

FILED

DEC 10 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 28743-2

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

CHERYL BECKER,

Appellant,

v.

WASHINGTON STATE UNIVERSITY, et al.,

Respondents.

RESPONDENTS' BRIEF

ROBERT M. MCKENNA
Attorney General

KATHRYN M. BATTUELLO
ASSISTANT ATTORNEY GENERAL
WSBA #13416
800 5TH AVENUE, SUITE 2100
SEATTLE, WA 98104-3188
206-464-7352

FILED

DEC 10 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 28743-2

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

CHERYL BECKER,

Appellant,

v.

WASHINGTON STATE UNIVERSITY, et al.,

Respondents.

RESPONDENTS' BRIEF

ROBERT M. MCKENNA
Attorney General

KATHRYN M. BATTUELLO
ASSISTANT ATTORNEY GENERAL
WSBA #13416
800 5TH AVENUE, SUITE 2100
SEATTLE, WA 98104-3188
206-464-7352

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	COUNTER-STATEMENT OF THE CASE.....	2
	A. Procedural Posture	2
	B. Relevant Facts.....	5
	1. Academic Expectations for Students in Becker’s Program	6
	2. Program Funding to Support Ph.D. Students	9
	3. Annual Reviews of Students’ Academic Performance.....	10
	4. Becker Failed to Meet Academic Expectations.....	12
	a. Becker’s 2001-2002 Academic Year	12
	b. Becker’s 2002-2003 Academic Year	15
	c. Becker’s 2003-2004 Academic Year	18
	d. Becker’s 2004-2005 Academic Year	23
	5. Becker’s Discrimination Complaints	27
	6. Chronological Overview of Material Facts	28
III.	ARGUMENT	36
	A. Standard of Review.....	36
	B. Historical Precedent Encourages Judicial Deference to Academic Decisions of Public Colleges and Universities, Absent Evidence of Conduct That is Arbitrary and	

Capricious or in Violation of Constitutionally Protected Rights	38
C. WSU’s Agents Are Entitled to Qualified Immunity From Becker’s Claims Under 42 U.S.C. § 1983 Because Becker Cannot Establish That Her Academic Dismissal was Arbitrary, Capricious or in Bad Faith	40
1. Qualified Immunity Applies Unless the Relevant WSU Agents Violated a Clearly Established Constitutional Right.....	40
a. Becker Cannot Establish a Violation of Any Rights to Procedural or Substantive Due Process	42
b. Becker’s Equal Protection Claim is Pre-empted by the ADEA.....	48
c. The Record Fails to Support Becker’s First Amendment Retaliation Claim.....	49
D. The Court Lacks Jurisdiction Over Becker’s ADA Claim	50
E. Summary Judgment Dismissing Becker’s WLAD Claims Should be Affirmed Because the Record Fails to Support a Prima Facie Case for Age-Based Employment Discrimination or Retaliation.....	52
1. WLAD Does Not Recognize a Cause of Action for Age Discrimination Outside the Employment Setting	52
2. Becker Cannot Establish Age-based Disparate Treatment.....	54
3. Becker’s Retaliation Claim Fails Because Her Loss of Employment was Based Upon Legitimate Non-Discriminatory Reasons That Were Unrelated to Her Age Discrimination Complaints	57
F. The Record Fails to Support Becker’s Breach of Contract and Quasi-Contract Claims	58

1.	WSU’s Academic Expectations and Procedures for Evaluation Were Clearly Stated and Justifiable	60
a.	Academic Expectations Were Clearly Stated and Consistently Applied to Becker.....	60
b.	Procedures for Evaluation Were Clearly Stated and WSU Complied With Those Procedures.....	63
c.	WSU’s Academic Expectations and Procedures for Evaluation Were Consistent With Academic Norms.....	66
2.	WSU Provided Appropriate Mentoring.....	68
a.	Mentoring Procedures Were Followed	68
3.	Becker Could Not Reasonably Expect to Develop Her Own Independent Program of Research.....	72
4.	Becker’s Promissory Estoppel Claim Fails as a Matter Of Law Because She Cannot Establish Each of the Elements of a Prima Facie Case	73
5.	The Evidence Does Not Establish A Prima Facie Negligent Misrepresentation Case.....	74
IV.	CONCLUSION	75

TABLE OF AUTHORITIES

Cases

<i>Ahlmeyer v. Nevada System of Higher Educ.</i> , 555 F.3d 1051 (9th Cir. 2009)	48
<i>Allison v. Housing Authority</i> , 118 Wn.2d 79, 821 P.2d 34 (1991)	57
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)	38
<i>Bd. of Curators v. Horowitz</i> , 435 U.S. 78, 98 S. Ct. 948, 55 L. Ed. 2d 124 (1978)	39, 42, 43, 44
<i>Bd. of Regents v. Roth</i> , 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972)	43
<i>Benjamin v. WSBA</i> , 138 Wn.2d 506, 980 P.2d 742 (1999)	49
<i>Bishop v. Wood</i> , 426 U.S. 341, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976)	43
<i>Carmen v. San Francisco Unified Sch. Dist.</i> , 237 F.3d 1026 (9th Cir. 2001)	38
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)	37
<i>Chen v. State</i> , 86 Wn. App. 183, review denied 133 Wn.2d 1020 (1997)	57
<i>Corales v. Bennett</i> , 567 F.3d 554 (9th Cir. 2009)	49
<i>Curto v. Smith</i> , 248 F. Supp. 2d 132 (N.D. NY 2003)	52

<i>Dixon v. Alabama State Bd. of Educ.</i> , 294 F.2d 150 (5th Cir., 1961)	44
<i>Doming v. Boeing Employees' Credit Union</i> , 124 Wn. App. 71, 98 P.3d 1222 (2004).....	57
<i>Eakins v. Huber</i> , 154 Wn. App. 592, 225 P.2d 1041 (2010).....	36
<i>Edwards v. Dep't of Trans.</i> , 66 Wn. App. 552, 832 P.2d 1332 (1992).....	49
<i>Enns v. Bd. of Regents</i> , 32 Wn. App. 898, 650 P.2d 113 (1982).....	39, 44, 45
<i>Goss v. Lopez</i> , 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975).....	43, 44
<i>Grimwood v. Puget Sound</i> , 110 Wn.2d 355, 753 P.2d 517 (1988).....	37, 55
<i>Harlow v. Fitzgerald</i> , 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).....	41
<i>Johnson v. Duffy</i> , 588 F.2d 740 (9th Cir. 1978)	40
<i>Jones v. State</i> , 140 Wn. App. 476, 166 P.3d 1219, 1227 (2007) (overturned on other grounds, ___ P.3d ___, 2010 WL 4352199 (Wash.) (review requested).....	42
<i>Keyser v. Sacramento City Unified Sch. Dist.</i> , 265 F.3d 741 (9th Cir. 2001)	49, 50
<i>Killian v. Atkinson</i> , 147 Wn.2d 16, 50 P.2d 658 (2002).....	52
<i>Kimel v. Florida Bd. of Regents</i> , 528 U.W. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522 (2000), after remand, 204 F.3d 1003 (10th Cir. 2000).....	48

<i>Kinney v. Cook</i> , 150 Wn. App. 187, 208 P.3d 1 (2009).....	36
<i>LaFleur v. Texas Dep't. of Health</i> , 126 F.2d 758 (5th Cir. 1997)	48
<i>Lawyers Title Ins. Corp. v. Baik</i> , 147 Wn.2d 536, 55 P.3d 619 (2002).....	74
<i>Loeb v. Textron Inc.</i> , 600 F.2d 1003 (1st Cir. 1979).....	56
<i>Lyons v. Salve Regina College</i> , 565 F.2d 200 (1st Cir. 1997).....	59
<i>Maas v. Corporation of Gonzaga University</i> , 27 Wn. App. 397, 618 P.2d 106 (1980).....	passim
<i>Mackay v. Acorn</i> , 127 Wn.2d 302, 898 P.2d 284 (1995).....	56
<i>Mahavongsanan v. Hall</i> , 529 F.2d 448 (5th Cir. 1976)	59
<i>Malley v. Briggs</i> , 475 U.S. 335, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986).....	41
<i>Marquez v. Univ. of Washington</i> , 32 Wn. App. 302, 648 P.2d 94 (1982).....	39, 49, 59, 60
<i>Marquis v. City of Spokane</i> , 130 Wn.2d 97, 922 P.2d 43 (1996).....	36, 53
<i>Marshall v. Bally's Pacwest, Inc.</i> , 94 Wn. App. 372, 972 P.2d 475 (1999).....	2
<i>McCormick v. Lake Washington School Dist.</i> , 99 Wn. App. 107, 992 P.2d 511 (1999).....	73
<i>McDonnell Douglas Corp v. Green</i> , 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973).....	55

<i>Mendocino Envtl Ctr. v. Mendocino County</i> , 192 F.3d 1283 (9th Cir. 1999)	50
<i>Migneault v. Peck</i> , 158 F. 3d 1131 (19th Cir. 1998)	48
<i>Mitchell v. Forsyth</i> , 472 U.S. 511, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985).....	41
<i>Moran v. State</i> , 147 F.3d 839 (9th Cir. 1998)	41
<i>Olympia Fish Prod., Inc. v. Lloyd</i> , 93 Wn.2d 596, 611 P.2d 737 (1980).....	38
<i>Oschner v. Bd. of Trustees of Washington Cmty. Coll.</i> , 61 Wn. App. 772, 811 P.2d 985 (1991).....	39, 63
<i>Pearson v. Callahan</i> , 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009).....	41
<i>Peretti v. Montana</i> , 464 F.Supp. 784, 786 (D. Mont. 1979), reviewed on other grounds, 661 F.2d 756 (9th Cir. 1981)	59
<i>Pinard v. Clatskanie Sch. Dist. 6J</i> , 467 F.3d 755 (9th Cir. 2006)	49, 50
<i>Polk Cy. v. Dodson</i> , 454 U.S. 312, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981).....	40
<i>Rannels v. Hargrove</i> , 731 F. Supp. 1214 (E.D. Pa. 1990).....	52
<i>Regents of the Univ. of Michigan v. Ewing</i> , 474 U.S. 214, 106 S. Ct. 507, 88 L. Ed. 2d 523 (1985).....	40, 44, 66, 68
<i>Sacramento v. Lewis</i> , 523 U.S. 833, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998).....	42

<i>Tapia –Tapia v. Potter</i> , 322 F.3d 742 (1st Cir. 2003).....	48
<i>Washington v. Boeing Co.</i> , 105 Wn. App.1, 19 P.3d 1041 (2000).....	57
<i>White v. State</i> , 131 Wn.2d 1, 929 P.2d 396 (1997).....	38
<i>Young v. Key Pharms., Inc.</i> , 112 Wn.2d 216, 770 P.2d 182 (1989).....	36, 37
<i>Zombro v. Baltimore City Police Dep’t.</i> , 868 F.2d 1364 (4th Cir. 1989)	48

Statutes

RCW 28B.04.120.....	2
RCW 49.44.090	53
RCW 49.60	52, 57
RCW 49.60.030	52, 53
RCW 49.60.030(1).....	52
RCW 49.60.090	54
RCW 49.60.180	53, 54
RCW 49.60.400(1).....	53

Other Authorities

<i>Restatement (Second) of Torts § 552(1)</i> (1977).....	74
---	----

Rules

CR 56	37
-------------	----

CR 56(e).....	37
ER 201	12

Regulations

45 C.F.R. § 90.50.....	51
45 C.F.R. § 90.50 (3)(i).....	51
45 C.F.R. § 90.50(b)(3)(iii).....	51
45 C.F.R. § 90.50(b)(3)(iv).....	51

Constitutional Provisions

42 U.S.C. § 1983.....	40, 47, 48, 50
42 U.S.C. § 6101.....	2
42 U.S.C. § 6102.....	50
42 U.S.C. § 6104.....	51
42 U.S.C. § 6104(e)(1).....	51
42 U.S.C. § 6104(e)(2).....	51

I. INTRODUCTION

Cheryl Becker (“Becker”) was dismissed from her Ph.D Program at the end of her fourth year of study because she failed to meet established academic requirements. She did not complete her preliminary examinations within the time period required by her Program and she failed to maintain the minimum grade point average required for continued enrollment as a graduate student at Washington State University (“WSU”). During the spring and summer semesters of her third year of study she responded to faculty concerns about her academic progress by complaining that she was being treated differently because she was older. She rejected subsequent offers of formal assistance to help her meet academic expectations and ultimately elected to abandon her studies, while continuing to receive full graduate student funding from WSU.

Becker asserts that her academic dismissal was arbitrary, capricious and motivated by retaliation for her age discrimination complaints. The record does not support her conclusory allegations. Instead, it establishes that WSU faculty and administrators arrived at their decision to dismiss Becker honestly, with due consideration of her academic record and in compliance with WSU policies and procedures. Becker offers no evidence to establish disparate treatment or a causal relationship between her discrimination complaints and her academic

dismissal. Further, she offers no material evidence suggesting that her academic dismissal represents a substantial departure from academic norms. Absent evidence of arbitrary and capricious behavior, the Court should follow established precedent and decline to second-guess the purely academic decisions of a university and its faculty regarding the criteria for awarding a Ph.D degree and whether a particular student is satisfying those criteria.

II. COUNTER-STATEMENT OF THE CASE

A. Procedural Posture

Becker initiated this lawsuit on March 1, 2007. CP 1-28.¹ She was deposed under oath on October 7, 2008. CP 85. On October 7, 2009, Defendants moved for summary judgment seeking dismissal of all claims. CP 46-76. Becker's response included a Declaration of Cheryl Becker (CP 612-35) and an Amended Declaration of Cheryl Becker. CP 680-704.² Becker's Amended Declaration states that this to "replace my first

¹ The complaint asserted claims for Breach of Contract, Promissory Estoppel, Age Discrimination and Retaliation under RCW 49.60, the Washington Law Against Discrimination (WLAD); Age Discrimination in violation of 42 USC § 6101 (the Age Discrimination Act or ADA) and RCW 28B.04.120; Civil Rights Claims under 42 U.S.C. § 1983; Negligent Infliction of Emotional Distress; Negligent Misrepresentations; and Defamation. The defendants (hereinafter collectively referred to as "WSU") include Washington State University (WSU) and the following individual members of its faculty and administration: Paul Whitney, Craig Parks, Jeffrey Joireman and Howard Grimes).

²To the extent either or both of these Declarations conflict with Ms. Becker's prior deposition testimony, the statements contained therein are not sufficient to generate a material issue of fact. *Marshall v. Bally's Pacwest, Inc.*, 94 Wn. App. 372, 379, 972 P.2d 475 (1999) ("When a party has given clear answers to unambiguous [deposition]

declaration” because “[t]his amended declaration is more accurate.” CP 680 ll. 30-34.

In addition, Becker submitted the Declaration of Loreleigh Keashly (“Keashly”). CP 458-96. Because the Keashly Declaration was untimely, the parties stipulated to continue the deadline for WSU’s reply brief, to allow for Keashly’s deposition. CP 1020-23. This occurred on November 9, 2009. CP 839. WSU filed its reply brief on November 14, 2009. CP 741-807.

Oral argument occurred on November 20, 2009. CP 1034-36. The court asked each party to submit a time-line on December 4, with record citations to support the time-line entries. CP 1036. WSU filed a cited time-line on December 4, 2009. CP 1043-49.³ Becker filed an uncited time-line on December 7. CP 980-89. Subsequently, on December 8, she filed an amended time-line that included record citations. CP 1004-14. Becker’s counsel filed a clarification to the amended time-line on December 15, asking the court to disregard an entry because it was not supported by the referenced citation to the record. CP 1120-21.

questions which negate the existence of any genuine issue of material fact, that party cannot thereafter create such an issue with an affidavit that merely contradicts, without explanation, previously given clear testimony.”).

³ A copy is attached for the Court’s easy reference in Appendix 1.

On December 18, 2009 the trial court issued its order granting defendants' motion for summary judgment and dismissing all claims. CP 991-94. This appeal followed. CP 995-99.

WSU filed a Motion to Strike Unsupported Facts in Appellant's Brief because 63 percent of the sentences in the "Statement of Facts" section of Appellant's Opening Brief ("Appellant's Br.") were unsupported by the record on appeal.⁴ In response, Becker filed a supplemental statement of the case, prepared by her husband Jeffrey Dippman.⁵ WSU objected to Mr. Dippman's supplemental statement because a) a substantial number of the statements were argumentative statements as opposed to fair statements of fact supported by the record, and b) a substantial number of the statements were simply not supported by the record citation(s) attached to the statement.⁶ This court denied WSU's motion, but invited WSU to address its concerns regarding

⁴ The "Statement of Facts" contained 263 sentences. Of those, 85 lacked any record cite and 81 contained a record cite that failed to support the factual assertion(s) contained in the sentence. *See*: WSU's Motion to Strike Unsupported Facts in Appellant's Brief (hereinafter referred to as "WSU Motion to Strike") and the supporting Declaration of Sarah E. Sawyer, including attachments.

⁵ Appellant's Response to Motion to Strike and accompanying Declaration of Jeffrey Dippman in Support of Appellant's Response to Respondent's Motion to Strike Sections of Opening Brief. Jeffrey Dippman, who is not an attorney, acknowledges in his Declaration that he has a "profound personal, moral and professional interest" in the outcome of this litigation.

⁶ Respondent's Reply to Appellant's Response to Motion to Strike and the supporting Declaration of Sarah Sawyer in Support of Respondent's Reply.

Becker's factual assertions in its responding brief.⁷ Becker filed her "corrected" Opening Brief on October 22, 2010.⁸

B. Relevant Facts

Becker applied to WSU's Ph.D. Program in Experimental Psychology ("Program") in November 2000. CP 268-73. She requested financial assistance through a graduate assistantship or a fellowship. CP 272. She was accepted into the Program starting in the fall semester 2001. CP 274-76. She received financial assistance through a part-time graduate assistantship. CP 274-76.

Becker started the Program with a Master's Degree. CP 235. Students who start the Program with a Master's Degree generally complete their Ph.D. degree within four years. CP 235 ll. 9-17. Becker was dismissed at the end of her fourth year because she failed to meet clearly stated academic expectations. CP 212-15, 226, 228-29, 231, 233, 234-39, 258-67. Graduate students must maintain a cumulative grade-

⁷ Commissioner's Ruling dated October 12, 2010, which states in pertinent part: "Ms. Becker has made corrections to the statement of facts in her opening brief, any further concerns that Respondents WSU have with Ms. Becker's brief may be pointed out and addressed in their responding brief, and this Court, prior to oral argument, will review the entire record and the briefs and consider only those facts that are supported by the record when making its' decision." When relevant, WSU will highlight inaccurate, unsupported and argumentative statements in footnotes throughout its Counter-Statement of the Case (Section II B, *infra* at pages 5-33). For a substantive discussion of WSU's Motion to Strike see the pleadings referenced above, which are incorporate by reference herein.

