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**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

<b>JUN YU,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No: 4:15-cv-00430-REB</b>
	)	
<b>v.</b>	)	<b>MEMORANDUM IN SUPPORT OF</b>
	)	<b>MOTION TO AMEND COMPLAINT</b>
<b>IDAHO STATE UNIVERSITY,</b>	)	<b>UNDER F.R.C.P. 15(a)(2) AND DIST.</b>
	)	<b>IDAHO LOC.CIV.R. 15.1</b>
<b>and</b>	)	
	)	
<b>JOHN/JANE DOES I through X, whose</b>	)	
<b>true identities are presently unknown,</b>	)	
<b>Defendants.</b>	)	
_____	)	

COMES NOW, Plaintiff, Jun Yu (“Plaintiff” or Mr. Yu “Jun Yu”), by and through counsel of record, Ronaldo A. Coulter of Idaho Employment Law Solutions, PLLC, and submits this Memorandum in Support of Motion to Amend Complaint Under F.R.C.P.15(a)(2) and Dist. Idaho Loc.Civ.R.15.1.

**PROCEDURAL HISTORY**

Plaintiff filed its complaint on September 16, 2015 (Dkt.1). Thereafter, Defendant filed its answer on October 8, 2015 (Dkt.6). On October 16, 2015, Defendant filed its Amended

Answer and Demand for Jury Trial (Dkt.8). On November 6, 2015, the court established a Case Management Order based on the stipulation of the parties (Dkts. 13 and 15). Paragraph 2 of Dkt. 15 provided that Motions to Join parties and/or amend pleadings shall be filed no later than December 30, 2015. Paragraph 3c of Dkt. 15 provided that Plaintiff had to make his expert witness disclosures on or before February 16, 2016. Upon Plaintiff's request, the parties entered into a stipulation to amend Dkt.15 (Dkt.18). Paragraph 3c of the Amended Case Management Order (Dkt. 19) now provided that Plaintiff make his expert witness disclosures on or before March 25, 2016. Per paragraph 3d of Dkt 18, Defendant now has until April 29, 2016 to make its expert witness disclosures. Plaintiff provided its expert witness disclosures pursuant to District of Idaho Local Civil Rule 26.2(b) and Federal Rule of Civil Procedure 26(a)(2)(B) on March 25, 2016.

### ARGUMENT

**a. Good Cause Exist for the Court to Allow the Amendment of the Complaint As Plaintiff Was Diligent in Pursuing Amending the Complaint**

Under F.R.C.P. 15(a), a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served. If a responsive pleading has already been served, a party may amend a pleading only by leave of court or by written consent of the adverse party... "[t]he Court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2), *Hadden v. Kirkman*, 2016 WL 1060206, at \*4 (D.Idaho, 2016). Public policy favors allowing a party to amend a pleading. Nevertheless, it remains within the discretion of the Court to "deny leave to amend after considering factors such as bad faith, undue delay, prejudice to the opposing party, futility of the amendment, and whether the party has previously amended her pleadings";

*Id.* citing *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995).<sup>1</sup> Where, as in the present case, a Case Management Order has been issued delineating when a case may be amended, the Court requires an additional showing of good cause. *See Stephens v. Idaho Dept. of Parks and Recreation*, 2011 WL 6150641, at \*1 (D.Idaho, 2011) citing *Johnson v. Mammoth Recreation, Inc.*, 975 F.2d 604, 608 (9th Cir.1992). The “good cause” standard is based on the diligence of the party seeking to amend the complaint. The good cause standard and its diligence requirement has been addressed by the Court as follows:

The “good cause” standard under Rule 16 focuses primarily on the “diligence of the party seeking the amendment.” *See id.* at 609. “If the party seeking the modification was not diligent, the inquiry should end and the motion to modify should not be granted.” *Zivkovic v. Southern California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir.2002) (citation and internal quotation marks omitted)

*Stephens v. Idaho Dept. of Parks and Recreation* at \*1

The facts in *Stevens* are instructive for the present case. In *Stephens*, the Plaintiff sought to amend her complaint nearly six months past the date established by the Case Management Order. Discovery had been completed and Depositions had been taken. Plaintiff argued to the Court that the elapsed time was not as it facially appeared. Plaintiff informed the Court that she discovered the information necessitating amending the complaint during a deposition that took place in April of 2011. Plaintiff informed the Court that the reason the deposition occurred as late as it did was due to the courtesy extended to the opposing counsel by Plaintiff’s counsel. As a courtesy to the opposing counsel in this matter, the depositions that had been scheduled for late February/early March 2011, would now take place in late April 2011 to accommodate the

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<sup>1</sup> As the original and amended complaint involves state claims *see also Ada County Highway District v. Acarrequi*, 105 Idaho 873, 673 P.2d 1067 (1983) and *Black Canyon Racquetball Club, Inc. v. Idaho First Nat. Bank, N.A.*, 119 Idaho 171, 175, 804 P.2d 900, 904 (1991).

Defendant's counsel's trial schedule. The Court in accepting Plaintiff's argument denied Plaintiff's motion to amend the complaint stating the following:

Still, such a circumstance cannot overcome that party's lack of diligence in actually (and timely) uncovering those same facts. Even though such a result may seem harsh, the need for orderly and timely progression of the lawsuit is necessary and important. Pleadings cannot be a continuously moving target for obvious reasons. The amendment deadline serves to frame the issues at a fixed point in time so that the parties have an adequate opportunity to prepare their respective positions moving forward. ***Even so, the deadline will not entirely foreclose amendments, so long as the standard of good cause is met to warrant the amendment.*** Here, the proffered reasons for the proposed untimely amendment do not constitute good cause, particularly where a primary element of good cause is due diligence. Accordingly, Plaintiff's Motion to Amend Complaint (Docket No. 29) is denied.

*Stephens v. Idaho Dept. of Parks and Recreation*, at \*3 (Emphasis added)

Aware of the due diligence standard, Plaintiff in the present case acted with appropriate speed to move to amend the present complaint. Per Dkt. 15, motions to join parties and/or amend pleadings were to be filed no later than December 30, 2015. The complaint in the present case was filed on September 16, 2015. Beginning immediately after the complaint was filed, Plaintiff began searching academia to secure the services of experts who were cognizant of the holdings in *Regents of University of Michigan v. Ewing*, 106 S.Ct. 507, 512, 474 U.S. 214, 222-23 (U.S.Mich., 1985) and *Board of Curators of the University of Missouri v. Horowitz*, 435 U.S. 78, 98 S.Ct. 948 (1978) who would support Plaintiffs allegations of a violation of Title VI, in regard to alleged unlawful disparate treatment, grounded in Defendant's cultural incompetence and aversive racism/prejudice in the present case. This was no small task and Plaintiff's last expert was secured on January 23, 2016. As it was impossible for Plaintiff's experts to comply with the February 16, 2016 expert witness disclosures deadline, the original Case Management Order (Dkt. 15) was amended by stipulation of the parties to allow Plaintiff to make his expert witness

disclosures on March 25, 2016.<sup>2</sup> On December 29, 2015, Plaintiff served Defendant with Plaintiff's First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions Propounded to Defendant Idaho State University. On February 5, 2016, Defendant provided its Responses to Plaintiff's First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions Propounded to Defendant Idaho State University. On March 23, 2016, Plaintiff received his last expert report. On March 25, 2016, in compliance with Dkt. 19, Plaintiff provided his expert reports to the Defendant. From reviewing the discovery provided by the Defendant, reviewing the opinions of Plaintiff's experts and conducting legal research, it was decided to seek leave of the Court to amend the Complaint to add the facts to sustain the additional counts of: (1) Breach of Contract, (2) Violation of Plaintiff's Substantive Due Process Rights, and (3) Promissory Estoppel. It is important to note that: (1) the receipt of the Defendant's response to Plaintiff's Discovery Request occurred thirty-seven (37) days (i.e. 1 month and 6 days) after December 30, 2015, the cut-off date for amending the complaint, and (2) the receipt by Plaintiff of his last expert report was received eighty four days (i.e. 2 months and 23 days) after December 30, 2015, the cut-off date for amending the complaint. Aware of the good cause due diligent standard, Plaintiff began the intense project of amending the complaint to add the latter three additional allegations that will later be discussed in detail herein. Aware of the good cause due diligent standard, Plaintiff filed its motion and supporting documents a mere fourteen days (i.e. two weeks) after the Defendants received Plaintiff's expert reports. Defendant, barring a request for an extension that will be unopposed, has three full weeks to make their expert witness disclosures. *See Sorroof Trading Development Co., Ltd. v. GE Microgen, Inc.*, 283

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<sup>2</sup> Expert disclosures involved providing copies of expert reports pursuant to District of Idaho Local Civil Rule 26.2(b) and Federal Rule of Civil Procedure 26(a)(2)(B).

F.R.D. 142 (S.D.N.Y.,2012) where the court found good cause to grant Plaintiff leave to amend the complaint where Plaintiff learned of the facts less than one month after learning of the new facts. *See also Tawwaab v. Virginia Linen Service, Inc.*, 729 F.Supp.2d 757, 770 (D.Md.,2010) where Plaintiff after conducting a deposition and learning of new facts that justified adding another party to the litigation, the Court granted Plaintiff leave to amend the complaint several months after the deadline established by the scheduling order.

Unlike the Plaintiff in *Stephens v. Idaho Dept. of Parks and Recreation*, Plaintiff in the present case has acted expeditiously to seek to amend the complaint once the opportunity presented itself. It was not until March 23, 2016, that Plaintiff had the requisite knowledge to file the present motion to amend the complaint. The chronology of events delineated in the preceding paragraphs, establish that it was virtually impossible for Plaintiff to act any faster in seeking to amend his complaint and be in compliance with F.R.C.P 11(b)(1)-(3).<sup>3</sup> Plaintiff has satisfied the due diligence criteria mandated by case law. As will be discussed herein, Plaintiff has also complied with rule F.R.C.P.8(a); and, Defendant cannot avail itself to the Defense offered by F.R.C.P.12(b)(6). Therefore, as public policy favors allowing a party to amend a complaint and as justice requires, the Court must grant Plaintiff's motion and give Plaintiff leave to amend his complaint.

