

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                                  |   |                       |
|----------------------------------|---|-----------------------|
| SEAMUS JOHNSTON,                 | ) |                       |
| Plaintiff                        | ) |                       |
| vs.                              | ) | CIVIL ACTION NO.      |
|                                  | ) | 3:13-cv-00213-KRG-KAP |
| UNIVERSITY OF PITTSBURGH OF      | ) |                       |
| THE COMMONWEALTH SYSTEM OF       | ) |                       |
| HIGHER EDUCATION d/b/a           | ) | DEMAND FOR JURY TRIAL |
| UNIVERSITY OF PITTSBURGH,        | ) |                       |
| ERIC KINSEY,                     | ) |                       |
| MARK A. NORDENBERG,              | ) |                       |
| JEM SPECTAR,                     | ) |                       |
| MATTHEW UPDYKE,                  | ) |                       |
| NANCY TURNER,                    | ) |                       |
| DANIEL W. DUNN,                  | ) |                       |
| PAUL J. EASH,                    | ) |                       |
| and Does 1 through 10, inclusive | ) |                       |
| Defendants                       | ) |                       |

**SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

**INTRODUCTION**

1. Plaintiff Seamus Johnston is male. He is also transgender: although he was assigned the sex of female at birth, he is legally, socially, and medically recognized as a man.
  
2. Under state and federal statutory and constitutional provisions that prohibit discrimination based on sex, it is unlawful for a public entity such as a university, or its employees or agents, to discriminate against a student based on transgender status or perceived

failure to conform to gender stereotypes.

3. Defendants discriminated against Mr. Johnston by prohibiting him from using campus locker rooms and restrooms designated for men, when all other non-transgender male students were permitted to use those facilities.

#### **JURISDICTION AND VENUE**

4. This action arises pursuant to 42 U.S.C. § 1983 for the deprivation of Plaintiff's rights under the Fourteenth Amendment to the Constitution of the United States, Title IX of the Education Amendments of 1972 codified as 20 U.S.C. § 1681 *et seq.*, the Pennsylvania Human Relations Act, 43 Pa. Stat. § 955, and the Pennsylvania Fair Educational Opportunities Act, 24 Pa. Stat. § 5001 *et seq.*, and Pennsylvania common law.

5. This Court has jurisdiction to hear these claims under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b), because Defendant University of Pittsburgh has its main campus in the Western District of Pennsylvania, and a substantial part of the events giving rise to Plaintiff's claims occurred in that District.

#### **PARTIES**

7. Plaintiff Seamus Johnston ("Mr. Johnston") is a former undergraduate Computer Science major at the University of Pittsburgh's Johnstown Branch Campus ("UPJ"). Mr. Johnston attended UPJ and maintained honor status there for five semesters from 2009 to 2011. He was permanently expelled from the University of Pittsburgh in early 2012.

8. Defendant University of Pittsburgh of the Commonwealth System Higher Education ("University") is a Pennsylvania-based non-profit education corporation and land-grant university which was statutorily established as an instrumentality of the commonwealth. The

University has its headquarters (“main campus”) in the City of Pittsburgh, with branch campuses throughout the region.

9. Defendant Eric Kinsey (“Kinsey”), an adult citizen of the United States, is an athletic coach in the employ of the University.

10. Defendant Mark A. Nordenberg (“Nordenberg”), an adult citizen of the United States, is the Chancellor of the University of Pittsburgh at Johnstown. At all material times Nordenberg had final arbitration power in conflicts within the University and the discretionary power to end discriminatory conduct.

11. Defendant Jem Spectar (“Spectar”), an adult citizen of the United States, is the President of the UPJ campus.

12. Defendant Matthew Updyke (“Updyke), an adult citizen of the United States, is a member of the UPJ Campus Police force.

13. Defendant Nancy Turner (“Turner”), an adult citizen of the United States, is a member of the UPJ Campus Police force.

14. Defendant Daniel W. Dunn (“Dunn”), an adult citizen of the United States, is a member of the UPJ Campus Police force.

15. Defendant Paul J. Eash (“Eash”), an adult citizen of the United States, is a member of the UPJ Campus Police force.

16. Docs 1-10 are adult citizens (placeholder for names not gathered).

#### **ALLEGATIONS OF FACT**

17. Mr. Johnston was born in Pennsylvania on May 15, 1989.

18. Mr. Johnston is a transgender man. That is, although he was assigned the sex of female at birth, his gender identity is male. He is legally, socially, and medically recognized as male.

