure voluntary compliance.⁸⁵ Thus, because a school will have the opportunity to take reasonable corrective action before OCR issues a formal finding of violation, a school does not risk losing its Federal funding solely because discrimination occurred.

VII. Recipient's Response

Once a school has notice of possible sexual harassment of students — whether carried out by employees, other students, or third parties — it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps

reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are the school's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the school to take action.⁸⁶ As described in the next section, in appropriate circumstances the school will also be responsible for taking steps to remedy the effects of the harassment on the individual student or students who were harassed. What constitutes a reasonable response to information about possible sexual harassment will differ depending upon the circumstances.

A. Response to Student or Parent Reports of Harassment; Response to Direct Observation of Harassment by a Responsible Employee

If a student or the parent of an elementary or secondary student provides information or complains about sexual harassment of the student, the school should initially discuss what actions the student or parent is seeking in response to the harassment. The school should explain the avenues for informal and formal action, including a description of the grievance procedure that is available for sexual harassment complaints and an explanation of how the procedure works. If a responsible school employee has directly observed sexual harassment of a student, the school should contact the student who was harassed (or the parent, depending upon the age of the student),⁸⁷ explain that the school is responsible for taking steps to correct the harassment, and provide the same information described in the previous sentence.

Regardless of whether the student who was harassed, or his or her parent, decides to file a formal complaint or otherwise request action on the student's behalf (including in cases involving direct observation by a responsible employee), the school must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. However, in all cases the inquiry must be prompt, thorough, and impartial. (Requests by the student who

was harassed for confidentiality or for no action to be taken, responding to notice of harassment from other sources, and the components of a prompt and equitable grievance procedure are discussed in subsequent sections of this guidance.)

It may be appropriate for a school to take interim measures during the investigation of a complaint. For instance, if a student alleges that he or she has been sexually assaulted by another student, the school may decide to place the students immediately in separate classes or in different housing arrangements on a campus, pending the results of the school's investigation. Similarly, if the alleged harasser is a teacher, allowing the student to transfer to a different class may be appropriate. In cases involving potential criminal conduct, school personnel should determine whether appropriate law enforcement authorities should be notified. In all cases, schools should make every effort to prevent disclosure of the names of all parties involved -- the complainant, the witnesses, and the accused -- except to the extent necessary to carry out an investigation.

If a school determines that sexual harassment has occurred, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation.⁸⁸ Appropriate steps should be taken to end the harassment. For example, school personnel may need to counsel, warn, or take disciplinary action against the harasser, based on the severity of the harassment or any record of prior incidents or both.⁸⁹ A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.⁹⁰ In some cases, it may be appropriate to further separate the harassed student and the harasser, e.g., by changing housing arrangements⁹¹ or directing the harasser to have no further contact with the harassed student. Responsive measures of this type should be designed to minimize, as much as possible, the burden on the student who was harassed. If the alleged harasser is not a student or employee of the recipient, OCR will consider the level of control the school has over the harasser in determining what response would be appropriate.⁹²

Steps should also be taken to eliminate any hostile environment that has been created. For example, if a female student has been subjected to harassment by a group of other students in a class, the school may need to deliver special training or other interventions for that class to repair the educational environment. If the school offers the student the option of withdrawing from a class in which a hostile environment occurred, the school should assist the student in making program or schedule changes and ensure that none of the changes adversely affect the student's academic record. Other measures may include, if appropriate, directing a harasser to apologize to the harassed student. If a hostile environment has affected an entire school or campus, an effective response may need to include dissemination of information, the issuance of new policy statements, or other steps that are designed to clearly communicate the message that the school does not tolerate harassment and will be responsive to any student who reports that conduct.

In some situations, a school may be required to provide other services to the student who was harassed if necessary to address the effects of the harassment on that student.⁹³ For example, if an instructor gives a student a low grade because the student failed to respond to his sexual advances, the school may be required to make arrangements for an independent reassessment of the student's work, if feasible, and change the grade accordingly; make arrangements for the student to take the course again

with a different instructor; provide tutoring; make tuition adjustments; offer reimbursement for professional counseling; or take other measures that are appropriate to the circumstances. As another example, if a school delays responding or responds inappropriately to information about harassment, such as a case in which the school ignores complaints by a student that he or she is being sexually harassed by a classmate, the school will be required to remedy the effects of the harassment that could have been prevented had the school responded promptly and effectively.

Finally, a school should take steps to prevent any further harassment⁹⁴ and to prevent any retaliation against the student who made the complaint (or was the subject of the harassment), against the person who filed a complaint on behalf of a student, or against those who provided information as witnesses.⁹⁵ At a minimum, this includes making sure that the harassed students and their parents know how to report any subsequent problems and making follow-up inquiries to see if there have been any new incidents or any retaliation. To prevent recurrences, counseling for the harasser may be appropriate to ensure that he or she understands what constitutes harassment and the effects it can have. In addition, depending on how widespread the harassment was and whether there have been any prior incidents, the school may need to provide training for the larger school community to ensure that students, parents, and teachers can recognize harassment if it recurs and know how to respond.⁹⁶

B. Confidentiality

The scope of a reasonable response also may depend upon whether a student, or parent of a minor student, reporting harassment asks that the student's name not be disclosed to the harasser or that nothing be done about the alleged harassment. In all cases, a school should discuss confidentiality standards and concerns with the complainant initially. The school should inform the student that a confidentiality request may limit the school's ability to respond. The school also should tell the student that Title IX prohibits retaliation and that, if he or she is afraid of reprisals from the alleged harasser, the school will take steps to prevent retaliation and will take strong responsive actions if retaliation occurs. If the student continues to ask that his or her name not be revealed, the school should take all reasonable steps to investigate and respond to the complaint consistent with the student's request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students.

OCR enforces Title IX consistent with the federally protected due process rights of public school students and employees. Thus, for example, if a student, who was the only student harassed, insists that his or her name not be revealed, and the alleged harasser could not respond to the charges of sexual harassment without that information, in evaluating the school's response, OCR would not expect disciplinary action against an alleged harasser.

At the same time, a school should evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The factors that a school may consider in this regard include the seriousness of the alleged harassment, the age of the student harassed, whether there have been other complaints or reports of harassment against the alleged harasser, and the rights of the

accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result.⁹⁷

Similarly, a school should be aware of the confidentiality concerns of an accused employee or student. Publicized accusations of sexual harassment, if ultimately found to be false, may nevertheless irreparably damage the reputation of the accused. The accused individual's need for confidentiality must, of course, also be evaluated based on the factors discussed in the preceding paragraph in the context of the school's responsibility to ensure a safe environment for students.

Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual complaint of harassment, other means may be available to address the harassment. There are steps a recipient can take to limit the effects of the alleged harassment and prevent its recurrence without initiating formal action against the alleged harasser or revealing the identity of the complainant. Examples include conducting sexual harassment training for the school site or academic department where the problem occurred, taking a student survey concerning any problems with harassment, or implementing other systemic measures at the site or department where the alleged harassment has occurred.

In addition, by investigating the complaint to the extent possible — including by reporting it to the Title IX coordinator or other responsible school employee designated pursuant to Title IX — the school may learn about or be able to confirm a pattern of harassment based on claims by different students that they were harassed by the same individual. In some situations there may be prior reports by former students who now might be willing to come forward and be identified, thus providing a basis for further corrective action. In instances affecting a number of students (for example, a report from a student that an instructor has repeatedly made sexually explicit remarks about his or her personal life in front of an entire class), an individual can be put on notice of allegations of harassing behavior and counseled appropriately without revealing, even indirectly, the identity of the student who notified the school. Those steps can be very effective in preventing further harassment.

C. Response to Other Types of Notice

The previous two sections deal with situations in which a student or parent of a student who was harassed reports or complains of harassment or in which a responsible school employee directly observes sexual harassment of a student. If a school learns of harassment through other means, for example, if information about harassment is received from a third party (such as from a witness to an incident or an anonymous letter or telephone call), different factors will affect the school's response. These factors include the source and nature of the information; the seriousness of the alleged incident; the specificity of the information; the objectivity and credibility of the source of the report; whether any individuals can be identified who were subjected to the alleged harassment; and whether those individuals want to pursue the matter. If, based on these factors, it is reasonable for the school to investigate and it can confirm the allegations, the considerations described in the previous sections concerning interim measures and appropriate responsive action will apply.

For example, if a parent visiting a school observes a student repeatedly harassing a group of female students and reports this to school officials, school personnel can speak with the female students to confirm whether that conduct has occurred and whether they view it as unwelcome. If the school determines that the conduct created a hostile environment, it can take reasonable, age-appropriate steps to address the situation. If on the other hand, the students in this example were to ask that their names not be disclosed or indicate that they do not want to pursue the matter, the considerations described in the previous section related to requests for confidentiality will shape the school's response.

In a contrasting example, a student newspaper at a large university may print an anonymous letter claiming that a professor is sexually harassing students in class on a daily basis, but the letter provides no clue as to the identity of the professor or the department in which the conduct is allegedly taking place. Due to the anonymous source and lack of specificity of the information, a school would not reasonably be able to investigate and confirm these allegations. However, in response to the anonymous letter, the school could submit a letter or article to the newspaper reiterating its policy against sexual harassment, encouraging persons who believe that they have been sexually harassed to come forward, and explaining how its grievance procedures work.

VIII. Prevention

A policy specifically prohibiting sexual harassment and separate grievance procedures for violations of that policy can help ensure that all students and employees understand the nature of sexual harassment and that the school will not tolerate it. Indeed, they might even bring conduct of a sexual nature to the school's attention so that the school can address it before it becomes sufficiently serious as to create a hostile environment. Further, training for administrators, teachers, and staff and age-appropriate classroom information for students can help to ensure that they understand what types of conduct can cause sexual harassment and that they know how to respond.

IX. Prompt and Equitable Grievance Procedures

Schools are required by the Title IX regulations to adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex.⁹⁸ Accordingly, regardless of whether harassment occurred, a school violates this requirement of the Title IX regulations if it does not have those procedures and policy in place.⁹⁹

A school's sex discrimination grievance procedures must apply to complaints of sex discrimination in the school's education programs and activities filed by students against school employees, other students, or third parties.¹⁰⁰ Title IX does not require a school to adopt a policy specifically prohibiting sexual harassment or to provide separate grievance procedures for sexual harassment complaints. However, its nondiscrimination policy and grievance procedures for handling discrimination complaints must provide effective means for preventing and responding to sexual harassment. Thus, if, because of the lack of a policy or procedure specifically addressing sexual harassment, students are unaware of what kind of conduct constitutes sexual harassment or that such conduct is

prohibited sex discrimination, a school's general policy and procedures relating to sex discrimination complaints will not be considered effective.¹⁰¹

OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the procedures provide for —

- Notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
- Application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Notice to the parties of the outcome of the complaint;¹⁰² and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.¹⁰³

Many schools also provide an opportunity to appeal the findings or remedy, or both. In addition, because retaliation is prohibited by Title IX, schools may want to include a provision in their procedures prohibiting retaliation against any individual who files a complaint or participates in a harassment inquiry.

Procedures adopted by schools will vary considerably in detail, specificity, and components, reflecting differences in audiences, school sizes and administrative structures, State or local legal requirements, and past experience. In addition, whether complaint resolutions are timely will vary depending on the complexity of the investigation and the severity and extent of the harassment. During the investigation it is a good practice for schools to inform students who have alleged harassment about the status of the investigation on a periodic basis.

A grievance procedure applicable to sexual harassment complaints cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. Thus, the procedures should be written in language appropriate to the age of the school's students, easily understood, and widely disseminated. Distributing the procedures to administrators, or including them in the school's administrative or policy manual, may not by itself be an effective way of providing notice, as these publications are usually not widely circulated to and understood by all members of the school community. Many schools ensure adequate notice to students by having copies of the procedures available at various locations throughout the school or campus; publishing the procedures as a separate document; including a summary of the procedures in major publications issued by the school, such as handbooks and catalogs for students, parents of elementary and secondary students, faculty, and staff; and identifying individuals who can explain how the procedures work.

A school must designate at least one employee to coordinate its efforts to comply with and carry out its Title IX responsibilities.¹⁰⁴ The school must notify all of its students and employees of the name, office address, and telephone number of the employee or employees designated.¹⁰⁵ Because it is possible that an employee designated to handle Title IX complaints may himself or herself engage in harassment, a school may want to designate more than one employee to be responsible for handling complaints in order to ensure that students have an effective means of reporting harassment.¹⁰⁶ While a school may choose to have a number of employees responsible for Title IX matters, it is also advisable to give one official responsibility for overall coordination and oversight of all sexual harassment complaints to ensure consistent practices and standards in handling complaints. Coordination of recordkeeping (for instance, in a confidential log maintained by the Title IX coordinator) will also ensure that the school can and will resolve recurring problems and identify students or employees who have multiple complaints filed against them.¹⁰⁷ Finally, the school must make sure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates.¹⁰⁸

Grievance procedures may include informal mechanisms for resolving sexual harassment complaints to be used if the parties agree to do so.¹⁰⁹ OCR has frequently advised schools, however, that it is not appropriate for a student who is complaining of harassment to be required to work out the problem directly with the individual alleged to be harassing him or her, and certainly not without appropriate involvement by the school (e.g., participation by a counselor, trained mediator, or, if appropriate, a teacher or administrator). In addition, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In some cases, such as alleged sexual assaults, mediation will not be appropriate even on a voluntary basis. Title IX also permits the use of a student disciplinary procedure not designed specifically for Title IX grievances to resolve sex discrimination complaints, as long as the procedure meets the requirement of affording a complainant a “prompt and equitable” resolution of the complaint.

In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering. However, because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.¹¹⁰ Similarly, schools are cautioned about using the results of insurance company investigations of sexual harassment allegations. The purpose of an insurance investigation is to assess liability under the insurance policy, and the applicable standards may well be different from those under Title IX. In addition, a school is not relieved of its responsibility to respond to a sexual harassment complaint filed under its grievance procedure by the fact that a complaint has been filed with OCR.¹¹¹

X. Due Process Rights of the Accused

A public school's employees have certain due process rights under the United States Constitution. The Constitution also guarantees due process to students in public and State-supported schools who are accused of certain types of infractions. The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding. Furthermore, the Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of persons accused of sexual harassment. Procedures that ensure the Title IX rights of the complainant, while at the same time according due process to both parties involved, will lead to sound and supportable decisions. Of course, schools should ensure that steps to accord due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant. In both public and private schools, additional or separate rights may be created for employees or students by State law, institutional regulations and policies, such as faculty or student handbooks, and collective bargaining agreements. Schools should be aware of these rights and their legal responsibilities to individuals accused of harassment.

XI. First Amendment

In cases of alleged harassment, the protections of the First Amendment must be considered if issues of speech or expression are involved.¹¹² Free speech rights apply in the classroom (e.g., classroom lectures and discussions)¹¹³ and in all other education programs and activities of public schools (e.g., public meetings and speakers on campus; campus debates, school plays and other cultural events¹¹⁴; and student newspapers, journals, and other publications¹¹⁵). In addition, First Amendment rights apply to the speech of students and teachers.¹¹⁶

Title IX is intended to protect students from sex discrimination, not to regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a sexually hostile environment under Title IX.¹¹⁷ In order to establish a violation of Title IX, the harassment must be sufficiently serious to deny or limit a student's ability to participate in or benefit from the education program.¹¹⁸

Moreover, in regulating the conduct of its students and its faculty to prevent or redress discrimination prohibited by Title IX (e.g., in responding to harassment that is sufficiently serious as to create a hostile environment), a school must formulate, interpret, and apply its rules so as to protect academic freedom and free speech rights. For instance, while the First Amendment may prohibit a school from restricting the right of students to express opinions about one sex that may be considered derogatory, the school can take steps to denounce those opinions and ensure that competing views are heard. The age of the students involved and the location or forum may affect how the school can respond consistently with the First Amendment.¹¹⁹ As an example of the application of free speech rights to allegations of sexual harassment, consider the following:

Example 1: In a college level creative writing class, a professor's required reading list includes excerpts from literary classics that contain descriptions of explicit

sexual conduct, including scenes that depict women in submissive and demeaning roles. The professor also assigns students to write their own materials, which are read in class. Some of the student essays contain sexually derogatory themes about women. Several female students complain to the Dean of Students that the materials and related classroom discussion have created a sexually hostile environment for women in the class. What must the school do in response?

