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

<b>JUN YU,</b>	)	
	)	
	)	<b>Case No.</b> _____
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>FIRST AMENDED COMPLAINT</b>
	)	<b>AND DEMAND FOR JURY TRIAL</b>
<b>IDAHO STATE UNIVERSITY,</b>	)	
	)	
and	)	
	)	
<b>JOHN/JANE DOES I through X, whose</b>	)	
<b>true identities are presently unknown,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	
_____	)	

**COMPLAINT**

Comes now Plaintiff, Jun Yu, (“Plaintiff” or “Mr. Yu”) by and through his attorneys of record, Ronaldo A. Coulter and Emile Loza de Siles of the law firm of Idaho Employment Law Solutions, PLLC, and for causes of action against the above named Defendants complains and alleges as follows:

**I. INTRODUCTION**

This is a case of discrimination in violation of Title VI of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000d et. seq. Mr. Yu was a graduate student at ISU. Mr. Yu had only one practicum to complete before receiving his Ph.D., returning to his native China and starting his professional career. Because of unlawful discrimination and lack of due process that was not voluntarily waived by Mr. Yu, Mr. Yu was denied an opportunity to complete his lone remaining practicum in his native homeland, The Peoples Republic of China.

## II. PARTIES

1. Mr. Yu is a citizen of The People's Republic of China. His address at the time of his dismissal through the final denial of his appeal from ISU was 5144 Beckett Ridge, Stow, Ohio, 44224. From August of 2008 through late June of 2012, Mr. Yu resided in Pocatello, Idaho at the following locations: (a) McIntosh Manor D8, Idaho State University, Pocatello, ID 83209; and (b) McIntosh Manor F7, Idaho State University, Pocatello, ID 83209. Mr. Yu presently resides in the Peoples Republic of China.

2. Defendant Idaho State University (hereinafter "ISU"), is now, and at all relevant times herein was, a "body politic and corporate, with its own seal and having power to sue and be sued in its own name" (*See* Idaho Code § 33-3003) and is now and at all relevant times herein "was established in the city of Pocatello, Idaho, an institution of higher education to be designated and known as the Idaho State University, consisting of such colleges, schools or departments as may from time to time be authorized by the Idaho State Board of Education." *See* Idaho Code § 33-3001.

3. Defendant ISU's official address is 921 S. 8<sup>th</sup> Ave., Pocatello, Idaho 83209; and upon information and belief, Defendant receives financial assistance from both the U.S. Department of Health and Human Services and the U.S. Department of Education.

**III. JURISDICTION, VENUE, AND  
EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1343, and 1367. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights of the parties and grant all further relief deemed necessary and proper as Plaintiff brings this private right of action for intentional discrimination pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et.seq.*<sup>1</sup>

5. Pursuant to 28 U.S.C. §§ 1391(b)(1) and 1331(b)(2) Plaintiff brings this action in, and jurisdiction is proper in, the United States District Court for the District of Idaho.

6. On May 3, 2013, the Director of Clinical Training, Dr. Mark W. Roberts constructed a letter notifying Plaintiff that he had been dismissed from the doctoral program in Clinical Psychology. Plaintiff appealed this decision.

7. On May 17, 2013, the Graduate Faculty of the Department of Psychology denied Plaintiff's appeal.

8. On June 26, 2013, Mr. Yu submitted his appeal to the Dean of Idaho State University College of Arts and Letters.

9. On July 30, 2013, the Dean issued her decision on Plaintiff's appeal denying Plaintiff the relief he sought. On August 29, 2013, Plaintiff requested a hearing before the Graduate Council.

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<sup>1</sup> See *Alexander v. Sandoval*, 532 U.S. 275, 280-81, 121 S. Ct. 1511, 1516, 149 L. Ed. 2d 517 (2001).

10. On October 2, 2013, Plaintiff presented his case before the Graduate Council. Additionally, on October 2, 2013, Mr. Yu was informally advised that his appeal had been denied.

11. On October 3, Plaintiff received the final and formal decision of the Graduate Council denying his appeal.

12. Mr. Yu filed a Notice of Tort Claim against the Defendants on March 14, 2014. Defendants claim was denied on June 12, 2014, after the 90-day statutory period to respond ended. Plaintiff has satisfied the notice requirements under the Idaho Tort Claims Act, I.C. §§ 6-901, et seq., to file a civil action against the State of Idaho.

13. The filing of the complaint is timely, as it has been filed within the two-year statute of limitations.<sup>2</sup>

#### IV. STATEMENT OF FACTS

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<sup>2</sup> The last and final act of discrimination occurred when as required, Mr. Yu exhausted the administrative remedies provided by ISU and the Graduate Council denied Plaintiff's appeal; *see Sirpal v. Univ. of Miami*, 684 F.Supp. 2d. 1349, 1360 (S.D. Fla. 2010). Plaintiff was informally advised of the denial on October 2, 2013. Two years from October 2, 2013 is Friday October 2, 2015 which is within the statute of limitations:

The length of the statute of limitations for a civil rights action is governed by state law. *Wilson v. Garcia*, 471 U.S. 261, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985) (overruled only as to claims brought under the Securities Exchange Act of 1934, which is not applicable here). Idaho Code § 5-219 provides for a two-year statute of limitations for professional malpractice, personal injury, and wrongful death actions. ***Federal civil rights actions arising in Idaho are governed by this two-year statute of limitations***... Notwithstanding the use of the state statute of limitations in civil rights cases, the Court uses federal law to determine when a claim accrues under a statute. *Elliott v. Union City*, 25 F.3d 800, 801-02 (9th Cir.1994). ***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 *Kimes v. Stone*, 84 F.3d 1121, 1128 (9th Cir.1996).

*Osborn v. Butler*, 712 F. Supp. 2d 1134, 1149 (D. Idaho 2010)(Emphasis added)

On October 2, 2013, Defendant denied Plaintiff's appeal and it was then that Plaintiff was fully aware of the basis for the cause of the present action.

14. That Mr. Yu is a citizen of the People's Republic of China and grew up in a Chinese cultural and language context.

15. In 2008, Mr. Yu was accepted into ISU's Graduate program seeking to obtain a PhD in Clinical Psychology.

16. Mr. Yu is/was an international student and is Chinese.

17. Mr. Yu's identity includes Chinese language and culture, and speaking English as a foreign language.

18. Mr. Yu attended ISU from 2008 through May of 2013. His final GPA was 3.69.

19. Mr. Yu successfully defended his dissertation titled "A Clinical Trial of Behavioral Family Therapy in China".

20. Mr. Yu's career goal was to return to China to work at a university or research center.

21. The ISU Clinical Psychology PhD program Mr. Yu attended was accredited by the American Psychological Association (APA).

22. Per IDAPA Rule 24.12.01.004, the Idaho State Board of Psychologists Examiners has incorporated into its administrative rules the APA Ethical Principles of Psychologists and Code of Conduct.

23. Per Idaho Code § 54-2309(5), any Psychologists who has been unethical as detailed by the current, and future amended, ethical standards of the American Psychological Association is subject to discipline up to and including the revocation of the psychologist's license.

24. ISU's Clinical Psychology PhD program is obliged to follow APA standards including the APA Ethical Principles of Psychologists and Code of Conduct (Ethics Code) and relevant APA policies.

25. That ISU policy, APA accreditation standards, and the APA Ethics Code embrace "cultural and individual diversity" and prohibit discrimination and harassment based on the diversity dimensions.

26. That per APA, cultural and individual diversity dimensions "include, but are not limited to, age, disability, **ethnicity**, gender, gender identity, **language**, **national origin**, **race**, religion, **culture**, sexual orientation, and social economic status" (emphasis added).

27. When Mr. Yu entered the program, he was the only non-white student for whom English was not their first language.

28. All of the clinical faculty and clinical supervisors that Mr. Yu worked with during his time as an ISU student were White, European American, from the US, and native English speakers who did not speak Chinese.

29. Mr. Yu's English proficiency met ISU's admission requirements for international students.

30. Mr. Yu, a person who spoke English as a foreign language, was keenly aware that he needed to immerse himself in English so that he would be successful in the doctorate program.

31. Mr. Yu did immerse himself in learning English.

32. Mr. Yu, because of his efforts to become fluent in English, was able to provide professional services in a manner consistent with an international student seeking a PhD.

33. Mr. Yu completed all of his course work in English.

34. Mr. Yu taught courses at ISU in English and received satisfactory evaluations from his students.

35. Mr. Yu successfully presented and defended his dissertation in English.

36. Prior to embarking on an internship, Mr. Yu had successfully completed all other degree requirements and defended his dissertation.

37. Prior to embarking on his internship, Mr. Yu was still in good standing and not on any form of academic probation.

38. Prior to embarking on his internship, Mr. Yu had satisfactory grades in all of his required courses.

39. During Mr. Yu's first three years in the program, the Clinical Training Committee (CTC) evaluations written and signed by Dr. Roberts stated that "The committee finds Jun's academic and professional progress to be satisfactory."

40. Mr. Yu received As and Bs in all of his classes, including his practica, and published a paper in an international peer-reviewed journal.

41. Consistent with APA Ethics Code requirements ISU Psychology Department's Clinical Student Handbooks for 2011-2012 and 2012-2013 states:

"If a student is at risk of earning a U-grade, the Clinical Training Committee (CTC) will be informed by the advisor prior to the end of the semester, and a formal letter will be issued that describes the nature of the unsatisfactory progress, the steps needed to remedy the deficiency, and a deadline for re-evaluation. Failure to meet the specified remediation plan will result in a U-grade and subsequent academic probation. Probation will be lifted upon semester-long performance yielding an S-grade."

42. Mr. Yu was dismissed from an externship and internship -- both classes where students could earn a U-grade or an S-grade -- without remediation<sup>3</sup>.

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<sup>3</sup> APA provides a model for trainee remediation on their website. Their model for remediation includes the following components: 1) Competency Domain/Essential Components; 2) Problem

43. During Mr. Yu's fourth year in the program, Dr. John Landers was Mr. Yu's supervisor for Fall 2011 PSYC 7748 Clinical Externship class at Eastern Idaho Regional Medical Center (EIRMC).

44. This externship was not a required course, but Mr. Yu was recommended by the CTC to the externship, opining that the experience "is critical for students to compete for national internships". According to the contract, the externship was planned to last for one year.

45. That Dr. Landers and Mr. Yu were in a cross-cultural supervision relationship.

46. On November 4, 2011, after just over two months into the Externship, Dr. Landers abruptly dismissed Mr. Yu from PSYC 7748 Clinical Externship, alleging Mr. Yu was "unable to grasp the communication nuances".

47. Dr. Landers did not provide Mr. Yu any prior specific feedback regarding his alleged areas of concern and omitted remediation.

48. That Dr. Landers denied Mr. Yu due process in supervision.

49. That Dr. Landers wrote "... that this site could not afford to engage in remediation efforts..." and acknowledged that "Daily feedback may have been too indirect".

50. That "Dr. Landers states that when he interviewed Complainant [Mr. Yu], he had concerns that Mr. Yu would not be able to do the externship ..." but Dr. Landers did not share his alleged concerns with Mr. Yu.

51. That "Dr. Landers admitted that he may not have specifically told Mr. Yu that he was concerned about Plaintiff's performance."

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Behaviors; 3) Expectations for Acceptable Performance; 4) Trainee's Responsibilities/Actions; 5) Supervisors'/Faculty Responsibilities/Actions; 6) Time frame for Acceptable Performance; 7) Assessment Methods; 8) Dates of Evaluation; 9) Consequences for Unsuccessful Remediation. *Competency Remediation Plan*, American Psychological Association, <https://www.apa.org/ed/graduate/competency-remediation-template.doc>



52. That Dr. Mark Roberts, who was the Director of Clinical Training at ISU, reported “And for all we knew things were going along swimmingly... So we were surprised when I got a phone call, and then a subsequent documentation [the dismissal letter] from Dr. Landers that Dr. Landers was going to dismiss him, and that that was not a choice.”

53. In his one page letter sent to Dr. Roberts dismissing Mr. Yu from the PSYC 7748 externship, Dr. Landers shared that “concerns do not revolve around effort” but that:

“I have consistently observed that Jun Yu is unable to grasp the communication nuances that are required to build rapport with difficult patients, administer standardized tests with difficult patients... Given his desire to return to China and specialize in parent/child training, he is probably right where he needs to be in this regard. However, his deficits have made this practicum one that was not a good fit and placed him, patients, and psychology services at the hospital in a difficult position”.

54. Dr. Landers provided no documentation to support his allegations.

55. When Mr. Yu mentioned that the sudden dismissal violated the externship contract which required “documented reasons that the Party must document” for withdrawal of a student, Dr. Roberts opened Mr. Yu’s student file and looked for information to support Dr. Landers’ dismissal.

56. Dr. Roberts pointed out comments from past practica regarding Mr. Yu’s command of English.

57. Mr. Yu respectively received Bs and As from these practica.

58. That Dr. Roberts showed Mr. Yu he already documented reasons for Dr. Landers to dismiss Mr. Yu before Mr. Yu had even started the externship. That Dr. Roberts demonstrated prejudice against Mr. Yu.

59. Mr. Yu complained to ISU Student Affairs Officer Shane Ostermeier about Dr. Landers’ and the Psychology Department’s actions/omissions.

