

**THE REPORT OF THE
INDEPENDENT INVESTIGATION**

**ROCHESTER, NEW YORK
JANUARY 11, 2018**

DEBEVOISE & PLIMPTON LLP

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I. INTRODUCTION

A. Overview

This Report follows an extensive three-and-a-half month independent investigation (the “Independent Investigation”) into allegations that a tenured professor in the Brain and Cognitive Sciences Department (“BCS”) at the University of Rochester (“UR” or the “University”) engaged in an historical pattern of behavior since he arrived at the University in 2007 that violated UR policies on intimate relationships with students (“UR Intimate Relationships Policy”),¹ conflicting employment relationships (“UR Policy 121”)² and gender-based discrimination and sexual harassment (“UR Policy 106”),³ thereby also creating a hostile work and academic environment for female graduate students in BCS, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (“Title VII”), Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, et seq. (“Title IX”) and the New York State Human Rights Law, N.Y. Executive Law § 290, et seq. (“NYSHRL”). At the most relevant times of the allegations, UR policies strongly discouraged, but did not then prohibit: (1) consensual intimate relationships between faculty and students, including with undergraduate and graduate students over whom the faculty member had academic authority; or (2) sexual or romantic relationships between supervisors and their employees who are not married or cohabitating. All forms of

¹ University of Rochester, *Faculty Handbook* (revised May 2017) (attached as Exhibit 1).

² University of Rochester, *Policy 121* (revised Sept. 2015) (attached as Exhibit 2).

³ University of Rochester, *Policy 106* (revised June 2014) (attached as Exhibit 3).

sexual harassment, as defined in UR Policy 106, were, however, prohibited throughout the relevant period.⁴

The professor in question is Florian Jaeger, who, before coming to UR, had been an acclaimed graduate student at Stanford University, where in 2006 he received his Ph.D. in linguistics, with a cognitive science designation, and a post-doctoral fellow at the University of California at San Diego (“UCSD”). He began as an assistant professor in BCS in 2007 at the age of 31, received tenure in July 2013 and was recommended for promotion to full professor in April 2016, which went into effect in July 2017. Since coming to UR, Jaeger has been a very successful researcher and achieved considerable stature as a scientist and academic authority in his field. Jaeger also had a reputation at Stanford and thereafter for being outgoing and sexually promiscuous.

The gist of the allegations against Jaeger is that, after coming to UR in 2007, he blurred the lines between professional and personal spheres, continued to lead a promiscuous lifestyle involving students in BCS and others in the cognitive sciences field, attended student social events uninvited, talked and joked about sex and sexual topics openly, harshly criticized students’ work in demeaning ways and unfairly took credit for their work, commented occasionally on the attractiveness of female graduate students, held off-site lab retreats at which there were hot tubs and illegal drugs and created an exclusionary “cult” around his lab, all of which allegedly combined to create a hostile and intimidating work environment, especially for female students in BCS. Despite being labeled as a “sexual predator” by his accusers, there have never been allegations of sexual assault, unwanted groping, any use of force, or exhibitionism

⁴ Exhibit 3.

outside of consensual relationships, and we have found no evidence of such behavior ever occurring.⁵

While the specific allegations of misconduct against Jaeger focus primarily on the period 2007-2013 (with emphasis on 2007-2011), they also assert continuing and present-day violations and problems. The allegations against Jaeger, which were reported to the University on March 10, 2016, are serious and disturbing. They were brought forward, not by a student, but by Professor Richard Aslin, a highly respected, then senior member of the BCS faculty and former Dean of the College of Arts & Sciences. His complaint, in the first instance, was prompted by predominantly second- and third-hand information he received in a phone call on March 5, 2016, from Professor Jessica Cantlon, another BCS faculty member; Cantlon filed a similar claim with the University in April 2016. Aslin was outraged and offended by what he heard from Cantlon about Jaeger's sexual relationships with students and told her, within days of reporting the matter to the University and as the investigation was just starting, "I will not let this rest until he is out of the department."⁶

Aslin and Cantlon, both before and after filing their complaints, actively sought out or endeavored to generate information supportive of their claims against Jaeger from potential witnesses at UR and elsewhere. They also discussed the allegations and the University's investigative findings with others at UR and elsewhere, before and after the University had completed its investigation and rendered its decision—at times, contrary to the instructions and

⁵ We are sensitive to the possibility that the topics discussed in this Report may trigger past experiences for which readers may want to get support. With the help of the Susan B. Anthony Center Director, we have compiled a list of resources and attach it here as Appendix A.

⁶ Mar. 11, 2016 Email from R. Aslin to J. Cantlon.

expectations of the UR Office of Counsel (“OOC”) to maintain confidentiality. There is no evidence that Jaeger sought out witnesses during the University investigation, though he responded to inquiries from former students and colleagues and confirmed that there was an investigation, without providing details.

In response to the Aslin and Cantlon reports of possible sexual misconduct by Jaeger and another claim made in July 2016 alleging retaliation against Celeste Kidd, a former BCS graduate student and now an assistant professor in BCS, the University followed its standard procedures and process for investigating claims of sexual harassment against faculty members. (Aslin, Cantlon and Kidd are sometimes referred to as the “claimants.”) UR’s investigations ultimately concluded, on June 2, 2016, that Jaeger’s conduct did not violate any UR policy applicable at the time of the conduct and, on October 4, 2016, that no retaliation against Kidd had occurred, but that Jaeger had exhibited gross lapses in judgment and that there had been aspects of his behavior in the past that “warrant[ed] review and discussion” with Jaeger by BCS Chair Gregory DeAngelis.⁷ The claimants appealed both decisions, which were upheld by senior University officials.⁸ Unbeknownst to University officials, the claimants, while their appeals were pending, had decided “to go public” if their appeals were denied.⁹

⁷ June 2, 2016 Letter from R. Clark to R. Aslin and J. Cantlon (attached as part of Exhibit 4).

⁸ On August 15, 2016, Dean of the Medical School Mark Taubman upheld the decision of now Provost Robert Clark on the underlying claims against Jaeger. On November 17, 2016, Clark upheld, on appeal, the decision of Gloria Culver, Dean of the School of Arts & Sciences, on the Kidd retaliation claim. The initial written decisions and the decisions on appeal, which were provided to Aslin and Cantlon (as the claimants), as well as Jaeger, are, in redacted form, collected in Exhibit 4 attached to this Report.

⁹ Aug. 15, 2016 Email from R. Aslin to J. Cantlon, S. Piantadosi, C. Kidd, B. Mahon, B. Hayden and E. Newport. From the outset, claimants discussed the plan to file the claim against Jaeger, the ongoing investigation, the appeal and its aftermath with others, including Steven Piantadosi (BCS assistant professor), Bradford Mahon (BCS associate professor),

The review and follow-up discussions between DeAngelis and Jaeger focused on areas related to the inherent risks and conflicts of engaging in consensual, intimate relationships with students, excessively socializing with students and Jaeger’s very blunt, unfiltered way of conversing, including, at times, talking and joking about sex and using language carrying sexual innuendo. On August 29, 2016, DeAngelis sent a formal letter admonishing Jaeger to be mindful of the requirements of the stricter, current UR policy on faculty relationships with students; the need to maintain appropriate boundaries in interactions with students; and how every member of the faculty, because of their position and disproportionate influence on the academic and work environment for students, has a special responsibility to demonstrate appropriate behavior and choice of words at all times.¹⁰

While noting that Jaeger had not engaged in intimate relationships with students in recent years and that the University’s investigator had also not found evidence that he had made offending comments of a sexual nature in recent years, DeAngelis expressed his personal view that all intimate relationships between faculty and all students should be prohibited and emphasized that “comments which are sexual in nature or otherwise sexually inappropriate are not acceptable in the academic environment or workplace.”¹¹ He also warned Jaeger that any recurrence of such behavior could be grounds for further discipline.¹² Since 2014, intimate relationships with undergraduate students and exercising any academic authority over a graduate

Ben Hayden (formerly BCS assistant professor) and Elissa Newport (formerly Chair of BCS), who left UR in 2012 to go to Georgetown University.

¹⁰ See Aug. 29, 2016 Letter from G. DeAngelis to F. Jaeger (attached as Exhibit 5). This letter was placed in Jaeger’s personnel file.

¹¹ *Id.*

¹² *Id.*

student with whom faculty has or has had such a relationship have been prohibited.¹³ There is no allegation and we have found no evidence suggesting that Jaeger has engaged in any sexual relationship with any BCS student or former student after these policy changes were made, or at any time after 2011.

DeAngelis further directed Jaeger to complete, by December 1, 2016, one-on-one training on respectful workplace behaviors (sexual and other), including training on “the dangers and risks inherent in entering even consensual relationships.”¹⁴ That training was successfully completed on November 9, 2016. Jaeger sent a letter of apology to the BCS faculty on December 7, 2016,¹⁵ but declined DeAngelis’ request to send it to BCS students. He also drafted a longer explanation of his perspective,¹⁶ which accompanied a summary of the allegations and investigative findings prepared by the OOC to provide greater transparency to the BCS faculty about the matter. In addition, he apologized to three students with whom he had had relationships, expressing regret for having been the cause of their being drawn into the allegations against him. Many of the follow-up steps and remedial measures just discussed have

¹³ University of Rochester, *Faculty Handbook* (revised May 2014).

¹⁴ Exhibit 5. DeAngelis’ August 29, 2016 letter to Jaeger was reviewed and approved by the OOC, which had previously advised that, since no policy violation had been found, DeAngelis should not impose any financial or other disciplinary sanctions and that any written statement DeAngelis provided to the BCS Faculty on the matter needed to be consented to by Jaeger because of privacy and potential defamation concerns. DeAngelis drafted such a statement. Jaeger reviewed and disagreed with its characterization of his conduct. (Sept. 6, 2016 Email from F. Jaeger to G. DeAngelis and S. Wormer.) DeAngelis never sent his statement to the BCS faculty. Separately, for reasons purportedly unrelated to the investigation, Dean Culver in spring 2017 asked Jaeger to step down early from his position as the Director of the Center for Language Sciences (“CLS”).

¹⁵ Dec. 7, 2016 Email from F. Jaeger to BCS Faculty (attached as Exhibit 6).

¹⁶ F. Jaeger’s Written Statement.

not been previously made public because of the confidentiality ordinarily accorded to personnel matters, leading the claimants and others to conclude incorrectly that no action had been taken in response to the findings of the University’s investigation of the allegations against Jaeger.

DeAngelis also continued more broadly to seek to tighten the relevant policies for at least BCS (to prohibit all intimate relationships with graduate students); formed the Workplace Behavior Committee, a committee of BCS faculty and students, to discuss how to raise awareness about UR’s sexual harassment policies and procedures and to develop guidelines for workplace behavior; and explored bringing in a facilitator to help restore a collegial and constructive environment among BCS faculty. Some of those efforts are still ongoing.

The claimants strongly disagreed with the University’s decision on Jaeger and, within days of the initial June 2, 2016 decision finding that there had been no policy violation, were planning their appeal and talking about an alternative route to getting Jaeger out of BCS by making his professional life miserable in various ways.¹⁷ The claimants also pressed for sanctions against Jaeger, notwithstanding that he had not been found to have violated any UR policy.¹⁸ Citing inherent conflicts of interest, lack of sufficient support for claimants, confusion

¹⁷ June 6, 2016 Email from R. Aslin to J. Cantlon, E. Newport, B. Hayden, C. Kidd, S. Piantadosi and B. Mahon; June 23, 2016 Email from B. Hayden to B. Mahon, J. Cantlon, S. Piantadosi, C. Kidd and S. Heilbronner; Jan. 5, 2017 Emails between Faculty 19, Faculty 13, Faculty 20, G. DeAngelis and Faculty 7.

¹⁸ While their appeal was pending, Cantlon prepared a list of possible “demands to Florian in order for us to back off.” Their demands included publicly admitting to the facts, as laid out in UR’s investigative report and as alleged in claimants’ appeal papers, publicly apologizing, stepping down as the administrative director of CLS, not taking on new graduate students for two years, and training at the Susan B. Anthony Center. (July 21, 2016 Email from J. Cantlon to R. Aslin.) These terms, plus close monitoring of Jaeger’s relationships with students, were reiterated in November by Aslin in a “call for action” letter to Joel Seligman, University President, and Peter Lennie, Dean of the Faculty. (Nov. 30, 2016 Letter from R. Aslin to J. Seligman and P. Lennie.)

about the reporting and investigative process and lack of transparency in reporting investigative results and remedial actions, the claimants also urged changes and enhancements to the relevant policies, procedures and process used by the University to address claims of sexual misconduct by faculty members.

In July 2016, partially in response to their belief that Jaeger was telling people that he had been “cleared” and the lack of information being provided by the University, the claimants decided that other members of the BCS faculty should be informed of the allegations and investigative findings and took it upon themselves to do so, joined by Newport and others at BCS (Mahon and Hayden). These efforts raised significant concerns on the part of the OOC, the deans, and DeAngelis about confidentiality and the potential for undermining official processes, and it offended a number of other BCS faculty, two of whom referred to the claimants’ conduct as vigilantism.¹⁹

On July 26, 2016, Deans Lennie and Culver sent a letter to BCS faculty telling them that the investigation was concluded, its findings were “a confidential employment matter” and that the matter was on appeal.²⁰ They criticized the “gossip” about the claims as “most regrettable and unprofessional,” but they emphasized that they “fully endorse the rights of individuals to make good faith complaints and they will ensure that no one will be retaliated against for their participation in the investigation.”²¹ Kidd, who filed a retaliation claim on July 21, 2016, as a

¹⁹ Jan. 5, 2017 Emails between Faculty 19, Faculty 13, Faculty 20, G. DeAngelis and Faculty 7; Oct. 20, 2017 Interview with Faculty 7.

²⁰ July 26, 2016 Letter from P. Lennie and G. Culver to BCS Faculty (“July 2016 Letter”) (attached as Exhibit 7).

²¹ *Id.*

result of some of the ongoing conversations which questioned her credibility,²² welcomed this belated admonition from the University. Other claimants resented this “gag order” and believed, in any event, that they had a first amendment right to discuss the matter.²³

During the period from July 2016 to March 2017, there were numerous discussions between the claimants, the BCS Chair, Deans Culver and Lennie, Provost Clark and other senior UR officials, including, eventually, President Seligman, about possible process changes and how best to move forward. DeAngelis also continued to press for a stricter code of conduct for BCS and other changes. These latter efforts were stymied, in his view, by the OOC, which did not think it was appropriate to have different standards for different departments, and the Executive Committee of the Faculty Senate, which, at the behest of DeAngelis and Lennie, considered a prohibition on any intimate relationships between faculty and students in the same department, but ultimately took a different approach to strengthening the policy. On November 30, 2016, Aslin sent his “call for action” letter to Seligman and Lennie, informing them that he would retire early from UR if the process for handling sexual harassment claims against faculty members was not improved and that he would leave UR, in any event, if Jaeger was not gone by June 30, 2017.²⁴

Aslin also sent a letter directly to Jaeger in early November 2016, which specified alternative paths forward for Jaeger, which Jaeger found inappropriate and threatening.²⁵ On November 29, 2016, largely in response to Aslin’s letter to Jaeger and in an effort to move past

²² C. Curtin’s Notes from Aug, 16, 2016 Interview with C. Kidd.

²³ Nov. 30, 2016 Letter from R. Aslin to J. Seligman and P. Lennie.

²⁴ *Id.*

²⁵ Nov. 2, 2016 Letter from R. Aslin to F. Jaeger.

the discord in BCS, Provost Clark sent a memorandum to BCS faculty telling them that the University considered the Jaeger matter closed and that the University valued and supported him as it does all faculty members.²⁶ In that memorandum, there was no mention or criticism of any of Jaeger's conduct that had been found problematic in the investigation, but Clark informed faculty that they could view a summary of the facts in the Intercessor's office. This unbalanced communication angered the claimants, their supporters and other, more neutral members of the BCS faculty.

Eventually, and reluctantly, in order to deal with the continuing tensions in BCS and to provide more transparency about the allegations and the investigation, as claimants and others in BCS were seeking, the OOC prepared a summary of facts in late November 2016, and provided it to interested BCS faculty who would agree to keep the information confidential.²⁷ Jaeger's written statement and Aslin's November 2, 2016 letter to him were also, at Jaeger's request, made available.

As with other steps the University took to try to move past the ongoing controversy and tensions in BCS, these efforts were not successful. Matters were further exacerbated when, in January 2017, the OOC provided DeAngelis with certain of the claimants' emails that had been preserved when UR was notified in July 2016 that Aslin and Cantlon had retained a lawyer. The emails had been reviewed by the OOC in connection with the complaints about violations of confidentiality and in anticipation of providing them to the outside lawyer working on Kidd's

²⁶ Nov. 29, 2016 Memorandum from R. Clark to BCS Faculty ("November 2016 Memo") (attached as Exhibit 8).

²⁷ Of the BCS faculty who supported the claimants, only Hayden reviewed the summary; Piantadosi refused to commit to confidentiality and so did not review the summary. Cantlon, Aslin and Kidd had reviewed the entire investigative report.

retaliation claim. In a January 2017 BCS faculty meeting, without naming names, DeAngelis told the group that he believed that he had been deceived and manipulated after he had reviewed emails from those who had complained about Jaeger to the University. Cantlon took his remarks to be referring to her, as well as Aslin, and was outraged. Later, it was asserted that DeAngelis' remarks constituted retaliation for their having complained about Jaeger and participated in the investigation. The revelation and discussion of the emails caused the BCS faculty to become further divided. All subsequent efforts to repair the faculty relationships in BCS have also been unsuccessful.

A number of BCS faculty and members of the University Administration have found the claimants' unrelenting pursuit of this matter, which the University believed it had thoroughly, fairly and in good faith investigated and resolved under its established procedures, both frustrating and inexplicable.²⁸ For their part, the claimants and their supporters felt insulted and very troubled by the University's perceived lack of responsiveness to them and their concerns about the sexual harassment of students and UR's system for dealing with sexual harassment claims against faculty members.

Ultimately exasperated by their lack of success internally to reverse the University's investigative findings, to sanction Jaeger or to change UR's policies and procedures, the claimants (together with others) filed a complaint with the Equal Employment Opportunity Commission ("EEOC") on August 30, 2017 (the "EEOC Complaint"), which repeated many of the allegations reported to UR in 2016. The complainants in the EEOC Complaint were four current BCS faculty members (Cantlon, Kidd, Mahon and Piantadosi), three former BCS faculty

²⁸ Seligman personally read the University's investigative report "multiple times" and found it to be thorough and persuasive. (Jan. 8, 2018 Interview with J. Seligman.) He also read the appeal papers and other subsequently-filed complaints. (*Id.*)

members (Aslin, Hayden and Newport), and Keturah Bixby, a female BCS graduate student who completed her Ph.D. in 2017 (collectively, the “EEOC Complainants”). The named defendants were UR, Jaeger, Catherine Nearpass (the University’s primary investigator), DeAngelis and Clark, who was the University’s decision-maker on the claims made about Jaeger by Aslin and Cantlon and the senior University official who affirmed, on appeal, Culver’s decision that there was no retaliation against Kidd. The EEOC Complaint was made public through the media on September 7, 2017.

The University, on September 29, 2017, responded to the EEOC Complaint in a Position Statement, denying many of the allegations and defending the fairness and robustness of their investigations.²⁹ In September 2017, Jaeger agreed to go on administrative leave, pending the outcome of the Independent Investigation of the allegations raised in the EEOC Complaint.³⁰ There is no evidence that, at any time prior to the publication of the EEOC Complaint, the Board of Trustees was informed about this matter, by either the University Administration or the claimants.

In late November 2017, the EEOC dismissed the EEOC Complaint and issued “right to sue” letters to all of the claimants, as well as to Sarah Heilbronner, a former post-doctoral fellow at the University and Hayden’s spouse, who filed a subsequent complaint with the EEOC, alleging that she did not receive an offer for a particular tenure-track position in BCS as a result

²⁹ Sept. 29, 2017 University of Rochester Position Statement (“UR Position Statement”) (attached as Exhibit 9). The UR Position Statement has not previously been made public.

³⁰ The terms of Jaeger’s administrative leave prohibit him from teaching classes, but, for the sake of his students, permitted him to continue to work with them if they chose to do so. (Nov. 14, 2017 Interview with G. Norris.) Jaeger is also scheduled, as previously approved, to be on sabbatical for the spring semester of 2018.

of UR’s retaliation for actions taken by her husband, Hayden, and the other EEOC

Complainants—a claim also raised in the original EEOC Complaint.³¹

On December 8, 2017, the EEOC Complainants and Heilbronner (collectively, the “Complainants”) filed a federal complaint in the United States District Court for the Western District of New York (the “federal complaint”),³² largely, though not entirely, based on the allegations in the EEOC Complaint.³³ The federal complaint was brought against UR, Seligman, and Clark; Jaeger, DeAngelis and Nearpass are no longer named as defendants. The University is currently scheduled to file its initial response to the federal complaint on February 5, 2018.

Today, the University Administration, Faculty Senate, BCS Chair, the Commission on Women and Gender Equity and the Students’ Association Task Force to Review University of Rochester Sexual Misconduct and Title IX Policies and Procedures, among others, continue to review and work on the policy and procedural concerns and related issues that this matter has brought forward and into the open for broader discussion and scrutiny by the University community of sexual harassment and other gender-related issues. While consideration of these issues is ongoing with the full support of President Seligman and the Administration, the

³¹ The issuance of “right to sue” letters did not reflect a decision by the EEOC on the merits of the complaints. Of the original EEOC Complainants, all but one received a “right to sue” letter at their request. An EEOC claimant may ask for a “right to sue” notice if he or she does not want to “wait for EEOC to complete the investigation and make a determination on the charge”; such a letter does not reflect a decision on the merits by the EEOC in either direction. *See Donald R. Livingston, EEOC Litigation and Charge Resolution* 431 (2018). Newport received a “Dismissal and Notice of Rights” letter, indicating that her case had been dismissed by the EEOC and that she had the right to bring suit in federal court.

³² *See* <https://www.documentcloud.org/documents/4325254-UR-Lawsuit.html>.

³³ Any new allegations added to the federal complaint have been reviewed by the Independent Investigation and we note in the Report where allegations in the EEOC Complaint have been dropped or materially changed. In some cases, insufficient information was provided in the federal complaint to identify the people and events being alleged.

Administration has also made clear that it believes that the current policies, process and procedures for addressing sexual harassment are fully compliant with Title VII, Title IX and best practices.³⁴ Recently, the Executive Committee of the Faculty Senate has made certain recommendations for changes in procedures and criticized the Administration for not making at least interim changes pending the outcome of the Independent Investigation and this Report.³⁵

It would be a significant understatement to say that these allegations, Jaeger's underlying actions and the University's and the claimants' responses to them have torn at the fabric of BCS and the broader UR community. They have, for example, led to: the filing of the EEOC Complaint; a subsequent, recently-filed federal lawsuit which is ongoing; protests; demands that Jaeger be fired; a letter dated March 13, 2017 from 18 former graduate students who worked with Jaeger to Dean Culver in strong support of him;³⁶ calls for President Seligman's resignation; an alumni petition making five demands, including a public written apology from Seligman; acceleration by Aslin of his previously planned retirement from UR; fractured personal relationships among the BCS faculty; a letter, co-authored by a former BCS graduate student and advisee of Aslin's and signed by over 400 faculty members at other schools, saying that they will not recommend that any student of theirs go to UR to study or work under present circumstances and encouraging UR's Trustees to think about changes they will make; and the formation of a

³⁴ See Exhibit 9. The University issued a statement that "The policies and practices in place at the University of Rochester are regularly benchmarked against those of peer institutions, and we believe they currently provide appropriate protections and support for both complainants and respondents." Brian Sharp, *Faculty Leaders: Inaction by Administration Has Damaged UR*, DEMOCRAT & CHRONICLE (Dec. 14, 2017).

³⁵ Op-Ed, *After Administration's Inaction, Harassment and Sexual Misconduct Policies Need Oversight*, CAMPUS TIMES (Dec. 14, 2017).

³⁶ Mar. 13, 2017 Letter from 18 former students in F. Jaeger's lab to G. Culver.

Special Committee of the UR Board of Trustees to commission and oversee a comprehensive, independent investigation, which is now the subject of this Report.

There have also been some attacks on the Special Committee and on our independence and competence since being retained to conduct the Independent Investigation. That comes with the territory when the matters being investigated are so critical and deeply felt by so many who are not in agreement about what happened, what the appropriate remedies should be or what should happen more generally going forward, leading to a general climate of mistrust. All of this is also occurring in an unprecedented environment of highly publicized instances and allegations of sexual assault, abuse and harassment in a wide variety of workplaces, including Hollywood, media, the federal bench, Congress and at other educational institutions.

All of these instances, like the one before the UR community, raise very troubling allegations and, in some cases, acknowledgements of sexual misconduct by men in powerful positions of various kinds where female subordinates have been victimized. We share the hope of many others that the public dialogue about these high-profile situations and the actions taken in response will heighten sensitivity, significantly raise the bar for acceptable behavior, lead generally to much more rigorous efforts by employers and others in authority to prevent sexual misconduct in the workplace, and enhance policies and stronger enforcement of policies and laws designed to ensure a work and educational environment free from any form of discrimination against anyone based on their sex, gender-preference, race, religion or on any other basis that does not respect the objective talents and performance of each individual.

As many we spoke with have said, a very positive and constructive outcome here would be for UR to emerge as the thought leader and role model for the academic community of how to prevent and optimally address sexual harassment in the workplace and, more broadly, to ensure

that UR remains—and is perceived to be—an esteemed place of higher learning where all students, staff and faculty flourish and feel protected to pursue their education, research, jobs and dreams in an environment supportive of all. In the meantime, what must not be lost in the current environment, turmoil and extensive public discourse is that each situation has its own unique facts and circumstances and that other fact patterns are not the subject of this investigation or the allegations that prompted it. It is critical that we be very clear-eyed about that and thoroughly and impartially examine and evaluate the evidence, findings and recommendations that are at issue here.

As one law professor commented recently, in the wake of quick public judgments about alleged sexual harassers, “[z]ero tolerance should go hand in hand with two other things: due process and proportionality.”³⁷ The distinguished jurist, Learned Hand, had a similar concern and worried, in a different context, about what he called “a spirit of general suspicion and distrust [of a community], which accepts rumor and gossip in place of undismayed and unintimidated inquiry.”³⁸

Some have urged us to simply accept as fact the allegations in the EEOC Complaint and the federal complaint (the “complaints”). We cannot do that. Claims and allegations are not proven facts and are not always true. To be sure, the complaints here contain a number of important allegations that the Independent Investigation has completely substantiated, including that, in his early years at UR, Jaeger, as then permitted by UR policy, had intimate consensual relationships with a number of BCS students, made inappropriate sexual remarks, blurred personal and professional boundaries and created a negative academic environment for some

³⁷ Zephyr Teachout, *I'm Not Convinced Franken Should Quit*, N.Y. TIMES (Dec. 11, 2017).

³⁸ Speech to the Board of Regents, State University of New York (Oct. 24, 1952).

BCS students. At the same time, the complaints also make assertions that the Independent Investigation has disproven, and still others where fuller context is necessary to accurately understand the import and impact of certain behaviors.

The EEOC Complaint, for example, suggests in two separate places that Jaeger engaged in sexual activity with a prospective student who stayed with Jaeger and his partner during a visit to UR in 2015.³⁹ To the EEOC Complainants' credit, their subsequent federal lawsuit, where Rule 11 pleading requirements apply,⁴⁰ withdraws that assertion, noting that the student has now confirmed that she did not experience any sexual advances or other misconduct by Jaeger during her visit.⁴¹

It is also important to recognize that the complaints contain numerous allegations having nothing to do with sexual harassment, which are important to distinguish for legal and fairness reasons. A number of these allegations have also been found not to be true. For example, Jaeger is criticized for selfishly taking unwarranted "credit" for the academic work of his students. Although the federal complaint omits many of the credit-related allegations that were in the EEOC Complaint, it continues to incorrectly allege that:

On one occasion, Jaeger found out that he and one of his former collaborators, then a graduate student at Stanford, had jointly won an award for a project they did together. Jaeger was incensed that he had to share recognition with this student. He called members

³⁹ EEOC Compl. ¶¶ 153, 164.

⁴⁰ "By presenting to the court a pleading, written motion, or other paper . . . an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: . . . the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery . . ." Fed. R. Civ. P. 11(b)(3).

⁴¹ Fed. Compl. ¶ 212 n.43.

of the awarding body and told them that the ideas and most of the work were not the student's but his.⁴²

The opposite is actually true. Contemporaneous emails from that time among the awards committee, Jaeger and the student make clear that Jaeger was initially given the award alone, but then informed the awards committee that the student was responsible for 50% of the work and urged that the student also be given the award. A committee member, in a break from prior precedent, agreed that Jaeger and the student could split the award money and be named as joint recipients. In an email to Jaeger and the student, the committee member reported that the two would be joint recipients of the award and split the award money, “given that Florian has let me know about 50/50 contribution to this piece of research.” Jaeger responded, “I think this would be awesome! Thank you for making this possible (and so fast). . . Congratulations, [Post-doctoral Fellow 8] =).”⁴³

More broadly, as numerous witnesses with first-hand knowledge told us, there are many specific incidents alleged in the complaints that occurred in some form, but have been embellished and “distorted” into something they were not in order to sensationalize Jaeger’s objectionable conduct and to support the assertion of a pervasively hostile environment for women students in BCS. One current BCS faculty member described the EEOC Complaint as “very engaging,” “like a novel,” “but it called into question how much was fiction versus non-fiction for me.”⁴⁴ The complaints are also frequently vague about when relevant alleged events occurred. This is particularly important here, not because past acts and problems are irrelevant

⁴² See EEOC Compl. ¶ 60; Fed. Compl. ¶ 100.

⁴³ Mar. 3, 2008 Emails between F. Jaeger and Post-doctoral Fellow 8 (attached as Exhibit 10).

⁴⁴ Oct. 20, 2017 Interview with Faculty 11.

or unimportant, but because the current environment is obviously of greatest concern to the University, its students and potential students.⁴⁵

We cite examples of inaccurate or misleading allegations in the complaints, not to minimize the allegations that have been brought forward or to undermine the overall credibility of the Complainants, but to underscore the importance of proof and basing ultimate judgments on full facts, not on unproven allegations, incorrect conclusions drawn from the facts or allegations that are demonstrably false. The stakes are high for everyone involved and it would be a disservice and unfair to everyone not to require clarity and rigor in assessing these very serious allegations of misconduct.

We urge everyone to read the full report and the exhibits before making judgments and to remember, as we found over and over during the investigation, BCS is an extraordinarily impressive department, and UR is a University where the Administration, faculty, students, alumni and the Board of Trustees are deeply engaged and committed to its welfare and that of its students. No one we talked with disputed that the safety and education of UR's students are paramount. This includes the former and current BCS graduate students who, despite the questions, disruptions and pain surrounding these events, generally praise the high quality of their education, while at the same time worrying about the negative impact on their research, reputations and careers that may flow from this matter and how it has proceeded.⁴⁶

⁴⁵ Legal liability for claims of this kind are also ordinarily governed by statutes of limitations of three years under Title IX and the NYSHRL and 300 days under Title VII.

⁴⁶ The release of the complaints has profoundly impacted Jaeger's current students. One student, who spoke very favorably about Jaeger as her adviser, said that the complaints had "derailed her entire year." (Dec. 8, 2017 Interview with Graduate Student 6.) She explained that others in the field were "boycott[ing]" her papers, because with Jaeger as a co-author, they were refusing to read her work. She noted that Jaeger had offered to remove his name from papers, but she declined, saying "that is not fair." The experience of being boycotted,

We have done our best to conduct a thorough, impartial inquiry to consider the allegations in light of all the known facts. We hope that our efforts will be helpful in providing more complete information and some perspective to these serious allegations that have deeply engaged, divided and negatively impacted BCS students and faculty and the University community as a whole. It is always possible that new evidence or allegations emerge, from the Complainants or others, that could alter or refine our conclusions. However, given the unusually extensive written record here and the extraordinary cooperation that we have received from so many witnesses with first-hand knowledge of relevant events, we are able to have a high level of confidence in our findings. We also hope that the recommendations we make, which are significantly informed by a number of the well-founded concerns and thoughtful suggestions expressed by the Complainants and others, will provide a partial roadmap for a constructive path forward.

B. Scope and Independence of the Investigation

On September 19, 2017, a Special Committee of the Board of Trustees of the University of Rochester retained Debevoise & Plimpton LLP to conduct an independent, comprehensive investigation of all matters raised in the 111-page EEOC Complaint; review the University's policies, procedures and processes for addressing claims of sexual misconduct and harassment by faculty members; and make any appropriate recommendations for changes in those policies, procedures and processes.⁴⁷ Debevoise does not represent the University or any of the parties before the EEOC or in federal court.

she told us, has led her to tentatively decide that she is “not going to stay in academia.” As she put it, it is “already hard [enough] to find a job.”

⁴⁷ The Board of Trustee’s resolution announcing the formation of the Special Committee and the Special Committee’s statement on retaining Debevoise are at Exhibit 11.

The matters raised in the EEOC Complaint, now mostly carried forward in the federal complaint, include: (a) allegations about Jaeger’s conduct over a period of years beginning in 2007; (b) the University’s actions in responding to these allegations, including the adequacy and impartiality of its investigations of the claims about Jaeger’s conduct, the resulting academic environment in BCS for female graduate students, and Kidd’s claims of retaliation;⁴⁸ and (c) the allegations raised in the complaints of broader retaliation against some of the Complainants who made or discussed the claims or who provided information about Jaeger’s conduct or discussed the allegations and the University’s investigation.

When the Special Committee was established, reflecting the extreme importance of this matter, it was made clear that its work would proceed to conclusion, irrespective of any decision by the EEOC or any other person to pursue claims. The Special Committee is chaired by Trustee Richard B. Handler; the other Trustee members are Nomi M. Bergman, Carol (John) Davidson, Launcelot F. Drummond and Lizette M. Pérez-Deisboeck. On October 11, 2017, Professor Jean Bidlack, Professor and Associate Chair of the Department of Pharmacology and Physiology and a member of the Executive Committee of the Faculty Senate, and Kolja Keller, a fifth-year Ph.D. student in the Philosophy Department, joined the Special Committee as full members and as representatives of, respectively, the faculty and graduate students.

⁴⁸ UR conducted two separate investigations: (1) beginning in March 2016 and concluding in May 2016, Nearpass investigated the claims made by Aslin and Cantlon about Jaeger; and (2) beginning in August 2016 and concluding in September 2016, Cynthia Maxwell Curtin, an outside lawyer at Curtin & DeJoseph, investigated Kidd’s retaliation claim, the crux of which was that Nearpass had improperly revealed Kidd’s name and questioned her reliability in the investigative report made available, per UR practice, to Aslin and Cantlon (the claimants) and Jaeger (the accused), which, in turn, allegedly led to criticisms of Kidd and her credibility being discussed by Jaeger with others inside and outside of BCS.

The Debevoise Investigative Team is headed by Mary Jo White, Senior Chair of the firm and the former Chair of the Securities and Exchange Commission and the former United States Attorney for the Southern District of New York, and her partner, Mary Beth Hogan, the co-chair of Debevoise's litigation department, who also serves on the Board of Directors of Catalyst, a worldwide nonprofit organization dedicated to the advancement of women at all levels in the workplace, including into leadership and board positions. They are assisted by Debevoise Counsel Winston Paes, a former Assistant United States Attorney and Section Chief in the Eastern District of New York, and several other Debevoise lawyers, as well as two outside professional investigators retained by Debevoise.⁴⁹ Both Debevoise and the outside investigators have extensive experience in conducting investigations of sexual misconduct.

On September 28, 2017, the Special Committee announced that it had structured its role primarily to help secure full cooperation from the University community for the Debevoise Investigative Team, making clear that the Special Committee would not be directing or influencing the investigation in any way, nor receiving factual briefings on witness interviews or document reviews prior to the completion of Debevoise's final written report.⁵⁰ As the Special Committee further determined, Debevoise's written report would be simultaneously presented to the Special Committee and the Board of Trustees upon completion of the Independent

⁴⁹ The investigators are Anthony P. Valenti, a former Special Agent of the IRS and Senior Criminal Investigator of the United States Department of Justice, Office of the United States Attorney for the Eastern District of New York, and Stephen Korinko, a former federal law enforcement agent and supervisor with the United States Postal Inspection Service. Both are with the investigative firm of Stroz Friedberg.

⁵⁰ Message from the Special Committee of the University of Rochester Board of Trustees, September 28, 2017 (attached as Exhibit 12). Debevoise spoke with the Special Committee, typically once a week, to report, at a high level, on the progress of the investigation, the cooperation being received and other relevant, non-factual developments.

Investigation and thereafter made available to the public on the same day, without change or edit.⁵¹

As directed by the Special Committee, the Debevoise Investigative Team has functioned entirely independently in conducting the investigation and preparing this Report. No changes or edits were made to the Report by anyone outside of the Debevoise Investigative Team at any time. No draft of the Report was shown to anyone outside of Debevoise or the Debevoise Investigative Team and no advance copy of the Report, or any part of it, was shown or read to anyone else. The findings and recommendations in the Report are exclusively those of the Debevoise Investigative Team.

In conducting the Independent Investigation, we received full cooperation from the University Administration, including the OOC, academic deans, and Title IX office. We also spoke with many members of the UR faculty (past and present), including Jaeger, 64 past and present UR students and post-doctoral fellows, students and faculty from other institutions and others with relevant information. Notably, we were able to interview 14 of the 17 graduate students (including all female graduate students), and seven out of the 10 post-doctoral fellows (including three female post-doctoral fellows), who worked in Jaeger's lab from 2007 through the present.⁵² In connection with our examination of the University's policies and procedures and our policy recommendations, we interviewed 12 University officials regarding UR's policies and investigative procedures, reviewed UR policies and procedures addressing sexual harassment, sexual misconduct, faculty-student relationships, conflicting employment

⁵¹ Exhibit 12.

⁵² Two of the three male graduate students declined to be interviewed, and one did not respond to our interview requests. One of the female post-doctoral fellows declined to be interviewed, and two male post-doctoral fellows did not respond to our interview requests.

relationships and information technology and benchmarked UR's policies against those of 19 other schools, as described in further detail in Appendix B.

In all, during the course of the investigation, we interviewed over 140 witnesses, some multiple times, and reviewed over 6,000 relevant documents, including University policies, interview notes and reports from the University's investigations, emails, Facebook messages and other correspondences. We also received very helpful input from the Executive Committee of the Faculty Senate, chaired by Mary Jane Curry and Kevin McFarland; Dr. Catherine Cerulli, the Director of the Susan B. Anthony Center, and Jordan Smith, the faculty and student co-chairs of the Students' Association Task Force to Review University of Rochester Sexual Misconduct and Title IX Policies and Procedures; and Antoinette Esce and Amy Lerner, the student and faculty co-chairs of UR's Commission on Women and Gender Equity in Academia.⁵³ Debevoise's total bill for its work is \$4.5 million.

The majority of witnesses who agreed to be interviewed requested anonymity and we have honored that request in conducting the Independent Investigation and in preparing the Report; to the extent we discuss what these witnesses said in interviews, emails or documents, we have assigned them an appellation that consists of their current academic status and a random witness number, *e.g.*, Former Graduate Student 3. We have also given an anonymous appellation to individuals with whom we did not speak. At times, we do not reveal the identity

⁵³ Seligman called for the formation of this Commission on September 14, 2017; the Commission announced its formal establishment on October 25, 2017 and that it would function independently of the President's Office and the University Administration and report to the University community as a whole. Its members include faculty, students and trainees from across the University, and its mission is a broad review of the policies, procedures and culture that affect women and LGBTQI individuals in the academic settings of UR. *See* Press Release from Amy L. Lerner, Antoinette Esce, et. al., Comm'n on Women and Gender Equity in Acad. (Oct. 25, 2017), <https://www.rochester.edu/commission-women-gender-academia/>.

of an interviewee in our citations to interviews where doing so would make the person identifiable. We do not adopt the pseudonyms used in the complaints—and instead use the appellations noted above—due to concerns raised by a number of the women we spoke to that people have been able to identify them despite the measures taken by the Complainants to conceal their identity.⁵⁴ In reporting our findings, we have also been sensitive to the fact that several of the Complainants, Jaeger, as well as many other witnesses remain part of BCS, UR and/or the broader academic community and therefore we have not reported on certain facts of a personal and private nature if they were not necessary to our findings and their disclosure might unnecessarily damage reputations or current and future personal or working relationships. We have not, however, omitted any such information that is relevant and might reflect unfavorably on Jaeger.

On the advice of counsel, the Complainants, and some of the witnesses referred to in the complaints by name or under an alias, did not agree to be interviewed by the Debevoise Investigative Team. For all eight of the EEOC Complainants, however, we were able to review detailed notes of interviews and information they gave in the University’s prior investigations of this matter, including those from the interviews of the two EEOC Complainants—Kidd and

⁵⁴ Two key witnesses told us that they had not been contacted before sensitive information purportedly coming from them or about them under an alias was included in the complaints. These witnesses complained that they were not contacted in advance, that their identities were not protected and were apparent despite the use of aliases and, in some respects, that the information included in the complaints about them was not accurate. At least one other central witness given an alias in the complaints told one of the Complainants, as well as the Complainants’ lawyers, that part of the information alleged about her was not accurate before the filing of the federal complaint.

Bixby—who had the most meaningful first-hand information based on direct, relevant interactions with Jaeger.⁵⁵

Significantly, the detailed notes of interviews prepared by the University investigators were also reviewed by the interviewed EEOC Complainants for accuracy and completeness prior to being finalized. That was also true of at least seven of the witnesses referred to in the EEOC Complaint by their names or aliases. In addition, five of those witnesses agreed to be interviewed directly by the Debevoise Investigative Team (one additional witness sent us a written statement), including all of the former UR students referred to in the complaints with whom Jaeger had a romantic or sexual relationship. The Independent Investigation discovered an additional intimate consensual relationship in 2008 with an undergraduate student, whom we also interviewed. We were also able to examine certain Facebook messages and email communications between and among all of the Complainants, the witnesses referenced in the EEOC Complaint and others, as well as speaking to other witnesses with whom they had spoken or otherwise communicated. A number of the EEOC Complainants, primarily Kidd and Cantlon, have also spoken extensively to the media, including on television and radio, and those sources were available to us. We were also able to listen to a three-hour recording of Kidd’s interview

⁵⁵ Kidd and Bixby were interviewed by and exchanged information with University investigators several times in 2016. Bixby (and later Kidd, as well as another woman, Post-doctoral Fellow 13) also met in 2013 with BCS Chair DeAngelis. The information provided by Aslin and Cantlon, who in March and April 2016, respectively, filed the claims against Jaeger with the University, as well as the information provided by the other four EEOC Complainants, was largely based on information received from others (many of whom we were able to interview). Although Cantlon has been on the BCS faculty since 2009 and has asserted that she witnessed sexually harassing behavior by Jaeger toward students for years, she provided very limited information based on first-hand experiences or observations. (Apr. 7, 2016 Email from J. Cantlon to C. Nearpass.)

by Curtin. Finally, the collective views of the Complainants are detailed in the allegations in the complaints.

We, of course, would have preferred to interview each of the Complainants and all witnesses referred to in the complaints ourselves, and we made a number of efforts to secure their cooperation, but also respected that counsel advised them not to be interviewed in the Independent Investigation.⁵⁶ While we were required to expand the scope of our work to some degree as a result of the Complainants' decision not to cooperate in the Independent Investigation (by interviewing more witnesses with whom they had spoken and reviewing more extensive written communications among them and with others), we believe that the investigative record we compiled fully and fairly reflects the Complainants' collective and, in most cases, their individual views and information. Ultimately, the decision of the Complainants and certain of the witnesses referred to in the complaints not to be interviewed did not affect our ability to make findings and recommendations on all core issues. One of the attorneys for the Complainants has suggested that our investigation is somehow "fraudulent" because her clients were not made available for interviews.⁵⁷ That, of course, is not the case, as we have been quite clear in this Report that we were not given the opportunity to interview the Complainants and

⁵⁶ In an effort to obtain cooperation from the Complainants, we made clear that we would agree to any reasonable terms and conditions for interviews, including the participation by their counsel and on the understanding that they could decline to answer any question and stop the interview at any time. The Complainants, through counsel, nevertheless declined both to be interviewed and/or to provide their previous "statements" and "testimony" cited, but not included, in the EEOC Complaint released in early September to the media. These "statements" and "testimony" are represented in the EEOC Complaint as pre-existing documents, which will presumably be provided in discovery in the federal litigation and thus could have been provided without creating any new litigation risk of inconsistent statements and without the necessity of giving a new interview.

⁵⁷ See Fed. Compl. ¶ 49.

certain other potential witnesses, we discuss the impact of not being able to do so, and we specify in detail the evidence on which we have based our findings and recommendations, including in part, that provided by the Complainants to the University, in emails and Facebook messages, to the media and in conversations with other witnesses we have interviewed.

We have provided citations throughout the Report in order to make clear the source of the information included, whether an email, another type of document or an interview. We do not, however, always attach the emails or other documents as exhibits. We have made judgments about what is necessary to include in full, as opposed to describing the document or providing quoted language in the Report and noting its source. We have endeavored to be thorough and transparent, while also not attaching documents that are sensitive and/or not crucial to our findings and/or were not, when they were written, intended for the public.

C. Summary of Key Findings and Recommendations

As more fully discussed below, on the basis of all of the interviews conducted and documents reviewed, applicable UR policies and the law, we arrived at a number of key findings and recommendations which are summarized here.

Findings

1. **Jaeger's Conduct: 2014 to the Present.** There is no evidence of which we are aware suggesting that there is currently, or has been since at least 2014, a hostile work or academic environment for any female graduate students in BCS. Indeed, all of the current BCS graduate students and post-doctoral fellows we interviewed from Jaeger's lab (female and male) were positive about Jaeger as a scientist and mentor and said that they had not experienced or witnessed sexual harassment or other inappropriate conduct by him. We are also not aware of evidence suggesting that any BCS female graduate student who started at BCS since 2014 has

avoided Jaeger and the educational opportunities he provides on account of any sexually-related behavior or verbiage.

We also did not find any evidence that, during this period, Jaeger violated UR Policy 106, the UR Intimate Relationships Policy, UR Policy 121 or any other UR policy. There is no evidence that Jaeger engaged in any sexual relationships in this period with anyone other than his current partner, who moved to Rochester in the fall of 2013. The allegation in the EEOC Complaint suggesting a 2015 sexual encounter with a prospective graduate student is inaccurate and has not been included in the federal complaint. Although the complaints do not make this clear, nearly all of the allegations against Jaeger are either undated or from a time period at least three years, and often up to nine years, prior to the filing of the Aslin/Cantlon complaints in 2016.

