



CASE STUDY PACKET

This training manual is intended to provide assistance for achieving best practices with respect to campus sexual misconduct, but is not given and should not be taken as legal advice.

Before acting on any of the ideas, opinions or suggestions in this publication, participants should check first with a licensed attorney in their own jurisdiction.

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1. IVAN AND JUANITA: ALLEGATION OF SEXUAL HARASSMENT

Reporting Party: Juanita Morales — Student
Responding Party: Ivan Petrovich — Student
Investigator: Michelle Goldberg
Employee: John Wang — Assistant director of information technology
Witness: Allen Davis — Student; president of Ivan's fraternity

Report by: Investigator Michelle Goldberg

Reported by: Juanita Morales

Allegations: Harassment, sexual harassment, policy on computer network acceptable use, and violation of laws (copyright Infringement).

I, Michelle Goldberg, met with a female student, Juanita Morales, who was extremely upset. Apparently, Juanita received a picture, via email, that had her face attached to a body with exaggerated breasts. She received the picture while studying at her sorority house. Many sorority members also saw the picture. Juanita was very worried that the picture had been distributed campuswide. Juanita stated that she thought that another student, Ivan Petrovich, was responsible.

I contacted John Wang, the assistant director of information technology, to investigate how the picture originated. We supplied Mr. Wang with the IP address from the originating email. Mr. Wang determined that the picture was sent from the community recreation room of the Lambda Lambda Lambda fraternity house, from on a desktop permanently installed there. However, he could not positively identify who actually sent the picture. The email account was assigned generically by the university (TriLambda@university.edu), as with all Greek Letter organizations, to be used for official organization business, and could be accessed by the fraternity's executives, who have shared the password broadly within the fraternity. The email was sent at 10:24 a.m. on October 11, when Petrovich was in class, to the sorority's generic email address. Once received, it was forwarded by sorority members within the sorority, and then externally, to hundreds, if not thousands, of recipients.

Petrovich learned the file had been shared only when he received it via email later on the 11th, and believes that it was stolen from the laptop in his room, where he stored it after copying it off a class shared drive, where he was working on it for an assignment. Petrovich noted that when he attempted to submit the picture for the class assignment, his professor refused to accept it. Ivan then transferred the image to a flash drive so that he could finish it at home on his own laptop. Petrovich noted that he usually signs out of his laptop when he is not using it, but does leave it unguarded while signed in occasionally to go down the hall to use the bathroom or to get some food.

Subsequently, statements were collected from Juanita Morales, Ivan Petrovich, Allen Davis (the Lambda Lambda Lambda fraternity president), and John Wang, the assistant director of information technology.

Reporting Party's Statement: Juanita Morales

On the morning of October 11, I was sitting in the common room of the sorority house studying for a quiz with my Big Sis Alice. Another sister came into the room, sat down on the couch, and began checking her email on her laptop. All of a sudden, she started to yell for all of us to come over to her computer and look at what was sent to her from the fraternity next door, Lambda, Lambda, Lambda. The email said, "Greetings new freshman, meet the girl next door." Everyone in the room walked over to the computer as she opened the picture. When I looked at the screen, I was horrified! It was a picture of me and I was totally naked, except it really wasn't me. I mean, it looked like me; it was my face pasted on this body that had these really huge breasts. It was amazing how everyone in the room knew it wasn't me, but they were all laughing at the picture. I was so embarrassed that I ran out of the room in tears. All I could think about was that everyone on campus was going to see this picture and think it was really me, and that I posed for a picture naked. I called this boy named Ivan, because I just knew that the email came from him. At first, he said that it was only a joke, and that I couldn't take a joke, and then he said that he didn't send it.

The next day, as I walked out the front door on my way to a class, several of the brothers from Tri Lambda were standing outside their house and started pointing at me and laughing. I just started crying and ran back to my room. As a result of this incident and quite a number of others, I stopped going to classes and withdrew from one with a lot of TriLams in it. My grades suffered and I stopped going out, because everywhere I went, people would ridicule me. As a result, I contacted the university to file this complaint. I am so upset about this whole thing.

Earlier this semester, Ivan asked me out several times, but I didn't want to go out with him. I know that I wasn't very nice, calling him a total loser in front of his friends, but he was really annoying and he wouldn't stop bothering me. I never really considered him to be my friend, but I can't imagine why he would hurt me or embarrass me like that when he doesn't even know me that well.

Signed: Juanita Morales

Responding Party's Statement: Ivan Petrovich

Juanita is totally blowing this out of proportion! I have never harassed her. Earlier this year, I asked her out a few times and she told me no. Actually, she called me a loser, but hey, I was cool with that. I told her that she didn't know what she was missing, but as far as I know, that is not harassment. I moved on and left her alone.

I still can't believe that she went to university with this. When she was at parties at our house and when she was drinking, she always used to tell me and everyone in the room that she wanted to get a boob job. I just helped her out a little bit. I had this project to do for my media design class, where you had to morph two objects together that did not belong together. I figured that this was the perfect opportunity to give her the boob job she wanted. Besides, she has flashed her boobs in public to many of the brothers when she was drinking. It was only meant to be a joke. I never put her name on it, so what's the big deal? This is a work of art that I created for my class, not a porn picture or anything.

I only showed my artwork, which by the way is protected by the First Amendment, to a few of my brothers. I know my rights very well, since I am a criminal justice major. In fact, the First Amendment states that *“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”*

I never sent that picture out to anyone, and I have no idea who did. It wasn't meant to hurt anyone, and besides, it's my property and my artwork.

Signed: Ivan Petrovich

Statement of: John Wang , assistant director of information technology

At the request of the Title IX coordinator, I initiated an investigation to determine, if possible, who sent a picture via computer of Juanita Morales, a student at the university, to several members of the Delta Pi Epsilon Sorority. I started the investigation by reviewing the computer use records of Ivan Petrovich. I was able to confirm that someone using the computer port in the common room of the Lambda Lambda Lambda house (a building owned by the university that has our computer network in each room) sent the picture to the Delta Pi common account. I then contacted the president of the fraternity and told him that I needed to inspect the computer in the common room (the residents of the house typically use the computer for printing to the printer in the common room). I found the picture in question had been sent at 10:24 a.m. on October 11 using the TriLam common account, with no evidence of which brother had logged in. The picture was inserted into the email via a flash drive. The image was not stored on the computer's hard drive or transmitted to it, only from it to the sorority.

I then contacted Ivan to inform him that I needed to inspect his laptop relative to my investigation. Ivan allowed me to inspect his laptop and I was able to determine that the picture was saved to his hard drive, but was not sent out via email to anyone. Ivan told me that he created the picture as a joke and part of his media design project, and that he didn't understand what all the fuss was about. He told me that he did not send the picture out and did not allow it to be removed from his laptop. If he does not have his laptop with him, Ivan indicated that it is typically locked in his bedroom, and that he signs out. No one else knows his password.

Statement of: Allen Davis, president, Lambda Lambda Lambda Fraternity

Earlier this semester, a member of our fraternity, Ivan Petrovich, tried to date Juanita Morales, a member of our sister sorority. After she turned him down several times, he stopped asking. Ivan knew Juanita because she has attended most of the parties we've hosted this year. Ivan told me he "liked her style" because she had flashed her breasts a couple of times. What I mean is that she lifted her shirt, showing her breasts like girls do at Mardi Gras. She was showing everyone. Ivan also told me that she had talked to him about wanting to get breast enlargements. So, after she turned him down, and since he had this project due, he thought it would be funny to generate a computer picture with her head on a body with very large breasts. Ivan is pretty good on computers, so it didn't take him long. He got a picture of her face from Facebook and found a picture to use for her body online.

Once the picture was done, a few of the guys in the house looked at it and thought it was pretty funny. Everyone who looked at it knew it was a joke because everyone knows Juanita doesn't look anything like the picture. Actually, the picture is more like an exaggerated caricature. While we were looking at the picture, someone — not Ivan but I can't remember who — suggested that he send it to the girls in Juanita's sorority. Since we know all the girls there, it seemed like a funny thing to do, especially since they all know Juanita looks nothing like the picture. But we didn't send it out, we just laughed about it. The day after the picture was sent, I got a call from Juanita. She was really angry. She said that she was sure Ivan had done it, and that she was going to get Ivan for doing this. Then Ivan told me he had been charged with harassing Juanita and that I needed to come here and tell people that this was all a joke and that Juanita has blown this all out of proportion. I don't think it's right that she can charge Ivan for what is clearly a mistake and an art project, especially when she has flashed her breasts at our parties and talked about wanting larger breasts.

1. IVAN AND JUANITA: DISCUSSION GUIDE

Issues:

- A. Is this sexual harassment? YES.
- B. Is Ivan responsible for creating a hostile educational environment for Juanita? YES.

Policy Definitions:

Sexual Harassment:

- Unwelcome,
- sexual, sex-based, and/or gender-based verbal, written, online, and/or physical conduct.¹

Anyone experiencing sexual harassment in any university program is encouraged to report it immediately to the Title IX coordinator or a deputy. Remedies, education, and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment, and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
 - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the university's educational [and/or employment], social, and/or residential program.

Issue A: Is this sexual harassment?

Based on the information Investigator Goldberg gathered, we know that a photo of Juanita's face was pasted onto an image of a body with exaggerated breasts, that the combined image was created on Ivan's computer, was shared with fraternity members in person, somehow got onto the desktop computer in the Lambda, Lambda, Lambda common room, and was sent using the computer port in the common room to each female in Juanita's sorority. The information suggests that Juanita did not give her permission for this, and the fact that she may have flashed her breasts previously or talked about her desire for a breast enhancement is irrelevant. This conduct is both *unwelcome and gender-based*.

Conclusion: Juanita has experienced sexual harassment.

Issue B: Did the sexual harassment create a hostile environment?

Juanita has described that she stopped studying for a quiz when she initially received the image by email and that she missed class when the fraternity brothers were laughing at her. Her grades have slipped, she has withdrawn from a class, faces constant ridicule and social ostracism. Thus, her ability to participate in or

¹ Purpose or intent is not an element of sexual harassment.

benefit from the university's educational program has been impacted by conduct the effect of which is sufficiently *severe and pervasive to create a hostile environment*. Based on the information the investigator has compiled at this point, Ivan has admitted to creating the picture and showing it to a few fraternity brothers, but denies sending it out to anyone or allowing it to be removed from his computer. The assistant director of IT found the image on the desktop computer in the Lambda, Lambda, Lambda common room and determined that the image was sent out from the computer port in the common room. The assistant director of IT could not determine if the image had been sent from Ivan's computer to anyone via email. You know that someone in the fraternity, unidentified at this time, suggested that Ivan send the photo out to the sorority. You also know that Juanita declined when Ivan asked her out previously, and called him a loser. Moreover, Juanita states that when she called Ivan about the photo, he said it was only a joke and then said he didn't send it. Are you ready to make a finding?

Consider whether Ivan has violated your policy simply by creating the image and showing it to his fraternity brothers, regardless of whether he sent it out. Doubtful.

Based on the information available from Investigator Goldberg's report, would you find Ivan responsible or not responsible for violating the policy on sexual harassment?

Conclusion: Even without determining whether Ivan sent the email out, Ivan's conduct violated the policy by creating a hostile environment. If not for his action, no harm would have occurred.

