

**FOR TRAINING PURPOSES ONLY PLEASE KEEP CONFIDENTIAL**

DATE: March 28, 2018  
RE: Investigative Report: Sexual Assault  
Respondent, Mark Jones (school id number)  
Complainant, Sally Smith (school id number)

**I. BACKGROUND AND REPORTED CONDUCT**

On November 9, 2017, Sally Smith (COMPLAINANT), Student, Anytown University (AU) reported to Jane Johnson, University Title IX Coordinator, AU, that she had been Sexually Assaulted by Mark Jones, Student, AU, (RESPONDENT) on October 19, 2017. According to the Complainant, she went to a party on October 19, 2017, and after the party, she went over to visit the Respondent at his apartment. She thought other people were going to the Respon

**II. JURISDICTION**

Compliance, Diversity, and Ethics (CDE) house the Title IX Office which has campus-wide responsibility for investigating alleged violations of Policy 1111: Sexual and Gender-Based Harassment and Other Interpersonal Violence. CDE responds to claims of sexual assault, sexual exploitation, intimate partner violence, stalking, sexual harassment, gender-based harassment, retaliation and complicity brought forward by students, employees or third parties.

**III. SCOPE OF THE INVESTIGATION**

On November 9, 2017, the Complainant submitted a complaint online. She was sent resources on the same day. Also on November 9, 2017, Director of the Chess Team, Dr. John Adams, came to CDE to report that he had been made aware of the situation between the Complainant and the Respondent. He was seeking advice as a responsible employee. (In her review of the draft report on April 17, 2018, the Complainant indicated that Dr. Adams came seeking the advice of CDE after the chess team that attempting to mediate the issue between the Complainant and

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Complainant responded on November 16, 2017, that she would like to meet with Johnson. A meeting was tentatively scheduled for November 20 or 21, but it was not confirmed. The Complainant reached back out after Thanksgiving Break, and an appointment was confirmed for December 4, 2017.

Before this meeting, the Complainant expressed some concerns about traveling with the Respondent on the Chess Team. She also expressed some concerns about her classes. Johnson sent her faculty an academic assistance email on December 1, 2017. A No Contact Order was also requested by the Complainant. It was sent out to her and the Respondent on December 4, 2017. At the December 4, 2017 meeting, the Complainant indicated her desire to have a formal investigation into the allegation of Sexual Assault against the Respondent. The Notice of Investigation letter was sent out on December 5, 2017, as well.

Specifically, the Complainant stated, once she \_\_\_\_\_ :

The Respondent asked the Complainant to come inside and sit down.

The Complainant noticed the Respondent put his arm around her. She thought this was a friendly gesture, as they were friends and teammates.

The Complainant recalls the Respondent's response to her concerns. [REDACTED]

The Office for Civil Rights (OCR) in the United States Department of Education is responsible for enforcing Title IX, which states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Sexual harassment is the unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.

Sexual harassment also includes conduct that occurs in an environment that does not explicitly or implicitly condition a decision or benefit on submission to sexual conduct, and explains that this type of harassment is generally referred to as hostile environment harassment. The 2001 guidance lists factors to determine if a hostile environment has been created, including:

- The type, frequency, and duration of the conduct.
- The identity of and the relationship between the alleged harasser and the subject or subjects of the harassment.
- The number of individuals involved.
- The age and sex of the alleged harasser and the subject or subjects of the harassment.
- The size of the school, the location of the incidents, and the context in which they occurred.
- Other incidents at the school.
- Incidents of gender-based harassment.

Sexual Contact includes (a) intentional touching of the breasts, buttocks, groin or genitals, whether clothed or unclothed or intentionally touching another with any of these body parts; and (b) making another touch you or themselves with or on any of these body parts.

2. **Sexual Intercourse** is:

Any penetration  
However slight  
With any object or body part (as described below)  
Performed by a person upon another person

Sexual Intercourse includes (a) vaginal penetration by a penis, object, tongue, or finger; (b) anal penetration by a penis, object, tongue, or finger; and (c) any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

3. **Affirmative Consent** is:

Informed (knowing)  
Voluntary (freely given)  
Active (not passive), meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexual activity

Affirmative Consent cannot be obtained by Force. Force includes (a) the use of physical violence, (b) threats, (c) intimidation, and/or (d) coercion.

## **V. INVESTIGATION**

### **A. Statements of Parties and Witnesses**

- a. **Complainant**- Title IX Coordinator, Jane Johnson, met with the Complainant, on December 19, 2017, at 2:36 pm.

Written Complaint submitted online Thursday, November 9, 2017, at 3:40 pm.

Brief Account of Incident(s): I was at a party a couple of weeks ago with my friends. I heard a bunch of people were going to Mark's house, around the corner, to hang out. I texted him asking if I could come and he said yes. I was going to leave with friends but said I wanted to go over, so a friend walked me there since I was too drunk to know where it was, even though I've been there a few times.

