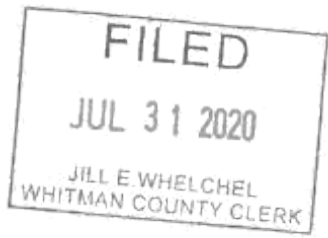


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SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF WHITMAN

PATRICK FLEETWOOD,

Plaintiff,

vs.

WASHINGTON STATE UNIVERSITY,

Defendant.

NO. 20-2-00053-38

OPENING BRIEF

I. INTRODUCTION & SUMMARY OF ARGUMENT

Complainant joined WSU’s Army Reserve Officers Training Corps (ROTC) program as a Military Science – 1 (MS-1) Cadet in September 2018. Within weeks it was public knowledge that Complainant was involved in an intimate relationship with MS-IV Cadet P who was friends with Patrick Fleetwood, also an MS-IV. After Cadet P broke up with the Complainant, she reached out to Fleetwood, looking for support and expressly seeking dirt about her ex to help confirm her belief that *“Todos Chicos son Pendejos,”* or, “all men are assholes.” At the time Fleetwood was not in a committed relationship and had a reputation as a “ladies’ man,” active on dating apps, and comfortable with non-committal, non-monogamous sexual relationships described in places like

1 Washington State University (WSU) Pullman as “hook-up culture.” The Complainant knew this
2 when she initiated a text flirtation with Fleetwood. And the Complainant has never made any
3 claim that her brief sexual encounter with Fleetwood was anything but consensual. It was what
4 allegedly happened afterwards that inspired this Complainant to seek retribution.

5
6 In early January 2019, Fleetwood and the Complainant went to lunch at an off-campus
7 restaurant. Approximately one week after that lunch at that public off-campus eating establishment
8 the Complainant, upon the urging and assistance of Cadet M (another ROTC Cadet with serious
9 credibility issues) made a complaint to WSU ROTC accusing Fleetwood of “sexual harassment”
10 when, in fact, *nothing of that sort happened*. Indeed, even the language of the Complainant’s
11 original sworn testimony make clear her vague concerns were speculative: she chose to formally,
12 vindictively disapprove of rumors related to Fleetwood’s promiscuity due to her concern about
13 potential repercussions on other future unknown partners of Fleetwood and her own growing
14 reputation as, *in Complainant’s own words*, “the program slut.” Complainant admitted as much
15 in later telling WSU’s investigator that in making the complaint “[t]he spotlight gets off me and
16 *on his behavior in uniform...general character check on him.*”

17
18 Nonetheless, after the January lunch, a story traveled through the college grapevine that
19 Complainant claimed Fleetwood had asked to resume their prior consensual sexual relationship
20 and then “bullied” her when she said “no.” The Complainant did not describe in her original written
21 complaint what that “bullying” was, nor did she ever describe details of the allegedly unwanted
22 proposition. Instead by early-April she vacillated claiming in one full sentence recorded by two
23 investigators that she *perceived* Fleetwood wanted to “hook up” again because he *hinted* as much.
24 This was but one example of this Complainant’s flagrant flip-floppery which WSU ignored when
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26

1 it chose to pursue a “guilty if accused” approach to find Fleetwood responsible for “sexual
2 harassment” even after all original allegations were effectively proven false.

3 And blatant issues with Complainant credibility weren’t the only thing WSU ignored.
4 WSU also ignored the concept of time, for it wasn’t until the end of January 2019 that WSU made
5 Fleetwood aware that the Complainant had initiated any claim against him through the “student
6 conduct system” or any type of system. Nevertheless, seemingly bound and determined to sanction
7 this student, WSU construed three brief conversations Fleetwood had – *before he was on notice*
8 *that any complaint of any sort had been lodged against him* – to be formal interference with his
9 friends’ participation in the student conduct system while wholly ignoring the fact that Fleetwood
10 had those conversations in the context of defending himself against meritless ROTC rumor mill
11 allegations that he had “raped” or “assaulted” the Complainant. When investigators realized that
12 the Complainant’s accusations were based on rumor—not fact, this case should have been thrown
13 out.
14 out.
15 out.

16 But instead WSU shifted the approach of its investigation to hunt down witnesses,
17 muckrake Fleetwood’s past, and draft entirely new findings based on evidence of cell phone
18 transmissions entirely unrelated to the original complaint and/or the original Complainant. There
19 is no physical evidence of allegedly inappropriate cell phone conduct between friends, which no
20 one had complained about in the two-year interim.

21 Nonetheless, ignoring Complainant’s self-professed anti-male bias WSU, first on
22 December 16, 2019 and then on February 21, 2020, determined (collectively “Decision”) that
23 Fleetwood violated:
24 Fleetwood violated:

25 WAC 504-26-227 - Sexual harassment. Sexual harassment includes
26 behavior defined in Washington State University's Executive Policy 15,
 which prohibits discrimination, sexual harassment, and sexual
 misconduct.

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2 WAC 504-26-209 - Violation of university policy, rule, or regulation.
3 Violation of any university policy, rule, or regulation published
4 electronically on the university web site or in hard copy including, but
not limited to Executive policy 15 (policy prohibiting discrimination,
sexual harassment and sexual misconduct).

5 WAC 504-26-219 - Abuse of the student conduct system. Abuse of the
6 student conduct system including, but not limited to: (5) Attempting to
7 discourage an individual's proper participation in, or use of, the student
conduct system.

8 The WSU Decision should be overturned because WSU (a) erroneously applied the law in
9 finding that Fleetwood sexually harassed the Complainant and/or violated Executive Policy 15 and
10 such findings are not supported by the evidence, (b) has no legitimate evidence that Fleetwood
11 attempted to discourage use of or participation in the student conduct system, again misapplying
12 the law, (c) arbitrarily and capriciously ignored context and serious witness credibility issues by
13 turning an off-campus spat between two college-age exes into a fiasco which, as it stands, has
14 destroyed Fleetwood's military career.

16 II. INCIDENT TIMELINE

17 **Part 1: Two College Kids “Hook Up” for Two Weeks: No Sexual Harassment Involved, Just** 18 **Standard Youth Melodrama with Complainant Seeking Dirt on an Ex-Boyfriend and** 19 **Expressing Hatred of Men—All Context WSU Ignores as Part of Its Decision.**

20 1. Fleetwood and Complainant were cadets in WSU's ROTC program, with
21 Fleetwood being a MSIV and Complainant a MSI. During the fall of 2018, Complainant became
22 romantically and sexually involved with Cadet P, a different MS-IV (AR 160).

23 2. Complainant's first known ROTC relationship ended sometime in mid-October
24 2018 but not before the romance was public knowledge in the program because, as the
25 Complainant told WSU OEO investigators, “[i]n ROTC people know everything. I dated a guy
26

1 [not Fleetwood] back in September thru November, and just by dating him people started asking
2 how many cadets has [the Complainant] slept with” (AR 160).

3 3. On or about November 20, 2018, suffering from her break-up with Cadet P, the
4 Complainant *initiated* new intimacy with Fleetwood by texting him the request: “Tell me things
5 about Cadet P that will make me hate him” (AR 033). Fleetwood asked Complainant, “Do you get
6 offended or not like ‘upsetting and dirty memes?’” to which Complainant replied, “Bring it on,
7 kid” (AR 034). The text evidence reveals how Complainant accused different male Cadets of the
8 same insults she would later accuse Fleetwood himself to have made. **Complainant:** “Like [Cadet
9 X] said I didn’t deserve my scholarship. [Cadet Q] said I was a tiny heart. [Cadet Z] should have
10 been on the team instead of me.” **Fleetwood:** “Wait are you for real? To your face?” (AR 036).

11 4. Soon thereafter the Complainant requested a second time that Fleetwood tell her
12 bad things about her previous boyfriend (Cadet P) because she was “**sick of being treated like**
13 **shit**” and “**loosing [sic] faith in men kind quick**” (AR 038). Complainant texted she was “sick
14 of empty promises” and shared the sentiment, “*Ayee todos chicos son pendejos*” which in Spanish
15 translation she claimed to mean “All men are Assholes” (AR 043, 045). Texts also reveal
16 Complainant was embarrassed to tell her family Cadet P had “gone behind [her] back” (AR 042).

