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TO WHOMEVER IT MAY CONCERN,

PLEASE NOTE THAT I HEREBY FILE THIS FEDERAL CIVIL RIGHTS COMPLAINT (TITLE IX) AGAINST HARVARD UNIVERSITY.

YOURS TRULY,

KURSAT CHRISTOFF PEKGOZ, PH.D.

CC: ASSISTANT SECRETARY FOR CIVIL RIGHTS, HONORABLE KENNETH MARCUS
CC: ASSISTANT ATTORNEY GENERAL FOR CIVIL RIGHTS, HONORABLE ERIC DREIBAND
CC: OFFICE FOR CIVIL RIGHTS, ELECTRONIC SUBMISSION PORTAL

PROLOGUE

GENERAL. Men face more discrimination than women in 91 of 134 countries, including the United States.¹ The American criminal justice system is biased against male defendants.² Likewise, there are concerns about discrimination against men in the American family court system.³

NO WAGE GAP. The persistent myth that men earn more than women for the same work is fueled by flawed comparisons which “do not control for many factors that can be significant in explaining earnings differences.”⁴ Men “are significantly more likely ... to work longer hours.” In addition, a woman’s decision to take time off for marriage and childbearing is another factor that may result in a lower salary.⁵ This was demonstrated in a 2005 study by the Congressional Budget Office which found “no gender gap in wages among men and women with similar family roles.”⁶ Furthermore, it is axiomatic that men work in more dangerous jobs and thus are more likely to suffer grievous harm: “riskier jobs get paid more.”⁷ Women control 60% of personal wealth and buy 85% of all customer purchases: moreover, 40% of women earn more than their husbands.”⁸ In 2010, *Time* reported that “single women under 30 actually earned, on average, 8% more than their male counterparts.”⁹ A recent study found out that women are 36% more likely than men to receive a job offer.¹⁰

BIAS IN EDUCATION. The education system in America is especially biased against men. 77% of all teachers in the public education system are women.¹¹ Girls have higher grades than boys in all categories.¹² Numerous studies “have shown that

¹ <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0205349>

² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2144002

³ <https://ir.library.illinoisstate.edu/cgi/viewcontent.cgi?article=1631&context=etd>

⁴ U.S. Bureau of Labor Statistics, *Highlights of women’s earnings in 2013*, December 2014, <https://www.bls.gov/opub/reports/womens-earnings/archive/highlights-of-womens-earnings-in-2013.pdf>.

⁵ Ketterer, Sarah, “The ‘Wage Gap’ Myth That Won’t Die,” *Wall Street Journal*, September 30, 2015, <https://www.wsj.com/articles/the-wage-gap-myth-that-wont-die-1443654408>.

⁶ O’Neill and O’Neill, *What Do Wage Differentials Tell us About Labor Market Discrimination?*, National Bureau of Economic Research, March 2005, p. 33, https://www.nber.org/papers/w11240.pdf?new_window=1&mod=article_inline

⁷ Worstall, Tim, “Here’s Your Gender Pay Gap - Fatal Occupational Injuries,” December 21, 2016, *Forbes*, <https://www.forbes.com/sites/timworstall/2016/12/21/heres-your-gender-pay-gap-fatal-occupational-injuries/#750063c26c3e>.

⁸ “Statistics on the Purchasing Power of Marketing,” *girlpowermarketing*, (emphasis in original) <https://girlpowermarketing.com/statistics-purchasing-power-women/>.

⁹ Williams and Ceci, *supra*, , quoting, O’Neill and O’Neill, *What Do Wage Differentials Tell us About Labor Market Discrimination?*, National Bureau of Economic Research, March 2005, p. 33, https://www.nber.org/papers/w11240.pdf?new_window=1&mod=article_inline; citing, Luscombe, “Workplace Salaries: At Last, Women on Top,” *Time*, September 1, 2010, http://content.time.com/time/business/article/0,8599,2015274,00.html?mod=article_inline.

