

MEMORANDUM OF FINDINGS

From: G. Antonio Anaya, Civil Rights Investigator

Re: YK Matter involving BD

Date: March 21, 2019

I. Introduction

ECRC initiated an investigation following the receipt of the allegation on February 21, 2018. This investigation was assigned to G. Antonio Anaya (hereinafter, the "Investigator").

The allegations were that at a meeting of the Graduate Faculty of the School of Journalism on February 21, 2018, Respondent strongly advocated that Complainant not be admitted to the Journalism Ph.D. program. Complainant believed that this action by Respondent was in retaliation for Complainant having participated in a separate investigation by ECRC of a complaint against Respondent filed by Witness E herein, who is a close friend of Complainant.

This investigation included interviews with Complainant, interviews with Respondent and interviews with witnesses; review of documents submitted by the parties; and review of ECRC files to determine whether any prior allegations of policy violations had been made against Respondent.

Before concluding the investigation process, the parties were provided a summation of evidence packet for their review. Complainant and Respondent each provided responses that were considered by the Investigator in reaching the conclusions in this Memorandum of Findings.

II. Case Summary

Respondent, as the Director of the International Institute of Journalism at the EW Scripps School of Journalism, runs both the YALI and SUSI programs at Ohio University. YALI, the Young African Leaders Initiative, is a program sponsored by the U.S. State Department, wherein the International Institute of Journalism travels to various African nations to host future African leaders for a week of workshops, presentations and networking opportunities. SUSI, the Study of the U.S. Institutes, is another program sponsored by the U.S. State Department. Through the SUSI program, the International Institute of Journalism hosts journalist scholars from around the world, visiting various locations in the United States.

Complainant, then a first-year graduate student in Journalism, was selected to participate in the SUSI program as a Program Assistant (“PA”). The fall 2017 SUSI program began shortly after Respondent and Witness E returned from the YALI program in Africa, although Complainant, Witness E and other PA’s had been preparing for SUSI even before the YALI program began. On July 6, 2017, shortly after Witness E returned from the YALI program, Witness E advised ECRC of her complaint alleging that Respondent had violated the Ohio University Sexual Misconduct Policy 03.004 (“Witness E’s Complaint”). On July 10, 2017, Witness E resigned from the SUSI program. Complainant was interviewed as part of the investigation of Witness E’s complaint.

Complainant worked for the SUSI program during July and August of 2017 as a PA. Following the SUSI program, Witness D, a member of the faculty who worked closely with Respondent and the PA’s, met with several members of the Graduate Faculty and reported having had issues with Complainant and other PA’s in the SUSI program. These faculty members agreed to wait to see what feedback was received from the scholars and the State Department.

Subsequently, Complainant applied to the Ph.D. program in Journalism. On February 21, 2018, the Graduate Committee met to discuss and vote on applications to the Ph.D. program. Respondent attended this meeting and strongly advocated against the admission of Complainant to the Ph.D. program. Complainant’s application was then rejected.

ECRC was notified by Witness E that Respondent’s action might be retaliatory. After Complainant confirmed that she believed Respondent’s action at the meeting of the Admissions Committee was in retaliation for her having participated in the investigation of the complainant of Witness E, an investigation was initiated.

III. Applicable University Policies

Given the information provided by the parties to the investigation, the Office of University Equity and Civil Rights Compliance (ECRC) identified a potential violation of Ohio University Policy 40.001 (Equal Employment and Education Opportunity). Specifically, the potential violations include retaliatory harassment/retaliation.

A. 40.001(B)(4) Retaliation

Ohio University Policy 40.001(A) states the following in regard to discrimination on the basis of protected status:

Retaliation is defined as adverse action or threat of an adverse action taken by the university, or member thereof, in response to a person who, in good faith, makes a protected disclosure under this policy by:

- a. reporting suspected discriminatory or harassing conduct to a supervisor or appropriate university official;
- b. filing a complaint under federal or state law or university policy that prohibits discrimination or harassment;
- c. ***participating in an investigation or proceeding under this policy***, or
- d. opposing educational or employment practices that the person reasonably believes discriminate against persons or groups of people in violation of university policies.

See, Ohio University Policy 40.001 (emphasis added)

IV. Evidentiary Standard

In evaluating alleged violations of Ohio University Policies 03.004 and 40.001, Ohio University Equity and Civil Rights Compliance uses a preponderance of the evidence standard. The preponderance of the evidence standard means that the evidence is sufficient to make a finding that it is “more likely than not” that a particular fact is true. With respect to alleged violations of policy, the preponderance of evidence standard means the evidence is sufficient to make a finding that it is “more likely than not” the alleged policy violation occurred.