Answer: Academic discourse in this example is protected by the First Amendment even if it is offensive to individuals. Thus, Title IX would not require the school to discipline the professor or to censor the reading list or related class discussion.

Example 2: A group of male students repeatedly targets a female student for harassment during the bus ride home from school, including making explicit sexual comments about her body, passing around drawings that depict her engaging in sexual conduct, and, on several occasions, attempting to follow her home off the bus. The female student and her parents complain to the principal that the male students' conduct has created a hostile environment for girls on the bus and that they fear for their daughter's safety. What must a school do in response?

Answer: Threatening and intimidating actions targeted at a particular student or group of students, even though they contain elements of speech, are not protected by the First Amendment. The school must take prompt and effective actions, including disciplinary action if necessary, to stop the harassment and prevent future harassment.

Endnotes

¹ This guidance does not address sexual harassment of employees, although that conduct may be prohibited by Title IX. 20 U.S.C. 1681 *et seq.*; 34 CFR part 106, subpart E. If employees file Title IX sexual harassment complaints with OCR, the complaints will be processed pursuant to the Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance. 28 CFR 42.604. Employees are also protected from discrimination on the basis of sex, including sexual harassment, by Title VII of the Civil Rights Act of 1964. For information about Title VII and sexual harassment, see the Equal Employment Opportunity Commission's (EEOC's) Guidelines on Sexual Harassment, 29 CFR 1604.11, for information about filing a Title VII charge with the EEOC, see 29 CFR 1601.7–1607.13, or see the EEOC's website at www.eeoc.gov.

² 20 U.S.C. 1681; 34 CFR part 106.

³ See, e.g., Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 649-50 (1999); Gebser v. Lago Vista Ind. Sch. Dist., 524 U.S. 274, 281 (1998); Franklin v. Gwinnett County Pub. Sch., 503 U.S. 60, 75 (1992); S. REP. NO. 100-64, 100th Cong., 1st Sess. 14 (1987); Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (1997 guidance), 62 FR 12034 (1997).

⁴ As described in the section on “Applicability,” this guidance applies to all levels of education.

⁵ For practical information about steps that schools can take to prevent and remedy all types of harassment, including sexual harassment, see “Protecting Students from Harassment and Hate Crime, A Guide for Schools,” which we issued jointly with the National Association of Attorneys General. This Guide is available at our web site at: www.ed.gov/pubs/Harassment.

⁶ See, e.g., Davis, 526 U.S. at 653 (alleged conduct of a sexual nature that would support a sexual harassment claim included verbal harassment and “numerous acts of objectively offensive touching;” Franklin, 503 U.S. at 63 (conduct of a sexual nature found to support a sexual harassment claim under Title IX included kissing, sexual intercourse); Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 60-61 (1986) (demands for sexual favors, sexual advances, fondling, indecent exposure, sexual intercourse, rape, sufficient to raise hostile environment claim under Title VII); Ellison v. Brady, 924 F.2d 872, 873-74, 880 (9th Cir. 1991) (allegations sufficient to state sexual harassment claim under Title VII included repeated requests for dates, letters making explicit references to sex and describing the harasser's feelings for plaintiff); Lipsett v. University of Puerto Rico, 864 F.2d 881, 904-5 (1st Cir. 1988) (sexually derogatory comments, posting of sexually explicit drawing of plaintiff, sexual advances may support sexual harassment claim); Kadiki v. Virginia Commonwealth University, 892 F.Supp. 746, 751 (E.D. Va. 1995)

(professor's spanking of university student may constitute sexual conduct under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65 (N.D. Cal. 1996) (sexually derogatory taunts and innuendo can be the basis of a harassment claim); Denver School Dist. #2, OCR Case No. 08-92-1007 (same to allegations of vulgar language and obscenities, pictures of nude women on office walls and desks, unwelcome touching, sexually offensive jokes, bribery to perform sexual acts, indecent exposure); Nashoba Regional High School, OCR Case No. 01-92-1377 (same as to year-long campaign of derogatory, sexually explicit graffiti and remarks directed at one student).

⁷ See also Shoreline School Dist., OCR Case No. 10-92-1002 (a teacher's patting a student on the arm, shoulder, and back, and restraining the student when he was out of control, not conduct of a sexual nature); Dartmouth Public Schools, OCR Case No. 01-90-1058 (same as to contact between high school coach and students); San Francisco State University, OCR Case No. 09-94-2038 (same as to faculty advisor placing her arm around a graduate student's shoulder in posing for a picture); Analy Union High School Dist., OCR Case No. 09-92-1249 (same as to drama instructor who put his arms around both male and female students who confided in him).

⁸ 20 U.S.C. 1687 (codification of the amendment to Title IX regarding scope of jurisdiction, enacted by the Civil Rights Restoration Act of 1987). See 65 FR 68049 (November 13, 2000) (Department's amendment of the Title IX regulations to incorporate the statutory definition of "program or activity").

⁹ If a school contracts with persons or organizations to provide benefits, services, or opportunities to students as part of the school's program, and those persons or employees of those organizations sexually harass students, OCR will consider the harassing individual in the same manner that it considers the school's employees, as described in this guidance. (See section on "Harassment by Teachers and Other Employees.") See Brown v. Hot, Sexy, and Safer Products, Inc., 68 F.3d 525, 529 (1st Cir. 1995) (Title IX sexual harassment claim brought for school's role in permitting contract consultant hired by it to create allegedly hostile environment).

In addition, if a student engages in sexual harassment as an employee of the school, OCR will consider the harassment under the standards described for employees. (See section on "Harassment by Teachers and Other Employees.") For example, OCR would consider it harassment by an employee if a student teaching assistant who is responsible for assigning grades in a course, i.e., for providing aid, benefits, or services to students under the recipient's program, required a student in his or her class to submit to sexual advances in order to obtain a certain grade in the class.

¹⁰ Cf. John Does 1 v. Covington County Sch. Bd., 884 F.Supp. 462, 464-65 (M.D. Ala. 1995) (male students alleging that a teacher sexually harassed and abused them stated cause of action under Title IX).

¹¹ Title IX and the regulations implementing it prohibit discrimination "on the basis of sex;" they do not restrict protection from sexual harassment to those circumstances in

which the harasser only harasses members of the opposite sex. See 34 CFR 106.31. In Oncale v. Sundowner Offshore Services, Inc. the Supreme Court held unanimously that sex discrimination consisting of same-sex sexual harassment can violate Title VII's prohibition against discrimination because of sex. 523 U.S. 75, 82 (1998). The Supreme Court's holding in Oncale is consistent with OCR policy, originally stated in its 1997 guidance, that Title IX prohibits sexual harassment regardless of whether the harasser and the person being harassed are members of the same sex. 62 FR 12039. See also Kinman v. Omaha Public School Dist., 94 F.3d 463, 468 (8th Cir. 1996), rev'd on other grounds, 171 F.3d 607 (1999) (female student's allegation of sexual harassment by female teacher sufficient to raise a claim under Title IX); Doe v. Petaluma, 830 F.Supp. 1560, 1564-65, 1575 (N.D. Cal. 1996) (female junior high student alleging sexual harassment by other students, including both boys and girls, sufficient to raise a claim under Title IX); John Does I, 884 F.Supp. at 465 (same as to male students' allegations of sexual harassment and abuse by a male teacher.) It can also occur in certain situations if the harassment is directed at students of both sexes. Chiapuzo v. BLT Operating Corp., 826 F.Supp. 1334, 1337 (D.Wyo. 1993) (court found that if males and females were subject to harassment, but harassment was based on sex, it could violate Title VII); but see Holman v. Indiana, 211 F.3d 399, 405 (7th Cir. 2000) (if male and female both subjected to requests for sex, court found it could not violate Title VII).

In many circumstances, harassing conduct will be on the basis of sex because the student would not have been subjected to it at all had he or she been a member of the opposite sex; e.g., if a female student is repeatedly propositioned by a male student or employee (or, for that matter, if a male student is repeatedly propositioned by a male student or employee.) In other circumstances, harassing conduct will be on the basis of sex if the student would not have been affected by it in the same way or to the same extent had he or she been a member of the opposite sex; e.g., pornography and sexually explicit jokes in a mostly male shop class are likely to affect the few girls in the class more than it will most of the boys.

In yet other circumstances, the conduct will be on the basis of sex in that the student's sex was a factor in or affected the nature of the harasser's conduct or both. Thus, in Chiapuzo, a supervisor made demeaning remarks to both partners of a married couple working for him, e.g., as to sexual acts he wanted to engage in with the wife and how he would be a better lover than the husband. In both cases, according to the court, the remarks were based on sex in that they were made with an intent to demean each member of the couple because of his or her respective sex. 826 F.Supp. at 1337. See also Steiner v. Showboat Operating Co., 25 F.3d 1459, 1463-64 (9th Cir. 1994), cert. denied, 115 S.Ct. 733 (1995); but see Holman, 211 F.3d at 405 (finding that if male and female both subjected to requests for sex, Title VII could not be violated).

¹² Nashoba Regional High School, OCR Case No. 01-92-1397. In Conejo Valley School Dist., OCR Case No. 09-93-1305, female students allegedly taunted another female student about engaging in sexual activity; OCR found that the alleged comments were sexually explicit and, if true, would be sufficiently severe, persistent, and pervasive to create a hostile environment.

¹³ See Williamson v. A.G. Edwards & Sons, Inc., 876 F.2d 69, 70 (8th Cir. 1989, cert. denied) 493 U.S. 1089 (1990); DeSantis v. Pacific Tel. & Tel. Co., Inc., 608 F.2d 327, 329-30 (9th Cir. 1979)(same); Blum v. Gulf Oil Corp., 597 F.2d 936, 938 (5th Cir. 1979)(same).

¹⁴ It should be noted that some State and local laws may prohibit discrimination on the basis of sexual orientation. Also, under certain circumstances, courts may permit redress for harassment on the basis of sexual orientation under other Federal legal authority. See Nabozny v. Podlesny, 92 F.3d 446, 460 (7th Cir. 1996) (holding that a gay student could maintain claims alleging discrimination based on both gender and sexual orientation under the Equal Protection Clause of the United States Constitution in a case in which a school district failed to protect the student to the same extent that other students were protected from harassment and harm by other students due to the student's gender and sexual orientation).

¹⁵ However, sufficiently serious sexual harassment is covered by Title IX even if the hostile environment also includes taunts based on sexual orientation.

¹⁶ See also, Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989) (plurality opinion) (where an accounting firm denied partnership to a female candidate, the Supreme Court found Title VII prohibits an employer from evaluating employees by assuming or insisting that they match the stereotype associated with their sex).

¹⁷ See generally Gebser; Davis; See also Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 65-66 (1986); Harris v. Forklift Systems Inc., 510 U.S. 14, 22 (1993); see also Hicks v. Gates Rubber Co., 833 F.2d 1406, 1415 (10th Cir. 1987) (concluding that harassment based on sex may be discrimination whether or not it is sexual in nature); McKinney v. Dole, 765 F.2d 1129, 1138 (D.C. Cir. 1985) (physical, but nonsexual, assault could be sex-based harassment if shown to be unequal treatment that would not have taken place but for the employee's sex); Cline v. General Electric Capital Auto Lease, Inc., 757 F.Supp. 923, 932-33 (N.D. Ill. 1991).

¹⁸ See, e.g., sections on "Harassment by Teachers and Other Employees," "Harassment by Other Students or Third Parties," "Notice of Employee, Peer, or Third Party Harassment," "Factors Used to Evaluate a Hostile Environment," "Recipient's Response," and "Prompt and Equitable Grievance Procedures."

¹⁹ See Lipsett, 864 F.2d at 903-905 (general antagonism toward women, including stated goal of eliminating women from surgical program, statements that women shouldn't be in the program, and assignment of menial tasks, combined with overt sexual harassment); Harris, 510 U.S. at 23; Andrews v. City of Philadelphia, 895 F.2d 1469, 1485-86 (3rd Cir. 1990) (court directed trial court to consider sexual conduct as well as theft of female employees' files and work, destruction of property, and anonymous phone calls in determining if there had been sex discrimination); see also Hall v. Gus Construction Co., 842 F.2d 1010, 1014 (8th Cir. 1988) (affirming that harassment due to the employee's sex

may be actionable even if the harassment is not sexual in nature); Hicks, 833 F.2d at 1415; Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (the boys made lewd comments about male anatomy and tormented the girls by pretending to stab them with rubber knives; while the stabbing was not sexual conduct, it was directed at them because of their sex, i.e., because they were girls).

²⁰ Davis, 526 U.S. at 650 (“Having previously determined that ‘sexual harassment’ is ‘discrimination’ in the school context under Title IX, we are constrained to conclude that student-on-student sexual harassment, if sufficiently severe, can likewise rise to the level of discrimination actionable under the statute.”); Franklin, 503 U.S. at 75 (“Unquestionably, Title IX placed on the [school] the duty not to discriminate on the basis of sex, and ‘when a supervisor sexually harasses a subordinate because of the subordinate’s sex, that supervisor “discriminate[s]” on the basis of sex.’ ... We believe the same rule should apply when a teacher sexually harasses and abuses a student.” (citation omitted)).

OCR’s longstanding interpretation of its regulations is that sexual harassment may constitute a violation. 34 CFR 106.31; See Sexual Harassment Guidance, 62 FR 12034 (1997). When Congress enacted the Civil Rights Restoration Act of 1987 to amend Title IX to restore institution-wide coverage over federally assisted education programs and activities, the legislative history indicated not only that Congress was aware that OCR interpreted its Title IX regulations to prohibit sexual harassment, but also that one of the reasons for passing the Restoration Act was to enable OCR to investigate and resolve cases involving allegations of sexual harassment. S. REP. NO. 64, 100th Cong., 1st Sess. at 12 (1987). The examples of discrimination that Congress intended to be remedied by its statutory change included sexual harassment of students by professors, id. at 14, and these examples demonstrate congressional recognition that discrimination in violation of Title IX can be carried out by school employees who are providing aid, benefits, or services to students. Congress also intended that if discrimination occurred, recipients needed to implement effective remedies. S. REP. NO. 64 at 5.

²¹ 34 CFR 106.4.

²² These are the basic regulatory requirements. 34 CFR 106.31(a)(b). Depending upon the facts, sexual harassment may also be prohibited by more specific regulatory prohibitions. For example, if a college financial aid director told a student that she would not get the student financial assistance for which she qualified unless she slept with him, that also would be covered by the regulatory provision prohibiting discrimination on the basis of sex in financial assistance, 34 CFR 106.37(a).

²³ 34 CFR 106.31(b)(1).

²⁴ 34 CFR 106.31(b)(2).

²⁵ 34 CFR 106.31(b)(3).

²⁶ 34 CFR 106.31(b)(4).

²⁷ 34 CFR 106.31(b)(6).

²⁸ 34 CFR 106.31(b)(7).

²⁹ 34 CFR 106.3(a).

³⁰ 34 CFR 106.9.

³¹ 34 CFR 106.8(b).

³² 34 CFR 106.8(a).

³³ The 1997 guidance referred to quid pro quo harassment and hostile environment harassment. 62 FR 12038–40.

³⁴ See Alexander v. Yale University, 459 F.Supp. 1, 4 (D.Conn. 1977), aff'd, 631 F.2d 178 (2nd Cir. 1980)(stating that a claim “that academic advancement was conditioned upon submission to sexual demands constitutes [a claim of] sex discrimination in education...”); Crandell v. New York College, Osteopathic Medicine, 87 F.Supp.2d 304, 318 (S.D.N.Y. 2000) (finding that allegations that a supervisory physician demanded that a student physician spend time with him and have lunch with him or receive a poor evaluation, in light of the totality of his alleged sexual comments and other inappropriate behavior, constituted a claim of quid pro quo harassment); Kadiki, 892 F.Supp. at 752 (reexamination in a course conditioned on college student’s agreeing to be spanked should she not attain a certain grade may constitute quid pro quo harassment).

³⁵ 34 CFR 106.31(b).

³⁶ Davis, 526 U.S. at 651 (confirming, by citing approvingly both to Title VII cases (Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57,67 (1986) (finding that hostile environment claims are cognizable under Title VII), and Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 82 (1998)) and OCR’s 1997 guidance, 62 FR at 12041-42, that determinations under Title IX as to what conduct constitutes hostile environment sexual harassment may continue to rely on Title VII caselaw).