17 5. On or about December 1, 2018, Complainant sent Fleetwood a threatening
18 Snapchat image of the Army’s Sexual Harassment/Assault Response and Prevention (SHARP)
19 pamphlet (AR 101). When asked by investigators, the Complainant confirmed she sent the
20 threatening text but meant it *jokingly*: “We were joking around. We all knew Patrick had a
21 reputation. Sent picture to him jokingly” (AR 101).

22 6. Fleetwood and Complainant’s short lived sexual relationship ended on/about
23 December 7, 2018, because (a) Complainant “stopped having sex [with Fleetwood because he] is
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25
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1 kind of a fuck boy and u [sic] shouldn't be getting with him, and he needs to learn not to get with
2 girls" (AR 160-161); and (b) Fleetwood did not feel comfortable with what he perceived to be
3 jealous manipulative tendencies in the Complainant (AR 031, 069, 107).

4 7. On December 31, 2018, the Complainant Snapchatted Fleetwood, "Should I dump
5 your ass in 2018?" which was odd since Complainant later told investigators the relationship ended
6 in early December (AR 101).

7 8. On January 9, 2019, Fleetwood invited the Complainant along with several
8 other peers to a "coupon deal" group lunch at Pullman's Red Bento sushi restaurant. Only the
9 Complainant was available to dine, responding to Fleetwood's invite, "Hell yea; I love sushi" (AR
10 062). The pair walked together to the restaurant. Complainant paid Fleetwood for her share of the
11 lunch (AR 062). The only controversy Fleetwood recalls was described as follows: "I took a
12 Snapchat picture of her while she was eating sushi and jokingly said, 'it's going to [Cadet P]'. My
13 intention was to patch-up our previously tense relationship with a little humor. However, the
14 Complainant quickly responded, 'Oh my god why did you send that to him? Did you really send
15 that to [Cadet P]. I [Fleetwood] didn't send it Cadet P, only to her while [they] were eating [their]
16 sushi and she understood this" (AR 32). This account of the lunch was confirmed by Complainant
17 (AR 100, 102).

18 9. Nonetheless, something about the lunch felt unsatisfactory to the Complainant, who
19 later gossiped to ROTC peer Cadet M and Cadet S that she perceived Fleetwood "had been
20 'bullying' her because she had refused to re-enter into a relationship/sleep with him again" (AR
21 67, AR 102).

22 10. **Fleetwood has consistently denied attempting to re-initiate a sexual**
23 **relationship** at the January 2019 Red Bento lunch or at any time after early December 2018, and
24

1 when interviewed by WSU investigators Complainant corrected her written accusation to report
2 she merely perceived Fleetwood “hinted” at renewed interested but never asked to re-initiate a
3 sexual relationship (AR 101).

4 11. Nonetheless, the ROTC rumor mill was effectively activated following the lunch,
5 and on or about January 10, 2019, Cadet M approached Fleetwood to ask why he tried to retaliate
6 against the Complainant because she would not engage in a sexual relationship (AR 032). When
7 interrogated by WSU OEO, Cadet M would later describe the January 9, 2019, Red Bento lunch
8 in ridiculously detailed terms as if he had been present (AR 089). “Some point he propositioned
9 her to sleep with him. Got more aggressive. She kept saying no he realized she wasn’t going to
10 say yes, he started being mean. Berating her ... He wanted to know why she wouldn’t sleep with
11 him” (AR 089). This testimony in no way aligns with either Fleetwood’s or the Complainant’s
12 account, yet Cadet M’s testimony would remain part of WSU’s evidence even after WSU knew
13 Cadet M's credibility was in question on a variety of other points (AR 016, 017, 223).

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16 **Part 2: Complainant, Fearful of Being Deemed the “Program Slut”, Accuses Fleetwood of**
17 **Sexual Harassment, but in Doing So Identifies NO Conduct that Remotely Comes Close to**
18 **Meeting the Legal Definition of Sexual Harassment.**

19 12. On January 10, 2019, WSU ROTC hosted a Sexual Harassment/Assault Response
20 and Prevention Program (SHARP) training lab, and shortly afterwards the Complainant sent a
21 Snapchat telling Fleetwood to stop joking about them to other people. Fleetwood’s alleged “joking
22 about them” was another of Cadet M’s rumors, never corroborated (AR 063). **This was also the**
23 **first and only time that the Complainant directly requested Fleetwood to cease behaviors she**
24 **found offensive.**

1 13. On January 10, 2019, Fleetwood responded to Complainant’s text with an “OK”
2 emoji and proceeded to block the Complainant because he did not know what jokes she was
3 referring to, and he “didn’t want to have any more drama” (AR 032, 063).

4 14. Fleetwood’s immediate response (blocking Complainant’s messaging) apparently
5 offended the Complainant because Cadet M would soon confront Fleetwood asking why he had
6 blocked the Complainant (AR 032).

7 15. Regarding Cadet M’s role in the origin of Complainant’s complaint, Fleetwood
8 provided written testimony from Sergeant Jon Crodle (a third party witness) who was Cadet M’s
9 roommate before and after the complaint and witnessed, “the manipulative and coercive aspects
10 of his character with great appall.” Sgt Crodle witnessed Cadet M’s interactions with the
11 Complainant and believed Cadet M had intent to see Fleetwood be dismissed from ROTC. He
12 witnessed Cadet M to possess character traits indicative of spiteful power complex. Crodle further
13 described Cadet M’s role as **explicit collusion**. He had also “observed him spread rumor and
14 inaccurate information in many other instances ... he has a sense of theatrics and has displayed a
15 strong vengeful attitude” (AR 223).

16 16. For the next few days the ROTC rumor mill churned wildly, and on January 15,
17 2019, Cadet R told Cadet D who, in turn, told Fleetwood he’d overheard the Complainant and
18 Cadet S discussing a sexual assault/rape complaint (AR 033).

19 17. On January 15, 2019 Fleetwood called Cadet S to verify what he’d been told by
20 Cadet R, but Cadet S did not pick up, so Fleetwood messaged him on Facebook (AR 063).

21 18. That same day, January 15, 2019, three days before any complaint would be filed,
22 Fleetwood called the Complainant, and she returned his call for a sixty second conversation when
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1 he asked her to stop talking about their relationship as if it had not been consensual because he had
2 overwhelming evidence to show the relationship had been consensual (AR 032, 064).

3 19. Fleetwood’s own description of these January 15-16, 2019 interactions corroborate
4 the text evidence and actual timeline: in a phone call *which the Complainant initiated* on January
5 15 at 5:10 pm, Fleetwood relayed, “there’s been some word out that you and whoever are trying
6 to say that I committed assault on you. I just want you to know that if you bring your argument up
7 [read: the rumored assault charge] that it will not last against the overwhelming evidence I have.
8 Do what you want, but I’m advising you that it won’t turn out great for you...” (AR 032, 064).

9
10 20. Fleetwood recalls the Complainant replied, “I’m not going to report you. I wouldn’t
11 do that.” And Fleetwood interjected, “Well, you don’t have anything to report on me” (AR 032;
12 corroborated by Cadet S at AR 063)

13
14 21. Reflecting on this pre-complaint time period which WSU would later construe as
15 interference/retaliation, Fleetwood wrote to WSU on January 23, 2019, “I personally felt
16 threatened, as much of this information was being passed to me by others. Nothing whatsoever
17 came from the accusers themselves. So, I tried to deal with the issue at the lowest level. I had the
18 conversations with Cadet S and the Complainant because I thought they were conspiring to create
19 a false accusation that I had assaulted [Complainant] or forced her do things that she didn’t want
20 to do. This upset me because I have and would never push anyone to do thing they don’t want to.
21 **I want to be clear that I did not tell Complainant or Cadet S that I would retaliate in anyway”**
22 (AR 033).

23
24 22. January 15, 2019, **three days before any complaint was filed**—and the same day
25 a key witness texted, “Relax ... she’s over it;” the same day the Complainant herself told
26

1 Fleetwood words to the effect of “don’t worry, there’s not going to be a complaint”—**was the last**
2 **time Fleetwood spoke to the Complainant** (AR 032, 063).

