

## MEMORANDUM OF FINDINGS

From: G. Antonio Anaya, Civil Rights Investigator  
Re: Complaint of LB re: YK  
Date: May 30, 2019

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### I. Introduction & Case Summary

This investigation was initiated by G. Antonio Anaya, Civil Rights Investigator, (hereinafter, the “Investigator”) following the receipt from Complainant of an allegation of sexual misconduct by the Respondent on or about March 1, 2018, and after consultation with Sara Trower, then Executive Director and Title IX Coordinator, University Equity and Civil Rights Compliance (“ECRC”).

Complainant alleged the following:

(1) while she and Respondent were in Lusaka, Zambia, in December 2011, Respondent invited the student to his hotel room and slow-danced with her;

(2) later, on the same trip to Zambia, Respondent hugged and kissed Complainant without her permission or consent;

(3) Respondent invited her to accompany Respondent on a trip to Santiago, Chili, for a conference during October 2012, and that Respondent advised her that the only way to get Ohio University to pay for the hotel was if Respondent and Complainant shared a single hotel room; and,

(4) in April 2012, Respondent asked Complainant to drive him to Washington, D.C. Upon arriving in Washington, Complainant discovered that Respondent had booked a suite in which both Complainant and Respondent would spend the night. After Complainant got into bed, Respondent came into her room, sat on her bed, and placed his arm across Complainant’s body and leaned into her, making her uncomfortable.

The Investigator initially contacted Complainant after Witness A advised the Investigator that Complainant may have been subjected to some type of inappropriate behavior in the past. Complainant advised the Investigator that the incidents that are alleged to have occurred while the parties were in Zambia were initially reported to the university in either December 2011 or January 2012 by another student who was on the trip to Zambia. During January 2012, Complainant was contacted by both Institutional Equity and the Center for International Studies regarding these issues; however, at that time, Complainant denied that these incidents occurred. When contacted by the Investigator, Complainant stated that these allegations had, in fact, occurred. Further, Complainant made the initial report to the Investigator of the new

allegations that Respondent invited Complainant to share a hotel room with him in Santiago, Chile and that Respondent did share a hotel suite with Complainant in Washington, D.C. Therefore, the investigation was conducted into all of Complainant's allegations.

The 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. Following the responses of both parties to the initial evidence packet, the Investigator collected additional evidence and the parties were provided with a second evidence packet. Complainant and Respondent each provided responses to the second evidence packet that were also considered by the Investigator in reaching the conclusions in this Memorandum of Findings.

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. Respondent also arranges other overseas travels to various academic programs in journalism. During Winter Intersession of the 2011-2012 academic year, Respondent taught "Media, Society & Governance" in conjunction with a senior lecturer from the University of Zambia. This course was taught in Zambia.

SUSI, the Study of the U.S. Institutes, is a 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 attended Ohio University as an undergraduate student between Fall of 2009 and Spring of 2013. Complainant graduated with a degree in journalism with a cumulative grade point average of 3.968.

Following the filing of the complaint, the Investigator conducted an investigation. As detailed below, the Investigator concludes that the preponderance of the evidence establishes that Respondent created a hostile educational/working environment for Complainant.

## II. 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 03.004 (Harassment), and a potential violation of Ohio University Policy 40.001 (Equal Employment and Education Opportunity). Specifically, the potential violations include sexual harassment by hostile environment. The alleged incidents occurred when the following versions of Policies 03.004 and 40.001 were in effect, and therefore, the allegations will be analyzed under those versions of the policies.

## **A. 03.004(IV) – Sexual Harassment by Hostile Environment**

Ohio University Policy 03.004(IV)(approved and effective March 27, 2006) states:

Because sexual harassment has been more thoroughly defined in the law than harassment based on a protected trait, the following definition of sexual harassment is included in this policy. The following two terms are defined first because they are used in the definition of sexual harassment:

- Quid Pro Quo is the Latin term for "this for that" and occurs when there is a demand for a sexual favor in exchange for employment or academic benefit
- Hostile Environment exists when harassing behavior unreasonably interferes with a student's academic or employee's work performance and creates a hostile, intimidating, or offensive academic or work environment.

Sexual Harassment at Ohio University is defined as any unwelcome sexual advance or request for sexual favor, including an explicit or implicit quid pro quo, made by an employee, student, or agent of the University to a student or employee of the University, and is conduct of a sexual nature exhibited by such a person (or people) toward another when such conduct substantially interferes with the person's educational or work performance, or creates an intimidating, hostile, or offensive educational or work environment.

