

CONFIDENTIAL

OFFICE FOR THE PREVENTION OF HARASSMENT AND DISCRIMINATION

REPORT OF INVESTIGATION AND FINDINGS

Complainant: [REDACTED], non-affiliate

Respondent: Yann Hufnagel, UC Berkeley Assistant Coach -- Men's Basketball

Investigators: Investigator 1: Will Mallari, OPHD Assistant Director/Deputy Title IX Officer; Investigator 2: Elizabeth Rome, OPHD Complaint Resolution Officer

Date of Report: March 14 2016

Conclusion: Finding of Policy Violation - Sexual Harassment

I. Background and Reported Behavior

On July 7, 2015, an Associate Athletic Director ("AAD") at UC Berkeley contacted the Office for the Prevention of Harassment and Discrimination ("OPHD") to report a potential sexual harassment of a non-affiliate, [REDACTED] (the "Complainant"), by a member of UC Berkeley's coaching staff, Yann Hufnagel (the "Respondent"). The AAD forwarded an email Complaint originally sent to a Head Varsity Athletics Coach on July 6, 2015 which detailed Complainant's concerns about enduring frequent and recurrent sexual harassment from Respondent in the course of her employment for [REDACTED]

On August 12, 2015, OPHD outreached to Complainant. Complainant responded within 24 hours and offered to discuss Complainant's concerns via telephone [REDACTED]. After a series of scheduling emails, Complainant agreed to come in for an in-person interview on August 25, 2015 [REDACTED]. On August 25, 2015, Complainant met with OPHD and reported that Respondent had sexually harassed her.

Specifically, it was reported that:

- Complainant was a [REDACTED] who met informally with coaches, including Respondent, as part of her job. Respondent was the unofficial designee of UC Berkeley's Men's Basketball team regarding communications with the press surrounding [REDACTED]
- Over a period of time from November 2014 through May 2015, Complainant received sexually harassing communications from Respondent on a bi-weekly

basis in response to Complainant's attempts to communicate with Respondent for professional purposes.

- On one occasion, prior to February 23, 2015, Respondent asked Complainant to drive him home after Respondent had been drinking and then he propositioned her for sex once she had driven her car into his building's garage and Respondent had closed the garage door after it—using a remote control in his possession.
- After Complainant refused Respondent's sexual advances, Respondent ceased providing [REDACTED] information to Complainant and as Respondent was the singular source for obtaining information pertinent to Complainant's specific assignment at [REDACTED] Complainant was no longer able to perform her job and was let go.

II. Interim Measures

The need for interim measures was evaluated. No interim measures were deemed necessary or appropriate in this case; and none were taken.

III. Jurisdiction

The Office for the Prevention of Harassment and Discrimination has campus-wide responsibility for responding to sex discrimination complaints, including sexual violence and sexual harassment, and implementation of the University of California Sexual Harassment and Sexual Violence Policy, which applies to the investigation and resolution of complaints against staff.

IV. Applicable Policy

The University of California Sexual Harassment and Sexual Violence Policy¹ defines sexual harassment as:

[U]nwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment is conduct that explicitly or implicitly affects a person's employment ... or interferes with a person's work ... or creates an environment such that a reasonable person would find the conduct intimidating, hostile, or offensive.

The policy continues:

Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, student employees, students, coaches, residents, interns, and non-student or non-employee participants in University programs (e.g., vendors, contractors, visitors, and patients). Sexual harassment may occur in hierarchical relationships, between peers, or between individuals of the same or opposite sex. To determine whether

¹ The University of California Sexual Harassment and Sexual Violence Policy issued on February 25, 2014 is the version applicable to this case as it was the policy in effect at all times relevant to the facts.

the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

V. Summary Findings

Based upon the evidence, OPHD made a finding of responsibility against Respondent for the reported behavior, in violation of the UC Sexual Harassment and Sexual Violence Policy. A detailed discussion of the finding is included in Sections VII and VIII.

VI. The Investigation

A. Complainant's Statement

On August 12, 2015, Investigator 1 outreached to Complainant. Complainant responded within 24 hours and they initially discussed speaking about Complainant's concerns via telephone [REDACTED]

[REDACTED] they ultimately arranged to meet in person on August 25, 2015. On August 25, 2015, Investigator 1 met with Complainant at OPHD and she provided the following statement. At that time, Complainant was a non-affiliate [REDACTED]

[REDACTED]

Complainant said, "As a [REDACTED] I meet informally with coaches." For stories pertaining to UC Berkeley Men's Basketball, Complainant said she occasionally texted or tweeted messages to Respondent requesting to meet him for coffee in order to gather [REDACTED] information. Complainant said Respondent would frequently turn the text conversations into sexual innuendos. Complainant noted Respondent was her only source of information and asserted, "He used his power." Complainant said she typically "deflected" Respondent's sexual innuendos with humor, but "was not encouraging." Complainant recalled the unwelcome interactions with Respondent beginning in November 2014 and continuing through May 2015. Complainant estimated that, "90 percent of [the] harassment [was] via text," and occurred approximately once every two weeks. Complainant also described an in-person incident that occurred in the parking garage of Respondent's residence, as detailed below. [REDACTED]

[REDACTED]

[REDACTED]

Complainant recalled her first interaction with Respondent was during a telephone call facilitated by Complainant's boss who connected Complainant with Respondent "as a resource." Complainant said the call lasted about five minutes and Respondent was "not inappropriate." Complainant said the first time Respondent was "flirtatious" or "inappropriate" was in mid-November 2014 about two weeks after their introductory telephone call. Complainant recalled telling [REDACTED] her boss about Respondent's behavior shortly after it happened, and that both of them were supportive of her.

