

Investigation Report

Wisconsin Public University

September 25, 2020

Investigation Related to Formal Complaint of Sexual Harassment under Title IX

Prepared by Investigator Christine Doe, Dean of Students, Wisconsin Public University

Sent to both parties and their advisors in electronic format on September 25, 2020

I. Identification of the Allegations Potentially Constituting Sexual Harassment

On September 1, 2020, Complainant university student Jane Smith (Complainant) filed a formal complaint against Respondent university student Peter Jones (Respondent), alleging sexual harassment under Title IX. In her formal complaint, Complainant alleged that Respondent made multiple comments to her and others at the university related to an alleged sexual incident on August 29, 2020, between Complainant and another adult male that occurred off-campus during a party at a private home. Specifically, according to her formal complaint, Complainant alleged that, on August 31, 2020, Respondent shouted at her in the university building during school that she was a “slut” and that she should “watch her back.” Respondent also allegedly told another university female student, Amanda Johnson, on August 31, 2020, during a university class, that Complainant needed to stop “leading guys on” or she would “get what she deserved.”

II. Description of the Procedural Steps Taken

A. Formal Complaint and Notice of Formal Complaint

Complainant filed the formal complaint on September 1, 2020, with the Title IX Coordinator Becky Jackson.

Upon receipt of the formal complaint, the Title IX Coordinator provided written notice on September 2, 2020, by hand delivery to Complainant and Respondent. The written notice included (1) notice of the University’s grievance process, (2) notice of the allegations of sexual harassment, (3) a statement that Respondent was presumed not responsible for the alleged conduct and that a determination regarding responsibility would be made at the conclusion of the grievance process, (4) a statement that the parties may have an advisor of their choice who may be an attorney and that they may inspect and review evidence; and (5) notice that the University’s code of conduct prohibits knowingly making false statement or knowingly submitting false information during the grievance process.

B. Selection of Investigator and Overall Investigation Approach

Upon receipt of this formal complaint, the Title IX Coordinator contacted me on September 2, 2020, to conduct an investigation under the grievance process. I reviewed the complaint and informed the Title IX Coordinator that, as an investigator, I did not have a conflict of interest or a bias against complainants or respondents generally or against the Complainant or Respondent.

During my investigation, I ensured that the burden of proof and burden of gathering evidence rested on the University, and not on the parties. My investigation also included a presumption that the Respondent was not responsible for the alleged conduct until any determination on

responsibility at the conclusion of the grievance process. I avoided any prejudgment of the facts and allegations. The standard of evidence in this matter is the preponderance of the evidence standard.

During my investigation, I did not require, allow, rely upon, or otherwise use questions or evidence that constituted, or sought disclosure of, information protected under a legally recognized privilege. No individual waived any privilege during the investigation. In addition, I did not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party.

Prior to the investigation, I was informed by the Title IX Coordinator of supportive measures that had been offered to Complainant. I also discussed with the Title IX Coordinator whether any dismissal of the complaint had been considered, and the Title IX Coordinator informed me that dismissal was not appropriate in this case. I also discussed and considered whether emergency removal for any student was necessary. I determined not to pursue emergency removal based on the circumstances.

C. Relevant Board Policies and Code of Conduct Provisions

Prior to my investigation, I also identified relevant University policies and code of conduct provisions. In particular, I identified the applicable Title IX sexual harassment policy and grievance process. I also identified a policy that addresses student harassment and a policy that addresses student bullying.

D. Pre-Investigation Gathering of Relevant Evidence

Prior to the investigation, I conducted a review of relevant evidence. Specifically, I asked the University to provide me with any relevant disciplinary records related to the Complainant and Respondent. In addition, I asked the university technology department to search for any email between the Complainant and Respondent within the last several weeks and to retrieve any video of the Complainant and Respondent on the date of the alleged incident. No disciplinary records or emails were identified. As explained below, a video was identified that showed an interaction between the Respondent and the Complainant, as well as the Respondent and a witness.

E. Investigation Procedure

1. Witness Interviews

On September 2, 2020, I provided by hand delivery to the Complainant written notice of an investigative interview to occur on September 3, 2020, at 4:00 p.m. at the university office. In the written notice, I informed the Complainant that the purpose of the interview was to ask questions related to her formal complaint and that I would be participating in the interview and a university administrative assistant would also be present only to take notes of the interview. The notice also informed the Complainant that she could have an advisor of her choice present

during the interview, but that the advisor must not engage in any conduct that disrupts the investigation during the interview, including answering questions on behalf of the Complainant. In the notice, I also informed the Complainant that she may present any relevant inculpatory or exculpatory evidence to me during the investigation and that she may present to me at any time a list of any fact or expert witness with relevant testimony to the investigation. Finally, I advised the Complainant that I expected her honesty during the interview, and that she should not engage in any action that constitutes retaliation against any individual.