³⁷ 34 CFR 106.31(b). See Davis, 526 U.S. at 650 (concluding that allegations of student-on-student sexual harassment that is “so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits” supports a claim for money damages in an implied right of action).

³⁸ In Harris, the Supreme Court explained the requirement for considering the “subjective perspective” when determining the existence of a hostile environment. The Court stated— “... if the victim does not subjectively perceive the environment to be abusive, the

conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation." 510 U.S. at 21-22.

³⁹ See Davis, 526 U.S. at 650 (conduct must be "objectively offensive" to trigger liability for money damages); Elgamil v. Syracuse University, 2000 U.S. Dist. LEXIS 12598 at 17 (N.D.N.Y. 2000) (citing Harris); Booher v. Board of Regents, 1998 U.S. Dist. LEXIS 11404 at 25 (E.D. Ky. 1998) (same). See Oncale, 523 U.S. at 81, in which the Court "emphasized ... that the objective severity of harassment should be judged from the perspective of a reasonable person in the [victim's] position, considering 'all the circumstances,'" and citing Harris, 510 U.S. at 20, in which the Court indicated that a "reasonable person" standard should be used to determine whether sexual conduct constituted harassment. This standard has been applied under Title VII to take into account the sex of the subject of the harassment, see, e.g., Ellison, 924 F.2d at 878-79 (applying a "reasonable woman" standard to sexual harassment), and has been adapted to sexual harassment in education under Title IX, Patricia H. v. Berkeley Unified School Dist., 830 F.Supp. 1288, 1296 (N.D. Cal. 1993) (adopting a "reasonable victim" standard and referring to OCR's use of it).

⁴⁰ See Davis, 526 U.S. at 651, citing both Oncale, 523 U.S. at 82, and OCR's 1997 guidance (62 FR 12041-12042).

⁴¹ See, e.g., Davis, 526 U.S. at 634 (as a result of the harassment, student's grades dropped and she wrote a suicide note); Doe v. Petaluma, 830 F. Supp. at 1566 (student so upset about harassment by other students that she was forced to transfer several times, including finally to a private school); Modesto City Schools, OCR Case No. 09-93-1391 (evidence showed that one girl's grades dropped while the harassment was occurring); Weaverville Elementary School, OCR Case No. 09-91-1116 (students left school due to the harassment). Compare with College of Alameda, OCR Case No. 09-90-2104 (student not in instructor's class and no evidence of any effect on student's educational benefits or service, so no hostile environment).

⁴² Doe v. Petaluma, 830 F.Supp. at 1566.

⁴³ See Waltman v. Int'l Paper Co., 875 F.2d 468, 477 (5th Cir. 1989) (holding that although not specifically directed at the plaintiff, sexually explicit graffiti on the walls was "relevant to her claim"); Monteiro v. Tempe Union High School, 158 F.3d 1022, 1033-34 (9th Cir. 1998) (Title VI racial harassment case, citing Waltman; see also Hall, 842 F. 2d at 1015 (evidence of sexual harassment directed at others is relevant to show hostile environment under Title VII).

⁴⁴ See, e.g., Elgmil 2000 U.S. Dist. LEXIS at 19 ("in order to be actionable, the incidents of harassment must occur in concert or with a regularity that can reasonably be termed pervasive"); Andrews, 895 F.2d at 1484 ("Harassment is pervasive when 'incidents of harassment occur either in concert or with regularity'"); Moylan v. Maries County, 792 F.2d 746, 749 (8th Cir. 1986).

⁴⁵ 34 CFR 106.31(b). See Vance v. Spencer County Public School District, 231 F.3d 253 (6th Cir. 2000); Doe v. School Admin. Dist. No. 19, 66 F.Supp.2d 57, 62 (D. Me. 1999). See also statement of the U.S. Equal Employment Opportunity Commission (EEOC): “The Commission will presume that the unwelcome, intentional touching of [an employee’s] intimate body areas is sufficiently offensive to alter the conditions of her working environment and constitute a violation of Title VII. More so than in the case of verbal advances or remarks, a single unwelcome physical advance can seriously poison the victim’s working environment.” EEOC Policy Guidance on Current Issues of Sexual Harassment, 17. Barrett v. Omaha National Bank, 584 F. Supp. 22, 30 (D. Neb. 1983), aff’d, 726 F. 2d 424 (8th Cir. 1984) (finding that hostile environment was created under Title VII by isolated events, i.e., occurring while traveling to and during a two-day conference, including the co-worker’s talking to plaintiff about sexual activities and touching her in an offensive manner while they were inside a vehicle from which she could not escape).

⁴⁶ See also Ursuline College, OCR Case No. 05-91-2068 (a single incident of comments on a male student’s muscles arguably not sexual; however, assuming they were, not severe enough to create a hostile environment).

⁴⁷ Davis, 526 U.S. at 653 (“The relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX’s guarantee of equal access to educational benefits and to have a systemic effect on a program or activity. Peer harassment, in particular, is less likely to satisfy these requirements than is teacher student harassment.”); Patricia H., 830 F. Supp. at 1297 (stating that the “grave disparity in age and power” between teacher and student contributed to the creation of a hostile environment); Summerfield Schools, OCR Case No. 15-92-1929 (“impact of the ... remarks was heightened by the fact that the coach is an adult in a position of authority”); cf. Doe v. Taylor I.S.D., 15 F.3d 443, 460 (5th Cir. 1994) (Sec. 1983 case; taking into consideration the influence that the teacher had over the student by virtue of his position of authority to find that a sexual relationship between a high school teacher and a student was unlawful).

⁴⁸ See, e.g., McKinney, 765 F.2d at 1138-49; Robinson v. Jacksonville Shipyards, 760 F. Supp. 1486, 1522 (M.D. Fla. 1991).

⁴⁹ Cf. Patricia H., 830 F. Supp. at 1297.

⁵⁰ See, e.g., Barrett, 584 F. Supp. at 30 (finding harassment occurring in a car from which the victim could not escape particularly severe).

⁵¹ See Hall, 842 F. 2d at 1015 (stating that “evidence of sexual harassment directed at employees other than the plaintiff is relevant to show a hostile environment”) (citing Hicks, 833 F. 2d, 1415-16). Cf. Midwest City-Del City Public Schools, OCR Case No. 06-92-1012 (finding of racially hostile environment based in part on several racial incidents at school shortly before incidents in complaint, a number of which involved the same student involved in the complaint).

⁵² In addition, incidents of racial or national origin harassment directed at a particular individual may also be aggregated with incidents of sexual or gender harassment directed at that individual in determining the existence of a hostile environment. Hicks, 833 F.2d at 1416; Jefferies v. Harris County Community Action Ass'n, 615 F.2d 1025, 1032 (5th Cir. 1980).

⁵³ Does v. Covington Sch. Bd. of Educ., 930 F.Supp. 554, 569 (M.D. Ala. 1996); Henson v. City of Dundee, 682 F.2d 897, 903 (11th Cir. 1982).

⁵⁴ See Meritor Savings Bank, 477 U.S. at 68. “[T]he fact that sex-related conduct was ‘voluntary,’ in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII.... The correct inquiry is whether [the subject of the harassment] by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary.”

⁵⁵ Lipsett, 864 F.2d at 898 (while, in some instances, a person may have the responsibility for telling the harasser “directly” that the conduct is unwelcome, in other cases a “consistent failure to respond to suggestive comments or gestures may be sufficient....”); Danna v. New York Tel. Co., 752 F.Supp. 594, 612 (despite a female employee’s own foul language and participation in graffiti writing, her complaints to management indicated that the harassment was not welcome); see also Carr v. Allison Gas Turbine Div. GMC., 32 F.3d 1007, 1011 (7th Cir. 1994) (finding that cursing and dirty jokes by a female employee did not show that she welcomed the sexual harassment, given her frequent complaints about it: “Even if ... [the employee’s] testimony that she talked and acted as she did [only] in an effort to be one of the boys is ... discounted, her words and conduct cannot be compared to those of the men and used to justify their conduct.... The asymmetry of positions must be considered. She was one woman; they were many men. Her use of [vulgar] terms ... could not be deeply threatening....”).

⁵⁶ See Reed v. Shepard, 939 F.2d 484, 486-87, 491-92 (7th Cir. 1991) (no harassment found under Title VII in a case in which a female employee not only tolerated, but also instigated the suggestive joking activities about which she was now complaining); Weinsheimer v. Rockwell Int’l Corp., 754 F.Supp. 1559, 1563-64 (M.D. Fla. 1990) (same, in case in which general shop banter was full of vulgarity and sexual innuendo by men and women alike, and plaintiff contributed her share to this atmosphere.) However, even if a student participates in the sexual banter, OCR may in certain circumstances find that the conduct was nevertheless unwelcome if, for example, a teacher took an active role in the sexual banter and a student reasonably perceived that the teacher expected him or her to participate.

⁵⁷ The school bears the burden of rebutting the presumption.

⁵⁸ Of course, nothing in Title IX would prohibit a school from implementing policies prohibiting sexual conduct or sexual relationships between students and adult employees.

⁵⁹ See note 58.

⁶⁰ Gebser, 524 U.S. at 281 (“Franklin ... establishes that a school district can be held liable in damages [in an implied action under Title IX] in cases involving a teacher’s sexual harassment of a student....”; 34 CFR 106.31; See 1997 Sexual Harassment Guidance, 62 FR 12034.

⁶¹ See Davis, 526 U.S. at 653 (stating that harassment of a student by a teacher is more likely than harassment by a fellow student to constitute the type of effective denial of equal access to educational benefits that can breach the requirements of Title IX).

⁶² 34 CFR 106.31(b). Cf. Gebser, 524 U.S. at 283-84 (Court recognized in an implied right of action for money damages for teacher sexual harassment of a student that the question of whether a violation of Title IX occurred is a separate question from the scope of appropriate remedies for a violation).

⁶³ Davis, 526 U.S. at 646.

⁶⁴ See section on “Applicability of Title IX” for scope of coverage.

⁶⁵ See section on “Notice of Employee, Peer, or Third Party Harassment.”

⁶⁶ See section on “Notice of Employee, Peer, or Third Party Harassment.”

⁶⁷ 34 CFR 106.31(b).

⁶⁸ 34 CFR 106.31(b).

⁶⁹ See section on “Notice of Employee, Peer, or Third Party Harassment.”

⁷⁰ Cf. Davis, 526 U.S. at 646.

⁷¹ 34 CFR 106.31(b).

⁷² 34 CFR 106.31(b).

⁷³ Consistent with its obligation under Title IX to protect students, cf. Gebser, 524 U.S. at 287, OCR interprets its regulations to ensure that recipients take reasonable action to address, rather than neglect, reasonably obvious discrimination. Cf. Gebser, 524 U.S. at 287-88; Davis, 526 U.S. at 650 (actual notice standard for obtaining money damages in private lawsuit).

⁷⁴ Whether an employee is a responsible employee or whether it would be reasonable for a student to believe the employee is, even if the employee is not, will vary depending on

factors such as the age and education level of the student, the type of position held by the employee, and school practices and procedures, both formal and informal.

The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. Gebser, 524 U.S. at 290, and Davis, 526 U.S. at 642. The concept of a “responsible employee” under our guidance is broader. That is, even if a responsible employee does not have the authority to address the discrimination and take corrective action, he or she does have the obligation to report it to appropriate school officials.

⁷⁵ The Title IX regulations require that recipients designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulations, including complaint investigations. 34 CFR 106.8(a).

⁷⁶ 34 CFR 106.31. See Yates v. Avco Corp., 819 F.2d 630, 636 (6th Cir. 1987); Katz v. Dole, 709 F.2d 251, 256 (4th Cir. 1983).

⁷⁷ For example, a substantiated report indicating that a high school coach has engaged in inappropriate physical conduct of a sexual nature in several instances with different students may suggest a pattern of conduct that should trigger an inquiry as to whether other students have been sexually harassed by that coach. See also Doe v. School Administrative Dist. No. 19, 66 F.Supp.2d 57, 63-64 and n.6 (D.Me. 1999) (in a private lawsuit for money damages under Title IX in which a high school principal had notice that a teacher may be engaging in a sexual relationship with one underage student and did not investigate, and then the same teacher allegedly engaged in sexual intercourse with another student, who did not report the incident, the court indicated that the school’s knowledge of the first relationship may be sufficient to serve as actual notice of the second incident).

⁷⁸ Cf. Katz, 709 F.2d at 256 (finding that the employer “should have been aware of the problem both because of its pervasive character and because of [the employee’s] specific complaints ...”); Smolsky v. Consolidated Rail Corp., 780 F.Supp. 283, 293 (E.D. Pa. 1991), reconsideration denied, 785 F.Supp. 71 (E.D. Pa. 1992) “where the harassment is apparent to all others in the work place, supervisors and coworkers, this may be sufficient to put the employer on notice of the sexual harassment” under Title VII); Jensen v. Eveleth Taconite Co., 824 F.Supp. 847, 887 (D.Minn. 1993); “[s]exual harassment ... was so pervasive that an inference of knowledge arises The acts of sexual harassment detailed herein were too common and continuous to have escaped Eveleth Mines had its management been reasonably alert.”); Cummings v. Walsh Construction Co., 561 F.Supp. 872, 878 (S.D. Ga. 1983) (“... allegations not only of the [employee] registering her complaints with her foreman ... but also that sexual harassment was so widespread that defendant had constructive notice of it” under Title VII); but see Murray v. New York Univ. College of Dentistry, 57 F.3d 243, 250-51 (2nd Cir. 1995) (concluding that other students’ knowledge of the conduct was not enough to charge the school with notice, particularly because these students may not have been aware that the conduct was offensive or abusive).

⁷⁹ 34 CFR 106.9 and 106.8(b).

⁸⁰ 34 CFR 106.8(b) and 106.31(b).

⁸¹ 34 CFR 106.9.

⁸² 34 CFR 106.8(b).

⁸³ 34 CFR 106.31.

⁸⁴ 34 CFR 106.31 and 106.3. Gebser, 524 U.S. at 288 (“In the event of a violation, [under OCR’s administrative enforcement scheme] a funding recipient may be required to take ‘such remedial action as [is] deem[ed] necessary to overcome the effects of [the] discrimination.’ §106.3.”).

⁸⁵ 20 U.S.C. 1682. In the event that OCR determines that voluntary compliance cannot be secured, OCR may take steps that may result in termination of Federal funding through administrative enforcement, or, alternatively, OCR may refer the case to the Department of Justice for judicial enforcement.

⁸⁶ Schools have an obligation to ensure that the educational environment is free of discrimination and cannot fulfill this obligation without determining if sexual harassment complaints have merit.

⁸⁷ In some situations, for example, if a playground supervisor observes a young student repeatedly engaging in conduct toward other students that is clearly unacceptable under the school’s policies, it may be appropriate for the school to intervene without contacting the other students. It still may be necessary for the school to talk with the students (and parents of elementary and secondary students) afterwards, e.g., to determine the extent of the harassment and how it affected them.

⁸⁸ Gebser, 524 U.S. at 288; Bundy v. Jackson, 641 F.2d 934, 947 (D.C. Cir. 1981) (employers should take corrective and preventive measures under Title VII); accord, Jones v. Flagship Int’l, 793 F.2d 714, 719-720 (5th Cir. 1986) (employer should take prompt remedial action under Title VII).

⁸⁹ See Doe ex rel. Doe v. Dallas Indep. Sch. Dist., 220 F.3d 380 (5th Cir. 2000) (citing Waltman); Waltman, 875 F.2d at 479 (appropriateness of employer’s remedial action under Title VII will depend on the “severity and persistence of the harassment and the effectiveness of any initial remedial steps”); Dornhecker v. Malibu Grand Prix Corp., 828 F.2d 307, 309-10 (5th Cir. 1987); holding that a company’s quick decision to remove the harasser from the victim was adequate remedial action).

⁹⁰ See Intlekofer v. Turnage, 973 F.2d 773, 779-780 (9th Cir. 1992)(holding that the employer’s response was insufficient and that more severe disciplinary action was

necessary in situations in which counseling, separating the parties, and warnings of possible discipline were ineffective in ending the harassing behavior).