⁸ Opening Brief of Becker (Corrected) hereinafter referred to as "Appellant's Brief Corr."

point average (GPA) of 3.3 for continued enrollment. CP 344. Becker's GPA was 2.21. CP 231.

1. Academic Expectations for Students in Becker's Program

The Program is "designed to produce highly skilled experimental psychologists," who have a strong background in general psychology and are highly knowledgeable about their specialty areas. CP 280. Students are expected to build a program of study around one of five (5) specialty areas (Behavior Analysis, Cognition, Physiological, Sensation and Perception or Social). CP 280.

Requirements for successful completion of the Program are set forth in the Graduate School Policies and Procedures ("GSPP") and the Program Description for the Doctoral Program in Experimental Psychology ("Program Description"). CP 260, 766.⁹ These include 72 credit hours of course work and research, and successful completion of a Master's Degree,¹⁰ preliminary examinations¹¹ and a dissertation.

⁹ The Graduate School Policies and Procedures are found at CP 305-50. The Program Description for the Doctoral Program in Experimental Psychology, Department of Psychology, Washington State University is found at CP 280-303. In addition, the Graduate Student Code ("GSC") outlines expectations for faculty and for students (CP558-68).

¹⁰ All students in Becker's Program are expected to obtain a Master's ("MS") degree, unless they are admitted with an acceptable MS degree from another program. CP 283. Once the MS thesis is accomplished the student is expected to choose a doctoral committee to conduct her preliminary examination ("prelims"), direct her dissertation and conduct a final examination on completion of the dissertation. CP 285.

CP 283-92. GSPP specify that after completing two semesters students must maintain a 3.0 cumulative GPA or enrollment “will be terminated”.

CP 345.

The Program places a significant emphasis on research, expecting students to be involved in twenty hours of research related activity a week.

CP 293. The Program Description states in pertinent part:

The faculty considers research to be the most important activity for an experimental psychologist, and graduate students should expect to be involved heavily in research at all times throughout the duration of their graduate school careers.

CP 293. Students receive course credit for their research activities, which is applied toward their 72 hour credit requirement for graduation. CP 302.

The Program Description specifies that prelims must be completed *and* passed before the formal dissertation process can begin (emphasis added). CP 285. They *must* be taken *before* the sixth semester of graduate study (emphasis added). CP 263, 285-86.

The student’s “doctoral committee” conducts the prelims. CP 285-

¹¹ WSU’s Graduate School Policies and Procedures emphasize that the preliminary examination determines a Ph.D. student’s fitness for pursuing a doctoral program. CP 337. It is required of each doctoral student for advancement to candidacy for the doctoral degree. CP 337. Becker’s Program requires Ph.D. students to complete their preliminary examination before the start of the sixth semester, CP 286. When Becker was dismissed at the end of her eighth semester because her GPA had fallen to 2.21 (CP 231) and she had not yet completed her prelims. CP 249-50.

86.¹² The prelims cover at least four substantive areas within psychology, selected by the student in consultation with her committee chair. CP 286.¹³ The student has the option of taking a written examination on each substantive area (i.e. four written examinations) or taking three written examinations and writing one paper. CP 152, 260. Students prepare from reading lists developed with each of the individual faculty members on their committee. CP 152, 260, 285-86.

Following successful completion of the prelims, the student becomes an official Ph.D. candidate and formally starts dissertation research. CP 287. Students engaged in formal dissertation research, writing and preparation for their final examinations register for Psych 800 credits. CP 287.¹⁴ The grading policy for Psych 800 is described in the WSU General Catalog, which provides course descriptions for all courses at WSU. CP 765. It states that Psych 800 is offered for “variable credit.

¹² The doctoral committee is comprised of four faculty members, including the student’s advisor, who serves as the committee chair. CP285. The student chooses the doctoral committee. CP 285, 560 no. 9. The committee participates in the prelims and final examinations and directs the student’s progress with her dissertation. CP 285.

¹³ The Program Description states in pertinent part: “decisions regarding what constitutes appropriate preliminary examination areas will be made by the student and his/her doctoral committee. . . . Such determinations will take into account the student’s career aspirations, research interests and other needs and goals . . . Caution should be exercised to avoid defining the areas too narrowly. The areas . . . should be clearly different from one another . . . It is recommended that at least one area be outside the specialty field of the student.” CP 286, no. 2. Optimally one of the four sections of the prelims is related to the specialty area in which the dissertation will focus. CP 82. This makes progress between the prelims and the dissertation more efficient. CP 82. However, it is not a Program requirement. CP 285-86.

¹⁴ Additionally they are expected to register for a minimum of two credits of Psych 800 in the semester that they take their preliminaries. CP 337.

S, F grading.” CP 765, 777, 786, 796, 807.¹⁵ “S” means satisfactory and “F” means failing. CP 765.

Becker understood when she started the Program that she had to earn her degree. CP 820-21. Further, she understood that in order to earn her degree she had to successfully complete her prelims. CP 816. She admitted in her deposition that no one on the Program faculty (and therefore none of the respondents) promised her that she would be successful. CP 820-21.

2. Program Funding to Support Ph.D. Students

Part-time graduate assistantships are one source of funding available to Ph.D. students in the Program. CP 260. Assistantships are conditioned upon continued full-time enrollment in the Graduate School, maintenance of a 3.0 GPA and satisfactory progress with the Program’s academic requirements. CP 260, 345.¹⁶ Graduate assistants receive a tuition waiver, graduate student medical insurance and a stipend for 20 hours of work a week. CP 260.¹⁷

¹⁵ The referenced pages contain the Psych 800 course description for each of the years that Becker was enrolled in the Program.

¹⁶ A normal credit load for a full-time student is between 14-18 credits per semester. CP 322, 815.

¹⁷ The Program does not guarantee financial support for its Ph.D. students. CP 260-61. Students who receive funding are ordinarily limited to 6 years of financial support. CP 325. However, if they start the Program with a Master’s Degree funding is generally limited to 4 years. CP 261, 325.

Assistantships generally take two forms: 1) a teaching assistantship (“TA”) paid for out of department funds; and 2) a research assistantship (“RA”) paid for through grant-funded research. CP 261. TAs in the Program are expected to assist assigned faculty with teaching and/or research activities as determined by faculty need. CP 261. RAs work on the research project that is providing their funding. CP 261.

Becker was funded through a TA for seven semesters and an RA for one semester. CP 261. She acknowledged in her deposition that the academic responsibilities for Ph.D. students who are funded through assistantships include twenty hours of work related to their assistantship, *in addition to* course work and research that they are expected to do for academic credit. CP 813-15.¹⁸

3. Annual Reviews of Students’ Academic Performance

GSPS require that all departments/programs conduct formal annual

¹⁸ The Program Description clearly states that students are expected to be involved in twenty hours of research related activity a week. CP 293. Becker asserts that she was required to double up on TA and RA assignments (*See, e.g.* Appellant’s Brief Corr. at 8-9). However, she offers no evidence to support this assertion. Instead, the evidence demonstrates that Becker received funding through a TA for seven of her eight semesters. CP 261 ll. 16-27. She received funding through an RA with Fournier for one semester (fall 2002). CP 727 l. 17 to 722 l. 7. Further, the record establishes that TAs in Becker’s Program assist with teaching and/or research, depending upon the needs of their assigned faculty. CP 261 ll. 8-13. Finally, graduate students in Becker’s Program are expected to be involved in 20 hours of research related work a week, *in addition to* any work they are doing for their assistantship. CP 293. That she was involved in research projects in addition to her assistantship is not evidence that her assistantship involved more than 20 hours of work a week. Finally, when asked in her deposition whether she worked more than 20 hours a week Becker said she did, but then volunteered she did not have any evidence to corroborate that. CP 722 ll. 5-15.

reviews of their students' academic performance and provide students with a written evaluation during the spring semester of each academic year. CP 344. Annual reviews consider the student's cumulative academic record, their progress in research and relevant work assignments, and expectations for the next review period. CP 344.

The formal annual review process within the Program occurs each spring at a meeting of the Program faculty. CP 262. This process is summarized in the Program Description, which provides:

Each graduate student in experimental psychology is evaluated annually at a formal meeting of the experimental faculty. The meeting takes place at the end of spring semester. . . . At this time each student's progress in research, in relevant work assignments and in general academic performance is carefully evaluated. Each student receives a written summary of his/her evaluation including written comments from various relevant faculty members and from the director of experimental training.

CP 292.

GSPP require that the Dean of the Graduate School receive notice whenever the Program faculty determines that a student should be dropped from the Program for failure to make satisfactory progress (CP 344). The GSC states that students should expect to receive timely written notice if a decision is made to terminate their enrollment, with information regarding the grievance procedures. CP 561 no. 4.

4. Becker Failed to Meet Academic Expectations

a. Becker's 2001-2002 Academic Year

Becker started her first semester in the Program on August 27, 2001. CP 1044.¹⁹ She registered as a full time student (CP 414) and accepted a TA with Professor Swindell. CP 261. Per her request, Paul Whitney (“Whitney”), Chair of the Psychology Department, agreed to be her advisor (CP 234-40, 235, 259 ll. 3-11).

Whitney’s primary research interests include cognition, working memory and impulsive decision-making. CP 234. During Becker’s Masters Degree program she worked with one of Whitney’s former graduate students on research regarding working memory and she hoped to continue working on this research with Whitney. CP 500 ll. 1-14. Whitney did not promise Becker that she could continue her research on working memory. CP 103 l.14 to 104 l. 10. He explained to her that his research projects had moved in a somewhat different direction from the working memory research she had been doing with his former student before she started in the Program. CP 500 ll. 1-24, 884. He explained that he was not against following up on those projects, if she felt like there was

¹⁹ The specific start and end dates for each semester are not consistently presented in the summary judgment record before the court. WSU’s counsel included them to assist the trial court and the parties with the time-line. They are accessible to the public at <http://www.catalogs.wsu.edu>. and are, consequentially admissible under ER 201.

time once she was established in the Program. CP 500 ll. 12-23. However, he advised Becker that it wouldn't be a good idea to let those projects get in the way of work on Program requirements. CP 500 ll. 12-24.

As her advisor, Whitney worked with Becker to narrow her research interests and select classes that would provide a strong foundation for later work. CP 235. He tried to engage her in the research he was doing. CP 235-36. When Becker spoke to him about getting lab space to work on her own projects he advised her to complete her Program requirements before getting involved in her own independent projects. CP 500 l. 24 to 501 l. 12.²⁰

Becker started her second semester on January 14, 2002. CP 1044. She registered as a full-time student (CP 414) and accepted a TA with Professor Robert Patterson ("Patterson"). CP 261. Toward the end of the semester she started discussions with Professor Lisa Fournier ("Fournier") about working on a multi-disciplinary project that included research on the effects of diet on memory and cognition in post-menopausal patients.

²⁰ Whitney testified in his deposition that he told Becker "for me to be her mentor we needed to get her interested and involved in research that I was actively doing and that eventually she would then branch off from in her own way. If time permitted, she wanted to follow up some of these other projects *and* she was meeting all of her other responsibilities, then we could talk about that" (emphasis added). CP 501 ll. 6-12. Becker admitted in her deposition that she *never* had a conversation with Whitney in which he indicated that if she became a graduate student in the Program she would be able to do research in working memory (emphasis added). CP 103 ll. 14-24.

CP 86, 236, 253-56).²¹ Fournier was collaborating on the project with Dr. Kathy Beerman (“Beerman”), faculty in the Department of Food Sciences. CP 253-55, 683.

Fournier asked Becker if she would be interested in being involved in the Beerman project (“Project”). CP 505 ll. 3-5; 895 ll. 1-5. Fournier said there was an RA opening; that instead of being a TA Becker could do an RA and “possibly” benefit if she wanted a publication. CP 506 ll. 10-14, 896 ll. 10-14. Fournier told Becker, “. . . this was a great opportunity for authorship and also could be a springboard in a sense for a dissertation in something related to this project. It couldn’t be this [P]roject because this [P]roject was already mapped out.” CP 506 l. 24 to 507 l. 5; 877 ll. 1-7. She told Becker she would get a publication out of it, with the understanding that she worked on the Project. CP 508 ll. 4-9, 898 ll. 4-9.²²

Becker was dissatisfied with the research opportunities Whitney had offered her during the first year of their work together. CP 86-87,

²¹ Becker asserts that Fournier told her the multi-disciplinary project had a “working memory element” (Appellant’s Brief Corr. at 13-14). The record cite she provides to support this assertion (CP 254 l. 14 to 255 l. 8) says nothing about “working memory”. Instead, it says that the project had a “cognitive” portion, which is what she would be working on with Fournier, as an RA.

²² Becker asserts that Fournier “promised” a “lead” role on the publications from the “working memory” portion of the project (Appellant’s Brief Corr. at 13-14). The record cites provided (CP 896 ll. 12-14, 897 l. 22 to 898 l. 13) state: “. . . and *possibly*, based upon this project, she *may* benefit in terms of being involved in this project in terms of if she wanted a publication” (emphasis added). CP 896 ll. 12-14. The record cites do not establish that Becker was promised lead authorship on a publication that related to “working memory” or to any aspect of the research she would be assisting with through her RA.

236, 254.²³ In May, 2002 she told Whitney she was interested in working with Fournier and he agreed that she should do that. CP 234-40, 720 ll. 1-13.²⁴ Becker decided to switch faculty advisors, moving from Whitney to Fournier. CP 86-87.

At the end of her second semester Becker received her first annual student evaluation, which included a written summary report, (CP 262, 352) and copies of written comments from individual faculty members that she pre-selected. CP 262, 353. The written summary states in pertinent part:

You seem to have adjusted well to the department, but there are worries about your self-confidence and seeming concern about the perceptions of others. We encourage you to focus more on your abilities and less on your shortcomings, and especially to be less worried about whether someone will have taken offense with something you've done or said. We see you as a talented student . . .

CP 352.²⁵

b. Becker's 2002-2003 Academic Year

Becker's third semester started on August 26, 2002. CP 1044. She

²³ Becker testified in her deposition that "I wasn't really making any progress with Paul Whitney. I was only working in his lab on the Parkinson's disease project and there was—you know, it didn't look like I was going to be getting anywhere as far as making progress as far as him advising me on other *research I wanted to do*" (emphasis added). CP 87 ll. 1-8.

²⁴ Becker contradicts her deposition testimony (CP 720 ll. 1-13) when she states in her Amended Declaration, filed in opposition to WSU's motion for summary judgment, that she had this conversation with Whitney immediately after Thanksgiving. CP 684 ll. 19-21.

²⁵ A copy of the Evaluation Report and written comments are found in App. 2.

enrolled as a full time student. CP 414. She accepted funding through the RA that Fournier offered her. CP 261.

In late November or early December Fournier advised Becker that Beerman had assigned her graduate student to work on the cognitive portion of the study with them. CP 8, 253-56, 819.²⁶ Beerman wanted her graduate student to use the research for her Master's Thesis. CP 253-56, 818. Fournier reassured Becker that she could still be an author on any publications. CP 253-56. Fournier also reassured Becker that this change would not affect their preparation for her prelims or their ability to use the project as a springboard for a dissertation project. CP 88-91, 253-56. Becker decided to abandon her RA work on Fournier's project because it no longer "provide[d] [her] with tangible benefits". CP 91-92. She also decided to switch to her third faculty advisor, Professor Jeff Joireman ("Joireman"). CP 92-94, 686-87.²⁷

On December 17, 2002 Becker filed her Program for Doctoral Degree form with the Graduate school, designating Joireman as her

²⁶ Becker's Amended Declaration in Support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment states that this conversation occurred during the last week of the fall semester, in December, 2002. CP 684 ll. 27-32. However, she filed her Doctoral Program Form designating Joireman as her advisor and doctoral committee chair on December 17, 2002 so the conversations must have occurred earlier. CP 243-244.

²⁷ Joireman's research focus was in the area of social psychology, Becker's secondary interest area. CP 685-86. They had talked often during the semester about her interest in social psychology. CP 94 ll. 15-19.

Doctoral Committee Chair. CP 243-44.²⁸ Whitney, Parks and Professor Tahira Probst were also on her Committee. CP 243-44.

Becker started her fourth semester on January 13, 2003. CP 1045. She enrolled as a full-time student and again accepted a TA with Patterson. CP 414, 261, 721 l. 24 to 722 l. 2.²⁹ Joireman began working with her to map out a strategy for completing her prelims in the fall of 2003 (her fifth semester). CP 151-57, 164-74. They discussed revising her committee to pull in faculty whose expertise was a better match for her then-stated research interests in social dilemmas and self-control. CP 151-57, 164-74.

At the end of her fourth semester she received her second annual student evaluation from the Program faculty. CP 262, 355-56. It states in pertinent part:

The faculty are pleased that you have connected with [Joireman], and that you have initiated preparation for your prelims. There exists some concern about your emotional involvement in events. . . . some faculty feel that you have difficulty moving past negative experiences and some feel that you demonstrate a sense of competition with other

²⁸ A copy of the form is attached in App. 3.

²⁹ Becker asserts that she was required to continue working as Fournier's RA through the end of the spring semester (Appellant's Brief Corr. at 17) and cites to her Amended Declaration, filed in opposition to WSU's summary judgment motion. CP 685. This directly contradicts her prior deposition testimony. CP 721-22. It is also contradicted by Program records, as outlined in the Declaration of Craig Parks (CP 261) and Dr. Fournier's testimony, both of which were submitted in support of Defendants' Motion for Summary Judgment. Fournier wanted Becker to continue working on the project as a paid RA. CP 255 l. 9 to 256 l. 2. Becker elected to quit (*Id.*). Indeed, she walked out before the fall semester's RA work she was paid to do was completed (*Id.*).

graduate students. . . . Some faculty also expressed concern that you are now on your third advisor in two years. It is not uncommon for graduate students to change advisors, but some faculty interpret so many changes in such a short period of time as evidence that the student and program are a mis-fit...it will be crucial that your working relationship with [Joireman] flourishes over the coming year.

CP 354-56.³⁰

c. Becker's 2003-2004 Academic Year

Becker started her fifth semester on August 25, 2003. CP 1045. She enrolled as a full-time student and accepted funding through a TA with Joireman. CP 216, 414. She had a new doctoral committee in place. CP 153.³¹ She agreed with Joireman to write a paper for his portion of the prelims. CP 153. She had reading lists from the other members of her committee. CP 98-9, 15.

Per her Program requirements Becker needed to complete her prelims this semester. CP 285-86. Joireman encouraged her to get them done. CP 151-57. However, in November, 2003 she alerted her doctoral committee that she wanted to push the examinations to February, 2004 (in her sixth semester). CP154, 180. She also advised Joireman that she

³⁰ A copy of this evaluation with the written faculty comments is attached in App. 4.