V. Factual Assertions

Background

1. At the time of the filing of the Complaint, Complainant was a Graduate Student pursuing a Master of Science of Journalism.
2. Respondent was the Director of the International Institute of Journalism at the EW Scripps School of Journalism.
3. At all times relevant herein, Respondent was a member of the Graduate Admissions Committee for the School of Journalism. As a member of this committee, Respondent

had a vote on whether a doctoral candidate should be admitted to the Ph.D. program in the School of Journalism.

4. Respondent ran the Study of U.S. Institutes, or “SUSI”, program at Ohio University. Through the SUSI program, funded by a grant from the State Department, the International Institute of Journalism hosts journalist scholars from around the world, visiting various locations in the United States.
5. Respondent also ran YALI, the Young African Leaders Initiative. YALI is a program also sponsored by the U.S. State Department, whereby the International Institute of Journalism travels to various African nations to host future African leaders for a week of workshops, presentations and networking opportunities. The YALI program for summer, 2017 was held in South Africa.
6. Respondent was the primary investigator for the State Department grant that funds the SUSI and YALI programs.
7. Witness D was a co-investigator of the YALI and SUSI grants and helped Respondent run the SUSI program.
8. Witness E was also a graduate student in the School of Journalism at all times relevant herein.
9. At all times relevant herein, Complainant and Witness E knew each other and were good friends.
10. Both Complainant and Witness E interviewed for and were hired as a Program Assistants (PA’s) for the fall, 2017 SUSI program.

Witness E’s Complaint

11. On or about July 6, 2017, Witness E filed a complaint with University Equity and Civil Rights Compliance, alleging that Respondent had violated Ohio University Policy 03.004, Sexual Misconduct, Relationship Violence, and Stalking, and Ohio University Policy 40.001, Equal Employment and Educational Opportunity, while Witness E was working as a Program Assistant (“PA”) for the 2017 YALI program.
12. On July 10, 2017, Witness E advised Witness D, via email, that Witness E was stepping down from her position as a SUSI PA because Witness E no longer felt safe working with Respondent, that she had been “consulting with various offices on campus for guidance and support” and that this was the “necessary conclusion for my safety and well-being.” Witness E advised Witness D of her resignation shortly before she advised Respondent.

13. Also, on July 10, 2017, Witness E advised Respondent, via email, that Witness E was stepping down from her position as a SUSI PA “effective immediately.” Witness E made no mention of having consulted with “various offices” on campus or regarding her “safety and well-being” to Respondent.
14. As part of the investigation into Witness E’s complaint, Respondent was interviewed by the Investigator on August 2, 2017 and October 11, 2017.
15. In addition, as part of the investigation into Witness E’s complaint, Witness D was interviewed on October 19, 2017.
16. During the interview with Witness D on October 19, 2017, Witness D raised the name of Complainant herein in a context that made Complainant a witness in the investigation of the complaint of Witness E. The Investigator was not aware that Complainant was a potential witness in Witness E’s case until Witness D’s interview.
17. On October 26, 2017, just one week after Witness D had become aware that Complainant herein would be interviewed as part of the investigation of the complaint of Witness E, Respondent was interviewed for the third and final time in that case. At that time, Complainant herein had still not been interviewed.
18. On November 8, 2017, Complainant herein was interviewed as part of the investigation into the complaint of Witness E.
19. Witness D reported that Respondent knew that Complainant and Witness E were close friends.
20. Witness D acknowledged that she also knew that Complainant and Witness E were close friends.
21. Shortly after resigning from SUSI, Witness E told Witness D that Witness E would be filing a complaint against Respondent. Witness D responded by asking Witness E if she knew what she was getting into and also asked, “are you sure it wasn’t a misunderstanding?”
22. Witness D described Witness E as having “dumped” her work for the SUSI program onto Complainant when Witness E withdrew from SUSI.
23. Witness D worked with Witness E on SUSI until Witness E withdrew.

Witness D’s Perspective of Complainant’s Work for the SUSI Program

24. Witness D worked with Complainant throughout the SUSI program.
25. Witness D said that she shared concerns/issues about Complainant with Respondent. Those included that she told Respondent that Complainant had removed herself from the WhatsApp Group account, that Complainant had spoken poorly about the

Respondent to some of the SUSI scholars, and that Witness D believed that Complainant had told some of the SUSI scholars that Witness E had withdrawn from the SUSI program because she had filed a complaint against Respondent alleging sexual harassment.

