

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF WHITMAN

PATRICK FLEETWOOD,

Plaintiff,

vs.

WASHINGTON STATE UNIVERSITY,

Defendant.

NO. 20-2-00053-38

PETITIONER REPLY BRIEF

I. INTRODUCTION & SUMMARY OF ARGUMENT

Rather than responding to the facts of this case in a meaningful fashion, Defendant essentially claims that its decision vis-à-vis Fleetwood is unassailable because it is a government agency, and since it made a decision, that decision is beyond reproach. That is not the law. The Agency must support its decision by *substantial evidence*, i.e. “evidence sufficient to persuade a fair-minded rational person of the truth of the declared premise” which, in this case, is whether Fleetwood sexually harassed the Complainant and/or interfered with the student conduct system. *In re Welfare of A.B.*, 181 Wn. App. 45, 59 (2014).

1 In this case there is simply ***no*** evidence that Fleetwood sexually harassed Complainant.
2 Instead, the Complainant’s words show her motivation for filing a complaint was at best
3 speculation (AR 069-071) about Fleetwood’s potential to harass some woman in his future—and
4 even that speculation was based on rumor, not evidence, much less evidence of the “substantial”
5 sort. Complainant filed a complaint against her former sexual partner because she disapproved
6 of malicious, hugely exaggerated, and utterly false rumors she heard about Fleetwood’s alleged
7 promiscuity (AR 069-071). Complainant describes her complaint as a “character concern” about
8 Fleetwood’s ***future*** “professionalism as an officer and whether or not he will know his limmits
9 [sic] and ***potentially*** prey on some private right out of basic training ... have sex with here, leave
10 her, then ruin her reputation” (AR 069). Complainant told investigators how her reputation was
11 ruined well before she met Fleetwood: “People talk. Another thing that makes community hostile.
12 I dated a guy back in Sept-Nov. *Just by me dating that one person, people asking, how many*
13 *people has [Complainant] slept with now. It’s really bad”* (AR 163). While this is unfortunate
14 for Complainant, it is not Fleetwood’s fault.

17 The substantial evidence, as shown by Complainant’s own words, was Complainant’s
18 concern for her growing reputation as “the program slut.” Complainant admitted as much when
19 telling WSU’s investigator her purpose for making the complaint: “***[t]he spotlight gets off me***
20 ***and on his behavior in uniform...general character check on him***” (AR 167). WSU echoed this
21 concern in its June 2018 Investigation Report: “[Complainant] expressed worry about gossip and
22 rumors in the Program and being labeled a ‘[Program] slut.’ (AR 22). The Complainant told
23 investigators she feels uncomfortable in the Program with everyone [allegedly] hearing these
24 rumors from the Respondent about their sexual activities” (AR 22, OEO Investigation Report
25 ¶40). WSU legitimized Complainant’s refusal to take accountability for her own actions despite
26

1 a factual record proving that others—including the Complainant herself—actively discussed the
2 Complainant’s sexual activity, but never provided a single factual instance when Fleetwood
3 himself initiated such gossip (AR 036-46).

4 The Complainant’s various testimony reveals remarkable internal inconsistency
5 surrounding the limited situations she chose to construe as verbal harassment, including the now
6 infamous January 9, 2019 Red Bento coupon lunch, which she attended willingly because “hell
7 yea” she loves sushi (AR 062).

- 9 • First, she told ROTC, in sworn written statement: “I noticed that he was acting way
10 more nice than usual and *then he asked* if I wanted to resume our sexual behavior.
When I denied him he was persistent” (AR 070).
- 11 • But later she would tell investigators how she told Cadet M immediately after the
12 lunch, “Like *I think* Patrick wants to get back to me, don’t know how I feel” (AR
13 100).
- 14 • Later her story becomes “he was *heavily hinting he wanted to get back* with me”
15 (AR101).
- 16 • Nonetheless to ROTC, this Complainant wrote, “after Cadet Fleetwood was denied
17 sexual favors from me, he decided to share explicit content to other cadets in the
18 program about what conspired between us” (AR 068).
- 19 • Then, in Cadet M’s wild imagination of an interaction he did not witness, the tall
20 tale develops further: “It was some sushi place in Pullman. Patrick had coupon. ...
21 Some point, he propositioned her to sleep with him. Got more aggressive. She kept
22 saying no. He realized she wasn’t going to say yes, he started being mean. He
23 wanted to know why she wouldn’t sleep with him. ... He began insulting her about
24 her intelligence... [and afterward *he, Cadet M,* suggested] “it’s time for you to go
25 forward and talk about this to somebody”¹ (AR 089).