Complainant recalled an in-person incident involving Respondent occurring sometime prior to February 23, 2015. Complainant said she had been attempting to meet with Respondent for coffee; and Complainant attended a UC Berkeley Men's Basketball game after which Respondent indicated he would be available for coffee. Complainant recalled waiting for an hour and a half after the game while Respondent was in a meeting. She said at about 11:30 p.m., Respondent finished the meeting and told Complainant, "We're going to a bar." Complainant said she wanted to find a coffee shop, but Respondent insisted on a bar; and Complainant suggested Jupiter because it had food too. Complainant recalled that other people met Complainant and Respondent there including [REDACTED]

[REDACTED] Complainant said [REDACTED] told her that Respondent hit on [REDACTED] friend that night. Complainant said that Respondent drank one or two beers during the two hours they met at Jupiter, after which Respondent told Complainant he was too drunk to drive home and insisted that she drive him to his residence. Complainant described that she told him "no" and suggested he take a taxi, but Respondent was insistent and Complainant ultimately acquiesced.

Complainant recalled driving Respondent to his apartment [REDACTED]—a street corner she described as being busy. Complainant said Respondent opened his apartment building's community parking garage for Complainant to drive her car into. Complainant said she did drive into the garage because there was no place on the street to pull over. Complainant said, once in the garage, Respondent directed her to park in a designated spot—an elevator-operated "lift" spot which would have suspended her car above the ground. Complainant said she did not park in the spot and felt Respondent was attempting to control her ability to leave. She recalled telling Respondent that she was just going to turn around; to which Respondent responded, "You're coming up." Complainant said she said, "No. I'm going to leave now," but Respondent kept insisting. Complainant said she asked Respondent, "Are you thinking that I'm going to have sex with you?" to which Respondent said, "Yes." Complainant recalled telling Respondent, "Not going to happen ... [REDACTED] ... you and I are professional colleagues ... not interested in you." Complainant noted that at that point the garage door was closed behind them with her car inside and Respondent indicated that he did not intend to let her out of the garage. Complainant recalled that she felt scared and ordered Respondent, "Let me the fuck out

of here.” She recalled Respondent “talked about oral sex,” “[Complainant] giving him oral sex.” Complainant estimated remaining in the garage with Respondent for about 15 minutes. During that time, Complainant recalled being in the car for most of the time and Respondent being out of the car for most of the time. Complainant said Respondent did not touch her on that occasion or any other occasion.

Complainant said that on March 17, 2015, Complainant requested a coffee meeting with Respondent and during electronic communications to set up the same, Respondent made sexual innuendos to Complainant implying, in Complainant’s words, “Come have a three-way with me and [REDACTED]” Complainant said that Respondent’s texts in regards to scheduling a coffee meeting evidence Respondent’s sexually suggestive references to his apartment, and specifically to his bed and couch. Complainant declined and re-directed Respondent’s sexual innuendos.

Complainant asserted that on March 23, 2015, Respondent provided Complainant with misinformation about [REDACTED] Over an electronic exchange, Complainant asked Respondent if a specific [REDACTED] Complainant indicated that she then reported that information in the course of her employment with [REDACTED] Complainant said she later learned that Respondent had told other reporters that [REDACTED] Complainant confronted Respondent and she recalled Respondent admitting that [REDACTED] [REDACTED] but Respondent insisting, “I was telling everyone the same thing.” Complainant believes Respondent provided her with this misinformation as retribution for declining his sexual advances.

Complainant reported direct messaging [REDACTED] [REDACTED] (“Witness 1”) on Twitter on May 22, 2015 and requesting to talk. Complainant said Witness 1 called her on May 23, 2015 at which time she told him that she “experienced sexual harassment from [Respondent].” Complainant recalled that Witness 1 cut her off and said, “I’m so angry.” Complainant recalled Witness 1 responding to Complainant’s report stating, “I take this very seriously,” and asserted his intention to “talk to [Respondent] right away.” Complainant said that Witness 1 instructed Complainant, “Follow-up with me in a couple of days.” Complainant said she did not have the opportunity to detail the information to Witness 1 at that time.

Complainant recalled sending a follow-up message to Witness 1 on May 25, 2015 and Witness 1 indicating, “We’re meeting in the morning.” Complainant characterized her attempts to follow up with Witness 1 regarding her initial report as unsuccessful. Complainant said that on May 26, 2015, she received a text from Respondent via Twitter stating, “I need to call you. What is your phone number?” Complainant said, “[Respondent] tried to take advantage of the power imbalance.” Complainant recalled that she told Witness 1 about the contact from Respondent and asked him if she should talk to Respondent. Complainant said, in response, Witness 1 said, “That’s totally your choice.”

Complainant said that on July 5, 2015, she contacted Witness 1 and asked for his email address in order to provide him with the text exchanges between Complainant and Respondent. Witness

1 provided his email address to Complainant; and she emailed screenshots of the texts to Witness 1.

[REDACTED]

B. Witness 1 Statement

Investigator 1 interviewed Witness 1 at OPHD on October 23, 2015. Witness 1 was [REDACTED] [REDACTED] at the time of the reported incidents.

Complainant provided Witness 1's name as a potential witness—noting that she had initially reported her concerns about Respondent's conduct to him. Witness 1 provided the following statement.

