

*****Note: These documents, pieces of evidence, and the hypothetical scenario is used for the specific purpose of University Conduct Board training. This is not an actual Sexual Misconduct Investigation Report or an actual Student Conduct Incident Referral.*****

Mock Formal Hearing for UCB Members

Summary of Alleged Incident Information

Dates of Alleged Violations:

- Saturday, September 4, 2021
- Tuesday, September 7, 2021
- Wednesday, September 8, 2021

Respondent: Blake Morgan

Respondent Student ID Number: 000123456

Formal Hearing Information

Hearing Type: Mock Formal Hearing

Hearing Officer(s): University Conduct Board Members

Alleged Violations of Sexual Misconduct Policy

Alleged Violation #1

Regulatory Stalking/Cyber-stalking: means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others; or suffer substantial emotional distress. A course of conduct is when a person engages in two or more acts that include, but are not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person in a prohibited way, or interferes with a person's property. Stalking includes the concept of cyberstalking, in which electronic media such as the Internet, social networks, blogs, cell phones, texts, email or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Alleged Violation #2

Non-Regulatory Sexual Assault - Sexual Penetration Without Consent: Any penetration of the mouth, sex organs, or anus of another person, however slight by an object or any part of the body, when Consent is not present. This includes performing oral sex on another person when Consent is not present.

*** DO NOT REMOVE THIS FORM FROM THE FORMAL HEARING ROOM ***

Witness List for the Respondent

Mock Formal Hearing Information

Mock Formal Hearing Date: Thursday, November 18, 2021

Mock Formal Hearing Time: 12:00pm

Hearing Type: Mock Formal Hearing

Hearing Officer(s): University Conduct Board Members

Respondent Information

Respondent: Blake Morgan

Advisor for the Respondent: Process Advisor #1

Witness List

Please print the name(s) and relationships of any witness(es) you will be bringing to your Formal Hearing. If you have questions please contact Student Conduct and Community Standards.

Witness Name	Status/Relationship to Respondent
<i>Ethan West</i>	<i>Friend & ESU Swimming Teammate</i>
<i>Tyler Branson</i>	<i>Friend & ESU Swimming Teammate</i>

Witnesses should arrive 10 minutes early for the Formal Hearing. The Office of Student Conduct and Community Standards is located in the back lower level of Sycamore Suites Building. If you have any questions, you may contact the Office of Student Conduct and Community Standards at (570) 422-3461.

*** PLEASE RETURN THIS FORM TO THE OFFICE OF STUDENT CONDUCT AND COMMUNITY STANDARDS PRIOR TO YOUR FORMAL HEARING ***

The Office of Student Conduct and Community Standards is committed to providing reasonable accommodations for disabilities. If you require accommodations in order to fully participate in this process, please notify us at (570) 422-3461 a minimum of five (5) working days prior to your meeting.

Participant List for Mock Formal Hearing

Mock Formal Hearing Information

Mock Formal Hearing Date: Thursday, November 18, 2021

Mock Formal Hearing Time: 12:00pm

Hearing Type: Mock Formal Hearing

Hearing Officer(s): University Conduct Board Members

Participant Information

Respondent: Blake Morgan

Advisor for the Respondent: Process Advisor #1

Complainant: Willow Smith

Advisor for the Complainant: Process Advisor #2

Participant List

Participated	Name	Student – Faculty – Staff – Other	Status/Relationship to Participant
	Blake Morgan	Student	Respondent
	Willow Smith	Student	Complainant
	Mackenzie Phillips	Student	Witness, Roommate of Complainant
	Ethan West		Witness, Friend of Respondent
	Tyler Branson		Witness, Friend of Respondent
	Savannah Lyons	Student	Witness, Residence Life Staff

*** DO NOT REMOVE THIS FORM FROM THE FORMAL HEARING ROOM ***

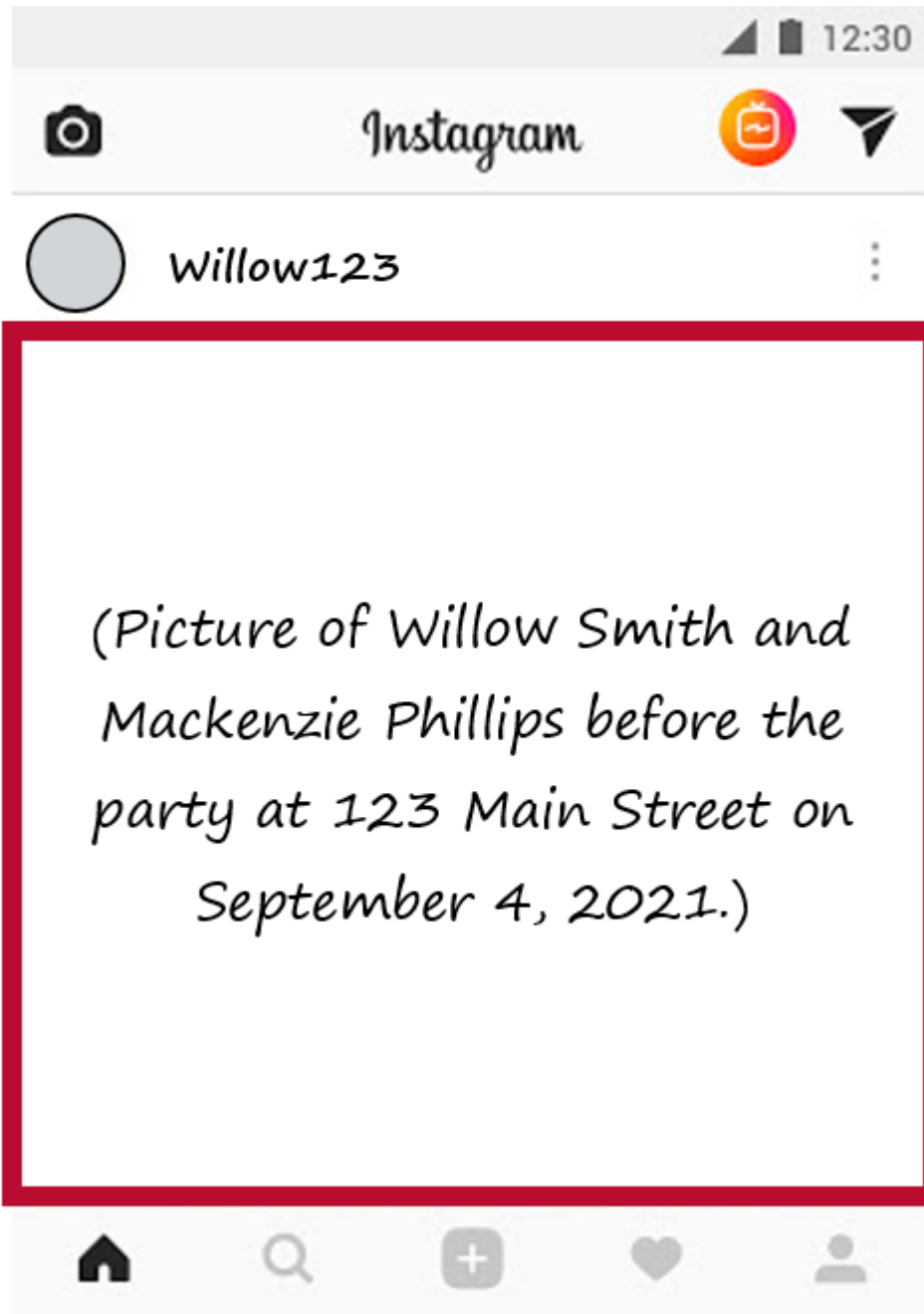
Referral Submitted through Guardian to the Title IX Office

