



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
MIDWESTERN DIVISION, CHICAGO OFFICE
CITIGROUP CENTER
500 WEST MADISON STREET, SUITE 1475
CHICAGO, ILLINOIS 60661

TEL: 312-730-1560
TDD: 877-521-2172
FAX: 312-730-1576

Dr. John D. Wiley
Chancellor
University of Wisconsin-Madison
161 Bascom Hall
500 Lincoln Drive
Madison, Wisconsin 53706

AUG 6 2008

Re: 05-07-2074

Dear Dr. Wiley:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation with respect to the above-referenced complaint filed against the University of Wisconsin-Madison (University). The Complainant (Student A) alleged that the University discriminated against her on the basis of sex when it subjected her to sexual harassment from April 2004 until June 2006. Additionally, Student A alleged that, since July 2005, the University failed to promptly and appropriately respond to her reports of sexual harassment.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to the provisions of Title IX. The University is also required to adopt and publish grievance procedures providing for prompt and equitable resolution of student complaints alleging a violation of the Act or regulations.

During the complaint resolution process, OCR interviewed Student A and other witnesses and reviewed documents provided by Student A and the University. Additionally, OCR conducted an on site investigation on November 1, 2007, and interviewed an additional witness on January 8, 2008. Based on its investigation, OCR determined that there is insufficient evidence to substantiate the allegations made in the complaint. The bases for OCR's conclusion are set forth below.

I. SUMMARY OF EVIDENCE

A. Student A's complaint

Student A was enrolled as a freshman at the University during the 2003-2004 school year. At that time she was a member of the University's crew team. On April 4, 2004, she went to a

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

fraternity party where she became intoxicated. During the party she began talking to two male University students, Students B and C, who were also members of the University's crew team. Later that evening, Student A left the party with Students B and C with the intention of going to another party. Instead of going to the next party, the students stopped at Student B's off campus residence. At Student B's residence, Students B and C engaged in sexual activity with Student A. Student A stated that because of her intoxication she was not aware of everything that happened. The next day Student A met with Students B and C to find out what happened the night before. According to Student A, Student B admitted that he raped her.

On July 13, 2005, Student A filed a sexual assault complaint against Students B and C with the University's Office of the Dean of Students (ODOS) pursuant to the University's non-academic misconduct policy. She alleged that Students B and C sexually assaulted her on April 4, 2004. Additionally, on July 19, 2005, Student A reported the alleged sexual assault to the University's police department (UW-PD). By the time that Student A made these charges Student C had already graduated from the University and Student B was entering his senior year.

Student A explained that she did not immediately complain about the alleged sexual assault because she was in denial and did not want to hurt her participation on the crew team. However, she felt uncomfortable with male crew team members after the incident, and she dropped out of the crew team after the fall 2004 season. Over time Student A learned more about sexual assault and came to believe that Students B and C had assaulted her. Student A talked to Student B at a party in July 2005. Student B apologized for his conduct in April 2004 and she believed that Student B was ready to take responsibility for his actions. She decided to file a sexual assault complaint in hopes that he would admit his conduct and she could resolve the issue.

Student A asserted that the University was responsible for the alleged assault. She stated that the off campus apartment where the assault occurred was owned by the crew team's boat-master and was rented exclusively to crew team members. Student A further stated that she had been told by another student and the University police department that there had been prior sexual harassment incidents involving the crew team. According to Student A, the University knew about these incidents and should have known about the risk of such behavior by crew team members.

She also alleged that because the University failed to take appropriate responsive action she was subjected to sexual harassment from the date of the assault until June 2006, when Student B graduated from the University. She cited an interaction with Student B at a fraternity party on November 12, 2005, as an example of continuing harassment that occurred because the University failed to take appropriate action. Although Student A's complaint stated that she was subject to continuing harassment and stalking-like behavior, the only

example of alleged harassment after she reported the assault that she told the University about related to this fraternity party.¹

In addition to disagreeing with the outcome of the investigation, Student A raised a number of objections concerning the adequacy of the University's response to her report of the sexual assault, including its investigation.

B. University Policies

The University prohibits discrimination on the basis of sex, including sexual harassment, in all University programs and activities. The University's sexual harassment policy states that allegations of student-to-student sexual harassment should be filed with the University's Office of the Dean of Students (ODOS), and such complaints are normally handled by ODOS, under the University's "Student Nonacademic Misconduct Policy."

The University's "Student Nonacademic Misconduct Policy," which is codified at UWS Chapter 17, covers conduct that constitutes a serious danger to the personal safety of a member of the University community, including sexual assaults and harassment. Students who violate Chapter 17 can be placed on probation, suspended or expelled. Chapter 17 does not exclude off campus conduct, but does not specifically indicate that it is covered either.