2. BILL AND SARAH: ALLEGATION OF SEXUAL MISCONDUCT

Complainant:	Sarah Stone — First-year student
Respondent:	Bill Baker — First-year student
Witness:	Andy Stewart — First-year student
Witness:	Ted Jones — First-year student; Bill's roommate
Witness:	Amy Knight — First-year student; Ted's girlfriend
Contacting Officer:	Michael Henry

Responding Party's Statement: Bill Baker

It was the first week of school and the college had a bunch of activities set up for us freshmen. Thursday night, there was a concert on campus, so me and my roommate Ted, the guy down the hall, Andy, and some other kids decided to meet at Andy's room around 8 p.m., have a few beers, and then head to the concert. I had a beer or two, and then these girls showed up. I guess it was around 9 p.m. or so, because we left right after they got there.

The nine of us walked to the concert, but when we got there it was dead, so we decided to go back to Andy's room and hang out. I had been talking with Sarah, who I had just met that night, on the way there; we were getting along pretty good. On the way back, we were all kind of walking with different people, but the same nine of us ended up back in Andy's room.

Some guys brought beer to the room, and I had one. Some people left the room, some stayed, and Sarah and I started flirting pretty hard with each other. At one point, we were leaning on the bed, which was up on blocks, and I knocked it over. I thought it would be funny, so I blamed Sarah for it and she was embarrassed. After a while, most people left, and it was just me, Ted, Ted's girlfriend (Amy), Sarah, and Andy. Ted and I shared a blunt, but no one else wanted any. While we were smoking, Sarah and I would kiss occasionally. Ted and Amy left to go to her room; and me, Andy, and Sarah were watching TV when Sarah and I were starting to make out on Andy's roommate's bed. Andy said he was tired, so Sarah and I went down the hall to my room. I guess it was around 12:30 a.m. or 1:00 a.m.

When we got to my room, we starting kissing and undressing. I took her shirt off and mine, and then she took off her shorts and I took off mine. I put my hand down her underwear and asked her if it felt good, and she said, "yes." We kept fooling around pretty hard, and then we started to have sex. I was on top of her at first, and she was grabbing onto the sheets and bedrail, so I could tell she was still enjoying it. At one point, she was on top of me, but then I got back on top of her. After we finished, she fell asleep pretty fast. I wasn't tired, so I climbed up to my roommate's bunk and watched TV on my laptop. Around 3 a.m., she woke up and asked me if I was going to climb down and sleep with her. I did. Shortly after that, I think she got up and went to the bathroom.

My alarm went off at 6 a.m. for practice, so I got up and got dressed; she got up too, and put her clothes on and left. Neither one of us really said anything. Later that day, the police showed up and took me to the station to question me.

Reporting Party's Statement: Sarah Stone

On Thursday, my girlfriends and I met for dinner at the cafeteria, and then went back to my room for some drinks. I know we met for dinner at 6 p.m., because that is when I take my medicine, so we couldn't have started drinking before 7 p.m. I got a text from this guy I met named Andy, asking if we wanted to go to his room and then to the concert on campus. I texted him back telling him we would after we finished our drinks. I had three drinks in my room and then we left at around 9 p.m. to go to Andy's. When we got there, I met Bill, who seemed pretty nice, and we started talking. We all decided to go to the concert, but when we got there, there was hardly anyone there, so we decided to go back to Andy's.

As we were leaving the concert, I tripped on the stairs and almost fell. A security guy walked over to me and asked me if I was OK. I told him "yes," and then he asked if I had been drinking. I told him "yes," and he told me to go back to my room and to not have any more to drink.

We went back to Andy's and hung out. A bunch of people went in and out of the room, but I was hanging out with Bill. We were sitting on the floor holding hands and leaning on Andy's bed. I leaned back too far one time when Bill went to kiss me, and almost knocked the bed over. It was pretty embarrassing, and Bill made a joke about it. After a while, there were only a few of us left, and Bill and his friend Ted smoked a joint. I didn't want any. After that, it was just me, Bill, and Andy in the room watching TV. Bill and I were kissing on Andy's roommate's bed. Andy asked us to leave because he was tired, so we went to Bill's room.

When we got to Bill's room, we started kissing and making out. At one point, Bill put his hands down my pants, and asked me if it felt good. I really didn't know what to say, so I said, "yes." The next thing I knew, we were on the lower bunk, naked, and he was on top of me and inside of me. The next thing I remember after that was waking up. He was on the upper bunk on his computer. I asked him why he was up there, and he jumped down and laid down next to me. I think I got up one time to use the bathroom, but I am not sure. His alarm went off around 6 a.m., and he said he had to get up to go to practice. I grabbed my clothes and cell phone, and got out of there as fast as I could. I went downstairs, and found the closest emergency phone and called the police to tell them what had happened to me.

Statement of: Andy Stewart, first-year student

I had a few kids over to my room before the concert, and we were just hanging out drinking a few beers. My friends Bill and Ted came over, and then I texted this girl I had met, Sarah, to see if she wanted to come over. She said she would after she finished her drink and then she and her friends stopped by. I guess it was close to 9 p.m. or so.

She and Bill were talking, and then we all decided to go to the concert shortly after they arrived. It sucked, so we decided to go back to my room. Some guy brought some beer because we ran out; I don't know if Bill or Sarah had any. At some point, my bed got knocked over — I think Sarah did it.

After a while, most people left, and Ted broke out a blunt and he and Bill smoked it. Me, Ted's girlfriend, and Sarah didn't have any. Ted and his girl took off and left the three of us. Bill and Sarah were kissing and stuff, so I asked them to leave. I guess they went to his room. I went to bed after they left. It was around 12:30 a.m.

Statement of: Officer Michael Henry

I was walking patrol of the freshmen week concert on Thursday on the east end of the amphitheater behind the Union. At approximately 9:40 p.m., I saw a young woman stumbling on the stairs as she was leaving the concert. I approached her and her friends, and, since she had almost fallen, I asked her if she was OK. She said she was. Since she had stumbled on the stairs, and I could smell alcohol on her breath, I asked her if she had been drinking. She indicated that she had.

As she did not appear overly intoxicated, I asked where she was going. She said "back to her dorm," and I told her to go straight there and to not have any more to drink. Had I believed her to be too intoxicated, I would have detained her and/or had her transported. I performed no field sobriety tests.

2. BILL AND SARAH: DISCUSSION GUIDE

Issues:

- A. Is Bill responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof because Sarah was incapacitated when sexual activity occurred and he should have known this fact? NO.
- B. Is Bill responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard because Sarah didn't consent to sexual activity? NO.

Policy Definitions:

Non-Consensual Sexual Intercourse:

- Any sexual intercourse,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue, or finger; and/or
- oral copulation (mouth-to-genital contact),
- no matter how slight the penetration or contact.

Consent:

- Clear, and
- knowing, and
- voluntary (or affirmative, conscious, and voluntary),
- words or actions,
- that give permission for specific sexual activity.

Incapacitation: A state where someone cannot make rational, reasonable decisions because the person lacks the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why, or how” of the sexual interaction).

Issue A: Is Bill responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard because Sarah was incapacitated when the sexual activity occurred and he should have known this fact?

The nature of the allegation suggests that you will apply a three-part analytic: force, incapacitation, and consent. Because there is no information to indicate force was used to obtain sexual access, you will move to the issue of incapacitation. You will ask whether Sarah was incapacitated, and, if so, whether Bill knew, or should have known that she was incapacitated.

Evidence of incapacity comes from context clues. The fact that Sarah was drinking and does not seem to remember much of the sexual interaction raises the possibility that she may have been incapacitated. She described that between 7:00 p.m. and 9:00 p.m., she had three drinks, although you do not know what the drinks consisted of, what their size was, how quickly she drank them, or a number of other factors that would be important in determining whether she was incapacitated. Sometime between 9:40 p.m. and 12:30 a.m., she was exposed to secondary marijuana smoke. Based on the accounts of Andy and Bill, Sarah and Bill got to Bill's room around 12:30 a.m. or 1:00 a.m. Sarah also had taken her medication at 6:00 p.m. Consider whether Sarah could have been incapacitated by the time she and Bill went back to his room. It is possible that the combination of alcohol, medication, and secondary marijuana smoke caused her to become incapacitated by the time the sexual contact occurred?

If you determine that Sarah was incapacitated, the next question is whether Bill knew or should have known that. You have several factors to consider. There is no information suggesting that Bill knew how much alcohol Sarah consumed, or about Sarah's medication and how it may have interacted with other substances to affect her. Information from Officer Henry suggests that around 9:40 p.m., Sarah stumbled but did not appear overly intoxicated. There is some implication that Sarah knocked or nearly knocked Andy's bed over, which could have some bearing on how she was behaving.

Conclusion: Based on the preponderance of evidence standard, you would find that Bill did not know of Sarah's incapacitation, and that a reasonable person would not have known.

Issue B: Is Bill responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard because Sarah didn't consent to sexual activity?

When assessing whether consent existed, you will ask what clear words or actions by Sarah gave Bill permission for the specific sexual activity that took place. Here, both parties indicate that when Bill put his hand down Sarah's pants and asked if it felt good, she responded "yes."

Although Sarah told the investigator that she did this because she didn't know what to say, her positive affirmation means there is insufficient evidence to determine this contact was without consent. Because consent must be assessed at every stage of sexual interaction, you will separately consider whether consent existed for sexual intercourse. Sarah remembers very little, and Bill's account of the intercourse is fairly vague. Investigators likely will want to drill down on the details of Bill's account.

Based only on the information you have at this time, would you determine that there were clear, knowing, voluntary, active words or actions indicating permission to engage in mutually agreed upon sexual activity? Bill claims he could tell that Sarah was "enjoying it" because she was grabbing onto the sheets and bedrail, and was on top of him at one point. Consider whether this indicates clear and active consent for sexual activity. Does Bill's description paint a clear picture of Sarah's response to intercourse?

Conclusion: Based only on the information available, you would likely find Bill not responsible for violating the policy on non-consensual sexual intercourse because of actions sufficient to indicate

permission to engage in mutually agreed upon sexual activity. Additional investigation is definitely needed, as this is such a borderline issue.

3. DENCIE AND WILL: ALLEGATION OF SEXUAL MISCONDUCT

Responding Party:	Will Washington — Junior and a resident advisor at Tessera University
Reporting Party:	Dencie Smith — Sophomore transfer student at Tessera University
Witness:	Kim — Student at Tessera; Dencie's roommate; is dating Alex
Witness:	Alex — Student at Tessera; Will's neighbor; is dating Kim

Reporting Party's Statement: Dencie Smith

I met Will Washington in October at the campus dining hall and on November 15, he raped me in his room. I knew Will was an RA, and he seemed nice enough, so I gave him my number. He started coming over to my room, just kind of hanging out with me and my roommate Kim and some of his friends. I liked Will as a friend, but I knew I didn't want a relationship with him. I kissed him a few times and we made out a little, but I kept telling him that was as far as it was going to go. I usually made sure there were a lot of people around, like my roommate Kim and some of his teammates. I was a little afraid of him because he is such a big guy, and I heard he has a pretty bad temper.