⁹¹ Offering assistance in changing living arrangements is one of the actions required of colleges and universities by the Campus Security Act in cases of rape and sexual assault. See 20 U.S.C. 1092(f).

⁹² See section on “Harassment by Other Students or Third Parties.”

⁹³ University of California at Santa Cruz, OCR Case No. 09-93-2141 (extensive individual and group counseling); Eden Prairie Schools, Dist. #272, OCR Case No. 05-92-1174 (counseling).

⁹⁴ Even if the harassment stops without the school’s involvement, the school may still need to take steps to prevent or deter any future harassment — to inform the school community that harassment will not be tolerated. Wills v. Brown University, 184 F.3d 20, 28 (1st Cir. 1999) (difficult problems are posed in balancing a student’s request for anonymity or limited disclosure against the need to prevent future harassment); Fuller v. City of Oakland, 47 F.3d 1522, 1528-29 (9th Cir. 1995) (Title VII case).

⁹⁵ 34 CFR 106.8(b) and 106.71, incorporating by reference 34 CFR 100.7(e). The Title IX regulations prohibit intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX.

⁹⁶ Tacoma School Dist. No. 10, OCR Case No. 10-94-1079 (due to the large number of students harassed by an employee, the extended period of time over which the harassment occurred, and the failure of several of the students to report the harassment, the school committed as part of corrective action plan to providing training for students); Los Medanos College, OCR Case No. 09-84-2092 (as part of corrective action plan, school committed to providing sexual harassment seminar for campus employees); Sacramento City Unified School Dist., OCR Case No. 09-83-1063 (same as to workshops for management and administrative personnel and in-service training for non-management personnel).

⁹⁷ In addition, if information about the incident is contained in an “education record” of the student alleging the harassment, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, the school should consider whether FERPA would prohibit the school from disclosing information without the student’s consent. Id. In evaluating whether FERPA would limit disclosure, the Department does not interpret FERPA to override any federally protected due process rights of a school employee accused of harassment.

⁹⁸ 34 CFR 106.8(b). This requirement has been part of the Title IX regulations since their inception in 1975. Thus, schools have been required to have these procedures in place since that time. At the elementary and secondary level, this responsibility generally lies

with the school district. At the postsecondary level, there may be a procedure for a particular campus or college or for an entire university system.

⁹⁹ Fenton Community High School Dist. #100, OCR Case 05-92-1104.

¹⁰⁰ While a school is required to have a grievance procedure under which complaints of sex discrimination (including sexual harassment) can be filed, the same procedure may also be used to address other forms of discrimination.

¹⁰¹ See generally Meritor, 477 U.S. at 72-73 (holding that “mere existence of a grievance procedure” for discrimination does not shield an employer from a sexual harassment claim).

¹⁰² The Family Educational Rights and Privacy Act (FERPA) does not prohibit a student from learning the outcome of her complaint, i.e., whether the complaint was found to be credible and whether harassment was found to have occurred. It is the Department’s current position under FERPA that a school cannot release information to a complainant regarding disciplinary action imposed on a student found guilty of harassment if that information is contained in a student’s education record unless — (1) the information directly relates to the complainant (e.g., an order requiring the student harasser not to have contact with the complainant); or (2) the harassment involves a crime of violence or a sex offense in a postsecondary institution. See note 97. If the alleged harasser is a teacher, administrator, or other non-student employee, FERPA would not limit the school’s ability to inform the complainant of any disciplinary action taken.

¹⁰³ The section in the guidance on “Recipient’s Response” provides examples of reasonable and appropriate corrective action.

¹⁰⁴ 34 CFR 106.8(a).

¹⁰⁵ Id.

¹⁰⁶ See Meritor, 477 U.S. at 72-73.

¹⁰⁷ University of California, Santa Cruz, OCR Case No. 09-93-2131. This is true for formal as well as informal complaints. See University of Maine at Machias, OCR Case No. 01-94-6001 (school’s new procedures not found in violation of Title IX in part because they require written records for informal as well as formal resolutions). These records need not be kept in a student’s or employee’s individual file, but instead may be kept in a central confidential location.

¹⁰⁸ For example, in Cape Cod Community College, OCR Case No. 01-93-2047, the College was found to have violated Title IX in part because the person identified by the school as the Title IX coordinator was unfamiliar with Title IX, had no training, and did not even realize he was the coordinator.

¹⁰⁹ Indeed, in University of Maine at Machias, OCR Case No. 01-94-6001, OCR found the school's procedures to be inadequate because only formal complaints were investigated. While a school isn't required to have an established procedure for resolving informal complaints, they nevertheless must be addressed in some way. However, if there are indications that the same individual may be harassing others, then it may not be appropriate to resolve an informal complaint without taking steps to address the entire situation.

¹¹⁰ Academy School Dist. No 20, OCR Case No. 08-93-1023 (school's response determined to be insufficient in a case in which it stopped its investigation after complaint filed with police); Mills Public School Dist., OCR Case No. 01-93-1123, (not sufficient for school to wait until end of police investigation).

¹¹¹ Cf. EEOC v. Board of Governors of State Colleges and Universities, 957 F.2d 424 (7th Cir. 1992), cert. denied, 506 U.S. 906 (1992).

¹¹² The First Amendment applies to entities and individuals that are State actors. The receipt of Federal funds by private schools does not directly subject those schools to the U.S. Constitution. See Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1982). However, all actions taken by OCR must comport with First Amendment principles, even in cases involving private schools that are not directly subject to the First Amendment.

¹¹³ See, e.g., George Mason University, OCR Case No. 03-94-2086 (law professor's use of a racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment); Portland School Dist. 1J, OCR Case No. 10-94-1117 (reading teacher's choice to substitute a less offensive term for a racial slur when reading an historical novel aloud in class constituted an academic decision on presentation of curriculum, not racial harassment).

¹¹⁴ See Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University, 993 F.2d 386 (4th Cir. 1993) (fraternity skit in which white male student dressed as an offensive caricature of a black female constituted student expression).

¹¹⁵ See Florida Agricultural and Mechanical University, OCR Case No. 04-92-2054 (no discrimination in case in which campus newspaper, which welcomed individual opinions of all sorts, printed article expressing one student's viewpoint on white students on campus.)

¹¹⁶ Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 506 (1969) (neither students nor teachers shed their constitutional rights to freedom of expression at the schoolhouse gates); Cf. Cohen v. San Bernardino Valley College, 92 F.3d 968, 972 (9th Cir. 1996) (holding that a college professor could not be punished for his longstanding teaching methods, which included discussion of controversial subjects such as obscenity and consensual sex with children, under an unconstitutionally vague sexual harassment policy); George Mason University, OCR Case No. 03-94-2086 (law professor's use of a

racially derogatory word, as part of an instructional hypothetical regarding verbal torts, did not constitute racial harassment.)

¹¹⁷ See, e.g., University of Illinois, OCR Case No. 05-94-2104 (fact that university's use of Native American symbols was offensive to some Native American students and employees was not dispositive, in and of itself, in assessing a racially hostile environment claim under Title VI.)

¹¹⁸ See Meritor, 477 U.S. at 67 (the "mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee" would not affect the conditions of employment to a sufficient degree to violate Title VII), quoting Henson, 682 F.2d at 904; cf. R.A.V. v. City of St. Paul, 505 U.S. 377, 389 (1992) (citing with approval EEOC's sexual harassment guidelines); Monteiro, 158 F.3d at 1032-34 (9th Cir. 1998) (citing with approval OCR's racial harassment investigative guidance).

¹¹⁹ Compare Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675, 685 (1986) (Court upheld discipline of high school student for making lewd speech to student assembly, noting that "[t]he undoubted freedom to advocate unpopular and controversial issues in schools must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior."), with Iota Xi, 993 F.2d 386 (holding that, notwithstanding a university's mission to create a culturally diverse learning environment and its substantial interest in maintaining a campus free of discrimination, it could not punish students who engaged in an offensive skit with racist and sexist overtones).

Exhibit M

Code of student conduct (effective June 18, 2012)

3335-23-01 Introduction and purpose

The code of student conduct is established to foster and protect the core missions of the university; to foster the scholarly and civic development of the university's students in a safe and secure learning environment, and to protect the people, properties and processes that support the university and its missions. The core missions of the university are research, teaching and learning, and service. Preservation of academic freedom and free and open exchange of ideas and opinions for all members of the university are central to these missions.

3335-23-02 Jurisdiction

The code applies to the on-campus conduct of all students and registered student organizations, including conduct using university computing or network resources. The code also applies to the off-campus conduct of students and registered student organizations in direct connection with:

- A. Academic course requirements or any credit-bearing experiences, such as internships, field trips, study abroad, or student teaching;
- B. Any activity supporting pursuit of a degree, such as research at another institution or a professional practice assignment;
- C. Any activity sponsored, conducted, or authorized by the university or by registered student organizations;
- D. Any activity that causes substantial destruction of property belonging to the university or members of the university community, or causes or threatens serious harm to the safety or security of members of the university community; or
- E. Any activity in which a police report has been filed, a summons or indictment has been issued, or an arrest has occurred for a crime of violence.

The code governs all campuses of the university. However, students attending at regional campuses, centers, or institutes are advised to consult their local resources for additional information or rules pertaining to those locations, which may create hearing boards or processes for the locations, consistent with these rules.

The university reserves the right to administer the code and proceed with the hearing process even if the student withdraws from the university, is no longer enrolled in classes, or subsequently fails to meet the definition of a student while a disciplinary matter is pending.

Students continue to be subject to city, state, and federal laws while at the university, and violations of those laws may also constitute violations of the code. In such instances, the university may proceed with university disciplinary action under the code independently of any criminal proceeding involving the same conduct and may impose sanctions for violation of the code even if such criminal proceeding is not yet resolved or is resolved in the student's favor.

3335-23-03 Definitions

As used in the code,

- A. "University premises" includes all lands, buildings, facilities, and resources owned, leased, managed, or operated by the university.
- B. "Student" includes an individual who has paid an acceptance fee, registered for classes, or otherwise entered into any other contractual relationship with the university to take instruction.
 - 1. It further includes persons who are eligible to receive any of the rights and privileges afforded a person who is enrolled at the university, including, but not limited to, those individuals admitted to the University and attending orientation programs.
 - 2. Student status lasts until an individual graduates, is dismissed, or is not in attendance for two (2) complete, consecutive terms.
 - 3. "Student" also includes registered student organizations.
- C. "Members of the university community" include, but are not limited to, students, faculty, staff, and visitors to the campus.
- D. "Complaint" includes a written statement, alleging a violation of the code of student conduct or other published rule applicable to students at the university, provided to an authorized university official, per section 3335-23-05 A. Information submitted by other means will be reviewed and may, at the university's discretion, be acted upon but will not be treated as a formal complaint.
- E. "Crime of violence" includes the offenses stated in Ohio revised code § 2901.01.

3335-23-04 Prohibited conduct

Any student found to have engaged, or attempted to engage, in any of the following conduct while within the university's jurisdiction, as set forth in section 3335-23-02, will be subject to disciplinary action by the university. For the purposes of this section, attempt shall be defined as conduct that, if successful, would constitute or result in the prohibited conduct. Any student who abandons an attempt or prevents the prohibited conduct from occurring under circumstances that demonstrate a complete and voluntary renunciation of the prohibited conduct will not be subject to disciplinary action by the university.

- A. **Academic misconduct** Any activity that tends to compromise the academic integrity of the university or subvert the educational process. Examples of academic misconduct include, but are not limited to:
 - 1. Violation of course rules as contained in the course syllabus or other information provided to the student;
 - 2. Knowingly providing or receiving information during examinations such as course examinations and candidacy examinations; or the possession and/or use of unauthorized materials during those examinations;
 - 3. Knowingly providing or using unauthorized assistance in the laboratory, on field work, in scholarship or on a course assignment;

4. Submitting plagiarized work for an academic requirement. Plagiarism is the representation of another's work or ideas as one's own; it includes the unacknowledged word-for-word use and/or paraphrasing of another person's work, and/or the inappropriate unacknowledged use of another person's ideas;
5. Submitting substantially the same work to satisfy requirements for one course or academic requirement that has been submitted in satisfaction of requirements for another course or academic requirement without permission of the instructor of the course for which the work is being submitted or supervising authority for the academic requirement;
6. Falsification, fabrication, or dishonesty in creating or reporting laboratory results, research results, and/or any other assignments;
7. Serving as, or enlisting the assistance of, a substitute for a student in any graded assignments;
8. Alteration of grades or marks by the student in an effort to change the earned grade or credit;
9. Alteration of academically related university forms or records, or unauthorized use of those forms or records;
10. Engaging in activities that unfairly place other students at a disadvantage, such as taking, hiding or altering resource material, or manipulating a grading system; and
11. Violation of program regulations as established by departmental committees and made available to students.

B. Endangering health or safety

1. **Endangering behavior** Taking or threatening action that endangers the safety, physical or mental health, or life of any person, or creates a reasonable fear of such action. Relationship violence or intimate partner abuse may constitute endangering behavior.
2. **Stalking** Engaging in a pattern of unwanted conduct directed at another person that threatens or endangers the safety, physical or mental health, or life or property of that person, or creates a reasonable fear of such a threat or action.

C. Sexual misconduct Physical contact or other non-physical conduct of a sexual nature in the absence of clear, knowing and voluntary consent, including but not limited to:

1. Non-consensual sexual intercourse, defined as any sexual penetration (anal, oral, or vaginal), however slight, with any body part or object by any person upon any person without consent.
2. Non-consensual sexual contact, defined as any intentional sexual touching, with any body part or object by any person upon any person without consent.
3. Sexual exploitation, defined as taking non-consensual, unjust or abusive sexual advantage of another. Examples include, but are not limited to, prostituting another student, non-consensual video or audio-taping of sexual activity, going beyond the boundaries of consent (such as knowingly allowing another to surreptitiously watch otherwise consensual sexual activity), engaging in non-consensual voyeurism, and

knowingly transmitting or exposing another person to a sexually transmitted infection (STI) without the knowledge of the person.

4. Sexual harassment, as defined in applicable university policy.
5. Indecent exposure, defined as the exposure of the private or intimate parts of the body in a lewd manner in public or in private premises when the accused may be readily observed.

For the purposes of this rule, consent shall be defined as the act of knowingly and affirmatively agreeing to engage in a sexual activity. Consent must be voluntary. An individual cannot consent who is substantially impaired by any drug or intoxicant; or who has been compelled by force, threat of force, or deception; or who is unaware that the act is being committed; or whose ability to consent is impaired because of a mental or physical condition; or who is coerced by supervisory or disciplinary authority. Consent may be withdrawn at any time. Prior sexual activity or relationship does not, in and of itself, constitute consent.

- D. **Destruction of property** Actual or threatened damage to or destruction of university property or property of others, whether done intentionally or with reckless disregard.
- E. **Dangerous weapons or devices** Storage or possession of dangerous weapons, devices, or substances including, but not limited to, firearms, ammunition, or fireworks, unless authorized by an appropriate university official or permitted by a university policy, even if otherwise permitted by law. Use or misuse of weapons, devices, or substances in a manner that causes or threatens serious harm to the safety or security of others.
- F. **Dishonest conduct** Dishonest conduct, including, but not limited to: knowingly reporting a false emergency; knowingly making false accusation of misconduct; misuse or falsification of university or related documents by actions such as forgery, alteration, or improper transfer; submission of information known by the submitter to be false to a university official.
- G. **Theft or unauthorized use of property** Theft, or the unauthorized use or possession of university property, services, resources, or the property of others.
- H. **Failure to comply with university or civil authority** Failure to comply with legitimate directives of authorized university officials, law enforcement or emergency personnel, identified as such, in the performance of their duties, including failure to identify oneself when so requested; or violation of the terms of a disciplinary sanction.
- I. **Drugs** Use, production, distribution, sale, or possession of drugs in a manner prohibited under law. This includes, but is not limited to, the misuse of prescription drugs.
- J. **Alcohol** Use, production, distribution, sale, or possession of alcohol in a manner prohibited under law or applicable university policy or facility policy.
- K. **Unauthorized presence** Unauthorized entrance to or presence in or on university premises.
- L. **Disorderly or disruptive conduct** Disorderly or disruptive conduct that unreasonably interferes with university activities or with the legitimate activities of any member of the university community.
- M. **Hazing** Doing, requiring, or encouraging any act, whether or not the act is voluntarily agreed upon, in conjunction with initiation or continued membership or participation in any group, that causes or creates a substantial risk of causing mental or physical harm or humiliation. Such acts may include, but are not limited to, use of alcohol, creation of excessive fatigue, and paddling, punching or kicking in any form.