60. Mr. Yu also expressed to Dr. Roberts that Dr. Landers' actions were potentially in violation of the APA Ethics Code.

61. Dr. Roberts immediately denied any ethical violations had taken place.

62. Dr. Roberts requested that Dr. Landers do an evaluation of Mr. Yu.

63. Dr. Lander's evaluation was dated November 14, 2011, 10 days after the dismissal occurred.

64. Despite Mr. Yu's academic success in his four plus years in the doctoral program, Mr. Yu continued to receive negative comments regarding his supposed language skills inadequacy.

65. That as an example of how Mr. Yu was denied participation in a practicum because of his national origin even though he was proficient in communication in English, Mr. Yu was denied a practicum because of "perceived" deficits in language fluency needed to evaluate English-speaking patients who were being tested with English language instruments.

66. That Dr. Cheri Atkins served as an Adjunct Faculty member in the Department of Psychology, ISU.

67. That Dr. Atkins allowed Mr. Yu to enroll in her Fall 2011 PSYC 7724 Community Practicum class at ISU held at her own private practice site, but only allowed Mr. Yu to observe during his practicum at her private practice.

68. That notwithstanding Dr. Atkins' concerns about Mr. Yu's English language proficiency, Mr. Yu obtained a "B" in his Spring 2010 PSYC 7725 Psychology Clinic practicum and an "A" in Summer 2010 PSYC 7725 Psychology Clinic practicum; in these two PSYC 7725 practicum classes, Dr. Atkins allowed Mr. Yu to provide direct clinical services to clients.

69. That upon information and belief, Dr. Shannon Lynch is the present Chair of the Department of Psychology.

70. That Dr. Lynch wrote in her 12/15/2011 practicum evaluation of Mr. Yu “I am assigning an “I” [Incomplete] at this time” and “his current efforts reflect performance + skills equivalent to a “B”“.

71. After Mr. Yu finished the Incomplete in Spring 2012, Dr. Lynch gave him an “A-” grade for her practicum but did not do a final evaluation of Mr. Yu’s work.

72. Dr. Roberts later used Dr. Lynch’s 12/15/2011 incomplete practicum evaluation to justify dismissing Mr. Yu from the doctoral program.

73. That Dr. Shannon Lynch signed the May 17, 2013 document that denied Mr. Yu’s appeal of Mr. Yu’s dismissal.

74. That Dr. Shannon Lynch complained to Mr. Yu’s wife that Mr. Yu’s English was “terrible”.

75. At the time Mr. Yu was unlawfully dismissed from the Graduate program, Mr. Yu was a student in good standing with only one practicum to complete prior to receiving his Doctorate in Clinical Psychology.

76. Completing an internship involved two steps. The first step was simply obtaining an internship, which is a stressful and challenging process. The second step was for Mr. Yu to successfully complete the internship.

77. In gaining an internship, Mr. Yu could have re-applied for an internship through the Association of Psychology Postdoctoral and Internship Centers (APPIC), but was discouraged by the CTC.

78. Had Mr. Yu chosen this path, it would have delayed the start of his internship by an entire year.

79. Due to the then shortfall in internship positions available through APPIC, there was no guarantee that Mr. Yu would actually be matched to an internship.

80. Mr. Yu also had the option of proposing an internship that he was to construct/find for himself.

81. Mr. Yu also had the option of constructing an internship in his native China.

82. That at the time, and for both personal and professional reasons, Mr. Yu chose not to construct an internship in China, where he did the work that was the basis for his dissertation.

83. Dr. Roberts gave Mr. Yu the Association of Psychology Postdoctoral and Internship Centers (APPIC) standards, which he directed Mr. Yu to follow in constructing his internship.

84. Mr. Yu initially found Dr. Cheryl Chase, a psychologist in private practice who was interested in working with him on the internship.

85. APPIC standards required at least two supervisors for an internship, compelling Mr. Yu to look for other supervisors.

86. In searching for the additionally needed supervisor, Mr. Yu found Dr. Leslie Speer and Dr. Thomas Frazier at Cleveland Clinic Center for Autism (CCCA), who agreed to work with him.

87. Mr. Yu constructed an internship with Dr. Chase and the Cleveland Clinic Center for Autism (CCCA) Cleveland, Ohio, as it seemed to be the best option to complete the internship within the time and the manner that suited Mr. Yu's goals.

88. Mr. Yu worked with Dr. Roberts/the Clinical Training Committee (CTC) to develop an internship proposal.

89. The internship was set to follow the APPIC standards.

90. The APPIC standards include the requirement of due process and grievance procedures for interns.

91. In drafting the proposal, Plaintiff included the grievance and due process procedures that ISU afforded its graduate students.

92. ISU's established grievance and due process procedure for the Department of Psychology is contained in the Department's Clinical Student Handbook.

93. ISU's established grievance and due process procedure for the Department of Psychology contains the two elements of procedural due process: (1) notice and (2) an opportunity to be heard.

94. On or about October 29, 2012, Dr. Jill Hedt was serving as the Training Director of the Boise Veterans Administration Clinical Internships.

95. On or about October 29, 2012, acting upon a request by the CTC Dr. Jill Hedt delivered a review of "Mr. Yu's Proposal for Non-APPIC Internship Placement".

96. Dr. Jill Hedt stated that there were two areas of concern with the proposal that did not meet the APPIC criterion one of which was the Due Process and Grievance Procedure Policy.

97. That in reviewing the proposal internship at the CCCA it was noted by Dr. Jill Hedt that the procedural due process safeguards were absent from the proposed agreement.

98. A specific concern of Dr. Jill Hedt was the lack of due process that would be afforded Mr. Yu in the proposed agreement was problematic as it was devoid of protection for Mr. Yu.

99. Dr. Jill Hedt wrote the following:

The Due Process and Grievance Procedure do not appear sufficient:

1. There is not a defined procedure (systematic steps) for managing intern problematic conduct or performance. Will the trainee be notified in writing or person of issues? *Will the intern have the right to appeal the decision?* Is there a remedial procedure for problematic performance?
2. There is not a trainee grievance procedure. What is the process if the intern has a grievance against a supervisor? *What if the grievance is against the identified training director?*

*In my opinion, the lack of a Due Process and Grievance Procedure places the intern in a vulnerable position. He could be dismissed any time during the year and would have no ability/right to appeal this decision. Similarly, if the intern is experiencing undue treatment he has no venue to grieve this treatment.*

I would recommend the intern and proposed program draft a Due Process and Grievance Procedure. (Emphasis added)

100. Dr. Mark Roberts, working within the CTC unilaterally without the consent of Plaintiff, removed the grievance and due process procedures from the proposal and subsequently approved the proposal.

101. Mr. Yu understood that the proposal was neither an agreement nor acquiescence by him in a proposal that did not contain the grievance and due process procedures available to all students enrolled in degree programs sponsored by ISU's Department of Psychology.

102. On or about October 31, 2012 a Clinical Education Agreement entered into by the Cleveland Clinic and ISU governing Mr. Yu's internship with CCCA was established.

103. The agreement was signed by the Executive Director of the Center for Health Sciences Education on October 16, 2012 and by the Provost of Idaho State University on or about October 31, 2012.

104. Mr. Yu was neither a party to nor signatory of the agreement.

105. The CCCA agreement to which Mr. Yu was not a party was devoid of the grievance and due process procedure for the Department of Psychology.

106. Plaintiff had no say in the bargaining process that lead to the CCCA agreement.

107. On January 2, 2013, Plaintiff started his internship.

108. The internship was designed to last for at least one year.

109. While in the internship, Plaintiff was considered a full-time student at ISU and enrolled in PSYC7749 Clinical Internship.

110. That Dr. Leslie Speer of the CCCA was one of three of Mr. Yu's supervisors during Mr. Yu's internship.

111. That Dr. Cheryl Chase, a Psychologist with a private practice in Independence Ohio, was also a supervisor in Mr. Yu's internship.

112. That Dr. Mark Roberts served as the Director of Clinical Training at ISU Department of Psychology while Mr. Yu was a student at ISU.

113. That Dr. Thomas Frazier of the CCCA was one of three of Mr. Yu's supervisors during Mr. Yu's internship.

114. Dr. Thomas Frazier, however, ceased his role as a supervisor of Mr. Yu in the first week of Mr. Yu's internship. This was against the internship proposal.

115. That on January 11, 2013, in a phone conversation Dr. Leslie Speer expressed concerns to Dr. Roberts alleging Mr. Yu manifested a "...slow learning curve."

116. That Dr. Leslie Speer also reported that Dr. Thomas Frazier, who was named in the approved internship as a second supervisor at the Cleveland Clinic, indicated Jun "...was not ready for patient care."

117. Dr. Mark Roberts recommended that Dr. Leslie Speer use the agreed upon “Psychology Trainee Competency Assessment Form” as soon as possible (i.e. January).

118. Dr. Mark Roberts recommended that Dr. Leslie Speer use the agreed upon “Psychology Trainee Competency Assessment Form “to “establish a baseline and to gauge progress at the agreed upon evaluation points for the internship”.

119. That the agreed upon evaluation points were April, July and December.

120. That Dr. Mark Roberts never addressed any of the concerns raised by Dr. Leslie Speer with Mr. Yu.

121. Mr. Yu was not made aware of Dr. Leslie Speer’s concerns.

122. Dr. Roberts did not immediately share the content of the January 11, 2013 conversation with Mr. Yu.

123. The first time Mr. Yu learned of the concerns Dr. Speer expressed to Dr. Roberts in the January 11, 2013 phone conversation was when he received his May 3, 2013 dismissal letter.

124. That early in Mr. Yu’s internship at CCCA, Dr. Speer reduced Mr. Yu’s weekly individual supervision time with her from one hour to half an hour.

125. This reduction in individual supervised time was contrary to the signed proposal, which had promised Mr. Yu a full hour of supervised time with Dr. Speer each week.

126. Mr. Yu was never provided remediation per current American Psychological Association standards as stipulated in the internship proposal.

127. Additionally, as Mr. Yu’s due process rights were unilaterally rescinded without his consent by agreement, Mr. Yu had no due process rights to challenge Dr. Leslie Speer’s assessment of his performance.



128. That it was clear, based on the comments of Dr. Leslie Speer, that establishing rapport with clients as well as other areas that require communicating in English was a concern of Dr. Leslie Speer in her assessment of Mr. Yu.

129. That there exists no evidence that any action was taken by Dr. Leslie Speer to recognize the language or cultural challenges encountered by Mr. Yu and devise a strategy to effectively address the issue during his brief internship with CCCA.

130. On April 3, 2013, Dr. Leslie Speer abruptly dismissed Plaintiff from CCCA alleging, “Jun has not made progress” and the “level of remedial work required is beyond the scope of this placement.”

131. Prior to his dismissal, Dr. Leslie Speer omitted remediation with Plaintiff; Mr. Yu had never had clear counseling or warning from Dr. Speer that dismissal loomed within the realm of possibility.

132. Dr. Roberts told Dr. Chase to stop working with Mr. Yu.

133. Mr. Yu informed Dr. Roberts that he had located an internship site in China willing to take him.

134. On April 29, 2013, Dr. Cheryl Chase evaluated Mr. Yu’s performance and found it to be satisfactory.

135. That Dr. Cheryl Chase provided a positive evaluation of Mr. Yu’s internship performance that was discounted by ISU during the appeals process.

136. That on May 3, 2013, Dr. Roberts informed Mr. Yu in writing (the dismissal letter) that he was dismissed from the doctoral program in Clinical Psychology based on Mr. Yu’s alleged unsatisfactory progress towards degree completion.

137. The dismissal letter omitted any reference to Dr. Cheryl Chase's positive evaluation of Plaintiff's performance.

138. The dismissal relied on the evaluations of Dr. Landers, Dr. Lynch, Dr. Roberts, and Dr. Speer to justify Mr. Yu's dismissal.

139. That prior to the May 3, 2013 dismissal letter from Dr. Roberts, Mr. Yu had never been placed on probation.

140. That prior to the May 3, 2013 dismissal letter from Dr. Roberts, Mr. Yu had never been informed that he was at risk of being dismissed from the doctoral program.

141. That Dr. Lynch admitted, "It is true that you [Mr. Yu] were in good standing. You were not on academic probation at the point of dismissal from the Cleveland Clinic."

142. The dismissal letter contained alleged deficiencies of which Mr. Yu had received no prior or adequate notice.

143. The dismissal letter also contained multiple omissions, misrepresentations, and unsubstantiated claims.

144. That 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".

145. The recommendation was made despite the fact that Mr. Yu had successfully defended his dissertation and only needed to complete on practicum to be awarded his PhD.

146. Upon information and belief, it is the practice in doctoral programs in Psychology, to award students in the Clinical Psychology Doctoral Program a PhD in General Psychology based upon their completion of required course work at the time of their dismissal from the Clinical Psychology Doctoral Program.

147. At the time of his dismissal, Mr. Yu had successfully completed the course requirements to be awarded a PhD in General Psychology.

148. Notwithstanding his academic eligibility, ISU did not award Mr. Yu a PhD in General Psychology.

149. That as of this filing, ISU has not even conferred upon Mr. Yu the Master of Science degree in Psychology mentioned in the dismissal letter.

150. That due to this May 3, 2013 dismissal from the doctoral program in Clinical Psychology, Mr. Yu had to cancel a job interview with a university in China for an assistant professor position in their Psychology Department.