The last time we were together before the rape, we were in my room watching movies. It was getting late and everyone had left except Will and Kim. Will was getting pissed that Kim was still there, so I asked her if she would step out for a bit, but not to go too far or for too long. So after Kim left, Will turns out the lights and starts taking his clothes off. I kept telling him not to, but he wasn't listening to me. He said he wasn't going to bother me, but since it was late, he was staying over and he wanted to get comfortable. I had been sitting up in my bed when he got onto the bed and wanted me to lay down with him. I said "no," but he began to raise his voice, so I did. I felt him reach over and try to touch me, but I kept moving away. I kept telling him not to, but he kept trying. He told me he didn't want to have sex — that he just wanted to rub against me. I was scared to death, so I just lay there. He got on top of me, pinned me down, and started rubbing against me. Just then, Kim came back in the room. He got off me, but stayed in bed and went to sleep. The next day, he was gone when I woke up.

A couple days later, he texted to invite me to his room. I wanted to see his dorm since I wanted to live there next year. I told him nothing was going to happen between us, and he swore that he wouldn't touch me if I didn't want him to. I walked to his place. Because he's an RA, he doesn't have a roommate. He offered me a drink and gave me a pair of his boxers to change into... "to get more comfy." His voice was raised when he told me he wanted me to change, so I did. We started to watch the movie and he was good for about an hour, but then he started to bite my neck. I told him to stop, that nothing was going to happen; he said "OK," but kept trying. Then he penetrated me with his finger. Even though I tried, I couldn't stop him. Eventually, he wanted to have intercourse. I said "no" many times, but he kept going. I was hitting him and saying "no," but he kept on 'til he was done. Then he rolled over and went to sleep. I cried a little and went to sleep too 'cause it was too late to catch the bus.

When his alarm went off at 6:30 a.m., I woke up too. Will said he had to go meet with a study group, so I had to leave. It was cold outside, so I asked if I could stay there 'til 8:00 a.m., but he said "no."

He said he didn't know me well enough to leave me in his room with his stuff. That's also when he told me that we could never do this again because he had a serious girlfriend at home. I left when he did and walked back to my room without a coat. I went back to my room, cried a little, and took a shower. I felt so ashamed about what happened and I needed to wash this whole thing away. I called my sister the next day and she told me to call the police. I couldn't do it then. I knew Will was an RA and was really well liked; plus, Tessera is a small school where rumors spread really quickly and everyone seems to know everyone. I was also scared about what he might do to me or my friends if I reported this.

I just wanted to forget the whole thing. Eventually I connected with the Counseling Center because everything went pretty bad for me for the rest of the term. It was only after I had been working with a counselor for a while that I got my confidence back and reported this. That's why I am here today.

Responding Party's Statement: Will Washington

I really don't know what this case is all about. I got called into the dean's office just as school started. The dean asked me if I knew Dencie Smith, and at first I said I didn't. Her name didn't mean anything to me because I date a lot of women and it had been a long time since I was with her. I didn't realize who she was until the dean showed me her picture. Then the dean told me that she said I raped her last semester. That @#\$%^ is crazy, because nothing happened between us that she didn't want to happen. I'm telling you the truth! We had sex only one time, but it didn't happen the way she said.

I met her at the campus dining hall and we talked and she gave me her number. The first time I went to her room, she pulled up this website of pictures of her posing. I think she was like a model or something. She was wearing lingerie in most of them, and in some of them, she was only half-dressed. I asked her for one of the pictures, and she emailed it to me. We made out and she was into it as much as I was, but we didn't have sex that night. The next time I came over to Dencie's room to watch movies, I stayed overnight because she asked me to. Her roommate was in the room working on her laptop, and Dencie asked her to leave, I guess so we could be alone. She was laying on her bed, so I took most of my clothes off, except for my boxers, and got into bed with her. We were fooling around, and I could tell she was into it. I started to rub up against her, and the only reason we didn't "do it" was because her damn roommate came back into the room. She wouldn't have sex with me with her roommate in the next bed, so I just rolled over and went to sleep.

On the night she says I raped her, she texted me and asked if she could come over to my room. It was late, but I said "OK." I figured maybe this was her way of picking up where we left off last time without her roommate being around. She got here and I offered her a pair of my boxers to get comfortable. She changed and got onto my bed to watch a movie. We were cuddling the whole time, so when the movie was over, we started kissing; one thing led to another, and we had sex that night. I didn't do anything to her she didn't want me to do.

I think she's just pissed with me because, the next morning, I told her we couldn't do that again, because I have a girlfriend at home I'm real serious with. Also, I asked her to leave the room when I did because I had an early morning study group and I didn't know her well enough to leave her in my room with all my stuff. I didn't have time to drive her back across campus, so she had to walk and it was pretty cold outside. I think I saw her maybe

one more time after that. I think she's just pissed and is trying to get back at me. I have no idea why she waited so long to do this; but I'm telling you, she's making this stuff up.

Additional Considerations:

- Will contends that Dencie didn't do well in school that term because she's not a great student. She had experienced academic difficulty before meeting him, and she trumped up this violation as a way to offer an excuse for her bad academic performance.
- Will's neighbor Alex will testify that he did not hear any noises coming from Will's room; also, that Will continued to hang out with Dencie for a while after the incident because she was helping him with a paper.
- Kim will testify that Dencie did ask her to leave their room, but that she didn't seem to be upset. Kim dates Will's neighbor, Alex, and Dencie thinks Kim is lying just to keep things cool between her and Alex.
- Dencie has brought this complaint against Will. She has asked that her counselor be present as a support person. She and Kim are no longer friends, so she does not want to have Kim contacted as a witness. Will has asked investigators to meet with Alex to testify regarding what he may have heard that night. Should any additional witnesses be contacted?
- What are the key issues surrounding the question of effective consent? Did Will's behavior violate the conduct code? Did Dencie's earlier behavior constitute consent for Will's subsequent behavior? More importantly, did Dencie's complaint meet the university's preponderance of evidence standard of proof?
- Is this a case of "he said/she said," or is there a more clear-cut set of issues here? Does Will's treatment of Dencie in his room on "the morning after" affect the outcome of your decision-making? Should Dencie be judged negatively for making poor choices, like going to Will's apartment?
- The campus newspaper reported a rumor that the responding party has been involved in three incidents of sexual assault. About that you know that one incident is the case at hand.
- You also know that:
 - An anonymous report was received while the respondent was a first-year student, alleging similar actions to the complaint at hand. No investigation was done, and no action was taken; and
 - The respondent was accused as a sophomore as well. The alleged victim has transferred to another school. At a campus hearing, the responding party was found not responsible on facts substantially similar to those of reporting party in the complaint at hand.

3. DENCIE AND WILL: DISCUSSION GUIDE

Issues:

- A. Is Will responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof because he used force to gain sexual access? YES.
- B. Is Will responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard because Dencie didn't consent to sexual activity? YES.

Policy Definitions:

Non-Consensual Sexual Intercourse:

- Any sexual intercourse,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue, or finger; and/or
- oral copulation (mouth-to-genital contact),
- no matter how slight the penetration or contact.

Consent:

- Clear, and
- knowing, and
- voluntary (or affirmative, conscious, and voluntary),
- words or actions,
- that give permission for specific sexual activity.

Issue A: Is Will responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof because he used force to gain sexual access?

The nature of the allegations suggests that you will apply the three-part analytic: force, incapacitation, and consent. The first question in the analytic is whether force was used to gain sexual access. Here, you are presented with two very different accounts of what occurred in Will's room and credibility will be a vital part of your analysis. Dencie's description indicates elements of physical force, as she described that she "tried" but "couldn't stop" Will from penetrating her with his fingers before sexual intercourse. Dencie's description also indicates elements of intimidation, as she described Will's raised voice and propensity for sexual aggression based on their previous interaction in her room. Will's description is vague but states, in general, that Dencie wanted the sexual contact. Other relevant information may include the fact that Alex didn't hear any noises coming from Will's room, which may go to how loudly Will spoke to Dencie, and the two previous allegations against Will involving actions similar to this allegation. If the two previous allegations good-faith allegations, those are a valid consideration in the immediate case. There is sufficient information to conclude

that Will used force to gain sexual access, assuming that you find Dencie's account credible. Hopefully, you were not influenced by the many red herrings in this scenario, chiefly the information about Dencie's modeling photos, the fact that Dencie went to Will's room after a previous bad encounter, or Will's inconsiderate treatment of Dencie in the morning.

Issue B: Is Will responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof because Dencie didn't consent to sexual activity?

Although Will gave Dencie a drink, there is no information to suggest that Dencie's incapacitation is at issue, therefore you will move to the third question in the analytic: What clear words or actions by Dencie gave Will permission for the specific sexual activity that took place? Again, credibility will be important in making your determination. If you find Dencie credible, then her description of trying to stop Will from penetrating her with his finger and saying "no" and hitting Will as he had intercourse with her would clearly lead to a violation, as her words and actions indicated that she did not want this sexual contact.

Conclusion: If you find Dencie and her account credible, you would find Will *responsible* for violating the policy on non-consensual sexual intercourse.

4. AMY AND TODD: ALLEGATION OF SEXUAL MISCONDUCT

Reporting Party: Amy Craft — First-year student at Tessera University
University Employee: Julia — Professor, Women and Gender Studies
Responding Party: Todd Martin — First-year student at Tessera University

On April 27, Amy Craft, a first-year student at Tessera, set up a time to meet with her Women and Gender Studies Professor, Julia, for later that afternoon. Upon arriving for the appointment, Julia can see that Amy is very upset and looks exhausted. Julia asks if everything is OK, and Amy asks if she can close the door. Julia gets up, closes the door, and sits back down. Amy blurts out, “I think I was raped last weekend in my dorm room by another student, a friend of a friend named Todd.” Stunned and very concerned, Julia asks what happened. What follows is Amy’s account as provided to the faculty member.

Reporting Party’s Statement: Amy Craft

On Friday, April, 23, I went to an on-campus party. I was doing a lot of drinking and dancing and getting to know people. I had at least four drinks in the first few hours I was there. Then, I met Todd. I remember that he came up to me on the dance floor, and started to dance with me. He was really good-looking, and so was the other guy he was with, Jeff, whom I had met at a different party the week before.

We danced and had a lot of fun, and I remember drinking some more and Todd getting me some Jell-O shots, which were really strong and nasty. I wasn’t feeling well and went into the bathroom, thinking I might throw up. The bathroom was really crowded, so I went outside for some fresh air instead. I sat on the stoop, feeling nauseated. I went over to the bushes and got sick. Todd came over and helped me out. I remember walking home with him and throwing up some more in my bathroom, but nothing else.

When I woke up the next day, his name and number were scrawled on a pad by my sofa, and there was a used condom in the toilet. I got scared, and called him to find out what had happened. I remembered most of what he said about the party, but when he told me that we came back to my room and had sex, I started to cry. I didn’t remember any of it, and was afraid I might be pregnant. Todd assured me that he wore a condom, and asked me out again. I hung up and cried. I told everything to my roommate Sarah, who was sitting on the sofa when I called Todd. She suggested that I call the campus police, but I felt more comfortable talking to you. Please don’t tell anyone...