- N. **Student conduct system abuse** Abuse of any university student conduct system, including but not limited to:
1. Failure to obey the summons or directives of a student conduct body or university official;
 2. Falsification, distortion, or misrepresentation of information before a student conduct body;
 3. Disruption or interference with the orderly conduct of a student conduct proceeding;
 4. Knowingly instituting of a student conduct proceeding without cause;
 5. Discouraging an individual's proper participation in, or use of, a university student conduct system;
 6. Influencing the impartiality of a member of a student conduct body prior to, and/or during the course of a student conduct proceeding;
 7. Harassment and/or intimidation of a member of a student conduct body prior to, during, and/or after a student conduct proceeding;
 8. Failure to comply with one or more sanctions imposed under the code of student conduct; and
 9. Influencing another person to commit an abuse of a university student conduct system.
- O. **Violation of university rules or federal, state, and local laws** Violation of other published university regulations, guidelines, policies, or rules, or violations of federal, state, or local law. These university regulations, guidelines, policies, or rules include, but are not limited to, those which prohibit the misuse of computing resources, sexual harassment, rules for student groups or organizations, and residence hall rules and regulations.
- P. **Riotous behavior**
1. Participation in a disturbance with the purpose to commit or incite any action that presents a clear and present danger to others, causes physical harm to others, or damages property.
 2. Proscribed behavior in the context of a riot includes, but is not limited to:
 - a. Knowingly engaging in conduct designed to incite another to engage in riotous behavior; and
 - b. Actual or threatened damage to or destruction of university property or property of others, whether done intentionally or with reckless disregard; and
 - c. Failing to comply with a directive to disperse by university officials, law enforcement, or emergency personnel; and
 - d. Intimidating, impeding, hindering or obstructing a university official, law enforcement, or emergency personnel in the performance of their duties.
 3. This rule shall not be interpreted as proscribing peaceful demonstrations, peaceful picketing, a call for a peaceful boycott, or other forms of peaceful dissent.

- Q. **Recording of images without knowledge** Using electronic or other means to make a video or photographic record of any person in a location where there is a reasonable expectation of privacy without the person's prior knowledge, when such a recording is likely to cause injury, distress, or damage to reputation. This includes, but is not limited to, taking video or photographic images in shower/locker rooms, residence hall rooms, and restrooms. The storing, sharing, and/or distributing of such unauthorized records by any means is also prohibited.

Student conduct procedures

3335-23-05 Initiation and investigation of code violations

- A. **Initiation** Person(s) witnessing or experiencing what they believe to be a possible code violation should provide an authorized university official with the information.
1. Information and/or complaints about possible code violations occurring in residence halls should be provided to the residence hall director.
 2. Information and/or complaints about possible non-residence hall related code violations should be provided to the director of student conduct, or chief student conduct officer for the regional campuses.
 3. Information and/or complaints regarding academic misconduct should be referred to the coordinator of the committee on academic misconduct.
 4. In cases where the alleged activity may involve a violation of criminal law in addition to a violation of the code, information and/or complaints should be provided to the Ohio state university police or other appropriate law enforcement agency. The university will review all information and/or complaints received and may conduct a preliminary investigation of the alleged violation.

B. Investigation

1. Role of the university

- a. The Ohio state university police or other appropriate law enforcement agency shall have primary responsibility for the investigation of acts that involve suspected violation of federal, state, local laws, or applicable university policies.
- b. Residence hall directors, assistant hall directors, the director of student conduct, the chief conduct officer for the regional campuses, and other designated university personnel are authorized to investigate alleged violations other than those involving academic misconduct.
- c. The coordinator of the committee on academic misconduct is authorized to investigate allegations involving academic misconduct.

2. Role of other participants

- a. During the investigation, the student allegedly involved in misconduct may be:
 - i. notified of the alleged violation,
 - ii. requested to make an appointment to discuss the matter, and
 - iii. provided a date by which the appointment must be made.
- b. Any person believed to have information relevant to an investigation may also be contacted and requested to make an appointment to discuss the matter.

3. Failure to comply with a request to make and keep an appointment relevant to an investigation may result in a disciplinary hold being placed on a student's registration and records and/or the initiation of charges for student conduct system abuse.
4. Upon completion of an investigation, the investigator will decide upon an appropriate course of action, which may include, but is not limited to:
 - a. Taking no further action,
 - b. Deferring further action with or without conditions, or
 - c. Initiating charges with the appropriate university student conduct body.

3335-23-06 Filing of complaint and initiation of charges

A written complaint alleging a violation of the code of student conduct should be filed with the university as soon as practicable following the discovery of the alleged violation. Absent extraordinary circumstances, the written complaint must be filed within six (6) months for cases of non-academic misconduct (3335-23-04 (B-Q)), and one (1) month for academic misconduct (3335-23-04 (A)), from the date upon which a university official becomes aware of the alleged violation and identifies the student(s) who allegedly committed the violation. Absent extraordinary circumstances, the university must initiate charges, if any, within one (1) year of the filing of the complaint.

3335-23-07 Notice of charges

- A. **Notification** Students shall be notified of university charges in writing, unless a more effective form of notification is deemed appropriate. Charges may be presented in person, by placement in a student's residence hall mailbox, by email to the accused student's official university email address (which may direct the student to view the notice on a secure website) or by mail to the accused student's local or permanent address on file in the office of the university registrar.
- B. **Current address** All students are required to maintain an accurate and current local and permanent address with the University Registrar.
- C. **Meeting with university official** Following notification of charges, students are strongly encouraged to and shall be afforded the opportunity to meet with a university official for the purpose of explaining the university student conduct process and discussion of the charges.
- D. **Failure to respond** Failure of the accused student to respond to the initiation of charges or schedule a preliminary meeting shall in no way prevent the university from scheduling and conducting a hearing in the absence of the accused student.

3335-23-08 Administrative decision

In all cases, a student charged with one or more violations of the code of student conduct has the right to a hearing. However, in a case where a charged student admits to such violation(s) in writing, the student may request in writing to have a decision as to appropriate action made administratively by a hearing officer rather than have the charges referred to a hearing officer or board for a hearing. In such situations, the student waives the right to a hearing and the related procedural guarantees provided by a hearing officer or board hearing. Administrative decisions in academic misconduct cases involving graduate students are to be made in consultation with the graduate school. Following an administrative decision, the student retains the right to request an appeal of the original decision, but may do so only upon the ground that the sanction is grossly disproportionate to the violation committed.

3335-23-09 Notice of hearing & request for postponement

- A. **Notice** If a hearing is to be held, written notification will be provided. The notice may be hand delivered; placed into a student's residence hall mailbox; sent by email to the accused student's official university email address, which may direct the student to view the notice on a secure website; or mailed to the last known address of the student, by first class mail, no fewer than ten (10) calendar days prior to the hearing. Unless already provided to the student, the notification will include the charge(s), date, time, and location of the hearing, the designated hearing officer or board, a statement of the student's rights, and information on the hearing procedures.
- B. **Postponement** The accused student may request a postponement for reasonable cause or a separate hearing from other accused persons. A request for a postponement for reasonable cause must be made in writing, include supporting rationale, and be received by the person sending the hearing notification at least two (2) business days before the scheduled hearing.

3335-23-10 Hearing procedures

Although the procedural requirements are not as formal as those existing in criminal or civil courts of law, to ensure fairness, the following procedures will apply and, unless already provided to the student, be included within the hearing notice:

- A. **Attendance** Attendance at hearings is limited to those directly involved or those requested by the hearing officer or board to attend. The hearing officer or board will take reasonable measures to assure an orderly hearing, including removal of persons who impede or disrupt proceedings.
- B. **Advisor** The accused student may have an advisor throughout the disciplinary process. The advisor may only counsel the student and may not actively participate in the disciplinary process, unless clarification is needed as determined by the hearing officer or board.
- C. **Written statements & witnesses** The accused may: submit a written statement invite relevant factual witnesses to attend, invite character witnesses to submit written statements, , ask questions of witnesses called by others, and will be notified of potential witnesses to be called. The accused must submit a list of potential witnesses to the hearing officer at least two (2) business days prior to the hearing. The university may present witnesses as well as question those presented by the accused.
- D. **Witness absence** The hearing officer or board coordinator may allow written statements if, for good reason, a fact witness cannot attend the hearing.
- E. **Consultants** In cases requiring special expertise, the board coordinator may appoint individuals with appropriate expertise to serve as consultants to the board. The consultants may be present and provide information as called upon during the hearing but will not vote.
- F. **Standard of evidence** A student will only be found in violation if a preponderance of evidence supports the charges. In the event of a tie, the board will continue to deliberate. If after the board determines that exhaustive deliberations have occurred and a majority decision is not reached, the student will be found not in violation.
- G. In cases where prompt review is essential (e.g., when graduation or the end of the academic year is imminent) the accused may be offered the option of an expedited administrative review consisting of an administrative decision or administrative hearing. The accused student may decline such expedited review without the expectation that the process can be completed on an expedited timeline.

3335-23-11 Attendance

Because the most accurate and fair review of the facts can best be accomplished when all parties are present, the accused is expected to attend and participate. If an individual does not choose to attend a hearing, the charges will be reviewed as scheduled on the basis of the information available, and a decision will be made. Although no inference may be drawn against a student for failing to attend a hearing or remaining silent, the hearing will proceed and the conclusion will be based on the evidence presented. No decision shall be based solely on the failure of the accused student to attend the hearing or answer the charges.

3335-23-12 Record of proceedings

A single record consisting of written notes, tape recording, or other method selected by the hearing board or officer, will be made of all hearings. Such record will remain the property of the university but will be made available to the accused for review during the appeal period. A written notice of the decision and, if found in violation, information regarding appeal procedures will be provided to the accused student.

3335-23-13 Hearing bodies

- A. In addition to the committee on academic misconduct, student conduct boards for residence life, and the university conduct board, the director of student conduct, hearing officers within the office of student conduct, the coordinator of the committee on academic misconduct, and university housing professional staff are to be considered as official university hearing officers, and may hear cases of alleged violations of the code affording accused students the same procedural guarantees as provided in hearings by a committee or board.
- B. The accused student has the right to accept responsibility for the charges, which will result in an administrative decision, or choose to have a hearing.
- C. Students will generally be afforded the right to choose an administrative or board hearing, except under special circumstances where, in order to ensure a fair and just process, the hearing officer may determine the appropriate hearing venue.

3335-23-14 Committee on academic misconduct

- A. On behalf of the committee, the coordinator may investigate and resolve all reported cases of student academic misconduct that fall under the committee's jurisdiction. The coordinator and chair shall establish procedure for the investigation and resolution of cases. The committee does not hear cases involving academic misconduct in professional colleges having a published honor code. These colleges shall follow their own codes and procedures which can be obtained in their respective central offices. Some allegations against graduate students that fall under the committee's jurisdiction may also implicate the university policy and procedures concerning research misconduct and/or graduate school policy on the investigation of allegations of research misconduct by a graduate student. Upon receipt of such an allegation, the coordinator shall meet with the dean of the graduate school or designee, and/or the senior vice president for research or designee, and these parties shall mutually agree on the appropriate procedure for adjudicating the case. Notice of this decision and a description of the procedure to be used shall promptly be given to the student who has been charged. The coordinator or chair may refer complaints to the office of student conduct if it is determined that the academic misconduct allegation is incidental to some other misconduct.

- B. The committee on academic misconduct is constituted according to rule 3335-5-48.7 of the administrative code.
- C. All complaints of academic misconduct shall be reported to the coordinator of the committee.
- D. Students have an obligation to report suspected misconduct.
- E. A quorum for a hearing shall be no fewer than four voting members of the committee which shall include no fewer than one student member and two faculty members.

For cases involving graduate students, reasonable efforts will be made to have graduate students serve as the student members of the hearing committee.

3335-23-15 Student conduct boards for residence life

The boards may hear only those cases that involve code violations that occur within university housing, whether committed by residents or nonresidents. The boards are comprised of students who currently reside or have resided in university residence halls within the previous academic year. The boards may initiate any sanction with the exception of suspension or dismissal. If it appears during the hearing, to the board or to the board advisor, that the violation may be serious enough to warrant suspension or dismissal, the board will adjourn and refer the case back to the hearing officer for referral to the office of student conduct.

3335-23-16 University conduct board

- A. **Membership** The university conduct board is responsible for adjudicating allegations of non-academic misconduct referred by student conduct hearing officers, The board consists of:
 1. Fifteen (15) faculty and/or administrative members recommended by the director of student conduct to the vice president for student life for three-year terms which begin with the autumn term;
 2. Twelve (12) undergraduate student members, appointed by undergraduate student government;
 3. Six (6) graduate student members, appointed by the council of graduate students;
 4. Two (2) professional student members, appointed by the inter-professional council; and
 5. The director of student conduct or designee shall serve as board coordinator ex-officio without vote.
- B. **Quorum** A quorum for a hearing shall be no fewer than four (4) voting members of the board which shall include no fewer than two (2) student members. A hearing board shall consist of no more than eight (8) voting members.
- C. **Appointment** All student appointments shall be for staggered two-year terms beginning in the autumn term. Six (6) of the undergraduate student members, three (3) of the graduate student members, and one (1) of the professional student members shall be appointed in odd-numbered years, with the remainder appointed in even-numbered years.
 1. To be eligible for appointment or service, a student must possess a minimum 2.5 cumulative grade point average and not be under current disciplinary sanction from the university.

2. Additional alternate members may be appointed as needed.

D. **Removal** The director of student conduct may remove university conduct board members for cause, including but not limited to, not attending training, falling below the minimum grade point average, repeated absences, violating the code of student conduct or other applicable laws or policies, or not responding to repeated attempts at communication. Notification shall be made in writing to the university conduct board member prior to removal, whenever possible.

University sanctions

3335-23-17 General guidelines for sanctions

Sanctions should be commensurate with the violations found to have occurred. In determining the sanction(s) to be imposed, the hearing officer or board should take into account any mitigating circumstances and any aggravating factors including, but not limited to, any provocation by the subject of the conduct that constituted the violation, any past misconduct by the student, any failure of the student to comply fully with previous sanctions, the actual and potential harm caused by the violation, the degree of intent and motivation of the student in committing the violation, and the severity and pervasiveness of the conduct that constituted the violation. Misconduct, other than constitutionally protected expression, motivated by bias based on age, color, disability, gender identity or expression, national origin, race, religion, sex, sexual orientation, or veteran status may be considered an aggravating factor for sanctioning. Impairment resulting from voluntary use of alcohol or drugs (i.e., other than medically necessary) will also be considered an aggravating, and not a mitigating, factor. One or more of the following courses of action may be taken when a student has been found to have violated the code of student conduct:

- A. **Informal admonition** An oral or written admonition issued by a hearing officer or residence hall advisor resulting from the student's misconduct. No formal charges are required before the issuance of an informal admonition. However, following issuance of an informal admonition, the student shall be entitled to a hearing upon written request, under the procedures provided in the code of student conduct. A written request for such a hearing must be filed with the university official who administered the informal admonition, within five (5) working days of the student's receipt of the informal admonition. An informal admonition shall not be considered a disciplinary sanction, but may be considered in any subsequent hearings.
- B. **Disciplinary sanctions**
1. **Formal reprimand.** A written letter of reprimand resulting from a student's misconduct.
 2. **Disciplinary probation.** This probationary condition is in effect for a specified period of time and may involve the loss of specified privileges. Further violation of university policies during the probationary period will additionally be viewed as a violation of the probation, which shall result in further action up to and including suspension or dismissal.
 3. **Suspension.** Suspension is a sanction that terminates the student's enrollment at the university for a specified period of time. Satisfactory completion of specified stipulations may be required for readmission at the end of the suspension period.
 4. **Dismissal.** Dismissal is a sanction which permanently separates a student from the university without opportunity to re-enroll in the future.