Pursuant to ODOS procedures, when a complaint of non-academic misconduct is made against a student, an investigating officer (IO) is appointed by the University to investigate the complaint and determine an appropriate course of action. Chapter 17 does not include a time frame for the investigation. If the IO determines that non-academic misconduct occurred, and that one of the disciplinary sanctions listed in UWS Chapter 17 is appropriate, the IO prepares a written report and delivers the report to the alleged offender who can request a hearing before a non-academic misconduct hearing committee to contest the IO's determination. The procedures do not require a written report if the IO decides that the University should not pursue the matter. There are no appeal rights for such a decision.

UWS Chapter 17 also contains procedures governing the judicial process. Section 17.17 states that a student may be temporarily suspended pending final institutional action in response to a report of nonacademic misconduct where the investigating officer has offered the alleged offender the opportunity for discussion, the investigating officer recommends a sanction of suspension or expulsion, and the chancellor determines that the student's continued presence on campus would constitute a potential for serious harm.

¹ Student A's complaint to ODOS mentioned the July 2005 party at which Student B apologized to her, but she did not complain that this interaction was an instance of sexual harassment. Student A also told OCR about an incident where she was standing with a group of people and Student B came over to talk to some friends who were also standing with the group. This incident occurred after November 2005. However, she did not tell the University about this incident.

The University's 2005-2006 Student-Athlete Handbook states that student athletes are expected to conduct themselves in a responsible manner at all times. If the Athletic Department receives information that a student athlete admits to, has been charged with, or was convicted of a criminal offense, the athlete will be suspended from participation in athletics. The Athletic Department refers allegations of misconduct to ODOS and does not take action against the athlete until the ODOS disciplinary process has been completed.

C. University Responsibility for Alleged Sexual Assault

OCR investigated Student A's assertion that the residence where the alleged sexual assault occurred (Student B's rented apartment) was owned by the University's crew team boat-master and rented to three University crew members. OCR also investigated her claim that there were prior known incidents of sexual harassment by members of the crew team.

The information submitted by the University indicates that the individual who owned the property rented by Student B was employed by the University as a Recreation Specialist. In this position, he was responsible for maintaining the crew team's boats and equipment. His employment by the University did not include any responsibilities relating to housing for the crew team members. This individual owned three rental properties in Madison and occasionally rented the properties to University student-athletes. He estimated that crew team members made up 10% of his rentals. He charged the student-athletes the same market rent as his other tenants and did not use the properties as a recruiting tool for the University crew team. Although all of Student B's roommates were crew team members, all of the crew team members did not rent from the boat master.

The University Housing office told OCR that the University is not involved in placing students in off-campus privately owned housing. However, the University Visitor and Information Programs office (VIP) maintains a referral service where owners of off campus housing can list their houses, apartments or rooms for rent for a nominal fee. University students who use the service to search for off campus housing are not charged a fee. The University's VIP website specifically disclaims any responsibility for the properties listed.

With respect to Student A's assertion that there were prior incidents in which male crew team members had committed sexual assaults, the University reported that the only other allegation of sexual harassment involving the crew team occurred in 1998 or 1999 when a member of the women's crew team reported an alleged sexual assault by a male crew team member. An investigation concluded there was no evidence of non-consensual sex. This incident did not involve Students B or C.

D. The ODOS and UW-PD investigations

The University first became aware of Student A's allegations of sexual harassment on July 13, 2005, when Student A met with an Assistant Dean of Students (Assistant Dean) at

ODOS. According to the Assistant Dean, Student A told her that in April 2004, Students B and C sexually assaulted her at Student B's off campus residence. Student A admitted that a portion of the sexual activity was consensual, but she believed that Students B and C also engaged in sexual activity with her without her consent. Student A also told her that at the time of the assault she and Student B were intoxicated, but Student C was sober. Student A did not complain to the University of any subsequent harassment by Students B or C occurring between the time of the alleged assault and her July 13, 2005 report.

The Assistant Dean said she discussed the ODOS student judicial process with Student A and told her she could also report the sexual assault to the UW-PD. She also told Student A about the various resources on and off campus that might be helpful in dealing with the trauma associated with sexual assault. Student A told the Assistant Dean that she would think about her options and let her know what she decided to do. ODOS staff informed OCR that they did not believe that emergency disciplinary action should be pursued given the lapse of time between the alleged assault and the report.

On July 26, 2005, Student A contacted UW-PD Detective G about the alleged rape by Students B and C. Detective G informed OCR that she explained the criminal investigation process to Student A and told her that, because the assault happened off campus, the Madison police department had jurisdiction over the offense and she would refer Student A's complaint to the Madison police pursuant to normal practice. Detective G forwarded a summary of Student A's interview to the Madison police department.

On July 26, 2005, Student A emailed the Assistant Dean and stated that she had decided to initiate an ODOS investigation against Student B. At this time, the Assistant Dean was acting as Student A's victim advocate, a role outlined in ODOS procedures for sexual assault cases.

On August 2, 2005, Student A, along with the Assistant Dean, met with the investigating officer (IO 1) assigned to Student A's complaint. On August 3, 2005, IO 1 sent Student B a charge letter, informing him of Student A's sexual assault complaint, and advising him that he should have no direct or indirect contact with Student A. The University took no action against Student C because he had graduated and it had no jurisdiction over him.

