

OFFICE OF THE GENERAL COUNSEL



**POLICY ON AFFIRMATIVE ACTION, EQUAL OPPORTUNITY
AND DIVERSITY**

**LEGAL STANDARDS FOR PROTECTED
CLASSIFICATIONS UNDER THE PPA**

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**QUINSIGAMOND COMMUNITY COLLEGE
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<p>LEGAL STANDARDS FOR PROTECTED CLASSIFICATIONS UNDER THE PAA</p>

When preparing Reports of Preliminary Findings and Final Findings and Recommendations, the investigating officer must make a finding on each element of the applicable legal standard. There must be sufficient evidence to support a finding that each element of the legal standard has been satisfied in order to find a violation of the PAA. For example, in a case of alleged race discrimination in employment, in order to find a violation of the PAA, a finding must be made that each element of the applicable legal standard has been satisfied: (1) complainant is a member of a protected class; (2) was performing their job in a satisfactory manner; (3) suffered an adverse employment action; and (4) was treated differently from similarly-situated, qualified person(s) not of the complainant's protected class.

To assist investigating officers in making the requisite findings when preparing PAA reports, the following legal standards for discrimination, harassment, sexual violence and retaliation are provided. This information supplements applicable sections of the December 2014 PAA.

DISCRIMINATION

1. Age, Color, Race, National Origin, Religion, Disability, Sex, Sexual Orientation, Gender Identity, Genetic Information, or Veteran Status

- (1) Complainant is a member of a protected class;
- (2) Was performing their job or academic activities in a satisfactory manner;
- (3) Suffered an adverse employment or education action;¹ and
- (4) Was treated differently from similarly-situated, qualified person(s) or student(s) not of the complainant's protected class.

2. Age (employment termination)

- (1) Complainant is over 40 years of age at the time of the alleged discrimination;
- (2) Was performing their job in a satisfactory manner;
- (3) Was terminated under circumstances that give rise to a reasonable inference that age was the cause; or
- (4) Complainant was replaced by an individual who is at least five years younger.

3. Disability (failure to accommodate)

- (1) Complainant suffers from a disability;
- (2) Complainant is capable of performing the essential functions of their job or the standards of their academic program;
- (3) Complainant requests a reasonable accommodation;
- (4) Respondent was aware of their handicap and the need for a reasonable accommodation;
- (5) Respondent was, or through reasonable investigation could have become, aware of a means to reasonably accommodate the disability;
- (6) Respondent failed to provide complainant the reasonable accommodation or failed to engage in an interactive discussion regarding the accommodation.

¹ Adverse actions include, but are not limited to: threats, intimidation, termination, suspension, demotion, transfer, loss or reduction of pay or benefits, changed working conditions, expulsion, denial of academic opportunities, and grade reduction.

4. Religion (failure to accommodate)

- (1) Complainant has a sincerely-held religious belief that conflicts with their job or academic requirements;
- (2) Complainant informs respondent of the conflict; and
- (3) Respondent refuses to accommodate their sincerely-held belief.

HARASSMENT**1. Discriminatory Harassment**

- (1) Complainant is a member of a protected class;
- (2) Subjected to verbal and/or physical conduct based on protected classification;
- (3) Conduct is unwelcome;
- (4) Conduct is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with the complainant's job performance or education; and
- (5) Conduct creates an objectively intimidating, hostile or offensive work or education environment.

2. Sexual Harassment**(a) Hostile Work Environment**

- (1) Complainant is subjected to sexual advances, request for sexual favors or other verbal or physical conduct of a sexual nature;
- (2) Conduct is unwelcome;
- (3) Conduct is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with the complainant's job or education; and
- (4) Conduct creates an objectively intimidating, hostile or offensive work or education environment.