Ohio University Policy 03.004(V)(approved and effective March 27, 2006) provides the following as examples of sexual harassment in any setting:

- Unwelcome or uninvited sexual comments or innuendo
- Oral, written, or electronic communications that are sexually explicit in nature
- Sexually explicit questions, jokes, or anecdotes about gender specific traits
- Sexually suggestive sounds, gestures, gifts, or visual materials such as magazines, pictures, posters, photos, cartoons, or drawings
- Direct or indirect threats concerning sexual favors or the refusal to consent to sexual favors
- Sexual leering, uninvited touching, stroking, or gestures
- Communication of unsought sexual propositions, requests for dates, sexual favors, or lewd remarks or sounds

Ohio University Policy 03.004(V) (approved and effective March 27, 2006) further provides:

Ohio University forbids amorous relationships between a student and anyone having grading, advisory, or supervisory authority over that student (including faculty, other instructors, teaching assistants, and supervisors). Amorous relationships that occur in the context of educational or employment supervision and evaluation present serious concerns about the validity of consent. The disparity of power between persons involved

in amorous relationships of a teacher and student, supervisor and subordinate, or senior and junior colleagues in the same department or unit makes them susceptible to exploitation. Furthermore, the possibility of a future amorous relationship may distort the present instructional or advisory relationship. Those who abuse their power in such a context violate their duty to the University community.

#### **40.001 Harassment on the basis of gender**

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

It is the policy of Ohio University that there shall be no discrimination against any individual in educational or employment opportunities because of race, color, religion, national origin, sex, veteran status, sexual orientation or handicap.

See, Ohio University Policy 40.001 (approved and effective December 2, 2002).

Note that a finding of a violation of Policy 03.004 constitutes a finding of discrimination on the basis of sex, and, therefore, also constitutes a violation of Policy 40.001.

### **III. 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 the evidence standard means the evidence is sufficient to make a finding that it is “more likely than not” the alleged policy violation occurred.

### **IV. Factual Assertions & Findings of Fact**

1. At all times pertinent herein, Complainant was an undergraduate student pursuing a bachelor’s degree in journalism in the EW Scripps School of Journalism. Evidence Packet (“EP”), pg. 2.
2. At all times pertinent herein, Respondent was a professor of journalism and the Director of the International Institute of Journalism at the EW Scripps School of Journalism.

#### **WINTER INTERSESSION DECEMBER 2011**

3. During either the spring semester of 2011 or the fall semester of 2011, Complainant registered for “Media, Society & Governance,” a study-abroad course in Zambia, Africa (the “Zambia Program”).

4. The Zambia Program was co-taught by Respondent and Witness B. EP, pgs. 8-17.
5. For two weeks prior to leaving for Africa, students enrolled in the Zambia Program began their academic work. EP, pg. 11.
6. Between Saturday, November 26, 2011 and December 20, 2011, the Zambia Program was conducted in Zambia, Africa. EP, pgs. 12-18.
7. Between November 26, 2011 and December 7, 2011, the Zambia Program was conducted in and around Lusaka, Zambia. EP, pgs. 12-14.
8. On December 8, 2011, the Zambia Program traveled to the Copperbelt area of Zambia, approximately 380 kilometers from Lusaka. On December 11, 2011, the Zambia Program returned to Lusaka. EP, pgs. 14-15.
9. On December 16, 2011, the Zambia Program traveled to Livingston, Zambia. On December 19, 2011, the Zambia Program returned to Lusaka. EP, pg. 16-17.
10. During the times that they were in Lusaka, the OU contingent, including Complainant and Respondent, stayed at the Cresta Golfview Hotel (the "Cresta"). EP, pgs. 2, 12, 17.
11. The Cresta is next door to another hotel, the Chainama Hotel (the "Chainama"). EP, pgs. 2, 31.
12. Complainant reported that one evening while staying at the Cresta, Respondent invited her to his room and invited her to dance with him. There was no one else in the room, and Complainant did not feel this was appropriate and found the incident "somewhat bizarre." EP, pg. 2.
13. Respondent denied inviting Complainant to his room or dancing with her in his room. Evidence Packet 2 ("EP2"), pg. 15.
14. Complainant also reported that several weeks into the trip, and while they were staying in the Cresta, Respondent invited Complainant to go the Chainama next door to have a drink. Respondent purchased an alcoholic beverage for Complainant at the indoor bar, and they then went to the outdoor patio to sit and talk. EP, pg. 2.
15. Complainant reported that when Complainant and Respondent were leaving the patio area of the Chainama, Respondent stopped Complainant, positioned himself in front of her while she had her back to the wall, embraced Complainant and attempted to kiss her and "make out" with her. EP, pg. 2.
16. Respondent denied that he and Complainant ever went next door to have a drink, and that he ever tried to embrace her, kiss her or make out with her. EP, pgs. 3-4; EP2, pg. 16.