Incident Referral Category	Information Submitted for the (Sample) Incident Referral
IR #:	5678-2021
Reported by:	Willow Smith
Reported Date and Time:	September 9, 2021
Incident Type:	Title IX Incident
Date & Time Info:	September 4, 2021
Location Info:	Off-Campus
Building:	123 Main Street
Building Room Number:	Upstairs Bedroom
University affiliation of alleged Respondent	Student
ESU Police Contacted:	No
EMS Contacted/On Scene:	No
Involved Parties:	<ul style="list-style-type: none"> ▪ Blake Morgan, Respondent ▪ Mackenzie Phillips, Witness ▪ Savannah Lyons, Residence Life Staff
Incident Details:	<p>On Saturday, September 4, 2021 I went to a swim team party at 123 Main Street. I got to the party around 10:00pm with my roommate Mackenzie Phillips and we hung out with Mackenzie’s boyfriend and his friend Blake Morgan. We were all drinking and playing beer pong, and having a good time. I knew Blake from a previous class, but did not know him well, and we started to flirt and got closer during the party.</p> <p>At one point I went up to the roof with Blake and we were kissing. I don’t remember how it happened, but we ended up back inside in one of the bedrooms and we began to make out and I started to give him a blow-job. He put his hands on me and I tried to push his hands off but he wouldn’t stop holding my head. Once I finished the blow-job I felt sick and went to the bathroom. I didn’t think I would make it home feeling sick so I put my clothes back on and laid down on the bed.</p> <p>When I woke up the next morning I felt really sore and something felt wrong. I didn’t remember anything else happening but my clothes were</p>

Incident Referral Category	Information Submitted for the (Sample) Incident Referral
	<p>off and I just wanted to get out of the room. I went back to my room and told my roommate what happened. She noticed I had red marks on my arms and took pictures of them. I don't know how they got there.</p> <p>The next week on September 7, 2021 and September 8, 2021 I saw Blake outside of my class and then outside of my residence hall room. I tried to ignore him but he wasn't getting the hint so I yelled at him to go away. I wanted to just forget about this but now that he is following me around campus I decided to make a report.</p>
Files Attached:	<ul style="list-style-type: none">▪ Instagram Photograph▪ Copies of Text Messages