26. Witness D reported that, after Witness E filed her complaint with ECRC, there was “a pretty dramatic change” in the attitude of the SUSI PA’s, particularly with Complainant.
27. Witness D reported that Complainant was disrespectful in staff meetings, “snapped” at Respondent and disregarded things that Respondent told Complainant to do. For instance, one of Complainant’s responsibilities was to assist the scholars in purchasing \$600 worth of books to take home. Witness D reported that Complainant wanted to know why she had to order the books instead of just giving the scholars each \$600. Witness D told Complainant that the only cash they could give the scholars was their *per diem*, and some of them did not have credit cards with which to order the books. Witness D reported that she was “stunned” when Complainant was “a little short and curt” with the scholars when asking them for information regarding their book orders. Witness D could not remember the particular scholars with which this occurred.
28. Witness D also reported that one time, Complainant was “bitching” about what a “pain in the ass” the book orders were, and several of the scholars overheard her.
29. The SUSI program used the WhatsApp Group application as a tool to allow them to all communicate with each other. Witness D reported that, within ten minutes of the WhatsApp Group being created, Complainant took herself out of the group. Witness D reported that three SUSI scholars asked Witness D why Complainant did not want to be part of the group or if they had done something to offend Complainant. When Witness D asked Complainant why she had removed herself from the WhatsApp Group, Complainant said, “Why do I want all those pictures and posts on my phone?” When Witness D told Complainant that she needed to remain in the WhatsApp Group to stay in communication, Complainant said, “I don’t have time for that” and walked away.
30. Witness D stated that both Complainant and Witness H were “questioning everything” in front of the scholars. For instance, they would say things like, “I don’t know why we are doing it this way.”
31. Witness D stated that she did not visit Atlanta with the SUSI scholars. However, Complainant did accompany the SUSI scholars to Atlanta.
32. When the SUSI scholars returned from Atlanta, five or six of them told Witness D that, “it was terrible. [Respondent] didn’t know where he was going.” The scholars reported that the program was “so inefficient” in Atlanta. However, because the itinerary for the Atlanta portion of the program is “nailed down cold and goes like clockwork,” Witness D believes that Complainant and the other graduate student must have been speaking poorly about Respondent while they were in Atlanta.

33. After Atlanta, the SUSI program went to Washington, D.C. While Witness D was driving to pick up the scholars from the airport, her GPS made a mistake, causing her to arrive late. One of the scholars stated, "It's [Respondent's] fault, not yours." The Scholars were blaming Respondent, which had never happened before. Witness D believes that it was Complainant who undermined Respondent, because one of the scholars said, "[Complainant] said we could do this a better way."
34. Witness D stated that Complainant also undermined Respondent with regard to the scholars taking home more than they brought with them. In order to prevent having any overweight luggage (which the program cannot pay for) the scholars were told by Respondent and Witness D that there was a \$250 budget per scholar for extra luggage. Witness D stated that, year after year, there would be two or three scholars who have overweight bags, instead of bringing extra luggage. Complainant told Witness D that she had told the scholars that it was okay if their bags were two- or three-pounds overweight instead of getting extra luggage. Witness D described this as being in "direct defiance" of what Witness D and Respondent had told the scholars.
35. Witness D also reported that she "came to believe" that Complainant had told the SUSI scholars the real reason that Witness E had resigned from the SUSI program.
 - a. First, Respondent told Witness D that two of the female scholars had requested a private meeting with the YALI State Department Program Officer to debrief with Complainant present. Respondent told Witness D that Witness G from the State Department gets requests for private meetings all the time from people with complainants. Respondent also told Witness D that the State Department does not handle such complainants, but rather, they refer those back to the director of the program – Respondent in this case. Respondent also told Witness D that the two women did not come back to him to set up a meeting to discuss their complaints.
 - b. Secondly, after the SUSI program concluded, Witness D asked Witness F if Witness F believed that the SUSI scholars had been told the real reason Witness E had resigned. Witness F told Witness D that while they had been in Columbus, two or three of the scholars had asked Witness F the real reason that Witness E had resigned; when Witness F told them it was for personal reasons, they asked, "So it didn't have anything to do with [Respondent]" or "So there weren't any problems between Witness E and Respondent?" Witness F told the scholars that she did not know.
36. Witness D also stated that, because there was a "concerted, very negative attitude towards" Respondent among the SUSI scholars that she had never seen in a prior group of SUSI scholars and, therefore, Witness D believes that the graduate students, including Complainant, "went out of their way to make [Respondent] look bad in front of the scholars."