17. Respondent asserted that these events could not have occurred because of the rules that he and Witness B put in place for the program. Namely, Respondent stated that Witness B was with Respondent “every single evening during the entire program,” that Witness B and Witness F did not leave the hotel until between 11:30 p.m. and midnight every night, and that the OU students were in bed by that point. EP2, pg. 16.
18. Respondent also asserted that he would not have embraced, kissed or attempted to make out with Complainant because he knew at the time of the trip to Zambia that Complainant was gay, because she had “alluded to being gay” approximately three months after she accepted the position as Respondent’s assistant. EP, pg. 4.
19. Respondent also asserted that these events could not have occurred because these allegations had already been brought to the attention of the University and Complainant had denied that Respondent had engaged in inappropriate behavior at that time. EP2, pgs. 15, 18-19.
20. The Investigator makes the following findings of fact: it is more likely than not true that Respondent did invite Complainant to his room to dance, that Respondent did go to the Chainama with Complainant, that Respondent did buy Complainant an alcoholic beverage, that Respondent embraced Complainant, and that Respondent attempted to kiss and “make out” with Complainant. These findings are based on the following.

### **Respondent’s Treatment of Complainant**

- a. With one exception, each of the student witnesses remembered that Respondent showed more interest in and favored Complainant.
  - i. Witness D reported that in the weeks leading up to the trip to Zambia, there were weekly meetings of the students with Respondent. During these meetings, Respondent appeared to be “very into” Complainant, often asking her opinion. Witness D stated that Complainant was “very clearly” Respondent’s favorite, including during the time they were in classes in Zambia. EP2, pg. 4.
  - ii. Witness H reported that Respondent liked Complainant “very much,” thought Complainant was very charming and smart, and gave Complainant “a lot of attention.” EP2, pg. 8.
  - iii. Witness I reported that Respondent would treat Complainant preferentially, including calling on her first for answers and asking her to sit next to him on the bus. It was noticeable enough that the other students were calling Complainant “teacher’s pet.” EP2, pg. 9.
  - iv. Witness I also reported that it became clear to Witness I that Respondent was “romantically interested” in Complainant, particularly after Complainant became intoxicated one night and had to be taken back to the hotel. Instead of taking Complainant to her own room, Respondent

took Complainant to his room. EP2, pg. 9. Witness I reported that Complainant woke up in Respondent's room and did not know where she was. EP2, pg. 9. Complainant herself, however, did not raise this allegation in her complaint.

- v. Witness G was the only student that did not report that Respondent favored Complainant. Witness G reported that he remembers Complainant being liked by Respondent, but not necessarily more than other students he liked. EP2, pg. 7.

### **Corroboration of Complainant's Allegations**

- a. Witness D reported that while in the Copperbelt region of Zambia, Complainant came to Witness D's room and said, "[Respondent] has been pursuing me pretty hard." Complainant told Witness D that while they had still been in Lusaka, Respondent had called Complainant in her hotel room and said, "You have to go out to dinner with me when we get to the Copperbelt." Complainant said, "No," and Respondent then said that he would not hang up until she did say yes. Therefore, Complainant said that she would go to dinner with Respondent. Witness D did not believe that Respondent and Complainant ever went to dinner. EP2, pg. 5.
- b. Sometime later, Complainant told Witness D that there was an incident when Complainant was on an outdoor patio and Respondent tried to kiss Complainant. Complainant also told Witness D that Respondent had tried to slow-dance with Complainant, but Complainant pulled away. Witness D does not know if this occurred at the same time as when Respondent tried to kiss Complainant, or if it was another, distinct incident. EP2, pg. 5.
- c. Complainant also told Witness D that she and Respondent had gone to the hotel next door. EP2, pg. 5.
- d. Witness I also reported that Complainant told her that Respondent had taken Complainant next door to have a drink, because he wanted to talk about future job opportunities for Complainant, including working for the SUSI program. Complainant said that they "got pretty drunk," and that Respondent tried to kiss Complainant. EP2, pg. 9.
- e. Witness J reported that Witness D told Witness J that Respondent had gone next door with Complainant, had cornered her and tried to kiss Complainant. Supplemental Witness J Statement ("SWJ"), pg. 2.

### **Complainant's Sexual Orientation**

- a. Complainant stated that during the time in which the incidents underlying her complaint occurred, she was still discovering her sexuality and did not yet self-identify as a lesbian. EP, pg. 3. The preponderance of the evidence supports a

finding that Complainant did not identify as a lesbian and had not come out as gay at the time of the incidents underlying her complaint.

- vi. Witness D reported that she had “no idea” that Complainant was gay at the time of the Zambia Program, as Complainant had never said so and had not come out during that time. Witness D reported finding out through social media later. EP2, pg. 4.
- vii. Witness G reported that, at the time of the trip to Zambia, Witness G was not aware that Complainant is gay, and he only learned this when he learned that Complainant was dating her now-wife. This was after both Witness G and Complainant had graduated. EP2, pg. 8.
- viii. Witness H reported that she was not aware that Complainant was gay at the time of the trip to Zambia, and had “no idea” until she later learned that Complainant had married Complainant’s wife. To Witness H’s knowledge, Complainant was not “out” at the time of the trip to Zambia. EP2, pg. 8.
- ix. Witness I reported that she does not believe that Complainant was “out” as a gay woman at the time of the trip to Zambia. Witness I found this out through social media and by staying in touch with Complainant after Witness I graduated from OU in 2014. EP2, pg. 10.