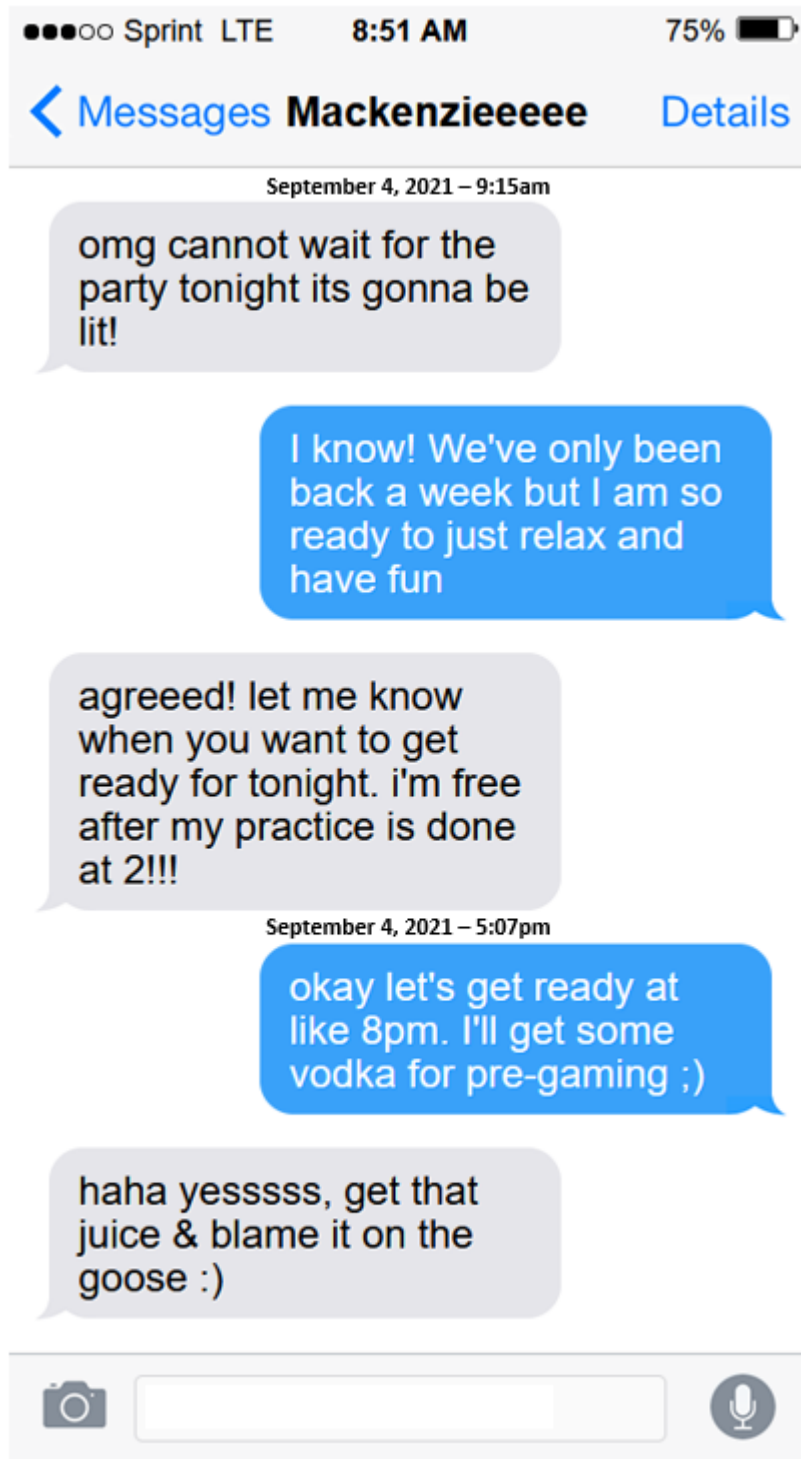
Referral Attachment #1 – Instagram Photograph

Photograph Complainant posted on Instagram of Complainant and Witness Phillips



Referral Attachment #2 – Copies of Text Messages

Copies of text messages between Witness Phillips and Complainant



●●●○○ Sprint LTE

8:51 AM

75% 

< Messages **Mackenzieeeee**

Details

haha yesssss, get that juice & blame it on the goose :)

September 4, 2021 – 7:15pm

okay I'm heading back to the room now....can't wait for tonight!!!!!!

haha yesss

September 5, 2021 – 9:04am

where are you???

WTH where are you? I tried to take you home but you were wasted and wanted to stay with Blake

September 5, 2021 – 9:15am

where are you???



Case Attachment #3 – Investigative Report from Title IX Investigator

Remaining Pages of Report (Note: the Investigative Report starts on a new Page 1)

Note: This is a sample investigative report created by PASSHE for use in training activities. This document and hypothetical scenario is used for the specific purpose of University Conduct Board training. This is not an actual Sexual Misconduct Investigation Report.

Sexual Misconduct Investigation Report

Name of Investigator: Isabelle Irwin
Date of Report: November 5, 2021
Case #: 1234-2021

Background:

This report addresses the allegations of violations of East Stroudsburg University's Sexual Misconduct Policy. Isabelle Irwin, Title IX Investigator, conducted the investigation into these allegations pursuant to the procedures in the University's Sexual Misconduct Policy. This investigation focused on a fair and impartial collection of all available evidence including, but not limited to, witness accounts and documents. The Respondent was provided with the Formal Complaint within ten (10) days of the Office's receipt of the Formal Complaint. The Complainant and the Respondent were provided with opportunities to offer evidence for inspection and review by the Investigator. Prior to completion and submission of this report, both parties and their advisors were afforded an equal opportunity to inspect and review all evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint.

The parties were given ten (10) days to review the evidence and submit a written response for consideration by the Investigator prior to the completion of this final report. Neither party provided a response. If responses had been provided, they would be considered by the Investigator included in the Appendix.

The final report was provided to the parties on October 15, 2021 and the parties were given until October 29, 2021 to respond. Neither party provided a response. This final report is a summary of all relevant evidence collected and reviewed as a part of the investigation.

The final report includes only relevant evidence. "Relevant" evidence is evidence that tends to make an allegation more or less likely to be true. "Relevant" evidence does not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of any process initiated under the University's Sexual Misconduct Policy:

1. Evidence about the Complainant's sexual predisposition or prior sexual behavior unless:
 - a. It is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
 - b. It concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.
2. Evidence that constitutes information protected under a legally-recognized privilege including attorney-client privilege; or
3. Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

Identification of Parties and Witnesses:

- Willow Smith is identified as the Complainant. Complainant is a senior at the University and is 21-years old.
- Blake Morgan is identified as the Respondent. Respondent is a senior at the University and is 21-years old. He is on the swim team.
- Ethan West is identified as a witness. West is a swimming teammate of the Respondent, and lives with the Respondent. Mackenzie Phillips is Witness West's girlfriend.
- Mackenzie Phillips is identified as a witness. Witness Phillips is the Complainant's roommate, and the girlfriend of Ethan West.
- Tyler Branson is identified as a witness. Witness Branson is a swimming teammate of the Respondent.
- Savannah Lyons is identified as a witness. Witness Lyons is a Resident Advisor for the University in Shawnee Hall.

Summary of Allegation(s):

On September 10, 2021, Complainant filed a Formal Complaint with the Title IX Coordinator according to the University's Sexual Misconduct Policy, naming Respondent. Complainant alleges Respondent engaged in nonconsensual oral sex and nonconsensual sexual intercourse with her at an off-campus apartment on September 4, 2021. Complainant also alleges Respondent stalked her by showing up at her classes on September 7, 2021 and her residence hall on September 8, 2021.