3 23. Within the same hour, January 15, 2019, **before any complaint had been filed, at**
4 **a time he believed he was being falsely accused of sexual assault**, Fleetwood also exchanged
5 texts with his friend Cadet P, the Complainant’s ex-boyfriend, and Cadet S (see AR 021-22, 033,
6 064, 070). On January 15, 2019, **Cadet S approached Fleetwood** explaining he wanted to discuss
7 rumors he had heard through the Complainant after PT (Physical Training) (AR 032, 066).

8 24. The next day **Cadet S again approached Fleetwood** about the rumors to which
9 Fleetwood told Cadet S, “You don’t know anything. Stay out of it.” The encounter was somewhat
10 heated, but all accounts agree Fleetwood did not threaten Cadet S in any way (AR 022, 032, 067).

11 25. On January 18, 2019, despite earlier claims there would be no complaint,
12 Complainant (escorted by Cadet S) filed her “harassment” complaint against Fleetwood (AR 066-
13 071). Complainant filed her “sworn statement” with ROTC instructor Sergeant First Class Streigle
14 (AR 106).¹ The Complainant (a) expressed “character concerns” about Fleetwood, (b) confirmed
15 Complainant’s November-December sexual relations with Fleetwood were consensual, (c)
16 claimed Fleetwood had sexual relations with thirty women² that semester which (d) led to the
17 *speculative concern* about Fleetwood’s character and ability to serve a la “his professionalism as
18 a [future] officer and whether or not he will know his limmits [sic] and potentially prey on some
19 private right out of basic training whose [sic] new to the program, have sex with her, leave her,
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25 ¹ As an aside, Cadet M alleged Fleetwood maligned Streigle’s wife, Fleetwood denied that
26 allegation, WSU’s investigator contacted Streigle who did not confirm Cadet M’s allegation, yet
WSU did not report this potentially exonerating evidence in its June 13 investigation report. (AR
17, 106, 109)

² Fleetwood provided third party corroboration of Cadet M’s role in conspiring with the
Complainant to file the complaint against Fleetwood. (AR 223)

1 then ruin her reputation,” and that Fleetwood’s behavior may at some point cause some unknown
2 future person to maybe commit suicide (AR 069-70).

3 26. Complainant’s additional motivation for filing is best explained by female witness
4 Cadet HFT (recruited by the Complainant):

5 *Question:* Did [Complainant] ever say anything about being afraid of retaliation?

6 *Answer:* I think reputation. Hard to have rep already established like when you’ve
7 slept around in program, to have rep that freshman girl who slept around. Didn’t
8 want to be girl who made rape case and people think that. Don’t think she was
9 scared of Patrick, think he has fragile ego but not aggressive. **Thinks she was more
10 afraid of reputation, don’t want to be girl that made false rape case** (AR 145).

11 27. WSU’s June 13 Investigation Report confirms this: “The Complainant ...
12 **expressed worry about gossip and rumors in the Program and being labeled a
13 ‘[Program]slut’**” (AR 022).

14 28. Cadet S also filed a sworn statement describing his January 15-16, 2019 encounters
15 with Fleetwood (AR 066-067). The testimony does not support allegations that Fleetwood
16 attempted to retaliate or interfere. Cadet S further reported the later discredited rumor that
17 Complainant “brought up [that] CDT Fleetwood had asked her out and she had said no” (AR 066)
18 and that Complainant “did not want to be thought of as ‘the unit slut’ or ‘the girl who kept someone
19 from commissioning’” (AR 067).

20 **Part 3: WSU OEO Investigation Disregards Complainant’s Inconsistent Accounts of the**
21 **Event Giving Rise to Her Complaint, Disregards Exculpatory Evidence Favorable to**
22 **Fleetwood, and Focuses on Consensual Activities from Years Earlier that Do Not involve**
23 **Complainant.**

24 29. Within the hour of receiving Complainant’s sworn testimony WSU
25 ROTC contacted WSU OEO whereupon WSU OEO Investigative Assistant Cheryl Rose reached
26

1 out to the Complainant about filing a Title IX complaint thru the Office of Community Standards
2 (WSU Prod 510) ³.

3 30. On January 24, 2019, the Complainant met with OEO Investigator Nikki
4 Finnestead in her office. Finnestead emailed at 11:31am requesting the Complainant’s permission
5 to contact ROTC to gather information about their “reporting and response processes” (WSU Prod
6 509). That same day Complainant returned Ms. Finnestead’s email: “I know we talked about a lot
7 both times we met, so if there’s anything you need me to say or do, please let me know” (WSU
8 Prod 508). Close reading of Finnestead’s intake notes from January 24, 2019, reveals various
9 evidence related to Complainant/witness credibility/motivation never addressed in the
10 Investigation Report (AR 160-167). The notes affirm, again, that her main concern with Fleetwood
11 was his promiscuity—and its impact on her reputation.
12

- 13 • “The reason I stopped having sex with is CFW is kind of a fuck boy and u
14 shouldn’t be getting them and ***he needs to learn to not get with girls.*** He
15 told his friends group from break, I’m going to be loyal to this one girl he
16 was talking to not me. ... He isn’t a very loyal person” (AR 161).
- 17 • **“The spotlight gets off me and on his behavior in uniform...general
18 character check on him”** (AR 162)
- 19 • “They [Cadet S, Cadet M, and Cadet HFT] wanted to meet me in the
20 library. They said we should bring this case forward. At first, I was like I
21 don’t know” (AR 164).
- 22 • “People telling [me I’m an] ROTC slut. Not to my face” (AR 164).
- 23 • “Cadet M said Patrick’s not really a great guy. I said, I’m not trying to date
24 him.”(AR 165).
- 25 • “It’s really weird because most college students, drama is contained outside
26 of classroom setting. You’re with a ton of strangers in class. But for me a
lot of what I do revolves around ROTC. Around it all the time. With the
people who ***potentially think bad things about me***” (AR 164).

³ The Agency Record omitted documents WSU provided Fleetwood’s counsel after Fleetwood filed this lawsuit. (Crotty Decl. Ex. A) Those additional documents are referenced and are filed to supplement the Agency Record. Those documents are labeled “WSU Prod.”

1 31. On January 25, 2019, Ms. Finnestead and Ms. Brooks recorded notes from an
2 interview with a name-redacted ROTC representative (presumably LTC Hobbs). The included
3 questions about his approach to sexual harassment training. **The notes and emails from these**
4 **interactions were not included in the Agency Record (WSU Prod 365-370).**

5 32. On January 28, 2019, the name-redacted ROTC rep emailed Ms. Finnestead “Could
6 you call me reference [sic] the Title IX inquiry we were discussion [sic]”? Ms. Finnestead replied
7 that the newly hired Ms. Rachel Brooks had been made the primary investigator (WSU Prod 364).
8

9 33. On January 28, 2019, Rachel Brooks informed the Complainant by email that she
10 would now be the contact person and primary investigator for the case, indicating Ms. Finnestead,
11 who did the “intake interviews” was removed (or removed herself) from the case. **Several**
12 **content-explicit emails would be exchanged in the upcoming days, none of which were**
13 **included in the Agency Record (WSU Prod 504-506).**

14 34. On January 28, 2019, at 11:09 am, Ms. Brooks emailed the Complainant with her
15 interpretation of the “allegations” (WSU Prod 506, **Not Included in Agency Record**). Neither
16 the dates nor the details of allegations in this list of allegations bear notable resemblance to the
17 alleged “facts” of the case presented in the January 18, 2019 sworn statements to ROTC, nor later,
18 in the June 13, 2019 WSU Investigation Report produced by Investigator Brooks. Nevertheless,
19 when explicitly asked by Brooks for corrections, emails from **the Complainant did not contest**
20 **any version of the ever-changing allegations** except as noted below.
21

22 35. On January 28, 2019 11:21am, the Complainant emailed Investigator Brooks a
23 “**Don’t quote me on that**” disclaimer: “**Of course I am nervous about the investigation moving**
24 **forward** but know it's for the best. In regards to the letter I would appreciate it if the direct quotes
25 weren't used, just because I stated them off memory and don't know if they were the exact phrasing
26

1 he said to me-given⁴, I know the general ideas were stated but **I feel uncomfortable putting words**
2 **into his mouth** over a letter that may or may not be the exact way he phrased it” (WSU Prod 505-
3 506, **Not Included in Agency Record**)

4 36. On January 28, 2019 11:23am, Ms. Brooks emailed the Complainant that she
5 would make the correction requested above and resend it to her (WSU Prod 505, **Not Included in**
6 **Agency Record**).