Witness 1 said that he never dealt with Complainant regarding media. Witness 1 recalled that Complainant called him in May 2015 and said, "I want to talk to you about one of your assistant coaches." Witness 1 confirmed that Complainant initially contacted him on Twitter and he sent her his telephone number. Witness 1 said he had a brief discussion with Complainant during the telephone call; but he denied that she provided any details or described anything as constituting sexual harassment. Witness 1 recalled Complainant telling him that she went to Respondent's house, she drove Respondent home, and Respondent only had two drinks. Witness 1 said Complainant did not elaborate further. Witness 1 recalled asking Complainant if she felt mistreated. Witness 1 said he did not recall Complainant asserting that she did feel mistreated and he told Complainant, "I'll have [Respondent] call you." Witness 1 said that Complainant never indicated that a call from Respondent to address her concerns would not be welcome. Witness 1 recalled telling Complainant, "Proceed how you need to proceed," and left it at that. Witness 1 said he followed up with Respondent to see if he had called Complainant. Witness 1 recalled that Respondent told him he had left Complainant a message. Witness 1 recalled that his last communication with Complainant was by email in which he asked her, "How do you want me to proceed?" and Complainant never responded. Witness 1 said that he did not have any further conversations with Respondent or the Athletics Department staff about the matter. Witness 1 said that he has not received any other complaints about Respondent.

[REDACTED]

[REDACTED]

[REDACTED]

C. Respondent's Statement

Investigator 1 met with Respondent at OPHD on October 23, 2015. At the outset of the meeting, Investigator 1 provided Respondent with a statement of the allegations, a copy of the University of California's Sexual Harassment and Sexual Violence Policy, an overview of OPHD's process, and information about the office of record. At that time, Respondent was an assistant coach for UC Berkeley's Men's Basketball team. He provided the following statement.

Respondent said that he has been an assistant coach with UC Berkeley's Men's Basketball team since May 2014. Respondent recalled Complainant reaching out initially to him by either telephone or text when he first started in that role. Respondent said that Complainant worked for [REDACTED] and it was her job to get information (e.g., [REDACTED] information) from the Men's Basketball team's coaching staff. Respondent recalled that during his early interactions with Complainant he was of the impression that Complainant was "professional." [REDACTED]

[REDACTED]

Respondent recalled going to Jupiter—possibly after the Arizona game in January—with Complainant, [REDACTED]² and [REDACTED] friend. Respondent stated [REDACTED] Respondent said that a few days before the game, he had asked Complainant via text message if she wanted to go out after the game. Respondent acknowledged that his invitation "was a sexual advance." Respondent said, "In the back of my mind I was like ... obviously [Complainant]'s willing." Investigator 1 asked if Respondent believed he was asking out Complainant at that point. Respondent replied, "Yes," and asserted believing that there was, "1000% acceptance on her part."

Respondent recalled that Complainant was waiting for him in the stairwell after the game. Respondent could not recall if he and Complainant walked or drove to Jupiter, but said that Complainant agreed to go. Respondent said that [REDACTED] friend were at Jupiter and Respondent was not sure if Complainant was aware that they would be there. Respondent said he and Complainant were at Jupiter for about an hour. Respondent said that he did not drink at Jupiter because he drove. Respondent recalled that Complainant drank tea and thinking in the back of his mind that she was "the lamest girl ever." Respondent said that he drove Complainant from Jupiter to his apartment [REDACTED] and that they were at the apartment building briefly. Respondent said that he asked Complainant if she wanted to come upstairs and

² Investigator 1 asked Respondent if he would be okay with Investigator 1 contacting [REDACTED] Respondent stated that he was okay with Investigator 1 doing so. Investigator 1 did not contact or interview [REDACTED] in the course of the investigation as there was no suggestion that [REDACTED] would be able to provide any new information relevant to resolving the matter in issue.

she said no. Respondent said that he then drove her back to her car, parked at a lot on UC Berkeley's campus between Channing and Haste on Ellsworth. Respondent asserted that the only time he ever spent any time with Complainant was on the Jupiter night. Respondent said that after that he realized that she was "a total ditz" and "not a good fit."

Respondent said that the only text he could remember was the text conversation in which he referenced [REDACTED]. Respondent asserted a belief that [REDACTED]. Respondent said that he thought the [REDACTED] related text was sent after the Jupiter night when, "[Complainant] asked me out for coffee, I believe." Respondent said, "I said okay. Only if [REDACTED] can come." Of the [REDACTED] related text, Respondent acknowledged, "Inappropriate? Yes. Sexual harassment? No." Investigator 1 asked Respondent why he described the text as inappropriate. Respondent responded, "Because as a coach there should be no sexual undertones at all."

Investigator 1 provided details of Complainant's statement to Respondent and asked him if he had any comments in response. Respondent said that he and Complainant did not have any discussion about where they would go after the game and did not discuss coffee versus a bar. Respondent said that he did not remember drinking at Jupiter and would be ashamed if he had because, normally, he would not drive if he had been drinking and Respondent did remember driving. Respondent denied that he and Complainant had any conversation about who would drive. Again, Respondent specifically recalled driving that night and parking his car in the elevated parking stall in his apartment building—stating that there is a specific way to maneuver his car into his stall. Further, Respondent said he would never have allowed Complainant to drive his car—[REDACTED]

Respondent did recall that Complainant was with him when he positioned his car to park it in the elevated parking spot and tried to park it there when Complainant asked what he was doing. Respondent said, at that point, he suggested that he and Complainant go upstairs. Respondent explained, "With all candor, I was trying to trick her into going upstairs." Investigator 1 asked him if he had sexual or romantic intentions at that point with respect to Complainant; and Respondent replied, "Yes." Respondent acknowledged that after they had a conversation about going up to his apartment, he asked again and it was possible that during that conversation Complainant asked Respondent whether he thought they were going to have sex and Respondent replied affirmatively.