Jurisdiction:

Under the University's Sexual Misconduct Policy, Sexual Misconduct Violations, both Regulatory and Non-Regulatory, as defined in the Policy are prohibited. The University promptly and equitably responds to all reports of sexual misconduct in order to eliminate the misconduct, prevent its recurrence, and redress its effects on any individual or the community.

For alleged violations of Regulatory Prohibited Conduct, as defined in the University's Sexual Misconduct Policy, the following elements will be determined in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred in the United States;
2. The conduct is alleged to have occurred as part of the University's Education Program or Activity; and
3. The alleged conduct, if true, would constitute covered Regulatory Prohibited Conduct, as defined in the University's Sexual Misconduct Policy.

If all of the elements are met, the University will investigate the allegations under the processes set forth in this Policy. Please note that charges may be brought for Regulatory Prohibited Conduct and Non-Regulatory Prohibit Conduct for the same conduct. If any one of the above elements is not met, the Title IX Coordinator will notify the parties the specific allegation

contained in the Formal Complaint does not meet the required jurisdictional requirements under the Final Rule and is being dismissed. Any Party may appeal a dismissal using the process set forth in the Appeals section of the Sexual Misconduct Policy. However, dismissal of any violations constituting Regulatory Prohibited Conduct will not affect the University's ability to proceed with an investigation of charges categorized as Non-Regulatory or other charges under the University's Sexual Misconduct Policy or any other University Policy.

Policies Implicated and Relevant Definitions:

The investigation addressed alleged violations of the University's Sexual Misconduct Policy. The following specific violations are alleged:

Alleged Regulatory Violations

- **Regulatory Stalking:** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - a. fear for their safety or the safety of others; or
 - b. suffer substantial emotional distress.

A course of conduct is when a person engages in two or more acts that include, but are not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person in a prohibited way, or interferes with a person's property.

Stalking includes the concept of cyberstalking, in which electronic media such as the Internet, social networks, blogs, cell phones, texts, email or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Stalking is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint.

- *Element 1: Engaging in two or more acts;*
- *Element 2: Directly, indirectly, or through third parties*
- *Element 3: Directed at the Complainant;*
- *Element 4: Carried out by any action, method, device or means to:*
 - a) *follow, monitor, observe, survey, threaten, or communicate*
 - b) *to or about a person*
 - c) *in a prohibited way, or in a way that interferes with a person's property;*
- *Element 5: That would cause a reasonable person to:*
 - a) *Fear for their safety or the safety of others;*
 - b) *Suffer substantial emotional distress.*
- *Element 6: Regulatory jurisdiction:*

- a) *Occurred in the United States*
- b) *Alleged conduct occurred in an Education Program or Activity (as those terms are defined in the policy)*

Alleged Non-Regulatory Violations

- **Non-Regulatory Sexual Assault - Sexual Penetration Without Consent:** Any penetration of the mouth, sex organs, or anus of another person, however slight by an object or any part of the body, when Consent is not present. This includes performing oral sex on another person when Consent is not present.

Sexual Assault:

- *Element 1: Sexual act;*
- *Element 2: Directed against the Complainant*
- *Element 3: When Consent is not present.*

Sexual Assault Includes: Sexual Penetration Without Consent

- *Element 1: Any penetration of the mouth, sex organs, or anus of the Complainant by any object or part of the body;*
- *Element 2: When Consent is not present.*

Other Relevant Definitions:

- **Consent:** A knowing and voluntary agreement to engage in specific sexual activity at the time of the activity communicated through clear actions and/or words that are mutually understood.

In order to be valid, Consent must be active, present and ongoing.

Consent is not present when it is the result of coercion, intimidation, force, or threat of harm.

Consent is not present when an individual is incapacitated due to alcohol, drugs, or sleep, or otherwise without capacity to provide Consent due to intellectual or other disability or other condition. Consent can be withdrawn at any time and consent to one form of sexual activity is not necessarily consent to other forms of sexual activity.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence of or impaired by the use of the drug. Alcohol and other drugs impact each individual differently. Determining whether an individual is incapacitated requires an individualized determination. When determining whether a person has the capacity to provide Consent, the University will consider whether a sober, reasonable person in the same position knew or should have known that the other party could or could not consent to the sexual activity.

When determining whether Consent has been provided, all the circumstances of the relationship between the parties will be considered.

- *Element 1: Knowing and Voluntary agreement;*
 - a) *Not made as a result of coercion, intimidation, force, or threat of harm;*
 - b) *Made when an individual is not incapacitated due to alcohol or drug use or sleep or otherwise without capacity;*
- *Element 2: To engage in specific sexual activity;*
- *Element 3: At the time of the activity and ongoing through the activity;*
- *Element 4: Communicated through clear actions and/or words;*
- *Element 5: Where the communication is mutually understood.*

Standard of Proof:

Consistent with the Student Personnel requirements for the Pennsylvania State System of Higher Education set forth in Pennsylvania Code, the University will use the preponderance of the evidence standard in investigations of formal complaints alleging sexual misconduct violations under the University’s Sexual Misconduct Policy. This means that the Decision Maker(s) must determine whether it is more likely than not that a violation of the Policy occurred.