**b. The Amended Complaint Is In Compliance With F.R.C.P. 8(a) and Forecloses to the Defendant the Defense of F.R.C.P 12(b)(6)**

While the court may not consider the sufficiency of the evidence related to the additional claims when deciding whether to allow leave to amend the pleadings, *Spur Products Corp. v. Stoel Rives LLP*, 142 Idaho 41, 44, 122 P.3d 300, 303 (2005), the court must determine whether the complaint satisfies the plausibility pleading standard set forth in Rule 8(a) of the Federal

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<sup>3</sup> See fn. 3 herein.

Rules of Civil Procedure. F.R.C.P. 8(a) also requires a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for the relief sought, which may include relief in the alternative or different types of relief. In interpreting the language of F.R.C.P. 8(a), the Supreme Court established the plausibility pleading standard. The plausibility pleading standard does not require “detailed factual allegations,” but it does require more than just “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937 (2009); *Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007); *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L.Ed.2d 209 (1986). A claim must contain sufficient factual matter to “state a claim to relief that is plausible on its face.” *Atlantic City v. Twombly*, 550 U.S. at 570, 127 S. Ct. 1955. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 556, 127 S. Ct. 1955. The amended complaint is compliant with F.R.C.P. 8(a). However, an amended complaint must also state a claim as required by F.R.C.P. 12(b)(6). As will be discussed herein, the amended complaint satisfies both FR.C.P.8(a) and F.R.C.P.12(b)(6).

**c. Breach of Contract Allegations in the Amended Complaint**

The complaint at bar, is unlike the complaint brought by the plaintiff in *Mann v. Boatright* 477 F.3d 1140, 1147-48 (10<sup>th</sup> Cir. 2007) where it was held that a single spaced 99 page pleading failed to meet the short and plain statement requirement of Rule 8(a). The complaint at bar is also unlike *U.S. ex rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 379 (7<sup>th</sup> Cir. 2003) where a 400 paragraph, 155-page pleading accompanied by 99 attachments was deemed to have violated Rule 8(a). Indeed, and as was noted in *Garst*, the court showed remarkable restraint “in wading through four iterations plus one “more definite statement” before giving up.” *Id.*

Plaintiff's present seventy (70) page complaint is neither excessive, repetitive, "or so verbose, confused and redundant that its true substance...is well disguised; and, the present complaint complies with Rule 8(a). See *Hearns v. San Bernardino Police Department*, 530 F.3d. 1124, 1131 (9<sup>th</sup> Cir. 2008) citing *Gillibeau v. City of Richmond*, 417 F.2d 426 (9<sup>th</sup> Cir. 1969). Further, and of significant importance, there is no case in the 9<sup>th</sup> Circuit that holds that a Rule 8(a) violation occurs based solely on excessive length. See *Hearns v. San Bernardino Police Department* at 1131; see also *Cafasso, U.S. ex rel. v. General Dynamics C4 Systems* 2011 WL 1053366, 7 (9<sup>th</sup> Cir. 2011).

The case at bar is complex involving the articulation of the existence and violations of the contract between the Plaintiff and Defendant among other allegations which require a comprehensive delineation of facts to avoid dismissal per F.R.C.P. 8(a) and F.R.C.P. 12(b)(6). Such a case therefore requires the recitation of sufficient detail in the complaint to sustain each violation of an alleged breach of contract. The case of *Doe v. John F Kennedy University*, 2013 WL 4565061 (N.D.Cal., 2013) is instructive. In *Doe*, Plaintiff who suffered from Attention Deficit Hyperactivity Disorder ("ADHD") was enrolled in a Doctor of Psychology program at John F. Kennedy University (JFKU). Plaintiff alleged a breach of contract against JFKU in that the Defendant failed to meet the accreditation standards required by the Western Association of Schools and Colleges and the American Psychological Association ("APA"). Plaintiff also alleged a breach of an "implied contract against JFKU for failing to perform under "an obligation, express or implied, that JFKU provide and maintain an office of disability services for students, and through that office ensure that students with disabilities are properly accommodated throughout their educational experience." In dismissing the contract complaints for failure to state a claim as required by F.R.C.P. 12(b)(6), the Court stated the following:



“A cause of action for breach of contract requires pleading of a contract, plaintiff’s performance or excuse for failure to perform, defendant’s breach and damage to plaintiff resulting therefrom.” *McKell v. Washington Mut., Inc.*, 142 Cal.App. 4th 1457, 1489, 49 Cal.Rptr.3d 227, 253 (Cal.Ct.App.2006) (citing 4 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 476 at 570). ***Plaintiff’s contract claims are insufficient because she has not clearly pleaded the existence of a contract or contracts. She did not attach a copy of a contract, quote from its terms, or sufficiently allege its legal effect.*** Her description is vague. For example, with respect to her sixth claim, Plaintiff alleges that a “valid written and implied contract” exists between Plaintiff and JFKU whereby Plaintiff paid tuition in exchange for JFKU’s promise to provide education through classroom lectures and other means, and that “[i]ncorporated in that agreement is JFKU’s representation of WASC and APA accreditation and promise to adhere to WASC and APA standards.” FAC at ¶¶ 132–134, 174. ***Plaintiff does not explain how these standards are “incorporated” into the alleged contract, nor does she set forth which specific standards JFKU has incorporated into and breached in its express or implied contract with Plaintiff, or the specific requirements of those standards. Without these allegations, it is not possible to determine the contours of the purported contract.***

Plaintiff’s seventh cause of action for “breach of implied contract” is similarly flawed. Here, Plaintiff alleges that the terms of the contract include an obligation, express or implied, that JFKU provide and maintain an office of disability services for students, and through that office ensure that students with disabilities are properly accommodated throughout their educational experience. FAC at ¶¶ 180–81. ***As with the sixth cause of action, the seventh cause of action is insufficiently pleaded. The FAC alleges neither express language in a contract nor conduct implying a contractual obligation to underpin its allegation that JFKU has a contract with Plaintiff which includes an agreement to provide and maintain an office of disability services.***

*Id* at \*8

To comply with the requirements of both F.R.C.P.8(a) and F.R.C.P.12(b)(6), Plaintiff consciously created a complex pleading to comply with the requirements. The detail is also important to give the Defendants notice of what the claim is about thereby providing the Defendants sufficient information to draft a thoughtful and well-crafted answer; and, to allow the Plaintiff to connect the facts to the necessary elements to sustain Plaintiff’s claim. As noted in *Swanson v. Citibank, N.A.*, 614 F.3d 400,405 (7<sup>th</sup> Cir. 2010) a complex case “will require more detail, both to give the opposing party notice of what the case is all about and to show how, in the plaintiff’s mind at least, the dots should be connected.”

Plaintiff's original complaint was drafted and filed after an investigation of the facts and circumstances then known to Plaintiff. To the best of Plaintiff's knowledge at that time, all causes of action were alleged that were known to exist and which F.R.C.P 11(b)(1)-(3) would allow.<sup>4</sup> During the course of these proceedings both Defendant and Plaintiff engaged in discovery. Through this discovery process as well as Plaintiff's efforts in consulting with Plaintiff's experts and the application of case law, Plaintiff discovered additional facts, which when considered in conjunction with the original allegations in Dkt 1, and when considered in their own light, warranted the amending of the original complaint.

In this matter, the Defendant does not have an available defense to bar the new state claims of breach of contract, promissory estoppel or the alleged violation of the substantive due process pursuant to Title 42 U.S.C. § 1983 as these violations are based on Defendant's breach of contract allegations.<sup>5</sup> The breach of contract claim is based on a contract, the collective terms

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<sup>4</sup> **(b) Representations to the Court.** By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery;

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions, FRCP Rule 11

<sup>5</sup> [t]here seems to be almost no dissent from the proposition that the relationship' ” “ 'between a public post-secondary educational institution and a student' ” “ 'is contractual in nature.' ”

of which are express, implied, and oral. The promissory estoppel claim sounds in contract. *See Smith v. Boise Kenworth Sales, Inc.*, 625 P.2d 417, 421-22, 102 Idaho 63, 67-68 (Idaho, 1981) citing the Restatement (Second) of Contracts §90(1)(1973). As the complete breach of the contract occurred on October 2, 2013, the claims are well within the four (4) and five (5) year statute of limitations for oral and written contracts respectively. *See* I.C. §§ 5-217 and 5-216.

**d. Violation of Substantive Due Process**

The Ninth Circuit has determined “that a claim accrues when the plaintiff knows, or should know, of the injury which is the basis of the cause of action.” *See Osborn v. Butler*, 712 F. Supp. 2d 1134, 1149 (D. Idaho 2010) citing *Kimes v. Stone*, 84 F.3d 1121, 1128 (9th Cir.1996). In the winter of 2015, Plaintiff embarked on an effort to secure experts who would support the allegations of a violation of Title VI, in regard to alleged unlawful disparate treatment, grounded in Defendant’s cultural incompetence and aversive racism/prejudice. The conduct alleged would explain the Defendant’s intentional refusal to follow the APA Ethical Principles of Psychologists and Code of Conduct (Ethics Code) and relevant APA policies. In the reports that were provided, Plaintiff’s experts stated the following:

It is clear that Mr. Yu suffered serious harm because of several significant ethically questionable behaviors at the hands of ISU faculty. These include failure of timely written notice of any inadequacies (if they existed), and failure to prescribe or plan

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(*Wickstrom v. North Idaho College* (1986) 111 Idaho 450, 452, 725 P.2d 155, 157 (*Wickstrom* ).) “ [B]y the act of matriculation, together with payment of required fees, ***a contract between the student and the institution is created...*** ” (*Andersen v. Regents of University of California, supra*, 22 Cal.App.3d at p. 769, 99 Cal.Rptr. 531; see also *Searle v. Regents of University of California, supra*, 23 Cal.App.3d at p. 452, 100 Cal.Rptr. 194 [“students have certain contractual rights”].) When a student is attending a publicly financed institution of higher education, as in the present case, attendance is regarded as a benefit somewhat analogous to that of public employment. (*Andersen, supra*, at p. 770, 99 Cal.Rptr. 531, citing *Goldberg v. Regents of the University of California* (1967) 248 Cal.App.2d 867, 877, 57 Cal.Rptr. 463.)