On August 4, 2005, IO 1 scheduled a meeting with Student B for August 16, 2005 to discuss Student A's complaint. However, on August 10, 2005, Detective G asked IO 1 to delay her interview with Student B so that Detective G could question him first. Detective G told OCR that it was her normal practice to ask ODOS to refrain from interviewing an alleged criminal offender until after the UW-PD interview. She routinely makes such a request because she wants to see the individual's initial reaction when first confronted in the criminal investigation process. Detective G and ODOS advised Student A via emails as to the reasons ODOS would postpone its interviews, and Student A did not object.

On August 16, 2005, Detective G met with Student A. Detective G informed Student A that the Madison police had declined to investigate her complaint. According to Detective G, Student A reiterated that she wanted Students B and C prosecuted. Detective G told Student A she would investigate Student A's complaint herself and forward her investigation to the Dane County prosecutor's office. She also told Student A that the investigation could take a while, as she had three other criminal cases to investigate. During this meeting, Student A provided Detective G with further details about the alleged sexual assault. According to Detective G's written summary of the meeting, Student A told Detective G twice that she did not remember Student B raping her. However, Student A said that Students B and C had told her that Student B raped her.

On September 27, 2005, in response to a question from Detective G, Student A stated that after the alleged sexual assault in April 2004, she went over to Student C's residence twice. Student A explained that she thought Student C liked her. On both occasions, Student A and Student C engaged in consensual physical contact. Additionally, on one of these occasions, Student B was at Student C's residence and Student A watched TV with Student B.

Detective G told OCR that she tried to contact Student B in September 2005, but had a hard time reaching him. She finally managed to interview Student B on October 10, 2005. During the interview, Student B stated that he and Student A engaged in consensual sexual activity, but he denied that he sexually assaulted her. After interviewing Student B, Detective G tried to contact other individuals who Student A said would have information about the alleged sexual assault. However, many of these individuals never returned her phone calls.²

According to ODOS emails, on October 10, 2005, and October 27, 2005, ODOS contacted Detective G to check on the status of her investigation. Detective G told ODOS that she was trying to contact Student C. On November 17, 2005, Detective G interviewed Student C. He told Detective G that Student A initiated the sexual activity and that Student B only engaged in the sexual activity to which Student A consented. He also told Detective G that Student B did not sexually assault Student A, and he denied telling Student A that Student B had sexually assaulted her. Student C confirmed that, after the alleged sexual assault, Student A came to his residence on two occasions and they engaged in consensual sexual activity.

Detective G had a fourth interview with Student A on November 17, 2005. Student A had contacted her via email on November 16, 2005, indicating that she and Student B had contact with each other at a party at a fraternity house on November 12, 2005, in violation of the ODOS August 3, 2005 no contact order. According to Detective G's written statement, Student A told Detective G that she had initiated the conversation with Student B in the hope that he would admit the alleged sexual assault. Student A also told Detective G that when she first spoke to Student B, he stated to Student A that he was not allowed to talk with her.

² Detective G tried to contact these individuals again in the spring of 2006. Only Students D and E returned her calls. The substance of their statements is discussed below.

Student A also informed Detective G that after Student B walked away from her she pursued him into another room. Student A said she followed him because she knew he wanted to talk with her. Student A admitted to Detective G that she hugged Student B a couple of times at the November 12, 2005 party. After the interview with Student A, Detective G contacted ODOS, informed them about the contact between Students A and B on November 12, 2005, and recommended that Student B not be punished because Student A had initiated the contact.

Detective G's account of Student A's description of the contact at the November 2005 fraternity party significantly differs from the description Student A gave OCR. In the OCR complaint, Student A claims that Student B followed her around at the party, initiated a conversation with her, cornered her and threatened her violently while pounding the walls around her. He told her that he would lie if charged with a crime. Student A claims that the UW-PD promised her that it would issue a no contact order concerning this incident, but it never did so. OCR asked Detective G about this assertion. Detective G stated she had no authority to issue this kind of order and did not promise to issue one.

OCR's investigation revealed that the fraternity party incident occurred off campus at a party that was not sponsored by the University. The University stated that while it does register student fraternities, the fraternity party was not under its control.

Sometime in November 2005, Detective G talked with the Dane County prosecutor about the results of her investigation. The Dane County prosecutor told her they would not prosecute Students B and C. Detective G then informed Student A of the decision and told ODOS that it could interview Student B.

After Detective G advised Student A of the Dane County prosecutor's decision, Student A again requested that Detective G try to contact various individuals, including Students D and E, whom she characterized as friends who heard Student B admit his guilt. Detective G stated to OCR that during the period from late November 2005 until May 2006, she attempted to contact these people. However, she had difficulty doing so because of the winter holiday break, and refusals by some of the individuals to talk with her. According to Detective G, no one is required to talk to the police under these circumstances. In addition to the difficulty obtaining witness cooperation, Detective G was distracted by other priority investigations and her preparation for in-court testimony.