Timeline of Investigative Steps:

Complainant initially reported this incident to the Title IX Coordinator on September 9, 2021. Complainant filed a Formal Complaint with the Title IX Coordinator on September 10, 2021. On September 10, 2021, the Title IX Coordinator selected Isabelle Irwin as Investigator. On September 13, 2021, the Investigator began the investigation. The following list shows major dates relevant to the investigation:

- | | |
|---|-----------|
| ▪ Formal Complaint Received | 9/10/2021 |
| ▪ Investigation Begins | 9/13/2021 |
| ▪ Interviewed Complainant | 9/15/2021 |
| ▪ Respondent Provided with the Formal Complaint | 9/15/2021 |
| ▪ Interviewed Respondent | 9/22/2021 |
| ▪ Interviewed Witness Phillips | 9/23/2021 |
| ▪ Interviewed Witness West | 9/24/2021 |
| ▪ Interviewed Witness Branson | 9/27/2021 |
| ▪ Interviewed Witness Lyons | 9/28/2021 |
| ▪ Follow-Up Interview with Respondent | 9/29/2021 |

The investigation was completed on October 15, 2021 and the parties were provided a copy of the investigative report. The parties and their advisors were given until October 29, 2021 to inspect and review the report and provide written responses to the report. Neither party responded or provided additional evidence. The report was finalized on November 5, 2021.

Evidence:

The following evidence was collected and reviewed during the investigation.

- Copies of text messages between Witness Phillips and Complainant
- Copies of text messages between Respondent and Witness Phillips
- Photograph posted on Complainant's Instagram of Complainant and Witness Phillips
- Photograph posted on Witness Branson's Twitter account
- Photograph of Complainant's arms taken by Witness Phillips on September 5, 2021

These pieces of evidence are included in the Appendix.

Interviews:

Summaries of each interview are presented below. All relevant items of evidence collected for this report are included as attachments.

Interview with Complainant

Investigator interviewed Complainant on September 15, 2021. Complainant stated that she and her roommate, Witness Phillips, went to a party on Saturday, September 4, 2021. The party was hosted by the University's swim team and was held at 123 Main Street. At around 9:15 p.m., Complainant and Witness Phillips took a selfie on Complainant's phone that Complainant posted on her Instagram account. Complainant told the Investigator she and Witness Phillips consumed two shots of vodka in their residence hall room at 9:30 p.m., prior to arriving at the party. Complainant said she and Witness Phillips took selfies on the way to the party on Witness Phillips' phone.

Complainant stated she and Witness Phillips arrived at the party around 10:00 p.m. Complainant said she and Witness Phillips met up with Witness Phillips' boyfriend, Witness West. Witness West was playing a drinking game – beer pong – with Respondent. When asked if Complainant knew Respondent, she stated she had spoken to Respondent a few times in a class they had together in Spring 2021. Complainant said Respondent spoke to Complainant and gave her a large cup, approximately twenty (20) ounces, containing beer. Complainant said Respondent and Witness West challenged Complainant and Witness Phillips to a game of beer pong. The game began at approximately 10:30 p.m.

Complainant said Respondent and Witness West won the beer pong game. During the game, Complainant believed she drank one and a half cups of beer. Complainant said they played a second game, in which she consumed another cup of beer. Complainant also took a shot of Fireball, a cinnamon-flavored whiskey (66 proof).

At approximately midnight, Complainant stated she went up onto the rooftop deck of the apartment building with Respondent and a few other people. Complainant said Respondent complimented Complainant on a picture Complainant had posted on Instagram of herself earlier

in the evening. Complainant said Respondent gave her a small cup of Fireball and the two began to kiss.

Complainant indicated she began to feel a little dizzy. At some point, she remembered ending up in a bedroom back in the apartment where the party was taking place. Complainant said she remembered continuing to kiss Respondent and that some of her clothes were off. Complainant said she remembers wanting to leave the apartment but that she did not do so.

Complainant stated she began to perform oral sex on Respondent. Complainant said that at some point, Respondent placed his hands on the back of her head while she performed oral sex. Complainant said this made her feel uncomfortable and she felt pressured to continue. She pushed Respondent's hands away, and Respondent did not try to put them on her head again. Complainant continued to perform oral sex on Respondent for a few more minutes after Respondent removed his hands. Complainant then stated she went to the bathroom, put her dress back on, and returned to lay down on the bed. Complainant stated she had no further memory until she awoke the following morning at 9:00 a.m.

Complainant recalled waking up the next morning at 9:00 a.m. and finding Respondent asleep next to her. Complainant noticed red marks on the bicep area of her arms, her vagina was sore, and her dress was on a table across the room. Complainant located her phone and texted Witness Phillips "where are you???" Complainant said that Witness Phillips texted back "WTH where are you? I tried to take you home but you were wasted and wanted to stay with Blake [Respondent]."

Complainant said she got dressed and left without speaking to Respondent. Complainant said that she returned home and told Witness Phillips what she remembered about what happened with Respondent the night before. Complainant said that while she kissed Respondent and performed oral sex on Respondent, she passed out in bed after that and did not remember anything else. Complainant said she did not consent to sexual intercourse with Respondent.

Complainant went with Witness Phillips to speak to Witness Lyons, her Resident Advisor. Complainant said Witness Lyons gave her information about the Title IX Coordinator, reporting to local police, and campus resources. Complainant told Witness Lyons she did not wish to take any action at the time and did not wish to get Respondent in any trouble.

Complainant stated that on Tuesday, September 7, 2021, Respondent was waiting for her when she got out of her morning class. Complainant said that she was shaken and did not wish to speak to him, so she walked away quickly in the other direction. Respondent shouted her name but did not follow her. Complainant said that on Wednesday, September 8, 2021, Respondent was again waiting for her, this time when she left her residence hall. Complainant yelled at Respondent to "go away" and he did not follow her. Complainant said Respondent's appearances made her uneasy. Complainant decided to make a report to the Title IX Coordinator.