³¹ She filed her first amended doctoral program form in September, 2003. CP 236, 246. The revised committee was made up of Joireman (Chair) and Probst, Tom Brigham ("Brigham") and Paul Strand ("Strand"). CP 246. Dean Grimes approved it on October 3, 2003. CP 246. A copy is attached in App. 5.

preferred to take a written examination for his portion of the prelims. CP151-57.

Joireman provided Becker a reading list in early December. CP 154. At that time she had completed the reading materials provided to her by the other three committee members. CP 98 l. 2 to 99 l. 13.³²

Becker's sixth semester started on January 12, 2004. CP 1045. She enrolled as a full-time student and accepted funding through a TA with Joireman. CP 414, 261-62. On February 12 she requested a second extension of time to complete preparation for her prelims this time pushing the deadline into the fall semester of 2004 (her seventh semester). CP 154; 263 ll. 12-18; 392-95.

On February 24, 2004, Whitney (Department Chair) called a meeting to discuss Becker's and Joireman's concerns about her academic progress. CP 154-56; 237-38; 263-64. Becker, Joireman and Parks (Program Director) attended the meeting. CP 154-56; 237-38; 263-64. Becker recalls being advised to better organize her time so that she could demonstrate satisfactory progress toward her preliminary examination or "she'd be in big trouble". CP 189-92. She complained that she did not have adequate time to prepare for her prelims because her TA

³² Becker admitted in her deposition that by December 2003 she had completed her coursework, had her committee pulled together, had completed her reading lists from Probst, Brigham and Strand, and had her reading list from Joireman. CP 98 l. 1 to 99 l. 13).

responsibilities exceeded 20 hours a week. CP 189-92. Whitney, Parks and Joireman advised her not to devote more than 20 hours a week to her TA. CP 189-192. She inquired whether she was being treated differently because of her age. CP 189-92.

Whitney recommended that Joireman work with Becker on a student-advisor contract to help her stay on track with her prelim preparation. CP 155; 189-92.³³ The next day Joireman drafted a contract and proposed schedule to help Becker organize her time. CP 155; 193-99.³⁴ The schedule demonstrated that she could prepare for her prelims by the end of April 2004, and accomplish this goal without working weekends. CP 198. Becker refused to sign the contract or the proposed schedule. CP 155-56; 237.

When Becker refused to sign the contract Joireman expressed concern about his ability to effectively chair Becker's doctoral committee through the dissertation phase. CP 156; 237-238. However, he was willing to see her through her prelims. CP 156; 237-238. On February 26, 2004, he encouraged her to meet with her doctoral committee to discuss preparations for her prelims. CP 201. On March 5, 2004 Becker nominated Joireman for the Adams Award for Excellence in Graduate

³³ The Program has successfully used contracts to help other graduate students accomplish their academic goals, including completion of their prelims and dissertation projects. CP 237, 264.

³⁴ A copy of the proposed contract and schedule is in App. 6.

Education. CP 208-209. Her nomination letter states in part: “In several ways I have received exceptional training while Dr. Joireman served as my advisor”. CP 208.

On April 1 Becker advised Joireman that Patterson was taking over as her fourth faculty advisor. CP 156, 211. Patterson proposed a dissertation project that Becker was very excited about. CP 132-141, 404.³⁵ It involved studying the application of a physics concept (hysteresis) in a social psychology setting.³⁶

They put together an outline for a dissertation and Patterson gave Becker a reading list to prepare for his portion of the prelims. CP 132-141, 404. They agreed that Parks would join her doctoral committee because he had social psychology expertise, which the project required. CP 248.³⁷ Parks gave her a reading list before the end of the spring

³⁵ Becker asserts that Patterson and Parks decided she would carry out a project they were interested in. Appellant’s Brief Corr. at 27-29. Yet, the record citations she provides in support of this argument (CP 135, 358, 360) actually contradict it. Patterson’s deposition testimony at CP 134-135 establishes that Becker participated in the decision to take on the hysteresis project. Her subsequent annual review (CP 358-359) and the accompanying faculty comments (CP 360) also indicate that she participated in the process. Furthermore, Becker’s referenced portions of the record indicate that she was happy about the project. (*See*, also Patterson’s deposition testimony at CP 140 ll. 7-14).

³⁶ Hysteresis is a recognized phenomenon in physics that explains why particles resist moving between neural networks. The goal of the project was to study whether individuals within social networks were similarly resistant to moving between groups. CP 135-136.

³⁷ Becker filed her second amended Doctoral Program form in the spring 2004. CP 236, 248. Her third committee was chaired by Patterson. The other members were Parks, Brigham and Strand. A copy of the form is attached in App. 7. Becker asserts that Parks removed Probst from the committee and substituted himself, over her objection.

semester. CP 264. At the end of the spring 2004 semester (semester 6) Becker had everything she needed to prepare to take her prelims in the fall. CP 132-141, 190, 264-265.

Becker's third annual faculty evaluation occurred on April 19.

CP 357-360. The written evaluation report stated in pertinent part:

. . . the faculty are very concerned about your progress and lack thereof. In fact, the majority opinion among the faculty was to terminate your assistantship. . . . the faculty were willing to go along with [the proposed plan for your doctoral studies]...only under the condition that a specific target date be set for completion of your prelim ballot meeting . . . After much discussion the faculty agreed that the meeting should occur no later than 29 October, 2004, which is the last Friday in October . . . This ballot meeting deadline is not negotiable and if it is not met the experimental faculty will terminate your appointment effective 18 December, 2004 (i.e. the day after finals week).

CP 357-360.³⁸ Patterson gave Becker a copy of the written summary report and individual faculty comments. CP 143 l. 4 to 146 l. 20. She refused to read them. CP 143 l. 4 to 146 l. 20, 264, 401-402. Patterson told her what the report said, emphasized that there was a firm deadline for her prelims and told her that if she failed to complete her prelims by the deadline she would be dropped from the Program. CP 143 l. 4 to

Appellant's Brief Corr. at 27-28. Once again, her assertions are directly contrary to the record. Becker herself testified that Probst had to rotate off the committee because she was going on sabbatical and would be out of the country. CP 694 ll. 7-9. This testimony was offered in the "corrected" Declaration that she filed in opposition to the Defendants' initial Motion for Summary Judgment. CP 680-704

³⁸ This copy of this evaluation is attached in App. 8.

146 l. 20.³⁹

d. Becker's 2004-2005 Academic Year

Becker admits that she did not do any work to prepare for her prelims during the summer or fall of 2004. CP 825. Parks sent her several memoranda indicating that the Program was expecting her to meet the non-negotiable October 29, 2004 deadline for completing the ballot meeting on her prelims. CP 265, 406, 407-408, 410. She did not respond. CP 265. She refused to discuss prelims preparation with her committee chair, Patterson, stating that she had an attorney. CP 141 l. 17 to 142 l. 8.⁴⁰ She did not request assistance of Whitney, or otherwise indicate she was making any progress toward her prelims leading up to the October deadline. CP 238, 265.

³⁹ Patterson testified in his deposition that he fully believes Becker knew the Department had established a firm deadline for her prelims and the consequence was "she'd be dropped from the program if she didn't finish them by October". CP 146 ll. 2-20.

⁴⁰ On July 22, 2004 attorney Laurel Siddoway wrote to Eric Lear, Dean of the WSU College of Liberal Arts, requesting a copy of Becker's education records. CP 909. The letter states in pertinent part: "... Ms. Becker's principal objectives are to correct her education records and to complete . . . the program . . ." Becker had previously complained to Parks about the content of her EAC evaluation for the 2002-2003 academic year, claiming that it was inaccurate and insisting that they be rewritten. CP 263, 363-391. Parks advised her that the written EAC Evaluation, which summarized the faculty's annual review discussion, could not be revised. CP 263, 363-391. He also advised her that she had the right to submit a written addendum to her annual review file (CP 262, 363-391) and that he was willing to share her perspective with the faculty. CP 263, 363-391. She did not accept this offer. CP 263, 363-391. The July 22 letter from Siddoway does not request an extension of time on the prelims deadline. CP 909. It does not indicate that Becker needed a leave of absence from her academic responsibilities. CP 909.

Becker did not take her prelims in the fall 2004 semester (her seventh semester). CP 825. She did, however, enroll as a full-time student (CP 414) and she accepted full assistantship funding. CP 261. She was assigned to TA for Patterson.

On October 12, 2004, Program Director Parks notified Becker in writing that she would be terminated at the end of the semester because she failed to sit for her prelims in accordance with the Program faculty's deadline. CP 265, 409-410. On January 4, 2005 Department Chair Whitney notified the Dean of the Graduate School (Howard Grimes) that the Program Faculty recommended Becker be dismissed. CP 250. His Memorandum states, in part:

. . . Despite coming in with a Masters degree, Cheryl has not completed her preliminary exams. In the student review meeting last April, the faculty seriously considered dismissing Cheryl from the program after the spring 2004 semester, but decided to give her one more chance to make discernable progress toward the degree. In her feedback, Cheryl was told that she was required to have her prelim exams completed by the end of October, 2004 and that failure to meet this deadline would result in her termination from the program.

Cheryl did not meet this deadline and she made no apparent efforts to work with a prelim committee to get ready for the exams after she was given the deadline. Cheryl has not had a productive relationship with any of her four different advisors during her time in the department, and given her continuing lack of progress toward the Ph.D., we have concluded that it is

inappropriate for Cheryl to continue her association with the department. . .

CP 249-250.⁴¹

Dean Grimes (“Grimes”) wrote to Becker on January 7, 2005, providing notice of the Program faculty’s recommendation and an opportunity to respond directly to him. CP 227-229.⁴² They met on January 14. CP 214, 696. Grimes proposed conditions for Becker’s continued enrollment during the meeting. CP 212-215.⁴³ The conditions were that she prepare a one-page synopsis of her proposed dissertation project and identify a doctoral committee she could work with. CP 212-215, 929-930, 931-934. To assist her in managing her time Grimes encouraged her *not* to pursue a TA, but offered to provide her with a tuition waiver. CP 112-113, 212-215. Becker objected to relinquishing her assistantship. CP 112-113, 931-934.

Becker enrolled as a full time student for the spring semester of

⁴¹ This memorandum complies with GSPP notice requirements. CP 360.

⁴² This letter complies with GSC notice provisions. CP 561.

⁴³ Becker denies that he discussed these conditions at that meeting. Appellant’s Brief Corr. at 34, 46-47. However, it is undisputed that her attorney confirmed the details of Grimes’ proposal on February 3, 2005. CP 929-930, 931-934. Becker’s deposition testimony confirms that she was aware of the conditions for her continued enrollment during the time that she was enrolled as a full time student, receiving a tuition waiver and being paid for 20 hours of TA work a week. CP 112-113. She did not complete a one-page synopsis, nor did she provide Grimes with a proposed doctoral committee. CP 824.

2005 (her eighth semester). CP 414.⁴⁴ She accepted a TA with Patterson. CP 261.

In February Becker left campus and returned to her home in Ellensburg. CP 112-113; 823-824. She testified during her deposition that full-time students are expected to be on campus pursuing their coursework throughout the semester. CP 833. She admitted that she did not follow through with Grimes' proposal while she was in Ellensburg. CP 824.

On April 14, 2005 Parks wrote to Becker asking her to identify individual faculty to provide input for her annual student evaluation for the 2004-2005 academic year. CP 265. She did not respond. CP 265. The Program faculty's annual evaluation meeting occurred on April 25. CP 361-362. Becker's written student evaluation for this academic year states in pertinent part:

During the past year you ignored program-imposed deadlines. You have made no discernible progress in the past year on completing the preliminary examinations. You did not consult with your advisor . . . on issues related to your program of study, preliminary examinations or research plans . . . Given your total lack of progress, a

⁴⁴ She enrolled for 16 credits in Psych 800. CP414. These credits are generally used for dissertation research. CP302. However, graduate students are expected to register for a minimum of two Psych 800 credits in the semester in which they plan to take their prelims. CP 337. Becker registered for 7 Psych 800 credits in both the spring semester of 2004 and the fall semester of 2004 (CP 414), but failed to take her prelims in either semester. The faculty carried over these essentially empty credits, anticipating that Becker would complete her prelims and move forward with her dissertation. CP 414.

grade of “F” was assigned for the Psych 800 credits in which you were enrolled. . . .

CP 362.⁴⁵ On May 12, 2005 the Graduate School issued written notice to Becker that she was being disenrolled because her cumulative GPA had fallen below the 3.0 mandatory minimum for continued enrollment. CP 231. It was 2.21. CP 231.

5. Becker’s Discrimination Complaints

During the summer of 2004 Becker contacted the WSU Center for Human Rights (CHR) and Grimes (Graduate School Dean) complaining that the Program faculty were discriminating against her on the basis of her age. CP 212-215, 218-219. Grimes asked his Associate Dean, Kristen Johnson, to investigate Becker’s complaint and determine what she would like the Graduate School to pursue. CP 212-215, 218-219. Johnson informed Becker that CHR needed a signed formal complaint and requested a specific statement regarding what Becker wanted from the graduate school. CP 221-222.⁴⁶

When Becker failed to respond to Johnson, Grimes wrote to Becker asking her to specify what she would like the Graduate School to do. CP 212-215, 223-224. Becker did not respond to Grimes. CP 212-

⁴⁵ A copy of this evaluation is attached in App. 9.

⁴⁶ Becker testified that when she spoke with Associate Dean Johnson that summer, Johnson advised her to take her prelims. CP 723 ll. 16-24.

215.⁴⁷ She did not file a formal signed complaint with the Center for Human Rights. CP 117, 212-215.

On May 16, 2005, the WSU Graduate School received notice that Plaintiff had filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC). CP 212-215. Whitney learned about Becker's EEOC complaint after Becker was disenrolled. CP 234-239.

6. Chronological Overview of Material Facts

At the close of oral argument on Defendants' Motion for Summary Judgment the trial court requested a time-line, with citations to the record, to assist in reviewing the extensive factual record before the court. CP 1036. A copy of WSU's time-line is reproduced below, with CP cites included for this court's easy reference.⁴⁸

Date	Event	Citation to Record
11/20/00	Plaintiff applies to Ph.D. Program in Experimental Psychology. Requests to work with Paul Whitney, Department Chair.	Declaration Craig Parks ("Parks Decl."), Exhibit A (CP 269-270)
12/15/00	Plaintiff submits her request to WSU for financial aid through a graduate assistantship or fellowship.	Parks Decl. Exhibit A (CP 272)

⁴⁷ Becker asserts that Grimes failed to follow WSU policies because he did not refer her complaints to the Committee on Graduate Student Rights and Responsibilities (CGSRR). Appellant's Brief Corr. at 31. Her record cite for this assertion (CP 219) is to her July 12, 2004 letter to Grimes, which does not establish the policy violation she alleges. Furthermore, the GSC does not establish that Grimes was obliged to refer her complaints to the CGSRR. CP 563-564. It states in relevant part: "Appeals of college or unit level decisions are handled by the Dean of the Graduate School . . . Unusual academic matters and *some combinations of conduct and academic matters* may be referred to the CGSRR." CP 564.

⁴⁸ A copy of the time line provided to the trial court appears in App. 1.

04/02/01	Letter from WSU offering her admission to the Ph.D. Program and funding through a part-time graduate assistantship starting fall semester 2001.	Parks Decl. Exhibit B (CP 275-276)
08/27/01	Fall semester 2001 begins (first semester). ⁴⁹ Plaintiff is assigned to Paul Whitney as her faculty advisor/mentor.	Parks Decl., Whitney Decl. (CP 259, 235)
09/04/01	Plaintiff is advised that the Master's Thesis requirement for her Ph.D. is waived and she "may proceed to the preliminary exams."	Parks Decl., Exhibit C (CP 278)
01/14/02	Spring semester, 2002 starts (second semester).	
04/22/02	First annual student progress evaluation by Experimental Program faculty takes place. Written summary identifies faculty concerns about self-confidence and focus.	Parks Decl., Exhibit F (CP 352-353)
05/?/02	Plaintiff asks Professor Whitney for permission to start working with Lisa Fournier and he agrees.	Becker Deposition Testimony at 52:25-53:15 (Ex. B, Declaration of Kathryn Battuello in Support of Defendants' Motion for Summary Judgment); 59:1-13 (Ex. A, Declaration of Kathryn Battuello in Support of Defendants' Motion to Strike);

⁴⁹ The specific start and end dates for each semester are not consistently presented in the summary judgment record before the court. I took the liberty of including them to assist the Court and the parties with the time-line. They are accessible to the public at <http://www.catalogs.wsu.edu>. and are, consequentially, admissible under ER 201.

		Declaration of Paul Whitney (“Whitney Decl.”); Declaration of Lisa Fournier (“Fournier Decl.”) (CP 86-87, 720, 236, 254).
05/10/02	Spring semester 2002 ends	
08/26/02	Fall semester 2002 starts (third semester).	
11/?/02	Plaintiff decides to switch faculty advisors, moving from Professor Whitney to Professor Fournier.	Amended Declaration of Cheryl Becker ¶s 9-11 (CP 684)
12/?/02	Plaintiff decides to stop working with Professor Fournier and switch to her third faculty advisor, Jeff Joireman.	Becker Deposition pp 64-70 (Ex. B, Declaration of Kathryn Battuello in Support of Defendants’ Motion for Summary Judgment); Amended Declaration of Cheryl Becker ¶s 18 and 19. (CP 88-94, 686-687)
12/17/02	Plaintiff files her Program for Doctoral Degree with the Graduate School designating Professor Joireman as the Chair of her Doctoral Committee.	Whitney Decl., Ex. B. (CP 243-244)
12/20/02	End of fall semester 2002	
01/13/03	Spring semester 2003 begins (fourth semester).	