In November 2005, IO 2 was appointed to replace IO 1 on Student A's complaint, because IO 1 had left ODOS' employ. IO 2 had received training in investigating sexual assaults and had investigated over a dozen sexual assault cases. After being appointed as the IO, she contacted the UW-PD on two or three occasions to find out the status of their criminal investigation, but did not discuss the case with them or review their case file. She stated that it was not unusual for ODOS to delay their interviews when a student also elected to file a criminal complaint with the UW-PD.

In November 2005, Student A informed IO 2 about the fraternity party incident. Student A admitted she initiated the contact with Student B. On December 2, 2005, IO 2 met with Student A and her mother to discuss the alleged violation of the no-contact order. Student A told her, for the first time, that Student B had followed her from room to room at the November 12, 2005 party. Student A also told her that Student B pounded a wall with his fist while he was talking to her. Based upon these new facts, IO 2 sent Student B a second charge letter on December 14, 2005, alleging a violation of the August 3, 2005 no-contact order. IO 2 sent an email to Student A on December 15, informing Student A that the charge letter had been sent.

On December 8, 2005, IO 2 emailed Student A and told her that once Student A provided her with a written statement, she would forward the statement to the appropriate person in the Athletic Department. On this same date, ODOS staff spoke with the Athletic Department to determine who in the Athletic Department should receive Student A's statement. IO 2 received Student A's statement on December 15, 2005.

On December 21, 2005, Student B sent ODOS a letter discussing the alleged rape and the alleged violation of the no contact order. Student B denied the rape allegations and described his interaction with Student A at the November 12, 2005 fraternity party. The theme of the party was "no pants." Student B stated he wore his underwear and Student A was also only wearing underwear. He said that for most of the evening Student A stared at him. Later that evening, when he was leaving the party, Student A reached out and touched his arm while he was walking past her chair and told him she wanted to speak to him off the record. Student B told Student A that he was not allowed to speak with her and wanted to leave the party before she fabricated lies about him. Student A asked him to sign a statement indicating that he witnessed Student C rape Student A. Student A told him that if he signed the statement he would get off "scott free." Student B told her that the offer was ridiculous because she had fabricated the alleged rape. At this point Student A began to scream at him, cry, and make a scene. He quickly left the party and went home.

Student A told OCR that she felt that the no contact order was violated, even if she talked to Student B first, because Student B was supposed to leave the premises when Student A was present. She did not realize that she was precluded from initiating a conversation with Student B, as no one told her not to talk to him. Emails indicate that after the November 12 party Student A asked ODOS for clarification of the no contact order. ODOS responded that she should not initiate contact with Student B. ODOS explained to Student A that this warning is not usually necessary because students requesting no contact orders generally do not want to have any contact with the alleged perpetrator. Detective G independently advised Student A that if she had felt bothered by Student B at the party she did not have to talk with him but could have asked him to leave or she could have left the party and asked a friend to accompany her if she felt her safety was threatened.

Student A also complained to OCR that ODOS did not interview other individuals who attended the November 12 party who could corroborate her account. ODOS staff told OCR that it did not pursue an investigation or further action against Student B in connection with this incident because Student A admitted that she had initiated the conversation, thus contributing to the contact that occurred.

On December 19, 2005, IO 2 met with Student A and the Assistant Dean for approximately 30 minutes. IO 2 and the Assistant Dean stated that IO 2 asked Student A to clarify certain portions of her December 15 statement. At one point, IO 2 asked her to explain what she meant when she wrote about certain sexual acts that Student B performed. IO 2 and the Assistant Dean stated that Student A became angry and asked IO 2 why she was asking that question. At this point, Student A was crying so they took a break and decided to schedule a follow-up interview. IO 2 and the Assistant Dean stated that they did not feel that IO 2 was cross-examining Student A at this interview.

Student A's characterization of this interview differs from the University's description. She describes the meeting as adversarial and accusing. Student A claims that at the meeting IO 2 created a mock trial setting. Student A was distressed to the point that the questioning ceased and the Assistant Dean encouraged Student A to back down because she was not a strong enough person. Student A claims that the meeting occurred during finals week and Student A failed her next exam because the Assistant Dean had not alerted her professors of her situation. OCR could not find any documentation that Student A had requested ODOS staff to intervene with her professors in this way, and Student A did not tell OCR that she specifically requested such assistance. The only assistance Student A requested in writing was that she be given counseling appointments on a priority basis, which the Assistant Dean arranged.

IO 2 met again with Student A and the Assistant Dean on December 22, 2005, and on January 4, 2006. At the December and January meetings, IO 2 asked Student A more questions concerning her December 15, 2005 statement. At one of these meetings, Student A said she wanted to change her written statement to make her case stronger by stating that she was too intoxicated in April 2004 to consent to sexual intercourse with Student B. IO 2 told Student A she should be truthful in her statement.