2. Jaeger's Conduct: 2007-2013. We credit, as the complaints allege, that during the earlier period of 2007-2013 (and especially during the earlier years in that period), Jaeger engaged in behavior that was inappropriate, unprofessional and offensive. Among other things, he engaged in four consensual sexual relationships with current, former or prospective UR students between 2007 and 2011, he was flirtatious with other students, he blurred appropriate faculty-student boundaries in other ways, including by renting a room in his home to a female graduate student, and he sometimes made comments in social and academic settings that included inappropriate sexual content or innuendo. As the Complainants also allege, we agree that these behaviors were harmful in a variety of ways; for example, a number of female graduate students from that time period told us that, as a result of Jaeger's reputation or behavior, they made a conscious decision to avoid him and the educational opportunities he offered, which we found to be very troubling. We further note, however, that the narrative presented in the

complaints is also exaggerated and misleading in many respects, including, for example, the allegations concerning Jaeger’s living arrangement with and treatment of Kidd.

Despite our conclusions that Jaeger’s conduct in this earlier period was inappropriate and harmful to some in the UR community, we nevertheless also believe that UR was correct in concluding that his conduct did not violate UR policy. UR’s Intimate Relationships Policy in effect at the time (which has since been substantially revised) did not prohibit, though it strongly discouraged, consensual sexual relationships between students and faculty. We also do not believe that any potential claimant or plaintiff would be able to sustain a legal claim for sexual harassment in violation of Title VII, Title IX, NYSHRL (or UR Policy 106, which substantially mirrors the standards under those laws) based on Jaeger’s conduct. There is no evidence that Jaeger ever engaged in so-called *quid pro quo* sexual harassment, or ever had any non-consensual sexual contact with any person. Although we find Jaeger’s behavior inappropriate, unprofessional and offensive, the governing “severe or pervasive” legal standard for hostile environment harassment is a demanding one, and we do not believe any claimant or plaintiff would be able to show that it was met as to her.

We emphasize that this is a legal conclusion (not a moral or social judgment), based on applying the governing legal standards to the facts as we understand them. We also note that many employers, educational institutions and jurisdictions have made a reasonable judgment to impose standards for defining prohibited sexual harassment that are more exacting than the standards which governed Jaeger’s conduct in the period before 2014; indeed, UR’s own relevant policies have become more exacting since then. Our legal conclusion here, however, is based on the standards that governed his conduct at the relevant time. By providing our legal conclusion,

we do not imply that Jaeger's conduct was acceptable or presume to opine on questions of moral culpability.

3. Intimate Relationships with Students. During the 2007-2011 period, Jaeger had consensual intimate relationships with two students (one graduate and one undergraduate) and one prospective student. We interviewed each of these women. While ill-advised and contributing to Jaeger's reputation as a "womanizer," none of these relationships, as the University found, violated UR's faculty-student intimate relationships policy or any other UR policy applicable at the time. We also credit that Jaeger disclosed the relationship with the prospective BCS student with a senior BCS faculty at the time. There is also no evidence that Jaeger ever engaged in any intimate relationships with students after 2011.

4. Relationship with Recently Graduated Student. From 2010-2011, Jaeger had a consensual intimate relationship with an employee of a different lab who had graduated from UR six months before the relationship began. We interviewed this woman as well. Their relationship did not violate UR Policy 121 or any other applicable UR policy. There is also no evidence that Jaeger has ever had any other sexual relationship with any other UR employee who was or who had ever been a BCS student.

5. Complaints to the University about Jaeger's Behavior. Despite the negative views of some students about Jaeger, especially during his early years, we are unaware of any complaint about his behavior, including any claim of sexual harassment, being brought to the attention of the Administration, BCS leadership or other faculty prior to 2013 and no explicit claims of sexual harassment before March 2016.

Sometime in the spring of 2013, Keturah Bixby, then 28 years old and a third-year BCS graduate student, spoke first to Aslin, then another faculty member,⁵⁸ and then DeAngelis about her discomfort with Jaeger. DeAngelis did not understand the conduct about which she complained to be sexual, and to the best of his recollection, confirmed that with her. We note, however, that the contemporaneous documents are ambiguous. Bixby's written complaint mentions "harassing" conduct, but in an email to a friend at the time, said that it "was not at the level of sexual harassment." In editing the notes from her March 24, 2016 interview with Nearpass, Bixby confirmed in writing that she "didn't intend" her 2013 complaint to be one of sexual harassment. In August 2016, however, Bixby and four other former BCS female graduate students, including the two DeAngelis interviewed in 2013 or early 2014, sent a letter to DeAngelis and several deans stating that they had "experienced and/or witnessed harassment and inappropriate sexual comments," which was forwarded to the OOC.⁵⁹ Bixby also conveyed in a cover email her belief that UR's 2016 investigation had been "inadequate" and the process "flawed," and offered to meet to share her views on how to improve UR's process for handling sexual harassment claims to better protect students.⁶⁰

We certainly do not rule out, as the complaints assert, that it is possible that issues about Jaeger's alleged sexual harassment were not brought forward because potential claimants may have been afraid of not being taken seriously or other negative consequences or because they did

⁵⁸ The professor suggested that she raise the concern with DeAngelis, which she did in November 2013.

⁵⁹ Aug. 23, 2016 Letter from K. Bixby, Graduate Student 14, Graduate Student 17, Graduate Student 4 and Post-doctoral Fellow 13 to University of Rochester Administration (attached as Exhibit 13).

⁶⁰ Aug. 23, 2016 Email from K. Bixby to P. Lennie, G. Culver, W. Heinzelman and G. DeAngelis.

not recognize the behavior as harassment at the time it occurred. We note, though, that during much of the most problematic period of time (2007-2011), the Chair of BCS was Newport, one of the female Complainants, who is described in the complaints as strong and proactive in addressing sexual harassment.⁶¹ We also want to clearly acknowledge that whether or not Bixby earlier recognized or articulated her discomfort with Jaeger as sexual harassment, she is to be commended for her courage in coming forward in 2013 and for her considerable efforts in 2016 to improve UR's process for responding to and addressing claims of sexual harassment in academia. As we also note below in Finding 11, we consider it a missed opportunity in 2013 not to have recognized Bixby's complaint, however labeled, as one involving potential sexual harassment.

Once complaints and concerns were raised about Jaeger's behavior, both in November 2013 and in March 2016, they were dealt with seriously and professionally by the BCS Chair and the University. In both cases, DeAngelis counseled Jaeger and took other remedial steps, which appear to have been at least somewhat successful in helping sensitize Jaeger to the impact of certain of his border-pushing behaviors and inappropriate manner of speaking to and about students.

6. The Adequacy and Impartiality of the University's Investigations of Jaeger's Conduct in 2016. The University's investigations relating to Jaeger in 2016 were conducted in good faith, impartially, professionally and in accordance with UR Policy 106. And we agree with its ultimate conclusion of no policy violations. At least in hindsight, however, there are

⁶¹ Newport chaired BCS from 1997-2010. It is asserted in the complaints that she was quite vocal that sexually harassing behavior "would not be tolerated" and that she "would protect" students when it did occur. EEOC Compl. ¶ 15. An example of Newport causing a male BCS professor to be terminated for sexual misconduct, against the advice of the OOC, is also cited in the complaints. EEOC Compl. ¶ 245; Fed. Compl. ¶ 348.

aspects of the initial University investigation that could have been done differently, and better, which might have avoided some of the troublesome communications about the investigation that occurred in BCS and certain of the Complainants' criticisms. We also acknowledge the inherent difficulty for the OOC, even with its investigator "walled off" and functioning in a purely human resources role, to conduct an entirely independent investigation in both fact and appearance. Our recommendations address that difficulty. As for how the investigation might have been improved:

First, the instructions given to interviewees with respect to confidentiality were neither uniform nor always clear, leaving claimants, Jaeger, witnesses and other BCS faculty uncertain about what they could discuss with others with respect to both the investigations themselves and their outcomes. We note that Nearpass, in September 2016, prepared and began using a standard form of instruction to claimants, witnesses and the accused about confidentiality.⁶²

Second, while it would not have affected the finding of no policy violation in this case, and we appreciate the privacy concerns that motivated its exclusion, the University should have included in its report the fact, anonymized, that Jaeger had also had a sexual relationship with a recent undergraduate. Although this relationship also did not violate University policy, it might have been relevant to the decision-maker or to others at the University who had discretion over what remedial steps to take.⁶³

⁶² University of Rochester, *Policy 106 Investigation, Information for Witnesses* (attached as Exhibit 14).

⁶³ We note that Nearpass did not include this relationship in the written report, which would be seen by claimants, Jaeger, DeAngelis and various administrators, in order to better safeguard the identity and privacy of the former student.

Finally, as Nearpass now acknowledges, she should have reviewed Jaeger's Facebook messages to Kidd that Kidd offered to provide. Once again, however, doing so would not likely have altered Nearpass' findings and, ironically, if Nearpass had also obtained Kidd's Facebook messages responding to Jaeger's messages, as we were able to do, the messages viewed in full context would likely have cast further doubts on Kidd's claims of unwanted, partially sexual banter with Jaeger and that he "forced" her to live in his home in 2007.

7. Retaliation Claims. The University did not retaliate against the Complainants for the claimants filing the complaint against Jaeger or for participating in the University's investigations and their aftermath. Retaliation, as that term is defined under applicable law, requires a materially adverse employment action (such as a termination or other conduct that would dissuade a reasonable person from complaining) in response to protected activity (such as complaining about or opposing harassment). While the Complainants felt that they were disrespected and unfairly criticized for the actions they took in this matter, such purported harms do not constitute material adverse employment actions for purposes of a legal claim of retaliation. In addition, many of the statements made and actions taken by UR to which the Complainants object were, in our view, not taken to retaliate against them for any protected activity, but rather as a good faith, albeit not successful, effort to lessen the divisiveness within BCS.

8. The University's Policies, Procedures and Process for Addressing Claims of Sexual Harassment Against Faculty Members. While they can and should be enhanced in a number of ways, as the claimants and Bixby have advocated, UR's policies on sexual harassment and its existing procedures and process for addressing claims of gender-based discrimination and sexual harassment by faculty members are consistent with both applicable law and in line with

the policies and procedures of comparable schools. UR Policy 106 and the Student Sexual Misconduct Policy (dealing with sexual harassment or assault claims against students), for example, track closely federal and state laws and are the product of detailed benchmarking against 18 other similarly-situated schools. That said, the claimants and Bixby have very constructively pointed out a number of areas where the University should change or enhance its policies, procedures and process. We agree and make a number of recommendations for change, including considering a more prohibitive UR Intimate Relationships Policy, having sexual harassment claims handled by an office and investigator independent of OOC, providing at the outset of every investigation a clear “statement of rights and process” to every complainant, witness and accused and providing access to a separate adviser for claimants and the accused, to assist them in understanding the process and the other support resources that are available to them.

9. Reviewing Faculty Emails. Although emails of faculty and students are rarely reviewed by the UR Administration,⁶⁴ the OOC’s preservation and review of BCS faculty emails relating to the claimants’ complaints about Jaeger fully complied with UR’s Information Technology Policy (“UR’s IT Policy”).⁶⁵ Sharing a sample of those emails with DeAngelis in

⁶⁴ According to Gail Norris, University General Counsel, email searches are rarely done, and when they are, they are performed pursuant to the UR’s IT Policy. Email searches are done most frequently when they are viewed as relevant to an employment dispute, but even then, they are uncommon. (Dec. 27, 2017 Email from G. Norris to Debevoise & Plimpton LLP.) Mark Fischer, the Director of the Department of Safety, confirmed for us that his office has never searched or collected a student’s email in connection with a sexual assault investigation or any other type of investigation. (Dec. 27, 2017 Email from M. Fischer to Debevoise & Plimpton LLP.)

⁶⁵ University of Rochester, *Information Technology Policy* (revised July 2014) (attached as Exhibit 15). The policy provides that all emails relating to “the University’s activities and functions, including, but not limited to, administrative functions in the areas of teaching, student life, patient care and research, as well as supportive administrative services” are

January 2017, while not prohibited and done in an effort to help DeAngelis effectively lead BCS, reflected questionable judgment under the circumstances and exacerbated the tensions in BCS. For security, investigative and other legitimate reasons, the University needs to retain the ability to search and review emails on its servers, just as other employers and educational institutions do. Reviewing the emails of faculty, students or staff, however, should not be done lightly and should be governed by new, more specific criteria, as we recommend below.

10. The University’s Response to the Controversies in BCS and on Campus in the Aftermath of its Decision on the Sexual Harassment Complaint against Jaeger. It is clear from the documents and from our interviews with all of the key University personnel that extensive efforts were made to try to deal with the aftermath of the University’s investigations, though it is equally clear that those efforts were not effective. The challenge was immense, starting with an unusual complaint, breaches of confidentiality during the investigation that threatened the integrity of the investigation, claimants who saw the facts very differently and rejected the University’s investigation and process and then later took matters into their own hands, all while a preeminent department was in turmoil. We think that the University acted in good faith and appropriately under its then-current policies and that the steps it took in an effort to navigate an unusually difficult situation were reasonable. That said, there were some steps taken and missed opportunities that, in hindsight, seem to have exacerbated the situation. Missteps included promoting Jaeger before the appeals process was finished, a move that understandably angered the claimants, sharing emails with DeAngelis and perhaps Seligman’s decision not to personally intervene during key moments of departmental tension (even though it appears that nothing less

“University Communications” that can be accessed by the University “as needed for the purpose of carrying out University Business without seeking prior approval.” (*Id.*)

than Jaeger's termination or forced exit would have satisfied Aslin⁶⁶ or likely some of the other Complainants). Below, we address the missed opportunities.

11. Missed Opportunities. In addition to acting on the recommendations set forth in this Report, the University community should reflect on the missed opportunities that it had to act on and respond to these issues sooner. These missed opportunities included:

(a) Newport, while she was Chair of BCS, was informed in 2007-2008 by BCS administrative personnel that Jaeger, then 31 years old and a first-year BCS faculty member, and Kidd, a 24-year old first-year BCS graduate student, were living in Jaeger's home. While Newport did once speak to Jaeger, after a faculty meeting, about the inadvisability of the living arrangement, when Jaeger asked whether he should throw Kidd out, Newport evidently did not engage further. When Kidd was asked about the arrangement by BCS administrative personnel in 2007-2008, she said that she and Jaeger were adults and comfortable with the arrangement. While it does not appear that there was ever a sexual relationship between Kidd and Jaeger (both deny it), Kidd does now allege that, during this period, Jaeger engaged in various conduct that she now considers to have been unwanted and, in part, sexually harassing, causing her emotional stress and to avoid Jaeger and certain educational opportunities he offered. Newport should have interceded and directed Jaeger to end that arrangement and taken the opportunity to counsel him, a very junior faculty member at the time, more generally on how to appropriately observe and handle boundaries between faculty and students.

(b) When Bixby reported her discomfort with Jaeger to Aslin and DeAngelis in 2013, whether or not she characterized Jaeger's conduct as sexual harassment, she

⁶⁶ Nov. 2, 2016 Letter from R. Aslin to F. Jaeger; March 11, 2016 Email from R. Aslin to J. Cantlon.

did report that the conduct was causing discomfort to her and other students, all of whom were women.⁶⁷ With better training and enhanced sensitivity, those to whom she reported her concerns might have viewed the situation as potentially involving sexual harassment or a hostile educational environment for women, and, as a result, broadened their investigation and taken different remedial action. It bears noting, however, that DeAngelis did in early 2014 counsel Jaeger on Bixby's concerns, as those concerns were then understood by DeAngelis, and Jaeger appears to have modified his behavior positively.

(c) After UR's investigations were completed and the appeals exhausted, without finding any violations of policy, but with pointed observations about inappropriate conduct, DeAngelis worked tirelessly and with commendable commitment to the welfare of BCS, its students and faculty, to require that Jaeger take responsibility and express accountability for his conduct, to include additional training on sexual harassment and workplace behavior, to hold discussions with BCS faculty and students on the issues and to make changes in BCS and University-wide policy on student-faculty relationships to enhance the protection of students. At several junctures, including when DeAngelis wanted to make a statement to faculty on the investigation and implement a stricter code of conduct, DeAngelis felt thwarted in these efforts by the OOC. While we do not find fault with the sincerity or substance of the concerns expressed to him by the OOC, it was not made sufficiently clear to DeAngelis that he could have proceeded with at least some of the measures he was considering even in light of the concerns expressed by the OOC. As a result, the situation continued to deteriorate, some remedial steps were delayed or not taken and the resulting effects of this entire matter on students and faculty of BCS were likely exacerbated.

⁶⁷ Letter from K. Bixby to G. DeAngelis.

(d) An enhancement to the UR Intimate Relationships Policy was on the Faculty Senate's agenda as early as 2010, but was not acted upon until 2014. The changes might well have resulted in Jaeger's not participating on the examination and thesis review committees of the graduate student with whom he had had a romantic relationship, five years before she came to UR. It would have been better if he had not, as Jaeger now acknowledges. There was also a delay in amending UR Policy 121 to cover relationships between supervisors and employees who are in romantic or sexual relationships. While hindsight is always a wonderful thing and an often unfair way of analyzing past actions, we do credit, as Jaeger told us, that he paid attention to what the University's policies permitted and prohibited. While that does not excuse Jaeger's inappropriate and harmful behaviors, whether or not prohibited by policy, there is nevertheless a message to be heard and remembered. Stronger policies can be helpful in combatting these issues, but they need to be promptly put into place to have any effect.

(e) We also consider it a lost opportunity that neither President Seligman nor any of the Complainants evidently notified the University's Board of Trustees of this matter, and the turmoil and dissension it was causing in BCS, prior to the Complainants going to the news media. Doing so would have given the Trustees the opportunity to intercede to try to help address the situation, which might have resulted in a quicker and more effective response by the University, with less damage to the University and its students.

This matter has fractured BCS and the University community generally. The concerns brought forward by the Complainants are serious ones going to the heart of the protection of students and the integrity and fairness of the academic environment. The University now needs to promptly take a number of bold steps, including but not limited to acting on the Recommendations in this Report, to repair the resulting wounds and distrust that have occurred.

The University must be proactive in responding, in some cases beyond what its peer institutions have done and beyond what would be necessary if this matter had never arisen and so significantly undermined trust in the UR community. Strengthening the relevant policies and procedures for addressing claims of sexual harassment by faculty members is not all that will be required. Heightened understanding of and sensitivity to the varieties of sexual harassment that may occur and the asymmetry in power between all faculty and students might have prevented or at least accelerated the detection and remediation of the problematic conduct that occurred here. In addition, some former female graduate students in BCS had to endure behaviors and inappropriate remarks that they should never have had to, at UR or at any educational institution. The University should consider, along with the other actions we are recommending and it is considering, what actions it might take to demonstrate its support for those students who had these painful experiences.

Recommendations

For the President and General Counsel

1. No later than three months from today, prepare and begin using, a plain English “Advice of Rights and Procedures” brochure for claimants or potential claimants, witnesses and the accused, to be provided at the outset of any investigation of a sexual harassment claim against a faculty member, or any inquiry about making such a claim, or upon first contact with a claimant, witness or any accused. This written tool should include clear information on, among other topics: how and where claims may be made; how any investigation will proceed; sources of support; the obligations of confidentiality, both during and after the investigation is concluded and a decision is rendered; and how, whether and when claimants, witnesses and the accused will be informed about the progress, conclusion and any action taken in response to a claim. In

addition, a protocol and template should be developed for communicating appropriate information about the conclusion of an investigation to the complainants, the accused and all witnesses.

2. Immediately develop a list of University personnel who can serve as advisers to claimants, potential claimants or an accused in matters involving claims of sexual harassment by a faculty member. The list should reflect a diverse pool of trained advisers, including academic deans, faculty members and other officers, similar to the pool of advisers made available to those participating in investigations pursuant to the Student Sexual Misconduct Policy, which is coordinated by the University's Judicial Officer. Notify all claimants, potential claimants, staff and the faculty of the availability of such advisers, specifying the range and purpose of such service and the confidentiality accorded to the consultations. Notify the Board of Trustees when this has been done and communicated to the relevant constituencies.

3. No later than three months from today, hire two new counsel to be initially assigned to the OOC, one of whom will serve as an adviser to claimants or potential claimants on a claim of sexual harassment or sexual misconduct involving a faculty member and the other to serve as an adviser to the accused. These advisers will not serve as the lawyers for claimants or the accused, but will be able to knowledgeably advise on matters of policy, procedure, process, appellate rights and other sources of support. Neither of the new advisers will advise or represent the University on claims or litigation involving claims of sexual harassment, sexual discrimination or other kinds of employment discrimination, although they may be assigned other legal duties, including duties involving sexual harassment training. If a separate office is established to investigate claims of sexual harassment or sexual misconduct by faculty members, these advisers should be transferred to that office.

4. Within three months from today, undertake and complete a review of the current mandatory training the University provides on sexual harassment to faculty, students, staff and trainees with the objective of providing state-of-the-art mandatory training to the entire University community on at least an annual basis and when anyone first enters the University community. Provide additional resources for training to achieve this objective.

5. Within three months from today, amend UR Policy 106 to specify: (a) examples of acts that may constitute sexual harassment; (b) the range of discipline and other remedial action that may be taken when there is a violation of the policy; and (c) the range of discipline and other remedial actions that may be taken by deans and chairs of departments for problematic conduct that does not rise to the level of a violation of the policy, but nevertheless counsels some remedial steps. In addition to these amendments, the University should consider adding to UR Policy 106 a statement encouraging members of the University community who believe that anyone subject to UR Policy 106 has engaged in sexual harassment to report such conduct, similar to the language in the University's Student Sexual Misconduct Policy that encourages reporting.

6. Retain expert outside counsel to advise the President and General Counsel on developing new procedures regarding confidentiality of investigations of claims of sexual harassment or sexual misconduct by faculty members, with the objective of adopting formal procedures that more carefully and flexibly balance the requirements and needs of confidentiality and the need for and benefits of transparency. Such new procedures should be finalized and implemented within six months of today. The General Counsel should consult with the Commission on Women and Gender Equity in Academia, the Executive Committee of the Faculty Senate, the leadership of the Graduate Students' Association ("GSA") and relevant deans

and department chairs before finalizing these procedures. Following the adoption of the new procedures, the General Counsel should publish them on the UR website.

7. The University should publish an annual report of the number of complaints made alleging gender-based discrimination and sexual harassment, whether made by the faculty, students or other staff, and information on how the complaints were resolved. Both Yale and Cornell may be useful resources in developing the template for this report.

8. The President and General Counsel should consult with the Executive Committee of the Faculty Senate to discuss the implementation of procedures for reviewing faculty emails on the University's servers in appropriate circumstances. The President and General Counsel shall report to the Board of Trustees by April 10, 2018 on the procedures that have been implemented. We recommend that UR's IT Policy should be amended to specify: (a) that the University respects the privacy of individuals and keeps user files and emails as private as possible; and (b) procedures for the distribution of emails by administrators authorized to access and review user emails.

9. The University should continue to provide easy online access to relevant policies, procedures and resources, including UR Policy 106, UR Policy 121 and the UR Intimate Relationships Policy. In addition to ensuring that all policies and training materials are readily available online, the University should provide online information regarding the Title IX Coordinator, any newly created office in this area, and the Intercessor. Such information should include actual names and contact information, not merely descriptions of their roles.

For the Board of Trustees, President, Provost, Executive Committee of the Faculty Senate, Leadership of GSA and the Commission on Women and Gender Equity in Academia

1. The Board of Trustees should direct the President and Provost to initiate consideration by the Faculty Senate of proposed amendments to the UR Intimate Relationships Policy so that, in addition to prohibiting faculty members from accepting academic authority over students and post-doctoral fellows with whom they have, or have had, an intimate relationship, regardless of department, to require flatly prohibiting all intimate relationships between faculty and students in the same department. The President, Provost and Faculty Senate should seek the recommendation of the Commission on Women and Gender in Academia and the GSA on such a policy and then recommend appropriate action to the Board of Trustees by April 10, 2018. As part of the process, input should be solicited from outside experts and other universities that have adopted such a policy.

2. The Board of Trustees should direct the President to consider establishing a dedicated office separate from the OOC to handle claims of sexual harassment or sexual misconduct against faculty members and instituting some or all of the procedures provided for investigating and adjudicating claims of sexual harassment or sexual misconduct by students as overseen by the Title IX Coordinator. As part of this consideration, the President and the Executive Committee of the Faculty Senate should consider establishing an appropriately comprised committee to recommend corrective action following the conclusion of every UR Policy 106 investigation of a faculty member for sexual harassment or sexual misconduct. The decision-making structures used by the University of Chicago and UR's College of Arts, Sciences & Engineering ("AS&E") for claims involving academic dishonesty may be useful resources to review. The President shall report to the Board of Trustees on the results of his consideration of this recommendation by April 10, 2018.

For the President and Board of Trustees

1. For the President, appoint a senior, cabinet-level official to oversee the implementation of these recommendations, including compliance with any deadlines, as well as other initiatives the President may develop to combat sexual harassment, misconduct, discrimination and retaliation throughout the University.

2. For the Board of Trustees, appoint a Trustee or Special Committee of the Board of Trustees to oversee the implementation of these recommendations, including compliance with any deadlines, as well as other initiatives as may be pursued by the University to combat sexual harassment, misconduct, discrimination and retaliation throughout the University.

* * *

We recognize that the University, Board of Trustees, the Faculty Senate, students, staff, alumni and others are deeply impacted by the events we were asked to investigate. The focus now will shift to pursuing the most constructive and optimal path forward, so that the University community can heal and progress. We make no recommendations with regard to the University's response to the pending federal complaint, or as to specific personnel actions, because decisions about those matters are beyond the scope of what we were asked to examine.

II. THE FACTS

A. Jaeger's Pre-2014 Conduct

The complaints contain serious allegations about Jaeger's conduct prior to 2014. To evaluate their veracity, we spoke with 90 individuals with knowledge of Jaeger's conduct prior to 2014 and reviewed contemporaneous writings, including emails and social media posts from

this period.⁶⁸ We found that some of the complaints' allegations were true, and Jaeger's behavior and statements, at times, were viewed by many (both male and female) as insensitive, unprofessional, cruel and occasionally containing sexual innuendo, and this perception, combined with Jaeger's reputation as a womanizer, genuinely caused some female students to avoid him socially and academically. At the same time, the complaints' narrative—framed through the language of sexual predation and retaliatory animus towards women—is largely without factual basis.

Jaeger unquestionably generated strong reactions from those who knew him and worked with him before 2014. His conduct during this early period reflected poor judgment, immaturity and a naïve and stubborn belief that continuing his graduate student lifestyle, including extensive socializing with students, was permissible and posed no risks. At the same time, this earlier period was also marked by close and productive relationships with many graduate students (both male and female), academic success and recognition, as well as the end of his promiscuous habits.

⁶⁸ We interviewed Jaeger on three separate occasions, two of which occurred in person, for a total of nine hours, and through his attorney, he has responded to multiple follow-up requests. Jaeger has also provided extensive documentation to the investigation.

In addition to Jaeger, we interviewed 26 graduate students, 9 post-doctoral fellows, 10 undergraduates, 2 visiting scholars, 15 UR faculty members, 3 visiting speakers, 4 BCS employees, 4 UR administrators, 13 other colleagues and 3 other witnesses who had knowledge of Jaeger's conduct during this time period.

1. Jaeger's Characteristics and Behavior

(a) Jaeger's Background

Jaeger started his position as a faculty member of BCS at UR in January 2007 when he was 31 years old, although already a “rock star” in his field.⁶⁹ Prior to joining UR, Jaeger was a graduate student at Stanford University and a post-doctoral fellow at UCSD. Although he had been hired to a faculty position in BCS, the first half of 2007 was intended to be an extension of Jaeger’s post-doctoral year, and he did not begin teaching until fall 2007.

A number of Jaeger’s characteristics distinguished him from his faculty colleagues at the start of his career. Raised in Germany by parents active in labor unions, Jaeger eschewed hierarchy, maintaining the view that he was on equal footing with both students and faculty, respect was earned (not simply conferred by holding a position of authority) and “anything could be discussed by anybody.”⁷⁰ With a cutting and sarcastic sense of humor, Jaeger enjoyed “push[ing] people’s buttons,” in particular by identifying and digging into their unique vulnerabilities and by taking arguments to the extreme to get a rise out of his audience.⁷¹ These traits are consistent with Jaeger’s expectation, albeit misguided, that he need not filter himself, as others were “in charge of their own emotions” and would push back if he went too far or crossed

⁶⁹ Oct. 31, 2017 Interview with Colleague 5.

⁷⁰ C. Nearpass Notes of Apr. 19, 2016 Interview with F. Jaeger; Oct. 12 & Dec. 8, 2017 Interviews with F. Jaeger; Oct. 19 & 23, 2017 Interviews with Graduate Student 9.

⁷¹ Oct. 16 & 18, 2017 Interviews with Graduate Student 19; Oct. 23, 2017 Interview with Graduate Student 21; Oct. 24, 2017 Interview with Graduate Student 10; Nov. 7, 2017 Interview with Colleague 2; Nov. 9, 2017 Interview with Colleague 3; Nov. 21, 2017 Interview with Graduate Student 21; Dec. 8, 2017 Interview with F. Jaeger.

any lines.⁷² As a graduate student and post-doctoral fellow, Jaeger also had a reputation for being promiscuous, having open relationships with women (many of whom were other academics in his field) and acting flirtatiously, occasionally with sexual innuendo.⁷³ This reputation followed him from Stanford to UCSD and, ultimately, UR.

Jaeger had difficulty adjusting to his new role as a professor. In his first few years at UR, Jaeger's "work hard, play hard" approach mirrored his graduate student behavior. Although he had been warned by a Stanford colleague before coming to UR that he would need to alter his behavior when he was a faculty member,⁷⁴ he did not give up the highly social lifestyle he was used to living, which included pursuing sexual encounters with fellow academics and students. In particular, between 2007 and 2011, Jaeger had four sexual relationships with either prospective, current or former UR students.⁷⁵ As a professor, Jaeger likewise did not cut back on

⁷² Oct. 27, 2017 Interview with Visiting Speaker 3; Nov. 9, 2017 Interview with Colleague 3; Nov. 21, 2017 Interview with Graduate Student 21.

⁷³ Oct. 31, 2017 Interview with Colleague 5; Nov. 7, 2017 Interview with Colleague 2; Nov. 17, 2017 Interview with Colleague 8; Nov. 20, 2017 Interview with Colleague 10; Nov. 21, 2017 Interview with Colleague 1.

⁷⁴ Nov. 21, 2017 Interview with Colleague 1.

⁷⁵ Interviews of Witnesses. The fourth brief relationship took place in spring 2008 with an undergraduate student and has never been mentioned in any of the complaints. (Oct. 26, 2017 Interview with Undergraduate 16.) The woman, who has requested anonymity, confirmed to us that the relationship with Jaeger was brief, consensual, and did not involve any supervisory interactions. At the time, Jaeger's four relationships with students, although we believe inadvisable, did not explicitly violate any University policy, as discussed further, *infra*, at Section II.A.2.b.

We are also aware of two other sexual encounters between Jaeger and UR faculty, as well as other sexual encounters between Jaeger and visiting speakers (some of which occurred years prior to visits to UR for colloquia, including while Jaeger was still a graduate student or post-doctoral fellow). Although none of these sexual encounters implicates any relevant University policy, it is likely that all those that were known contributed to and perpetuated Jaeger's reputation.

the extremely demanding and critical character that he had always brought to both his academic pursuits and social interactions. He bristled when he was treated differently in his new role as faculty, since this clashed with his belief that hierarchy was irrelevant. A Facebook message from Jaeger to Kidd in March 2007, before Kidd had come to UR, illustrates his difficulty with adapting to his new professional role: “[Y]ou wouldn’t believe how differently [I]’m suddenly being treated by most people” because of “this whole stupid professor thing.”⁷⁶

(b) Academic Settings

Jaeger was unquestionably a demanding teacher and adviser, whose direct and unfiltered style of questioning permeated all of his interactions in the field, including with his students in groups, one-on-one with his colleagues or with speakers at conferences. Although some witnesses we spoke with did not mind this style, commenting that Jaeger’s demanding, direct and critical way was in search of scientific excellence,⁷⁷ many others described it as insensitive, cruel, and at times, humiliating and bullying.⁷⁸ To Jaeger, his style was intended to challenge students and colleagues to push them to improve.⁷⁹ He had high expectations for his students,

⁷⁶ Facebook Messages from F. Jaeger to C. Kidd, at Mar. 7, 2007 10:54 AM (attached as Exhibit 16). Exhibit 16 includes both the screenshot of the entire conversation as provided by Jaeger, as well as a transcription of the content of the messages prepared by Debevoise & Plimpton for ease of reading.

⁷⁷ Oct. 20, 2017 Interview with Graduate Student 26; Nov. 3, 2017 Interview with Graduate Student 13; Nov. 14, 2017 Interview with Post-doctoral Fellow 5; Nov. 15, 2017 Interview with Post-doctoral Fellow 7.

⁷⁸ Oct. 16, 2017 Interview with Graduate Student 12; Oct. 17, 2017 Interview with Graduate Student 11; Oct. 20, 2017 Interview with Post-doctoral Fellow 2; Oct. 25, 2017 Interview with Graduate Student 20; Nov. 7, 2017 Interview with Graduate Student 28.

⁷⁹ Dec. 8, 2017 Interview with F. Jaeger.

and when a student failed to meet these expectations, he could be, depending on one's perspective, "direct" or "harsh" in his criticism.

Several male and female graduate students and post-doctoral fellows⁸⁰ described Jaeger as "mean,"⁸¹ "overly critical,"⁸² "pretty scathing,"⁸³ "cruel,"⁸⁴ and a "bully,"⁸⁵ and reported that his particular style of criticism tended to recast their understandable mistakes as personal failings.⁸⁶ Some of Jaeger's harsh comments were made in front of other students, causing the targeted student to feel additionally "humiliated."⁸⁷ Even those students who did not personally feel attacked by Jaeger acknowledged that some of their classmates "suffered" under Jaeger's style of supervision.⁸⁸ His "demeaning" language and harsh criticism led some students of both

⁸⁰ Oct. 12, 2017 Interview with Graduate Student 25; Oct. 13, 2017 Interview with Graduate Student 14; Oct. 16, 2017 Interview with Graduate Student 12; Oct. 17, 2017 Interview with Graduate Student 11; Oct. 19 & 23, 2017 Interviews with Graduate Student 9; Oct. 20, 2017 Interview with Post-doctoral Fellow 2; Oct. 25, 2017 Interview with Graduate Student 20; Oct. 26, 2017 Interview with Graduate Student 24; Nov. 1, 2017 Interview with Graduate Student 1; Nov. 3, 2017 Interview with Graduate Student 13; Nov. 7, 2017 Interview with Colleague 2; Nov. 14, 2017 Statement from Graduate Student 8; Nov. 16, 2017 Interview with Post-doctoral Fellow 3; Nov. 7, 2017 Interview with Graduate Student 28; Dec. 20, 2017 Interview with Post-doctoral Fellow 12.

⁸¹ Oct. 20, 2017 Interview with Post-doctoral Fellow 2.

⁸² *Id.*

⁸³ Oct. 25, 2017 Interview with Graduate Student 20.

⁸⁴ Oct. 16, 2017 Interview with Graduate Student 12.

⁸⁵ Dec. 20, 2017 Interview with Post-doctoral Fellow 12.

⁸⁶ Oct. 20, 2017 Interview with Graduate Student 7.

⁸⁷ Oct. 17, 2017 Interview with Graduate Student 11.

⁸⁸ Oct. 19 & 23, 2017 Interviews with Graduate Student 9.

genders to stop attending Jaeger’s lab meetings, switch advisers, or choose not to pursue language as a field of research altogether.⁸⁹

That said, other students thrived in this challenging and competitive environment.⁹⁰ These students generally viewed Jaeger as a supportive mentor who was generous with his time and advice, which helped them to succeed in the field. When the talk and criticism about Jaeger persisted after the investigation and appeals were conducted, 18 former students from Jaeger’s lab sent a supportive, but balanced, letter to Dean Culver on March 13, 2017, describing their experiences with Jaeger.⁹¹ As the students recounted, Jaeger tended to value “honesty over diplomacy,” and some of his criticism was incorrect or aimed at undermining students personally.⁹² Nevertheless, on balance, the letter concludes strongly that Jaeger “made a lasting impression on all of us through his generosity as a mentor,” noting that everyone could recall numerous occasions when Jaeger “met with us for hours (causing all parties involved to miss other meetings or dinner appointments), returned 40-page manuscripts with incredibly detailed

⁸⁹ Oct. 13, 2017 Interview with Graduate Student 14; Oct. 25, 2017 Interview with Graduate Student 4; Nov. 1, 2017 Interview with Graduate Student 1; Nov. 7, 2017 Interview with Graduate Student 28; Nov. 2, 2017 Interview with Graduate Student 2.

⁹⁰ Since its inception in 2007, Jaeger’s lab, as reported on his website, has included a total of 17 male graduate and post-doctoral fellows and 10 female graduate and post-doctoral fellows. We interviewed 12 of the 17 male graduate students and post-doctoral fellows and 9 of the 10 female graduate students and post-doctoral fellows. Three former students (two male graduate students and one female post-doctoral fellow) refused our interview requests, and three former students (one male graduate student and two male post-doctoral fellows) did not respond to our interview requests.

⁹¹ Mar. 13, 2017 Letter from 18 former students in F. Jaeger’s lab to G. Culver.

⁹² *Id.*

edits, questions and suggestions in under 24 hours or promoted our work in conference

presentations when professional etiquette did not require him to do so.”⁹³

The EEOC Complaint includes other allegations against Jaeger that are non-sexual, including that Jaeger took credit for students’ work.⁹⁴ Four witnesses echoed this concern about credit,⁹⁵ although Jaeger’s students with this view ultimately successfully resolved their concerns by talking to Jaeger directly to achieve their desired credit.⁹⁶ While Jaeger’s requests for credit

⁹³ *Id.*

⁹⁴ EEOC Compl. ¶ 63.

⁹⁵ Oct. 31, 2017 Interview with Colleague 5; Nov. 3, 2017 Interview with Graduate Student 13; Nov. 14, 2017 Interview with Post-doctoral Fellow 5; Nov. 21, 2017 Interview with Colleague 1.

⁹⁶ Nov. 3, 2017 Interview with Graduate Student 13; Nov. 14, 2017 Interview with Post-doctoral Fellow 5.

Although not cited in the complaints, we learned during the course of our investigation that both Kidd and Piantadosi apparently experienced issues with Jaeger’s credit allocation. Three students told us that Kidd had warned them (one in 2008, and the other two around 2012 or 2013) against working with Jaeger because he was “too grabby about credit.” (Oct. 19 & 23, 2017 Interviews with Graduate Student 9; Oct. 20, 2017 Interview with Post-doctoral Fellow 2; Nov. 14, 2017 Interview with Post-doctoral Fellow 5.) Of Kidd and Jaeger’s three joint presentations in 2008, Jaeger is listed ahead of Kidd in one of the three and last on the other two presentations. (F. Jaeger C.V. (updated June 2017).)

For Piantadosi, Jaeger reviewed a paper written by Piantadosi and his adviser at MIT (who had previously advised Jaeger) that Jaeger believed failed to properly acknowledge similar previous work (including his own). Based on documents we have reviewed, Piantadosi and Jaeger disagreed on the significance of Jaeger’s contribution and the extent to which he deserved to be cited and credited. (Nov. 2012 Emails between F. Jaeger and S. Piantadosi.) Jaeger told us that, while he may have been more concerned about credit allocation at the beginning of his career, he appropriately credits students whenever possible for their contributions in papers or presentations. (Dec. 8, 2017 Interview with F. Jaeger.)

We reviewed slide decks from presentations confirming that students’ work is acknowledged upfront and clearly labeled throughout the deck. Per Jaeger’s CV, he is listed as the first author in only two of the first ten journal papers or chapters with his advisees from before 2014. (F. Jaeger C.V. (Updated June 2017).)

were apparently problematic for two colleagues, we understand that credit allocation is a common topic in academic circles. Although much of the “credit hogging” allegations have not been included in the federal complaint, the specific instance that appears in both complaints is false.⁹⁷

(c) Social Settings

During these early years, Jaeger’s behavior remained largely unchanged from when he was in graduate school. He was not, in other words, someone who suddenly had power and started to use it in order to gain sexual access.⁹⁸ Rather, Jaeger largely continued the same lifestyle from his graduate student and post-doctoral fellow years. He frequently hosted gatherings at his home and attended social events with students, who, like Jaeger, were largely single and close in age to Jaeger.⁹⁹ Social events included graduate student parties and local bar nights—all of which was well known to at least some BCS faculty.¹⁰⁰ These events tended to

⁹⁷ Whereas the complaints allege that Jaeger demanded sole credit for research that had been granted a joint award, (EEOC Compl. ¶ 60; Fed. Compl. ¶ 100), the opposite is true. When Jaeger initially received the award alone (not with his student collaborator), Jaeger called the awarding committee to request that his student share the award, including the associated prize money. (Exhibit 10; Dec. 8, 2017 Email from Post-doctoral Fellow 8 to Debevoise & Plimpton LLP.)

⁹⁸ While it certainly does not excuse Jaeger’s conduct during this time period, Jaeger seemingly rejected, as a matter of principle, the notion of an asymmetry of power existing between faculty and students. With the benefit of hindsight, Jaeger realized that others see this hierarchy “even if [he] [doesn’t] want [it] to be there,” characterized some of his conduct in this period as “definitely not appropriate” and acknowledged that his position as faculty may have affected whether students felt comfortable addressing concerns with him directly. (C. Nearpass Notes of Apr. 19, 2016 Interview with F. Jaeger; Oct. 12, 2017 Interview with F. Jaeger.)

⁹⁹ For example, when Kidd started at UR in fall 2007, she was 24 and Jaeger was 31. The next youngest faculty member was over 40 and married.

¹⁰⁰ Nov. 1, 2017 Interview with Faculty 2. In fact, a faculty member told us that when Cantlon started at UR in July 2009, she would also frequently socialize with students. *Id.*

involve social drinking (not binge drinking)¹⁰¹ and occasionally marijuana, which Jaeger sometimes provided.¹⁰² While some of the other BCS professors certainly attended some graduate student parties, including the Friday happy hours at a “dive” bar called Lux,¹⁰³ or hosted events with students in their homes,¹⁰⁴ the frequency with which Jaeger socialized with students unquestionably blurred the lines between his professional and social spheres.¹⁰⁵

¹⁰¹ Oct. 20, 2017 Interview with Post-doctoral Fellow 2; Oct. 20, 2017 Interview with Graduate Student 26.

¹⁰² Oct. 20, 2017 Interview with Post-doctoral Fellow 2; Oct. 20, 2017 Interview with Graduate Student 26; Oct. 24, 2017 Interview with Graduate Student 10; Nov. 8, 2017 Interview with Undergraduate 5; Nov. 13 & Dec. 6, 2017 Interviews with Post-doctoral Fellow 1.

We have also heard from multiple witnesses that Jaeger is not unique among faculty in using marijuana with his students. (Oct. 9, 2017 G. DeAngelis Notes on EEOC Complaint; Nov. 28, 2017 Interview with Graduate Student 30.)

¹⁰³ Oct. 17, 2017 Interview with Faculty 19; Oct. 20, 2017 Interview with Graduate Student 26; Nov. 15, 2017 Interview with Post-doctoral Fellow 7.

¹⁰⁴ Oct. 26, 2017 Interview with Colleague 14; Nov. 2, 2017 Interview with Graduate Student 2.

¹⁰⁵ The federal complaint contains a new allegation that a BCS professor (who was later fired for sexual harassment) tried to kiss an undergraduate during a party at Jaeger’s home, and Jaeger—despite witnessing this attempt—did nothing. The undergraduate did not report the incident because Jaeger’s students convinced her that Jaeger would get in trouble if she did so for having an undergraduate at a party at his home. (Fed. Compl. ¶ 125.)

This undergraduate’s and Jaeger’s memories differ slightly, although both recall Jaeger walking into the room at the very end of the incident, and Jaeger remembers that another faculty member intervened to take the offending BCS professor out of the party as Jaeger was entering the room. (Oct. 25, 2017 Interview with Undergraduate 8; Dec. 8, 2017 Interview with F. Jaeger.) Both agree that Jaeger did not tell the undergraduate not to report the incident. (Oct. 25, 2017 Interview with Undergraduate 8; Dec. 8, 2017 Interview with F. Jaeger.) Rather, the undergraduate told us that she agreed with a graduate student friend’s view that the incident might reflect badly on Jaeger, who was not yet tenured, which caused her to refrain from reporting the incident to the University. (Oct. 25, 2017 Interview with Undergraduate 8.)

The complaints' allegations about Jaeger's lab's offsite retreats, held at the end of most academic years from 2009 to 2015, sensationalize these blurred lines and the behavior that transpired at them.¹⁰⁶ The retreats, which were typically organized by Jaeger's graduate students, involved renting a house outside of Rochester at the end of the school year for a few days. By contrast to the complaints' allegations, attendance was not mandatory for anyone, and no one from Jaeger's lab was excluded from these retreats.¹⁰⁷ Characterized by some students as akin to "work camps,"¹⁰⁸ attendees generally spent the days working on research or partaking in outdoor activities and socialized together at night over big group dinners, usually involving drinking, and occasionally, the use of drugs and soaking in hot tubs.¹⁰⁹ The EEOC Complaint alleges that, at one retreat, an attendee "took an overdose,"¹¹⁰ which substantially embellishes what occurred that evening. This attendee reported to us that she had not felt well that entire

¹⁰⁶ EEOC Compl. ¶ 51; Fed. Compl. ¶ 91.

¹⁰⁷ Oct. 17, 2017 Interview with Graduate Student 11; Oct. 20, 2017 Interview with Graduate Student 26; Oct. 24, 2017 Interview with Graduate Student 10; Nov. 1, 2017 Interview with Faculty 8; Nov. 1, 2017 Interview with Graduate Student 1; Nov. 7, 2017 Interview with Graduate Student 28; Nov. 13, 2017 Interview with Visiting Scholar 2.

We note that none of the Complainants ever attended Jaeger's lab retreats.

¹⁰⁸ Oct. 20, 2017 Interview with Graduate Student 26; Oct. 24, 2017 Interview with Graduate Student 10.

