

HOSTED BY SOUTHWESTERN ADVENTIST UNIVERSITY



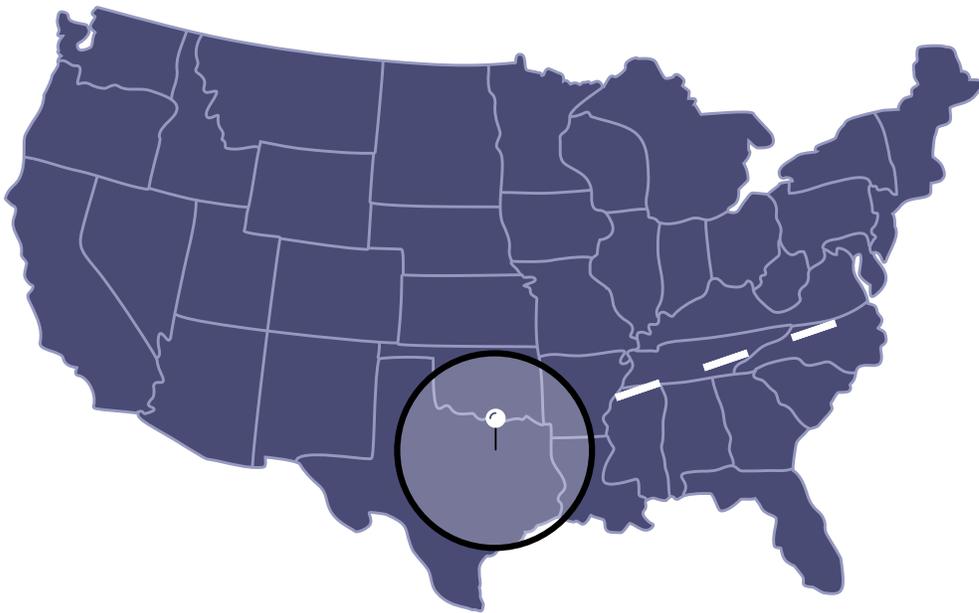
TITLE IX INVESTIGATOR REGIONAL TRAINING EVENT GUIDE

AUGUST 2, 2023



WELCOME!

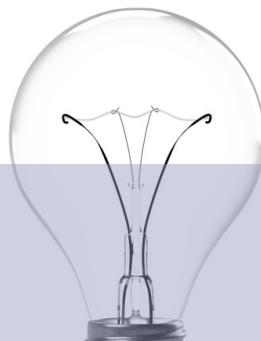
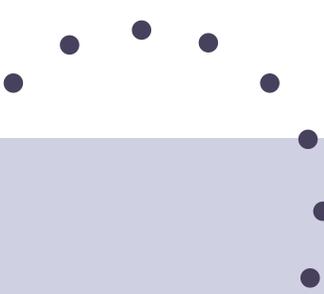
We are excited to have you join us today for our Title IX Investigator training! Please refer to this training guide for the full schedule, session descriptions, instructor bios, and training materials.

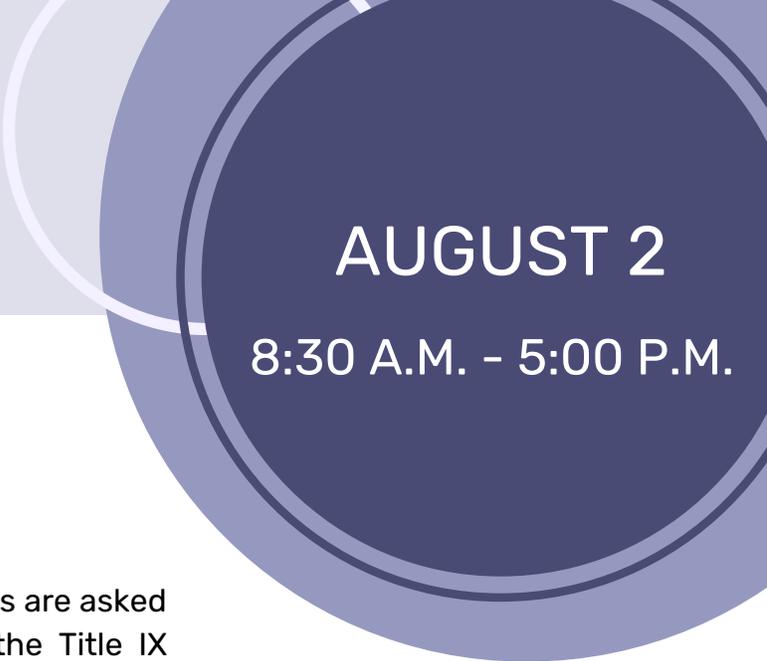


**Southwestern
Adventist University**

REGIONAL INVESTIGATOR TRAINING

**AUGUST 2, 2023
8:30 A.M. - 5:00 P.M. CST**





AUGUST 2
8:30 A.M. - 5:00 P.M.

8:30 a.m. - 8:45 a.m. | Welcome

In addition to speaker introductions, participants are asked to share their biggest challenges related to the Title IX grievance process, areas in which they feel most confident while conducting investigations, and their overall goals for the program.

8:45 a.m. - 10:00 a.m. | Understanding Title IX Policies and Procedures as an Investigator

In this introductory session, TIXS instructors outline the stages of the Title IX grievance process and define relevant terms. Instructors also establish investigators' obligations under Title IX while incorporating lessons learned from and best practices in the field.

10:00 a.m. - 10:15 a.m. | Break

10:15 a.m. - 11:30 a.m. | Planning a Prompt, Thorough and Impartial Investigation

TIXS instructors describe steps for planning a compliant investigation, including best practices for forming an investigative team, navigating actual or perceived biases and conflicts of interest, reviewing key documents, establishing a timeline for the investigation, and preparing the physical space. Participants are then presented with a case study and begin to plan their own investigation.

11:30 a.m. - 12:30 p.m. | Guidelines for Title IX Investigation Questions

With an investigation plan in place, TIXS instructors walk participants through interview preparation by discussing topics such as using an interview outline to create a playbook for the conversation, the foundations to crafting effective interview questions, and understanding the emotions of the participants at the table.





AUGUST 2

8:30 A.M. - 5:00 P.M.

12:30 p.m. - 1:30 p.m. | Lunch Break

1:30 p.m. - 2:15 p.m. | Conducting Title IX Interviews - Part One

In this session, TIXS instructors provide techniques for building trust with parties and witnesses to optimize information shared during interviews. Instructors then walk participants through the steps of a Title IX investigation interview while using scenarios and to share strategies and best practices.

2:15 p.m. - 3:00 p.m. | Conducting Title IX Interviews - Part Two

In this session, participants put the previous lessons into action. Using the case study, TIXS instructors will facilitate a role-play exercise in Title IX interviewing. Participants will have the opportunity to conduct live interviews of the fictional Complainant and Respondent, played by TIXS instructors.

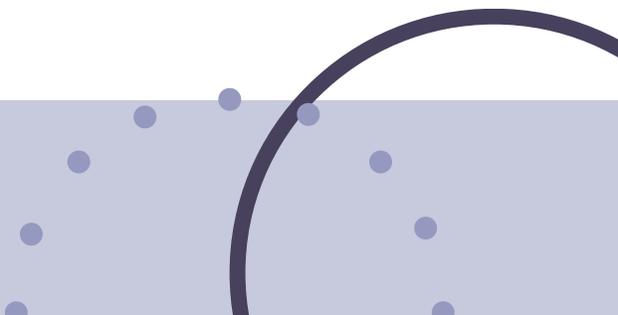
3:00 p.m. - 3:15 p.m. | Break

3:15 p.m. - 4:45 p.m. | Preparing the Investigation Report and File

TIXS instructors outline required elements of a compliant Title IX investigative report and file explain their purpose in the overall Title IX grievance process. After outlining ways to format investigative reports, instructors discuss common mistakes, lessons learned, and best practices. Instructors also highlight transparency, accessibility, and security of information while sharing best practices for organizing, referencing, and sharing evidence with parties. Participants will have the opportunity to review, critique, and draft elements of sample investigative reports.

4:45 p.m. - 5:00 p.m. | Training Debrief and Q&A

Participants are asked to share key takeaways from the program, plans for implementing investigative skills, and methods for collaborating with fellow participants.



MEET YOUR INSTRUCTORS



TAWNY ALONZO, M.S.

DIRECTOR OF TRAINING

Tawny Alonzo is the Director of Training with TIXS. A graduate of Texas A&M University, she has blended careers in higher education and law enforcement to address issues of sexual misconduct on college campuses. As a police officer in the Dallas area, Tawny took an interest in working with victims of sexual assault, child abuse, and domestic violence. She immersed herself in trainings on trauma-informed interviewing, violence against women and children, as well as community approaches to prevention. This passion led to a jump into higher education and the world of Title IX.

She previously served as a Title IX Investigator at Texas Woman's University, Director of Violence Prevention at Southern Methodist University, and Title IX Program Manager at UT Southwestern Medical Center. Her areas of expertise include conducting compliant investigations, creating dynamic student and employee trainings, and building holistic campus violence prevention programs.

In her role with TIXS, she is responsible for the creation of custom training for secondary and postsecondary institutions, planning and implementation of regional and national trainings and conferences, consultation on special topics such as prevention education, advocacy, LGBTQ+ issues, bystander intervention, and athletics. Tawny also provides support in Title IX investigations and report-writing. Tawny is a training instructor for TIXS, specializing in investigations, athletics, prevention, and response.



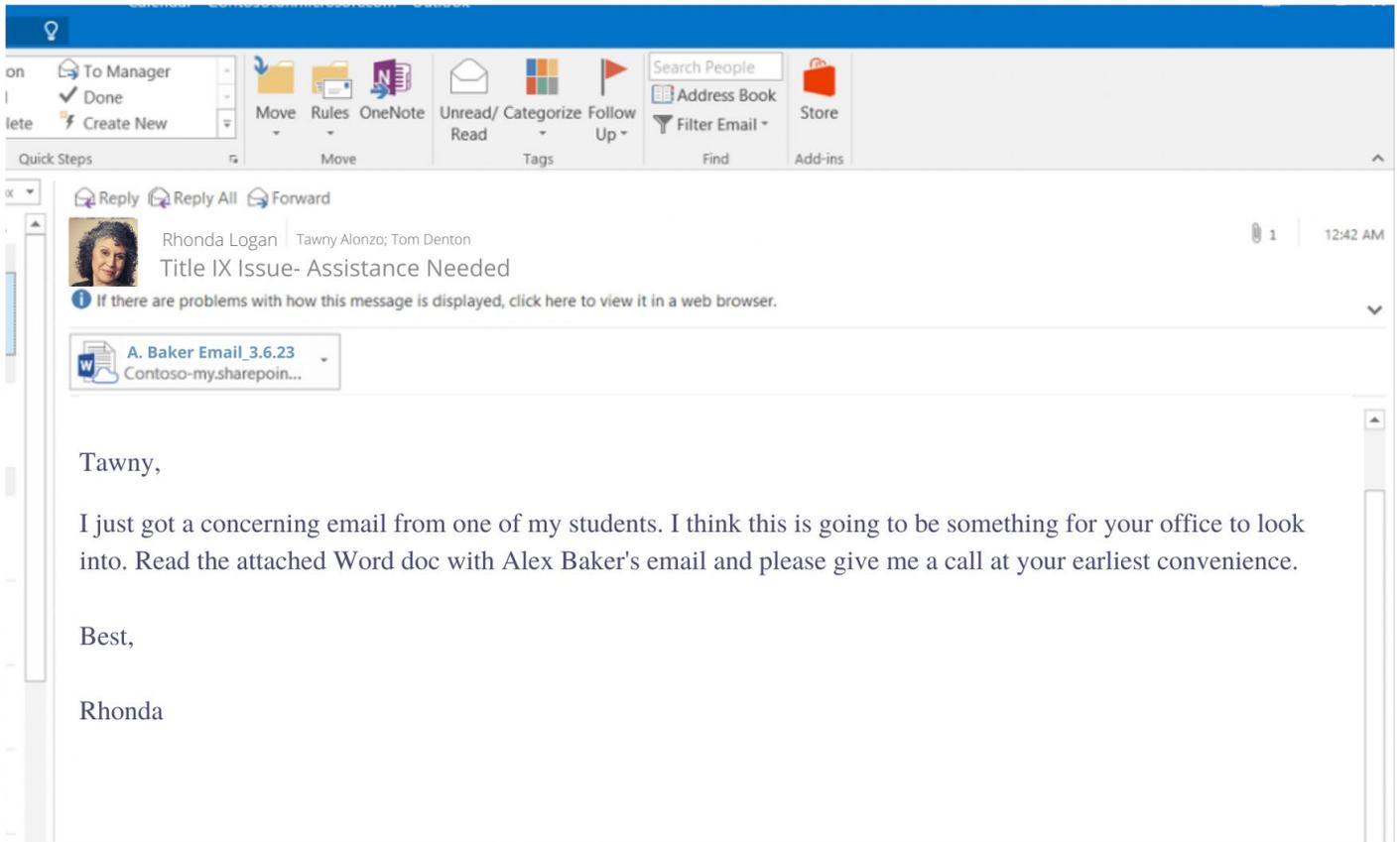
LIZ ABDNOUR, J.D.

INVESTIGATOR & ADVISOR

Elizabeth (Liz) Abdnour is an experienced civil rights and employment attorney. She represents students and provides investigative, consulting, and training services to educational institutions, groups, and nonprofits of all sizes. After a career in legal services, where she learned how to advocate for underserved clients from a trauma-informed perspective and supervised a law school practice clinic, Liz transitioned into higher education where she spent three years in the civil rights office at a large and grant university. Liz then opened her own law and consulting practice where she now serves both individual and institutional clients. The combination of Liz's legal experience and her years as an investigator and equity coordinator give her unparalleled expertise regarding educational institutions' obligations with respect to civil rights and Title IX response.