7 37. On January 28, 2019 11:26am, the Complainant again revealed credibility
8 concerns when she replied, “Send it as soon as you see fit. But again, **the less quoting you can**
9 **say in the letter the best**, in my opinion. ... If you want to use them however that’s fine” (WSU
10 Prod 505, **Not Included in Agency Record**).

11 38. On January 30, 2019 8:31am, after consulting with a “senior investigator,” Ms.
12 Brooks emailed the Complainant who then approved a significantly altered collection of
13 allegations as follows:

14 **Brooks:** Here is the revised edits. If there [sic] look good I will move forward...
15 “Specifically, the Complainant alleged that you

16 1. subjected her to harassment and bullying by explicitly talking about the sexual
17 relationship to others or talking to her about the sexual relationship in the presence
18 of others within the WSU classroom setting or on campus, which harmed and/or
19 had the potential to harm her reputation amongst classmates in the WSU program.
20 This included, but is not limited to, the following comments: a. During the week of
21 January 9, 2019, you spread rumors about her sexual activities to other members of
22 WSU such as telling others that she "squirted all over my sheets," and referring to
23 another as an "Eskimo Bro" with the understanding that Eskimo Bros is a reference
to two people who have had sex with the same person at different times.⁵ b. On or

24 ⁴ Notably, several of the “I stated them off memory and don’t know if they were the exact phrasing
25 he said to me” quotes were reported to the Complainant, presumably by Cadet M. In most cases,
she could not have remembered exact phrasing because she was not present to witness the alleged
26 statements, but that did not concern her, nor Investigator Brooks.

⁵ Neither of these he said/he said “Eskimo Bro” accounts survived investigation, and both were
removed entirely from WSU’s December 16, 2019 Findings presumably due to Cadet P’s quiet

1 around January 10, 2019, when the Complainant walked into class, you pulled lip
2 gloss from your pocket and stated that you had found the lip gloss by your bed,
3 asking the Complainant if she left it there.⁶

4 2. Subjected her and other students to sexual comments by openly and explicitly
5 talking about your sexual activities with other women;

6 3. **Persistently** attempted to reinitiate a sexual and/or romantic relationship with the
7 Complainant, which was unwanted.

8 4. Subjected her to negative and rude treatment and comments amongst other
9 students, including those in the WSU program, when the Complainant was not
10 amenable to reinitiating a sexual and/or romantic relationship with you.

11 5. Engaged in retaliatory conduct against the Complainant to dissuade her from
12 making a complaint or participating in an investigation under this policy which
13 included, but is not limited to, on January 15, 2019, you told her she would have no
14 respect in the xxx program if she brought this case forward, and that you have a lot
15 of people backing you.

16 6. Engaged in interference when you contacted another in the program asking that
17 if they are contacted by investigators to help you out and to tell them that "Patrick
18 wouldn't do that, type deal."

19 7. Engaged in interference when you contact another xxx in the program asking that
20 if they are contacted by investigators to help you out and to tell them that "Patrick
21 wouldn't do that, type deal."

22 8. Engaged in retaliatory and/or interfering behaviors when you sent a statement
23 about the Complainant to multiple other individuals (WSU Prod 503-504, **Not
24 Included in Agency Record**).

25 39. The Complainant okayed the new version of events a few minutes later, on
26 January 30, 2019 at 8:37am, "That's okay, you can go for it. Thanks" (WSU Prod 503, **Not
Included in Agency Record**).

admission that he, not Fleetwood indeed, initiated the comment: "I found out he had sex with
[Complainant from someone else], he said yeah bro we are Eskimo bros now. We had a class
together and **I asked him when he came in**. It wasn't in a space where e a lot of people could
hear" (AR 127).

⁶ As for the shifting hearsay that Fleetwood told someone that she (or was it he?) "squirted the
sheets," **and** the odd "chap stick" incident; **both storylines entirely disappeared during
investigation**; instead, the June 13 Investigation Report, line 17 shared discretely, that Cadet M's
"remaining statements were given limited weight as appropriate." Which is to say, Brooks
presumably determined the main allegations were lies, but nonetheless never fully dismissed
Student A/Cadet M's credibility. Nor did she dismiss or seek alternative resolution in a case based
on verifiable lies (AR 012-022).

1 40. WSU took no issue with Complainant’s willingness to accept either version as
2 “truth,” with emails to Brooks confirming she “okayed” both versions. The concern was never
3 raised as an issue of witness credibility; instead, the June 13 Investigation report claimed, in
4 general, “For witnesses interviewed, investigators assessed credibility. Factors considered when
5 assessing credibility include, but are not limited to, internal consistency of their statements, consist
6 of their statements with those of other witnesses or documentary evidence, plausibility, motivation
7 to make statements, demeanor during their interview, and witnesses’ overall memory (AR 15).
8 The report also included specific assessment of the Complainant credibility which ignored
9 countless inconsistencies in her own written and oral testimony, “Her statements to investigators
10 were generally consistent with the written statement⁷ she provided” (AR 017, WSU Prod 503-
11 504).
12

13 41. On January 31, 2019, Brooks hand-delivered a letter to Fleetwood clarifying that
14 he was under investigation for the allegations above and that he should cease contact with the
15 Complainant (AR 003-005).
16

17 42. From February 6, 2019 through April 19, 2019 Investigator Brooks conducted
18 numerous witness interviews (AR 84-167, plus dozens of relevant emails in WSU Prod 311-357,
19 415-436, **none of which appear in Agency Record**).
20

21 43. While Brooks did expedite numerous interviews with the Complainant and the
22 Complainant’s witnesses, beginning February 6, 2019 (AR 083-168), Ms. Brooks never invited
23 Fleetwood to meet until February 26, 2019, and due to calendar conflicts with Spring Break and
24

25 _____
26 ⁷ To be clear, the only written statement Complainant provided which was included in the Agency
Record was the January 18, 2019 the Sworn Statement to ROTC, and the content of the
investigation report is very different from that written statement (AR AR 17-21, 069-071)

1 ROTC trainings (WSU Prod 484-489), she did not actually interview Fleetwood until March 29,
2 2019 (AR 113).

3 44. Nor did Ms. Brooks inform Fleetwood when her approach to the investigation
4 shifted, as early as February 6, 2019 to include interviews related to all new allegations from an
5 entirely different time period involving instances that didn't even involve Complainant (AR 115-
6 162).

7
8 45. Brooks took notes regarding the investigation which WSU filed in this Court as part
9 of the Agency Record (AR 084-167). However, WSU failed to include exculpatory evidence in
10 the Agency Record such as when on April 10, 2019, Brooks received an email from a former WSU
11 student named by the Complainant as a possible “victim” of Fleetwood’s allegedly inappropriate
12 advances towards female MS-I Cadets:

13
14 I'm sorry for the delay in my response as I have a busy schedule. I have heard about the case you are looking into.
15 However, I never felt apprehensive or felt that [REDACTED] 38 was unapproachable. I discussed that the case did not
16 pertain to me with [REDACTED] 38. I was never called in to speak to [REDACTED] 38, otherwise I would have. I do not think I
17 have any information that would be helpful to this case or I would have went to speak to him myself.
18 The individual who reported the [REDACTED] 38 in question thought I had been involved with this [REDACTED] 38 as well; however, this is
19 not the case. I believe she named me because she knew I had been friends with the [REDACTED] 38 in question and that I am not
20 anymore. While I am no longer friends with the [REDACTED] 38 in question it has nothing to do with anything pertaining to this
21 case or his conduct. I explained to [REDACTED] 38 that me leaving the [REDACTED] 38 program had nothing to do with the alleged
22 [REDACTED] 38.
23 Also, I believe the individual that reported this [REDACTED] 38 confused me with another female [REDACTED] 38 my friend [REDACTED] 38.
24 She has given me permission to give you her email as she was more involved with the alleged [REDACTED] 38 and might be able to
25 help answer your questions about his conduct. Her email is [REDACTED] 38

26
Key quote: “While I am no longer friends with the [Fleetwood] it has nothing to do with anything pertaining to this case or his conduct. I explained to [presumably Complainant] that **me leaving the [ROTC] program nothing to with the alleged [Cadet]**” (WSU Prod 427, **Not in Agency Record**).