¹⁰⁹ Oct. 8, 2017 Interview with Visiting Speaker 1; Oct. 19 & 23, 2017 Interviews with Graduate Student 9; Oct. 24, 2017 Interview with Graduate Student 10; Nov. 14, 2017 Interview with Post-doctoral Fellow 5.

¹¹⁰ EEOC Compl. ¶ 51.

day, had stayed inside while others went on an outing, and she had fainted after eating a few pieces of brownie containing marijuana provided by another student.¹¹¹

(d) Sexual Remarks

Jaeger not only blurred lines by regularly socializing with students, but his sense of humor included flippant remarks that sometimes contained sexual innuendo. As an example, one student recalled that when she was stressed, Jaeger would joke that he should talk to her husband about how to relax her.¹¹² Some of Jaeger’s comments were made to or solicited by people who regularly engaged in sexual banter with him. Five former students from Jaeger’s lab, two of whom are women, told us about specific sexual banter they participated in or overheard both in and outside of the lab.¹¹³ The women actively participated while never feeling “demeaned” by or “uncomfortable” with Jaeger’s sexual comments and felt that while others might perceive these exchanges with Jaeger as inappropriate when taken out of context, in the context in which they were made, these particular women were not offended.¹¹⁴ By contrast, one of Jaeger’s former male students (who was dating a past sexual partner of Jaeger’s) was offended when he jokingly

¹¹¹ Interview with Witness. This “overdose” allegation was changed in the federal complaint to allege that this attendee was taken to the hospital after ingesting brownies made with marijuana, which is true in the most literal sense. (*Compare* EEOC Compl. ¶ 51, *with* Fed. Compl. ¶ 91.) We obtained the medical records for this attendee’s hospital visit. She was not admitted overnight, her diagnosis was vasovagal syncope, and she left the hospital after approximately three hours.

¹¹² Oct. 16, 2017 Interview with Graduate Student 12.

¹¹³ May 2009 Emails Regarding Graduate Student 11’s Anatomy; Oct. 19 & 23, 2017 Interviews with Graduate Student 9; Oct. 24, 2017 Interview with Graduate Student 10; Nov. 7, 2017 Interview with Graduate Student 28; Nov. 21, 2017 Interview with Graduate Student 21.

¹¹⁴ Oct. 19 & 23, 2017 Interviews with Graduate Student 9; Oct. 24, 2017 Interview with Graduate Student 10.

asked how to—in an academic context—please Jaeger, to which Jaeger replied, “Why don’t you ask your girlfriend?”¹¹⁵ This particular example is noteworthy, not only because the remark was made to a man, who was not amused, but also because it demonstrates how Jaeger, although not starting the exchange, enjoyed pushing dialogue in ways that could and would cross lines for others.

Some who were the subject of and/or heard these comments were uncomfortable, and Jaeger’s off-color comments, mostly but not exclusively in social settings, played a part in some female students’ decisions to avoid him.¹¹⁶ For example, a former female BCS graduate student who was not in Jaeger’s lab cited an instance when she thought Jaeger made “a pass” at her while they were with a group of students and faculty at Lux in 2007.¹¹⁷ She said she could not recall what he said, but confirmed that he did not touch her.¹¹⁸ She also observed Jaeger flirting with other women and received a party invitation from him stating, “bring your loved ones,

¹¹⁵ Oct. 17, 2017 Interview with Graduate Student 11.

¹¹⁶ See *infra*, at Section II.A.1.e. With respect to the allegations that Jaeger sent unwanted photographs of his penis (EEOC Compl. ¶¶ 17, 83, 158; Fed Compl. ¶¶ 121, 217, 220) or a pornographic image (Fed. Compl. ¶ 126), to protect the privacy of the women involved, we will not share unnecessary, extraneous details. Jaeger told us that he recalled sending these types of photos on one or two occasions, but he did not recall sending either of the photos alleged in the complaints. (Oct. 12 & Dec. 8, 2017 Interviews with F. Jaeger.) We credit that Jaeger sent two racy pictures to women he was dating, one of which included his penis, at times when these relationships were tumultuous. These two photos were the only sexually explicit pictures that these women received from Jaeger, and both women said that they did not typically exchange explicit photographs with Jaeger. One of the women characterized the photo she received as an attempt by Jaeger to get her attention, which initially angered her, while the other was uncomfortable with the picture and believed it was meant “to taunt her,” although she did consensually resume her sexual relationship with Jaeger for a period after the picture was sent. (Interviews of Witnesses.)

¹¹⁷ Oct. 13, 2017 Interview with Graduate Student 14.

¹¹⁸ *Id.*

people you wanna make love to (I am not making any assumptions here), etc.”¹¹⁹ Another student who was not in Jaeger’s lab told us that Jaeger would often stand close to her, and in 2007 or 2008, Jaeger touched her arm outside of Meliora Hall and said that “all people are ultimately selfish and people who aren’t are kidding themselves . . . everybody should be a hedonist.”¹²⁰ Referring to a visiting speaker, another student not in Jaeger’s lab heard him predict that the visitor would be a “great lay.”¹²¹ At a 2008 holiday party, Jaeger told a group of students and faculty that a male professor found a female graduate student attractive, and the female student, who was present for this comment, described this incident as “super mortifying” and deeply upsetting that she had been talked about in such sexual terms in front of professional

¹¹⁹ *Id.*; Dec. 10, 2009 Email from F. Jaeger to HLP Lab (attached as Exhibit 17.)

¹²⁰ Nov. 6, 2017 Interview with Graduate Student 17.

¹²¹ Nov. 10, 2017 Interview with Graduate Student 29.

colleagues.¹²² We credit that such remarks were made by Jaeger and agree that they were inappropriate and affected the students involved.¹²³

(e) Effect of Jaeger's Conduct

During this early time period, the complaints allege that sixteen women avoided Jaeger either socially or academically or both.¹²⁴ Avoiding Jaeger took a variety of forms—at one

¹²² Oct. 17, 2017 Interview with Graduate Student 11; Oct. 25, 2017 Interview with Graduate Student 4. Graduate Student 4 also told us about additional sexual or off-color remarks that Jaeger directed at her, including (1) on January 28, 2009, Graduate Student 4 asked to be added to the attendance list for a workshop, which Jaeger had said was full, Jaeger responded “are you putting on that man-melting face again?!? [I]t’s a weapon. [I] have to run . . . escape from her grasp ;),” (Jan. 28, 2009 Email from F. Jaeger to Graduate Student 4); (2) on February 20, 2009, Jaeger sent Graduate Student 4 an instant message in the middle of the night stating, “you’re a different kind of box yourself[.] [W]ait, that sounded different than I meant it,” (Feb. 20, 2009 Chat from F. Jaeger to Graduate Student 4); (3) during the 2009 Linguistic Society of America Institute, Jaeger leered at Graduate Student 4 and remarked “nice shorts,” (Nov. 20, 2017 Email from Graduate Student 4 to Debevoise & Plimpton LLP); (4) at the same conference, Graduate Student 4 shared a house with Jaeger and heard him having “loud sex,” (Oct. 25, 2017 Interview with Graduate Student 4); (5) Jaeger leered at Graduate Student 4 and mocked her clothing in a BCS classroom in front of several people, (Nov. 20, 2017 Email from Graduate Student 4 to Debevoise & Plimpton LLP); and (6) Jaeger teased her in front of at least one professor, mimicking her in an exaggerated way, (*id.*).

¹²³ Not to minimize or excuse these comments, but to put them in context and be fair, two witnesses who attended gatherings with Jaeger where graduate students were not present told us that other people in attendance, including one of the claimants, would also comment on the appearance of students. (Oct. 31, 2017 Interview with Faculty 15; Nov. 13 & Dec. 6, 2017 Interviews with Post-doctoral Fellow 1.)

We also note that some inappropriate remarks alleged in the complaints were made only in the presence of faculty. (*See, e.g.*, EEOC Compl. ¶ 76; Fed. Compl. ¶ 114.) Indeed, when Nearpass interviewed Cantlon in 2016 about her complaint, Cantlon confirmed that Jaeger’s only sexual comments of which she had first-hand knowledge were made at faculty functions where no students were present; sources for the other comments she cited in her complaint were either “what Celeste Kidd said to [Cantlon]” or “grumblings/innuendo from other graduate students over the years.” (Apr. 7, 2016 Email from J. Cantlon to C. Nearpass.)

¹²⁴ Primarily employing pseudonyms, the EEOC Complaint lists eleven current or former students, two of whom were undergraduates, who avoided Jaeger. (EEOC Compl. ¶ 94.)

extreme, being one of two students (one female/one male) to leave Jaeger's lab¹²⁵ (that we know of) to, at the other end, deliberately skipping or leaving social events where Jaeger would be in attendance.¹²⁶ While we credit that the ten women whom we had contact with all reported avoiding Jaeger, we also saw evidence suggesting at least one of these women occasionally

The federal complaint adds an additional five former students to this list. (Fed. Compl. ¶¶ 133-52.)

We confirmed the identities of ten of these former graduate students—nine from the EEOC Complaint and one from the federal complaint. We spoke to six of the ten former graduate students whose identities we substantiated, (Oct. 13, 2017 Interview with Graduate Student 14; Oct. 16, 2017 Interview with Graduate Student 12; Oct. 25, 2017 Interview with Graduate Student 4; Nov. 3, 2017 Interview with Graduate Student 15; Nov. 10, 2017 Interview with Graduate Student 29; Nov. 6, 2017 Interview with Graduate Student 17), and we reviewed Nearpass' interview notes, which in most cases had been reviewed and adopted by the interviewee, for the four remaining women whom we could not interview, (C. Nearpass Notes of Mar. 18, 2016 Interview with C. Kidd; C. Nearpass Notes of Mar. 24, 2016 Interview with K. Bixby; C. Nearpass Notes of Apr. 12, 2016 Interview with Post-doctoral Fellow 14; C. Nearpass Notes of April 25, 2016 Interview with Post-doctoral Fellow 13). We were not able to interview either of the undergraduates, and note that one undergraduate's identity remains unknown to us.

Four other women whom we had contact with (either through an interview or written statement) told us that they avoided Jaeger. As we were unable to identify four of the five women added in the federal complaint, there may be overlap between the additional four women we spoke with and those listed in the federal complaint under pseudonyms. (Nov. 1, 2017 Interview with Graduate Student 1; Nov. 2, 2017 Interview with Graduate Student 2; Nov. 14, 2017 Statement from Graduate Student 8; Nov. 16, 2017 Interview with Post-doctoral Fellow 3.)

¹²⁵ Although Jaeger was not her formal adviser, a female student came to UR to work with Jaeger and another professor, and decided to stop working with Jaeger and rely only on her other adviser because she was uncomfortable with Jaeger's unprofessional behavior. The other, who was male, was advised only by Jaeger and switched advisers for academic reasons when he had a change in his research interests (although we note that this student considered Jaeger to be an adviser who was "demanding"—and not in a "good way.") (Interviews of Witnesses.)

¹²⁶ Oct. 13, 2017 Interview with Graduate Student 14; Nov. 1, 2017 Interview with Graduate Student 1; Nov. 2, 2017 Interview with Graduate Student 2; Nov. 3, 2017 Interview with Graduate Student 15; Nov. 6, 2017 Interview with Graduate Student 17; Nov. 14, 2017 Statement from Graduate Student 8.

sought him out during this time, which renders it difficult to evaluate the extent to which these women consistently avoided Jaeger. A former student, who was already at UR when Jaeger started in 2007, told us that she avoided Jaeger more and more over time and became increasingly intolerant of his behavior, which is at odds with an email she sent to Jaeger in March 2009 (over two years after he started at UR) asking if she could visit his home to do her laundry, offering to cook dinner for him while at his home and suggesting a bowling outing for later that night.¹²⁷ Overall, we credit that each woman had a highly personal reaction to Jaeger’s behavior and conduct, which included avoiding him to some extent.

Although we cannot quantify the precise effect, avoiding Jaeger in an academic context caused some of these female students to miss out on certain educational opportunities—namely, learning the computational methods that were Jaeger’s expertise through forgoing certain classes, lectures or research opportunities.¹²⁸ The magnitude of the impact varied from student to student. For example, Graduate Student 14 thought that Jaeger’s students who had gained expertise in data analytics earned twice as much money as she does, though she acknowledges that she made other career choices that also had an impact;¹²⁹ Graduate Student 15 avoided working with Jaeger on one analysis for her dissertation but was able to get the help, though not

¹²⁷ Mar. 3, 2009 Emails between Graduate Student 17 and F. Jaeger.

¹²⁸ Oct. 13, 2017 Interview with Graduate Student 14; Oct. 25, 2017 Interview with Graduate Student 4; Nov. 1, 2017 Interview with Graduate Student 1; Nov. 3, 2017 Interview with Graduate Student 15; Nov. 6, 2017 Interview with Graduate Student 17; Nov. 10, 2017 Interview with Graduate Student 29.

¹²⁹ Oct. 13, 2017 Interview with Graduate Student 14.

“as thorough,” elsewhere;¹³⁰ and Graduate Student 4 considered it “hard to know” the practical impact of missing academic opportunities, guessing that her research could have been altered or she might have pursued a different type of post-doctoral fellowship had she continued to work with Jaeger.¹³¹

Jaeger had a sense that some students (both male and female) avoided him, which he attributed to natural personality clashes between professors and students in close working relationships.¹³² From the perspective of these female students, however, it is difficult to disentangle which elements of Jaeger’s personality and conduct caused them to feel uncomfortable around Jaeger and, as a result, to avoid him. A combination of Jaeger’s harsh and demeaning language, flirtatious behavior, use of sexual innuendo, promiscuous reputation, open relationships with students and blurring of social and professional lines all contributed to some extent, but we cannot unravel the degree to which women avoided Jaeger because of the sexual elements in his conduct, as opposed to other simply offensive or unappealing aspects of his personality. The ten women we heard from consistently cited both sexual and non-sexual behavior as reasons they avoided Jaeger, as did the four women Nearpass interviewed.¹³³ As just

¹³⁰ Nov. 3, 2017 Interview with Graduate Student 15. We note that Graduate Student 15’s case is somewhat different than the others in that she began to avoid Jaeger only after their break-up as a result of a difficult end to their relationship.

¹³¹ Oct. 25, 2017 Interview with Graduate Student 4.

¹³² Dec. 8, 2017 Interview with F. Jaeger.

¹³³ C. Nearpass Notes of Mar. 18, 2016 Interview with C. Kidd; C. Nearpass Notes of Mar. 24, 2016 Interview with K. Bixby; C. Nearpass Notes of Apr. 12, 2016 Interview with Post-doctoral Fellow 14; C. Nearpass Notes of Apr. 25, 2016 Interview with Post-doctoral Fellow 13; Oct. 13, 2017 Interview with Graduate Student 14; Oct. 16, 2017 Interview with Graduate Student 12; Oct. 25, 2017 Interview with Graduate Student 4; Nov. 1, 2017 Interview with Graduate Student 1; Nov. 2, 2017 Interview with Graduate Student 2; Nov. 3, 2017 Interview with Graduate Student 15; Nov. 6, 2017 Interview with Graduate Student 17;

one example, Graduate Student 12 told us that Jaeger constantly bothered her and other students in their office and stole snacks, but she also described his banter with her and other students as “flirtatious” and recounted off-color comments she heard Jaeger make about women, such as, “She has a nice pair of assets.”¹³⁴ Ten women also cited mere knowledge of Jaeger’s promiscuous reputation or sexual relationships as at least one source of their discomfort.¹³⁵ Indeed, his reputation alone appears to have colored even relatively benign interactions with several women in a negative way. One former student reported, for example, that Jaeger’s compliment on her haircut felt different and “dirty” coming from him because of his reputation, as opposed to similar compliments she received from other male faculty members.¹³⁶

(f) Bixby’s 2013 Complaint

That some of Jaeger’s conduct was seen by female students as offensive and peculiar—but not sexual in nature—carried through to the written complaint Bixby submitted to DeAngelis in November 2013 (the “2013 Complaint”), which was the first formal complaint to an administrator regarding Jaeger’s behavior.¹³⁷ The 2013 Complaint cites two specific incidents between Bixby and Jaeger that caused Bixby to feel “uncomfortable” and not “safe” around

Nov. 10, 2017 Interview with Graduate Student 29; Nov. 14, 2017 Statement from Graduate Student 8; Nov. 16, 2017 Interview with Post-doctoral Fellow 3.

¹³⁴ Oct. 16, 2017 Interview with Graduate Student 12.

¹³⁵ C. Nearpass Notes of Mar. 18, 2016 with C. Kidd; C. Nearpass Notes of Mar. 24, 2016 Interview with K. Bixby; C. Nearpass Notes of Apr. 12, 2016 Interview with Post-doctoral Fellow 14; Oct. 16, 2017 Interview with Graduate Student 12; Oct. 25, 2017 Interview with Graduate Student 4; Nov. 1, 2017 Interview with Graduate Student 1; Nov. 6, 2017 Interview with Graduate Student 17; Nov. 10, 2017 Interview with Graduate Student 29; Nov. 16, 2017 Interview with Post-Doctoral Fellow 3; Statement from Graduate Student 8.

¹³⁶ Nov. 10, 2017 Interview with Graduate Student 29.

¹³⁷ Letter from K. Bixby to G. DeAngelis (attached as Exhibit 18.)

Jaeger: (1) Jaeger took a photo of Bixby without her permission in 2013; and (2) a few years earlier, Jaeger walked into Bixby’s office without asking, picked up some post-its and a pen, and stood behind her without saying anything for an extended period of time, during which Bixby “assumed he was writing a note for his door.”¹³⁸ Bixby called Jaeger’s actions not “anything huge” or “ridiculously unacceptable,” but rather “just unprofessional.”¹³⁹ In her written complaint to DeAngelis, however, she referenced “harassing” behavior and noted that there were nine other women who had such experiences. In a contemporaneous email to another female graduate student, Bixby wrote that Jaeger’s “unprofessional” behavior made her “uncomfortable” but “was not at the level of sexual harassment”—a sentiment the other female student corroborated.¹⁴⁰ And in a contemporaneous email to a BCS faculty member, Bixby explained how “microaggressions” might be a “useful concept” to describe Jaeger’s behavior, but then notes that “for me it seems to feel different. Like micro aggressions would be ‘this person is hurtful’ versus someone pushing boundaries is ‘this person is viscerally unsafe.’”¹⁴¹ The faculty member responded that it is “the ‘micro’ that is relevant. I wonder if people have studied this [with regard to] sexual harassment.”¹⁴² Bixby did not respond to this email.

¹³⁸ *Id.* A male BCS student told us that Jaeger once loomed behind him and that it was “awkward” but not “threatening” or “anything about gender.” (Nov. 30, 2017 Interview with Post-doctoral Fellow 6.)

¹³⁹ Exhibit 18.

¹⁴⁰ Nov. 20, 2013 Email from K. Bixby to Graduate Student 14 (attached as Exhibit 19.) Graduate Student 14, who is among the ten women we interviewed who avoided Jaeger, responded that she also had not “had an experience that would qualify as sexual harassment,” but agreed that Jaeger’s behavior was “definitely over the line and unprofessional.” (*Id.*)

¹⁴¹ Nov. 21, 2013 Email from K. Bixby to Faculty 17 (attached as Exhibit 20.)

¹⁴² *Id.*

Other female students similarly confirmed to DeAngelis at the time that Jaeger's conduct was unprofessional and inappropriate, but not sexual. When Bixby suggested that DeAngelis speak to other female students about Jaeger's "harassment," she noted that one student whom she suggested "didn't feel harassed, and ended up having a productive working relationship with [Jaeger]" and another was willing to talk about her "bad-but-not-sexual-harassment experiences" with Jaeger.¹⁴³ DeAngelis spoke to the two female students recommended by Bixby who were still at UR, including Post-doctoral Fellow 13, who reported being uncomfortable when Jaeger insisted she meet him at his house, despite her suggestion to meet at a coffee shop instead (although nothing inappropriate occurred),¹⁴⁴ and relayed that Jaeger had berated her and made insulting comments, after which she told him she would not work with him anymore.¹⁴⁵ Kidd, according to DeAngelis' notes, told him that Jaeger frequently crossed personal/professional boundaries, including by asking personal questions via Facebook, attending graduate school events and unexpectedly dropping by the house shared by his teaching assistants.¹⁴⁶ Kidd also told DeAngelis at this meeting that Jaeger had had relationships with two graduate students.¹⁴⁷

¹⁴³ Nov. 20-21, 2013 Emails from K. Bixby to G. DeAngelis (attached as Exhibit 21.)

¹⁴⁴ DeAngelis Notes from meeting with Post-doctoral Fellow 13. Post-doctoral Fellow 13 confirmed to DeAngelis that nothing inappropriate or sexual occurred during her meeting at Jaeger's home, although she was uncomfortable for the entire time, a statement that she repeated to Nearpass in 2016. (Nearpass Interview Notes of Apr. 25, 2016 Interview with Post-doctoral Fellow 13; DeAngelis Notes from meeting with Post-doctoral Fellow 13.)

¹⁴⁵ DeAngelis Notes from meeting with Post-doctoral Fellow 13.

¹⁴⁶ G. DeAngelis Notes from meeting with C. Kidd. We are aware that Jaeger spent time at the house shared by his two teaching assistants (and others). One student who lived in this house told us that Jaeger would come to their house at night to smoke cigarettes and discuss research with her roommates. (Oct. 25, 2017 Interview with Graduate Student 4.)

¹⁴⁷ G. DeAngelis Notes from meeting with C. Kidd. *See infra*, at Section II.A.3, for additional discussion about Kidd's statements to DeAngelis in 2013 and to Nearpass in 2016.

According to DeAngelis, he did not raise the 2013 Complaint with the OOC or Title IX Coordinator because he did not understand the conduct to be sexual. He said that it is his best recollection that he asked Bixby expressly whether the conduct was sexual, and she said that it was not.¹⁴⁸ He determined, based on his conversation with Bixby, as well as with Kidd and Post-doctoral Fellow 13, that no operative University policies were violated.¹⁴⁹ DeAngelis did, however, counsel Jaeger about the substance of the allegations (as he understood them at the time).¹⁵⁰

In March 2014, DeAngelis sent an email to Bixby to inform her that “[t]here were consistent patterns of behavior in the stories” he heard from Bixby, Kidd and Post-doctoral Fellow 13, and he concluded that Jaeger had shown “undesirable behavior,” but “none of the stories that [he] was told were in violation of the university’s policy on harassment.”¹⁵¹ DeAngelis further told Bixby that he had spoken to Jaeger about “personal/professional boundaries, how an adviser has to be careful about power relationships when trying to be social with students, etc.”¹⁵² He believed Jaeger would “go forward with a heightened sensitivity to such things,” and DeAngelis “would give [Jaeger] more feedback in the future if [he] heard anything more about these issues.”¹⁵³ He encouraged Bixby to “let [DeAngelis] know if

¹⁴⁸ Oct. 12, 2017 & Jan. 10, 2018 Interviews with G. DeAngelis.

¹⁴⁹ Oct. 12, 2017 Interview with G. DeAngelis.

¹⁵⁰ Mar. 7, 2014 Emails between G. DeAngelis and F. Jaeger (attached as Exhibit 22); Mar. 11, 2014 Email from G. DeAngelis to K. Bixby (attached as Exhibit 23); Oct. 12, 2017 Interview with G. DeAngelis.

¹⁵¹ Exhibit 23.

¹⁵² *Id.*

¹⁵³ *Id.*

problems persist.”¹⁵⁴ Bixby responded thanking DeAngelis for looking into her complaint and for working to maintain confidentiality.¹⁵⁵ Bixby did not make any additional complaints to DeAngelis about Jaeger, and Bixby told Nearpass in her March 24, 2016 interview that DeAngelis “took her complaint seriously.”¹⁵⁶ As documented in Nearpass’ interview notes that Bixby reviewed and edited, Bixby said that DeAngelis “didn’t take” her 2013 Complaint as a sexual harassment complaint and that she “didn’t intend hers as one.”¹⁵⁷

Jaeger was bothered by the complaint, particularly as it clashed with his expectation—which we see as naïve—that people, including his students, would approach him directly to discuss any concerns. In an email to DeAngelis, Jaeger expressed frustration that DeAngelis could not give him more details on which of his behaviors made students uncomfortable, asking whether there was “any claim of anything more severe.”¹⁵⁸ DeAngelis told him there was not.¹⁵⁹ Jaeger then asked whether he should not hold meetings off campus and cease any social activity, including lab dinners and retreats, with students.¹⁶⁰ DeAngelis said no, but advised Jaeger to “be sensitive to these sorts of issues regarding personal/professional boundaries going forward.”¹⁶¹ In DeAngelis’ view, events like lab dinners and retreats could be very valuable to students, and

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ C. Nearpass Notes of Mar. 24, 2016 Interview with K. Bixby.

¹⁵⁷ *Id.*

¹⁵⁸ Exhibit 22.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

Jaeger's proposed behavioral changes would not have addressed the conduct at issue in the 2013 Complaint, the gravamen of which related to Jaeger's inattention to customary professional boundaries.¹⁶²

DeAngelis' resolution of the 2013 Complaint was in substantial compliance with UR Policy 106. The policy authorized department chairs to use their discretion and pursue an informal resolution of the complaint without resort to the submission of a formal complaint with OOC or the Human Resources Department ("HR").¹⁶³ DeAngelis contacted two of the potential witnesses recommended by Bixby and, concluding that Jaeger's behavior did not implicate UR Policy 106, determined that an informal resolution was the appropriate way to handle the complaint, a judgment to which Bixby did not object.¹⁶⁴ With the benefit of hindsight, DeAngelis acknowledges that it would have been a better exercise of his discretion had he notified the Title IX Coordinator or someone else,¹⁶⁵ which he did not do after concluding that the 2013 Complaint did not involve sexual harassment.¹⁶⁶

Regardless of Bixby's characterization of her complaint, we note that Bixby's discomfort with Jaeger was a missed opportunity for the University to intervene more aggressively earlier in

¹⁶² Dec. 29, 2017 Email from G. DeAngelis to Debevoise & Plimpton LLP.

¹⁶³ University of Rochester, *Policy 106* (revised Jan. 2013). DeAngelis reviewed this January 2013 version of Policy 106 when Bixby came to him in November 2013 with her complaint. At that time, the policy provided for informal resolution of complaints, with no reporting requirement. That changed in December 2013, after which even informal complaints needed to be reported to the Equal Opportunity Compliance Director. The complaint pre-dated the change in policy, but DeAngelis was not aware of the change when he completed the informal resolution—by reporting back to Bixby—in March 2014.

¹⁶⁴ Exhibit 23; G. DeAngelis Notes from Meetings with C. Kidd and Post-doctoral Fellow 13.

¹⁶⁵ Oct. 12, 2017 Interview with G. DeAngelis.

¹⁶⁶ *Id.*

a situation that potentially involved sexual harassment or a hostile work environment directed at women.¹⁶⁷ In her written complaint to DeAngelis, Bixby also named other faculty members to whom she had previously expressed her discomfort about Jaeger—including to Aslin six months prior. According to DeAngelis, Aslin never raised Bixby’s concerns about Jaeger with him,¹⁶⁸ nor did Aslin (as far as we are aware) raise Bixby’s concerns with anyone else or confront Jaeger.

2. Misstatements and Exaggerations about Jaeger’s Characteristics and Behavior

The complaints focus on power dynamics, painting Jaeger as a “sexual predator”¹⁶⁹ who preyed on female students and colleagues—all the while “gaslight[ing]”¹⁷⁰ and “control[ing]”¹⁷¹ his students in academic and social settings—causing all to “fear[]”¹⁷² his reactions. This framing device significantly misrepresents the collegial social and academic environment Jaeger fostered in his lab,¹⁷³ and in an effort to demonize Jaeger, paints the women with whom he had

¹⁶⁷ It is noteworthy that when DeAngelis attended a training for department chairs sometime later in 2014, the training led him to question whether he had handled the Bixby complaint appropriately. (Oct. 12, 2017 Interview with G. DeAngelis.)

¹⁶⁸ *Id.*

¹⁶⁹ EEOC Compl. ¶¶ 17, 32; Fed. Compl. ¶ 41.

¹⁷⁰ EEOC Compl. ¶ 62; Fed. Compl. ¶ 102.

¹⁷¹ EEOC Compl. ¶ 61; Fed. Compl. ¶ 101.

¹⁷² EEOC Compl. ¶ 54; Fed. Compl. ¶ 94.

¹⁷³ We note that the website for Jaeger’s lab lists many students who were not primarily advised by Jaeger. Jaeger explained that anyone who was interested could be a part of his “lab” by attending lab meetings (even if a student was not advised by him). (Dec. 8, 2017 Interview with F. Jaeger; *see* HLP Lab website, *available at* <https://www.hlp.rochester.edu/people/>.)

relationships as victims, a characterization that, based on the time we spent with them, is inaccurate to say the least.

(a) Academic Settings

The perceptions of students who worked most closely with Jaeger do not support the allegations that Jaeger’s lab was “cult-like,”¹⁷⁴ or that many students were isolated and ostracized by the culture of his lab,¹⁷⁵ or felt they “had to participate in Jaeger’s social life” to have a successful research relationship with him.¹⁷⁶ Fresh from graduate school and largely rejecting hierarchical norms that separated professors and students, Jaeger created a lab that combined academic pursuits with social and recreational activities. Most of Jaeger’s students appreciated that their lab included a social aspect and thrived in this environment, building close connections with their fellow students and with Jaeger.¹⁷⁷ Insiders and outsiders described the lab as a “close knit” community,¹⁷⁸ a “cohesive environment,”¹⁷⁹ and attested to the “ethical, professional, and

¹⁷⁴ EEOC Compl. ¶ 53; Fed. Compl. ¶ 93.

¹⁷⁵ EEOC Compl. ¶ 53; Fed. Compl. ¶ 93.

¹⁷⁶ EEOC Compl. ¶ 50; Fed. Compl. ¶ 90.

¹⁷⁷ Oct. 12, 2017 Interview with Graduate Student 25; Oct. 19 & Oct. 23, 2017 Interview with Graduate Student 9; Oct. 20, 2017 Interview with Post-doctoral Fellow 2; Oct. 23, 2017 Interview with Graduate Student 21; Oct. 24, 2017 Interview with Graduate Student 10; Nov. 3, 2017 Interview with Graduate Student 13; Nov. 11, 2017 Interview with Visiting Scholar 1; Nov. 14, 2017 Interview with Post-doctoral Fellow 5. Invitations to social events were generally extended to everyone who was associated with Jaeger’s lab (including those who also worked for other labs), although not the entire department. (Oct. 24, 2017 Interview with Graduate Student 10.) Several students who neither worked with Jaeger nor were members of his lab, including some women who reported avoiding Jaeger, also recounted being invited to retreats, dissertation defense parties and gatherings for visiting speakers hosted by Jaeger. (Oct. 13, 2017 Interview with Graduate Student 16; Nov. 1, 2017 Interview with Graduate Student 1; Nov. 2, 2017 Interview with Graduate Student 2.)

¹⁷⁸ Oct. 25, 2017 Interview with Graduate Student 23.

welcoming working environment” fostered by Jaeger.¹⁸⁰ Students in the lab maintained that they socialized with Jaeger because they enjoyed it, not because they felt pressured to do so, and we know of at least one student who maintained a research relationship with Jaeger despite rarely attending social events.¹⁸¹

That many students thrived in Jaeger’s lab culture is not to dismiss that he certainly blurred social and professional lines and discussed research and other academic issues during predominantly social events. With one exception, though, only the students who were never members of Jaeger’s lab (as it was broadly defined) reported feeling excluded professionally because they were not in his social group, or were uncomfortable with the lab’s atmosphere, describing it as “cutthroat.”¹⁸² The one student who viewed Jaeger as a co-adviser and who felt similarly eventually worked more closely with her principal adviser—in part because she was uncomfortable that maintaining a professional relationship with Jaeger “needed to be integrated into a larger social component.”¹⁸³

It is common for labs to have different “personalities,” and students may choose one lab over another for a variety of reasons, including comfort level with the social dynamics of such a

¹⁷⁹ Oct. 20, 2017 Interview with Post-doctoral Fellow 2.

¹⁸⁰ Mar. 13, 2017 Letter from 18 former students in F. Jaeger’s lab to G. Culver.

¹⁸¹ Oct. 12, 2017 Interview with F. Jaeger; Oct. 23, 2017 Interview with Graduate Student 21; Oct. 24, 2017 Interview with Graduate Student 10; Nov. 3, 2017 Interview with Graduate Student 13; Nov. 11, 2017 Interview with Graduate Student 28. This student later transferred labs because of a change in research interests, as well as academic disagreements with Jaeger; the social aspect of Jaeger’s lab was not the impetus for the switch. (Interview with Witness.)

¹⁸² Oct. 16, 2017 Interview with Graduate Student 12; Oct. 25, 2017 Interview with Graduate Student 4; Nov. 10, 2017 Interview with Graduate Student 29.

¹⁸³ Oct. 25, 2017 Interview with Graduate Student 4.

lab.¹⁸⁴ Indeed, Jaeger, in recent years, has interviewed prospective students on this topic to be sure that they would be comfortable with his style of mentoring and the social environment of his lab.¹⁸⁵ Thus, to some extent, Jaeger's lab's cohesive culture and his students' appreciation of it may be the result of self-selection. Nevertheless, the overwhelming weight of the evidence indicates that Jaeger's lab was not intentionally exclusionary, nor was Jaeger unwilling to work with those students who did not socialize with him. While some students regularly socialized with Jaeger, and others did not, this appears to result from individual students' comfort levels with engaging in a social relationship with a professor generally, or with Jaeger in particular—not intentional exclusion by Jaeger. Similarly, no student wanted to work with Jaeger, but could not, merely because the student did not participate in the social aspect of the lab. The students who avoided socializing with Jaeger also avoided working with him—again for various reasons that are difficult to disentangle, including discomfort with Jaeger's academic behavior, sexual comments or romantic relationships. We emphasize this not to diminish the legitimacy of all of the various reasons students had for avoiding Jaeger, but to more clearly distinguish between the behaviors and characteristics that Jaeger exhibited and those he did not. Jaeger's lab was both an academic and a social environment, at which Jaeger was often at the center. While not all students were comfortable with this constraint, we found no evidence that students were shut out of research opportunities with Jaeger merely as a result of an unwillingness to socialize with him,

¹⁸⁴ Oct. 27, 2017 Interview with Visiting Speaker 3.

¹⁸⁵ Dec. 8, 2017 Interview with F. Jaeger.

nor did we find that students were intentionally or systematically excluded from social or academic lab events.¹⁸⁶

(b) Jaeger’s Sexual Relationships with Students

In a related claim, the complaints proffer a misleading allegation that female students had to either sleep with Jaeger or “tolerat[e] sexually explicit behavior and power plays that made them feel vulnerable” to enjoy a successful academic relationship with him.¹⁸⁷ We discuss Jaeger’s sexually explicit behavior above,¹⁸⁸ and we reiterate here that we view his sexual banter and innuendo with students as, at a minimum, inappropriate in a professional setting. That said, no female student was forced or otherwise pressured to engage in a sexual relationship with Jaeger to have an academic relationship with him. We interviewed 41 female BCS graduate and undergraduate students and post-doctoral fellows who were at BCS at some point between 2007 and 2014, none of whom reported that Jaeger had ever pressured them to have sex or felt that working with him was contingent on submitting to a sexual relationship. Two female students who avoided Jaeger implied that they felt, based on Jaeger’s reputation, that he might theoretically pressure them for sex at a later date, but acknowledged that no such coercion ever

¹⁸⁶ Jaeger reported that he regularly offers methodological and statistical advice through a data analysis blog, a statistics forum, and in-person tutorials to students and colleagues inside and outside of BCS, including routinely answering complex statistical questions. (Dec. 13, 2017 Letter from S. Modica to Debevoise & Plimpton LLP.)

¹⁸⁷ EEOC Compl. ¶ 92; Fed. Compl. ¶ 131.

¹⁸⁸ *See supra*, at Section II.A.1.d.

occurred.¹⁸⁹ Likewise, no female student reported that Jaeger retaliated against them or treated them differently in any way as a result of their not having a sexual relationship with him.¹⁹⁰

This, of course, does not alter the fact that Jaeger had consensual sexual relationships with four prospective, current or former students between 2007 and 2011.¹⁹¹ Although, given the inherent asymmetry of power, we agree with DeAngelis that any intimate relationship with a student is problematic and a reflection of poor judgment, none of these relationships violated then-existing University policy.¹⁹² Each of these women reported that her sexual relationship with Jaeger was entirely consensual, not unwanted and resulted from her independent decision to engage in an adult, sexual relationship—a choice wholly unrelated to any perceived benefit to her academic or professional status. Indeed, Jaeger had no supervisory role of any kind with

¹⁸⁹ C. Nearpass Notes of Apr. 12, 2016 Interview with Graduate Student 17; Nov. 6, 2017 Interview with Graduate Student 17.

¹⁹⁰ In Kidd’s case, for example, after she had a falling out with Jaeger in her first year, *see infra*, at Section II.A.3, we nonetheless saw continued communications between the two until at least summer 2010 regarding routine academic questions, such as Jaeger asking if Kidd would be interested in reviewing a colleague’s paper or Kidd sharing an article from *The New York Times*. (Jan. 9, 2009 Email from C. Kidd to F. Jaeger; June 18, 2009 Email from C. Kidd to F. Jaeger (both attached as part of Exhibit 24).)

¹⁹¹ *See supra*, at Section II.A.2.b. Two of the women told us that they continued to communicate and interact socially with Jaeger after their sexual relationship ended. (Oct. 16 & Oct. 18, 2017 Interviews with Graduate Student 19; Oct. 25, 2017 Interview with Undergraduate 8.)

¹⁹² *See infra*, at Section II.A.2.b. At the time, the UR Intimate Relationships Policy between faculty and students did not prohibit, but rather “strongly discouraged,” such relationships. (University of Rochester, *Faculty Handbook* (revised Feb. 2007); *Faculty Handbook* (revised July 2008).)

respect to two of these women during or after they had a sexual relationship and was not the adviser or primary supervisor of any of them.¹⁹³

Whether, as the complaints allege, sexual relationships with Jaeger created a conflict of interest insofar as Jaeger supervised or had a role in the education of his partners, is a more complicated question with respect to Graduate Student 19 and Undergraduate 8, although we note again that neither circumstance violated then-existing University policy.¹⁹⁴ While Jaeger did not advise or otherwise formally supervise Graduate Student 19, Graduate Student 19 asked Jaeger to serve as an additional reader on her qualifying committee, as well as participate in her thesis committee, several years after their brief “fling” (in Graduate Student 19’s words) ended.¹⁹⁵ Undergraduate 8, although directly employed by another BCS professor’s lab at the

¹⁹³ Because it occurred prior to the 2014 policy change, Jaeger’s relationship with Graduate Student 15 did not violate any University policy, and Jaeger and Graduate Student 15 considered it “ok” because he was not her adviser and did not otherwise supervise her work. (Nov. 3, 2017 Interview with Graduate Student 15.)

Jaeger’s brief relationship with an undergraduate similarly did not involve a supervisory relationship, *see supra*, at n. 75. (Oct. 26, 2017 Interview with Undergraduate 16; Dec. 8, 2017 Interview with F. Jaeger.)

¹⁹⁴ See *infra*, at Section II.A.2.b. For Graduate Student 19, at the relevant time, it was not prohibited for a professor who previously had a long-removed romantic relationship with a student to serve on committees related to that student’s degree. This it is now prohibited under the UR Intimate Relationships Policy. At the time of Jaeger’s relationship with Undergraduate 8, she was a University employee, and UR Policy 121, which deals with relationships among University employees, was not violated because it did not at that time address sexual relationships.

It is important to note that under current University policies, absent disclosure and a work plan approved by the University’s Associate Vice President for HR, Jaeger would not have been permitted to serve on committees for Graduate Student 19 or collaborate with Undergraduate 8.

¹⁹⁵ Oct. 12, 2017 Interview with F. Jaeger; Oct. 16 & 18, 2017 Interviews with Graduate Student 19. In October 2009, Jaeger was one of two additional readers chosen by Graduate Student 19 for her qualifying exams, after her primary adviser had reviewed her work and

time of her sexual relationship with Jaeger, voluntarily continued research for Jaeger’s lab that had started prior to their relationship because, as she told us, she enjoyed the work and had already put in significant effort.¹⁹⁶ Again, while, as a method of avoiding potential conflicts of interest, we much prefer the now stricter UR policy that prohibits exercising any supervisory role over a current or former sexual partner, neither woman in these relationships with Jaeger reported feeling any pressure from Jaeger to have sex with him to obtain an academic benefit.

Jaeger’s sexual relationships—with the students described above, as well as with CLS visiting speakers¹⁹⁷ and his current partner¹⁹⁸—are a significant focus of the complaints, which

assessed that she had “clearly passed.” (Dec. 29, 2017 Email from S. Modica to Debevoise & Plimpton LLP.) In 2012, Graduate Student 19 again asked Jaeger to be a part of her dissertation committee—a request the other members of her dissertation committee supported, according to another BCS faculty member, due to the amount of statistical analysis in Graduate Student 19’s research. (Oct. 27 & Nov. 1, 2017 Interviews with Faculty 17.) This faculty member also said that Graduate Student 19’s dissertation was “great work,” and Jaeger’s presence on the committee did not make a difference in deciding whether to approve her degree. (Oct. 27 & Nov. 1, 2017 Interviews with Faculty 17.)

¹⁹⁶ Oct. 25, 2017 Interview with Undergraduate 8. Jaeger also wrote Undergraduate 8 a letter of recommendation for graduate school, which was submitted after they had kissed, although Jaeger told us that he had already written the letter prior to the beginning of their relationship. Jaeger expanded on this letter for a grant application that was due after their relationship ended. (Oct. 25, 2017 Interview with Undergraduate 8; Dec. 8, 2017 Interview with F. Jaeger.)

¹⁹⁷ The complaints allege that Jaeger invited several of the women he had sexual relationships with to be visiting speakers at UR. That is true, although conveys an incomplete picture, as visiting speakers receive invitations through a selection process comprised of several BCS faculty, not Jaeger or anyone alone. We spoke with three of the four visiting speakers with whom Jaeger had sexual contact, each of whom told us that their sexual relationship with Jaeger was brief and consensual. (Oct. 8, 2017 Interview with Visiting Speaker 1; Oct. 24, 2017 Interview with Visiting Speaker 2; Oct. 27, 2017 Interview with Visiting Speaker 3.) Additionally, two of these women were invited to speak years after their sexual relationships with Jaeger had ended. (Oct. 8, 2017 Interview with Visiting Speaker 1; Oct. 27, 2017 Interview with Visiting Speaker 3.) Students and senior BCS faculty members described these women as smart, highly qualified and well regarded. (C. Nearpass Notes of Apr. 14, 2016 Interview with Undergraduate Student 1; Oct. 17, 2017 Interview with Graduate Student 11; Oct. 27 & Nov. 1, 2017 Interviews with Faculty 17.) The CLS website also

allege that knowledge of these relationships by other graduate students created an environment that was hostile toward female students.¹⁹⁹ The complaints characterize Jaeger as a “manipulative sexual predator” who “relentlessly pursued and engaged in numerous sexual relationships” with these women.²⁰⁰ While there is no doubt that Jaeger, at one time, had a reputation as promiscuous—another aspect of his character that did not change from his years as a graduate student—Jaeger’s characterization as a “sexual predator” in the complaints is baseless.²⁰¹ Even Graduate Student 15, who undoubtedly had an emotionally difficult

indicates that there were at least 107 speakers between 2007-2017 (60 men and 47 women). (See Center for Language Sciences Colloquia Series, <http://www.sas.rochester.edu/cls/news-events/index.html>.)

¹⁹⁸ An overwhelming number of interviewees took serious issue with how Kurumada, Jaeger’s current partner, was identified and portrayed in the complaints, noting that using Kurumada’s real name was a gratuitous and unfair personal attack that only detracted from, rather than furthered, the complaints’ narrative. (Oct. 9, 2017 G. DeAngelis Notes on EEOC Complaint; Oct. 20, 2017 Interview with Faculty 11; Oct. 13, 2017 Interview with Faculty 13; Oct. 17, 2017 Interview with Graduate Student 11; Oct. 25, 2017 Interview with Witness 5; Oct. 30, 2017 Interview with Undergraduate 7; Nov. 11, 2017 Interview with Colleague 1; Nov. 28, 2017 Interview with Graduate Student 30.)

¹⁹⁹ EEOC Compl. ¶ 24; Fed. Compl. ¶ 97.

²⁰⁰ EEOC Compl. ¶¶ 17, 87-88; Fed. Compl. ¶¶ 41, 126-27. We note that at no point during our investigation did any interviewee report that Jaeger touched anyone sexually without consent. The only physical contact we learned of was a student who reported that Jaeger sometimes touched women on the back or shoulder and one instance where Jaeger touched a student’s arm. (Nov. 6, 2017 Interview with Graduate Student 17; Nov. 10, 2017 Interview with Graduate Student 29.) In a similar vein, some interviewees—mostly women but also some men—reported that Jaeger would occasionally stand very physically close to them without touching. (C. Nearpass Notes of Mar. 24, 2016 Interview with K. Bixby; C. Nearpass Notes of Apr. 18, 2016 Interview with Graduate Student 8; Nov. 2, 2017 Interview with Graduate Student 2; Nov. 10, 2017 Interview with Graduate Student 29.) Jaeger acknowledged that his German background makes him less cognizant of the physical space around a person that Americans typically maintain. (Dec. 8, 2017 Interview with F. Jaeger.)

²⁰¹ Likewise, the complaints contain numerous examples of allegations that have a kernel of truth that is highly exaggerated. For example, the complaints allege that a former student whom Jaeger had a sexual relationship with often came to the office of a colleague “to cry,”

relationship, and parting, with Jaeger, did not believe that Jaeger was a “sexual predator” or that their sexual relationship was anything other than consensual.²⁰²

Two of the women, in particular, took exception to the allegations that Jaeger was a “sexual predator” who coerced them or whom they feared in any way, noting that they were fully able to make decisions for themselves and consent to adult sexual relationships.²⁰³ Graduate Student 19 bristled at what another witness called the “damsel in distress” narrative of the EEOC Complaint’s description of her brief relationship with Jaeger, which she described as inaccurate and included without her permission.²⁰⁴ She also described the EEOC Complaint’s allegation that she “did not want Jaeger to be on her qualifying exams or dissertation committees, but was too afraid to request that he be excluded” as “entirely false.”²⁰⁵ Undergraduate 8 similarly disagreed with how the complaints portrayed her relationship with Jaeger, emphasizing that she specifically told one of the claimants, both before and after the EEOC Complaint was released publicly, that its statement that she feared “retaliation and retribution” from Jaeger was false. Likewise, while the allegation that Jaeger did not pay for the medical treatment of an injured

(EEOC Compl. ¶ 87)—implying by placing this sentence in the middle of a paragraph of allegations about her relationship with Jaeger that the woman was upset about aspects of this relationship. To the contrary, we spoke with the woman in question, who reported to us that she recalled crying in her colleague’s office once after her sister was in a car accident. (Interview with Witness.) This allegation was changed only slightly in the federal complaint, stating instead that the woman came to her colleague’s office “upset.” (Fed. Compl. ¶ 126.)