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SAMPLE REPORT



The screenshot shows an Outlook email interface. The top ribbon includes options like 'To Manager', 'Done', 'Create New', 'Move', 'Rules', 'OneNote', 'Unread/Read', 'Categorize', 'Follow Up', 'Search People', 'Address Book', 'Filter Email', and 'Store'. The email header shows it is from Rhonda Logan to Tawny Alonzo and Tom Denton, with the subject 'Title IX Issue- Assistance Needed' and a timestamp of 12:42 AM. The body of the email contains the following text:

Tawny,

I just got a concerning email from one of my students. I think this is going to be something for your office to look into. Read the attached Word doc with Alex Baker's email and please give me a call at your earliest convenience.

Best,

Rhonda

SAMPLE FORMAL COMPLAINT

March 10, 2023

To the Sample University Title IX Coordinator,

On the night of March 3rd, a Friday, the Music Department held a celebratory dinner for all seniors who will be graduating this spring. The students, department faculty, and some program alumni were invited to attend the event which was held in the main banquet room in Briggs Hall. The event started at 7 PM. I was seated at a table with two Music Department faculty members, one of which was my professor Dr. Logan, and three other students, one of which was Jordan Reynolds. I thought the dinner was pleasant and overall, conversation seemed pretty normal. However, there was a cash bar provided, with wine and beer, and I saw Jordan Reynolds drinking quite a bit. I noticed Jordan getting louder and more talkative with each drink they had. I saw Jordan drink four beers, but I don't know if they had more than that because I was not around them until we were seated. I don't drink, so I didn't visit the bar.

When the event was over, Dr. Logan asked if she could have some help taking two boxes of table decorations back to the Music Department administrative office also in Briggs Hall. I wanted to be helpful, so I volunteered to take a box back. Jordan immediately jumped in saying they would join me. I was somewhat annoyed because they were clearly intoxicated and had been looking at me strangely all night.

Dr. Logan informed me that the main office was unlocked and that we could place the boxes behind the main reception desk. Dr. Logan said she would lock up later when she gathered her personal belongings from her office. Jordan and I walked down the hall to the Music Department office where it was extremely dark. We put the boxes behind the reception desk as Dr. Logan instructed us to do. I felt weird about being in there with them, so I immediately made my way to the door so I could go to my car and go home. Jordan ran to the door and pushed it closed, pinning me between themselves and the door. I was terrified. Jordan told me we should "take advantage of the privacy" and started telling me how attracted they are to me. I froze and couldn't say anything or even more. Jordan forcefully began kissing my neck and had my arms held down to my side. Jordan started pulling my dress up and put their hand inside my underwear. I started to squirm around and felt myself crying. Jordan said something like, "You'll enjoy it if you just let it happen," and told me we should keep going. As they started to unbuckle their belt, I had enough space to push them away and ran out the door as fast as I could.

As I was running down the hall, I passed Dr. Logan, who I think saw me crying. I couldn't stop because I was afraid Jordan would follow me into the parking lot. I missed classes on Monday because I didn't want to risk bumping into Jordan on campus. One of the classes I missed was Dr. Logan's capstone class, which I never skip. I emailed her to tell her I was sick, but she asked if my absence had anything to do with what she saw Friday night. I didn't know what to do, so I just broke down and told her everything.

I would like to file a formal complaint against Jordan Reynolds. I feel unsafe and scared.

Signed,



Alex Baker

SAMPLE NOTICE OF ALLEGATIONS

March 13, 2023

Jordan Reynolds

Sent electronically to jreynolds@sampleu.edu

PERSONAL AND CONFIDENTIAL

Regarding Case Number: 2023-Q1-0120

Dear Jordan:

The Sample University (“University”) Title IX Office has received a Formal Complaint from Alex Baker (“Complainant”) alleging that you (“Respondent”) have engaged in conduct that may be a violation of Sample University policy.

Complainant alleges the following:

On March 3, 2023 at approximately 7:00 PM, Respondent attended an event honoring the Music Department graduating senior students. Following the event, in the Music Department administrative office, located in Briggs hall on the campus of Sample University:

- *Respondent kissed Complainant without consent;*
- *Respondent placed their hand up Complainant’s dress and inside of their underwear without consent*

This letter serves as formal notice that the Title IX Office will be conducting a prompt, thorough, and impartial investigation of these allegations in accordance with the procedures detailed in the Sample University Sexual Harassment Policy, SU Policy 237.

You are alleged to have engaged in Sexual Harassment as defined in the Sample University Sexual Harassment Policy, specifically:

237(4)(iii) “Sexual assault”- includes any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving affirmative consent.

(b) Fondling: The touching of the private body parts (including genitalia, anus, groin, breast, inner thigh or buttocks) of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

237(4)(ii) “Sexual harassment”- means conduct on the basis of sex that satisfies one or more of the following:

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- (a) An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct (commonly referred to as a "quid pro quo");*
- (b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity (commonly referred to as a sexually or gender-based "hostile environment").*

Respondent is considered "not responsible" for violating University policy unless and until the University determines at the conclusion of the grievance process, by a preponderance of the evidence, that the Respondent is responsible for the conduct. The burden is on the University to gather evidence, investigate the allegations, summarize all relevant evidence in an investigation report, conduct a live hearing for the cross-examination of the parties and reach a final determination for all matters alleged.

You may have an advisor of your choice assist or represent you in this process....

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SAMPLE INVESTIGATION PLAN TEMPLATE

Lead Investigator:

Name of Co-Investigator:

INVESTIGATION TIMELINE

- Date Formal Complaint Filed:
- Date Notice of Investigation sent to Parties:

INTENDED INVESTIGATION DATES

- Send interview invitations/notices by Date:
- Complete Interviews by Date:
- Complete Summaries of Interviews by Date:
- Proposed Draft Investigative Report Deadline:
- Proposed Final Investigative Report Deadline:

POTENTIAL ROADBLOCKS:

1)

2)

3)

4)

5)

WHAT IS THE ALLEGED INCIDENT?

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WHAT ARE THE ALLEGED POLICY VIOLATIONS?

PARTIES

- Complainant Name-
 - Age-
 - Year-
 - Contact information-
 - Name of Advisor (if known) & Relationship to Advisor (friend, mother, attorney, etc.)-

- Respondent Name-
 - Age-
 - Year-
 - Contact information-
 - Name of Advisor (if known) & Relationship to Advisor (friend, mother, attorney, etc.)-

WITNESS LIST

Witness No.	Name	Relationship to Complainant/Respondent	Contact Information
1			
2			
3			
4			
5			

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FOLLOW UP TASKS

- 1)
- 2)
- 3)
- 4)
- 5)

ORDER OF INTERVIEWS

1. Complainant Name
 - a. Date
2. Respondent Name
 - a. Date
3. Witness Name
 - a. Date
4. Witness Name
 - a. Date
5. Witness Name
 - a. Date

EVIDENCE LIST

Exhibit/Appendix No.	Description	Source of Evidence (from Complainant, Respondent, Dept. on Campus, etc.)	Date Collected

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FOLLOW UP TASKS

- Coordinate with relevant campus departments for evidence collection
- Request evidence from Parties and witnesses
-

DRAFT PREAMBLE TEXT:

POTENTIAL INTERVIEW QUESTIONS:

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SAMPLE PREAMBLE

Today's date is March 14, 2023 the time is now 1:00 PM (CST). My name is Susanna Murphy and I am a Title IX Investigator at Sample University. I will be serving as Title IX Investigator for this case and my goal is conduct a prompt, thorough, and impartial investigation into this matter.

This is a recorded interview of Jordan Reynolds who is identified as the Respondent taking place virtually, via the Zoom platform, pursuant to a formal Title IX complaint submitted to the Sample University Title IX Coordinator, Tawny Alonzo on March 10, 2023 by the Complainant, Alex Baker.

I will be asking you and your Advisor to state your name and your purpose for being present today. I am making an audio recording of today's interview, of which a written transcript will be provided to both the Complainants and the Respondent for review. This recording and transcription of every interview will also be included in the final investigative file.

[Ask each participant the following:]

Please state your full name.

Do you consent to the recording of this interview?

Thank you.

Without consent to record, my co-investigator will be taking notes to best capture your responses to the questions asked. The transcript provided will not be a word for word documentation of your responses as this is highly difficult to achieve when note-taking. Your responses will be documented as fully as possible and available for your review and comment.

Before we start with more formal questions, I would like to say that I am sorry that we are meeting under these circumstances. I know this is a difficult process and I appreciate you joining me today. I want to assure you that my role as an investigator is to gather the facts, and I will do so to the greatest extent of my capabilities. However, whether you talk to me today is not up to me or your Advisor. That is up to you and you alone.

In today's interview I will be asking many questions. Some may be of a personal or intimate nature. I encourage you to be open and honest when answering questions. Nothing you say today will shock or offend me. There are no trick questions. I am only interested in finding facts and have no role in deciding the outcome of this complaint. This is simply your opportunity to share your recollection of events.

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My scope as the Investigator in this matter is to investigate any allegations brought forth by the complainant that would violate Sample University's Sexual Harassment Policy (Policy 237). It is not within my scope to investigate any matters which do not fall under this policy. I will do my best to answer any questions you have regarding the Title IX Investigation. If I am unable to answer a question for you, I will document the question and route it to the appropriate individual.

At the conclusion of the investigation process, the parties and their Advisors will be provided with an investigation file of all evidence gathered in the course of the investigation. This would include items such as emails, text message screenshots, photos, recordings, and interview transcripts. It is important that you provide me with any evidence you may have regarding these allegations. Additionally, I will be asking for the names and contact information for any witnesses you believe may have relevant information helpful in the investigation of this matter. I appreciate your cooperation and assistance with compiling this information.

Of course, please let me know if you need to pause or step away at any point during this interview. If you forget to tell me something today, you have my contact information from our previous email. We can always set up another conversation.

Role of the Advisor

I would like to remind the Advisor in the room that during this interview, your role is to provide emotional support and private consultation. You may speak privately to your Advisee, but you are not permitted to directly participate in this interview, make a presentation or represent your advisee during this interview, or speak on your party's behalf during the interview. Please refrain from speaking to me until you are invited to do so. If you would like a break to discuss anything with your party in greater detail, please let me know. You can find the full description of the Advisor's role on page 10 of the Sample University Sexual Misconduct Policy (Policy 237).

DRAFT TITLE IX INVESTIGATION REPORT

To: Toby Flenderson
Title IX Coordinator
Scranton State University

From: Holly Flax
External Title IX Investigator
Nashua Consulting

Date: June 9, 2023

Re: Pam Beesly/Jim Halpert

Background

On December 13, 2022, Scranton State University (“SSU” or the “University”) became aware of a complaint of sexual misconduct involving the Complainant, Pam Beesly (“Complainant”), and the Respondent, Jim Halpert (“Respondent”) (collectively referred to as, “Parties”). Specifically, Complainant alleged that on or around December 11, 2022, Respondent touched her inappropriately while shopping at the Target store, located on Paper Road in Scranton, Pennsylvania, and again while she and Respondent were in Respondent’s off-campus apartment, the Dunder Mifflin Apartments, located at 1130 N Office Park Dr., Scranton, Pennsylvania.

Following a Title IX Assessment¹ of the matter by Title IX Coordinator Toby Flenderson, the University assigned me to investigate Complainant’s allegation that Respondent had violated Section III.A (Sexual Assault) of the University’s Sexual Misconduct and Interpersonal Violence Policy (the “Policy”).

Scope and Process of Investigation²

I was assigned to conduct and complete a timely, thorough, impartial and fair investigation into Complainant’s allegation that Respondent violated the Policy. To date, my investigation has included interviewing the parties, identifying and interviewing witnesses, identifying and

¹ The University’s Title IX Assessment included meetings and/or email communications with both Parties providing a wide range of information.

² Due to unforeseen personnel changes within the Title IX office, and due to the impact of COVID-19 on the University’s established operations, the office made best efforts to swiftly, but thoroughly, conduct this investigation, once assigned to trained Title IX investigation professionals. All parties involved were regularly updated on the progress of the investigation, and necessary interim measures and accommodations were maintained throughout the investigation process.

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obtaining any relevant documentary evidence, and drafting this draft investigation report. Prior to commencing this investigation, the Investigator reviewed the University's Sexual Misconduct Policy as well as the Student Investigative Procedures Involving Sexual Misconduct and Relationship Violence (effective November 28, 2021). I also reviewed the case file that accompanied this assignment, which included the Title IX Intake Report for this matter (0001-2022), a Title IX housing report, and the correspondence between Title IX Coordinator, Toby Flenderson, and Complainant and Respondent, respectively.

Excerpts of Applicable Title IX Policy:

The following are applicable quotations from the Policy that outline the process that governs the investigation:

- To Whom Does the Policy Apply?

This policy is applicable to Students, Employees, and Third Parties.

- “Student” includes any person who meets any of the following criteria at the time the prohibited conduct is alleged to have occurred:
 - is enrolled in any number of courses, in any format at SSU,
 - is living in University housing, and/or
 - is not officially enrolled for a particular term, but whose SSU record indicates a continuing relationship with the University. The term relationship includes, but is not limited to:
 - those eligible and/or applying for re-enrollment and/or readmission;
 - those involved in an appeal or grievance process; and
 - those with unresolved business matters with SSU.