151. That Dr. Speer rated Mr. Yu low on items under “competence in individual and cultural diversity” and that Dr. Landers alleged, “He is significantly lagging in all the ‘B’ rated areas of functions primarily as it relates to cultural awareness and competency” yet neither of them clearly communicated these alleged issues to Mr. Yu prior to dismissing him, nor did they offer remediation to Mr. Yu.

152. That neither Dr. Speer nor Dr. Landers acknowledged the inherent challenges Mr. Yu faced in a foreign social-cultural context while speaking a foreign language.

153. That while Mr. Yu had a record of having delivered psychological services to clients in their native language of English while a student at ISU, Mr. Yu was also a client of Dr. Speer and Dr. Landers as a supervisee and neither supervisor could deliver supervision services to Mr. Yu in his native language of Chinese, yet they both alleged he had cultural competency issues.

154. That there is no evidence that Dr. Speer and Dr. Landers were culturally competent and specifically competent to supervise an international student whose cultural-linguistic background was different from theirs.

155. In his presentation to ISU, Dr. Michael Dwyer, a psychology professor at Baldwin-Wallace University, stated that Mr. Yu “was harmed by the ISU psychology department’s cultural incompetence.”

156. Dr. Dwyer reminded ISU that the program violated the APA Ethics Code, APA Accreditation standards, and APPIC policies.

157. That, consistent with aversive racism, ISU had not articulated minimal levels of achievement required to maintain satisfactory professional progress in the program nor in practicum settings (including the externship and internship) as per APA Accreditation standards, yet ISU determined Mr. Yu had allegedly failed to meet standards in an externship, an internship and the program itself.

158. ISU took pride and ownership of the fact that they approached Mr. Yu’s case using the same “model for applying for internships, the same external review, and the same process for notification of the limitations”.

159. Nothing was done that was specific to Plaintiff. Therefore, Mr. Yu’s treatment was the same as the other students who had proposed the alternative internship. That Dr. Lynch stated, “... Nothing was done that was specific to him [Mr. Yu]. So in each of those cases his treatment was the same as the other students who had proposed the alternative internship.”

160. The sample internship proposal that ISU had previously approved for another student, who was a White European American, had due process and grievance procedures, while Mr. Yu’s internship proposal had none.

161. On July 13, 2012, Dr. Mark W. Roberts acknowledged that Mr. Yu had completed all the academic requirements necessary to receive his doctorate in Clinical Psychology save one clinical internship.

162. Dr. Mark Roberts provided Mr. Yu with three (3) options to complete his internship.

163. The three (3) options offered by Dr. Mark Roberts to Mr. Jun Yu to complete his internship were (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.

164. Mr. Yu chose to propose a local internship with the Cleveland Clinic in Cleveland Ohio.

165. The Defendant did not object to Mr. Yu's pursuing an internship with the Cleveland Clinic.

166. On November 12, 2012, Dr. Mark Roberts reminded Mr. Yu that the Clinical Training Committee had provided Mr. Yu with two additional options and that those two options were still available to Mr. Yu.

167. At no time from when the options were offered to Mr. Yu 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.

168. In continuing with his internship at Cleveland Clinic, Mr. Yu relied on the representation by the Defendant that he had the options to re-apply to APPIC member sites; or propose an accommodated internship in China

169. After his dismissal from the Cleveland Clinic, Mr. Yu, 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.

170. Mr. Yu was denied the opportunity to construct an internship at the Shanghai Mental Health Center.

171. That ISU has denied Mr. Yu the opportunity to complete his degree requirements in China where his cultural competence and communications skills are beyond question and appreciated.

172. In denying Mr. Yu's request to construct an internship in China, Dr. Lynch stated that two options available to Mr. Yu were never "explicitly or implicitly intended as a set of options to be taken in sequence, given a problem in one venue or the other."

173. 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"

174. Dr. Lynch's opinion is contradicted by the fact that Mr. Yu's dissertation, a clinical trial of Behavioral Family Therapy in China, is evidence that he was a benefit to Chinese patients.

175. 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.

176. That Mr. Yu's unfortunate experience at the hands of ISU and ISU's denial of Mr. Yu's appeal establishes a prima facie case of discrimination in that Mr. Yu is a member of a protected class, he is qualified to continue to participate in the ISU Psychology Doctorate

Program, and that he has been denied that opportunity by a federally funded institution where other similarly situated non-Asian students were not.

**STATEMENT OF FACTS AS TO THE CONTRACT BETWEEN MR. JUN YU AND  
DEFENDANT IDAHO STATE UNIVERSITY**

177. In December 2007, Mr. Yu offered to Idaho State University (“ISU”) his application, including the required fee and associated other materials, to become a doctoral student in the Doctorate Program in Clinical Psychology (“Program”) within ISU’s Department of Psychology (“Department”).

178. On April 15, 2008, ISU accepted Mr. Yu’s application and offered him a position in the Program to commence on August 18, 2008.

179. On April 15, 2008, ISU additionally offered consideration to Mr. Yu in the form of a non-resident tuition waiver and a stipend for services to be provided to a local youth agency.

180. On April 17, 2008, ISU enhanced its offer of consideration to Mr. Yu by also offering him a graduate teaching assistantship, which would pay for all of Mr. Yu’s tuition and fees for his participation in the Program and provide him with a \$12,000 stipend for the nine-month academic year.

181. Mr. Yu accepted ISU’s enhanced offer and, in August 2008, moved with his wife to Pocatello, Idaho, and matriculated into the Program.

182. The parties exchanged extensive additional consideration.

183. In addition to other consideration paid for the Contract, Mr. Yu prepared and successfully defended his doctoral dissertation. He incurred approximately \$15,000 in student debt to help fund his five (5) year full-time educational tenure in the Program. He paid for his

externship (PSYC 7748) and his internship (PSYC 7749), from both which he was abruptly dismissed without prior notice or cause.

184. By offer, acceptance, and consideration, an academic contract existed between Mr. Yu and Idaho State University (“ISU”) (“Contract”).

185. The Contract commenced no later than the date in April 2008 when Mr. Yu acceptance of ISU’s offer to admit him into the Program.

186. The Contract continued in effect until ISU terminated the Contract in total at the point at which Mr. Yu exhausted his administrative remedies on October 2, 2013 to appeal ISU’s dismissal of him from the Program.

187. The basic exchange established and carried out by the Contract was that, for good and valuable consideration, Mr. Yu would matriculate into and continue enrollment in the Program; pay the necessary tuitions, fees, and other expenses associated with his doctorate education; perform so as to satisfy the appropriate academic requirements for his doctoral education, including, without limitation, his successful defense of his doctoral dissertation; and, as a result, be awarded his doctorate degree in clinical psychology by ISU.

188. For its side of the exchange established by the Contract, ISU, inclusive of its Department and Program, was to provide the appropriate learning environment, student support services, substantive psychological education, and practical clinical training experiences appropriate to Mr. Yu’s doctoral education and, in exchange for Mr. Yu’s agreed performance and other consideration, confer upon Mr. Yu his doctorate degree in clinical psychology.

189. Mr. Yu satisfactorily performed his obligations under the Contract, yet due to ISU’s total breach of the Contract, was excused from performance due to the impossibility of doing so.



190. ISU breached its Contract with Mr. Yu by multiple acts.

191. Mr. Yu suffered significant harm because of ISU's breaches of the Contract.

192. The Contract contains implied terms, including specific terms; ISU's implied representations and warranties to Mr. Yu; the implied covenants of good faith and fair dealing; and terms as to which Mr. Yu is entitled as a third-party beneficiary to agreements that ISU has with two accrediting bodies.

**STATEMENT OF FACTS AS TO THE TERMS OF THE CONTRACT BETWEEN MR. JUN YU AND DEFENDANT IDAHO STATE UNIVERSITY<sup>4</sup>**

**FACTS REGARDING CONTRACT TERMS PURSUANT TO STATE BOARD OF EDUCATION REQUIREMENTS**

**The Idaho State Board of Education's Controlling Authority over and Requirements of ISU as Relates to ISU's Contract with Mr. Yu**

193. The contract between Mr. Yu and ISU contains express or implied terms or both by virtue of applicable law and of the Idaho State Board of Education's ("Board") requirements as the governing authority of ISU, including as set forth in the Board's *Governing Policies and Procedures* ("GP&Ps").

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<sup>4</sup> The applicable legal standards require that Mr. Yu's amended complaint articulate, sufficient to the standard established under Federal Rule of Civil Procedure 8(a), the terms of the Contract. *See, e.g., Wickstrom v. North Idaho College*, 111 Idaho 450, 452 (1986)(quoting *Peretti v. State of Montana*, 464 F. Supp. 784, 786 (D. Mont. 1979), *rev'd on other grounds by Montana v. Peretti*, 661 F.2d 756 (9th Cir. 1981))(other citations omitted); *Zumbrun v. University of Southern California*, 603 Pd. 454, 25 Cal. App. 3d 1 (1972); *Doe v. John F. Kennedy University*, 2013 WL 4565061 at \*8-\*9 (citing, in part, *McKell v. Washington Mut., Inc.*, 142 Cal. App. 4th 1457, 1489, Cal. Rptr. 3d 227, 253 (Cal. Ct. App. 2006)(citation omitted)).

Because a formal contract is rarely prepared between a student and the institution of higher education in which he is enrolled, "the general nature and terms of the agreement are usually implied[] with specific terms to be found in the university bulletins and other publications[.]" *Wickstrom v. North Idaho College*, 111 Idaho 450, 452 (1986)(quoting *Peretti v. State of Montana*, 464 F. Supp. 784, 786 (D. Mont. 1979), *rev'd on other grounds by Montana v. Peretti*, 661 F.2d 756 (9th Cir. 1981))(other citations omitted).

"Custom and usages can also become specific terms [of the agreement between the student and the university] by implication." *Id.*

194. Defendant Idaho State University (“ISU”) is an entity of public education supported in whole or part by State of Idaho funds and exists by virtue of Idaho legislation. *See* I.C. § 33-3001, *et seq.*; *see also* Idaho State Board of Education, GP&P § 1(F) (Apr. 2002) (“The state constitution and the applicable statutes of the Idaho Code establish and prescribe the legal role and mission of each institution . . . under the governance of the Board).

195. Pursuant to Idaho Code § 33-107(3), the Idaho State Board of Education (“Board”) has the power to “[h]ave general supervision . . . of all entities of public education support in whole or in part by state funds[.]”

196. Pursuant to Idaho Code § 33-107(5)(a), the Board has the power to “[e]nforce the school laws of the state[.]”

197. The Board has the power to supervise ISU and to enforce the applicable laws as to ISU. *See* I.C. § 33-107(3) & (5)(a).

198. The Board, as the designated policy-making body for ISU, an institution under its governance, has all of the powers and duties established by the Constitution of the State of Idaho and Title 33 of the Idaho Code, as amended. *See* GP&P § (I)(A)(1)&(2) (Dec. 2008).

**Implied Contract Terms Arising Out of the Idaho State Board of Education’s Express Statement of ISU’s Mission and Role**

199. The Board, as ISU’s governing authority, adopts the formal statement of the role and mission of ISU and must approve any changes thereto. *See* GP&P § III(I)(2)(Apr. 2002).

200. The Board expressly establishes ISU’s role as a “public research institution which serves a diverse population . . . .” Idaho State Board of Education, *Mission Statement for Idaho State University* (2012),

[https://boardofed.idaho.gov/public\\_col\\_univ/documents/mission\\_statements/isu\\_2012.pdf](https://boardofed.idaho.gov/public_col_univ/documents/mission_statements/isu_2012.pdf)

(“Board’s Mission for ISU”).

201. The Board’s mission for ISU states, in relevant part, that ISU is to “develop citizens who will . . . provide leadership to enrich the future in a diverse, global society.”

Board’s Mission for ISU, *supra*; *see also* ISU, 61 Graduate Catalog 2008-2009, 7 (undated) (“Catalog”).

202. The Board expressly charges ISU with the responsibility to “provide[] opportunities for students with a broad range of educational preparation and backgrounds to enter the university and climb the curricular ladder so that they may reach their intellectual potential and achieve their goals and objectives.” Board’s Mission for ISU, *supra*.

**Contract Terms Arising Out of the Idaho State Board of Education’s Requirements for ISU and its Faculty under Applicable Law and the Board’s Governing Policies and Procedures**

203. All GP&Ps of the Board and all of ISU’s policies and procedures, as an institution under the Board’s governance, must adhere and conform to applicable state and federal laws.

*See* GP&P § I(A)(4) (Dec. 2008).

204. As its governing authority, the Board intends ISU to follow the Board’s Governing Policies & Procedures (“GP&Ps”). *See* GP&P § I(A)(1) (Dec. 2008).

205. In the event of any conflict between the Board’s requirements for ISU pursuant to a Governing Policy or a Governing Procedure of the Board and an internal ISU policy or internal ISU procedure, the Board’s GP&Ps shall govern. *See* GP&P § I(H)(2) (Dec. 2008).

***Facts as to Contract Terms as to Non-Discrimination and Equal Opportunity***

206. As to student employment, including as Mr. Yu was employed by ISU as a teaching assistance as part of his financial assistance as a doctoral student, the Board requires

that ISU's policies and procedures "must ensure that equal employment opportunity is offered without discrimination." GP&P III(P)(11)(b) (Oct. 2015).

207. The Board requires that ISU provide "equal educational opportunities, services, and benefits to students without regard to race, color, religion, sex, national origin, age, handicap, or veterans status, GP&P III(P)(1)(a) (Oct. 2015).