²⁰² Nov. 3, 2017 Interview with Graduate Student 15.

²⁰³ Oct. 16 & 18, 2017 Interviews with Graduate Student 19; Dec. 21, 2017 Interview with Undergraduate 8.

²⁰⁴ Oct. 16 & 18, 2017 Interviews with Graduate Student 19.

²⁰⁵ *Id.*

sexual partner supports the complaints’ “predator” narrative and claim that Jaeger is “indifferent” to the welfare of the women with whom he sleeps, we found its factual component largely false, and its broader implication entirely false.²⁰⁶

Jaeger’s past sexual relationships with students, which we see as significant errors in judgment, should nonetheless be considered in context. One of Jaeger’s colleagues confirmed that many graduate students, post-doctoral fellows and faculty in their field have had sexual relationships with one another.²⁰⁷ Statistics bear out this observation. Academic couples comprise 26% of American professors, and 83% of female scientists in academic couples are partnered with another scientist.²⁰⁸ At UR, spousal hires are common, and as noted, one of the Complainants met her spouse while she was a professor and he was a graduate student, and among the Complainants are three faculty couples.

3. Jaeger’s Relationship with Celeste Kidd

A significant portion of the allegations made in the EEOC Complaint and federal complaint stem from interactions in 2007 and 2008 between Jaeger and Kidd. The complaints allege that Jaeger sexually harassed Kidd during her UR recruitment process in spring 2007,²⁰⁹

²⁰⁶ EEOC Compl. ¶ 82; Fed. Compl. ¶ 120. We will not disclose any additional details to protect the privacy of the woman involved.

²⁰⁷ Oct. 24, 2017 Interview with Visiting Speaker 3. This observation is borne out by the Complainants, most of whom are in relationships with each other (e.g., Cantlon and Mahon; Kidd and Piantadosi; and Hayden and Heilbronner). We note that Newport is also married to one of her former graduate students. (See Exhibit 9.)

²⁰⁸ Londa Schiebinger, Andrea Davies Henderson & Shannon K. Gilmartin, *Dual-Career Academic Couples: What Universities Need to Know*, Michelle R. Clayman Institute for Gender Research, Stanford University, 2008.

²⁰⁹ EEOC Compl. ¶ 38; Fed. Compl. ¶ 78.

“pressed” Kidd to rent a room in his home in summer 2007,²¹⁰ and made a series of unwelcome, harassing sexual comments over this period.²¹¹

While Kidd declined our interview requests, we reviewed notes from her interview with DeAngelis in 2013 stemming from Bixby’s complaint, notes from her interview with Nearpass in 2016 that Kidd reviewed and supplemented at the time, notes and an audio recording of her interview with Curtin, as well as Facebook messages and emails that we obtained.²¹² Whenever possible, we have also spoken with witnesses who were present for specific events alleged in the complaints involving Kidd and Jaeger and who socialized and worked with them regularly during their cohabitation. We understand the sensitive nature of these facts, and we have done our best to provide all relevant context that we discovered during our investigation that was otherwise missing from the complaints.

We cannot conclude, in any definite terms, whether the statements Kidd alleges that Jaeger made only to her were indeed unwelcome or if Jaeger crossed any lines or boundaries that Kidd verbally established with him. Jaeger concedes that he made sex-related comments generally during this time, including to Kidd, but did not think he made the specific comments alleged in the complaints.²¹³ While we credit that Jaeger spoke about everything—including sex—in an unfiltered manner, our review of the full record with respect to at least some of the

²¹⁰ EEOC Compl. ¶ 42; Fed. Compl. ¶ 82.

²¹¹ EEOC Compl. ¶¶ 34, 36, 38; Fed. Compl. ¶¶ 74, 76, 78.

²¹² We reviewed a series of Facebook messages and emails between Jaeger and Kidd, although we cannot be certain that we have every communication between the two. Due to the time that has passed, we are likewise unsure that Facebook or email providers archived all communications or that users did not delete any communications.

²¹³ Dec. 8, 2017 Interview with F. Jaeger.

complaints' allegations leads us to suspect that many of the allegations related to Jaeger's interactions with Kidd are presented absent the context in which they were made. Some of the allegations describe conduct or statements that are consistent with reports of Jaeger's behavior that we learned about from witnesses during this time period—such as, for example, allegations that Jaeger ignored Kidd's personal boundaries,²¹⁴ made comments about students' physical appearance to Kidd,²¹⁵ or spoke with her frankly about sex, including about her sex life and sexual acts that he performed, or wanted to perform, on other women.²¹⁶ Although Jaeger does not specifically recall these incidents, we credit that it is more likely than not that they occurred. We question, though, whether at least some of Jaeger's statements were actually offensive to Kidd at the time, in part because interviewees told us that Kidd openly talked about sex with colleagues, including specific, graphic comments about her sexual partners,²¹⁷ and that Kidd

²¹⁴ See, e.g., EEOC Compl. ¶ 45; Fed. Compl. ¶ 85 (allegations that Jaeger would push Kidd's boundaries by entering her room without knocking, using her computer, and stating that he had stuck his hand in the beans she was preparing and saying, "Your beans feel really weird, Celeste.").

²¹⁵ See, e.g., EEOC Compl. ¶ 72; Fed. Compl. ¶ 110 (allegations that Jaeger evaluated the sexual appeal of other women and warned Kidd against gaining weight).

²¹⁶ See, e.g., EEOC Compl. ¶ 66; Fed. Compl. ¶ 104 (allegation that Jaeger made a comment about one of his partner's oral herpes and that Kidd was a "germophobe"); EEOC Compl. ¶ 70; Fed. Compl. ¶ 108 (allegations that Jaeger used sexual language and told Kidd that the medication that one of his partners used made her vagina taste bad); EEOC Compl. ¶ 71; Fed. Compl. ¶ 109 (allegations that Jaeger questioned Kidd about her past relationships and sex life, including joking about her ex-partner's ethnicity, and to identify how many sexual partners she had); EEOC Compl. ¶ 73; Fed. Compl. ¶ 111 (allegation that Jaeger told Kidd he wanted to pull on a student's hair and another student had nice lips that he wanted to "suck and bite"); EEOC Compl. ¶ 78; Fed. Compl. ¶ 116 (allegation that Jaeger showed up uninvited to Kidd's date).

²¹⁷ Oct. 16 & 18, 2017 Interviews with Graduate Student 19; Oct. 25, 2017 Interview with Witness 5.

maintained a list of prominent academics in her field with whom she wanted to have sex.²¹⁸

Kidd herself acknowledged the “list” to Nearpass in 2016, noting that it was something she joked about—but did not create—because those men would understand her workload.²¹⁹ The weight of the evidence we reviewed suggests two conclusions: first, the complaints present only one editorialized and edited side of a complicated story, and second, Kidd’s account of Jaeger’s conduct from 2007-2008 escalated between her 2013 interview with DeAngelis and the 2017 complaints.

With respect to the first point, the complaints’ portrayal of Jaeger and Kidd’s initial communications provides only Jaeger’s comments, while excluding Kidd’s seemingly willing and playful responses. As alleged in the complaints, for example, Jaeger did tell Kidd that he hoped she would read a manuscript to him while he would “lie lazily on the couch” and she “paced around occasionally in front of the fire.”²²⁰ This allegation, however, omits the context of Kidd’s earlier statement about a manuscript of a novel that she was writing, and likewise omits her response to Jaeger’s statement, which said, “I’ll only read if I get to take a turn on the couch while you read and pace. ;) sweet dreams!”²²¹ Similarly, the allegation that Jaeger told Kidd “sex” is his favorite reading topic is taken entirely out of context.²²² Jaeger’s comment was made following Kidd’s request for book recommendations and was not limited to “sex” but

²¹⁸ Oct. 17, 2017 Interview with Graduate Student 11; Oct. 19 & 23, 2017 Interviews with Graduate Student 9.

²¹⁹ C. Nearpass Notes of May 2, 2016 Interview with C. Kidd.

²²⁰ EEOC Compl. ¶ 38; Fed. Compl. ¶ 78.

²²¹ Exhibit 16, at Mar. 29, 2007 5:41 AM.

²²² EEOC Compl. ¶ 38; Fed. Compl. ¶ 78.

rather contained a laundry list of authors and topics: “I like books about chance, apparent arbitrariness of life (paul austen), sex (the sexual life of catherine m., venus trap, p’s complaint, the human stain), politics, and then my dad often sends me good stuff he found somewhere.”²²³

In contrast to the complaints’ allegation that Jaeger “continued to sexually harass Kidd during the remainder of her recruitment process,”²²⁴ Jaeger was the first faculty member at UR whom Kidd told about accepting her offer to attend, in an email thread where she later added, “I’m ridiculously excited. It’s going to be fun. I want to just gun it for five years. A lot of work interspersed with maybe some bouts of good play. ;) We should go down to NYC one weekend. I have cousins and friends there.”²²⁵ Later in the summer, before she officially moved in with Jaeger—a time when the complaints allege that Jaeger “pressed” Kidd to rent the room and “threat[ened]” that “his professional opinion of her would inevitably be tied to his personal opinion of her”²²⁶—Kidd wrote him an email stating, “You know so many interesting, beautiful people. I’m really glad we met, Flo. And I’m delighted to be moving to Rochester.”²²⁷

The unedited Facebook messages between Jaeger and Kidd, as well as their email communications, suggest that in summer 2007, when Kidd moved into Jaeger’s house, their relationship was friendly and harmonious, and we found no evidence indicating that Jaeger coerced Kidd into living with him. Interviewees overwhelmingly indicated that while they found

²²³ Exhibit 16, at Mar. 30, 2007 2:58 AM.

²²⁴ EEOC Compl. ¶ 38; Fed. Compl. ¶ 78.

²²⁵ Apr. 13, 2007 Email from C. Kidd to F. Jaeger (attached as part of Exhibit 24.)

²²⁶ EEOC Compl. ¶ 42; Fed. Compl. ¶ 82.

²²⁷ Aug. 2, 2007 Email from C. Kidd to F. Jaeger (attached as part of Exhibit 24.)

Kidd's and Jaeger's living arrangement strange,²²⁸ they all thought Kidd and Jaeger were friends from summer 2007 to spring 2008.²²⁹ Emails between Jaeger and Kidd at the beginning of their living arrangement echo this perception.²³⁰

By all accounts, Jaeger's and Kidd's living arrangement appears to have been initially friendly and mutually acceptable, although we note that we view it as a serious lapse in Jaeger's judgment to live with a graduate student. Based on the available evidence, we believe their

²²⁸ Oct. 12, 2017 Interview with Administrator 3; Oct. 19, 2017 Interview with Faculty 25; Oct. 25, 2017 Interview with Graduate Student 4; Oct. 26, 2017 Interview with Graduate Student 24; Nov. 7, 2017 Interview with Graduate Student 28; Nov. 10, 2017 Interview with Graduate Student 29; Nov. 30, 2017 Interview with Post-doctoral Fellow 6.

Three BCS faculty and staff told us that Jaeger and Kidd's living arrangement was brought to the attention of then-BCS Chair, and current complainant, Newport, but that she did not have any significant reaction to the news. (Nov. 1, 2017 Interview with Administrator 8; Oct. 12, 2017 Interview with Administrator 3; Nov. 8, 2017 Interview with Faculty 20.) Jaeger recalled that at the end of a faculty meeting in fall 2007, Newport told him that his living situation was unusual but never mentioned it again. (Dec. 8, 2017 Interview with F. Jaeger.) Many years later, in a 2016 email to Aslin, Newport reflected on the “inappropriateness of having Celeste stay at [Jaeger's] house then become his roommate.” (Mar. 9, 2016 Email from E. Newport to R. Aslin.)

²²⁹ Oct. 17, 2017 Interview with Graduate Student 11; Oct. 25, 2017 Interview with Witness 5; Nov. 8, 2017 Interview with Colleague 11; Nov. 13 & Dec. 6, 2017 Interview with Post-doctoral Fellow 1.

²³⁰ On September 11, 2007, after Jaeger apologized for his “grumpy exhilaration” following a car ride from Kidd, Kidd responded, “i never take you seriously serious. :) Have a great trip!” (Sept. 11, 2007 Email from C. Kidd to F. Jaeger.) (attached as part of Exhibit 24.) At other times, they discussed what movies to add to their Netflix account, (Oct. 1, 2007 Emails between F. Jaeger and C. Kidd) (attached as part of Exhibit 24); made plans to go on trips together to Boston, New York and Ithaca, (Apr. 13, 2007 Email from C. Kidd to F. Jaeger; Oct. 3, 2007 Emails between F. Jaeger and C. Kidd; Oct. 4, 2007 Emails between C. Kidd and F. Jaeger) (all attached as part of Exhibit 24); and planned crawfish boils at their house and a trip to the Adirondacks with mutual friends from the Linguistic Society of America Institute, (Dec. 4, 2007 Email from C. Kidd to F. Jaeger (attached as part of Exhibit 24); Oct. 17, 2017 Interview with Faculty 20; Oct. 26, 2017 Interview with Colleague 14; Nov. 8, 2017 Interview with Colleague 11; Nov. 15, 2017 Interview with Post-doctoral Fellow 9.) Kidd also sent Jaeger photos of her baby sister through February 2008. (Nov. 30, 2007 Email from C. Kidd to F. Jaeger and others; Feb. 13, 2008 Email from C. Kidd to F. Jaeger.)

relationship began to break down sometime in spring 2008,²³¹ and Kidd made clear to Jaeger at least by summer 2008 that she wanted space from him.²³² Although Kidd may have, as she claims, expressed orally to Jaeger that she did not want to engage in any sexually-related discussions with him, Jaeger denies this, while acknowledging that the two had roommate incompatibility problems ranging from the mundane to those involving values and communication styles.²³³ We have found no written evidence from Kidd of any disapproval of Jaeger on sexual-harassment grounds. And while it is well-documented that many women do not complain of sexual harassment at the time it occurs, it is worth noting that Kidd’s adviser was Aslin and the BCS Chair was Newport, with the latter being described in the EEOC Complaint as having a “reputation for protecting and advancing her students,” including “interven[ing] by

²³¹ While the language of the complaints’ allegations about sleeping in Aslin’s lab are exaggerated (*e.g.*, that C. Kidd needed to “escape Jaeger,” EEOC Compl. ¶ 94), we credit that Kidd slept in the lab occasionally during this time period, although most of her colleagues assumed she did so at the time because she was working late nights. (C. Nearpass Notes of Mar. 18, 2016 Interview with C. Kidd; Nov. 30, 2017 Interview with BCS Employee 4; Oct. 13, 2017 Interview with Graduate Student 14; Oct. 16, 2017 Interview with Graduate Student 12; Oct. 16 & 18, 2017 Interviews with Graduate Student 19.)

²³² At the end of July 2008 after Kidd moved out, Jaeger sent her an email saying, “[I]t’s really a pity how the vibe between [us] has been developing.” He said that she had once asked him to “leave [her] alone” regarding things that bothered her, and he had done that for “over half a year” but “it hasn’t changed anything.” He said “it would be nice if [they] could get on better terms again” and offered to listen to “things on [her] mind that [she needed] to get rid of.” Kidd responded that she was “not sure how best to respond” and that she was not “ready for a conversation just yet,” and wasn’t sure when she would be. She concluded that she would like for them to “be friends again” and thought the best route there was to establish a good working relationship first, but she needed time and space for “personal things” before she would do that. (July 10, 2008 Emails between F. Jaeger and C. Kidd; July 27, 2008 Emails between F. Jaeger and C. Kidd) (both attached as part of Exhibit 24.)

²³³ Dec. 8, 2017 Interview with F. Jaeger.

making it clear that [sexual harassment] would not be tolerated.”²³⁴ Kidd also told Nearpass in 2016 that she knew she could go to Aslin for help during this time.²³⁵ We were not, in the end, able to substantiate the allegation that sexual harassment was the predominant reason that the personal relationship between Kidd and Jaeger eroded and then ended by the spring 2008.

Similarly, the evidence we reviewed also suggests that Kidd’s narrative in the complaints about what she found irksome and harassing about Jaeger’s conduct is not entirely consistent with the views she expressed at earlier times to faculty and students. Kidd may have been reluctant to report sexual harassment at the time, although we remain skeptical that Aslin and Newport would not have acted immediately, particularly given their reactions to the instant allegations. By contrast to Kidd’s recent statements that Jaeger made demeaning sexual comments that made her life unbearable,²³⁶ Kidd did not call attention to Jaeger’s alleged unwelcome sexual comments or innuendo before 2016—rather only his problematic and unprofessional social and academic behavior.²³⁷ Moreover, when DeAngelis met with Kidd following Bixby’s 2013 Complaint,²³⁸ DeAngelis’ handwritten notes from this meeting recount that Kidd told him that Jaeger had relationships with graduate students, that he unexpectedly

²³⁴ EEOC Compl. ¶ 15. This language was omitted from the federal complaint.

²³⁵ C. Nearpass Notes of May 2, 2016 Interview with C. Kidd.

²³⁶ See Maria Danilova, *Universities Face #MeToo Movement Over Sexual Harassment*, ASSOCIATED PRESS, Dec. 28, 2007.

²³⁷ See *supra*, at n. 96, where three students reported that Kidd specifically warned them about working with Jaeger (in 2008 and around 2012-2013), not because of any alleged sexual harassment, but because Jaeger took credit for students’ academic ideas. Another student reported that when she joined in 2009, Kidd openly talked about “hat[ing] Jaeger’s guts.” However, the student believed the problem was that Jaeger was an annoying roommate. (Oct. 24, 2017 Interview with Graduate Student 10.)

²³⁸ See *supra*, at Section II.A.1.f.

dropped by his teaching assistants' house and sometimes showed up to graduate student events, crossed professional lines and asked Kidd personal questions over Facebook.²³⁹ In contrast to the complaints' allegations of sexual harassment, however, DeAngelis recalled that Kidd told him "very little" in 2013, including failing to relay any of Jaeger's alleged sexual comments that she later provided to Nearpass in 2016 (that are also alleged in the complaints).²⁴⁰ Likewise, DeAngelis does not recall, as the complaints claim, that Kidd gave him names of ten additional students to contact, and his contemporaneous notes do not contain that information.²⁴¹

It is also worth noting that later, after the Nearpass investigation and before the EEOC Complaint was filed, Kidd sent an email to DeAngelis on January 4, 2017, complaining that Nearpass had declined to review Facebook messages that Kidd believed supported her sexual harassment allegations against Jaeger.²⁴² Instead of sending the full dialogue between herself and Jaeger, it is telling that Kidd provided a "cut and pasted" Word document that contained only excerpts of Jaeger's statements with many of Kidd's remarks or responses removed.²⁴³

²³⁹ G. DeAngelis Notes of 2013 Meeting with C. Kidd.

²⁴⁰ Oct. 9, 2017 G. DeAngelis Notes on EEOC Complaint.

While we cannot be certain that DeAngelis' handwritten notes document the entirety of his conversation with Kidd, DeAngelis' recollection of what occurred when he spoke to Kidd is bolstered by his conclusion at the time that sexual harassment was not at issue, only drawing appropriate personal/professional boundaries. Had Kidd told DeAngelis the same allegations relating to Jaeger's conduct that are set forth in the complaints, we are doubtful that DeAngelis would have reached this same conclusion.

²⁴¹ G. DeAngelis Notes of 2013 Meeting with C. Kidd; Oct. 9, 2017 G. DeAngelis Notes on EEOC Complaint.

²⁴² Jan. 4, 2017 Email from C. Kidd to G. DeAngelis and J. Cantlon (attached as part of Exhibit 25.)

²⁴³ Facebook Messages from F. Jaeger to C. Kidd that C. Kidd provided to G. DeAngelis (attached as part of Exhibit 25.)

Kidd's email suggests that these were the same messages she had offered to Nearpass in 2016 for her review.²⁴⁴ As described earlier, these heavily edited Facebook messages have been manipulated in such a manner as to make them essentially devoid of all critical context, including not only reciprocal flirting, but also the lengthy passages where Jaeger is providing graduate school and career advice.

By contrast to the complaints, the evidence we reviewed suggests that Kidd and Jaeger's relationship was amicable and harmonious when they initially met and lived together, but eventually deteriorated by the end of spring 2008. While we cannot draw any definitive conclusions from the information we were provided, the evidence suggests that the Complainants' lack of transparency related to Jaeger and Kidd's exchanges make us question what other context is missing from the Complainants' accounts of their relationship. We have not been able to determine why the relationship fell apart, except that no evidence that we have seen concretely indicates that Jaeger's alleged sexual harassment was the sole, or even predominant, culprit. Kidd's own words to Curtin in 2016 accurately capture our conclusion on her relationship with Jaeger: "[S]exual harassment was a small part of all of the problems I had in [Jaeger's] lab. There was a huge number of problems, many of which were professional."²⁴⁵

B. Jaeger's Post-2014 Conduct

Jaeger's personal and professional behavior has shifted substantially from the time he joined UR to the present, and we found 2014 to be an important demarcation line for this behavioral shift. A former graduate student who enrolled in 2010 remarked upon the change in

²⁴⁴ Exhibit 25. Nearpass opted not to review the Facebook messages that Kidd offered to her. *See infra*, at Section II.C.3.

²⁴⁵ C. Curtin Recording of Aug. 16, 2016 Interview with C. Kidd.

Jaeger’s behavior that occurred during these years, describing it as Jaeger “realiz[ing] that he was in a position of power [and] couldn’t just be a cool guy who happens to be a professor.”²⁴⁶

Whether it was because Jaeger matured, was now in a committed long-term relationship with another BCS professor,²⁴⁷ was spoken to by his Department Chair following a complaint about his “pushing boundaries” and “unprofessional” behavior involving a graduate student outside his lab²⁴⁸ or some combination of all of these things, the available evidence supports the finding that during the 2014-2017 period, Jaeger significantly reduced or eliminated the types of problematic behavior in which he previously had engaged. Specifically, the University has received no complaints of inappropriate conduct or sexual commentary from students in Jaeger’s lab from 2014 through the present, and all the students (male and female) whom we interviewed shared positive experiences with respect to being part of the lab community and expressed appreciation for Jaeger’s rigor and dedication as an adviser.

1. Academic Settings

We interviewed 23 people affiliated with Jaeger’s lab during the 2014-2017 period, including 13 women, all of whom refuted the claim that Jaeger’s lab was “cult-like” or a “boys’ club.”²⁴⁹ To the contrary, the environment in Jaeger’s lab during this time was “very

²⁴⁶ Oct. 23, 2017 Interview with Graduate Student 21.

²⁴⁷ We note that Kurumada and Jaeger have been in a relationship since July 2009, and they have lived together in Rochester since 2013. We have found no evidence that after Kurumada moved to Rochester, Jaeger engaged in any other sexual relationships, whether with UR graduate or undergraduate students or with anyone else.

²⁴⁸ *See supra*, at Section II.A.1.f.

²⁴⁹ EEOC Compl. ¶ 53; Fed. Compl. ¶ 93.

welcoming,”²⁵⁰ “close-knit,”²⁵¹ and provided a sense of “community” for the individuals who were part of the lab.²⁵² In particular, various female undergraduates described feeling comfortable in the lab, one of whom even described working in Jaeger’s lab as “one of the best parts of [her] undergraduate career.”²⁵³

In contrast to the earlier period, none of the students who began working with Jaeger in the 2014-2017 period described him as a harsh critic or a bully, but rather as a supportive mentor whose demanding advising style was beneficial to their academic work, growth and development.²⁵⁴ Many of them stated that his criticism, while “direct,”²⁵⁵ was not “over the top” and generally constructive.²⁵⁶ A female graduate student told us that Jaeger was a driving factor in her decision to choose UR over better-known schools, describing him as having high standards, which was “worth it” as her work greatly improved as a result of his advising.²⁵⁷

Similarly, students in Jaeger’s lab since 2014 told us that Jaeger gave them ample credit for their

²⁵⁰ Nov. 1, 2017 Interview with Undergraduate 10.

²⁵¹ Oct. 25, 2017 Interview with Graduate Student 23.

²⁵² Crystal Lee, Shaelyn Rhinehard, Lauren Oey, Leslie Li & Becky Chu, *Regardless of Controversy, Jaeger was a Good Mentor*, CAMPUS TIMES, Oct. 2, 2017; Oct. 30, 2017 Interview with Undergraduate 14.

²⁵³ Nov. 1, 2017 Interview with Undergraduate 10.

²⁵⁴ The only criticism we heard with respect to Jaeger’s advising and mentoring during this time period involved his communication style, which was described as “informal” (citing as an example the use of smiley faces) and occasionally tone deaf, although “nothing creepy.” (Oct. 30, 2017 Interview with Undergraduate 7.)

²⁵⁵ Oct. 12, 2017 Interview with Graduate Student 25; Oct. 20, 2017 Interview with Post-doctoral Fellow 2.

²⁵⁶ Oct. 13, 2017 Interview with Graduate Student 6; Oct. 25, 2017 Interview with Graduate Student 23.

²⁵⁷ Oct. 25, 2017 Interview with Graduate Student 23.

work, including one student who noted that Jaeger “would give credit where credit was due, and even sometimes where it wasn’t yet due,” recalling a conference where Jaeger cited her work even though it had not yet been completed.²⁵⁸ Additionally, a visiting student told us that Jaeger gave her so much input that she asked him if he would like to be listed as a co-author, but he refused.²⁵⁹

As with the earlier period, the allegations that students felt they had to participate in Jaeger’s social life in order to obtain teaching benefits,²⁶⁰ or that those not in Jaeger’s social circle were excluded from lab events,²⁶¹ are unfounded. Students who began working with Jaeger in the 2014-2017 period told us that Jaeger’s lab still includes a social component outside of academic settings.²⁶² While this is less common in other labs, the students overwhelmingly felt this was a positive, and voluntary, aspect of their lab.²⁶³ None of the students we spoke to reported feeling excluded from, or compelled to attend, social events. Lab retreats also continued during this period (one in 2014 and one in 2015), and still involved social drinking and

²⁵⁸ Nov. 28, 2017 Interview with Graduate Student 30.

²⁵⁹ Nov. 16, 2017 Interview with Visiting Scholar 4.

²⁶⁰ EEOC Compl. ¶ 50; Fed. Compl. ¶ 90.

²⁶¹ EEOC Compl. ¶ 52; Fed. Compl. ¶ 92.

²⁶² Oct. 12, 2017 Interview with Graduate Student 5; Oct. 12, 2017 Interview with Graduate Student 25; Oct. 13, 2017 Interview with Graduate Student 6; Oct. 25, 2017 Interview with Graduate Student 23; Oct. 27, 2017 Interview with Post-doctoral Fellow 4; Oct. 30, 2017 Interview with Post-doctoral Fellow 11; Nov. 1, 2017 Interview with Undergraduate 1; Nov. 1, 2017 Interview with Undergraduate 10; Nov. 16, 2017 Interview with Visiting Scholar 4; Nov. 28, 2017 Interview with Graduate Student 30.

²⁶³ Oct. 12, 2017 Interview with Graduate Student 5; Oct. 12, 2017 Interview with Graduate Student 25; Oct. 25, 2017 Interview with Graduate Student 23; Oct. 30, 2017 Interview with Post-doctoral Fellow 11; Nov. 1, 2017 Interview with Undergraduate 1; Nov. 28, 2017 Interview with Graduate Student 30.

hot tubs, but the students who attended these lab retreats described them as “nice, relaxing experiences” where no drugs were present.²⁶⁴ One student, who attended retreats both before and during this period, described these retreats as “tamer” than even the prior retreats, which we found were unduly sensationalized in the complaints.²⁶⁵

2. Social Settings

While we found that Jaeger consistently blurred professional and personal boundaries in the earlier period, including through extensive (and potentially unwelcome) socializing with graduate students, students consistently told us in this time period that Jaeger’s presence was welcome and encouraged at such events.²⁶⁶ While Jaeger tended to attend only the more important social events (like birthday parties or dissertation defense celebrations), one female student remarked that “students really enjoy [Jaeger’s] company and actually want him to be present at social events.”²⁶⁷ Another female student emphasized that, on the more infrequent occasions when students see Jaeger at Lux, they invite him to join them because they enjoy socializing with him.²⁶⁸ As with the earlier period, Jaeger also occasionally hosted social events at his home where students were invited, and with the exception of one post-doctoral fellow who

²⁶⁴ Oct. 12, 2017 Interview with Graduate Student 25; Oct. 25, 2017 Interview with Graduate Student 23.

²⁶⁵ Oct. 23, 2017 Interview with Graduate Student 21.

²⁶⁶ Oct. 25, 2017 Interview with Graduate Student 23; Nov. 1, 2017 Interview with Undergraduate 10; Nov. 28, 2017 Interview with Graduate Student 30; Nov. 29, 2017 Interview with BCS Employee 1; Dec. 12, 2017 Interview with Graduate Student 6.

²⁶⁷ Oct. 30, 2017 Interview with Undergraduate 14.

²⁶⁸ Oct. 25, 2017 Interview with Graduate Student 23.

recalled marijuana at some of the parties he attended with Jaeger since 2014,²⁶⁹ no other student observed binge drinking or the use of drugs at parties involving Jaeger.²⁷⁰

3. Sexual Remarks

Similarly, our investigation found no evidence to support the allegation that Jaeger made female students feel uncomfortable, or treated female students differently, during the 2014-2017 period. All of the students whom we interviewed who have worked with Jaeger since 2014 told us that they did not feel uncomfortable with any sexual comments or innuendo that Jaeger may have made in their presence, with many of them reporting that they did not remember hearing Jaeger make such comments.²⁷¹ Some students recognized that Jaeger occasionally made sexual jokes,²⁷² although one female graduate student clarified that they were made “only in social contexts” and with students who were comfortable with such conversations.²⁷³ For example,

²⁶⁹ Nov. 6, 2017 Interview with Post-doctoral Fellow 10.

²⁷⁰ Oct. 20, 2017 Interview with Post-doctoral Fellow 2; Oct. 27, 2017 Interview with Post-doctoral Fellow 4; Oct. 30, 2017 Interview with Post-doctoral Fellow 11; Oct. 30, 2017 Interview with Undergraduate 7; Nov. 1, 2017 Interview with Undergraduate 1; Nov. 1, 2017 Interview with Undergraduate 10; Nov. 16, 2017 Interview with Visiting Scholar 4.

²⁷¹ Oct. 12, 2017 Interview with Graduate Student 5; Oct. 25, 2017 Interview with Graduate Student 23; Oct. 30, 2017 Interview with Undergraduate 14; Nov. 1, 2017 Interview with Undergraduate 1; Nov. 14, 2017 Interview with Visiting Scholar 5; Nov. 28, 2017 Interview with Graduate Student 30.

²⁷² Oct. 25, 2017 Interview with Graduate Student 23; Nov. 28, 2017 Interview with Graduate Student 30.

²⁷³ Nov. 28, 2017 Interview with Graduate Student 30. Graduate Student 30 told us that although she was never uncomfortable with Jaeger’s comments, she knew that Bixby felt differently. She described a recruitment weekend in early 2015 when Bixby told her that she was uncomfortable with Jaeger, and added, “It was pretty well known that Keturah didn’t like Florian.” This student did not know of anyone else who was uncomfortable around Jaeger. As noted *supra*, at Section II.A.1.f, the incidents that caused Bixby to be uncomfortable with Jaeger occurred prior to 2014.

when presented a student with an email from Jaeger to his lab, which included the line, “I want to encourage you--old or young, fresh or … ripe?--to take advantage of opportunities to meet with visiting professors,”²⁷⁴ the student told us that she was not offended.²⁷⁵ Although Jaeger could be informal outside of an academic setting, students generally agreed that Jaeger had “always been really professional” with them in the classroom or lab.²⁷⁶

Jaeger’s reputation as promiscuous also seems to have faded in this time period. One of Jaeger’s female graduate students stated that, prior to the disclosures in the EEOC Complaint, she was not aware of Jaeger’s previous sexual relationships with women or that he had a reputation as a “womanizer.”²⁷⁷ This student explained that she was “surprised by the [EEOC] complaint” because she had met with two of the EEOC Complainants during her interviews at UR, which occurred after Bixby raised concerns about Jaeger’s behavior in 2013, and neither of them had expressed any concern to her.²⁷⁸

Although much of the complaints are written in a way that makes the timing difficult to discern, there are two allegations in the complaints dating from this latter period. One allegation that was in the EEOC Complaint, but has been omitted from the federal complaint, was that

²⁷⁴ Nov. 22, 2015 Email from F. Jaeger to students (attached as Exhibit 26.)

²⁷⁵ Oct. 25, 2017 Interview with Graduate Student 23.

²⁷⁶ Oct. 20, 2017 Interview with Post-doctoral Fellow 2; Nov. 1, 2017 Interview with Undergraduate 10; Nov. 14, 2017 Interview with Visiting Scholar 5; Nov. 28, 2017 Interview with Graduate Student 30.

²⁷⁷ Oct. 25, 2017 Interview with Graduate Student 23.

²⁷⁸ Oct. 25, 2017 Interview with Graduate Student 23.

some type of sexual misconduct might have taken place when a student, “Jane Doe,”²⁷⁹ visited UR in 2015.²⁸⁰ The federal complaint now states that Doe “did not experience any sexual misconduct by Jaeger during the recruitment weekend.”²⁸¹ The other allegation pertains to a complaint Piantadosi received from a graduate student attending courses at the summer 2017 Kavli Institute (where Jaeger was faculty) that Jaeger was the only faculty member attending parties in the students’ dorms until early in the morning.²⁸² We have not been able to identify or to speak with this student, but Jaeger told us that, following a day “hanging out” with multiple students, several of them invited him to a party of about 60-80 students held in the male dorms. Jaeger—the only faculty member present that evening (although faculty had socialized with

²⁷⁹ “Jane Doe” in the EEOC Complaint is referred to as “Cathy Crawford” in the federal complaint.

²⁸⁰ EEOC Compl. ¶ 153; Fed. Compl. ¶ 212.

²⁸¹ The Complainants maintain, however, that it was wrong for Nearpass to fail to interview Doe after they suggested to her, again, without further basis, that they suspected something inappropriate had happened. *See infra*, at n. 300.

The federal complaint also notes that “[Doe] herself considers it strange that DeAngelis approved her staying at Jaeger’s house . . . given the complaints he had already received.” We spoke with two BCS faculty members who told us that it was “not atypical” for prospective students to stay with faculty during a recruitment weekend. (Oct. 12, 2017 Interview with Administrator 3; Oct. 27 & Nov. 1, 2017 Interviews with Faculty 17.) Additionally, Doe stayed in a hotel with other prospective students for the weekend, and only moved to Jaeger’s house because she decided to spend a few extra days in Rochester, telling Kurumada and Jaeger that she “was interested in learning more about the city, the lab, and the people in the department.” (Nov. 1, 2017 Interview with C. Kurumada.) A BCS administrator confirmed that UR does not pay for a hotel for students who stay for additional days, and thus it was “common” for visiting students to stay with faculty members. (Oct. 12, 2017 Interview with Administrator 3.) Furthermore, Aslin, who also knew of Bixby’s 2013 Complaint, stated in an email to Nearpass that Doe staying with Jaeger “seemed innocent enough to [him]” when he first learned of it. (Mar. 16, 2016 Email from R. Aslin to C. Nearpass.)

²⁸² EEOC Compl. ¶ 292; Fed. Compl. ¶ 373.

students on other nights)—recalled playing Frisbee, drinking beer, being asked to dance and leaving late that night without anything untoward happening.²⁸³ According to Jaeger, the organizers of the Kavli Institute did not want faculty to socialize only with each other.²⁸⁴ For this reason, Jaeger made an effort to socialize in informal settings with students, as well as during the Institute’s official parties, which all involved alcohol.²⁸⁵ Jaeger also noted that many of the “students” at the Institute were post-doctoral fellows.²⁸⁶ We spoke with the Title IX Officer at the University of California at Davis (“UC Davis”), who reported that the co-director of the Kavli Institute (who is a faculty member at UC Davis) received no complaints from students regarding Jaeger’s behavior.²⁸⁷

C. The University’s Investigations and Their Aftermath

1. The Nearpass Investigation (March – May 2016)

The Aslin and Cantlon complaints against Jaeger in March and April 2016, respectively, arose at a time of heated discussions among BCS faculty over a hiring decision that included a potential spousal hire, with Aslin and Cantlon disagreeing with Jaeger and others.²⁸⁸ Two days after a March 1, 2016 faculty meeting, at which the issue of faculty-student relationships was

²⁸³ Dec. 18, 2017 Interview with F. Jaeger.

²⁸⁴ Jan. 5, 2018 Email from S. Modica to Debevoise & Plimpton LLP.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ Jan. 2, 2018 Interview with W. Delmendo.

²⁸⁸ Feb. 28, 2016 Emails between G. DeAngelis, R. Aslin and J. Cantlon; Feb. 29, 2016 Emails between G. DeAngelis, R. Aslin and J. Cantlon; Mar. 17, 2016 Email from R. Aslin to C. Nearpass; Oct. 12, 2017 Interview with G. DeAngelis; Oct. 13, 2017 Interview with Faculty 12; Oct. 17, 2017 Interview with Faculty 19; Oct. 20, 2017 Interview with Faculty 11; Oct. 30, 2017 Interview with G. Culver; Nov. 1, 2017 Interview with Faculty 8; Dec. 29, 2017 Letter from S. Modica to Debevoise & Plimpton LLP.

raised, Cantlon sent an email to Kidd, Piantadosi, Hayden, Heilbronner and Mahon (together with Aslin, the “BCS Faculty Complainants”) inviting the group to dinner, saying “Between this gender thing, the BME search, and the Ralf/Florian bro connection I feel like I’m going crazy.”²⁸⁹ Although she mentions Jaeger, there was no mention of concerns about sexual harassment.²⁹⁰ The dinner was scheduled for March 5, 2016 and it was that same evening, apparently after the dinner with this group, that Cantlon first told Aslin that Jaeger had had sexual relationships with students. Aslin immediately sent an email to DeAngelis, at 9:33 p.m., saying “I just talked to Jessica for an hour . . . It is not about you and me. Let’s talk by phone soon. It’s pretty ugly and involves other BCS faculty.”²⁹¹ Aslin was clearly upset by what Cantlon had told him. In a March 11, 2016 email, Aslin told Cantlon, “I am disgusted and angry. I will not let this rest until he is out of the dept.”²⁹²

Aslin relayed this report on behalf of Cantlon and those Cantlon claimed were victims of Jaeger’s conduct to DeAngelis, Newport and the OOC.²⁹³ On March 11, 2016, the OOC assigned Nearpass to investigate whether Jaeger had engaged in conduct in violation of the University’s policies concerning (1) consensual relationships between faculty and students and (2) sexual harassment, as set forth in both the UR Intimate Relationships Policy and UR Policy

²⁸⁹ Mar. 3, 2016 Email from J. Cantlon to B. Hayden, S. Heilbronner, S. Piantadosi, C. Kidd and B. Mahon.

²⁹⁰ *Id.*

²⁹¹ Mar. 5, 2016 Email from R. Aslin to G. DeAngelis

²⁹² Mar. 11, 2016 Email from R. Aslin to J. Cantlon.

²⁹³ Mar. 5, 2016 Email from R. Aslin to G. DeAngelis; Mar. 9, 2016 Email from R. Aslin to E. Newport; Mar. 28, 2016 Aslin Notes leading up to the complaint.

106.²⁹⁴ At that time, Nearpass had worked at UR for approximately 6 years and had conducted over 40 UR Policy 106 investigations.

The Nearpass investigation lasted two months and included interviews of over 30 witnesses (some more than once).²⁹⁵ The witnesses included 15 of the 25 individuals Aslin identified in an email of March 13, 2016; three of the eight individuals Aslin identified in an email the following day; and 11 of the 19 witnesses Cantlon identified in a written complaint submitted to Nearpass in early April 2016.²⁹⁶ Nearpass explained that her decisions regarding whom to interview were informed by the complaints themselves, leads received from witnesses and by information that Aslin and Cantlon provided regarding the potential interviewees.²⁹⁷ For example, Nearpass did not interview two students, who were described in Aslin's list only as former post-doctoral fellows supervised by faculty members other than Jaeger.²⁹⁸ When Nearpass followed up with Aslin, asking whether these two former students had any negative interactions with Jaeger or had information about the allegations, Aslin responded that one other

²⁹⁴ Mar. 28, 2016 Aslin Notes leading up to the complaint.

²⁹⁵ C. Nearpass Interview List.

²⁹⁶ Mar. 13, 2016 Email from R. Aslin to C. Nearpass; Mar. 14, 2016 Email from R. Aslin to C. Nearpass; Apr. 6, 2016 Email from J. Cantlon to M. Levy and C. Nearpass; Formal Complaint sent by J. Cantlon to M. Levy and C. Nearpass.

²⁹⁷ Oct. 30, 2017 Interview with C. Nearpass. Cantlon herself had no personal complaints of sexual harassment against Jaeger and the two had been friends as recently as 2014, when Cantlon invited Jaeger to her child's birthday party. (Nov. 30, 2014 Email from J. Cantlon to F. Jaeger, *et al.*) Her complaint and the notes from her interview by Nearpass, which she reviewed and had the opportunity to supplement, reflect that Cantlon's only direct knowledge of Jaeger's alleged inappropriate conduct was that Graduate Student 15 had once been in a relationship with Jaeger and that Jaeger once made an inappropriate comment about Graduate Student 4 at a faculty-only dinner party. (C. Nearpass Notes of Mar. 11, 2016 Interview with J. Cantlon; Mar. 23, 2016 Email from J. Cantlon to C. Nearpass.)

²⁹⁸ Mar. 13, 2016 Email from R. Aslin to C. Nearpass.

student might have such information,²⁹⁹ but did not reply that either of the two suggested former students, both now gone from UR, did.³⁰⁰

Emails from that time indicate that Cantlon and Kidd contacted potential witnesses, told them “current” students had raised concerns and told them to make sure to mention certain incidents when they spoke to Nearpass. On March 8, for example, Cantlon wrote to Graduate Student 15, “Can I call you to ask about Florian or no-go?”³⁰¹ She explained that “Dick Aslin and I have heard some things from current students.”³⁰² Cantlon told Graduate Student 15 in a later email that, “Florian used to tell students what faculty thought of them” as a “power play” and that Graduate Student 15 “should share . . . with the intercessor” any “similar experiences.”³⁰³ Graduate Student 4 was similarly encouraged to make specific allegations about

²⁹⁹ Apr. 8, 2016 Emails between R. Aslin and C. Nearpass. We interviewed Graduate Student 2, the other student identified by Aslin, who told us that she had been interested in working on a project with Jaeger, but changed her mind “partly because he creeped her out.” This student said Jaeger would ask personal questions outside of the lab that were flirty and would stand very close to her. She continued to attend Jaeger’s lab meetings because she did not think the “weird behavior would happen there”—which, she confirmed, it did not. (Nov. 2, 2017 Interview with Graduate Student 2.)

³⁰⁰ Apr. 8, 2016 Email from R. Aslin to C. Nearpass. The complaints also allege that Nearpass should have interviewed a prospective student, but did not, another sign, according to the Complainants, that Nearpass’ investigation was not thorough. (EOC Compl. ¶ 153; Fed. Compl. ¶ 212.) Nearpass stated that she did not interview Doe because “there was no evidence” to support the theory that Jaeger had sexually assaulted or harassed her during her visit to UR. (Oct. 30, 2017 Interview with C. Nearpass.) The Complainants have now conceded that nothing untoward took place. (Fed. Compl. ¶ 212 n.42.)

³⁰¹ Mar. 8, 2016 Email from J. Cantlon to Graduate Student 15. Cantlon also asked to meet with Graduate Student 6, telling her that she heard from Aslin that the student was thinking of leaving Jaeger’s lab. When the student expressed surprise and disagreed, Cantlon told her that she was asking because female graduate students have a history of leaving Jaeger’s lab.

³⁰² Mar. 9, 2016 Email from J. Cantlon to Graduate Student 15.

³⁰³ Mar. 11, 2016 Email from J. Cantlon to Graduate Student 15.

Jaeger to Nearpass. In a March 19, 2016 email to Kidd, Cantlon asked, “Was [Graduate Student 4] aware that Florian was making comments about her body, wanting to sleep with her? If so can she write about that and send it?”³⁰⁴ Kidd responded that Jaeger had told Graduate Student 4 that another BCS faculty member found her attractive and, after Cantlon claimed that that is “sexual harassment,” Kidd said that she would “make sure she knows to mention that.”³⁰⁵ Cantlon added, “Anything like that, sex talk and sex jokes from professor to student is sexual harassment.”³⁰⁶ On March 20, 2016, Aslin informed Cantlon that while Nearpass “said don’t talk to people,” a senior faculty member was “not on our master list for interviews and it’s strange not to loop her in. We need troops on our side.”³⁰⁷

2. The Nearpass Report & Clark Determination (May – June 2016)

Nearpass’ report was finalized on May 23, 2016. She made the following findings: (1) Jaeger’s relationships were consensual and did not violate the UR Intimate Relationships Policy or UR Policy 106; (2) Jaeger’s had only one relationship with a graduate student during his time at UR; (3) knowledge on the part of others of Jaeger’s sexual relationships did not create a sexually hostile environment; (4) there was insufficient evidence to conclude that Jaeger had sexually harassed Kidd or other female students in his lab; and (5) Jaeger’s “boundary pushing” did not amount to sexual harassment.³⁰⁸

³⁰⁴ Mar. 19, 2016 Email from J. Cantlon to C. Kidd.

³⁰⁵ Mar. 19, 2016 Email from C. Kidd to J. Cantlon.

³⁰⁶ Mar. 19, 2016 Email from J. Cantlon to C. Kidd.

³⁰⁷ Mar. 20, 2016 Email from R. Aslin to J. Cantlon.

³⁰⁸ May 23, 2016 C. Nearpass Report.

