

## **Written Determination**

Wisconsin Public University

October 15, 2020

Investigation and Decision Related to Formal Complaint of Sexual Harassment under Title IX

Prepared by Responsibility Decision-Maker Alice Hanson, Director of Student Services,  
Wisconsin Public University

Written Determination Sent to Both Parties on October 15, 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 south hallway 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 Christine Doe on September 2, 2020, to conduct an investigation under the grievance process. Ms. Doe determined that she did not have a conflict of interest or a bias against complainants or respondents generally or against the Complainant or Respondent.

### **C. Investigation Procedure**

#### **1. Pre-Investigation Gathering of Evidence**

Prior to the investigation, the investigator conducted a review of relevant evidence, including a review of any relevant disciplinary records related to the Complainant and Respondent, any email between the Complainant and Respondent within the last several weeks, and any video of the Complainant and Respondent on the date of the alleged incident. No disciplinary records or emails were identified. A video was identified that showed an interaction between the Respondent and the Complainant, as well as the Respondent and a witness.

#### **2. Witness Interviews**

On September 2, 2020, the investigator 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. The written notice informed the Complainant that the purpose of the interview was to ask questions related to her formal complaint and that the participants would be the investigator and a university administrative assistant. 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. The notice also informed the Complainant that she may present any relevant inculpatory or exculpatory evidence to the investigator during the investigation and that she may present to the investigator at any time a list of any fact or expert witness with relevant testimony to the investigation. Finally, the investigator advised the Complainant that there was an expectation of her honesty during the interview, and that she should not engage in any action that constitutes retaliation against any individual.

On September 4, 2020, the investigator 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 the investigator with verbal testimony relevant to her allegations. No written statement was taken from the Complainant. The Complainant did not provide the investigator with any relevant physical evidence. The Complainant identified one student, Amanda Johnson, who she identified as a relevant witness.

On September 4, 2020, the investigator 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. The written notice 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. The investigator advised the witness that there was an expectation of her honesty during the interview, and that she should not engage in any action that constitutes retaliation against any individual.

On September 8, 2020, the investigator 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 the investigator with verbal testimony relevant to

the allegations. No written statement was taken from her, and she did not provide the investigator with any relevant physical evidence.

On September 8, 2020, the investigator 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. The written notice 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, the investigator 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 the investigator with verbal testimony relevant to the Complainant's allegations. No written statement was taken from the Respondent. The Respondent did not provide the investigator with any relevant physical evidence. The Respondent did not provide the investigator with any relevant witnesses.

The investigator also reviewed security camera footage from the university south hallway. The camera does not record audio. The investigator 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.

### 3. Delivery of Relevant Evidence and Written Responses

On September 11, 2020, prior to completion of her investigation report, the investigator 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 she did not intend to rely on in reaching her 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. The investigator informed both parties that they had ten (10) days, or until September 21, 2020, to submit a written response and that she would consider their written response prior to the completion of the investigation report. Both parties submitted written responses.

### 4. Investigation Report

On September 25, 2020, the investigator completed her investigation report. She sent the investigation report to both parties and their advisors in electronic format on September 25, 2020. The investigator also provided me with a copy of the report on September 25, 2020. The investigation report fairly summarized the relevant evidence and was provided to me at least ten (10) days prior to my determination regarding responsibility. The investigator conducted an objective evaluation of the relevant evidence and made credibility determinations that were not based on the person's status as complainant, respondent, or witness.

5. Live Hearing

After receipt of the investigative report and before reaching a determination regarding responsibility, I followed a live hearing process on October 5, 2020, which included each party and their advisor in separate rooms at the university, but both parties could view one another through Zoom technology. I permitted each party's advisor to present witnesses and ask questions of each witness, including the Complainant and the Respondent. During the live hearing, I made decisions on whether a question submitted by a party was relevant. No questions were asked about the Complainant's sexual predisposition or prior sexual behavior. No questions were asked about that sought disclosure of information under a legally recognized privilege.

During the hearing, the Respondent's advisor asked the Complainant whether she remained in school on the day on which Respondent made the alleged comments. I determined that the question was relevant. The Complainant stated that she left school on that day because she was fearful of the potential actions by the Respondent.

**III. Findings of Fact and Credibility Determinations**

Based on my objective evaluation of all relevant evidence, including the questions and answers provided by the parties during the decision-making process, and based on my credibility determinations that were not based on the person's status, I have made the following findings of fact.

I adopt the findings of fact reached by the investigator. 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.

I also adopt the credibility determination made by the investigator. Specifically, the investigator concluded that, based on her investigation, Ms. Johnson provided very credible testimony, and she alleged that she was friends to both the Complainant and the Respondent.

The investigator believed that Ms. Johnson did not have any incentive to provide false testimony in this instance. As a result, I also find that Ms. Johnson likely provided the most accurate account on both actions by the Respondent.