***Contract Terms as to ISU's Employees and Others' Mandatory Compliance with Board's Governing Policies and Procedures, Including as to a Prohibition on Non-Compliant Representations, Contracts, and Actions Regarding Students***

208. Each ISU faculty member of ISU serves to an employment contract. *See* GP&P § II(G)(1)(a) (Dec. 2012).

209. Each ISU faculty member's employment is expressly subject to the Board's GP&Ps. *See* GP&P § II (G)(1)(a) (Dec. 2012).

210. All ISU employees, agents, and representatives are prohibited by the Board from "mak[ing] representations to, or enter into agreement with, or act toward any student or person in a manner which is not in conformity with" the Board GP&Ps or ISU's approved policies and procedures. GP&P III(P)(4) (Oct. 2015).

***Contract Terms Arising Out of ISU's Employees and Others' Mandatory Requirements to Comply with Board's Ethical Code***

211. All ISU employees are required to adhere to the Board's expressed General Principles of Ethical Conduct ("Board's Ethical Code"). *See* GP&P II(Q)(1) (Dec. 2008).

212. Under the Board's Ethical Code, all ISU employees must "put forth honest effort in the performance of their duties. GP&P II(Q)(1)(c) (Dec. 2008).

213. All ISU employees must "act impartially" as to all individuals. *See* GP&P II(Q)(1)(f) (Dec. 2008).

214. All ISU employees must “endeavor to avoid any actions that would create the appearance that they are violating the law . . . .” GP&P II(Q)(1)(j) (Dec. 2008).

215. All ISU employees must “endeavor to avoid any actions that would create the appearance that they are violating. . . the ethical standards of the Board” or ISU. GP&P II(Q)(1)(j) (Dec. 2008).

216. All ISU employees must “avoid conflicts of interest, potential conflicts of interest, and circumstances giving rise to the appearance of a conflict of interest.” GP&P II(Q)(1)(k) (Dec. 2008).

217. As to the mandatory compliance of each ISU employee with the Board’s Ethical Code and, in relevant part, as applies to Mr. Yu’s case, “[a] conflict of interest occurs where a person’s private interests compete with his or her professional obligations to [ISU] to a degree that an independent observer might reasonably question whether the person’s professional actions or decisions are materially affected by personal consideration. . . .” GP&P II(Q)(2) (Dec. 2008).

***Contract Terms Arising Out of the Idaho State Board of Education’s Accreditation Requirements for ISU***

218. The Board requires ISU to be evaluated for accreditation by the Northwest Commission on Colleges and Universities (“NWCCU”), to participate fully in NWCCU’s accreditation procedures, and to involve the Board therein, including as to corrective actions to be taken by ISU. *See* GP&P § III (M) (Aug. 2011).

**FACTS AS TO CONTRACT TERMS PURSUANT TO REGIONAL NWCCU ACCREDITATION STANDARDS AS REQUIRED BY THE STATE BOARD OF EDUCATION**

**The Idaho State Board of Education’s NWCCU Accreditation as Relates to ISU’s Contract with Mr. Yu**

219. In accordance with the Board's governing requirements, *see* GP&P § III (M) (Aug. 2011), ISU is evaluated for accreditation by NWCCU.

220. On information and belief, NWCCU is a regional accrediting agency within the scope of authority approved by the U.S. Department of Education. *See* NWCCU, *Types of Accreditation*,

<http://www.nwccu.org/Accreditation%20Overview/Types%20of%20Accreditation/Types%20of%20Accreditation.htm>; *see also* The Office of the Provost and Vice President of Academic Affairs, ISU, *Accreditation*, <http://www2.isu.edu/acadaff/accreditation/about.shtml> (discussing Regional Accreditation).

221. ISU has been accredited by NWCCU since 1918. *See* NWCCU, *Directory of Institutions*, [http://www.nwccu.org/Directory%20of%20Inst/Alpha%20Cluster/e\\_1.html](http://www.nwccu.org/Directory%20of%20Inst/Alpha%20Cluster/e_1.html).

222. ISU, including at the doctorate level, currently is accredited by NWCCU. *See id.*

223. On information and belief, ISU, including at the doctorate level, has been accredited by NWCCU since at least 2007.

**Contract Terms Arising Out of ISU's Institutional Responsibilities as an NWCCU-Accredited Institution**

224. Among other affirmative duties, ISU is “responsible to ensure integrity in all institutional operations, relationships with their constituencies, relationships with other institutions, and accreditation activities with the Commission[*i.e.*, NWCCU].” NWCCU, *Institutional Responsibilities*, <http://www.nwccu.org/Process/Inst%20Responsibilities/Inst%20Resp.htm>; *see* NWCCU, *Accreditation Handbook* (“Handbook”), *Institutional Commitment and Responsibilities in the Accreditation Process*, 13 (2003).

225. As an NWCCU-accredited institution, ISU is to “remain in good standing with other recognized accrediting bodies with which it has accreditation . . . status.” *Id.*

**Contract Terms Arising Out of ISU’s Duties Under NWCCU’S Accreditation Standards**

226. The NWCCU five Standards for Accreditation (“Standards”) “articulate the quality and effectiveness expected of” ISU. *See* NWCCU, *Standards for Accreditation 2010*, 1, <http://www.nwccu.org/Pubs%20Forms%20and%20Updates/Publications/Standards%20for%20Accreditation.pdf>.

227. Under Standard 1, ISU, pursuant to approval by the Board, is to “articulate[] its purpose in a mission statement[] and identify[y] core themes that comprise *essential* elements of that mission.” *Id.* (Standard 1) (emphasis supplied); *see id.* at 2 (Standard 1.B.1).

228. ISU’s articulated mission statement is guided by Standards 1.A and 1.B to identify ISU’s “acceptable threshold or extent of mission fulfillment.” The Office of the Provost and Vice President of Academic Affairs, ISU, *Accreditation Standards*, <http://www2.isu.edu/acadaff/accreditation/standards.shtml> (regarding NWCCU Standard 1).

229. ISU’s mission statement repeatedly identifies diversity as among the essential elements of the institution’s mission.

230. Under Standard 1.A.1, ISU’s mission statement, as approved by the Board, is to articulate its appropriate purpose as “is generally understood[] by its community,” including its students. *See* NWCCU, *Standards for Accreditation 2010*, 2 (Standard 1.A.1).

231. Under NWCCU’s Standard regarding governance, ISU must clearly define its policies, regulations, and procedures and it must ensure that those are “equitably administered.” *See id.* (Standard 2.A.2).

232. ISU must “clearly communicate” its academic policies to students and other constituencies. *See id.* at 3 (Standard 2.A.12).

233. ISU must clearly state, make readily available, and fairly and consistently administer its policies and procedures regarding students’ rights and responsibilities. *See id.* (Standard 2.A.15).

234. ISU must clearly define, widely publish, and fairly and timely administer its policy regarding students’ continuation and termination from its educational programs. *See id.* at 4 (Standard 2.A.16).

235. ISU’s Office of the Provost and Vice President of Academic Affairs’ online discussion of NWCCU Standard 2 does not include any specific references to the repeatedly emphasized requirements under Standard 2 for the transparent and widely published student policies or other their equitable administration. *See* The Office of the Provost and Vice President of Academic Affairs, ISU, *Accreditation Standards*, <http://www2.isu.edu/acadaff/accreditation/standards.shtml>

236. ISU must “adopt[] and adhere[] to admission and placement policies that guide the enrollment of students in courses and programs through an evaluation of prerequisite knowledge, skills, and abilities to assure a reasonable probability of student success at a level commensurate with the institution’s expectations.” *Id.* at 4 (Standard 2.A.16).

237. ISU must “represent itself clearly, accurately, and consistently through its announcements, statements, and publications” and “regularly review[] its publications to assure integrity in all representations about its missions, programs, and services. *Id.* (Standard 2.A.21).

238. ISU must “advocate[], subscribe[] to, and exemplify[y] high ethical standards . . . in the fair and equitable treatment of students . . . .” *Id.* (Standard 2.A.22).



239. ISU must “ensure [that] complaints and grievances are addressed in a fair and timely manner.” *Id.*

240. ISU must “adhere [] to a clearly defined policy that prohibits conflict of interest on the part of . . . [its] administration, faculty, and staff.” *Id.* (Standard 2.A.23).

241. As to its graduate programs, ISU’s “[g]raduate admission and retention policies [must] ensure that student qualifications and expectations are compatible with the institution’s mission and the program’s requirements.” *Id.* at 8 (Standard 2.C.13).

242. The 2003 Standards articulated these accreditation requirements similarly such that “[g]raduate admission and retention policies [must] ensure that student qualifications and expectations are compatible with institutional mission and goals.” Handbook, at 21 (Standard 2.F).

243. Regarding student support resources, ISU must “create[] effective learning environments with appropriate programs and services to support student learning needs,” with such environments being “[c]onsistent with the nature of its educational programs and methods of delivery.” *Id.* at 8 (Standard 2.D.1); *see* Handbook at 53 (Standard 3.D) (“The institution recruits and admits students qualified to complete its programs. It fosters a supportive learning environment and provides services to support students’ achievement of their educational goals.”).

**Contract Terms Arising Out of ISU’s Duties Under NWCCU’S Accreditation Standards as Expressed in NWCCU’s Accreditation Handbook**

244. NWCCU’s Accreditation Handbook (“Handbook”) compiles information about its evaluation and accreditation of ISU and other higher institutions. *See* NWCCU, Accreditation Handbook, *Forward*, ix (2003).

245. The 2003 edition of the Handbook applies to ISU's accreditation was in effect during all times relevant to Mr. Yu's claims.

246. The Handbook documents nine (9) NWCCU accreditation standards ("2003 Standards") in comparison with the five (5) Standards articulated in 2010<sup>5</sup>

247. To be eligible for NWCCU accreditation, ISU must be "governed and administered with respect for the individual in a nondiscriminatory manner. . . ." Handbook, 6 at ¶ 3 (Accreditation Eligibility Requirement 3); *see* NWCCU, Accreditation Standards 19 (Mar. 2015) (Accreditation Eligibility Requirement 5).

248. As part of its accreditation commitments, ISU must "adhere to all policies and procedures" of NWCCU. Handbook, *Institutional Commitment and Responsibilities in the Accreditation Process*, 13.

249. ISU also must, "in keeping with its mission and admission policy, give[] attention to the needs and characteristics of its student body with conscious attention to such factors as ethnic, socioeconomic, and religious diversity while demonstrating regard for students' rights and responsibilities." *Id.* at 53 (2003 Standard 3.D.2).

250. ISU is required to adhere with NWCCU's Policy 6.1 dealing with non-discrimination, *See id.* at 74 (Policy 6.1 as revised in 1987).

251. Under NWCCU's Policy A-8 and recommended practices thereunder, ISU is required to adhere to the principle of the humane governance and administration of the institution and recommended to "[t]ake action to see that there is no discrimination in the campus

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<sup>5</sup> There is a significant commonality between the Standards and the 2003 Standards, despite the varying number.

community based on race, religion, color, national origin, sex, or age.” *Id.* at 122 (Policy A-8(c)(1)).

252. The definition of “Institutional Integrity” by which ISU’s evaluation for NWCCU accreditation is judged is set forth as: “The pursuit of knowledge governed and administered with respect for individuals in a nondiscriminatory manner while responding to the educational needs and legitimate claims of the constituencies it serves, as determined by its mission and goals.” *Id.* at 169 (glossary).

253. Beyond the value of assuring students and other members of the public as to the external evaluation and finding of conformity with general expectations in the professional field or higher education, ISU’s NWCCU accreditation provides to students:

- a. an assurance that the educational activities of an accredited institution or program have been found to be satisfactory and, therefore, meet the needs of the students;
- b. assistance in the transfer of credits between institutions or in the admission of students to advanced degree programs through the general acceptance of credits among accredited institutions when the performance of the student has been satisfactory and the credits to be transferred are appropriate to the receiving institution; [and]
- c. a prerequisite in many cases for undertaking licensure for a profession.

Handbook at 145 (Policy B-1).

254. ISU must “provide[] student services and programs based upon an assessment of student needs, provide[] adequate support for the services offered to achieve established goals, and adopt[], publish[], and make[] available policies that are accurate and current.” Handbook, at 51 (2003 Standard 3.B).

255. Within Standard 3.B.1, ISU is to “systematically identify[] the characteristics of its student population and students’ learning and special needs” and then “to make[] provision for meeting those identified needs, emphasizing students’ achievement of their educational goals.” *Id.* (2003 Standard 3.B.1).

256. ISU's "[p]olicies on students' rights and responsibilities, including those related to academic honesty and procedural rights, are [required to be] clearly states, well publicized, readily available, and implemented in a fair and consistent matter." *Id.* (2003 Standard 3.B.3).

**FACTS AS TO CONTRACT TERMS PURSUANT TO AMERICAN PSYCHOLOGY ASSOCIATION ACCREDITATION STANDARDS APPLICABLE TO ISU'S CLINICAL PSYCHOLOGY PROGRAM AS AN APA-ACCREDITED PROGRAM**

257. The American Psychological Association ("APA") is an accrediting body for psychology education in the United States, including as recognized under and in compliance with the authority of the U.S. Department of Education. *See generally* Office of Program Consultation & Accreditation, APA, *Guidelines and Principles for Accreditation of Programs in Professional Psychology* ("G&P") fourth and fifth unnumbered pages (2006) (Forward), <http://www.apa.org/ed/accreditation/about/policies/guiding-principles.pdf>.