- C. **Conditions of suspension and dismissal** A student who has been dismissed or suspended from the university shall be denied all privileges afforded a student and shall be required to vacate campus at a time determined by the hearing officer or board. In addition, after vacating campus property, a suspended or dismissed student may not enter upon campus and/or other university property at any time, for any purpose, in the absence of expressed written permission from the vice president for student life or designee. To seek such permission, a suspended or dismissed student must file a written petition to the vice president for student life for entrance to the campus for a limited, specified purpose or to have the terms of this condition modified or reduced.
- D. **Failing or lowered grades** In cases of academic misconduct, a hearing officer or board may authorize the instructor to award a failing or lowered grade in the course, a loss of credit on the graded coursework, and impose any of the above-listed sanctions including suspension or dismissal from the university.
- E. **Other sanctions** Other appropriate sanctions may be imposed by a hearing officer or board singularly or in combination with any of the above-listed sanctions. Examples include, but are not limited to, making restitution for property damage or misappropriation of university property or services, or the property of any person, residence hall contract termination or reassignment to another room, restriction of access to specified campus facilities and/or property, research assignments, community service projects, special workshop participation, and/or referral to medical resources or counseling personnel.

Appeal process

3335-23-18 Appellate process

A. Right to appeal

1. A student found to have violated the code of student conduct has the right to appeal the original decision. The appeal is not intended to re-hear or re-argue the same case, and is limited to the specific grounds outlined below. The appeal must state the specific grounds for the appeal and should include all supporting documentation. The appeal must be postmarked or hand delivered to the appropriate appeal officer, or sent via email, as provided below, within five (5) working days after the date on which notice of the decision is sent to the student. Each student shall be limited to one appeal. The decision of the appeal officer is final.
2. In cases involving charges relating to sexual harassment as defined in applicable university policy, the victim may appeal the original decision in accordance with the appeals procedures provided in this section. Such charges include, but are not limited to, sexual misconduct and stalking.
3. A student who has accepted responsibility for violating the code of student conduct waives the right to appeal, except on the basis that the disciplinary sanction is grossly disproportionate to the violation(s) committed.
4. Each party shall be limited to one appeal. The decision of the appeal officer is final.

- B. **Grounds for appeal** An appeal may be based only upon one or more of the following grounds:

1. Procedural error that resulted in material harm or prejudice to the student (i.e., by preventing a fair, impartial, or proper hearing). Deviations from the designated procedures will not be a basis for sustaining an appeal unless material harm or prejudice results ;
2. Discovery of substantial new evidence that was unavailable at the time of the hearing, and which reasonably could have affected the decision of the hearing body; or
3. Disciplinary sanction imposed is grossly disproportionate to the violation(s) committed, considering the relevant aggravating and/or mitigating factors.

Non-attendance by the accused student may not be the sole grounds for an appeal.

C. Appropriate appeal officers

1. Appeals from residence hall hearings:
 - a. All appeals from residence hall hearings, other than contract terminations, shall be submitted to the director of residence life or designee.
 - b. All appeals where the sanction imposed by the residence hall hearing is contract termination shall be submitted to the director of student conduct or designee.
2. Appeals of a decision of a student conduct hearing officer or from the university conduct board's will be submitted for decision to the vice president for student life or the designee.
3. Appeals of decisions of the committee on academic misconduct or its coordinator will be submitted for decision to the executive vice president and provost or designee.

D. Appeal proceedings

1. The appeal officer will dismiss the appeal if the appeal is not based upon one or more of the grounds set forth in section (B) above.
2. The appeal officer will decide the appeal based upon a review of the record and supporting documents (e.g. prior disciplinary history).
3. The appeal officer may consider additional relevant information from any party to the proceeding and then decide the appeal based upon the enhanced record.

E. Possible dispositions by the appeal officer The appeal officer may, after a review of the record:

1. Uphold the original decision and/or sanction(s);
2. Dismiss the case or individual charge(s) against the student and vacate any portion or all of the sanction(s);
3. Modify or reduce the sanction(s); or in cases involving charges relating to sexual harassment as defined in applicable university policy, enhance the sanction; or
4. Remand the case to the original hearing body or refer the case to a new hearing officer or board to be reheard. If possible, a new hearing officer or board should be different from the one that originally decided the case. If a case is reheard by a hearing officer or board, the sanction imposed can be greater than that imposed at the original hearing.

3335-23-19 Minor deviations from procedure

A student and hearing officer may agree in advance to minor deviations from procedure. Such deviations are not then subject to appeal. Other minor deviations are acceptable as long as such deviations are not found upon appeal to be materially harmful to the accused student.

3335-23-20 Interim suspension

When the vice president for student life or designee has reasonable cause to believe that the student's presence on university premises or at a university-related or registered student organization activity poses a significant risk of substantial harm to the safety or security of themselves, others, or to property, the student may be immediately suspended from all or any portion of university premises, university-related activities or registered student organization activities. This temporary suspension will be confirmed by a written statement and shall remain in effect until the conclusion of a full hearing or administrative decision, without undue delay, in accordance with the rules of the Ohio state university. The student may, within three (3) working days of the imposition of the suspension, petition the vice president for student life for reinstatement. The petition must be in writing, and must include supporting documentation or evidence that the student does not pose, or no longer poses, a significant risk of substantial harm to the safety or security of themselves, others, or to property. A decision on such petition will be made without undue delay by the vice president for student life or designee.

3335-23-21 Administrative disenrollment and other restrictions

- A. A student may be disenrolled from the university; prohibited from all or any portion of university premises, university-related activities or registered student organization activities; and/or permitted to remain only under specified conditions when the vice president for student affairs or designee finds that there is clear and convincing evidence that the student's continued presence poses a significant risk of substantial harm to the health or safety of themselves, others, or to property.
- B. In those cases under paragraph (A)(1) of this rule in which it appears that the risk posed by the student is a result of a health condition or a disability as defined by the americans with disabilities act, the vice president for student life or designee shall also determine whether the risk or disruption can be eliminated or sufficiently reduced through reasonable accommodation and, if so, shall take appropriate steps to ensure that accommodation is made. The vice president for student life or designee may request the student to undergo an appropriate examination, as specified by the vice president for student life or designee, to determine whether any such condition exists and whether any such accommodation is possible. If the student fails to undergo such an examination, and if the other available evidence supports a finding under paragraph (A) the vice president for student life or designee shall, to the extent reasonably possible, take the least restrictive measure or combination of measures necessary to resolve the risk or disruption.
- C. A student who has been disenrolled; prohibited from university premises, university-related activities or registered student organization activities; or permitted to remain only under specified conditions may petition the vice president for student life for revision of that status. The petition must include supporting documentation or evidence that:
 1. The conditions found to have existed under paragraph (A) no longer exist and will not recur, and
 2. The student meets all normal and appropriate standards for admission and enrollment in any academic unit in which the student seeks to re-enroll. Upon receipt of such a

petition, the vice president for student life or the vice president's designee shall evaluate the evidence and may consult with the student, any appropriate university personnel, and any other persons whom the vice president for student life or designee deems appropriate. The vice president for student life or designee may deny the petition, grant the petition in whole or in part under specified conditions, or grant the petition in whole or in part without condition.

3335-23-22 Authority

The bylaws of the university board of trustees and rules of the university faculty provide that the university president shall have the final responsibility and authority for the discipline of all students of the university See rule 3335-11-01 (A) of the administrative code. This responsibility and authority has been delegated by the president to the vice president for student life, whose office is also charged with responsibility for promulgation of rules governing student conduct, see rule 3335-1-03 (H) of the administrative code.

The deans of colleges and of the graduate school, the directors of schools, and the chairpersons of departments, respectively, are responsible to the president through regular disciplinary channels for the discipline of all students in the activities of their respective colleges, schools, and departments, see rule 3335-11-01 (B) of the administrative code. Likewise, the deans and directors of the regional campuses are responsible to the president through the executive vice president and provost for the discipline of all students in the activities of their respective campuses.

The Ohio state university code of student conduct is an official publication of the university board of trustees. All petitions for revision and amendment of this code of student conduct should be submitted through the office of the vice president for student life. Proposed revisions to the code shall be reviewed, in draft form, by the office of the president, the office of academic affairs, and the steering committee of the university senate before being presented for approval to the university senate by the council on student affairs. No revision shall become effective unless approved by the university board of trustees and until printed notice of such revisions is made available to students.

Exhibit N

*for
Jon
Waters'
eyes
only*




June 2007

January | February | March | April | May | **June** | July | August | September | October | November | Decr

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|--|--------------------------|--|--------|----------|
| May 27 | 28 | 29 MultiBowl Golf Tournament | 30 Instrument Turn-In | 31 Instrument Turn-In | 1 | 2 |
| 3 | 4 Instrument turn in/check out 5:00pm - 9:00pm | 5 Instrument turn in/check out 12:00pm - 3:00pm | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 Marching Band Instrument sign out 4:00pm - 6:30pm | 18 | 19 Summer Session 7:00 p.m. - 9:00 p.m. | 20 | 21 Summer Session 7:00 p.m. - 9:00 p.m. | 22 | 23 |
| 24 | 25 | 26 Summer Session 7:00 p.m. - 9:00 p.m. | 27 | 28 Summer Session 7:00 p.m. - 9:00 p.m. | 29 | 30 |

Boys of Troop '07



|  July 2007 | | | | | | |
|--|--------|---|-----------|---|---------------------------|---------------------------|
| February March April May June July August September October November December Ja | | | | | | |
| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
| 1 | 2 | 3 Summer Session 7:00 p.m. - 9:00 p.m. | 4 | 5 Summer Session 7:00 p.m. - 9:00 p.m. | 6 | 7 |
| 8 | 9 | 10 Summer Session 7:00 p.m. - 9:00 p.m. | 11 | 12 Summer Session 7:00 p.m. - 9:00 p.m. | 13 | 14 |
| 15 | 16 | 17 Summer Session 7:00 p.m. - 9:00 p.m. | 18 | 19 Summer Session 7:00 p.m. - 9:00 p.m. | 20 | 21 |
| 22 | 23 | 24 Summer Session 7:00 p.m. - 9:00 p.m. | 25 | 26 Summer Session 7:00 p.m. - 9:00 p.m. | 27 | 28 |
| 29 | 30 | 31 Summer Session 7:00 p.m. - 9:00 p.m. | August 1 | 2 OSUWS Practice with CSU | 3 Picnic with the Pops | 4 Picnic with the Pops |

Boys of throw '07



August 2007

March | April | May | June | July | **August** | September | October | November | December | January | Feb

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---------|---|---|---|--|--|---|
| July 29 | 30 | 31 Summer Session 7:00 p.m. - 9:00 p.m. | 1 | 2 OSUMB Practice with CSO 4:00 p.m. - 10:00 p.m. | 3 Picnic with the Pops 4:00 p.m. | 4 Picnic with the Pops 4:00 p.m. |
| 5 | 6 | 7 Summer Session 7:00 p.m. - 9:00 p.m. | 8 | 9 Summer Session 7:00 p.m. - 9:00 p.m. | 10 | 11 |
| 12 | 13 | 14 Summer Session 7:00 p.m. - 9:00 p.m. | 15 | 16 Summer Session 7:00 p.m. - 9:00 p.m. | 17 | 18 |
| 19 | 20 Summer Session 7:00 p.m. - 9:00 p.m. | 21 Summer Session 7:00 p.m. - 9:00 p.m. | 22 Summer Session 7:00 p.m. - 9:00 p.m. | 23 Summer Session 7:00 p.m. - 9:00 p.m. | 24 | 25 |
| 26 | 27 | 28 | 29 Squad Leader Try-outs 9:00 a.m. - 12:00 p.m. | 30 Squad Leader Try-outs 9:00 a.m. - 12:00 p.m. | 31 Volunteer Game Practice 9:00 a.m. - 5:00 p.m. | 1 September Football vs Youngstown State |

Boys of throw '07



September 2007

April | May | June | July | August | **September** | October | November | December | January | February |

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--|--|---------------------------------|---------------------------------|---|---|---|
| August 26 | 27 | 28 | 29 Squad Leader Try-outs | 30 Squad Leader Try-outs | 31 Colts vs Game Practice | 1 Football vs Youngstown State |
| 2 OSUMB New Candidates Report *required | 3 OSUMB Candidate Day *required | 4 OSUMB Tryouts *required | 5 OSUMB Tryouts *required | 6 Marching Band Practice 9:00 a.m. - 12:00 p.m. | 7 Marching Band Practice 9:00 a.m. - 12:00 p.m. | 8 Football vs Akron |
| 9 | 10 OSUMB at Cincinnati Bengals 9:00 p.m. | 11 | 12 | 13 | 14 | 15 |
| 16 | 17 | 18 | 19 Classes Begin | 20 | 21 | 22 Football vs Northwestern |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | Return | | | | | 6 The Epic Eye Installation |

Boys of throw '07



| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--------------|--------|---------|---------------------------|--------------------------------|---------------------|----------------------------------|
| September 30 | 1 | 2 | 3 | 4 | 5 | 6 The Buckeye Invitational |
| 7 | 8 | 9 | 10 | 11 | 12 | 13 Football vs Kent State |
| 14 | 15 | 16 | 17 | 18 | 19 | 20 Football vs Michigan State |
| 21 | 22 | 23 | 24 Concert in Lima, OH | 25 Recording Session 3:00pm | 26 Youth Concert | 27 Veteran's Memorial Concert |
| 28 | 29 | 30 | 31 | November 1 | 2 | 3 Football vs Wisconsin |

Boys of throw '07

Exhibit O

From: Waters, Jonathan [waters.33@osu.edu]
Sent: Thursday, October 31, 2013 11:24 AM
To: Saunders, Gayle
Subject: Conversation on Band culture

Follow Up Flag: Follow Up
Flag Status: Flagged

Hi Gayle,

I wanted to drop you a note and request to speak with you about the culture within the OSUMB. I had a great conversation with Gary Lewis this morning and he shared with me that there are perhaps some concerns from the Board of Trustees and Administration regarding a culture within the band. I exceptionally surprised about these rumors and I would love an opportunity to speak to you about them. Do you have time today for a conversation, either via phone or in person?

Many Thanks,
Jon



Jonathan Waters

Director

The Ohio State University Marching Band

The Ohio State University Athletic Bands

1866 College Rd.
Columbus, Ohio 43210
Mobile: (614) 506-0963
Office: (614) 292-2598

Exhibit P

Whiteside, Eric

From: Jonathan Waters <waters33@osu.edu>
Sent: Friday, September 11, 2009 10:21 PM
To: Whiteside, Eric
Subject: Re: 9-8-09 Party in the Band Room - reference OSU Police report #09-4265

Captain Whiteside,

I thank you for your note. The part of the report that is most upsetting is the comment that was allegedly stated by Mr. [REDACTED] that this event was an unauthorized event and that Dr. Woods did not know about it. This is absolutely 180 degrees away from the truth. It was Dr. Woods and I who cleared this event with the stadium crew and it was Dr. Woods and I who appointed Mr. [REDACTED] to be present at the event. We had total knowledge about this event and gained permission to have it weeks ahead of time. I can speak with 100% certainty that Mr. [REDACTED] would have not made this comment. Mr. [REDACTED] does not have anything to lose with the band members...he works for the staff of the band. I think that it is quite possible that the officer misunderstood what Mr. [REDACTED] was saying and had the facts wrong. I really think that that part of the report needs to be amended.

Perhaps it would be beneficial if we spoke to the officer who filed the report. Please advise. The report has gotten out to many in the university community and the rumor is that our GTA had an unauthorized party with the band and served them alcohol in the stadium. That is now the public perception. This report has defamed the character of Mr. [REDACTED] AND the members of the OSU Marching Band. Unfortunately, this report has dragged Mr. [REDACTED] name and the name of the Band through the mud because of misinformation. I REALLY think that this needs to be addressed immediately. We can make ourselves available next week for a meeting.

I thank you again for your understanding.

-Jon

On Sep 11, 2009, at 11:41 AM, Whiteside, Eric wrote:

Mr Waters,

I am happy to hear the you were already aware of the situation and conducting an internal review. We appreciate the timely and personal attention you gave the case during a busy week. It demonstrates your commitment to the values you outlined in your email.

If Mr [REDACTED] was the individual that called 911, I certainly commend him for his actions. However, there appears to be some disagreement between him and the police officers at the scene to what was said and occurred. I will concede that mistakes happen and sometimes report narratives do not effectively communicate what actually stated. But our departmental policy requires officers to accurately report facts. Police reports are a matter of public record and our officers use them to testify in court cases under the penalty of perjury. A police officer who knowingly places false information in a criminal incident report would face severe disciplinary action by our agency.