04/28/03	Second annual student evaluation by Experimental Program faculty occurs. Written summary comments on initiating preparation for prelims. Concern expressed about having three different advisors in two years and the need to develop a good working relationship with Professor Joireman.	Parks Decl., Ex. G (CP 354-356)
05/09/03	Spring semester 2003 ends	
08/25/03	Fall semester 2003 begins (fifth semester) Per Program Requirements this is the deadline for completing prelims.	Parks Declaration Ex. D, pp 6-7. (CP 285-286)
11/19/03	Plaintiff advises Professor Joireman and the rest of her committee that she needs more time to prepare for her prelims and proposes an extension to February, 2004.	Declaration of Jeff Joireman (Joireman Declaration) Ex. E (November 19 emails from Becker to Joireman and Dec. 3 email from Joireman to committee members) (CP 180, 182, 185).
12/19/03	Fall semester 2003 ends.	
01/12/04	Spring semester 2004 begins (sixth semester)	
02/12/04	Plaintiff requests an additional extension of time to complete her prelims, to the start of the fall semester of 2004.	Parks Decl. Ex. K; Joireman Decl. (CP 393, 154).
02/24/04	Plaintiff meets with Professors Whitney, Parks and Joireman to discuss her progress. She is encouraged not to work more than 20 hours a week on any assistantship assignments. Plaintiff asks if she is being treated differently because of her age.	Parks Decl. Ex. L.; Amended Declaration of Cheryl Becker ¶s 35-37. (CP 396-400, 691-693).
02/25/04	Professor Joireman proposes a	Joireman

	student-advisor contract to assist Plaintiff with staying on track with her prelim preparation. He also proposes a schedule that limits her TA time to 4 hours a day, 5 days a week and reserves all other time for prelim preparation. Plaintiff refuses to agree to the contract or the schedule.	Declaration Ex. H and Ex. I; Amended Declaration of Cheryl Becker ¶s36-38. (CP 193-196, 197-199, 692-693).
02/26/04	Professor Joireman encourages Plaintiff to organize a meeting with her prelim committee to discuss preparations. Follow-up confirms that the committee is ready to schedule the exams at the start of fall semester 2004.	Joireman Declaration Ex. J (CP 200-205)
04/01/04	Plaintiff advises Professor Joireman that she is switching advisors and will be working with Professor Patterson.	Joireman Declaration Ex. L (CP 210-211)
04/19/04	Third annual student evaluation by Experimental Program Faculty occurs. Written summary emphasizes concern about lack of progress and sets an October 29, 2004 deadline for completion of prelim ballot meeting.	Parks Decl. Ex. H (CP 357-360)
04/22/04	Plaintiff advises Professor Parks that she and Professor Patterson finished outlining the format for her prelim paper, calling it "an excellent project".	Parks Decl. Ex. N; Patterson Deposition pp 57-65 (Ex. D, Declaration of Kathryn Battuello in Support of Defendants' Motion for Summary Judgment). (CP 403-404, 133-141)
05/04/04	Email from Professor Patterson to Professor Parks reporting that Plaintiff refused to read her annual evaluation, so he told her what it said and	Parks Decl. Ex. M. (CP 401-402)¶

	emphasized the prelim deadline.	
05/07/04	Spring semester 2004 ends.	
07/12/04	Plaintiff submits a formal complaint to Howard Grimes, Dean of the Graduate School. She complains of age discrimination and retaliation and asks the Graduate School for “support and assistance”.	Declaration of Howard Grimes (“Grimes Decl”) Ex. A. (CP 217-219)
07/22/04	Letter from Laurel Siddoway to Erich Lear, Interim Dean for WSU College of Liberal Arts initiating a FERPA ⁵⁰ request for Plaintiff’s “education records”.	** Ex. 1, Declaration of Laurel Siddoway (not attached to Siddoway Declaration) (CP 908-909)
08/04/04	Graduate School Associate Dean Kristen Johnsen follows-up with Plaintiff regarding her formal complaint, advising her that she needs to complete a formal complaint form for the Center for Human Rights and asking her to outline how the Graduate School can provide support and assistance. Plaintiff does not respond.	Grimes Decl., Ex. B (CP 220-222).
08/23/04	Fall semester 2004 begins (seventh semester)	
08/25/04	Memo from Craig Parks to Plaintiff regarding prelim scheduling deadlines. Plaintiff does not respond.	Parks Decl. Ex. O (CP 404-405)
09/01/04	Graduate School Dean Howard Grimes writes to Plaintiff directly inviting her to follow up on her July 12, 2004 formal complaint. Plaintiff does not respond.	Grimes Decl., Ex. C (CP 223-224)
09/?/04	Plaintiff refuses to discuss prelim preparation with her advisor, Professor Patterson, because she has an attorney.	Amended Decl. Cheryl Becker ¶ 48. (CP 696)
09/10/04	Memo from Craig Parks to Plaintiff	Parks Decl. Ex. P

⁵⁰ Federal Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

	regarding prelim scheduling deadlines. Plaintiff does not respond.	(CP 407-408)
10/12/04	Memo from Craig Parks advising Plaintiff that her graduate assistantship appointment and funding will end effective December 18 because she failed to sit for her prelims in time to meet the October 30 ballot meeting deadline.	Parks Decl. Ex. Q (CP 409-410)
12/17/04	Fall Semester 2004 ends	
01/04/05	Memo from Paul Whitney to Howard Grimes recommending that Plaintiff be disenrolled from the Graduate School because she has failed to make satisfactory progress toward her degree.	Whitney Decl., Ex. E. (CP 249-250)
01/07/05	Letter from Howard Grimes to Plaintiff putting her on notice regarding the Experimental Program faculty's recommendation that she be disenrolled and inviting her to meet with him to discuss this.	Grimes' Decl., Ex. E (CP 227-229)
01/10/05 01/10/05 cont.	Spring semester 2005 begins (eighth semester) Memo from Paul Whitney to Plaintiff advising her that her TA assignment remains active and assigning her to work with Robert Patterson. Plaintiff is registered for 16 credits of Psych 800	Whitney Decl. Ex. F (CP 251-252) Parks Decl. (CP 258-267)
01/13/05	Letter from Siddoway to Howard Grimes	Siddoway Declaration Ex. 2. (CP 910-928)
01/14/05	Plaintiff meets with Howard Grimes.	Amended Decl. Cheryl Becker ¶14. (CP 696)
02/03/05	Siddoway confirms for Plaintiff the details of Grimes' proposal for her continued enrollment.	Siddoway Declaration Ex. 3 and Ex. 4 (CP 929-934)

02/?/05	Plaintiff abandons her studies when she leaves WSU and returns to her home in Ellensburg.	Becker Deposition pp 136-137 (Ex. B, Declaration of Kathryn Battuello in Support of Defendants' Motion for Summary Judgment)
04/14/05	Craig Parks writes to Plaintiff asking for input for her annual student evaluation. Plaintiff fails to respond.	Parks' Decl. (CP 258-267)
04/25/05	Fourth annual student evaluation by Experimental Program faculty takes place. Written summary notes that the faculty decided to assign an "F" for her Psych 800 credits because she ignored program deadlines, failed to communicate with her faculty advisor and made no discernable academic progress during the semester. (Report is dated May 17, 2005)	Parks Decl., Ex. I (CP 361-362)
04/29/005	Plaintiff files a complaint with the EEOC	Ex. 6, Supplemental Declaration of Cheryl Becker in Support of Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment. (CP 966-967)
05/09/05	Attorney General's Office receives notice of Plaintiff's EEOC Complaint	Ex. 7, Supplemental Declaration of Cheryl Becker in Support of Plaintiff's Memorandum in Opposition to

		Defendants' Motion for Summary Judgment (Glover letter to EEOC dated May 10, 2005) (CP 975)
05/12/05	Letter from Graduate School to Plaintiff advising her that she is being disenrolled because her GPA has fallen below the mandatory minimum and inviting her to petition for reinstatement per Graduate School Policies. Plaintiff fails to request reinstatement.	Grimes Decl. Ex. G (CP 230--233)
05/16/05	Graduate School receives notice of EEOC Complaint	Grimes Decl. (CP 215)
03/01/07	Plaintiff files this lawsuit.	Court File. (CP 1-28).

III. ARGUMENT

A. Standard of Review

Review of a trial court order granting summary judgment is de novo. *Marquis v. City of Spokane*, 130 Wn.2d 97, 922 P.2d 43 (1996).

The purpose of a summary judgment motion is to avoid an unnecessary trial where no genuine issues as to a material fact exist. *Eakins v. Huber*, 154 Wn. App. 592, 225 P.2d 1041 (2010) (citing *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989)). A material fact is one upon which the outcome of litigation depends. *Kinney v. Cook*, 150 Wn. App. 187, 192, 208 P.3d 1 (2009).

A defendant who moves for summary judgment meets its initial burden by demonstrating that an essential element of the plaintiff's claim has not been established. *Young v. Key Pharms.*, 112 Wn.2d 225, 770 P.2d 182 (1989) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). If at this point the plaintiff "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial," the trial court should grant the motion. *Young*, 112 Wn.2d at 225 (citing *Celotex* 477 U.S. at 322). "In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Celotex*, 477 U.S. at 322-323.

The non-moving party cannot meet its burden of proof by relying upon allegations in its pleadings but instead must put forward specific facts, through affidavit or other evidence recognized in CR 56, showing that there is a genuine issue for trial. *Young*, 112 Wn.2d at 225-226. "The facts required by CR 56(e) are evidentiary in nature. Ultimate facts or conclusions of law are insufficient. Likewise, conclusory statements of fact will not suffice." *Grimwood v. Puget Sound*, 110 Wn.2d 355, 359-60, 753 P.2d 517 (1988) (citations omitted). Bare assertions that a genuine

material issue exists will not defeat a summary judgment motion in the absence of actual evidence. *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997) (“A plaintiff’s belief that a defendant acted from an unlawful motive, without evidence supporting that belief, is no more than speculation or unfounded accusation about whether the defendant really did act from an unlawful motive.”) *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1028 (9th Cir. 2001).

Where issues of material fact do not exist, an order of dismissal is necessary to avoid a useless trial. *Olympia Fish Prod., Inc. v. Lloyd*, 93 Wn.2d 596, 602, 611 P.2d 737 (1980). The existence of some issues of fact does not preclude summary judgment unless the issues are material to the substantive claim at issue. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Factual disputes that do not affect the outcome of the suit under governing law should not be considered. *Id.*

B. Historical Precedent Encourages Judicial Deference to Academic Decisions of Public Colleges and Universities, Absent Evidence of Conduct That is Arbitrary and Capricious or in Violation of Constitutionally Protected Rights

It is settled law in Washington that absent arbitrary and capricious action a court will not interfere with the academic decisions of a University. *Marquez v. Univ. of Washington*, 32 Wn. App. 302, 648 P.2d

94 (1982) (citing, *Maas v. Corporation of Gonzaga University*, 27 Wn. App. 397, 402-02, 618 P.2d 106 (1980), accord, *Enns v. Bd. of Regents*, 32 Wn. App. 898, 650 P.2d 113 (1982), *Oschner v. Bd. of Trustees of Washington Cmty. Coll.*, 61 Wn. App. 772, 811 P.2d 985 (1991)).⁵¹

The decision to award or not award a degree, and based upon what criteria, is one uniquely within the academic sphere. The courts should abstain from interference with this process unless arbitrary and capricious decision making or bad faith is present. Decisions arrived at honestly and with due consideration are not arbitrary and capricious.

Enns v. Bd. of Regents, 32 Wn. App. at 900-901 (citing *Bd. of Curators v. Horowitz*, 435 U.S. 78, 98 S. Ct. 948, 55 L. Ed. 2d 124 (1978)).

Washington law in this regard is grounded in U.S. Supreme Court jurisprudence, which has long recognized that the decision to dismiss a student rests on “the academic judgment of school officials that she did not have the necessary ability to perform adequately . . . and was making insufficient progress . . .” *Horowitz*, 435 U.S. at 90.

⁵¹ In *Oschner* this court overturned an academic dismissal, after concluding that witness testimony in the record raised a genuine factual issue regarding whether the decision-making process was arbitrary and capricious. *Oschner* was purportedly dismissed because he failed to comply with established attendance policies. The court concluded “Mr. Angstrom’s affidavit gives rise to a reasonable inference that Mr. Croskrey did not apply the attendance policy evenly . . . [and] creates a genuine issue as to whether Mr. Croskrey’s evaluation of Mr. Oschner’s attendance was arbitrary and capricious.” 61 Wn. App. At 776. The record in this case lacks comparable evidence; there are no facts suggesting that Becker was treated differently than other graduate students with respect to expectations around prelims or with grading. There are no witnesses to corroborate her perceptions that she was discriminated against. Indeed, the undisputed evidence demonstrates that Becker was aware of established academic expectations and elected not to meet them.

Like the decision of an individual professor as to the proper grade for a student in his course, the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision making.

Id. Judges are expected to show great respect for a faculty's professional judgment when asked to review the substance of a genuinely academic decision. *Regents of the Univ. of Michigan v. Ewing*, 474 U.S. 214, 225, 106 S. Ct. 507, 88 L. Ed. 2d 523 (1985) "They may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate the person or committee responsible did not actually exercise professional judgment." *Id.*

C. WSU's Agents Are Entitled to Qualified Immunity From Becker's Claims Under 42 U.S.C. § 1983 Because Becker Cannot Establish That Her Academic Dismissal was Arbitrary, Capricious or in Bad Faith

1. Qualified Immunity Applies Unless the Relevant WSU Agents Violated a Clearly Established Constitutional Right⁵²

Government officials are protected from liability for civil damages unless their conduct violates clearly established statutory or constitutional

⁵² The relevant WSU agents for purposes of Becker's § 1983 claim are those individual defendants who allegedly engaged in an affirmative act, participate in another's affirmative act, or omitted to perform an act which he [or she] is legally required to do that causes the complained-of deprivation. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). WSU enjoys sovereign immunity from liability under 42 U.S.C. § 1983 and cannot be sued under a theory of *respondeat superior*. *Polk Cy. v. Dodson*, 454 U.S. 312, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981). Thus, the relevant WSU agents are Whitney, Parks, Joireman and Grimes.

rights of which a reasonable person would have known. *Moran v. State*, 147 F.3d 839, 844 (9th Cir. 1998) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982)) (Whether a government official enjoys qualified immunity is a purely legal question). *Mitchell v. Forsyth*, 472 U.S. 511, 528, 105 S. Ct. 2806, 86 L. Ed. 2d 411 (1985).

Qualified immunity balances two important interests – the need to hold public officials accountable for an irresponsible exercise of power and the need to shield them from harassment, distraction and liability when they perform their duties reasonably. *Pearson v. Callahan*, 129 S. Ct. 808, 815, 172 L. Ed. 2d 565 (2009) (emphasis added). The “driving force” behind qualified immunity is the desire to resolve insubstantial claims before trial, at the earliest possible stage in the litigation. *Id*

The qualified immunity defense is applied quite broadly, affording protection to all but the plainly incompetent or those who knowingly violate the law. *Malley v. Briggs*, 475 U.S. 335, 341, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986). WSU’s agents are entitled to summary judgment on qualified immunity grounds if Becker’s complaint fails to state a claim or if, in light of clearly established principles governing their conduct, they objectively believed their conduct was lawful, or when there is no genuine issue of material fact about whether they engaged in conduct violating Becker’s clearly established civil rights. *Jones v. State*, 140 Wn. App.

476, 166 P.3d 1219, 1227 (2007) (*overturned on other grounds*, ____ P.3d ____, 2010 WL 4352199 (Wash.) (review requested) (internal citations omitted)). Here, WSU's agents are entitled to qualified immunity because Becker cannot establish a violation of the constitutional rights that her § 1983 is based upon: due process, equal protection and free expression.

a. Becker Cannot Establish a Violation of Any Rights to Procedural or Substantive Due Process

The touchstone of due process is protection of the individual against arbitrary government actions, whether in denying fundamental procedural fairness (procedural due process) or in exercising power arbitrarily, without any reasonable justification in the service of a legitimate governmental objective (substantive due process). *Sacramento v. Lewis*, 523 U.S. 833, 845-846, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998) (citations omitted). However, to be entitled to the due process protections of the Fourteenth Amendment, Becker must first demonstrate that her academic dismissal deprived her of a liberty interest or a property interest recognized by state law. *Bd. of Curators of the Univ. of Missouri v. Horowitz*, 435 U.S. 78, 82, 98 S. Ct. 948, 55 L. Ed. 2d 124 (1978).

Becker offers no authority to support her assertion that WSU's decision to dismiss her for academic reasons deprives her of a liberty interest. Regardless, the courts have generally declined to find deprivation

of a liberty interest where a dismissal is academic as opposed to disciplinary. *Horowitz*, 435 U.S. at 83-91 (discussing *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975), *Bishop v. Wood*, 426 U.S. 341, 96 S. Ct. 2074, 48 L. Ed. 2d 684 (1976), *Bd. of Regents v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972)). Moreover, she fails to provide any authority for her apparent assumption that state law recognizes a property interest in continued enrollment in a Ph.D Program at a public university. However, assuming (solely for purposes of argument) that Becker has a constitutionally protected property interest in continued enrollment, the facts of record fail to demonstrate a violation of either her procedural or substantive due process rights.

The procedural due process requirements of the Fourteenth Amendment entitle Becker to advance notice of the faculty's dissatisfaction with her academic progress and the risk this posed to her continued enrollment. *Horowitz*, 435 U.S. at 85. It is undisputed that WSU met these requirements. Becker received advance notice through the written annual review process and through follow up communications with the Program Chair, Director and faculty advisors. She may disagree with the content of her evaluations and the advice provided by Whitney, Parks, Joireman and Patterson, however her disagreement with content does not generate a material issue of fact regarding whether she was

warned about the academic consequences of her failure to satisfy academic expectations.

A formal hearing is not necessary. *Horowitz*, 435 U.S. at 90.⁵³ Yet, it is undisputed that the Dean of the Graduate School (Grimes) provided Becker an opportunity to respond to the Program Faculty's recommendation that she be disenrolled. Moreover, after meeting with her, Grimes arranged for her reinstatement in the Program and outlined criteria by which she could demonstrate sufficient academic progress to warrant continued enrollment.

In addition, Becker is entitled to a decision making process that is careful, deliberate and consistent with WSU policies and procedures. *Horowitz*, 435 U.S. at 85; *Regents of the Univ. of Michigan v. Ewing*, 474 U.S. 214, 106 S. Ct. 507, 88 L. Ed. 2d 523 (1985), *Maas v. Gonzaga University*, 27 Wn. App. 397, 618 P.2d 106 (1980), *Enns v. Bd. of Regents of the Univ. of Wash.*, 32 Wn. App. 898, 650 P.2d 1113 (1982). When the facts of this case are measured against established precedent they fall well

⁵³ In *Horowitz* the U.S. Supreme Court distinguished an academic dismissal from a disciplinary dismissal, stating: “. . . we have frequently emphasized that “[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.” . . . The need for flexibility is well illustrated by the significant difference between the failure of a student to meet academic standards and the violation by a student of valid rules of conduct. This difference calls for far less stringent procedural requirements in the case of an academic dismissal.” 435 U.S. at 86 (internal citations omitted). Becker's reliance on *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 725 (1975) and *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150 (5th Cir., 1961) to impose a hearing requirement in this case is misplaced as both of those cases involved disciplinary dismissals for student misconduct.

short of what is required to support an inference that WSU's agents were arbitrary and capricious in their decision-making around Becker's dismissal.⁵⁴

Becker claims that she was not provided clear directions regarding the circumstances under which she could be removed from the Program. Yet, the Program Description clearly stated that doctoral students must complete their prelim by the end of their fifth semester. CP 286. In addition, Becker's annual evaluations from the Program faculty emphasized the importance of completing her prelims and, after granting two extension requests, set a firm deadline for the start of her seventh semester. The Program also offered to assist her with preparation by instituting a student/advisor contract that outlined a schedule providing ample time for prelim study. She refused to sign the contract, refused to study for her prelims and failed to schedule these required examinations in the fall 2004 (seventh semester). Under these circumstances this Court should refrain from second-guessing the Program Faculty's academic decisions. Accord, *Enns v. Bd. of Regents*, 32 Wn. App. at 898.⁵⁵

⁵⁴ If anything, the facts support the inference that Becker's approach to the Program faculty's firm deadline for completing her prelims in the fall semester of 2004 and her approach to her full-time load of Psych 800 credits in the spring semester of 2005 was arbitrary and capricious. She enrolled as a full time student for both semesters, accepted full funding from WSU and essentially abandoned her studies.