(b) Quid Pro Quo

- (1) Complainant is subjected to sexual advances, request for sexual favors or other verbal or physical conduct of a sexual nature;
- (2) By a person who has control or authority over the terms and conditions of the complainant's job or education;
- (3) Conduct is unwelcome;
- (4) Complainant rejects the advances, requests or conduct; and
- (5) Terms or conditions of complainant's employment or education are adversely affected; or
- (6) Complainant submitted to such advances, requests or conduct out of a reasonable fear of an adverse employment or education action.

SEXUAL VIOLENCE

1. Rape

- (1) Penetration, no matter how slight;
- (2) Of the vagina or anus with any body part or object; or
- (3) Oral penetration by a sex organ of another person; and
- (4) Without the consent of the victim.

2. Sexual Assault

- (1) Actual or attempted sexual contact with another person; and
- (2) Without that person's consent.

(a) Fondling

- (1) Touching of the private body parts of another person;
- (2) For the purpose of sexual gratification;
- (3) Without the consent of the victim;
- (4) Including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

(b) Incest

- (1) Sexual intercourse;
- (2) Between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(c) Statutory Rape

- (1) Sexual intercourse;
- (2) With a person who is under the statutory age of consent (age 16).

3. Sexual Exploitation

- (1) A person takes sexual advantage of another person;
- (2) For the benefit of anyone other than that person; and
- (3) Without that person's consent.

4. Aiding in the Commission of Sexual Violence

- (1) Aiding or assisting in the commission of an act(s) of sexual violence.

5. Dating Violence

- (1) Violence committed by a person;
- (2) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (3) Where the existence of such a relationship shall be determined based on a consideration of the following factors: length of relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

6. Domestic Violence

- (1) A person commits a felony or misdemeanor crime of violence;²
- (2) The perpetrator is: (a) a current or former spouse or intimate partner of the victim, (b) a person with whom the victim shares a child in common, (c) a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner, (d) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or (e) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

7. Stalking

- (1) Engaging in a course of conduct;³
- (2) Directed at a specific person; and
- (3) Would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.⁴

RETALIATION

- (1) Complainant engaged in protected activity;⁵
- (2) Respondent was aware the complainant engaged in protected activity;
- (3) Respondent subjected complainant to an adverse employment or education action; and
- (4) Causal connection exists between protected activity and adverse employment or education action.

² Including, but not limited to: attempting to cause or causing physical harm; placing another in fear of imminent serious physical harm; or causing another to engage involuntarily in sexual relations by force, threat or duress.

³ "Course of conduct" means two or more acts, including, but not limited to: acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

⁴ "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

⁵ "Protected activity" includes the following: 1) Complaining to the College about prohibited conduct, such as discrimination or harassment; 2) asking the College (e.g. supervisor) to stop the discrimination or harassment; 3) cooperating in an internal investigation; 4) filing a complaint with the EEOC, MCAD, or OCR; and/or 5) speaking to an attorney.

OUTLINE FOR INVESTIGATION PROCESS UNDER THE PAA

Alleged Victim: _____

Respondent: _____

ALLEGED VIOLATION OF THE PAA

LEGAL STANDARD

WITNESSES TO BE INTERVIEWED

DOCUMENTS TO BE REVIEWED

INTERIM PROTECTIVE MEASURES/ACTION TAKEN

TIMELY WARNING ISSUED

Yes _____ Date Issued _____ No _____

REPORTABLE CLERY ACT CRIME

Yes _____ Date Campus Police Informed _____ No _____

OUTLINE FOR REPORT WRITING UNDER THE PAA

INTRODUCTION

INTERIM PROTECTIVE MEASURES AND/OR INTERIM ACTION

LEGAL STANDARD AND STANDARD OF PROOF

Pursuant to the PAA, _____ is “_____.” My review of the allegations is limited to whether the Respondent violated the PAA. All findings shall be based on a “preponderance of the evidence” (i.e. more likely than not) standard. If I am unable to conclude that the PAA was violated, this matter may still be referred to the appropriate college administrator for further action and/or discipline pursuant to the Student Code of Conduct (or applicable collective bargaining agreement or handbook if an employee).