19. Gender identity is a person's deeply rooted understanding of oneself as male or female. Gender identity is typically established at a very early age and cannot be changed.

20. Mr. Johnston understood his gender identity to be male from a very early age. At age 9, Mr. Johnston first informed his parents that he was a boy.

21. In or around May of 2009, Mr. Johnston transitioned to living full-time in accordance with his male gender identity. At this time, he began consistently holding himself out as male in all aspects of his life.

22. In or around August of 2010, Mr. Johnston started counseling related to his gender at the Persad Center in Pittsburgh, Pennsylvania. At that time, Mr. Johnston was diagnosed with Gender Identity Disorder ("GID") by his psychotherapist, Ms. Emily Burr.

23. GID is a recognized, serious medical condition identified in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (4th Ed. Text Revision 2000) ("DSM-IV"). The technical name for GID was changed to Gender Dysphoria in the Fifth Edition of the DSM, published in 2013 ("DSM-V").

24. Before a transgender person can be eligible for sex-reassignment surgery, the World Professional Association of Transgender Health Standards of Care require that a transgender individual continuously live in the gender role that is congruent with their gender identity for at least one year, including accessing bathrooms and other sex-specific facilities consistent with that gender identity.

25. In or around August 2011, a medical panel at the Persad Center issued for Mr. Johnston a formal recommendation letter approving him for hormone treatment.

26. In or around August 2011, Mr. Johnston began hormone treatment for his GID in the form of testosterone injections. Testosterone causes development of male secondary sex

characteristics, including increased muscle mass, deepening of the voice, and facial and body hair growth.

27. As part of Mr. Johnston's transition to living as male, beginning in 2009, Mr. Johnston amended his identity documents and records to reflect his male gender identity.

28. In early 2010, Mr. Johnston obtained a common law name change to a traditionally masculine name, Seamus Samuel Pdraig Johnston.

29. In or around October 2011, Mr. Johnston amended the gender marker on his Pennsylvania driver's license to male.

30. In or around July 2011, Mr. Johnston registered with Selective Service in accordance with the legal requirement that all male U.S. citizens between the ages of 18 and 25 must register.

31. In or around February 2012, Mr. Johnston amended the gender marker to male on his U.S. passport.

32. In or around November 2013, Mr. Johnston amended the gender marker in his Social Security record to male.

33. In or around March 2009, Mr. Johnston applied for admission to the University of Pittsburgh-Johnstown.

34. Because Mr. Johnston was still in the process of updating his identity documents, and to avoid any delay or denial of his application, Mr. Johnston listed his sex as female on his application form.

35. Mr. Johnston was admitted to the University and was awarded an REB Commuter Scholarship. The scholarship provides funds for needy, full-time, commuting students who graduate from local high schools. It is a four-year scholarship covering full tuition, fees, and

books. Recipients must maintain a 3.25 GPA freshman year, 3.30 GPA sophomore year, and 3.35 GPA junior year to renew the scholarship.

36. Mr. Johnston earned the scholarship the entire time he was enrolled at the University.

37. In or around August 2009, Mr. Johnston enrolled at UPJ.

38. At the time of his enrollment and at all times afterwards, Mr. Johnston consistently lived as male and, upon information and belief, was perceived by others to be male.

39. In or around August 2011, Mr. Johnston submitted the first of multiple unsuccessful inquiries to UPJ requesting that the University amend the gender marker on his school records to reflect his male identity, in order to ensure that his identity documents and records were consistent with his other records.

40. In the fall of 2011, Mr. Johnston presented UPJ with proof of his name change in the form of a notarized affidavit.

41. In the fall of 2011, UPJ changed the name on his student records to Seamus Samuel Padraig Johnston.

42. During the time he was enrolled at UPJ, Mr. Johnston consistently used the men's restrooms on campus, without incident.

43. During the spring 2011 semester, Mr. Johnston enrolled in and the University allowed him to register for a for-credit men's weight training class. Only men attended the weight training course.

44. Mr. Johnston consistently used the men's locker room for the men's weight training class throughout the spring 2011 semester without incident.

45. In the fall 2011 semester, Mr. Johnston enrolled again in the for-credit men's weight training class. He used the men's locker room approximately five times between the end of August and mid-September without incident.