3.7.7 Sexual Misconduct Policy

Prohibited Conduct [1]

Sexual Assault

- **Sexual Assault** is:

Sexual Contact and/or Sexual Intercourse that occurs without Consent.

- Sexual Contact includes touching of the breasts, buttocks, groin and genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts.
- Sexual Intercourse includes (a) vaginal penetration by a penis, object, tongue, or finger, however slight; (b) anal penetration by a penis,

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object, tongue, or finger, however slight; and (c) any contact between the mouth of one person and the genitals of another person.

Interviews of the Parties³

Complainant Pam Beesly

April 1, 2023

The Investigator spoke with Complainant via cellphone at Complainant's choosing since she is not located on campus currently due to Scranton State University's ("SSU" or "the University") closure because of COVID-19 concerns. The Investigator explained that she is an attorney, licensed in New Hampshire, but is not serving in a representative capacity for this matter. Instead, the Investigator explained that she is an independent investigator with Nashua Consulting, which contracts with colleges and universities, including SSU, to conduct impartial investigations for Title IX claims.

The Investigator explained the process of the investigation, including the University's relevant policies and procedures. The Investigator reviewed with Complainant the background of her Complaint and the No-Contact Order that was issued on January 17, 2023 by the University's Title IX Coordinator, Toby Flenderson. The Investigator asked Complainant if she had any questions before beginning the interview and she responded that she wished to know which police department she could file a report with since the incident happened off-campus. The Investigator responded that she would check with the University's Title IX Office, but believed it would be the Scranton Police Department.⁴

At the time of the interview Complainant was a sophomore at SSU, studying Communications and Public Relations,⁵ and living in Schrote Hall with roommate, Angela Martin. Complainant stated that Respondent, Jim Halpert, is also a sophomore at SSU, living off-campus at Dunder Mifflin Apartments, Scranton, Pennsylvania.

The Investigator asked Complainant to explain both what happened that led to her filing a complaint with the University's Title IX Office, as well as how she knows Respondent. Complainant explained that she and Respondent shared a history class together. Complainant indicated that she was not friends with Respondent prior to the shared class, but that they started talking more because of class. Complainant stated that this may have been because of a mutual friend, Oscar Martinez. Complainant stated that a group of students, herself and Respondent

³ These sections include summaries of the Investigator's interviews with the Parties. Language is not a direct quotation from the Parties unless it is included in quotation marks.

⁴ The Investigator confirmed with the University's Title IX Coordinator, Toby Flenderson, that the Scranton Police Department is the proper agency to receive a report for this matter.

⁵ Complainant provided the Investigator with her major on April 16, 2023, when she responded with her edits and comments to her interview summary.

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included, would hang out in a group setting after class. In one instance, Complainant recalled for the Investigator that the group went to Alfredo's Pizza after class. The Investigator asked who comprised the group, and Complainant stated that Oscar Martinez was a constant, but the rest of the group changed regularly.

Complainant stated that she began having contact with Respondent more frequently after they “matched” on Tinder. Complainant indicated that this contact consisted mostly of teasing and joking with each other because they matched on the app. Complainant stated that she and Respondent began talking more at the end of November or beginning of December, and that they began to develop “a rapport.”

Complainant also stated that they attended Kevin Malone’s 21st birthday party on December 7th, as Kevin is a mutual friend. The party was held at Kevin and Respondent’s fraternity house. Complainant told the Investigator that she and Respondent spoke at Kevin’s party for some time, mostly getting to know each other a little bit better. At the end of the party, Complainant stated that Respondent walked her back to her residence hall. Before parting ways for the evening, Complainant told the Investigator that she asked Respondent “when are you going to ask me on a date?” Complainant further recalled that Respondent’s response was something along the lines of “let’s go to Target and hang out at my place after.”

Complainant told the Investigator that the date was set for Wednesday, December 11, 2022. Complainant recalled for the Investigator that she was to meet Respondent in the evening, after her writing class, likely “around 8 PM.” Complainant stated that Respondent picked her up from her dorm and they drove together to the Target located on Paper Road. Complainant stated that the ride to Target was not long, “maybe 10 minutes” and that the ride was uneventful. Complainant further stated that the plan upon arriving at Target was to get pizza ingredients and make a pizza at Respondent’s apartment.

Complainant told the Investigator that the trip to Target took approximately two hours, that nothing stood out about their time in the store, and that near the end of the trip they began to hold hands, which she was okay with. Complainant reported to the Investigator that she and Respondent got a frozen pizza instead of pizza ingredients, checked out, and drove straight to Respondent’s apartment.

Complainant described Respondent’s apartment for the Investigator, stating that the complex is approximately four floors high, that she believes Respondent lived on the 3rd floor, and that Respondent lived with “four or five” roommates. Complainant stated that she does not know the names of Respondent’s roommates. Complainant further described that when she walked into Respondent’s apartment she observed a small dog, which may have belonged to one of Respondent’s roommates. Complainant stated that the plan was to make pizza and watch the movie *The Grinch* in Respondent’s room. Complainant further stated that while Respondent was putting the pizza in the oven, she was playing with the dog.

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Complainant told the investigator that while the pizza was cooking, she and Respondent were in Respondent's room beginning to watch the movie and that when the pizza was done, they brought it into Respondent's bedroom to eat. Complainant noted for the Investigator that Respondent closed his bedroom door after he and Complainant entered the room. While in Respondent's bedroom, Complainant stated to the Investigator that she and Respondent were sitting on Respondent's bed while eating. Respondent was seated up near his pillows and Complainant was seated closer to the foot of the bed. The movie was playing on a laptop computer, which was situated on Respondent's bed.⁶

Complainant stated to the Investigator that she had one slice of pizza because she wasn't that hungry. Complainant further stated that, at some point after Respondent was done eating, he began to pull on Complainant's right arm, to which she said to Respondent: "I don't want to lay down because it hurts my stomach after I eat." Complainant stated that Respondent let go of Complainant's arm. Complainant stated that after about 30 minutes, Respondent sat up on the bed and began "scotching closer to her." Complainant told the Investigator that she told Respondent something along the lines of "wow, you're shy," after which Respondent leaned in to kiss her. Complainant told the Investigator that she was okay with kissing. Complainant further told the Investigator that she did not tell Respondent that it was okay to kiss her, but instead thought it in her mind.

Complainant told the Investigator that once she and Respondent began kissing, it became aggressive "fast." Complainant described that Respondent began to "put a lot of his body weight into it," which "caused her to lay down on the bed." Complainant stated that she sat back up and they continued kissing.

Complainant told the Investigator that when they sat back up and continued kissing, Respondent began to put his hand on her thigh and also began to touch her vulva over her pants. Complainant stated that when Respondent touched her vulva, she moved his hand down to her knee. Complainant further stated that after moving Respondent's hand to her knee, he moved his hand up to feel her breast over her shirt, and then again touched her vulva over her pants. Complainant told the Investigator that she removed Respondent's hand again and they continued kissing.

Complainant also told the Investigator that Respondent began to bite Complainant's "lower lip," to which she told Respondent to "please be gentle." Complainant recalled for the Investigator that at one point, Respondent reached under her shirt and felt her breast over her bra, and that Respondent appeared to be trying to "unclasp" her bra, but "it wasn't that kind of bra." Complainant described that because of the way they were laying – with her on top of Respondent – Respondent slid his hands into her pants onto "her bare butt." Complainant stated that she took Respondent's hands out but did not say anything to him. The Investigator asked Complainant whether Respondent asked for consent prior to engaging in any of the activity that she described,

⁶ Complainant clarified for the Investigator that the laptop was placed on Respondent's bed on April 16, 2023, when she responded with her edits and comments to her interview summary.

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and she told the Investigator “no.” Complainant stated to the Investigator that she and Respondent “eventually stopped kissing” and she got a drink of water from her water bottle, which was nearby.

Complainant stated that, following the above events, she “wrapped herself up in blankets” to “guard herself” and then laid back down on Respondent’s bed. She described for the Investigator that she “felt really uncomfortable” but that she “was scared to leave” because she knew the door to his bedroom was shut, but she did not know if it was locked. Complainant told the Investigator that she felt like she could not do anything, so she “laid down to disengage.” Complainant said that when she and Respondent were laying down, she was on her side and Respondent was on his side, immediately behind her. Complainant said that, at some point, Respondent told Complainant that he was cold and that he wanted to share the blanket, which Complainant did.

Complainant stated to the Investigator that when they were laying on their respective sides, under the blanket, Respondent put his hands near Complainant’s vulva, over her pants, which Complainant moved to her knee. Complainant stated that Respondent also put his hands on her butt, which caused Complainant to move her body away, which then caused Respondent to move closer to Complainant. After they resettled, Complainant told the Investigator that Respondent again put his hand on her vulva, over her pants, and kept it there for “a few minutes.” This time, Complainant told the Investigator that she “froze” and “just stared at the wall.”

Complainant stated that after the movie ended, she laid on the bed “for a second” and Respondent offered to drive her back to her dorm, which Complainant accepted. Complainant stated that the drive from Respondent’s apartment to her dorm was brief and that before exiting the car, they “did a peck kiss goodbye.”

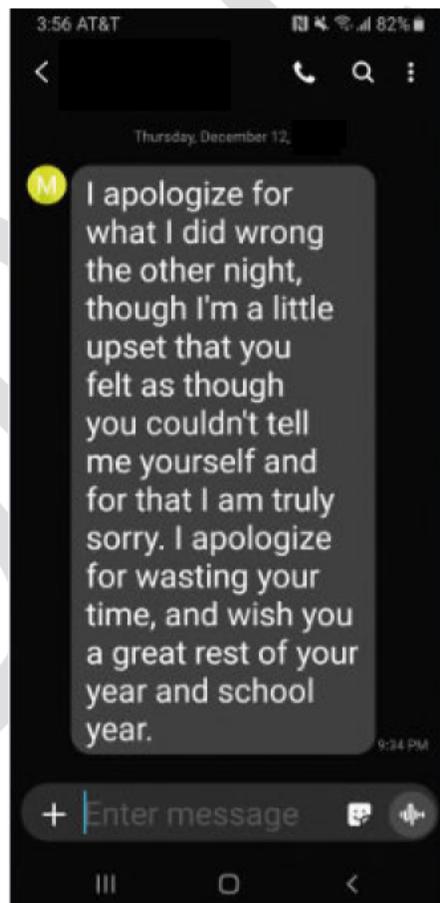
At approximately 12:15 AM, upon arriving back at her dorm, Complainant went to the room of Oscar Martinez. Oscar is a friend of Complainant’s and he is also a Resident Advisor in Schrote Hall. Complainant told the Investigator that she asked Oscar to “sit with her” while she cried. Complainant stated that Oscar was “not too prodding” and let her cry. Following this, Complainant stated that she went to her own dorm room for the night. Complainant told the Investigator that Respondent sent her a text message sometime that night, after she arrived back in her dorm room, indicating that he had a great time with her. Complainant did not respond until sometime the next day, and said something along the lines of, “sorry, I was at work.”

The next day, December 12, 2022, Complainant went back to Oscar’ room and “told him everything.” Complainant told the Investigator that because Oscar is a “campus security authority,” he was obliged to make a formal report, and he did. Complainant stated that later in the afternoon on December 12, she sat down with friends Kevin Malone and Stanley Hudson in the first floor lounge of her dorm room. Complainant stated to the Investigator that she and Stanley are good friends and she wanted him to know what happened “in case she looked off.” Complainant further stated that she wanted Kevin to know because he and Respondent are in the same fraternity. Complainant recalled for the Investigator that she told

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both Stanley and Kevin something along the lines of “hey guys, something happened to me . . . I feel super weird in my stomach . . . I am pretty sure I was sexually assaulted.” Following the conversation, Complainant recalled that Kevin offered to speak with Respondent about what happened, and Complainant was “okay” with that. Complainant stated that it is possible she told her roommate, Angela Martin, about what happened with Respondent, as well, but she is not sure if that occurred on Thursday (December 12) or Friday (December 13).

Complainant told the Investigator that she remained in contact with Kevin throughout the day on December 12 by text message and understands that Kevin confronted Respondent at their fraternity house that night. Complainant was not present for the interaction between Respondent and Kevin, but she understands from Kevin that it went along the lines of Kevin asking how the date went, Respondent saying it went well, and Kevin saying that he (Kevin) had heard otherwise. Complainant stated to the Investigator that she understands that Respondent walked away from Kevin after that interaction and that Respondent sent Complainant a text message soon after. Complainant provided the Investigator with a copy of the text message, and it states:



Complainant informed the Investigator that the above message is the last communication that she received from Respondent.

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The Investigator asked Complainant to discuss what, if any, impact the events that she described had on her. Complainant responded that she was on “high alert” walking around campus because she did not want to see him and she was scared that she would. Complainant further stated that she had a class, on Tuesdays and Thursdays, in the same building as Respondent, so she would have her friend Oscar Martinez walk her to class on those days. Complainant also stated that she has a support system in place, though it is interrupted by COVID-19 and being off campus for the time being. Complainant noted that when she is on campus, she works for the University’s student center as an event technician. One of her job duties is to set up rooms that student clubs rent. On one occasion, after the incident with Respondent, she believes that Respondent had rented a room and as she was about to unlock the door, she believed she saw him so she turned around and went back to the office as she did not feel safe.⁷ Finally, Complainant stated that her grades have not suffered but she began seeing a therapist after the incident with Respondent.

