

MEMORANDUM

To: [REDACTED] 29
WSU Department of [REDACTED] 29

From: Nikki A. Finnestead, Investigator
Office for Equal Opportunity

Date: May 30, 2019

Subject: Office for Equal Opportunity, Matter No. 2019-108

The Washington State University (WSU) Office for Equal Opportunity (OEO), along with Human Resource Services (HRS), commenced a pre-investigation inquiry on April 11, 2019, regarding concerns that [REDACTED] 29 (the Respondent), a male [REDACTED] 29 in the [REDACTED] 29 Department, had engaged in conduct implicating the WSU Policy Prohibiting Discrimination, Sexual Harassment, and Sexual Misconduct, Executive Policy #15 (EP 15). Specifically, it was alleged that the Respondent targeted lab recruitment efforts towards female [REDACTED] 38 students and directed preferential treatment towards female [REDACTED] 38 students. Furthermore, it was alleged that the Respondent engaged in a romantic and/or sexual relationship with an [REDACTED] 38 student under the Respondent's supervision, which may implicate the WSU Policy on Faculty-Student and Supervisor-Subordinate Relationships, Executive Policy #28 (EP 28), which is under the purview of HRS, and may also implicate EP 15.

This memorandum is specific to OEO's review under EP 15 only. HRS jointly conducted this investigation; HRS's separate review is forthcoming. At this time, OEO is declining to engage in further investigation. Based on the information received, OEO has determined that there is insufficient information to warrant further investigation or review. If new information is provided to OEO in the future, relevant to allegations that OEO has not already reviewed, OEO may reassess, as appropriate. A summary of OEO's pre-investigation inquiry, as well as recommendations, follows.

Background Information

On March 7, 2019, [REDACTED] 45 a female staff member in the [REDACTED] 29, contacted OEO to report that "several [REDACTED] 38 Students" told a former WSU employee, later identified as [REDACTED] 45 that the Respondent was having an "affair" with an unnamed [REDACTED] 38 student in his lab. [REDACTED] 45 also

reported that [REDACTED] 45 told her the Respondent "mocks" [REDACTED] 38 students in his lab, to "show off" in front of the female [REDACTED] 38 students. [REDACTED] 45 later identified [REDACTED] 38 (Student A) and [REDACTED] 38 (Student B) to OEO as the female [REDACTED] 38 students in the [REDACTED] 29 Department who allegedly shared this information with [REDACTED] 45 [REDACTED] 45

On March 8, 2019, [REDACTED] 45 a male faculty member in the [REDACTED] 29 Department, met with OEO investigators to report that Student A and Student B both expressed concerns to him about the Respondent's conduct. Specifically, they felt they were being "ignored" by the Respondent, who directed more time and mentorship to female [REDACTED] 38 students in his lab. [REDACTED] 45 also said the students did not feel comfortable voicing these concerns directly with the Respondent, for fear of retaliation. [REDACTED] 45 [REDACTED] 45 also reported to OEO that another faculty member, [REDACTED] 45 informed him of the allegation about a relationship between the Respondent and an unknown [REDACTED] 38 student. According to [REDACTED] 45, [REDACTED] 45 told him the allegation originated from an unnamed [REDACTED] 38 student.

Based on the information shared by [REDACTED] 45 and [REDACTED] 45, OEO solicited additional information regarding the Respondent's alleged conduct. During this preliminary information gathering process, OEO contacted Student A, Student B, and [REDACTED] 38 [REDACTED] 38 (Student C), also a female [REDACTED] 38 student in the [REDACTED] 29 Department. Their statements were generally consistent with the statements made by [REDACTED] 45 and [REDACTED] 45 [REDACTED] 45

Based on the allegations presented to OEO, OEO and HRS investigators determined that additional information was needed to fully assess the concerns and therefore initiated this pre-investigation inquiry. There was some delay in issuing the notice of inquiry due to OEO's attempts to address the concerns of Student A, Student B, and Student C, as well as to gather preliminary information to determine what type of response was appropriate in this matter. A HRS representative participated in interviews with some of the witnesses.

