

University of the Northwest

Investigation Report

Office of Equal Opportunity

Sam Smith,
Investigator
November 20, 2020
Case No: 202001076

Grievance Policy Investigation Report

November 20, 2020

INTRODUCTION

On Tuesday, October 6, 2020, the Title IX Coordinator (TIXC) met with Complainant and her advisor, the Sexual Assault Victim's Advocate. The Complainant reported that on Saturday, September 5, 2020 the Respondent sexually assaulted her while the Complainant was in a state rendering the Complainant unable to give consent. The Complainant requested to file a Formal Complaint and completed the form during the meeting [See Appendix A].

As a result of this allegation and additional evidence presented at the time of intake, the TIXC asked the Title IX Investigator to conduct a thorough and impartial investigation using the provisions outlined in the University's Equal Opportunity, Harassment, Nondiscrimination Grievance Policy (hereinafter, Grievance Policy) and in accordance with Title IX and following guidelines from the U.S. Department of Education's Office for Civil Rights.

Complainant is a sophomore student. Respondent is a senior student.

ALLEGATIONS

The TIXC tasked the investigator with gathering evidence to allow the University to determine whether the Respondent is responsible for violating the Grievance Policy (using the preponderance of evidence standard) specifically in regard to the allegations below:

A. *Sexual harassment*: conduct on the basis of sex that satisfies one or more of the following:

1) Sexual Harassment:

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to their University education

2) Sexual assault, defined as:

a) Sex Offenses, Forcible:

- i) Any sexual act directed against another person,
- ii) without the consent of the Complainant,
- iii) including instances in which the Complainant is incapable of giving consent.

b) Forcible Rape:

- i) Penetration,
- ii) no matter how slight,

- iii) of the vagina or anus with any body part or object, or
- iv) oral penetration by a sex organ of another person,
- v) without the consent of the Complainant.

c) Forcible Sodomy:

- i) Oral or anal sexual intercourse with another person,
- ii) forcibly,
- iii) and/or against that person's will (non-consensually), or
- iv) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age¹ or because of temporary or permanent mental or physical incapacity.

d) Sexual Assault with an Object:

- i) The use of an object or instrument to penetrate,
- ii) however slightly,
- iii) the genital or anal opening of the body of another person,
- iv) forcibly,
- v) and/or against that person's will (non-consensually),
- vi) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

e) Forcible Fondling:

- i) The touching of the private body parts of another person (buttocks, groin, breasts),
- ii) for the purpose of sexual gratification,
- iii) forcibly,
- iv) and/or against that person's will (non-consensually),
- v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

3) Dating Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.

¹ Per state law.

- B. *Sexual Exploitation*, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment.
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
 - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- C. Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
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INVESTIGATION INTERVIEWS/SUMMARY

Date: October 20, 2020

Name: Complainant

Location: Title IX Investigator's Office

Title IX Investigator met with the Complainant and their advisor, Sexual Assault Victim Advocate Sandra Lincoln for an initial investigation interview in the Investigator's office on October 20, 2020. During the interview, the Complainant shared the following information. (Note: all pronouns used are gender non-specific "they"):Complainant stated that they met the Respondent at a social gathering at the Complainant's brother's off-campus residence in late April 2020. Complainant and Respondent exchanged contact information at that time and occasionally communicated via Snapchat and text messaging between their first meeting and the date of the reported incident.

- Complainant reported that starting close to 11:00 p.m. on Saturday, September 5 through 4:00 a.m. on Sunday, September 6, 2020, the Complainant was at the on-campus apartment of the Respondent.
- Complainant believes that they watched 2-3 episodes of a Netflix series, Ozark. While watching this show, they shared a bottle of wine and 3 beers (over a period of approximately 2 -3 hours).
- Complainant is unsure of how many glasses of wine or beer they personally drank but believes that they had about the same amount to drink as the Respondent. Complainant reported that the amount they consumed was not an abnormal amount as compared to other previous nights when the Complainant has consumed alcoholic beverages.