46. On or around September 19, 2011, Mr. Johnston met with Ms. Teresa Horner, executive director of Health & Wellness Services at the University, at her request.

47. At that meeting, Ms. Horner informed Mr. Johnston that he could no longer use the men's locker room. At her insistence, and because use of the female locker room was not an option due to his obviously male appearance, Mr. Johnston agreed to the temporary use of a unisex locker room at the Sports Center normally reserved for referees.

48. The unisex referee's locker room that Mr. Johnston was required to use was much smaller than the general men's locker room. The referee's locker room lacked a scale, an integral part of Mr. Johnston's fitness regime, forcing him to climb two flights of stairs to access a scale located near the Sports Center weight lifting room.

49. Mr. Johnston found it humiliating, isolating, and stigmatizing to be singled out and excluded from the men's locker room unlike all the other male students. The course Mr. Johnston enjoyed the most became the class he disliked the most. As a result of the ban, Mr. Johnston became increasingly depressed and irritable and often considered dropping out of school entirely.

50. On or around September 20, 2011, Mr. Johnston approached Jonathan Wescott, UPJ Vice President of Student Affairs, to find out what steps he could take to regain access to the men's locker room. At a meeting on or around September 26, 2011, Mr. Wescott informed Mr. Johnston that he would be allowed to use the men's locker room if his student records were updated from female to male.

51. Following that meeting, on September 26, 2011, Mr. Johnston met with the UPJ Campus Registrar, Marylin Alberter, to learn how to change the sex designation on his student records.

Ms. Alberter said she would have to check with counsel at the main campus.

52. On September 29, 2011, Ms. Alberter sent Mr. Johnston an email stating in relevant part, "After our conversation Monday afternoon I contacted Ted Fritz, an attorney in the Office of University Counsel at the Pittsburgh campus, for direction on your request. He advised me that since you identified your gender at the point of admission as female the University would require either a court order or a new birth certificate reflecting your current gender."

53. On October 5, 2011, Mr. Johnston replied to Ms. Alberter's email and asked for the specific policy or legal citations that were the basis of the University's decision.

54. On or about October 5, 2011, Mr. Johnston also emailed Mr. Wescott indicating he would attempt to change his student records and also asked for "exact law and policy citations regarding my use of gendered facilities." Mr. Wescott replied on or about the same date reiterating that his position remained the same and encouraging Mr. Johnston to pursue changing his student records.

55. In or around October 2011, Mr. Johnston offered Ms. Alberter evidence of his gender in the form of his Pennsylvania driver's license that indicated his sex was male. The University refused to accept his driver's license as sufficient proof of his male sex.

56. On October 6, 2011, Mr. Johnston emailed Mr. Wescott indicating he "remain[ed] cooperative in our temporary agreement [to use the referee's locker room]" and noted again that no University policy pertaining to his use of male-designated facilities had yet been cited.

57. On or around October 19, 2011, Mr. Johnston registered a complaint with the UPJ School President, Jem Spectar, Ph.D., to protest his exclusion from the men's locker room. Mr. Johnston



sent copies of this letter to Chancellor Mark A. Nordenberg, Provost Patricia E. Beeson, and General Counsel Jerome Cochran on the main University of Pittsburgh campus.

58. President Spectar responded in a letter dated October 21, 2011 reiterating that the only way Mr. Johnston could access the men's locker room was by officially changing his gender in the university's records through a court order or birth certificate change.

59. Mr. Johnston used the men's locker room approximately six times between October 24, 2011 and November 14, 2011 without incident.

60. On November 16, 2011, Mr. Johnston was issued a citation by campus police for using the men's locker room. UPJ Campus Police Sergeant Turner and Officer Daniel Wade Dunn appeared following Mr. Johnston's weight training class and informed Mr. Johnston outside the locker room that he could not use the men's locker room. Officer Dunn wrote Mr. Johnson a citation for disorderly conduct. The citation was later withdrawn on December 13, 2011. Mr. Johnston was frightened by the encounter and was concerned that other students would witness the events, that they would learn of his transgender status, and that he would be isolated from his peers and could become a target for violence.