INVESTIGATION

In addition to interviewing the parties and reviewing their materials, I also interviewed the individuals identified as witnesses and reviewed relevant documents. Brief summaries are outlined below.

Summary of Complainant's Allegations

Summary of Respondent's Response to Allegations

Summary of Witness Interview(s)

Summary of Document(s)

PRELIMINARY FINDINGS

Findings Made on Undisputed Facts

Findings Made on Each Element of the Legal Standard(s)

Findings Made on Each Element of the Legal Standard(s)

Findings Made on Each Element of the Legal Standard(s)

Findings Made on Each Element of the Legal Standard(s)

Findings as to Whether there is a Violation of the PAA

In addition to the above, the following sections will need to be added/modified in the Report of Final Findings and Recommendation:

ISSUANCE OF PRELIMINARY REPORT

On _____, 20____, I issued Report of Preliminary Findings to the parties with notice that they had ten days from their receipt to submit Rebuttal Statements to me and may not present new allegations at that time.

REBUTTAL STATEMENTS

On _____, 20____, I received a Rebuttal Statement from the Complainant. In summary, the Complainant's Rebuttal Statement asserts _____.

On _____, 20____, I received a Rebuttal Statement from the Respondent. In summary, the Respondent's Rebuttal Statement asserts _____.

- **Replace Preliminary Findings with Final Findings and modify as necessary based on Rebuttal Statements and/or any additional investigation conducted, if any**
- **Add the Recommendations after the Final Findings**

RECOMMENDATION(S)

Based on my Final Findings, I recommend _____.

MEMO TO COMPLAINANT SCREENING IN COMPLAINT

TO: _____, *(Name of Individual Making Allegations/Complaint)*
FROM: _____, Affirmative Action Officer/Title IX Coordinator
DATE: _____
RE: Complaint dated _____

I write in response to our recent communications regarding the complaint you submitted to the College on an “affirmative action discrimination grievance” form. As we discussed, *(add if they have acknowledged orally and in writing)*, your allegations, if true, fall under the Policy on Affirmative Action, Equal Opportunity & Diversity (PAA). *(Explain why screening is based on legal standard(s) for the discrimination alleged – for example you allege a hostile environment, based on the protected categories of age or gender)*. Accordingly your complaint will be addressed pursuant to the PAA Complaint Procedure (attached).

If you have any questions or I may be of further assistance, please contact me upon your receipt of this memorandum.

cc:

Discrimination/Affirmative Action/Legal Standards/Screening In Complaint

MEMO TO COMPLAINANT SCREENING OUT COMPLAINT

TO: _____, *(Name of Individual Making Allegations/Complaint)*
FROM: _____, Affirmative Action Officer/Title IX Coordinator
DATE: _____
RE: Complaint dated _____

I write in response to our recent communications regarding the complaint you submitted to the College on an “affirmative action discrimination grievance” form. As we discussed, *(add if they have acknowledged orally and in writing)*, your allegations, even assuming as true, do not fall under the Policy on Affirmative Action, Equal Opportunity & Diversity. *(Explain why screening out based on legal standard(s) for alleged discrimination – for example although you allege a hostile environment, you do not allege it is based on a protected category. Although you checked of the box “age” and “gender” you do not make any allegations of age or gender discrimination or harassment)*. Accordingly your "complaint" has not been addressed pursuant to that grievance process.

Option 1: Notwithstanding the College takes your concerns seriously as it seeks to provide an appropriate educational and work environment and will be reviewing them (or referring them to _____ for review and response).

Option 2: As you are aware the College does not share your views or characterization of events outlined in your “complaint” and related communications but I do not think it useful to respond in detail again.