37. Witness D reported that both she and Respondent believed that the only reason for the change in Complainant's behavior was the investigation of Witness E's complaint. Complainant never treated Witness D the way she treated Respondent, and, therefore, both Respondent and Witness D assumed that it was Witness E's complaint which was motivating Complainant's behavior.
38. Witness D stated that she and Respondent "should have sat [Complainant] down" and talked to her about these issues but they did not do so.
39. Witness D reported that, during September 2017, Respondent told Witness D that he intended to vote against Complainant's admission to the PhD program, and said, "I can't deal with her [Complainant] telling every student what's happening (with Witness E's complaint)."
40. Witness D reported that she and Respondent both believe that Complainant's change in attitude was caused by the investigation of Witness E's complaint; in Witness D and Respondent's minds, there was no question about why Complainant was acting the way she did.
41. Approximately one week after Witness E resigned, Respondent told Witness D he was going to take himself out of any communications with Complainant; Witness D wanted Respondent to talk to Complainant about Complainant's disrespect, but Respondent did not want to because one of them had to be able to work with Complainant, namely, Witness D

Respondent's Perspective of Complainant's Work for the SUSI Program

42. Respondent reported that Witness D was the first person to raise issues with Complainant's work with other faculty, namely, Witness A (the Associate Director for Graduate Studies), Witness B (the faculty member who chaired the Graduate Committee Meeting) and the Department Director.
43. Respondent stated that the most significant issues with Complainant's work with the SUSI program constituted "insubordination." Respondent citing the following alleged incidents of insubordination by Complainant:
 - a. Complainant removed herself from a WhatsApp Group account that was used by the participants in the SUSI program to communicate.
 - b. Complainant spoke poorly about the Respondent to some of the visiting SUSI scholars.
 - c. Several SUSI scholars had complained about Complainant's work to the State Department.

- d. Complainant told some of the SUSI scholars that Witness E had withdrawn from the SUSI program because Witness E had filed a complaint against Respondent alleging sexual misconduct.
44. Respondent stated that it was Witness D who had told Respondent that Complainant had removed herself from the WhatsApp Group account, that Complainant had spoken poorly about the Respondent to some of the SUSI scholars, and that Complainant had told the SUSI scholars that Witness E had withdrawn from the SUSI program because Witness E had filed a complaint against Respondent alleging sexual misconduct. Respondent reported that he did not have first-hand knowledge of these acts of insubordination.
45. Respondent denied telling the investigator that several of the SUSI scholars had complained to the State Department and requested a meeting with Complainant and the State Department. However, Respondent did not deny saying this to Witness D or to the Graduate Committee.

Other Evidence Regarding Complainant's Work for the SUSI Program

46. Witness F does not remember Complainant talking about Respondent to the SUSI scholars, and Witness F never saw Complainant undermine Respondent in front of the scholars.
47. Witness F stated that Complainant was frustrated by the scheduling and chaos and was angry and upset because Complainant had to do Witness E's work for SUSI.
48. Witness F has "a 50/50 feeling" that Complainant told the SUSI scholars what happened between Respondent and Witness E that caused Witness E to resign from the program. This was based on the fact that Complainant was "very close" to some of the scholars and the fact that Complainant spoke negatively about Respondent to Witness F. However, Witness F also stated, "I have no idea" if Complainant actually told the scholars what had happened between Respondent and Witness E.
49. Witness F does not remember Complainant ever talking about Respondent to the scholars.
50. Although Respondent and Witness D did not provide any cooperation or assistance in doing so, the Investigator reached out to a number of SUSI scholars whose contact information was publicly available. These scholars were asked the following questions via email:
 - a. Did the OU students that assisted in the program, namely, [names of the four PA's] do a reasonably good job?
 - b. If so, can you rate the overall performance of each on a scale of 1-10, with 1 being lowest/poorest and 10 being highest/best?