- Complainant left the room one time during the evening to use the restroom. Complainant noted that they shared this information with the police detective that the Complainant spoke to at the hospital and that the detective suggested that the Complainant might have been drugged.
- Complainant recalls that sometime during the third episode of the show and after they had used the restroom that they started to feel “weird, unable to move normally, dizzy.”
- Complainant recalls the Respondent began touching the Complainant’s genital region over their clothing and kissing the Complainant.
- Complainant felt like they were unable to move.
- Complainant recalls that the Respondent then got up off the couch where they had been sitting while watching the show and took the Complainant by their hand and led them down the hallway to a bedroom. The Complainant assumed the bedroom belonged to the Respondent but was not sure since they had never been to the house before.
- Complainant recalls that the Respondent led the Complainant to the bed and sat the Complainant on the bed.
- Complainant recalls that the Respondent continued to kiss and touch the Complainant as they had been doing in the room with the television.
- Complainant recalls observing the Respondent removing their own clothing.
- Complainant recalls the Respondent asking the Complainant if it was okay if they removed the Complainant’s clothing. The Complainant does not remember if they said yes or no or nothing.
- Complainant remembers the Respondent leaving the room for a short period of time (several minutes), before returning to the room and closing the door behind them. The Complainant remembers the door to the bedroom being open until this time.
- Complainant remembers that the lights were also on and that they could hear other people in the house.
- Complainant remembers waking up several hours later confused and dazed and uncertain about what had happened.
- Complainant got up and went to the bathroom and saw red marks on their shoulders and hips and hickeys on their neck.

- Complainant said they “quietly freaked out” and texted Witness One [See Appendix C].
- Complainant described being in pain and feeling like they had to crawl around the room to find all of their clothes.
- Complainant remembers getting dressed in the hallway before leaving the house around 4:00 a.m. Complainant remembers seeing Witness Two was asleep on the couch when the Complainant left.
- Complainant called Witness One who met the Complainant and walked the Complainant to her residence hall.
- Complainant also called the Victim’s Advocate and was then taken to the hospital for a medical evaluation.
- Complainant met with a police detective who documented the marks and took a report. The Investigator has been unable to obtain a copy of this report.
- Complainant received the SANE kit back from the hospital in late September. According to the Complainant, the toxicology report only showed high levels of alcohol, and no drugs were detected. Complainant did not share the results of the physical examination from the SANE kit with the Investigator.
- Complainant reported this incident to the University after realizing they were going to be in a class for their major with the Respondent next spring.
- Complainant provided the Investigator with the full text exchange with Witness One (See Appendix C). Complainant was unable to provide texts from the Respondent because they deleted and then blocked the Respondent shortly after this incident.
- The Complainant requested that the Investigator interview the friend who accompanied them to the hospital and provided electronic copies of three photographs the Complainant took with their cellphone a few days after the date of the reported incident showing bruising and hickeys (**See Appendix B**).

Date: October 23, 2020
Name: Respondent
Location: Title IX Investigator Office

Title IX Investigator met with the Respondent and their advisor, attorney Bill Jones, for an initial investigation interview in the Investigator's office on October 23, 2020. During the interview, the Respondent shared the following information:

- Respondent stated that on Saturday, September 5, 2020 they received a Snapchat from the Complainant asking if they wanted to hang out.
- Respondent recalled that they traded several texts and Snapchats with the Complainant before meeting up near the Campus Center a little before 11:00 p.m.
- Respondent recalls that they then walked to the Safeway on Rose Street with the Complainant and purchased a bottle of wine, a six pack of beer, and a loaf of bread.
- On the way back to the Respondent's residence from Safeway, the Respondent asked Complainant if they wanted to "Netflix and chill." The Respondent reports that the Complainant said "yes."
- Respondent believes they arrived back to the Respondent's on-campus apartment around 11:40 p.m.
- Respondent recalls putting the wine, beer and bread in the kitchen and that while they set up their laptop to watch some shows, the Complainant went to the kitchen and opened the wine and beer and brought wine, beer, glasses, and bread back to the living room.
- Respondent claims they do not like wine so ended up only drinking beer. The Respondent recalls the Complainant finishing the bottle of wine and having some of the beer the Respondent was drinking.
- Respondent recalls Complainant getting up at some point in the evening to go to the bathroom.
- Respondent denies placing anything in Complainant's glass or being aware of anyone else doing so.
- Respondent said they started kissing in the living room and there was "lots of touching." When asked who initiated the kissing and touching the Respondent said that the Respondent had initiated both.
- Respondent recalls getting a text from their housemates (see Appendix D) and so the Respondent grabbed the Complainant's hand and led the Complainant down the hall to the Respondent's bedroom.
- Respondent recalls taking off their own clothes and then asking the Complainant if they

“needed help” taking off their clothes. The Respondent said that the Complainant asked for help in getting their clothes off and so the Respondent helped.

- Respondent recalls that the kissing and touching continued on the bed for quite a while.
- Respondent recalls grabbing a towel off of the back of the door and leaving the room when they heard their roommates return (Witnesses Two and Three). Respondent talked with their roommates for a short period of time before going to the bathroom, getting a condom, and returning to the bedroom. The Respondent thinks they might have been out of the room for up to five minutes.
- When the Respondent returned to the bedroom, they thought the Complainant was asleep, but once they touched the Complainant’s shoulder they woke up.
- The Respondent then got back up and closed the door.
- The Respondent reports that the Complainant then began to touch the Respondent and they took that to mean that the Complainant was interested in engaging further.
- The Respondent put the condom on and the two began to actively explore each other.
- The Respondent recalls asking the Complainant if everything was okay and was pretty sure the Complainant said “yes.”
- The Respondent recalls penetrating the Complainant with the Respondent’s penis, both the Complainant and Respondent climaxing and then both laughing as the Respondent told the Complainant that Witness Two had told the Respondent to “keep it down.”
- When asked specifically about how consent was obtained the Respondent said, “that just seemed like the way things were going, so that is the way they went.”
- The Respondent recalls them talking for a while and then falling asleep.
- When the Respondent woke up around 10:00 a.m., the Complainant was gone. The Respondent texted the Complainant thanking the Complainant for a “wild and fun night.” The Respondent reports that the Complainant never responded. When asked what the Respondent contributed the lack of response to, the Respondent said “then? Summer. Now? This.”
- The Respondent was unable to produce any text messages because they accidentally dropped their phone in a lake this past summer while water skiing.

- The Respondent requested that the Investigator interview both of their roommates and agreed to provide a copy of the floorplan for their apartment via e-mail by the end of the week (See Appendix E).
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Date: **October 26, 2020**

Name: **Witness One**

Location: **Title IX Investigator's Office**

The Investigator met with Witness One for an initial investigation interview in the Investigator's office on October 26, 2020. No other individuals were present for the meeting. During the interview, Witness One shared the following information:

- Witness One is a sophomore student who has been best friends with the Complainant since middle school. Witness One and Complainant currently live in the same residence hall and are planning to live together off campus next year. Witness One also met the Respondent at a social gathering at the Complainant's brother's residence in late April 2020. Witness One reports not having any contact with the Respondent since their initial meeting.
- Witness One received a text message from the Complainant at approximately 4:00 a.m. on Sunday, September 6, 2020 that was confusing. (See Appendix C). Witness One did not know where Complainant was. In subsequent texts Complainant indicated that they thought they were at the Respondent's apartment. Witness One recalls being afraid for Complainant because Witness One didn't know Respondent beyond their brief introduction in April, and it seemed out of character for the Complainant to hang out with someone that they "didn't know very well."
- Witness One met Complainant walking home near Sherwood and immediately took Complainant back to their residence hall.
- Witness One described Complainant as "totally out of it."
- Witness One recalls that the Complainant could not recall how much they had had to drink, eat or smoke and so they suggested they go to the hospital. On the way to the hospital Witness One called the Victim Advocate. The Victim Advocate met Witness One and the Complainant at the hospital.
- Witness One reports that although they drove the Complainant to the hospital, they were not in the room during the examination.
- To Witness One's knowledge, the Complainant has not communicated with the

Respondent since September 6, 2020.