In addition to Student A, Student B, Student C, Dr. Kwon, and Ms. DeShields, investigators interviewed:

1. The Respondent;
2. [REDACTED] 38 (Student D), a female WSU [REDACTED] 38 student in the [REDACTED] 38 Department;
3. [REDACTED] 38 (Student E), a female WSU [REDACTED] 38 student in the [REDACTED] 38 Department;
4. [REDACTED] 38 (Student F), a female WSU [REDACTED] 38 student in the [REDACTED] 38 Department;
5. [REDACTED] 38 (Student G), a female WSU [REDACTED] 38 student in the [REDACTED] 38 Department;
6. [REDACTED] 38 (Student H), a female [REDACTED] 38 student in the [REDACTED] 38 Department;

7. [REDACTED] 38 (Student I), a male WSU [REDACTED] 38 student in the [REDACTED] 38 Department;
8. [REDACTED] 38 (Student J), a female, and formerly a WSU [REDACTED] 38 student in the [REDACTED] 38 Department;
9. [REDACTED] 45 a male faculty member and Director of the [REDACTED] 29 ;
10. [REDACTED] 45 a female staff member in the [REDACTED] 29 ;
11. [REDACTED] 29 a female faculty member in the [REDACTED] 29 Department and [REDACTED] 29 the Respondent; and
12. [REDACTED] 45 a female faculty member in the [REDACTED] 29 Department.

Investigators attempted to interview other individuals who did not respond to interview requests as of the drafting of this document, or were otherwise unavailable or unwilling to speak to investigators:

1. [REDACTED] 38 (Student K), a female, and formerly a WSU [REDACTED] 38 student in the [REDACTED] 29 Department;
2. [REDACTED] 38 (Student L), a female, and formerly a WSU [REDACTED] 38 student in the [REDACTED] 29 Department;
3. [REDACTED] 38 (Student M), a female WSU [REDACTED] 38 student in the [REDACTED] 29 Department;
4. [REDACTED] 38 (Student N), a female WSU [REDACTED] 38 student in the [REDACTED] 29 Department; and
5. [REDACTED] 29 a female, and formerly a staff member in the [REDACTED] 29 .

Investigators reviewed:

1. OEO Complaint Form, submitted to OEO on March 7, 2019, by [REDACTED] 45 ;
2. Screenshots of a text message and social media posts provided to OEO on March 21, 2019, by Student A;
3. Email correspondence between the Respondent and Student B, provided to OEO on March 21, 2019, by Student B;
4. OEO Complaint Form, submitted to OEO on April 11, 2019, by [REDACTED] 38 (Student O), a male WSU [REDACTED] 38 student in the [REDACTED] 29 Department;
5. Screenshot of a text message between the Respondent and Student E, provided to OEO on April 19, 2019, by Student D;
6. Information on Recruitment and Assignment of Tasks document, provided to OEO on April 23, 2019, by the Respondent; and
7. Project work distribution document, provided to OEO on April 23, 2019, by the Respondent.

OEO has determined that closing the matter is appropriate at this time for the following reasons:

1. There was no information presented to OEO to support the allegation that the Respondent engaged in a romantic and/or sexual relationship with an [REDACTED] student of a nature which would implicate EP 15. Although most of the witnesses who spoke with OEO described learning of this allegation, none of the witnesses had first hand knowledge of the identity of the student. Witnesses presented varying descriptions of the alleged relationship to investigators. Multiple witnesses described the allegation as "hearsay" and "rumor" circulating throughout the department. Some witnesses described feeling "surprised" to learn of the allegation. Of the two current [REDACTED] students interviewed by investigators, only one told investigators she was aware of the allegation and said she had learned of it from speaking to multiple [REDACTED] students, at least one of whom is not in the Respondent's lab. Investigators also spoke with [REDACTED] students, some of whom described learning about the allegation from faculty members in the department. Conversely, faculty and staff members told investigators they learned about the allegation from [REDACTED] students and other faculty and staff. At no time was the identity of the alleged student presented to investigators. OEO has determined there is insufficient evidence to warrant further review of this allegation under EP 15.
2. The Respondent told multiple students, including Student B and Student C, that an [REDACTED] student filed a complaint against him in Fall 2017 semester. Student C told investigators that the Respondent told her the complaint was baseless, and that it was brought by a student he described as "crazy." Student C's description shares some similarities to OEO Matter No. [REDACTED] and WSU Police Report No. [REDACTED]. OEO and WSU PD reviewed those matters; there was insufficient information to warrant further investigation at the time (student privacy does not allow for more information to be included in this memorandum). OEO investigators considered whether this incident was the source of the allegation about an inappropriate relationship with a student; however, there was insufficient information to make a finding.
3. Student A, Student B, Student C, and some faculty members, alleged that the Respondent directed preferential treatment and targeted recruitment efforts to female [REDACTED] students. Based on the information received, there was evidence that the [REDACTED] students felt the Respondent provided better mentoring and support to the [REDACTED] students; however, investigators did not have sufficient information to link that treatment to a protected class. Therefore, this complaint is not within the purview of OEO to investigate; OEO refers this to the [REDACTED] department to address as appropriate. Some witnesses did not respond to OEO interview requests; if additional information is presented later, OEO may reassess.
4. Regarding the [REDACTED] students concerns about the Respondent's mentorship, Student A, Student B, and Student C felt that the Respondent's behavior hindered their ability to thrive as [REDACTED] students. The three students told investigators they were not comfortable sharing their concerns about the Respondent directly with him for fear of professional retaliation by the Respondent. They also expressed