Responding Party’s Statement: Todd Martin

On the night of Friday, April 23, I went to an on-campus party. There was a band and a lot of alcohol. I got to the party at about 11:00 p.m. and slammed about three beers in the first hour I was there. It was very crowded, and people were dancing. A lot of people already seemed to be drunk. I hung out around the dance floor with my friend Jeff Kwik for a while, until I noticed Amy Craft dancing. She was really cute, and I had noticed her on campus a few times. I went up to her and we started talking. She seemed a little tipsy and in a pretty loose mood.

We talked for a while, and I think I got her about two or three beers over the next hour. I didn't have anything more to drink because the three beers I slammed were doing the trick just fine.

Around 1:00 a.m., somebody started passing out Jell-O shots spiked with grain alcohol. I didn't want to mix beer and liquor, but Amy had a few shots. We danced a lot, and then I got her a few more Jell-O shots. She went off to the bathroom, and after that I couldn't find her, which really bummed me out. I waited around to see if she would show up again, but she didn't. I took off and started to walk back to my residence hall. As I left the party, I heard someone vomiting. I looked over and saw Amy in the bushes throwing up. I went over to help her, and she seemed to be in pretty bad shape. I offered to take her home, and she told me her dorm and leaned on my arm.

When we got to her dorm, I helped her inside, and was about to leave, but she asked me to come up to her room, just to make sure she got there. I took her upstairs, opened the door for her, and let her in. She asked me to get her a glass of water, and I did. I started to take off again, but she asked me not to go. When I turned around, she kissed me, hard. We kissed for a while, but she wasn't feeling well and went into the bathroom again. When she came out, she said she felt better, but tired. She lay down and we kissed some more. I started to massage her back, and she passed out. She came to about 20 minutes later, and started to kiss me and fondle me. She took off her shirt, and all of my clothes. I started to kiss her all over, and she said she wanted to lay down again. I asked her if she was OK, and she said she was. I asked her if she had a condom, and she said she had one in her dresser. I went to get it, and when I got back to the couch, she was out again.

She woke up after about 20 minutes, and I suggested that she just go to sleep. But, she said she felt much better, and started to give me oral sex. After a while, she put the condom on me and we had sex. It was great. She was really wild, and liked to be on top. Afterward, we talked until the early morning, and I gave her my number and left. The next day, she called me to ask me why my name was on the pad by her sofa. I told her about meeting her at the party, and about our evening together. She seemed to get upset, and said she remembered meeting me at the party, but nothing else. I asked if she ever wanted to get together again, and she hung up on me.

Additional Considerations:

- Todd knew that Amy was pretty drunk, although Todd was unsure of how much alcohol Amy had consumed.
- Todd remembered that when Amy went into the bathroom in her room, she came back smelling like she had just brushed her teeth.
- Todd believes that Amy was fully alert and conscious during the sex. He had been feeling badly, but Todd thought Amy threw up a lot of the alcohol. Amy kind of passed out/went to sleep twice when they were fooling around, but after the second time, Amy seemed to be feeling much better.
- Amy initiated all the sexual contact with Todd, put the condom on him with no difficulty, and was an active participant in the sex, both physically and verbally.
- Todd drinks frequently and copiously. He has a high tolerance for alcohol.
- It takes at least eight beers to get him really drunk.

- Todd had a full stomach when he got to the party.
- He did not drug Amy.
- Todd served Amy at least two beers and four Jell-O shots over the course of three hours. Amy believes she consumed four or five beers, and at least two Jell-O shots.
- Todd did not bring his own condom. He used Amy's, which was in her dresser. She told Todd it was there.
- In Todd's opinion, Amy was not incapacitated.
- Todd left Amy's room at 6:00 a.m.
- Physical evidence in the form of PERK results proved sex with Todd.
- There were no signs of any illegal drugs in Amy's system.
- Amy had a condom in her dresser and now it is gone. She does not recall telling Todd that it was there.
- Amy recalls throwing up in the bathroom, but does not recall brushing her teeth.
- Amy does not recall putting the condom on Todd, or engaging in any sexual activity with Todd, or talking with him afterward.
- Amy has been drunk before, but nothing like this has ever happened.
- Amy called the police station at 1:30 p.m. Her call was referred to Lt. Discov.
- Lt. Discov noted that Amy is experiencing bad dreams and eating disturbances that he believes are consistent with those of others who have experienced significant trauma.
- Lt. Discov refers to Amy's condition as "black time." He asserts that it is possible for students to consume enough alcohol that they black out mentally, but not physically. That would explain why Amy recalls nothing, but Todd says she was an active participant.
- Neither party has a criminal or disciplinary record.

4. AMY AND TODD: DISCUSSION GUIDE

Issue: Is Todd responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof because Amy was incapacitated when the sexual activity occurred and he should have known this fact? YES.

Policy Definitions:

Non-Consensual Sexual Intercourse:

- Any sexual intercourse,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue, or finger; and/or
- oral copulation (mouth-to-genital contact),
- no matter how slight the penetration or contact.

Consent:

- Clear, and
- knowing, and
- voluntary (or affirmative, conscious, and voluntary),
- words or actions,
- that give permission for specific sexual activity.

Incapacitation: A state where someone cannot make rational, reasonable decisions because the person lacks the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of the sexual interaction).

Issue: Is Todd responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof because Amy was incapacitated when the sexual activity occurred and he should have known this fact? YES.

The nature of the allegations suggests that you will apply the three-part analytic: force, incapacitation, and consent. Because there is no information to indicate that force was used to obtain sexual access, you will move to the issue of incapacitation. You will ask whether Amy was incapacitated, and, if so, whether Todd knew or should have known that she was incapacitated. Evidence of incapacity often comes from context clues. The creation of a timeline of events will be important for your analysis, especially given the intermittent nature of sexual contact. You know that Amy initiated all the sexual contact with Todd, was an active participant in sex both verbally and physically, told Todd where the condom was, and put it on him with no difficulty.

Although it certainly sounds like she was consenting through words or actions, remember that there is nothing an incapacitated person can do or say to consent to sex.

The facts indicate that Amy was *incapacitated*. She consumed a lot of alcohol, vomited repeatedly, passed out at one point, and has no recollection of any sexual activity occurring or any later conversation with Todd. She was unable to make considered decisions or to understand the who, what, when, where, why, or how of the sexual interaction.

Having determined that Amy was incapacitated by alcohol, the next question is whether Todd knew or should have known of her incapacitation. From Todd's statement and the Additional Considerations, you know that Todd did not believe Amy was incapacitated. You will consider, however, whether he *should have known*. Although Todd is unaware of exactly how much alcohol Amy had, he was aware that she was tipsy when they began dancing, and that she subsequently consumed at least two beers and four Jell-O shots over three hours. He is also aware that she had vomited and was in “bad shape” when they left the party. He knows that she went into the bathroom at her dorm after saying she wasn't feeling well, and when she came out she had brushed her teeth and said she felt better. He also indicated that she passed out shortly before their initial sexual contact. During this initial period of sexual activity, Amy was incapacitated and Todd should have known that based on context clues. Remember, it is irrelevant that Amy voluntarily consumed the alcohol and Jell-O shots.

What about the second period of sexual activity, 20 minutes later, when Amy said she felt better and performed oral sex on Todd before having sexual intercourse, including with her positioned on top? Knowing that Amy had passed out only 20 minutes earlier, in combination with all the additional information Todd had about her consumption and vomiting, Todd should have known that Amy was still incapacitated at that time. We wouldn't expect Todd to be an expert on how the body metabolizes alcohol, but common sense would lead a reasonable person to this conclusion.

Conclusion: Based on the preponderance of evidence standard, you would find that Todd should have known of Amy's incapacitation and would find Todd *responsible* for violating the policy on non-consensual sexual intercourse.

5. ANNE: ALLEGATION OF SEXUAL MISCONDUCT

Reporting Party: Anne Chen — Student at Citron College

Anne Chen, a student at Citron College, was an ardent basketball fan. Last term, she attended a basketball game with a group of friends. At the game, she met three young men who were fraternity brothers. Anne had friendly conversations with the men, who shared a container of rum and coke with her.

The young men invited Anne and her friends back to their fraternity house for a post-game party and to talk about the “big win,” but her friends declined. Anne decided to go with the young men. The party lasted for hours, and a considerable amount of alcohol was consumed by everyone, including Anne.

Anne eventually accompanied the three men to their upper floor room for further conversation, and to listen to music. She continued to drink alcohol there, and became so intoxicated that she occasionally “passed out” for several minutes at a time. Anne contends that she was raped by the three men while she was not fully conscious.

Anne left the fraternity house early in the morning to return to her dorm. She did not call the police or seek medical attention. Ten days later, she described the incident to a friend, who convinced her to file a report with the Dean of Student’s Office at the college.

During follow-up interviews, two of the three men denied having any sexual contact with Anne. The third admitted having sex with her, but stated that it was “definitely consensual,” and that Anne was fully conscious during that time.

All three men were charged with sexual assault. A lawyer representing all three men wrote to the dean, stating that the charges by the college must be dropped because there were pending criminal charges, and that would place the men in double jeopardy.

Anne does not want to testify at the conduct hearing if it means that she will have to confront the three men, but she is willing to submit a written statement.

5. ANNE: DISCUSSION GUIDE

Issue: Did the three men violate the policy on non-consensual sexual intercourse by having sex with Anne while she was not fully conscious, based on a preponderance of evidence standard of proof?

YOUR FINDING WILL BE BASED ON CREDIBILITY.

Conclusion: Anne states that she became so intoxicated that she occasionally passed out for several minutes at a time and was raped by the three men while she was not fully conscious. Two of the men denied having sexual contact with Anne, and one stated that he engaged in consensual sex with Anne. You have very limited information, but if you had to make a finding at this point, it would be based on how credible you find the parties and the information they provided.

Future Directions: Investigators will want to conduct full interviews with each of the parties and consider the role of each of the men as a witness in each others' cases. Investigators may wish to talk with the friends who were with Anne at the game, as well as with individuals who attended the party and who interacted with or saw Anne and the three males. Investigators also may wish to talk with the friend to whom Anne described the incident 10 days after it occurred.

6. COURTNEY AND SHAWN: ALLEGATION OF INTIMATE PARTNER VIOLENCE

Reporting Party:	Courtney — Rising senior on women's soccer team
Responding Party:	Shawn — Rising senior on men's baseball team
Witness:	Jenna — Courtney's roommate
First Responder:	Women's soccer coach
Investigator:	Deputy Title IX coordinator

For the last three years, Shawn, a rising senior outfielder on the men's baseball team, has been dating Courtney, also a rising senior and team captain on the women's soccer team. Their relationship is quite serious and the two have even discussed marriage, although Courtney is hesitant to commit until Shawn controls his drinking and his behavior when he is drunk. When sober, Shawn is engaging, light-hearted, and easy-going, but when he drinks heavily, he becomes aggressive, destructive, and prone to yelling at people and getting into fights. His teammates typically keep a close watch on Shawn if he goes out or is at a party, and occasionally it takes two or three of them to keep Shawn under control. They know that Shawn cannot afford any more problems because he was suspended the previous year for his third alcohol and disruptive behavior incident. During his suspension, Shawn received some counseling, and it seems to have helped him drink less and make more mature decisions; at least until Friday night.