23 ¹ Lest the different Cadet-alphabets become confusing, the fair-minded will want to recall
24 testimony of SGT Jon Crodle, so important to understanding the real story of this case: Crodle
25 was Cadet M’s roommate who witnessed Cadet M’s interactions with the Complainant
26 eventually recognizing “the manipulative and coercive aspects of his character... with great
appall.” Crodle questioned the origination of the OEO complaint because he believed Cadet M,
“had intent to see that Patrick be dismissed from ROTC... and that he “displayed character traits
indicative of a spiteful power complex.” Moreover, Crodle noted, how he observed Cadet M to
“spread rumor and inaccurate information in many other instances” (AR 223).

1 Outside Cadet M’s imagination, truth does matter. In addition to never denying Fleetwood
2 sexual favors, this Complainant never produced explicit evidence of Fleetwood sharing “explicit
3 content” beyond the one time he confirmed (quietly, when asked) his “eskimo bros²” status with
4 Cadet P—a former boyfriend who *already knew the news* from others, presumably the
5 Complainant herself (AR 127).
6

7 In place of evidence, this case exists due to Complainant’s willingness to forward broadly
8 stroked lies from Cadet M. In fact, with time, members of WSU’s OEO investigation team
9 recognized the credibility concerns with Cadet M’s allegations central to the case (AR 17 at OEO
10 Investigation Report pg. 6 ¶40). By removing findings related to original allegation, *WSU OEO*
11 *itself effectively concluded there was no evidence of sexual harassment related to the*
12 *Complainant.* However, instead of sensibly dismissing the case, WSU investigators shifted
13 focus, recruiting witnesses to complain about reports of photo transmissions between male
14 friends—photo transmissions which happened in a much earlier time period and were entirely
15 unrelated to the Complainant, except insofar as she dredged he ex’s past for dirt just as she’d
16 previously asked Fleetwood to “Tell me things about Cadet P that will make me hate him” (AR
17 046).
18

19 Text evidence from the Complainant further clarifies she was never sexually harassed but
20 rather acted on pre-existing vindictive motivations related to her resentment that Fleetwood, along
21

22
23
24 ² A fair-minded rational person would conclude that a single instance of quietly using the code
25 “Eskimo brothers” to reply in the affirmative to a peer’s query about the Complainant’s sexual
26 activity does **NOT** qualify as a sexual harassment. As OCR affirms (see below), context matters!
This was a college campus. These guys were army buddies. And army or no army, fair-minded,
rational people talk about who hooked up with who. Indeed, Fleetwood, for his part, was decidedly
discrete.

1 with her previous boyfriend, had not remained monogamous (AR 36-46). Again, the
2 Complainant’s temperament is established clearly—in her own words. She was “sick of empty
3 promises” and shared the sentiment, “*Ayee todos chicos son pendejos*” which in Spanish
4 translation she claimed to mean “All men are Assholes” (AR 043, 045). Indeed, upon discovering
5 he had connected with another woman, this Complainant explicitly *threatened* to file a SHARP
6 complaint against him back in December 2018—and a full month before any incident of alleged
7 harassment took place, but later claimed the threat was a joke (Opening Brief 5 ¶5). As Fleetwood
8 can attest, unfounded complaints are *not* a joke: he has now been kicked out of ROTC, forced to
9 pay back over \$32,000 to the government, and is barred from pursuing the military career he has
10 envisioned since boyhood (Amended Complaint, ¶229).

12 Underscoring the weakness of WSU’s defense for the utter failure of this investigation, is
13 the latest response brief’s continued reliance on “evidence” (e.g. Fleetwood’s alleged “Eskimo
14 bros” and “she squirted my sheets³”) which WSU OEO’s Investigation Report (despite all its
15 flaws) effectively discarded. Which is to say, these were *rumors* the investigation failed to
16 corroborate, not “substantial evidence.”

18 For example, in the first lines of its Statement of Case, WSU’s Response misconstrues
19 interview testimony to support ongoing vague attacks against Fleetwood’s character—*all based*
20 *on rumor*. See, for example, Resp Brief, pg.3 line 25-26 where WSU falsely claims, “student T.P,
21 a self-described friend of Mr. Fleetwood, stat[ed] that Mr. Fleetwood ‘treats women like shit.’”
22 Counsel cites AR 127, but misquotes the investigation record. In actuality, Cadet P was asked by
23 investigators, “Ever *heard anyone talk about Patrick’s behavior* towards women? *What heard?*”
24

26 ³ It bears repeating, on January 31, 2019, WSU accused Fleetwood of telling others Complainant
“squirted all over my sheets” (AR 004) but WSU’s June 13, 2019 “Investigation Report” does not
substantiate the “squirted all over my sheets” allegation (AR 016 – 022).