Nearpass considered whether Jaeger's reputation for having relationships with students created an environment that was hostile to other students.³⁰⁹ Her report found the evidence to be mixed: while some women did report that they avoided Jaeger because he made them feel uncomfortable, "the vast majority" of the current and former students and post-doctoral fellows interviewed did not support the claim that Jaeger's prior relationships with students created a sexually hostile environment for women.³¹⁰ The report also noted that much of the alleged behavior occurred many years ago and that Jaeger had "settled down in recent years."³¹¹ Nearpass' ultimate findings were predicated in part on the marked change in Jaeger's behavior since 2012 and the fact that witnesses raised "no current concerns" about his behavior.³¹²

Nearpass' report did not "clear" Jaeger of all wrongdoing. Although concluding that Jaeger had not violated UR Policy 106, Nearpass found that Jaeger had a "widely perceived reputation as someone who has not always maintained clear personal/professional boundaries," which had "caused discomfort among some female students in the past."³¹³ Nearpass also found that Jaeger's decision to share his apartment with Kidd was a "gross lapse in (or lack of) judgment."³¹⁴

³⁰⁹ *Id.* at 7.

³¹⁰ *Id.*

³¹¹ *Id.* at 11 n.11.

³¹² *Id.* at 19.

³¹³ *Id.*

³¹⁴ *Id.* at 14.

Nearpass' report went to Dean Clark for a final determination. He affirmed its findings in full in letters to Aslin, Cantlon and Jaeger on June 2, 2016.³¹⁵ In doing so, Clark stated that there were "aspects of [Jaeger's] past behavior that warrant some review and discussion," and Clark signaled that DeAngelis, as the department chair, would address these with Jaeger.³¹⁶

Aslin and Cantlon were disappointed with the outcome of the investigation and remained adamant that the allegations they brought forward were accurate. Separately, Aslin indicated to Newport that he was considering leaving the University entirely.³¹⁷ In a June 5, 2016 email to DeAngelis, Aslin set forth three "potential sanctions" for Jaeger that DeAngelis should impose: (1) removal from the CLS directorship; (2) a "letter to the file" stating that Jaeger "has engaged in unprofessional behaviors"; and (3) a mandatory training seminar on workplace conduct and

³¹⁵ Exhibit 4; June 2, 2016 Letter from R. Clark to F. Jaeger (attached as Exhibit 27.) The federal complaint alleges that Clark's intimate relationship with one of his direct reports "may have dulled [his] sensitivity to the perils Jaeger's behavior posed to students and UR's reputation." Fed. Compl. ¶¶ 45-46. Clark's romantic relationship with this individual began in September 2017—after his direct involvement in the Jaeger investigation. (Dec. 26, 2017 Interview with R. Clark; Dec. 27, 2017 Interview with Administrator 20; Dec. 27, 2017 Interview with Witness 8; Dec. 27, 2017 Interview with Witness 9.) Clark disclosed the relationship as required at that time and pursuant to a management plan put in place by the OOC, supervisory and evaluative ties between Clark and this individual were cut. (Sept. 9, 2017 Email from R. Clark to J. Seligman and G. Norris; Dec. 14, 2014 Interview with G. Norris.)

The federal complaint also accuses Seligman of engaging in an intimate relationship that created the potential for a conflict of interest. (Fed. Compl. ¶ 44.) We found no evidence that Seligman's relationship generated a perceived or actual conflict of interest. As provided for under UR Policy 121, Seligman entered into a conflict of interest management plan that was approved on October 24, 2014 by the OOC. (Oct. 24, 2014 Institutional and Individual Conflict of Interest Management Plan.)

³¹⁶ Exhibit 4; Exhibit 27.

³¹⁷ June 7, 2016 Email from R. Aslin to E. Newport; June 22, 2016 Email from R. Aslin to E. Newport.

sexual harassment.³¹⁸ Yet during a June 7, 2016 meeting with a BCS faculty member, Aslin said that he wanted Jaeger out of the department, and suggested a strategy for making his life “so uncomfortable” that he would leave on his own accord.³¹⁹

3. Appeal of the Nearpass Findings (July – August 2016)

Confident that Nearpass’ report overlooked key evidence, Aslin and Cantlon appealed Clark’s decision on July 15, 2016.³²⁰ Taubman reviewed Nearpass’ report and the witness statements Nearpass had collected, and he met with both DeAngelis and Nearpass.³²¹ Taubman discussed with Nearpass why she had interviewed certain witnesses and had chosen not to interview others, and he asked her to investigate further whether Jaeger had had a sexual relationship with an undergraduate student.³²² Nearpass confirmed to Taubman that the undergraduate student in question had graduated from the University before entering into a relationship with Jaeger,³²³ though at the time, intimate relationships with undergraduates were

³¹⁸ June 5, 2016 Email from R. Aslin to G. DeAngelis.

³¹⁹ Jan. 5, 2017 Email among BCS Faculty Members.

³²⁰ July 15, 2016 Letter from R. Aslin to P. Lennie.

³²¹ Exhibit 4.

³²² *Id.* Although Nearpass was aware of Jaeger’s relationship with an undergraduate student when she wrote her report, she did not mention it. When interviewed for this investigation, Nearpass explained that she omitted mention of the relationship because it did not violate any policy and because only one witness mentioned it to her, so to the extent that the claimants believed that Jaeger’s relationships created a hostile work environment for other women, this relationship was not relevant. (Oct. 30, 2017 Interview with C. Nearpass.) She also considered the undergraduate student’s request that her privacy be maintained. (C. Nearpass Notes of Apr. 16, 2016 Interview.) Taking these considerations together, Nearpass decided to protect the student’s privacy by not including her in the report. (Oct. 30, 2017 Interview with C. Nearpass.)

³²³ Exhibit 4.

not prohibited.³²⁴ Taubman considered Nearpass' investigation to be one of the most thorough with which he had had any involvement, and he concluded that her decisions regarding who to interview were appropriate and without bias.³²⁵ On August 15, 2016, Taubman upheld Clark's decision.³²⁶

From a policy compliance perspective, Nearpass' investigation and the ensuing appeal conformed to UR Policy 106 requirements. We found no evidence that Nearpass possessed a discriminatory motive in conducting her investigation and her decisions about which documents to collect and review and which witnesses to interview were well within the discretion granted to her under the policy.³²⁷ Although the investigation would have been even more complete had Nearpass collected and reviewed Facebook messages proffered by Kidd, we do not think, having reviewed the full set of Facebook messages between Kidd and Jaeger—not the redacted set that Kidd proffered to DeAngelis—the finding would have differed.³²⁸

4. Aftermath of the Nearpass Investigation (June – July 2016)

Having learned of the Clark ruling upholding the Nearpass findings, some of the Complainants began to share information from the investigation with fellow BCS faculty

³²⁴ University of Rochester, *Faculty Handbook* (revised July 2008).

³²⁵ Exhibit 4.

³²⁶ *Id.* The Complainants criticize Taubman's decision, alleging that because he reports to Clark, he was not able to overturn Clark's decision. (EEOC Compl. ¶ 216; Fed. Compl. ¶ 260.) Taubman does not report to Clark, but rather reports to Seligman. (Oct. 17, 2017 Interview with M. Taubman; Nov. 28, 2017 Interview with R. Clark.)

³²⁷ Exhibit 3.

³²⁸ Nearpass Report; Oct. 30, 2017 Interview with C. Nearpass; Exhibit 16.

members in a bid to put pressure on DeAngelis to take forceful remedial action against Jaeger and on Jaeger to admit to his alleged wrongdoing and apologize (among other demands).³²⁹

The BCS Faculty Complainants and Jaeger had been asked repeatedly by OOC to keep Nearpass' investigation and its findings confidential.³³⁰ These requests served legitimate goals

³²⁹ In a move that further angered the BCS Faculty Complainants, Jaeger was promoted to full professor before the appeal was filed. (Oct. 24, 2017 Interview with P. Lennie; Oct. 30, 2017 Interview with G. Culver; Nov. 22, 2017 Interview with J. Seligman.) The University followed its standard processes with respect to Jaeger's promotion (Oct. 24, 2017 Interview with P. Lennie; Oct. 30, 2017 Interview with G. Culver), but failed to take into account how the timing could be—and was—perceived. Culver already was reviewing Jaeger's possible promotion several months before the Aslin/Cantlon complaints (Oct. 30, 2017 Interview with G. Culver), and in April 2016, while the investigation was underway, she sent Lennie her recommendation, “without reservation and with high enthusiasm,” that Jaeger be promoted. (Apr. 4, 2016 Letter from G. Culver to P. Lennie.) She did consider the Nearpass investigation: “[W]e got indication that the Policy 106 investigation was wrapping up and that it was likely that there would not be a finding of violation, so that's when I decided to move the promotion to the provost office for review.” (Oct. 30, 2017 Interview with G. Culver.) Similarly, Lennie, who was the Provost at the time, stated that he held up the promotion until he “knew the outcome” of the Nearpass investigation. (Oct. 24, 2017 Interview with P. Lennie.) Although the initial vote to promote Jaeger was unanimous, Aslin wrote to DeAngelis on March 23, 2016 to revoke his affirmative vote. (Mar. 23, 2016 Email from R. Aslin to G. DeAngelis.)

University officials conceded that the timing of the promotion was ill-considered. Culver said that “in retrospect I would have changed the timing of when my decision came out.” (Oct. 30, 2017 Interview with G. Culver.) Seligman said that he believes that Jaeger’s promotion should not have proceeded until after the appeal was exhausted. (Nov. 22, 2017 Interview with J. Seligman.)

³³⁰ For example, after Jaeger described instances when he would discuss the investigation with others, Norris instructed Jaeger that “it would be best if he responded that he did not feel he should talk about it.” (July 28, 2016 Memorandum to File from G. Norris.) Susan Wormer, Senior Counsel for Labor and Employment, added another note of caution, advising Jaeger to “continue to maintain confidentiality relating to these matters and to refrain from any actions which might be perceived as retaliatory.” (Aug. 3, 2016 Email from S. Wormer to F. Jaeger.)

As for the Complainants, Nearpass “cautioned” Aslin “not to make any more contacts and of course not to tell anyone that there is an investigation ongoing.” (Mar. 11, 2016 Email from R. Aslin to G. DeAngelis) (attached as Exhibit 28). Deputy General Counsel Richard Crummens later contacted Aslin and Cantlon to “reiterate what I believe has been Kate

and were consistent with UR policy and expectations, and with federal regulatory guidance. Maintaining confidentiality in investigations of potential harassment, to the fullest extent permitted by law and feasible consistent with the need to investigate, serves legitimate and compelling interests. Measures to preserve confidentiality serve to protect privacy and reputations and to encourage people to report misconduct and to be forthcoming in investigations without fear of embarrassment or reprisal. EEOC Guidance for employers provides that, in conducting an investigation of alleged harassment, “[a]n employer should make clear to employees that it will protect the confidentiality of harassment allegations to the extent possible.”³³¹ The Guidance further provides that, while “[a]n employer cannot guarantee complete confidentiality, since it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses . . . information about the allegation of harassment should be shared only with those who need to know about it.”³³² Consistent with this federal regulatory guidance, UR Policy 106 also provides that “every effort will be made [by the University] to protect the privacy of all parties” in connection with an investigation, though it also acknowledges that “confidentiality cannot be guaranteed.”³³³

In fairness to the BCS Faculty Complainants, the evidence indicates that the OOC sent them mixed signals on this issue. In a July 12 email from Aslin to the BCS Faculty Complainants, Aslin stated that Crummins had given them permission to “discuss the basics of

[Nearpass’] advice that you do not discuss the investigation with potential witnesses and others.” (Apr. 14, 2016 Email from R. Crummins to R. Aslin and J. Cantlon.)

³³¹ U.S. Equal Emp’t Opportunity Comm’n, *Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors*, § V.C.1 (last modified Apr. 6, 2010).

³³² *Id.*

³³³ Exhibit 3.

the investigation with our colleagues as long as we did not defame TFLo by saying things that are false.”³³⁴ According to notes that Kidd took after her interview with Nearpass, Kidd was told that she could disclose the investigation to “friends.”³³⁵

The lack of an official policy statement about the importance of confidentiality only added to the confusion some felt about the scope of confidentiality that applied to the University’s investigations.³³⁶ Devising an appropriate policy regarding confidentiality in workplace and academic investigations is, in fact, a complex undertaking, involving a careful balancing of conflicting interests and legal considerations, as we discuss in more detail in Section IV.E below, and we therefore recommend that the University engage outside counsel to assist with that effort, as detailed in Section V.A.5. Whatever complexities may be involved in developing an optimal policy, though, and notwithstanding that we agree that there was a lack of clarity, the University had a legitimate interest in maintaining confidentiality for the protection of witnesses, claimants and Jaeger.

Whether driven by the belief that the confidentiality policy wrongfully protected Jaeger or that the confidentiality policy only prevented false and defamatory statements, Aslin, Cantlon, and other BCS Faculty Complainants engaged in a concerted effort to disclose their allegations about Jaeger’s behavior and their interpretation of Nearpass’ findings to other faculty. We found

³³⁴ July 12, 2016 Email from R. Aslin to C. Kidd, J. Cantlon, B. Hayden, B. Mahon, S. Piantadosi and S. Heilbronner.

³³⁵ C. Kidd Notes from Mar. 18, 2016 Interview with C. Nearpass.

³³⁶ The OOC has since prepared a one-page information sheet about the UR Policy 106 process and now provides that to witnesses. The document states that the “University requires that you keep anything related to your interview (including any information discussed during the interview and the fact that an investigation is taking place) confidential. Please do not discuss this investigation or the allegations that are being investigated with anyone.” (Exhibit 14.)

evidence that one or more BCS Faculty Complainants met with at least four other faculty members to inform them about Nearpass' findings and planned to meet with others too.³³⁷ In a July 11 email, Aslin informed the other BCS Faculty Complainants that he had met with two faculty members and "brought them up to speed (not stating any details that are beyond the content of the investigative report)."³³⁸ Also in July, one faculty member had what he characterized to DeAngelis as a "deeply uncomfortable" interaction with Mahon.³³⁹ "[I]t became clear," he wrote, "that there is an organized effort under way to spread [Aslin] et al.'s interpretation of the final report."³⁴⁰ He explained, "I was told details from the report and about the investigation that are of course impossible to verify for those not involved."³⁴¹ Faculty 6 also noted that "three other faculty members . . . were similarly approached and 'briefed' by [Mahon], [Hayden] and [Aslin]."³⁴²

On July 15, 2016, after fielding a complaint from Faculty 6, DeAngelis sent an email to Aslin, saying that he did "not agree with the tactics being taken by people in the department."³⁴³

³³⁷ July 11, 2016 Email from R. Aslin to C. Kidd, J. Cantlon, B. Hayden, B. Mahon, S. Piantadosi, and S. Heilbronner.

³³⁸ *Id.*

³³⁹ Email from Witness to G. DeAngelis.

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ July 15, 2016 Email from G. DeAngelis to R. Aslin.

DeAngelis feared that “these efforts are going to cause damage within the department that lasts for a very long time” and that his “authority has been undercut.”³⁴⁴

Jaeger also complained about the BCS Faculty Complainants’ breaches of confidentiality. In a July 15 email, he informed Taubman and Culver that the BCS Faculty Complainants’ breaches had created an environment in which he could not “conduct [his] research and teaching without fear of being bullied by some of [his] colleagues.”³⁴⁵

Jaeger breached OOC’s expectations of confidentiality as well, although not to the same extent. According to notes of a call that took place on July 28, 2016 with Norris, the University General Counsel, Jaeger said that the “only time he has talked about it is when colleagues have approached him first to ask him about what they’ve heard.”³⁴⁶ Norris told him “it would be best if he responded that he did not feel he should talk about it.”³⁴⁷ Jaeger also told Curtin that he probably had told people that he “was exonerated and/or that the report concluded that he did not violate any policies.”³⁴⁸

5. The July 2016 Letter

In response to complaints by Jaeger and other BCS faculty that the BCS Faculty Complainants were continuing to talk with others in BCS about the investigation, Lennie and Culver sent the July 2016 Letter,³⁴⁹ which stated that the University had “received multiple

³⁴⁴ *Id.*

³⁴⁵ July 15, 2016 Email from F. Jaeger to M. Taubman, S. Wormer and E. Caruso.

³⁴⁶ July 28, 2016 Memorandum to File from G. Norris.

³⁴⁷ *Id.*

³⁴⁸ C. Curtin Notes of Aug. 29, 2016 Interview with F. Jaeger.

³⁴⁹ Exhibit 7.

reports from several sources expressing concern about gossip . . . about the claims that resulted in the investigation” and denounced “gossip that appears to have undermined the confidentiality of the [investigative] process and fractured the department.”³⁵⁰

The BCS Faculty Complainants were incensed. Aslin complained that there was “no guidance to any of us” about confidentiality restrictions and questioned, “Why does the perp get to talk and the complainants/victims not?”³⁵¹

6. The Curtin Investigation & Appeal Determination (July – November 2016)

Believing that Jaeger was “spreading rumors about [her] honesty and reliability to other department members,” Kidd filed a complaint with the OOC accusing Jaeger of retaliating against her for participating in the Nearpass investigation.³⁵² Kidd also objected to being identified by name in Nearpass’ report, despite Nearpass allegedly having stated that she would not be named without permission, and to the fact that the Nearpass report included that three witnesses had questioned Kidd’s credibility.³⁵³

In response, over the course of the next two months, Curtin interviewed 12 witnesses, including Kidd, Jaeger, Aslin, Cantlon, Newport, Mahon and Hayden.³⁵⁴ After conducting an

³⁵⁰ *Id.*

³⁵¹ July 27, 2016 Email from R. Aslin to J. Cantlon, B. Hayden, B. Mahon, C. Kidd and S. Piantadosi; *see supra*, at n. 330 (note collecting emails regarding the expectation to maintain confidentiality).

³⁵² July 21, 2016 Letter from C. Kidd to G. Culver, G. DeAngelis and R. Crummins (attached as Exhibit 29.)

³⁵³ *Id.*

³⁵⁴ Sept. 26, 2016 C. Curtin Report (“Curtin Report”).

initial round of interviews, Curtin requested access to BCS faculty members' emails because "issues around confidentiality became significant."³⁵⁵

Curtin's report, delivered on September 26, 2016, validated some of Kidd's allegations.³⁵⁶ Curtin concluded that Jaeger (and also "Complainants in the first investigation") had breached confidentiality during and after the investigation and that Nearpass' disclosure of Kidd's name was not appropriate.³⁵⁷ Curtin found, however, that the decision by Nearpass to identify Kidd by name was mitigated by the fact that Jaeger would have been able to identify her anyway, due to the nature of her allegations.³⁵⁸ Curtin also determined there was not sufficient evidence to find that "references [among BCS faculty members] to allegations being 'made up' or 'untrue' were specifically in regard to [Kidd]"; that Jaeger was the source of the comments

³⁵⁵ Curtin Report; Dec. 8, 2017 Interview with C. Curtin. In July 2016, Wormer had implemented a litigation hold on BCS faculty members' emails to "preserve all documents (electronic and hard copy) that are related to [the] respective complaints about Florian Jaeger and the recent investigation." (July 5, 2016 Email from S. Wormer to G. DeAngelis.) Wormer identified the genesis of the litigation hold as a July 1, 2016 letter the University had received from a law firm representing Aslin and Cantlon. (July 5, 2016 Email from S. Wormer to G. DeAngelis; Oct. 26, 2017 Interview with S. Wormer.) When interviewed, Wormer explained that the University decided to then review the preserved emails (1) to address complaints made by several BCS faculty members of breaches of confidentiality during and after the Nearpass investigation, and (2) to comply with Curtin's request to view emails as part of the investigation of Kidd's retaliation claims. This email search and review applied to the claimants, Jaeger, Kurumada, and DeAngelis. (Oct. 26, 2017 Interview with S. Wormer.)

³⁵⁶ Curtin Report, 18. That same day, Curtin delivered a second report to Norris. This second report focused on whether senior faculty were aware of Jaeger's alleged conduct before Nearpass' investigation, whether faculty had received sexual harassment training, and the environment within BCS following Nearpass' investigation. The report also included suggestions from witnesses about how BCS could improve the environment. (Sept. 26, 2016 C. Curtin Supplemental Report.)

³⁵⁷ Curtin Report, 18.

³⁵⁸ *Id.*

about Kidd's credibility or her motive for participating in Nearpass' investigation; or that Jaeger's statements to other people were made in retaliation rather than in defense of his reputation.³⁵⁹ On October 4, 2016, Culver accepted most of the findings of the Curtin report.³⁶⁰

On October 31, Kidd appealed Culver's determination,³⁶¹ which was denied on November 17.³⁶² Clark rejected Kidd's claim that Curtin's investigation was biased, finding "nothing in the investigation" that revealed any bias by the investigator.³⁶³

7. Bixby Complaint (August 2016)

While the Curtin investigation was ongoing, a new complaint relating to Jaeger was presented to the University administration: on August 23, 2016, Bixby, together with Graduate

³⁵⁹ *Id.*

³⁶⁰ Oct. 4, 2016 Letter from G. Culver to C. Kidd (attached as part of Exhibit 4). In adopting Curtin's conclusion, Culver disagreed with Curtin's finding that Nearpass "took no steps to mitigate [Kidd's] concerns about the accused knowing the identity of other witnesses." (*Id.*) Culver characterized that finding as "simply untrue." (*Id.*) We, however, agree with Curtin's conclusion. While we credit Nearpass' view that any description of the allegations relating to Kidd would have made their identity obvious, and note that UR Policy 106 does not guarantee that confidentiality will be maintained, it was still an error of judgment to refer to her by name, revealing her identity not only to the accused but also to University decision-makers—DeAngelis, Clark, and Taubman—for whom the allegations would not have obviously identified Kidd.

³⁶¹ Oct. 31, 2016 Email from C. Kidd to R. Clark.

³⁶² Exhibit 4.

³⁶³ *Id.* We reviewed the full Curtin Report investigation file—including notes of the interviews she conducted with witnesses—and interviewed Curtin. We find no factual basis for Kidd's accusation that Curtin was not capable of conducting an independent investigation solely because the University paid her fees. Curtin has conducted or supervised over 1,000 independent investigations. (Curtin Report, 1 n.1.) Her ethical obligation was to make findings independently of the University. The practical reality is someone or some entity needs to pay. No employer would or could impose, at least before a finding of culpability, the economic burdens of an investigation on employees. That cost must be shouldered by the employer.

Student 14, Graduate Student 17, Graduate Student 4 and Post-doctoral Fellow 13, sent a letter to Lennie, Culver, Heinzelman and DeAngelis alleging that they had “experienced and/or witnessed harassment and inappropriate sexual comments” from Jaeger while they had been in BCS.³⁶⁴ This group of former students and researchers stated that this conduct created an environment that “adversely affected [their] professional development, including missed educational opportunities at courses/workshops he led, missed networking with [their] peers at social events he attended, and/or missed academic collaborations with his advisees.”³⁶⁵

Bixby’s letter triggered the University’s duty to respond; under UR Policy 106, “the University will look into and respond to all good faith concerns and complaints raised under this Policy . . .”³⁶⁶ The University did respond—Lennie responded on August 26, 2016 that he would “look into the issues you raise”; DeAngelis and Culver offered to meet with Bixby; Lennie and Sturge-Apple met with Bixby on September 7, 2016; and Levy met with Bixby on September 15, 2016.³⁶⁷ Although the OOC typically oversees investigations into allegations that implicate UR Policy 106, Levy oversaw the response to Bixby’s concerns because the allegations

³⁶⁴ Exhibit 13. Although these individuals did not join Bixby’s letter anonymously at the time, they have requested anonymity in connection with this investigation and report.

³⁶⁵ *Id.* Nearpass had interviewed three of the five signatories to Bixby’s August 2016 letter during the Jaeger investigation. (Nearpass Interview List.)

³⁶⁶ Exhibit 3.

³⁶⁷ Aug. 23, 2016 Email from G. DeAngelis to P. Lennie, G. Culver and W. Heinzelman; Aug. 23, 2016 Email from W. Heinzelman to G. DeAngelis; Aug. 23, 2016 Email from G. Culver to G. DeAngelis, W. Heinzelman and P. Lennie; Aug. 26, 2016 Email from P. Lennie to K. Bixby, W. Heinzelman, G. Culver and G. DeAngelis; Sept. 8, 2016 Email from K. Bixby to P. Lennie and M. Sturge-Apple (attached as Exhibit 30); Sept. 23, 2016 Email from K. Bixby to M. Levy (attached as part of Exhibit 31).

dealt with a topic—Jaeger’s conduct—that the University had already investigated.³⁶⁸ Levy’s mandate was to determine whether Bixby—who had already been interviewed by Nearpass during the University’s investigation into Jaeger’s behavior—had new information about Jaeger.³⁶⁹

To address Bixby’s concerns, Levy conducted a comprehensive review of the previous Jaeger complaints—she told Bixby that she “was provided the opportunity to review portions of the most recent investigation file, including the [Nearpass] report . . . related determination letters, pertinent witness interview summaries, and follow up documents.”³⁷⁰ Levy also reviewed Bixby’s correspondence with DeAngelis during the 2013 complaint process and DeAngelis’ follow-up with Jaeger and Bixby.³⁷¹ Based on this review, Levy assured Bixby that the University’s prior investigation into Jaeger’s conduct was thorough and appropriate.³⁷² Bixby disagreed. She said that efforts to instruct Jaeger “to have boundaries and not harass people ha[d] been ineffective,” noting that “Florian mocked the sexual harassment prevention training openly in late 2015.”³⁷³

Despite Bixby’s lingering concerns about Jaeger, she declined to file a new complaint and expressed frustration with the University’s process for handling sexual harassment

³⁶⁸ Jan. 6, 2018 Email from G. Norris to Debevoise & Plimpton LLP.

³⁶⁹ Sept. 29, 2016 Email from M. Levy to K. Bixby (attached as part of Exhibit 31); Jan. 6, 2018 Email from G. Norris to Debevoise & Plimpton LLP.

³⁷⁰ Oct. 4, 2016 Email from M. Levy to K. Bixby (attached as part of Exhibit 31).

³⁷¹ *Id.*

³⁷² Oct. 11, 2016 Email from K. Bixby to M. Levy (attached as part of Exhibit 31).

³⁷³ *Id.*

complaints, stating that she was “not . . . comfortable going through the university’s current process again.”³⁷⁴ Bixby added, “given that you also mentioned at lunch that people have to quit grad school for the environment to be considered hostile, why would I want to make a new formal complaint? I already know what the outcome will be.”³⁷⁵

Levy proceeded to contact potential witnesses. Levy followed up with the two signatories to Bixby’s letter who had not been interviewed during the Nearpass investigation, but only Graduate Student 14 spoke with Levy.³⁷⁶ Graduate Student 14 told Levy that Jaeger had acted inappropriately towards her in insulting, highly dismissive, hurtful and condescending ways and had also made a pass at her at Lux during her first year.³⁷⁷ Levy allowed Graduate Student 14 to review her notes from their meeting before forwarding them to the OOC.³⁷⁸ The OOC took no further action.

The University’s response to Bixby’s letter was in compliance with UR Policy 106 procedures. UR had recently completed an exhaustive investigation into allegations that Jaeger sexually harassed students, and three of the five signatories of Bixby’s letter had been

³⁷⁴ *Id.*

³⁷⁵ *Id.* Levy denies this description of her conversation with Bixby. According to Levy, she told Bixby that “access to educational opportunity must be sufficiently impacted to demonstrate severe or pervasive [harassment], not that someone would have to leave. (Oct. 4, 2017 Interview with M. Levy.)

³⁷⁶ Oct. 4, 2016 Email from Levy to Graduate Student 14; Oct. 4, 2016 Email from M. Levy to Graduate Student 4; Oct. 4, 2016 Email from M. Levy to Post-doctoral Fellow 13; Oct. 4, 2016 Email from M. Levy to Graduate Student 17; Oct. 21, 2016 Email from M. Levy to Graduate Student 17 (all attached as part of Exhibit 32).

³⁷⁷ M. Levy Notes of Oct. 7, 2016 Interview with Graduate Student 14; Oct. 13, 2017 Interview with Graduate Student 14.

³⁷⁸ Nov. 15, 2017 Interview with M. Levy; Oct. 13, 2017 Interview with Graduate Student 14; Oct. 7, 2016 Graduate Student 14 edits to M. Levy’s Notes.

interviewed by Nearpass during that investigation.³⁷⁹ Bixby's letter did not bring forth new allegations of misconduct, and Levy's interview with Graduate Student 14—who had not been interviewed by Nearpass—did not elicit information that would have altered the outcome of the University's judgment that Jaeger did not violate UR Policy 106.

8. DeAngelis Sanctions Jaeger and Forms Workplace Conduct Committee (August – September 2016)

Although invisible to the claimants and the witnesses who had complained about Jaeger's conduct, Jaeger did face consequences from the University as a result of the Aslin/Cantlon complaint. On August 29, DeAngelis officially reprimanded Jaeger, highlighting in a letter all of the conclusions of the Nearpass investigation that DeAngelis found disturbing or troubling, even if they did not violate University policies.³⁸⁰ In the letter, which had been reviewed by the OOC, DeAngelis instructed Jaeger to complete training on respectful workplace behavior by December 1, 2016; to “reflect on these matters”; and to work on modifying his behavior.³⁸¹ He included this last piece despite the Nearpass finding that Jaeger’s conduct had already improved markedly from the earlier period.

Second, DeAngelis announced to BCS faculty the formation of a Workplace Behavior Committee (made up of Duje Tadin, Kathy Nordeen, Renee Miller and Alyssa Kersey) “to raise awareness” of sexual harassment and other types of unacceptable workplace behavior and “to put procedures and guidelines in place that will help to promote a healthy and happy workplace.”³⁸²

³⁷⁹ C. Nearpass Interview List.

³⁸⁰ Exhibit 5.

³⁸¹ *Id.*

³⁸² Aug. 29, 2016 Email from G. DeAngelis to BCS Faculty, Staff, Students and Post-Doctoral Fellows (attached as Exhibit 33).

That Committee proceeded to meet through the fall of 2016 and to prepare draft guidelines, which it sent on November 19 to the University's OOC for input.³⁸³

Despite DeAngelis' efforts to move forward, Aslin, Cantlon, Kidd and the other EEOC Complainants remained profoundly upset by the University's handling of their allegations and expressed their views to Lennie, Taubman, Seligman and others throughout the fall of 2016. Aslin threatened to leave the University, including in a September 5 letter to Lennie taking the position that Jaeger must make a "good faith attempt to reconcile, first by apologizing to the affected students and then by admitting to the faculty that he behaved badly," or "leave[] the university."³⁸⁴ If Jaeger did not agree to that course of action, Aslin stated that he and many of the other faculty members would leave the University.³⁸⁵ Along similar lines, Kidd wrote to

³⁸³ Nov. 19, 2016 Email from G. DeAngelis to S. Wormer, M. Levy, G. Culver and P. Lennie; Nov. 19, 2016 G. DeAngelis BCS Workplace Behavior Guidelines Draft (attached as Exhibit 34). The OOC asked for time to review the proposals because "there are a number of places where information is either incomplete or inconsistent (with policies/practice)." (Nov. 21, 2016 Email from S. Wormer to G. DeAngelis.) After not receiving a response from Wormer for several weeks, DeAngelis sent an email to her on January 22, 2017 asking for a status update (Jan. 22, 2017 Email from G. DeAngelis to S. Wormer.); Wormer responded that the OOC has been busy with other matters but had briefly reviewed the guidelines and decided they needed "pretty much an entire overhaul." (Jan. 22, 2017 Email from S. Wormer to G. DeAngelis.) Additional progress on the draft guidelines for BCS stalled at this point until February, when Norris met with the BCS Workplace Behavior Committee to discuss their proposals.

On October 7, 2017, the BCS Workplace Behavior Committee sent a letter to the Faculty Senate Executive Committee requesting that they revisit and revise University policies on harassment and discrimination. (Oct. 7, 2017 Letter from Workplace Behavior Committee to Faculty Senate Executive Committee.) The letter noted that their own effort to establish guidelines "never really advanced anywhere as it met with resistance from the central administration." (Oct. 7, 2017 Letter from Workplace Behavior Committee to Faculty Senate Executive Committee.)

³⁸⁴ Sept. 5, 2016 Letter from R. Aslin to P. Lennie.

³⁸⁵ Sept. 5, 2016 Letter from R. Aslin to P. Lennie. This was not the first time Aslin had threatened to leave the University in response to the Jaeger investigation. On August 11, for

Lennie on September 19 that “the distress in my department will not be resolved until we address the fact that the investigation itself was deeply flawed.”³⁸⁶

DeAngelis continued to try to facilitate some form of resolution or closure. On September 20, DeAngelis told Aslin that he has imposed “sanctions” on Jaeger but that he could not, consistent with longstanding practices concerning personnel matters, reveal what they are.³⁸⁷ Aslin told Lennie that this was insufficient “because there needs to be ‘closure’ for the complainants and witnesses.”³⁸⁸ Two days later, DeAngelis asked Aslin and Cantlon to meet with the University Intercessor, Lynnett Van Slyke, to figure out the “right approach” for “facilitat[ed] discussions.”³⁸⁹ Aslin refused, stating that he does “not trust anyone associated with the UR legal department” and does “not feel comfortable ‘negotiating’ on behalf of the victims.”³⁹⁰

9. Claimants’ Meetings with Seligman and Van Slyke (October - November 2016)

In October, Aslin and Cantlon signaled a new willingness to compromise. They met with Seligman on October 26 to discuss their concerns and expressed an openness to a “reconciliation

example, Aslin wrote a faculty member that he was considering leaving “immediately.” Email from R. Aslin to Witness.

³⁸⁶ Sept. 19, 2016 Email from C. Kidd to P. Lennie and G. DeAngelis; Sept. 19, 2016 Letter from C. Kidd to P. Lennie and G. DeAngelis.

³⁸⁷ Sept. 20, 2016 Email from R. Aslin to P. Lennie.

³⁸⁸ *Id.*

³⁸⁹ Sept. 21, 2016 Email from G. DeAngelis to R. Aslin (attached as Exhibit 35).

³⁹⁰ Sept. 22, 2016 Email from R. Aslin to G. DeAngelis.

process.”³⁹¹ The meeting focused on “suggestions...that might improve our processes with respect to Title IX and 106 cases” and Aslin’s and Cantlon’s thoughts on “how can we heal BCS.”³⁹² Aslin and Cantlon asked for Seligman’s support for a revised Intimate Relationships Policy that would prohibit consensual relationships between faculty members and graduate students in the same department; Seligman said that he would not oppose such a prohibition but that it was the Faculty Senate’s responsibility to propose and approve changes to the policy. Second, Aslin and Cantlon recommended removing Jaeger from his directorship of CLS.³⁹³ Although Seligman does not remember if he supported Jaeger’s removal, AS&E subsequently recommended Jaeger’s removal from the post.³⁹⁴ Third, Aslin and Cantlon pressed Seligman to impose a moratorium on Jaeger’s ability to recruit new graduate students; Seligman recalls not agreeing with that proposal.³⁹⁵ Fourth, Aslin and Cantlon said that the University needed to make a statement about the case.³⁹⁶ Fifth, they insisted that Jaeger needed to acknowledge fault and undergo training.³⁹⁷ Seligman “promised to circle back to Aslin and Cantlon” after

³⁹¹ Oct. 26, 2016 J. Seligman Notes on Meeting with R. Aslin and J. Cantlon (attached as Exhibit 36).

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ Oct. 30, 2017 Interview with G. Culver; Jan. 2, 2018 Interview with G. DeAngelis. DeAngelis’ understanding of Jaeger’s removal was that it was not done “as a consequence of the investigation per se.” DeAngelis said that Jaeger’s removal had more to do with his failure to submit a training grant proposal, which he had agreed to do in exchange for obtaining University resources for the Center. (Jan. 2, 2018 Interview with G. DeAngelis.)

³⁹⁵ Exhibit 36; Nov. 22, 2017 Interview with J. Seligman.

³⁹⁶ Exhibit 36.

³⁹⁷ *Id.*

discussing with Lennie, Norris and Culver.³⁹⁸ Although other deans and Norris met frequently with claimants during the remainder of the academic year, Seligman did not meet again with Aslin or Cantlon—or any other EEOC Complainant.

Aslin also met with University Intercessor Van Slyke on November 1 to discuss the possibility of the University administration and the BCS chair making a public statement about Jaeger.³⁹⁹ During this meeting, Aslin agreed to a mediated conversation with Jaeger if Jaeger admitted to conduct from his first years as a professor.⁴⁰⁰ In an email the following day to Jaeger, Van Slyke described her meeting with Aslin as “productive” and invited Jaeger to discuss next steps with her before he reached out to Aslin.⁴⁰¹

10. Aslin’s Letter to Jaeger and Jaeger’s Concern for His Students (November 2016)

On November 2, Aslin sent a letter to Jaeger presenting two options: (1) “[D]rop the pretense, admit that you engaged in inappropriate sexual relations with graduate students and at least one recent undergraduate (as well as others outside the UR), and admit that your denial of Celeste’s testimony about sexual harassment was untruthful” or (2) “[T]ough it out, continue to deny any and all allegations, and hope that everyone in BCS ‘gets over it.’”⁴⁰² Aslin went on to state that “several faculty (including me) will not remain silent. Although we risk a defamation suit by you should we ‘go public’, we think that such a legal action (and a counter suit by us)

³⁹⁸ *Id.*

³⁹⁹ Oct. 17, 2017 Interview with L. Van Slyke.

⁴⁰⁰ *Id.*

⁴⁰¹ Nov. 2, 2016 Email from L. Van Slyke to F. Jaeger (attached as Exhibit 37).

⁴⁰² Nov. 2, 2016 Letter from R. Aslin to F. Jaeger.

would ultimate lead to the truth. . . . I don't see anyone willing to pony up funds for your defense.”⁴⁰³ Aslin added that “you can be assured that future ‘warnings’ will be raised whenever you try to engage with other unsuspecting faculty.”⁴⁰⁴ Despite Aslin’s statement in the letter that Jaeger “not interpret this letter as a threat,”⁴⁰⁵ both Jaeger and the OOC lawyers viewed it as such.⁴⁰⁶

In response to the letter, Jaeger began expressing concern to the OOC about the effect the investigations and their aftermath were having on his current and former students. On November 8, 2016, Jaeger told Wormer and Norris that he “really would like to have a chance to talk with my students, both former and current.”⁴⁰⁷ He said he was “really concerned about them—both in terms of the rumors and their worries how this might affect their career, and in terms of my significantly diminished energy, which they (not knowing what’s been going on all along) might wrongly take as a sign of less interest or commitment from me).”⁴⁰⁸ He asked for guidance on “what would qualify for sharable information.”⁴⁰⁹ Jaeger also addressed the toll the controversy was having on him, saying that “the number of days where I’m close to snapping (either in anger or desperation) keeps increasing.”⁴¹⁰ Later that day, Norris responded that there was “no legal

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ Oct. 26, 2017 Interview with S. Wormer.

⁴⁰⁷ Nov. 8, 2016 Email from F. Jaeger to S. Wormer, G. Norris and L. Van Slyke.

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

prohibition on you discussing your situation with your students—subject to the usual caveats on slander or other inappropriate or unprofessional statements.”⁴¹¹

Jaeger told his graduate and post-doctoral fellows following a lab meeting that he had been “cleared.”⁴¹² This lab meeting likely took place on January 19, 2017.⁴¹³ Aside from this lab meeting, one witness told us that he had observed Jaeger discussing the investigations with students and post-doctoral fellows.⁴¹⁴ These discussions consisted mostly of Jaeger “professing his complete innocence of absolutely everything except for the things that are undeniable,” like the relationship he had with Graduate Student 19.⁴¹⁵

11. Provost Clark’s Memo to Faculty (November – December 2016)

The first “public” statement by the University came after, and partly in response to, Aslin’s November 2, 2016 letter. Clark sought to strike a balance by issuing a statement—as Aslin and Cantlon demanded—acknowledging that there had been an investigation, while also urging the department to move on.⁴¹⁶ In the November 2016 Memo, Clark confirmed that there had been a UR Policy 106 investigation into Jaeger’s conduct and that “the University considers the matter closed.”⁴¹⁷ Van Slyke, who was among the group involved in the letter’s drafting

⁴¹¹ *Id.*

⁴¹² Interview with Witness; Oct. 25, 2017 Interview with Graduate Student 23.

⁴¹³ Jan. 8, 2018 Email from S. Modica to Debevoise & Plimpton LLP.

⁴¹⁴ Interview with Witness.

⁴¹⁵ Interview with Witness.

⁴¹⁶ Nov. 28, 2017 Interview with R. Clark.

⁴¹⁷ Exhibit 8.

process, gave Jaeger an opportunity to review, but not revise, the letter.⁴¹⁸ The November 2016 Memo also announced – with Jaeger’s consent -- the availability of a summary of key findings “in an effort to clarify things for the department and to help it move forward and begin to heal.”⁴¹⁹ Significantly, the November 2016 Memo also noted “the wealth of rumors and in some instances misinformation” within BCS. The November 2016 Memo’s final paragraph proved particularly divisive:

Finally, as the chief academic officer for the institution, I affirm that Dr. Jaeger is a valued member of our faculty. He has achieved tremendous academic success since his arrival in 2007, including being promoted with tenure in 2013 and his promotion to full professor in 2016. We look forward to continuing to support Dr. Jaeger, as we do all of our faculty, and to Dr. Jaeger’s continued success as teacher, researcher and scholar here at the University of Rochester.⁴²⁰

Although intended to move the department forward, the memo had the opposite effect. The BCS Faculty Complainants interpreted the memo as an endorsement of Jaeger’s conduct, dividing the department even further. Aslin wrote a letter to Lennie and Seligman to express the he felt “personally insulted by how [he] ha[d] been treated”,⁴²¹ and Cantlon, Kidd and Piantadosi told DeAngelis that they and other BCS Faculty Complainants were considering leaving the University.⁴²² Faculty members and University administrators, when interviewed, referred to the

⁴¹⁸ Nov. 21, 2016 Email from L. Van Slyke to F. Jaeger.

⁴¹⁹ Exhibit 8.

⁴²⁰ *Id.*

⁴²¹ Nov. 30, 2016 Letter from R. Aslin to J. Seligman and P. Lennie.

⁴²² Nov. 29, 2016 Email from J. Cantlon to G. DeAngelis; Nov. 29, 2016 Email from C. Kidd and S. Piantadosi to G. DeAngelis.

memo as “tone-deaf,”⁴²³ “not tactful,”⁴²⁴ and akin to “tossing gasoline onto glowing embers.”⁴²⁵ Culver stated, “It was written to try and calm things down again, and make people understand this is the department they exist in and it is who we are at the moment. But I think it missed its mark and had a complete opposite effect.”⁴²⁶

As the November 2016 Memo promised, the University made a summary of the Nearpass findings available for review in Van Slyke’s office from November 30 – December 7, subject to the execution of a confidentiality agreement.⁴²⁷ After the summary first became available, the University added a written statement provided by Jaeger and a copy of the November 2 letter from Aslin to Jaeger; those additional documents then were made available to any BCS faculty member.⁴²⁸ Four witnesses told us that Jaeger made the decision to include Aslin’s letter, with Wormer stating that Jaeger felt “very threatened” by it.⁴²⁹ Van Slyke told us that Jaeger decided to publicize Aslin’s letter because his own letter quoted some of Aslin’s letter and one of his

⁴²³ Oct. 27, 2017 Interview with Faculty 6.

⁴²⁴ Nov. 27, 2017 Interview with Faculty 21.

⁴²⁵ Dec. 9, 2016 Letter from Faculty 20, Faculty 13 and Faculty 7 to R. Clark (attached as Exhibit 38).

⁴²⁶ Oct. 30, 2017 Interview with G. Culver.

⁴²⁷ Nov. 1, 2017 Email from L. Van Slyke to Debevoise & Plimpton LLP; Oct. 17, 2017 Interview with L. Van Slyke.

⁴²⁸ Nov. 1, 2017 Email from L. Van Slyke to Debevoise & Plimpton LLP; F. Jaeger Statement to BCS Faculty; Nov. 2, 2016 Letter from R. Aslin to F. Jaeger. Eight of the 18 BCS faculty members read or listened to the summary report and three returned or went to read the Jaeger statement and Aslin letter, when they became available the following week.

⁴²⁹ Oct. 26, 2017 Interview with S. Wormer; Nov. 14, 2017 Interview with G. Norris; Nov. 28, 2017 Interview with R. Clark; Oct. 17, 2017 Interview with L. Van Slyke.

colleagues recommended making a redacted copy of Aslin’s letter available so that it would not seem that he was cherry-picking language.⁴³⁰

The University made several efforts during this period to respond to questions and defuse tensions within the department. But with the University unwilling to sanction Jaeger further and the claimants unwilling to settle for less, the deterioration of relationships continued. At a December 2 BCS faculty meeting with Lennie and Culver, BCS Faculty Complainants raised concerns about signing a confidentiality agreement before reviewing the Summary Findings and again, the November 2016 Memo came under criticism.⁴³¹ On December 16, Lennie, Culver and Norris met again with BCS faculty to discuss UR’s sexual harassment policies and its handling of the Jaeger investigation.⁴³² Participants described a heated exchange about the adequacy of the Nearpass investigation.⁴³³ Then, on January 9, 2017, Clark met with three BCS professors to address his controversial November 2016 Memo.⁴³⁴

⁴³⁰ Nov. 1, 2017 Email from L. Van Slyke to Debevoise & Plimpton LLP.

⁴³¹ Dec. 1-2, 2016 Emails between BCS Faculty and L. Van Slyke, P. Lennie, G. Culver, P. Lennie and G. DeAngelis. Clark then followed up with another memo on December 5, expressing his “regret” that the wording of his November 2016 Memo might have led the faculty to conclude that he was repudiating the findings of the University’s investigation. (Dec. 5, 2016 Email from R. Clark to BCS Faculty) (attached as Exhibit 39).

⁴³² See Dec. 8, 2016 Emails between G. Norris, P. Lennie, G. Culver and G. DeAngelis discussing Dec. 16 meeting.

⁴³³ Dec. 16, 2016 Email from G. Norris to J. Seligman, P. Lennie, R. Clark, G. Culver and L. Murphy.

⁴³⁴ EEOC Complaint ¶ 256; Fed. Compl. ¶ 307.

12. Aslin Resigns in Protest (December 2016)

Aslin's repeated indications during the prior several months that he might leave the University came to a head on December 2, 2016 when he resigned.⁴³⁵ Aslin already had been planning to retire in the near future. In October 2014, long before the allegations that led to the Nearpass and Curtin investigations, Aslin prepared a letter detailing his plan to unwind his University position starting in June 2016, with continuing reduction in his responsibilities through 2019.⁴³⁶ However, Aslin appears to have accelerated those plans based on his disagreement with the University.