The Investigator concluded the interview with Complainant by asking how she was doing and reminding her that she should contact the University’s Title IX Coordinator if she has questions about the process or if she needs to discuss the No-Contact Order that is in place between herself and Respondent. The Investigator thanked Complainant for her time and indicated that he would likely reach out to her to set a follow up interview. The Investigator asked Complainant to send the text messages that she mentioned during her interview, and Complainant indicated that she would.

The Investigator provided Complainant with a summary of her interview on April 15, 2023. Complainant replied on April 16, 2023 with comments and clarifications, all of which are included in the preceding paragraphs or footnotes.

April 27, 2023

The Investigator spoke with Complainant via telephone for a follow-up interview. The Investigator briefly reviewed his status as an independent investigator and the status of this investigation. The Investigator asked Complainant if she had any questions. Complainant stated that wanted to know what the process is after the report in this matter is created. The Investigator briefly described the possible next steps based on the University’s Title IX

⁷ Complainant provided the follow clarification to the Investigator on April 16, 2023, when she responded with her edits and comments to her interview summary:

“It showed up on the Student Center’s television ‘room board’ (located in the office of the Student Center) of what club/organization rented out what room number. This ‘room board’ also shows the event/reason why the club/organization is renting out the room. The television ‘room board’ showed that I Eta Patata was going to have a room for the “Michael Scott’s Dunder Mifflin Scranton Meredith Palmer Memorial Celebrity Rabies Awareness Pro-Am Fun Run Race for the Cure” event.

“I believe I saw him, and he was around maybe 15 feet away from the door, with a few of his Fraternity Brothers who I recognized from knowing Kevin and seeing them at the frat house.”

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procedure, and invited Complainant to contact the University’s Title IX Coordinator if she had additional questions or if she remained unsure about the next steps.

The Investigator began the interview by asking Complainant what she remembered about the text messages that she exchanged with Respondent prior to their date on December 11, 2019.⁸ Complainant stated that nothing about the messages really stood out to her. Complainant stated that “maybe she was flirting” with Respondent, but that she does not remember the messages, specifically. Complainant also stated that she knew that she liked Respondent and that Respondent liked her. The Investigator asked Complainant if the text messages were intended to give Respondent an idea for how the date would go. The Investigator clarified by asking if Complainant was intending to give Respondent any indication what she wanted to do with Respondent on December 11, 2022. Complainant said that the impression she was intending to send was that they “would go shopping, get ingredients to make a pizza, talk, and hangout.” Complainant clarified for the Investigator that she and Respondent had not – as of that point in December – had the opportunity to hangout “one-on-one,” so she was looking forward to being able to do so.

The Investigator asked Complainant about a text message that she sent Respondent about a mutual friend, Oscar Martinez, feeling as if Respondent is “cheating on” Oscar with Complainant. Complainant replied that she remembered the “gist” of the text, but that was it.⁹ Complainant also stated that she was not, in any of the texts, foreshadowing what she hoped would occur on the night of December 11, 2022. Complainant further clarified that she and Respondent would “tease each other,” and she referenced a text message about “penis size” that she said was indicative of the way she and Respondent would joke around and tease each other. Complainant described for the Investigator that the teasing and joking around would continue in person, and she described that Respondent would joke about Complainant’s being short and she would joke with Respondent about his appearance without a beard.¹⁰

⁸ The text messages referenced here were provided by Respondent and are too voluminous to include in-text here. The text messages are found in Ex. B.

⁹ Complainant provided the follow clarification to the Investigator on April 29, 2023, when she responded with her edits and comments to her interview summary:

“I know banter was exchanged between Oscar and Respondent about jokingly being in 'a relationship' along those lines. I am just sort of confused as to why Oscar and Respondent’s fake relationship is relevant to the case, but if you could explain why, that would be appreciated.”

The Investigator responded to Complainant’s request for clarification on April 29, 2023, stating that the purpose of this point of the investigation is to gather facts, not to weigh the relevance of certain statements, whether provided by Complainant or Respondent.

¹⁰ Complainant provided the follow clarification to the Investigator on April 29, 2023, when she responded with her edits and comments to her interview summary:

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The Investigator asked Complainant about her time with Respondent at Target. Specifically, the Investigator asked Complainant if she recalled smacking Respondent on the butt while they were shopping. Complainant stated that she did not recall doing that, and then stated that while they were walking around together they were teasing and pushing each other in a playful manner.

The Investigator asked Complainant whether she recalled if the door to Respondent's bedroom was open or closed when she and Respondent watched their movie. Complainant stated that Respondent closed the door, that she "did not touch the door," and that she was sitting on Respondent's bed when he closed the door. Complainant stated that she does not know if the door was locked.

The Investigator asked Complainant to walk through the events that occurred with Respondent from the time that they began kissing on his bed. Complainant stated that their kissing "was fine" but that it "got aggressive pretty fast." Complainant estimated that it was within the first "ten seconds or so" after they started kissing that Respondent placed "his body weight" on her and that he was "on top of her." Complainant told the Investigator that Respondent was on top of her in this instance for "a hot second," and that she "sat up and got some water."¹¹

Complainant said that after she got some water, she and Respondent began kissing again and that they were sitting upright while doing so. Complainant stated that Respondent then began "placing his hands on her" and that he moved his hands "up her thigh" and that she moved his hands to her knee. Complainant stated that Respondent again placed one of his hands onto her vulva, and that she again moved his hand. Complainant stated that, at some point, she was laying on top of Respondent but that she does not recall how that happened, though she thinks that "they just ended up that way" based on how they were seated on the bed, but she is not "100% sure." Complainant further stated that it was while she was laying on top of Respondent, Respondent placed his hands under her pants and onto her butt. Complainant said that she removed his hands from her pants.

Complainant told the Investigator that she did not touch Respondent's waist, thigh, groin, or penis, over or under his clothes, at any time. Complainant said that she does not remember if she touched Respondent's chest at all, and that she does remember touching and, perhaps "putting her hands through," Respondent's hair. Complainant also told the Investigator that she did not guide or place Respondent's hands onto her body at all, except when she moved Respondent's hands away from her vulva and her chest, and off of her butt. Complainant told the Investigator

"This nature was continued with other members of the history class when a group of people (varying each time, but Oscar and I were the two consistent people in that group) would go get Alfredo's Pizza after class. The environment was lighthearted teasing and poking fun at eachother [*sic*], which continued with Respondent over text, as well as in person towards eachother [*sic*]."

¹¹ Complainant provided the follow clarification to the Investigator on April 29, 2023, when she responded with her edits and comments to her interview summary:

"I don't recall how long in exact minutes, but I know that it was brief and short."

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that she did not say anything to Respondent about her wanting him to touch her. Complainant also said that she did not say “wow, you’re good at that,” or anything similar, when Respondent touched her vulva, or when Respondent kissed her.

The Investigator asked Complainant if she recalled sighing or sighing heavily while she was kissing Respondent or at any point with Respondent on the evening of December 11, 2022. Complainant stated that she did not recall doing so, but noted that she was annoyed at having to “move his hands.”¹² Complainant told the Investigator that “the message she was trying to send” to Respondent was that “it was ok to touch [her] knee, but nowhere else.” Complainant said that she was trying to send that message “several times” by moving his hands.

The Investigator asked Complainant to describe where Respondent’s hands were while she was laying on top of him. Complainant reiterated that she was not laying on top of Respondent for very long but that when she was, she believes Respondent’s hands were “a little above her waist” around her “mid-back” and “outside of her clothes” until he slid his hands down her pants and onto her butt. Complainant also reiterated that she “did not touch or grab” Respondent anywhere, except for possibly touching his hair.

The Investigator asked Complainant about her statement in her first interview that she wrapped herself in blankets on Respondent’s bed to watch the remainder of the movie. Complainant said that she was wearing a shirt and, she believes, her jacket, the entire time that she was at Respondent’s apartment. Complainant also said that she recalled being cold that night. Complainant said that she “rolled up” in whatever blanket was on Respondent’s bed.

The Investigator asked Complainant about the car ride home with Respondent and Complainant stated that it was quick, and that when she got out of the car she recalls that they “did a peck goodbye” and she “thanked him for the ride.” The Investigator clarified whether Complainant thanked Respondent for the date or the ride, and Complainant stated that she thanked Respondent “for the ride” and that nothing else was said.

The Investigator asked Complainant if she had additional evidence or witnesses that she wished to share. Complainant stated that she did not have any other evidence to share. As to witnesses, Complainant stated that she recalled speaking to her friend, Kelly Kapoor, a day or so after her date with Respondent. Complainant also stated that she and her roommate, Angela Martin, had since had a falling out, and that they had not spoken much between January and April¹³ of this

¹² Complainant provided the follow clarification to the Investigator on April 29, 2023, when she responded with her edits and comments to her interview summary:

“I do not recall sighing heavily, and I sent the message nonverbally by removing his hands off of me several times and placing them where it was okay. In terms of being annoyed, I don’t necessarily remember what was going through my head but I know I was trying to get a point across about where it was okay to touch me. I wouldn’t describe it as being annoyed, more so trying to get a point across.”

¹³ Complainant clarified the dates as January and *April*, rather than January and *March*, as was included in the interview summary prepared by the Investigator.

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year. Complainant stated that she would not, at this time, be comfortable with the Investigator speaking with her therapist.

The Investigator concluded the interview by thanking Complainant for her time, by reminding her of the University's retaliation policy, and by asking Complainant to contact the Investigator or the University's Title IX Coordinator if she needed anything further. Complainant indicated that she understood.

The Investigator provided Complainant with a summary of her interview on April 15, 2023. Complainant replied on April 16, 2023 with comments and clarifications, all of which are included in the preceding paragraphs or footnotes.

Respondent

Interview of April 2, 2023

The Investigator spoke with Respondent via cellphone since he is not located on campus currently due to Scranton State University's ("SSU" or "the University") closure because of COVID-19 concerns. Respondent was joined on the call by his advisor, attorney Andy Bernard. The Investigator explained that she is an attorney, licensed in New Hampshire, but is not serving in a representative capacity for this matter. The Investigator further explained that she is an independent investigator with Nashua Consulting, which contracts with colleges and universities, including SSU, to conduct impartial investigations for Title IX claims.

The Investigator explained the process of the investigation, the University's relevant policies and procedures, and asked if Respondent had any questions about the process or next steps. Respondent responded that he did not but that his advisor/attorney, Mr. Andy Bernard, might. Mr. Bernard asked if the Investigator could share the names of individuals that the Investigator has spoken to in connection with the instant investigation. The Investigator stated that he was not sure if University policy permitted disclosure of such information at this juncture, and the interview continued.

At the time of the interview, Respondent was a sophomore, studying secondary education and history at Scranton State University. Respondent was living off-campus in Dunder Mifflin Apartments, located in Scranton, Pennsylvania. Respondent is a member of the I Eta Patata fraternity at the University.

The Investigator asked Respondent to describe how he knew Complainant and to describe for the Investigator the events that led up to the evening of December 11, 2022. Respondent recalled that the first time her interacted with Complainant was during their shared history class. Respondent recalled that he had not spoken with Complainant for the first half of the Fall semester, until about November.

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In November, Respondent stated that he was introduced to Complainant, in person, by a mutual friend, Oscar Martinez. As Respondent described, Oscar had invited Respondent and a few other people to Alfredo's Pizza. One of the other people Oscar invited was Complainant. Respondent told the Investigator that Oscar "sat him (Respondent) next to Complainant" while at Alfredo's Pizza that day. Respondent estimated that this occurred on a Monday as there was no class on Wednesday that week because of the Thanksgiving holiday. The Investigator asked Respondent if he had any other interactions with Complainant before the Thanksgiving break, and Respondent stated that he had not. The Investigator asked Respondent if he had any communications with Complainant over the Thanksgiving break, and Respondent said that he did not. Respondent stated that he "matched" with Complainant on Tinder at some point in "early December", and that he got Complainant's number around that time, as well.

After getting Complainant's number, Respondent stated the he was "kind of pushed" by friends Oscar Martinez and Kevin Malone to ask Complainant on a date. Respondent told the investigator that "he did not want to" ask Complainant on a date at that time, but that he talked and texted more with Complainant.

Respondent told the Investigator that the next time he saw Complainant was Kevin Malone's 21st birthday party, which was held at the I Eta Patata fraternity house. Kevin Malone's birthday is on December 7 and Respondent believes that this was the date of the party. Respondent stated that the party likely began around 10:00 PM or 10:30 PM. Respondent also stated that it was Kevin Malone who invited Complainant to the party that night. Respondent is not certain whether it was at Complainant's request or at Kevin Malone's urging, but Respondent recalls that he walked to Complainant's dorm that night so as to walk with her to the party at the I Eta Patata fraternity house. Respondent told the investigator that he believed Complainant was not comfortable walking from her dorm to the party alone.

At this point in the conversation, Respondent told the Investigator that he was not talking to anyone else "in this way", and that he had not been on a date in about one year. Respondent said to the Investigator that he was feeling "nervous" on the evening of Kevin Malone's 21st birthday party.

Respondent stated to the Investigator that there were a "decent amount" of people at the party – maybe 30 to 40 – on the night of December 7th. While at the party, Respondent and Complainant spoke for a while and after the party, around 2:00 AM, Respondent walked Complainant back to her dorm, where they sat on a bench and talked about potentially going on a date. After talking for a few minutes, Complainant went into her dorm for the evening and Respondent went to his apartment.

Respondent told the Investigator that, over the next few days, likely on December 9th or 10th, Respondent and Complainant exchanged text messages, and Complainant asked Respondent when he "was going to ask her on a date." At some point in the back-and-forth of texting, they agree to do a "movie/dinner" date. Respondent stated to the Investigator that the date was finalized on December 10, 2022 and it was set for the next day, December 11, 2022. Respondent

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told the Investigator that the idea for the date – to make a pizza and watch a movie – was Complainant’s idea and he was good with that.