Date: October 27, 2000

Name: Witness Two

Location: Title IX Investigator Office

The Investigator met with Witness Two for an initial investigation interview in the Investigator's office on October 27, 2020. No other individuals were present for the meeting. During the interview, the Witness Two shared the following information:

- Witness Two is the roommate of the Respondent. Witness Two and the Respondent share membership in several student organizations. Witness Two is also a senior and knows the Complainant's older brother through social interactions. Witness Two reports never meeting or communicating with the Complainant.
- Witness Two remembers seeing the Respondent in their shared apartment around 2:00 a.m. on the date of the reported incident. Witness Two remembers the Respondent coming out of their room with just shorts on.
- Witness Two recalls joking about Respondent's luck.
- Witness Two recalls telling Respondent to try to "keep it down" as Witness Two was going to sleep.
- Witness Two e-mailed the Investigator screenshots of group text messages from September 5-6, 2020 in which the Respondent, Witness Two, and Witness Three debriefed the night **(See Appendix D)**.

Date: October 27, 2020

Name: Witness Three

Location: Title IX Investigator's Office

The Investigator met with Witness Three for an initial investigation interview in the Investigator's office on October 27, 2020. No other individuals were present for the meeting. During the interview, the Witness Three shared the following information:

- Witness Three is the roommate of the Respondent. Witness Three went to high school with the Complainant's older brother. Witness Three and Witness Two play on the same athletic team. Witness Three is a junior and reports casually knowing the Complainant.
- Witness Three remembers seeing the Respondent in their shared apartment around

2:00 a.m. on the date of the reported incident. Witness Three recalls the Respondent having a towel wrapped around them.

- Witness Three recalls joking about Respondent's luck.
- Witness Three recalls walking down the hallway ahead of the Respondent and seeing the Complainant under the covers of the bed. Witness Three recalled observing that the Complainant seemed very still as though they might be asleep.
- Witness Three reviewed the screenshots provided by Witness Two and confirmed that they were accurate and that Witness Three recalled the group text conversation from September 5-6, 2020.

APPLICATION OF CONSENT ANALYSIS

The University defines consent as

- "knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in

which the alleged incident occurred and any similar, previous patterns that may be evidenced. “

Consent in relationships must also be considered in context. When parties consent to BDSM² or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the University’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

CREDIBILITY FACTORS

The investigator assessed that all three witnesses’ statements were credible and consistent and provided no reason for the investigator to question their credibility.

The Complainant responses were consistent and corroborated and credible to the extent they could be considering the gaps in their memory.

The Respondent’s responses were inconsistent when responding to questions related to their recounting of the period of time after the Respondent returned from talking with Witness Three and Two. The Respondent reported that the Complainant seemed asleep when they returned. Witness Three corroborated this as well. The Respondent’s narrative that the Complainant then became fully awake and willing to engage in “wild” sexual activity, while certainly plausible, seems to advantage the Respondent’s narrative in light of the allegations.

ANALYSIS

Using the definitions above and considering all information from the investigation, the panel must determine if the following is a factor in their analysis:

- **Was there force?**
- **Was the Complainant incapacitated?**
- **Did the Respondent know the Complainant was incapacitated?**
- **Was there consent?**

HEARING PANEL MUST DETERMINE FINDINGS FOR EACH POLICY ELEMENT

² Bondage, discipline/dominance, submission/sadism, and masochism.