1 At which point Cadet P answered *he had heard Fleetwood “treats women like shit”* (AR 127).
2 When probed later in the same interview, “Who said Patrick treats women like shit,” Cadet P
3 clarified, “I know his best friend [the non-credible conspirator Cadet M] talked about it...” (AR
4 130). When asked if females were saying things Cadet P clarified, “Only talked to Complainant”
5 (AR 130). And even then when asked by investigators, “Did she say what problems she was
6 having? Cadet P: “Just him being a dick head.” RMB: “Did she give example?” Cadet P: “None I
7 recall” (AR 130).
8

9 This Response Brief also draws attention to the most frequently misquoted, misdated, and
10 unsubstantiated allegation of this entire case: the notorious “who squirted whose what” rumor.
11 (See Response Brief, pg. 4, lines 2-3) The record shows Complainant *told investigators* Fleetwood
12 allegedly said something about squirting on some date (perhaps November 9th, when they were
13 sexually active) but then again maybe it was January 9th (long after they were broken up, which
14 makes little sense) but then WSU does not substantiate that allegation in its June 2019 report. *See*
15 *supra* n.3. The “sheet squirting” comment plays out as follows:
16

- 17 • **January 18, 2019:** ROTC Complaint. No mention of any “squirting” commentary
18 whatsoever (AR 069-071).
- 19 • **January 24, 2019:** OEO *Interview notes Version 1* “We talked after we had sex we
20 continued to communicate. **November 9th** started saying things about our sex life.
21 He was saying things like “she squirted all over my shit, Ekimio bro (If two people
22 had had sex with the same person) he is saying this in our professional area. Saying
23 a lot things that aren’t true, he is ruining my rep.” (AR 160)
- 24 • **January 24, 2019:** OEO *Interview notes Version 2*: “**Jan 9** that whole week
25 spreading rumors details about sex life in and out of uniform to whole battalion.
26 Telling people, she squirted on my sheets. Telling people, friend I date in program,
Eskimo Bro—two people who have sex with same person. In our professional
settings.” (AR 163)
- **January 28, 2019, 11:09 a.m.:** WSU OEO Rachel Brooks emailed Complainant
allegations: “On or around January 9, 2019, you subjected the Complainant to
comments that were sexual explicit when you made comments such as ‘She
squirted all over my sheets.’” (7/31/2020 Crotty Decl Ex. A *citing* WSU Prod 506)
- **January 28, 2019, 11:21 a.m.:** Complainant writes back “I would appreciate it if
the direct quotes weren't used.” (*Id.* WSU Prod 505)

- 1 • **January 28, 2020 11:23 a.m.:** Brooks emails Complainant: “I will make the
2 corrections and resend to you.” *Id.*
- 3 • **January 28, 2019 11:26 a.m.:** Complainant emails Brooks, “No you can send it as
4 soon as you see fit. But again the less quoting you can in the letter the best in my
5 opinion.” *Id.*
- 6 • **January 28, 2019 11:30 a.m.:** OEO Brooks emails Complainant, “Once my senior
7 investigators looks [sic] it over, I will address those quotes and resend” (WSU Prod
8 504).
- 9 • **January 30, 2019 8:31 a.m.:** OEO Brooks emails Complainant, “Here is the
10 revised edits, if there look [sic] ok I will move forward...During **the week of**
11 **January 9, 2019**, [he] spread rumors...such as telling others that she ‘Squirted all
12 over my sheets...’” (WSU Prod 503-504).
- 13 • That version of the allegation carried over to the **January 31, 2019** letter received
14 by Fleetwood, was repeated in the allegations of the **June 13, 2019** Investigation
15 Report, but mysteriously disappeared from the *Findings* in the **June 13, 2019** OEO
16 Investigation Report, presumably because nobody corroborated the details nor the
17 date of the originally problematic hearsay. *See supra.* n.3.

18 Yet despite all of this WSU still argues, “On one occasion, *he told others*, ‘she squirted all
19 over my shit’ (AR 160)” (Response Brief, pg. 4, lines 2-3) That is not substantial evidence.

20 Meanwhile, physical, corroborated, exculpatory evidence debunking allegations that
21 Fleetwood attempted to interfere or intimidate students *does exist* in the factual record; however,
22 it requires a level of attention to factual chronology which seemingly did not exist in this
23 investigation. Recall, how on or about January 14-15, 2019, Fleetwood learned through the
24 overactive rumor mill that Complainant accused him of rape/sexual assault (See Opening Brief pg.
25 16-21). As a fair-minded, rational person who is appalled by rape, Fleetwood proceeded to defend
26 his reputation from false and defamatory allegations. He did that in three brief communications
with friends which took place within 24 hours on January 15-16 and well before the Complainant
had invoked the student conduct system for the reasons reported to ROTC, and later revised to
WSU OEO. Again, *the Complainant’s own words debunk the allegations* WSU forwarded on her
behalf. See for example, AR 166, January 24 interview comments from Complainant which
establish that Fleetwood had learned about the OEO complaint, *two days previously on Tuesday*,

1 **January 22**, “I didn’t know he’d find out so quickly.” But more to the point, Complainant admits
2 that she “don’t know how he would react”, AR 166, meaning that WSU has no substantial evidence
3 to accuse Fleetwood of engaging in retaliatory conduct on January 15, 2019, when Complainant,
4 on January 24, 2019, still “don’t know” how Fleetwood will react to a harassment complaint
5 Fleetwood (in Complainant’s words) first learned about on January 22, 2019, (*compare* AR 13, ¶5
6 *with* AR 166 bottom of page).