⁵⁵ In *Enns* a graduate student alleged that the University of Washington violated his due process rights because it failed to clearly communicate the conditions under which he could be dropped from his doctoral program in mathematics. The allegations

Furthermore, in this case the Program Description and GSPP provided that continued enrollment was conditioned upon maintenance of a 3.0 cumulative GPA. CP 344-45. Becker failed to maintain this GPA. After the fact she asserts that she was not advised that she could receive a failing grade for psych 800 classes if she did no work. Yet the course catalog description for Psych 800 states that these credits are graded on a S/F basis.

Becker registered for Psych 800 credits for three consecutive semesters and each time she failed to do the required work associated with these credits. In spring semester 2004 (Becker's sixth semester) she registered for seven credits, consistent with the GSPP requirement that students register for a minimum of seven credits in the semester they plan to take their prelims. She did not take her prelims, but instead asked for a continuance to the fall 2004 semester. The Program faculty carried over the credits.

She registered for another seven Psych 800 credits in the fall 2004 semester but did not take her prelims. The Program faculty carried over her credits.

were insufficient where the relevant Program Description stated that doctoral students are expected to complete found preliminary examinations by the fall of their third year (their fifth semester) and that those who fall seriously behind will be advised to terminate their studies. Enns fell behind, was asked to withdraw and, failing to do so, was dropped.

In the spring semester 2005 Becker signed up for 16 Psych 800 credits, and then abandoned her studies while continuing to accept the financial benefits afforded a fully funded full-time graduate student. She refused to communicate with the Program faculty. At the end of that semester the faculty assigned her a failing grade for that semester, because she had done no work toward her Psych 800 credits.

Given these undisputed facts a reasonable fact finder cannot conclude that WSU's agents acted in an arbitrary and capricious manner toward Becker's spring semester 2005 grade or that they acted in bad faith. Becker was given multiple chances to complete her prelims and make reasonable progress toward satisfying her Psych 800 course credit obligations. She elected not to do the work. The Court should not second-guess the academic decision of the Program faculty regarding the appropriate grade for Becker's complete lack of effort in Psych 800 during the spring semester of 2005.

Becker fails to provide this court with any competent evidence supporting her claims for violation of her procedural and substantive due process rights. Absent competent evidence of other constitutional violations (there is none) WSU's agents are entitled to qualified immunity. The trial court's summary judgment dismissing her claims under 42 U.S.C. § 1983 was appropriate,

b. Becker's Equal Protection Claim is Pre-empted by the ADEA

Becker's equal protection claim appears to be predicated upon her age discrimination allegations. The Ninth Circuit recently ruled that the ADEA provides the exclusive federal remedy for claims asserting age discrimination in the workplace, foreclosing recovery for age discrimination in a § 1983 claim predicated upon the Equal Protection Clause. *Ahlmeier v. Nevada System of Higher Educ.*, 555 F.3d 1051 (9th Cir. 2009). In so doing it joined a number of other circuit courts across the country in dismissing age discrimination claims under 42 U.S.C. § 1983. *Tapia –Tapia v. Potter*, 322 F.3d 742, 745 (1st Cir. 2003); *Migneault v. Peck*, 158 F. 3d 1131 (19th Cir. 1998), *abrogated on other grounds* by *Kimel v. Florida Bd. of Regents*, 528 U.W. 62, 120 S. Ct. 631, 145 L. Ed. 2d 522 (2000), *after remand*, 204 F.3d 1003 (10th Cir. 2000); *LaFleur v. Texas Dep't. of Health*, 126 F.2d 758, 760 (5th Cir. 1997); *Zombro v. Baltimore City Police Dep't.*, 868 F.2d 1364, 1369 (4th Cir. 1989).

Moreover, because Becker offers no evidence of age-based disparate treatment, or otherwise establishes an abuse of discretion or arbitrary or capricious conduct on the part of the WSU or its faculty she cannot establish that her constitutional right to equal protection was

violated. *Marquez v. Univ. of Wash.*, 32 Wn. App. 302, 648 P.2d 94 (1982).

c. The Record Fails to Support Becker's First Amendment Retaliation Claim

To establish a First Amendment retaliation claim in the student speech context Becker must show that: (1) she engaged in constitutionally protected activity, (2) the respondents' actions would chill a person of ordinary firmness from continuing to engage in the protected activity and (3) the protected activity was a substantial or motivating factor in the respondents' conduct. *Corales v. Bennett*, 567 F.3d 554, 563 (9th Cir. 2009) (quoting *Pinard v. Clatskanie Sch. Dist. 6J*, 467 F.3d 755, 770 (9th Cir. 2006)).⁵⁶ If Becker establishes the elements of a retaliation claim, WSU remains entitled to summary judgment if it shows, through evidence, that it would have taken the same action even in the absence of her protected conduct. *Pinard*, 467 F.3d at 770 (citing *Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d 741, 750 (9th Cir. 2001)).

Becker cannot establish that a First Amendment violation occurred

⁵⁶ Appellant's apparent reliance on the "public concern" doctrine outlined in *Benjamin v. WSBA*, 138 Wn.2d 506, 980 P.2d 742 (1999) and *Edwards v. Dep't of Trans.*, 66 Wn. App. 552, 832 P.2d 1332 (1992) (Appellant's Brief Corr. at 71) is misplaced. Those cases involved First Amendment retaliation claims advanced on behalf of public employees. Here, as in *Corales* and *Pinard*, the Court is assessing a First Amendment Retaliation claim advanced by a student who is challenging an adverse academic decision on the grounds that the decision was made in retaliation for raising complaints against faculty and administrators who were responsible for evaluating her academic progress. Becker's concerns were personal rather than public.

because she fails to establish the requisite causal nexus between WSU's academic decision to terminate her enrollment in May, 2005 and her age discrimination complaints, raised in the spring and summer of 2004.⁵⁷ Becker provides no *material evidence* from which a reasonable jury could conclude that her complaints a) were a substantial motivating factor in the decision to disenroll her, or b) that WSU would not have disenrolled her in the absence of her complaints. *Pinard*, 467 F.3d at 770 (citing *Mendocino Envtl Ctr. v. Mendocino County*, 192 F.3d 1283 (9th Cir. 1999); *Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d 741, 750 (9th Cir. 2001)). In the absence of such evidence, Becker cannot establish that a First Amendment violation occurred.

In summary, Becker provides no competent evidence that would establish a violation of her constitutional rights and, consequently, WSU's are entitled to qualified immunity. The trial court's decision to dismiss Becker's claims under 42 U.S.C. § 1983 was appropriate and should be affirmed.

D. The Court Lacks Jurisdiction Over Becker's ADA Claim

Becker's claim under the Age Discrimination Act of 1975 (ADA, 42 U.S.C. § 6102) was properly dismissed by the trial court because she

⁵⁷ It is undisputed that although Becker submitted complaints to the Graduate School and WSU's CHR in July, 2004, she failed to follow through on those complaints, in spite of the efforts of Grimes and his associate dean (Kristen Johnson) to assist her with follow up. CP 212-215, 221-224.

did not satisfy the procedural and legal pre-requisites to a civil action under this federal statute. These pre-requisites, which are laid out in 42 U.S.C. § 6104 and 45 C.F.R. § 90.50, require that any private civil action under the ADA be brought in a United States district court for the district in which the recipient is found or transacts business. 42 U.S.C. § 6104; 45 C.F.R. § 90.50 (3)(i). Moreover, prior to filing suit a private individual must exhaust administrative remedies *and* provide 30 days' notice by *registered mail* to the Secretary of United States Department of Health and Human Services, the Attorney General of the United States, the head of the granting agency (in this case the United States Department of Education) and the grant recipient (in this case Defendant WSU). 42 U.S.C. § 6104(e)(1); 45 C.F.R. § 90.50(b)(3)(iii). The notice must state the alleged violation of the ADA, the relief requested, the court in which the action shall be brought and whether attorney's fees will be demanded if plaintiff prevails. 42 U.S.C. § 6104(e)(2); 45 C.F.R. § 90.50(b)(3)(iv).

Becker elected to file her ADA claim in state court rather than U.S. District Court in the Eastern District of Washington. Additionally, Becker provides insufficient evidence that she satisfied the statutory pre-requisites pertaining to notice. The file copy of a January 3, 2007 letter appended to the Declaration of Patti Rose does not establish notice by *registered mail*,

nor does it establish that notice was provided to the Department of Education.

Dismissal of a civil cause of action under the ADA is the appropriate response where, as here, a plaintiff fails to satisfy the statutory pre-requisites to pursuit of any private remedies available under this federal statute. *Rannels v. Hargrove*, 731 F. Supp. 1214 (E.D. Pa. 1990); *Curto v. Smith*, 248 F. Supp. 2d 132 (N.D. NY 2003).

E. Summary Judgment Dismissing Becker's WLAD Claims Should be Affirmed Because the Record Fails to Support a Prima Facie Case for Age-Based Employment Discrimination or Retaliation

1. WLAD Does Not Recognize a Cause of Action for Age Discrimination Outside the Employment Setting

In *Killian v. Atkinson*, 147 Wn.2d 16, 50 P.2d 658 (2002), the Washington Supreme Court held that the clear and unambiguous language of RCW 49.60 (WLAD) limited age discrimination claims to the employment setting.⁵⁸ It based its holding on RCW 49.60.030, which sets forth the civil causes of action for discrimination that are authorized pursuant to WLAD. This statutory provision designates race, creed, color, national origin, sex and disability as classifications entitled to protection

⁵⁸ The court stated, “. . . Even under liberal construction of RCW 49.60, this court will not adopt a strained or unrealistic interpretation of the statutes in that chapter. Adding “age” to the list of protected classes under RCW 49.60.030(1) would result in a strained interpretation of the statute, and the court would then be engaging in legislation. *Killian*, 147 Wn.2d at 26-27.

from discrimination under the act, but does not recognize age. Similarly, RCW 49.60.400(1) omits “age” from the list of classifications protected from discrimination at public colleges and community colleges. The *only* provisions in the statute that recognize a civil cause of action for age discrimination are RCW 49.60.180 and RCW 49.44.090, which provide that it is an unfair labor practice for employers to hire, discharge or otherwise discriminate against employees who are forty years of age or older.⁵⁹

Although this case arises out of an academic relationship between a student and a public university, Becker urges the court to treat her claims as employment claims because the funding package that WSU provided for her education included a part-time position as graduate teaching assistant (TA). However, her TA was conditioned upon full-time enrollment, maintenance of a 3.0 GPA and satisfactory progress with Program requirements. When she was disenrolled for failure make satisfactory academic progress, her TA position ended.

In short, this case is about an academic dismissal; Becker is complaining about academic decisions regarding her progress as a student

⁵⁹ For a similar analysis regarding the scope of protection afforded under Washington’s WLAD *see, Marquis v. City of Spokane*, 130 Wn.2d 97, 922 P.2d 43 (1996). (Under the broad protections of RCW 49.60.030 an independent contractor may bring an action for discrimination in the making or performance of a contract for personal services where the alleged discrimination is *based on sex, race, creed, color, national origin or disability*.)

in a Ph.D. Program. WSU is not being sued as an employer. This is not a case in which the evidence raises material issues of fact regarding age-based disparate treatment with respect to wages, hours, or terms and conditions of employment. It is not a case in which the TA position of a 40+ year-old student, who was enrolled in school, otherwise qualified for the position and doing satisfactory work, was terminated. This case does not fall under the scope of the statutory provisions recognizing a cause of action for age-based *employment* discrimination⁶⁰ Becker's age discrimination claim under WLAD should be dismissed because she fails to state a claim that falls under the purview of this statute.

Alternatively, Becker's age discrimination and retaliation claims under WLAD should be dismissed because her loss of employment was the result of a legitimate non-discriminatory academic dismissal.

2. Becker Cannot Establish Age-based Disparate Treatment

To establish a prima facie case of age discrimination under WLAD Becker must offer specific evidence that: 1) she was within the statutorily protected age group; 2) was discharged from her employment; 3) was doing satisfactory work; and 4) was replaced by a younger person. *Grimwood v. Univ. of Puget Sound*, 110 Wn.2d 355, 362, 753 P.2d 517

⁶⁰ RCW 49.60.090; RCW 49.60.180.

(1988). Given her age and the undisputed fact that her TA performance was satisfactory, Becker has sufficient evidence to support the first and third elements. Her *prima facie* case fails with respect to elements two and four.

Becker is not claiming that she was discharged from her employment, *per se*. Instead, she asserts age-based disparate treatment. Yet she offers no evidence of comparators, i.e. graduate students who were similarly situated in all respects but age and received more favorable treatment with respect to the length of their graduate assistantship, the conditions precedent to that appointment or any other terms or conditions of employment. Her conclusory allegations that others received more favorable treatment do not represent evidence sufficient to raise a material issue of fact. *Grimwood*, 110 Wn.2d at 365 (“Plaintiff’s conclusory opinions do not amount to material facts admissible in evidence showing there is a genuine issue for trial as to his age discrimination claim”).

Should the court conclude that Becker has met her threshold *prima facie* burden [which she has not done] any inference of discrimination associated with her *prima facie* case is dispelled by *evidence* of a legitimate non-discriminatory reason for her discharge. *Grimwood*, 110 Wn.2d at 363-364 (citing *McDonnell Douglas Corp v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973); *Loeb v. Textron Inc.*,

600 F.2d 1003 (1st Cir. 1979) and concluding that “the burden of persuasion remains at all times with the plaintiff”). Becker’s assistantship ended when she was disenrolled. WSU had legitimate, non-discriminatory reasons for her academic dismissal: she failed to complete her preliminary examinations within the time frame required by her Program and failed to maintain the minimum required grade-point average of 3.0. Becker cannot defeat summary judgment absent specific factual evidence that these reasons are “mere pretext” for what, in fact, is a discriminatory motive. *Id.* Her burden in this regard is to prove that age was a “substantial factor” in WSU’s decision-making process. *Mackay v. Acorn*, 127 Wn.2d 302, 898 P.2d 284 (1995).

To establish a genuine issue of material fact regarding whether WSU’s stated reasons are pretextual Becker must present *evidence* that WSU’s stated reasons are unworthy of belief because: 1) they have no basis in fact; or 2) WSU was not motivated by those reasons; or 3) the stated reasons are insufficient to motivate a decision to terminate her graduate assistantship; or 4) that she was treated differently from similarly situated graduate assistants who were outside her protected age group. *Doming v. Boeing Employees’ Credit Union*, 124 Wn. App. 71, 98 P.3d

1222 (2004).⁶¹ The record does not contain such evidence. Her disparate treatment claim under WLAD should be dismissed.

3. Becker's Retaliation Claim Fails Because Her Loss of Employment was Based Upon Legitimate Non-Discriminatory Reasons That Were Unrelated to Her Age Discrimination Complaints

Becker fails to establish a prima facie retaliation case under RCW 49.60 because the record fails to establish: a) that she suffered any adverse employment actions; and b) the requisite causal nexus between WSU's academic decisions and the age discrimination complaints Becker raised in the spring and summer of 2004. *Washington v. Boeing Co.*, 105 Wn. App.1, 14-15, 19 P.3d 1041 (2000). Moreover, for the reasons stated above, the record lacks any *evidence* to suggest that WSU's legitimate non-discriminatory reasons for her academic dismissal are pre-textual.

To establish the causal nexus element of her retaliation claim Becker must prove that retaliation for her age discrimination complaints was a substantial factor motivating her academic dismissal. *Allison v. Housing Authority*, 118 Wn.2d 79, 821 P.2d 34 (1991). Becker asserts that she was given a failing grade in May 2005 because she complained about age

⁶¹ Plaintiff's self-evaluations of her academic performance or her justifications for performance that her employer found sub-standard are not sufficient to establish discriminatory intent. *Chen v. State*, 86 Wn. App. 183, *review denied* 133 Wn.2d 1020 (1997).

discrimination in July, 2004.⁶² In contrast to her assertion, the undisputed evidence is that she registered for 16 Psych 800 credits during the spring semester of 2005, applied her University provided tuition waiver to pay for those credits, and elected not to do any work. Consistent with established grading policies for Psych 800 credits, she received a failing grade for her work that semester.

F. The Record Fails to Support Becker's Breach of Contract and Quasi-Contract Claims

Becker's claims for breach of contract, promissory estoppel and negligent misrepresentation are generally predicated upon the same set of factual allegations regarding WSU's academic expectations and its decisions regarding her failure to meet them. CP 1-28 She asserts that WSU breached obligations to provide clear guidelines regarding academic expectations and procedures for evaluation (Appellant's Brief Corr. at 5), failed to warn her that she would be terminated if she failed to meet expectations (*id.*), failed to provide adequate mentoring (*id.*) and failed to allow her to develop her own program of research (*id.*). In addition, she claims that WSU Professor Lisa Fournier breached promises and/or made negligent misrepresentations regarding the benefits Becker would receive

⁶² Becker would like the court to conclude that the Program faculty issued this grade in retaliation for her decision to file an EEOC complaint on April 29, 2005. However, Plaintiff offers no evidence to establish that the relevant faculty were aware of her EEOC complaint when they made the grading decision.

as part of her work on a grant-funded research project that Fournier was involved in (Appellant's Brief Corr. at 50-53). In short, her claims for breach of contract, promissory estoppel and negligent misrepresentation arise out of the academic relationship between a student and a university.

Settled law in Washington provides that the student – university relationship is primarily contractual in nature. , *Maas*, 27 Wn. App. at 400. The general nature and terms of the student-university contract are implied, with specific terms to be found in the university bulletin and other publications. *Marquez*, 32 Wn. App. at 305 (quoting *Peretti v. Montana*, 464 F.Supp. 784, 786 (D. Mont. 1979), *reviewed on other grounds*, 661 F.2d 756, 757(9th Cir. 1981)).