APPENDIX A

Title:	Formal Complaint
Submitted By:	Complainant
Date Submitted:	October 20, 2020
Received By:	Title IX Coordinator

University of the Northwest
Harassment and Discrimination Complaint Form

This form may be completed by any member of the University community who has experienced or otherwise become aware of an incident that may constitute a violation of the University's Equal Opportunity, Harassment, and Nondiscrimination Policy. Please complete the form to the best of your ability.

Today's Date: October 6, 2020

Name: Kaleigh Hunter

University ID: E374R952

Phone Number: (385)229-7333

E-mail: Khunter2@unorthwest.edu

Preferred Method of Contact: ☐ Phone ☒ E-mail ☐ Text Message ☐ Other: _____

University Affiliation: ☒ Undergraduate Student ☐ Graduate Student ☐ Faculty ☐ Staff ☐ Alumni ☐ Guest

Incident Date: Sept. 5th, 2020

Incident Time: 11 pm - 4 am

Incident Location:

- ☒ Campus Building
- ☐ Campus Outdoors
- ☐ Organization House
- ☐ Off Campus
- ☐ University Sponsored Event

Type of Incident:

- ☐ Discrimination
- ☐ Harassment
- ☒ Violence
- ☐ Retaliation

Protected Class(es) Basis for Report:

- ☒ Sex
- ☐ Gender
- ☐ Gender Identity
- ☐ Gender Expression
- ☐ Sexual Orientation
- ☐ Pregnancy/Parenting
- ☐ Race
- ☐ Color
- ☐ Religion
- ☐ Veteran Status
- ☐ Disability
- ☐ Age
- ☐ Genetic Information
- ☐ Marital Status
- ☐ National Origin

Specific Location: a bedroom in Drew's apartment

Respondent: Drew Mathis

University ID: Unknown

University Affiliation: ☒ Student ☐ Faculty ☐ Staff ☐ Alumni ☐ Guest ☐ Other _____

Phone Number: (385)706-3720

E-mail: unknown

Social Media Accounts: ☐ Facebook ☐ Twitter ☒ Instagram ☒ Snapchat ☐ Tik Tok ☐ YouTube ☐ Other _____

Witness 1: Melody Jackson

University ID: FL37T279

University Affiliation: ☒ Undergraduate Student ☐ Graduate Student ☐ Faculty ☐ Staff ☐ Alumni ☐ Guest

Phone Number: (385) 229-3161

E-mail: mcjackson@unorthwest.edu

Witness 2: _____

University ID: _____

University Affiliation: ☐ Undergraduate Student ☐ Graduate Student ☐ Faculty ☐ Staff ☐ Alumni ☐ Guest

Phone Number: _____

E-mail: _____

Witness 3: _____

University ID: _____

University Affiliation: ☐ Undergraduate Student ☐ Graduate Student ☐ Faculty ☐ Staff ☐ Alumni ☐ Guest

Phone Number: _____

E-mail: _____

Incident Narrative (use additional pages if needed):

I went to the grocery store with Drew to get some drinks and then we went to his house. We watched Netflix and drank. He took me into a bedroom and I don't remember what happened, but I woke up naked + sore. I got scared when I saw marks on my neck so I texted Melody. She took me to get a rape exam and I made a police report. The police officer said I could have been drugged. I did not agree to sex. Now Drew is going to be in my class next semester and I am scared to see him.