¹⁰ <http://insight.movemeon.com/insight-analysis/gender/women-more-likely-to-get-hired-than-men>

¹¹ <https://nces.ed.gov/pubs2017/2017072.pdf>

¹² <http://www.apa.org/news/press/releases/2014/04/girls-grades.aspx>

stereotyping [by female teachers] can bias teachers' assessment and grades" against boys.¹³ New civil rights data published by the Department of Education makes it clear that concerns over the underrepresentation of women in STEM education are outdated.¹⁴ Women are the overrepresented sex among college students nationwide.¹⁵ They are also the majority of law students¹⁶ and medical students.¹⁷ Almost every college offers a Women's Studies Department,¹⁸ but no equivalent programs exist for men.¹⁹

BIAS IN SEXUAL HARASSMENT ADJUDICATION. According to institutions that release such data, the overwhelming majority of all persons sanctioned under Title IX theory are male.²⁰ However, men and women experience sexual victimization at equal rates²¹ and the majority of male victims report female perpetrators.²² The majority of Title IX administrators are women.²³

CHILLING EFFECT. Male students/professors who deviate from the orthodoxy of campus gender politics often face mobbing or termination. There are many such examples, including cases covered by the press.^{24,25,26,27,28}

¹³ Camille Terrier, *Boys Lag Behind: How Teachers' Gender Biases Affect Student Achievement*, November 2016, MIT Department of Economics and National Bureau of Economic Research, ("Research shows that teachers' biases generate self-fulfilling prophecies, produce stereotype threats, affect students' interest in a subject, and affect students' levels of effort." pp. 1-3 (citations omitted) <https://seii.mit.edu/wp-content/uploads/2016/11/SEII-Discussion-Paper-2016.07-Terrier-1.pdf>.

¹⁴<https://www.ed.gov/news/press-releases/us-department-education-releases-2015-16-civil-rights-data-collection>

¹⁵https://nces.ed.gov/programs/digest/d16/tables/dt16_322.20.asp

¹⁶<https://www.nytimes.com/2016/12/16/business/dealbook/women-majority-of-us-law-students-first-time.html>

¹⁷https://www.washingtonpost.com/local/social-issues/women-are-now-a-majority-of-entering-medical-students-nationwide/2018/01/22/b2eb00e8-f22e-11e7-b3bf-ab90a706e175_story.html?utm_term=.3873f1eff392

¹⁸ <https://datausa.io/profile/cip/050207/>

¹⁹ The creation of a Men's Studies program is not a hypothetical request. There are scholars who would like to teach such subjects (Edward Stephens, Warren Farrell) and there is also demand for such programs. For example, a Facebook page called "Gender Studies for Men" has 5000+ likes on Facebook, a not-so-insignificant number since most Women's Studies programs have small cohorts:

<https://www.facebook.com/GenderStudiesForMen/>

²⁰ *Stanford University's 2018 Title IX Report*:

<https://news.stanford.edu/2018/02/27/provost-issues-campus-wide-report-title-ix-sexual-harassment-cases/>

Yale University's 2018 Title IX Report:

[https://provost.yale.edu/sites/default/files/files/FINAL%20February%202018%20Report\(1\).pdf](https://provost.yale.edu/sites/default/files/files/FINAL%20February%202018%20Report(1).pdf)

²¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4062022/>

²² <https://www.sciencedirect.com/science/article/pii/S1359178916301446?via%3Dihub>

²³ https://www.nas.org/articles/gender_inequity_among_the_gender_equity_enforcers

²⁴ <http://www.foxnews.com/us/2018/03/12/college-student-kicked-out-class-for-telling-professor-there-are-only-two-genders.html>

²⁵ <https://www.andrewlawton.ca/pro-free-speech-professor-rick-mehta-fired-by-acadia-university/>

²⁶ <https://thehill.com/blogs/blog-briefing-room/news/409090-catholic-university-suspends-dean-over-comment-that-degraded>

²⁷ <https://pjmedia.com/trending/students-demand-professor-fired-after-he-champions-due-process-says-accusers-sometimes-lie/>

²⁸ <https://www.washingtontimes.com/news/2019/jan/7/peter-boghossian-portland-state-univ-professor-fac/>

COMPLAINT

The American Psychological Association has recently proclaimed that masculinity is a form of (or a driving factor for) mental illness.²⁹ I hereby file this Title IX complaint against Harvard University, a sponsor and accomplice of APA.