If you have any questions or I may be of further assistance, please contact me upon your receipt of this memorandum.

cc:

LETTER TO COMPLAINANT CONCERNING SEXUAL ASSAULT

Dear _____:

This letter serves as a follow-up to our meeting on _____, where we discussed your complaint of alleged sexual assault. Specifically, you alleged that on _____ you were (describe event) by _____. *(Add any additional facts that are pertinent to the complaint).*

At our meeting I advised you of your rights under the College's *Policy on Affirmative Action, Equal Opportunity & Diversity* (PAA) and your right to pursue a criminal complaint with the assistance of the College's Police Department should you wish to do so. I also shared with you the College's *Sexual Violence – Victim's Rights and Information Advisory*, which provides a detailed summary of your rights and protections as an alleged victim of sexual violence and a list of services available to you. You were also informed of certain interim protective measures that are available to you including, but not limited to, access to counseling services and assistance in scheduling an appointment, on or off campus, rescheduling of exams and assignments, and/or providing an escort to ensure safe movement between classes and activities.

(Where the accused is an employee) The College takes your complaint very seriously and intends to investigate the matter to the extent possible pursuant to the PAA. During the College's investigation, _____ will be placed on leave. Please be advised that it is a violation of the PAA to retaliate against anyone who has filed a complaint or participates in a PAA investigation. If you are subject to retaliation by the accused or someone on his behalf, please contact me or Campus Police immediately.

(Where the accused is a student) The College takes your complaint very seriously and intends to investigate the matter to the extent possible pursuant to the PAA. During the College's investigation, _____ will be placed on interim suspension and is prohibited from attending classes. Please be advised that it is a violation of the PAA to retaliate against anyone who has filed a complaint or participates in a PAA investigation. If you are subject to retaliation by the accused or someone on his behalf, please contact me or Campus Police immediately.

To ensure the integrity of the process, please understand that this investigation is confidential and the parties are requested not to discuss the matter with others. The College will keep you informed of the progress of its investigation. If you have any questions or I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Name

Title IX Coordinator

NOTIFICATION OF COMPLAINT TO RESPONDENT

To: _____, Responding Party
From: _____, (Title of College Official)
Subject: Affirmative Action Discrimination Complaint
Date: _____

This is to notify you that on _____ a complaint alleging a violation of the College's Policy on Affirmative Action, Equal Opportunity and Diversity (PAA) was filed against you with the College. A copy of the complaint is attached, as is a copy of the complaint procedure. Within ten (10) days of your receipt of this notice, please submit to me a written response to the complaint.

I will be contacting you to schedule an appointment to discuss this matter. Please be advised that it is unlawful to retaliate against a student, employee or any other person for filing a complaint or for cooperating in an investigation related thereto.

All reasonable efforts will be made to maintain confidentiality during the PAA's complaint procedure. Further, if any disciplinary sanctions are imposed as a result of a finding of a violation of the PAA, all such sanctions shall be regarded as an administrative action subject to all terms and conditions of applicable collective bargaining agreements.

All questions concerning this matter should be addressed to the College official referenced above. Further, all parties to a complaint may have a personal advisor (for union employees this may be a union representative) assist them throughout the process.

INTERIM ACTION LETTER (STUDENT RESPONDENT)

Dear _____:

I write to follow up our recent communications regarding allegations of _____ by you that may be in violation of the Policy on Affirmative Action, Equal Opportunity & Diversity (PAA). During our meeting on _____, which was also attended by _____, I provided you with a copy of the complaint, provided you an opportunity to respond to the allegations presented and informed you that College would be handling the complaint, pursuant to the Complaint Procedure outlined in the PAA, including that you have 10 days to submit a written response.

I informed you that this was a very serious matter and violations of the PAA could result in discipline, up to and including, expulsion from the College. I also requested that you not discuss this confidential matter with anyone in order not to impede the integrity of the investigation.