*Kashmiri v. Regents of University of California*, 67 Cal.Rptr.3d 635, 646, 156 Cal.App.4th 809, 824 (Cal.App. 1 Dist.,2007). (Emphasis added)

remediation (if needed). The ISU faculty also appears to have failed to provide due process in the course of dismissing him, failed to properly assist him on internship selection, failed to warn him that he was or would be at risk of termination from the program, and failed to re-offer previously acceptable alternative internship placements (e.g., arranging a comparable training experience in China). By further failure to offer an alternative Ph.D. degree option, based on the clear doctoral quality of his work, the university attempted to trivialize the previously recognized quality of his scholarly accomplishments. ***Taken as a whole, the actions of the faculty at ISU in dismissing Mr. Yu as they did constitute, in my opinion, substantial arbitrary and capricious and departures from accepted academic norms in clinical psychology doctoral programs.***

January 21, 2016 Expert Opinion of Dr. Gerald P. Koocher, Ph.D., ABPP (Emphasis added) Exhibit "A"

On the basis of these facts, it is my opinion that the behavior of the members of the Idaho State University psychology department ***was arbitrary and capricious and deviated from accepted professional norms in psychology.*** It is also my opinion that the shifting of standards in stereotype-relevant judgments contributed to the negative treatment of Mr. Yu in ways that were not professionally appropriate. While aversive racism is typically something my field only studies while considering differences across large groups of people, and not individuals, it is hard to imagine a situation that more strongly demonstrates all of the hallmarks that are typically present when aversive racism is occurring, which strongly suggests that the behavior of the ISU Psychology department was influenced by Mr. Yu's race and international status. Expert

March 19, 2016 Expert Opinion of Dr. M. Leslie Wade Zorwick (Emphasis added) Exhibit "B"

In conclusion, Mr. Yu has clearly suffered serious harm due to the cultural incompetence of the ISU faculty, the program's violation of accreditation standards, and ethical violations committed by ISU faculty and program affiliated clinical supervisors in working with Mr. Yu. It is my opinion that the dismissal of Mr. Yu from ISU's Clinical Psychology Ph.D. Program was excessive (especially when considering that an appropriate formal remediation had not been attempted), unjustified, and objectively unreasonable. ***In my opinion, the actions of the faculty at ISU in dismissing Mr. Yu as they did, was a substantial departure from accepted academic norms.***

March 23, 2016 Expert Opinion of Dr. Shannon Chavez-Korell, Ph.D. (Emphasis added) Exhibit "C"

In *Regents of University of Michigan v. Ewing*, 106 S.Ct. 507, 512, 474 U.S. 214, 222-23 (U.S.Mich., 1985), the Court accepted the University of Michigan's invitation to "assume the existence of a constitutionally protectible property right in [Ewing's] continued enrollment,".

*See also Oyama v. University of Hawaii*, 2013 WL 1767710, at \*11 (D.Hawaii i,2013). In

rejecting the Plaintiff's argument that the University of Michigan erred when it declared that Plaintiff was unfit to remain medical school, the Court found that the University of Michigan had not violated Plaintiff's substantive due process rights. As the Court did in the earlier procedural due process case of *Board of Curators of the University of Missouri v. Horowitz*, 435 U.S. 78, 98 S.Ct. 948 (1978), the Court reaffirmed its emphasis on giving deference to the professional judgment of the academic community in making academic decisions. However, the Court cautioned that this was not a free pass to the academic community to simply do as it pleased in making its academic decisions. The Court stated the following:

The University's refusal to allow Ewing to retake the NBME Part I is thus not actionable in itself. It is, however, an important element of Ewing's claim that his dismissal was the product of arbitrary state action, for under proper analysis the *refusal may constitute evidence of arbitrariness* even if it is not the actual legal wrong alleged. The question, then, is whether the record compels the conclusion that the University acted arbitrarily in dropping Ewing from the Inteflex program without permitting a reexamination... When judges are asked to review the substance of a genuinely academic decision, such as this one, they should show great respect for the faculty's professional judgment. *Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.*

*Regents of University of Michigan v. Ewing*, 106 S.Ct. 507, 513, 474 U.S. 214, 224-25 (U.S.Mich.,1985). See also *Emerson v. North Idaho College*, 2006 WL 3253585, at \*8 (D.Idaho, 2006).

With the opinions of Dr. Gerald P. Koocher, Dr. M. Leslie Wade Zorwick and Dr. Shannon Chavez-Korrell, Plaintiff now possessed the facts needed to in good faith amend the original complaint. Armed with sufficient facts, Mr. Yu could now allege a violation of Mr. Yu's substantive due process rights and not run afoul of the F.R.C.P 11(b)(1)-(3).

**e. Promissory Estoppel**

On February 5, 2016, Plaintiff received Defendant's response to Plaintiff's First Set of Interrogatories, Requests for Production of Documents and Requests for Admissions

Propounded to Defendant Idaho State University. From the documents provided, it was established that Mr. Yu had completed all the academic requirements necessary to receive his doctorate in Clinical Psychology save one clinical internship... “He is all but internship” (Exhibit “D” )(ISU Documents 0428). It was affirmed that the Clinical Training Committee had offered three options for Mr. Yu to pursue: (1) re-apply to the national internship, (2) propose a local internship, subject to Clinical Training Committee approval, and (3) propose a modified/accommodated internship in China; (Exhibit “D”)(ISU Documents 0323,0324, 0428 and 0641). On November 12, 2012, in a letter to Plaintiff authored and signed by Dr. Mark Roberts, Director of Clinical Training for Defendant, Plaintiff was informed that Dr. Roberts had mailed the final approval documents for the non-standard clinical internship at the Cleveland Clinic to Dr. Speer; (Exhibit “D”) (ISU Document 0323). In this same correspondence, Dr. Mark Roberts informed Mr. Yu of the following: “Please remember that the Clinical Training Committee provided you with two other options to complete the required internship (see your spring semester evaluation letter, June 4, 2012): 1. Re-apply to APPIC member sites; 2. Propose an accommodated internship in China. ***Both of these options are still available to you...it is my responsibility to remind you of these other two options.***” (Exhibit “D”)(ISU Documents 0323 and 0324)(Emphasis added). After his dismissal from the Cleveland Clinic, Plaintiff, in reliance on the options provided to him in completing the only internship needed to obtain his doctorate in Clinical Psychology, informed Dr. Mark Roberts of Plaintiff’s desire to construct an internship at the Shanghai Mental Health Center; (Exhibit “D”)(ISU Document 0323). In response, Dr. Roberts acknowledged that Plaintiff had been given three options to complete the required clinical internship; (Exhibit “D”)(ISU Document 0542). Of importance, is that at no time from when the options were offered to Plaintiff was there any representation made by the



Defendant that the options to re-apply to APPIC member sites; or propose an accommodated internship in China were no longer available to Mr. Yu. In responding to Mr. Yu's administrative appeal to the Defendant's Graduate Faculty of the Psychology Department, Dr. Shannon Lynch wrote: "The options at that time, however, were not explicitly or implicitly intended as a set of options to be taken in sequence, given a problem in one venue or the other." (Exhibit "D")(ISU Document 0641). Defendant, in an attempt to justify not allowing Mr. Yu to complete his internship in China, stated in part "Based on the available data, we believe you may actually put patients at risk, not as a matter of inadequate linguistic abilities, but as a matter of poor perspective taking and difficulties with conceptualization." (Exhibit "D")(ISU Document 0641). The latter justification belies any meaningful scrutiny as illustrated by Dr. M. Leslie Wade Zorwick who writes:

When Mr. Yu was let go from the internship with Dr. Leslie Speer at the Cleveland Clinic, he requested the opportunity to attempt an internship in China. The psychology department denied this request, arguing in their response to Mr. Yu's appeal that "failure at the Cleveland Clinic provided explicit evidence that your lack of satisfactory progress is not the result of a linguistic problem alone...we believe that you may actually put patients at risk, not as a matter of inadequate linguistic abilities, but as a matter of poor perspective taking and difficulties with conceptualization...and might put Chinese patients at risk of harm" (ISU Document 0641). The logical leap required to believe that the concern of one internship supervisor (which was not shared by Mr. Yu's other supervisor, Dr. Cheryl Chase) meant increased risk for Chinese patients, when none of the faculty making this assessment had ever been in the position to assess Mr. Yu's work with Chinese patients, suggests the creation of a post hoc justification for dismissal, in addition to the ISU faculty working to create a race-neutral justification for dismissal.

In addition, the *only* evidence of Mr. Yu's work with Chinese families suggests incredible success. Mr. Yu had 100% of his 19 families complete their sessions with him (Plaintiff Document p. 295), which is an incredibly large and very rare completion rate in psychological research. In addition, the average satisfaction ratings Mr. Yu received were all in the range of 5.4-5.5 (out of 6) when patients considered Mr. Yu's preparation, teaching skills, helpfulness, and his interest and concern for the caregiver and their child's problems (Plaintiff Document 000377-000379). These ratings show that Mr. Yu's Chinese patients had very positive experiences working with him and that they perceived he had good perspective taking skills, which stands in direct contrast with the concerns of the ISU faculty. To ignore the only direct piece of evidence about Mr. Yu's work with

Chinese patients in making their final decision about dismissal also offers strong evidence of the use of *post hoc* justifications. (Exhibit “B”) (Emphasis in the original text)

Both Dr. Koocher and Dr. Chavez-Korell have also refuted the allegation of Mr. Yu harming patients. Dr. Koocher wrote:

No timely reasons were given as to why the previously offered option of finding a comparable internship training site in China was no longer available as an alternative choice to Mr. Yu. However, in the Departmental Level Rejection of his Appeal dated May 17, 2013 the Department Chair Dr. Lynch wrote, “The Graduate Faculty is convinced that a fourth “chance” (i.e., an Internship in China) is unwarranted and might put Chinese patients at risk of harm.” [Opinion: No evidence supports such a strained post-hoc conclusion. Nothing in the record shows that Mr. Yu ever harmed a patient in the United States or in China. In fact, his doctoral research demonstrated that his clinical efforts benefitted the clients he served in China.] (Exhibit “A”)

Dr. Chavez-Korell wrote:

...there is no evidence in the documents reviewed to support that harm by Mr. Yu ever occurred. In fact, there is evidence to the contrary, including: (1) Mr. Yu earned passing grades in all of his required practicum work (i.e., Fall 2009 Psychology Clinic Practicum = A, Spring 2010 Psychology Clinic Practicum = B, Summer 2010 Psychology Clinic Practicum = A, Fall 2010 Psychology Clinic Practicum = A, Spring 2011 Community Practicum = A, Fall 2011 Psychology Clinic Practicum = A- and Community Practicum = A, Spring 2012 Psychology Clinic Practicum = B); if there was a serious concern about Mr. Yu’s clinical skills it should be reflected in the grade evaluation. (2) Mr. Yu’s doctoral dissertation involved running clinical trials with Chinese families with preschool-age children in Shanghai, China. Mr. Yu culturally adapted an evidence-based practice. In order to competently adapt a treatment to a specific culture, one must understand the culture and cultural context in which the original evidence-based practice existed (i.e., U.S. mainstream White culture) and have a strong understanding of the culture and cultural context for which the treatment is being adapted to (i.e., Chinese culture). Mr. Yu demonstrated clinical and cultural competence in successfully adapting the treatment he was examining; his dissertation yielded successful treatment results. 19 families completed treatment and rated Mr. Yu an average of at least 5.4 on a 6-point scale reflecting evidence of consumer satisfaction. (3) During Fall of 2011 the ISU faculty deemed Mr. Yu ready for internship and identified no concerns about any competency areas. (4) Mr. Yu received a positive evaluation from Dr. Chase who served as his clinical supervisor during internship, contrasting the negative evaluation by Dr. Speer. Developmentally it does not make sense that a student would move from a competency level of meeting and exceeding most (if not all) clinical standards of evaluation, to then suddenly regress to a clinical competence level that is below



expectations on almost all standards of evaluation. The assigned grades and formal evaluations across semesters are inconsistent with unsatisfactory progress and concerns of harm; due process was not followed. (Exhibit “C”)

Idaho has adopted the Restatement (Second) of Contracts to determine the sufficiency of a complaint based on promissory estoppel. *Smith v. Boise Kenworth Sales, Inc.*, 625 P.2d 417, 421-22, 102 Idaho 63, 67-68 (Idaho, 1981). A party seeking to sustain an allegation under the doctrine of promissory estoppel must show that:

“(1) the detriment suffered in reliance was substantial in an economic sense; (2) substantial loss to the promisee acting in reliance was or should have been foreseeable by the promisor; and (3) the promisee must have acted reasonably in justifiable reliance on the promise as made.” *Id* at 422, 68 citing *Mohr v. Shultz*, 86 Idaho 531, 540, 388 P.2d 1002, 1008 (1964).

In the present case, Plaintiff was provided with the documents that demonstrate that Plaintiff was given three choices to participate in the only internship necessary to satisfy the requirements necessary for Plaintiff to earn his doctorate in Clinical Psychology. Plaintiff was provided with the following three options to satisfy the remaining requirement. Plaintiff could: (1) re-apply to the national internship, (2) propose a local internship, subject to Clinical Training Committee approval, and (3) propose a modified/accommodated internship in China. At no time was Plaintiff told that if he chose one option that he would be foreclosed from having the opportunity at a later date to choose the other two options that remained. Indeed, Dr. Roberts acknowledged that Plaintiff had been given three options to complete the required clinical internship and specifically stated without further explanation or any added conditions that both of these options were “still available to you [Mr. Yu.]” Plaintiff in reliance on the existence of two more available options to complete his lone degree requirement chose to propose an internship at the Cleveland Clinic. Given that Mr. Yu was an international student from China, it

was foreseeable that he would rely on the existence of the two remaining options; and, given the representations made by the Defendant Mr. Yu's reliance was not only reasonable but also justified.

Armed with the facts as documented in Exhibit "D", the analysis of Dr. M. Leslie Wade Zorwick, Plaintiff now possesses the facts needed to amend the original complaint without running afoul of the F.R.C.P 11(b)(1)-(3) seeking the protection of the doctrine of promissory estoppel.

**f. Defendants Are Not Prejudiced by the Amended Complaint**

Plaintiff's new proposed claims do not cause undue delay that would be prejudicial to the Defendants. The new allegations stem from the same factual nexus as the original complaint giving fair notice of the factual situation from which the amended pleadings arose. *See In re Carmell*, 424 B.R. 401, 413-14 (Bankr. N.D. Ill. 2010). Because the amended pleadings arose from the same core of facts advanced in the original pleadings, the amended complaint should be deemed timely and relate back to the original pleadings under Rule 15(c). *Id.* (citing *In re Gerardo Leasing, Inc.*, 173 B.R. 379, 388 (Bankr.N.D.Ill.1994)). Timeliness of a motion for leave to amend is not a decisive factor; however, it is important in view of factors such as undue delay, bad faith, and prejudice to the opponent. *Carl H. Christensen Family Trust v. Christensen*, 133 Idaho 866, 871, 993 P.2d 1197, 1202 (1999). Nevertheless, this motion to amend the present complaint is timely. As previously stated herein, the motion has been brought within fourteen (14) days after Plaintiff indentified his expert witnesses and provided the expert reports to Defendant as required by F.R.C.P. 26(a)(2)(b) and prior to when the Defendant is obligated to identify its expert witnesses. No depositions have been taken. Therefore, the litigation is still in its infancy.

In addition to the Federal Rules of Civil Procedure, Plaintiff makes this request in compliance with the Local Rules of the United States District Court for the District of Idaho, which govern all proceedings before this Court. *See* Dist. Idaho Loc. Civ. R. 1.1(c) that states “These rules must apply in all proceedings in civil actions.”

Dist. Idaho Loc. Civ. R. 15.1 discusses the form of a motion to amend and states in part:

A party who moves to amend a pleading must describe the type of the proposed amended pleading in the motion (i.e., motion to amend answer, motion to amend counterclaim). ***Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must reproduce the entire pleading as amended.*** Failure to comply with this rule is not grounds for denial of the motion. ***The proposed amended document will be filed at the time of filing the motion and submitted to the Court for approval.*** (Emphasis added)

Pursuant to the local rule, Plaintiff has filed its first amended complaint with its motion to amend and this memorandum in support of its motion to amend. Plaintiff respectfully requests that the Court approve its Motion to Amend Complaint and grant Plaintiff leave to file its first amended complaint and to serve the additional named Defendants with summonses and copies of the first amended complaint.

DATED this 8<sup>th</sup> day of April, 2016.

Respectfully Submitted,

IDAHO EMPLOYMENT LAW SOLUTIONS

/s/  
R.A. (RON) COULTER  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8<sup>th</sup> day of April, 2016, I caused to be served a true and correct copy of the foregoing Memorandum in Support of Motion to Amend Complaint Under F.R.C.P. 15(a)(2) and Dist. Idaho Loc.Civ.R. 15.1 to:

MICHAEL E.KELLY ISB # 4351  
380 E. PARKCENTER BLVD., SUITE 200  
POST OFFICE BOX 856  
BOISE, ID 83701

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: (208) 342 4344
- Electronic Mail: (ECF)  
[mek@ktslawoffice.com](mailto:mek@ktslawoffice.com)

NATHAN S.OHLER ISB# 8502  
380 E. PARKCENTER BLVD., SUITE 200  
POST OFFICE BOX 856  
BOISE, ID 83701

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: (208) 342 4344
- Electronic Mail: (ECF)  
[nso@ktslawoffice.com](mailto:nso@ktslawoffice.com)

IDAHO EMPLOYMENT LAW SOLUTIONS

      /s/        
R. A. (RON) COULTER

Exhibit “A”  
Excerpts From Dr. Gerald P.  
Koocher’s Expert Report

- expected to maintain adequate numbers of practicum sites, and failing to do so represents a breach of their obligations to admitted students. In addition, the CTC was very familiar with Jun Yu's English language skills and continuously rated these as meeting expectations with limited exceptions. If the CTC truly regarded this as a significant issue that impeded his ability to perform at an advanced level, his grades should have reflected those problems and/or remedial actions should have been prescribed as a pre-condition for advancing.]**
- The department faculty expressed surprise by Dr. Landers' dismissal of Mr. Yu for the externship. In his letter of November 21, 2011 to Mr. Yu, Dr. Roberts made no suggestion of any need to improve spoken English proficiency. All of the five steps suggested to Mr. Yu involved clinically focused activity, and were not clearly couched as remedial requirements. **[Opinion: The faculty clearly had not monitored Mr. Yu's progress, and Dr. Landers had not consulted with them prior to the dismissal.]**
  - Dr. Mark Roberts confirmed in his October 23, 2012 letter to Dean Turley-Ames: *"The Clinical Training Committee formally recognized the student's right to propose the non-standard clinical internship in his/her June 4, 2012 evaluation."* However, while agreeing to the proposed Non-APPIC internship placement, Mr. Yu never saw or had a chance to review the terms of the affiliation agreement negotiated between ISU and the CCCA internship site. **[Opinion: This failure deprived Mr. Yu of his rights to fully understand and possibly to object to the terms of the agreement.]**
  - The CTC letter of June 4, 2012 provided Mr. Yu with three options including an accommodated internship in China. Mr. Yu expressed a preference for an internship in the United States, as he believed he would obtain a better quality of experience. **[Opinion: There is no indication that Mr. Yu was ever informed that the option to seek an internship in China was a one-time offer or would later be withdrawn.]**
  - The letter of May 2, 2013 informing Mr. Yu of summary dismissal from the doctoral program with a master's degree cited "not making satisfactory progress," and a "requirement that he limit" APPIC applications to sites serving Chinese populations. In the fall 2011 and spring 2012 CTC evaluations cited unsatisfactory professional progress in some respects, but Mr. Yu was nonetheless assigned grades of A and B, inconsistent with alleged failing levels of professional performance. **[Opinion: The assigned grades are inconsistent with unsatisfactory progress, and due process was not followed.]**
  - No timely reasons were given as to why the previously offered option of finding a comparable internship training site in China was no longer available as an alternative choice to Mr. Yu. However, in the Departmental Level Rejection of his Appeal dated May 17, 2013 the Department Chair Dr. Lynch wrote, "The Graduate Faculty is convinced that a fourth "chance" (i.e., an Internship in China) is

unwarranted and might put Chinese patients at risk of harm.” **[Opinion: No evidence supports such a strained post-hoc conclusion. Nothing in the record shows that Mr. Yu ever harmed a patient in the United States or in China. In fact, his doctoral research demonstrated that his clinical efforts benefitted the clients he served in China.]**