The federal complaint alleges that John Foxe, Chair of the UR Department of Neuroscience, told Cantlon, Mahon and Hayden that "central UR administration" had "shut down" his attempts to retain Aslin by moving him from BCS to the Neuroscience Department.⁴³⁷ Foxe confirmed that he tried to retain Aslin, who had just recently recruited Foxe to UR, but strongly denied that the University administration opposed the idea.⁴³⁸ Seligman said that he did not want Aslin to resign, but noted Aslin's preexisting commitment to leave in 2019.⁴³⁹

13. Jaeger Apologizes to BCS Faculty (December 2016)

On December 7, 2016, in connection with the release of the summary of findings and Jaeger's accompanying six-page written statement, Jaeger sent an email to the BCS faculty, stating that he "deeply regret[s] my part in the struggle that our department has been going

⁴³⁵ EEOC Complaint ¶ 248; Fed. Compl. ¶ 297.

⁴³⁶ Oct. 1, 2014 Letter from G. Culver to R. Aslin (attached as Exhibit 40).

⁴³⁷ Fed. Compl. ¶¶ 305, 448(h).

⁴³⁸ Dec. 13, 2017 Interview with J. Foxe.

⁴³⁹ Nov. 22, 2017 Interview with J. Seligman.

through. There are mistakes that I made many years ago that, with the benefit of hindsight, I would not repeat. I sincerely apologize for any feelings that have been hurt as a result.”⁴⁴⁰ He promised to issue a more detailed statement “in which I address both the mistakes I have made, and the many rumors about me.”⁴⁴¹ Jaeger also stated that he was “eager to contribute whatever I can to help the healing both of individual relationships, and the department on the whole.”⁴⁴²

His longer statement, made available to BCS faculty who went to view the confidential summary of findings, offered an apology “for any damage I might have done to the women I had relationships with or to students in the department that were disturbed by rumors they heard about me.”⁴⁴³ Jaeger wrote that “it is important that I own up to any errors in judgment I have made, while also providing my own perspective of what has happened over the past several months and the impact it has had on me and others.”⁴⁴⁴

14. Professional Repercussions for Jaeger (December 2016–February 2017)

Aslin had warned Jaeger that “you can be assured that future ‘warnings’ will be raised whenever you try to engage with other unsuspecting faculty.”⁴⁴⁵ Thereafter, Aslin told the former adviser of a graduate student who transferred to UR in August 2016 to work primarily

⁴⁴⁰ Exhibit 6.

⁴⁴¹ *Id.*

⁴⁴² *Id.*

⁴⁴³ F. Jaeger’s Written Statement.

⁴⁴⁴ *Id.*

⁴⁴⁵ Nov. 2, 2016 Letter from R. Aslin to F. Jaeger.

with Jaeger “about the “TFlo situation.”⁴⁴⁶ After arriving at UR, the student’s adviser sent an email to him to say that he had “heard that things are a little tricky at Rochester at the moment,” adding that “Dick Aslin and I were talking a few days ago about general stuff going on in their department . . .”⁴⁴⁷ The former adviser offered to talk with the transfer student “if you wanted to run through it with anyone.”⁴⁴⁸

In December 2016, Jaeger was summarily disinvited as a plenary speaker at the 2017 Georgetown University Round Table (“GURT”) conference.⁴⁴⁹ After speaking with the conference organizer, David Lightfoot, about the rescinded invite, Jaeger wrote that Lightfoot had told him that his invitation was withdrawn because Lightfoot “had been approached by some people who threaten to boycott GURT if [Jaeger] was invited.”⁴⁵⁰ Jaeger complained about the decision, calling it “academic bullying.”⁴⁵¹ Lightfoot declined to speak to us and we have not been able to confirm who approached him.

After learning that Jaeger’s invitation to GURT had been withdrawn, the OOC grew more concerned that Jaeger was being blacklisted and that litigation could ensue and requested that the Information Technology (“IT”) Department preserve the emails of Aslin, Jaeger, Piantadosi and

⁴⁴⁶ Aug. 9, 2016 Email from R. Aslin to C. Kidd, J. Cantlon, B. Hayden, S. Piantadosi and B. Mahon.

⁴⁴⁷ Aug. 12, 2016 Email from Student’s Adviser to Graduate Student 31.

⁴⁴⁸ *Id.*

⁴⁴⁹ Dec. 12, 2016 Email from D. Lightfoot to F. Jaeger.

⁴⁵⁰ Dec. 14, 2016 Email from Jaeger to D. Lightfoot (attached as Exhibit 41).

⁴⁵¹ *Id.*

Hayden.⁴⁵² The IT Department subsequently imaged the emails and a link to the emails was sent to Wormer.⁴⁵³ Wormer confirmed that she requested the email preservation, but she has no recollection of having reviewed them.⁴⁵⁴

On December 20, 2016, Faculty 21 notified Norris that he had learned from a colleague at UCSD that a BCS faculty member had approached him with information about Jaeger, alleging that UR's investigation into Jaeger had been flawed.⁴⁵⁵ Jaeger was able to substantiate this incident to Norris and Wormer; Jaeger claimed that a professor at UCSD had told him that "a senior member of the faculty at Rochester" had discussions with faculty members at UCSD about the allegations against Jaeger.⁴⁵⁶ Jaeger said that "it rather unambiguously identifies Dick as the person who contacted someone at UCSD."⁴⁵⁷

On January 5, 2017 Jaeger reported his concerns about the "prolonged smear campaign" to DeAngelis and senior faculty members of BCS.⁴⁵⁸ Jaeger wrote that he had "been told that at least at Northwestern, Princeton and UCSD people had heard of the allegations against me

⁴⁵² Dec. 15, 2017 Interview with S. Wormer; Dec. 5, 2017 Interview with S. Wormer.

⁴⁵³ Dec. 5, 2017 Interview with S. Wormer.

⁴⁵⁴ *Id.* The complaints also allege that Aslin's emails were searched in March or April 2017. (EEOC Compl. ¶ 267; Fed. Compl. ¶ 317.) Wormer denied conducting such a search or requesting that it be conducted, and Mike Pinch, the University's Chief Security and Technology Officer, confirmed this. (Dec. 27, 2017 Email from S. Wormer to Debevoise & Plimpton LLP; Jan. 3, 2018 Email from M. Pinch to Debevoise & Plimpton LLP.) We have found no evidence that such a search took place.

⁴⁵⁵ Dec. 5, 2017 Interview with S. Wormer.

⁴⁵⁶ Jan. 5, 2017 Email from F. Jaeger to S. Wormer and G. Norris.

⁴⁵⁷ *Id.*

⁴⁵⁸ Jan. 5, 2017 Email from F. Jaeger to Faculty 19, Faculty 13, Faculty 20, G. DeAngelis and Faculty 7.

‘through the grapevine.’”⁴⁵⁹ He claimed that these academics had been told that Jaeger “got off on a technicality” and that he “had sexual relations with 18 undergraduate and graduate students.”⁴⁶⁰ Jaeger implored his colleagues: “how many more lines Dick and others would have to cross so that you would speak publicly to say that enough is enough.”⁴⁶¹ After dropping Jaeger from the chain, the faculty members shared their concerns.⁴⁶² One faculty member said that he “already had two colleagues from other universities talk to me about this,” and confirmed that Aslin had “told a lot of details about the case.”⁴⁶³ This faculty member said that the threats made against Jaeger were “horrifying,” adding that the “same person cannot be the accuser, the judge and the punisher.”⁴⁶⁴ Another faculty member likened the activities to a “sort of vigilantism.”⁴⁶⁵

15. University Administrators’ Engagement with the BCS Faculty Complainants’ Policy Proposals (November 2016 – January 2017)

The BCS Faculty Complainants were also very engaged during this period in efforts to change University policies and procedures relating to sexual harassment and sexual misconduct. The record is replete with examples of letters sent by the BCS Faculty Complainants to the administration, and meetings between the BCS Faculty Complainants and University

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.*

⁴⁶² Jan. 5, 2017 Emails between Faculty 19, Faculty 13, Faculty 20, G. DeAngelis and Faculty 7.

⁴⁶³ *Id.*

⁴⁶⁴ Jan 5, 2017 Email from Faculty 19 to Faculty 13, Faculty 20, G. DeAngelis and Faculty 7.

⁴⁶⁵ Jan. 5, 2017 Email from Faculty 13 to Faculty 19, Faculty 20, G. DeAngelis and Faculty 7.

administrators, to discuss reforms to the University’s policies and ensure that perceived errors in the Jaeger investigations were not repeated. For example, on November 30, Aslin wrote a ten-page letter to Seligman and Lennie detailing his complaints about the handling of the Jaeger complaint;⁴⁶⁶ thereafter, Lennie met with Aslin on December 2 to further discuss the concerns.⁴⁶⁷ On January 3, Kidd and Piantadosi wrote to Lennie and Culver with a detailed account of their criticisms of the Jaeger investigation and proposed revisions to University policies; neither Dean replied to their letter.⁴⁶⁸

These sincere attempts by Aslin, Kidd and Piantadosi to change what they perceived as a broken system led to positive reforms. As noted, DeAngelis created the BCS Workplace Behavior Committee to create a set of guidelines for appropriate workplace behavior and Lennie drafted proposals to make the Intimate Relationships Policy more restrictive.⁴⁶⁹ On February 1,

⁴⁶⁶ Nov. 30, 2016 Letter from R. Aslin to J. Seligman and P. Lennie.

⁴⁶⁷ Oct. 24, 2017 Interview with P. Lennie; Nov. 30, 2016 Email from P. Lennie to R. Aslin.

⁴⁶⁸ Jan. 3, 2017 Email from S. Piantadosi and C. Kidd to P. Lennie and G. Culver.

⁴⁶⁹ In October 2016, Lennie met with the co-chairs of the Faculty Senate to express his desire to revise the Intimate Relationships Policy to prohibit certain faculty relationships with graduate students and post-doctoral fellows. (Oct. 24, 2017 Interview with P. Lennie.) Lennie found the co-chairs “emphatically uninterested” in broadening the code of conduct provisions, while Faculty 10 told us that a bright-line prohibition on faculty relationships with graduate students “would have passed,” adding that there would not have been a “huge amount of resistance” from faculty. (*Id.*; Interview with Faculty 4 and Faculty 10.) In December 2016, however, the co-chairs informed Lennie that “the preponderance of opinion” was against revisiting the decision not to include graduate students or post-doctoral fellows in the class of individuals with whom faculty relationships result in automatic policy violations. (Dec. 8, 2016 Email from Faculty Senate Co-Chair to Lennie.) Lennie continued to follow up with the co-chairs, sending proposed language on January 2017. (Jan. 17, 2017 Email from P. Lennie to Faculty Senate Co-Chairs and G. Culver (attached as Exhibit 42); “Intimate Relationships with Students and Postdocs” Draft.) Lennie and Culver’s proposed language changes included requiring faculty to establish a professional management plan before entering into a relationship with any member of the University community “over whom they exercise, or might have the potential to exercise, the authority

Norris met with members of the BCS Workplace Behavior Committee to discuss the language in their revision of the Intimate Relationships Policy and, in May 2017, the Faculty Senate enacted a stricter Intimate Relationships Policy that expanded the categories of consensual faculty-student relationships that were disallowed.⁴⁷⁰ Also in response to the complaints about the Jaeger investigation, the OOC prepared a one-page information sheet about the UR Policy 106

of their faculty position.” (“Intimate Relationships with Students and Postdocs” Draft) The change would explicitly apply to faculty relationships with graduate students and post-doctoral fellows. Lennie’s and Culver’s proposed language was not included in the final version of the revised policy adopted in May 2017. (Exhibit 1.)

⁴⁷⁰ We investigated the federal complaint’s allegation that Norris “reacted angrily” when a Faculty Senate committee proposed changes to the Intimate Relationships Policy. The complaint alleges that Norris said “that the new policy would be like ‘throwing a firebomb’ at a BCS faculty member.” (Fed. Compl. ¶ 350.) The allegation about the “firebomb” comment relates to a March 20, 2017 email sent by Faculty 10 to the Faculty Senate Committee working on the policy revision, which included J. Cantlon. (Mar. 20, 2017 Email from Faculty 10 to Faculty Senate Committee.). In the email, under the heading “non-substantive concern,” Faculty 10 described Norris’ reaction to the proposed revisions to the policy as follows: “she immediately reacted angrily seeing the language, and asserted that this would be like ‘throwing a firebomb’ at some faculty member in BCS.” (March 20, 2017 Email from Faculty 10 to Faculty Senate Committee.)

Norris told us that it was possible that she used the word “firebomb” in reference to the draft language because she saw it as “out there.” (Dec. 27, 2017 Email from G. Norris to Debevoise & Plimpton LLP.) The draft language that Norris found problematic provided that faculty-student relationships “are generally problematic, even if there appears to be consent by both individuals.... [S]uch a relationship may undermine the real or perceived evaluation and accomplishments of the less powerful party, such that the achievements may be viewed by others through a biased lens. Such relationships can also have adverse effects on the climate of a department or program.” (Draft “Intimate Relationships with Students and Post-doctoral fellows” language; Jan. 24, 2017 Email from Faculty 10 to Norris.) Norris was surprised to see the changes because she was under the impression that “the [Senate Executive Committee] had no appetite for revising the policy.” (Jan. 24, 2017 Email from G. Norris to Faculty 10.) Norris also highlighted language in the draft that she thought posed “some legal issues.” (Jan. 24, 2017 Email from G. Norris to Faculty 10.)

process, including guidance about both confidentiality and retaliation, which has been provided to witnesses since September 2016.⁴⁷¹

16. January 2017 Faculty Meeting

A new problem erupted in BCS in January, when Wormer and Norris decided to share certain of the BCS faculty emails that they had collected in July 2016 with DeAngelis.⁴⁷² Wormer said she provided the emails to give DeAngelis “a better idea of why our office felt the way it did,” and allow him to reach his own conclusions about the investigations.⁴⁷³ “We gave him the spiel about how he can’t retaliate. And I don’t think he did; I think [the Complainants] just don’t like that he knows about some of this stuff.”⁴⁷⁴ Norris stated, “The intent was not to get [DeAngelis] mad at [Aslin], it was to try to get [DeAngelis] to understand why the things he was doing to try to heal the department weren’t working.”⁴⁷⁵

Angered by the emails, DeAngelis called a BCS faculty meeting for January 10, 2017.⁴⁷⁶ The Complainants allege that DeAngelis “announced that he had in front of him a stack of emails that showed ‘manipulation and deception of faculty members’ and the ‘smearing’ of Jaeger.⁴⁷⁷ He allegedly said that “the emails showed ‘definitive proof’ that there had been widespread

⁴⁷¹ Exhibit 14.

⁴⁷² Jan. 6, 2017 Email from G. DeAngelis to G. Norris and S. Wormer. These were from email searches that OOC conducted to investigate breaches of confidentiality and Kidd’s retaliation claims in the summer of 2016.

⁴⁷³ Oct. 26, 2017 Interview with S. Wormer.

⁴⁷⁴ *Id.*

⁴⁷⁵ Nov. 14, 2017 Interview with G. Norris.

⁴⁷⁶ Jan. 10, 2017 Email from G. DeAngelis to S. Wormer.

⁴⁷⁷ EEOC Compl. ¶ 259; Fed. Compl. ¶ 310.

lying,⁴⁷⁸ deceit, and manipulation in the complaints against Jaeger.”⁴⁷⁹ The Complainants allege that “[i]t was clear to everyone” that DeAngelis was referring to Aslin, Cantlon, Kidd, Piantadosi, Mahon and Hayden.⁴⁸⁰

We found that DeAngelis did refer to the emails, but he did not reveal the contents of the emails or the specific authors. As stated by Faculty 13, “DeAngelis did not . . . reveal at the faculty meeting, who was the author of the emails he felt demonstrated efforts to manipulate opinions about the case or mislead faculty about their ultimate intentions regarding [Jaeger].”⁴⁸¹ This faculty member said that DeAngelis “was particularly careful to not mention any names, and did not state that everyone involved in bringing complaints forward was at fault.”⁴⁸² The faculty member further stated that Cantlon then “began telling people she was accused of being a

⁴⁷⁸ One faculty member did not recall DeAngelis saying that people were lying. Nov. 21, 2017 Interview with Faculty 16.

⁴⁷⁹ EEOC Compl. ¶ 259; Fed. Compl. ¶ 310.

⁴⁸⁰ EEOC Compl. ¶ 259; Fed. Compl. ¶ 310. The Complainants assert that at least two additional incidents reveal that the University’s decision to cast doubt on their credibility originated from the highest levels of the administration. The first incident is a meeting that occurred between Seligman and Jeffrey Runner, current Dean of the College of AS&E, during which Seligman allegedly told Runner that the witnesses who had complained about Jaeger had “witnessed nothing.” Runner, however, denies that this statement was made. (Oct. 27, 2017 Interview with J. Runner.) The second incident allegedly occurred in April 2017: the federal complaint contends that “[w]hile traveling together for a fundraising trip,” Seligman told Foxe “that the case against Jaeger was all hearsay and that Aslin had overreacted.” (Fed. Compl. ¶ 295.) Foxe categorically denies this occurrence. According to Foxe, “I’ve never traveled anyplace with [Seligman]. I’ve had very limited exposure to [Seligman].” Foxe stated, “Under no circumstance ever has [Seligman] disparaged Dick Aslin or any of the Complainants to me.” (Dec. 13, 2017 Interview with J. Foxe.)

⁴⁸¹ Faculty 13 Notes on EEOC Complaint.

⁴⁸² *Id.*

‘liar, manipulator, smearer’—these are labels she applied to herself, and at various times I cautioned her against doing so.”⁴⁸³

The BCS Faculty Complainants were understandably upset with the revelation that their emails had been collected by the OOC, shared with their department chair and discussed at a faculty meeting. DeAngelis later wrote to the BCS faculty to “sincerely apologize to those of you who feel that my comments unfairly targeted you and harmed your reputations.”⁴⁸⁴ DeAngelis stated that “I have little doubt that much of the behavior that has divided us was well-intentioned in the context of a very difficult situation.”⁴⁸⁵

The OOC’s decision to collect the faculty members’ emails did not violate UR’s IT Policy.⁴⁸⁶ The University is allowed to access and collect emails stored on University servers without the consent of the employee in order to investigate a violation of University policy and in cases where litigation is threatened.⁴⁸⁷ With respect to the OOC’s decision to share some of

⁴⁸³ *Id.*

⁴⁸⁴ Feb. 3, 2017 Letter from G. DeAngelis to BCS Faculty.

⁴⁸⁵ *Id.*

⁴⁸⁶ The Complainants allege that “it has become commonplace for the University to search the UR emails of faculty, staff and students who are perceived as potential threats to the University,” including those who file sexual harassment complaints and undergraduate sexual assault victims who seek help from the Title IX office. (Fed. Compl. ¶ 43.) Levy and Mark Fischer, the Director of the Department of Safety, confirmed that their respective offices have never searched or collected a student’s email in connection with a sexual assault investigation or any other type of investigation. (Dec. 13, 2017 Email from M. Levy to Debevoise & Plimpton LLP; Dec. 27, 2017 Email from M. Fischer to Debevoise & Plimpton LLP.) With respect to the Complainants’ allegation that Seligman directed that the emails of a member of the Board of Trustees be searched, Norris confirmed that no trustee’s emails have been searched. (Dec. 27 & 28, 2017 Emails from G. Norris to Debevoise & Plimpton LLP.)

⁴⁸⁷ Exhibit 15.

the collected emails with DeAngelis, UR’s IT Policy provides that faculty “have reasonable expectations of privacy in their uses” of IT Resources, but goes on to state that “rights to privacy are constrained in the University environment because,” among other things, “legal and ethical restrictions apply.”⁴⁸⁸ Although the OOC’s decision to provide DeAngelis with the emails did not violate any University policy, the judgment to do so resulted in deepening the divide between the claimants and others in the department and was inconsistent with the emphasis that Policy 106 places on confidentiality. We recommend that UR review its IT Policy to make clearer the range of circumstances that justify review of emails and to specify criteria for sharing emails outside of OOC.

17. Hayden and Heilbronner’s Retention and Hiring Issue (December 2016 – April 2017)

The Complainants assert that UR’s pattern of retaliatory conduct extended to its hiring and retention decisions involving Hayden and Heilbronner for their association with the complaints about Jaeger.⁴⁸⁹ Specifically, the Complainants allege that UR rejected Heilbronner,

⁴⁸⁸ Exhibit 15.

⁴⁸⁹ The Complainants’ allegations of retaliation omit that the University also took the following actions after Aslin, Cantlon and Kidd complained about Jaeger’s conduct: (1) on May 13, 2016, the Board of Trustees approved Cantlon’s promotion to Associate Professor with tenure (May 18, 2016 Letter from J. Seligman to J. Cantlon) (attached as Exhibit 43); (2) on September 15, 2016, DeAngelis wrote a letter recommending Kidd for the Sloan Research Fellowship (Sept. 15, 2016 Letter from DeAngelis to Selection Committee) (attached as Exhibit 44); (3) in December 2016, Jaeger wrote a letter to “fully support” Mahon’s promotion to Associate Professor with tenure (Letter from F. Jaeger in support of Mahon promotion) (attached as Exhibit 45); (4) in the spring of 2017, Jaeger wrote to “fully support” reappointing Kidd and Piantadosi as Assistant Professors following their third-year reviews, which were successful (Feb. 28, 2017 Email from F. Jaeger to G. DeAngelis); and (5) Mahon was promoted to Associate Professor.

the “top candidate” and best fit for a BCS position;⁴⁹⁰ refused to hire Heilbronner despite hiring other spouses;⁴⁹¹ and made minimal efforts to retain Hayden.⁴⁹²

Many BCS witnesses confirmed that BCS and UR had traditionally made efforts to hire spouses, although departmental needs and resources end up dictating the ability to hire a spouse.⁴⁹³ UR is not required to make offers to retain faculty members, or to make offers to hire the spouses of faculty members.⁴⁹⁴ One faculty member explained that there were “several cases” of BCS not making spousal hires on grounds that the candidate was not appropriate.⁴⁹⁵

BCS faculty deliberations about whether to extend an offer to Heilbronner began in September 2015, when the department decided to delay the search for a Systems Neuroscience faculty member by one year, in part to give Heilbronner more time to strengthen her candidacy.⁴⁹⁶ At the time, some faculty members expressed concerns about whether Heilbronner’s research focus “fit” into the open Systems Neuroscience spot, while other faculty

⁴⁹⁰ EEOC Compl. ¶¶ 28, 274-75, 289, 326(d); Fed. Compl. ¶¶ 324-27, 329

⁴⁹¹ EEOC Compl. ¶ 279; Fed. Compl. ¶ 330.

⁴⁹² EEOC Compl. ¶¶ 28, 314(l), 326(e); Fed. Compl. ¶¶ 330-31, 403(i), 410(n).

⁴⁹³ Nov. 22, 2017 Interview with J. Seligman; Oct. 30, 2017 Interview with G. Culver; Oct. 13, 2017 Interview with Faculty 13; Oct. 12, 2017 Interview with Graduate Student 25.

⁴⁹⁴ Nov. 15, 2017 Interview with G. Culver.

⁴⁹⁵ Oct. 26, 2017 Interview with Faculty 20. In 2016, BCS voted to extend an offer to a faculty applicant (which he accepted) but decided not to also extend an offer to his spouse, who was then given an offer by a different department. (Oct. 20, 2017 Interview with Faculty 11.) In another case, a coveted professor rejected BCS’s offer after the department did not offer his wife a job. (Oct. 26, 2017 Interview with Faculty 20; Oct. 13, 2017 Interview with Faculty 13.)

⁴⁹⁶ Oct. 13, 2017 Interview with Faculty 13; Oct. 17, 2017 Interview with Faculty 19; Oct. 23-24, 2017 Interview with Faculty 5.

members did not believe Heilbronner was quite ready.⁴⁹⁷ The search resumed in earnest in November 2016, when the hiring committee, composed of DeAngelis, Nordeen and Jude Mitchell—all with a research interest in Systems Neuroscience—selected the finalists to interview for the position, including Heilbronner.⁴⁹⁸ The hiring committee—although impressed with Heilbronner’s academic achievements and publications—thought that Heilbronner’s area of expertise was not a good fit for the position.⁴⁹⁹ Indeed, multiple witnesses confirmed that Heilbronner, then a post-doctoral fellow in Neurology, was not, as an anatomist, a good fit for the open BCS position; still, she was being considered in an effort to retain Hayden.⁵⁰⁰

The BCS faculty met on December 9 and December 13, 2016 to discuss the slate of candidates.⁵⁰¹ Traditionally, BCS faculty members defer to the judgments of the hiring committee, given their direct research interest and expertise in the academic sub-specialty.⁵⁰² Witnesses said that, despite this practice and the committee’s concerns about Heilbronner’s candidacy, Cantlon insisted that the department “had to hire” Heilbronner because of the possibility that Hayden would leave, and that it was a “waste of time” to even discuss other

⁴⁹⁷ Oct. 13, 2017 Interview with Faculty 13; Timeline provided by Faculty 13; Oct. 23-24, 2017 Interviews with Faculty 5.

⁴⁹⁸ Timeline provided by Faculty 13.

⁴⁹⁹ *Id.*

⁵⁰⁰ Dec. 13, 2017 Interview with J. Foxe; Nov. 1, 2017 Interview with Faculty 8; Oct. 30, 2017 Interview with G. Culver; Oct. 13, 2017 Interview with Faculty 13; Nov. 21, 2017 Interview with Faculty 16; Oct. 23-24, 2017 Interview with Faculty 5; Oct. 26, 2017 Interview with Faculty 20; Oct. 20, 2017 Interview with Faculty 7; Oct. 13, 2017 Interview with Faculty 12.

⁵⁰¹ Oct. 12, 2017 Interview with G. DeAngelis.

⁵⁰² Oct. 13, 2017 Interview with Faculty 12.

candidates.⁵⁰³ Cantlon also threatened that she and the other BCS Faculty Complainants would leave the University if BCS failed to retain Hayden.⁵⁰⁴ Other BCS Faculty Complainants who attended the meeting agreed with Cantlon, noting that they did not want to lose their existing research collaborations with Hayden.⁵⁰⁵ Multiple witnesses said that the BCS Faculty Complainants' conduct at these and subsequent hiring meetings was startling and disturbing.⁵⁰⁶ One senior faculty member characterized the conduct during these meetings as the "worst behavior [he had] ever seen" at a faculty meeting.⁵⁰⁷ Witnesses expressed concern that if the BCS Faculty Complainants prevailed in having Heilbronner hired over the wishes of the hiring committee—counter to the department's traditional hiring practice—the BCS Faculty Complainants would become emboldened to continue to employ this tactic in future hiring decisions.⁵⁰⁸

On February 17, 2017, the department met to discuss the candidates.⁵⁰⁹ The BCS Faculty Complainants again threatened to leave UR if Heilbronner was not hired.⁵¹⁰ After the meeting,

⁵⁰³ Oct. 12, 2017 Interview with G. DeAngelis; Oct. 13, 2017 Interview with Faculty 12; Oct. 13, 2017 Interview with Faculty 13; Timeline provided by Faculty 13.

⁵⁰⁴ Oct. 12, 2017 Interview with G. DeAngelis; Oct. 13, 2017 Interview with Faculty 12; Oct. 13, 2017 Interview with Faculty 13; Timeline provided by Faculty 13.

⁵⁰⁵ Timeline provided by Faculty 13.

⁵⁰⁶ Oct. 12, 2017 Interview with G. DeAngelis; Oct. 13, 2017 Interview with Faculty 12; Oct. 13, 2017 Interview with Faculty 13; Oct. 26, 2017 Interview with Faculty 20; Oct. 17, 2017 Interview with Faculty 19.

⁵⁰⁷ Oct. 26, 2017 Interview with Faculty 20.

⁵⁰⁸ Oct. 12, 2017 Interview with G. DeAngelis; Oct. 13, 2017 Interview with Faculty 13.

⁵⁰⁹ Timeline provided by Faculty 13.

⁵¹⁰ *Id.*

the faculty voted 10-4 in favor of making an offer to another candidate (who later turned down the offer).⁵¹¹

The Complainants assert that Jaeger's vote on Heilbronner was in retaliation for her involvement in the investigations.⁵¹² Although we found no evidence that Jaeger "lobb[ied] against hiring Heilbronner to others in the department", as alleged in the complaints,⁵¹³ DeAngelis did, on March 9, in an effort to forge a path to hire Heilbronner and retain Hayden, reach out to only those faculty members who opposed extending an offer to Heilbronner to gauge whether they would support a supernumerary position in BCS for Heilbronner.⁵¹⁴ The next day, these faculty members held a meeting to consider the matter further and subsequently decided not to extend an offer for a supernumerary position.⁵¹⁵ In an email to Culver and Lennie explaining the decision, DeAngelis said that many faculty members are "really fed up with the shenanigans in the department over the past year and they want their department back. They are very concerned that hiring Sarah will add to the group that has factionized [sic] the department, and will embolden them to continue to take the department hostage whenever they want something."⁵¹⁶

⁵¹¹ *Id.*

⁵¹² EEOC Comp. ¶ 326(c); Fed. Compl. ¶¶ 433(c), 437(c).

⁵¹³ EEOC Comp. ¶ 326(c); Fed. Compl. ¶¶ 433(c), 437(c).

⁵¹⁴ Timeline provided by Faculty 13.

⁵¹⁵ Timeline provided by Faculty 13; Oct. 17, 2017 Interview with Faculty 19; Nov. 1, 2011 Interview with Faculty 8; Oct. 27 & Nov. 8, 2017 Interviews with Faculty 6.

⁵¹⁶ Mar. 12, 2017 Email from G. DeAngelis to G. Culver and P. Lennie.

Nevertheless, DeAngelis continued to try to find a position for Heilbronner in order to retain Hayden. Eventually, Foxe became involved and sought to create a neuroscience position for Heilbronner. In April 2017, Foxe met with Heilbronner to discuss a non-tenure track position.⁵¹⁷ According to Foxe, Heilbronner already had an offer from the University of Minnesota at that point.⁵¹⁸

Foxe ultimately made Heilbronner an oral offer to join the Neurology Department at URMC as a tenure-track faculty member. Heilbronner was given a draft offer letter, which was in the process of being approved by UR's HR Department, but she accepted the University of Minnesota's offer before it was approved. Foxe said the approval process was "simply a formality" and that Heilbronner was "unanimously" elected to the faculty by the department.⁵¹⁹ Foxe characterized Heilbronner's offer "as good an offer as we've ever given to anybody" at her level.⁵²⁰ Foxe stated, "We were doing something way above the standard call of duty. We're creating a tenure-track position in one of the premier neuroscience departments in the world so we could give her a position."⁵²¹ In sum, the majority of BCS faculty did not think that Heilbronner was the best candidate for the BCS position, but DeAngelis and Foxe made a significant effort to keep Heilbronner at UR and to retain Hayden.

The federal complaint also alleges that Foxe pressured the BCS Faculty Complainants to stop pursuing their complaints in order to aid him in hiring Heilbronner, saying he would "face

⁵¹⁷ Dec. 13, 2017 Interview with J. Foxe.

⁵¹⁸ *Id.*

⁵¹⁹ Dec. 8, 2017 Email from J. Foxe to Debevoise & Plimpton LLP.

⁵²⁰ Dec. 13, 2017 Interview with J. Foxe.

⁵²¹ *Id.*

obstacles with the administration” when he tried to hire her.⁵²² Foxe denies these allegations. According to Foxe, he had no idea that she was involved in the ongoing “BCS thing” at the time he tried to hire Heilbronner.⁵²³ Per Foxe, “[T]here was no complaint at that time. I was thoroughly unaware that anything was going on at that point. I was under the impression that the matter was closed.”⁵²⁴ Foxe added, “I have never had any pushback from the administration on trying to retain people. Nobody’s ever interfered in my job in that regard.”⁵²⁵ Foxe denied that anyone pressured him either way with respect to hiring Heilbronner.⁵²⁶

With respect to Hayden, the University offered an increased salary, increased funding and other financial incentives.⁵²⁷ One senior faculty member in Neuroscience explained that the reason Hayden’s offer from Minnesota appeared much higher than the one offered by BCS was because Minnesota included funding to build a lab, “which he wouldn’t have to do at UR.”⁵²⁸ Another faculty member in Neuroscience described the Minnesota offer as “insane” and “double the offer most institutions offer.”⁵²⁹ She stated that Hayden confided in her that he was leaving because of the better financial resources and larger department at Minnesota.⁵³⁰ A review of

⁵²² Fed. Compl. ¶ 329(c), 329(e), 448(h).

⁵²³ Dec. 13, 2017 Interview with J. Foxe.

⁵²⁴ *Id.*

⁵²⁵ *Id.*

⁵²⁶ *Id.*

⁵²⁷ May 5, 2017 B. Hayden Retention Offer.

⁵²⁸ Oct. 23-24, 2017 Interview with Faculty 5.

⁵²⁹ Nov. 2, 2017 Interview with Faculty 3.

⁵³⁰ *Id.*

other BCS retention offers from 2012 to 2016 revealed that Hayden’s offer was similar to or greater than other precedents in the Department.⁵³¹

18. Spring 2017 Performance Reviews of Kidd and Piantadosi (February 2017)

The Complainants allege that DeAngelis wrongfully permitted Jaeger to participate in the spring 2017 performance reviews of Kidd and Piantadosi,⁵³² and assert that Jaeger used this as an opportunity to retaliate further against them by criticizing Kidd’s collaborative work.⁵³³

While it is true that Jaeger was involved in the spring 2017 performance evaluations of Kidd and Piantadosi, he fully supported their reappointment.⁵³⁴ In an email to DeAngelis from February 28, Jaeger wrote that Kidd and Piantadosi were “clear cases for re-appointments,” which he “fully support[ed].”⁵³⁵ With respect to the claim by Kidd and Piantadosi that DeAngelis had assured them that “Jaeger would not be involved in either of their evaluations,”⁵³⁶ DeAngelis denied providing such assurance. “I recall Kidd and Piantadosi raising concerns about Jaeger being involved in their tenure review cases, but I don’t recall there being discussion

⁵³¹ July 25, 2012 J. Cantlon Retention Offer; July 25, 2012 B. Mahon Retention Offer; Feb. 8, 2016 D. Tadin Retention Offer; Apr. 5, 2013 F. Jaeger Retention Offer.

⁵³² EEOC Compl. ¶ 226; Fed. Compl. ¶¶ 285-86. The federal complaint adds that DeAngelis “kept Jaeger’s participation secret from them.” (Fed. Compl. ¶ 286.)

⁵³³ EEOC Compl. ¶ 227; Fed. Compl. ¶ 287.

⁵³⁴ Feb. 28, 2017 Email from F. Jaeger to G. DeAngelis; Dec. 15, 2017 Interview with G. DeAngelis.

⁵³⁵ Feb. 28, 2017 Email from F. Jaeger to G. DeAngelis.

⁵³⁶ EEOC Compl. ¶ 226; Fed. Compl. ¶ 285.

of the third year review.”⁵³⁷ In any event, DeAngelis did not recall Jaeger “saying anything critical” during Kidd’s review.⁵³⁸

19. Potential RIT Group Hire (May 2017)

In May 2017, Cantlon, Mahon, Kidd, Piantadosi, Hayden and Heilbronner interviewed at the Rochester Institute of Technology (“RIT”) about a potential group hire.⁵³⁹ The Complainants allege that in order for this move to be successful, they required continued access to a medical scanner housed at the University’s MRI center, and that the University, in “another example of retaliation,” said that it would charge them a rate 2.5 times higher than it charges University researchers to use the scanner.⁵⁴⁰

As of May 2017, the UR scanner’s heaviest users from AS&E were Cantlon and Mahon, who paid approximately \$150,000 per year of the \$500,000 AS&E spends each year to operate the scanner.⁵⁴¹

In pursuing offers at RIT, the BCS Faculty Complainants were in contact with Jeff Pelz, a senior RIT Professor. Pelz spoke on the phone with Lennie on May 2 and May 9 about the potential of the group going to RIT and continuing to use UR’s scanner.⁵⁴² According to detailed notes from those conversations taken by Pelz and Lennie’s recollection of those calls, Lennie

⁵³⁷ Oct. 9, 2017 G. DeAngelis Notes on EEOC Complaint.

⁵³⁸ Dec. 15, 2017 Interview with G. DeAngelis.

⁵³⁹ May 2, 2017 Email from J. Pelz to RIT employees.

⁵⁴⁰ EEOC Compl. ¶ 282; Fed. Compl. ¶ 335.

⁵⁴¹ Oct. 24 & Nov. 21, 2017 Interviews with P. Lennie; Sept. 27, 2017 Interview with J. Pelz; May 9, 2017 Emails between J. Pelz and J. Cantlon.

⁵⁴² May 2, 2017 J. Pelz Notes of Call with P. Lennie; May 9, 2017 J. Pelz Notes of Call with P. Lennie (attached as Exhibit 46).

agreed that Cantlon and Mahon could continue to use the scanner if they left UR for RIT, but said that the University would no longer subsidize its use and that RIT would be charged \$500,000, the cost to AS&E for operating the scanner.⁵⁴³ Lennie told us that he was not penalizing the group seeking to leave UR, but rather was attempting to cover the costs of running the scanner.⁵⁴⁴ Cantlon's and Mahon's view was that UR should continue to subsidize them, even while they were at another institution, because UR could benefit from "building the intellectual resources in the region."⁵⁴⁵

Pelz's notes and Lennie's recollection differ on one point: the hours during which the group would have access to the scanner. Pelz's notes reflect that the group could have "regular daytime use only until UR gets new uses" and then would have to shift to "unsocial hours."⁵⁴⁶ Another section of Pelz's notes reflect that the group would be given "low priority access." Lennie told us that he made it "clear there would be no restrictions on access."⁵⁴⁷

Pelz's notes of the call indicate that Lennie said that "nobody at UR views it as a plus if they go to RIT," and it was UR's "first choice" to have the Complainants "stay at UR."⁵⁴⁸ Lennie also told Pelz that the Complainants were in a "complicated situation that's made many people here pretty uncomfortable,"⁵⁴⁹ and Pelz told us that he recalls Lennie telling him during

⁵⁴³ Exhibit 46.

⁵⁴⁴ Dec. 18, 2017 Interview with P. Lennie.

⁵⁴⁵ May 9, 2017 Emails between J. Pelz and J. Cantlon.

⁵⁴⁶ Exhibit 46.

⁵⁴⁷ Dec. 18, 2017 Interview with P. Lennie.

⁵⁴⁸ Exhibit 46.

⁵⁴⁹ *Id.*

one of the calls that “no one thinks they are going to stay at UR.”⁵⁵⁰ In explaining why it was “not an advantage at all” for UR to continue to subsidize Cantlon and Mahon’s scanner use to encourage them to stay in the city of Rochester, Lennie said that “the idea that keeping them in the area is a good thing isn’t high on the thinking of anyone at UR,” and that if claimants left UR, then it “doesn’t matter where they are.”⁵⁵¹ Lennie told us that UR “certainly didn’t want them to leave.”⁵⁵²

Ultimately, Pelz informed Cantlon, Mahon and Hayden by email on May 9, 2017 that the scanner costs would likely be negotiable and that compromise was possible.⁵⁵³ The Complainants further assert that the scanner is “required to be open to all legitimate researchers” since it was “purchased with federal funds.”⁵⁵⁴ Our investigation uncovered no evidence that the University denied access to legitimate researchers, including the BCS Faculty Complainants.

20. Maternity Leave and Course Load Issues

The EEOC Complaint alleged retaliation against Kidd in connection with her 2016 maternity leave and also in connection with Cantlon’s 2017-2018 course load.⁵⁵⁵ Both allegations have been omitted from the federal complaint.

Briefly, as to Kidd, the EEOC Complaint alleges that DeAngelis tried to unlawfully limit her October 2016 maternity leave to a two-week period,⁵⁵⁶ but it does not allege that she was

⁵⁵⁰ Sept. 27, 2017 Interview with J. Pelz.

⁵⁵¹ Exhibit 46.

⁵⁵² Oct. 24, 2017 Interview with P. Lennie.

⁵⁵³ Exhibit 46.

⁵⁵⁴ EEOC Compl. ¶ 282; Fed. Compl. ¶ 335.

⁵⁵⁵ EEOC Compl. ¶¶ 265, 314(g).

actually limited to two weeks. In fact, in August 2016, Kidd asked DeAngelis about the possibility of a graduate student covering her course for the remainder of the semester after her upcoming maternity leave ended.⁵⁵⁷ DeAngelis agreed and hired a graduate student to complete the semester for Kidd.⁵⁵⁸

As to Cantlon, the EEOC Complainants contend that DeAngelis retaliated against her by trying to impose on her a heavier course load than other faculty members for the current 2017-18 academic year.⁵⁵⁹ The relevant documents do not support this conclusion. On August 24, 2017, DeAngelis told Cantlon that he would like her to teach a lecture course in the spring 2018 semester, as she only had one course scheduled for the academic year and there were no other faculty members with a free course slot.⁵⁶⁰ Cantlon refused, taking the position that she was not prepared to teach a large lecture class and suggesting that other professors had lighter course loads.⁵⁶¹ DeAngelis then calculated course loads and found that Cantlon's had been lighter overall.⁵⁶² DeAngelis emphasized to Cantlon that the issue was that she teach a regular course load during the 2017-18 academic year, and that past course loads were not the concern: "I am not asking you to overload on teaching, or to make up for your previous teaching load—that is

⁵⁵⁶ *Id.* These allegations were not included in the federal complaint.

⁵⁵⁷ Aug. 29, 2016 Email from G. DeAngelis to C. Kidd; Aug. 29, 2016 Email from G. DeAngelis to Graduate Student.

⁵⁵⁸ Aug. 29, 2016 Email from G. DeAngelis to C. Kidd; Aug. 30, 2016 Email from G. DeAngelis to Graduate Student.

⁵⁵⁹ EEOC Compl. ¶¶ 265, 289. These allegations were not included in the federal complaint.

⁵⁶⁰ Aug. 26, 2017 Email Chain between G. DeAngelis and J. Cantlon (attached as Exhibit 47).

⁵⁶¹ *Id.*

⁵⁶² *Id.*

not the case. I am just asking you to teach a full load this coming academic year.”⁵⁶³ After further discussion, DeAngelis agreed to allow Cantlon to teach a new undergraduate course instead.⁵⁶⁴

21. Events Leading Up to EEOC Complaint (March 2017 – September 2017)

In addition to the retention efforts involving Hayden, which ended in May when Hayden and Heilbronner accepted positions at the University of Minnesota,⁵⁶⁵ this period also included RIT’s efforts to recruit the four remaining BCS Faculty Complainants. Just prior to that, in April 2017, Mahon sent an email to Jaeger that he and Cantlon wanted to meet to “talk about some of the things have been going on in BCS.”⁵⁶⁶ Jaeger conveyed his willingness to do so, but the meeting never happened.⁵⁶⁷

On September 7, 2017, the EEOC Complainants publicly released the EEOC Complaint.

III. LEGAL ANALYSIS

In this Section, we evaluate whether our factual findings support legal conclusions that any Complainant or other UR student or employee was subjected to unlawful sexual harassment as a result of Jaeger’s conduct or that any Complainant was subjected to unlawful retaliation.

We find that the evidence does not support a conclusion that any Complainant or other UR student or employee has been subjected to unlawful sexual harassment as a result of Jaeger’s

⁵⁶³ *Id.*

⁵⁶⁴ Oct. 9, 2017 G. DeAngelis Notes on EEOC Complaint.

⁵⁶⁵ May 10, 2017 Email from S. Heilbronner to J. Foxe.

⁵⁶⁶ Apr. 20, 2017 Email from B. Mahon to F. Jaeger, Faculty 20, J. Cantlon and G. DeAngelis.

⁵⁶⁷ Apr. 25, 2017 Emails between F. Jaeger, B. Mahon, Faculty 20, J. Cantlon and G. DeAngelis.

conduct. Although Jaeger's conduct before 2014 was at times inappropriate, unprofessional and offensive, and may have been harmful to some students, as well as to the BCS and greater UR communities in a variety of ways, we find that Jaeger's conduct did not meet the standard for sexual harassment, as currently defined by law. We also find that UR did not unlawfully retaliate against the Complainants.

In reaching our legal conclusions, we recognize that we did not speak to every possible witness or review every possible document, and there always remains the possibility that new evidence could impact our analysis. For the reasons described in the Introduction to this Report, however, we are our confident that our investigation was exhaustive and that our conclusions are therefore founded on a robust record.

A. Sexual Harassment

1. Governing Legal Standards

Sexual harassment is prohibited by Title VII, Title IX and the NYSHRL.⁵⁶⁸ It is also prohibited by UR Policy 106, which closely tracks the legal definition of sexual harassment under those statutes.⁵⁶⁹ The law and UR Policy 106 recognize two types of sexual harassment: (1) *quid pro quo* harassment, in which an adverse employment or academic action (e.g., termination, pay cut, bad grade) results from a refusal to submit to a supervisor's or professor's

⁵⁶⁸ Title VII, Title IX and the NYSHRL broadly prohibit sex-based discrimination in both the workplace and educational environments. Courts have generally followed principles developed in Title VII jurisprudence to analyze claims under Title IX and under the NYSHRL. *See, e.g., Papelino v. Albany Coll. of Pharmacy of Union Univ.*, 633 F.3d 81, 89 (2d Cir. 2011) (“[A] Title IX hostile education environment claim is governed by traditional Title VII hostile environment jurisprudence.”); *Rivera v. Rochester Genesee Reg'l Transp. Auth.*, 743 F.3d 11, 20 n.4 (2d Cir. 2014) (noting that NYSHRL claims are analyzed under the same standard as Title VII hostile environment claims).

⁵⁶⁹ Exhibit 3.

unwelcome sexual demand or where submission to such a demand is made a condition of receiving employment or academic benefits;⁵⁷⁰ or (2) hostile environment harassment, in which sexual harassment is so “severe or pervasive” that it creates an abusive working or academic environment.⁵⁷¹

A plaintiff asserting a hostile work environment or hostile educational environment claim must prove, among other things, that (i) the conduct in question was unwelcome, and (ii) as a result of such unwelcome conduct, the educational or workplace environment “is permeated with discriminatory intimidation, ridicule and insult that is sufficiently *severe* or *pervasive* to alter the conditions of the victim’s employment and create an abusive working environment.”⁵⁷² This standard has both objective and subjective components: “the conduct complained of must be severe or pervasive enough that a reasonable person would find it hostile or abusive,” and the plaintiff herself “must subjectively perceive the work environment to be abusive.”⁵⁷³

To prevail, a plaintiff must demonstrate “either that a single incident was extraordinarily severe, or that a series of incidents were sufficiently continuous and concerted to have altered the conditions of her working environment.”⁵⁷⁴ When a plaintiff complains that a series of incidents

⁵⁷⁰ *Papelino*, 633 F.3d at 89.

