

UNIVERSITY OF THE NORTHWEST
Office of Equal Opportunity

December 15, 2020

Respondent: Drew Mathis

Complainant: Kayleigh Hunter

Case No: 202001076

Delivered via e-mail

Dear Drew,

This serves as official correspondence from the University of the Northwest regarding the outcome of the formal hearing held on December 11, 2020. The Complainant, Kaleigh Hunter, submitted a formal complaint to the Title IX Coordinator on October 6, 2020 alleging that you engaged in behaviors that violate the University of the Northwest's Equal Opportunity, Harassment, and Nondiscrimination Grievance Policy on September 5-6, 2020, at your on-campus apartment. Specifically, it is alleged that you engaged in sexual assault, dating violence, sexual exploitation, and threatening or causing physical harm. It is alleged that these activities occurred while Ms. Hunter was incapacitated from alcohol and/or drugs. The Title IX Investigator, Sam Smith, conducted a formal investigation of the Complainant's allegations, and the final investigation report served as the basis for the formal hearing held pursuant to the University's Grievance Policy.

The Title IX Coordinator implemented a No Contact Directive to the Respondent on October 7, 2020. The parties were notified of the allegations and formal investigation on October 15, 2020. Subsequently, the Title IX Investigator conducted in-person investigation interviews according to the following timeline:

October 20, 2020	Complainant
October 23, 2020	Witness One
October 26, 2020	Respondent
October 27, 2020	Witness Two
October 27, 2020	Witness Three

The parties and their advisors were provided with an opportunity to review all information gathered during the investigation that was directly related to the allegations. This information, along with a copy of the draft investigation report, was provided by the Title IX Investigator to the parties and their advisors in an electronic format from October 30 – November 13, 2020 (accounting for Veterans' Day). The Respondent submitted a written response to the draft report on November 13, 2020.

A copy of the final investigation report was provided along with the formal hearing notice on Friday, November 20, 2020.

The University of the Northwest Grievance Board ("the Board") was convened on December 11, 2020, to review information provided in the investigation report and information provided by the parties and witnesses (if any) during the hearing. Both parties, the three witnesses identified in the investigation report, and the Title IX Investigator all participated in the formal hearing. Based on the information presented at the hearing, the Board has made the following findings of fact:

The Complainant consumed one full bottle of wine and an unknown amount of beer on the night of September 5, 2020. The Respondent was present and observed the Complainant consume the alcoholic beverages. The Respondent confirmed that they engaged in sexual activity with the Complainant, including kissing, touching of intimate body parts, and vaginal sexual intercourse on September 5-6, 2020, following the Complainant's consumption of alcohol. The Respondent indicated that he woke the Complainant from sleep, and Witness Three stated that they observed the Complainant unalert and under the covers on the Respondent's bed prior to the Respondent engaging in vaginal sexual intercourse with the Complainant. Further, Witness One stated that the Complainant was "completely out of it" when Witness One contacted them, first initially via text message and shortly thereafter in person, at approximately 4:00 AM on September 6, 2020. This statement is corroborated by the unintelligible text messages the Complainant sent to Witness One upon leaving the Respondent's residence. Based on this information, the Board finds that the Complainant was incapacitated by alcohol, rendering them unable to consent to sexual activity on September 5-6, 2020.

The Respondent engaged in both verbal and seemingly lucid text message communication with their roommates prior to engaging in vaginal sexual intercourse with the Complainant as documented by screenshots of text message communication and statements from the Respondent, Witness Two, and Witness Three. Based on this information, the Board has determined that the Respondent was not incapacitated on September 5-6, 2020.

The Board also evaluated the credibility of the parties and witnesses. We found that all three witnesses were credible and consistent and provided no reason for the Board to question their credibility.

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

The Respondent's responses were inconsistent, both during the investigation and again in the hearing, 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 shortly thereafter and willing to engage in "wild" sexual activity, was not deemed credible by the Board, and especially in light of Witness Three's observations of the Complainant during the pertinent time period.