1. By using APA's guidelines, Harvard University creates a set of different standards of behavior/sanctions/treatment for men and women. This is a violation of Title IX.^{30,31}
2. By using APA's guidelines, Harvard University has adopted biased training materials which rely upon sex stereotypes.³² Title IX specifically prohibits such biased training materials.^{33,34}
3. By using APA's guidelines, Harvard University creates a hostile environment against men.³⁵
4. By using APA's guidelines, Harvard University discourages men from seeking counseling services. No reasonable male person would seek counseling at a clinic where his gender is considered to be a form of mental illness (or a driving factor for mental illness). Such dissuasion is prohibited by Title IX.³⁶
5. Harvard University violates Title IX by endorsing an external agency (i.e., APA) which discriminates on the basis of sex in offering services.³⁷

²⁹ <https://www.apa.org/monitor/2019/01/ce-corner.aspx>

³⁰ 34 CFR § 106.31(b)(4) prohibits "separate or different rules of behavior, sanctions, or other treatment."

³¹ APA does not maintain that femininity (traditional or otherwise) is a mental health risk factor.

³² APA's guidelines are predicated upon the assumption that some highly subjective and capricious characteristics such as "stoicism" or "risk-taking" are stereotypically masculine. These assumptions are irrational, unscientific, and regressive.

³³ "Decision-making techniques or approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the adjudication proceeds objectively and impartially" (September 2017, *Q&A on Campus Sexual Misconduct*, Question 8, p. 5). Given the proximity of counseling and sexual harassment prevention/adjudication on college campuses, the 2017 Dear Colleague is relevant here.

<https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>

³⁴ 34 CFR § 106.45(b)(1)(iii) [proposed]. "Require that any individual designated by a recipient as a coordinator, investigator, or decision-maker ... receive training on the definition of sexual harassment and how to conduct an investigation and grievance process ... and that any materials used to train coordinators, investigators, or decision-makers not rely on sex stereotypes."

<https://www2.ed.gov/about/offices/list/ocr/docs/title-ix-nprm.pdf>

³⁵ As per DOE policy, hostile environment can occur even in the absence of intent to harm or even if the hostility is not directed at a particular target. Nor does hostile environment require sexual intent: gender animus or hostility based on sexual stereotypes is sufficient to trigger Title IX liability (October 2010, *Dear Colleague Letter*, pp. 7-8). This includes situations in which "students are harassed for exhibiting what is perceived as a stereotypical characteristic for their sex" (ibid).

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

³⁶ CFR § 106.36 prohibits discrimination in counseling.

³⁷ 34 CFR § 106.31(b)(6) prohibits an institution from "aid[ing] or perpetuat[ing] discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees."

LEGAL THEORY

The Supreme Court prohibits gender discrimination against men. In *Craig v. Boren*, the Supreme Court criticized the use of sex in a statute that prohibited vendors from denying only to males the option to purchase a higher alcohol content beer.³⁸ The Court found the statute's reliance on "broad sociological propositions by statistics ... a dubious business, and one that inevitably is in tension with the normative philosophy that underlies the Equal Protection Clause."³⁹ Original and appellate courts have proscribed sex discrimination against men as well as women,⁴⁰ and decisions have been based on different laws and statutes including Title IX, Title VI, Title VII and the Fourteenth and Fifth Amendments.⁴¹

The Supreme Court has consistently rejected "overbroad generalizations about the different talents, capacities or preferences of males and females" as a basis for sex classifications in other state and federal laws.⁴² In *Mississippi Univ. for Women v. Hogan (Hogan)*,⁴³ the Supreme Court held that denying men enrollment in a nursing program was impermissible gender classification under the Equal Protection Clause of the Fourteenth Amendment.⁴⁴ Though the issue concerned an equal protection challenge,⁴⁵ the decision is helpful in evaluating whether Yale's sex restriction for certain benefits is reasonable. In *Hogan*, the Supreme Court reasoned that a sex classification must be ---

³⁸ *Craig v. Boren*, at p. 204.