7
8 After receiving formal notice first from ROTC (January 19, 2019) and then from WSU
9 OEO (January 31, 2019) that an actual student conduct harassment complaint (not the rumored
10 rape sexual assault complaint) **had** indeed been filed, Fleetwood entirely ceased communication
11 fully adhering to the no-contact directive. Indeed, the last time he spoke to the Complainant was
12 January 15, 2019, **three days before** she approached WSU ROTC with her initial sworn statement
13 (AR 064, AR 069).

14
15 Lastly, there is ample evidence that WSU’s actions were arbitrary and capricious because
16 it failed to act upon available evidence surrounding witness credibility—especially Cadet M’s
17 malicious motives, while also disregarding Complainant’s anti-male bias, Complainant’s real
18 stated motives, and the extenuating constellations of circumstance: College kids have sex, and
19 college kids talk about who they have sex with. That does not qualify as sexual harassment.
20

21 **II. ARGUMENT**

22 **A. There is no substantial evidence, that Fleetwood sexually harassed Complainant.**

23 WSU’s response instructs the Court to “look to OCR’s interpretation” of sexual harassment
24 which is “sufficiently severe, persistent, pervasive” to warrant sanctions (Resp Brief pg. 15 lines
25 1-6). Fleetwood agrees that the Court should look to the OCR’s interpretation of “sexual
26

1 harassment” because applying OCR interpretation to this case shows that there is no substantial
2 evidence of sexual harassment (OCR 62 FR 12034-01).

3 *First*, OCR advises investigators to consider the “*totality of the circumstances*” including
4 first and foremost, “*evidence about the relative credibility of the allegedly harassed student and*
5 *the alleged harasser. For example, the level of detail and consistency of each person's account*
6 *should be compared in an attempt to determine who is telling the truth*” (OCR 62 FR at 12041).
7
8 WSU to this day attacks Fleetwood’s credibility ad nauseum, using broad strokes of “he’s sexist,”
9 yet ignores recurrent inconsistencies in Complainant’s story, her outright threats to the Fleetwood,
10 her vocal anti-male bias, along with her blatant disregard for the details of truth established in her
11 early email dialogue with WSU OEO intake (See Opening Brief §II – Incident Timeline - ¶3-4,
12 10, 11, 22, 25, 26, 30-40). WSU’s Response Brief would have us believe these emails (referenced
13 in §II, ¶31-37 of the Opening Brief) between Complainant and WSU-OEO are somehow irrelevant
14 to the case⁴, thereby justifying their non-inclusion in the Agency Record yet these emails
15 demonstrate Complainant’s credibility concerns and the credibility of WSU’s investigation.
16

17 *Second*, OCR continues, advising investigators to consider, “*other contemporaneous*
18 *evidence. For example, did the student claiming harassment write about the conduct, and his or*
19 *her reaction to it, soon after it occurred (e.g., in a diary or letter)?*” (OCR 62 FR at 12041) Here
20 Complaint’s first documentation occurred on January 18, 2019, *nine days after the alleged*
21 *harassment*, when Complainant wrote about her experiences in her sworn statement to ROTC,
22 that sworn statement makes no mention of “squirting on sheets” or “Eskimo bros” or “Chapstick”
23

24 _____
25 ⁴ It would appear WSU wants to “fancy dance” around blatant omissions to the Agency Record
26 by drawing some arbitrary, non-existent boundary between WSU OEO and WSU Office of
Community Standards (located just a few doors down the same Pullman Administrative Hall). But
common sense and the facts dictate you can’t have one (OEO first investigating) without the other
(OCS) making decisions off of the “facts” OEO found.

1 but those allegations show up in WSU’s January 31, 2019, OEO complaint against Fleetwood
2 (*compare* AR 069-071 *with* AR 3-6).

3 **Third**, OCR guidance includes the obvious point, “*another way to assess credibility is to*
4 *see if corroborative evidence is lacking where it should logically exist*” (OCR 62 FR at 12041).
5 Here the only corroboration of Complainant’s original (and conflicting)⁵ allegations of sexual
6 harassment was CDT M (who wasn’t at the lunch where the harassment allegedly occurred) who
7 was later deemed to have been untruthful during the investigation (*compare* AR 16 (identifying
8 Student A as CDT M) *with* AR 17, ¶17 (identifying Student A as providing untrue information)
9 *and* AR 89 CDT M’s interview).