I also notified you that in light of _____ (*letter must provide specific reasons for suspending student on an interim basis before the completion of any investigation which includes one or more of the following: poses a threat to health or safety, poses a threat to College property or equipment, is disruptive or interferes with the normal operations of the College, or is charged with a serious violation of state or federal law*), you are:

- being placed on interim suspension and are prohibited from entering the College's property or participating in any College activities absent my written authorization; and;
- directed not to have any contact with the student complainant either directly or through a third party. Contact includes but is not limited to face-to-face communication, email, telephone and cellphone, text messaging, and social networking),

I reiterate that it is unlawful to retaliate against a student, employee or any other person in the College for filing a grievance or for cooperating in an investigation of a grievance.

If you have any questions regarding the above, please contact me immediately upon your receipt of this letter.

Sincerely,

AA/Title IX Coordinator

cc: Student Record

INTERIM ACTION LETTER (EMPLOYEE RESPONDENT)

Date
Name
Address

Dear Name:

I write to follow up our recent communications regarding a student complaint. During our meeting on _____, which was also attended by _____, and _____ a union representative at your request, I provided you with a copy of the complaint, provided you an opportunity to respond to the allegations presented and informed you that because the student was asserting discrimination, among other allegations, the College would be handling the complaint, pursuant to the Complaint Procedure outlined in the Policy on Affirmative Action, Equal Opportunity & Diversity (PAA). I informed you that this was a very serious matter and could result in further action or discipline, up to and including, dismissal consistent with the applicable collective bargaining agreement. In light of _____ (*letter must include specific reasons why being placed on paid administrative leave prior to completing an investigation which includes one or more of the following: poses a threat to health or safety, poses a threat to College property or equipment, is disruptive or interferes with the normal operations of the College, or is charges with a serious violation of state or federal law*), you are:

- being placed on paid administrative leave and are prohibited from entering the College's property or participating in any College activities absent my written authorization; and;
- directed not to have any contact with _____ (or student(s) or college employees except union representatives,) either directly or through a third party. Contact includes but is not limited to face-to-face communication, email, telephone and cellphone, text messaging, and social networking),

The College will be contacting you to schedule a meeting to discuss the allegations and you may bring your union representative. You also have 10 days to submit a written response to the complaint. I reiterate that it is unlawful to retaliate against a student, employee or any other person in the College for filing a grievance or for participating in the College's review of the grievance. If you have any questions regarding the above, please contact me immediately upon your receipt of this letter.

Sincerely,

AA Officer/Title IX Coordinator

cc: Personnel File

MODEL REPORT OF FINAL FINDINGS AND RECOMMENDATIONS

Prepared by Jane Smith,
Director of Equity Compliance,
Affirmative Action Officer, ADA/504 & Title IX Coordinator
December 7, 2018

INTRODUCTION

On November 9, 2018, a reporting party (hereinafter “Complainant”), a student at the College, alleged in a meeting with Jane Smith, Director of Equity Compliance that a responding party (hereinafter “Respondent”), engaged in non-consensual sexual touching with Complainant on two occasions during Fall 2017, with specific references to September 14, 2017, and September 16, 2017. Complainant stated that both encounters occurred at the College on the main campus. Complainant was advised of her right to file a complaint pursuant to the Policy on Affirmative Action, Equal Opportunity & Diversity (PAA) and provided with a copy of the PAA and report form. Complainant was also provided a copy of the *Sexual Violence - Victim Rights and Information Advisory*. Complainant was informed that if she chose not to pursue the complaint, the College took her allegations seriously and would nonetheless investigate the complaint to the extent possible.

Following this meeting, on November 9, 2018, Complainant submitted an Affirmative Action Discrimination Complaint Form alleging sexual violence. Jane Smith acknowledged receipt of this written complaint. On November 9, 2018, Jane Smith met with the Respondent, informed him of the allegations presented and provided him with a copy of the written complaint and the PAA. He was further advised that he had a right to file a response to the complaint within ten (10) days of receiving it.