However, contract law is not rigidly applied because “[t]he student-university relationship is unique, and it should not be and cannot be stuffed into one doctrinal category. . . . *Marquez*, 32 Wn. App. at 305-306 (quoting, *Lyons v. Salve Regina College*, 565 F.2d 200, 202 (1st Cir. 1997). A university should be “entitled to some leeway in modifying programs from time to time so as to properly exercise its educational responsibility”. *Marquez*, 32 Wn. App. at 306 (quoting *Maas*, 27 Wn. App. at 402 and *Mahavongsanan v. Hall*, 529 F.2d 448, 450 (5th Cir. 1976)). Courts allow wide latitude and discretion to educational institutions in academic matters. *Marquez*, 32 Wn. App. at 306. The court

should limit that discretion only if ‘a university acts in an arbitrary and capricious fashion or in bad faith. *Maas*. 27 Wn. App. at 403.

The construction of the student-university contract and the legal effect of its terms present questions of law which may be properly resolved by summary judgment. *Marquez*, 32 Wn. App. at 306. The standard is that of reasonable expectations, i.e. what interpretation a university should reasonably expect the student to give to its representations. *Id.*

1. WSU’s Academic Expectations and Procedures for Evaluation Were Clearly Stated and Justifiable

a. Academic Expectations Were Clearly Stated and Consistently Applied to Becker

WSU’s academic expectations for successful completion of a Ph.D. in Experimental Psychology are clearly stated in the GSPP (CP 305-50) and the Program Description. CP 280-303. Relevant to Becker’s claims are the following (emphasis added):

- “The preliminary doctoral examination is designed to determine *the fitness of the student for pursuing a doctoral program* in the field in which a degree is desired.” CP 337.
- “A preliminary examination *is required* of each doctoral student for advancement to candidacy for the doctoral degree.” CP 337.
- “The preliminary examination cannot be taken until the master’s thesis is completed. The doctoral program must be submitted to the Graduate School before the preliminary examination can be *scheduled*.” CP 285.

- “The preliminary examination *must be completed and passed* before the Ph.D. Dissertation can be formally begun. . . CP 285.
- “The *student* is responsible for scheduling the preliminary examination.” CP 337.
- “The preliminary examination *must be taken before the sixth semester* of graduate study (summers excepted).” CP286.
- “The student must be registered for a minimum of two hours of 800 as a regular student at the beginning of the semester in which the preliminary examination is to be taken and have at least a 3.0 cumulative grade point average and a 3.0 grade point average or higher on the program courses already taken before the preliminary examination may be schedule.” CP 337.
- “A student *must have a 3.0 cumulative GPA* and a 3.0 program GPA.” CP 344.
- “Upon completion of two semesters, one semester and one summer session, or two summer sessions of any graduate study and thereafter, *a 3.0 cumulative GPA or above is required for continued enrollment in the Graduate School.*” CP 344-345.
- “The enrollment of a graduate student *who fails to establish and maintain a cumulative GPA of 3.0 or above* at the end of two semesters, one semester and one summer session, or two summer sessions *will be terminated.*” CP 345.

In light of the foregoing WSU should reasonably expect Becker to understand that completing her preliminary examinations was a critical pre-requisite to moving forward with her Ph.D. program and that she needed to accomplish this before the start of her sixth semester.

It is undisputed that Becker failed to schedule her prelims in accordance with the foregoing clearly stated expectations. Further, it is

undisputed that the Program attempt to address her stated concerns about shifting advisors and lack of time to prepare. She was granted two extensions and offered the assistance of a contract to structure her allocation of time between her assistantship, research and course-work and preparation for prelims.

At the start of her fourth semester (spring 2003) she began working with Joireman in a new substantive area (social psychology). He worked with her to reconfigure her doctoral committee to adapt to this new area. He encouraged her to take her exams at the start of her fifth semester (fall 2003), but when she requested an extension of time to her sixth semester (spring 2004), it was granted. By mid-December 2003 (the end of her fifth semester) she had completed her prelim preparation reading lists from her three committee members and was working on preparing for Joireman's portion of the prelims.

In February 2004 Becker requested another extension, this time to the start of the fall semester 2004 (her seventh semester). Her request was granted, but it was established as a firm deadline, i.e. the Program faculty stated a clear expectation that Becker meets this deadline or she would be dropped from the Program. It is undisputed that Becker elected not to do *any* work to prepare for taking her prelims by this deadline. CP 825. Furthermore, she ignored all communications from the Program and

refused to communicate with her advisor.

In the spring semester 2005 Becker enrolled as a full time student, accepted full funding through a TA and registered for 16 credits of Psych 800. She proceeded to leave campus, abandon her studies and refuse to communicate with Program Faculty. She received a failing grade for her Psych 800 credits for that semester. Her cumulative GPA fell below 3.0 and she was notified that she would be terminated for failing to maintain the minimum cumulative GPA required for continued enrollment.

In light of the foregoing Becker cannot reasonably claim that WSU failed to clearly set forth its expectations regarding prelims or GPA. She offers no evidence that WSU applied these expectations to her situation in an arbitrary or capricious fashion or that she was held to a different set of expectations than other students. The record in this case is distinct from the record in *Oschner*, 61 Wn. App. 772, where the plaintiff presented witness testimony from another student to establish that the professor may have held him to a different attendance standard than other students. She offers no evidence to support her allegations that WSU breached its contractual obligations to provide clearly stated academic expectations.

b. Procedures for Evaluation Were Clearly Stated and WSU Complied With Those Procedures

Procedures for formal student evaluations are set forth in the GSPP

and Program Description. CP 292. Program Faculty must conduct an annual review of their student's academic performance and provide students with a written evaluation during the spring semester of each academic year. CP 344. This review should consider the student's cumulative academic record, their progress in research and relevant work assignments and expectations for the next review period. CP 344.

It is undisputed that the Program Faculty conducted Becker's annual review each spring semester that she was enrolled in the Program and that Becker received a written summary of the review, along with copies of written comments from faculty she designated. That Becker disagrees with the content of the reviews does not generate a material issue of fact regarding whether WSU met its obligations to provide annual reviews. Moreover, with respect to purely academic decisions, such as grading, courts generally will not interfere with or second-guess faculty decisions. *Maas*, 27 Wn. App. at 402-403. Given these facts, the Court should find that WSU complied with its annual review obligations, as a matter of law.

Procedures for evaluating performance in Psych 800 (the credits for which Becker received a failing grade in the spring semester 2005) were also clearly stated. Students register for Psych 800 credits after they have completed their prelims and are conducting doctoral research, writing

their dissertation and preparing for and taking their final oral examination. CP 302, 238 l. 24 to 239 l. 7.⁶³ In addition the GSPP requires that students register for a minimum of two hours of 800 at the beginning of the semester in which the preliminary examination is to be taken. CP 337. The grading procedures for Psych 800 are outlined in WSU's general course catalog, which states that Psych 800 is taken for "variable credit" and graded on a "satisfactory" or "fail" basis.⁶⁴

Becker contends that in addition to the foregoing clearly stated expectations regarding Psych 800 credits, WSU was obliged to specifically warn her that her failure to do any work toward these credits could result in a failing grade. The Washington Supreme Court previously addressed a similar allegation, finding:

No authority is cited which requires a university to inform its prospective students of the probability of their success or failure. We have found no such authority and have serious doubts if such a duty exists. . . . The possibility of academic failure is implicit in the nature of the educational contract between a student and a university. A graduate student seeking admission to a university knows a certain level of performance is necessary to obtain a degree. It is

⁶³ Becker attempts to confuse the court when, at the top of page 44 of Appellant's Opening Brief (Corrected) she implies that Psych 800 credits are general research credits that students with assistantships are obliged to enroll in, as opposed to credits for post-prelims dissertation-level work. Her record cite (CP 532) does not support this assertion. Furthermore, her assertion that "no one grades research or necessarily reviews it" is unsupported by her reference to CP 482, which is a page in her expert's written report discussing what is done at Wayne State. There is no evidence to suggest that WSU faculty fail to review or grade student research.

⁶⁴ This refers to testimony in the Supplemental Declaration of Howard Grimes, WSU's Graduate School Dean at attachments thereto. CP 765, 777, 786, 796, 807.

unreasonable to require the university to warn applicants of the obvious.

Maas, 27 Wn. App. at 400-401; accord *Regents of Univ. of Michigan v. Ewing*, 474 U.S. 214, 225, 106 S. Ct. 507 88 L. Ed. 2d 523 (1985). *Maas* addressed the complaints of a student who was denied admission, but it nonetheless dictates a similar ruling in this case. It would be unreasonable to require WSU to warn graduate students, who register for 16 credits and then abandon their studies and refuse to communicate with their faculty, that they risk receiving a failing grade for those credits.

c. WSU's Academic Expectations and Procedures for Evaluation Were Consistent With Academic Norms

Becker attempts to persuade the court that even if WSU's academic expectations and procedures for evaluation were clearly stated, they were unreasonable and/or were applied in an arbitrary and capricious manner as to Becker. She relies on the Declaration of Dr. Keashly ("Keashly"), a Professor in Communications (not Psychology) at Wayne State University. CP 458-461. Dr. Keashly testified in her deposition that she does not know whether WSU's policies and procedures defining satisfactory academic progress or their grading policies for Psych 800 credits were consistent with expected academic standards or norms at the time because she is not familiar with what graduate schools around the

country were doing. CP 728 l. 17 to 731 l. 18, 732 l. 22 to 733 l. 16, 734 l. 16 to 736 l. 10. In short, Dr. Keashly's testimony fails to raise a genuine issue of material fact regarding whether WSU's academic expectations and evaluation procedures depart from academic norms or are otherwise unreasonable, arbitrary or capricious.

In contrast, WSU's Graduate School Dean, Howard Grimes, testified that in his position as Dean of the Graduate School he is familiar with the policies and procedures of graduate schools at peer institutions around the country, today and at the time period relevant to Becker's claims. CP 766 ll. 21-23. Further, he conducted a preliminary review of graduate school policies and procedures at several peer universities, including Auburn, Colorado State, Cornell, Iowa State, Kansas State, Louisiana State, Ohio State, Oklahoma State, Purdue, Texas A & M, UC Davis, Florida, Georgia, Minnesota, Missouri and Tennessee. CP 766 l. 21 to 767 l. 2. "All of these institutions condition enrollment on a minimum grade-point average of 3.0 and "satisfactory academic progress" with graduate school requirements and specific degree Program requirements." CP 767 ll. 2-4. In his opinion these policies and procedures, and those at WSU, are "well within accepted academic practice for graduate schools in the United States today and during the

time period when Ms. Becker was a graduate student at WSU.” CP 767
II. 4-7.

The court should not interfere with a university’s professional judgment when it comes to genuinely academic decisions, such as dismissal for academic reasons, unless there is evidence of “such a substantial departure from accepted academic norms as to demonstrate” the absence of professional judgment. *Ewing*, 474 U.S. at 225. Becker’s evidence fails to demonstrate those WSU policies and procedures, or their application to Becker, represent a substantial departure from accepted academic norms.

2. WSU Provided Appropriate Mentoring

a. Mentoring Procedures Were Followed

Becker asserts that WSU’s GSC obliges WSU to provide mentors who assist with scholarly development through regular interactions, guidance, and advice necessary to help them complete their degree program. (Appellant’s Brief Corr. at 5) In her Program, mentors (or faculty advisors) are expected to chair their student’s doctoral committee, working with the committee to conduct the prelims, direct the dissertation and conduct a final examination on completion of the dissertation. CP 285. The doctoral committee “has the responsibility of directing the student’s progress, supervising the thesis and participating in the

preliminary and final examinations”. CP 285.⁶⁵

It is undisputed that WSU met its obligations to provide mentoring. When Becker was initially accepted into the Program she requested and was assigned to Professor Whitney. She was dissatisfied with the research opportunities he offered to her, but that is not evidence that WSU breached its mentoring obligations. Becker agrees that when she started working with Whitney she understood her research opportunities would be framed by the research interests of the faculty. CP 102. She admitted in her deposition that the Program did not promise her that she could develop her own independent area of research. CP 102.

When Becker decided that Fournier’s work on the multidisciplinary project with Beerman was more to her liking Whitney agreed that she could and should switch advisors. Becker made that choice (CP 86 ll. 1-18) and then, within the course of one semester (fall 2002), changed her mind and decided to work with Joireman. Program faculty did not object to her decision to switch from Whitney to Fournier or from Fournier to Joireman, although her annual review in the spring of her fourth semester (spring 2003) cautioned her that “it will be crucial that

⁶⁵ Students, on the other hand, are expected to collaborate with Program faculty, including their advisor, as they develop their research focus. CP 293. Indeed, WSU’s GSC obliges students to “communicate regularly with faculty advisors on matters related to progress within their graduate programs.” CP 560. It also obliges them to “assume the initiative” in selecting committee members for their dissertation (CP 560 no. 9) and to fulfill program requirements “in a timely manner”. CP 560 no. 8.

your working relationship with [Joireman] flourishes over the coming year. CP 354-356.⁶⁶

Becker argues that she was forced to walk away from her mentor-mentee relationship with Fournier when Fournier agreed that Beerman's student would take a lead role on research she was interested in doing. Yet, the undisputed *competent* evidence establishes that Fournier wanted to continue working with Becker, wanted Becker to continue as a paid research assistant on the project, and was willing to work with Becker on a spin-off project that could form the basis of a dissertation. CP 88 ll. 2-13, 91 ll. 5-10, 253-237, 504-513. Becker essentially walked away from that relationship because she wasn't going to get the "tangible benefits" she wanted, i.e. she wanted to be lead author on publications. CP 46 ll. 1-12.⁶⁷ That Becker concluded her working relationship with Fournier was not working to her satisfaction is not evidence that WSU failed to meet its mentoring obligations.

Becker argues that she should have received an accommodation on her deadline for taking her prelims because the switch from Fournier to

⁶⁶ This advice resulted from a concern about two consecutive advisor changes over a relatively short period of time. CP 354-356.

⁶⁷ Becker testified in her deposition that when she started the Program she wasn't in any rush to finish because she wanted to take advantage of any opportunities for publications. She felt she had done quite a number of poster presentations and "now was the time for working toward building [her] vitae with publications". CP 719 ll. 7-12.

Joireman involved switching specialty areas from “cognition” to “social psychology”. The Program provided that accommodation.

In this lawsuit Becker complains about Joireman, yet on March 5, 2004 (shortly after she refused to sign the contract) Becker nominated Joireman for the Adams Award for Excellence in Academic Education, stating in part:

. . . Dr. Joireman has proven to be highly effective in training his students in the methods of experimental psychology, and is the positive driving force behind his students’ many accomplishments. I believe Dr. Joireman embodies all of the characteristics one looks for in honoring a Psychology faculty member . . . His dedication to excellence in training, tireless work on behalf of his students, and his exemplary scholarship establish him as the perfect recipient for this award.

CP 209.

Becker switched to a fourth faculty advisor (Patterson) in early April. Patterson worked with her to develop a plan for completing her prelims by her new deadline (fall 2004) and a dissertation project. She elected not to follow through with the plan or meet her fall 2004 prelims deadline.

Given the foregoing facts Becker cannot establish a failure on the part of WSU to meet its mentoring obligations to graduate students.⁶⁸ The

⁶⁸ If anything, these facts demonstrate that Becker failed to meet her obligations under the GSC to communicate regularly with faculty advisors on matters related to her progress and to fulfill “in a timely manner” the requirements of her program. CP 560,

record does not generate any material factual issues regarding WSU's compliance with its obligations to provide Becker with appropriate mentoring. If anything, the record before the Court demonstrates that WSU bent over backwards to assist Becker who, in retrospect, squandered faculty time and Department (and taxpayer) resources.

3. Becker Could Not Reasonably Expect to Develop Her Own Independent Program of Research

Becker asserts that WSU was obliged to help her pursue her independent research interests and failed to do so. Becker's deposition testimony contradicts this assertion. She admitted that when she started the Program she understood that research opportunities in the Program would be framed by the research interests of its faculty. CP 102-104. She admitted that the Program does not guarantee students that they can develop their own independent area of research or develop a dissertation project in an independent area of their choosing. CP 102-104. Becker offers no competent evidence to establish that WSU or its agents made any representations from which a reasonable graduate student could conclude that they would be developing an independent research program of their own choosing and design.

nos. 4 and 8.

4. Becker’s Promissory Estoppel Claim Fails as a Matter Of Law Because She Cannot Establish Each of the Elements of a Prima Facie Case

Becker’s promissory estoppel claim fails because she lacks evidence of a promise that “manifests an intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.” *McCormick v. Lake Washington School Dist.*, 99 Wn. App. 107, 117, 992 P.2d 511 (1999). The promise must be made by someone who is authorized to fulfill the terms of the promise. *Id.* Becker’s promissory estoppel claim focuses primarily on her interactions with Fournier and their discussions about her role in the multi-disciplinary project. Yet, Fournier, who was not the lead faculty member on the project, lacked authority to make promises regarding authorship. CP 255. Moreover, taking the evidence in the light most favorable to Becker the most that Fournier promised was an *opportunity* for authorship on publications, assuming the work was done. CP 895-898.⁶⁹

Because Becker cannot establish each of the essential elements of a promissory estoppels claim, the trial court’s summary judgment dismissing this claim should be affirmed.

⁶⁹ See discussion of relevant facts in Section II B(4)(a-b) *supra*. at 12-18.

5. The Evidence Does Not Establish A Prima Facie Negligent Misrepresentation Case.

A prima facie case for negligent misrepresentation depends upon evidence of false representations, detrimental reliance and a causal relationship with the plaintiff's claimed damages. *Lawyers Title Ins. Corp. v. Baik*, 147 Wn.2d 536, 545, 55 P.3d 619 (2002).

One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies *false information* for the guidance of others *in their business transactions*, is subject to liability for *pecuniary loss caused to them by their justifiable reliance upon the information*, if he fails to exercise reasonable care or competence in obtaining or communicating the information. *Lawyers Title Ins. Corp. v. Baik*, 147 Wn.2d 536, 545, 55 P.3d 619 (2002) (quoting *Restatement (Second) of Torts* § 552(1) (1977)).

Becker's negligent misrepresentation claim fails as a matter of law because Fournier's statements were not made to provide guidance in a business transaction; they were made in an educational context. Further, there is no evidence that Fournier (or any of WSU's agents) made false representations. Becker provides no evidence to suggest that Fournier's offer of mentorship, a research assistantship, the opportunity for publications, and a segue to a dissertation topic was insincere at the time it was made. It is undisputed that Fournier advised Becker that Dr. Beerman's student would be joining the team and what the implications were as soon as she learned of this change. CP 253-257.

Given the undisputed evidence Becker's negligent misrepresentation claims fails as a matter of law and the trial court's summary judgment dismissing this claim should be affirmed.

IV. CONCLUSION

A careful review of the record before the Court demonstrates that Ms. Becker lacks competent evidence to establish the essential elements of her several claims against WSU and its agents. The trial court's summary judgment dismissing all claims was appropriate and should be affirmed.

RESPECTFULLY SUBMITTED this 9th day of December, 2010.