³⁹ *Ibid.* at p. 210. "We conclude that the gender-based differential contained in Okla. Stat., Tit. 37, § 245 (1976 Supp.) constitutes a denial of the equal protection of the laws ... and reverse the judgment of the District Court." The Court allowed the vendor to "rely upon the equal protection objections of males 18-20 years of age to establish her claim of unconstitutionality of the age-sex differential." *Id.* at pp. 192-93.

⁴⁰ *Craig v. Boren*, 429 US 190, 202, 204 (1976) ("Indeed, prior cases have consistently rejected the use of sex as a decision-making factor even though the statutes in question certainly rested on far more predictive empirical relationships than this."); *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 582 US ___, 198 L. Ed. 2d 150 (2017) (invalidating a law that treated men less favorably than women in determining citizenship); *Orr v. Orr*, 440 U.S. 268 (1979) (invalidating Alabama statute that imposed alimony obligations on husbands, but not wives); *Caban v. Mohammed*, 441 U.S. 380 (1979) (invalidating New York statute that required the consent of the mother, but not the father, to permit the adoption of an illegitimate child).

⁴¹ In *Glenn v. Brumby*, 663 F. 3d 1312 (11th Cir. 2011) the Eleventh Circuit drew upon U.S. Supreme Court cases interpreting Title VII to reach its conclusion in favor of the plaintiff, even though the plaintiff chose to pursue only a remedy for the Fourteenth Amendment violation.

⁴² *United States v. Virginia*, 518 U.S. 515, 533 (1996) (denying women admission to a state military institute); see also, *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 582 US __ (2017) (invalidating law that effectively treated men less favorably than women in acquiring U.S. citizenship); *Weinberger v. Wiesenfeld*, 420 U. S. 636, 640-41, 653 (1975) (invalidating federal law that denied benefits to male single parents, but allowed benefits for females).

⁴³ *Mississippi Univ. for Women v. Hogan*, 458 U.S. 7, 18, 724 (1982)

⁴⁴ *Ibid.*, at pp. 720-21, quoting *Wengler v. Druggists Mutual Ins. Co.*, 446 U. S. 142, 150 (1980).

⁴⁵ *Ibid.*, at p. 730. Under the Equal Protection Clause, the discriminating entity must be a government or state actor and must show the gender classification serves "important governmental objectives and that the discriminatory means employed" are "substantially related to the achievement of those objectives." *Ibid.* at p. 724. Claims may be brought under both Title IX and for violations of equal protection under 42 USC § 1983. *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246, 129 S.Ct. 788, 790 (2009)

...determined through reasoned analysis rather than through the mechanical application of traditional, often inaccurate, assumptions about the proper roles of men and women. Care must be taken in ascertaining whether the statutory objective itself reflects archaic and stereotypic notions. Thus, *if the statutory objective is to exclude or "protect" members of one gender because they are presumed to suffer from an inherent handicap or to be innately inferior, the objective itself is illegitimate* [italics added]⁴⁶

Mississippi Univ. for Women v. Hogan, 458 U.S. 7, 18, 724 (1982)

Circuit courts agree with this normative philosophy and expanded upon the use of Title IX to eliminate discrimination against men. The Second Circuit of Appeals has clarified that discrimination against men is unconstitutional even in the absence of malicious intent *and* even for a short period of time.⁴⁷ The Sixth Circuit of Appeals has clarified that unlawful anti-male bias can be inferred when the overwhelming majority of the impacted parties are male.⁴⁸