INTERIM PROTECTIVE MEASURES AND/OR INTERIM ACTION

Respondent was notified in person on November 9, 2018, of the following interim protective measures, which shall remain in effect until withdrawn by the College:

- A no contact order was put in place between Complainant and Respondent.
- Respondent was prohibited from being at the College with the exception of attending classes.
- It is unlawful to retaliate against a student, employee or any other person for filing a complaint or for cooperating in an investigation related thereto.
- All questions concerning this matter should be addressed to the Title IX Coordinator.

There have been no further allegations since the College instituted the interim protective measures.

LEGAL STANDARD AND STANDARD OF PROOF

Pursuant to the *Policy on Affirmative Action Equal Opportunity, and Diversity* (herein the “PAA”), **Sexual Assault** is prohibited conduct and defined as follows:

- Actual or attempted sexual contact with another person without that person’s consent. Sexual assault includes, but is not limited to:

- Fondling-the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

The investigator's review of the allegations within this complaint is limited as to whether Respondent violated the PAA. All findings shall be based on a **“preponderance of the evidence” (i.e. more likely than not) standard**. If the investigator is unable to conclude that the PAA was violated, this matter may still be referred to the appropriate college administrator for further action and/or discipline pursuant to the applicable student code of conduct.

INVESTIGATION

Jane Smith, Director of Equity Compliance, and Joe Jones, Director of Grants, served as investigators for this complaint. As part of their investigation, they interviewed Complainant, Respondent, and witnesses identified by Complainant and Respondent. Summaries of these investigatory interviews are as follows:

SUMMARY OF COMPLAINANT'S ALLEGATIONS

On November 9, 2018, Complainant provided the following information:

- Complainant stated that during fall 2017, and specifically on September 14, 2017, and September 16, 2017, student Respondent touched Complainant's breasts without permission.
- On September 14, 2017, Complainant was walking with friends on the third floor of the Wellesley campus. In addition to some friends that were present, Respondent was there as well.
- Complainant stated it was a hot day and she had on two shirts—an undershirt and a regular shirt. Complainant stated that she took off the regular shirt and upon doing this, Respondent said, “boobies” and groped Complainant's breasts with her two hands.
- Complainant said she slapped Respondent's hands away and left the area because she was upset with what occurred. Complainant stated she did not want to be near her and left the area and went to the cafeteria.
- Complainant stated that following this incident, on September 16, 2017, Complainant was in the auditorium on the main campus with several students, including Witness 1 and Witness 2. Complainant stated that it was again a hot day and the College was experiencing issues with the air conditioning. Complainant stated she was on stage, nearest the door on the right; Complainant stated she had two shirts on similar to what she was wearing on the 14th of September and again, took one of the shirts off.
- Complainant stated that upon taking one of her shirts off, Respondent who was present, again said to Complainant, “boobies” and groped Complainant's breasts with her hands.
- Complainant stated that recently, another friend stated to her that Respondent has said that being accused of this incident has been traumatic for Respondent.
- Complainant stated that she was informed by others at the College that Respondent told others that Complainant refused to accept her apology for what she did and she was thinking of harming herself because Complainant would not accept such apology.

- Complainant stated that on November 5, 2018, she had a conversation with Respondent, with Witness 2 present. Complainant stated that she asked Respondent to admit to her mistakes in touching her without her permission and Respondent replied by stating that Complainant wouldn't allow her to apologize.
- Complainant stated that as a result of this conversation, she would like the College to address what happened between her and Respondent in Fall 2017.