11 **Fourth**, OCR recommends an examination of past history: “*Evidence that the alleged*
12 *harasser has been found to have harassed others may support the credibility of the student*
13 *claiming the harassment; conversely, the student's claim will be weakened if he or she has been*
14 *found to have made false allegations against other individuals*” (OCR 62 FR at 12041) Here
15 Complainant’s first documentation occurred on January 18, 2019, *nine days after the alleged*
16 *harassment*, when Complainant wrote about her experiences in her sworn statement to ROTC,
17 that sworn statement makes no mention of “squirting on sheets” or “Eskimo bros” or “Chapstick”
18 but those allegations show up in WSU’s January 31, 2019, OEO complaint against Fleetwood
19 (*compare* AR 069-071 *with* AR 3-6).

21 **Third**, OCR guidance includes the obvious point, “*another way to assess credibility is to*
22 *see if corroborative evidence is lacking where it should logically exist*” (OCR 62 FR at 12041).
23

24 _____
25 ⁵ *Compare* AR 70 “I noticed that he was acting way more nice than usual and **then he asked** if I
26 wanted to resume our sexual behavior. When I denied him he was persistent” *with* AR 100 “Like
I think Patrick wants to get back to me, don’t know how I feel.”

1 To read interview notes, WSU looked long (four months) and far (across the state) to find another
2 woman willing to further denigrate Fleetwood’s reputation—and had no success. *See infra.*
3 Meanwhile, several witnesses recruited to support Complainant’s allegations plain simply refuted
4 the malicious characterization presented by the original Complaint. See, for example, a
5 conveniently ignored email (not in the Agency Record) from a former female Cadet WSU pursued
6 after Complainant claimed she the program because of Fleetwood:
7

8 From: [REDACTED] 38
9 Sent: Wednesday, April 10, 2019 12:24 PM
10 To: Brooks, Rachel M <rachel.m.brooks@wsu.edu>
11 Subject: Re: WSU Office for Equal Opportunity

12 Good Afternoon,

13 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.
14 However, I never felt apprehensive or felt that [REDACTED] 38 was unapproachable. I discussed that the case did not
15 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
16 have any information that would be helpful to this case or I would have went to speak to him myself.
17 The individual who reported the [REDACTED] 38 in question thought I had been involved with this [REDACTED] 38 as well; however, this is
18 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
19 anymore. While I am no longer friends with the [REDACTED] 38 in question it has nothing to do with anything pertaining to this
20 case or his conduct. I explained to [REDACTED] 38 that me leaving the [REDACTED] 38 program had nothing to do with the alleged
21 [REDACTED] 38

22 Also, I believe the individual that reported this [REDACTED] 38 confused me with another female [REDACTED] 38 my friend [REDACTED] 38.
23 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
24 help answer your questions about his conduct. Her email is [REDACTED] 38

25 Have a good day,
26 [REDACTED] 38

(7/31/2020 Crotty Decl at Ex. A *citing* WSU Prod 427).

16 Similarly, Witness L.A, who did meet with investigators, also failed to corroborate
17 allegations of former sexual harassment. Instead, this former Cadet, despite significant leading by
18 Investigators, claimed, “RP never made me feel uncomfortable” (AR 087). When asked, again,
19 about any potential verbal offenses, she clarified, “It’s not what he say, its more about how he says
20 it, his tone of voice lets you know he doesn’t care” (AR 83-87 versus AR 069). This “failure to
21 corroborate” was clearly a pattern as Cadet HFT, another female recruited by Complainant, not
22 only failed to agree with the Complainant’s negative characterization, but also refuted details
23 related to stated concerns founded in false rumor.

25 **Cadet HFT:** “When this case is developing, people saying Patrick is rude to women. ... I
26 think his demeanor is neutral, I don’t see it.”

WSU: Anyone ever come to you and said Patrick did this or that.

Cadet HFT: Only [Complainant] “She only one that ever came with specific ‘Patrick
did this to me’” (AR 143-145).

1 Fleetwood also provided Ms. Metzner, and by extension the Appeals Board, with numerous
2 character references from other female colleagues—none of whom experienced harassment by Mr.
3 Fleetwood.
4

5 Indeed, witnesses called in to support the allegations against Fleetwood instead introduced
6 evidence to further question the Complainant’s motivation Complainant’s additional motivation
7 for filing is best explained by female witness Cadet HFT (recruited by the Complainant):

8 **WSU RMB:** Did [Complainant] ever say anything about being afraid of
9 retaliation?

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

14 And the conflicts were not just with Complainants’ reporting of other females’ sentiments. See
15 also the testimony of Cadet P, Complainant’s ex-boyfriend, which contradicts accusation that
16 Fleetwood publicly gossiped about Complainant.

17 **WSU RMB:** ever heard Patrick refer to you and him as eskimo bros? Context?

18 **Cadet P:** Yeah in context I found out [not from Fleetwood] he had sex with
19 Complainant. ***I asked him about her***, is it true. He said yeah, we’re eskimo bros
now.

20 **WSU RMB:** Know if anyone else heard?