Respondent told the Investigator that the next day, December 11, 2022, Respondent picked up Complainant from her dorm at approximately 8:00 PM and they went to the Target located on Paper Road. Respondent stated that they stayed at Target until approximately 10:30 PM, mostly walking around looking at toys, clothes, and Christmas decorations. Respondent further stated that he purchased a frozen pizza and nothing else. Respondent told the Investigator that while they were in the frozen food aisle, Complainant “smacked his rear” and said “let’s get a move on.” Respondent stated that she likely did this because they could not decide on a pizza.

After checking out at Target, Respondent drove Complainant to his apartment (Dunder Mifflin Apartments), which was about 5 – 6 minutes away. Respondent stated that the drive was uneventful and they mostly spoke about the movie that they were going to watch – *The Grinch*.

Respondent explained for the Investigator the layout of his apartment and that he lived with roommates: Creed Bratton and Meredith Palmer. At the time Respondent and Complainant arrived at Respondent’s apartment, Creed and Meredith were watching TV on the couch along with Creed’s girlfriend, Phyllis Lapin,¹⁴ and Ryan Howard.¹⁵ Respondent and Complainant planned to watch the movie on Respondent’s laptop in his bedroom, which he shares with Creed.

Respondent put the pizza in the oven and he and Complainant started watching the movie on Respondent’s laptop. Respondent described for the investigator the layout of his bedroom and that both he and Complainant were sitting on his bed while they watched the movie, which was playing on the laptop on the bed. Respondent stated that they ate while sitting on his bed and when they were done eating, they continued sitting on the bed with their legs extended, sort of facing each other but watching the movie from an angle.

Respondent stated to the Investigator that after approximately 10 minutes of sitting like this, Complainant said to Respondent that “it sucks that you’re too shy to kiss me.” In response, Respondent said “okay” and leaned in to kiss her “pretty much immediately.” Respondent stated that Complainant “sighed” and leaned “into the kiss.” Respondent stated to the Investigator that he took this as “a sign to keep going.” Respondent stated that while they were kissing, Complainant put her hand on Respondent’s thigh and stomach, and he put his hand on her thigh. Respondent stated that while they were kissing he “continued to touch higher” on Complainant’s thigh and Complainant’s “more private area.” The Investigator asked Respondent to clarify what he meant by “more private area,” and Respondent clarified that he touched Complainant’s vagina over her pants.

¹⁴ Phyllis’s last name was provided by Respondent during his second interview, on April 24, 2023.

¹⁵ Ryan’s last name was provided by Respondent during his second interview, on April 24, 2023.

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Respondent stated to the Investigator that upon his touching Complainant's vagina, Complainant said "wow" and "you're good at that." When the Investigator asked Respondent how long he kept his hand on Complainant's vagina, over her clothes, Respondent responded that "it was a little extended" as he was "trying to figure out what she liked." Respondent told the Investigator that at no point did Complainant say "no" or "don't do that," and based on how she was responding, Respondent believed that she was "okay" with what they were doing.

Respondent told the Investigator that he removed his hand and put it on Complainant's thigh, at which point Complainant sighed, again, and they continued to kiss. Respondent stated that while they were kissing, Complainant placed her hands on his "chest, stomach, and thighs" and Respondent placed his hands on Complainant's "chest, stomach, and thighs." Respondent told the Investigator that both he and Complainant "stayed clothed all night." Respondent also stated that when he touched Complainant's chest, it was on top of her clothes, and that he did not go under her shirt. Respondent also said that he touched "[Complainant's] butt over her clothes, all while they were kissing." Respondent described for the Investigator that, at one point, he and Complainant were laying on his bed with her laying on top of him.¹⁶ As they were in this position, Respondent said to the Investigator that Complainant was "holding his face as they kissed" and that she was "moving her hands down to his shoulders, neck, and chest" and then down to his thigh, and that she "touched his butt and briefly once over his crotch." Respondent clarified that it was more of a "brush" over his crotch.

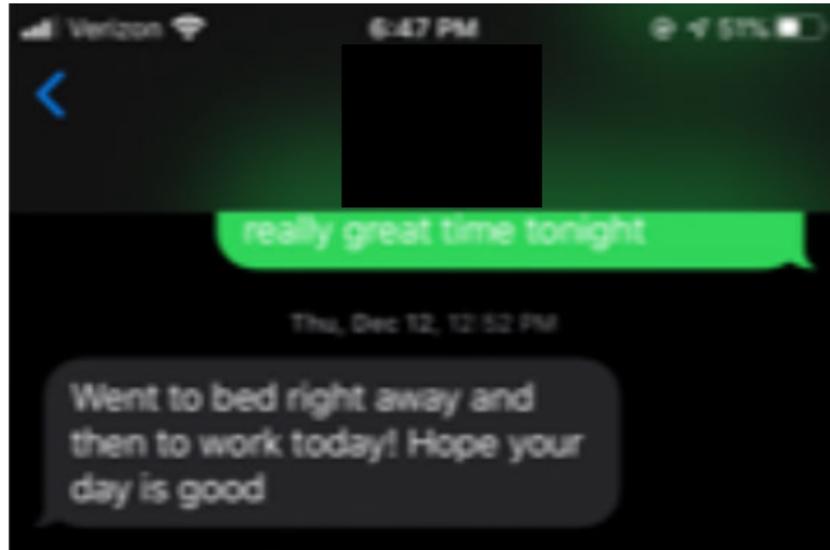
Respondent told the Investigator that, at one point, he told Complainant that "she was a good kisser," to which she responded "I know" and leaned back in to continue kissing.

Respondent stated that from the time they began kissing to when they stopped, about 15 minutes had passed. Respondent stated that Complainant told him that she had to lean back up because she "gets nauseous" when she eats. Respondent was "okay" with that and she sat back up. Respondent said that they finished watching the movie, and he offered to drive Complainant back to her dorm, which she accepted. Respondent stated that upon arriving at her dorm, which was only a few minutes-drive from his apartment, Complainant said that she "had a great time" and they kissed before she left the car. Respondent responded to Complainant and said "Ok, text me in the morning," and Complainant went to her dorm. Respondent texted Complainant at

¹⁶ Respondent provided the follow clarification to the Investigator on April 23, 2023, when he responded with his edits and comments to her interview summary:

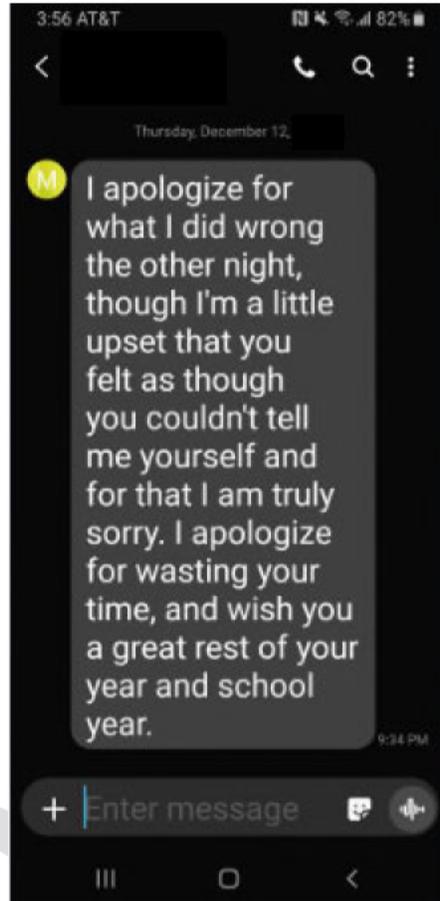
"I would also like to elaborate upon my answer over when she was lying on me, she was clearly in control of the situation. She was using her hands and moaning and making statements that showed to me that she was in control and liked the encounter. She had accused me of being too shy to kiss her, and each time I touched her with a new level of intimacy, she gave me positive feedback. From the time she was flirtatiously texting me, to patting me on the butt, to telling me I am 'really good at that' when I touched her vagina outside her pants while she was on top of me, I felt that she was in charge of any and all activities from the beginning of the date, throughout that evening's encounters until after I dropped her off at her dorm. I was worried about disappointing her. I was not focused on trying to satisfy any sexual desire of my own. It was only after she put her hand on my penis, clarifying it was more than a brush, that I felt comfortable touching her vagina over her clothing."

about 12:30 AM to say that he had a good time. Complainant did not respond until later the next day and, when she did, she said that she had fallen asleep. A portion of this text exchange is included here:¹⁷



The next day, on December 12, 2022, Respondent told the investigator that he was approached by Kevin Malone as they were both at the fraternity house for an event. While Respondent and Kevin were in the kitchen, Kevin asked Respondent how the date with Complainant went. Respondent responded that he thought “it went well,” to which Kevin replied “no it didn’t, you owe her an apology” and something along the lines of “you did not get her signs.” Respondent was confused by Kevin’s comment, as Respondent thought “it was a great date” and that “it went smooth.” Respondent told the Investigator that he didn’t believe he did anything wrong, but that he had not been on a date in a long time. Respondent stated that he texted Complainant within five or six minutes of talking with Kevin. That text message appears below:

¹⁷ This screenshot is taken from Ex. B, which was provided to the Investigator by Respondent. In the original file, the text from Respondent to Complainant is not completely visible. Additionally, the image quality is the same in the original as it is in the reproduction, above.



From December 12, 2022 through the end of the University's winter break, Respondent stated that he did not have any communications with Complainant. Respondent stated that the next thing that he heard about his interactions with Complainant was on January 13, 2023, when he received the No Contact Order from the University's Title IX Coordinator. Respondent stated that he "had no idea what was going on." He said he later received the University's Notice of Investigation, at which point he talked to his parents and "told them the entire situation." Respondent stated that he spoke to a close friend, Darryl Philbin, about the situation with Complainant, as well. Respondent stated that Oscar Martinez had blocked him on Snapchat around this time. Respondent stated that he noticed this because he went to message Oscar and could not do so because he was blocked. This caused Respondent to feel "slighted" by Oscar, though he understands that Oscar was friends with Complainant first.

At this point in the interview, Respondent's advisor asked Respondent to discuss why Respondent believed it was okay to engage in some of the physical contact that Jim described earlier in the interview. Respondent responded by reiterating that while he and Complainant were kissing, "she was leaning in." Respondent also stated that he and Complainant had been talking about "sexual topics" in the lead up to their date, and that many of those conversations were "sexually charged" or "sexual in nature."

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Respondent's advisor asked Respondent to discuss some of the specifics of the text messages, to which the Investigator responded that it would be preferable to share the text messages before discussing them in any detail. Respondent's advisor then asked Respondent to describe "what was in his (Respondent's) head that led you to believe it was OK to go to each new level." Respondent responded by again describing the text messages that were sexual in nature that he exchanged with Complainant prior to their date on December 11, 2022. Respondent noted that Complainant would joke around that Respondent and Oscar Martinez were "in a relationship." Respondent described an occasion where he received a text message from Complainant stating "you and I are going to make sweet sweet love," but it was actually written by Oscar Martinez. Complainant also stated that "he [Oscar] thinks you're cheating on him with me." Respondent stated for the Investigator that these texts "kind of created a whole area of promiscuity."¹⁸

The Investigator asked Respondent to describe what, if any, impact this situation has had on him. Respondent described it as "anxiety-inducing." Respondent said he is familiar with stories from other schools that once someone is accused, "that's it." He continued by describing that he's "scared that there's this whole idea that evidence is being ignored from one side or the other" and that he is "anxious that he will not be treated equitably" in this process. Respondent said that this has impacted his ability to enjoy much of anything because there "is this thing hanging over [his] head," and it has been that way for the past four months. Finally, while it has not had an impact on his grades, Respondent stated that this situation has made him "take a step back" from dating or "talking to women" as it is now "extremely intimidating."

The Investigator concluded the interview with Respondent by asking how he was doing and reminding him that he should contact the University's Title IX Coordinator if he has questions about the process or if he needs to discuss the No-Contact Order that is in place. The Investigator thanked Respondent for his time and indicated that se would likely reach out to him to set a follow up interview. The Investigator asked Respondent to discuss with his advisor the text messages that he mentioned in the interview, and to send them via email. Respondent indicated that he would do so.

The Investigator provided Respondent with a summary of his interview on April 19, 2023. Respondent replied on April 23, 2023 with clarifications, all of which are included in the preceding paragraphs or footnotes.

¹⁸ Respondent provided the follow clarification to the Investigator on April 23, 2023, when he responded with his edits and comments to her interview summary:

"On page five, when I used the word promiscuity, I meant flirtatious excitement, I simply misused the word promiscuity, I did not mean what it is defined, as I had no idea what the word meant until I looked it up following the conversation. I meant to say that these texts were sexualized and flirtatiously exciting, I was simply confused about what the word promiscuity meant."

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Interview of April 24, 2023

The Investigator spoke with Respondent via Zoom for a follow-up interview. Respondent was joined on the call by his advisor, attorney Andy Bernard. The Investigator briefly reviewed his status as an independent investigator and the status of this investigation. The Investigator told Respondent that he had a few follow up questions, but that he understood that Respondent wished to discuss certain aspects of the investigation, to include some of the text messages that Respondent previously shared with the Investigator.