258. ISU's Department of Psychology's ("Department") Doctorate Program in Clinical Psychology ("Program"), in which Mr. Yu was enrolled, is currently accredited by the APA. *See* APA, *Search for Accredited Programs*, [http://apps.apa.org/accredsearch/?\\_ga=1.260495886.2076650553.1459876508](http://apps.apa.org/accredsearch/?_ga=1.260495886.2076650553.1459876508).

259. The Program's APA "Accredited" status designates it as a program, "which in the professional judgment of the [APA's Commission on Accreditation], *is consistent, substantively and procedurally, with the Guidelines and Principles for Accreditation of Programs in Professional Psychology.*" APA, *About Accreditation – What is the Purpose of Accreditation*, <http://www.apa.org/ed/accreditation/about/aboutaccreditation.aspx> (emphasis supplied).

260. As one of its governing APA Accreditation Standards, the Program must abide by APA's published policies and procedures as pertain to the Program's recognition and status as an APA-accredited Program. *See* G&P, at 12 (Domain H, § 1).

261. Students considering enrollment in or matriculated into the Program benefit from the Program’s APA accreditation because “[a]ccreditation provides assurance that the program in which you are enrolled or are considering enrolling is engaged in continuous review and improvement of its quality, that it meets nationally endorsed standards in the profession [of psychology], and that it is accountable for achieving what it sets out to do.” APA, *About Accreditation – What is the Purpose of Accreditation*, <http://www.apa.org/ed/accreditation/about/aboutaccreditation.aspx>.

262. Given its APA accreditation, graduating from the Program “may facilitate the achievement” of employment or licensure for the Program graduate. *Id.*

263. For members of the public, including prospective and current Program students, APA accreditation “ensures public accountability” of the Program or ISU, meaning that the Program and ISU as its sponsoring institution “has the means and demonstrates the outcomes for its educational process that are consistent with its goals and objectives.” *Id.* “Accreditation [means] . . . that there is ‘truth in advertising.’” *Id.*

264. One of the deciding factors for Mr. Yu, when considering and comparing his offers of doctorate program enrollment and ultimately selecting ISU’s Program, was the fact of the Program’s APA accreditation.

***Contract Terms Arising Out of the Program’s Duty to Adhere to APA Accreditation Prerequisites***

265. The Program as a doctoral graduate program accredited by the American Psychological Association (“APA”) must adhere to eligibility requirements as a precondition to accreditation.<sup>6</sup>

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<sup>6</sup> See Office of Program Consultation & Accreditation, APA, *Guidelines and Principles for Accreditation of Programs in Professional Psychology* (“G&P”) 5 (2006) (Domain A:

266. Among those preconditions to APA accreditation, the Program must be “sponsored by an institution of higher education accredited by a nationally recognized accrediting body in the United States.” *Id.* (Domain A, § 1).

267. The requirement under Domain A, § 1 means that the Program’s APA accreditation is dependent upon the precondition that ISU be accredited by NWCCU, pursuant to the Board’s governing mandate under the GP&P.

268. As an additional precondition for its APA accreditation, the Program has a duty to adhere to eligibility requirements of Domain A, Section 5, which states:

*The program engages in actions that indicate respect for and understanding of cultural and individual diversity.* Throughout this document, the phrase “cultural and individual diversity” refers to diversity with regard to personal and demographic characteristics. These include, but are not limited to, age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and social economic status.<sup>11</sup>

*Respect for and understanding of cultural and individual diversity is reflected in the program’s policies for the recruitment, retention, and development of faculty and students, and in its curriculum and field placements.* The program has *nondiscriminatory policies and operating conditions*, and it avoids any actions that would restrict program access or completion on grounds that are irrelevant to success in graduate training or the profession.

G&P, *supra*, at 6 (Domain A, §5) (emphases supplied).

269. This Domain A APA accreditation prerequisite continues as an APA Accreditation Standard in that the Program must “show[] respect for cultural and individual diversity among their students by treating them in accordance with the principles contained in Domain A, Section 5 . . . .” *Id.* at 11 (Domain e, § 3).

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Eligibility), <http://www.apa.org/ed/accreditation/about/policies/guiding-principles.pdf>; *see generally id.* at 5-12 (APA accreditation standards applicable to doctoral graduate programs).

270. The Program must meet another APA accreditation prerequisite under Domain A,

Section 6:

*The program adheres to and makes available to all interested parties formal written policies and procedures that govern: academic admissions and degree requirements; administrative and financial assistance; student performance evaluation, feedback, advisement, retention and termination decisions; and due process and grievance procedures for students and faculty. It has policies and procedures that are consistent with those of its sponsor institution that pertain to faculty and student rights, responsibilities, and personal development.*

*Id.* (Domain A, § 6) (emphases supplied).

***Contract Terms Arising Out of the Program’s Duty to Adhere to APA Accreditation Standards***

271. The Program has an affirmative duty to “ha[ve] and implement a clear and coherent curriculum plan that provides the means whereby all students can acquire and demonstrate substantial understanding of and competence,” G&P, *supra*, at 7 (Domain B, §3), regarding “[i]ssues of cultural and individual diversity that are relevant to . . .,” *id.* (Domain B, §3(d)), the theory and professional practice of scientific psychology, *see id.* (Domain B, § 3(a)-(c)).

272. The Program must “provide information regarding the minimum level of achievement it requires for students to satisfactorily progress through *and graduate from* the program, as well as evidence that it adheres to the minimum levels it has set.” *Id.* at 8 (Domain B, § 4). This requirement applies to the Program’s practica, including externships, for its students. *See id.* at 7-8 (Domain B, § 4).

273. The Program’s faculty leadership, being held by one or more persons, is responsible to be “available to and function as appropriate role models for students in their learning and socialization into the discipline and profession.” *Id.* at 8 (Domain C, § 1(f)); *see id.*

(Domain C, § 1 & 1(a)); *id.* at 10 (Domain E, § 2) (“The faculty provide appropriate role models” for the students.).

274. The Program’s faculty leadership must be one or more doctoral psychologists and must have the credentials and expertise consistent with the Program’s mission, goal, and substantive area of psychology as to which the Program provides training. *See id.* (Domain C, § 1(a)).

275. The Program provides training in clinical psychology. *See, e.g.*, Department of Psychology, Idaho State University, *Doctor of Philosophy in Clinical Psychology (M.S.-Ph.D.)*, <http://www2.isu.edu/psych/clinicalprogram.shtml>.

276. In accordance with APA Accreditation Standard Domain C, § 1(a), the ISU faculty members leading the Program must have the appropriate credential for doctors of clinical psychology.

277. The Program is required to have and appropriately use the additional resources, including student support services, *e.g.*, English language support services of non-native students, which the Program needs to achieve its training goals and objectives. *See G&P, supra*, at 9 (Domain C, § 3 & 3(e)).

278. The repeatedly stated goal of the Program was “to produce clinical psychologists who are well trained in the science of human behavior and its application to *diverse clinical populations*.” Graduate School, 2009-2010 Graduate Catalog 78 (undated) (emphasis supplied); *see also, e.g.*, Graduate School, 2010-2011 Graduate Catalog 84 (identically stated Program goal).



279. The Program elaborated extensively on its goals and objectives to educate and graduate multi-culturally competent doctors of psychology. *See* ISU, Department of Psychology, *Clinical Student Handbook* 6 (Aug. 2012), as follows:

Goal 5 Appreciation of Individual Differences, Cultural Differences, and Diversity of Practice: Students will be exposed to individuals who are affiliated with diverse cultural, demographic, and socioeconomic backgrounds. Furthermore, students will work with such individuals in varied and diverse settings. Students will demonstrate awareness, appreciation, and respect for cultural and individual differences and diverse value or belief systems.

Objective 5-A Cultural Diversity: Appreciate the person in his or her many social and cultural contexts; recognize that as cultural beings, psychologists may hold attitudes and beliefs that can detrimentally influence their perceptions of, and interactions with, individuals who are culturally different from themselves; demonstrate sensitivity to social processes (e.g., prejudice, discrimination, oppression) affecting stigmatized and marginalized individuals and groups; recognize the importance of cultural sensitivity/responsiveness, knowledge, and understanding about culturally different individuals; apply culturally appropriate skills in assessment, intervention, and research; recognize and utilize organizational processes to advocate for and advance culturally informed policy development and practices; understand how the characteristics of rural environments affect mental health and service delivery.

*Id.*

280. ISU offered Mr. Yu admission into the Program.

281. From a pool of sixty-four (64) doctoral applicants, ISU offered Program admission to only eleven (11) students, Mr. Yu among them, when Mr. Yu matriculated into the Program in 2008. Idaho State University, *Year Seven Self-Evaluation Report to Northwest Commission on Colleges & Universities* 227 (Sept. 2, 2014) (Table 64), [http://www2.isu.edu/acadaff/accreditation/NWCCU\\_reports.shtml](http://www2.isu.edu/acadaff/accreditation/NWCCU_reports.shtml) (link non-functional).

282. Only five of those offered students, again, Mr. Yu among them, enrolled in the Program. *Id.*

283. Under the APA Accreditation Standard for Domain C, Section 3 and 3(e), the Program had a duty to have and appropriately use the additional resources, including student support services, *e.g.*, English language support services for Mr. Yu as a non-native English speaker student in the Program.

284. APA Accreditation Standards require the Program to “recognize the importance of cultural and individual differences in the training of psychologists.” G&P, *supra*, at 10 (Domain D).

285. The Program must have “made systematic, coherent, and long-term efforts to attract *and retain students* and faculty *from differing ethnic, racial, and personal backgrounds* into the Program. *Id.* (Domain D, § 1) (emphasis supplied).

286. The Program must “act[] to ensure a supportive and encouraging learning environment appropriate for the training of diverse individuals and the provision of training opportunities for a broad spectrum of individuals.” *Id.*

287. The Program must “ha[ve] and implement[] a thoughtful and coherent plan to provide students with relevant knowledge and experiences about the role of cultural and individual diversity in psychological phenomena . . . .” *Id.* (Domain D, § 2).

288. As to APA Accreditation Standards for student-faculty relations, the Program, “to maximize the quality and effectiveness of students’ learning experienced, all interactions among students, faculty, and staff should be collegial and conducted in a manner that reflect the *highest standards of the scholarly community and of the profession* (see the current APA Ethical Principles of Psychologists and Code of Conduct.” *Id.* (Domain E, § 1).

289. Program faculty must “engage in actions that promote the students’ acquisition of knowledge, skills, and competencies consistent with the program’s training goals.” *Id.* at 10-11 (Domain E, § 2).

290. As to APA Accreditation Standards for due process protections for students, the Program must adhere to the requirements of Domain E, Section 4, as follows

At the time of admission, the program provides the students with written policies and procedures regarding program and institution requirements and expectations regarding students’ performance and continuance in the program and procedures for the termination of students. *Students receive, at least annually, written feedback on the extent to which they are meeting the program’s requirements and performance expectations.*

Such feedback should include:

- (a) *Timely, written notification of all problems that have been noted and the opportunity to discuss them;*
- (b) *Guidance regarding steps to remediate all problems (if remediable); and*
- (c) *Substantive, written feedback on the extent to which corrective actions are or are not successful in addressing the issues of concern.*

*Id.* at 11 (Domain E, § 4) (emphases supplied).

291. “In all matters relevant to the evaluation of students’ performance, [the Program] must adhere [ISU]’s regulations and local, state, and federal statutes regarding due process and fair treatment of students.” *Id.* at 11 (Domain E

**FACTS AS TO CONTRACT TERMS ARISING FROM IDAHO LAW AS TO THE  
REGULATION AND MANDATORY LICENSURE OF PSYCHOLOGISTS,  
INCLUDING ISU’S PROGRAM FACULTY LEADERSHIP**

292. In accordance with APA accreditation standards, the Program’s faculty leadership must be one or more doctoral psychologists and must have the credentials and expertise consistent with the Program’s mission, goal, and substantive area of psychology as to which the Program provides training. *See id.* (Domain C, § 1(a)).

293. In accordance with APA Accreditation Standard Domain C, § 1(a), ISU faculty members leading the Program must have the appropriate credentials for doctors of clinical psychology.

294. Other “individuals who hold faculty appointments at the institution may be used to augment and expand students’ educational experiences,” *i.e.*, whom the APA identifies as “adjunct faculty,” also are held to “appropriate standards of competence,” including to be “available to and function as appropriate role models for students in their learning and socialization into the discipline and profession.” G&P, *supra*, at 8-9 (Domain C, § 1 & 1(a) & (f)).

295. “Psychologists are regulated in Idaho and are required to be licensed.” Bureau of Occupational Licenses, State of Idaho, *Idaho Board of Psychologist Examiners*, <http://ibol.idaho.gov/IBOL/BoardPage.aspx?Bureau=PSY>.

296. The regulation and mandatory licensure of psychologists in Idaho is set forth at Idaho Code, Title 54, Chapter 23. *See* I.C. §§ 54-2301–15.

297. To be qualified for licensure by the State of Idaho, psychologists must “certif[y] under oath that they have reviewed and will abide by the laws and rules governing the practice of psychology in Idaho *and the code of ethics of the American Psychological Association . . .*” I.C. § 54-2312(4) (emphasis & capitalization supplied).

298. The code of ethics to which all Idaho psychologists are required to adhere during the duration of their licensure by the State of Idaho is APA’s publication entitled, “*Ethical Principles of Psychologists and Code of Conduct* (2003). *See* IDAPA 24.12.01.004, <http://adminrules.idaho.gov/rules/current/24/1201.pdf>.