61. Mr. Johnston continued to use the men's locker room following the November 16, 2011 citation.

62. On November 21, 2011, three Campus Police officers confronted Mr. Johnston outside the Sports Center locker rooms and issued him a second citation for disorderly conduct for using the men's locker room. Campus Police Chief Kevin Grady was also present and informed Mr. Johnston that if he continued, he would be arrested and taken into custody. Associate Chief of Campus Police Eric Zangaglia informed Mr. Johnston that he was being cited a second time because they did not have enough officers to arrest him for defiant trespass. Officer Paul Eash

wrote Mr. Johnston another citation for disorderly conduct. This caused Mr. Johnston to become extremely distressed and frustrated, and concerned for his personal safety on the campus. During the confrontation, Mr. Johnston re-entered the locker room to retrieve an item he had left there, and was overcome with a panic attack. Mr. Johnston's pulse raced, he had trouble breathing, he became dizzy, and he sweated profusely. The anxiety was so overwhelming that Mr. Johnston was forced to sit on the floor and remain still for an extended period. The citation was later withdrawn on December 12, 2011.

63. On the same day, November 21, 2011, Jacob W. Harper, Coordinator at the UPJ Office of Student Conduct and Conflict Resolution, sent Mr. Johnston a letter notifying him that, due to the events of the day, Mr. Johnston had been designated an "Interim Persona Non Grata" from men's locker rooms within the UPJ Sports Center.

64. Also on November 21, 2011, Mr. Harper issued Mr. Johnston a letter stating in part, "This notice is being sent to you to make known that disciplinary charges have been filed against you regarding an incident which occurred on November 16, 2011 at Sports Center.... As such, your presence is required ... on November 23, 2011, at 10:00 AM." That hearing was subsequently rescheduled for December 2, 2011.

65. On Monday, November 28, 2011, Mr. Harper issued Mr. Johnston an "Interim Persona Non Grata" designation barring him from the entire Sports Center due to his continued use of the men's locker room. This precluded Mr. Johnston from using the unisex referee's locker room, which was located in the Sports Center, as well as the men's locker room.

66. On November 28, 2011, Campus Police, including Chief Kevin Grady and a Richland Township officer, waited outside the locker room to confront Mr. Johnston prior to his weight training class. When he emerged, Mr. Johnston was taken temporarily into custody. Campus

Police Officer Nancy Turner issued Mr. Johnston another disorderly conduct citation, but it was never filed.

67. On December 7, 2011, Mr. Johnston had to attend the final class of his for-credit weight training class, a class in which participation counted toward the grade. Mr. Johnston changed into his gym shorts in a stall of a men's restroom in the Wellness Center, located outside of the Sports Center. He did this specifically in an effort to comply with the November 28, 2011 Interim Persona Non Grata designation, which precluded Mr. Johnston from accessing all locker rooms in the Sports Center, including the unisex referee's locker room. When Mr. Johnston exited the restroom, Campus Police Officer Matthew Updyke was waiting in the hallway, and informed Mr. Johnston that he was not to use any men's restrooms on campus. Mr. Johnston felt persecuted by these appearances, as though the University and its employees were constantly following and watching him. Mr. Johnston became more and more exhausted and despondent over the course of these encounters.

68. At the disciplinary hearing on December 2, 2011, Mr. Johnston faced three charges resulting from alleged violations of the Student Code of Conduct: "Offenses Related to the Operation of the University/14. Engages in conduct which is disorderly, lewd, or indecent; breach of peace; or aiding, abetting or procuring another to do the same"; "Offenses Related to the Operation of the University/3. Fails without just cause to comply with the lawful directions of a University official acting in the performance of his or her duties and authority"; and "Offenses Related to Property/7. Enters or uses facilities or property of another person or the University without consent or authorization." Following the hearing, Hearing Officer Dr. Jerry Samples informed Mr. Johnston that he had been found guilty on all charges and instructed him that he was not to use male locker room or restroom facilities on campus.

69. On December 9, 2011, Dr. James Gyure, Ph.D., Vice President for Enrollment Services and Planning in the UPJ Office of Student Conduct and Conflict Resolution, issued a letter confirming that Mr. Johnston had been found guilty of the three violations with which he was charged. Several sanctions were imposed on Mr. Johnston as a result: he was required to undergo a counseling assessment by January 16, 2012, as well as to satisfy the therapist's recommendations; he was placed on disciplinary probation for approximately one year, until December 31, 2012; and he was designated "persona non grata" in all male-designated campus facilities until he graduated from the University.