### **Complainant’s Prior Denial**

- a. After returning from Zambia, Witness D submitted an evaluation form to Witness E in the Office of Global Opportunities. This evaluation form raised concerns about the behavior of Witness B. Witness E subsequently spoke with Witness D regarding these allegations. EP2, pg. 6.
- b. Witness D reported to Witness E that Witness B had asked Witness D to come back to Witness B’s room with him. Witness D also reported that Respondent had attempted to kiss Complainant. EP2, pg. 6.
- c. As a result of the report of Witness D, an investigation was conducted by the Office of Institutional Equity (now known as Equity & Civil Rights Compliance). This investigation primarily focused on the allegations raised by Witness D involving Witness B. During this investigation, Witness D mentioned a potential, improper relationship between Respondent and Complainant. EP2, pgs. 63-65.
- d. The Office of Institutional Equity conducted an inquiry into “the allegations of an improper relationship against [Respondent].” As part of this inquiry, Institutional Equity questioned Complainant about the allegations against Respondent. The Memorandum of Findings from that case, dated February 14, 2012, states, “The student alleged to have been involved denies the allegations.” EP2, pgs. 63-65.



- e. On January 25, 2012, the Director of the Office of Education Abroad asked to meet with Complainant regarding the allegations that had been raised by Witness D regarding Respondent.
- f. In response, Complainant sent the Director of the Office of Education Abroad an email, in which she stated, "The issue, which I never considered an issue in the first place, is truly non-existent. Rest assured that I am not the type of personality [sic] who would not speak out about something due to fear or something along those lines. I have been through a lot in my life and I don't allow others to take advantage of me. Once again, I appreciate your concern. However, when I declined to speak to the Office of Equity, I did so for a reason. It's been more than a month since the Zambia trip and I think it may be a bit silly to keep discussing something that was largely a misconception and is now quite irrelevant." EP2, pg. 51.
- g. Complainant confirmed to the Investigator that she had denied that Respondent had engaged in any inappropriate behavior at that time. EP, pg. 3.
- h. Complainant stated that she denied that Respondent had engaged in any inappropriate behavior at that time because of opportunities that Respondent had already made available to Complainant and opportunities that Respondent could make available to her in the future. EP, p. 3.
- i. Complainant stated that there were a number of factors that caused Complainant to choose not to report Respondent's behavior:
  - i. Respondent had already suggested to Complainant that she would be working with the SUSI program during the summer of 2014. EP, pg. 3.
    - 1. SUSI, the Study of the U.S. Institutes, is a 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.
    - 2. Working for the SUSI program would allow Complainant to make "significantly more" money than the other opportunities available to Complainant at that time. EP, pg. 3.
    - 3. Witness I stated that Complainant was going to be working with Respondent after the Zambia trip in a "good job" for the SUSI program. EP2, pg. 9.
  - ii. At the time, Complainant was in her third year of undergraduate studies and had two more years to earn a degree in her major, journalism. Respondent was a ranking member of the faculty of Complainant's major. EP, pg. 3.

- iii. Complainant had a good working relationship with Respondent and Complainant did not want to compromise that relationship. EP, pg. 3.
  - iv. Complainant knew that because of his position and connections, Respondent could be instrumental in helping Complainant obtain a position in the field of journalism, and Complainant was afraid that she would jeopardize this and the other opportunities if she reported Respondent. EP, pg. 3.
- j. Witness D corroborated that while still in Zambia, Complainant had already decided to not report Respondent's behavior.
- i. Witness D told Complainant that she was going to file a report regarding Witness B driving OU students after he had been drinking. EP2, pg. 5.
  - ii. Witness D reported that Complainant told Witness D that if the University asked Complainant if Respondent had engaged in any inappropriate behavior with Complainant while in Zambia, Complainant would deny anything happened. EP2, pg. 5.