On December 27, 2005, Student A forwarded a revised statement to ODOS for the Athletic Department, and sent the Assistant Dean an email asking that this statement be forwarded to the Athletic Department by the start of 2005-2006 school year's spring semester. The Assistant Dean told OCR that she did not forward Student A's statements to the Athletic Department, as the Assistant Dean was uncertain whether the statement should be released before ODOS concluded its investigation and she conveyed this concern to Student A by telephone.

IO 2 and the Assistant Dean advised OCR that a few days after the January 4, 2006 meeting, Student A asked for a new IO, explaining that her mother is Hispanic (as is IO 2), and Student A felt that she was experiencing transference of tensions she had with her mother to IO 2. Student A felt this might explain her defensive attitude towards IO 2 during the questioning. IO 2 recused herself from the case. About two weeks later, IO 3 was appointed to investigate Student A's complaint.

IO 3 had received sexual assault training and had investigated ten sexual harassment cases prior to her involvement with Student A's complaint. Prior to her appointment as the IO in Student A's case, IO 3 had met briefly with Student B when he arrived for an interview in August 2005 that was postponed at Detective G's request. IO 3 also told OCR that she met with Student B in January 2006, before she was appointed IO, but she did not conduct a formal interview.

On January 19, 2006, IO 3 sent an email to Student A requesting an interview with her. However, no interview took place because Student A's attorney objected. On February 1, 2006, Student A's legal counsel wrote to IO 3 and the Assistant Dean, indicating that, as Student A had provided sufficient information to ODOS, he did not believe further interviews were needed, but if necessary he would attend. He proposed that any necessary questions should be forwarded in writing. After talking with IO 3, the Assistant Dean sent an email to Student A indicating that Student A's written statement and information from IO 2 should be sufficient.

In an April 6, 2006 email, Student A told the Assistant Dean that since the University investigation was no longer in progress she thought it would now be appropriate to send her statement to the Athletic Department. The Assistant Dean replied to Student A via email the same day, advising her that she had discussed the issue with her supervisor, the Associate Dean, and he felt Student A could send the statement to the Athletic Department if she wished. On April 6, 2006, Student A forwarded her statement to the Interim Associate Director (Director) of the Athletic Department. On April 17, 2006, the Director sent Student A an email telling her he had been out of the office but acknowledging receipt of her statement.

IO 3 told OCR that she did not interview other individuals during her investigation. Nor did she review the UW-PD file that contained witness statements. IO 3 explained that there were only three people who actually knew what happened between Students A and B at the apartment on April 4, 2004, i.e., Students A, B, and C. IO 3 did not interview Student C because he was no longer at the University and therefore had no obligation to talk with her, lived out of the Madison area, and, as an alleged accomplice to the alleged sexual assault, was unlikely to support Student A's account. Additionally, IO 3 pointed out that there was no physical evidence that an assault occurred, and alcohol was involved, which clouded the perceptions of Students A and B as to what happened on the night of the alleged sexual assault.

IO 3 stated that she considered the evidence for a long time before she arrived at a decision in the case. After reviewing all of the evidence, IO 3 talked with the Associate Dean who agreed that there was insufficient evidence to support a finding that Student B sexually assaulted Student A. On April 19, 2006, the Assistant Dean advised Student A of IO 3's decision. On April 20, 2006, IO 3 sent a letter to Student B, advising him that the investigation did not substantiate the assault charges, but warning Student B of the dangers of excessive drinking.

On April 25, 2006, IO 3 and the Assistant Dean met with Student A at her request to discuss IO 3's decision on her complaint. IO3 told Student A that she was not pursuing the matter because there were no eyewitnesses other than Students A, B, and C concerning the events that happened at Student B's residence. Additionally, Students A and B were not clear on what happened at Student B's residence and that alcohol played a part in their lack of clarity.

Student A told OCR that she informed IO 3 and the Assistant Dean, for the first time, that Student B's roommate, who had been sleeping in another room of the apartment, might have relevant information. In written remarks to IO 3, Student A stated that Student B's roommate "woke up from all the activity, I do not know what he would know, but I know he may be a witness." ODOS did not interview Student B's roommate.

Shortly after the ODOS decision, the Associate Dean met with Student A and her mother. Student A gave the Associate Dean a 2005 psychologist report stating that she may have been the victim of sexual abuse. At Student A's request, the Associate Dean reviewed all of the materials in the file. He found insufficient evidence to support Student A's allegation and so advised her.

On May 5, 2006, the Athletic Department sent a letter to Student A, acknowledging her statement, and noting that Student A had filed complaints with ODOS and the University police. The letter also stated that Department was doing everything possible to ensure that their student-athletes are engaging in lawful, safe and healthy behaviors. In addition, the Athletic Department provided information to OCR indicating that all of their coaches and administrative staff attended a sexual harassment workshop by the Campus Equity and Diversity Resource Center in the summer or fall of 2006 and that the Department was also working on an orientation for all freshmen student athletes. The Department also planned to have a meeting with all male athletes to discuss their role in the prevention of violent behavior.