In addition to her interview, Complainant provided the following evidence:

- Photograph Complainant posted on Instagram of Complainant and Witness Phillips
- Copies of text messages between Witness Phillips and Complainant

Interview with Respondent

Respondent stated he attended the party on Saturday, September 4, 2021 at 123 Main Street. He arrived at the party at 9:00 p.m. Around 9:15 p.m., Respondent stated he was checking his Instagram and saw a photograph that Complainant posted on Complainant's account of herself and Witness Phillips. Respondent knew Witness Phillips through her boyfriend, Witness West, who is Respondent's swim teammate and roommate. Respondent stated he was interested in Complainant. When asked how he knew Complainant, Respondent stated he had only spoken to Complainant a few times in class but that he found her attractive. Respondent texted Witness Phillips to ask if Complainant was coming to the party. Respondent stated Witness Phillips responded with a selfie of Witness Phillips and Complainant that said "Looking good and on our way." Respondent said that he texted back, "AGREED! Looking good!"

Respondent said he saw Complainant and Witness Phillips enter the party around 10:00 p.m. Respondent was playing beer pong with Witness West when Complainant and Witness Phillips approached them. Respondent said he gave Complainant a beer and challenged Complainant and Witness Phillips to a game of beer pong against Respondent and Witness West. The game began at approximately 10:30 p.m.

Respondent said he and Witness West won the first game of beer pong. Respondent guessed that he only drank about a fourth of a cup of beer during the game. Respondent said he knew Complainant was drinking during the game but did not know how much she had to drink. Respondent and Witness West challenged Complainant and Witness Phillips to a second game. Complainant and Witness Phillips again lost. Respondent said Complainant and Witness Phillips took Fireball shots in addition to drinking beer.

Respondent stated that, around midnight, he asked Complainant if she wanted to get some air. Respondent and Complainant ended up on the rooftop deck of the apartment building with several other people. Respondent said he complimented Complainant on her Instagram photograph from earlier in the night, and the two flirted for a while. Respondent said he gave Complainant a small cup of Fireball, and he and Complainant began to kiss.

Respondent stated that he invited Complainant to go downstairs to a bedroom in the apartment. When asked why he did this, Respondent said the Complainant did not want to be kissing in front of other people. Respondent said he knew Complainant was "pretty buzzed" because she was slurring her words. However, she was able to walk on her own.

Respondent said he and Complainant continued to kiss in the bedroom. Respondent said most of their clothing was off and Complainant began performing oral sex on Respondent. When asked, Respondent admitted to placing his hands on Complainant's head while she was performing sex but he did not hold her head in place or force her to continue performing oral sex. Respondent said he removed his hands from Complainant's head when she pushed his hands away.

Respondent stated that, about twenty or thirty minutes after Complainant engaged in oral sex with him, Respondent asked Complainant if she wanted to have sex. Respondent claims that Complainant did not say anything but she stood up and took off her underwear. Respondent stated he interpreted this action as consent to engage in sexual intercourse with Complainant. When asked about Complainant's state of dress, Respondent could not recall if Complainant had her dress on at this time or not. Respondent said he left the room for about five or ten minutes to find a condom. When he returned, Respondent said he and Complainant engaged in sexual intercourse. Respondent claimed he did not grab Complainant's arms during intercourse. Respondent's next recollection was waking up alone in the bedroom of the apartment at approximately 10:30 a.m.

On Saturday, September 5, 2021, Respondent said he received a text message from Witness Phillips around 1:00 p.m. Respondent said the message said "I can't believe what you did to Willow [Complainant]! Don't ever come near her again, creep!" Respondent said he was confused and did not know what Witness Phillips meant. He texted back but Witness Phillips did not respond.

Respondent said he knew when Complainant's first class was on Tuesday morning, September 7, 2021. Respondent went to her class, hoping to speak with Complainant and make sure she was alright. When Complainant came out of class, Respondent said he shouted her name but that she walked away quickly in the other direction and he did not follow her. Respondent decided to try and speak with Complainant again so he went to her residence hall on the morning of Wednesday, September 8, 2021. Respondent said Complainant shouted "go away" and Respondent did not follow Complainant. When Respondent was asked why he thought Complainant was behaving this way, he said that he did not know.

In addition to his interview, Respondent provided the following evidence:

- Copies of text messages between Respondent and Witness Phillips, including the selfie that Witness Phillips texted Respondent
- Instagram photograph of Complainant and Witness Phillips

Interview with Mackenzie Phillips

Witness Phillips confirmed that she attended a party with Complainant on Saturday, September 4, 2021 at 123 Main Street. Prior to attending the party, Witness Phillips and Complainant took two shots of vodka at 9:30 p.m. Witness Phillips exchanged text messages with Respondent while Witness Phillips and Complainant were on the way to the party. Respondent wanted to know if Complainant was coming to the party.

When Witness Phillips and Complainant arrived at the party around 10:00 p.m., Witness Phillips looked for her boyfriend, Witness West. She found Witness West playing beer pong with Respondent. Witness Phillips and Complainant played two games against Respondent and Witness West and lost both games. Witness Phillips saw Complainant go upstairs to the rooftop deck around midnight. Witness Phillips observed Complainant and Respondent flirting and kissing.

At around 1:00 a.m., Witness Phillips was ready to leave the party. Witness Phillips stated Complainant and Respondent both appeared to be drunk. Witness Phillips asked Complainant if she was ready to go but Witness Phillips stated Complainant wanted to stay with Respondent. Witness Phillips stated she received a text message from Complainant the next morning around 9:00 a.m., asking where Witness Phillips was. Witness Phillips stated Complainant returned to their residence hall around 10:30 a.m. Witness Phillips said Complainant seemed visibly upset and that she had red marks on the bicep area of her arms. Complainant said she did kiss and engage in oral sex with Respondent but did not remember if she had sexual intercourse with him. Witness Phillips said Complainant did not want to report the incident to anyone or get Respondent in trouble.