### **Respondent's Assertions and Supporting Witnesses**

- k. Respondent asserted that there is no way that Respondent could have invited Complainant to his room or have attempted to slow-dance with her, because Witness B was with Respondent "every night" until around 11:30 p.m., and all of the OU students were in their rooms before Witness B left the hotel. EP2, pg. 16.
- l. Respondent also asserted that he could not have taken Complainant next door to the Chainama for a drink because the Chainama was a "no go" for their group, "none of the students stepped into that area," and it was "not the type of social place/hotel where we would allow our students to go." Respondent also reiterated that he was with Witness B each evening until 11:30 p.m. EP2, pg. 17.
- m. When the Investigator spoke with Witness B, he confirmed Respondent's assertion that Witness B had been at the Cresta "every night" until 11:00 p.m. or midnight, and that Witness B was "always with" Respondent at night. EP2, pgs. 3, 4.
- n. When asked if he was aware of any of the OU contingent going next door to the Chainama, Witness B stated that he was not aware of anyone ever going to the Chainama, and that the Chainama was not a place he would take Respondent or other foreign visitors. EP2, pg. 3.
- o. Witness B then volunteered, without being asked, that the Chainama was "not a kind of place where you could take someone to have a drink." The Investigator had made no mention to Witness B that Complainant had alleged that Respondent had taken her to the Chainama to have a drink. As such, the

Investigator asked Witness B if he had spoken with the Respondent about this matter recently. Witness B confirmed that he had “gotten a communication from Respondent” but said that Respondent had “just” told him to expect an email or phone call from someone at OU. EP2, pg. 3.

- p. Respondent’s and Witness B’s assertions were contradicted by other witnesses.
- i. Witness C stated, “The OU students did have some free time in the evenings.” EP2, p. 4.
  - ii. Witness D stated that there was “an hour or so” each night before leaving for dinner that the students had free time to “do their own thing,” that Witness D recalled being at the bar in the Cresta alone one evening, and that “there was definitely opportunities for students to be alone with [Respondent].” EP2, pg. 5.
  - iii. Witness D also reported that, while she is pretty sure that Witness B did come back to the Cresta each evening, there were not only times when students could be alone with Respondent, but also times when either Witness B or Respondent would take other people home and the other would stay with the OU students. EP, pg. 5
  - iv. Witness F was the bus driver for the OU contingent while in Zambia. EP., pg. 6. Contrary to Respondent’s statement, “I would see off the driver [Witness F] and professor [Witness B] every night between 11:30 and midnight” (EP2, pg. 16), Witness F stated that each evening he would drive the students back to the Cresta, but would then ask permission to go home as soon as he dropped off the students. Therefore, Witness F does not know how long Witness B stayed at the Cresta with Respondent. EP, pgs. 6-7.
  - v. Witness G reported that he is “sure” there was enough time in the evenings for the Respondent and Complainant to have gone next door to have a drink. EP, pg. 7.
  - vi. Witness H reported that she is “100% sure” that there were times in the evenings when Respondent and a student could be alone; “There were plenty of times for that.” EP2, p. 8.
  - vii. Witness H also reported that she believes that “lots of students” went to the hotel next door to the Cresta. EP2, p. 8.
  - viii. Witness I reported that there were opportunities for Respondent to have “alone time” with a student in the evenings. EP3, p. 9.

- ix. Witness I also reported that she did not recall Witness B “hanging out” with Respondent in the evenings, although Witness I did go to bed earlier than most of the others. EP2, pg. 10.
  - x. Witness I further reported that she herself had gone to the Chainama with a group of OU students, and that Respondent came with them. The Chainama was not as nice as the Cresta, but had more of a “bar aspect” to it. Witness I described a dance floor with tables at the back, and the outdoor space with tables with umbrellas. EP2, pg. 9-10.
  - xi. Witness J reported that there was time for Respondent to have been alone with Complainant in the evening. SWJ, pg. 2.
  - xii. Witness J reported that Witness B was at the Cresta in the evening “frequently” but does not remember if he was at the Cresta every night.
21. Therefore, a preponderance of the evidence establishes that it is more likely than not true that Respondent did invite Complainant to his room to dance, that Respondent did go to the Chainama with Complainant, that Respondent did buy Complainant an alcoholic beverage, that Respondent embraced Complainant, and that Respondent attempted to kiss and “make out” with Complainant.

### **The Trip to Santiago, Chile**

22. Complainant reported that in late 2011 or early 2012, Respondent invited her to accompany him to a professional journalism conference in Santiago, Chile from June 23, 2012 to July 1, 2012. EP, pg. 3. Complainant stated that Respondent told her that the only way the University would pay for the cost of Complainant’s hotel room was if she shared a room with Respondent. EP2, pg. 13. This allegation was reported to the Investigator during the initial interviews with Complainant herein, as it was not included in the report filed by Witness D shortly after returning from the trip to Zambia.
23. Respondent denied even inviting Complainant to this conference, and also denied asking Complainant to stay in the same hotel room in Santiago, Chile. EP, pg. 4; EP2, pgs. 15, 19. Respondent also asserts that he traveled to Santiago, Chile for an international conference on journalism studies that took place between June 27 and June 29, 2012. EP2, pg. 20.
24. The Investigator finds that it is more likely than not that Respondent did invite Complainant to accompany him to Chile, and that Respondent invited Complainant to stay in the same room with Respondent. This finding is based on the following.
- a. Complainant produced a number of emails in support of this allegation.
    - i. On February 7, 2012, Complainant’s mother advised her in an email that the flight would be “12 hours or more, depending on where you go in Chile.” Complainant responded, “He purchased the tickets yesterday.” EP, pg. 19.