Using the preponderance of the evidence standard, the Board has found the Respondent **responsible** for violating the following section(s) of the *Equal Opportunity, Harassment, and Nondiscrimination Grievance Policy (Grievance Policy)*:

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

- Sexual Harassment:
 - unwelcome conduct,
 - determined by a reasonable person,
 - to be so severe, and
 - pervasive, and,
 - objectively offensive,
 - that it effectively denies a person equal access to their University education

- Sexual assault, defined as:

- Sex Offenses, Forcible:
 - Any sexual act directed against another person,
 - without the consent of the Complainant,
 - including instances in which the Complainant is incapable of giving consent.

- Forcible Rape:
 - Penetration,
 - no matter how slight,
 - of the vagina or anus with any body part or object, or
 - oral penetration by a sex organ of another person,
 - without the consent of the Complainant.

- Forcible Fondling:
 - The touching of the private body parts of another person (buttocks, groin, breasts),
 - for the purpose of sexual gratification,
 - forcibly,
 - and/or against that person's will (non-consensually),
 - 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.

- 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.

The Respondent engaged in sexual activity including kissing, touching of intimate body parts, and vaginal sexual intercourse with the Complainant when the Complainant was unable to consent due to alcohol-facilitated incapacitation on September 5-6, 2020. This behavior satisfies the elements of two forms of sexual assault under the Grievance Policy, specifically forcible rape and forcible fondling. Additionally, an incident of sexual assault such as forcible rape is also sufficiently severe, pervasive, and objectively offensive such to deny the Complainant's full access to the University's education program. The Complainant reported that the sexual activity was unwelcome and that her academic experience is impacted. Accordingly, the Respondent is determined by a preponderance of the evidence to be responsible for sexual harassment, as well.

Additionally, the evidence presented in the investigation and hearing, notably the photographs that the Complainant provided that showed bruising shortly after the incident, were sufficient to support a finding that the Respondent caused physical harm to the Complainant. These injuries were corroborated by Witness One, who observed the Complainant immediately after the incident. This evidence was sufficient for the Board to find the Respondent in violation of the "causing physical harm" provision of the University's Grievance Policy.

Using the preponderance of the evidence standard, the Board has found the Respondent **not responsible** for violating the following section(s) of the *Grievance Policy*:

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

- Sexual assault, defined as:

- Forcible Sodomy:
 - Oral or anal sexual intercourse with another person,
 - forcibly,
 - and/or against that person's will (non-consensually), or
 - 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.

- Sexual Assault with an Object:
 - The use of an object or instrument to penetrate,
 - however slightly,
 - the genital or anal opening of the body of another person,
 - forcibly,
 - and/or against that person's will (non-consensually),
 - 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.

- Dating Violence, defined as:
 - violence,
 - on the basis of sex,
 - committed by a person,
 - who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - 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—
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.

- *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)

¹ Per state law.

There were no allegations or evidence presented to indicate that the Complainant was sodomized or was penetrated with an object on September 5-6, 2020; therefore, the Sexual Assault with an Object and Forcible Sodomy sections of policy are not applicable. The Complainant stated they do not consider themselves in a social relationship of a romantic or intimate nature with the Respondent; therefore, the Dating Violence section of policy is not applicable. Furthermore, evidence was not presented to support the allegation that the Respondent caused the Complainant's incapacity.

Although Witness Three did observe the Complainant in the Respondent's bed, this incidental observation from outside the Respondent's bedroom was very minimal, the witness saw the Complainant while covered by the sheets and other bedding, and the Respondent did not intentionally allow the witness to observe Complainant. The preponderance of the evidence did not support the Board making a finding regarding sexual voyeurism.

As a result of the Board's findings, and in consideration of the Respondent's prior student conduct history (if any), the following sanction(s) have been assigned:

Suspension – You are suspended from The University of the Northwest through December 31, 2021. During the suspension period, you may not attend classes (either in person or online) or participate in student group or student organization activities or otherwise represent the University, whether activities occur on or off campus. You will be withdrawn from any classes in which you are currently enrolled and are not eligible for a refund. A registration and records hold will be placed on your student account until the conclusion of the suspension period. As an on-campus resident, your contract with Housing & Residence Life will also be terminated and you will be responsible for paying any remaining fees for the duration of the original contract period. You must successfully complete all assigned educational sanctions prior to the conclusion of the suspension period. The suspension will remain in effect until they are completed. Any further violations of University policy while on suspension could result in more serious sanctions being imposed.