- Reasons given for terminating Mr. Yu from the program included these statements:
  - *“Despite four years (August 2008 to May 2012) in the standard curriculum on campus and three months in an approved clinical internship, he remains unable to provide professional services in a manner consistent with expectations for a fourth year student or an intern.*
  - *“It is the opinion of the Clinical Training Committee, based on Mr. Yu's objective record and the qualitative reports of multiple supervisors in multiple sites, that his poor performance is not simply a matter of poor linguistic communication with English-speaking patients and supervisors, it appears that Mr. Yu lacks sufficient perspective-taking skills and conceptual abilities to become a clinical psychologist. Specifically, he seems unaware of the impact of his behavior on patients and supervisors alike, failing to appreciate the perspectives of those critical audiences. Second, he appears unable to conceptualize a patient's current bio-psycho-social functions through the normal professional processes of integrating information obtained from interviewing, psychometric testing, direct observation, intervention trials, and individual and cultural differences. Third, he appears unable to adjust a professional course of action in response to patient needs, e.g., unable to notice and respond to patient distress in the moment. Finally, he seems to lack insight into his own shortcomings, resulting in ineffectual problem solving and unsuccessful conflict negotiation.”*
- **[Opinion: These statements which stand in direct conflict with the grades he earned and supervisory ratings he accumulated between 2008 and 2012]**

### Summary of Opinions

A number of ethical and accreditation standards have been violated in Mr. Yu's case. These include ethical violations by faculty members related to following through with program descriptions (*Code: 7.02*), flaws in assessing and responding to student performance (*Code: 7.06*), and avoiding harm (*Code: 3.04*).

- The alleged educational and professional skill defects cited as bases for dismissal are inconsistent with Mr. Yu's prior accumulated record of grades and supervisor ratings over his first three years at ISU.

- If the allegations made by the ISU faculty are to be believed, they clearly failed to perform appropriate timely assessments; provide timely feedback; propose and assist with necessary remediation; or provide timely monitoring of off-site placements.
- No evidence is provided to show that Mr. Yu was on notice regarding a risk of dismissal from the program for any reason.
- The stated reason for failing to re-offer Mr. Yu the opportunity to complete an internship in China (i.e., that he might pose some risk of harm to Chinese clients) seems contrived to support dismissal after that conclusion had been reached, since nothing in the records suggests that Mr. Yu ever caused harm to a client in the United States or China (as described above).

In addition, the Accreditation *G & P* seem to have been violated with respect to Domains D and E. In particular, the program did not appear to adequately address the diversity challenges faced by your client, did not adequately respect his rights, and did not provide timely assessments or adequate notice regarding potential dismissal from the program. As previously noted, there were no written documentation of substantive guidance, remedial feedback, or corrective action. All of those elements, along with assisting students in identifying appropriate placements and monitoring students in those placements are part of the *G & P* specifications.

Because the number of students seeking psychology internships in the United States greatly exceeds the number of internship slots available, it is not at all unusual for students to have difficulty finding placements. This gap between the number of candidates and the number of vacancies was particularly high in the year that Mr. Yu was applying. I do not know of any university-based programs that would dismiss a student, who had otherwise met all other academic requirements, for failing to make adequate progress by virtue of internship-finding problems. In such circumstances most programs would become increasingly focused on helping such students to find a new appropriate placement.

In awarding Mr. Yu a second master's degree citing the equivalence of his doctoral dissertation to a master's thesis at ISU the faculty again demonstrates a kind of post-hoc mental gymnastic that runs contrary to the *G & P* specifications. Doctoral dissertations are by definition intended to differ in breadth, depth, quality, and demonstrated independence of the student from master's theses. By allowing Mr. Yu to propose, complete, and defend a doctoral dissertation the faculty recognized and acknowledged attainment of doctoral-level scholarship. By later claiming equivalence to a master's degree in the course of dismissing him, the faculty has attempted to somehow reverse and diminish the quality of his work in a totally inappropriate and reprehensible manner. They also imply that the doctoral standards applied to him were not at a level that the APA Commission on Accreditation expects of doctoral dissertations.



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## In Conclusion

It is clear that Mr. Yu suffered serious harm because of several significant ethically questionable behaviors at the hands of ISU faculty. These include failure of timely written notice of any inadequacies (if they existed), and failure to prescribe or plan remediation (if needed). The ISU faculty also appears to have failed to provide due process in the course of dismissing him, failed to properly assist him on internship selection, failed to warn him that he was or would be at risk of termination from the program, and failed to re-offer previously acceptable alternative internship placements (e.g., arranging a comparable training experience in China). By further failure to offer an alternative Ph.D. degree option, based on the clear doctoral quality of his work, the university attempted to trivialize the previously recognized quality of his scholarly accomplishments. Taken as a whole, the actions of the faculty at ISU in dismissing Mr. Yu as they did constitute, in my opinion, substantial arbitrary and capricious and departures from accepted academic norms in clinical psychology doctoral programs.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald P. Koocher", with a long horizontal flourish extending to the right.

Gerald P. Koocher, Ph.D., ABPP

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\* Massachusetts Psychology License No. 113  
New Hampshire Psychology License No. 319  
Illinois Clinical Psychology License No. 071-008636  
Association of State and Provincial Psychology Boards,

Exhibit “B”  
Excerpts From Dr. M. Leslie  
Wade Zorwick’s Expert Report

0198), Dr. Mark Roberts wrote that, "In early June 2012...It was clear to the committee that Mr. Yu's professional progress remained unsatisfactory...he was unable to perform at the intermediate level of professional skill," yet the committee thought the best option for Mr. Yu would be an internship in China, calling it a "more viable option."

In a letter in support of Mr. Yu receiving Dissertation funding, Dr. Roberts argues that Mr. Yu should have the resources to conduct therapy with families in China, noting "were Mr. Yu successful in accommodating the current treatment measures and treatment procedures to Chinese families, the potential clinical service to high-risk defiant and aggressive Chinese children is staggering" (ISU Documents 0668). In his letter of recommendation for APPIC, Dr. Mark Roberts says that Mr. Yu did excellent work collecting his dissertation data and functioned "virtually independently in performing a clinical trial" in China, including working with multiple families (ISU Documents 0670). Both of these documents suggest tremendous trust in Mr. Yu's ability to engage in counseling that would be effective and transformative for clients. Dr. Roberts also notes that Mr. Yu's largely independent work "is a most impressive accomplishment for a pre-intern in a clinical psychology program" (ISU Documents 0670).

When Mr. Yu was let go from the internship with Dr. Leslie Speer at the Cleveland Clinic, he requested the opportunity to attempt an internship in China. The psychology department denied this request, arguing in their response to Mr. Yu's appeal that "failure at the Cleveland Clinic provided explicit evidence that your lack of satisfactory progress is not the result of a linguistic problem alone...we believe that you may actually put patients at risk, not as a matter of inadequate linguistic abilities, but as a matter of poor perspective taking and difficulties with conceptualization...and might put Chinese patients at risk of harm" (ISU Document 0641). The logical leap required to believe that the concern of one internship supervisor (which was not shared by Mr. Yu's other supervisor, Dr. Cheryl Chase) meant increased risk for Chinese patients, when none of the faculty making this assessment had ever been in the position to assess Mr. Yu's work with Chinese patients, suggests the creation of a *post hoc* justification for dismissal, in addition to the ISU faculty working to create a race-neutral justification for dismissal.

In addition, the *only* evidence of Mr. Yu's work with Chinese families suggests incredible success. Mr. Yu had 100% of his 19 families complete their sessions with him (Plaintiff Document p. 295), which is an incredibly large and very rare completion rate in psychological research. In addition, the average satisfaction ratings Mr. Yu received were all in the range of 5.4-5.5 (out of 6) when patients considered Mr. Yu's preparation, teaching skills, helpfulness, and his interest and concern for the caregiver and their child's problems (Plaintiff Document 000377-000379). These ratings show that Mr. Yu's Chinese patients had *very*

positive experiences working with him and that they perceived he had good perspective taking skills, which stands in direct contrast with the concerns of the ISU faculty. To ignore the only direct piece of evidence about Mr. Yu's work with Chinese patients in making their final decision about dismissal also offers strong evidence of the use of *post hoc* justifications.

- d) In the dismissal letter sent by Dr. John Landers to Dr. Mark Roberts when Mr. Yu was let go from an externship (ISU Documents 0035), Dr. Landers says "...Jun Yu is unable to grasp the communication nuances that are required to build rapport with difficult patients, administer standardized tests with difficult patients..." but then goes on to write "Jun Yu...has obviously mastered the behavioral science components essential to his career goal of returning to China to provide parent/child skills training." In a feedback summary form (ISU Documents 0039), Dr. Landers wrote "Given his desire to return to China and specialize in parent/child training, he is probably right where he needs to be...I would recommend continued focus in his area of interest..." This externship dismissal was held up as part of the reason for Mr. Yu's ultimate dismissal from the ISU program. However, Dr. Landers is explicit that the language problems that prevented Mr. Yu from working successfully at Dr. Landers' externship were not likely to be a problem working with Chinese patients. The ultimate usage of this dismissal to prove the concern about harming patients more generally suggests the ISU faculty were looking for ways to justify their decision to dismiss Mr. Yu after the fact.
- e) In responding to a complaint with the Office of Consultation and Accreditation on January 28 2014, Dr. Roberts wrote that, while the department thought that Mr. Yu should complete his internship in China, the department "was compelled...to honor his request to begin the process of approving the non-standard internship; further, we were...prevented...from contacting Dr. Speers [sic] independently to provide historical caveats regarding Mr. Yu's readiness for internship" (ISU Documents 0199). Given that Dr. Roberts had written a strong letter of support for Mr. Yu, when Mr. Yu applied for APPIC internships, this suggests *post hoc* generation of reasons to justify Mr. Yu's dismissal.
- f) When Mr. Yu's two internship supervisors in 2013, Dr. Cheryl Chase and Dr. Leslie Speer, offered mixed evidence about his work, the Psychology department only focused on the negative opinion of Dr. Leslie Speer. Dr. Chase did not share Dr. Speer's concerns; in fact, Dr. Chase was uniformly positive in her feedback and impressed with Mr. Yu's work (ISU Documents 0530). In responding to Mr. Yu's appeal of the decision to dismiss him (ISU Documents 0641), the Psychology department says that they did not consider Dr. Chase's feedback with the same weight because she had not seen Mr. Yu in "face-to-face service provision with clients." However, this is directly contradicted by Dr. Chase's report on Mr. Yu's work, which references working together with clients. In addition, given that Dr.

held Mr. Yu's work to a different standard when he worked with Chinese and American populations.