- ii. On April 3, 2012, Complainant received an email, inviting her to attend a mission trip. On May 15, 2012, Complainant responded that she would be visiting Chile from June 25 – July 1 for a journalism conference. EP, pgs. 21-22.
- iii. On June 21 and June 22, 2012, Complainant engaged in an email conversation with a missionary in Chile that she had already been introduced to. Complainant advised the missionary at that time that her trip to Chile had been cancelled due to her colleague having to take an emergency trip to Europe. EP, pgs. 24-25.
- b. Respondent asserted that because Complainant has not produced flight reservations, vaccination records, hotel reservations or emails between the two of them discussing this trip, the trip could not have happened. EP2, pg. 20.
- c. Respondent also alleges that Complainant fabricated this allegation on the basis that she “knew all about my travel plans” and that “Complainant was my institute’s IJ Ambassador (a paid student-worker position), her duties included coordinating many of the international engagements for the IJ. She knew that I traveled to Santiago, Chile in late June 2012.” EP2, pg. 20.
- d. Respondent, in his denial, stated that documentary evidence corroborated his position, however, Respondent did not produce any such documentary evidence.
- e. Complainant has produced corroborating evidence to support her allegations, but Respondent has not produced any corroborating evidence of his assertions.

### **The Trip to Washington, D.C.**

- 25. Complainant reported that in April of 2012, Respondent requested that Complainant drive Respondent to Washington, D.C. so that he could attend a SUSI administrative meeting. Respondent told Complainant that her hotel room would be paid for and that she would have several days to explore Washington. EP, pg. 3. This allegation was also reported to the Investigator during the initial interviews with Complainant herein, as it was not included in the report filed by Witness D shortly after returning from the trip to Zambia.
- 26. Complainant further reported that when she arrived in Washington, D.C., she discovered that Respondent had made reservations for both of them to stay in a suite in the Renaissance Washington D.C. Hotel. EP, pgs. 3, 33.
- 27. Complainant also reported that after Complainant was in bed, Respondent came into her bedroom and sat on her bed. Respondent then leaned over and put his arm over her. Complainant then said she needed to sleep and Respondent left her room. EP, pg. 3.

28. Respondent admitted that he was in Washington, D.C. on April 20, 2012, but stated that he always goes to D.C. alone and denied that Complainant was with him on that trip. EP, pg. 4.
29. The Investigator finds that it is more likely than not that Respondent did invite Complainant to accompany him to Washington, D.C. during April of 2012, that Respondent reserved a suite at the Renaissance Washington, D.C. Hotel (the "Renaissance") for both himself and Complainant, and that Respondent came into Complainant's bedroom, sat on her bed and put his arm across her. This finding is based on the following:
  - a. Complainant produced a record represented to be from the Renaissance showing that Respondent incurred \$558.35 in charges on April 19 and April 20, 2012. EP, pg. 30.
  - b. Complainant produced a Tweet from Respondent dated April 20, 2012 at 11:20 p.m. stating, "Attending @StudyoftheUS Admin Briefing @ U.S. State Dep't is one of IJJ's most important annual training meetings. Great sessions!" EP, pg. 32. Respondent confirmed that this Tweet is accurate. EP, pg. 4.
  - c. Complainant produced a screenshot showing that she was at the International Spy Museum at 800 E. St. NW in Washington, D.C. on April 20, 2012 at 11:33 a.m. EP, pg. 33.
  - d. Complainant produced a screenshot showing that she was at the Renaissance on April 21, 2012 at 10:22 a.m. EP, pg. 33.
  - e. Respondent asserted that had Complainant traveled with him to Washington, D.C., there should have been financial records indicating that she was paid for this trip, and that "OU financial records show I traveled alone." EP.2, pg. 20-21. Respondent did not produce any such financial records.
  - f. Respondent also asserted that a Federal Grant would not pay for the rate of a suite in Washington, D.C., and certainly not for two people. EP2, pg. 21. However, Complainant never alleged that this hotel was paid for with federal grant money. Further, Respondent never produced any records indicating how this room was either reserved or paid for.
  - g. Respondent also asserts that this claim must be false because "a suite with two bedrooms does not exist at the Renaissance . . ." EP2, p. 21.
  - h. The Renaissance website advertises a "Executive Suite" with a living room and a bedroom. EP2, pg. 56-61.
  - i. The photographs of the Renaissance Executive Suite clearly show a door to the bedroom and a full-size couch large enough to sleep on. EP2, pg. 57-61.