The UW-PD investigation was still open and ongoing in the spring 2006. Detective G interviewed Student D on May 1, 2006, after trying to make contact with him for several months. Student D stated he was a friend of Student A and he knew Students B and C. Student D told Detective G that he could not recall the April 4, 2004 party. Student D never

heard Student A say she was sexually assaulted by anyone, and had no other information to corroborate Student A's account.

On May 22, 2006, Detective G interviewed Student E. He stated that he dated Student A in the latter part of April through the first part of June 2004, but he did not present any evidence that corroborated Student A's account of the incident. Student E confirmed that Student A was intoxicated and somewhat flirtatious at the April 2004 party. Student A had never told him that Students B and C assaulted her.

In May of 2006, Detective G sent the Dane County Prosecutor's office all of the summarized interview statements she compiled. Based on her investigation, she did not think Student A's case was strong enough to prosecute. Detective G denied that she had ever told Student A that she had a strong case (as Student A had reported to OCR). After reviewing the statements, the Dane County Prosecutor's office concurred with Detective G's assessment and again declined to prosecute Student A's complaint.

II. LEGAL STANDARD

The Title IX regulation, at 34 C.F.R. §106.31(a), states that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity operated by a recipient. Sexual harassment of a student in an educational program or activity that is sufficiently serious to deny or limit the student's ability to participate in or receive the benefits, services, or opportunities in the school's program may constitute discrimination prohibited by Title IX. Sexual harassment is defined as unwelcome conduct of a sexual nature, which can include can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. OCR considers the totality of the circumstances to determine if a hostile environment has been created, i.e., if sexually harassing conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program based on sex.

A recipient has a responsibility to respond promptly and effectively to such student-to-student sexual harassment that it knows about, or reasonably should have known about. Title IX requires that once a recipient has notice of possible sexual harassment of a student, the recipient should take immediate and appropriate steps to investigate or otherwise determine what occurred. If the recipient determines that sexual harassment occurred, it should take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment. In addition, it may be appropriate for a recipient to take interim steps during its investigation.

III. ANALYSIS

Student A alleged that the University discriminated against her on the basis of sex when it subjected her to sexual harassment from April 2004 until June 2006. Additionally, Student A alleged that the University, since July 2005, failed to promptly and appropriately respond to her reports of sexual harassment.

A. Alleged sexual harassment

Student A asserted that the University was responsible for the alleged sexual assault that occurred on April 4, 2004, and for the alleged subsequent harassment of her that occurred. For the University to be responsible under Title IX, the harassment must have occurred in the context of an educational program or activity operated by the University, and the University must have had notice of the harassment.

As indicated above, the information submitted by the University indicates that although the University's nonacademic misconduct policies applied to the alleged misconduct by Students B and C, the University did not regulate or control the premises at which the alleged assault took place on April 4, 2004. OCR found that the owner of the apartment was a University employee who, in his private capacity, listed his rentals with the University's office that handles available off campus rentals, and a few crew team members rented an apartment from him. In addition, although Student A asserted that there were prior incidents in which male crew team members had committed sexual assaults, the University reported only one prior report of sexual harassment by a crew member made four or five years earlier, which did not involve Students B or C and was not substantiated when investigated by the University.

Based on the above, OCR determined that the alleged assault did not occur in the context of an educational program or activity operated by the University. OCR also determined that the information about one prior unsubstantiated report of sexual harassment by previous crew members was not sufficient to support a determination that the University knew or should have known of possible later sexual harassment by members of the crew team. Therefore, there is insufficient evidence to conclude that the University subjected Student A to sexual harassment with respect to the April 4, 2004 alleged assault.

With respect to alleged subsequent harassment, Student A asserted she was subjected to continuing sexual harassment and stalking-like behavior by Students B and C after the date of the assault until June 2006. She indicated that, as a result, she quit the crew team and failed her exams. However, the only example of alleged harassment after the assault that she complained to the University about related to the November 12, 2005 fraternity party. For purposes of analysis, OCR assumed that the fraternity party contact, which was allegedly in violation of a University no contact order, was sufficiently connected with the University to be considered a University program or activity. Based on the totality of circumstances, particularly Student A's admission that she initiated the contact with Student B at the

November 12 fraternity party, OCR determined that there is insufficient evidence to establish that the University subjected Student A to a sexually hostile environment.

B. University's response

Student A also alleged that the University failed to respond promptly and appropriately to her complaint of sexual assault. As noted, Student A did not file a complaint of sexual assault with the University until over a year after the alleged April 2004 assault. The University handled the complaint under its established student nonacademic misconduct policy and procedures. As indicated above, Title IX requires a recipient that has notice of possible sexual harassment of a student to take immediate and appropriate steps to investigate or otherwise determine what occurred. However, the specific steps in a recipient's investigation of alleged sexual harassment may vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases the inquiry must be prompt, thorough, and impartial.