27 46. This exonerating evidence (not provided by WSU as part of the Agency Record)
28 introduced additional credibility concerns about a key allegation—again founded in rumor—which
29 appeared in the Complainant’s January 18, 2019 complaint: “Not only did I find out he had sex
30 with well over 30 women [sic] that semester, he was also involved with two other MS-I cadets:
31 Ms. XXXXX and Ms. XXXXX [one of whom presumably penned the email above]. I do not know

1 if they left the program because of him, but his predatorial [sic] behaviors of pursuing the
2 newest/youngest freshmen in are [sic] program concerns me” (AR 069-071).

3 47. Discussion highlighting how many allegations from the original complaint(s) were
4 proven untrue is never included in the June 13 Investigation Report, and at least one exonerating
5 witness who contacted Brooks is not even listed as a witness (AR 012-022, AR 069-071)⁸.

6 48. When original harassment allegations proved false, the WSU OEO chose to solicit
7 new witness testimony to pursue a new line of questioning related to Fleetwood’s much earlier
8 transmission of a Snapchat video consensually created in September 2017. ***The video,***
9 ***consensually created years earlier on his 21st birthday, played no role in the Complainant’s***
10 ***original complaint*** (AR 012-022, 110-129).

11 49. During this phase, Investigator Brooks also led a female witness to claim she had
12 been previously “grossed out” by a shirtless “Army Strong” photo Fleetwood transmitted by phone
13 at time period when he was dating one of her friends (AR 125). ***These photos and videos did not***
14 ***involve the Complainant.***

15 50. On June 13, 2019, WSU delivered an Investigation Report, drafted by Ms.
16 Brooks who also completed the bulk of the interviews for the investigation meaning that
17 ***Fleetwood’s investigator was Fleetwood’s original adjudicator.*** The report found Fleetwood
18 “Responsible” for Violating WSU Executive Policy 15 (AR 012-022).
19
20
21

22
23 ⁸ Determining who the actual witnesses were is an exasperating part of reading the Investigation
24 Report, and the Agency Record, especially with redactions. Nonetheless, we do know it was Cadet
25 S, not Fleetwood, who would best be accused of “pursuing the newest/youngest freshmen,”
26 including the Complainant herself. In addition, the very first interview notes in the Agency Record
(AR 83-88) present a somewhat exonerating testimony from a Ms. XXXX who also is not listed
as a witness (AR 14-15). Then, there’s the curious notation of a Student J, who *is* listed as a
witness, but then two lines later receives the disclaimer, “Investigators did ***not*** interview (Student
J)” (AR 15). It’s unclear whether this was a typo or if Ms. Brooks herself had trouble tracking
who was who.

1 51. On June 13, 2019, Ms. Brooks emailed the Complainant informing Complainant
2 that her failure to participate in a conduct hearing could have consequences, impact the outcome
3 for the case (WSU Prod 297, **Not Included in Agency Record**).

4 52. On October 4, 2019, the Complainant officially informed Ms. Metzner she did not
5 want to be involved in the Center for Community Standards conduct hearing (AR 171).

6 53. On October 8, 2019, Ms. Metzner (a) after having an off the record call with Brooks
7 about Fleetwood on June 13, 2019, (b) after having an off the record call with Complainant
8 sometime in late-September/early-October 2019, and (c) knowing (from the June 13th email
9 exchange) that Complainant had been warned of the consequences of not participating in the
10 hearing process, emailed Mr. Fleetwood that she (Metzner) was Fleetwood's "designated Conduct
11 Officer" and that Fleetwood was "assumed not responsible for the reported incident" until a
12 decision was made at his hearing (AR 173-175)

13 54. On October 29, 2019, Fleetwood met with Ms. Metzner. Ms. Metzner's notes from
14 the hearing show that Fleetwood (still unrepresented by a lawyer) had numerous concerns with the
15 investigation including concrete inaccuracies with remaining allegations, Cadet M's
16 manipulation/collusion as witnessed by Sgt Crodle (see AR 233), the double standard wherein
17 Complainant freely discussed and recruited witnesses from his past whereas Fleetwood had been
18 instructed not to discuss the confidential case, Brooks' failure to address the Complainant's
19 December 2018 threats to weaponize sexual harassment policies process, and other concerns with
20 an ROTC rumor mill which was still, nearly a year later, "muttering rapist" accusations against
21 him (AR 199-204). Fleetwood also provided Ms. Metzner with numerous character statements to
22 challenge the Complainant's rumor-based attack related to "the way he treats women" (AR 205-
23 209).

1 55. On December 5, 2019, Fleetwood met with Ms. Metzner in her office. Nobody else
2 was present. This would later be described as his “conduct hearing” by WSU. At the “hearing,”
3 Fleetwood also provided Metzner with the signed letter from Sgt Crodle verifying the issues with
4 Cadet M’s witness credibility (AR 223). According to Fleetwood, Ms. Metzner gave the letter a
5 brief glance. The meeting was short. Fleetwood was not provided with the redacted file that Ms.
6 Metzner promised and had no opportunity to cross examine witnesses (AR 214).

8 56. On December 16, 2019 WSU, by and through Ms. Metzner, found Fleetwood
9 “Responsible” for the violating the following community standards and subjected him to various
10 sanctions (AR 214-219).

11 57. On January 5, 2020, Fleetwood appealed the December 16, 2019, finding to WSU’s
12 University Appeals Board (AR 220-221). Key points in his appeal letter included:

- 14 • Metzner not addressing “flawed nature of the original investigation report”
- 15 • Some allegations did not involve Complainant and are not usually prohibited
- 16 • Investigator’s reliance on statements from witnesses with easily verifiable
17 credibility issues
- 17 • WSU failure to provide Fleetwood full access to investigation records
- 18 • Failure to note the Complainant’s conduct could be sexual harassment
- 18 • The Snapchat video did not involve Complainant and was from years earlier
- 19 • Failure to provide evidence that Fleetwood “gossiped” about Complainant
- 19 • Cadet M’s role with his blatant bias against Fleetwood (AR 220-221).

20 58. On January 8, 2020, Kyle Cance wrote Fleetwood that his Appeals Board Chair
21 would be Hearing Boards Manager TJ Page, with Olivia Shoemith and Riley Guttromson⁹ as
22 Board members. Fleetwood was invited to investigate members of his Appeals Board for conflicts
23 of interest (AR 224).

24
25
26 ⁹ Appeals Board Chair Olivia Shoemith was a student intern with the Alumni Association
pursuing a Bachelor’s Degree in Accounting. See <https://www.linkedin.com/in/olivia-shoemith>
(last visited July 31, 2020). Member Riley Guttromson is/was “double majoring in witchcraft and
ecoterrorism.” See <https://www.instagram.com/rileyguttromson> (last visited July 31, 2020).

1 *inter alia*, “(1) the administrative decision is based on an error of law, (2) the administrative
2 decision is unsupported by substantial evidence, [or] (3) the administrative decision is arbitrary or
3 capricious.” *Hung Dang v. Washington State Dep’t of Health, Med. Quality Assurance Comm’n*,
4 450 P.3d 1189, 1197 (Wash. Ct. App. 2019).

5 An agency commits an “error of law” when the Agency’s interpretation of the law conflicts
6 with the statute. *Crosswhite v. Washington State Dep’t of Soc. & Health Servs.*, 197 Wn. App. 539,
7 549 (2017). An agency must support its decision with substantial evidence i.e. evidence of “a
8 sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the
9 order.” *Tassoni v. Dep’t of Ret. Sys.*, 108 Wn. App. 77, 84 (2001). And an agency’s actions are
10 arbitrary and capricious when the agency commits a “willful and unreasoning action, taken without
11 regard to or consideration of the facts and circumstances surrounding the action.” *Linville v. Dep’t*
12 *of Ret. Sys.*, 452 P.3d 1269, 1275 (Wn. Ct. App. 2019)(internal quotations omitted).