3. *Evaluations of Mr. Yu's work were on formal evaluations, which encouraged the use of confirmatory standards.*

Mr. Yu's twice-yearly evaluations from the CTC are formal evaluations established by the program. This type of evaluation is frequently associated with confirmatory standards and from the testimony of Dr. Mark Roberts, it is clear that the expectations of proficiency for a nonnative English speaker are lower than for a "typical" student. This means that it would be more difficult for Mr. Yu to ultimately confirm impressions of competence or strong English language skill than it would for students who did not belong to a negatively stereotyped group. And, Mr. Yu's CTC evaluations frequently include lots of positive feedback, including statements praising his "strong GTA performance" (ISU Documents 0054), "'good job' with his first ADA evaluation" (ISU Documents 0059), "journal submission and acceptance...at the WCBCT conference" (ISU Documents 0065), "exceptional" effort (ISU Documents 0072), and "diligence...non-defensiveness...conceptualizations [that were] accurate and sophisticated" (ISU Documents 0077), to name just a few. But, the handful of concerns about Mr. Yu's work and progress seemed to carry much more weight than the tremendous number of positive comments, which is consistent with the incredible difficulty of meeting confirmatory standards in domains in which one is negatively stereotyped.

## VI. Conclusions and Summary Opinions

The inconsistencies in the treatment of Mr. Yu across his time in the program, and the profound shift in the faculty's impression of his performance following his dismissal by Dr. Landers from the Eastern Idaho Regional Medical Center externship, show decision-making that was not based on objective and consistent standards. And, the ambiguity created without objective and consistent standards sets the stage for aversive racism to manifest. The ambiguity surrounding the evaluation and assessment of Mr. Yu was evidenced in unclear expectations of required English language proficiency, the feedback Mr. Yu received from supervisors, the criteria used to assess the tasks that would be appropriate for Mr. Yu's level of training, and in the overall criteria used to assess "satisfactory progress."

It appears that across his time in the program, the faculty shifted from trying to consider Mr. Yu's unique circumstances as an international student to coming up with race-neutral explanations for their negative assessments. This focus on race neutrality is one hallmark of situations that are conducive to the expression of aversive racism and

reflects a color-blind approach, which is strongly associated with the use of microaggressions. The shift from trying to consider Mr. Yu's needs as an international student to trying to treat him the same as other students was accompanied by Mr. Yu's impression that his supervisors did not respect him, which is also consistent with the challenged work environments that are created in the presence of aversive racism. Despite the faculty arguing they tried to accommodate Mr. Yu as a nonnative English speaker, it appears that microaggressions towards Mr. Yu were happening simultaneously and one consequence of these microaggressions was that Mr. Yu felt unsupported and undermined in his work.

There is strong evidence of the use of *post hoc* justifications once the psychology faculty made the decision to dismiss Mr. Yu from the program. These *post hoc* justifications include memories of his work that are reported differently from initial assessments of his work, considering areas of concern as dismissal-worthy only after the decision was made to dismiss Mr. Yu from the psychology program, a complete reversal of the faculty's belief in the appropriateness of Mr. Yu completing an internship in China, systematically failing to consider positive evaluations of Mr. Yu's work with the same weight as negative evaluations, and using mixed feedback from supervisors to justify dismissal by systematically ignoring positive comments. The use of *post hoc* justifications – particularly race-neutral *post hoc* justifications – for behavior or decisions is another hallmark of the presence of aversive racism.

There is also strong and compelling evidence that the evaluations of Mr. Yu were shaped by shifting standards. The ISU faculty made regular references to the fact that they were comparing Mr. Yu to international students, for whom English is their nonnative language, in his first two years in the program and "typical" program graduates (in the words of ISU faculty) in his third year and beyond. The shift that occurs during his time in the ISU graduate program suggests that Mr. Yu's performance was seen as good "for an international student" in his first two years, but that there was a significant drop in assessments of his work when he was compared to the native English speakers who made up the department's expectation of a successful student. This leads me to believe that Mr. Yu got feedback early on that was *relative* to what was expected for international students, as opposed to all graduates of the program. This prevented him from having the opportunity to grow from feedback in the same way offered to the native English speakers who make up the majority of the psychology graduate program. This is consistent with research suggesting White faculty, even those who believe in egalitarianism, have a difficult time speaking about topics involving race. And, this difficulty reduces the likelihood that faculty will become self-aware of their own biases, which is required to have a chance to correct for bias.

The regular and formal evaluations Mr. Yu received from the CTC may have also encouraged the use of shifting standards in such a way that it was more difficult for Mr. Yu to meet the confirmatory standards of professional competence. And, this happened



because of the ways in which nonnative English speakers and international students were stereotypically expected to be less successful.

It is also clear, given the ISU faculty's initial desire for Mr. Yu to complete his internship in China and their complete reversal after dismissing him, based on their concern that he might harm clients in China, that the faculty either a) created *post hoc* justifications for their behavior and evaluations of Mr. Yu, b) held him to different standards in working with American and Chinese populations, or c) had different requirements for the treatment of clients in America and China. In any instance, his work was being judged in a way that involved shifting standards of judgment in stereotype-relevant domains. And, this judgment ignored the overwhelmingly positive feedback from Mr. Yu's actual clients in China, who were the only people in a position to actually communicate his skill as a clinician.

From early on in the work developing Mr. Yu's nonstandard internship at the Cleveland Clinic, concerns were raised about his inability to access the due process of a standard APPIC internship grievance procedure. There are many ways in which Dr. Leslie Speer violated the minimal due process that was available to Mr. Yu (Plaintiff Document 000053-000059) – ranging from not offering a second assessment until after his dismissal to not working with him to develop a remediation plan in the face of performance concerns to not assembling the group of supervisors in Ohio to discuss his performance before dismissal – and the ISU faculty used the decision of Dr. Speer to justify dismissing Mr. Yu from the program. The ISU faculty's decision to privilege the opinion and decision-making of a supervisor who was violating accepted standards means that the decision was, at least in part, based on a violation of accepted professional norms. In addition, the psychology department never placed Mr. Yu on probation or told him he was at risk of dismissal from the program.

On the basis of these facts, it is my opinion that the behavior of the members of the Idaho State University psychology department was arbitrary and capricious and deviated from accepted professional norms in psychology. It is also my opinion that the shifting of standards in stereotype-relevant judgments contributed to the negative treatment of Mr. Yu in ways that were not professionally appropriate. While aversive racism is typically something my field only studies while considering differences across large groups of people, and not individuals, it is hard to imagine a situation that more strongly demonstrates all of the hallmarks that are typically present when aversive racism is occurring, which *strongly* suggests that the behavior of the ISU Psychology department was influenced by Mr. Yu's race and international status.

## **VII. Previous work as an expert witness**

*Spurlock v. Fox*, 2010 WL 3807167 (M.D.Tenn., 2010)

I was an expert for the plaintiff in a NAACP-backed lawsuit against a 2009 Metro Nashville school re-zoning plan. I wrote an expert witness report, was deposed, and testified in court. My testimony described the social psychological literature on prejudice, stereotyping, and the benefits of integrated educational settings.

### VIII. Compensation

My rate for the work on this case is [REDACTED]/hour. This fee includes case review, literature review, report writing, and communication with the legal team. I charge [REDACTED]/hour, plus travel expenses, up to a maximum of [REDACTED]/day for travel and testimony.

Sincerely,



Dr. M. Leslie Wade Zorwick  
Associate Professor of Psychology  
Hendrix College

### References

- Aberson, C. L., & Ettlin, T. E. (2004). The aversive racism paradigm and responses favoring African Americans: Meta-analytic evidence of two types of favoritism. *Social Justice Research, 17*(1), 25-46.
- Armour, J. (1995). Stereotypes and prejudice: Helping legal decision makers break the prejudice habit. *California Law Review, 83*, 733-772.
- Benard, S., Paik, I., & Correll, S. J. (2008). Cognitive bias in motherhood penalty. *Hastings Law Journal, 59*, 1359-1387.
- Biernat, M. (2003). Toward a broader view of social stereotyping. *American Psychologist, 58*(12), 1019-1027. doi:10.1037/0003-066X.58.12.1019.
- Biernat, M. (2009). Stereotypes and shifting standards. in T. D. Nelson (Ed.), *Handbook of Prejudice, Stereotyping, and Discrimination* (137-152). New York, NY: Psychology Press.



Exhibit “C”  
Excerpts From Dr. Shannon  
Chavez-Korell’s Expert Report

- In the May 3, 2013 dismissal letter, it was stated, “We recommend that Idaho State University award you the Master of Science degree in Psychology, to be conferred in August, 2013”, despite the fact that Mr. Yu had successfully defended his dissertation. **[Opinion: The university has the obligation and responsibility to award Mr. Yu a Ph.D. in general psychology at a minimum. Mr. Yu successfully completed all doctoral level program requirements of the Ph.D. in Clinical Psychology, including successful defense of a doctoral dissertation, with the sole exception of successful completion of internship.]**

### III. Summary of Opinions and Conclusions

In Mr. Yu’s case, there are ethical and accreditation standards that have been violated by ISU faculty and clinical supervisors, as well as clear indicators of cultural incompetence among faculty and clinical supervisors. Ethical violations by ISU faculty and clinical supervisors, as guided by the American Psychological Association’s *Ethical Principles of Psychologists and Code of Conduct* (American Psychological Association, 2010), include boundaries of competence in training international students who speak English as a second language (APA Ethics Code Standard: 2.01), avoiding harm (APA Ethics Code Standard: 3.04), and assessing student and supervisee performance (APA Ethics Code Standard: 7.06). In addition, *Guidelines and Principles for Accreditation in Professional Psychology* (APA Commission on Accreditation) were violated: Domain D - Cultural and Individual Differences and Diversity, and Domain E - Student-Faculty Relations.