Three days ago (Friday), Courtney and Shawn got into a very loud and public argument at breakfast in the athletes' dining hall. At the end of the argument, Courtney told Shawn that she was cancelling their plans for that night and that they both needed some time to calm down; Shawn agreed.

That night, Shawn and some of his teammates played X-box in Shawn's room and began drinking a few beers (Shawn is 22 years old). One of the teammates brought whiskey, and Shawn made himself a very strong whiskey and coke. His friends left for a party, and Shawn, who told his friends that he was just going to bed, continued drinking. As he became very drunk, he began to get worried, frustrated, and angry about the state of his relationship with Courtney. He felt he really needed to talk to her.

At about 1:00 a.m., Shawn made his way over to the off-campus apartment Courtney and her roommate were renting nearby, banged on the living room window, and yelled that he wanted to talk to Courtney. Courtney refused to let him in because he was both drunk and angry. Shawn threatened to break down the door if she did not let him in. Courtney told him to go home and go to bed, and that they could talk in the morning. Shawn yelled and cursed, then started to cry, saying that he couldn't live without Courtney and he just needed to talk. Courtney still refused to let him into the house, and Shawn became very angry, punching a window near the door and breaking it. Courtney told Shawn that he was out of control and she was going to call the police.

She pulled out her phone, but before she could dial, Shawn broke the rest of the window near the front door, reached in, unlocked the door, threw it open, and charged at Courtney, screaming at her to "put the f-ing phone

down!” Courtney screamed and ran to her bedroom with Shawn chasing her. Courtney tried to close the door, but Shawn wedged himself between the door and the jam, and forced the door back open, calling her a “crazy bitch.” Courtney backed away, and they continued to yell at each other. Shawn charged at Courtney, reaching for the phone, but Courtney kept her arm extended and away from him. The two wrestled as Shawn tried to reach the phone. When he couldn’t, Shawn reached for Courtney’s neck, and put his hand around the front of it, still trying to get to the phone. The two hit and toppled onto the bed, with Shawn on top, his hand still on her neck, while he reached for the phone with his other hand. Courtney could not breathe well and slapped/punched Shawn’s face and kicked him with her legs, which seemed to bring Shawn back to his senses. He quickly released Courtney, got off the bed, and said he was so sorry and that he did not know what came over him. He told her that a phone call to the police would end his baseball career and his time at the school. Courtney, sobbing, screamed at Shawn that he needed help and that he could not keep doing this. Shawn, also sobbing, apologized again and left.

Courtney’s roommate, Jenna, who had barricaded herself into her own bedroom when Shawn burst through the door (unfortunately her cell phone was in the kitchen), told Courtney to call the police. Courtney, however, called the person she trusted the most — her coach. Her coach rushed over and convinced Courtney that Shawn needed help. Courtney gave the coach permission to call the police.

The police arrived, took statements and photos of the damage to the house and the bruising and marks on Courtney’s body, then arrested Shawn. The next day, in a conversation with the school’s deputy Title IX coordinator/investigator, the soccer coach indicated, to the obvious surprise of the deputy coordinator, that this was the third time Shawn had done something like this; the previous two times, the coach said she simply “worked the situation out” with an assistant coach on the baseball team.

Questions to Consider:

1. How does this case involve Title IX?
2. What issues of jurisdiction arise?
3. Given the pending criminal prosecution, how would you address this situation?
4. From the perspective of an institutional response, what went wrong in this situation?
5. Who should be interviewed in the course of the institution’s investigation?
6. What responsibility (if any) does the institution have to investigate the first two incidents?
7. As a Title IX coordinator, how do you best address the way the soccer coach and the baseball coach handled the previous two incidents?
8. What interim remedies would you provide?
9. What long-term remedies appear to be appropriate in this situation?
10. What is the institution’s Title IX obligation pertaining to Courtney’s roommate?
11. Who else at the institution do you need to inform of the situation? Given the profile of the participants, who do you keep apprised of the progress of the investigation?

6. COURTNEY AND SHAWN: DISCUSSION GUIDE

Issue: Did Shawn violate the policy on intimate partner violence based on a preponderance of evidence standard of proof? YES.

Policy Definition:

Intimate Partner Violence:

- Violence between those in an intimate relationship toward each other.
 - Examples include:
 - Physical abuse by a spouse or partner such as hitting, slapping, pushing, or strangling.
 - Sexual violence by a spouse or partner.
 - Extreme verbal abuse by a spouse or partner.

Conclusion: In addition to the issues of unlawful entry and damage to property, you will consider whether Shawn engaged in intimate partner violence. Courtney and Shawn were in an intimate relationship, so if you find Courtney's account credible as corroborated by physical evidence and her roommate's account, you will find Shawn responsible for violating the provision on intimate partner violence because he damaged Courtney's property and charged at and choked her.

Future Directions: In addition to interviewing the parties, investigators will want to interview Jenna and request the police report and photos. Investigators will also want to interview the soccer coach, Courtney, and others about the previous incidents.

7. GWEN AND MARK: ALLEGATION OF STALKING

Reporting Party:	Gwen — Freshman student at Tessera University and Holly's roommate
Responding Party:	Mark — Student at Tessera University
Witness:	Holly — Freshman student at Tessera University and Gwen's roommate
Referring Party:	Resident Assistant

You are an Investigator at Tessera College. It's the second week of school and one of the resident assistants in Cedar Hall, an all-freshman residence hall, refers Gwen, a student, to meet with you. Gwen comes to your office and shares her story and recent experiences on your campus.

She is an in-state freshman who lives in Cedar Hall with her roommate, Holly. She loves Tessera College so far, but she has been having some strange things happen that she's worried about, and she doesn't know who to talk to. She told Campus Public Safety about her concerns, but they said they couldn't really do anything.

The first week of school, Gwen was studying in Fleming Library on campus. She went to check out a reading that was on reserve at the front desk of the library for one of her classes, Introduction to Economics. The next day, she got an email sent to her campus email address that said: "Hey Gwen, its Mark from the library. I took Econ when I was a freshman, so if you need any help just let me know."

Gwen was surprised to get this email, but she didn't want to be rude, so she wrote back, "Thanks, but I think I got it so far lol!" She didn't recognize the name on the email account, Mark Noy, but she assumed that it was the guy who worked at the library. Mark wrote back and said, "Cool. How do you like Tessera so far? One of my buddies is having a party after the game Saturday; you should come. It'll be a blast." They emailed back and forth a few times, and Mark sent her pictures of himself, but Gwen eventually stopped responding because she started to get a little creeped out.

One night, Gwen was at a party with a guy named Carter, whom she has been seeing for a few weeks. Gwen, remembering her evening studying in the library, noticed that Mark was at the party. Doing her best to avoid Mark, Gwen circled the party, saying "hello" to friends and catching up with acquaintances she had not seen in a while. As the evening progressed, a few people expressed concern about Mark. Friends told her that Mark went up to Carter and started asking questions about her. The next day, Gwen received a friend request from Mark on Facebook, but she hasn't responded. She doesn't want to be friends with him, but she doesn't want to seem like a jerk either.

Gwen, leaving Math with her roommate Holly, saw Mark standing outside the Math building by himself, staring at her. She sort of waved but kept walking. There have been some other weird things happening, and Gwen is starting to get a little nervous. She keeps finding notes on her car, which she parks on campus; they just have hearts and arrows on them. Someone wrote, "Gwen u r so hot" on the whiteboard outside her room, and drew the same hearts and arrows she had been seeing on her car. Last week, she got a text on her cell from a

blocked number that said, "Gwen I luv you." She freaked out and wrote back "Who is this?? Leave me the fuck alone." The person texted back, "Fuck you, you ugly bitch."

Gwen shares with you that she doesn't want to make a big deal about her situation. She simply wants it to stop. Although she can't prove it, she feels like it must be Mark. She has been avoiding Fleming Library and has been having friends walk her to and from her car at night. Other than Public Safety, her RA is the first person to hear of these concerns.

Questions to Consider:

1. Now that Gwen has shared her story, how do you proceed?
2. What is your top priority in this case?
3. When you consider that Gwen is scared for her safety on campus, what type of things should you do to assure her safety?
4. What should you do in regards to the previous incidences? Should you report them to anyone? Should you refer Gwen to any other departments on campus?
5. Knowing that follow-up with Mark will be necessary, what types of questions do you have for him?
6. Are there others in this case, besides Mark and Gwen, whom you feel you should speak to?

7. GWEN AND MARK: DISCUSSION GUIDE

Issue: Did Mark violate the policy on stalking based on a preponderance of evidence standard of proof? NO.

Policy Definition:

Stalking 1:

- A course of conduct,
- directed at a specific person,
- on the basis of actual or perceived membership in a protected class,
- that is unwelcome, AND
- would cause a reasonable person to feel fear.

Stalking 2:

- Repetitive and menacing
- pursuit, following, harassing, and/or interfering with the peace and/or safety of another.

Conclusion: The information you have at this point certainly indicates that Mark may be stalking Gwen, but further investigation is required to determine if it is Mark leaving the notes and texting her. If you had to make a finding at this point, you would find Mark not responsible for both forms of stalking.

Future Directions: In addition to interviewing Mark, investigators will want to look into the physical evidence and the text Gwen got from a blocked number to see if they lead back to Mark. Investigators may wish to interview Holly about seeing Mark outside of class and the note on their whiteboard as well. Investigators may also wish to see if there is any available video surveillance that could show who left the notes on Gwen's car or wrote on her whiteboard. If these things link back to Mark, he may be responsible for violating the stalking policy, as his conduct is unwelcome and could cause a reasonable person to feel fear. Regardless of the results of this analysis, investigators may wish to consider whether Mark contacting Gwen violated the terms of his employment.

8. CARLA AND DON: ALLEGATION OF SEXUAL MISCONDUCT

Reporting Party: Carla — Student

Responding Party: Don — Student

First-year students Don and Carla met in honors English. They studied together and became close friends. They had a great deal in common and spent hours talking about their families, music, movies, and sports. As the weeks rolled on, their friendship grew, along with their respect and affection for each other. Don finally asked Carla out on a date of pizza and movie. After the movie, they went to the local bar and had beers while they discussed the movie. Over the course of the next few hours, they consumed two pitchers of beer.

Carla was quite tipsy, and Don wanted to make sure she arrived at her apartment safely, so he accompanied her to her door. Carla asked Don if he would like to come in to see how she had decorated. Don eagerly agreed. They sat on the couch and talked about how much fun they had that evening, and how glad they both were to get to know each other better. Carla told Don how easy it was to feel comfortable with him. Don was delighted to hear this and put his arms around Carla and kissed her. She eagerly kissed him back. They continued to kiss and touch, and Don gently pushed Carla back on the couch. Carla said, "I think things are going too fast." Don replied, "We won't do anything you are not comfortable with."

The two continued kissing with increasing passion. Don, tentative at first, began to unbutton Carla's blouse. She brushed his hand aside but continued kissing him. A short time later, he reached under her blouse and fondled her breast. Carla did not stop him. Don told Carla, "I really want to make love to you." Carla did not respond. Don took this as consent and proceeded to remove Carla's panties (she was fully clothed otherwise). They had intercourse. Don cuddled Carla, who cuddled back but did not say a word. Since it was getting late and Carla was so quiet, Don gave her a kiss, told her he'd call her, and left. In the following days, Carla refused to take Don's calls and did not respond to his text messages.