Witness Phillips stated she assured Complainant that she was not to blame for what happened. Witness Phillips was upset and convinced Complainant to speak with their Resident Advisor, Witness Lyons, about what happened. Witness Phillips also took photographs of Complainant's arms, which were red and starting to show bruises. When asked if Witness Phillips noticed marks or bruises on Complainant's arms prior to September 4, 2021, Witness Phillips said no.

After Complainant and Witness Phillips spoke with Witness Lyons, Witness Phillips texted Respondent, "I can't believe what you did to Willow [Complainant]! Don't ever come near her again, creep!" Witness Phillips stated she was upset for Complainant and wanted to stick up for her friend.

In addition to her interview, Witness Phillips provided the following evidence:

- Copies of text messages between Witness Phillips and Complainant
- Copies of text messages between Respondent and Witness Phillips
- Instagram photograph of Complainant and Witness Phillips
- Photograph of Complainant's arms taken by Witness Phillips on September 5, 2021

Interview with Ethan West

Witness West confirmed that he was at a party on Saturday, September 4, 2021 at 123 Main Street. He stated he was playing beer pong with Respondent when his girlfriend, Witness Phillips, arrived around 10:00 p.m. Witness West and Respondent played two game of beer pong against Witness Phillips and Complainant.

Around midnight, Witness West observed Respondent and Complainant going upstairs to the rooftop deck. Witness West stated both Complainant and Respondent consumed "a good deal" of alcohol during the party and appeared to be "buzzed." Witness West said he saw Complainant and Respondent flirting and kissing on the roof. Witness West left the party with Witness Phillips around 1:00 a.m.

Witness West said Respondent had a tendency of drinking too much alcohol during parties. He also stated Respondent was a bit "sketchy" in his interactions with women. When asked what he meant, Witness West said that Respondent had one night stands with women who he met at parties and who are typically intoxicated. Witness West also said he had never heard anyone say

Respondent engaged in nonconsensual sexual activity. Witness West provided a screenshot from Twitter posted by Tyler Branson of Respondent.

In addition to his interview, Witness West provided the following evidence:

- Photograph from Twitter of Respondent (posted by Tyler Branson)

Interview with Tyler Branson

Witness Branson was interviewed because of a photo he posted of Respondent on Twitter on August 28, 2021. The photo was provided to the investigator by Witness Phillips. The photo showed Respondent licking beer off of a ping pong table with a caption reading “Blake the Snake, Looking to Score with a Drunk Girl #sodurrttyboy.” Witness Branson confirmed he posted the photo and wrote the caption. When asked what the caption meant, Witness Branson stated Respondent is “a party boy” and has a reputation for having one-night hook ups with drunk girls.

Witness Branson did not attend the party on September 4, 2021.

In addition to his interview, Witness Branson provided the following evidence:

- Photograph from Twitter of Respondent (posted by Tyler Branson)

Interview with Savannah Lyons

Witness Lyons is a Resident Advisor in Shawnee Hall. Witness Lyons stated she spoke with Complainant and Witness Phillips on September 5, 2021. Witness Lyons advised Complainant of the University’s process for filing complaints of sexual misconduct and that Complainant could also report the matter to the local police department. Witness Lyons also provided Complainant with a list of resources. Witness Lyons stated that she did not complete an incident referral at the time because Complainant did not want to make a report.

Follow-Up Interview with Respondent

A follow-up interview was held with Respondent to ask about the information provided by Witness Branson. Respondent admitted the photograph from Twitter was of him. However, he did not know why his teammate would post a photo of him with that caption.

Undisputed Relevant Facts:

For the purposes of this report, undisputed facts are facts either that all parties and witnesses agree on or those that are so clear based on evidence that they cannot be meaningfully disputed.

The relevant incidents occurred on September 4, 7, and 8, 2021. On September 4, 2021, Complainant and Witness Phillips planned to attend a party hosted by the swim team at an off-campus apartment. Complainant and Witness Phillips took a selfie around 9:15, which Complainant posted to Instagram, and took shots of vodka at 9:30 in their residence hall room.

On the way to the party, Respondent texted Witness Phillips to ask whether Complainant was coming to the party, and Witness Phillips confirmed Witness Phillips and Complainant were on their way. Complainant and Witness Phillips arrived at the party around 10:00 p.m.

Respondent and Witness West were playing beer pong when Complainant and Witness Phillips arrived at the party. Complainant and Witness Phillips joined Respondent and Witness West to play beer pong. Complainant, Respondent, Witness Phillips, and Witness West all stated that they played beer pong from approximately 10:30 until midnight. All four consumed beer during the two games they played, although it is unclear or disputed how much each consumed. Complainant and Witness Phillips also took Fireball shots.

Complainant and Respondent went up to the rooftop deck around midnight. Witness West and Witness Phillips confirmed they saw Complainant and Respondent on the rooftop deck at this time. Respondent gave Complainant a cup of Fireball while on the roof, and the two began flirting and kissing. Witness Phillips and Witness West left the party around 1:00 a.m. and Complainant and Respondent were still at the party.

Around 1:00 a.m., Respondent and Complainant returned to the apartment where the party took place and went to a bedroom. They continued kissing, and Complainant began to perform oral sex on Respondent. At some point, Respondent placed his hands on Complainant's head and she pushed them away. Complainant continued to perform oral sex on Respondent after he removed his hands. Complainant and Respondent later had sexual intercourse.

Complainant woke up at 9:00 a.m. on September 5, 2020 in bed next to Respondent. Complainant texted Witness Phillips, asking where Witness Phillips was. Complainant left the apartment and returned back to her residence hall. Complainant told Witness Phillips about the previous night, and Witness Phillips convinced Complainant to speak with Witness Lyons, their Resident Advisor, which Complainant did. Witness Phillips also took photographs of Complainant's arms.

Respondent woke up at 10:30 a.m. in bed alone. He received a text message from Witness Phillips at 1:00 p.m. on September 5, 2021, which said "I can't believe what you did to Willow [Complainant]! Don't ever come near her again, creep!"