SUMMARY OF RESPONDENT'S RESPONSE TO COMPLAINANT'S ALLEGATIONS

On November 19, 2018, Respondent provided the following information:

- Respondent stated that she has never grabbed Complainant's breasts with her hands. Respondent stated that she did not touch Complainant's breast or Complainant in any way on September 14, 2017. Respondent stated that she did say, "boobies" when Complainant took her shirt off, but she denies touching Complainant.
- Respondent stated that she did not touch Complainant's breasts or Complainant in any way on September 16, 2017, while in the auditorium. Respondent said she does not know what Complainant is referring to regarding the alleged encounter on September 16, 2017, and Respondent said she has no memory of this occurring.
- Respondent stated that on one occasion, a date that she cannot recall other than it occurred in fall 2017, she did use one of her fingers to poke Complainant in the breasts while Respondent and Complainant were sitting in the cafeteria on the main campus. Respondent stated that she does not recall what else occurred or what took place during that conversation. Respondent stated that she does remember if anyone else was there.
- Respondent stated that she thought she could poke Complainant's breasts because she was under the impression that Complainant lets friends touch her breasts and did not understand why she was not able to do so as well.
- Respondent stated that if she had touched the Complainant's breasts she would have enjoyed doing so because she finds the Complainant attractive.
- Respondent said she does not know any other reason she poked Complainant's breasts other than Respondent is impulsive and does things without thinking and then later recognizes her actions.
- Respondent said that her friends have told her that the encounters on September 14, 2017, and September 16, 2017, have occurred and it scares her that she does not have any memory of these encounters occurring.
- Respondent stated that she does want to apologize to Complainant for inappropriately touching her in the cafeteria during fall 2017.

SUMMARY OF WITNESS INTERVIEW(S)

Witness 1 and Witness 2 were both identified by Complainant and Respondent as persons to interview regarding these allegations.

Witness 1 was interviewed on _____ and provided the following information:

- Witness 1 stated that she recalled a time when Respondent was in the auditorium on the Wellesley campus and touched Complainant in an inappropriate manner. Specifically, Witness 1 stated that she saw Complainant in the auditorium and at one point, Complainant took off one of her shirts and had on another shirt underneath it.
- Witness 1 said that after Complainant took off one of her shirts, Respondent said, “boobies” and grabbed Respondent’s breasts with her hands.
- Witness 1 said that Complainant said, “What the hell” and then left the auditorium.

Witness 2 was interviewed on _____ and provided the following information:

- Witness 2 stated that she did not see the encounter between Complainant and Respondent in the auditorium but recalled an encounter between Complainant and Respondent where Complainant became upset. Specifically, Witness 2 said she heard Complainant state, “What the hell” and then left the auditorium. Witness 2 stated that Complainant later told her that Respondent grabbed her breasts without Complainant’s permission.
- Witness 2 stated that Complainant said Respondent said “boobies” and grabbed Complainant’s breasts in the auditorium during drama club. Witness 2 said she does not recall the specific date or timeline when this occurred.
- Witness 2 said that recently, Complainant came to her and said she wanted to confront Respondent about what happened. Witness 2 said Complainant said she told both Witness 1 and Witness 2 that she was going to talk with Respondent about what happened.
- Witness 2 said that on November 5, 2018, during drama club rehearsal in the auditorium on the main campus, Witness 2 brought both Complainant and Respondent together to talk. Witness 2 said she, Complainant, and Respondent went to the second floor and sat at some unoccupied desks.
- Witness 2 said Complainant said to Respondent, “I don’t appreciate you grabbing me. You just came up to me and grabbed me. You didn’t even seem to care that what you did was wrong.”
- Witness 2 said Respondent did not respond to this, she just starred and said nothing. Witness 2 said that the meeting was interrupted by another student who asked her to come back to deal with something else in drama club.
- Witness 2 said that following this, the three of them left the area and Witness 2 has not spoken with Respondent about this situation since.

SUMMARY OF DOCUMENT(S) REVIEWED

- Affirmative Action Discrimination Complaint Form
- Student record files

REPORT OF PRELIMINARY FINDINGS

On November 26, 2018, a Report of Preliminary Findings was issued to the parties via email and mail with notice of their rights to submit a Rebuttal statement within ten (10) days.

REBUTTAL STATEMENTS

- Complainant did not submit a rebuttal statement.
- Respondent submitted a rebuttal statement on _____. The rebuttal statement provided the following information: _____.