The Investigator began by asking follow up questions from the first interview. The Investigator asked Respondent about his statement that Complainant had “smacked his rear” while they were in Target on December 11, 2022. Respondent stated for the Investigator that it was “a spank” and that he was “taken by surprise by it.” Respondent described his thought process at the time as “ok, I guess we will continue past this.” Respondent stated that since they were in Target together he thought to himself “alright, let’s just continue on and finish up here.” The Investigator asked Respondent if he had provided consent to Complainant to touch him in that way, and Respondent stated that he had not. Specifically, Respondent said that Complainant “just did it. I didn’t get fair warning and I was just pushing to get out of there.” Respondent told the Investigator that “the spank” made him feel “uncomfortable because [he] didn’t think it was going to happen.” Respondent also told the Investigator that, since it happened at the beginning of the date, he felt it “set the tone” for the rest of the date, and it showed him that “[Complainant] was in charge.”

The Investigator then asked Respondent to clarify the names of two individuals who were in his apartment when he returned to the apartment with Complainant on December 11, 2022. Respondent stated that the names were Phyllis Lapin and Ryan Howard. The Investigator asked if any of the people who were in the apartment that night – including Phyllis and Ryan – would have heard anything that occurred in Respondent’s room that night. Respondent stated “no” and that everyone else was “watching TV” and that they were “giving each other privacy.”

The Investigator asked Respondent to clarify whether the door to his bedroom was open or closed, and whether it was locked or unlocked. Respondent stated that the door to the bedroom was open until the pizza that they were making was done, at which point they both went to get it, and when they came back to the room Complainant closed the door. Respondent doesn’t believe that the door was locked.

The Investigator turned next to the responses that Respondent provided upon reviewing the summary of his first interview in this matter. The Investigator asked Respondent to clarify his statement that “[Complainant] was lying on [him]” and specifically whether Respondent pulled Complainant on top of him. Respondent responded and stated that he did not pull Complainant down. The Investigator next asked if Respondent guided Complainant down on top of him in any way. Respondent responded and stated that he did not guide Complainant down, either. Respondent explained that while he and Complainant were kissing, “she pressed forward until she was on top” of Respondent. Respondent described it as Complainant “pressing with her

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entire body toward” him and “bringing herself into” him. The Investigator asked Respondent if, at any point, he was on top of Complainant. Respondent said that he was not. The Investigator asked Respondent if, at any point, he was leaning on Complainant or leaning into Complainant. Respondent responded that he was not leaning on or leaning into Complainant at any point and added that he “did not apply his weight to her.”

The Investigator asked Respondent to clarify his interview response that Complainant “was clearly in control of the situation.” Respondent stated that he felt Complainant was in control partly because “she was on top of him and running her hands on his body” and that he “kissed her based on her responses.” The Investigator asked Respondent to clarify what he meant by “her responses,” to which Respondent said it was “the way she guided his hands down to her waist and thighs.” Respondent further stated that Complainant would “goad him” by telling him that “he wasn’t doing enough.” The Investigator asked Respondent to clarify what he meant by “goad him,” to which Respondent stated that Complainant was not speaking anything at the time, but was instead “telling him” what she wanted to happen “in terms of [her] body language, their kissing, her sighing, and her pressing into his body.”

The Investigator asked Respondent what “statements” Complainant made, as indicated in his interview response, and Respondent said that he was referencing Complainant’s statements that he was “too shy to kiss her” and her saying “you’re good at that” when he touched her vagina over her pants. Respondent told the Investigator that, at the time, he was thinking he “had to do more” and that she “wanted more,” based on what she was saying and doing. The Investigator asked Respondent about his interview response “that showed [him] that she was in control,” to which Respondent again noted for the Investigator that he was referring to Complainant’s comments about his being shy, and Complainant’s guiding Respondent’s hands from “her back to her chest and waist.” Respondent reiterated to the Investigator that these were not all verbal comments from Complainant, but physical reactions, as well.

The Investigator asked Respondent about his interview response that Complainant gave Respondent “positive feedback.” Respondent stated that he was describing Complainant’s statement that he “was good at that” when he touched her vagina over her pants, and, at the end of the date, when Complainant told Respondent that “she had a great time.”

The Investigator asked Respondent to clarify how it was that he touched Complainant’s vagina over her pants while she was laying on top of him. Respondent stated that Complainant was laying “in a way that his arms were underneath her” and that “his hands were at his waist” and that Complainant “pushed his arms underneath her” placing them between his body and hers. Respondent reiterated that “this is the only time” he touched her vagina at all and that all touching was “over her clothes.” The Investigator asked Respondent if, at any point, Complainant moved his hands from her vagina to her knee. Respondent responded by saying “no, at no time did she move [his] hand.” Respondent then stated that he moved his hand to her thigh or knee because “he was done and did not wish to continue.” The Investigator asked Respondent if, at any point, Complainant moved his hands from inside of her pants, on her butt,

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to outside of her pants. Respondent stated “no” and that “there was no point where [he] was attempting to get under her clothing.” Respondent added that he was not intending to “satisfy his desires” but instead was “trying to keep up with her.”

The Investigator asked Respondent why Respondent believed that Complainant was “in charge of any and all activities from the beginning of the date,” as he had written in his response to his first interview summary. Respondent stated that it began with the fact that Complainant “picked the idea for the date,” Complainant “smacked his rear” while they were at Target, Complainant said that it “sucked” that Respondent was “too shy” to kiss her, and that Complainant decided “when to be on top” while they were kissing.

The Investigator asked Respondent about his statement, in his interview response, that “[i]t was only after she put her hand on [his] penis, clarifying it was more than a brush, that [he] felt comfortable touching her vagina over her clothing.” Specifically, the Investigator noted that Respondent, in his first interview, described Complainant has having brushed over his crotch. Respondent clarified, stating that it was more of a “press” and that it was over his penis, as well as his thigh and “where the thigh meets the groin.” Respondent further described it as “pushing that turned into a grab but without the gripping.” Respondent described it as forceful and lasting “5 – 10 seconds during the kissing.” Respondent stated that the push to grab was over his clothes. The Investigator asked Respondent to clarify the timeline of when the push occurred, and the Investigator noted for Respondent that in his first interview, Respondent stated that he touched Complainant’s vagina over her pants before she brushed his crotch. Respondent clarified for the Investigator by stating that it happened while they were both sitting up, not long after they began kissing. Respondent said that Complainant pressed and then pushed into his penis, thigh, and groin area, at which time he “reciprocated” by touching Complainant’s vagina over her pants.

The Investigator asked Respondent whether he and Complainant went from sitting to laying once, twice, or more. Respondent stated that they began seated, then laid down, at which point Complainant indicated to Respondent that she gets nauseous if she lays down after eating, they sat back up, began kissing again, and Complainant pushed Respondent back down to continue kissing.

The Investigator asked Respondent whether, at any point, Complainant was wrapped up in a blanket or blankets on his bed. Respondent said that he does not recall, but that while they were watching the end of the movie, Complainant was “wrapped up in her sweatshirt.” Respondent stated that he has a comforter and pillow on his bed but no extra blankets on the bed. Respondent further stated that he had some extra blankets folded elsewhere in his room, but that they were not used that evening by Complainant or himself.

The Investigator asked Respondent if he and Complainant were ever “spooning” with Complainant laying in front of him. Respondent said that the only time they were spooning was when she was sitting on his lap and pushing him down, but in that instance they were “face to

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face” and “not laying behind” each other. The Investigator asked Respondent if, at any point, he placed his hands on Complainant while he was behind Complainant, and Respondent said “no.”

The Investigator asked Respondent about the text messages that Respondent shared with the Investigator. Specifically, the Investigator asked Respondent why he believed the texts were “flirtatious,” as he indicated in his response to this first interview summary. In response, Respondent referred the Investigator to the texts from Complainant where she wrote about “how good she is at what she does,” a “penis size” text exchange, and the “topic of sex” in a few text messages. Respondent told the Investigator that he believed these messages were indicative of Complainant’s thinking. Respondent further stated that when Complainant “smacked his butt” at Target, and then when Complainant “was laying on [him],” that Complainant was in charge of what was happening that evening.

The Investigator asked Respondent what his text to Complainant, apologizing “for what [he] did wrong the other night,” meant when he sent it. Respondent stated that he “had no idea what was going on” and that he was “told to” apologize to Complainant from Kevin Malone. Respondent also told the Investigator that he was “upset that she did not just tell him to stop” when they were together in his room on December 11, 2022. Respondent said that he “was just following her lead,” and she even said that she “had a really great time” when he dropped her off at her dorm that night. Respondent said that, at the time, he did not think he did anything wrong, and that he “was confused” the night he apologized to Complainant via text. Respondent said that he was “apologizing for wasting her time on the date.” The Investigator asked Respondent if he felt the same way currently, and Respondent responded that he does and that he still believes that “he did not do anything wrong” and that he “was trying to keep up with her” and was “thinking of her” on December 11, 2022.

The Investigator asked Respondent if he would like to further discuss the impact that this has had on him. Respondent said that it “still feels like a big cloud hanging over” him and that “being accused of something of this gravity” while “he understands the severity” it “is painful inside and out.” Respondent said that there is nothing more he can do for this investigation aside from what he has already done. Respondent said that it has created “a lot of anxiety” for him and that it “affected his finals week” but that he “was able to finish the semester.” The Investigator apologized for any interruption caused by the email message setting up this follow up interview.

The Investigator concluded by thanking Respondent for his time and that if he has any additional witness information or evidence to share with the Investigator, to please do so. The Investigator told Respondent that he would be receiving a copy of the summary of this interview, and to review it closely. The Investigator reminded Respondent of the University’s retaliation policy and that if he had questions or concerns about the process or policy, that he should reach out to the Investigator or to the University’s Title IX Coordinator, Mr. Toby Flenderson.

The Investigator provided Respondent with a summary of his interview on April 28, 2023. On May 4, 2023, Erin Hannon, an assistant to Respondent’s advisor, Mr. Bernard, replied to the

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Investigator on Respondent’s behalf, stating “Mr. Halpert does not have any edits or comments for the interview summary you provided.”

Witnesses¹⁹

The Parties identified a number of potential witnesses during the course of this investigation. Complainant identified six potential witnesses. Of those, the Investigator contacted five: Oscar Martinez, Kevin Malone,²⁰ Stanley Hudson, Angela Martin, and Kelly Kapoor.²¹ The Investigator contacted Mr. Hudson on April 25, 2023, April 28, 2023, and on May 4, 2023. In the email from the Investigator to Mr. Hudson on May 4, 2023, the Investigator indicated that it would be the last contact with respect to serving as a witness in this matter. The Investigator did not hear back from Mr. Hudson. The Investigator interviewed Mr. Martinez on April 27, 2023; Ms. Martin on April 27, 2023; and Ms. Kapoor on May 11, 2023.

Respondent identified one potential witness, Darryl Philbin, and the Investigator interviewed Mr. Philbin on May 11, 2020.²²

Prior to the interview, each potential witness was advised of investigator neutrality, the University’s prohibition on retaliation, and that information shared with me during the interview was not confidential and would be included in the investigation report issued in this matter. Summaries of each interviewed witness follow.

Oscar Martinez – April 27, 2023

¹⁹ These sections include summaries of the Investigator’s interviews with the witnesses. Language is not a direct quotation from the witnesses unless it is included in quotation marks.

²⁰ The Investigator contacted Mr. Malone via email on April, 25, 2023, April 28, 2023; and May 5, 2023. In the email from the Investigator to Mr. Malone on May 5, 2023, the Investigator indicated that it would be the last contact with respect to serving as a witness in this matter. The Investigator did not hear back from Mr. Malone until May 28, 2023, at which time the Investigator and Mr. Malone arranged for an interview on June 1, 2023. In light of the fact that the Investigator had already begun drafting this summary, the Investigator contacted the University’s Title IX Coordinator for guidance on whether to schedule a witness interview with Mr. Malone. The University’s Title IX Coordinator agreed that such an interview should take place. The interview with Mr. Malone occurred on June 1, 2023.

²¹ The one witness that the Investigator did not contact was Complainant’s therapist. The Investigator did not believe that the therapist would add anything relevant to the matter being investigated. Further, Complainant indicated to the Investigator that she did not feel comfortable with the Investigator interviewing her therapist at the time that the Investigator asked Complainant.

²² During the course of the Investigator’s interviews with Respondent, Respondent provided the names of a number of individuals who were in Respondent’s apartment on the night of December 11, 2022. The Investigator asked Respondent whether it was possible that any of the individuals who were present that night would have heard or observed anything that happened in Respondent’s room with Complainant. Respondent stated that it was not likely. The Investigator determined that since none of the individuals were in Respondent’s room that night, that Respondent did not indicate that he spoke to any about what happened with Complainant, and that Complainant did not speak with any of the individuals, that their testimony would not add anything relevant to the matter being investigated.

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The Investigator spoke with Oscar Martinez via cellphone as he is currently living off-campus due to Scranton State University's ("SSU" or "University") closure because of COVID-19 concerns. The Investigator introduced himself and explained to Oscar that he had been identified by a party in the matter of Complainant and Respondent. The Investigator explained that she is an attorney, licensed in New Hampshire, but is not serving in a representative capacity for this matter. Instead, the Investigator explained that she is an independent investigator with Nashua Consulting, which contracts with colleges and universities, including SSU, to conduct impartial investigations for Title IX claims.

Oscar stated that he is currently living at home but prior to leaving campus he was a Resident Advisor (RA) in Schrute Hall at SSU. Oscar explained that when campus reopens he will be an RA again, though he is unsure where. Oscar just completed his sophomore year and he majors in accounting.

The Investigator asked Oscar if he was familiar with Complainant or Respondent. Oscar indicated that he knew Complainant from his freshman year where he knew Complainant's roommate, Angela Martin, from the University's accounting department. Oscar told the Investigator that he, Complainant, and Respondent were in a class together and that this is how the three of them initially all interacted. Oscar described Respondent as more of an acquaintance at the time. Oscar said that as they got to know each other better, they became friends.