ROBERT M. MCKENNA
Attorney General



KATHRYN M. BATTUELLO
ASSISTANT ATTORNEY GENERAL
WSBA #13416
800 5TH AVENUE, SUITE 2100
SEATTLE, WA 98104-3188
206-464-7352

CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington that on the 9th of December, 2010, the original and one copy of the preceding Brief of Respondents was sent for filing by Federal Express Overnight Delivery to the following address:

Court of Appeals of Washington, Division III
500 N. Cedar Street
Spokane, WA 99201

And, that a copy of the Brief of Respondents was served on counsel for appellant, by legal messenger, at the following address:

Patricia S. Rose
157 Yesler Way, Suite 503
Seattle, WA 98104



VALERIE TUCKER—Legal Assistant

APPENDIX 1



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

Torts Division
800 Fifth Avenue Suite 2000 • Seattle WA 98104-3188

December 3, 2009

Sent via Federal Express and Legal Messenger

The Honorable Scott R. Sparks
Kittitas County Superior Court
205 West 5th Avenue, Ste. 210
Ellensburg, WA 98926

RE: *Becker v. Washington State University, et al.*
Kittitas County Superior Court No. 07-2-00125-8

Dear Judge Sparks:

With this letter I am submitting the time-line you requested at the close of the parties' November 20, 2009 oral argument on Defendants' Motion for Summary Judgment Dismissing All Claims. Per your ruling, the substantive time-line entries are supported by a reference to the Motion for Summary Judgment record.

The court has not ruled on Defendants' Motion to Strike, which encompasses documents that were filed on the eve of the hearing, in violation of the November 12, 2009 Stipulation and Order Extending the Hearing Date of Defendants' Motion for Summary Judgment. These documents include a Declaration from Laurel Siddoway and Exhibits. As discussed during oral argument, the exhibits to the Siddoway Declaration should be stricken as untimely and, moreover, are not admissible evidence. However, because the court has not ruled on the Motion to Strike, and in an effort to minimize prejudice to the defendants associated with the court's potential consideration of these documents, they are referenced in the time-line (designated with an **). We trust the Court will disregard these references to the extent the documents are stricken as untimely and/or inadmissible.

Date	Event	Citation to Record
11/20/00	Plaintiff applies to Ph.D. Program in Experimental Psychology. Requests to work with Paul Whitney, Department Chair.	Declaration Craig Parks ("Parks Decl."), Exhibit A
12/15/00	Plaintiff submits her request to WSU for financial aid through a graduate assistantship or fellowship.	Parks Decl. Exhibit A
04/02/01	Letter from WSU offering her admission to the Ph.D. Program and funding through a part-time graduate assistantship starting Fall semester, 2001.	Parks Decl. Exhibit B

COPY

ATTORNEY GENERAL OF WASHINGTON

Judge Scott R. Sparks
 December 3, 2009
 Page 2

08/27/01	Fall semester, 2001 begins (first semester). ¹ Plaintiff is assigned to Paul Whitney as her faculty advisor/mentor.	Parks Decl., Whitney Decl.
09/04/01	Plaintiff is advised that the Master's Thesis requirement for her Ph.D. is waived and she "may proceed to the preliminary exams."	Parks Decl., Exhibit C
01/14/02	Spring semester, 2002 starts (second semester).	
04/22/02	First annual student progress evaluation by Experimental Program faculty takes place. Written summary identifies faculty concerns about self-confidence and focus.	Parks Decl., Exhibit F
05/2/02	Plaintiff asks Professor Whitney for permission to start working with Lisa Fournier and he agrees.	Becker Deposition Testimony at 52:25-53:15 (Ex. B, Declaration of Kathryn Battuello in Support of Defendants' Motion for Summary Judgment); 59:1-13 (Ex. A, Declaration of Kathryn Battuello in Support of Defendants' Motion to Strike); Declaration of Paul Whitney ("Whitney Decl."); Declaration of Lisa Fournier ("Fournier Decl.")
05/10/02	Spring semester, 2002 ends	
08/26/02	Fall semester, 2002 starts (third semester).	
11/?/02	Plaintiff decides to switch faculty advisors, moving from Professor Whitney to Professor Fournier.	Amended Declaration of Cheryl Becker ¶s 9-11

¹ The specific start and end dates for each semester are not consistently presented in the summary judgment record before the court. I took the liberty of including them to assist the Court and the parties with the time-line. They are accessible to the public at <http://www.catalogs.wsu.edu>. These specific dates are not intended as substantive evidence and should not be considered by the Court in reaching its determination on Defendants' Motion for Summary Judgment.

ATTORNEY GENERAL OF WASHINGTON

Judge Scott R. Sparks
 December 3, 2009
 Page 3

12/7/02	Plaintiff decides to stop working with Professor Fournier and switch to her third faculty advisor, Jeff Joireman.	Becker Deposition pp 64-70 (Ex. B, Declaration of Kathryn Battuello in Support of Defendants' Motion for Summary Judgment); Amended Declaration of Cheryl Becker ¶s 18 and 19.
12/17/02	Plaintiff files her Program for Doctoral Degree with the Graduate School designating Professor Joireman as the Chair of her Doctoral Committee.	Whitney Decl., Ex. B.
12/20/02	End of fall semester, 2002	
01/13/03	Spring semester, 2003 begins (fourth semester).	
04/28/03	Second annual student evaluation by Experimental Program faculty occurs. Written summary comments on initiating preparation for prelims. Concern expressed about having three different advisors in two years and the need to develop a good working relationship with Professor Joireman.	Parks Decl., Ex. G
05/09/03	Spring semester 2002 ends	
08/25/03	Fall semester 2003 begins (fifth semester) Per Program Requirements this is the deadline for completing prelims.	Parks Declaration Ex. D, pp 6-7.
11/19/03	Plaintiff advises Professor Joireman and the rest of her committee that she needs more time to prepare for her prelims and proposes an extension to February, 2004.	Declaration of Jeff Joireman (Joireman Declaration) Ex. E (November 19 emails from Becker to Joireman and Dec. 3 email from Joireman to committee members)
12/19/03	Fall semester 2003 ends.	
01/12/04	Spring semester 2004 begins (sixth semester)	
02/12/04	Plaintiff requests an additional extension of time to complete her prelims, to the start of the fall semester of 2004.	Parks Decl. Ex. K; Joireman Decl.

0-000001045

ATTORNEY GENERAL OF WASHINGTON

Judge Scott R. Sparks
 December 3, 2009
 Page 4

02/24/04	Plaintiff meets with Professors Whitney, Parks and Joireman to discuss her progress. She is encouraged not to work more than 20 hours a week on any assistantship assignments. Plaintiff asks if she is being treated differently because of her age.	Parks Decl. Ex. L.; Amended Declaration of Cheryl Becker ¶s 35-37.
02/25/04	Professor Joireman proposes a student-advisor contract to assist Plaintiff with staying on track with her prelim preparation. He also proposes a schedule that limits her TA time to 4 hours a day, 5 days a week and reserves all other time for prelim preparation. Plaintiff refuses to agree to the contract or the schedule.	Joireman Declaration Ex. H and Ex. I; Amended Declaration of Cheryl Becker ¶s 36-38.
02/26/04	Professor Joireman encourages Plaintiff to organize a meeting with her prelim committee to discuss preparations. Follow-up confirms that the committee is ready to schedule the exams at the start of fall semester, 2004.	Joireman Declaration Ex. J
04/01/04	Plaintiff advises Professor Joireman that she is switching advisors and will be working with Professor Patterson.	Joireman Declaration Ex. L
04/19/04	Third annual student evaluation by Experimental Program Faculty occurs. Written summary emphasizes concern about lack of progress and sets an October 29, 2004 deadline for completion of prelim ballot meeting.	Parks Decl. Ex. H
04/22/04	Plaintiff advises Professor Parks that she and Professor Patterson finished outlining the format for her prelim paper, calling it "an excellent project".	Parks Decl. Ex. N; Patterson Deposition pp 57-65 (Ex. D, Declaration of Kathryn Battuello in Support of Defendants' Motion for Summary Judgment).
05/04/04	Email from Professor Patterson to Professor Parks reporting that Plaintiff refused to read her annual evaluation, so he told her what it said and emphasized the prelim deadline.	Parks Decl. Ex. M.¶
05/07/04	Spring semester 2004 ends.	
07/12/04	Plaintiff submits a formal complaint to Howard Grimes, Dean of the Graduate School. She complains of age discrimination and retaliation and asks the Graduate School for "support and assistance".	Declaration of Howard Grimes ("Grimes Decl") Ex. A.

ATTORNEY GENERAL OF WASHINGTON

Judge Scott R. Sparks
 December 3, 2009
 Page 5

07/22/04	Letter from Laurel Siddoway to Erich Lear, Interim Dean for WSU College of Liberal Arts initiating a FERPA ² request for Plaintiff's "education records".	** Ex. I, Declaration of Laurel Siddoway (not attached to Siddoway Declaration)
08/04/04	Graduate School Associate Dean Kristen Johnsen follows-up with Plaintiff regarding her formal complaint, advising her that she needs to complete a formal complaint form for the Center for Human Rights and asking her to outline how the Graduate School can provide support and assistance. Plaintiff does not respond.	Grimes Decl., Ex. B.
08/23/04	Fall semester 2004 begins (seventh semester)	
08/25/04	Memo from Craig Parks to Plaintiff regarding prelim scheduling deadlines. Plaintiff does not respond.	Parks Decl. Ex. O.
09/01/04	Graduate School Dean Howard Grimes writes to Plaintiff directly inviting her to follow up on her July 12, 2004 formal complaint. Plaintiff does not respond.	Grimes Decl., Ex. C
09/7/04	Plaintiff refuses to discuss prelim preparation with her advisor, Professor Patterson, because she has an attorney.	Amended Decl. Cheryl Becker ¶ 48.
09/10/04	Memo from Craig Parks to Plaintiff regarding prelim scheduling deadlines. Plaintiff does not respond.	Parks Decl. Ex. P
10/12/04	Memo from Craig Parks advising Plaintiff that her graduate assistantship appointment and funding will end effective December 18 because she failed to sit for her prelims in time to meet the October 30 ballot meeting deadline.	Parks Decl. Ex. Q
12/17/04	Fall Semester 2004 ends	
01/04/05	Memo from Paul Whitney to Howard Grimes recommending that Plaintiff be disenrolled from the Graduate School because she has failed to make satisfactory progress toward her degree.	Whitney Decl., Ex. E.
01/07/05	Letter from Howard Grimes to Plaintiff putting her on notice regarding the Experimental Program faculty's recommendation that she be disenrolled and inviting her to meet with him to discuss this.	Grimes' Decl., Ex. E

² Federal Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99.

ATTORNEY GENERAL OF WASHINGTON

Judge Scott R. Sparks
 December 3, 2009
 Page 6

01/10/05 01/10/05 cont.	Spring Semester 2005 begins (eighth semester) Memo from Paul Whitney to Plaintiff advising her that her TA assignment remains active and assigning her to work with Robert Patterson. Plaintiff is registered for 16 credits of Psych 800	Whitney Decl. Ex. F Parks Decl.
01/13/05	Letter from Siddoway to Howard Grimes	** Siddoway Declaration Ex. 2.
01/14/05	Plaintiff meets with Howard Grimes.	Amended Decl. Cheryl Becker ¶14.
02/03/05	Siddoway confirms for Plaintiff the details of Grimes' proposal for her continued enrollment.	**Siddoway Declaration Ex. 3 and Ex. 4
02/?/05	Plaintiff abandons her studies when she leaves WSU and returns to her home in Ellensburg.	Becker Deposition pp 136-137 (Ex. B, Declaration of Kathryn Battuello in Support of Defendants' Motion for Summary Judgment)
04/14/05	Craig Parks writes to Plaintiff asking for input for her annual student evaluation. Plaintiff fails to respond.	Parks' Decl.
04/25/05	Fourth annual student evaluation by Experimental Program faculty takes place. Written summary notes that the faculty decided to assign an "F" for her Psych 800 credits because she ignored program deadlines, failed to communicate with her faculty advisor and made no discernable academic progress during the semester. (Report is dated May 17, 2005)	Parks Decl., Ex. 1
04/29/005	Plaintiff files a complaint with the EEOC	Ex. 6, Supplemental Declaration of Cheryl Becker in Support of Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment.
05/09/05	Attorney General's Office receives notice of Plaintiff's EEOC Complaint	Ex. 7, Supplemental Declaration of Cheryl Becker in Support of Plaintiff's Memorandum in Opposition to Defendants' Motion for

ATTORNEY GENERAL OF WASHINGTON

Judge Scott R. Sparks
 December 3, 2009
 Page 7

		Summary Judgment (Glover letter to EEOC dated May 10, 2005)
05/12/05	Letter from Graduate School to Plaintiff advising her that she is being disenrolled because her GPA has fallen below the mandatory minimum and inviting her to petition for reinstatement per Graduate School Policies. Plaintiff fails to request reinstatement.	Grimes Decl. Ex. G
05/16/05	Graduate School receives notice of EEOC Complaint	Grimes Decl.
03/01/07	Plaintiff files this lawsuit.	Court file.

In addition, for the Court's easy reference I enclose a copy of *Domingo v. Boeing Credit Union*, 124 Wn. App. 71 (2004). We referred to this case during oral argument regarding plaintiff's age discrimination and retaliation claims. Also enclosed are copies of the U.S. Supreme Court cases that were referenced by the parties when discussing the plaintiff's burden of proof in civil rights litigation arising out of an academic dismissal. These cases are: *Board of Curators of University of Missouri v. Horowitz*, 435 U.S. 78 (1978) and *Regents of the University of Michigan v. Ewing*, 474 U.S. 214 (1985). Finally, copies of the two breach of contract cases referenced by both parties in their briefing are enclosed (*Maas v. Gonzaga Univ.*, 27 Wn. App. 397, 618 P.2d 106 (1980); *Marquez v. Univ. of Washington*, 32 Wn. App. 302, 648 P.2d 94 (1982)).

We appreciate your careful attention to the detailed record for this particular summary judgment motion.

Sincerely,


 KATHRYN M. BATTUELLO
 Assistant Attorney General
 206.464-7352

Enclosures
 cc w/enc: Robert Boggs
 Patricia Rose

0-000001049

APPENDIX 2

To: Cheryl Becker

From: Craig Parks, Director of Experimental Training

Date: April 24, 2002

Re: 2001-02 EAC Student Evaluation

Advisor: Paul Whitney

The experimental faculty met on 22 April 2002 to discuss the progress of graduate students during the past year. I briefly summarize below the conclusions reached during the faculty discussion of your progress.

You seem to have adjusted well to the department, but there are worries about your self-confidence and seeming concern about the perceptions of others. We encourage you to focus more on your abilities and less on your shortcomings, and especially to be less worried about whether someone will have taken offense with something you've done or said. We see you as a talented student, and would like you to have as much confidence in yourself as we have in you.

A copy of this evaluation has been given to your advisor. You should discuss its content with him/her. You are also welcome to talk with me about any questions or concerns you have.

Please sign and return one copy of this evaluation for your student file. Your signature indicates only that you have read the evaluation report, not that you agree with it. Keep the other copy, along with the specific faculty comments, for your records.

Signature _____

004445

22

00-000000352

Cheryl Becker-Parks

Academic Progress

Cheryl has performed acceptably in 512, likely ending up with a B or B+ in the course. She is quiet in class but does not hesitate to seek help during office hours. She seems to be quite concerned with the many qualifications and exceptions associated with things, and because of this is often unwilling to just simply take a position, and that has hurt her a bit in my class. Also, her self-confidence is somewhat low and I encourage her to focus more on her accomplishments and abilities rather than her shortcomings.

Fournier: Student Evaluations 2002:

Cheryl Becker (592 student): academic progress

Cheryl is doing very well in the course. She did well on her article presentations given the difficulty level of the information (the authors were not always very explicit). She is also doing well on the exams and her performance indicates that she can understand, integrate and critically evaluate information that we have discussed in class. My only recommendation is to encourage Cheryl to share more of her ideas with the class.

Cheryl Becker (Patterson)

Cheryl is my T.A. for this Spring semester. She is performing at a high level and it is a pleasure working with her. She completes her TA assignments correctly and on time. Moreover, she is putting in a lot of time helping set up my lab for a research project on visual attention and motion processing (also involving Lisa F.).

Cheryl Becker (Whitney)

Cheryl is a very conscientious student in both her class work and in her research. In fact, she tries to be so conscientious that she sometimes "second guesses" herself too much. Nevertheless, she is making good progress. Her performance in Psych 511 was solid. She is coordinating our research protocol involving older adults and I anticipate increasing her responsibilities in the coming semesters.

004446

23

00-000000353

APPENDIX 3

WASHINGTON STATE UNIVERSITY **MASTER**

ID # 10535149

The Graduate School

DATE 12-17-02

PROGRAM FOR DOCTORAL DEGREE

NAME Cheryl S. Becker

LOCAL ADDRESS 980 ALE. Providence Court, #301 Pullman, WA TELEPHONE 509-338-9379

By-Passing Master's Degree? Yes

No
Earned at another institution and accepted by the WSA Psychology department

DEGREE SOUGHT:

Ph.D.

Major Psychology

Ed.D.

D.A.

Minor _____

Dissertation Subject Social Cognition

Doctoral Committee Recommended: (If a minor is chosen, the minor field must be represented on the Committee)

Print/Type name	Signature
<u>Jeff Isaacson</u>	<u>[Signature]</u>
<u>Paul Whitney</u>	<u>[Signature]</u>
<u>Craig Parks</u>	<u>[Signature]</u>
<u>Tahira Probst</u>	<u>Tahira Probst</u>

Unless notified otherwise by the Graduate School, the above faculty members will be appointed to the doctoral committee.

Program Recommended: Chair, Major Department Paul Whitney Date 12/17/02

Program Recommended: Chair, Minor Department(s) _____ Date _____

Program Approved: Dean, Graduate School H.D. Gilman, I, Sr. Date 2/7/03

Summary of Previous Education

College/University Attended	Period	Degrees and Dates Awarded
University of Wisconsin - Stout	5/96 - 5/98	MS Applied Psychology 5/98
University of Wisconsin - Eau Claire	8/85 - 8/87	BA Psychology 8/87
University of Wisconsin System Campus (Post-1980)		RECEIVED

(OFFICE USE ONLY)

DEC 13 2002

Preliminary Examination Passed _____

THE GRADUATE SCHOOL

Program subject to completion by end of _____

607

11900002

00-000000244

APPENDIX 4

To: Cheryl Becker

From: Craig Parks, Director of Experimental Training

Date: May 5, 2003

Re: 2002-03 EAC Student Evaluation

Advisor: Jeff Joireman

The experimental faculty met on 28 April 2003 to discuss the progress of graduate students during the past year. I briefly summarize below the conclusions reached during the faculty discussion of your progress.