FINAL FINDINGS

Based on the investigation conducted, this investigator makes these Final Findings:

A. Findings on Undisputed Facts

1. Complainant is a student at the College.
2. Respondent is a student at the College.
3. On September 14, 2018, the Complainant was on the 3rd Floor of the main campus with friends, including the Respondent.
4. On September 14, 2018, after the Complainant removed an outer shirt she was wearing because she was hot, the Respondent responded “boobies” while referring to the Complainant.
5. On September 16, 2018, both the Complainant and Respondent were in the auditorium.
6. In fall 2017, the Respondent used one of her fingers to poke Complainant in the breasts while they were sitting in the cafeteria on the Wellesley campus.
7. Respondent acknowledged that she is impulsive and does things without thinking and then later recognizes her actions.
8. Respondent stated that if she had touched the Complainant’s breasts she would have enjoyed doing so because she finds the Complainant attractive.
9. Respondent stated that she does want to apologize to Complainant for inappropriately touching her in the cafeteria during fall 2017

B. Findings on the Legal Standard (Sexual Assault – Fondling)

10. **Touching of Private Body Parts** - I find the Complainant touched private body parts of the Respondent in the Auditorium on September 16, 2018.
 - Complainant’s Statement
 - Witness 1 Statement
 - Witness 2 Statement

11. **Without Consent** - I find Complainant touched private body parts of the Respondent without her consent in the Auditorium on September 16, 2018.

- Complainant's Statement
- Witness 1 Statement
- Witness 2 Statement

12. **Purpose of Sexual Gratification** - I find Complainant touched private body parts of the Respondent without her consent in the Auditorium on September 16, 2018, for sexual gratification.

- Respondent's Statement

C. Findings as to Whether there is a Violation of the PAA

13. I find the Respondent engaged in sexual assault – fondling – of the Complainant in violation of the PAA.

ALTERNATIVELY, IF THIS CASE OF HOSTILE ENVIRONMENT SEXUAL HARASSMENT, THE FINDINGS UNDER THIS SECTION COULD BE PRESENTED AS FOLLOWS:

B. Findings on the Legal Standard (Sexual Harassment)

14. **Verbal or Physical Conduct of a Sexual Nature** - I find that the Respondent engaged in physical conduct of a sexual nature when she touched the Complainant's breasts.

- Complainant's Statement
- Respondent's Statement
- Witness 1 Statement

15. **Conduct was Unwelcome** - I find the Respondent's physical conduct against the Complainant as objectively unwelcome.

- Complainant's Statement
- Witness 1 Statement
- Witness 2 Statement

16. **Purpose or effect of unreasonably interfering with the Complainant's education** – I find the Respondent's unwelcome physical conduct of a sexual nature unreasonably interfered with the Complainant's education.

- Complainant's Statement

17. **Created a Hostile Educational Environment** - I find the Respondent's unwelcome physical conduct of a sexual nature created an objectively intimidating, hostile, humiliating or sexually offensive learning environment.

- Complainant's Statement
- Witness 1 Statement
- Witness 2 Statement

C. Findings as to Whether there is a Violation of the PAA

- I find the Respondent engaged in sexual harassment of the Complainant in violation of the PAA.

RECOMMENDATIONS

Respondent is hereby suspended effective the date on this letter through the end of Spring 2019. Suspension is temporary removal from the College or a program, without financial reimbursement, for a specified period of time. During this time, Respondent is not permitted to be on College property for any reason. During the Respondent's suspension, she shall have no contact with the Complainant. In order to be eligible to return to the College after the conclusion of the Spring 2019 semester, the Respondent must be in compliance with all aspects of this letter.

Discrimination/Affirmative action/PAA Draft Reports/sample report 1-9-19-#t

Entire Document - Discrimination/Affirmative Action/Legal Standards/Training Materials June 2019