Several weeks later, Carla attended a date rape seminar and felt that she had experienced the same type of behavior as described in the case study presented there. She went her advisor to ask what she should do. They called the campus police and subsequently met with a female officer. The officer reluctantly told Carla that since several weeks had passed, there would be no evidence that would support pressing criminal charges, but she encouraged Carla to file a complaint with the campus conduct officer. Carla met with the assistant dean and made a formal complaint.

Carla's Story:

Carla, who is from a small town, was excited to break out of the mold of her older sisters and go away to college. She is the first person in her family to attend college. Carla's mother warned her about the dangers that lurk for young women "out there." She repeatedly told her not to be "easy," and that a man would never respect her if she "gave in."

Carla really liked Don. They had so much fun together, and she felt that he was a very nice person who liked and respected her. Yet, if that was the case, why didn't he stop when she told him things were going too fast? He knew her family background and how she felt about casual sex. Yet, they still had sex. Was it her fault? Did she have too much to drink? Did she send him a wrong message? Should she have pushed him away so he wouldn't go further? If he really liked and respected her, why didn't he understand her silence and lack of response?

Her mother was right. All men were alike and after just one thing. She knew Don would never respect her now, and she didn't respect herself either. Maybe by holding him accountable for his pushing forward to have sex too soon and not respecting her wishes, he would realize that you can't treat women that way. If only she just didn't still like him so much. She has missed a week of English class because she just can't face him.

Don's Story:

Don was so happy to meet Carla in English class. He and his long-time high school girlfriend had broken up before he came to college, and he had been lonely since arriving there. Carla was a breath of fresh air. She was from a small town and had good values, and she was so much fun to be with.

He had been really looking forward to their date and was a little nervous beforehand, but the evening seemed to go so well. They seemed compatible, and their kissing was so passionate. When Carla told him she thought they were going too fast, he even assured her that they wouldn't do anything she didn't want to do.

Don and his high school girlfriend had sex for the past year, and before her, there had only been one other girl, but he knew how to please a girl, and he wanted to please Carla, too. Although she brushed him aside, she didn't push his hand away when he fondled her breasts under her blouse, so he thought for sure that it was "cool" to go forward to the next step. He took her lack of response as her not wanting to seem too eager. She even cuddled with him after they had intercourse.

So, what went wrong? Why wouldn't she take his phone calls or respond to any of his text messages? Why hasn't she been coming to class? And NOW THIS?! What is going on with this letter about an institutional investigation for alleged non-consensual sexual intercourse?

8. CARLA AND DON: DISCUSSION GUIDE

Issue: Is Don responsible for violating the policy on non-consensual sexual intercourse based on a preponderance of evidence standard of proof? YES.

Policy Definition:

Consent:

- Clear, and
- knowing, and
- voluntary (or affirmative, conscious, and voluntary),
- words or actions,
- that give permission for specific sexual activity.

Conclusion: The nature of the allegations suggests that you will apply the three-part analytic: force, incapacitation, and consent. Because there is no information to indicate that force was used to obtain sexual access, you will move to the issue of incapacitation. Although the information suggests that Carla was “quite tipsy” after sharing two pitchers of beer with Don over a few hours time, there is no information to suggest that she lacked an ability to make rational, reasonable decisions, and this does not present itself as an incapacitation case. Thus, you will proceed to analyzing whether consent existed for the sexual activity, and will ask what clear words or actions by Carla gave Don permission for the specific sexual activity that took place. You know that when Don initially began to unbutton Carla’s blouse, Carla brushed his hand aside but continued kissing him. When Don reached under her blouse and began fondling her breast, she did not stop him. When Don told Carla that he wanted to make love, she did not respond, and he proceeded. The critical component of the consent definition in this scenario is *active*. The scenario suggests that Carla was silent and passive, and silence is not consent. There is no information to suggest that she consented through words or actions, and based on the available information, you would find Don responsible.

Future Directions: Investigators will want to conduct full interviews with each of the parties to drill down on the details of the sexual interaction. You know that Carla was silent, but how did she respond physically (i.e., Did she pull Don into her, push him away, or lay still?). Investigators will want to review these details, as consent can be given through clear actions indicating permission to engage in mutually agreed upon sexual activity.

9. SARAH, JANELLE, AND NEV: EMPLOYEE-REPORTED INTIMATE PARTNER VIOLENCE

Witness:	Sarah — Administrative assistant at Braeburn Community College and Janelle's co-worker
Alleged Victim:	Janelle — Employee of Braeburn Community College
Alleged Harasser:	Robert — Janelle's Partner
Reported To:	Nev — Sarah's and Janelle's Supervisor

Sarah, an administrative assistant at Braeburn Community College, approaches her supervisor, Nev, asking if she can speak with her confidentially about one of her co-workers. Nev agrees, and they meet one-on-one in Nev's office. Sarah starts by saying that she does not want to get anyone in trouble and that she is only trying to help. She reveals that the matter is very sensitive and involves one of her co-workers, Janelle. Nev immediately asks what is going on.

Sarah says she thinks that Janelle is being physically abused by her partner, Robert. Sarah tells Nev that Janelle seems noticeably withdrawn. Recently, Janelle came to work late, had red puffy eyes, and looked as though she had been crying. When Sarah and others asked Janelle if she was OK, she simply nodded and said she was fine, and that she was just dealing with some personal issues. Sarah shares that she saw Janelle walking with a limp last week and, when asked about it, Janelle told people that she twisted her knee after slipping on some ice in her driveway. Later that same day, Sarah overheard Janelle on the phone saying, "But I'm scared of what he would do if I tried to leave him."

Sarah shares with Nev that a month ago, Janelle missed a few days of work and returned to work wearing a sling. Janelle claimed that she had sprained her shoulder while working in the yard. Just yesterday, Janelle showed up over an hour late to work and had some swelling around her eye and her bottom lip. When asked, Janelle said that she got up to the bathroom last night in the dark and walked right into the edge of her open closet door. Sarah says that she also heard Janelle crying in the bathroom yesterday. Sarah notes that she has hesitated to raise any concerns or suspicions previously, but she now worries that Janelle's situation is escalating and that someone needs to step in. Nev thanks Sarah for coming in, for her candor, and her concern. Sarah returns to her desk.

Concerned, Nev pulls Janelle's employee file. Nev knows that Janelle has been making more mistakes lately, and has missed an unusual amount of time, but feels that Janelle is a good employee who interacts well with students, faculty, and administrators. Whatever is going on, it is really beginning to impact Janelle's attendance at work. Janelle has taken 10 sick days in the last six weeks, which is more than she used the previous six months combined. Janelle only has one sick day remaining. While normally punctual, Janelle has also been late five times in the last month.

Nev had already planned to address the tardiness issue in her one-on-one with Janelle tomorrow, but given this

new information, Nev is unsure of what approach to take. She is also unsure of whether she should share Sarah's concerns with anyone else.

Questions to Consider:

1. What Title IX issues, if any, do you see?
2. What should Nev do at this juncture?
3. Does Nev have an obligation to investigate this matter further?
4. Who at your institution do you need to inform of the situation? Would it change if Janelle admitted she is being abused?
5. If Janelle's work continues to decline and she continues to miss work, do you proceed with typical performance improvement processes?
6. Would it change anything if you knew Janelle's partner also works on campus?

9. SARAH, JANELLE, AND NEV: DISCUSSION GUIDE

Issue: In this scenario, Janelle's partner Robert is not affiliated with the college, so your response may be limited to offering support and assistance (e.g., counseling, help in applying for a restraining order or in making a police report, etc.) and to excluding Robert from campus. If Janelle's partner was an employee of the college, the analysis in Case 12 would apply.

10. CAREY AND STAN: ALLEGATION OF INTIMATE PARTNER VIOLENCE (A variation on Courtney and Shawn case study)

Reporting Party:	Carey — Part-time employee of Braeburn Community College and part-time student
Responding Party:	Stan — Employee of Braeburn Community College and part-time student
Witness:	Jenny — Carey's roommate
First Responder:	Carey's supervisor from work
Investigator:	Deputy Title IX coordinator

Stan is a full-time employee in the facilities management department at Braeburn Community College; he is also a part-time student. For the last three years, Stan has been dating Carey, a part-time receptionist in the college's English department, as well as a part-time student at the college. Their relationship is quite serious, and the two have even discussed marriage, although Carey is hesitant to commit until Stan controls his drinking and his temper when he is intoxicated.

When sober, Stan is engaging, light-hearted, and easy-going, but when he drinks heavily, he becomes aggressive, destructive, and prone to yelling at people and getting into fights. His friends usually keep a close watch on Stan when he goes out to a party. It typically takes two or three of them to keep Stan under control when he starts to act up. Stan has had a few problems at work, primarily in response to coming in hung-over or his temper problems; last year he was placed on probation and performance improvement for yelling and cussing at his supervisor. At the prompting of his supervisor, Stan received some counseling, and it seems to have helped him drink less and has allowed him to make more mature decisions.

Three days ago (Friday), Carey and Stan get into a very loud and public argument at the campus's main bus stop. At the end of the argument, Carey tells Stan that their plans for that night need to be cancelled and that they should both take some time to calm down; Stan agrees. That night, some of Stan's friends come over. They drink beer and watch some basketball. One of Stan's friends brings whiskey, and Stan makes himself a very strong, large whiskey and coke. After his friends leave, Stan continues to drink. He begins to worry, and becomes frustrated and angry about his relationship with Carey. He can't stop thinking about their relationship and really needs to talk.

At about 1:00 a.m., Stan makes his way to Carey's apartment, bangs on the living room window, and yells that he wants to talk to Carey. She refuses to let him in because he is both drunk and angry. Stan threatens to break down the door. Carey tells him to go home and go to bed, and that they can talk in the morning. Stan yells and curses, then starts to cry, saying he can't live without Carey and asking to talk. Carey still refuses to let Stan into the house, and Stan becomes very angry. He punches a window near the door, breaking it. Carey tells Stan that he is out of control and threatens to call the police. Carey pulls out a cellphone, but before Carey can dial, Stan breaks the rest of the window near the front door. He reaches in, unlocks the door, and throws it open. He charges at Carey. Stan bellows at Carey, "Put the fucking phone down!" Carey screams and runs to the bedroom.

Stan chases Carey, who tries to close the door between them, but Stan wedges himself between the door and the doorframe. Stan tries to force the door open while yelling, “Open the door, you crazy bitch!” Carey lets the door open and they continue to yell at each other. Carey threatens again to call the police. Stan charges at Carey, grabbing for the phone. Carey keeps her arm extended and tries to back away from Stan. They wrestle as Stan tries to grab the phone. When he can’t reach it, Stan grabs Carey’s neck. He puts his hand around the front of it, still trying to get to the phone. The two fall onto the bed, with Stan on top. His hand is still on Carey’s neck as he reaches for the phone with his other hand. Carey has trouble breathing and slaps Stan’s face and kicks him. This seems to bring Stan back to his senses. He releases Carey, gets off the bed, and apologizes, saying, “I don’t know what came over me.” He adds, “If you call the police, that will get me fired and thrown out of school.” Carey, sobbing, screams at Stan, “You need help! You can’t keep doing this!” Stan, also crying, apologizes again and leaves.