It should also be noted that the OSU Police Officers who responded to the scene are independent observers with no personal stake in the incident. While I don't know how you conducted your investigation, it sounds like the people you interviewed had something to lose. As a law enforcement professional working in the criminal justice field, it is common for suspects to be dishonest during interviews. I can't speak for the rationale or

integrity of anyone you spoke with, but I would guess that they saw all of their hard work to get on the band in jeopardy. Or, they were concerned that they violated the trust placed in them

I had an opportunity to review the letter that Doctor Woods sent to Andrea Goldblum. The 27-year veteran of the OSU Police Division is Lieutenant George Spence. I had an opportunity to speak with him this morning about the incident. As mentioned in the letter, he was actually at the scene and supports the observations and statements recorded by Officer Spears-McNatt. I have no problem if you wish to speak with either individual about the incident. If they feel that something needs to be amended, I am sure they will take the appropriate steps. If there is still disagreement, I am confident that we can get the matter resolved through the student judicial process in a fair and impartial manner. I would also suggest that someone from the band contact us prior to the event next year to help minimize potential problems.

Feel free to contact me if you need anything else.

Captain Eric Whiteside
The Ohio State University Police Division
Office: 292-8093
Cell 732-9920

From: Jonathan Waters (<mailto:waters.33@osu.edu>)
Sent: Friday, September 11, 2009 12:14 AM
To: Whiteside, Eric
Subject: Re: 9-8-09 Party in the Band Room - reference OSU Police report #09-4265

Captain Whiteside,

Thank you so much for your email. We are dealing with this situation, however, I am concerned about many of the facts stated in the report below. Please be aware that this tradition dates back to at least 1960 and that it has nothing to do with alcohol, nor sneaking into the stadium. It is called "Midnight Ramp" and involves the band marching into the stadium and down the field at midnight. The entire event takes 15 minutes at most.

Most concerning is the fact that [REDACTED] story was so drastically distorted in the report. Mr. [REDACTED] is the Graduate Assistant Director for the OSU Marching and Athletic Bands. He was appointed by Jon Woods and myself to oversee the event in the stadium on Monday night. Whenever we have band students in the stadium (regardless of the time) we appoint band staff to be present for purposes of liability. This event had also been cleared with all of the stadium officials and proper permissions were granted to continue this tradition. [REDACTED] was given the key to unlock the ramp gate to allow the band onto the field. To quote from the report...

The officer most definitely misunderstood or misinterpreted the information that Mr. [REDACTED] gave to him. It is most definitely NOT the tradition to "sneak" into the stadium. Mr. [REDACTED] has a key, as he is on the staff, and he had the ramp gate key. [REDACTED] was the appointed staff member to accompany the band in the stadium and the midnight ramp tradition. He was there for liability purposes and THANK GOD he was. In fact, [REDACTED] presence was EXACTLY WHY he was appointed by Jon Woods and I to attend...for liability. It is false to say that Mr. [REDACTED] admitted this was an "unauthorized event and that Jon Woods was unaware of it." Let me make this point as clear as possible...Jon Woods and I were both aware of it, as we appointed [REDACTED] to oversee it. This event has been accompanied by staff for decades and I have attended the event at least 4 times in the

last 10 years. Furthermore, I will attest to the fact that there was no alcohol served or consumed in Ohio Stadium or in the Steinbrenner Band Center. Mr. [REDACTED] also confirms this fact. In our investigation, we deduced from many interviews with students that no alcohol was brought to Ohio Stadium. Unfortunately, Mr. [REDACTED] came to the stadium under the influence of alcohol. At this point, I can only surmise that Mr. [REDACTED] was the only student who needed medical assistance because of alcohol. I don't believe that any other students were arrested for underage consumption, and at this point I can't determine which students, if any, came to the stadium having had alcohol.

If it is true that Mr. [REDACTED] was disrespectful to an OSU Police Officer, I will certainly deal with him like we dealt with the student who came to Ohio Stadium in an intoxicated state. I can assure you that no band student will be permitted to show disrespect to law enforcement.

I am not sure how the officer involved in issuing the report so dramatically turned the details of the event into falsehoods. I would like to speak to the officer if you think that would be appropriate. Please know that we have disciplined the student who was intoxicated and taken to the hospital. It is the opinion of our staff, and most vociferously, it is my opinion that Mr. [REDACTED] acted with integrity, caring and intelligent speed in calling 911 when he saw the student in distress. He should be commended for his efforts and for his quick response. We could be dealing with a FAR WORSE situation if [REDACTED] had not been so thoughtful in his response.

Please know that we are trying to protect the integrity of the OSUMB. The false nature of the information in this report tarnishes that integrity. Is there anything that you can do to correct the facts about the band in the report? And equally important, is there anything that can be done to correct the misinformation alleged about our staff member [REDACTED]?

Thank you again for your help in this matter and for your concern for The Ohio State University Marching Band. Please let me know how I can help with this incident.

-Jon Waters
Assistant Director, OSUMB

On Sep 9, 2009, at 2:17 PM, Whiteside, Eric wrote:

Mr Waters,

I think we may have already met, but my name is Captain Eric Whiteside of the Ohio State University Police Division. I oversee the patrol operations and came across an arrest report from 9-8-09 that you may found interesting. I here is a synopsis of the incident.

Here is another report supplemental report narrative that was written by another officer

While only [REDACTED] is facing criminal charges, we are sending all three individual through the student judicial process. Being a former night watch officer, I am somewhat familiar with some of the "traditions" of the band, but I was not aware of any event that involved the use of alcohol. It appears that this event violated university policy regarding alcohol and resulted in a student going to the hospital for a possible case of alcohol poisoning.

Please let me know if you have any additional questions.

Captain Eric Whiteside
The Ohio State University Police Division
Office: 292-8093
Main# 292-2121

Exhibit Q

From: Tobias, Jessica L.
Sent: Friday, June 13, 2014 4:25 PM
To: Waters, Jonathan
Cc: Glaros, Chris M.
Subject: Interview Questions

Jonathan,

Please find attached a list of the questions we asked during our meeting on Thursday, June 12. Please let me know if you have any questions.

Thank you,
Jessica



Jessica Tobias
Compliance Investigator

The Ohio State University
Office of University Compliance and Integrity
1534 N. High Street, Columbus, OH 43201-2190
P: 614-292-5328 | C: 614-327-2620
tobias.80@osu.edu
compliance.osu.edu

Questions for Jonathan Waters, Marching Band Director

Introduction
Confidentiality
Retaliation

Questions:

1. When did you learn of the incident? Who informed you? What was your response? Can you help us understand the timeline of when you reported?
2. Did you subsequently meet with [REDACTED]? When? Who else was present? What was discussed?
3. Did [REDACTED] share with you that she has spoken to Mike Smith about the assault?
4. How did you respond? Did you instruct [REDACTED] not to speak with staff about the assault or investigation?

5. Did [REDACTED] express to you that she did not feel supported?

6. Did you suggest to [REDACTED] that she take a break from marching band?

7. What role did squad leaders play in addressing this issue?

8. Did you speak with them or any other students or staff about retaliation against [REDACTED] or [REDACTED]? Whom did you speak with? When did you speak with them? What did you say? (Reference email to Kelly Smith if needed.)

9. Did you speak with students or staff about how to respond to [REDACTED]? Whom did you speak with? What did you say?

10. Were you aware of any students making jokes about band culture or issues facing the band?

11. Were you aware of any actions that might constitute retaliation by students or staff?

12. How would you describe the marching band culture?

13. Who is present for Midnight Ramp? Are you present? What is your role? Any other staff?
What is their role?

14. What happens if a student chooses not to participate in Midnight Ramp?

15. After you reported the assault, with whom in leadership roles did you have conversations?

Andrea Goldblum? Intake protocols in place?

Student Conduct?

Direct superior? Richard Blatti? Anyone else?

Above direct superior? Provost? What did provost say? How did you respond?

16. Have you participated in any Title IX training? Has the marching band participated in training?

17. Is there anyone else we should speak with? Any other information we should know? Any questions?

Exhibit R

From: Tobias, Jessica L.
Sent: Tuesday, July 01, 2014 5:43 PM
To: Waters, Jonathan
Cc: Glaros, Chris M.
Subject: RE: Questions

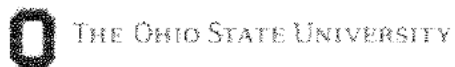
Hi Jon,

The questions are attached.

Thanks,
Jessica

From: Waters, Jonathan
Sent: Tuesday, July 01, 2014 4:48 PM
To: Tobias, Jessica L.
Subject: Questions

Hi Jessica,
When you have a moment, would you please send over the questions you asked today? Thanks!
-Jon



Jonathan Waters

Director

The Ohio State University Marching Band
The Ohio State University Athletic Bands

1866 College Rd.
Columbus, Ohio 43210
Mobile: (614) 506-0963
Office: (614) 292-2598

Follow-Up Questions for Jonathan Waters, Marching Band Director

Questions:

1. On June 13th you called to let us know about a Facebook post by [REDACTED] on a reporter's Facebook page. Is the reporter you referred to [REDACTED]?
2. It appears that [REDACTED] comment is no longer on his Facebook page. Did you contact [REDACTED] and ask him to remove it? Why?
3. How did your student secretary know to bring this comment to your attention?
4. [REDACTED] and others reported the assault to you on a Saturday evening. Why did you wait until Monday night at 10 p.m. to leave a message for Andrea Goldblum?

5. With respect to Title IX issues, how would you describe marching band culture?

6. Is the band's culture sexualized?

7. Are there any inappropriate behavior or attitudes?

8. Does the band's culture include sexual harassment?

9. Does the band's culture include sexual innuendo?

10. Does the marching band culture create a hostile environment for students?

11. I assume you are familiar with Trip Tic because we have learned that you did away with it in 2012. Did you read that issue of Trip Tic?

12. How did you get a copy?

13. Had you read previous issues?

14. Did Trip Tic issues usually include material of a sexual nature?

15. When exactly did you ban it?

16. Did anyone ask you to ban it?

17. How did you address Trip Tic?

18. How did you direct your staff or students to address Trip Tic?

19. Did you seek training (sexual harassment or otherwise) or any other means of effecting change after you banned Trip Tic? If no, how do you ensure that this behavior no longer occurs?

20. As Director, you are present for F night, correct? And during F night the Rookie names are shared with the entire band, right?

21. As a staff member, did you do anything to address the rookie nicknames?

22. As the assistant director or director, have you ever used the nicknames?

23. What about Less Grossman? Tiggles?

24. To name a few sexually oriented nicknames, we have heard

- Jizzy
- Jewoobs
- Taintbrush
- Mushroom Stamp
- Tits Magee
- Snatch

Do you think these nicknames are appropriate? If not, why tolerate them at all?

25. Can you estimate how many rookie nicknames could be considered offensive or sexual in nature?

26. How long have you known that sexually oriented nicknames are assigned to rookies?

27. How have you addressed the use of sexual nicknames?

28. How have you directed staff or students to address the use of sexual nicknames?

29. Some of the rookie tricks that we have heard of include:

- A female student sits on laps and pretends to orgasm. This included her sitting on her younger brother's lap and pretending to orgasm on make the band night. Her nickname was Squirt.
- A female student thumping the ground with her foot and pretending to orgasm. Her nickname was Thumper.
- Two females rubbing their chests together. Their nicknames were Jewoobs and Tiggles.
- A male scooting across the floor on his hindquarters. His nickname was Taintbrush.
- A male stamping other students' foreheads with a penis stamp. His nickname was Mushroom Stamp.
- A male conducting a full-body demonstration of a flaccid penis becoming erect and spitting candy. This trick was also occasionally performed with another female student who pretended to stimulate the male student.

It is our understanding that these tricks are performed at band parties, during down time such as waiting in a locker room before a Bangles game, on other trips and at events with alumni. Have you ever witnessed or heard of rookie tricks being performed?

30. Do you believe these tricks are appropriate? If no, why tolerate them at all?

31. Can you estimate how many rookie tricks could be considered sexual in nature?

32. How long have you known that sexually oriented tricks are performed by rookies?

33. How have you addressed the use of sexually-oriented tricks? When?

34. How have you directed staff or students to address the use of sexually-oriented tricks?
When?

35. Did you seek training (sexual harassment or otherwise) or any other means of effecting change after you learned of sexually oriented nicknames or tricks? If no, how do you ensure that this behavior no longer occurs?

36. What is the marching band policy for alcohol consumption? How does that compare to policies governing alcohol consumption during athletic competitions?

37. Did the band have issues with alcohol or any other misconduct at the 2013 CAL State Game?

38. Did anyone from Cal send a letter to OSU Leadership regarding the band's behavior?

39. Pam Bork was a volunteer for 18 years, why did she leave her position with the band after the Cal game?

40. What was your response to her leaving? Did you seek training (alcohol abuse or otherwise) at that time?

41. During the bus ride from Santa Barbara to the Cal game did Pam comment to you that if she heard the words "penis" or "vagina" one more time she would scream?

42. On the Cal trip, did you witness a flying 69 on your bus? Did Pam tell you she witnessed a flying 69 on your bus?

43. Did you play rollerbus?

44. Multiple sources have indicated that rookies are subject to questioning on different buses and that these questions often involve sexually explicit content or jokes. Following these questions, rookies march to the bathroom on the bus and their clothes are pulled from them as they walk. Have you witnessed this activity or heard about it?

45. Two sources have indicated that students were groped during the march to the bathroom. Have you witnessed students being groped on buses or heard about it?

46. Other stories include rookie midterms where rookies are subject to sexual activities such as putting a condom on a banana and putting a banana between a graduate assistant's legs and putting a condom on it. Have you witnessed this behavior or heard of it?

47. Have you witnessed or heard about students bringing a box of porn on the bus and sharing passing it out to other students? Are you aware of this behavior? What have you done to address it? When did you address it? How do you ensure this type of activity does not happen on other buses?

48. Did you seek training (sexual harassment or otherwise) or any other means of effecting a cultural change based any of this behavior? If no, how do you ensure that this behavior no longer occurs?

49. Do you have student cell phone numbers? Why? Did you ever text students or other staff dirty limericks?

50. Where are band members expected to change before and after games or performances? Did you ever offer alternatives? Did students ever ask you for alternatives? How did you respond?

51. Two weeks ago when we asked about the culture of the band in the context of a Title IX investigation and midnight ramp, why didn't you share this information with us?

52. You met with the Provost last fall in the wake of [REDACTED]'s assault. Did you share with him any of these cultural issues in terms of sexual harassment or sexual innuendo?

53. Did you meet with any other senior leaders about the assault or band culture in general?

54. Two weeks ago, you stated that in all your years you never yelled and cursed at a student?

55. Is it possible that there have been times when you did yell and curse at a student or students and that that yelling and cursing was warranted?

56. Were there times when the yelling and cursing was not warranted? Did you lose your temper?

57. We have separate accounts of you yelling and cursing at students. Can you help us understand why this might be?

58. Do you recall [REDACTED] speaking with Eleven Warriors? Was that in violation of any band rules? Can you show us the policy?

59. Why was [REDACTED] suspended? Why did he lose his scholarship?

60. Do you recall meeting with [REDACTED] and Chris Hoch before the Wisconsin Game? Is it possible that you yelled and cursed at [REDACTED]? Did you say "you better fucking realize who you are dealing with" and "if we tell you to stand on your goddamn head you will stand on your head?"

Exhibit S

From: Tobias, Jessica L. [tobias.80@osu.edu]
Sent: Thursday, July 03, 2014 1:52 PM
To: Waters, Jonathan
Subject: RE: Questions

Jon,

As we discussed, a list of formal and/or informal trainings made available to the band over the past few years would be very helpful for us to review.

Also, on Tuesday you mentioned a marching band alumni directory that lists member nicknames. Do you have a copy of the directory? If so, can you share it with us? If not, can you assist us in obtaining a copy?