- c. If not, were there any specific shortcomings of any particular participant that you remember?
 - d. If there were any shortcomings, did you report those by the students' name, to either [Respondent], another Ohio University faculty or staff, and/or the US state Department.
51. Eight of the sixteen SUSI scholars responded to the Investigator's questions. All of these scholars were highly complementary of all of the PA's. Several of the scholar's responses and comments provide significant insight into the scholars' perspectives of Complainant herein:
- a. "They were all fantastic - responsive, helpful, good at filling in cultural gaps - friendly and warm and tireless in their work."
 - b. "All outstanding."
 - c. "I would like to highlight their respect for all of us."
 - d. "All [of the PA's] did a fabulous job."
 - e. "They did a great job and they were so helpful, friendly, always ready to fulfill our needs and I can say that my stay was better just because of them. I want to congratulate OU to have such a nice team like this one."
 - f. "I had nothing bad to report. On the other hand, I mentioned to [Respondent] and to [Witness G] at the US State Department, that all of the program assistants [sic] did a great job and always made us feel so comfortable and safe."
 - g. On a scale of 1-10, with 1 being lowest/poorest and 10 being highest/best, both Complainant and Witness H were scored an average of 9.875, and Witness E an even "10."¹
52. Several of the scholars even mentioned Witness E and provided insight regarding the scholar's lack of information regarding Witness E's departure from the program:
- a. "I would like to mention [Witness E] who was part of the welcome party at the airport. She was fantastic too. 11/10."
 - b. "[Witness E]: 10/10 – she was super nice, helpful and really funny. But she suddenly disappeared after a few days, and we didn't know what happened with her."
 - c. "Also in the beginning of program was taking care of us assistant named [Witness E] (do not know surname): 10, who was from some reason took [sic]

¹ Only 1 scholar scored Complainant and Witness H as being "8," but did not provide any detail as to why their score was lower than the other PA's, and also said "All did a fabulous job."

away from the program. We were very sorry she was taken away from the program, the reason why was never told to us.”

Evidence Regarding SUSI Scholar Complainants about the Program

53. Witness F reported that some of the SUSI scholars told him that they felt that the program was “too hectic” and that they were not getting any down time. Two of the scholars also told Witness F that it would be nice to have some free time and not have every minute filled up with activities that are not relevant to them.
54. Witness F also reported that some of the scholars said that one of the other scholars was “difficult to be with” but that she could get away with behaving that way “because [Respondent] had her back.”
55. One scholar told Witness F directly that she was really upset that Respondent was not treating the scholars well.
56. When Witness F told Witness D that some of the scholars had an issue with Respondent, Witness D responded by blaming Complainant and another PA, Witness H, saying Complainant and Witness H they were unprofessional and talked behind Respondent’s back.
57. When Witness H interviewed for the SUSI PA position, he was told there would be a total of 6-7 students on staff. There were only five PA’s when the program started and then only four after Witness E left.
58. Witness H also stated that the assistants were often “winging it” and that it was “all chaos” behind the scenes.
59. Witness H did not see any mistakes by Complainant, and her work responsibilities “went perfectly.”
60. Witness H did not hear any of the scholars complain about Complainant.
61. Witness H did not hear Respondent say anything negative about the PA’s.
62. Witness H reported that SUSI Scholar 4 told Witness H that that some of the scholars had felt that Respondent had treated them like children and spoken to them in a demeaning tone. SUSI Scholar 4 also told Witness H that some of the scholars had walked away from a conversation with Respondent “in tears.”
63. Witness H reported that, at the closing event for the SUSI program, all of the student assistants received standing ovations from the SUSI scholars, but Respondent did not receive a standing ovation.

August 2017 Meeting of Witness D with Witness A, Witness B and the Department Director

64. Based on Witness D's beliefs regarding Complainant's (and the other PA's) performance for the SUSI program, Witness D advised Respondent that she wanted to meet with Witness A, Witness B and The Department Director.
65. Respondent did not want to meet with Witness A, Witness B and the Department Director because, in light of the ongoing investigation with regard to Witness E, Respondent wanted to, according to Witness D, "lay low." Respondent stated that, with regard to this meeting, "I had nothing to do with it."
66. During August 2017, Witness A, Witness B and the Department Director met with Witness D to discuss Complainant and Witness H's work as PA's in the SUSI program.
67. Witness D told Witness A, Witness B and the Department Director that, "there is a little bit of tarnish on the halo" of Complainant and Witness H. Witness D told them of the issues she had with Complainant and Witness H, including that they were all insolent/insubordinate and poor at event planning. Witness D wanted them to know that before they considered Complainant for a position in the Ph.D. program.
68. Witness B reported that Witness A did not believe Witness D. Witness B reported that she did not doubt Witness D's veracity.
69. Witness D told Witness A, Witness B and the Department Director that neither Respondent nor Witness D had reprimanded Complainant or Witness H.
70. Witness A reported that he, Witness B and the Department Director decided that they would wait and see what the feedback was after the SUSI participants spoke to the State Department.
71. Witness A reported that he was never provided with any feedback from the State Department or otherwise.
72. Following this meeting, Witness A asked Complainant if she knew that Witness D and Respondent were "less than pleased" with her performance during the SUSI program. Complainant was "stunned" to hear this.