70. On December 15, 2011, Mr. Johnston used a men's restroom in Biddle Hall, an academic building on the UPJ campus. Campus Police Officer Matthew Updyke witnessed Mr. Johnston entering the restroom, and approached Mr. Johnston. Officer Updyke reiterated that Mr. Johnston was not permitted to enter the men's restrooms on campus, and informed Mr. Johnston that Officer Updyke intended to file a complaint with the University Hearing Board.

71. On or about December 20, 2011, Mr. Harper called and emailed Mr. Johnston to inform him that due to Mr. Johnston's use of the men's restrooms on campus on December 7 and December 15, Mr. Johnston would be placed on interim disciplinary suspension and would be designated an interim "persona non grata" for all University property, effective immediately pending an adjudicatory hearing.

72. On January 24, 2012, a disciplinary hearing was held in which Mr. Johnston was charged with the same violations as in the December 2, 2011 hearing. The hearing was held before a panel of students. At the close of the hearing, Mr. Johnston was found guilty of exhibiting disorderly, lewd, or indecent behavior, failing to comply with lawful directions of a University official, and entering University facilities without authorization. The sanction issued was

“disciplinary dismissal,” that is, expulsion with no chance for re-admittance to the University and included designation as a “persona non grata” barred from accessing all UPJ property.

73. On February 2, 2012, Dr. Gyure issued a “sanction justification review” in which he upheld Mr. Johnston's expulsion. According to Mr. Gyure’s notes placed in the disciplinary record, that decision was based, among other things, on his view that other students would be “uncomfortable” sharing a locker room or restroom with a transsexual student.

74. On February 23, 2012, Mr. Johnston petitioned the University Appeals Board to review the disciplinary sanctions against him, including his expulsion. On February 29, 2012, the Board was authorized to review the case.

75. On information and belief, the University Appeals Board subsequently upheld the disciplinary sanctions against Mr. Johnston.

76. Having been expelled, Mr. Johnston was unable to attend UPJ in the spring semester of 2012 and thereafter, and lost his scholarship.

77. On December 2, 2011, the UPJ Campus Police filed a criminal complaint with the District Attorney’s office, and charges were filed against Mr. Johnston in court (docket number: CP-11-CR-0000590-2012), charging Mr. Johnston with violations of 18 Pa.C.S.A. § 3127(a) – Indecent Exposure (M2), 18 Pa.C.S.A. § 3503(b)(1)(i)– Criminal Trespass (M3), and 18 Pa.C.S.A. § 5503(a)(1) – Disorderly Conduct (M3).

78. On May 30, 2013, after multiple attempts over 16 months to get the charges dismissed or withdrawn for lack of probable cause, Mr. Johnston pled guilty to the reduced charges of Trespass (S) and Disorderly Conduct (S). Mr Johnston was sentenced to six months probation and approximately \$600 in fines.

79. On January 20, 2012, Mr. Johnston presented his story of discrimination at a meeting of the University Senate Anti-Discriminatory Policies Committee (“ADPC”) in Pittsburgh.

80. On information and belief, on February 21, 2012, the ADPC unanimously passed a resolution recommending that the University nondiscrimination policy should operate to permit students access to sex-segregated spaces based on gender identity, not natal sex, noting that birth certificate verification might be in violation of the University’s nondiscrimination policy and city ordinances, and that this should apply to all regional campuses.

81. On information and belief, on March 20, 2012, the University responded by sending a representative through its Office of General Counsel to appear at a meeting of the ADPC. That representative informed the ADPC that the University’s position is that students are restricted to facilities that correspond to the sex indicated on their birth certificate.

82. On information and belief, this was the first time the University had ever formally announced an explicit policy with regard to the use of sex-segregated facilities by transgender students.

83. Following his expulsion, Mr. Johnston was investigated by the FBI for potential involvement in a series of bomb threats against the University; however, charges against Mr. Johnston were never filed in conjunction with that investigation. On information and belief, in August 2012, the FBI initiated a prosecution of Adam Stuart Busby of Dublin, Ireland for the bomb threats.

84. Upon information and belief, the University gave Mr. Johnston’s name to the FBI in retaliation for exercising his right to complain about the University’s discriminatory conduct.

85. As a result of the University's discriminatory conduct, Mr. Johnston experienced and continues to suffer from significant emotional distress including humiliation, stress, depression, and anxiety.

86. As a result of the University's discriminatory conduct, Mr. Johnston has been diagnosed with and suffers from Post-Traumatic Stress Disorder ("PTSD"). He is receiving counseling treatment for his PTSD at the Persad Center.