299. On information and belief, Dr. Maria Wong is a Department faculty member and held at relevant times a leadership role as to the Program.

300. Dr. Maria Wong is not licensed in the State of Idaho. *Accord* Search of Public Record Information, Bureau of Occupational Licenses, State of Idaho (searched Apr. 6, 2016).

301. On information and belief, Dr. Paula Seikel is a Department faculty member and held at relevant times a leadership role as to the Program.

302. Dr. Paula Seikel is currently and at relevant times has been a psychologist licensed in the State of Idaho and holds license number PSY-369. *See* Bureau of Occupational Licenses, State of Idaho, *Public Record*, <https://secure.ibol.idaho.gov/eIBOLPublic/LicensePublicRecord.aspx?Profession=PSY&LicenseType=PSY&LicenseNo=369>.

303. On information and belief, Dr. Mark Roberts is a Department faculty member and held at relevant times a leadership role as to the Program.

304. Dr. Mark Roberts is currently and at relevant times has been a psychologist licensed in the State of Idaho and holds license number PSY-138. *See* Bureau of Occupational Licenses, State of Idaho, *Public Record*, <https://secure.ibol.idaho.gov/eIBOLPublic/LicensePublicRecord.aspx?Profession=PSY&LicenseType=PSY&LicenseNo=138>.

305. On information and belief, Dr. Erin Rasmussen is a Department faculty member and held at relevant times a leadership role as to the Program.

306. Dr. Erin Rasmussen is not licensed by the State of Idaho. *Accord* Search of Public Record Information, Bureau of Occupational Licenses, State of Idaho (searched Apr. 6, 2016).

307. On information and belief, Dr. Shannon Lynch is a Department faculty member and held at relevant times a leadership role as to the Program.

308. Dr. Shannon Lynch is currently and at relevant times has been a psychologist licensed by the State of Idaho and holds license number PSY-202220. *See* Bureau of Occupational Licenses, State of Idaho, *Public Record*, <https://secure.ibol.idaho.gov/eIBOLPublic/LicensePublicRecord.aspx?Profession=PSY&LicenseType=PSY&LicenseNo=202220>.

309. On information and belief, Dr. John Landers is a Department faculty member and held at relevant times a leadership role as to the Program in his capacity as Mr. Yu's clinical supervisor during Mr. Yu's externship at the Eastern Idaho Regional Medical Center.

310. Dr. John Landers is currently and at relevant times has been a psychologist licensed by the State of Idaho and holds license number PSY-202268. *See* Bureau of Occupational Licenses, State of Idaho, *Public Record*, <https://secure.ibol.idaho.gov/eIBOLPublic/LicensePublicRecord.aspx?Profession=PSY&LicenseType=PSY&LicenseNo=202268>

311. On information and belief, Dr. Courtney Haight is a Department faculty member and held at relevant times a leadership role as to the Program.

312. Dr. Courtney Haight is currently and since September 27, 2013 has been a psychologist licensed in the State of Idaho and holds license number PSY-202698. *See* Bureau of Occupational Licenses, State of Idaho, *Public Record*, <https://secure.ibol.idaho.gov/eIBOLPublic/LicensePublicRecord.aspx?Profession=PSY&LicenseType=PSY&LicenseNo=202698>.

313. Dr. John Landers was at the relevant times an “adjunct faculty” member under the APA Accreditation Standards. *See* Paragraph 107, *supra*; G&P, *supra*, at 9 (Domain C, § 1).

314. On information and belief, Dr. Cheri Atkins is a Department faculty member and held at relevant times a leadership role as to the Program.

315. Dr. Cheri Atkins is currently and at relevant times has been a psychologist licensed in the State of Idaho and holds license number PSY – 202272. *See* Bureau of Occupational Licenses, State of Idaho, *Public Record*, <https://secure.ibol.idaho.gov/eIBOLPublic/LicensePublicRecord.aspx?Profession=PSY&LicenseType=PSY&LicenseNo=202272>

## **FACTS AS TO TERMS ARISING FROM ISU’S STATEMENTS AND PUBLICATIONS**

### ***Facts as to Contract Terms Regarding ISU’s Institutional Accreditation by NWCCU and the Stated Significance Thereof***

316. ISU’s Provost and Vice President of Academic Affairs states:

Idaho State University is accredited by the Northwest Commission on Colleges and Universities (NWCCU)[.]

Accreditation of an institution of higher education by the Northwest Commission on Colleges and Universities indicates that *it meets or exceeds criteria for the assessment of institutional quality* evaluated through a peer review process. An accredited college or university is one which has available the necessary resources to achieve its stated purposes through appropriate educational programs, *is substantially doing so, and gives reasonable evidence that it will continue to do so in the foreseeable future. Institutional integrity is also addressed through accreditation.*

Accreditation by the Northwest Commission on Colleges and Universities is not partial[,] but applies to the institution as a whole. As such, it is not a guarantee of every course or program offered, or the competence of individual graduates. *Rather, it provides reasonable assurance about the quality of opportunities available to students who attend the institution.*

The Office of the Provost and Vice President of Academic Affairs, ISU, *Accreditation*, <http://www2.isu.edu/acadaff/accreditation/about.shtml> (emphases supplied).

317. ISU's Graduate School makes the same statement and assertions as quoted in Paragraph 313. *See* ISU, *Graduate Education at Idaho State University*, <http://www2.isu.edu/graduate/accreditation.shtml>.

318. NWCCU's accreditation "recognizes [ISU] for performance, integrity, and quality to merit the confidence of the educational community and the public." *Id.* (discussing Regional Accreditation). ISU asserts:

Accreditation[sic] is intended to foster excellence, encourage institutional improvement, and *provide assurances* that [ISU as an NWCCU-accreditation institution, has clearly defined and appropriate educational objectives, has established conditions under which their achievement can reasonably be expected, appears in fact to be substantially accomplishing them, and *is so organized, staffed, and supported that it can be expected to continue to do so.*

The Office of the Provost and Vice President of Academic Affairs, ISU, *Accreditation Standards*, <http://www2.isu.edu/acadaff/accreditation/standards.shtml> (emphasis supplied).

#### **FACTS AS TO TERMS ARISING FROM ISU'S FACULTY & STAFF HANDBOOK**

319. All policies and procedures of ISU's faculty "must be consistent with" the Board's Rule Manual and GP&P, *supra*, Paragraph. ISU Faculty & Staff Handbook ("FS Handbook"), Part 2, Section II(A)(2) (Mar. 2010), [http://www.isu.edu/policy/fshandbook/part2/2\\_2\\_2a.html](http://www.isu.edu/policy/fshandbook/part2/2_2_2a.html) (as posted Aug. 8, 2012).

320. ISU's faculty members are bound by its Statement on Faculty Ethics. *See* FS Handbook, Part 4, Section I(B)(2) (May 2002), [http://www.isu.edu/policy/fshandbook/part4/4\\_1/4\\_1b.html](http://www.isu.edu/policy/fshandbook/part4/4_1/4_1b.html) (as posted Aug. 8, 2012).

321. Under the Statement on Faculty Ethics, ISU's faculty



accept the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. They practice intellectual honesty.

....

As teachers, the professors encourage the free pursuit of learning in their students. They hold before the students the best scholarly standards of their disciplines. They demonstrate respect for the students as individuals, and adhere to their proper roles as intellectual guides and counselors.

*Id.*

322. ISU faculty and staff are subject to the Board's Conflict of Interest and Ethical Conduct Policy. *See* FS Handbook, Part 4, Section I(B)(3) (May 2002), [http://www.isu.edu/policy/fshandbook/part4/4\\_1/4\\_1b.html](http://www.isu.edu/policy/fshandbook/part4/4_1/4_1b.html) (as posted Aug. 8, 2012).

323. ISU's non-discrimination policy stated in the FS Handbook reads, in relevant part: "It is the policy of Idaho State University to provide equal educational opportunities, services and benefits to students without regard to race, color, religion, sex, national origin, age, disability, or veteran status . . . in accordance with applicable State and Federal laws." FS Handbook, Part 4, Section I(G)(1)(b) (Jan. 1992), [http://www.isu.edu/policy/fshandbook/part4/4\\_1/4\\_1g.html](http://www.isu.edu/policy/fshandbook/part4/4_1/4_1g.html) (as posted Aug. 8, 2012).

324. In setting forth its policy statement for its EEO/Affirmative Action Program, ISU stated that it "endeavors to achieve equal educational opportunity for individuals with legally protected status through recruitment, admission, curricular and extracurricular programs, advising and retention practices, and student aid and employment." FS Handbook, Appendix A, Section I (July 2008), [http://www.isu.edu/policy/fs-handbook/appendix/appa\\_1.html](http://www.isu.edu/policy/fs-handbook/appendix/appa_1.html) (as posted Aug. 8, 2012).

325. ISU defined this phrase, "race, color, religion, national origin, sex, age, or disability status," as referring to "individuals with legally protected status." *Id.*

326. ISU established its requirement to, through its EEO/Affirmative Action Director, “[d]etermine whether . . . students with legally protected status are afforded full opportunity and encouragement for participation in all University sponsored educational training and recreational programs,” FS Handbook, Appendix A, Section II(B)(2)(j) (July 2008), [http://www.isu.edu/policy/fs-handbook/appendix/appa\\_2.html](http://www.isu.edu/policy/fs-handbook/appendix/appa_2.html) (as posted Aug. 8, 2012).

327. ISU also established its requirement to, through its EEO/Affirmative Action Director, “[c]ooperate with vice presidents, deans, department chairpersons, program directors, supervisors, and members of the affected groups in determining the need for . . . special programs and/or services to aid individuals with legally protected status in completing their education[.]” FS Handbook, Appendix A, Section II(B)(2)(m)(2) (July 2008), [http://www.isu.edu/policy/fs-handbook/appendix/appa\\_2.html](http://www.isu.edu/policy/fs-handbook/appendix/appa_2.html) (as posted Aug. 8, 2012).

#### **FACTS AS TO TERMS ARISING FROM ISU’S STUDENT HANDBOOK**

328. Dr. Donald Paulson, ISU’s Acting Dean of Students, encouraged students to come forward with any concerns and assured students of ISU’s commitment to honestly and quickly assist them with those issues, stating,

Most importantly, when you encounter difficulties or challenges seek advice and help. Whether that comes from myself, a faculty member, or another staff member from Student Affairs, tell us what your concerns are and how we can help. We, in turn, commit to assisting you as honestly and as quickly as possible.

ISU, Student Handbook 2010-2011 (“Student Handbook”), frontispiece (undated).

329. ISU sets forth its duties and policies as to compliance with applicable laws and its equal opportunity policy in the Student Handbook, in relevant part, as follows:

Idaho State University subscribes to the principles and laws of the State of Idaho and the federal government, including applicable executive orders pertaining to civil rights. All rights, privileges, and activities of the University are made available without regard

to race, creed, color, sex, disability, national origin or veteran status.

Student Handbook, *supra*, at 2.

330. “The University has an obligation and shall apply its rules equally to all students who are similarly situated.” *Id.* at 5 (Section A.7).

### **FACTS AS TO TERMS ARISING FROM ISU’S STATEMENTS IN GRADUATE SCHOOL CATALOGS**

331. ISU’s Graduate Catalog sets forth the institution’s policies and procedures related to probation, program dismissal, appeals, and related matters.

332. ISU’s Graduate School, within the purview of which lies the Program, commits to “be the strongest advocate for rigorous, fair, consistent, and courteous treatment of graduate students.” Catalog, *supra* at 7.

333. In ISU’s Graduate Catalogs for academic years 2009-2010 and 2010-2011, the Graduate School repeated this commitment of advocacy for rigorous, fair, consistent, and courteous treatment of ISU’s graduate students.

### **FACTS AS TO TERMS ARISING FROM ISU’S STATEMENTS IN CLINICAL STUDENT HANDBOOKS**

#### ***Facts as to Contract Terms Regarding the Program’s APA Accreditation***

334. The Program has been APA-accredited since May 2001. See Clinical Training Committee, Department of Psychology, Idaho State University, *Clinical Student Handbook 2-3* (Aug. 2012) [hereinafter “2012 Clinical Student Handbook”]; see also Department of Psychology, Idaho State University, *Doctor of Philosophy in Clinical Psychology (M.S.-Ph.D.)*, <http://www2.isu.edu/psych/clinicalprogram.shtml>.

335. The Program was fully reaccredited by the APA in 2004 and 2011. See 2012 Clinical Student Handbook, *supra*, at 3.

336. The Program stated that it had been accredited for a third time in March 2012. *See id.* at 31, § X.

337. The Program stated that it pays its annual fee online to APA and thereby maintains its APA-accredited status. *See id.* at 31, § X; ISU, Department of Psychology, *Clinical Student Handbook* 30, § X (Aug. 2011).

338. The Program repeatedly and consistently highlighted its APA accreditation. *See, e.g.*, Department of Psychology, ISU, *Clinical Ph.D. Program*, <http://www.isu.edu/psych/clinicalprogram.shtml> (as posted Mar. 24, 2008 & Apr. 20, 2011).

339. The Program repeatedly and consistently asserted its commitment as to its APA accreditation, saying, “We will continue to work with the APA to ensure that the CTP evolves consistently with national, professional criteria.” *See, e.g.*, Department of Psychology, ISU, *Clinical Ph.D. Program*, <http://www.isu.edu/psych/clinicalprogram.shtml> (as posted Mar. 24, 2008 & Apr. 20, 2011).