Carey’s roommate, Jenny, who is also a part-time student at Braeburn, barricaded herself in her own bedroom when Stan burst through the door (unfortunately her cell phone was in the kitchen). After Stan leaves, she tells Carey to call the police. Instead, Carey, calls her supervisor from work, a woman Carey sees as a mentor whom she deeply trusts. Over the phone, Carey tells the supervisor about what just happened. The supervisor rushes over and convinces Carey that Stan needs help. Carey gives permission to call the police. The police arrive and take statements from Carey and the roommate. They also take photos of the damage to the house and the bruising and marks on Carey’s body. They arrest Stan at his home. Stan tells the police, “I really only remember bits and pieces of what happened, but whatever Carey tells you, it’s the truth.”

The next day in conversation with the school’s deputy Title IX coordinator, the supervisor indicates — to the obvious surprise of the deputy coordinator — that this was the third time Stan has done something like this.

Questions to Consider:

1. How does this case involve Title IX?
2. What issues of jurisdiction arise?
3. Given the pending criminal prosecution, how would you address this situation?
4. From the perspective of an institutional response, what went wrong in this situation?
5. Who should be interviewed in the course of the institution’s investigation?
6. What responsibility (if any) does the institution have to investigate the first two incidents?
7. How should the deputy Title IX coordinator best address the way the supervisor handled the previous two incidents?
8. What interim remedies should be provided?
9. What long-term remedies appear to be appropriate in this situation?
10. What is the institution’s Title IX obligation pertaining to Carey’s roommate?
11. Who else at the institution do you need to inform of the situation? Who do you keep apprised of the progress of the investigation?

10. CAREY AND STAN: DISCUSSION GUIDE

Issue: Did Stan violate the policy on intimate partner violence based on a preponderance standard of proof?
YES.

Policy Definition:

Intimate Partner Violence:

- Violence between those in an intimate relationship toward each other.
 - Examples include:
 - Physical abuse by a spouse or partner such as hitting, slapping, pushing, or strangling,
 - Sexual violence by a spouse or partner,
 - Extreme verbal abuse by a spouse or partner.

Conclusion: In addition to the issues of unlawful entry and damage to property, you will consider whether Stan engaged in intimate partner violence. Carey and Stan were in an intimate relationship, so if you find Carey's account credible as corroborated by physical evidence and her roommate's account, you will find Stan responsible for violating the provision on intimate partner violence because he damaged Carey's property and charged at and choked her.

Future Directions: In addition to interviewing the parties, investigators will want to interview Carey's roommate and request the police report and photos. Investigators will want to interview Carey's supervisor about the previous incidents as well.

11. JEREMY AND PROFESSOR SANCHEZ: CONSENSUAL STUDENT/FACULTY RELATIONSHIP

Alleged Victim: Jeremy Costa — Senior student at Tessera University
Alleged Harasser: Antonia Sanchez — Associate professor of Spanish at Tessera University

Background:

Jeremy Costa is a senior with a dual major — one in Accounting and the other in Spanish. He is a very good student, is active in a couple of student organizations, and spends his winter and spring breaks building schools in Mexico. For the last three months, Jeremy has been in a sexual relationship with Antonia Sanchez, an associate professor specializing in Spanish literature.

Professor Antonia Sanchez is a 32-year old rising star within the department; her research is stellar and her teaching evaluations are always among the highest in the department.

Beginning February 2013:

Jeremy is struggling with some of the writings for his Spanish Literature course and seeks out Professor Sanchez during her office hours. Jeremy took a previous course from Professor Sanchez and performed well, though the current course is more difficult. After guiding Jeremy through his concerns, Professor Sanchez gets up and closes the door to her office. She then sits down next to Jeremy and proceeds to tell him about a special comparative literature project that she would like him to be part of. During their conversation, she compliments his work and places her hand over his, indicating that she really hopes he will agree to be part of the project. Pleased and a little excited, he readily agrees. Professor Sanchez tells him the project group will be meeting at her house the following evening. She also notes that he should stay after the group leaves so they can discuss his long-term goals of getting into graduate school and how she can be of help in the process.

Jeremy arrives at Professor Sanchez's house and the group of four students and the professor meet for about an hour. Jeremy notices that Professor Sanchez makes prolonged eye contact with him, and she goes out of her way to compliment him throughout the evening. Once the other group members leave, Professor Sanchez draws close to him. She tells him that he has remarkable potential and wants to see him do well in her course, but she needs something from him in return. She leans in to kiss him. The two ultimately begin a sexual relationship.

Jeremy and Professor Sanchez meet a few times a week, typically at her house, and engage in sexual intercourse. Occasionally, they engage in sex in her office after hours as well. They spend a weekend in Miami together. With regularity, the two send each other naked pictures of themselves and involve themselves in daily sexting.

11. JEREMY AND PROFESSOR SANCHEZ: DISCUSSION GUIDE

Issue: Is Professor Sanchez responsible for violating the policy on sexual harassment based on a preponderance of evidence standard of proof? NO.

Policy Definitions:

Quid Pro Quo Harassment:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- by a person having power or authority over another constitutes sexual harassment when
- submission to such conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational (or employment) progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational (or employment) program.

In addition, most schools have policies restricting amorous/consensual relationships between students and faculty, or between any two individuals when one has evaluative authority by the other. A typical policy establishes that an amorous relationship between two individuals constitutes a conflict of interest when one of the individuals has direct evaluative authority over the other, and requires that the direct evaluative authority be eliminated.

Conclusion: This case sounds like it could be quid pro quo sexual harassment. Remember that one of the elements of any form of sexual harassment is that the conduct is unwelcome. Here, there are some indications that Jeremy may have welcomed the professor's advances and the opportunity to engage in a sexual relationship with her. Jeremy participated in sexting, including sending nude photos of himself, travelled with the professor, and engaged in sex with her regularly. You will need to determine why he did these things. If the conduct was welcomed by Jeremy, this case wouldn't constitute sexual harassment toward him and your investigation would focus on whether the amorous/consensual relationship policy was violated. If you had to make a finding regarding possible sexual harassment at this time, you would find Professor Sanchez not responded for quid pro quo sexual harassment, as there is no information to suggest that her conduct was unwelcome.

Future Directions: It will be important to interview Jeremy about his perceptions of the professor's attention and demands, and whether he felt compelled to comply, perhaps out of a concern for getting into graduate school, or whether he chose to do willingly. Remember that he may have been a willing participant initially, but that could have changed over time. A detailed interview with Jeremy is needed to gain more information about how he perceived this situation. Additional investigation will include interviewing the professor and checking to see if there have any allegations made against her that include similar conduct.

12. TIFFANY AND JASON: ALLEGATIONS OF SEXUAL MISCONDUCT/ INTIMATE PARTNER VIOLENCE

Reporting Party:	Tiffany Lake — Tessera University student
Responding Party:	Jason Best — former Tessera University student; current TU instructor
Witness:	Sarah — Tiffany's roommate
Witness:	Isaiah — Tiffany's new boyfriend

Intake Report:

Tiffany Lake met Jason Best at Tessera University when she came to campus for freshman orientation. Jason was a senior tour guide for the university. Over the remainder of the summer, they texted each other daily, and Tiffany was excited to come to campus to begin her college career and hopefully develop a stronger friendship with Jason. Jason was very good-looking and popular, a member of a campus fraternity, and captain of the ice hockey team. Tiffany was flattered when he texted her to see if she would meet him to study, and she enthusiastically agreed. She was surprised when after only an hour of studying, he wanted to go back to his fraternity house to “chill out” and have a few beers.

When they arrived at the house and went to his room, Jason rolled a joint and offered one to Tiffany. Feeling somewhat out of her element, she accepted the cigarette, although she had never smoked weed before. They ordered a pizza and Jason brought out some beers. They enjoyed the evening just relaxing and talking and drinking beer. Tiffany had an early class and told Jason that she needed to go back to her dorm. Jason said it was customary for the college women to end a lovely evening by engaging in “mutual satisfaction.” Tiffany again felt awkward and asked what he meant. Jason explained that the cool girls who date guys in his fraternity always ended the evening by providing some form of sexual gratification to their dates. She responded that although they had texted for a few months, this was the first time they had actually been together, so she didn't feel comfortable engaging in sexual activity with him so soon. Jason laughed and told her that she really needed to get on board with being in college now, and that all the girls provided their dates with a “satisfactory ending” to the evening. Still Tiffany resisted. Jason told her that, “Clearly, he had misjudged her,” and that, “She probably wasn't cut out to be a part of the inner crowd at his fraternity.” He offered to take her home. Tiffany noticed a significant shift in Jason's attitude toward her, and she was very anxious to fit in with the cool people on campus. Besides, Jason told her that all the college girls did this, and what did she know about the college culture as a freshman student? Tiffany offered to give Jason oral sex, and he agreed that for a first date, that would be acceptable and would give him an opportunity to see how skilled Tiffany was in providing pleasure.

Jason walked Tiffany to her residence hall gave her a kiss goodnight, and Tiffany went to her room. She wanted to talk about the evening with her roommate, but she had just met her and felt that it may be too soon to share these types of details. She decided to pay attention and listen carefully to what other girls were saying so that she could learn more about the college culture. Tiffany was desperate to fit in and really had a crush on Jason. She shared that she didn't want to appear to be the small-town girl who was the prude in the college environment.

Jason didn't call Tiffany for over a week, and she worried during that time that her lack of sophistication and hesitation to pleasure him on their first date turned him off, and that he wouldn't want to go out with her again. She was so excited when he finally called and invited her to a party at the fraternity house the coming weekend. As the weekend approached, she worried about what she would wear and what she could do to show Jason a good time so that he would think she was cool and want to go out with her again. After they arrived at the party, Jason handed her a glass of some kind of punch. Tiffany assumed it contained alcohol.

Over the course of the next two hours, he filled her glass several times. They danced and kissed, and Tiffany commented that she was feeling really relaxed but a little dizzy. Jason offered to take her to the "secret room," where she could lay down and they could cuddle for a while. He led her to a basement room, and when they entered, she realized it was very dark, but there were many mattresses on the floor, mostly occupied by couples. Jason led her to a mattress, and they lay down. He put his arms around her. She shared that she felt so safe and close to Jason, but she was concerned by some of the sounds that she was hearing, which sounded like some of the women in the room were not enjoying their time there. She asked Jason about it and he replied that some of the couples liked to role-play and play "fake rape" just as a turn on. He said the girls who were there were the most popular ones on campus, and that Tiffany should get to know them because those were the type of girls to whom his fraternity would give the honor of being "little sisters" of the fraternity.

Tiffany was anxious to be a part of this group, so she unbuttoned Jason's shirt and began kissing his chest. Then she unzipped his pants and began fondling him. Jason responded by taking off her shirt and bra and slipping down her pants. Jason produced a condom from beside the mattress and asked Tiffany to put it on him. She hesitated, silently asking herself, "What was she thinking?" She had never gone this far with a guy. Yet here she was naked with a guy asking her to put a condom on him. She shared her hesitation with Jason. He laughed and told her that she had a lot of learning to do if she was going to be a part of the in crowd at the college for the next four years, and that she needed to get with the culture.