21 **Cadet P:** We sat down, I asked like what going on... that type of context. (AR
22 130)

23 Meanwhile, Complainant accused other men of treating her like shit (AR 038-39) or being
24 promiscuous (AR 044), or being pendejos meaning, according to Complainant, “Dumbass,
25 asshole, all of the above lol” (AR 45) because “lol” = laugh out loud. Here, the Complainant’s
26 logic presents a ridiculous double standard: a woman slandering all men is laughable whereas she
believed Fleetwood’s military career should be ended due to **rumors** of less egregious verbal

1 behavior, which as it turned out was him making one quiet “eskimo bros” comment in a
2 conversation he did not initiate with a man who previously possessed intimate knowledge of the
3 Complainant’s sexual promiscuity within the program (AR 130).

4 ***Fourth***, the OCR writes, “[i]n order to be actionable as harassment, sexual conduct must
5 be unwelcome. Conduct is unwelcome if the student did not request or invite it ***and ‘regarded the***
6 ***conduct as undesirable or offensive’***” (OCR 62 FR at 12040). In this case Complainant accused
7 Fleetwood of improperly discussing her relationships in the ROTC program but she also discussed
8 her relationships with other ROTC program members did so using swear words (See, as example
9 AR 040-046). To use OCR verbiage, ***“...if a student actively participates in sexual banter and***
10 ***discussions and gives no indication that he or she objects, then the evidence generally will not***
11 ***support a conclusion that the conduct was unwelcome”*** *Id.* From day one, when ***Complainant***
12 ***initiated new intimacy*** with Fleetwood asked her outright, “Do you get offended or not like
13 upsetting and dirty memes.” And Complainant responded, “Bring it on kid” (AR 034).

14 ***Fifth***, OCR provides useful, fair-minded, rational guidance to help investigators consider
15 if ***“conduct of a sexual nature is sufficiently severe, persistent, or pervasive”*** to create a hostile
16 environment. ***“In most cases, a hostile environment will exist if there is a pattern or practice of***
17 ***harassment or if the harassment is sustained and nontrivial”*** (OCR 62 FR at 12041). In this case
18 it would seem clear, that one verifiable incident does not constitute a pattern. And even if one
19 admits the unrelated photo transmissions which no one previously complained about, Fleetwood
20 ceased that behavior as well—and long before it constituted a “sustained” pattern.

21 WSU also cites a 2010 Dear Colleague letter to highlight its allegedly “eerily similar”(?)
22 example involving fictionalized high school kids. The fictional example in no way “mirrors” this
23 case (Resp Brief pg. 15 lines 7-24). Instead, this seemingly desperate attempt to find a compelling

1 comparator misconstrues the cited story wherein “One of the student’s teachers and an athletic
2 coach witnessed the name calling” but ignored it (OCR Dear Colleague Letter at 6 (October 26,
3 2010)). That fictionalized school employee “also noticed the new student’s anxiety and declining
4 class participation” *Id.* In the Dear Colleague example, evidence of verbal harassment *was*
5 corroborated by a reliable witness—which never happened in Fleetwood’s saga. *Id.* Moreover, an
6 educational impact on that fictionalized underaged victim *was* evident. *Id.* No such educational
7 impact on this Complainant has been established. Indeed, when asked by WSU during intake about
8 impacts, Complainant responded, “They’ve been clear this has no effect... it makes it a little
9 awkward for me but I feel like I’m in good things” (AR 167)

11 Furthermore, OCR’s purpose in citing this example was to illustrate how a fictionalized
12 school did *not* comply with its Title IX obligations because it failed to investigate the situation
13 (OCR Dear Colleague Letter at 7 (October 26, 2010)). WSU, on the other hand, dragged Fleetwood
14 through an investigation for nearly a year—and long after initial allegations had been disproven.
15 The remedies recommended by OCR also do not equate: “An effective response also might have
16 included training students and employees on the school’s policies related to harassment, instituting
17 new procedures by which employees should report allegations of harassment, and more widely
18 distributing the contact information for the district’s Title IX coordinator...” *Id.* Nowhere does
19 OCR guidance suggest the punitive, career-ending “remedy” levied against the innocent
20 Fleetwood.
21

23 WSU cites *Mercer Island* for the proposition that name calling is, standing alone,
24 actionable under Title VI. What *Mercer Island* actually held was “*That which occurred here went*
25 *beyond simple teasing or name calling*” and that pronouncement was made in the following
26 context:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Student A made it clear to B.W. not only that his skin color made him look physically different from his peers, but that it also was the basis for a lack of intelligence. ‘Shut up, you stupid Black’ leaves no doubt as to the perceived cause of a lack of intelligence.

In fact, during the second incident, Student B joined Student A in taunting B.W. It is not difficult to imagine the emotional toll that these instances of harassment could take on a seventh grade boy in an unfamiliar environment. Yet, there is no need to imagine: the emotional stress suffered by B.W. was evidenced by crying in front of his peers, submitting disturbing essays to his teacher who blamed him for the conflict with Student A, and receiving uncharacteristically low grades. *Mercer Island Sch. Dist. v. Office of the Superintendent of Pub. Instruction*, 186 Wash. App. 939, 981 (2015).