13
14
15 With these rules in mind, it is clear that WSU’s Decision was not in compliance with the
16 law, not supported by substantial evidence, and arbitrary and capricious.

17 **B. WSU’s finding that Fleetwood sexually harassed Complainant and/or**
18 **violated EP 15 is both an error of law and is not supported by substantial evidence.**

19 WSU’s Executive Policy 15 defines “sexual harassment” as “[u]nwelcome sexual
20 advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature or on
21 the basis of sex and/or gender constitutes sexual harassment and is a violation of this policy
22 when: (1) The conduct meets the definitions described in Discriminatory Harassment,¹⁰ or (2) The
23

24
25 ¹⁰ “Sexual harassment’s” definition also includes “quid pro quo” harassment which can be
26 summed up as “you have sex with me in exchange for educational/work favors,” “sexual misconduct” as “and egregious form [of] sexual assault and other sexual violence,” WAC 504-26-221(1), “stalking” as “engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (a) Fear for his or her safety or the safety of others; (b) Fear for harm

1 conduct has the purpose or effect of *unreasonably* interfering with an individual’s work
2 performance or creating an intimidating, hostile, or offensive working environment.” EP 15
3 defines “Discriminatory Harassment” as “[u]nwelcome, intentional conduct, on the basis of
4 membership in a protected class, which is *so severe or pervasive, and objectively offensive, that*
5 *it substantially and unreasonably (1) interferes with, or has the potential to interfere with, an*
6 *individual’s ability to participate in WSU employment, education, programs, or activities*” or (2)
7 “[a]dversely alters the condition of an individual’s WSU employment, education, or participation
8 status” or (3) “[c]reates an objectively abusive employment, program, or educational environment;
9 or (4) “[r]esults in a material or substantial disruption of WSU’s operations or the rights of
10 students, staff, faculty, visitors, or program participants.”¹¹

12 In assessing whether “substantial evidence” of sexual harassment exists case law
13 interpreting the Washington Law Against Discrimination and Title VII of the Civil Rights Act,
14 statutes that both use EP-15’s “severe or pervasive” language in defining legally actionable sexual
15 harassment make the following points:
16

17 **First**, “conduct that is hostile and intimidating, without more, is not actionable
18 as sexual harassment.” *Herried v. Pierce Cty. Pub. Transp. Ben. Auth. Corp.*, 90 Wn. App. 468,
19 473 (1998)(citing *Miller v. Aluminum Co. of Am.*, 679 F.Supp. 495, 502 (W.D.Pa.1988) (“Hostile
20 behavior that does not bespeak an unlawful motive cannot support a hostile work environment
21

22
23 to his or her property or the property of others; or (c) Suffer substantial emotional distress,” WAC
24 504-26-223(1)(a)-(c), and “intimate partner abuse” as “conduct or threats which are targeted
25 against a person with whom an individual is in or had been in a romantic, sexual, or dating
26 relationship, where the conduct or threats are used to coerce, intimidate, or control the person. This
may include physical, verbal, emotional, psychological, or financial assault and/or control.” There
is no allegation Fleetwood engaged in these types of “discriminatory harassment.”

¹¹ See <https://policies.wsu.edu/prf/index/manuals/executive-policy-manual-contents/ep15-discrimination-sexual-harassment-and-sexual-misconduct/> (last visited July 28, 2020).

1 claim.”). **Second**, (a) “[c]asual, isolated or trivial manifestations of a discriminatory environment
2 do not affect the terms or conditions of employment to a sufficiently significant degree to violate
3 the law” (b) “the harassment must be sufficiently pervasive so as to alter the conditions of
4 employment **and** create an abusive working environment” and (c) “[w]hether the harassment...is
5 sufficiently severe and persistent to seriously affect the emotional or psychological wellbeing...is
6 a question to be determined with regard to the totality of circumstances.” *Payne v. Children's Home*
7 *Soc. of Washington, Inc.*, 77 Wn. App. 507, 515 (1995). **Third**, gossip is not harassment. *Clemmons*
8 *v. Academy for Educ. Dev.*, 107 F.Supp.3d 100, 121 (D. D.C. 2015) (holding that plaintiff’s
9 “allegations of workplace criticisms, gossip, rudeness, and subjective changes in perception are
10 simply insufficient to establish an objectively hostile work environment.”); *Davis v. NYS Dept. of*
11 *Corr.*, 46 F.Supp.3d 226, 236 (W.D. N.Y. 2014)(“Whispering, gossiping, and making negative
12 comments about an employee also do not rise to the level of an adverse employment action because
13 they do not materially change the terms and conditions of employment.”). **Fourth**, the fact that
14 Fleetwood directed his supposed request that he and Complainant reignite their prior (consensual)
15 sexual relationship in and of itself is not harassment as WSU needed to show “that the conduct
16 was (a) directed at women **and** (b) **motivated by animus against them as women.**” *Adams v. Able*
17 *Bldg. Supply, Inc.*, 114 Wn. App. 291, 297 (2002).

20 For the reasons stated below none of the facts giving rise to WSU’s Decision established
21 that Fleetwood “sexually harassed” Complainant. **First**, the sexual relations were fully consensual
22 (AR 069) **Second**, there was never a quid-pro-quo relationship in place. Indeed, when asked if
23 Fleetwood “ever used his position, standing in program to manipulate cadets for dates” a female
24 witness answered, “Don’t think so. He doesn’t really have position. He’s not in a position of
25 authority that could do that. I haven’t seen it” (AR 141). **Third**, Complainant’s January 18, 2019
26

1 complaint expresses her *speculative* “concerns about his *professionalism*,” that Fleetwood may
2 “*potentially* prey on some private right out of basic training”, that Fleetwood “decided to share
3 explicit content [none of which is described] some true and some not true” after being “denied
4 sexual favors”; in short, her complaint was that Fleetwood may harm some unknown person at
5 some unknown date, which is not, in fact, a complaint and certainly not a qualifying act of sexual
6 harassment (AR 069-71). **Fourth**, Complainant flipfopped on April 8, 2019, as to whether
7 Fleetwood told her he did not want to have sex with Complainant anymore after December:
8

9 RMB: Did Patrick ever tell you he did not want to engage in sexual relations with you anymore?

10 No. Not really. I mean, yeah. We stopped seeing each other, but don't remember him saying I don't want
11 to have sex with you. I could be mistaken, but I don't remember him saying no more sex.

12 (AR 101). **Fifth**, Complainant confirmed that despite her original sworn statement to ROTC,
13 **Fleetwood never asked to re-engage in sexual relationship after December**; hence, the overriding
14 premise that he retaliated because she withheld “sexual favors” is unsubstantiated (AR 101). **Sixth**,
15 the “Eskimo brothers” comment was *not* initiated by Fleetwood but rather by Cadet P, one of the
16 Complainant’s other MS-IV sex partners (AR 127). Cadet P’s testimony confirms Fleetwood’s
17 own memory that **Cadet P asked him about his sexual relationship with the Complainant**,
18 indicating that someone else had spread the gossip. Fleetwood’s part was merely to discretely
19 confirm that they had both slept with the same Cadet by repeating the ROTC code “Eskimo
20 brothers” (AR 108-109). **Seventh**, the entire premise that “who-hooked-up-with-who gossip” (or
21 making “sexual comments” to friends) is somehow legally off limits on a college campus or within
22 an ROTC program is ridiculous. Gossip is not illegal sexual harassment. Courts, in analogous
23 employment cases assessing anti-discrimination statutes that use the same “severe and pervasive”
24 standard as EP-15 say as much. *See supra*. People talk about their relationships. The Complainant
25 clearly talked about her relationships. Her ex-boyfriend talked about his relationship. Cadet M
26