concerns about sharing this information with [REDACTED] 29 given her relationship with the Respondent, even though [REDACTED] 29 is in a position to provide support and mentorship to [REDACTED] 38 students. Some also described reluctance in seeking support from [REDACTED] 45 Chair of the [REDACTED] 29 Department, given their perceptions of a close personal relationship between [REDACTED] 45 and the [REDACTED] 29. Furthermore, the Respondent expressed reluctance at times when giving feedback to the [REDACTED] 38 students, out of concerns that he would be viewed as combative and unsupportive. Again, as described in Finding 3, these concerns are outside the purview of OEO's investigative authority. OEO refers to the [REDACTED] 29 Department to address as appropriate.

5. Some witnesses, including both faculty members and students, described their discomfort with the Respondent's social media presence with students, particularly female [REDACTED] 38. There is insufficient evidence to suggest the Respondent's social media practices implicate EP 15; OEO refers this to the [REDACTED] 29 Department to address as appropriate.
6. Some witnesses, including both faculty and students, described the Respondent as having a "flirtatious" communication style. Some witnesses alleged that the Respondent's conduct made females feel uncomfortable; however, none of the witnesses that OEO spoke with described personally experiencing any unwanted "flirtatious" conduct directed at them by the Respondent, and some witnesses said the Respondent communicates "flirtatiously" with males and females. There is insufficient evidence to warrant further review of this allegation under EP 15; OEO refers this to the [REDACTED] 29 Department to address as appropriate.
7. Although OEO is declining to proceed with further review, OEO noted discrepancies between the statements of the Respondent and the statements of some witnesses and finds the Respondent less credible than other witnesses. For example, the Respondent told investigators he did not make any attempts to ascertain the identity of the students who shared complaints with OEO and spoke only to his wife and [REDACTED] 45 [REDACTED] 45 about the matter. However, OEO received screenshots of a text conversation between Student E and another person she identified as the Respondent (labeled "[REDACTED] 29" in Student E's phone), which she said occurred on April 12, 2019, one day after the Respondent received notice of this inquiry. Investigators also noted that this text conversation was shown to other students, who interpreted the Respondent's questions as an attempt to learn their identity, and acted to further heighten their concerns about retaliation against them by the Respondent, as identified in Finding 4 above. The text conversation follows:

The Respondent: Was it you who said someone complained about guys not being in our lab?

Student E: hahaha oh no, might had been me at some point [sic]. Why?

The Respondent: What you mean? [sic]

The Respondent: You were complaining or someone complained?

Student E: Oh no it was me I think, a long time ago though! Why? Sorry, I read your question wrong I [sic] initially

The Respondent: Just trying to remember if someone whined about that or if I was making it up in my head. It's a non-issue.

Student E: Yeah, it was just an observation I made the first time I went to a lab meeting! Okay!

8. Based on the information OEO received during the course of this preliminary inquiry, there was a significant amount of gossip and rumors discussed amongst students, faculty, and staff. Some of those conversations were had out of concern for students; however, OEO recommends the [REDACTED] 29 Department provide training to faculty and staff about appropriate university resources and reporting requirements for concerns of this nature, in order to minimize stress and disruption in the workplace.

Based on the documentation provided and the witnesses interviewed, OEO does not have sufficient evidence to warrant further inquiry into this matter. OEO has determined that further investigation of this matter is not warranted at this time, and now considers this matter closed. If additional information is provided, OEO will review the information and reassess its response, as appropriate.

CC: [REDACTED] 45 Chair, Department of [REDACTED] 29
[REDACTED] 45, Dean, College of Arts and Sciences
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