The plain language of Title IX, rooted in 34 CFR §106, prohibits any institution from funding/sponsoring/listing discriminatory programs and initiatives.⁴⁹ Title IX prohibits recipients from listing, soliciting, approving, sponsoring discriminatory programs even if they are entirely external to the University.⁵⁰ Even *listing* discriminatory programs is in express violation of Title IX: nothing in the language of 34 CFR §106 suggests that an institution is even allowed to *mention* a discriminatory program on its webpages.⁵¹ Title IX prohibits discrimination in terms of counselling.⁵² Title IX prohibits discrimination in terms of health benefits.⁵³ Title IX prohibits any kind of *preference* for admission in any educational entity, or its substituent chapters.⁵⁴ In determining whether discrimination occurs, Title IX requires an assessment of the *overall effect*.⁵⁵

⁴⁶ *Ibid.*, at pp. 724-725.

⁴⁷ "A defendant is not excused from liability for discrimination because the discriminatory motivation does not result from a discriminatory heart, but rather from a desire to avoid practical disadvantages that might result from unbiased action. A covered university that adopts, even temporarily, a policy of bias favoring one sex over the other in a disciplinary dispute, doing so in order to avoid liability or bad publicity, has practiced sex discrimination, notwithstanding that the motive for the discrimination did not come from ingrained or permanent bias against that particular sex" (*Doe v. Columbia University*, No. 15-1536, 2nd Circuit 2016, p. 26, footnote 11).

⁴⁸ "The statistical evidence that ostensibly shows a pattern of gender-based decision-making and external pressure on Miami University supports at the motion-to-dismiss stage a reasonable inference of gender discrimination ... nearly ninety percent of students found responsible for sexual misconduct between 2011 and 2014 have male first-names" (*Doe v. Miami University*, No. 17-3396, 6th Circuit 2018, p. 15).

⁴⁹ Such is the overall intent of CFR § 106.

⁵⁰ CFR § 106.37.

⁵¹ 34 CFR §106.37(a)(2) expressly prohibits even *listing* any outside organization's offerings "in a manner which discriminates on the basis of sex. In reading 106.31(b)(6) and 106.37(a)(2) together, "significant assistance" would thus include the mere *listing* of a sex-discriminatory offering.

⁵² CFR § 106.36.

⁵³ CFR § 106.39.

⁵⁴ CFR § 106.22.

⁵⁵ CFR § 106.37.

As per DOE policy, *hostile environment* can occur even in the absence of intent to harm or even if the hostility is not directed at a particular target. Nor does hostile environment require sexual intent: gender animus or hostility based on sexual stereotypes is sufficient to trigger Title IX liability (*Dear Colleague Letter*, 2010, p. 8).⁵⁶ This includes situations in which “students are harassed for exhibiting what is perceived as a stereotypical characteristic for their sex” (*id.*). For example, men who are subjected to negative effects on the basis of their stereotypically masculine characteristics (i.e. traditional masculinity) are victims of sex discrimination, prohibited under Title IX. This context is especially relevant in terms of understanding APA’s guidelines.

Whenever the Department of Education investigates an educational institution for discrimination against men, the decision generates significant public support. For example, after Yale University was placed under a similar investigation, an article by Fox News gathered 1,500+ positive comments.⁵⁷ A video by Stephanie Hamill received 1.4 million views.⁵⁸ Two articles about similar complaints (published on Campus Reform) were shared 12,000+ times on social media.⁵⁹ An article about the University of Texas-Austin’s attempts at classifying masculinity as a mental health problem has received 1,900+ critical comments.⁶⁰ 61% of male students at Yale University agree (at least in part) with the operational logic of a complaint filed against Yale, according to at least one poll conducted by Yale itself, and 26% of male students believe they were specifically victims of anti-male discrimination themselves.⁶¹ Last but not least, according to recent poll conducted by YouGov, 69% of all Americans believe that men face discrimination to some extent. 74% of men believe that such discrimination occurs, while 63% of women agree that men face some degree of discrimination (p. 102).⁶² There are other examples of the American public reacting sharply against anti-male bias. For example, a YouTube video about a Gillette ad has garnered more than a million negative votes, despite concerns that YouTube may be using botware to boost positive votes.⁶³

The complaint seeks to eliminate gender discrimination against men without jeopardizing the civil rights of women.