#### ***Facts as to Contract Terms as to Degrees To Be Earned***

340. The Program repeatedly advised its doctoral students that they would be earning two graduate degrees: a master’s degree in psychology and a doctorate degree in clinical psychology. *See* ISU, Department of Psychology, *Clinical Student Handbook* 2 (Aug. 2012); ISU, Department of Psychology, *Clinical Student Handbook* 2 (Aug. 2011); ISU, Department of Psychology, *Clinical Student Handbook* 2 (Aug. 2010).

#### **FACTS AS TO TERMS ARISING FROM ISU DEPARTMENT OF PSYCHOLOGY GRADUATE STUDIES MANUAL**

341. The Department undertook an effort to “maintain standards consistent with Domain D of the APA Accreditation Guidelines (Cultural and Individual Differences and

Diversity.” See ISU, Department of Psychology, *Graduate Studies Manual* 13 (Aug. 2009) (“Department Graduate Studies Manual”).

342. The Department chairperson appointed a Recruitment/Diversity Coordinator to “facilitate the recruitment of qualified applicants to the experimental and clinical graduate programs, with a special emphasis on recruiting Idaho residents and individuals from diverse backgrounds” and charged with the responsibility to lead the Department’s efforts as to Domain D APA Accreditation Standards. *Id.*; see generally *id.* at 13-16. § IV (activities of Recruitment/Diversity Coordinator); ISU, Department of Psychology, *Graduate Studies Manual* 13-17, § IV (Aug. 2010).

343. The Department stated, “Three different departmental initiatives are designed to enhance diversity and the multicultural competency of faculty and students: 1. Recruitment, 2. Multicultural Education, and 3. Community Practica.” Department Graduate Studies Manual, *supra*, at 13.

344. The Department stated on the topic of multicultural education, as follows:

The departmental goal is to promote readiness to practice psychology in a multicultural society via systematic coursework and presentations. The concept of multiculturalism includes not only ethnic minorities and sex, but other diversity dimensions, such as age, sexual orientation, and disabilities (i.e., motoric limitations, sensory deficits, etc.). [] The [Recruitment/Diversity] Coordinator solicits syllabi and other relevant course information from instructors to document diversity information, readings, and presentations. The Coordinator also collects and distributes materials (e.g., journal articles, books, chapters, videos) on various diversity topics to faculty members for consideration in their academic courses.

*Id.* at 13, § 3.

## V. DAMAGES<sup>7</sup>

345. As a direct and proximate consequence of Defendant's unlawful practices, Mr. Yu has suffered the loss of an opportunity to gain an education in the field of his choice in a publicly funded university, which receives funding from both the state of Idaho and the federal government to include the U.S. Department of Health and Human Services and U.S. Department of Education.

346. Because of the foregoing, Mr. Yu suffered the loss of a PhD degree despite successfully defending his dissertation.

347. Because of the foregoing, Mr. Yu suffered the loss of job opportunities and career in his field of choice.

348. Because of the foregoing, Mr. Yu has lost time that could have been spent towards his career and professional development.

349. Because of the foregoing, Mr. Yu has suffered fear, anger, frustration, irritability, depression, anxiety, emotional duress, pain, humiliation and has experienced a profound sense of betrayal.

350. Because of the foregoing, Mr. Yu has lost a part of his self-respect and his feeling of self-worth.

## VI. STATEMENT OF CLAIM

### COUNT ONE (Violation of Title VI)<sup>8</sup>

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<sup>7</sup> To state a claim for damages under 42 U.S.C. § 2000d, *et seq.*, a plaintiff must allege that (1) the entity involved is engaging in racial discrimination; and (2) the entity involved is receiving federal financial assistance. Although the plaintiff must prove intent at trial, it need not be pled in the complaint. *Rodriguez v. California Highway Patrol*, 89 F. Supp. 2d 1131, 1139 (N.D. Cal. 2000) and *Joseph v. Boise State Univ.*, 998 F. Supp. 2d 928, 944 (D. Idaho 2014).

**A Violation of Title VI of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000d et. seq. and 34 C.F.R. §§ 100.1 and 100.3 Which Prohibits the Exclusion on the Basis of Race, Color, or National Origin Programs or Activities Receiving Federal Financial Assistance from the U.S. Department of Education and a Violation of I.C. § 67-5909 (1) against Defendant, ISU.**

351. Mr. Yu restates, incorporates and re-alleges paragraphs 1-350 as this paragraph 351 of this Count One.

352. ISU's cultural incompetence and aversive racism/prejudice resulted in the unlawful disparate treatment of Mr. Yu which treatment manifested a deliberate and indifference to ISU's obligation to Mr. Yu under Title VI.

353. By virtue of the foregoing, the Defendant caused Mr. Yu to suffer as a victim of deliberate and unlawful discrimination due to his national origin in violation of Title VI of The 1964 Civil Rights Act, 42 U.S.C. §§ 2000d *et. seq.*

**COUNT TWO**

**Deprivation of Constitutional Rights Under Color of State Law  
Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983  
(Denial of 14th Amendment Procedural Due Process Rights)**

354. Plaintiff restates, incorporates and re-alleges paragraphs 1 through 353 herein as paragraph 354 of this Count Two.

355. Plaintiff was dismissed from ISU's Psychology Graduate program without being informed of the clinical evaluators' dissatisfaction with his progress.

356. Plaintiff was not accorded established grievance and due process procedures for the Department of Psychology that contains the two elements of procedural due process (1)

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<sup>8</sup> To establish a *prima facie* case that Defendants violated Title VI regulations, Plaintiffs must demonstrate that Defendants have a program, policy or practice that has a "discriminatory impact." *Rodriguez v. California Highway Patrol*, 89 F. Supp. 2d 1131, 1139 (N.D. Cal. 2000)

notice and (2) an opportunity to be heard prior to being involuntarily released for alleged academic deficiencies.

357. Plaintiff's dismissal deprived him of a liberty interest by substantially impairing his opportunity to continue his education.

358. Plaintiff's dismissal deprived him of the opportunity to complete the only remaining practicum he needed to obtain his Ph.D. in Clinical Psychology.

359. At all times material hereto, the Conduct of the Defendants was subject to 42 U.S.C. § 1983 and the Defendants were acting under color of law.

### **COUNT THREE**

#### **(Negligent Infliction of Emotional Distress)**

360. Plaintiff restates, incorporates, and re-alleges paragraphs 1 through 359 herein as paragraph 360 of this Count Three.

361. Defendant's actions caused Plaintiff to suffer severe emotional and physical distress. Additionally, and as a result of Defendant's conduct, Plaintiff has suffered from fear, anger, frustration, and a profound sense of betrayal.

362. As a result of Defendant's actions, Plaintiff has lost a part of his self-respect, his feeling of self-worth, and his self-identity.

### **COUNT FOUR**

#### **Deprivation of Constitutional Rights Under Color of State Law Violation of Civil Rights Pursuant to Title 42 U.S.C. § 1983 (Denial of 14th Amendment Substantive Due Process Rights)**

363. Plaintiff restates, incorporates and re-alleges paragraphs 1 through 362 of this Count Four as paragraph 363.



364. At all times material hereto, Mr. Yu had a fundamental property interest in his continued enrollment in the Defendant's program in Clinical Psychology

365. At all times material hereto, the Conduct of the Defendants was subject to 42 U.S.C. § 1983 and the Defendants were acting under color of law.

366. By dismissing Mr. Yu from participating in the Defendant's doctoral program in Clinical Psychology in the arbitrary and capricious manner as set forth in this Complaint, Defendants have impaired and violated Mr. Yu's right to substantive due process under the 14<sup>th</sup> Amendment to the United States Constitution, and Article 1, Sections 1 and 13 of the Constitution of the State of Idaho. These violations entitle Mr. Yu to relief under Title 42, Section 1983 of the United States Code. As a direct and proximate result of the violations of Mr. Yu's constitutional rights, Mr. Yu has suffered direct and consequential losses and damages in amounts to be determined at trial.

367. By dismissing Mr. Yu from participating in the Defendant's doctoral program in Clinical Psychology in a manner that was a substantial departure from accepted academic norms as set forth in this Complaint, Defendants have impaired and violated Mr. Yu's right to substantive due process under the 14<sup>th</sup> Amendment to the United States Constitution, and Article 1, Sections 1 and 13 of the Constitution of the State of Idaho. These violations entitle Mr. Yu to relief under Title 42, Section 1983 of the United States Code. As a direct and proximate result of the violations of Mr. Yu's constitutional rights, Mr. Yu has suffered direct and consequential losses and damages in amounts to be determined at trial.

## **COUNT FIVE**

### **(Promissory Estoppel)**

368. Plaintiff restates, incorporates and re-alleges paragraphs 1 through 367 of this Count Five as paragraph 368.

369. Mr. Yu had only one internship to complete to satisfy the academic requirements to earn his doctorate in Clinical Psychology.

370. As stated in the facts paragraphs 161 - 176 herein, Plaintiff relied on the unconditional statements that the options to re-apply to APPIC member sites or propose an accommodated internship in China were open to him.

371. Absent any conditions on the statements and acting on reasonable reliance that the two remaining options would be available to him even where Mr. Yu had chosen to complete an internship at the Cleveland Clinic, Mr. Yu acted reasonably and in justifiable reliance on the unconditional statements (i.e. promises) made by Dr. Mark Roberts.

372. Given Dr. Mark Roberts position as the Director of Clinical Training for the Defendant, it was obviously foreseeable and Dr. Roberts knew or should have known that Mr. Yu would rely on the unconditional statements (i.e. promises) made by Dr. Mark Roberts.

373. As a proximate result of Defendant's failure to perform according to the promises made to Mr. Yu, the economic detriment suffered by Mr. Yu in reliance on the promises made by Dr. Roberts is estimated to be two million one hundred eight-five thousand, seven hundred and ninety-three dollars and no cents (2,185,793.00).

374. Defendant must be estopped from preventing Mr. Yu from completing his internship in China as he has requested which will allow Mr. Yu to earn his doctorate from Idaho State University.

**COUNT SIX**

**(Breach of Contract Failure to Provide Equal Educational Opportunity authority as set forth in the Board's *Governing Policies and Procedures* ("GP&Ps"))**

375. Plaintiff restates, realleges, and reavers and hereby incorporates by reference all allegations of Paragraphs 1- 374, herein as Paragraph 375.

376. An academic contract existed between Mr. Yu and ISU ("Contract") and contained implied terms requiring the parties to comply with applicable law and other terms.

377. The Contract imposed upon ISU a duty owed to Mr. Yu that ISU complied and would continuously comply with applicable federal and state law, including as established by the Idaho State Board of Education ("Board") pursuant to its legal authority and as set forth in the Board's *Governing Policies and Procedures* ("GP&Ps") and elsewhere.

378. Under the Contract, ISU owes duties of legal compliance to Mr. Yu as a then citizen of the State of Idaho and as a student at ISU, a public university and instrumentality of Idaho government.

379. ISU breached its duty of legal compliance under the Contract by failing to comply with the Board's mandate that ISU provide equal educational opportunities, services, and benefits to Mr. Yu without regard to his race, color, or national origin.

380. ISU's actions in thus breaching the Contract was arbitrary, capricious, and a substantial departure from accepted academic norms.

**COUNT SEVEN**

**(Failure to Adhere o the Code of Ethics of the American Psychological Association as Mandated by I.C. § 54-2312(4))**

381. Plaintiff restates, realleges, and reavers and hereby incorporates by reference all allegations of Paragraphs 1- 380, herein as Paragraph 381.

382. Under the Contract, ISU, through its Program faculty, owed duties of legal compliance to Mr. Yu as a then citizen of the State of Idaho and as a student at ISU, a public university and instrumentality of Idaho government.

383. ISU breached its duty of legal compliance under the Contract by the Program faculty's failing to adhere at all times with the code of ethics of the American Psychological Association as mandated by I.C. § 54-2312(4).

384. ISU actions in thus breaching the Contract was arbitrary, capricious, and a substantial departure from accepted academic norms.

### **COUNT EIGHT**

#### **(Failure of Faculty to Comply with the Board's GP&Ps)**

385. Plaintiff restates, realleges, and reavers and hereby incorporates by reference all allegations of Paragraphs 1- 384, herein as Paragraph 385.

386. The Contract imposed upon ISU a duty owed to Mr. Yu that ISU's faculty would refrain from acting toward Mr. Yu in a manner that was not in conformity with the Board's GP&Ps.

387. ISU breached its duty of legal compliance under the Contract the acts of ISU's faculty in acting toward Mr. Yu in a manner that was not in conformity with the Board's GP&Ps.

388. ISU's actions in thus breaching the Contract was arbitrary, capricious, and a substantial departure from accepted academic norms.

#### **COUNT NINE**

##### **(Breach of Contract, Failure to Follow Applicable Law As Required by the Board's GP&Ps)**

389. Plaintiff restates, realleges, and reavers and hereby incorporates by reference all allegations of Paragraphs 1 - 388, herein as Paragraph 389.

390. The Contract imposed upon ISU a duty owed to Mr. Yu that ISU's faculty would refrain from making representations to Mr. Yu in a manner that was not in conformity with the Board's GP&Ps.