1 couldn't keep his mouth shut about everyone else's relationships. But only Fleetwood, who was
2 decidedly discrete when it came to talking about his relationships, ended up in the WSU student
3 conduct system where no amount of witness credibility issues could change the finding "guilty if
4 accused." *Eighth*, when the original harassment allegations proved false, WSU OEO chose
5 instead to solicit all new witness testimony, pursuing an entirely different allegation related to
6 Fleetwood's much earlier transmission of a Snapchat video consensually created in September
7 2017. The video played no role in the Complainant's original complaint to ROTC or WSU OEO.
8 Nor did Fleetwood posing "shirtless in a towel" - - - something that is not remotely illegal. Indeed,
9 the video had absolutely NO impact on the Complainant and should never have been investigated
10 in relation to a sexual harassment against the Complainant. *Ninth*, Complainant's admission that
11 she was taking action not to end harassment but as a "general character check on him." (AR
12 162) *Tenth*, and most damning WSU failed to show that any of Fleetwood's comments were
13 "motivated by animus against...women" *Adams*, 114 Wn. App. at 297. This is an important legal
14 criterion because without it *any* request by *any* ex-boyfriend to "hook back up" with *any* ex-
15 girlfriend (before said ex-girlfriend warns ex-boyfriend that solicitation is not welcome) would
16 constitute sexual harassment.
17
18

19 There is **zero evidence** that Fleetwood ever engaged in unwelcome "verbal or physical
20 conduct of *a sexual nature*" towards the Complainant following the dissolution of their
21 relationship in 2018. There is **zero evidence** that Fleetwood's behavior was *sufficiently severe,*
22 *persistent, or pervasive*¹² to interfere with another's work or, in this context, educational
23

24
25 ¹² OCR Guidelines are established in V.1, clarifying that "OCR considers the conduct from both
26 a subjective and objective 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' ... To draw commonsense distinctions between

1 environment. Instead, Complainant’s January 18, 2019, complaint states she “never had
2 [negative] thoughts herself” but rather acted upon a rumor-fueled speculative concern for future
3 female Army cadets who might feel mistreated by Fleetwood should he become an officer. (AR
4 069-71) Indeed, when WSU OEO asked Complainant “[h]as this impacted your status in the
5 program”, the Complainant responded, “They’ve been clear this has no affect. ... It makes it a
6 little awkward for me but I feel like I’m in good things [sic]” (AR 167).

8 **C. WSU’s finding that Fleetwood discouraged or interfered with students
9 using/accessing the student conduct system is not supported by the law or the facts.**

10 In order to establish that Fleetwood violated WAC 504-26-219(5) in “abuse of the
11 student conduct system” WSU needed to establish via substantial evidence that Fleetwood
12 was “[a]ttempting to discourage an individual's proper participation in, or use of, the student
13 conduct system.” For the reasons stated below, WSU failed to establish that Fleetwood tried to
14 discourage others to participate in or use the student conduct system.

15 **First**, Fleetwood was first informed of Complainant’s complaint on January 31, 2019, but
16 the alleged retaliatory actions by Fleetwood ended on January 15, 2019. This is key because
17 common sense dictates that a party cannot be found to have discouraged someone from using the
18 student conduct system when the party didn’t know the student conduct system was in play in the
19 first place. By analogy, courts routinely dismiss retaliation complaints in employment
20 discrimination cases when it is found that the alleged bad actor (here Fleetwood) did not know of
21 the protected activity. Indeed “[b]ecause retaliation is an intentional act, an employer cannot
22 retaliate against an employee for an action of which the employer is unaware.” *Cornwell v.*
23 *Microsoft Corp.*, 192 Wn.2d 403, 414 (2018).

24
25
26
conduct that constitutes sexual harassment and conduct that does not rise to that level.”
<https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

1 **Second**, the three brief communications which took place within a 24-hour period *before*
2 any complaint had been filed, happened because Fleetwood understood he was being falsely
3 accused of sexual assault and confirm Complainant was not fearful of retaliation at all. Indeed,
4 even a witness peripheral to the case confirmed the rape rumor:

5 **WSU RMB**: “Did she say anything about being afraid of retaliation”

6 **Cadet HFT**: “I think reputation. Hard to have rep already established like when you’ve
7 slept around in program, to have rep that's freshman girl who slept around. Didn’t want
8 to be girl who made rape case and have people think that. Don’t think she was scared
9 of Patrick, think he has a fragile ego, but not aggressive. Think she was more afraid of
10 reputation, **don’t want to be that girl that made false rape case**” (AR 145)

11 **Third**, one of the communications involved Fleetwood responding to communication
12 initiated by Complainant a la “there’s been some word out that you and whoever are trying to say
13 that I committed assault on you. I just want you to know that if you bring your argument up [the
14 rumored assault charge] that it will not last against the overwhelming evidence I have. Do what
15 you want, but I’m advising you that it won’t turn out great for you...” (AR 032). Telling someone
16 “do what you want” is not discouraging use of the student conduct system and claiming (truthfully)
17 that no sexual assault happened is not retaliatory either.

18 **Fourth**, in keeping with EP #15 Procedural guidelines to consider circumstances and
19 relationships, Fleetwood calling his longstanding colleagues in order to clear up
20 misunderstandings surrounding an utterly false accusation seems to be a sensible response.

21 **Fifth**, once Fleetwood *was* aware that a complaint had indeed been filed, he made no
22 attempt to interfere with the investigation and indeed limited his recruitment of viable witnesses
23 because he feared his behavior could be construed as interference.
24

25 **D. WSU’s Decision was arbitrary and capricious.**

1 The WSU Decision should also be reversed because it was a willful and unreasoning action
2 which ignored the facts and circumstances surrounding the action for which there is no room to
3 form two opinions. *See Linville*, 452 P.3d at 1275.

4 As stated above, there is no room to form two opinions as to whether Fleetwood engaged
5 in illegal sexual harassment or retaliation. And the other facts and circumstances WSU ignored in
6 finding Fleetwood at fault for sexual harassment and retaliation are as follows.

7
8 **First**, WSU ignored the fact that Complainant’s story changed multiple times between her
9 January 18, 2019 complaint and her follow up correspondence with Brooks that occurred days
10 later. Tellingly, WSU did not disclose Complainant’s “new” story with Brooks as part of the
11 Agency Record. Instead Brooks concluded, “[The Complainant ’s] statements to investigator were
12 generally consistent internally and consistent with the written statements she provided” when that
13 clearly wasn’t the case (AR 17).

14
15 **Second**, WSU wrongly concluded Complainant’s “statements were generally consistent
16 with the statements of witnesses OEO found to be credible including Student A [Cadet M who
17 served as her chief conspirator]” (AR 017), but nevertheless assessed Fleetwood’s credibility as
18 poor because he told investigators he had “concerns about the impact this investigation may have
19 on his future career prospects, his continued participation in the Program, and with his family.
20 Investigators considered this as a potential motivation to be untruthful and weighted the assessment
21 of the Respondent’s credibility appropriately” (AR 017). While concluding Fleetwood had a
22 motive to be untruthful, WSU fully disregarded that Complainant not only had a motive to be
23 untruthful but expressed, in writing, motives to do so first by professing an anti-male bias and
24 second by professing concern for not wanting to be seen as the ROTC “program slut” (AR 022,
25 067).
26

1 **Third**, there is no evidence that Fleetwood’s case ever went thru EP Policy
2 #15 Conflict Review which checks for a conflict of interest defined as a
3 “personal interest, financial, familial, professional, or otherwise, that might
4 impair or reasonably appear to an objective outside observer to impair an
5 investigator independent, unbiased judgment “ documentation of the
6 Review has not been provided. See [https://crci.wsu.edu/crci-procedural-
7 guidelines/](https://crci.wsu.edu/crci-procedural-guidelines/) (last visited July 23, 2020)

8 **Fourth**, in this case the preferential treatment/pro-female bias provided to the female
9 Complainant was evident as follows:

- 10 • The Complainant was never reprimanded for her own witness coaching and
11 refusal to respect confidentiality during the Investigation. (i.e: Fleetwood was
12 gagged; the C.P. was not (AR 199-204, AR 220-221).
- 13 • Complainant was never reprimanded in any way for her equal and often more
14 extreme incidences of “discussing prior sexual relationships” within the
15 program (No evidence in Agency Record).
- 16 • The Complainant was never reprimanded for her own explicitly sexual
17 depiction of other members of the ROTC program. (No evidence in Agency
18 Record).
- 19 • The Complainant did not honor the no contact order (AR 199-204)
- 20 • The underlying basis of this claim—speculative concern about the reputation
21 consequences of sexual promiscuity within the ROTC program—was never
22 applied to the Complainant’s other sexualized behavior within the program.
23 (No evidence in Agency Record).
- 24 • Complainant was never reprimanded for wrongly and without basis concluding
25 that Fleetwood slept with 30 women in a semester.