What happened at WSU is on a planet wholly different than that of *Mercer Island*.

There is no substantial evidence that Fleetwood harassed Complainant because of her gender.

B. There is no substantial evidence that Fleetwood dissuaded anyone from using the student conduct system.

In order for the government to show “substantial evidence” that Fleetwood dissuaded someone from using the student conduct system the government must show that Fleetwood knew that the student conduct system was in play, meaning that someone was intending to use that system. This is important because knowledge of that intent constructively puts Fleetwood on notice that such interference would be improper. But that’s not what happened here. Instead Fleetwood’s only interaction with the future Complainant and witnesses took place when he heard was being labeled a criminal, a rapist, an assaulter. WSU arbitrarily and capriciously ignores these surrounding circumstances and argues Fleetwood’s attempted to discourage Complainant and JS from using the student conduct system (Resp Br. pg. 22). This is simply not true. The actual evidence is:

- On January 15, 2019, Fleetwood learned through two friends that Complainant was claiming Fleetwood “committed assault” on her, i.e. a crime (AR 032-33).

- On January 15, 2019 Fleetwood called Cadet S to verify what he'd been told by Cadet R, but Cadet S did not pick up, so Fleetwood messaged him on Facebook (AR 063). That same day, January 15, 2019, three days before any complaint would be filed, Fleetwood called the Complainant, and she returned his call for a sixty second conversation when he asked her to stop talking about their relationship as if it had not been consensual because he had overwhelming evidence to show the relationship had been consensual (AR 032-33, 064).
- Fleetwood's own description of these January 15-16, 2019 interactions corroborate the text evidence and actual timeline: in a phone call *which the Complainant initiated* on January 15 at 5:10 pm, Fleetwood relayed, "there's been some word out that you and whoever are trying to say that I committed assault on you. I just want you to know that if you bring your argument up [read: the rumored assault charge] that it will not last against the overwhelming evidence I have. *Do what you want*, but I'm advising you that it won't turn out great for you..." (AR 032, 064).
- On January 15, 2019, **three days before any complaint was filed**—and the same day a key witness texted Fleetwood, "Relax ... she's over it;" the same day the Complainant herself told Fleetwood words to the effect of "don't worry, there's not going to be a complaint"—**was the last time Fleetwood spoke to the Complainant** (AR 032, 063).
- Within the same hour, January 15, 2019, **before any complaint had been filed, at a time he believed he was being falsely accused of sexual assault**, Fleetwood also exchanged texts with his friend Cadet P, the Complainant's ex-boyfriend, and Cadet S (see AR 021-22, 033, 064, 070). And, on January 15, 2019, **Cadet S approached Fleetwood** explaining he wanted to discuss rumors he had heard through the Complainant after PT (Physical Training) (AR 032, 066). The next day **Cadet S again approached Fleetwood** about the rumors to which Fleetwood told Cadet S, "You don't know anything. Stay out of it." The encounter was somewhat heated, but all accounts agree Fleetwood did not threaten Cadet S in any way (AR 022, 032, 067).
- Complainant's additional motivation for filing is best explained by female witness Cadet HFT (recruited by the Complainant):

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

Answer: I think reputation. Hard to have rep already established like when you've slept around in program, to have rep that freshman girl who slept around. Didn't want to be girl who made rape case and people think that. Don't think she was scared of Patrick, think he has fragile ego but not aggressive. **Thinks she was more afraid of reputation,**

1 **don't want to be girl that made false rape case**⁶ (AR 144-
2 145).

3 WSU ignores all of this and erroneously concludes that a reasonable fair minded person
4 would deem Fleetwood's brief efforts to defend himself to friends against the earlier rape rumors
5 to be dissuading the use of a student conduct system Fleetwood did not know was in play.
6 Moreover, WSU ignores context again in accusing Fleetwood of poisoning Cadet P, a long time
7 ROTC colleague. When Fleetwood said, "if I need evidence or back up" in the form of "Patrick
8 wouldn't do that," a fair-minded rational person would discern that one friend confiding in another
9 to seek a character witness to defend against an assault charge "Patrick wouldn't rape a woman.
10 Patrick wouldn't sexually assault a woman" does not constitute activity dissuading someone from
11 using the student conduct system. Moreover, Fleetwood *knew* the Complainant had discussed the
12 "consensual" nature of their interactions since that witness, Cadet P, a formal sexual partner of the
13 Complainant, had approached him to ask about it, "In context I found out he had sex in [sic]
14 Brianna. I asked him about he [sic], is it true" (AR 130)

15
16 Nonetheless WSU OEO presented the findings which the Office of Community Standards
17 upheld: "investigators determined that the Respondent attempted to interfere⁷ with the [not yet
18 existent] investigation on three separate occasions [all three days before any complaint was filed]"
19
20

21
22 ⁶ Here again, we see corroborated in the record Fleetwood's version of events wherein he made
23 three brief efforts to defend himself against the January 15-16 rape rumors which were unrelated
24 to the sexual harassment report Complainant later filed. Indeed, this witness apparently believe
the Complainant filed her actual January 18 complaint in part to challenge any rumors that she
would be the "girl who made rape case."