I knocked on the door and Mark let me in. It was just him and I was confused where everyone else was. He told me to come to sit with him on the couch so I did and he put his arm around me. I thought it was a friendly gesture since we were friends and teammates. He started kissing me but I stopped him saying we were both really drunk. I felt weird about it and he said 'okay' and then started kissing me again five seconds later. I was in shock and didn't really know what to do except keep telling him I didn't feel comfortable because we were both drunk.

He wasn't listening. Finally, he suggested we go upstairs to hang out with two of our friends. I said yes because I wanted to be around other people, and I didn't realize they were in his bedroom. We went upstairs and were talking, but the two of them said they were leaving (Samantha Kelly, David Sing). I said I wanted to get an Uber but Mark texted me that I should stay. I opened up my Lyft app and texted him "maybe" to be polite, but they left before I could call it. Mark started kissing me again and I told him we should stop but instead he just said: "you want me to shut the door" and got up to shut it. I didn't know what to do so I didn't say anything.

He started telling me I had been baiting him and that I shouldn't have worn that dress or danced like that at the party. He undid his belt and pants and picked up my hand and put it on his penis. After a few seconds, I took it off because I didn't want to do that and told him. He told me to give him a blowjob. I said no and rolled onto my back to create distance and get away from him but he rolled on top of me and pinned me. I asked him to stop but he started kissing my neck and chest and putting his hands all over me and trying to take off my dress. I was fading in and out of consciousness and falling asleep because I was on my back. I felt like if I didn't do something it was going to escalate because he wasn't stopping even though I told him to.

I made a big fuss and told him I had to go and left the room. I started crying when I got downstairs and two of my friends helped me get home (Candice Thompson). He texted me later asking if I made it home okay and I said I was uncomfortable. He tried calling me and said he was freaking out and that all we had done was kiss, even though it had gone further than that despite me making it repeatedly clear I did not want any sexual engagement with him.

We share a chess team and I have to see him at team meetings, tournaments and in the team room. My coach found out recently and filed a separate Title IX report. Mark has told other students on my team and on other teams in the country that I am faking charges against him even though I have filed nothing up to this point.

[Upon review of the report, the Respondent said when the Complainant told him because of his state of mind at the time.]

**b. RESPONDENT** - Title IX Coordinator, Jane Johnson, met with the Respondent on December 19, 2017, at 8:55 am.

The Respondent said that the Complainant texted him and asked if she could come over (from the party). He said of course. He said they were both super drunk. He said they sat down on the couch, and almost immediately started kissing. He recalls they both leaned in. After the first F6 1deW\*ifo4 started

looked at the Complainant and said, \_\_\_\_\_ he explained to the investigator that it was his way of saying, Are you sure? The investigator explained that was not the use of \_\_\_\_\_). He asked her if she wanted to go upstairs where their other teammates were, and she said yes. When they got upstairs, other teammates (Samantha Kelly, David Sing and perhaps Tom) were in his room. He said the others indicated they were going to leave, a

The Respondent said he reacted super poorly said she did not consent. He said he was really angry and really upset. He said he hy she went to Dr. John Adams. The Respondent said he was super defensive about it and admits his response was immature. The Respondent said he went to see Dr. Adams. He was advised by Adams to get his anger under control by visiting with the Counseling and Psychological Services Office. One of his takeaways was to better understand affirmative consent when both parties have been drinking. The Complainant indicated that she did not tell Dr. Adams about the incident. She s





other words, after reviewing all of the evidence, including the relative credibility of the parties and their statements during interviews, whether it is more likely than not that the conduct occurred as alleged. If the conduct did occur as alleged, then an analysis is completed to

not reach conclusions whether the alleged conduct violated state or federal laws, but instead

The Complainant and the Respondent hung out at the Respondent's apartment on October 19, 2017, after attending a party. The Complainant

The Complainant and the Respondent agree they kissed on the couch, and stopped, and decided to stop and go upstairs where their teammates were. The Complainant indicated she went upstairs to where the teammates were because she

Witness 2 indicated that the Respondent texted him to clear out because he wanted to be alone with the Complainant. The Respondent indicated both he and the Complainant were drunk. Witness 2 believes the Respondent was less drunk than the Complainant. The Respondent admitted to kissing the Complainant and grabbing her butt while they were kissing. The Complainant indicated she did not want to kiss him or engage in sexual contact with the Respondent. The Complainant said the Respondent rolled on top of her on the

The Respondent does not recall them laying down or rolling around. He does not recall placing the Respondent on his penis. The Respondent said he did not ask for oral sex.

The Respondent admitted to not obtaining affirmative consent before he grabbed the buttocks of the Complainant or before he kissed her, repeatedly. This admission establishes that it is more