⁵⁶ <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

⁵⁷ Please refer to p. 102 in the survey.

https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/7dh1943i0z/econTabReport.pdf

⁵⁸ <https://www.facebook.com/Americanvoicesthedailycaller/videos/683586881973534/>

⁵⁹ <https://www.campusreform.org/?ID=11249> && <https://www.campusreform.org/?ID=10899>

⁶⁰ <https://pjmedia.com/trending/university-of-texas-to-treat-masculinity-as-a-mental-health-issue/>

⁶¹ <https://yaledailynews.com/blog/2018/09/16/mens-rights-move-in-on-yale/>

⁶² https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/7dh1943i0z/econTabReport.pdf

⁶³ <https://www.youtube.com/watch?v=koPmuEyP3a0>

SIGNIFICANT ASSISTANCE

It should be clear to any reasonable person that Harvard University offers significant assistance to the American Psychological Association.

- Upon information and belief, all of Harvard’s psychologists and counselors use the APA guidelines.⁶⁴ APA is the largest professional organization of psychologists in the United States. This reliance on APA guidelines counts as endorsement, and APA derives significant financial benefit from this connection.
- Harvard’s Clinical Psychology program is accredited by APA and all clinicians in the program receive APA training.⁶⁵
- Two programs at Harvard are APA-approved sponsors for “continuing professional education.” Both programs are affiliated with the Beth Israel Deaconess Medical Center.⁶⁶ The programs are:
 - *Continuing Education Program Inc.*
 - *Cognitive Neurology Unit*
- APA uses campus space at Harvard.⁶⁷
- APA uses Harvard’s websites to list/solicit its events.⁶⁸
- Harvard professors often have membership/leadership roles in APA. This includes Jessica Henderson Daniel, a Harvard professor who was the president of APA in 2018.⁶⁹
- A reasonable person may impute other forms of financial, reputational, professional ties between APA and Harvard. If need be, a compliance review by OCR can reveal such information.⁷⁰

⁶⁴ APA’s guidelines are nationally binding, including all Harvard counselors accredited by APA.

⁶⁵ <https://psychology.fas.harvard.edu/clinical-psychology>

⁶⁶ <http://approvedsponsors.apa.org/> [Insert keyword: *Harvard*].

⁶⁷ For example, APA accreditation requires use of campus space. “Also listed for each program is the date of the next regularly scheduled site visit.” Harvard is scheduled for an accreditation visit at 2020.

<https://www.apa.org/ed/accreditation/programs/doctoral.pdf>

⁶⁸ For example, an upcoming APA conference (2019, May) scheduled to take place in Athens is currently being advertised on Harvard’s website.

<https://psychology.fas.harvard.edu/event/american-psychological-association-9th-annual-international-conference-psychology>

⁶⁹ <https://www.apa.org/pi/women/programs/leadership/jessica-henderson-daniel.aspx>

⁷⁰ “The compliance review regulations afford OCR broad discretion to determine the substantive issues for investigation and the number and frequency of the investigations” (*Case Processing Manual*, p. 20).

REQUEST FOR INJUNCTIVE RELIEF

Any of the following forms of injunctive relief would satisfy the allegations raised in this complaint.

1. APA may repeal the guidelines, thus eliminating the discriminatory practice(s) in question.
2. APA may alter the guidelines to eliminate the characterization of “masculinity” as a form of mental illness and/or a mental illness factor, thus eliminating the discriminatory practice(s) in question. APA should instead adopt guidelines which are rational and non-discriminatory, i.e. guidelines which do not rely on the kind of broad and regressive sexual stereotypes discouraged by Supreme Court doctrine and/or which do not seek to justify differential and invidious treatment based on sex.
3. Harvard University may stop offering significant assistance to APA (including the use of campus space, the use of Harvard’s websites, the use of any kind of funding by or through Harvard, the use of APA guidelines by Harvard’s counsellors, all ties between APA and Harvard professoriate).