**IV. Conclusions Regarding Application of the University's Policy to the Facts / Statement and Rationale Concerning the Allegations**

The University's Title IX sexual harassment policy states that sexual harassment includes conduct based on sex that includes "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." The University must find that such sexual harassment occurred by a preponderance of the evidence.

In this instance, the Respondent on two different occasions made comments about Complainant that were based on the sex of the Complainant, calling her a "slut" and telling one of Complainant's friends to stop "leading guys on." Further, the Respondent made very serious statements related to the Complainant, telling her that she should "watch her back" and that she "would get what she deserved."

Based on a review of all relevant evidence, the comments were unwelcome in nature. There is no evidence to indicate that the comments were invited or welcomed by the Complainant. Instead, the comments appeared to be prompted solely by the Respondent's frustration and anger toward the Complainant based on the incident that occurred between the Complainant and one of the Respondent's friends.

The collective comments were certainly based on the sex of the Complainant. Further, standing alone, the isolated "slut" and stop "leading guys on" comments were inappropriate, but would not rise to the level of comments that a reasonable person would find so severe, pervasive, and objectively offensive to deny the Complainant equal access to the University's program or activity. However, when such comments are also combined with very threatening statements that the Complainant must "watch her back" and that she "would get what she deserved," then such comments become increasingly closer to the standard in the University's Title IX sexual harassment policy. Further, in this instance, the Respondent made the comments in a very angry and threatening tone toward both the Complainant and one of her friends. Both the Complainant and her friend were very uncomfortable and very fearful as a result of the comments made by the Respondent. In addition, the Complainant went home on that particular day out of fear of the Respondent's comments. I conclude that, based on the comments and the manner in which they were conveyed, a reasonable person would react in the same manner as the Complainant and her friend.

The Respondent does not have any past disciplinary record, which would suggest that any threatening comments were perhaps exaggerated in nature. However, based on the very angry nature of the comments, it is reasonable for the Complaint to believe that such comments could have resulted in Respondent following through on these threats in an immediate and perhaps harmful nature. As a result, I find that, based on the totality of the circumstances, a reasonable person would find that the conduct was so severe, pervasive, and objectively offensive that it

denied the Respondent to access to the educational program or activity, and therefore, this conduct violated the University's Title IX sexual harassment policy.

The comments were made only on two instances on a single day, and therefore, it raises some question about the pervasiveness of the comments; however, based on the overall threatening nature of the comments and the fact that the comments were repeated to two different individuals, I find that the pervasive element is met.

Even if my conclusion on the University's Title IX sexual harassment policy is incorrect, any error would be harmless, considering that Respondent's conduct also violated another student harassment policy and the University student code of conduct. Such violations would result in the same sanctions and remedies below. In particular, the University has another student harassment policy, and the University also finds that, based on the test established under that harassment policy, the conduct by the Respondent violated that policy. In addition, the University's student code of conduct prohibits any conduct by a student that is threatening in nature. As a result, the conduct by the Respondent also violated that policy as well.

#### **V. Determination Regarding Responsibility, Sanctions, and Remedies**

Based on the evidence, I find that the Respondent is responsible for conduct that violates the University's Title IX sexual harassment policy. In addition, the conduct by the Respondent also violated another harassment policy and the student code of conduct in the University.

Although the comments by the Respondent were very serious in nature, there was no further physical action by the Respondent and the Respondent has shown remorse in his comments. Further, the Respondent has had no previous disciplinary action while in the University. As a result, I am recommending a short two-day suspension for the Respondent for his actions and then additional harassment training for the specific student. I also recommend that the Respondent must also follow a no-contact order with the Complainant until the end of the semester, effective on the date that this decision is final. This no-contact allows Respondent to attend school and recognizes that Respondent may come in occasional contact with Complainant while at school, but this order requires the Respondent to not intentionally initiate verbal or written contact with the Complainant during the time of the order. The no-contact order will be monitored at the end of the semester to determine whether it will be continued beyond the semester.

I am also recommending remedies for the Complainant. Specifically, as noted above, the Respondent must follow a no-contact order until the end of the semester. In addition, I recommend that the Complainant is provided any counseling or other services, as appropriately identified by the counselor.

#### **VI. Permissible Bases for the Complainant and the Respondent to Appeal**

The Complainant or the Respondent may appeal this decision as permitted by the University's policy, which includes a requirement that either party must file an appeal within ten (10) days of this written determination. An appeal may be based upon any of the following: (1) a procedural irregularity that affected the outcome of the matter; (2) new evidence that was not

reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter; and/or (3) the Title IX Coordinator, investigator(s), or decision-maker had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome of the matter.

Either party may also appeal any final determination to the state superintendent of public instruction, as permitted by University policy and state law.