- The ISU Clinical Psychology faculty and clinical supervisors did not adequately address the diversity challenges faced by Mr. Yu. In addition, there is no evidence that clinical supervisors and the Clinical Training Committee directly addressed culture and issues of culture with Mr. Yu despite concerns about Mr. Yu’s ability to form alliances with clients, his struggle in understanding cultural nuances, and also concerns with his fluency in English as documented across supervisors’ evaluations and in the semi-annual evaluations. The Clinical Training Committee raised concerns about Mr. Yu’s performance and often attributed these concerns to language problems; however, they failed to provide Mr. Yu with supportive and effective action plans, recommendations, appropriate remediation, and/or accommodations thus reflecting the cultural incompetence of the faculty. The ISU faculty and clinical supervisors did not provide Mr. Yu with the special mentoring he needed as an international student who speaks English as a second language.
- ISU faculty and clinical supervisors who lacked multicultural competence and whose behavior violated professional standards, created distorted evaluations and had a tendency to view Mr. Yu as incompetent which harmed Mr. Yu. The ISU faculty did not question the adverse events that Mr. Yu suffered because of this cultural incompetence.
- Based on the documentation reviewed, there are several examples of Mr. Yu not receiving feedback in a direct and timely manner from ISU faculty and clinical supervisors (e.g., During a phone conversation with Dr. Roberts on January 11, 2013, Dr.

Speer informed Dr. Roberts that she had concerns about Mr. Yu. Neither Dr. Roberts nor Dr. Speer shared these concerns with Mr. Yu). In addition, there is no documentation of a single remediation plan that directly addressed concerns raised about Mr. Yu.

- Mr. Yu was dismissed from the doctoral program in Clinical Psychology based on his alleged unsatisfactory progress towards degree completion and professional skills deficits, which is inconsistent with his academic grades, and grades earned for practicum as well as evaluations. At the time of dismissal, Mr. Yu was a student in good standing with a cumulative GPA of 3.69, and he had only one pre-doctoral internship to complete prior to receiving his Doctorate in Clinical Psychology. Prior to the May 3, 2013 dismissal letter from ISU, Mr. Yu had never been on probation and had never been informed that he was in danger of being dismissed from the doctoral program. ISU faculty failed to provide due process in Mr. Yu's dismissal from the Clinical Psychology Ph.D. program.
- Mr. Yu was dismissed from the doctoral program in Clinical Psychology and denied the opportunity to earn a Ph.D. in part due to alleged concerns for potential harm to clients and the in an effort to protect the public; however, there is no evidence in the documents reviewed to support that harm by Mr. Yu ever occurred. In fact, there is evidence to the contrary, including: (1) Mr. Yu earned passing grades in all of his required practicum work (i.e., Fall 2009 Psychology Clinic Practicum = A, Spring 2010 Psychology Clinic Practicum = B, Summer 2010 Psychology Clinic Practicum = A, Fall 2010 Psychology Clinic Practicum = A, Spring 2011 Community Practicum = A, Fall 2011 Psychology Clinic Practicum = A- and Community Practicum = A, Spring 2012 Psychology Clinic Practicum = B); if there was a serious concern about Mr. Yu's clinical skills it should be reflected in the grade evaluation. (2) Mr. Yu's doctoral dissertation involved running clinical trials with Chinese families with preschool-age children in Shanghai, China. Mr. Yu culturally adapted an evidence-based practice. In order to competently adapt a treatment to a specific culture, one must understand the culture and cultural context in which the original evidence-based practice existed (i.e., U.S. mainstream White culture) and have a strong understanding of the culture and cultural context for which the treatment is being adapted to (i.e., Chinese culture). Mr. Yu demonstrated clinical and cultural competence in successfully adapting the treatment he was examining; his dissertation yielded successful treatment results. 19 families completed treatment and rated Mr. Yu an average of at least 5.4 on a 6-point scale reflecting evidence of consumer satisfaction. (3) During Fall of 2011 the ISU faculty deemed Mr. Yu ready for internship and identified no concerns about any competency areas. (4) Mr. Yu received a positive evaluation from Dr. Chase who served as his clinical supervisor during internship, contrasting the negative evaluation by Dr. Speer. Developmentally it does not make sense that a student would move from a competency level of meeting and exceeding most (if not all) clinical standards of evaluation, to then suddenly regress to a clinical competence level that is below expectations on almost all standards of evaluation. The assigned grades and formal evaluations across semesters are inconsistent with unsatisfactory progress and concerns of harm; due process was not followed.

- The assigned grades and formal evaluations across semesters are inconsistent with unsatisfactory progress; due process was not followed. In regards to accreditation standards, in all matters relevant to the evaluation of students' performance, programs must adhere to their institution's regulations regarding due process and fair treatment of students.
- There is no documentation of a single remediation plan that directly addressed the specific concerns raised about Mr. Yu. The Competency Benchmarks: A Model for Understanding and Measuring Competence in Professional Psychology Across Training Levels (Fouad et al., 2009) offers an excellent framework for assessing students competency across various domains and offering students feedback. In addition, the Competency Assessment Toolkit for Professional Psychology (Kaslow et al., 2009) includes a template of a competency remediation plan. The remediation plan includes: identifying the competency domain where the concerns exist; identifying problem behaviors; expectations for acceptable performance, trainee's responsibilities/actions, supervisors'/faculty responsibilities/actions, timeframe for acceptable performance, assessment method, dates of evaluation, and consequences for unsuccessful remediation. This remediation plan template offered by Kaslow et al., 2009 is an exemplar of a quality remediation, which is significantly different from any remediation or recommendations offered by ISU faculty. In addition, this process of remediation is time intensive, ongoing, and requires a commitment to the student and to training, which stands in contrast to the approach taken by the ISU faculty and clinical supervisors.

In conclusion, Mr. Yu has clearly suffered serious harm due to the cultural incompetence of the ISU faculty, the program's violation of accreditation standards, and ethical violations committed by ISU faculty and program affiliated clinical supervisors in working with Mr. Yu. It is my opinion that the dismissal of Mr. Yu from ISU's Clinical Psychology Ph.D. Program was excessive (especially when considering that an appropriate formal remediation had not been attempted), unjustified, and objectively unreasonable. In my opinion, the actions of the faculty at ISU in dismissing Mr. Yu as they did, was a substantial departure from accepted academic norms.

#### **IV. Compensation**

My rate for work on this case is [REDACTED]/hour, plus travel expenses, and up to a maximum of [REDACTED]/day for travel and testimony. My work on this case includes reviewing case documents, report writing, communication with the legal team, and all required testimony.

Sincerely,



Shannon Chavez-Korell, Ph.D.

Exhibit “D”  
ISU Documents  
0323,0324,0542,0640,0641 and  
0642 Received From the  
Defendant in Answer to  
Plaintiff’s First Set of  
Discovery Request

**Idaho State**  
**UNIVERSITY**

Department of Psychology  
921 S 8th Ave, Stop 8112 • Pocatello, Idaho 83209-8112

November 12, 2012

Jun Yu, M.Ed.  
5144 Beckett Ridge  
Stow OH 44224

Dear Mr. Yu,

I have just mailed the final approval documents for the non-standard clinical internship at the Cleveland Clinic to Dr. Speer. I have enclosed copies of the following documents for your records:

1. External Internship Proposal Review (Jill Hedt, Ph.D., Training Director of the Boise VA clinical internship)
2. Pages 1-13 of the internship proposal in which there are minor changes on pages 3, 10, and 13). Pages 14-34 are unchanged.
3. Letter to Dr. Speer dated November 12, 2012, which describes the Clinical Training Committee's response to Dr. Hedt's review.

Please review the documents. As you can readily determine, two substantive concerns were identified by Dr. Hedt (compensation and due process). The Clinical Training Committee cannot address either of these concerns adequately, as indicated in our letter to Dr. Speer. The committee is willing, nevertheless, to authorize the non-standard internship at the Cleveland Clinic commencing June 2, 2013.

Before I provide the registration override that will allow you to register for PSYC 7749, Clinical Internship, for spring semester, 2013, I will need the following:

1. An email or written response from Dr. Speer indicating acceptance of the minor revisions to the proposal and acceptance/recognition of the limitations of the proposal as identified by Dr. Hedt.
2. A signed, written response from you indicating that you have been fully informed of the limits of the internship proposal and your willingness to proceed, despite those limitations (mail to me at Stop 8112, ISU, Pocatello ID 83209-8112).
3. Your payment to the ISU Psychology Department for Dr. Hedt's fee. You should have already received an invoice.

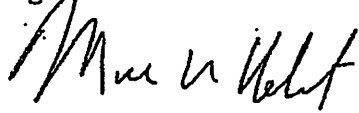
Please remember that the Clinical Training Committee provided you two other options to complete the required internship (see your spring semester evaluation letter, June 4, 2012):

ISU Documents 0323

1. Re-apply to APPIC member sites;
2. Propose an accommodated internship in China.

Both of these options are still available to you. I assume you continue to prefer the non-standard internship option at the Cleveland Clinic, given the time, effort, and expense you have expended to craft the proposal, but it is my responsibility to remind you of these other two options.

Regards

A handwritten signature in black ink, appearing to read "Mark W. Roberts". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark W. Roberts, Ph.D.  
Director of Clinical Training



Idaho State University Mail - Request to Waive Continuous Registrati... <https://mail.google.com/mail/?ui=2&ik=2f543c6d3e&view=pt&sear...>

Mark Roberts &lt;robemark@isu.edu&gt;

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**Request to Waive Continuous Registration Rule**

2 messages

Mark Roberts &lt;robemark@isu.edu&gt;

Fri, Jul 13, 2012 at 2:38 PM

To: Nicole Hill &lt;hillnico@isu.edu&gt;

Cc: Rhonda Woodruff &lt;woodrho2@isu.edu&gt;, Donna Plant &lt;plandonn@isu.edu&gt;

Bcc: Shannon Lynch &lt;lynchshan@isu.edu&gt;

Dear Dean Hill,

I have an unusual circumstance.