Respondent said that Complainant had exited his car while he maneuvered it within the garage, but that he did not end up parking on the lift. She then returned to the vehicle. Respondent said it was possible that Complainant said, "[L]et's get the fuck out of here," and that is when he drove her back to her own car. Respondent estimated that he and Complainant were in the parking garage for an amount of time closer to five minutes—not fifteen minutes. Respondent explained that a clicker is needed to get into the parking garage of his residence and he keeps the clicker in his car—he was 99 percent sure of this. Respondent said that his car would have been parked under Haas pavilion on that night and there was only a slim possibility that he had stopped by his car to get the clicker, if they took Complainant's car, as she reported.

Respondent continued and said that he recalled being in Complainant's car at some point because he could remember that her car "smelled really bad." Respondent said he could not recall exactly when he was in Complainant's car, but did not think the car was moving at the time and thought maybe he had gotten into her car when he dropped her off.

Investigator 1 showed Respondent the screenshots of the text exchange on March 17, 2015 as provided to OPHD by Complainant. Respondent reviewed the images and acknowledged that he authored the texts to Complainant. Investigator 1 specifically asked him to respond to the text which states, "It's only real when you are in the apartment with me and [REDACTED]." Respondent said the text was inappropriate, but declined to characterize it as sexual harassment and described such a text as being indicative of the relationship he had with Complainant—a relationship he further described as being "playful." Respondent conceded that the text referring to [REDACTED] was meant as an innuendo to have "a three-way." Respondent said that the innuendo was a joke because he would never have a three-way with [REDACTED]. Respondent asserted that Complainant never told him to stop; and he noted that she responded to the specific text conversation about [REDACTED] with three smiley faces.

Respondent denied that he was less helpful to Complainant about supplying information to Complainant after the mid-March 2015 text exchange; and he cited as an example the fact that she called to interview him on a Thursday in April before the Final Four. Respondent said that the April interview lasted over an hour and they had a good conversation. Respondent further asserted that he and Complainant had several interactions over the telephone and by text during which there were no date requests or innuendos made.

In regards to Complainant's assertion about Respondent intentionally providing her with misinformation, Respondent stated that information is fluid and it changes. Respondent acknowledged telling Complainant that [REDACTED], but Respondent explained that he was under Witness 1's orders not to tell anyone in the media about the visit. Respondent said he told no less than ten other reporters the same information about [REDACTED] that he told to Complainant. Respondent said he told [REDACTED] on the telephone that [REDACTED]; and Respondent stated he was okay with Investigator 1 contacting [REDACTED] to confirm this information. Respondent asserted that even if he did mislead Complainant with the [REDACTED] information, it was not related to the fact that Complainant turned down his sexual advances. Respondent said that it is part of his job to mislead and redirect media.

Respondent recalled that on May 22, 2015, Complainant texted him to ask what was happening [REDACTED]. Respondent said he had seen on a message board that [REDACTED] and responded to Complainant's text with the word, [REDACTED]. Respondent said that such information was incredibly damaging to UC Berkeley and Respondent himself, and Respondent would not want that information getting out. Respondent showed the Investigator a post published on [REDACTED] Cal message board stating, "From Cal BB staff member, [REDACTED]. Respondent stated he received a screenshot from Witness 1 asking him about the source of the information. Respondent then called Complainant and told her that he found her actions very unprofessional. Respondent said that after he "read [Complainant] the riot act," he deleted her telephone number and told her, "take [the post] down and never call me again."

Respondent acknowledged that he messaged Complainant via Twitter on May 26, 2015. Respondent thought that was likely when Witness 1 first came to him to reach out to Complainant as she had told Witness 1 that she was threatening to go to the newspapers. Respondent said that his intent in contacting Complainant on that date was to apologize, but Complainant never responded.

Respondent explained that, in his understanding, [REDACTED] has nothing to do with UC Berkeley. Rather, he understood that [REDACTED] issued Complainant a credential that allowed her media access at UC Berkeley. Respondent said that he would never have the types of conversations that he had with Complainant with a Cal staff member.

Respondent said he had a “gut feeling” that Complainant was trying to [REDACTED]. He offered that as a motive for Complainant to willingly engage with him, beyond soliciting [REDACTED] information. Respondent also offered, “I can say with candor that I never touched [Complainant].” Respondent questioned whether he ever even shook her hand.

On October 24, 2015, Respondent emailed Investigator 1 and wrote, in relevant part, “[G]iven [Complainant]’s previous [REDACTED] coupled with *no clear indication whatsoever from her to stop the behavior*,³ it would be, truthfully, almost impossible to conclude that these types of ‘locker room messages’ were unwanted.” Further, Respondent asserts the [REDACTED] information he provided to Complainant regarding [REDACTED] was “off the record.”

Respondent provided several photographs of the parking garage at his residence and screenshots of his text messages to Complainant and [REDACTED] as attachments to the October 24, 2015 email. Respondent sent Investigator 1 another email on October 25, 2015 and submitted additional information to the effect that he provided the same information as he provided to or withheld from Complainant as he provided to or withheld from [REDACTED]. Respondent provided screenshots of his text messages to [REDACTED] as attachments to the October 25, 2015 email. In addition, Respondent provided links to [REDACTED] and [REDACTED] biography on [REDACTED] website and a March 23, 2015 article about [REDACTED] written by [REDACTED] and [REDACTED] and published on [REDACTED].

D. Complainant Second Statement

On January 8 2016, Investigator 2 met with Complainant at OPHD, who provided the following additional statement. Investigator 2 explained that the purpose of the follow-up meeting was to address some inconsistencies and collect some additional information. Investigator 2 asked Complainant to clarify who drove whose car into Respondent’s parking garage on the Jupiter night in January 2015. Complainant was adamant—“100% positive”—that she had driven her car with Respondent as a passenger into Respondent’s parking garage on that night. Complainant recalled that she had just gotten some garlic shots⁴ in her car, she warned Respondent that they might smell, and he said he couldn’t smell them. Complainant stated that the car she had at that

³ (Emphasis in original).