87. As a result of the University's discriminatory conduct, Mr. Johnston has not been able to enroll in any other school and has not been gainfully employed since his expulsion from the University.

88. The stress resulting from the University's discriminatory conduct, including Mr. Johnston's arrest, has taken a significant toll on Mr. Johnston's well-being. Mr. Johnston has difficulty sleeping and is often overcome by intense bouts of fear, anger, and sadness.

89. The stress resulting from the University's discriminatory conduct was a significant contributing factor to the separation between Mr. Johnston and his wife.

90. As a result of the University's discriminatory conduct, Mr. Johnston fears appearing in public and frequently worries that his transgender status will become known and will cause others to harass or discriminate against him.

91. As a result of the University's discriminatory actions, Mr. Johnston has experienced financial losses including the value of his full scholarship and federal grants.

**First Claim for Relief  
Against All Defendants  
Discrimination and Retaliation in Violation of the Fourteenth Amendment to the  
U.S. Constitution, Brought Under 42 U.S.C. § 1983.**

92. Plaintiff Seamus Johnston repeats and re-alleges paragraphs 1-91 as though set forth in full.

93. Defendants, acting under color of state law, have deprived Plaintiff of the rights, privileges, or immunities secured by the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, in that Defendants, without justification, treated Plaintiff differently from other similarly situated students on the basis of his sex, including his transgender status and perceived failure to conform to gender stereotypes.

94. All other non-transgender male students attending the University were permitted to use the men's locker room and restroom facilities on campus.

95. Mr. Johnston was denied access to the men's locker rooms and restrooms despite the fact that he is legally, socially, and medically recognized as male.

96. Defendants retaliated against Mr. Johnson for asserting his constitutional right to be free from discrimination based on sex.

97. Upon information and belief, the actions of the Defendants named herein were at times conducted with the supervision, instruction, approval, or collaboration of others unknown to the Plaintiff.

98. As a direct and proximate cause of Defendants' actions, Plaintiff has suffered and continues to suffer injury, including, without limitation, deprivation of his constitutional rights, financial damages, emotional harm, mental anguish, distress, humiliation, and indignity.

**Second Claim for Relief  
Against All Defendants  
Discrimination and Retaliation in Violation of 42 U.S.C. § 1681 *et seq.* (Title IX)**

1. Plaintiff Seamus Johnston re-alleges paragraphs 1-98 as though set forth in full.



2. Title IX and its implementing regulations prohibit discrimination on the basis of sex in educational programs and activities operated by recipients of federal financial assistance.
3. The University is a recipient of federal financial assistance.
4. All students, including transgender students and students who do not conform to gender stereotypes, are protected from sex-based discrimination under Title IX.
5. All other non-transgender male students attending the University were permitted to use the men's locker room and restroom facilities on campus.
6. Mr. Johnston was singled out and denied access to the men's locker rooms and restrooms despite the fact that he is legally, socially, and medically recognized as male.
7. Defendants discriminated against Mr. Johnston because of his sex, including his transgender status and his perceived failure to conform to gender stereotypes.
8. Defendants retaliated against Mr. Johnson for asserting his statutory right to be free from discrimination based on sex.
9. Upon information and belief, the actions of the Defendants named herein were at times conducted with the supervision, instruction, approval, or collaboration of others unknown to the Plaintiff.
10. As a direct and proximate cause of Defendants' actions, Plaintiff has suffered and continues to suffer injury, including, without limitation, financial damages, emotional harm, mental anguish, distress, humiliation, and indignity.

**Third Claim for Relief  
Against All Defendants  
Discrimination and Retaliation Under the Pennsylvania Human Relations Act,  
43 Pa. Stat. § 955**

11. Plaintiff Seamus Johnston re-alleges paragraphs 1-108 as though set forth in full.

12. The Pennsylvania Human Relations Act prohibits discrimination in public accommodations on the basis of sex.
13. All people, including transgender people and people who do not conform to gender stereotypes, are protected from sex-based discrimination under the Pennsylvania Human Relations Act.
14. All other non-transgender male students attending the University were permitted to use the men's locker room and restroom facilities on campus.
15. Mr. Johnston was denied access to the men's locker rooms and restrooms despite the fact that he is legally, socially, and medically recognized as male.
16. Defendants discriminated against Mr. Johnston because of his sex, including his transgender status and his perceived failure to conform to gender stereotypes.
17. Defendants retaliated against Mr. Johnson for asserting his statutory right to be free from discrimination based on sex.
18. Upon information and belief, the actions of the Defendants named herein were at times conducted with the supervision, instruction, approval, or collaboration of others unknown to the Plaintiff.
19. As a direct and proximate cause of Defendants' actions, Plaintiff has suffered and continues to suffer injury, including, without limitation, financial damages, emotional harm, mental anguish, distress, humiliation, and indignity.