The Ph.D. Candidate Admissions Committee Meeting

73. Complainant applied to the Ph.D. program in Journalism, to begin in the fall of 2018.
74. On or about February 21, 2018, the Graduate Admissions Committee of the School of Journalism met to discuss and approve applications of candidates for the Ph.D. program.

75. This meeting was chaired by Witness B, as Witness A was not able to attend for personal reasons.
76. According to Witness B, the Committee was planning on accepting up to five applicants.
77. It was agreed by the Committee that two applicants would be summarily excluded; one who failed to submit a GRE score and one who's GRE score did not meet the cut-off and whose letters of recommendation contained "red flags."
78. Witness B reported that Respondent was not expected to attend the meeting, as he had a class conflict. However, Respondent did attend the meeting and remained at the meeting through its conclusion.
79. Witness G also reported that Respondent "is usually pretty quiet" but was not at this meeting.
80. Witness B also reported that when these two applicants were excluded, Respondent stated that, "if we vote these people out then we need to vote [Complainant] out, too." According to Witness B, Respondent proffered the following reasons for denying Complainant's application:
 - a. Respondent told the Admissions Committee that Complainant, "caused a lot of problems that were reported back to the school." This included telling the Admissions Committee that Complainant had talked to some of the SUSI scholars who had turned against Respondent.
 - b. Respondent also told the Committee that Complainant had been antagonistic to him, was "incompatible with the majority of the SUSI scholars," had "stirred up" the SUSI scholars against him and was disruptive and disrespectful.
 - c. Respondent also told the Committee that Complainant had "poisoned the well" and that journalism students were not applying to Respondent's 2018 SUSI program, and that some of the 2017 SUSI alumni were not interacting with Respondent, either.
 - d. Respondent further stated that Complainant's attitude of questioning him had gained the attention of the State Department when it interviewed some of the SUSI scholars who Respondent said had complained about Complainant to the State Department. Respondent also said that Complainant asked for a meeting with the State Department, that the State Department had advised Respondent of this request, and that Respondent had told the State Department not to grant the request.
 - e. Respondent also told the Committee that Complainant would look "disinterested" during some of the SUSI workshops.

81. Witness B also reported that Respondent gave the Committee an ultimatum regarding Complainant's application, saying, "As long as she is in this program, I will not work with anyone in this program. How am I going to be in this building with [Complainant] in it?"
82. Witness C corroborated that Respondent accused Complainant of "poisoning the well" and that Respondent presented his objection to Complainant's application as an ultimate by saying, "If you admit [Complainant], I will have nothing to do with the graduate program while she is here."
83. Witness C had never heard Respondent be "unprofessional" about a student, was thinking that something "really serious" had happened and found what Respondent said had happened as, "striking."
84. Respondent also told the Committee that he had been trying to get in touch with Witness A and the Department Director, but that they had been unresponsive with regard to his issues with Complainant.
85. Respondent told the Investigator that the only reason he raised these issues with the Committee is that Witness D encouraged him to do so.
86. Respondent also told the Investigator that what he told the Committee about Complainant was based on what Witness D had reported to him.
87. Pursuant to Witnesses A, B and C, it was because of Respondent's statements to the Committee that Complainant's application to the Ph.D. program in the School of Journalism was denied.

The State Department

88. Witness G is the Program Officer and primary contact with the State Department for the SUSI program grants.
89. During the initial phone interview, Witness G did not have any recollection of any issues with the PA's being brought to his attention by the SUSI scholars after the SUSI program. Witness G offered to review his notes from the fall, 2017 SUSI to see if there was any such issue raised.
90. Upon review of his notes, Witness G stated that there was nothing in his notes regarding the performance of any of the PA's. Further, Witness G had no recollection of any meeting being requested with any PA.

Subsequent Events

91. On or about March 21, 2018, Respondent resigned/recused himself from the Graduate Committee.

92. Following Respondent's resignation, the Graduate Committee convened to determine to whom the Graduate Student of Year awards should be granted. When this meeting began, Witness A, then chair of the Committee, read a prepared statement regarding Complainant, asked the Committee to reconsider Complainant's application to the Journalism Ph.D. program, and then left the room. The remaining members of the Committee then voted to accept Complainant's application and Complainant enrolled in the Ph.D. program beginning in the fall of 2018. The vote was 8-0 with one abstention.