- j. Complainant has produced corroborating evidence to support her allegations regarding the trip to Washington, D.C., but Respondent has not produced any corroborating evidence of his assertions regarding this trip. To the contrary, Respondent has asserted that Complainant used her knowledge of his trip to Washington, D.C. “to try to frame me with an almost familiar storyline as the allegations filed by [another student complainant].” EP2, pg. 21. The allegation that Complainant herein is trying to “frame” Respondent is not supported by the evidence.
- k. Respondent specifically points to the accounting statement for his travel expenses attached to the Evidence Packet as proof that Respondent had one room in his name only for two nights, and that Complainant’s name is not included in that statement. EP2, pg. 21. What Respondent failed to appreciate is that the travel expense statement to which Respondent refers was produced by Complainant herself. EP, pg. 30.

## **V. Analysis and Conclusions**

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

### **A. University Equity and Civil Rights Compliance’s Authority to Address this Complaint.**

The version of Ohio University Policy 03.004 (“Harassment” – effective 3/27/2006 through 8/3/2012) applicable to the events alleged by Complainant contained a 180-day time limit. The policy version states: “A complaint of harassment, including sexual harassment, must be filed no later than 180 days, from the date of the last occurrence of the alleged harassing behavior.” While policy 03.004 had a 180 day limit to report, the similarity of allegations between those made in this case and those made against Respondent in another case raised a concern that there has been a pattern of behavior. Therefore, under Title IX, ECRC felt an obligation to investigate.

Title IX itself does not contain a time limitation. Rather, under Title IX, the University’s obligation to respond to reports of sexual misconduct is triggered when the University receives notice of the alleged sexual misconduct. In this case, Complainant did not confirm the validity of her complaint regarding the incidents in Zambia until March 2018, and did not raise the allegations of the invitation to share a room in Santiago, Chile or the trip to Washington, D.C. until that time. There were a number of reasons why Complainant delayed acknowledging that Respondent engaged in inappropriate behaviors.

At the time of the incidents giving rise to the complaint in this case, Complainant was an undergraduate student seeking a degree in the program of which Respondent was a ranking faculty member. Complainant intended to stay in that program for another two and half years and did stay in that program. Respondent had also extended a job offer to Complainant for a

very valuable position in the SUSI program for the following summer. Therefore, Complainant had actual vulnerabilities in both academic standing and imminent employment. Complainant was also aware that Respondent had numerous connections in Complainant's desired profession and could be an invaluable resource for Complainant come graduation.

**B. Analysis Supporting the Finding that Respondent Violated University Policy 03.004 by Engaging in Sexual Harassment by Hostile Environment.**

1. Ohio University Policy 03.004 prohibits conduct that constitutes sexual harassment.
2. In this case, Complainant has asserted that Respondent engaged in sexual harassment of her. To establish a violation, the preponderance of the evidence must show that:
  - a. Respondent subjected Complainant to unwelcome sexual advances or requests for sexual favor; and,
  - b. Respondent engaged in conduct of a sexual nature when the conduct was severe enough:
    - i. to substantially interfere with the Complainant's educational or work performance; or
    - ii. to create an intimidating, hostile, or offensive educational or work environment.
3. With regard to the first element, the evidence establishes that Respondent did subject Complainant to unwelcome sexual advances.
  - a. The preponderance of the evidence establishes that while Respondent and Complainant were in Zambia, Respondent put Complainant in a position where she was up against a wall and Respondent then attempted to kiss her and make out with her. Attempting to kiss someone and make out with them is by definition a sexual advance.
  - b. The preponderance of the evidence also establishes that Respondent invited Complainant to stay in a single hotel room with him in Santiago, Chile. While this trip never materialized for Complainant, this is evidence of a pattern of behavior on the part of Respondent, namely, arranging to spend the night in a single hotel room with one of his female students a significant distance from campus.
  - c. The preponderance of the evidence also establishes that Respondent created a situation by which Complainant had to share a hotel suite with him in Washington, D.C. Again, the question is whether or not this constituted a sexual advance or request for sexual favors. The preponderance of the evidence establishes that Respondent having made a reservation for a single suite to be



shared with Complainant in Washington, D.C. was sexual in nature, as evidenced by the following:

- i. While Complainant was lying in bed, Respondent entered her room and sat on the edge of the bed. Respondent then placed his arm across Complainant's body, putting his hand on the bed on her other side.
  - ii. Respondent did not advise Complainant that they would be sharing a room in Washington, D.C., and Complainant only became aware of this when Respondent and Complainant checked into the hotel.
  - iii. Respondent denied that this ever occurred. However, Respondent did not provide any documentation to corroborate that he traveled to and stayed in Washington, D.C. alone.
  - iv. Complainant produced evidence corroborating that she was in Washington, D.C. at the same time as Respondent, in the nature of two screenshots containing physical locations and dates. EP, pgs. 33-34. Respondent has provided no explanation for these two screenshots.
4. With regard to the second element, there is a preponderance of evidence establishing that Respondent's behavior was severe enough to create an intimidating, hostile, or offensive educational or work environment.
- a. Policy 03.004 provides express examples of sexual harassment. These include (but are not limited to):
    - i. Unwelcome or uninvited sexual comments or innuendo.
    - ii. Sexual leering, uninvited touching, stroking, or gestures.
    - iii. Communication of unsought sexual propositions, requests for dates, sexual favors, or lewd remarks or sounds.
  - b. Respondent's attempt to dance with, and then kiss and make out with, Complainant meet all three of these examples. Both incidents constituted unwelcome and uninvited touching and sexual gestures. Both incidents also constituted sexual innuendo and communication of unsought sexual propositions or sexual favors, as these physical gestures and acts constituted forms of communication. Therefore, Policy 03.004 presumes that these acts created a hostile environment.
  - c. Respondent has provided no reasonable, non-sexual rationale for requesting that Complainant share a hotel room with him. The preponderance of the evidence indicates that Respondent did so twice. One of these was several hundred miles from campus and the other was thousands of miles from campus in a foreign country. Both of these were in situations where Respondent was familiar and

comfortable but where Complainant would be significantly dependent upon Respondent. This would also have been true had the trip to Chile occurred. No reasonable person could find such conduct anything less than severe enough to create a hostile, intimidating or offensive environment.

- d. Respondent's conduct was also severe enough to create an intimidating, hostile, or offensive environment when considered in light of the factors delineated under Policy 03.004. These factors include (i) the degree to which a person is affected; (ii) the type, frequency and duration of the alleged conduct; (iii) the relationship between the alleged harasser and the subject of the harassment; (iv) the location and context in which the alleged conduct occurs; and, (v) other or corroborating incidents.
  - i. The effect that the behavior had on Complainant leans slightly in favor of a finding of harassment. Complainant was affected by Respondent's behavior in Zambia enough to have brought it to the attention of other students while there. Complainant also indicated that she was not comfortable staying in the suite with Respondent even before he came into her room after she was in bed. Complainant also felt enough concern about the possible effect of reporting Respondent's behavior on the future of her educational and work opportunities to prevent her from reporting him at the time.
  - ii. The type, frequency and duration of the conduct supports a finding of harassment. Respondent tried to dance with Complainant and then make out with Complainant while they were in Zambia. This conduct, particularly the attempt to kiss and make out with Complainant, is extremely inappropriate, and only one incident is sufficient to constitute harassment. However, Respondent continued attempting to put Complainant in compromising positions in the nature of sharing a hotel room with her. While Respondent was unable to do so in Santiago, Chile, he created a situation where he and Complainant shared a suite in Washington, D.C.
  - iii. The relationship between the parties strongly supports a finding of harassment. Respondent was a ranking professor in Complainant's major. Complainant was an undergraduate student, with two and half more years of study before she was scheduled to graduate. Adding to this disparity of power was the fact that Respondent was the ranking Ohio University authority while the parties were in Zambia.
  - iv. The location and context of the conduct also strongly supports a finding of harassment. This is particularly true with regard to the incidents in Zambia and Washington, D.C. In both instances, Complainant was a substantial distance from either school or her home. In both instances, Respondent had a significant degree of responsibility for Complainant. And in both instances, Respondent took advantage of the situation to isolate Complainant before attempting sexually inappropriate behavior.

- v. Other corroborating incidents also strongly support a finding of harassment. Complainant's allegations in this case are significantly similar to the allegations made by another student complainant following a fall, 2017 trip to Rwanda that the other complainant took with Respondent. The central allegation in that case was that Respondent had invited the student to spend the night alone with him in a hotel room overseas – a strikingly similar allegation to those made by the Complainant in this case. The allegation of sexual harassment by hostile environment was found to have been substantiated in that case. While certainly not dispositive, this supports a finding of sexual harassment by hostile environment in this case.
  - e. Finally, assuming that Complainant might have had a romantic or other interest in Respondent (of which there is no evidence), Respondent was in a position where he held a direct supervisory and evaluative role over Complainant. According to Ohio University Policy 03.004, "Ohio University forbids amorous relationships between a student and anyone having grading, advisory, or supervisory authority over that student (including faculty, other instructors, teaching assistants, and supervisors)." Therefore, even a consensual relationship between Respondent and Complainant would have been an express violation of University policy.
5. In conclusion, given the information disclosed to ECRC, the Investigator concludes that there is sufficient evidence on which to base a finding that Respondent's alleged behavior constituted sexual harassment by hostile environment. Accordingly, by the preponderance of the evidence standard, the Investigator finds that the allegation of sexual harassment on the basis of hostile environment is **SUBSTANTIATED**