Supportive Measures Requested:

- | | | | |
|--|--|--|---------------------------------------|
| <input checked="" type="checkbox"/> No Contact Order | <input type="checkbox"/> Residence Hall Relocation | <input type="checkbox"/> Assistance Reporting to Law Enforcement | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Faculty Notification | <input type="checkbox"/> Facility Access Plan | <input type="checkbox"/> Academic Withdrawal (partial) | _____ |
| <input checked="" type="checkbox"/> On-Campus Counseling | <input type="checkbox"/> Campus Police Escort | <input type="checkbox"/> Academic Withdrawal (full) | _____ |
| <input type="checkbox"/> Off-Campus Counseling | <input type="checkbox"/> On-Campus Medical Care | <input type="checkbox"/> Legal Support Information | _____ |
| <input type="checkbox"/> Work Schedule Adjustment | <input type="checkbox"/> Off-Campus Medical Care | <input type="checkbox"/> Visa/Immigration Information | _____ |
| <input checked="" type="checkbox"/> Academic Adjustment | <input checked="" type="checkbox"/> Victim Advocate Outreach | | |

Accommodations:

☐ I request an interpreter Language: _____

☐ I request accommodation(s) for a qualified disability

☒ I do not request accommodation(s) for a qualified disability

Resolution Requested:

☐ No University Action ☐ Informal Resolution ☒ Formal Resolution (Investigation and Hearing)

Signature: _____

Kayleigh Hunter

Date: _____

10/6/20

Received By: _____

B

Date: _____

10-6-2020

APPENDIX B

Title:	Photographs of Bruises Taken on September 6, 2020
Submitted By:	Complainant
Date Submitted:	October 21, 2020
Received By:	Title IX Coordinator

Left Hip



Right Side of Neck, Shoulder, and Upper Arm



Left Side of Neck, Shoulder, and Upper Arm




APPENDIX C

Title:	Screenshots of Text Message Communication – Complainant & Witness One
Submitted By:	Complainant
Date Submitted:	
Received By:	Title IX Investigator

●●●○○ Sprint

4:01 AM

43% 

[← Messages](#)

<3 Mel <3

[Details](#)

same me

Im too funk

Where are you?

What's wrong?

hacky on my neck

Where are you?

were r u?

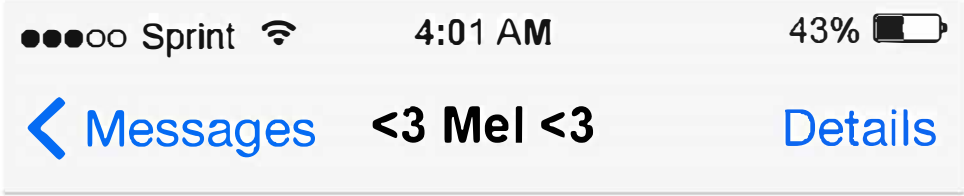
You aren't making any sense

are you drunk?



iMessage

Send



i think smthing hapn

I'm coming to find you

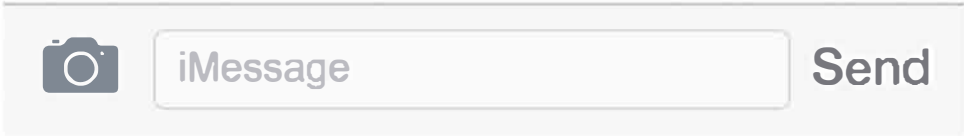
rawrrrrr tigr King

you're definitely drunk

wiiiiiiiiiiiiiiiiine fine

Stay where you are

nkd drew plce



iMessage

Send

APPENDIX D

Title: Screenshots of Text Message Communication between Respondent,
Witness Two, and Witness Three

Submitted By: Witness Two

Date Submitted:

Received By: Title IX Investigator

[← Messages](#) House Bruhs

[Details](#)

Bruh, were on our way home

Dont come back yet

y

Im entertaining

You walk her home?

no...

passed out

How u get pussy when u ABN?



Text Message

Send

[← Messages](#) **House Bruhs**

[Details](#)

lucky I guess :)

thanks for keeping it
down...haha

Clearly not...she was
wild...likes it rough

Might need to share with
Trent

he'd kill you

ya...want to hit that again
so betta not



Text Message

Send

APPENDIX E

Title: Floorplan for Respondent's On-Campus Residence
Submitted By: Respondent
Date Submitted:
Received By: Title IX Investigator