The faculty are pleased that you have connected with Jeff, and that you have initiated preparation for your prelims. There exists some concern about your emotional involvement in events. Specifically, some faculty feel that you have difficulty moving past negative experiences, and some feel that you demonstrate a sense of competition with other graduate students. It is very important that you work on not internalizing disappointing experiences. Some faculty also expressed concern that you are now on your third advisor in two years. It is not uncommon for graduate students to change advisors, but some faculty interpret so many changes in such a short period of time as evidence that the student and program are a mis-fit. To combat those perceptions it will be crucial that your working relationship with Jeff flourishes over the coming year.

A copy of this evaluation has been given to your advisor. You should discuss its content with him/her. You are also welcome to talk with me about any questions or concerns you have.

Please sign and return one copy of this evaluation for your student file. Your signature indicates only that you have read the evaluation report, not that you agree with it. Keep the other copy, along with the specific faculty comments, for your records.

Signature _____

004447

24

00-000000355

To: Craig Parks, Director of Experimental Program
From: Jeff Joireman
Date: April 17, 2003
Re: Cheryl Becker's End of the Year Evaluation

Academic Progress

Cheryl has been in my Groups and Interpersonal Relations class and in my Attitudes and Social Cognition class. She has been a model student in both. She is always extremely well prepared for class, and offers good insights in class. She received an 'A' in 551, and has an 'A-' in 550 at this point. Cheryl is an excellent student.

C. Becker

Bob

Cheryl has served as my TA and has also worked with me in my lab helping conducting research on motion perception and visual attention. With respect to her TA duties, Cheryl performance has been very good—she is always cheerful and willing to take on various duties as the need arises, including grading exams and running the stat labs. With respect to research, Cheryl performance is also very good—she has helped on a very important project and I fully expect the data to eventually be published with her as co-author. My only advice for her is to try to respond to situations with more even-level emotions, part of which comes from her desire to perform her duties well.

004448

25

00-000000356

APPENDIX 5

TO: Associate Dean of the Graduate School

RE: Change of Committee

NAME OF STUDENT: Cheyl Parker
FOR THE DEGREE Ph.D. DEPARTMENT/PROGRAM Psychology / Experimental

NEW COMMITTEE

OLD COMMITTEE

Jeff Isaacman
Tahica Probst (VA)
Tom Brigham
Paul Stouard (TC)

Jeff Isaacman
Tahica Probst
Paul Whiting
Craig Parks

The undersigned accept the responsibility of acting as this student's committee.

(SIGNATURES OF NEW COMMITTEE)

Jeff Isaacman
Tahica Probst
Tom Brigham
Paul Stouard

The reason(s) for the requested committee change is:

The new committee better reflects my research interests.

The above change of committee is recommended by:

Paul Whiting
Chair, Major Department or Program
Paul Whiting
Chair, Minor Department or Program

*AD member
10/3/03*

PSYCH DEPARTMENT ID: 509-335-5043 SEP 02 03 8:54 AM '04 P.02

80100294

00-000000246

APPENDIX 6

**Student-Advisor Contract Between
Cheryl Becker and Jeff Joireman
February 25, 2004**

This contract was prepared at the request of Paul Whitney, Chair of Psychology at WSU, following the mediated meeting with Paul Whitney, Craig Parks, Jeff Joireman, and Cheryl Becker which took place in Paul's office on February 24, 2004. The goal of this contract is to clearly describe what Jeff Joireman (Cheryl's advisor and TA supervisor) expects from Cheryl Becker (graduate student, Jeff's TA) over the remaining days of the spring 2004 semester. This contract also constitutes an agreement on the part of Jeff Joireman to abide by its guidelines.

This agreement is being written in an effort to improve the working relationship between Jeff Joireman and Cheryl Becker, and help Cheryl move ahead in timely manner in meeting the expectations and requirements for graduate students in the experimental program in pursuit of their Ph.D.

If, in Jeff Joireman's view, Cheryl should fail to meet the criteria contained in this contract, Jeff will advise the experimental faculty at the end of the spring semester 2004, during its annual review of graduate students, that Cheryl is not, in his judgment, making acceptable progress in the program (i.e., is not in "good standing"), and Jeff will recommend that the faculty consider asking her to leave the program. Ultimately, the decision regarding whether to retain or dismiss Cheryl will rest with the entire experimental faculty, and Jeff will abide by its decision. If Cheryl does not meet these expectations, but it is the judgment of the faculty that she should be allowed to continue in the program, Jeff Joireman will respectfully step down as Cheryl's advisor.

It is Jeff Joireman's belief that many of the problems that have necessitated this contract have arisen as a result of the fact that Cheryl is both under Jeff's tutelage (i.e., Jeff is Cheryl's advisor) and Cheryl is serving as Jeff's graduate assistant. This has, unfortunately, blurred the boundaries between assistantship and research, and has made it difficult to clearly evaluate each area. As a result, if Cheryl continues in the program, Jeff will recommend that Cheryl not be assigned as his assistant in the future (beginning fall of 2004). Ultimately, that decision will be determined by Paul Whitney, as chair of the department, and Jeff will abide by Paul's decision.

As her advisor, it is my belief that Cheryl must balance three things: work toward her prelim exams, her 20-hour per week assistantship duties, and involvement in research. Expectations for each category are outlined below.

Prelim Expectations

Preferably, I would like Cheryl to take her prelims by the end of the spring semester 2004 (exact date here), as this would clearly allow her prelim committee to advise the experimental faculty that she is making good progress toward basic program requirements. However, if, in the judgment of Cheryl's prelim committee (Jeff Joireman-Chair along with Tom Brigham, Tahira Probst, and Paul Strand), Cheryl is making good progress toward finishing her prelims, Cheryl will be allowed to take the summer of 2004 to continue preparing.

At the very latest, Cheryl will complete her prelims by the end of the second week of classes during the fall semester 2004 (date). If the members of Cheryl's prelim committee agree that Cheryl is making good progress, and Cheryl prefers to take her prelim exams at this time, she will schedule a specific date for completion of her prelims scheduled before the end of the spring semester 2004.

As the chair of Cheryl's prelim committee, I will convene a meeting of her prelim committee as soon as possible following the date this contract is signed. I will ask the committee how Cheryl is progressing in each area, and whether they have any overall recommendations. I will relay these recommendations to Cheryl. Ultimately, however, it will be Cheryl's responsibility to ensure that she clearly understands what each of her four committee members expects on each of their respective exams.

BECKER
INV - 01120007

Page 1 of ___

00-000000194

Assistantship Duties

It is the policy of the university/department that students given graduate assistantships will be required to complete 20 hours of service per week during the course of the academic year. The duties the student is required to perform are determined at the discretion of the faculty member with which they are completing their assistantship.

Cheryl Becker is currently assigned as Jeff Joireman's graduate assistant. She is thus expected to provide 20 hours per week of professional service for him. In an effort to help Cheryl, earlier this semester, I provided Cheryl with several options for fulfilling her assistantship duties (literature review, help with organizing literature using Endnote software, and coordinating a lab study on aggression). Cheryl chose to coordinate a lab study on aggression. For several reasons, I expect Cheryl to continue coordinating the aggression study. However, I reserve the right to ask Cheryl to perform additional assistantship duties as the need arises. These activities may include, but are not limited to, such things as grading papers, assisting with preparation of material for classes, preparing photocopies for teaching or research, and working on literature reviews on topics not limited to aggression. In other words, this contract clearly states that final decision regarding what to ask of Cheryl in her role as a graduate assistant rests with the faculty member, Jeff Joireman.

Cheryl will carefully track the time she spends on her assistantship duties, and if, in the context of a given week (running Sunday through Saturday), Cheryl reaches her 20-hour requirement, and additional duties remain, it will be Jeff Joireman's responsibility to find a way to accomplish those tasks.

Given that Cheryl is interested in aggression, and would in my view benefit by moving the aggression study ahead, I may very well ask her continue her work on that project, even after she has fulfilled her official 20 hour commitment as a graduate assistant. However, Cheryl is under no obligation to say yes, and Cheryl's decision will be respected. Her decision regarding whether or not to continue working on the aggression study will not, in isolation, affect Jeff's judgment of whether or not she is satisfactorily completing the terms described in the following section, "Research".

Research

This is the most difficult category to judge, for several reasons. To begin, Cheryl has not yet identified a clear research trajectory. In addition, as outlined earlier, Cheryl is Jeff's assistant, which has blurred the boundary between assistantship duties and independent research. In any case, it is my expectation as her advisor that Cheryl should, through involvement in her prelims, and additional study, identify a specific area of interest that she will pursue for her dissertation (e.g., aggression, self-regulation, social value orientation, decision-making in social dilemmas, prosocial behavior etc.) by the end of the spring 2004.

I also expect Cheryl to continue working on research, beyond what she may be requested to do within the bounds of her assistantship. I will likely encourage her to continue our work on aggression, since she already has momentum in this area, but as noted above, I will not require that her research be in the area of aggression (what I would like her to continue doing for her assistantship, as noted above). It is possible that Cheryl would prefer to collect data on an independent project (i.e., other than the aggression study, if she chooses not to be involved in the aggression study over and above her assistantship duties). We have a number of projects that would be easy to implement (e.g., in large group settings) and which Cheryl has expressed interest in (e.g., studies on self-regulation). I believe these would be a good avenue for fulfilling the expectations in this section. It is hard to say how much time she should devote in this category each week, but some progress must be evident.

BECKER
INV - 01120008

Page 2 of ____

00-000000195

Dear Paul,

As per your request, Cheryl and I have developed an agreement in an effort to improve our working relationship, and help Cheryl move ahead in timely manner in meeting the expectations and requirements for graduate students in the experimental program in pursuit of their Ph.D.

As her advisor, it is my belief that Cheryl must balance three things: work toward her prelim exams, her 20-hour per week assistantship duties, and involvement in research. Recently, Cheryl and I sat down and worked out a weekly schedule that we believe will help her make progress toward these goals.

Prelim Expectations

Preferably, I would like Cheryl to take her prelims by the end of the spring semester 2004, as this would clearly allow her prelim committee to advise the experimental faculty that she is making good progress toward basic program requirements. However, if, in the judgment of Cheryl's prelim committee (Jeff Joireman-Chair along with Tom Brigham, Tahira Probst, and Paul Strand), Cheryl is making good progress toward finishing her prelims, Cheryl could take the summer of 2004 to continue preparing.

At the very latest, Cheryl should complete her prelims by the end of the second week of classes during the fall semester 2004. If the members of Cheryl's prelim committee agree that Cheryl is making good progress, and Cheryl prefers to take her prelim exams at this time, she will schedule a specific date for completion of her prelims scheduled before the end of the spring semester 2004.

Assistantship Duties

Cheryl and I have together developed the attached schedule specifying expectations for her role as an assistant, including a combination of research on aggression, and help organizing literatures.

Research

Cheryl and I have also agreed that she should spend some time each week on research outside of her hours as an assistant. We have agreed that she can spend 4.5 hours/week writing up a joint research project on aggression. We believe a reasonable expectation is that, over the remaining weeks of the semester, Cheryl will be able to put together an initial draft of the introduction, method section, and results section for the paper.

Signed

Dr. Paul Whitney, Chair of Psychology

Date

Dr. Craig Parks, Director of Experimental Studies

Date

Dr. Jeff Joireman

Date

Cheryl Becker

Date

BECKER
INV - 01120011

00-000000199

Schedule for Cheryl Becker ~ Begins March 8th
March 1 – March 5, training, etc.
Agreed Upon by Cheryl and Jeff

	Read Sordy	Ed. of Becker	Ed. of Sordy		Stim. Research and Copy		
	MES, etc. RA Final	Stim. Copy	Ed. of Becker		Coordination with REAS for Agg. for Stim. Final, etc.		
	Microvel. Studies Edward Goss	Alternate with Becker	Ed. of Becker and Goss				
	FlexTime	FlexTime	FlexTime	FlexTime	FlexTime		
	Prelims	Prelims	Prelims	Prelims	Prelims		

Summary of Weekly Hours:

- RA Hours: 18 hrs per week
- Prelims: 25 hrs per week
- Research: 4.5 hrs per week via work on CFC/Agg paper and upcoming conferences

Goals for Prelims

As of February 27, 2004, Cheryl has...

- Finished Tahira's Reading List (1 week review)
- Finished Paul's Reading List (1 week review)
- Has 2 books to go for Tom (1 week to finish, 1 week review)
- Has - 27 articles to go for Jeff (2 weeks to finish, 3 articles/day, 15 articles a week, 1 week review)

Total Time Required to Finish: (7 weeks; March 1 – April 16th)

Target Date for Prelims: April 19th – April 30th

BECKER
 INV - 01120010

APPENDIX 7

TO: Associate Dean of the Graduate School

RE: Change of Committee

NAME OF STUDENT: Cheryl Becker

FOR THE DEGREE Ph.D. DEPARTMENT/PROGRAM Psychology/Experimental

NEW COMMITTEE

OLD COMMITTEE

Robert Patterson ✓
 (Chair)
 Connie Parks ✓
 Tom Brigham ✓
 Paul Strand ✓

Jett Jaiseman
 (Chair) P
 Tabira Probst
 Tom Brigham
 Paul Strand

The undersigned accept the responsibility of acting as this student's committee.

(SIGNATURES OF NEW COMMITTEE)

OK
H. [unclear]
4-30-04

[Handwritten signature]
 [Handwritten signature]
 [Handwritten signature]

The reason(s) for the requested committee change is:

The change is due to my decision on the direction my dissertation will take; Dr. Patterson and Dr. Parks can provide me with valuable theoretical background.

The above change of committee is recommended by:

[Handwritten signature]
 Chair, Major Department of Program

CHALE, KINOK Department of Program

8/84

80100211

00-000000248

APPENDIX 8

To: Cheryl Becker

From: Craig Parks, Director of Experimental Training

Date: April 23, 2004

Re: 2003-04 EAC Student Evaluation

Advisor: Bob Patterson

The experimental faculty met on 19 April 2004 to discuss the progress of graduate students during the past year. I briefly summarize below the conclusions reached during the faculty discussion of your progress.

Cheryl, the faculty are very concerned about your progress and lack thereof. In fact, the majority opinion among the faculty was to terminate your assistantship. Bob and I talked at length about the plan we have developed for your doctoral studies, and for the most part the faculty were willing to go along with the plan, but they do so only under the condition that a specific target date be set for completion of your prelim-ballot meeting. After much discussion the faculty agreed that the meeting should occur no later than 29 October 2004, which is the last Friday in October. As you may allocate as much as 30 days to the writing of your exams, and you need to allow two weeks between completion of the exams and the ballot meeting, you should plan on scheduling your first exam for some time the week of 13 September 2004. This ballot meeting deadline is not negotiable, and if it is not met, the Experimental faculty will terminate your appointment effective 18 December 2004 (i.e., the day after finals week).

The faculty raised many issues with regard to your progress. Chief among them is the fact that you are now on your fourth advisor. The faculty feel that you are unwilling to accept that your inability to form a meaningful relationship with an advisor is due in large part to your work habits and interpersonal style. One faculty member (not Jeff) reported that you were outright hostile to him/her during a recent interaction. Another happened to overhear you interacting with a faculty member and said that he/she would have thrown you out of the office if you had spoken to him/her with the tone of voice you were using. Additionally, some noted that, despite our feedback in last year's annual review letter cautioning you against internalizing negative experiences, you continue to do so, to the point where it takes up most of the time in your work day. As such, the faculty indicate that you must change your style of interaction with faculty so that it is respectful at all times, and you must concentrate solely on your work and block out negative events, if you are to successfully complete your prelims and dissertation.

It is important that you understand that no faculty member is going to be obstructionist. But there is so much skepticism at this point about the likelihood that you can complete the program that faculty are seriously questioning whether any more resources should be

004449

26

00-000000358

invested. As I have indicated, after much persuasion Bob and I have convinced most people that it is worth one more try. But you must realize that the ball is now in your court, and it is up to you to demonstrate that you can maintain a fruitful relationship with an advisor, you can absorb and move past whatever negative events may occur, and you can be productive.

A copy of this evaluation has been given to your advisor. You should discuss its content with him/her. You are also welcome to talk with me about any questions or concerns you have.

Please sign and return one copy of this evaluation for your student file. Your signature indicates only that you have read the evaluation report, not that you agree with it. Keep the other copy, along with the specific faculty comments, for your records.

Signature _____

004450

00-000000359

Cheryl Becker: (PATTERSON)

2003-04

Although I have been the Chair of Cheryl's dissertation committee for only a week now, we have had several productive meetings concerning the focus of her prelims and dissertation. I look forward to working with Cheryl in the future.

Cheryl Becker-Parks

Cheryl will embark on preim and doctoral study with Bob beginning in the Fall. She plans on integrating theory on the motion perception principle of hysteresis with the social psychological work on cooperative behavior. Basically, hysteresis is a memory phenomenon that is manifested as the result of cooperation-like processes within a neural network. Cheryl would like to know if these neural network models can also serve as a framework for understanding human cooperation. This is a promising line of inquiry that, if it bears fruit, would represent a novel contribution to the literature on cooperative behavior. Cheryl seems excited about this direction, and the general idea is one that Bob and I have discussed for quite some time, so she should be able to pull this off without too much trouble.

Cheryl Becker (PATTERSON)

004451

For her assistantship, Cheryl graded brief essays in my social psychology course, ran exams through scanning system, and conducted a lab study on aggression. Cheryl did a good job in these areas. In addition, Cheryl will be presenting the aggression study at a national conference this May, and she is

27

00-000000360

APPENDIX 9

To: Cheryl Becker

From: Paul Whitney, Chair, Department of Psychology
Craig Parks, Director of Experimental Training

Date: May 17, 2005

Re: 2004-2005 RAC Student Evaluations

The experimental faculty met on April 25, 2005 to discuss the progress of graduate students during the past year. I briefly summarize below the conclusions reached during the faculty discussion of your progress. As you did not respond to our request for names of faculty who could provide feedback, no written feedback was solicited.

During the past year you ignored program-imposed deadlines. You have made no discernible progress in the past year on completing the preliminary examinations. You did not consult with your advisor, Dr. Robert Patterson, on issues related to your program of study, preliminary examinations, or research plans.

Given your total lack of progress, a grade of 'F' was assigned for the Psych 800 credits in which you were enrolled. According to the Graduate School, your GPA is now deficient. You should have received a letter from them informing you of this deficiency and what the process is to apply for reinstatement. You should also be aware that if you are reinstated, the department does not have TA funds available to offer you.

A copy of this letter has been given to your advisor. You can discuss the content with him or with either of us. Please sign and return one copy of this evaluation for your student file. Your signature indicates only that you have read the evaluation, not that you agree with it. Keep the other copy for your records.

Signature _____

004452

25