391. ISU breached its duty of legal compliance under the Contract the acts of ISU's faculty in making representations to Mr. Yu in a manner that was not in conformity with the Board's GP&Ps.

392. ISU's actions in thus breaching the Contract was arbitrary, capricious, and a substantial departure from accepted academic norms.

#### **COUNT TEN**

##### **(Breach of Contract, Failure of Defendant's Employees to Act Impartially, Avoid Conflicts of Interest, Avoid Violating the Law or Appearing to Violate Either the Law or the Board's Ethical Standards )**

393. Plaintiff restates, realleges, and reavers and hereby incorporates by reference all allegations of Paragraphs 1-392, herein as Paragraph 393.

394. The Contract imposed upon ISU a duty owed to Mr. Yu that ISU's employees would adhere to the Board's Ethical Code, which imposes duties that they would act impartially

as to Mr. Yu, avoid conflicts of interest and endeavor to avoid any actions by which they violated or appeared to violate the law, the Board's ethical standards, or any conflict of interest.

395. ISU breached its duty of legal compliance under the Contract the acts of ISU's employees by failing to act impartially as to Mr. Yu, by failing to avoid conflicts of interest, and failing their duties to endeavor to avoid any actions by which they violated or appeared to violate the law, the Board's ethical standards, or any conflict of interest.

396. ISU's actions in thus breaching the Contract was arbitrary, capricious, and a substantial departure from accepted academic norms.

#### **COUNT ELEVEN**

#### **(Breach of Contract to Mr. Yu as a Third Party Beneficiary of the Contract that Exists Between the Northwest Commission on Colleges and Universities (NWCCU) and the Defendant)**

397. Plaintiff restates, realleges, and reavers and hereby incorporates by reference all allegations of Paragraphs 1- 396, herein as Paragraph 397.

398. The Contract imposed upon ISU the duty to act in accordance with and otherwise adhere to the accreditation standards, accreditation eligibility prerequisites, and accreditation policies and procedures of the Northwest Commission on Colleges and Universities ("NWCCU"), and ISU owed that duty to Mr. Yu.

399. Alternatively or in addition, a contract, on information and belief, has existed since 1918 between ISU and Northwest Commission on Colleges and Universities ("NWCCU") as its regional accrediting body and pursuant to applicable law, including the Board's GP&Ps.

400. At all relevant times, Mr. Yu was a third-party beneficiary of that contract between ISU and NWCCU both as a student in ISU, an NWCCU-accredited university and as a member of the public.

401. ISU breached its duty to Mr. Yu under the Contract or as a third-party beneficiary by failing to ensure the integrity of its relationship with him as a member of ISU's student constituency and by failing to maintain institutional integrity in its dealings with Mr. Yu.

402. ISU's actions in thus breaching the Contract was arbitrary, capricious, and a substantial departure from accepted academic norms.

#### **COUNT TWELVE**

##### **(Breach of Contract, Failure to Adhere to NWCCU's Accreditation Standards, Eligibility Requirements and Policy and Procedures)**

403. Plaintiff restates, realleges, and reavers and hereby incorporates by reference all allegations of Paragraphs 1- 402, herein as Paragraph 403.

404. ISU had the duty to Mr. Yu under the Contract or as a third-party beneficiary or both to act in accordance with and otherwise adhere to NWCCU accreditation standards, NWCCU accreditation eligibility requirements, and NWCCU's policies and procedures.

405. ISU breached its duty to Mr. Yu under the Contract or as a third-party beneficiary or both by failing in its actions toward Mr. Yu to act in accordance with and otherwise adhere to NWCCU accreditation standards 2.A.2, 2.A.12, 2.A.15, 2.A.16, 2.A.21, 2.A.22, 2.A.23, 2.C.13, 2.D.1, 2.F, 3.B, 3.B.1, 3.B.3, 3.D, and 3.D.2; NWCCU accreditation eligibility requirements 3 and 5; and NWCCU's Policies 6.1, A-8(c)(1), and B-1.

406. ISU's actions in thus breaching the Contract was arbitrary, capricious, and a substantial departure from accepted academic norms.

### **COUNT THIRTEEN**

#### **(Breach of Representation and Warranty)**

407. Plaintiff restates, realleges, and reavers and hereby incorporates by reference all allegations of Paragraphs 1- 406, herein as Paragraph 407.

408. The Contract contained implied representations and warranties made by ISU to Mr. Yu that, by virtue of ISU's, on information and belief, continual NWCCU accreditation since 1918 and by ISU's repeated and variously publicized statements to its students and other constituencies and members of the public, ISU at the commencement of the Contract acted in accordance with and otherwise adhered and would continue do so through the duration of the Contract with all NWCCU accreditation standards, NWCCU accreditation eligibility prerequisites, and NWCCU's policies and procedures.

409. Alternatively or in addition, the contract between ISU and NWCCU, inclusive of its terms for ISU's compliance with NWCCU's accreditation policies and procedures, created representations and warranties to Mr. Yu as a third-party beneficiary that ISU adhere and continue to adhere at all relevant times to all NWCCU accreditation standards; NWCCU accreditation eligibility prerequisites; and NWCCU's policies and procedures.

410. ISU breached these representations and warranties to Mr. Yu under the Contract or as a third-party beneficiary or both by failing adhere at all relevant times to NWCCU accreditation standards 2.A.2, 2.A.12, 2.A.15, 2.A.16, 2.A.21, 2.A.22, 2.A.23, 2.C.13, 2.D.1, 2.F,



3.B, 3.B.1, 3.B.3, 3.D, and 3.D.2; NWCCU accreditation eligibility requirements 3 and 5; and NWCCU's Policies 6.1, A-8(c)(1), and B-1.

411. ISU's actions in thus breaching these representations and warranties were arbitrary, capricious, and a substantial departure from accepted academic norms.

#### **COUNT FOURTEEN**

##### **(Breach of Contract to Mr. Yu as a Third Party Beneficiary of the Contract that Exists Between the American Psychological Association (APA) and the Defendant)**

412. Plaintiff restates, realleges, and reavers and hereby incorporates by reference all allegations of Paragraphs 1- 411, herein as Paragraph 412.

413. The Contract imposed upon ISU the duty for its Program to act or to make reasonable efforts to act in accordance with and otherwise adhere to the accreditation standards, accreditation eligibility requirements, and to the accreditation policies and procedures of the American Psychological Association ("APA"), and ISU owed that duty to Mr. Yu.

414. Alternatively or in addition, a contract, on information and belief, has existed since 2001 between ISU and APA as that Program's accrediting body.

415. At all relevant times, Mr. Yu was a third-party beneficiary of that contract between ISU and APA as a student in the Program and a member of the public.

416. ISU breached its duty to Mr. Yu under the Contract or as a third-party beneficiary by failing in its actions toward Mr. Yu to act in accordance with and otherwise adhere to APA accreditation standards Domain B, §§ 3 & 4; Domain C, §§ 1 & 3; Domain D, §§ 1 & 2; Domain E, §§ 1, 2 & 4; Domain H, § 1; APA accreditation eligibility prerequisites Domain A, §§ 1, 3, 5

& 6 and otherwise as required by the Board pursuant to GP&P § III(M); and the corresponding APA policies and procedures.

417. ISU's actions in thus breaching the Contract was arbitrary, capricious, and a substantial departure from accepted academic norms.

### **COUNT FIFTEEN**

#### **(Breach of Representation and Warranty)**

418. Plaintiff restates, realleges, and reavers and hereby incorporates by reference all allegations of Paragraphs 1-417, herein as Paragraph 418.

419. The Contract contained implied representations and warranties made by ISU to Mr. Yu that, by virtue of the Program's, on information and belief, continual APA accreditation since 2001 and by ISU, including by its Department, Program, and Graduate School, repeated and variously publicized statements to its students and other constituencies and members of the public, the Program at the commencement of the Contract acted in accordance with and otherwise adhered and would continue do so through the duration of the Contract with all APA accreditation standards, APA accreditation eligibility prerequisites, and APA's policies and procedures.

420. Alternatively or in addition, the contract between ISU and APA, inclusive of its terms for ISU's compliance with APA's policies and procedures, created representations and warranties to Mr. Yu as a third-party beneficiary that ISU adhere and continue to adhere at all relevant times to all APA accreditation standards; APA accreditation eligibility prerequisites; and APA's policies and procedures.

421. ISU breached these representations and warranties to Mr. Yu under the Contract or as a third-party beneficiary or both by failing adhere at all relevant times to failing in its actions toward Mr. Yu to act in accordance with and otherwise adhere to APA accreditation standards Domain B, §§ 3 & 4; Domain C, §§ 1 & 3; Domain D, §§ 1 & 2; Domain E, §§ 1, 2 & 4; Domain H, § 1; APA accreditation eligibility prerequisites Domain A, §§ 1, 3, 5 & 6 and otherwise as required by the Board pursuant to GP&P § III(M); and the corresponding APA policies and procedures.

422. ISU's actions in thus breaching these representations and warranties were arbitrary, capricious, and a substantial departure from accepted academic norms.

#### **COUNT SIXTEEN**

**(Breach of Contract to Mr. Yu as a Third Party Beneficiary of the Requirements Set Forth in the Defendant's Faculty and Staff Handbook Part 4, §§ I(B)(2)-(3), I(G)(1)(b), Appendix A, §§ I & II(B)(2)(j) & (m)(2))**

423. Plaintiff restates, realleges, and reavers and hereby incorporates by reference all allegations of Paragraphs 1- 422, herein as Paragraph 423.

424. The Contract imposed upon ISU a duty owed to Mr. Yu that ISU's faculty, as mandated by the Board, would refrain from acting toward Mr. Yu in a manner that was not inconformity with ISU's approved policies and procedures.

425. Alternatively or in addition, all employment contracts between ISU and its faculty and staff require adherence with requirements set forth in the Faculty & Staff Handbook, and Mr. Yu is a third-party beneficiary to such contracts.

426. ISU breached its duty to Mr. Yu under the Contract or as a third-party beneficiary or both of legal compliance by the failure of ISU faculty members' actions toward Mr. Yu in a manner that was not in conformity with ISU's Faculty & Staff Handbook Part 4, §§ I(B)(2)-(3), I(G)(1)(b), Appendix A, §§ I & II(B)(2)(j) & (m)(2).

427. ISU's actions in thus breaching the Contract was arbitrary, capricious, and a substantial departure from accepted academic norms.

### **COUNT SEVENTEEN**

#### **(Breach of Contract By Defendant's Failure to Honestly and Quickly Assist Mr. Yu In Resolving Concerns, Difficulties, and Challenges as Expressly Delineated and Required in Defendant's Student Handbooks and Graduate Catalogs)**

428. Plaintiff restates, realleges, and reavers and hereby incorporates by reference all allegations of Paragraphs 1 - 427, herein as Paragraph 428.

429. By express promises made by ISU in its Student Handbooks and Graduate Catalogs, ISU had the duty to Mr. Yu under the Contract to assist him in resolving concerns, difficulties, and challenges honestly and as quickly as possible and to serve as the strongest advocate for Mr. Yu's fair, consistent, and courteous treatment by ISU.

430. ISU breached its duty to Mr. Yu under the Contract by failing to carry out and fulfill these promised actions toward Mr. Yu and on his behalf.

431. ISU's actions in thus breaching the Contract was arbitrary, capricious, and a substantial departure from accepted academic norms.

### **COUNT EIGHTEEN**

**(Breach of Contract By Defendant's Failure to Comply with Defendants Equal Opportunity Policy and Laws as Required in Delineated in Defendant's Student Handbook)**

432. Plaintiff restates, realleges, and reavers and hereby incorporates by reference all allegations of Paragraphs 1 - 431, herein as Paragraph 432.

433. By express promises made by ISU in its Student Handbook, ISU had the duty to Mr. Yu under the Contract that ISU's activities as to Mr. Yu would comply with its equal opportunity policy and with applicable laws.

434. ISU breached its duty to Mr. Yu under the Contract by failing to so comply with its equal opportunity policy and with applicable laws.

435. ISU's actions in thus breaching the Contract was arbitrary, capricious, and a substantial departure from accepted academic norms.

**VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Mr. Yu, respectfully prays for the following relief against Defendant:

- a. Readmission of Mr. Yu to Defendant's Graduate Clinical Psychology Program; or, in the alternative, award Mr. Yu a PhD in either General Psychology or Clinical Psychology;
- b. That Defendant allow Mr. Yu to complete his remaining internship in the Peoples Republic of China where the opportunity presents itself that will allow Mr. Yu to successfully receive his Doctorate in Clinical Psychology;
- c. Attorney fees and costs related to the filing and pursuing the present claim;
- d. Compensatory damages for Defendant's breach of contract and negligent infliction of emotional distress for an amount equal to or greater than two million, one hundred

eighty-five thousand, seven hundred ninety-three dollars and no cents (\$2,185,793.00);

and

- e. Compensatory damages as determined at trial should Plaintiff establish that the violation of Title VI was intentional.

### **VIII. DEMAND FOR A TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury in this action.

PLAINTIFF

By Plaintiff's Attorney

Idaho Employment Law Solutions, PLLC

/s/  
R. A. (RON) COULTER

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of March, 2017, I caused to be served a true and correct copy of the First Amended Complaint and Demand for Jury Trial to:

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

- U.S. Mail
- Hand Delivery
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- Overnight Mail
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- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: (208) 342 4344
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IDAHO EMPLOYMENT LAW SOLUTIONS

      /s/        
R. A. (RON) COULTER