Student A identified numerous inadequacies in the University's investigation and overall response to her complaint, each of which are discussed below. Based on OCR's investigation, OCR concluded that the evidence indicates that the University responded promptly and appropriately to Student A's complaint.

Student A's chief concern was that the ODOS investigation of her sexual assault complaint took too long. OCR's investigation determined that the ODOS investigation took nine months. Student A filed her complaint on July 13, 2005 against Students B and C. Later in July, Student A limited her complaint to Student B. On April 19, 2006, following an investigation by three investigating officers, the University informed Student A that the investigation did not support a finding that Student B had sexually assaulted Student A. OCR found that the University decided not to pursue emergency disciplinary action against Student B in July 2005 because it had been fifteen months since the alleged assault and there had been no reported intervening harassment.

OCR found that, although the ODOS investigation took nine months, the University took interim steps while the investigation was underway to protect and prevent harassment of Student A and there was a reasonable explanation for the investigation's length.³ ODOS sent Student B a no contact order and appointed an investigating officer and victim advocate within one week of Student A's decision to pursue an investigation. The University also issued a second no contact order to Student B after the November 2005 incident even though Student A admitted that she had initiated the contact. Per its usual practice in a dual

³ OCR has provided the University with technical assistance concerning its Student Nonacademic Misconduct Policy; specifically, OCR has recommended that the policy be revised to include designated and reasonably prompt timeframes for the major stages of investigations of sexual harassment or assault complaints under the Policy.

investigation, ODOS allowed UW-PD to interview the alleged perpetrators first. ODOS resumed its investigation shortly after the alleged perpetrators were interviewed and before the UW-PD investigation was completed. The ODOS investigation was further delayed when the case was reassigned at Student A's request. OCR found no evidence of a lack of diligence on the part of University personnel, and ODOS staff kept Student A informed throughout the investigation.

Student A also raised several objections to the manner in which the ODOS investigation was conducted.

1. Adversarial ODOS Interview. Student A asserted that the treatment of her by ODOS during an interview was unnecessarily adversarial and caused her stress during finals and that ODOS did nothing to intervene on her behalf with her professors. OCR confirmed that ODOS did not contact Student A's professors on her behalf following the interview, but determined that the University was not required to contact Student A's professors. The evidence also confirmed that the interview was stressful for Student A. Because the IO was conducting an investigation, she needed to know the details of sensitive topics. When Student A broke down during the questioning, the interview was postponed. The University agreed to change the IO upon Student A's request. Student A's attorney later told the new ODOS investigator that he did not think it was necessary for ODOS to interview Student A again. The evidence did not indicate that IO 2 treated Student A disrespectfully or unprofessionally during the interview.

2. Witnesses identified by Student A. Student A also asserted that ODOS failed to interview all of the witnesses whose testimony might have affected the outcome of the investigation. She specifically stated that ODOS did not interview all of the witnesses whose names she provided and that one of the investigating officers did not interview her. OCR's investigation confirmed that the ODOS did not interview all of the witnesses suggested by Student A and that IO 3 did not interview Student A. The ODOS did not interview other witnesses suggested by Student A because these individuals did not witness the alleged assault. IO 3 also presented a legitimate reason for not interviewing Student C, in that she correctly believed that his testimony would not corroborate Student A's version. Furthermore, Detective G interviewed Students C, D, and E, about the April 2004 incident, and none of them provided corroborative evidence.

Student A also asserted that ODOS failed to interview other individuals who attended November 12 party at which Student B allegedly harassed her. ODOS did not take disciplinary action against Student B regarding the alleged violation of the no contact order because Student A acknowledged that she was responsible for initiating the contact. Additional interviews would not have changed this result.

After she was informed of the outcome of the investigation, Student A mentioned for the first time that Student B's roommate might have relevant information. ODOS' decision not to

interview Student B's roommate after the investigation had been concluded did not adversely affect the adequacy or reliability of the investigation, especially because Student A did not provide ODOS with any specific information to suggest that the roommate would corroborate her allegation of sexual assault.

Finally, IO 3 did not interview Student A because Student A's attorney told ODOS that he believed that Student A had provided sufficient information in prior interviews and that an additional interview was not necessary.

3. Student B's participation in the ODOS investigation. Student A also complained that ODOS did not notify her of Student B's testimony, provide her with notice of a decision making meeting with Student B, or provide her with an opportunity to rebut his statements. She also claims that the University sent Student B an exoneration letter before she was advised of the decision concerning her sexual assault complaint.

The evidence indicated that ODOS did not formally interview Student B. Student B met briefly with ODOS staff. The brief meeting was not a formal hearing or a decision-making event, and Student A did not have a right to attend or be given notice of that meeting under the University's procedures and practices. The evidence also revealed that Student A was interviewed on several occasions during the ODOS investigation, and was asked about discrepancies between her statement and Student B's version of the events. She had an opportunity to rebut his version of the events in her interviews and written statements to the University. Moreover, Student B was not present at or notified of any of these interviews. As to the timing of communications concerning the determination, the evidence showed that the University verbally advised Student A of the determination on April 19 *prior to informing* Student B of the decision in an April 20 letter.