⁴ A garlic shot is touted as an immunity booster. It consists of mashed garlic, lemon juice and cayenne pepper and is to be taken by mouth several times a day at the first sign of cold or flu symptoms.

time was very similar to Respondent's—[REDACTED]. Investigator 2 asked if Complainant recalled whether or not Respondent had the garage fob on him, they stopped to get it out of Respondent's car, or something else. Complainant recalled stopping by Respondent's car—which was parked in a garage on Channing either prior to or after going to Jupiter. Complainant was not sure if he got the fob out of the car at that time, but she recalled making the stop. Investigator 2 asked whether Complainant was certain Respondent consumed alcohol at Jupiter on the night of the parking garage incident. Complainant reiterated that she was positive that Respondent drank two beers at the restaurant and again noted that she did not consume any alcohol that night.

Investigator 2 asked Complainant about [REDACTED] and the significance, if any, she perceived his image or name having as related to the electronic evidence in the case. [REDACTED]

[REDACTED] Complainant asserted a belief that Respondent used the text messages about and photographs of [REDACTED] to convey to Complainant a message that Respondent "owned" [REDACTED] and Complainant should not try to have a good relationship with [REDACTED]. Complainant believed that when Respondent mentioned [REDACTED] or sent a picture depicting [REDACTED] to Complainant that Respondent was trying to tell her that he still had the power to control the media messages—even if she was trying to circumnavigate Respondent and go to [REDACTED] for information about the [REDACTED]

Complainant provided that it is not unusual for [REDACTED] writers such as herself to build relationships with [REDACTED] to get more information, but that it is sometimes difficult to get information from [REDACTED]. Complainant stated that she first met her now-friend [REDACTED] at Jupiter on the night of the parking garage incident. Complainant provided that [REDACTED] is a mutual friend of Complainant's and Respondent's. Complainant stated that in working for [REDACTED] she was paid [REDACTED].

[REDACTED]

Complainant stated that in this way, she felt that Respondent knew he had all the power in the relationship. In Complainant's view, Respondent had the power to scoop a story to [REDACTED] based on which media outlet he chose to favor; and Complainant believed Respondent would withhold information or lie because she rebuffed his sexual advances.

Investigator 2 asked Complainant when she began approaching other people on [REDACTED] to collect information. Complainant stated that she could not put an exact date on it because on such an assigned beat it is routine for a writer to build relationships with the [REDACTED]

Investigator 2 asked Complainant if she could recall any specific communications with Respondent between March 23 and May 21, 2015. Complainant showed Investigator 2 some additional electronic correspondence from Respondent during that time period concerning her

ability to get into the high school state championships. Investigator 2 asked her if she was willing to provide those communications to OPHD and she stated that she was.

Investigator 2 asked about the [REDACTED] information and she stated that Respondent never communicated to her in advance of her publishing the [REDACTED] piece that the information he provided to her about the same was off-the-record information. Complainant asserted that in the industry there is an understanding—a default assumption—that if Respondent’s role is talking the media about sports [REDACTED] information, any [REDACTED] information he provides is for publication unless otherwise specified. Complainant recalled receiving a telephone call from Respondent on May 22, 2015; Respondent was yelling and asking her, “What the fuck were you thinking?” Complainant stated that for the first part of the telephone call she did not know what Respondent was so upset about, but then he said, “A source close to the [REDACTED].” At that point, Complainant realized that Respondent was calling about the [REDACTED] piece that she had just published. Complainant described Respondent as a person who can “change emotion on a dime.” Complainant stated Respondent’s demeanor was unpredictable—sometimes he was “very sweet” and “professional,” other times not.

Investigator 2 asked Complainant about an hour-long telephone conversation with Respondent in April 2015. Complainant responded that she interviewed Respondent in April 2015 for a “sunshine pumping piece” [REDACTED] was putting together on [REDACTED]. Complainant opined that it was in Respondent’s interest to participate in the interview for the piece [REDACTED].

Complainant stated that by the time the piece was slated for publication, Complainant’s supervisor was frustrated with Respondent’s behavior towards Complainant and decided not to publish the portion about Respondent.

Investigator 2 asked Complainant what her assigned beat was at the outset of her employment with [REDACTED]. Complainant stated it was UC Berkeley Men’s Basketball reporting and [REDACTED] as well as some additional pieces focusing on other sports’ teams she was interested in. [REDACTED]

Complainant stated that her editors were really supportive and tried to make it work, but she did not know how to make it work, “I had no idea where to go.” Complainant explained that to attempt to do her job without Respondent’s help or access to Respondent would have required her to have working relationships with multiple [REDACTED] [REDACTED] which was untenable. Complainant stated that at the outset, someone at [REDACTED] gave her Respondent’s telephone number and told her that he was going to be her contact.

Complainant asserted that covering UC Berkeley Men’s Basketball [REDACTED] was harder than a sport like football because there were fewer assistant coaches who could potentially provide information on [REDACTED]. When talking about trying to get the information she needed to write about Men’s Basketball [REDACTED]. Complainant stated that it was not really possible to get the needed information from anyone other than Respondent.

Complainant stated that she felt very beholden to Respondent because of the dynamic of Respondent having the [REDACTED] information and knowing that Complainant needed that

I should have been clear at the time ... this was not an isolated incident. Conversely, [Respondent]'s harassment of me spanned a period of months, since last October, until about a month and a half ago, when we first spoke about it.