⁵⁷¹ *Rivera v. Rochester Genesee Reg'l Transp. Auth.*, 743 F.3d 11, 20 (2d Cir. 2014).

⁵⁷² *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (internal quotation marks omitted) (citations omitted) (emphases added); *see also Littlejohn v. City of New York*, 795 F.3d 297, 320-21 (2d Cir. 2015) (same).

⁵⁷³ *Littlejohn*, 795 F.3d at 321.

⁵⁷⁴ *Alfano v. Costello*, 294 F.3d 365, 374 (2d Cir. 2002) (internal quotation marks omitted); *see also Summa v. Hofstra Univ.*, 708 F.3d 115, 126 (2d Cir. 2013) (“Our case law . . . establishes that a single incident can create a hostile environment if it is sufficiently severe.”); *Kaylor v. Elec. Boat Corp.*, 609 F.3d 537, 547 (2d Cir. 2010) (“Isolated incidents

collectively establish a hostile work environment, the incidents complained of “must be more than episodic; they must be sufficiently continuous and concerted in order to be deemed pervasive.”⁵⁷⁵ “There is no ‘mathematically precise test,’ however, for deciding whether an incident or series of incidents is sufficiently severe or pervasive to alter the conditions of a plaintiff’s working environment.”⁵⁷⁶ Courts thus adopt a “totality of the circumstances” approach, considering “the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.”⁵⁷⁷

Because sexual harassment is actionable as a form of discrimination, a plaintiff must show that the conduct was not merely offensive, but discriminatory on the basis of gender.⁵⁷⁸ Proving that conduct is discriminatory requires showing either that the harasser’s intent was to discriminate on the basis of sex or that the harasser’s conduct—regardless of intent—created a hostile environment for one gender or another (but not both).⁵⁷⁹

generally will not suffice to establish a hostile work environment unless they are extraordinarily severe.”).

⁵⁷⁵ *Raspardo v. Caralone*, 770 F.3d 97, 114 (2d Cir. 2014).

⁵⁷⁶ *Id.* (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22-23 (1993)).

⁵⁷⁷ *Littlejohn*, 795 F.3d at 321; *see also Raspardo*, 770 F.3d at 114 (same).

⁵⁷⁸ *Kaytor*, 609 F.3d at 547 (“It is axiomatic that to prevail on a claim of hostile work environment based on gender discrimination, the plaintiff must establish that the abuse was based on her gender.”).

⁵⁷⁹ *Id.* at 547-48; *Raniola v. Bratton*, 243 F.3d 610, 621-22 (2d Cir. 2001).

An “equal opportunity offender” who directs sexually-charged words or conduct at both men and women can still create a hostile environment where women are disparately impacted. *See Petrosino v. Bell Atl.*, 385 F.3d 210, 222 (2d Cir. 2004) (“[T]he depiction of women in the offensive jokes and graphics was uniformly sexually demeaning and

There are limits to what the law prohibits in the workplace or in academia, and courts have emphasized that the law “does not create a general civility code for the American workplace.”⁵⁸⁰ Thus, “simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment.”⁵⁸¹ The purpose of laws prohibiting sexual harassment is to protect against discrimination on the basis of sex or gender—not to protect generally against a rude or obnoxious boss or professor who makes the workplace equally difficult for men and women.⁵⁸²

communicated the message that women as a group were available for sexual exploitation by men.”). The presence of pornography in a workplace, for instance, can offend men and women alike but can still alter the status of women in that workplace differently than it can for men. *See, e.g., Patane v. Clark*, 508 F.3d 106, 114 (2d Cir. 2007).

⁵⁸⁰ *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998)).

⁵⁸¹ *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) (citation and internal quotation marks omitted).

⁵⁸² *See Schiano v. Quality Payroll Sys., Inc.*, 445 F.3d 597, 605 (2d Cir. 2006) (quoting *Holtz v. Rockefeller & Co., Inc.*, 258 F.3d 62, 75 (2d Cir. 2001)) (distinguishing general “boorish and inappropriate behavior” from “actionable sexual harassment”).

As important context for reviewing our legal assessment here, it bears emphasizing that the legal standards that would govern a sexual harassment claim based on Jaeger’s conduct, and on which our assessment is therefore necessarily grounded, impose a higher bar than those that apply in other jurisdictions. Other jurisdictions have enacted more stringent standards for workplace behavior than does UR Policy 106, Title VII, Title IX, or NYSHRL. By way of example, under the New York City Human Rights Law, which governs sexual harassment claims arising in workplaces in New York City, the analysis would be very different. New York City law holds that the “severe or pervasive” standard applicable under federal or State law “sanction[s] a significant spectrum of conduct demeaning to women” and “reduce[s] the incentive for employers to create workplaces that have zero tolerance” for harassment and discrimination. *Williams v. N.Y.C. Hous. Auth.*, 61 A.D.3d 62, 78 (N.Y. App. Div.), *leave denied*, 13 N.Y.3d 702 (2009). Thus, under New York City law, any conduct that indicates a plaintiff “has been treated less well than other employees because of her gender” will establish a claim, unless the employer can prove as an affirmative defense that the conduct complained of consists of nothing more than what a reasonable person would consider “petty slights and trivial inconveniences.” *Id.*

2. *Quid Pro Quo* Harassment

There is no evidence that Jaeger engaged in *quid pro quo* sexual harassment. Jaeger did not condition academic participation or performance on submission to sexual advances. None of the four students (at the time, former, prospective and current) who had sexual relationships with Jaeger said that any such demand existed. All four told us that their sexual relationships were consensual. Not a single witness or claimant has alleged that Jaeger threatened any adverse educational consequence for failing to submit to a sexual advance or that he conditioned any benefit on submitting to his advances.

3. Discussion of Hostile Environment Claims Based on Jaeger's Pre-2014 Conduct

As a preliminary observation, we note that the law requires claims alleging sexual harassment be brought within the statute of limitations. The applicable statute of limitations is three years under Title IX⁵⁸³ and the NYSHRL⁵⁸⁴ and 300 days under Title VII.⁵⁸⁵ Much of Jaeger's conduct, therefore, would be considered by a court to be time-barred, both as of the time of the filing of the complaints, and as of the time of the Nearpass investigation. For purposes of our analysis here, however, we ignore the statute of limitations bar and assess whether, substantively, any Complainant or other UR student or employee was subjected to unlawful sexual harassment as a result of Jaeger's conduct.

Three women claim directly that they were subjected to unlawful harassment based on Jaeger's conduct before 2014: Bixby, Cantlon and Kidd. We are mindful that several other

⁵⁸³ *Curto v. Edmundson*, 392 F.3d 502, 503-04 (2d Cir. 2004), *cert. denied*, 545 U.S. 1133 (2005).

⁵⁸⁴ *Russo v. N.Y. Presbyterian Hosp.*, 972 F. Supp. 2d 429, 445 (E.D.N.Y. 2013).

⁵⁸⁵ 42 U.S.C. § 2000e-(5)(e)(1).

women have reported concerns about inappropriate comments or behaviors by Jaeger, and we do not discount the reports or the feelings of those witnesses; they are relevant to our legal analysis for reasons explained further below. A proper legal assessment of potential sexual harassment liability, however, naturally begins with an examination of the claims of those who directly assert that they were subjected to unlawful harassment—Bixby, Cantlon and Kidd, in this case. Without discounting—and indeed crediting in large part—that they each may have been genuinely distressed and hurt by some of Jaeger’s behavior, we conclude that none of them was subjected to an unlawfully hostile environment, as defined by the governing legal standards.

As to Bixby, we conclude that the conduct she claims to have experienced (described at length in Section II.A.1.f), which we credit, was not sufficiently “severe or pervasive” to support a conclusion that she was subjected to a hostile environment, as defined by law. Such conduct was not objectively severe or pervasive. In addition, her contemporaneous statements may suggest that she also did not subjectively view the conduct as severe or pervasive at the time.

We understand Cantlon’s complaints about Jaeger to relate, overwhelmingly, to her expressed concerns about the impact of his conduct on other women and not to conduct she experienced directly. Although the experiences of others are not irrelevant to a plaintiff’s sexual harassment claim (as further discussed below), the focus of any such claim should and would in a court of law be the plaintiff’s own experiences. Here, Cantlon claims to have experienced directly only two comments that she found offensive: a joke Jaeger made at a faculty party in February 2011 that he had decided to come to UR because of its “legendary nude hot tub parties with students,” and a highly inappropriate question Jaeger asked in front of a group of faculty members at a party in 2010 about which part of a student’s body another professor found attractive. Crediting that both comments were made and that they were both objectionable, we

do not believe they approach being sufficiently “severe or pervasive” to support a conclusion that Cantlon was subjected to a hostile environment, as defined by law. Again, although in any sexual harassment claim by Cantlon, experiences of others would not be irrelevant, it would be unprecedented for a plaintiff whose own experiences do not come close to satisfying the legal standard to sustain a legal claim based almost entirely on the experiences of others.

The interactions between Jaeger and Kidd in 2007 and 2008 are, however, concededly more complicated, and if Kidd’s version of events is credited, presents a closer question. As we describe in Section II.A.3, Jaeger displayed exceedingly poor judgment in blurring appropriate boundaries between a faculty member and a graduate student by renting a room in his home to her and maintaining a close personal friendship with her, often characterized by frank discussion on sexual topics. As also detailed above, we credit that Jaeger made many sexualized comments to Kidd during the time they lived together, though we also find that her accounts of these comments were, in several instances, exaggerated or taken out of context. Assessing whether Jaeger’s poor judgment and inappropriate comments rise to the level of creating an unlawfully hostile environment for Kidd requires an examination of the “welcomeness” of his conduct at the time, whether it was subjectively perceived by her as creating an abusive educational environment, and on the “totality of the circumstances” surrounding the behavior. For reasons we detail above, the evidence we examined leads us to conclude that the complaints are significantly misleading on these contextual issues.

A thorough examination of the contemporaneous evidence demonstrates that the complaints set forth a one-sided portrayal of the relationship and discourse between Jaeger and Kidd. For example, there is insufficient evidence, in our view, to support the allegation that Kidd was pressured into renting a room in Jaeger’s house. It is also clear that the complaints

exclude Kidd’s contributions to exchanges with Jaeger that would seriously undermine her current claim that the sexual content of those exchanges was unwelcome or viewed by her as abusive.

We did not limit our inquiry to the experiences of Bixby, Cantlon and Kidd. The experiences of other women in the BCS community are also relevant to our legal analysis for several reasons. Under the law, “a plaintiff who herself experiences discriminatory harassment need not be the target of other instances of hostility in order for those incidents to support her claim.”⁵⁸⁶ Similarly, a plaintiff need not witness particular behavior in order for that behavior to be relevant to an objective assessment of the hostility of the environment.⁵⁸⁷ Thus, Bixby, Cantlon, Kidd or another future claimant could argue that behavior she heard about but did not herself experience is relevant to an assessment of whether she was subjected to an objectively and subjectively hostile environment.

Over the course of our review, we learned about several categories of behavior by Jaeger that were clearly inappropriate, unprofessional, offensive and reflected immaturity and poor judgment. In assessing whether such conduct would support a legal claim of unlawful sexual harassment—as contrasted against an assessment of whether it caused distress to some students, detracted from UR’s educational mission, harmed UR’s reputation, or was otherwise problematic—the legal touchstone remains whether any particular plaintiff was subjected to objectively and subjectively severe or pervasive harassing conduct. Following extensive interviews with women currently or formerly connected to BCS, including the majority of

⁵⁸⁶ *Whidbee v. Garzarelli Food Specialties, Inc.*, 223 F.3d 62, 69-70 (2d Cir. 2000).

⁵⁸⁷ See, e.g., *Schwapp v. Town of Avon*, 118 F.3d 106, 111-12 (2d Cir. 1997); *Perry v. Ethan Allen, Inc.*, 115 F.3d 143, 151 (2d Cir. 1997).

graduate students and post-doctoral fellows who worked in Jaeger's lab from 2007 through the present, we are not aware of any woman who we find was subjected to objectively and subjectively severe or pervasive harassing conduct, notwithstanding the various categories of unprofessional and disturbing behavior by Jaeger that we credit.

In particular, five categories of behavior or traits warrant further discussion.

First, Jaeger was sexually promiscuous in the period before 2014, and he developed a reputation as a "womanizer" as a result. He had four consensual sexual relationships with prospective, current or former UR students between 2007 and 2011, and he engaged in several more sexual encounters with other academics from UR and elsewhere. Although these relationships may evidence poor judgment, the law does not prohibit consensual relationships in the workplace. Courts consistently hold that it is not sex discrimination for a supervisor to engage in a workplace romance with a subordinate, even if the "paramour" enjoys preferential treatment, and that a sexual relationship between a male supervisor and a female subordinate does not, in itself, create a hostile environment for other women employees who may feel uncomfortable about the relationship.⁵⁸⁸ In addition, UR's Intimate Relationships Policy in effect before 2014 permitted, though it strongly discouraged, sexual relationships between faculty and students. While we recognize that Jaeger's consensual sexual relationships may have had a variety of negative consequences, including potentially undermining morale among female colleagues and students and damaging BCS's reputation, and that other employers and

⁵⁸⁸ See, e.g., *DeCintio v. Westchester Cty. Med. Ctr.*, 807 F.2d 304, 307-08 (2d Cir. 1986), *cert. denied*, 484 U.S. 825 (1987); *Kelly v. Howard I. Shapiro & Assocs. Consulting Eng'rs, P.C.*, 716 F.3d 10, 14 (2d Cir. 2013); *Krasner v. HSH Nordbank AG*, 680 F. Supp. 2d 502, 517-18 (S.D.N.Y. 2010); *Gale v. Primedia, Inc.*, No. 00-CV-5700, 2001 WL 1537692, at *3 (S.D.N.Y. 2001); *Foster v. Humane Soc'y of Rochester & Monroe Cty., Inc.*, 724 F. Supp. 2d 382, 392-94 (W.D.N.Y. 2010); *Fattoruso v. Hilton Grand Vacations*, 873 F. Supp. 2d 569, 576-77 (S.D.N.Y. 2012), *aff'd*, 2013 WL 2123088 (2d Cir. 2013).

educational institutions prohibit consensual relationships in order to avoid these types of potential harms, Jaeger’s consensual relationships do not support a legal finding of sexual harassment or a policy violation at the times they occurred. We are also aware of no evidence to support claimants’ characterization of Jaeger as a “sexual predator.” Critically, we are aware of no evidence—or even allegation—that Jaeger ever engaged in sexual assault or any other non-consensual sexual contact whatsoever.

Second, the evidence, including Jaeger’s admissions, establishes that Jaeger on occasion made sexual comments or jokes in conversations with students and peers. The evidence indicates that most of his comments were not considered “unwelcome.” Two former female students from Jaeger’s lab, for example, actively participated in sexual banter with Jaeger and never felt “demeaned” by or “uncomfortable” with Jaeger’s sexual comments. Several other credible witnesses, however, did express that they were bothered and distressed by his comments. Although there is evidence of a large number of inappropriate comments overall in the seven-year period between 2007 and 2014, and especially in the first few years of that range, given the nature of the comments, the social contexts in which most of them were made, and the lengthy time period covered, we do not believe the evidence would ultimately substantiate any potential plaintiff’s claim that the comments were sufficiently continuous and concerted to be deemed pervasive by a court and that the plaintiff was therefore subjected, as the law currently defines it, to severe or pervasive harassing conduct as a result of the comments.

Third, the evidence, including Jaeger’s admissions, also establishes that Jaeger engaged in flirtatious behavior, especially in social settings. For example, one former female student told us that Jaeger made “a pass” at her while they were with a group of students and faculty at a local bar in 2007, which she found unwelcome. Another student told us that Jaeger often stood

close to her and that he once touched her arm and said that “everybody should be a hedonist.” At a holiday party in 2008, Jaeger told a group of students and faculty that a male professor found a female graduate student attractive, and the female student, who was present for this highly inappropriate comment, was understandably deeply mortified. There is no evidence, however, that Jaeger’s flirtatiousness ever crossed a line into insistently pursuing a sexual relationship with any student or colleague after being rebuffed or refusing to take “no” for an answer.

Fourth, Jaeger consistently blurred social and professional lines and socialized more frequently with graduate students and post-doctoral fellows than other BCS faculty members. This pattern may have led some students to feel pressure to socialize with Jaeger. Indeed, one student who came to UR to work with another adviser, but also Jaeger, said she felt sufficiently uncomfortable that maintaining a professional relationship with Jaeger “needed to be integrated into a larger social component” that she eventually stopped working with him.

Fifth, Jaeger, primarily in his early years as a faculty member, was aggressive, demanding and harsh in critiquing students’ and colleagues’ academic work. Some students and post-doctoral fellows from those early years—men and women—described him as “mean,” “cruel” and a “bully.” As a result of these behaviors and his demeanor, some students of both genders avoided him in the academic setting, and he made some women, more than men, uncomfortable in social settings as well.

Our review indicates that, in the pre-2014 period, Jaeger’s reputation for promiscuity, his penchant for making sexual comments, his flirtatiousness, his blurring of boundaries and his harsh demeanor in academic contexts made him a polarizing figure within BCS. While he was liked and admired by many students and colleagues, he was disdained and avoided by others. Our review also indicates that his particular mix of traits and behaviors was more offensive and

off-putting to women than to men. At least ten female graduate students and post-doctoral fellows in BCS reported to us that they chose to avoid Jaeger, either socially or academically or both, in this period. We credit this evidence. And we credit that it is very problematic for a variety of reasons that more women than men would be put off by a particular professor's traits and behaviors. We note, though, that it is difficult or impossible to disentangle the motivating factors that would be supportive of a legal claim for sexual harassment (such as sexualized comments if they were pervasive) from those which would not (such as Jaeger's harshness as an academic critic). The perspective and experience of each woman with whom we spoke was different. Ultimately, while we fully appreciate that Jaeger's traits and behaviors in the pre-2014 period were harmful to a number of BCS students and to the BCS and greater UR communities in a variety of ways, we conclude that they did not violate applicable legal standards governing sexual harassment claims under Title VII, Title IX, the NYSHRL or UR Policy 106.

4. Discussion of Hostile Environment Claims Based on Jaeger's Conduct from 2014 Onwards

For the period from 2014 through the present, the evidence does not support a conclusion that any UR student or employee was subjected to unlawful sexual harassment as a result of Jaeger's conduct. All of the problematic traits and behaviors discussed in the prior section were essentially absent or markedly toned down in the period from 2014 forward. There is no evidence that Jaeger engaged in any sexual relationships in this period with anyone other than his current partner, who moved to Rochester in the fall of 2013.⁵⁸⁹ We found very little evidence that his reputation as a "womanizer" was known by students in the department after 2014, prior

⁵⁸⁹ The EEOC Complaint implies that Jaeger had a sexual experience with a prospective graduate student named "Jane Doe" in 2015. As addressed *supra*, at Section II.B.3, we found this allegation to be unfounded, and it was appropriately withdrawn in the federal complaint.

to the publication of the EEOC Complaint. One of Jaeger’s female graduate students, for example, stated that, prior to reading the EEOC Complaint, she was not aware at all of Jaeger’s previous sexual relationships with women or that he had a reputation as a “womanizer.” She said she was “surprised by the Complaint.” Another female graduate student said Jaeger “has given [her] compliments” during this period, but emphasized that Jaeger never “made a pass” at her and noted that she did not feel uncomfortable with such compliments.

There was also insufficient evidence to support any allegation that Jaeger’s sexual commentary and innuendo were unwelcome or pervasive during this period. All of the students and post-doctoral fellows we interviewed who worked with Jaeger since 2014 told us that they did not feel uncomfortable with any sexual comments or innuendo that Jaeger may have made in their presence, which, by all reports was, in any event, very infrequent.

The complaints claim that Jaeger maintained a non-inclusive boys’ club atmosphere in his lab. Our investigation revealed that the environment in Jaeger’s lab during the period from 2014 forward was, in fact, “very welcoming” and provided a sense of “community” for the individuals who were part of the lab. We found that students and post-doctoral fellows in the lab were “close-knit” and appeared to get along with each other and with Jaeger. In particular, various female undergraduates described feeling comfortable in the lab and being part of the lab “community.” We found no evidence of women in the lab being treated differently than their male peers or being excluded from professional or social opportunities.

The complaints assert that Jaeger facilitated binge drinking and drug use and pressured students to socialize. There was insufficient evidence to support this claim. Although Jaeger continued to socialize with students during this period, we found that students socialized with Jaeger voluntarily and without undue pressure, and there was no evidence to indicate that Jaeger

attended graduate-student parties uninvited. Jaeger’s female students told us that they “really enjoy [Jaeger’s] company and actually want him to be present at social events.” Witnesses denied that binge drinking or drug use was common. Although there was alcohol consumed at one lab retreat, students told us that “there was no drinking excessively and no one was falling over” and “nobody got rowdy.”

The complaints allege that Jaeger is a bully, whose “harsh criticism” was feared by his students. During the period from 2014 forward, none of the students or post-doctoral fellows whom we interviewed described Jaeger as a bully. Indeed, many of them stated that Jaeger’s criticism, while “direct,” was not “over the top” and was generally constructive. Overall, Jaeger’s students and post-doctoral fellows during this period consider him to be a very supportive mentor.

5. Summary of Sexual Harassment Conclusions

In sum, we find that the evidence does not support a conclusion that any Complainant or other UR student or employee has been subjected to unlawful sexual harassment as a result of Jaeger’s conduct. We emphasize that this is a legal conclusion, based on applying the facts as we understand them to precise legal standards that would govern a claim under Title VII, Title IX or the NYSHRL, and that apply derivatively to complaints made under UR Policy 106. We do not presume to be arbiters of any broader ethical or societal judgments, and we recognize that some of Jaeger’s conduct may be reprehensible to some relevant constituencies. By providing our legal conclusion, we do not imply that Jaeger’s conduct was free from fault or that a reasonable business judgment could not have been made by UR to respond to his behavior in a more punitive fashion than UR chose to do.

To the contrary, we fully appreciate that his conduct in the period before 2014 was, at times, reckless, immature and highly unprofessional. It may have harmed the BCS and broader UR communities in a variety of ways, including by undermining the academic mission and harming UR's reputation among students, prospective students, the broader academic community, alumni and donors. Because of concerns about these kinds of harms, many employers and educational institutions impose standards for defining prohibited sexual harassment that are more exacting than the standards which governed Jaeger's conduct, especially in the period before 2014; indeed, UR's own relevant policies have become more exacting and we are recommending that further enhancements be considered. Likewise, some municipalities (including New York City, for example) impose more exacting standards for defining prohibited sexual harassment, which some of Jaeger's conduct would likely have violated.

Our legal assessment here, however, must be grounded in the standards that governed Jaeger's conduct at the relevant times.

B. Retaliation⁵⁹⁰

1. Governing Legal Standards

Laws that prohibit sexual harassment also make it unlawful for an employer or educational institution to retaliate against those who in good faith complain about or engage in other protected activity to oppose sexual harassment. To establish a claim for unlawful retaliation, a plaintiff must prove that a materially adverse action was taken against her because

⁵⁹⁰ The federal complaint includes a number of causes of action in addition to the retaliation causes of action, such as defamation counts, but the gravamen of these claims is substantively duplicative of the retaliation claims.

she filed a sexual harassment complaint or engaged in other protected activities, such as participating in a sexual harassment investigation.⁵⁹¹

Not all activities receive protection from retaliation. There is no legal protection for making a complaint in bad faith or for engaging in behavior that disrupts an employer's legitimate fact-finding and deliberative processes. The law recognizes that, in addressing a claim of discrimination or harassment, employers are allowed to take action "to preserve a workplace environment that is governed by rules, subject to a chain of command, free of commotion, and conducive to the work of the enterprise."⁵⁹² As one court put it, "[a]lthough an individual has a right under Title VII to speak out against unlawful employment practices and discrimination, he does not have the right to do so in any manner he pleases."⁵⁹³

Only "materially adverse" actions against an employee who engages in protected activity support a retaliation claim.⁵⁹⁴ To be "materially adverse," the retaliation must be so "harmful" that it would dissuade a reasonable person from bringing a sexual harassment complaint.⁵⁹⁵ "[T]rivial harms" – the "petty slights or minor annoyances that often take place at work and that all employees experience" – are not enough to sustain a claim of retaliation.⁵⁹⁶

⁵⁹¹ *Papelino*, 633 F.3d at 91; *Matima v. Celli*, 228 F.3d 68, 78-79 (2d Cir. 2000).

⁵⁹² *Matima*, 228 F.3d at 79.

⁵⁹³ *Finn v. N.Y. State Office of Mental Health-Rockland Psychiatric Ctr.*, No. 08-CV-5142, 2011 WL 4639827, at *18 (S.D.N.Y. 2011), *aff'd*, 489 F. App'x 513 (2d Cir. 2012).

⁵⁹⁴ *Tepperwien v. Entergy Nuclear Operations, Inc.*, 663 F.3d 556, 568 (2d Cir. 2011).

⁵⁹⁵ *Shultz v. Congregation Shearith Israel of City of N.Y.*, 867 F.3d 298, 309 (2d Cir. 2017) (internal quotation marks omitted).

⁵⁹⁶ *Tepperwien*, 663 F.3d at 568 (internal quotation marks omitted).

2. Discussion of Retaliation Claims

The complaints attempt to characterize virtually every action taken by UR in response to and in the aftermath of the March 2016 complaint as unlawful retaliation. As a general matter, this characterization of UR's actions conflates unlawful retaliation with disagreement about UR's conclusions and decisions about Jaeger and about how to handle a sensitive situation. This has, unquestionably, been a wrenching period in the history of UR, and we appreciate that many people in the UR community, including the Complainants, have deeply held convictions about how the matter should have been decided and handled. We do not doubt that the Complainants genuinely believe that Jaeger should have been subject to more severe discipline and that UR made many missteps in the way it addressed the concerns raised and communicated about the issues. At the same time, we are sympathetic to the challenge UR faced in navigating a difficult personnel matter that spawned highly contentious internecine disagreements and, ultimately, a campus, alumni and public relations crisis. In such a climate, disagreements about UR's actions are inevitable.

For purposes of the legal analysis, though, UR's failure to acquiesce to the Complainants' views about how that matter should have been handled does not amount to retaliation prohibited by law. Under the law, an employer or educational institution has no obligation to acquiesce to a complaining witness' view about how a sexual harassment allegation should be investigated or handled, so long as the employer or educational institution does not take a materially adverse employment action against the complaining witness in retaliation for the witness engaging in protected conduct.

More specifically, we conclude that each of the allegations of unlawful retaliation contained in the complaints is legally flawed because they fail to satisfy one or both of the prongs necessary under the law.

First, the alleged retaliatory actions, whether considered in isolation or collectively, were not materially adverse. Putting aside the voluntary resignations of Aslin and Hayden (addressed below), we find that no other Complainant accusing the University of retaliation experienced any change in his or her employment status that could qualify as “materially adverse.” Indeed, contrasted against their purportedly feeling reprimanded or disrespected (which fails as a matter of law to qualify as “materially adverse”), many of the Complainants enjoyed objectively demonstrable advancements in their careers and status at UR during the period in which they claim that they suffered retaliation. For example, in May 2016, the Board of Trustees approved Cantlon’s promotion to Associate Professor with tenure;⁵⁹⁷ in September 2016, DeAngelis wrote a letter recommending Kidd for the Sloan Research Fellowship;⁵⁹⁸ in December 2016, Jaeger wrote a letter to “fully support” Mahon’s promotion to Associate Professor with tenure;⁵⁹⁹ in the spring of 2017, Jaeger wrote to “fully support” reappointing Kidd and Piantadosi as Assistant Professors following their third-year reviews;⁶⁰⁰ and, in 2017, Mahon was promoted to Associate Professor.

Second, for the reasons detailed in Section II.C, we found insufficient evidence to establish a linkage between UR’s actions and any protected activities. Instead, we determined

⁵⁹⁷ May 10, 2016 Email from G. DeAngelis to J. Cantlon.

⁵⁹⁸ Exhibit 44.

⁵⁹⁹ Exhibit 45.

⁶⁰⁰ Feb. 28, 2017 Email from F. Jaeger to G. DeAngelis.

that most of the purportedly “adverse” actions were taken in response to non-protected activities, such as breaching confidentiality during the investigation, attempting to recruit faculty members to the anti-Jaeger “side,” threatening Jaeger, engaging in “vigilantism,” and disrupting department meetings and decision-making.

The litany of actions characterized as retaliatory in the complaints is very lengthy, running into the dozens. We do not attempt in this legal analysis to address each such allegation individually, as we have already addressed the retaliation allegations in detail in Section II.C and explained why the evidence does not support them. Also, many of the allegations are patently insufficient to qualify as “materially adverse” employment actions under the law. Two broad categories of challenged actions, however, warrant further discussion because they appear to represent the primary themes of the Complainants’ retaliation claims.

(a) Express and Implicit Criticism

The core of the retaliation claims in the complaints appears to be that UR in its statements in the aftermath of the Nearpass investigation expressly or implicitly criticized Aslin, Cantlon and others, who were supportive of their views on the Jaeger matter. These challenged statements include, among others: (1) the July 2016 Letter discouraging “gossip”;⁶⁰¹ (2) the November 2016 Memo discussing a “wealth of rumors and in some instances misinformation”;⁶⁰² and (3) statements at the January 2017 faculty meeting discouraging “rumors” and “bullying.”⁶⁰³

⁶⁰¹ EEOC Compl. ¶ 210; Fed. Compl. ¶ 253.

⁶⁰² EEOC Compl. ¶ 237; Fed. Compl. ¶ 288.

⁶⁰³ *See, e.g.*, EEOC Compl. ¶ 306(c); Fed. Compl. ¶ 382(c).

As detailed at length in Section II.C, following the Nearpass investigation, Aslin, Cantlon and others engaged in disruptive, non-protected activity, such as antagonistic behavior towards fellow faculty members, efforts to recruit faculty members to their “side,”⁶⁰⁴ the unauthorized disclosure of confidential information, attempts to influence the investigative process and aggressive tactics relating to departmental hiring and retention decisions. Several witnesses told us these activities resulted in a “toxic” and “divided” department.⁶⁰⁵ For example, one senior faculty member told us that there was no “hostility” toward Aslin, Cantlon and others when they first brought their complaints about Jaeger’s conduct, but that attitudes towards them changed over time due to how they interacted with their peers, especially when attempts to recruit fellow faculty members to their “side” crossed the line into verbal threats, bullying and breaches of confidentiality.⁶⁰⁶ This faculty member said that Aslin, Cantlon and others became “combative towards those who didn’t agree with their decision to break confidentiality, [and some] faculty felt their words were manipulated to achieve certain ends, and faculty objected to having threats of departure used as a bargaining strategy.”⁶⁰⁷ Efforts by some faculty members to remain impartial were met with “bullying” and, eventually, this behavior led to the creation of a toxic environment within the department.⁶⁰⁸

⁶⁰⁴ July 1, 2016 Email from B. Hayden to Certain Complainants.

⁶⁰⁵ Oct. 13, 2016 Interview with Faculty 12; Oct. 23, 2017 Interview with Faculty 5; Nov. 28, 2017 Interview with R. Clark; Faculty 13 Notes on EEOC Complaint.

⁶⁰⁶ Faculty 13 Notes on EEOC Complaint.

⁶⁰⁷ *Id.*

⁶⁰⁸ *Id.*

The statements made by UR which the complaints seek to characterize as “retaliatory” were, by and large, attempts (albeit not successful) to lessen the divisiveness and discord caused by some of the Complainants’ non-protected activities. Lennie and Culver’s July 2016 Letter is an instructive example.⁶⁰⁹ The evidence shows that the letter was issued only after several faculty members, including Jaeger, complained to UR about breaches of confidentiality by certain of the Complainants.⁶¹⁰ Clark’s November 2016 Memo was likewise a response to good faith concerns raised about disruptive workplace behavior by certain of the Complainants.⁶¹¹ Dissatisfied with the outcome of the Nearpass investigation and subsequent appeal, Aslin sent Jaeger a letter on November 2, 2016 threatening to make the allegations public and vowing that Jaeger would “never have a joint research project, joint grant, or joint student” with him or Piantadosi.⁶¹² The November 2016 Memo was drafted only after the letter was brought to the attention of UR administrators, they interpreted it as a threat, and they determined that some statement aimed at trying to address the growing divisiveness and discord within the department was warranted.⁶¹³

In addition to concluding that the statements at issue were not made to retaliate against the Complainants for their protected activities (but rather were made in an attempt to address the

⁶⁰⁹ Exhibit 7.

⁶¹⁰ Oct. 24, 2017 Interview with P. Lennie; Oct. 30, 2017 Interview with G. Culver; Aug. 18, 2016 Email from F. Jaeger to G. DeAngelis, G. Norris and S. Wormer.

⁶¹¹ Exhibit 8.

⁶¹² Nov. 2, 2016 Letter from R. Aslin to F. Jaeger.

⁶¹³ We credit that three additional BCS professors—none of whom were among the Complainants—complained about the content of the November 2016 Memo. The thrust of their complaint, however, was that the memorandum contributed to department turmoil, not that it amounted to retaliation against claimants. Exhibit 38.

consequences of the Complainants' unprotected activities and the turmoil in BCS), we also conclude that the statements do not constitute "materially adverse" employment actions. Verbal reprimands and criticisms of an employee are not materially adverse employment actions. Even if a reprimand is based on "false[]" or erroneous facts or is otherwise unjustified, as the Complainants here assert, that alone does not transform the reprimand into an adverse employment action.⁶¹⁴ Additionally, "merely being given the proverbial cold shoulder by one's coworkers (even assuming that this could be imputed to the employer) is not enough to show that one has suffered an adverse employment action."⁶¹⁵ Thus, to the extent any of the Complainants were irritated or offended by statements which they contend expressed or implied a criticism of them, such reactions reflect the types of "trivial harms" or "petty slights or minor annoyances" that are legally insufficient to sustain a retaliation claim.⁶¹⁶

(b) Constructive Discharge

The federal complaint alleges that UR, in retaliation against them for their protected activities, "constructively discharged" Aslin, Heilbronner and Hayden. To establish a constructive discharge claim, a plaintiff must prove that the employer subjected him to conditions that were "so intolerable" that any "reasonable person" would have felt compelled to resign.⁶¹⁷

⁶¹⁴ See *Cody v. Cty. of Nassau*, 577 F. Supp. 2d 623, 645-46 (E.D.N.Y. 2008), *aff'd*, 345 F. App'x 717 (2d Cir. 2009).

⁶¹⁵ *McCullough v. Xerox Corp.*, 942 F. Supp. 2d 380, 387 (W.D.N.Y. 2013).

⁶¹⁶ *Tepperwien*, 663 F.3d at 568 (internal quotation marks omitted).

⁶¹⁷ *Green v. Brennan*, 136 S. Ct. 1769, 1776 (2016) (internal quotation marks omitted); *see also Petrosino*, 385 F.3d at 229.

As to Aslin, we conclude that, as a matter of law, the conduct to which he claims to have been subjected was not so “intolerable” that it would compel any reasonable person to resign. In addition, we conclude that most of the actions about which Aslin complains (such as the reprimands of him that he implies were embedded in the July 2016 Letter, the November 2016 Memo and comments at the January 2017 faculty meeting) were not “materially adverse” employment actions, as a matter of law, and were not, in any event, taken to retaliate against him for engaging in protected conduct.

Heilbronner and Hayden allege that they were constructively discharged, in retaliation against them for Hayden’s protected activities, because UR failed to offer a position in BCS to Heilbronner and failed to make a more attractive offer to try to retain Hayden.⁶¹⁸ As detailed in Section II.C, the evidence does not support conclusions either that the challenged decisions were motivated by any retaliatory animus or that Hayden or Heilbronner were subjected to such intolerable working conditions that a reasonable person in their positions would have felt compelled to resign. Although the evidence demonstrates that the deliberations about Heilbronner’s candidacy were highly contentious, our investigation indicates that the primary cause of that contention was the disruptive conduct of Cantlon and others, including repeated threats to resign if Heilbronner did not get an offer.⁶¹⁹ The fact that Jaeger, like a majority of his colleagues, voted to offer the open BCS position to someone other than Heilbronner also does not support a retaliation claim. As a faculty member, Jaeger was entitled to vote, and there is no evidence that his vote with the majority was motivated by any retaliatory animus.

⁶¹⁸ EEOC ¶¶ 326(d), 326(e); Fed. Compl. ¶¶ 437(d), 437(e), 447.

⁶¹⁹ Oct. 12, 2017 Interview with G. DeAngelis; Oct. 13, 2017 Interview with Faculty 12; Oct. 13, 2017 Interview with Faculty 13; Mar. 12, 2017 Email from G. DeAngelis to G. Culver and P. Lennie.

In any event, Heilbronner ultimately was orally offered a tenure-track position in neurology at URMC, a highly-coveted position in the academic world.⁶²⁰ Heilbronner was given a draft offer letter, which was in the process of being cleared by UR’s HR Department when Heilbronner accepted the offer from University of Minnesota. BCS also made Hayden a competitive offer similar to or greater than the retention offers previously received by most of his BCS colleagues.⁶²¹ In short, neither of them was subjected to working conditions that were so “intolerable” that any reasonable person subjected to them would have felt compelled to resign.

IV. POLICY ANALYSIS

We reviewed and analyzed UR’s policies and procedures relating to the handling of complaints alleging sexual harassment, and, as detailed below, we conclude that they comply with law and are substantially consistent with policies in effect at peer universities. We nevertheless make recommendations for further enhancements to the policies in Section V, and we note that certain of the Complainants’ suggestions for improvements in procedures and the complaint process for claimants and witnesses are well-taken and have informed both our review and recommendations.⁶²²

A. Intimate Relationships Policy

UR’s current Intimate Relationships Policy for faculty and students, enacted in May 2017, provides, in pertinent part:

⁶²⁰ Apr. 24, 2017 S. Heilbronner Offer Letter; Dec. 13, 2017 Interview with J. Foxe.

⁶²¹ May 5, 2017 B. Hayden Offer Letter.

⁶²² Although we make recommendations in Section V to revise and enhance certain policies, those recommendations should not be read to imply that the current policies do not comply with the law.

Faculty members shall not accept academic authority over any student or post-doctoral fellow with whom they currently share an intimate personal relationship, or with whom they have shared such a relationship in the past.

[...]

Faculty members shall not enter into romantic or sexual relationships with undergraduate students of the University, nor shall they enter into such relationships with any members of the University community (including all students and post-doctoral fellows and prospective students and post-doctoral fellows) over whom they exercise academic authority.⁶²³

The policy's definition of "exercising academic authority" is broad and includes conduct that goes beyond direct supervisory relationships between faculty and students, including "making professional recommendations, and taking actions to affect grades, grants, honors, and admission to academic programs."⁶²⁴

The policy allows for "[e]xceptions" when there is a "written plan to manage the professional relationships for the protection of the parties involved," which must be approved by the OOC.⁶²⁵ Faculty members are required to report their relationships that come within, or may come within, the scope of the policy.⁶²⁶

A prior version of the policy, in place before 2014, was considerably less strict. Under that policy, intimate relationships between faculty members and students, including

⁶²³ Exhibit 1.

⁶²⁴ *Id.*

⁶²⁵ *Id.*

⁶²⁶ *Id.* The UR Intimate Relationships Policy does not require third parties who learn of a prohibited faculty-student relationship to disclose that fact to superiors. The University's policy for all other supervisor-subordinate relationships (Exhibit 2), however, does place an affirmative disclosure obligation on third parties who learn of a conflicting relationship.

undergraduates, with whom the faculty member had a “direct, current supervisory or evaluative relationship” were “strongly discourage[d],” but not prohibited.⁶²⁷ In May 2014, the policy was revised to make it a violation for a faculty member to have an intimate relationship with an undergraduate student or with any member of the UR community (including graduate students and post-doctoral fellows) over whom the faculty member “exercise[s] the authority of [his or her] faculty position.”⁶²⁸ The policy in place in May 2014 also made it a violation for faculty members to “accept supervisory, evaluative, or advisory authority over any student or post-doctoral fellow with whom they currently share an intimate personal relationship, or with whom they have shared such a relationship in the past.”⁶²⁹

As noted, there were efforts in the wake of the Jaeger investigation and aftermath to further enhance the policy. The Administration and Faculty Senate worked to reform the policy from October 2016 until May 2017.⁶³⁰ The current version of the policy differs from the May 2014 policy in three key respects: (i) by expanding the scope of prohibited faculty-student relationships (with a broad definition of “academic authority,” that includes as examples “teaching, mentoring, supervising, making professional recommendations, and taking actions to affect grades, grants, honors, and admission to academic programs”); (ii) by adding warning

⁶²⁷ University of Rochester, *Faculty Handbook* (revised February 2007); *Faculty Handbook* (revised July 2008). Emails indicate that, in July 2012, Seligman and the OOC began to stress their shared view that the Intimate Relationships Policy should be made more restrictive. On July 19, 2012, Seligman wrote in an email to an OOC lawyer regarding his concern about “the inappropriateness of a faculty member being involved with a student who is in her or his class and whom he or she grades.” (July 19, 2012 Email from J. Seligman to S. Stewart.)

⁶²⁸ University of Rochester, *Faculty Handbook* (revised May 2014).

⁶²⁹ *Id.*

⁶³⁰ Nov. 30, 2017 Interview with Faculty 4 and Faculty 10.

language that where a power differential exists, “intimate relationships have the potential to expose both parties to conflict of interest, and can have adverse effects on the climate of a department or program”; and (iii) by requiring the OOC to approve any management plans.⁶³¹

The current Intimate Relationships Policy is consistent with federal law. Nothing in Title IX precludes a university from implementing policies prohibiting sexual conduct or sexual relationships between students and adult employees.⁶³² And while Title IX does not prohibit faculty-student relationships, guidance issued by the Department of Education’s Office of Civil Rights—the federal agency that administers and enforces Title IX—acknowledges that even when there is a supposed consensual relationship between an adult employee and a student, there is a strong presumption that sexual conduct between them is not consensual.⁶³³ Therefore, from a Title IX compliance perspective, it is generally advisable that a university implement some restrictions on faculty-student relationships.

It is notable that UR’s Intimate Relationships Policy is one of the more restrictive policies in academia.⁶³⁴ UR is, for example, one of the few universities in our sampling of 19 members

⁶³¹ Compare Exhibit 1, with University of Rochester, *Faculty Handbook* (revised May 2014).

⁶³² See U.S. Dep’t of Educ. Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, 6-7 (66 Fed. Reg. 5512, Jan. 19, 2001) (“Harassment Guidance”), available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>. While Title IX does not prohibit faculty-student relationships, guidance issued by the Department of Education’s Office for Civil Rights—the federal agency that administers and enforces Title IX—recognizes the unique concerns involved when the harasser is in a position of authority. *Id.* at 8.

⁶³³ *Id.*

⁶³⁴ We reviewed and analyzed relevant policies at 19 representative universities of the Association of American Universities (“AAU”), of which University of Rochester is a member. These universities are: Brown University, Case Western University, University of Chicago, Columbia University, Cornell University, Duke University, Emory University,

of the AAU to have an outright prohibition on relationships between faculty members and undergraduate students.⁶³⁵ One of the few universities in this sample group that has a stricter policy than UR is Stanford University, which prohibits relationships between faculty members and graduate students in the same department, program or division.⁶³⁶ Northwestern University does not prohibit faculty-graduate student relationships in the same department, but it does require disclosure so that a management plan can be put in place to deal with any potential conflicts of interest.⁶³⁷

B. Policy Against Discrimination and Harassment

UR Policy 106 is UR's policy against discrimination and harassment that applies to complaints made against faculty members, staff and other non-student members of the UR community.⁶³⁸ The current version of UR Policy 106, which came into effect in December 2013 and underwent minor, non-substantive revisions in 2014, defines sexual harassment as any

Harvard University, Johns Hopkins University, University of Michigan, New York University, Northwestern University, University of Pennsylvania, University of Southern California, Stanford University, Tulane University, Vanderbilt University, Washington University in St. Louis and Yale University.

In an Appendix, we provide a comprehensive benchmarking analysis comparing relevant University policies and procedures and those in effect at peer universities. *See Appendix B.*

⁶³⁵ Brown, University of Chicago and Yale are the only other universities in our sample to prohibit such relationships. *See id.*

⁶³⁶ Stanford University, *Administrative Guide 1.7.2 Consensual Sexual or Romantic Relationships in the Workplace and Educational Setting*, 2, available at <https://adminguide.stanford.edu/printpdf/chapter-1/subchapter-7/policy-1-7-2>.

⁶³⁷ Northwestern University, *Consensual Romantic or Sexual Relationships between Faculty, Staff and Students*, 3, available at http://policies.northwestern.edu/docs/Consensual_Relations_011314.pdf.

⁶³⁸ Exhibit 3.

“unwelcome sexual advances or requests for sexual favors, or other verbal or physical acts/conduct of a sexual or sex-based nature” when:

- 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or academic success;
- 2) submission to or rejection of such conduct by an individual is used as the basis for an employment or academic decision affecting such individual; or
- 3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work or academic performance or creates an intimidating, hostile, or offensive working or academic environment.”⁶³⁹

To qualify as harassment, the conduct must also be “sufficiently severe or pervasive” and “objectively and subjectively ha[ve] the effect of (1) unreasonably interfering with an individual’s work or equal access to education or (2) creating an intimidating, hostile, or offensive work or academic environment.”⁶⁴⁰

UR Policy 106 mirrors federal laws and regulations defining and proscribing sexual harassment and is similar to how other universities define sexual harassment.⁶⁴¹

⁶³⁹ *Id.* The first and second elements described above refer to so-called *quid pro quo* sexual harassment, while the third element refers to hostile work/academic environment sexual harassment.

⁶⁴⁰ Exhibit 3 (emphasis in original).

⁶⁴¹ See 29 C.F.R. § 1604.11 (“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.”); Appendix B.