Jun Yu (Bengal ID #000210017), an international student from China, successfully defended his dissertation in June of 2012 and has performed all clearance steps on the Graduation Checklist. However, Mr. Yu has not completed his clinical internship (PSYC 7749), which requires an 11-12 month contract at a national internship site OR an equivalent experience approved by our own Clinical Training Committee. **The internship is his only remaining degree requirement. He is, "all but internship".** Our Clinical Training Committee has offered him three options: 1) re-apply to the national internship match in November 2012 (a process that failed to yield him a site during the last applicant cycle); 2) propose a local internship, subject to Clinical Training Committee approval; **3) propose a modified internship in China, subject to Clinical Training Committee approval, where he hopes to gain academic employment (which would include professional practice) in the future.**

In the interim, he is not registered for any course. I incorrectly informed him he did not have to register this fall, since his dissertation had been defended and there was no course he wished or needed to take. Indeed, Mr. Yu has left Pocatello and returned to Cleveland OH where he has friends and family. He hopes to construct a local internship in the Cleveland area (Option 2 above). The earliest possible commencement date for such an internship would be January, 2013. I do not have any idea what course he would register for this fall semester, were he required to do so by the Graduate School. Taking more dissertation credits after he has defended makes no sense to me; nor does a special problems course, since his Program of Study has been completed (other than internship). Consequently, I ask that the continuous registration requirement be waived for Mr. Yu. If and when an internship is approved and initiated, he will be required to enroll in 1-credit of PSYC 7749 for each of three consecutive semesters. Successful completion of the internship will allow his degree to be conferred by ISU.

Let me know.

Thanks

--

Mark W. Roberts, Ph.D.  
 Director of Clinical Training  
 Idaho State University

---

 Nicole Hill <hillnico@isu.edu>

Fri, Jul 20, 2012 at 9:39 AM

To: Mark Roberts &lt;robemark@isu.edu&gt;

Cc: Rhonda Woodruff &lt;woodrho2@isu.edu&gt;, Donna Plant &lt;plandonn@isu.edu&gt;

Dear Mark,

Good morning. I appreciate the detail you provide below about the unique and unusual circumstances of Jun Yu's program. I also met with this student earlier in the year, and thus, have some background from that



Idaho State University Mail - Internship Documentation and Request f... <https://mail.google.com/mail/u/0/?ui=2&ik=2f543c6d3e&view=pt&s...>



Mark Roberts <robemark@isu.edu>

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## Internship Documentation and Request for Proposal Criteria

2 messages

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Jun Yu <yujun@isu.edu>

Sun, Apr 14, 2013 at 9:23 PM

To: "Mark W. Roberts, Ph.D." <robemark@isu.edu>

Dear Dr. Roberts,

I have scanned the evaluation from Dr. Speer in case you have not yet received it in the mail. This also includes my rebuttal of her evaluation. Please download it here.

I also have a scanned version of my weekly logs for the months of January, February and March (download here), which shows that up until March 24 I completed 475 internship hours.

A professor at Shanghai Mental Health Center expressed interest in taking me on as an intern. I wish to work on my proposal for an internship in Shanghai as soon as possible. Would there be any different criteria for this proposal, since it would take place in China?

I look forward to hearing from you at your earliest convenience.

Best,

Jun Yu

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Mark Roberts <robemark@isu.edu>

Mon, Apr 15, 2013 at 12:05 PM

To: Jun Yu <yujun@isu.edu>

Hi Jun

I have received the evaluation performed by Dr. Speer and the letter of dismissal. The Clinical Training Committee will review these materials as soon as possible. Once we have reviewed the materials from your internship efforts at Cleveland, we will get back to you with a disposition. Note that you DO NOT have authorization from the Clinical Training Committee to initiate the construction of an internship in China at this time. In June of 2012 you were given 3 options. You selected to initiate a non-standardized internship in the USA. We accepted your decision and worked with the Cleveland Clinic to construct that option in a manner consistent with all our procedures for approving a non-standardized internship. Your contract with the Cleveland Clinic was terminated on April 4, 2013. Consequently, the Clinical Training Committee will now review the documents, including the two attached documents ("rebuttal" and hours).

I will get back to you once the committee has deliberated your situation.

Regards

[Quoted text hidden]

--

Mark W. Roberts, Ph.D.  
Director of Clinical Training  
Idaho State University

ISU Documents 0542



# Idaho State UNIVERSITY

Department of Psychology  
921 S 8th Ave, Stop 8112 • Pocatello, Idaho 83209-8112

May 17, 2013

Jun Yu, M.Ed.  
5144 Beckett Ridge  
Stow OH 44224

Dear Mr. Yu,

The Graduate Faculty of the Psychology Department convened on May 16, 2013, to review your appeal of your dismissal. Upon deliberation of the reasons you provided for reconsideration and a review of your record, the Graduate Faculty voted unanimously (11-0) to sustain your dismissal from the doctoral program in clinical psychology. The committee considered each of the points you raised in your appeal letter of May 9, 2013.

#### "Argument 1: In Good Standing Until Cleveland Clinic Dismissal"

It is true that you were in good standing. You were not on academic probation at the point of dismissal from the Cleveland Clinic. The Graduate Faculty disagrees, however, with your opinion "...that the Cleveland Clinic termination was the nexus for all that followed." **The reasons behind your dismissal date back to unsatisfactory progress in professional development that was first formally documented during fall semester 2011. See the "Chronological Summary" document attached to your dismissal letter. The Cleveland Clinic dismissal in April 2013 demonstrated a continued lack of satisfactory progress, rather than the "...nexus for all that followed".**

#### "Argument 2: Internship Should Be Viewed , at Worst, as Incomplete"

##### "Sub point a: Lack of due process by Cleveland Clinic"

It is true that the approved internship proposal states in a variety of ways that internship staff should always attempt to provide training to address any performance difficulties encountered by the intern to acquire needed skills. That is, of course, what all supervisors of clinical psychology students attempt to do in all educational settings. We have absolutely no reason, however, to believe that Dr. Speer failed to make reasonable efforts to assist you in acquiring needed skills. Indeed, in a phone conversation with Dr. Roberts on January 11, 2013, his notes indicate that Dr. Speer reported that you were "...not as far along as expected"; consequently, she planned to focus on assessment using a graduated approach to skill acquisition. We have no reason to doubt her plan to "...work closely with [you] to adequately and fairly address any concerns..." The result of these educational efforts, however, was insufficient, as manifest by the unacceptably low ratings on the Psychology Trainee Competency Assessment Form, both in January, and then again, in April. Consequently, Dr. Speers dismissed you from the internship.

ISU Documents 0640



It is also true that you had no right to a formal appeal process of Dr. Speer's decision. You were fully aware of the absence of due process for student trainees at the Cleveland Clinic. You acknowledged and accepted that limitation in a signed letter dated November 19, 2012. Moreover, the absence of due process for student trainees was agreed to in the formal Affiliation Agreement between Idaho State University and the Cleveland Clinic Foundation. Specifically, the Cleveland Clinic Foundation "...retains the right to take immediate action to suspend a Student's participation in response to a lack of professionalism, concerns of patient care or the safety and respect of its staff (Section 2 q of the Affiliation Agreement)". This agreement was signed by the Executive Director of the Center for Health Sciences Education on 10/16/2012 and by the Provost of Idaho State University on 10/31/12.

"Sub point b: Dr. Cheryl Chase held positive opinions of my performance"

It is true that a Dr. Chase, the third member of your approved supervisory team, did provide acceptable ratings on the Psychology Trainee Competency Assessment Form. This assessment was performed in April, following your dismissal from the internship, and reflected Dr. Chase's appraisal of your performance with her up to that date. The Graduate Faculty does not give Dr. Chase's evaluation significant weight, however. Her email of April 8, which you have attached to your appeal, indicated that she had not yet observed you perform any professional work with patients. Rather, your work with Dr. Chase was limited to didactics and discussion, not face-to-face service provision with patients.

"Argument 3: I Should Be Given An Opportunity To Do Internship in China"

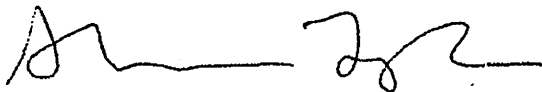
It is true that the Clinical Training Committee considered that option in June of 2012. At that time, given your success with your clinical research trial in China during the summer of 2011, an arranged internship in China was considered an appropriate cultural accommodation. The options at that time, however, were not explicitly or implicitly intended as a set of options to be taken in sequence, given a problem in one venue or the other. Most importantly, your demonstrated failure at the Cleveland Clinic provided explicit evidence that your lack of satisfactory progress is not the result of a linguistic problem alone. Rather, problems of perspective taking and conceptualization during professional processes have now been replicated in two external sites (Eastern Idaho Regional Medical Center, Fall Semester, 2011; Cleveland Clinic, Spring Semester, 2013) and our own efforts during your fourth year in the program at Idaho State University (2011-12). Such problems are not expected for a student in the fourth and fifth years of doctoral study, even an international student such as yourself. See the "Chronological Summary" attached to the dismissal letter for details. Patient care is an integral component of the professional practice of clinical psychology. Based on the available data, we believe you may actually put patients at risk, not as a matter of inadequate linguistic abilities, but as a matter of poor perspective taking and difficulties with conceptualization. The Graduate Faculty is convinced that a fourth "chance" (i.e., an Internship in China) is unwarranted and might put Chinese patients at risk of harm.

You have the right to appeal the decision of the Graduate Faculty of the Department of Psychology to the Dean of the College of Arts and Letters. See the Graduate Catalog, p. 16 for

details ([www.isu.edu/graduate/catalog.shtml](http://www.isu.edu/graduate/catalog.shtml)). If you choose to do so, you must do so within 15 working days of the receipt of this letter. Simply provide your written appeal to:

Kandi Turley-Ames, Ph.D.  
Dean of the College of Arts & Letters  
Idaho State University, Stop 8087  
Pocatello ID 83209-8087

Sincerely,

A handwritten signature in black ink, appearing to read 'Shannon Lynch', written over a horizontal line.

Shannon Lynch, Ph.D.  
Chair, Department of Psychology

Cc. Kandi Turley-Ames, Dean  
College of Arts & Letters

Cornelis Van der Schyf, Dean  
Graduate School