He did not harass me on a daily basis. If I were to estimate the frequency, I would say probably on a weekly basis, [Respondent] would make an inappropriate/sexual/degrading comment to me, or we would have an extended exchange during which he would make multiple such comments.

While most of the interaction that I term harassment occurred via text message (several of which I will attach to this email for your reference [and she did attach some screenshots of her text exchanges with Respondent]), I also had experiences in-person with [Respondent] where he sexually propositioned me. I made it clear that there was no mutual interest in any kind of relationship outside of a professional one, and furthermore, that I was uncomfortable based on the professional relationship that we presumably would both strive to create and maintain. Here is what I feel is the biggest example of that:

I had requested repeatedly to meet [Respondent] for coffee, at the suggestion of my boss, in order to discuss [REDACTED]

He continually put off our meeting, but finally agreed to meet after a game. By the time he got out of his meeting with you and the other coaches, it was well past 11 PM. I wasn't sure if we were still going to meet, but wanted to try to make it happen because I hadn't been successful so far in getting him to have coffee with me.

He told me that we were meeting his friend, and asked me where a good place was. I suggested Jupiter's, a place that serves food late ...

We went to Jupiter's ... [Respondent] ordered a couple of beers ... I ordered a green tea.

We met his friend and a friend of his friend, and stayed for a little over an hour. At that point, [Respondent] insisted that I drive him back to his apartment and said he was too drunk to drive. I didn't want to question that for safety reasons, but just to let you know, he'd only had two beers—over the span of an hour and a half. I did not at that time, and do not now, believe for a second that he was too drunk to drive.

I was very clear that I planned to drop him off at his apartment. He said, 'You're coming in.' I told him I was not coming in.

When we got to his apartment, which is at [REDACTED], a busy intersection, I couldn't pull over because even at that hour there was plenty of fast-moving traffic. He opened his garage, and I drove in, thinking he had done so

because the traffic wouldn't have allowed me to simply stop on the street safely. As soon as I drove in, the garage door closed behind me, and he motioned for me to pull over into a spot – but not just a normal spot, a spot where my car would have been stacked on top of another car, and I would have needed assistance (obviously) if I had wanted to leave and get my car down.

I want to highlight the way that [Respondent] was creating a situation in which he would have had power over me – he would have had the power to dictate if/when I could leave, had I not first realized what was happening.

I told him that I did not need to pull my car into that spot. He told me I did, and again informed me: 'You're coming up.' Notably, he never asked me, as a question. He was asserting that I would come in to his apartment as a statement of fact – another attempt at establishing power.

He continued to insist that I come up to his apartment. He also explicitly sexually propositioned me. I continued to decline, ask to leave. After about ten minutes, he relented to open the garage door so that I could leave.

Complainant's Text Messages

Complainant provided screen shots of text messages she exchanged with Respondent on dates pertinent to Complainant's allegations of sexual harassment. The relevant portions of the text exchanges read:

Monday, February 23, 2015 – 11:58 a.m.

Complainant: "Hey[,] want to meet for coffee this week?"

Respondent: "No. Let's plan on Vegas during the pac-12 tournament at the mgm!"

Complainant: "I'm not going[,] Berkeley this week. You have time[?]"

Monday, February 23, 2015 – 3:01 p.m.

Complainant: "Honestly[,] I would just really like to meet up with you and catch up ... Not in a bar or a casino. I know that's an insane thing to ask but do you think we can manage it?"

Respondent: "I like the casino bar."

Tuesday, March 17, 2015 – 12:35 a.m.

Complainant: [REDACTED] yes?"

Respondent: "Yes[.]"

Tuesday, March 17, 2015 – 4:09 p.m.

Complainant: “Coffee soon [smiling emoticon]”

Respondent: “I’m only coming if [REDACTED] comes too.”

Complainant: “You guys are so in love!”

Respondent: “That’s my man. No [REDACTED] no coffee.”

Complainant: [REDACTED]

Respondent: “I was?”

Complainant: “That’s when it’s real[.]”

Respondent: “It’s only real when you’re in the apartment with me and [REDACTED] That’s when it’s real.”

Complainant: “Omg [three emoticons of a laughing until crying face][.]”

Respondent: “[Emoticon of a smug/flirty face] We’ll do the coffee first ...”

Complainant: “So you’re making coffee for the three of us[?]”

Respondent: “The coffee will be at Starbucks.”

Complainant: “No apartment necessary[.]”

Respondent: “For coffee, no.”

Complainant: “So you’re making us food at your house?! You’re the best[.]”

Respondent: “Funny. Really the only two places I am in my apartment are the bed and the couch ...”

Complainant: “So you’re saying you do all of your meal preparation in the living room[?] Unconventional[,] [b]ut I guess it works!”

Thursday, March 19, 2015 – 4:57 p.m.

Complainant: “Thanks [Respondent][.] Would love to have coffee some time[.] Just fyi[.] K [sic] cool[.]”

Respondent: [Photograph of [REDACTED] walking on the street and away from the camera]
“Again only if he can come.”

Thursday, March 19, 2015 – 8:08 p.m.

Complainant: “Since when are you two bffs [sic][?]”

Respondent: “That’s just my dude.”

Complainant: “Alright let’s all have coffee[.] Also[,] [c]an you fill me in on what is happening with [REDACTED]”

Respondent: “When the 3 of us are in the apartment, yah.”

Complainant: “Waiting on him[,] [REDACTED] [REDACTED] [Respondent] no. Starbucks[.]”

Respondent: “Just let [REDACTED] kno[w] when that [sic] gone [sic] be and I’ll make sure I’m there. Nope.”