UR Policy 106 also “prohibits retaliation [by the UR] against any person who complains of or opposes perceived unlawful discrimination or harassment, including those who participate in any investigation under this policy or other proceeding involving a claim based on a protected class.”⁶⁴² The policy defines retaliation as “adverse action” taken against an individual.⁶⁴³ UR Policy 106’s prohibition on retaliation is also consistent with Title VII, Title IX and the anti-retaliation policies of other schools.⁶⁴⁴

C. Policy on Conflicting Relationships

UR’s Conflicting Relationships Policy, or UR Policy 121, has traditionally been considered an anti-nepotism policy. It provides that “[n]o employee involved in employment decisions may make, participate in, or attempt to influence employment or evaluative decisions involving a relative or closely related person,” with “relative or closely related person” defined to include “any individual currently or within the prior two years sexually or romantically involved in a consensual relationship with any University employee.”⁶⁴⁵ UR Policy 121 requires that conflicting relationships be disclosed and a management plan be put in place.⁶⁴⁶

An older version of the policy, in effect from 2005 to 2012, did not define conflicting relationships to include supervisors and subordinates in an intimate relationship.⁶⁴⁷

⁶⁴² Exhibit 3.

⁶⁴³ *Id.*; *see supra*, at Section III.B.1.

⁶⁴⁴ 42 U.S.C. § 2000e-3(a); 34 C.F.R. § 106.71 (incorporating 34 C.F.R. § 100.7(e) by reference).

⁶⁴⁵ Exhibit 2.

⁶⁴⁶ *Id.*

⁶⁴⁷ University of Rochester, *Policy 121* (revised June 2005).

Compared with the AAU universities in our sample, UR now has one of the more robust and restrictive nepotism policies from the perspective of prohibiting intimate relationships, providing for procedures for reporting and management of such relationships, and establishing discipline for violations of the policy.⁶⁴⁸

D. Information Technology Policy

Although noting that faculty and other users “have reasonable expectations of privacy in their uses of IT Resources,” UR’s IT Policy broadly authorizes UR to access and review emails sent, received, created, or stored on UR systems.⁶⁴⁹ Emails stored on UR servers that are “personal”—*i.e.*, “faculty and student research, teaching, learning or personal (*i.e.* non-University related) emails”—can be accessed and reviewed when such access is “determined reasonable” by a senior administrative officer or IT Management.⁶⁵⁰ As relevant here, the policy explicitly provides that access is “reasonable” in order “[t]o investigate or prevent a violation of law or University policy” and “[t]o comply with a subpoena, warrant, court order or similar legal process, including a discovery request or a litigation stay order issued by or investigation undertaken by the OOC in connection with a potential claim in anticipation of litigation.”⁶⁵¹ The policy provides that all other emails prepared by a faculty member in connection with his or her job responsibilities are “University Communications” that can be accessed by the University “as needed for the purpose of carrying out University Business without seeking prior approval.”⁶⁵²

⁶⁴⁸ See Appendix B.

⁶⁴⁹ Exhibit 15.

⁶⁵⁰ *Id.*

⁶⁵¹ *Id.*

⁶⁵² *Id.*

UR's IT Policy is fully consistent with the policies of peer universities, which also permit the review of emails stored on university servers in connection with investigations into violations of university policies or procedures, among other reasons.⁶⁵³ Like UR, many universities indicate that users have a reasonable expectation of privacy, but then also broadly allow review and collection of emails.⁶⁵⁴

E. Investigation Policies and Procedures

UR's policies and procedures relating to investigations of sexual harassment allegations are substantially in compliance with the requirements of Title VII and Title IX and consistent with the policies of most peer universities.⁶⁵⁵

Pursuant to UR Policy 106, sexual harassment and discrimination can be reported to the relevant department chair or dean, the Office of Human Resources, the Equal Opportunity

⁶⁵³ For example, the policy applicable to Harvard University's T.H. Chan School of Public Health explicitly states that "Employees have no expectation or right of privacy in anything they create, store, send, or receive on Harvard's computers, networks or telecommunications systems." Harvard University T.H. Chan School of Public Health, *Information Security and Privacy*, available at <https://www.hsph.harvard.edu/information-technology/resources/policies/security-privacy-policies/information-security/>. Columbia University's policy provides that "in the context of a litigation or an investigation, it may be necessary to access Data with potentially relevant information." Columbia University, *Acceptable Usage of Information Resources Policy*, 2, available at http://policylibrary.columbia.edu/files/policylib/imce_shared/Acceptable_Information_Resources_Usage.pdf.

⁶⁵⁴ Columbia, for example, notes that it "respects the privacy of individuals and keeps User files and emails . . . as private as possible." Columbia University, *Acceptable Usage of Information Resources Policy*, 2.

⁶⁵⁵ During the course of the investigation, we were contacted by only one person (a parent) with concerns about how a student-on-student sexual assault complaint had been handled. We reviewed that complete file and found nothing to suggest that the University mishandled the complaint. Rather, the University investigated the complaint, offered academic accommodations and counseling for the student involved and worked to ensure the student's safety despite the fact that the student chose not to make a formal report.

Compliance Office, the Office of the Intercessor or the OOC.⁶⁵⁶ If the matter cannot be resolved through informal measures, a formal written complaint is prepared and submitted either to the OOC or HR for “assessment and prompt investigation.”⁶⁵⁷ UR Policy 106 gives investigators broad discretion in conducting investigations, but provides that investigations “will include an interview with the individual who has made the complaint and interviews of other witnesses with knowledge relevant to the complaint.”⁶⁵⁸ UR Policy 106 explicitly states that third parties, including attorneys, may not participate in investigations.⁶⁵⁹

UR’s Policy 106 process is consistent with federal law, which requires that a university establish a system for the prompt and equitable resolution of complaints of sexual harassment.⁶⁶⁰ UR’s procedures are also consistent with most peer universities’ policies, which also grant investigators wide discretion.⁶⁶¹ Some universities allow complainants and respondents to have

⁶⁵⁶ Exhibit 3. A recent EEOC report on workplace harassment endorses “reporting systems that are multifaceted, including a choice of procedures, and choices among multiple ‘complaint handlers.’” (U.S. Equal Emp’t Opportunity Comm’n, *Report of the Select Task Force on the Study of Harassment in the Workplace* 41 (June 2016), available at https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.) The report notes that a “multi-faceted system might offer an employee who complains about harassment various mechanisms for addressing the situation.” (*Id.*)

⁶⁵⁷ Exhibit 3.

⁶⁵⁸ *Id.*

⁶⁵⁹ *Id.*

⁶⁶⁰ U.S. Dep’t of Educ. Office for Civil Rights, *Title IX Resource Guide*, 4 (Apr. 2015), available at <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>.

⁶⁶¹ See Appendix B.

representatives during the investigative process and provide complainants with the option to have their complaint considered at a hearing.⁶⁶²

UR Policy 106 states that “[w]hile every effort will be made to protect the privacy of all parties, confidentiality cannot be guaranteed.”⁶⁶³ This policy is consistent with Title VII and Title IX guidance, which only require that confidentiality be maintained where feasible.⁶⁶⁴ Other universities make clear in their policies that confidentiality cannot be guaranteed during the investigative process.⁶⁶⁵ Some universities, now including UR, compel participants in investigations to respect the confidentiality of the process.⁶⁶⁶

Since the conclusion of the Jaeger investigation and following criticism of the lack of clearly established rules about what participants in a confidential investigation may disclose to others, the OOC prepared a one-page information sheet about the UR Policy 106 process and, since September 2016, now provides that to witnesses.⁶⁶⁷ The document states that the “University requires that you keep anything related to your interview (including any information

⁶⁶² See, e.g., Duke University, *Harassment Policy & Procedures* 11-12, available at <https://oie.duke.edu/sites/default/files/u32/Harassment%20Policy%20and%20Procedures%2014September2017.pdf>.

⁶⁶³ Exhibit 3.

⁶⁶⁴ Harassment Guidance, at 17-18; U.S. Equal Emp’t Opportunity Comm’n, *Policy Guidance on Current Issues of Sexual Harassment* (last modified June, 21, 1999), available at <https://www.eeoc.gov/policy/docs/currentissues.html>.

⁶⁶⁵ See Appendix B.

⁶⁶⁶ Exhibit 14. Cornell, for example, requires witnesses to comply with the university’s rules regarding privacy. (Cornell University, *Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct*, 18, available at https://www.dfa.cornell.edu/sites/default/files/vol6_4.pdf.)

⁶⁶⁷ Jan. 8, 2018 Email from C. Nearpass to Debevoise & Plimpton LLP.

discussed during the interview and the fact that an investigation is taking place) confidential.

Please do not discuss this investigation or the allegations that are being investigated with anyone.”⁶⁶⁸

While the new one-page information sheet may have been a useful step, we believe more analysis and work on this issue is necessary. Devising an appropriate policy regarding confidentiality in workplace and academic investigations is a complex undertaking, involving a careful balancing of conflicting interests and legal considerations. On the one hand, there are compelling reasons for imposing measures to preserve confidentiality, including to protect privacy and reputations, and to encourage people to report misconduct and to be forthcoming in investigations without fear of embarrassment or reprisal. For these reasons, EEOC Guidance, like UR Policy 106, as enhanced by the one-page information sheet, emphasizes the importance of maintaining confidentiality to the extent possible in conducting an investigation of alleged harassment.⁶⁶⁹ On the other hand, the law protects the rights of employees to engage in protected “concerted activities,” which includes dialogue about sensitive issues impacting their working environments.⁶⁷⁰ The National Labor Relations Board, therefore, has held that workplace rules purporting to prohibit any discussion of workplace investigations must be limited to contexts in which there has been a specific determination that such an instruction is necessary to serve legitimate interests.⁶⁷¹

⁶⁶⁸ Exhibit 14.

⁶⁶⁹ U.S. Equal Emp’t Opportunity Comm’n, *Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors*, § V.C.1 (last modified Apr. 6, 2010).

⁶⁷⁰ 29 U.S.C. § 157.

⁶⁷¹ *The Boeing Co.*, 362 N.L.R.B. 195 (2015); *Banner Health Sys. d/b/a/ Banner Estrella Med. Ctr.*, 362 N.L.R.B. 137 (2015).

In light of the complexity of the issues, and the competing considerations and regulatory guidance, we recommend that UR engage outside counsel to assist with further refining UR's approach to addressing confidentiality issues in investigations, as set forth in Section V.A.5.

UR Policy 106 provides for the preparation of a written report of findings, which is submitted to the appropriate decision-maker, who will issue a written determination of the outcome.⁶⁷² The written determination is provided to the complainant, the accused and appropriate administrative personnel.⁶⁷³ This complies with federal law standards for investigative reports, which require that both parties (the complainant and accused) be notified, in writing, of the outcome of both the complaint and any appeal.⁶⁷⁴ UR's policy is also consistent with the policies of peer universities in our sample, the majority of which provide that

⁶⁷² Exhibit 3. From 2012-16, the years for which we have data about the outcome of complaints, there were 195 complaints brought pursuant to Policy 106. Of those, five resulted in a finding of a violation of Policy 106, seven resulted in a finding of no violation but the need for further remedial action to address inappropriate conduct, and nine resulted in an appeal. (Employment-Related Legal Claims Update (2016 Summary), 6; Employment-Related Legal Claims Update (2015 Summary), 6; Employment-Related Legal Claims Update (2014 Summary), 4-5; Employment-Related Legal Claims Update (2013 Summary), 4; Employment-Related Legal Claims Update (2012 Summary), 2; Metrics: Lawsuits and Agency Claims: Employment.) The remaining complaints either were determined to fall outside the scope of Policy 106 and not investigated, resolved without an investigation through the Intercessor's office, or investigated and determined that there was no violation of Policy 106. (*Id.*)

Since 2014, when the University began maintaining statistics about the categories of Policy 106 complaints, the most commonly alleged type of discrimination in Policy 106 complaints is sex/gender discrimination (including sexual harassment). Of the 135 complaints filed under Policy 106 from 2014-16, 56 dealt with sex/gender discrimination (including sexual harassment). (Employment-Related Legal Claims Update (2016 Summary), 6; Employment-Related Legal Claims Update (2015 Summary), 6; Employment-Related Legal Claims Update (2014 Summary), 4 n. 5.)

⁶⁷³ Exhibit 3.

⁶⁷⁴ Harassment Guidance, at 20.

the complainant and respondent should be notified of the outcome of a complaint or investigation.⁶⁷⁵

F. Sexual Harassment Training

UR currently mandates that faculty members, staff, graduate students and undergraduate students all undergo mandatory training sessions regarding sexual misconduct and UR Policy 106.⁶⁷⁶ UR only recently introduced mandatory training. Several witnesses with whom we spoke complained about the lack of adequate training on this topic and recommended that UR expand its offerings. One former student said that she could not recall receiving any training on sexual harassment or appropriate workplace relationships. She said, “the University’s failure to effectively train graduate students on these matters is problematic because it left graduate students unable to know what behaviors were and were not acceptable, and unsure how and when to report inappropriate workplace behaviors.”⁶⁷⁷ Other students echoed these concerns, with four students saying that they would not have known where to report complaints of sexual

⁶⁷⁵ Cornell University allows for the release of a “public statement of its findings of fact, conclusions, and recommendations,” although will only do so after taking into account any concerns about confidentiality. (Cornell University, *Procedures for Resolution of Reports against Faculty Under Cornell University Policy 6.4*, 18, available at https://hr.cornell.edu/sites/default/files/documents/faculty_policy6.4procedures.pdf.) In certain circumstances, Cornell also engages in actions to restore the respondent’s reputation, such as notifying persons who participated in the investigation, and/or a public announcement of the outcome. (*Id.* at 7.)

⁶⁷⁶ Jan. 3, 2018 Email from M. Levy to Debevoise & Plimpton LLP; Nov. 14, 2017 Interview with G. Norris; Nov. 15, 2017 Interview with M. Levy; Nov. 15, 2017 Interview with M. Sturge-Apple. Federal law does not require employers or universities to offer training on sexual harassment and grievance procedures, but regulators strongly encourage such training. (See 29 C.F.R. § 1604.11(f).) UR’s training complies with these advisory guidelines.

⁶⁷⁷ Nov. 14, 2017 Statement from Graduate Student 8.

harassment.⁶⁷⁸ Many faculty members with whom we spoke also said that the training they received was ineffective. One faculty member said the training did not explain how to report complaints of sexual harassment or what would happen after those complaints were reported.⁶⁷⁹ The general consensus was that UR needs to do a better job of explaining what constitutes sexual harassment and the process surrounding sexual harassment complaints and investigations.⁶⁸⁰

UR implemented mandatory online sexual misconduct training for all faculty members and staff for the first time in 2013.⁶⁸¹ The mandatory training has been offered twice: during the 2013-2014 academic year and the 2015-2016 academic year.⁶⁸² The modules address UR policies relating to sexual harassment and gender-based discrimination, resources for reporting harassment and discrimination, and harassment within the context of college campuses. The current training module does not, however, address UR's policy on faculty-student relationships other than to provide a link to the relevant portion of the UR Intimate Relationships Policy. To encourage participation by faculty members, salary increases were not given to any UR

⁶⁷⁸ Oct. 24, 2017 Interview with Graduate Student 10; Oct. 25, 2017 Interview with Graduate Student 20; Nov. 27, 2017 Interview with Graduate Student 30; Nov. 2, 2017 Interview with Graduate Student 2.

⁶⁷⁹ Oct. 17, 2017 Interview with Faculty 19.

⁶⁸⁰ Over the course of the investigation, we were contacted by six UR alumna who described experiencing some type of sexual harassment by UR faculty during their time at the University. Some never reported and some did report and were dissatisfied with the way the complaint was handled. Each of these accounts, which took place long before mandatory training was imposed, demonstrated how critical effective training is to all—victims, bystanders, and people to whom others turn with these concerns.

⁶⁸¹ Nov. 14, 2017 Interview with G. Norris.

⁶⁸² *Id.*

employee who failed to complete the program.⁶⁸³ While such training was not required before 2013, including at the time of Jaeger’s arrival to UR in 2007, training courses were available through HR and employees could have participated if they desired.⁶⁸⁴ According to Barbara Saat, UR’s Director of HR Services, faculty members rarely exercised this option.⁶⁸⁵

The training offered in 2013-2014 was prepared by United Educators, a company that specializes in preparing training courses for colleges and universities.⁶⁸⁶ The training offered to faculty members in 2015-2016 was prepared in-house by the University and was subject to some criticism.⁶⁸⁷ According to the complaints, at a department-wide BCS dinner event, Jaeger characterized the mandatory sexual harassment training offered in 2015 as “stupid.”⁶⁸⁸ We spoke to five people who attended the event, including Jaeger, and we credit this allegation.⁶⁸⁹ Jaeger did not remember calling the training “stupid,” but said he complained about the training because he did not think it was very effective.⁶⁹⁰ Others with whom we spoke agreed.⁶⁹¹

⁶⁸³ *Id.*

⁶⁸⁴ Nov. 30, 2017 Interview with B. Saat.

⁶⁸⁵ *Id.*

⁶⁸⁶ Nov. 17, 2017 Interview with G. Norris.

⁶⁸⁷ *Id.*

⁶⁸⁸ EEOC Compl. ¶ 123; Fed. Compl. ¶ 180.

⁶⁸⁹ Oct. 23, 2017 Interview with Graduate Student 21; Oct. 12, 2017 Interview with Administrator 3; Dec. 17, 2017 Interview with Faculty 7; Nov. 1, 2017 Interview with Faculty 8; Dec. 18, 2017 Interview with F. Jaeger.

⁶⁹⁰ Dec. 18, 2017 Interview with F. Jaeger.

⁶⁹¹ Nov. 14, 2017 Interview with G. Norris.

UR also provides mandatory sexual harassment and sexual misconduct training to students.⁶⁹² The University has made it mandatory for all incoming graduate and undergraduate students to complete both in-person and online sexual misconduct and Title IX training since 2014.⁶⁹³

We reviewed HavenPlus, the graduate student-specific online training module, and found it to be effective and comprehensive. The module addresses domestic partner violence, sexual harassment, stalking and sexual assault. The training also touches upon personal and professional boundaries and navigating faculty-student interactions. The training module also contains a section on how to create a respectful community and academic environment, and warns against sexist language by providing various examples of inappropriate language. At various points throughout the online training, students are required to review UR's relevant

⁶⁹² The implementation of mandatory sexual harassment and sexual misconduct training, and the greater awareness that such training engenders among students and employees about such behavior, generally results in an increase in the number of complaints that are filed. (See U.S. Equal Emp't Opportunity Comm'n, *Select Task Force on the Study of Harassment in the Workplace* 46 (June 2016) ("[T]raining can increase the ability of attendees to understand the type of conduct that is considered harassment and hence unacceptable in the workplace.").) In a study that evaluated anti-harassment training at two large employers, "complaints to the human resources department did increase after the training." UR witnessed a substantial increase in Policy 106 complaints in 2016 and attributes the rise to its recent expansion of mandatory anti-harassment training. (Employment- Related Legal Claims Update (2016 Summary), 7.)

⁶⁹³ Jan. 3, 2018 Email from M. Levy to Debevoise & Plimpton LLP. In 2016-2017, the University began imposing consequences for a student's failure to complete a training course. Incoming undergraduate students who failed to complete the online training by October 20, 2016 had a registration hold placed on their accounts. (*Id.*; Nov. 15, 2017 Interview with M. Levy.) Beginning in the 2017-2018 academic year, incoming graduate students will have a registration hold applied to their accounts if they fail to timely complete training. (Jan. 3, 2018 Email from M. Levy to Debevoise & Plimpton LLP.) Beginning in the 2016-2017 academic year, the medical school and dental school began imposing a fine against incoming students who fail to complete the training. (Jan. 3, 2018 Email from M. Levy to Debevoise & Plimpton LLP.)

policies in order to progress to the next screen. The training module also contains resources available to victims or individuals who want to learn more.

The mandatory in-person training session for incoming graduate students led by Levy addresses the requirements and prohibitions of Title IX, the role of the Title IX Coordinator, how to contact the Title IX Coordinator and a high-level overview of UR policies against discrimination and harassment. UR also offers additional, optional in-person training sessions, including training about maintaining a boundary between personal and professional settings.

Like HavenPlus, Haven, the online training course on sexual harassment and misconduct that is required for undergraduate students, also focuses on sexual assault, dating violence, stalking and sexual harassment. The module does not, however, include much of the material addressing faculty-student interactions and navigating personal/professional boundaries offered in HavenPlus.

Prior to implementing mandatory online training in 2014, both graduate students and undergraduate students received separate, in-person presentations on Title IX and sexual misconduct. According to Levy, this practice dated back to 2008.⁶⁹⁴ The training session addressed Title IX and Title VII and identified UR Policy 106 as a resource for students who wished to file a complaint.

V. POLICY RECOMMENDATIONS

Based on our review and analysis of the University's relevant policies and procedures, our comparison of such policies and procedures to those of peer universities and our consideration of the factual findings of our investigation, we recommend the following steps to

⁶⁹⁴ Jan. 3, 2018 Email from M. Levy to Debevoise & Plimpton LLP.

enhance the University's sexual harassment compliance program. We emphasize that most of our recommendations are recommendations to be considered by the University with input from its various stakeholders before they are implemented.

As a general matter, and as detailed below, the University should implement clearer and more robust procedures for investigating and responding to claims of sexual harassment against faculty members. The University should also consider whether the human resources function is sufficiently integrated into addressing sexual harassment issues and whether the resources devoted to the human resources function are sufficient. This recommendation and others that follow stem from the fact that there is widespread confusion among members of the University community about the University's reporting and investigative processes with respect to sexual harassment.⁶⁹⁵ During the Nearpass investigation, the Curtin investigation, the related appeals and Bixby's complaints, both the claimants and Jaeger expressed confusion over what to expect from the process, which policies applied, and who in the administration to contact.⁶⁹⁶ There should be no misunderstanding with regard to how to make a complaint and what to expect from

⁶⁹⁵ Over the course of the Investigation, we were contacted by or learned about two individuals who believe that the University has retaliated against them. We have not investigated them separately, as they are outside of the scope of our investigation, but note one theme, which was confusion over the complaint process. The information we received counsels that the University should look carefully at the handling of complaints and treatment of complainants. The addition of claimant and respondent advisers, as well as the plain language brochure explaining the complaint process, *see infra*, at Section V.A.1, should help to address these concerns and make what can be a difficult process less so.

⁶⁹⁶ C. Curtin's Notes from Aug. 16, 2016 Interview with C. Kidd; C. Curtin's Notes from Aug. 22, 2016 Interview with J. Cantlon; C. Curtin's Notes from Aug. 26, 2016 Interview with R. Aslin; C. Curtin's Notes from Aug. 29, 2016 Interview with F. Jaeger; C. Curtin's Notes from Sept. 14-16, 2016 Interview with E. Newport; June 25, 2016 Email from K. Bixby to W. Heinzelman; Aug. 24, 2016 Emails between K. Bixby and W. Heinzelman.

the investigative process. These recommendations also are intended to address concerns that there are insufficient protections for claimants and the accused in an investigation.

Specifically, we recommend the following steps.

A. For the President and General Counsel

1. Notice of Investigative Process and Rights

When an investigation is opened, each party should be provided with clear written notice of the investigative process and steps. Although a resource of this type exists as Appendix C to the University's Student Sexual Misconduct Policy, no similar resource exists addressing sexual harassment complaints against faculty. To this end, no later than three months from today, the University should prepare and begin using a plain English "Advice of Rights and Procedures" brochure for claimants or potential claimants, witnesses and the accused to be provided at the outset of any investigation of a sexual harassment claim against a faculty member, or any inquiry about making such a claim. This written tool should include clear information on, among other topics: how and where claims may be made; how any investigation will proceed; sources of support; the obligations of confidentiality, both during and after the investigation is concluded and a decision is rendered; and how, whether and when claimants, witnesses and the accused will be informed about the progress, conclusion and any action taken in response to a claim.

We make this recommendation in light of the confusion over the University's investigative process that was expressed by the parties in the Nearpass Investigation.⁶⁹⁷ The Complainants allege that complainants, the accused and witnesses are not informed of their rights, their entitlement to confidentiality or how the process will unfold.⁶⁹⁸ Several universities

⁶⁹⁷ See *supra*, at n. 696.

⁶⁹⁸ EEOC Compl. ¶¶ 113, 135; Fed. Compl. ¶¶ 170, 193.

provide such information in a fact sheet or flow chart to complainants and respondents, including Case Western and Johns Hopkins.⁶⁹⁹ For example, at Johns Hopkins, upon receiving a complaint, the university will provide the complainant with a written explanation of his or her rights and options and the resources available to assist the complainant.⁷⁰⁰ If an investigation is opened, the Title IX Coordinator will notify the complainant and respondent simultaneously in writing of the alleged violation being investigated and will provide the complainant and respondent with a written explanation of their rights and options during the resolution process, including the availability of interim measures and support services.⁷⁰¹ The Title IX Coordinator also ensures that both the complainant and respondent are updated throughout the investigative process.⁷⁰²

By providing this information at the outset of an investigation in a straightforward, uniform way, the University could help avoid subsequent frustration with the process, as was experienced in this case.

In addition, a protocol and template should be developed for communicating information about the conclusion of an investigation to the claimant, the accused and all witnesses.

⁶⁹⁹ Johns Hopkins University, *Harassment and Discrimination Procedures*, available at <http://oie.jhu.edu/discrimination-and-harassment/harassment-and-discrimination-complaint-procedures/index.html>; Case Western Reserve University, *Sexual Misconduct Policy*, at 15, available at <https://students.case.edu/policy/sexual/doc/sexualmisconductpolicy.pdf>.

⁷⁰⁰ Johns Hopkins University, *Harassment and Discrimination Procedures*.

⁷⁰¹ *Id.*

⁷⁰² *Id.*

2. Advisers for Claimants and Accused

The University should immediately develop a list of University personnel from among those who can serve as advisers to claimants and accused parties in matters involving claims of sexual harassment against faculty members. The list should reflect a diverse pool of trained advisers, including academic deans, faculty members and other officers, similar to the pool of advisers made available to those participating in investigations pursuant to the Student Sexual Misconduct Policy, which is coordinated by the University's Judicial Officer. The University should notify all claimants, potential claimants and faculty of the availability of such advisers, specifying the range and purpose of such service and the confidentiality accorded to the consultations. Then, no later than three months from today, the University should hire two new counsel to be initially assigned to the OOC, one of whom will serve as an adviser to claimants, or potential claimants, on claims of sexual harassment or sexual misconduct involving faculty members, and the other to serve as an adviser to accused parties. If a separate office is established to investigate claims of sexual harassment or sexual misconduct by faculty members, these advisers should be transferred to that office.

This change would align the University with many other universities' policies, including those of Harvard, Columbia, Case Western and Cornell, which allow both parties to have advisers during the investigative process.⁷⁰³ Similarly, the University of Rochester's Student Sexual Misconduct Policy allows students to have advisers during the investigative process.⁷⁰⁴

⁷⁰³ See Harvard University, *Sexual and Gender-Based Harassment Policy and Procedures for the Faculty of Arts and Sciences*, at 16, available at https://www.fas.harvard.edu/files/fas/files/fas_sexual_and_gender-based_harassment_policy_and_procedures-1-13-16.pdf; Case Western Reserve University, *Sexual Misconduct Policy*, at 22, available at <https://students.case.edu/policy/sexual/doc/sexualmisconductpolicy.pdf>; Columbia University, *Employee Policy and Procedures on Discrimination, Harassment, Sexual*

This change also will provide parties with additional guidance throughout the investigative process—guidance that to some extent was lacking in connection with the investigations that took place in this matter. Although the advisers will not serve as the lawyers for the claimants or the accused, they will be able to knowledgeably advise on matters of policy, procedure, process and other sources of support. Neither of the new counsel should advise or represent the University on claims or litigation involving claims of sexual harassment, sexual discrimination or other kinds of employment discrimination, although they may be assigned other legal duties and/or duties involving sexual harassment training.

3. Training Programs

Within three months, the University should undertake and complete a review of the training that it provides on sexual harassment to faculty, students, staff and trainees, with the objective of providing state-of-the-art, mandatory training to the entire University community on at least an annual basis and when anyone first enters the University community. In order to achieve this objective, greater resources, including funding, will be needed. The number of training sessions almost certainly will need to be increased. In-person training, including peer training for students, would be preferable, but online training could be used if necessary. Training should cover, among other topics, faculty/undergraduate and faculty/graduate student relationships and interactions, none of which is sufficiently addressed in current training programs. Training also should include a clear explanation of the complaint and investigation

Assault, Domestic Violence, Dating Violence, and Stalking, at 18, available at http://eoaa.columbia.edu/files/eoaa/content/EOAAPolicyFebruary2017.final_.pdf; Cornell University, *Procedures for Resolution of Reports Against Faculty Under Cornell University Policy 6.4*, at 8, available at <https://titleix.cornell.edu/procedure/>.

⁷⁰⁴ University of Rochester, *Student Sexual Misconduct Policy*, at 8, available at <https://www.rochester.edu/sexualmisconduct/assets/pdf/StudentSexualMisconductPolicy.pdf>

process. Training initiatives should be considered as part of the evaluation process for department chairs.

As we have noted, many faculty and students alike lacked clarity and certainty regarding what the University's policies actually permitted, prohibited, and required. This uncertainty was particularly acute before 2013: the University did not implement organized, campus-wide sexual harassment training for all employees until 2013.⁷⁰⁵ While the change in 2013 was a step in the right direction, the current training for employees does not deal at all with faculty-student relationships. The significance of this gap in training is underscored by Jaeger's conduct and the University's and the claimants' responses to such conduct. We believe that incorporating this topic into the training will help to prevent similar situations in the future, and by including training initiatives as part of the evaluation process for department chairs, leadership will be more incentivized to give training the attention and funding it needs. Annual training on key policies is increasingly a standard tenet of compliance programs at large institutions, not only in the business world, but also in other sectors. We believe the University should be at the forefront of this trend.

Student sexual harassment training is also now mandatory.⁷⁰⁶ Although the students' online training is thorough and effective, we recommend increased peer training, which, in the views of Norris and Levy, among others, is a particularly effective method of delivering such training.⁷⁰⁷

⁷⁰⁵ Nov. 14, 2017 Interview with G. Norris.

⁷⁰⁶ Nov. 15, 2017 Interview with M. Levy; Jan. 3, 2018 Email from M. Levy to Debevoise & Plimpton LLP.

⁷⁰⁷ Nov. 14, 2017 Interview with G. Norris.; Nov. 15, 2017 Interview with M. Levy.

4. UR Policy 106

We recommend that within three months from today, the University should amend UR Policy 106 to specify: (a) examples of acts that may constitute sexual harassment; (b) the range of discipline and other remedial action that may be taken when there is a violation of the policy; and (c) the range of discipline and other remedial actions that may be taken by deans and chairs of departments for problematic conduct that does not rise to the level of a violation of the policy, but nevertheless counsels some remedial steps. In addition to these amendments, the University should consider adding to UR Policy 106 a statement encouraging members of the University community who believe that anyone subject to UR Policy 106 has engaged in sexual harassment to report such conduct, similar to the language in the University's Student Sexual Misconduct Policy that encourages reporting.

5. Confidentiality Policy

The OOC should retain outside counsel to advise the President and the General Counsel on developing new procedures regarding confidentiality of investigations of claims of sexual harassment or sexual misconduct against faculty members, with the objective of adopting formal procedures that more carefully and flexibly balance the requirements and needs of confidentiality and the benefits of transparency. Such new procedures should be finalized and implemented within six months of today. The General Counsel should consult with the Commission on Women and Gender Equity in Academia, the Executive Committee of the Faculty Senate, the leadership of the GSA and relevant deans and department chairs before finalizing these procedures. Following the adoption of the new procedures, the General Counsel should publish them on the University's website.

The current policy leaves uncertainty as to what will be kept confidential and in what circumstances. We found that there was confusion among the Complainants, witnesses and Jaeger about whether information they provided in connection with the investigation would remain confidential, whether information they knew about the investigation needed to remain confidential, and whether information collected by the OOC during the investigation would remain confidential.⁷⁰⁸ Witnesses were not notified when the investigation had concluded unless they followed up actively.⁷⁰⁹ One student expressed the sentiment that in an investigation, “one side has to be confidential about it, and the other side does not.”⁷¹⁰ The student said, “It’s a balance of confidentiality and transparency, and it frustrates people that it tends toward confidentiality.”⁷¹¹ While we appreciate that in this case, lack of communication created confusion and distrust toward the University’s administration, we also note the need for confidentiality surrounding an investigation. Nearpass agreed that the OOC’s confidentiality expectations should be clearly communicated upfront.⁷¹²

As noted, the OOC recently prepared a one-page information sheet about the UR Policy 106 process and has begun providing that to witnesses. The document states that the “University requires that you keep anything relating to your interview (including any information discussed during the interview and the fact that an investigation is taking place) confidential. Please do not

⁷⁰⁸ See discussion *supra*, II.B.4.

⁷⁰⁹ EEOC Compl. ¶ 236; C. Curtin’s Notes from Aug. 22, 2016 Interview with J. Cantlon; May 19, 2016 Email from K. Bixby email to C. Nearpass; Sept. 13, 2016 Email from Witness 11 to C. Nearpass.

⁷¹⁰ Nov. 21, 2017 Interview with Witness 3.

⁷¹¹ *Id.*

⁷¹² Oct. 30, 2017 Interview with C. Nearpass.

discuss this investigation or the allegations that are being investigated with anyone.”⁷¹³ This is a step in the right direction, but further analysis of the range of issues needs to be done in order to achieve an optimal balance between the important interests served by confidentiality and transparency.

6. Publicize Annual Data on Harassment Complaints

The University should release an annual report of the number of complaints filed with the University alleging gender-based discrimination and sexual harassment and how the complaints were resolved.

The annual release of such information would serve to increase transparency and community awareness. Both Cornell and Yale publish reports on complaints of sexual misconduct.⁷¹⁴ Cornell provides yearly statistics about the type of complaint, how it was resolved and the gender of the parties.⁷¹⁵ Yale provides a much more detailed, semi-annual report.⁷¹⁶ In addition to statistical data about the complaints, the report includes summaries of the various complaints.⁷¹⁷

⁷¹³ University of Rochester, *Policy 106 Investigation: Information for Witnesses* (2017).

⁷¹⁴ Cornell University, *Policy 6.4 Formal Complaints Against Students During the 2014-2015 and 2015-2016 Academic Years*, available at <https://titleix.cornell.edu/statistics/>; Yale University, *Report of Complaints of Sexual Misconduct Brought forward from January 1, 2017 through June 30, 2017*, available at <https://provost.yale.edu/sites/default/files/files/August%202017%20Report.pdf>.

⁷¹⁵ Cornell University, *Policy 6.4 Formal Complaints Against Students During the 2014-2015 and 2015-2016 Academic Years*, available at <https://titleix.cornell.edu/statistics/>.

⁷¹⁶ Yale University, *Report of Complaints of Sexual Misconduct Brought forward from January 1, 2017 through June 30, 2017*, available at <https://provost.yale.edu/sites/default/files/files/August%202017%20Report.pdf>.

⁷¹⁷ *Id.*

7. Information Technology Policy

We recommend that the President and General Counsel consult with the Executive Committee of the Faculty Senate and the leadership of the GSA and the Student Body to discuss the implementation of procedures for reviewing emails on the University's servers in appropriate circumstances, and that the President and General Counsel report to the Board of Trustees by April 10, 2018 on the procedures that have been implemented. Although the University, like its peer universities, has the authority to review emails on its servers and has security, investigative and other legitimate reasons to retain the ability to do so, the fact that the OOC reviewed emails relating to Aslin's and Cantlon's complaints about Jaeger has upset and concerned many members of the University community. Such concerns were exacerbated by the sharing of such emails with DeAngelis. To address those concerns and increase transparency regarding such email reviews, we believe that new, more specific criteria governing any such review are warranted. Relatedly, we recommend that UR's IT Policy be amended to specify: (a) that the University respects the privacy of individuals and keeps user files and emails as private as possible; and (b) procedures for the distribution of emails by administrators authorized to access and review user emails.

8. Access to Policies, Procedures and Resources

The University should continue to provide online access to information about all of the foregoing policies, procedures and resources, including UR Policy 106, UR Policy 121 and the UR Intimate Relationships Policy. In addition to ensuring that all policies and training materials are readily available online, the University should provide online information regarding the Title IX coordinator, any newly-created office in this area and the Intercessor. Such information should include actual names and contact information, not merely descriptions of their roles. The

foregoing policies and procedures should be streamlined and presented in an intuitive format, with separate sections based on the identity of the accused and the nature of the claim. They should provide narrative examples of conduct that would violate the policy. The revised policies should clearly lay out the full range of potential discipline and other remedial action that may be taken when there is a policy violation, and set forth a range of potential consequences for conduct that does not rise to the level of a policy violation, but is still problematic.

This recommendation addresses the evident need for increased transparency and clarity surrounding the University's reporting and investigative procedures. With respect to the recommendation that the University enumerate potential sanctions, many universities provide a list of various penalties for violating policies, including Washington University in St. Louis and Cornell.⁷¹⁸ Improved access to policies, procedures and resources, as well as a more streamlined process, will ensure that, going forward, members of the University community will know exactly where to go to report a concern and what the process will entail should they choose to move forward with a complaint, as well as what to expect in terms of sanctions.

B. For the Board of Trustees, President, Provost, Executive Committee of the Faculty Senate, Leadership of GSA and the Commission on Women and Gender Equity in Academia

1. UR Intimate Relationships Policy

We recommend that the Board of Trustees direct the President and Provost to initiate consideration by the Faculty Senate of amendments to the UR Intimate Relationships Policy so that, in addition to prohibiting faculty members from accepting academic authority over students

⁷¹⁸ University of Washington in St. Louis, *Discrimination and Harassment*, available at <https://hr.wustl.edu/items/discrimination-harassment-policy/>; Case Western Reserve University, *Sexual Misconduct Policy*, at 23, available at <https://students.case.edu/policy/sexual/doc/sexualmisconductpolicy.pdf>

and post-doctoral fellows with whom they have, or have had, an intimate relationship, regardless of department, it also flatly prohibits all intimate relationships between faculty and students in the same department. In order to give due consideration to such amendments, the President, Provost, and Faculty Senate should seek the recommendation of the Commission on Women and Gender Equity in Academia and the GSA, and then should recommend appropriate action to the Board of Trustees by April 10, 2018. Input also should be solicited from outside experts and other universities that have adopted such policies.

This recommendation is rooted in our investigation's findings with respect to Jaeger's intimate relationships with multiple BCS students.⁷¹⁹ We found that these relationships contributed, at least in part, to making some female graduate students in BCS uncomfortable; in some cases, these women actively avoided pursuing academic opportunities with Jaeger.⁷²⁰ It also seems clear that the fact of such relationships between Jaeger and BCS students was what most bothered at least Aslin, notwithstanding that UR did not have a policy prohibiting them. DeAngelis also believes that romantic relationships between faculty and students have no proper place in BCS or UR.

The University's policies did not prohibit these relationships at the relevant times, but did prohibit sexual harassment. Although some factual circumstances might implicate only one of those two policies, Jaeger's conduct and the Complainants' allegations implicated both policies and thereby highlighted the potential tension between the two policies—and the acute challenges that can arise when intimate relationships between faculty and students are permitted. While some institutions have navigated those challenges without imposing strict prohibitions, we

⁷¹⁹ *See supra*, at Section II.A.2.b.

⁷²⁰ *See supra*, at Section II.A.1.e.

believe that in light of the University's experiences in this matter, a bright-line rule would be beneficial. Although the University has strengthened its policies recently,⁷²¹ we believe that they can and should be further reinforced as described above.⁷²²

These amendments, although stringent, would not be out of line with the policies of peer universities. To the contrary, what we recommend is similar to restrictions in other universities' faculty-student relationship policies. Stanford, for example, prohibits sexual or romantic relationships between faculty members and students where the faculty member "has had, or in the future might reasonably be expected to have, academic responsibility over" the student.⁷²³ This includes faculty members and students in the same "department, program or division."⁷²⁴ Stanford also requires that the faculty member notify his or her "supervisor, department chair or dean" about any relationship that is prohibited by this policy.⁷²⁵ Northwestern also requires that consensual relationships be reported to the department chair.⁷²⁶ UR's current policy, on the other hand, does not mandate disclosure but simply states, "Faculty members should err on the side of

⁷²¹ See Exhibit 1; University of Rochester, *Faculty Handbook* (revised Feb. 2007); *Faculty Handbook* (revised July 2008).

⁷²² See *id.*

⁷²³ Stanford University Administrative Guide, *1.7.2 Consensual Sexual or Romantic Relationships in the Workplace and Educational Setting*, at 2, available at <https://adminguide.stanford.edu/printpdf/chapter-1/subchapter-7/policy-1-7-2>.

⁷²⁴ *Id.*

⁷²⁵ *Id.*

⁷²⁶ Northwestern University, *Consensual Romantic or Sexual Relationships between Faculty, Staff and Students*, at 3, available at http://policies.northwestern.edu/docs/Consensual_Relations_011314.pdf.

disclosing a relationship to the Intercessor if there is any doubt about whether they exercise academic authority.”⁷²⁷

Northwestern’s policy explains, “the possibility exists that the faculty member may influence evaluation or academic or career advancement of the student even if the faculty member does not directly supervise the graduate/professional student.”⁷²⁸ Such requirements would have either prohibited Jaeger from dating female students within BCS or required him to disclose his relationships to the University administration. We believe that prohibiting relationships between faculty and students in the same department will help to prevent problematic faculty-student relationships in the future and would better address the concerns described by Northwestern’s policy.

2. Dedicated Office to Investigate Sexual Harassment or Misconduct by Faculty Members

We recommend that the Board of Trustees consider directing the President to establish an office separate from the OOC to handle claims of sexual harassment or sexual misconduct by faculty members and instituting some or all of the procedures provided for investigating and adjudicating claims of sexual harassment or sexual misconduct by students as overseen by the Title IX Coordinator. As part of this consideration, the President and the Executive Committee of the Faculty Senate should consider establishing an appropriately comprised committee to recommend corrective action following the conclusion of every UR Policy 106 investigation of a faculty member for sexual harassment or sexual misconduct. Such a committee would be

⁷²⁷ Exhibit 1.

⁷²⁸ Northwestern University, *Consensual Romantic or Sexual Relationships between Faculty, Staff and Students*, at 3, available at http://policies.northwestern.edu/docs/Consensual_Relations_011314.pdf.

comprised of representatives from relevant constituencies of the University community, which would mitigate concerns about bias and lend credibility to findings. Decisions that are understood to reflect the perspectives of different populations may be more likely to be accepted as fair and legitimate. The decision-making structures used by the University of Chicago and UR's College of Arts, Sciences & Engineering for claims involving academic dishonesty may be useful resources to review. The President shall report to the Board of Trustees on the results of his consideration of this recommendation by April 10, 2018.

We credit the Complainants' concerns that there is at least a perception of a conflict of interest in having the OOC handle UR Policy 106 claims, although Nearpass told us that she conducts UR Policy 106 investigations in a human resources capacity, not in her capacity as a University lawyer.⁷²⁹ It is true that if a party disagrees with the outcome of a UR Policy 106 investigation and decides to sue the University in an administrative proceeding or in court, the OOC defends the University.⁷³⁰ We therefore recommend that such investigations be handled by a separate office in order to avoid the perception of a conflict.

⁷²⁹ EEOC Complaint ¶ 137; Oct. 30, 2017 Interview with C. Nearpass. Nearpass explained that she makes clear during all interviews that she is not acting in an advocacy role or representing the University, and instead is acting as a neutral fact-finder. (Oct. 30, 2017 Interview with C. Nearpass.) We credit that she acted neutrally in that role in this case. Nevertheless, as the Complainants made abundantly clear, there can be an appearance of a conflict when it is the OOC, of which Nearpass is a part, that defends the University in an administrative proceeding or in court on employment matters, including those that may involve a disagreement about the outcome of a Policy 106 investigation. Although we recognize that UR has handled Policy 106 claims made against faculty in this way for many years and that there are resource and expertise reasons for doing so, we nevertheless believe that serious consideration should be given to establishing a separate, dedicated office to handling these critical issues.

⁷³⁰ Oct. 30, 2017 Interview with R. Crummens.

Our research indicates that the University is an outlier in permitting claims of sexual harassment to be handled by the OOC. Most other universities have a separate office tasked with handling claims of sexual misconduct. Harvard has created a centralized system whereby the Office for Dispute Resolution is responsible for receiving and investigating complaints of sexual and gender-based harassment and preparing a final report with recommendations for corrective and disciplinary action.⁷³¹ Similarly, Brown's Director of Diversity Inclusion similarly reviews all incoming complaints.⁷³²

C. For the President and Board of Trustees

1. Cabinet-Level Officer to Oversee Implementation

In recognition of the importance of the issues addressed in this Report and the challenges of taking into account the interests of all relevant groups and stakeholders, the President should appoint a senior, cabinet-level official to oversee the implementation of these recommendations, including compliance with any deadlines, as well as other initiatives the President may develop to combat sexual harassment, misconduct and discrimination, as well as retaliation. This person should be someone with relevant expertise and credibility with all of the University's constituencies.

2. Trustee or Special Committee to Oversee Implementation

Similarly, the Board of Trustees should appoint a Trustee or Special Committee of the Trustees to oversee the implementation of these recommendations, including compliance with

⁷³¹ See Harvard University Office for Sexual and Gender-Based Dispute Resolution ("ODR"), available at <https://odr.harvard.edu/about-0>.

⁷³² See Brown University Office of Institutional Equity and Diversity, *Incident Reporting*, available at https://www.brown.edu/about/administration/human-resources/sites/human-resources/files/sexualharassment-workplaceharassment-discrimination-complaint-form-revised-july2017_0.pdf.

any deadlines, as well as other initiatives as may be pursued by the University to combat sexual harassment, misconduct, discrimination and retaliation throughout the University.

VI. CONCLUSION

Over the past three and a half months, we have conducted a thorough and objective independent investigation. Our investigation has substantiated a number of allegations in the complaints, not substantiated others and refuted some. This Report gives a full accounting of our work, findings and recommendations. It was a very difficult, and at times wrenching, undertaking. We credit that some BCS students were negatively impacted by the professor's conduct earlier in his career at the University. Partly as a result of that conduct, but also because of the broad dissemination of the often exaggerated descriptions of that conduct, the esteemed BCS faculty has been fractured and the University's reputation has been harmed. This case illustrates once again that a community can be damaged when public discourse on important issues fails to separate rumor from fact, to distinguish between different levels of wrongful conduct, and to apply a sense of proportionality in the consideration of how prior conduct should be remediated.

There are a lot of facts to absorb from our Report about these events. Once that is done, it is important to look beyond the specifics and details of this matter and turn toward the future. In our view, the University and all involved here now have a unique opportunity to make such amends as can be made, heal and work hard to become the thought and moral leader for the academic community in preventing and dealing fairly with allegations of sexual harassment and all forms of discrimination in the academic workplace. Set the bar and set it high. "Ever Better" is what UR is about.