25 ⁷ WSU Response Brief engages in polemics surrounding the word "retaliation" versus
26 "intimidation" or "interference" claiming, at pg. 19, n. 9, "any discussion of case law considering
retaliation in employment or any other context is inapposite." Nonetheless, "retaliation" *was* one
word used by investigators to describe interference. See for example witness interview with Cadet
HFT: "RMB: Did she say anything about being afraid of retaliation" (AR 144). And no, Cadet
HFT did not think Complainant was afraid of retaliation about reporting. *See supra*.

1 (AR 022 ¶43). The irony occurs in the report writers' unnecessary repetition within the same
2 paragraph: "OEO finds that the Respondent did interfere with the investigation and his interference
3 could have had [sic] impacted the witnesses [sic] willingness to provide truthful information" *Id.*
4 Which is to say, there's zero indication that any witnesses felt unwilling to provide information,
5 but in Cadet M's case, the information they provided remained far from truthful.

7 **C. Agency's action was arbitrary and capricious.**

8 An agency's actions are arbitrary and capricious when the agency commits a "willful and
9 unreasoning action, taken without regard to or consideration of the facts and circumstances
10 surrounding the action." *Linville v. Dep't of Ret. Sys.*, 452 P.3d 1269, 1275 (Wn. Ct. App.
11 2019)(internal quotations omitted).

12 As set out above, WSU did not consider the facts nor the relevant circumstances
13 surrounding Complainant's motivations, Complainant's ever-changing story, and Complainant's
14 documented anti-male bias.

16 **D. Rebuttal to Agency's process arguments.**

17 In lengthy paragraphs, pages 7-12, WSU presents minimal relevant evidence, but rather
18 filibusters through miscellaneous rules and statutes for EP15 investigations. The semantics of who
19 is who at WSU are irrelevant to Fleetwood's fate. Indeed, they only serve to obfuscate the recurring
20 failure of justice which began with OEO, continued with the Center for Community Standards,
21 and was ultimately upheld by the University Appeals Board (AR 216-227, 236-238). WSU
22 Counsel scolds Fleetwood for his reliance on the OEO Investigation which constitutes the bulk of
23 the Agency Record provided, claiming dubiously that "Ms. Metzner and the University Appeals
24 Board also reviewed scores of other pages of evidence considered oral testimony and additional
25 evidence submitted by Fleetwood" (Response Brief pg. 17-18 lines 11-15, 1-6). If there are "scores
26

1 of pages of additional evidence” the Mr. Fleetwood, along with the court certainly deserve to see
2 it. Meanwhile, it would appear WSU wants readers to believe the Office for Equal Opportunity’s
3 existence a few doors down the hall from Center for Community Standards somehow indemnifies
4 the second entity from responsibility for the first entity’s investigative failures. This argument is a
5 shameless haze designed to sidestep real issues of Complainant credibility, investigative fumbles,
6 and now a deceptively inconsistent production of Agency Record wherein WSU would have us
7 believe that OEO emails to the Complainant deserve no place in the Agency Record.
8

9 Pages 10 and 11 of WSU’s response further blows smoke to blame-shift delays in what
10 should have been a simple investigation onto Fleetwood. Once Fleetwood got notice of the
11 opportunity to review the records he (and his father) attempted to do so by exercising his right to
12 obtain them through a public record request—a request that was not properly responded to and
13 which forms the basis of the public record act claims Fleetwood and his father are currently
14 bringing against WSU.
15

16 Moreover, after reviewing the record, Fleetwood did address first Ms. Metzner in his
17 conduct hearing, and later then the University Appeals Board with his documented concern with
18 Ms. Metzner’s letter: “it is apparent that no effort was put into examining the deeply flawed nature
19 of the original Investigation Report” (AR 220). He also provided new evidence including the
20 credible letter from Sgt. Crodle about Cadet M’s malicious collusion; however, to Fleetwood’s
21 knowledge “[Ms. Metzner] never followed up/contacted the witness [he provided]” (AR 221-222).
22 Meanwhile, WSU has provided nil in the way of evidence supporting a conclusion that these latter
23 phases of the WSU’s adjudication relied on any new evidence, than presented in the OEO
24 Investigation.
25
26

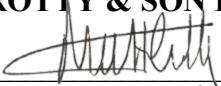
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

III. CONCLUSION

WSU's Decision should be reversed.

DATED this 7th day of October 2020.

CROTTY & SON LAW FIRM, PLLC

By: 
MATTHEW Z. CROTTY, WSBA #39284

Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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 7th day of October 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 ✓ |
|---|---|

CROTTY & SON LAW FIRM, PLLC


Matthew Crotty