On September 4, 2020, I met with the Complainant. Also present at the investigative interview were a university administrative assistant; John Advocate, the Complainant's attorney/advisor; and the Complainant's mother. During the interview, the Complainant provided me with verbal testimony relevant to her allegations. No written statement was taken from the Complainant. The Complainant did not provide me with any relevant physical evidence. The Complainant identified one student, Amanda Johnson, who she identified as a relevant witness.

On September 4, 2020, I provided by hand delivery to Amanda Johnson written notice of an investigative interview to occur on September 8, 2020, at 4:00 p.m. at the university office. In the written notice, I informed the witness that she has been identified as a potential witness who may have information that is relevant to a pending investigation, that the investigation related to events alleged to have occurred in late August, and that she has not been accused of any misconduct. I advised the witness that I expected her honesty during the interview, and that she should not engage in any action that constitutes retaliation against any individual.

On September 8, 2020, I met with Amanda Johnson. Also present at the investigative interview were a university administrative assistant and Ms. Johnson's father. During the interview, Ms. Johnson provided me with verbal testimony relevant to the allegations. No written statement was taken from her, and she did not provide me with any relevant physical evidence.

On September 8, 2020, I provided by hand delivery to the Respondent written notice of an investigative interview to occur on September 10, 2020, at 4:00 p.m. at the university office. In the written notice, I informed the Respondent that the purpose of the interview was to ask questions related to a formal complaint of sexual harassment. The other contents of the notice were similar to the contents provided to the Complainant.

On September 10, 2020, I met with the Respondent. Also present at the investigative interview were a university administrative assistant; Susan Counselor, the Respondent's attorney/advisor; and the Respondent's mother. During the interview, the Respondent provided me with verbal testimony relevant to the Complainant's allegations. No written statement was taken from the Respondent. The Respondent did not provide me with any relevant physical evidence. The Respondent did not provide me with any relevant witnesses.

As part of my duty to develop a complete and accurate record, on September 5, 2020, I reviewed security camera footage from the university building's south hallway. The camera does not record audio. I determined that the camera showed the Respondent passing by the

Complainant and witness Amanda Johnson on August 31, 2020, at the time of the alleged incident. The video appears to show a brief interaction among those three individuals. The video did not show any other identifiable person in the area who might be interviewed as an additional witness.

2. Delivery of Relevant Evidence and Written Responses

On September 11, 2020, prior to completion of my investigation report, I sent in electronic format to the Complainant and the Respondent, and to their advisors, the evidence subject to inspection and review. The evidence provided included evidence upon which I did not intend to rely on in reaching my determination, as well as inculpatory and exculpatory evidence, obtained from a party or another source. The evidence provided consisted of the video and notes of investigatory interviews. In my cover letter to both parties, I informed both parties that the information is intended solely for use with the University's Title IX sexual harassment grievance process and must not be shared with anyone for another purpose. I also informed both parties that they had ten (10) days, or until September 21, 2020, to submit a written response and that I would consider their written response prior to the completion of the investigation report.

III. Findings of Fact and Credibility Determinations

Based on my objective evaluation of all relevant evidence, including the written responses to the evidence provided by the parties (which are included in the investigative record), and based on my credibility determinations that were not based on the person's status, I have made the following findings of fact.

On Monday, August 31, 2020, Respondent made multiple comments to Complainant at the school. Specifically, Respondent confronted her in the university south hallway during school and told her that she was a "slut" and that she should "watch her back." Respondent denied making these statements, but he admitted to confronting the Complainant in the hallway and asserted that he only told Complainant that she should stay away from him and his friends. However, Amanda Johnson also stated that she heard the Respondent make the statements alleged by the Complainant. Ms. Johnson also alleged that the Respondent was extremely angry, got very close to the Complainant, and used a very angry tone with Complainant. Ms. Johnson reported that she felt very uncomfortable and observed Complainant to be very afraid. Ms. Johnson reported that the Complainant did not say anything to Respondent immediately before or after the incident.

Ms. Johnson also reported that the Respondent then approached her separately in class later that same day and told her that Complainant needed to stop "leading guys on" or she would "get what she deserved." Ms. Johnson again observed the Respondent to be very angry. She stated that she did not say anything to Respondent immediately before or after this incident. Respondent admitted to talking to Ms. Johnson in class and admitted to saying that Complainant needed to stop leading guys on, but he denied making any sort of threatening statement toward Complainant.

Based on my investigation, Ms. Johnson provided very credible testimony, and she alleged that she was friends to both the Complainant and the Respondent. I also believe that Ms. Johnson did not have any incentive to provide false testimony in this instance. As a result, I believe that Ms. Johnson likely provided the most accurate account on both actions by the Respondent.