Oscar said that he knew that Respondent and Complainant "maybe liked each other," though he doesn't recall any specific statements about as much. Oscar said that he knew that Respondent and Complainant "were talking." Oscar said that there weren't any group text message threads between the three of them, but that he knows that Respondent and Complainant were texting. Oscar recalled that occasionally he, Respondent, and Complainant would talk about Respondent's and Complainant's texts, and that they were typically "joking" or "friendly things about class." Oscar stated that he does not recall "anything about a hint of intimacy" about the text messages.

The Investigator asked Oscar if he was familiar with what happened between Complainant and Respondent. Oscar said that he was familiar with what happened based on his conversations with Complainant. Oscar told the Investigator that most of the details of what Complainant told him, however, can be found in an incident report that Oscar filed with the University. Oscar stated that, as an RA, he is a mandatory reporter on campus. Oscar also stated that he was not comfortable providing the report directly to the Investigator but encouraged the Investigator to contact the University's Title IX office to obtain the report. The Investigator understood and indicated that he would do so.

The Investigator asked Oscar to tell him what he could remember without reference to the incident report. Oscar stated that Complainant had told him that she and Respondent were planning on doing something together, but does not recall that being a date necessarily. Oscar

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recalled that on the night of the “event,” Complainant came to his room after coming back from Respondent’s apartment.

Respondent described for the Investigator that it was “later at night,” though he could not recall a specific time. Oscar described for the Investigator that Complainant appeared “very frazzled” and “disheveled” and in “some sort of distress.” Oscar also described Complainant as “visibly upset.” Oscar told the Investigator that he sat Complainant down “because he could tell something was wrong” and that Complainant was “not her normal self.”

The Investigator asked Oscar to explain further, if he could, what he observed. Oscar stated that he does not recall specifics but that Complainant “was not in a good mood.” Oscar stated that he told Complainant that he has an obligation, as an RA, to report certain things to the proper campus authorities. Oscar stated to the Investigator that Complainant acknowledged as much. The Investigator asked Oscar whether he believed that Complainant was visiting him that night as an RA or as friend. Oscar stated that he believed it was because they were friends. Oscar stated that he asked Complainant if she wanted him to contact anyone on her behalf, and that Complainant declined. Oscar told the Investigator that he contacted Michael Scott,²³ who is one of Oscar’s supervisors, while Complainant was in Oscar’s room. Oscar recalled for the Investigator that Michael asked Oscar if Complainant wanted him (Michael) to come to Oscar’s room, but Complainant declined. Oscar stated that Complainant stayed in the room for about 30-45 minutes that evening, and that Complainant was emotional for most of the time.

Oscar stated that Complainant came back to his room the next day, around 9:00 PM, and that he and Complainant talked “in more depth” about what happened with Respondent. Oscar stated that he does not recall the specifics of any discussion with Complainant about creating an incident report, but believes that they discussed it at some point. Oscar stated that Complainant “talked about what happened” with Respondent and about going to the Title IX office to “report it officially.” Oscar told the Investigator that Complainant was “very emotional” while they spoke and that there were “periods of time where she would take deep pauses and collect herself.” Oscar said that Complainant appeared strained about having to go through the events again in her mind. Oscar told the Investigator that he believes that Complainant wrote a timeline of events, but he does not know that for sure. Oscar told the Investigator that Complainant was more descriptive about what happened with Respondent, but that those details are better found in the incident report. Oscar stated that he gave Complainant some resources about the Title IX office and that the end of their conversation was centered on getting in touch with the University’s Title IX office.

Oscar stated that, following the discussion with Complainant on the night that the events with Respondent occurred and the next day, he and Complainant did not speak much about what

²³ Oscar provided the Investigator with Michael’s last name on May 3, 2023, when he responded with his edits and comments to his interview summary.

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happened. Oscar stated that he spoke with Complainant more than Respondent at that time, and that he really only interacted with Respondent through their shared class.

Oscar stated that it is possible that Complainant spoke to her roommate, Angela Martin, about what happened with Respondent, but that he is not certain. Oscar stated that Complainant's and Angela's relationship has grown apart over the past several months.

The Investigator asked Oscar if there was anything else that he would want the Investigator to know about this matter. Oscar said that he is disappointed that it has taken so long to investigate and resolve what happened with Complainant. Oscar stated that he would have rather the situation be handled sooner so that memories aren't as cloudy. Oscar said that this situation has taken a personal toll on Complainant, and that Oscar believed Complainant appeared anxious or depressed at times. Oscar also said that the incident with Respondent "really affected her" and that, while "it's hard to explain," this "incident changed her."

The Investigator asked Oscar if he had any evidence that he could share about what Complainant shared with him or about anything pertaining to Complainant and Respondent. Oscar stated that he did not, aside from the incident report.

The Investigator asked Oscar if there was anyone else that he would recommend the Investigator speak with about Complainant and Respondent. Oscar stated that, aside from Angela Martin, he could not think of anyone else.

The Investigator thanked Oscar for his time and stated that he would be in touch if he had additional questions. The Investigator asked Oscar to not share the details of what he and the Investigator had discussed, and that if he has questions or concerns, to get in touch with the Investigator or Toby Flenderson, the University's Title IX Coordinator.

The Investigator provided Oscar with a summary of his interview on May 1, 2023. Oscar replied on May 3, 2023 with one clarification, which is included in the preceding paragraphs and footnotes.

Angela Martin – April 27, 2023

The Investigator spoke with Angela Martin via cellphone as she is currently living off-campus due to Scranton State University's ("SSU" or "University") closure because of COVID-19 concerns. The Investigator introduced himself and explained to Angela that she had been identified by a party in the matter of Complainant and Respondent. The Investigator explained that she is an attorney, licensed in New Hampshire, but is not serving in a representative capacity for this matter. Instead, the Investigator explained that she is an independent investigator with Nashua Consulting, which contracts with colleges and universities, including SSU, to conduct impartial investigations for Title IX claims.

Angela stated that she is currently living in Pittsburgh, Pennsylvania, and that she is an accounting major with a minor in business management. Angela just completed her

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sophomore year at SSU. Angela stated that she lived on campus in Schrute Hall with her roommate, Complainant. Angela further stated that she and Complainant had lived together for the past two years, and that while she and Complainant were not friends prior to attending SSU, they “hit it off” over text messages before their freshman year on campus and decided to live together. Angela clarified for the Investigator that she and Complainant are no longer talking or friends because of an incident that occurred after what Complainant went through with Respondent.

The Investigator asked Angela if she was familiar with what happened between Complainant and Respondent, and Angela indicated that she knew what Complainant had told her. The Investigator asked Angela to share what she knew and how she knew it. Angela stated that it was around the first week of December, possibly December 5th or 6th, that she had a conversation with Complainant about what happened with Respondent. The Investigator asked Angela whether she is confident about the dates, and Angela stated that she is confident because it was around the time that she had a theater performance on campus.

Angela told the Investigator that the conversation started with a text message from Complainant, in which Complainant asked Angela if they could talk. Angela said that Complainant’s text message indicated that what they had to talk about was “important.” Angela told the Investigator that, around this time, Angela was out of the room a lot because she was studying for exams. Angela said that the conversation with Complainant happened shortly after her text message, and it occurred in their shared room, while they were both seated on the bed together, perhaps around 3 PM or 4 PM in the afternoon. Angela told the Investigator that Complainant’s demeanor while they were talking was “quiet and kind of shy” and Angela stated that it was “weird because Complainant was normally so boisterous and fun” and that Complainant “seemed very off.” Angela further noted that Complainant also seemed “off” in the week or so before they had their conversation.

Angela told the Investigator that she believes that Complainant and Respondent knew each other from a shared history class, and that they were introduced through a mutual friend (of Complainant and Respondent), Kevin Malone. Angela said that Kevin used to be a Resident Advisor on campus, in Schrute Hall. Angela told the Investigator that she did not hear Complainant speak of Respondent much before their conversation about what happened at Respondent’s apartment.

According to Angela, Complainant said that she and Respondent were “having a fun time” and Angela’s perception was that Complainant and Respondent were probably “joking around.” Complainant did not say “joking around in so many words,” but that was the gist that Angela picked up from Complainant. According to Angela, Complainant stated that “everything seemed fine” with Respondent and that “they had gotten onto the bed.” At this point, Angela told the Investigator that she did not know the details, but recalled Complainant saying something about sitting in Respondent’s bed and Respondent trying to make Complainant lay down. Angela told the Investigator that she does not know for sure.

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Angela told the Investigator that Complainant described Respondent as starting to touch her (Complainant) and being really physical with her in ways that she was not comfortable with. Angela admitted to the Investigator that she was listening to Complainant, but that she was a little distracted since she had to get ready for the show that she had that evening. Angela said that Complainant told her that Respondent tried to hold her (Complainant) down. While she is not 100% sure, Angela believes that Complainant said that it was escalating to the point where Respondent was holding her down and that Complainant pushed Respondent off.

Angela recalled for the Investigator that Complainant may have said that she (Complainant) did not verbally tell Respondent to stop what he was doing, but that she (Complainant) was showing Respondent that she was not comfortable and wanted to stop. Angela recalled Complainant saying something along the lines of being very distant with Respondent and showing him that she did not want to be touched in the way Respondent was touching her. Angela recalled Complainant telling her that she did not know what to do because Respondent was supposed to give Complainant a ride home, and that Complainant did not know her way around Respondent's apartment building.

Angela does not know how Complainant got back to the dorm that night and does not know anything that Complainant might have done or not done when she got back to the dorm.

Angela stated that she knows that Complainant spoke to Kevin Malone at some point about what happened with Respondent. The Investigator asked Angela how she knew this and Angela said that Complainant told her. Angela stated that Complainant mentioned possibly going through the University's Title IX office to make a report.

The Investigator asked Angela about her observations of Complainant during their conversation. Angela said that "it seemed to be weighing on Complainant," and that "she seemed reserved and quiet." Angela told the Investigator that Complainant appeared sad even before their conversation. Specifically, Angela recalled a time, not long before their conversation, when she observed Complainant watching a movie with friends in a common area. Angela said that she saw Complainant watching the movie and stopped in to say hello but that Complainant "just seemed really sad."

The Investigator asked about the falling out between Complainant and Angela and Angela said that it had to do with Angela's boyfriend being in their (Complainant and Angela) room and that they changed their roommate agreement to set out who can be in their room.

The Investigator thanked Angela for her time and stated that she would be in touch if she had additional questions. The Investigator asked Angela to not share the details of what she and the Investigator had discussed, and that if she has questions or concerns, to get in touch with the Investigator or Toby Flenderson, the University's Title IX Coordinator.

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The Investigator provided Angela with a summary of her interview on April 29, 2023. Angela replied on April 29, 2023 with edits and clarifications, all of which have been included in the preceding paragraphs.

Kelly Kapoor – May 11, 2023

The Investigator spoke with Kelly Kapoor via cellphone. Kelly currently lives in Trenton, New Jersey and is a marketing student attending Trenton Community College. Kelly's course of study has shifted online in light of COVID-19 concerns. The Investigator introduced himself and explained to Kelly that she had been identified by a party in the matter of Complainant and Respondent. The Investigator explained that she is an attorney, licensed in New Hampshire, but is not serving in a representative capacity for this matter. Instead, the Investigator explained that she is an independent investigator with Nashua Consulting, which contracts with colleges and universities, including Scranton State University, to conduct impartial investigations for Title IX claims.

The Investigator asked Kelly if she is familiar with Complainant or Respondent. Kelly stated that she and Complainant had gone to the same school since the 2nd grade and that, while they have known each other as acquaintances since about the 8th grade, they really "hit it off" around the 9th grade and have been friends ever since. Kelly said that she and Complainant live about five minutes apart from each other in the Trenton area.

The Investigator asked Kelly what, if anything, she knew about what happened between Complainant and Respondent. Kelly stated that she received a text message from Complainant saying that Complainant had something to tell Kelly, but preferred to do so by phone. Kelly stated that she spoke to Complainant on a Friday evening, and that maybe a few days had passed between receiving Complainant's text message and speaking with Complainant via phone.²⁴

Complainant told the Investigator that she recalls Complainant saying something about a friend (of Complainant's) setting Complainant up on a date with Respondent. Kelly said that the friend of Complainant's may have been someone named Kevin. Kelly stated to the Investigator that she was aware that Complainant had previously broken up with her boyfriend. Kelly further stated that she wondered if Complainant was getting back into dating. The Investigator asked Kelly if she recalled anything else about Complainant's being setup on a date or the date itself. Kelly said "not really," but that she believed Complainant mentioned being at Respondent's apartment, watching a movie, and maybe sitting together on a couch. Kelly also said that she recalled Complainant saying that Respondent put his hands on her (Complainant) inappropriately. Kelly clarified that she understood from Complainant that Respondent had touched Complainant "where she did not want to be touched." Kelly recalled that Complainant described removing

²⁴ Kelly provided the Investigator with a screen shot of the text message that she received from Complainant, dated Friday, December 13, 2022. Kelly originally stated to the Investigator that she spoke with Complainant within a few days of receiving that text message, but upon reviewing the text message, Kelly clarified in an email to the Investigator that she spoke with Complainant on the same day that Complainant sent her that text message.