VI. Analysis and Conclusions

The Investigator makes the following conclusions based on a preponderance of the evidence, meaning that the evidence is sufficient to find the conclusion is more likely than not true.

A. Analysis

1. Ohio University Policy 03.004 prohibits conduct that constitutes retaliatory harassment and Ohio University Policy 40.001 prohibits conduct that constitutes retaliation.
2. In this case, Complainant has asserted that Respondent engaged in retaliation against her because Complainant participated in an investigation or proceeding under Policy 03.004. To establish a violation, the preponderance of the evidence must show that:
 - a. Complainant participated in an investigation or proceeding under the policy;
 - b. Respondent took adverse action against Complainant; and,
 - c. Respondent took the adverse action against Complainant because Complainant participating in the investigation regarding the complaint filed against Respondent by Witness E.
3. With regard to the first element, the evidence is unequivocal. Complainant was asked to provide information in the form of an interview with the Investigator as part of the investigation of the allegation by Witness E that Respondent had violated Policy 03.004. On November 11, 2017, Complainant was interviewed as part of that investigation. As such, the first element is satisfied.
4. With regard to the second element, the evidence is very strong. Respondent strongly advocated against Complainant's admission to the journalism Ph.D. program at the meeting of the Graduate Committee on February 21, 2018. Respondent was not expected at the meeting, but he did attend. Respondent was then uncharacteristically vocal in his criticism of Complainant, using terms like, "antagonistic," "incompatible" and "poisoned the well." Further, Respondent gave the committee an ultimatum: if Complainant was admitted to the Ph.D. program, Respondent would have nothing to do with or work with anyone in the program. As a direct result thereof, the Graduate Committee rejected Complainant's application. This element was further established

by the fact that, after Respondent resigned from the Graduate Committee, Complainant's application was re-considered by the Committee and Complainant was admitted to the Ph.D. program.

5. Therefore, this case turns on the third element: whether or not a preponderance of the evidence establishes that Respondent took the adverse action against Complainant because Complainant participated in the investigation of the complaint of Witness E.
6. Witness D reported that Respondent told her that he intended to vote against Complainant's admission to the Ph.D. program because (he believed) she was telling students about Witness E's complaint. See paragraph V.39.
7. During the meeting with the Candidate Admissions Committee, Respondent proffered several additional reasons—other than Complainant's participation in the investigation of the complaint of Witness E—for opposing Complainant's acceptance to the Ph.D. program. These reasons are discussed in detail in paragraph V.80.

It bears noting that at least two of the factual assertions that Respondent made to the Candidate Admissions Committee and during the investigation could not be corroborated.

a. Respondent's Assertions that Could Not Be Corroborated

- i. The only evidence of insubordination that Respondent reported to the Graduate Committee that was not provided to him by Witness D², was the allegation that several SUSI scholars had complained to the US State Department about Complainant and had asked for a meeting with the State Department, but the State Department had refused a meeting and referred the complaint back to Respondent.³ Obviously, this is an extremely serious allegation. However, this allegation is not supported by the evidence.
 1. Witness G, the Program Officer from the US State Department, had no recollection and no indication in his notes that any such complaints were made about Complainant by the scholars, or that any such meeting with or about Complainant was requested by any of the scholars. SUSI Scholar 5 confirmed that it was Witness G that the SUSI scholars met with at the end of the program to debrief.

² Many of the issues reported to Respondent by Witness D were also not corroborated by the witnesses.

³ In his response to the Evidence Packet, Respondent adamantly denied having reported this to the Investigator. However, Respondent never denied making these statements at the Graduate Committee meeting on February 21, 2017 or to Witness D. Both Witness C and Witness D reported that Respondent had made this representation to them in the context of Respondent assessing Complainant's application to the Ph.D. program.