4. Written findings and review process. Student A complained that ODOS did not provide her with written findings and that the review of the investigation by ODOS administrators was inadequate. The University's disciplinary procedures do not require that a written finding be provided to a student who files a sexual assault charge or provide the student with a right to file an appeal. In any event, the evidence revealed that the University verbally informed Student A of the findings and IO 3 met with her to explain why the evidence did not support her complaint. In addition, after IO 3 informed Student A of her decision, the Associate Dean talked to Student A and her mother, reviewed the evidence again as they requested, and found insufficient evidence to support Student A's allegation.

In conclusion, the above objections raised by the Complainant, including the investigation's length, the perceived adversarial nature of an ODOS interview, ODOS' decision not to interview all of the witnesses identified by Student A, Student B's participation in the investigative process, the absence of written findings and Student A's dissatisfaction with the review process, do not provide a basis for concluding that the University's response to Student A's complaint and notice of possible sexual harassment was not sufficiently prompt

and appropriate. As noted, the University took interim and effective steps reasonably calculated to protect Student A and prevent her from being subjected to harassment during the investigation and provided explanation for the investigation's length. The University's investigation of her complaint was adequate, reliable and impartial, and provided Student A with an opportunity to present evidence and identify witnesses. Student A had multiple opportunities to present information to support her version of the alleged harassment both in writing and in person to ODOS. The University also provided Student A with notice of the outcome of the investigation.

Finally, Student A objected that the University's response to her sexual harassment complaint was also inadequate because of the responses of ODOS and the UW-PD to Student B's alleged violation of no contact order, because the UW-PD did not refer her complaint to the District Attorney's Office and because ODOS did not send her written statement to the Athletics Department. As noted, if a recipient determines that sexual harassment occurred, it should take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

Student A complained about Detective G's failure to issue a no contact order as promised, or to offer any protection when the ODOS order was violated by Student B at the November 12 party. She also complained that both entities had failed to warn her against talking with Student B, or instruct her as to what she should do if Student B refused to leave a location where she was present. The evidence did not confirm that Detective G had promised Student A it would issue a no contact order. Moreover, the evidence further revealed that Student A initiated the contact and that, after the November 12 party, ODOS explained that generally parties who request no contact orders do not initiate conversations with the alleged perpetrators. The UW-PD also reminded Student A that she could have avoided talking to Student B at the party by leaving the party herself. Under the circumstances, the University's response to the November 2005 contact was reasonably calculated to prevent further interaction between Students A and B and possible harassment of Student A. In fact, Student A did not report any further instances of harassment to the University after the November 2005 contact.

Student A also objected that UW-PD did not refer her case to the District Attorney's Office as promised. She asserts the District Attorney has no record of the referral. The evidence does not support Student A's objection. Detective G stated that she did refer the case for prosecution. The District Attorney's office decided not to prosecute the case and may not have a record of the referral for that reason.

Student A also complained that ODOS did not forward her written statement to the University Athletic Department. Instead, Student A forwarded her statement in April 2006. Although it appears that ODOS staff had initially agreed to send Student A's statement to the

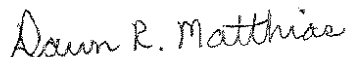
Athletic Department, the University contended that the delay was occasioned by concern as to whether sharing the statement would be appropriate while the investigation was proceeding. In any event, the Athletic Department policy did not provide for possible disciplinary action prior to completion of the ODOS investigation. This policy clearly stated that any violations of UWS Chapter 17 received by the Athletic Department were to be immediately reported to ODOS for action in accordance with its investigative procedures. Accordingly, even if Student A's statement were sent to the Athletic Department before April 2006, the Athletic Department could not have taken action against the alleged perpetrator until the ODOS investigation was completed and action recommended. Thus, OCR cannot conclude that the decision not to forward Student A's written statement to the Athletic Department rendered the University's response to her complaint inadequate.

IV. CONCLUSION

Based on the above, OCR concludes that the University did not subject Student A to a sexually hostile environment in any educational program or activity operated by the University, or fail to respond promptly and appropriately upon receiving a complaint from Student A alleging that she was sexual harassed. Accordingly, OCR has determined that there is insufficient evidence to conclude that the University subjected Student A to discrimination based on sex as alleged. This concludes OCR's consideration of this complaint.

We wish to thank you and your staff for the cooperation and courtesy extended to OCR during this case. In particular, we wish to thank Mr. John Dowling, Counsel for the University. If you have any questions regarding this matter, please contact Ms. Barbara Wolkowitz, OCR Attorney, at (312) 730-1616.

Sincerely,



Dawn R. Matthias
Team Leader

cc: Mr. John Dowling