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Respondent's hands from Complainant's body and Respondent putting them back on Complainant's body. Kelly stated that Complainant did not say where, specifically, Respondent had touched her on her body. Kelly stated that Complainant was "pretty vague" when describing what happened. Kelly stated that she recalled Complainant saying that Respondent drove her back to her dorm room that night. Kelly stated that, while she does not know the people at SSU that Complainant is friends with, she recalls Complainant saying that she (Complainant) had told a friend named Kevin what happened with Respondent, and that Kevin said something to Respondent about it. Kelly also stated that Complainant mentioned that she had told her parents, but that she had not told them very much of what happened.

The Investigator asked Kelly if she recalled how Complainant sounded on the phone that Friday night. Kelly said that Complainant "seemed shaky" but "not hysterical." Kelly stated that she and Complainant had shared a lot of phone calls in the past and that she could tell that Complainant was upset. Kelly also stated that she could tell that Complainant did not want to talk about what happened in much detail, but that Complainant may have felt compelled to do so because she and Kelly were soon traveling to Florida with Kelly's family.

Kelly stated that she recalled Complainant seemingly being "hesitant" to contact the University's Title IX office. Kelly stated that she recalled Complainant saying that she "did not know what to do" because she "did not want to ruin Respondent" but that she might need to "talk to a Title IX person" at SSU. Kelly stated that it was "not a lot of hesitation" on Complainant's part, but appeared to be "a thought in her mind."

The Investigator asked Kelly if she and Complainant had discussed what happened between Complainant and Respondent on any other occasions. Kelly stated that it was possible that it came up on the trip that she and Complainant took to Florida, but that if it did, it was not "in depth."

The Investigator asked Kelly if she had any evidence pertaining to what she discussed with Complainant, or anything pertaining to what happened between Respondent and Complainant, and Kelly stated that she has the text message that Complainant sent to her before their phone call. The Investigator asked Kelly to send a screenshot of that message, which Kelly did on May 11, 2023.

The Investigator asked Kelly if there was anyone else that she would recommend the Investigator speak with about Complainant and Respondent. Kelly stated that she believes Complainant spoke with her (Complainant's) roommate about what happened with Respondent, but she is not certain.

The Investigator asked Kelly if there was anything else that she wished to share about Complainant or the matter involving Respondent and Complainant. Kelly stated that there was not.

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The Investigator thanked Kelly for her time and stated that she would be in touch if she had additional questions. The Investigator asked Kelly to not share the details of what he and the Investigator had discussed, and that if he has questions or concerns, to get in touch with the Investigator or Toby Flenderson, the University's Title IX Coordinator.

The Investigator provided Kelly with a summary of her interview on May 12, 2023. Kelly replied on May 13, 2023 and stated, "everything looks good" in her interview summary.

Darryl Philbin – May 11, 2023

The Investigator spoke with Darryl Philbin via cellphone as he is currently living off-campus due to Scranton State University's ("SSU" or "University") closure because of COVID-19 concerns. The Investigator introduced himself and explained to Darryl that he had been identified by a party in the matter of Complainant and Respondent. The Investigator explained that she is an attorney, licensed in New Hampshire, but is not serving in a representative capacity for this matter. Instead, the Investigator explained that she is an independent investigator with Nashua Consulting, which contracts with colleges and universities, including SSU, to conduct impartial investigations for Title IX claims.

Darryl stated that he is currently living in Scranton, Pennsylvania and that he just finished his sophomore year at SSU, where he is studying supply chain management.

The Investigator asked Darryl if he is familiar with Complainant or Respondent. Darryl stated that he has known Respondent since the 5th grade and that they have been friends ever since. Darryl further stated that he and Respondent had attended the same high school and that he still keeps in touch with Respondent, though not as frequently. Respondent stated that he did not know Complainant until this investigation, and that now he only knows her name.

The Investigator asked Darryl what, if anything, he knew about what happened between Complainant and Respondent. Darryl stated that, one day in mid- to late-February 2023, he received a call from Respondent. Darryl stated that Respondent asked if he (Darryl) could stop by Respondent's dad's store, which is where Respondent worked on occasion. Darryl told the Investigator that "it seemed like something had happened" with Respondent. The Investigator asked Darryl why he thought that. Darryl responded, stating that Respondent is "generally a pretty happy guy" and that Respondent is "always energetic" and inviting Darryl to do stuff, but that Respondent did not seem that way on the phone. Darryl stated that he went to the store as Respondent asked him to do and that when he arrived, he and Respondent walked along the shops and talked for about 15 minutes. Darryl stated that Respondent mentioned receiving the email from the University's Title IX Coordinator about an investigation. Darryl stated that Respondent described going on a date, though he did not mention Complainant by name, and that Respondent described thinking that that the date had gone well. Darryl also stated that Respondent described being told by Kevin Malone to apologize to Complainant, but being confused as to why he (Respondent) had to do so. Darryl stated that he knows that Kevin was a friend of Complainant's.

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Darryl stated that he does not know much about what happened during the date, but that he believes they “went to a movie.”²⁵ The Investigator asked Darryl if he and Respondent discussed what happened between Respondent and Complainant in Respondent’s apartment bedroom. Darryl recalled that Respondent said something about Complainant telling him (Respondent):

“why don’t you kiss me more?” Darryl said that he does not recall much else. Darryl said that it is possible that Respondent shared more details but he does not recall them now. Darryl stated that he and Respondent talked about other things on their walk, and that it was not entirely about Respondent’s Title IX matter. Darryl stated that he has not spoken to Respondent about the specifics of what happened with Complainant since that conversation described above, but that Respondent would occasionally share updates on what was going on with the investigation.

The Investigator asked Darryl if he had any evidence pertaining to what he discussed with Respondent, or anything pertaining to what happened between Respondent and Complainant, and Darryl stated that he would check his messages and let the Investigator know.

The Investigator asked Darryl if there was anyone else that he would recommend the Investigator speak with about Complainant and Respondent. Darryl stated that Kevin Malone may be worth talking to since he is familiar both with Complainant and Respondent.

The Investigator asked Darryl if there was anything else that he wished to share about Respondent or the matter involving Respondent and Complainant. Darryl stated that there was not.

The Investigator thanked Darryl for his time and stated that she would be in touch if she had additional questions. The Investigator asked Darryl to not share the details of what he and the Investigator had discussed, and that if he has questions or concerns, to get in touch with the Investigator or Toby Flenderson, the University’s Title IX Coordinator.

The Investigator provided Darryl with a summary of his interview on May 12, 2023. Darryl replied on May 19, 2023 and stated, “I don’t recall stating that I believe [*sic*] they went to a movie but other than that it looks good.”

Kevin Malone – June 1, 2023

The Investigator spoke with Kevin Malone via cellphone. The Investigator introduced herself and explained to Kevin that he had been identified by a party in the matter of Complainant and Respondent. The Investigator explained that she is an attorney, licensed in New Hampshire, but is not serving in a representative capacity for this matter. Instead, the Investigator explained that she is an independent investigator with Nashua Consulting, which contracts with colleges and universities, including Scranton State University, to conduct impartial investigations for Title IX claims.

²⁵ On May 19, 2023, in response to reviewing his interview summary, Darryl told the Investigator that he did not recall stating to the Investigator that he believes “they went to a movie” during his interview.

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Kevin stated that he currently lives off-campus, however, when campus was open, he lived in Schrute Hall and, later, in Vance Hall. Kevin stated that he just completed his junior year at SSU where he studies secondary education.

The Investigator asked Kevin if he is familiar with Complainant or Respondent. Kevin stated that he knows both Pam and Jim. Kevin stated that he knows Pam from his work as a Resident Advisor at SSU. Kevin stated that while he was an RA in Schrute Hall, Pam was a Desk Assistant, thus they got to know each other. Kevin also stated that Pam lived one floor below him in Schrute Hall. Kevin stated that he remains friendly with Pam and that they speak occasionally.

Kevin stated that he knows Respondent from their being in the same fraternity – I Eta Patata. Kevin further stated that he has known Jim for approximately two years, since Jim joined I Eta Patata. Kevin also stated that he and Jim had an economics class together, which is where they originally met. Kevin stated that he still speaks with Jim occasionally.

The Investigator asked Kevin what, if anything, he knows about what happened between Pam and Jim. Kevin stated that he knew that Pam and Jim went on a date, though he could not recall the exact day of their date. The Investigator asked Kevin if he had setup the date or encouraged the date, and Kevin said “no,” but that he “vouched for Jim” when Pam asked him (Kevin) about Jim. Kevin recalled that Pam had told him about the date beforehand, and that he knew the date was going to happen. Kevin also recalled seeing Pam and Jim speaking at his (Kevin’s) 21st birthday party, which was held at the I Eta Patata fraternity house, but that nothing stood out about that interaction. Kevin stated that the day after Pam and Jim’s date, Pam contacted him about wanting to “talk about something.” Kevin is uncertain whether Pam contacted him via text or phone call. Kevin stated that he had an event that evening at the I Eta Patata fraternity house but that he stopped by Schrute Hall, where Pam still lived, in order to speak with Pam. Kevin stated that he believes the conversation with Pam occurred in a lounge in Schrute Hall, and that Stanley Hudson and Oscar Martinez may have been present, as well.

Kevin recalled for the Investigator that Pam was good at “putting on a face,” an “I’m alright face,” but that Pam “kind of broke down a little bit” while she was telling Kevin, Stanley, and Oscar, what happened with Jim the previous night. Kevin stated that he could not recall many of the details that Pam shared that day in the Schrute Hall lounge. However, Kevin did recall that Pam described Jim as touching her where she did not want to be touched. Kevin further recalled that Pam said [to Kevin, Stanley, and Oscar] that “she did not say no” to Jim, but she “kept removing his arm.” Kevin stated that while he does not currently recall many of the details that Pam shared in the lounge, it was his belief at the time, and remains his belief today, that Pam was describing having been assaulted by Jim.

Kevin told the Investigator that Pam stated that “she wanted an apology from Jim” for what happened. Kevin further told the Investigator that he understood at the time that Pam was not originally planning on “filing a Title IX,” but that she “wanted an apology and no more contact” from Jim.

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Kevin told the Investigator that following the conversation with Pam he saw Jim at the event at the I Eta Patata house. Kevin further stated that, following the event, he approached Jim and asked for his impression of how the date with Pam went. Kevin recalled that Jim responded that the date went “great.” Kevin further recalled that he responded to Jim by saying something along the lines of “well, she certainly doesn’t think that it went well” and telling Jim that he needed to apologize to Pam. Kevin explained to the Investigator that his thought process at the time of speaking to Jim was that he was trying to help Jim avoid having a “Title IX case against him.” Kevin stated that after he spoke with Jim about apologizing to Pam, that Jim walked away.

Kevin stated that, about an hour after speaking with Jim, he (Kevin) received a text from Pam, and that Pam had asked to see him. Kevin told the Investigator that he went to Pam’s dorm and that Pam showed him a text that she had recently received from Jim. Kevin further stated that the text message was Jim’s apology to Pam. Kevin recalled for the Investigator that Pam found Jim’s text message “to be pretty disrespectful” and that she was going to pursue filing a Title IX report. Kevin further recalled that Pam may have mentioned “things happening in the past” but that he did not ask Pam about what that meant and Pam did not elaborate on it. Kevin did not recall anything that he said to Pam specifically, but did recall that it would have been something along the lines of “do what you think you have to do.”

Kevin stated that he kept in touch with Pam about her Title IX case “a little bit,” and explained that, in mid-March, he heard from Pam that the Title IX investigation was moving forward. Kevin said that Pam also asked him if he would be a witness in the investigation, to which he said “yes.” Since that time, Kevin stated that he and Pam still speak, but not about the case.

Kevin stated that he has not spoken with Jim about this Title IX investigation.

The Investigator asked Kevin if there was anything else that he wished to share about matter involving Pam and Jim, to which Kevin responded “no.”

The Investigator asked Kevin if there was anyone else that he would recommend the Investigator speak with about the matter involving Pam and Jim, and Kevin provided the names Stanley Hudson and Oscar Martinez.

The Investigator asked Kevin if he had any evidence pertaining to the matter involving Pam and Jim, and Kevin stated that he would look at his messages and, if he had any, that he would send them to the Investigator.

The Investigator thanked Kevin for his time and stated that she would be in touch if she had additional questions. The Investigator asked Kevin to not share the details of what he and the Investigator had discussed, and that if he has questions or concerns, to get in touch with the Investigator or Toby Flenderson, the University’s Title IX Coordinator.

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The Investigator provided Kevin with a summary of his interview on June 1, 2023. Kevin replied on June 3, 2023 and stated, “I reviewed the transcript and it looked accurate.”

Other Evidence:

Complainant provided the following evidence:

- Screenshot of a text message, dated December 12, 2022, purportedly from Respondent to Complainant. (Ex. A)

Respondent provided the following evidence:

- Screenshots of text messages, dated December 8, 2022, December 9, 2022, December 10, 2022, December 11, 2022, December 12, 2022, purportedly between Complainant and Respondent. (Ex. B)

Witness Kelly Kapoor provided the following evidence:

- Screenshots of text messages dated December 13, 2022, purportedly between Complainant and Kelly Kapoor. (Ex. C)

Witness Kevin Malone provided the following evidence:

- Screenshots of text messages dated December 10, 2022; December 11, 2022; and December 12, 2022 purportedly between Complainant and Kevin Malone. (Ex. D)
- Screenshots of text messages, undated, purportedly between Complainant and Respondent.²⁶ (Ex. E)

Additionally, as noted above, I reviewed the following:

- Title IX housing report. (Ex. F)

²⁶ On June 3, 2023, in response to an emailed question from the Investigator, Kevin stated “Pam did send me those screenshots before the date occurred, yes.”



QUESTIONS?

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