Complainant: “Star[.] Bucks[.]”

Respondent: “Nope. After.”

Complainant: “After?”

Respondent: “After we get done on the couch we can go downstairs, yah.”

Complainant: “You have a coffee maker on your couch I’m assuming[?]”

Respondent: “Nope[.] I ain’t [sic] got shit there[.]”

Complainant: [REDACTED]

Respondent: “Besides a couch n [sic] a bed in my spot which is really all I need honestly[.]”

Undated in screenshot, but immediately prior to a conversation on Monday, March 23, 2015

Complainant: [REDACTED]

Respondent: “No.”

Complainant: “Literally no truth to that?”

Respondent: “I’m in [L.A.] We have no1 [sic] on campus today.”

Monday, March 23, 2015 – 7:32 a.m.

Complainant: “How come [REDACTED] is reporting that [REDACTED]”

Respondent: “He did. Last night.

Complainant: “[Respondent] are you actually trying to make me look bad[?] You understand exactly what you just did [a]nd there’s no reason for it[.]”

Respondent: “I was telling ever[y] 1 [sic] the same thing [n]ot just you[.] We weren’t confirming anything.

Complainant: “You’re playing games[.]”

Friday, March 27, 2015 – 11:45 a.m.

Complainant: “Hey [Respondent]. [REDACTED] won’t credential me and I would like to be able to go to the [REDACTED] game tomorrow. Is there any way you can get me in?”

Respondent: “Just buy a ticket. I think that’s easy right?”

Complainant: “So you’re unable to help?”

Respondent: “[Photograph of Respondent and [REDACTED] with heads together looking directly into the camera]”

Complainant: “Oh great I’ll be sure to present that picture at the door tomorrow that helps a lot[.]”

Respondent’s Text Messages⁶

Respondent provided (via email attachments on October 24, 2015 and October 25, 2015) screen shots of text messages he exchanged with Complainant and [REDACTED] on dates pertinent to Complainant’s allegations of sexual harassment. The relevant portions of the text exchanges read:

March 23, 2015 – 4:51 p.m.

[REDACTED] “U [sic] dirty dog[.]”

⁶ Respondent provided some screenshots of text messages that were not relevant to the issues in question; and therefore, they were not considered. Those screenshots include: (1) messages between Respondent and [REDACTED] on Saturday, January 24, 2015 at 11:04 p.m.; and (2) messages between Respondent and Complainant on Tuesday, May 19, 2015 at various times.

Respondent: “What???”

█ “[Link to █ and █ March 23, 2015 article on █ titled █

Respondent: “[Witness 1].”

█ “Tell him I said he’s a beast. And quote me[.] Why are u [sic] so quiet[?] [F]irst time in your life[.]”

Respondent: “The crazier thing is I’ve been able to keep my migh [sic] shut for 4 months! [Two emoticons illustrating laughing until crying]. You beat me 2 that.”

█ “CRAZY. Amazed[.]”

April 26, 2015 – 4:56 p.m.

█ “[Respondent] [b]e real w[ith] me[.] U [sic] all heard from █

Respondent: “Sup[?] No[.] I haven’t talked with █ or █ in a few hours tho [sic][.] I’m on that plane[.]”

May 1, 2015 – 4:26 p.m.

█ “Calls will come tonight[.] I think soon[.]”

Respondent: “Man! [H]ere we go[.] █

█ █
Respondent: “[F]or sure?”

May 22, 2015 – 10:55 a.m.

Complainant: “What’s happening with █

Respondent: “Probably not much █

Complainant: “Ew[,] weird █

VII. Analysis and Findings of Fact

A. Standard of Evidence: Preponderance of the Evidence

In evaluating allegations of sexual harassment and sexual violence, the “preponderance of the evidence” standard is used. Under this standard, individuals are presumed not to have engaged in the alleged conduct unless a “preponderance of the evidence” supports a finding that the conduct occurred. This “preponderance of the evidence” standard requires that the evidence supporting each finding be more convincing than the evidence offered in opposition to it. In other words, the alleged conduct must be “more likely than not.”

B. Fact Finding: Did Respondent behave as alleged?

Respondent admitted he engaged in the conduct Complainant alleged. Respondent acknowledged making repeated sexual innuendos to Complainant via electronic communication—including suggesting her participation in a three-way sexual encounter with him and [REDACTED]. Respondent offered that, at the time, he believed Complainant would be willing to have sex with him [REDACTED]. Further, Respondent recounted trying to “trick her” into going up to his apartment to have sex. The Investigators also found Complainant’s account credible that Respondent repeatedly insisted that she accompany him up to his apartment, even after she declined and while she was closed into Respondent’s parking garage and Respondent was in control of her ability to get out of the garage. Respondent’s own admissions, together with Complainant’s credible account, demonstrate that it is more likely than not that Respondent behaved as alleged.

C. Did the Alleged Behavior Violate the Policy?

According to the Policy, sexual harassment may include incidents between staff and non-employee participants in University programs (e.g., visitors). Complainant had a legitimate business purpose for interacting with Respondent in his capacity as a University representative. Accordingly, the Policy applies to Respondent’s reported conduct.

A violation of the Policy occurs when each of the following elements are met: (1) unwelcome conduct; (2) of a sexual nature; that is: (3) objectively intimidating, hostile, or offensive.

a. Respondent’s conduct was unwelcome.