26 **Fifth**, additional evidence of a biased investigation includes:

- a verifiably inaccurate list of witnesses (AR 016-017).
- a lack of genuine effort to assess witness credibility, including most blatantly
Cadet M’s who promoted the false allegations which mysteriously disappeared, but
also Cadet S (who was a freemason brother to Cadet M), and Cadet P, the
Complainant’s ex-boyfriend who had further motive to mislead as means to avoid
self-incrimination (AR 017, 127)
- a failure to examine the Complainant’s motivation (AR 012-022)
- a failure to summarize exculpatory evidence (AR 018-022)
- a repeated reliance on hearsay as fact (AR 017-018)
- factual timeline issues, confusing chronology (AR 021)
- failure to explain how/why initial allegations disappeared and instead, were
replaced by unrelated allegations surrounding alleged cell phone misconduct
from an entirely different standpoint (AR 022-023)
- failure to inform Respondent that allegations had changed.
(AR 012-022).

1
2 **Sixth**, WSU ignored context. And “Agency action is ‘arbitrary or capricious’ if there is no
3 support in the record for the action which is therefore ‘willful and unreasoning action, in disregard
4 of facts and circumstances.’” *Hayes v. Yount*, 87 Wn.2d 280, 286 (1976). Such is the case here. As
5 a whole the November texts, available at AR 033-061 and in WSU’s possession early in its
6 prolonged investigation, provide compelling context evidence that WSU disregarded in its
7 investigation.

- 8 • The sexual relationship between Fleetwood and the Complainant was fully
- 9 consensual; if anything the Complainant pursued Fleetwood
- 10 • Fleetwood never indicated he would be monogamous
- 11 • The Complainant confessed a pre-existing belief that all men were malicious
- 12 • The Complainant demonstrated a pre-existing potential for seeking “dirt” about
- 13 men she felt rejected by
- 14 • The Complainant herself used sexually explicit and otherwise offensive language
- 15 to describe ROTC peers. Indeed, the Complainant ’s own clearly documented
- 16 hostile language is notably more hostile and explicit than Fleetwood’s only
- 17 corroborated incident of alleged verbal harassment wherein he agreed, in a private
- 18 setting—after being asked by Cadet P—that he and the Complainant ’s former sex
- 19 partner were now “Eskimo brothers” (AR 012, 127).
- 20 • The Complainant herself discussed her sexual relationships with ROTC peers,
- 21 which is to say, evidence suggests the Complainant ’s own sexualized behavior
- 22 along with the Complainant ’s willingness to gossip widely about her sexualized
- 23 behavior, presented biggest threat to her “reputation” within the program (AR 043-
- 24 045).

25 Taken alone or together these points show WSU Decision arbitrarily disregarded any pro
26 Fleetwood evidence while ignoring Cadet M’s malicious collusion, the Complainant’s own
vindictive nature and anti-male bias.

Seventh, not only did WSU ignore context, it also ignored its own policies. Its Appeal
Letter did not contain the information required of EP 15. WSU told Fleetwood that certain
members would be on the board, so as to allow Fleetwood to conduct a conflict check, but then
changed the board’s composition which deprived Fleetwood to conduct a conflict check on the
board member who determined Fleetwood’s fate.

1 **Eighth**, WSU did not produce the entire Agency Record which, in turn, is proof positive
2 of “a willful and unreasoning action made without consideration and without regard to the facts
3 and circumstances” which, in this instance are (a) how Complainant’s allegations against
4 Fleetwood changed from January 18, 2019 to January 28, 2019 (e.g. no mention of “Eskimo Bros”
5 in the 1/18/19 complaint but it magically appears ten days later) and how (b) Complainant twice
6 told Ms. Brooks words to the effect of “don’t quote me on that.” *Lang v. Washington State Dep’t*
7 *of Health*, 138 Wn. App. 235, 255 (2007). Additional evidence of WSU ignoring the facts and
8 circumstances (and its own policy) is the fact that the triggering event that gave rise to
9 Complainant’s complaint (the January 9th lunch) took place off campus as EP 15 only applies to
10 off campus behavior if it negatively effects “the university community” and there is no evidence
11 of such a negative community-wide effect (AR 011).
12

13
14 As shown above, WSU ignored the circumstances giving rise to the complaint while also
15 ignoring the Complainant’s verifiable inconsistencies—inconsistencies that she twice highlighted
16 through her “don’t quote me on that” emails. WSU also ignored that Fleetwood’s mid-January
17 attempts to combat the false complaint that he was a rapist could “reasonably be considered
18 protected speech.”

19 **III. CONCLUSION**

20 WSU’s Decision should be reversed. As written, the findings in this case threaten the
21 legitimate purposes of WSU EP #15 and Title IX legislation at large.
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1 DATED this 31st day of July 2020.

2 **CROTTY & SON LAW FIRM, PLLC**

3
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CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085 the undersigned hereby certifies under penalty of perjury under the laws of the State of Washington, that on the 31st day of July 2020, the foregoing was delivered to the following persons in the manner indicated:

| | |
|---|---|
| Nathan E. Deen Attorney General of Washington 332 French Administration Building Pullman, WA 99164 | VIA REGULAR MAIL — VIA FACSIMILE — HAND DELIVERED — VIA EMAIL ✓ |
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CROTTY & SON LAW FIRM, PLLC



Matthew Crotty

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Who's Who?

Cadet P was the first MS-IV boyfriend of the Complainant and a problematic witness in the case because his truthful exoneration of Fleetwood would require self-incrimination. Hence, he had motive to misrepresent facts surrounding who said what, when. Also remarkable is the way Cadet P somehow avoided the primary accusation of “ruining the Complainant ’s reputation” since their ROTC relationship was “public knowledge” and the text record indicates the Complainant was originally frustrated with his spurning of her affection. In his own words, Cadet P said, “I don’t know what happened between you two. Like she’s my Ex and I hold no hard feelings. Like I’m friends to both of you.” Indeed, many of the antics which took place with Fleetwood appear to have been the Complainant ’s efforts to make Cadet P jealous.

Cadet M was “just a friend” of the Complainant who seemingly had romantic interests and became her chief conspirator/advisor in the case against Fleetwood (a friend prior to the case). The Complainant described multiple times how Cadet M was the one informing her of things such as the alleged sexual comments that Fleetwood was making about her. *She later told the ROTC board, that Cadet M. “did encourage her to make a complaint and helped her with it.”*

Cadet S is a free mason brother to Cadet M. Part of their brotherly pledge includes loyalty; hence, Cadet S felt obligated to support Cadet M. And certainly Cadet S was influenced by Cadet M to file against Fleetwood with ROTC.

Sergeant C, a Washington Army National Guardsman, was Cadet M’s roommate during the time of the complaint. He shared in a letter provided to WSU OEO (AR 223) how he witnessed the Complainant ’s interactions with Cadet M. who Sergeant C.: “I witnessed Cadet M.’s interaction ... and I would be remised if I did not bring to light that his behavior wither was coercive and complicative. I believe that he had intent to see that Patrick be dismissed from ROTC. I believe this because he has displayed character traits indicative of a spiteful power complex. He conveyed on numerous occasions to [the Complainant] that he had just gone through and investigation into his own character and that he knew the right courses of action to see to it that Fleetwood’s involvement in ROTC would be ended. This was explicit collusion.” Sergeant C also described how he “had observed [Cadet M.] spread rumor and inaccurate information in many other instances. Cadet M. has a sense of theatrics and has displayed a strong vengeful attitude on many occasions” (AR 223).