**Fourth Claim for Relief  
Against All Defendants  
Discrimination and Retaliation Under the Pennsylvania  
Fair Educational Opportunities Act, 24 Pa. Stat. § 5001 *et seq.***

20. Plaintiff Seamus Johnston re-alleges paragraphs 1-117 as though set forth in full.

21. All students, including transgender students and students who do not conform to gender stereotypes, are protected from sex-based discrimination under the Pennsylvania Fair Educational Opportunities Act.

22. All other non-transgender male students attending the University were permitted to use the men's locker room and restroom facilities on campus.

23. Mr. Johnston was denied access to the men's locker rooms and restrooms despite the fact that he is legally, socially, and medically recognized as male.

24. Defendants discriminated against Mr. Johnston because of his sex, including his transgender status and his perceived failure to conform to gender stereotypes.

25. Defendants retaliated against Mr. Johnson for asserting his statutory right to be free from discrimination based on sex.

26. Upon information and belief, the actions of the Defendants named herein were at times conducted with the supervision, instruction, approval, or collaboration of others unknown to the Plaintiff.

27. As a direct and proximate cause of Defendants' actions, Plaintiff has suffered and continues to suffer injury, including, without limitation, financial damages, emotional harm, mental anguish, distress, humiliation, and indignity.

**Fifth Claim for Relief  
Against Defendant University  
Common Law Breach of Contract**

28. Plaintiff Seamus Johnston re-alleges paragraphs 1-125 as though set forth in full.

29. The University's nondiscrimination policy (Policy 07-01-03) holds that discrimination or harassment on the basis of "gender identity and expression" is prohibited. Retaliation against those who make claims or give information related to discrimination is also prohibited.

30. The clause prohibiting discrimination based on "gender identity and expression" was adopted in 2008.

31. Mr. Johnston accepted the terms offered by the University and paid tuition through his scholarship funds.

32. Mr. Johnston reasonably relied on the fulfillment of the University's nondiscrimination policy when he sought to access men's locker room and restroom facilities on campus on a nondiscriminatory basis.

33. The University's denial of access to the men's restroom and locker room facilities just because Mr. Johnston's male gender identity was different from his sex assigned at birth was a breach of the nondiscrimination term in the agreement between the University and Mr. Johnston.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- a. Enter a judgment that Defendant's actions and practices as set forth herein are in violation of the Constitution and laws of the United States and the Commonwealth of Pennsylvania;
- b. Award Plaintiff compensatory damages, including lost grant and scholarship monies, any interest that may be charged to him on grant funds since his expulsion, lost potential wages, humiliation, emotional suffering, and punitive damages;

c. Award Plaintiff the costs of this action, including, where appropriate, the fees and costs of experts and reasonable attorneys' fees;

d. Grant Plaintiff such further relief as this Court finds necessary and proper.

Or, in the alternative:

c. Injunctive relief in the form of an order reinstating Plaintiff with all prior academic credits, honors, and scholarships, including such paperwork as is necessary to explain the error to federal and state financial aid providers, private lenders, and credit institutions.

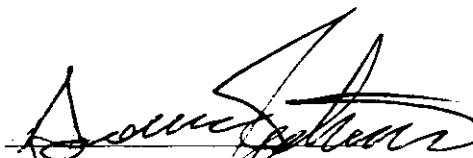
**JURY DEMAND**

Plaintiff demands a trial by jury on all issues of fact and damages in this action.

**AVERMENT**

I aver that the foregoing facts are true and correct to the best of my knowledge, information, and belief.

RESPECTFULLY SUBMITTED,

  
Seamus Johnston, pro se  
1047 Church Ave, Fl 3  
Johnstown, PA 15901  
[jspjohnson@gmail.com](mailto:jspjohnson@gmail.com)  
(814) 317-6874

Dated: January 14, 2014