Reluctantly, she agreed and they had sexual intercourse. During sex, Tiffany felt so scared that she just froze and stopped touching Jason and responding. Jason didn't seem to notice and continued until he climaxed. Afterward, Jason took her back to her dorm and kissed her goodnight. Tiffany went to her room and again wanted to talk about what she had just experienced, but didn't know who to talk to. Who would understand? Was this really what college was all about? If she told someone, would Jason get in trouble? What about the girls in the secret room, who sounded like they were not consenting? If she told someone, would she get in trouble for drinking the punch, since she was under age? Would they tell her parents? Would they send her home? Would she have to talk about it a lot? She said that she was scared and confused.

Over the next year, Jason called Tiffany from time to time, and every time they were together, the evening ended in some form of sexual activity. But even though Tiffany didn't see Jason all the time, he referred to her, when they talked, as his girlfriend or his special person. She felt special and included. Jason graduated at the end of Tiffany's freshman year and told her that he had accepted a graduate assistant position in the English department for the coming two years. They talked about what fun it would be if Tiffany took a course that he was teaching. She was flattered at the suggestion, because it meant that he wanted to see her more often.

Over the summer, Jason and Tiffany texted frequently, although they did not visit each other. It seemed like Jason always had to work or go away with his family when she was available. Tiffany found out what courses Jason was teaching and arranged to enroll in one of them for the fall term. It was great fun being able to see Jason several times a week in class and occasionally on the weekends during the term, although she became jealous of the attention he paid to two of the women in the class. He reassured her there was no reason to be jealous, since she was the most special. He also told her that the more she demonstrated to him how much she liked him and enjoyed being with him, the better she would do in his class. Tiffany heard rumors about Jason dating some of his students, but she knew it was not true. All the girls had a crush on him and wanted to be his girlfriend, but Tiffany knew she was the one.

During the next two years, as Tiffany finished her sophomore and junior years, she continued to see Jason. In fact, he knew her schedule, would call or text her many times a day, and would often accuse her of cheating on him. He wanted to know where she was every minute of the day. This led to many fights, some of which got very heated. A couple of times, she slapped him and he pushed her around. In the end, they always made up, and even though his sexual demands became more bizarre over time, he explained that granting those demands should be her way of proving her love for him.

During her senior year, Tiffany moved into an apartment with seven other women who were high school friends of her junior-year roommate. One evening, she went into one of the girl's rooms, Sarah, with whom she had become close friends. As they were chatting over a glass of wine, Tiffany shared with Sarah details about her relationship with Jason and about his temper, which seemed to be getting increasingly threatening. Sarah told her that she should talk with someone, and they tried to find out whom she could talk to at the university who would keep the information confidential. They found some information stating, "If you or someone you know has been a victim of sexual assault, get medical attention or call this office." Tiffany and Sarah decided that that didn't apply to Tiffany's situation, so they would need to find someone in the town. But they became increasingly busy over the course of the semester, and they didn't have time to find a resource that Tiffany could go to, so the two girls continued to share her concerns just between them.

One night, Tiffany came to Sarah's room crying. She had bruises on her arm and a red cheek. She told Sarah that she and Jason, who had been appointed an instructor after finishing his master's degree, had gotten into a huge fight. Tiffany had heard so many rumors about Jason seeing students in his class or flirting with them and she was sick and tired of it. When she confronted Jason about the rumors, he became enraged and threatened to break up with her if she told anyone about those rumors. Tiffany tried to leave his apartment, but he grabbed her by one arm and pulled her back in. She pushed him with her free hand to try to leave, and he hit her across the cheek. She told him they were through and ran out. Sarah told her to stay away from him and to be careful.

The next day, Sarah went to her former RA to ask her for advice and told her about Tiffany and Jason. The RA gave her some resource information, but also told her that she was required to report this. The RA reported the information to her hall director, and the hall director told the deputy Title IX coordinator for students. The Title IX deputy contacted Tiffany and asked if she would be willing to talk to her about it, and explained that the university could provide her with assistance and support. Tiffany told her that Sarah had inaccurate information

and that Jason did not harm her in any way. The Title IX deputy reported this to the Title IX coordinator, who decided to contact Jason, since he was a university employee. Jason denied harming Tiffany in any way. In fact, he denied having dated her since the time when they were undergraduates. The university did not pursue this any further, since both parties denied it happening.

Tiffany moved on with her life, and that winter term, she met a guy she really liked named Isaiah. Tiffany noticed that it seemed like every time she and Isaiah went out to dinner or to a movie, they ran into Jason. She tried to consider this to be a coincidence, but the frequency with which it happened was troubling. Then one evening, Isaiah mentioned that he had been getting weird messages on his school email address. Those messages threatened him about seeing Tiffany, stating that Tiffany was “trouble,” and that she was cheating on Isaiah. Both Tiffany and Isaiah were concerned but decided that it was probably one of Isaiah’s friends playing tricks. After all, who would know Isaiah’s university e-mail?

When the spring term began, Isaiah returned to campus and realized that he had been dropped from all his classes. He thought it might be the result of an error by the registrar’s office, so he went to that office to resolve the problem. The registrar told him that a university official had canceled his classes because it was done internally in the system. This began an investigation process with the IT Department and Campus Police. They were able to trace the action to Jason’s academic department. When questioned, Jason denied knowing anything about it and stated that the office staff all had access to the same account.

When Tiffany found out about the connection between Isaiah’s courses being dropped and Jason’s department, she became alarmed. She then began to believe that Jason had used his campus access to track Isaiah (and perhaps her too?) and that maybe he was also the person who had been sending Isaiah weird emails. Tiffany then went to Sarah’s RA friend and told her this story.

This account has now been passed along to you to address.

12. TIFFANY AND JASON: DISCUSSION GUIDE

Issue: Did Jason violate policies on sexual misconduct, stalking, or intimate partner violence based on a preponderance of evidence standard of proof? NO, NO, and YES.

Policy Definitions:

Consent:

- Clear, and
- knowing, and
- voluntary (or affirmative, conscious, and voluntary),
- words or actions,
- that give permission for specific sexual activity.

Coercion: Unreasonable pressure for sexual activity. When someone makes it clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Stalking 1:

- A course of conduct
- directed at a specific person
- on the basis of actual or perceived membership in a protected class
- that is unwelcome, AND
- would cause a reasonable person to feel fear.

Stalking 2:

- Repetitive and menacing
- pursuit, following, harassing, and/or interfering with the peace and/or safety of another.

Intimate Partner Violence:

- Violence between those in an intimate relationship toward each other.
 - Examples include:
 - Physical abuse by a spouse or partner such as hitting, slapping, pushing, or strangling.
 - Sexual violence by a spouse or partner.
 - Extreme verbal abuse by a spouse or partner.

Conclusion: Tiffany's allegations involve multiple possible policy violations occurring over a long period of time, and a full investigation is warranted based on this intake report.

- A. With respect to the first night in the fraternity house, when Tiffany provided oral sex to Jason, Tiffany smoked marijuana for the first time and consumed alcohol, but given her recollection of events and the intentional choices she made around sexual activity, incapacitation doesn't seem to be an issue.

Investigators will consider whether the oral sex was consensual, and specifically will assess whether Jason coerced Tiffany into sexual activity.

Non-consensual sexual intercourse includes any sexual intercourse (including oral sex) that is without consent and/or by force; and force includes coercion that overcomes resistance to produce consent. When Tiffany resisted Jason, he pressured her and implied that she couldn't be a part of the cool crowd if she didn't engage in sexual conduct with him. Your analysis will consider whether the amount of pressure he applied was reasonable or unreasonable. Coercion is typically measured by the frequency, intensity, and duration of the pressure applied for sexual access. Here, although he took advantage of her naiveté, the degree of pressure applied by Jason would not lead to a finding that Tiffany was coerced into sexual activity, as the pressure was not so intense or concentrated as to be unreasonable.

- B. With respect to the second night in the fraternity house, when sexual intercourse occurred in the "secret room," Tiffany's incapacitation doesn't seem to be an issue given her recollection of events and the intentional decisions she made around sexual activity. When Jason produced a condom, she hesitated and then agreed to sex after he pressured her about being a part of the cool crowd. Was this coercion? Again, although Jason took advantage of Tiffany, the degree of pressure he applied would not lead to a finding that Tiffany was coerced into sexual activity, as the pressure was not so intense, repeated, or concentrated as to be unreasonable.

Tiffany described that during sex, she became scared, froze, and stopped touching Jason and responding. How does this comport with the requirement that consent requires clear words or actions giving permission for specific sexual activity? There are competing pieces of information here, and you will consider whether Tiffany withdrew her permission at some point. A typical sexual misconduct policy states that consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly, and that a withdrawal of consent can be done in numerous ways and need not be a verbal withdrawal of consent. Your analysis will focus on whether Tiffany withdrew consent by disengaging. Based on the information here, it is unlikely that Tiffany withdrew consent in a manner that was communicated clearly, and you would find no policy violation.

- C. What do you make of the fact that Tiffany was Jason's student while they were in a sexual relationship during her sophomore year? This likely would be a violation of your amorous/consensual relationship policy, which typically establishes that an amorous relationship between two individuals constitutes a conflict of interest when one of the individuals has direct evaluative authority over the other.
- D. With respect to Jason's behavior during Tiffany's sophomore and junior years, Tiffany indicates that Jason knew her schedule, repeatedly called or texted her, and repeatedly accused her of cheating, which led to physical confrontations. You will consider whether Jason's behavior constitutes stalking, and whether either party engaged in intimate partner violence. Based on the information available at this time, it appears that both parties engaged in intimate partner violence, as Tiffany described slapping Jason, and that Jason pushed her around. Regarding the allegation of stalking,

although it appears Jason's conduct was unwelcome, it likely would not cause a reasonable person in a situation similar to Tiffany's to feel fear, and would not be a violation of the stalking provision.

- E. When Tiffany tried to leave Jason's apartment after confronting him about his involvement with other students, he grabbed her and pulled her back into the apartment, she pushed him, and then he hit her. Both parties engaged in intimate partner violence. Investigators might want to consider whether their school addresses the use of force as self-defense and how that may apply here.
- F. Tiffany described that after the relationship ended, her new partner Isaiah began receiving email messages that threatened him against seeing Tiffany, and was dropped from all his classes by someone in Jason's academic department. In addition, Tiffany and Isaiah repeatedly ran into Jason whenever they went out. Investigators will consider whether Jason is stalking Tiffany. Although some of the behavior attributed to Jason is directed at Isaiah, it is indirectly focused on Tiffany, and may be considered a part of a course of conduct directed at her. Investigators will need to look into whether the email and class schedule changes can be linked back to Jason, and whether there is a legitimate explanation for Jason continually appearing at the same locations as Tiffany and Isaiah. Based on the information available at this time, there is insufficient information to find Jason responsible for stalking. Further investigation may lead to a different result.

Future Directions: In addition to interviewing Jason and making credibility assessments of both parties, investigators will want to otherwise conduct a reliable and thorough investigation by interviewing any witnesses with relevant information. As an example, perhaps Tiffany or Jason can identify other individuals who were in the "secret room." Tiffany's roommate Sarah and Isaiah will be important witnesses. In addition, investigators will want to obtain the police report and look further into the source of the emails and Isaiah's class schedule changes.