Thank you,
Jessica

From: Waters, Jonathan
Sent: Tuesday, July 01, 2014 6:46 PM
To: Tobias, Jessica L.
Cc: Glaros, Chris M.
Subject: Re: Questions

Many thanks Jessica!
-Jon



Jonathan Waters

Director

The Ohio State University Marching Band
The Ohio State University Athletic Bands

1866 College Rd.
Columbus, Ohio 43210
Mobile: (614) 506-0963
Office: (614) 292-2598

From: <Tobias>, "Jessica L." <tobias.80@osu.edu>
Date: Tuesday, July 1, 2014 5:43 PM
To: Jonathan Waters <waters.33@osu.edu>
Cc: "Glaros, Chris M." <glaros.3@osu.edu>
Subject: RE: Questions

Hi Jon,

The questions are attached.

Thanks,

Jessica

From: Waters, Jonathan
Sent: Tuesday, July 01, 2014 4:48 PM
To: Tobias, Jessica L.
Subject: Questions

Hi Jessica,
When you have a moment, would you please send over the questions you asked today? Thanks!
-Jon



Jonathan Waters

Director

The Ohio State University Marching Band
The Ohio State University Athletic Bands

1866 College Rd.
Columbus, Ohio 43210
Mobile: (614) 506-0963
Office: (614) 292-2598

Exhibit T

From: Axelrod, David F. [daxelrod@slk-law.com]
Sent: Friday, July 18, 2014 4:03 PM
To: Schimmer, Alexandra
Subject: Jon Waters
Attachments: guidelinesdiscrim.pdf

Alexandra,

As I mentioned, I am trying to understand the process in which Jon is involved so that we can properly advise him. To that end, I have a few (what I hope are) simple questions. I am hopeful that you can either answer them, or refer me to someone else who can. It should go without saying that I appreciate any help that you can give.

- We have located Guidelines for Investigating Complaints of Discrimination and Harassment on your Office of Human Resources website (copy attached). Are they the applicable guidelines?
- When do you expect the investigation to be completed and the report prepared?
- The Provost told Jon that an entity called the Sports Culture Institute would perform some sort of assessment of the band culture. How does the investigation and its timeline fit with this cultural assessment?
- Can the investigation alone result in discipline, or are there appeal and review protections? If so, what are they?
- The guidelines mentioned above provide different procedures for corrective measures, depending on the status of the individual involved. Is Jon considered faculty? If not, how is he classified and which procedures apply?
- How does the university treat results of this kind of investigation under the public records statute, *i.e.*, do FERPA protections override because students are involved, and if so, to what extent?

I apologize for sending these questions so soon before your departure, but as you know, I've only been involved for a couple of days, and this is a very important and urgent matter to Jon. Again, if you are unable to deal with this right now, I would be grateful if you would refer me to another resource. For instance, I know Chris Glaros; would it be acceptable for me to contact him directly to discuss the process? Or is there someone else whom I can call?

Thanks again for your patience and help.

Best,

David

David F. Axelrod | Shumaker

Attorney at Law

Huntington Center, Suite 2400

41 South High Street | Columbus, Ohio 43215-6104

Direct 614.628.4427 | Fax 614.463.1108

daxelrod@slk-law.com | [bio](#) | [LinkedIn](#)

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Exhibit U



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41 South High Street 614.463.1108 fax
Suite 2400
Columbus, Ohio 43215
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DAVID F. AXELROD
614.463.9441
daxelrod@slk-law.com

August 27, 2014

Via Email and U.S. Mail

Fred G. Pressley, Jr., Esq.
Porter Wright Morris & Arthur LLP
41 South High Street
Suites 2800-3200
Columbus, OH 43215-6194

Mary G. Menkedick Ionno, Esq.
Associate General Counsel
Office of Legal Affairs
The Ohio State University
1590 North High Street, Suite 500
Columbus, Ohio 43201-2178

Re: Jonathan Waters – Request for Public Name-Clearing Hearing

Dear Mr. Pressley and Ms. Menkedick Ionno:

As you know, we are attorneys for Jonathan Waters, whose employment with The Ohio State University (“the University” or “OSU”) was terminated as of July 24, 2014, by letter as of that date from Joseph Steinmetz, Executive Vice President and Provost of the University. We write in connection with the University’s July 22, 2014 Investigation Report, which led to that termination (the “Report”).¹

The Report is replete with false, defamatory and stigmatizing statements concerning Mr. Waters, and has wrongfully tarnished his reputation, honor and integrity. Nonetheless – and stunningly – Mr. Waters was terminated without being afforded any opportunity whatsoever to respond to the Report or defend himself in any way. In fact, as you know, the University denied his request for such an opportunity. Mr. Waters was not even given a copy of the Report until after being notified that his employment with OSU was being terminated.

It should seem fundamental that as an extension of the State of Ohio, the University must act not only in accordance with its own policies and procedures, but also with the United States Constitution. And, “a person’s reputation, good name, honor, and integrity are among the liberty interests protected by the due process clause of the fourteenth amendment” to the Constitution. *Quinn v. Shirley*, 293 F.3d 315, 319 (6th Cir. 2002) (copy attached for ease of reference). Thus, save for exceptional circumstances not applicable here, “before a person is deprived of either a

¹ The Report is formally entitled “Investigation Report” concerning “Complaint against Jonathan Waters, Director of the OSU Marching Band.”

Fred G. Pressly, Jr., Esq.
Mary G. Menkedick Ionno, Esq.
August 27, 2014
Page 2 of 2

liberty or property interest, he has a right to some kind of hearing.” *Id.* Thus, “when a nontenured employee shows that he has been stigmatized by the voluntary, public dissemination of false information in the course of a decision to terminate his employment, the employer is required to afford him an opportunity to clear his name.” *Id.*, quoting *Chilingirian v. Boris*, 882 F.2d 2000, 205 (6th Cir. 1989).

The University’s voluntary dissemination of the information described above, combined with its refusal to afford Mr. Waters any sort of hearing, has denied his due process rights – both before his termination and after. While the pre-termination due process may have to be addressed through the courts, the University’s subsequent, post-termination conduct warrants an immediate response. Accordingly, Mr. Waters hereby requests a name-clearing hearing, to provide an opportunity to respond to the University’s false statements and clear his name.

We request that the University promptly schedule a public hearing, at a mutually agreeable time and an easily accessible location on the University campus, moderated by a disinterested party, such as, for example, a retired judge. We further request that Mr. Waters be afforded adequate time to fully clear his name, which we estimate to be two full business days. We also request that OSU make available University personnel and officials from whom Mr. Waters seeks testimony, and that the University provide written assurance that it has not attempted and will not attempt to discourage any person from participating in the hearing. Finally, we request that OSU notify both local and national media of the date, time and location of the hearing and provide sufficient space and facilities for media presence. *See Gunasekera v. Irwin*, 551 F.3d 461, 471 (6th Cir. 2009) (adequate publicity by the university required to satisfy due process).

We would appreciate the courtesy of a response, to make the necessary arrangements, no later than September 2, 2014. Thank you for your anticipated cooperation.

Very truly yours,


David F. Axelrod

DFA/ksd

Exhibit V



THE OHIO STATE UNIVERSITY

Office of Legal Affairs
1900 North High Street
500 Gateway Building C
Columbus, OH 43201-2247
614-292-0811 Phone
614-292-8699 Fax
<http://www.legal.osu.edu/>

September 11, 2014

Mr. David Axelrod
Shumaker, Loop & Kendrick, LLP
Huntington Center
41 S. High Street, Suite 2400
Columbus, OH 43215

Dear David,

We write concerning several matters and in response to your letter from yesterday.

1. Meeting follow up

At Tuesday's meeting, which was convened at your request, we shared with you a cross-section of the extensive additional information, evidence, and witness voices concerning the sexually hostile culture we had to deal with in the Marching Band.

As discussed, for the dignity and safety of our complainants and victims—and for the sake of Mr. Waters's ability to move on—the University has chosen not to engage in the battle Mr. Waters has waged in the court of public opinion. As you see, though, the University stands ready to respond to any lawsuit Mr. Waters may file. As Mr. Waters considers his next steps, we wished to be forthright about what this would entail and the fact that many of his most vocal defenders have the most to be defensive about.

We do not intend to turn over the documents discussed in advance of litigation, as we do not wish to put any students or alumni in harm's way. By contrast, the University finds it unconscionable that you would reference in a letter the name of an additional rape victim and an incident reported to Mr. Waters that the student maintains was mishandled by him, and that you would insist on inspecting photos of students in sexually suggestive poses and various states of undress, which were contained in the calendar Mr. Waters maintained as an office keepsake right up through his termination. Further, your point that this calendar is irrelevant because it dates from 2007 is lost on us. If Mr. Waters still held onto this inappropriate item in his office after seven years and counting, how much longer than seven years would the University have to wait for him to appreciate the seriousness of the Band's cultural problems and to change them?

Also as we discussed, and as the document trail confirms, you know that Mr. Waters is not being forthcoming with you about the timing or rigor of his cultural transformation efforts—much the way he was not forthcoming with the University about the culture itself for the more than ten years he served in the Band's leadership.

With so much about the Band to be proud of, the University would feel great anguish seeing any student or alumnus further damaged through litigation. For that reason, and that reason alone, the University is willing to at least consider further discussion to bring this matter to a close. Please be in touch if you wish to have additional conversations with regard to that.

2. Letter of August 27, 2014

Furthermore, in response to your letter dated August 27, Mr. Waters has of course had numerous opportunities to state his position with respect to the Marching Band's culture both before and after his termination, and on stages both local and national. Nonetheless, the University will provide Mr. Waters with a "name clearing" forum.

The opportunity is for Mr. Waters to speak in a public setting, though as both the President and Board of Trustees have previously stated, the decision to terminate Mr. Waters will not be reconsidered. Because this is a non-adversarial forum, a number of your requests in the August 27 letter are not applicable.

We will provide an open forum for Mr. Waters and invite you to contact us so that we can confirm the date, location, and other logistical details.

3. Mr. Waters's computer

As you know, Mr. Waters failed to return his university-issued computer as required upon his termination, and then refused to return it until August 29.

Multiple times, we invited conversation about any material that may be on the computer that is subject to the attorney-client privilege—a concern you raised and that we have been sensitive to. You indicated that you mirrored the computer, so this information is readily available to you.

Though we were under no obligation, we assured you that the University would not open or access the computer until we had the opportunity to discuss its contents with you. We asked you several times to provide us times you would be available last week to discuss this. We received no response. We then indicated that the meeting on Tuesday would be the opportunity to discuss these issues in person, and on our call in advance of the meeting, you agreed this would be fine. But at the meeting, when we solicited your input on these matters, none was provided.

The University is therefore now accessing the computer as we discussed. We will consider the list of "personal" items you provided by email yesterday. However, in the continued absence of any input from you on the attorney-client privileged issues you raised earlier, the University will handle any such material as prescribed by law.

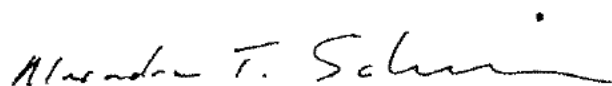
4. Public records

We have checked on the status of your public records requests and the University is moving forward with finalizing those responses, some of which you will have by tomorrow.

5. Discussions with parties represented by counsel

Finally, we see no basis for your holding private conversations with any employee or trustee outside the presence of counsel.

Sincerely yours,

A handwritten signature in cursive script, reading "Alexandra T. Schimmer". The signature is written in black ink and includes a small dot above the letter 'i' in "Schimmer".

Alexandra T. Schimmer
Associate Vice President and Deputy General Counsel

Exhibit W



OHIO STATE ATHLETICS

Fawcett Center | 2400 Olentangy River Rd. | Columbus, Ohio 43210

November 25, 2013

Lenee Buchman
VIA HAND DELIVERY

Dear Lenee:

For the reasons set forth in my email of November 22, which we also discussed this afternoon, your employment as head coach of the Cheerleading/Spirit Squad is terminated effective today.

You may contact the Office of Human Resources, Benefits Services at 614-292-1050, with questions or to arrange for the continuation of your group life, hospitalization and medical insurance coverage. You will be entitled to any accrued, unused vacation leave in accordance with University policy. You must return all University property, such as keys, BuckID, computer, files, etc., today.

Upon termination, you may be eligible to convert your Unum Disability coverage to an individual policy. You must convert the coverage within 31 calendar days of the coverage termination date. To obtain an application, contact the Office of Human Resources, Integrated Disability Office, at 614-292-3439 or toll free at 1-800-678-6413 or visit the website at www.hr.osu.edu/benefits/disability.htm.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Smith", written over a white background.

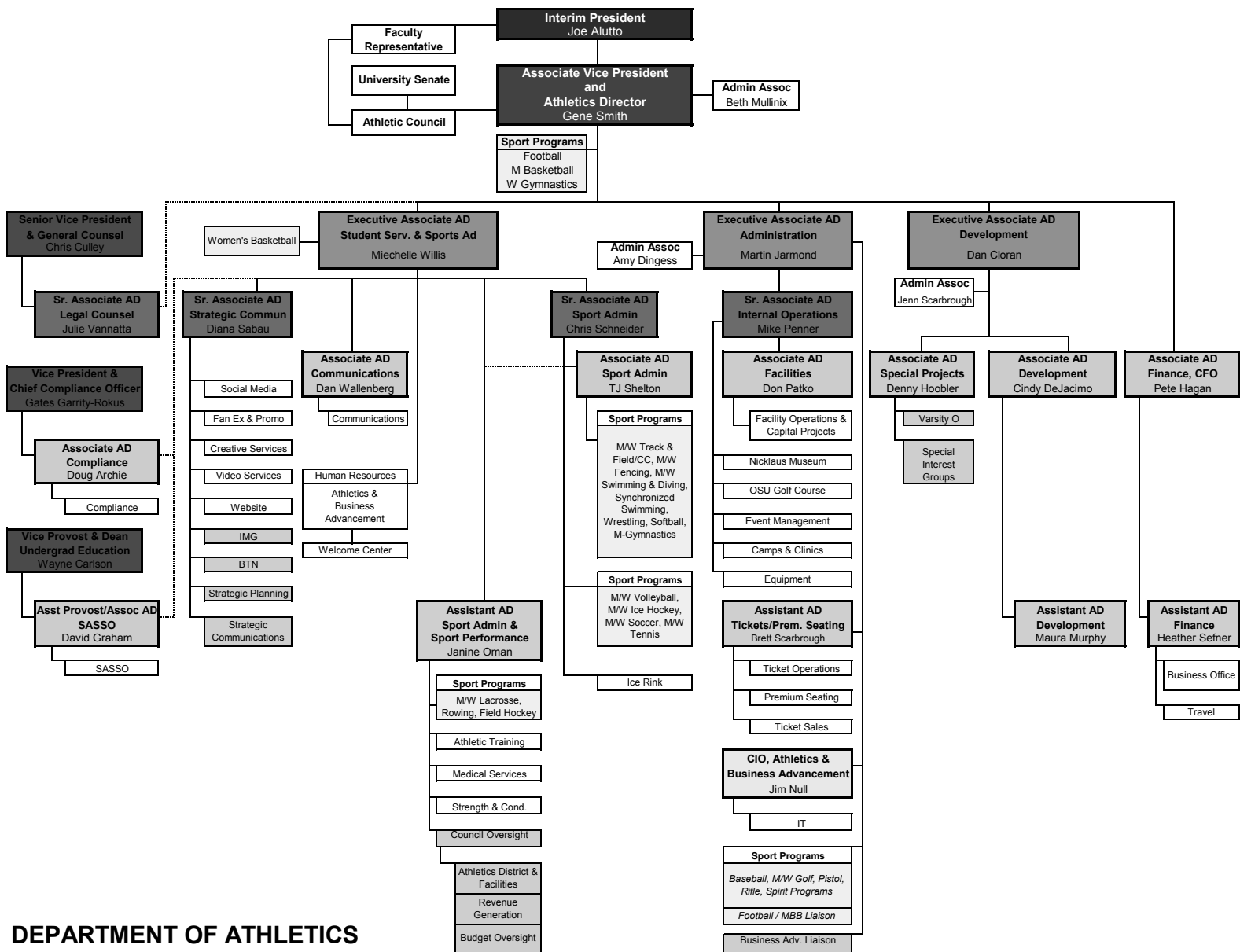
Eugene D. Smith
Vice President and Director of Athletics

{00218088-1}

OhioStateBuckeyes.com

athletics

Exhibit X



DEPARTMENT OF ATHLETICS