Neither Complainant’s nor Respondent’s accounts of the in-person interactions includes Complainant indicating a desire to or agreeing to engage in any sexual conduct with Respondent. Complainant credibly asserts that on or about January 24, 2015, when she was in the parking garage with Respondent, she clearly communicated to him that she was not going to have sex with him, [REDACTED], she was not interested in Respondent in that way, and they were professional colleagues. Complainant stated that Respondent continued to insist that she come upstairs, Complainant asked to be let out of the parking garage, and Respondent indicated to Complainant that he did not intend to let her out of the parking garage. Complainant reported feeling “scared” and demanding to be let out. Subsequently, Respondent made several and

repeated sexual innuendos by text message to Complainant. The sexual innuendos revolved around Complainant participating in a three-way sexual encounter along with Respondent and [REDACTED]. The text message evidence in response to Respondent's innuendos is consistent with Complainant stating that she typically "deflected" Respondent's innuendos with humor, but was "not encouraging." Further, the text conversations bear out Respondent making sexual innuendos and Complainant repeatedly trying to refocus the conversation back to meeting up for coffee at a neutral location or collecting [REDACTED] information. Complainant described "put[ting] up" with Respondent's behavior as a means to an end when she believed there was not a good alternative source for the information she needed in order to do her job. Despite Respondent attempting to justify his conduct by asserting that there was "no clear indication whatsoever from her to stop the behavior," the facts show otherwise and it is clear that Respondent's conduct was unwelcome to Complainant.

b. Respondent's conduct was of a sexual nature.

Respondent's in-person and electronic communications with Complainant were sexual in nature. Moreover, they constituted "sexual advances" as specifically proscribed by the Policy. When discussing the in-person interaction between Respondent and Complainant in Respondent's parking garage on a night in late January 2015, Respondent told Investigator 1, "With all candor, I was trying to trick her into ... go upstairs." Respondent acknowledged harboring sexual or romantic intentions at that point with respect to Complainant; and he communicated to her a belief that they were going to have sex that night. Respondent acknowledged to Investigator 1 that he asked Complainant out that night and that his invitation "was a sexual advance." Respondent acknowledged to Investigator 1 that when he asked her to meet after the game he believed that she was likely willing to have sex [REDACTED]. Complainant's account of that night includes Respondent verbally propositioning her for oral sex and repeatedly insisting that she come upstairs to his apartment with him while she was in her car which was trapped inside of Respondent's parking garage at the time. While Respondent's and Complainant's versions of whose car they drove into the parking garage and how long they were in the parking garage differ, those discrepancies have little bearing on the facts relevant to the issue at hand. Respondent agrees that he asked Complainant more than once to come upstairs, possibly told her he believed they were going to have sex, and Complainant told him, "No."

When Investigator 1 questioned Respondent about his communications with Complainant, specifically the texts referencing [REDACTED] Respondent labeled the texts as "inappropriate." When asked to explain why he defined the texts as being inappropriate, Respondent directly acknowledged the sexual nature of the texts to Complainant by stating, "Because as a coach [there] should be no sexual undertones at all." Respondent further acknowledged that the texts to Complainant referencing [REDACTED] were meant to suggest that he and Complainant have a three-way sexual interaction with [REDACTED]. While Respondent asserted that these types of communications were in keeping with the "playful" nature of his relationship with Complainant and that, for instance, the three-way innuendo was in jest, it is clear on these facts that Respondent's in-person and electronic conduct was of a sexual nature and was experienced as such by Complainant.

- c. Respondent's conduct was objectively intimidating, hostile, or offensive.

In this case, Complainant related the first "inappropriate" or "flirtatious" communication from Respondent to Complainant occurred in mid-November 2014—approximately two weeks after the two were introduced to one another as professional contacts. A more severe - and the only in-person - interaction occurred on or about January 24, 2015. During that incident, Complainant felt physically confined by Respondent within Respondent's parking garage. Respondent's and Complainant's accounts both acknowledge Respondent asking more than once for Complainant to come up to Respondent's apartment and Respondent verbally acknowledging to Complainant a belief that they were going to have sex. Complainant described feeling "scared" and demanding that Respondent let her out of the garage as he had the fob to operate the garage door. In mid-March 2015, Respondent acknowledged sending Complainant a series of text messages containing sexual innuendos to participate in a three-way sexual encounter with Respondent and

[REDACTED]. In late March 2015, Respondent again—by virtue of the context of the previous text messages in mid-March--proposed a three-way sexual encounter between Respondent, [REDACTED] and Complainant. He did this when he sent a picture of himself and [REDACTED] together and looking into the camera in response to Complainant asking Respondent to get her access to a championship game. Complainant credibly provided that Respondent's inappropriate electronic contacts continued on a bi-weekly basis until mid-May 2015 when Complainant reported Respondent to Witness 1.

In this case, Respondent's conduct was pervasive in that it continued over a six-month span and consists of at least one severe incident in which Respondent caused Complainant to feel scared and physically trapped in an enclosed space controlled by Respondent while he repeatedly propositioned her for sex despite her refusals and declinations. In this way, Respondent's conduct was objectively intimidating, hostile, or offensive—repeatedly propositioning Complainant for sex and, in some cases, suggesting that her participation in sex with Respondent would grant her greater access to parts of the sports world in Respondent's control. Further, to show the objectively offensive nature of Respondent's communications with Complainant, Respondent stated to Investigator 1 that he would never have the types of conversations with a Cal staff member that he had with Complainant.

VIII. Conclusion

Investigator 1 and Investigator 2 evaluated the record of the allegations as a whole and gave consideration to the totality of the circumstances, including the context in which the alleged behavior occurred. The evidence gathered was weighed by a preponderance of evidence standard. It supports the conclusion that Respondent behaved in violation of the Sexual Harassment and Sexual Violence Policy. OPHD refers this matter to the Intercollegiate Athletics Department for appropriate disposition.