2. Respondent produced no documentary evidence that any such communication occurred between himself and Witness G, or any other person at the State Department.
 3. On the basis of privacy, Respondent refused to provide the Investigator with the names of the SUSI scholars who allegedly made these complaints and/or requested a meeting with the State Department. The Investigator made it clear to Respondent that being unable to verify this allegation could significantly impact the findings of the investigation.
 4. SUSI Scholar 5 confirmed that she had reported to Witness G that “all of the program assistants did a great job and always made us feel so comfortable and safe.”
 5. Also affecting the assessment of this allegation is the outcome of the meeting about Complainant between Witness D and Witnesses A, B and the Department Director in August of 2017. Witness A reported that, at the end of that meeting, it was decided that they would wait and see what feedback regarding the graduate students was given by the SUSI participants to the State Department. While it is not clear that this was directly communicated to Respondent by Witness D or otherwise, Witness A never received any such feedback, Respondent never provided any such feedback to the Investigator, and Respondent refused to provide the identities of the SUSI scholars who had allegedly complained about Complainant.
 6. There is no corroborating evidence that any complaint was made to the State Department by any SUSI scholar regarding Complainant’s performance during the SUSI program, or that there was a meeting requested of the State Department with Complainant and any of the SUSI scholars.
- ii. Witness B stated that Respondent also reported to the Graduate Committee on February 21, 2018 that Complainant had been “incompatible with the majority of the SUSI scholars”. This assertion is not supported by a preponderance of the evidence.
1. Fifty percent of the SUSI scholars responded to the Investigator’s questions regarding the performance of the PA’s, including Complainant.
 2. Every one of these scholars who responded to the Investigator’s email inquiry highly praised the work of the PA’s.
 3. Respondent did not provide the Investigator with the names of any of the SUSI scholars with whom Complainant was incompatible or who had been “stirred up” by Complainant. Therefore, the investigator was unable to confirm any of these allegations by Respondent.

4. Even assuming that all of the SUSI scholars who either could not be reached or did not respond to the Investigator's questions would have indicated some "incompatibility" with Complainant, that would not amount to a "majority." Of the total of sixteen SUSI scholars, eight responded to the Investigator's emails and all of these were positive regarding Complainant's performance in the SUSI program. Therefore, even assuming, arguendo, that all eight of the other SUSI scholars were "incompatible" with Complainant, that would still only constitute half, and not a majority.

There is no corroborating evidence that Complainant was incompatible with a majority of the SUSI scholars. Therefore, the preponderance of the evidence does not support Respondent's statements to the Graduate Committee to that effect.

- b. In his response to the Evidence Packet, Respondent asserted that he could not have acted in retaliation against Complainant because he did not know that Complainant participated in that investigation. As detailed above, at least two of Respondent's representations lack corroborating evidence. However, none of Respondent's uncorroborated representations touch directly on the issue of Respondent having had knowledge that Complainant participated in the investigation of the complaint of Witness E. Rather, there is no independent, corroborating evidence to establish that Respondent did know that Complainant was interviewed as part of the investigation of Witness E's Complaint until after the faculty meeting at which Respondent advocated against Complainant's admission to the Ph.D. program.
 - i. Respondent is correct that at the time of Respondent's first two interviews in the investigation of the complaint of Witness E, the Investigator was not yet aware that Complainant would be a witness in that investigation. However, on October 19, 2017, Complainant's name was brought to the Investigator's attention as a potential witness in that case by Witness D. This was a full four months prior to the Graduate Committee meeting. It was during the final interview of Witness D for Witness E's Complaint on October 26, 2017 that Complainant's name came up specifically because Witness D mentioned Complainant.⁴
 - ii. The Evidence Packet in Witness E's case was not provided to Respondent until March 27, 2018, approximately one month after the meeting at which

⁴ Note that Respondent's assertion that the investigator told Respondent and Witness D that Complainant herein was not a witness in the Witness E investigation is not accurate. The investigator did not tell Respondent or Witness D that Complainant was not a witness in Witness E's complaint. Further, when Witness D mentioned Complainant to the Investigator on October 19, 2017, she immediately became a witness in Witness E's case. There is no evidence, however, that Witness D conveyed this information to Respondent.

Respondent objected to Complainant's admission to the Ph.D. program. This is the first point at which Respondent unequivocally must have known that Complainant was a witness in the investigation of Witness E's Complainant.

8. Therefore, there is insufficient evidence to establish that Respondent took the adverse action against Complainant because Complainant participated in the investigation of the complaint of Witness E, because there is insufficient evidence to establish, by a preponderance, that Respondent knew that Complainant had participated in that investigation.
9. In conclusion, given the information disclosed to ECRC, the Investigator concludes that there is insufficient evidence on which to base a finding that Respondent's alleged behavior constituted retaliatory harassment and retaliation against Complainant because of her participation in the investigation of the complaint of Witness E. Accordingly, the Investigator finds that the allegation of retaliation is **UNSUBSTANTIATED.**