Undergraduate students who are not enrolled for three or more consecutive terms (including summer) are required to apply for readmission. Information regarding the readmission process can be found at www.unorthwest.edu/apply/readmission.

No Contact Directive - You are to have no contact with the Complainant until further notice. This includes contact via any means (telephone, written correspondence, personal visits, e-mail, social networking sites, text messaging, etc.) as well as contact initiated by any third parties on your behalf or at your request. This restriction applies both on and off-campus as well as any contact with this individual's property.

Academic Adjustment(s) – Should you re-enroll following the suspension period, you are required to meet with the Title IX Coordinator prior to course registration each term to ensure that there are no conflicts with the Complainant's academic schedule.

Educational Sanctions – Based upon your statements made at the hearing, the Board believes that you would benefit from additional educational opportunities regarding consent and sexual activities. We therefore assign you to engage in the Affirmative Consent Educational Module prior to the conclusion of your suspension period. The Title IX Coordinator, or his designee, will be in touch with you to provide information about this component of your sanction.

The rationale provided for the assigned sanction(s) is as follows:

The Respondent denied responsibility for the violations and has not demonstrated contrition for the behavior. Further, The Respondent used force or physical violence in the perpetration of the sexual assault as evidenced by the marks and bruising that developed on the Complainant's hip, neck, shoulders, and upper arms. The Board is also concerned that the Respondent invited the Complainant over to his residence with the intention of having sexual intercourse, which was not clearly understood or agreed to by the Complainant.

The Respondent has one prior student conduct violation for underage alcohol consumption during his first year of enrollment. The Board is not including the cumulative nature of the violations due to the span of time between violations and unrelated nature of the allegations.

The Board has determined that a suspension of one year is appropriate due to the severity of the behavior. The Respondent agreed to, and the Board confirms that the No Contact Directive shall remain in place. In light of the Complainant and the Respondent being in the same academic major, there may need to be academic scheduling adjustments made should the Respondent choose to re-enroll when eligible and if the Complainant were to remain enrolled at the University. It will be the responsibility of the Respondent to modify their academic schedule in consultation with the Title IX Coordinator in order to ensure there are no conflicts or overlaps with the Complainant's academic schedule.

Education sanctions were determined to be appropriate in this situation. The Board has determined that education sanctions, specifically the Affirmative Consent Educational Module available from the Title IX Coordinator, are appropriate due to statements made during the hearing in which the Respondent did not indicate sufficient understanding of the definition of consent under the University's Grievance Policy. Even after completing this process, the Respondent did not indicate a sufficient understanding of his responsibility to gain informed and knowing consent from sexual partners; therefore, completion of additional training is necessary before he is eligible to seek readmission to the University.

Further remedies to restore and preserve the Complainant's access to the University of the Northwest's academic programs will be provided in consultation with the Complainant and the Title IX Coordinator.

A record of this matter will be maintained as part of the Respondent's student conduct record pursuant to University policy and will be considered as prior conduct history if the Respondent is found responsible for any future policy violations.

Failure to successfully complete the sanction(s) by the assigned deadline(s) will result in your student account being placed on hold. A hold on your account may prevent you from seeking readmission, enrolling, dropping a class, adding a class, processing of formal transcript requests, etc. Once the hold is in place, it will not be removed until all sanctions are satisfactorily completed.

Both parties are afforded the opportunity to appeal this decision one time within the University's process detailed in the Grievance Policy. If you wish to appeal this decision, you must submit the appeal request via the online Appeal Request Form no later than five (5) business days following the date of this letter. You will be notified in writing if an appeal request is received regarding this matter. If no appeal requests are received by the conclusion of the five (5) business day period, this decision will constitute final University action with respect to this matter. Please refer to the *Equal Opportunity, Harassment, and Nondiscrimination Grievance Policy* for additional information regarding the appeal process.

If you have any questions regarding the grievance process and procedures related to the *Equal Opportunity, Harassment, and Nondiscrimination Grievance Policy*, or the contents of this letter, you may contact James Okun, Director of Equal Opportunity/Title IX Coordinator at (385) 246-2315.

Sincerely,

Samantha Borkowski
Chair
University of the Northwest Grievance Policy Board