On September 7, 2021, Respondent was waiting outside of Complainant's morning class. She saw him and began to walk quickly away. He shouted her name but did not follow her. On September 8, 2021, Respondent was waiting outside of Complainant's residence hall in the morning. Complainant shouted that Respondent should "go away" and Respondent did not follow Complainant.

Complainant made a report to the Title IX Coordinator on September 9, 2021 and signed a Formal Complaint on September 10, 2021.

Disputed Relevant Facts:

For the purposes of this report, the following facts are disputed amongst the parties and witnesses interviewed. The Decision Maker(s) will make determinations concerning disputed facts.

The material disputed facts are:

- 1) whether there was consent to engage in oral sex;
- 2) whether there was consent to engage in sexual intercourse; and
- 3) whether Respondent had an intent to place Complainant in reasonable fear of bodily injury or to cause substantial emotional distress to Complainant.

Consent to Engage in Oral Sex

Complainant stated she initially performed oral sex on Respondent. She stated, however, that he placed his hands on her head, and this made her uncomfortable and she felt pressured to continue. She pushed his hands away and she continued to perform oral sex on him for several minutes. Respondent did not put his hands on Complainant's head again.

Respondent stated he placed his hands on Complainant's head. However, he said that he did not hold her head or push her to continue. When she removed his hands, he did not try to place them on her head again. Complainant continued to perform oral sex on him for several minutes after he removed his hands.

Consent to Engage in Sexual Intercourse

Complainant stated she did not consent to sexual intercourse. Complainant said that after performing oral sex on Respondent, she went to the bathroom and put her dress back on. She went back to lay on the bed. Complainant did not have any further memory after laying on the bed. Complainant stated she woke up in the morning at 9:00 a.m. and noticed red marks on the bicep area of her arms, her vagina was sore, and her dress was on a table across the room.

Respondent stated he asked Complainant if she wanted to have sex about twenty to thirty minutes after Complainant performed oral sex on him. Respondent claims that Complainant did not say anything but she stood up and removed her underwear. Respondent interpreted this action as consent to engage in sexual intercourse with Complainant. Respondent left the room for five to ten minutes to find a condom and when he returned, had sexual intercourse with Complainant.

Intent to Place Complainant in Reasonable Fear of Bodily Injury or to Cause Substantial Emotional Distress to Complainant

Respondent claimed he approached Complainant on September 7 and 8, 2021 to speak with her to make sure she was alright. Respondent stated that he did not understand Witness Phillips' text on September 5, 2021, telling him not to go near Complainant. Respondent stated that

when Complainant walked away quickly and did not respond when he called her name on September 7, 2021, he did not follow. Respondent sought Complainant out again outside of her residence hall on September 8, 2021. When Complainant yelled at him to go away, he did not follow.

Complainant stated that she was shaken and did not wish to speak to Respondent on September 7, 2021. She walked away quickly and did not respond when he called her name. When Respondent waited outside of her residence hall on September 8, 2021, she yelled at him to “go away.” His two appearances made Complainant uneasy and she subsequently decided to make a report to the Title IX office.

Analysis

Regulatory Analysis

Under the University’s Sexual Misconduct Policy, the University prohibits all Sexual Misconduct Violations, both Regulatory and Non-Regulatory, as defined in the Policy.

To meet the definition of Regulatory, the conduct must meet the following three criteria:

- 1) The conduct is alleged to have occurred in the United States;
- 2) The conduct is alleged to have occurred in the University’s Education Program or Activity;
and
- 3) The alleged conduct, if true, would constitute covered Regulatory Prohibited Conduct, as defined in the University’s Sexual Misconduct Policy.

If the conduct does not meet all three criteria, it must be dismissed as Regulatory violation. The conduct may continue to be investigated if it has been charged as a nonregulatory violation.

Alleged Regulatory Violation

- **Regulatory Stalking:** (as defined in the VAWA amendments to the Clery Act) means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - c. fear for their safety or the safety of others; or
 - d. suffer substantial emotional distress.

A course of conduct is when a person engages in two or more acts that include, but are not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person in a prohibited way, or interferes with a person’s property.

Stalking includes the concept of cyberstalking, in which electronic media such as the Internet, social networks, blogs, cell phones, texts, email or other similar devices or forms

of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Stalking is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint.

- *Element 1: Engaging in two or more acts;*
- *Element 2: Directly, indirectly, or through third parties*
- *Element 3: Directed at the Complainant;*
- *Element 4: Carried out by any action, method, device or means to:*
 - a) *follow, monitor, observe, survey, threaten, or communicate*
 - b) *to or about a person*
 - c) *in a prohibited way, or in a way that interferes with a person's property;*
- *Element 5: That would cause a reasonable person to:*
 - a) *Fear for their safety or the safety of others;*
 - b) *Suffer substantial emotional distress.*
- *Element 6: Regulatory jurisdiction:*
 - a) *Occurred in the United States*
 - b) *Alleged conduct occurred in an Education Program or Activity (as those terms are defined in the policy)*

The charge was brought for Regulatory Stalking because the conduct occurred on-campus.

The facts that go to supporting a “course of conduct” “directed toward another person” are Respondent waiting for Complainant outside of her morning class on September 7, 2021 and outside of her residence hall on September 8, 2021. These facts are undisputed.

Respondent stated he went to the class and the residence hall because he knew Complainant would be there and he wanted to talk to her and make sure she was alright. He received a text from Witness Phillips on September 5, 2021 telling him to stay away from Complainant and that Witness Phillips could not believe what he did to Complainant. Respondent did not follow Complainant when she left either time.

Complainant stated that she was shaken to see Respondent outside of her class. Complainant walked away quickly because she did not wish to speak to Respondent. When Complainant saw Respondent outside of her residence hall, she shouted at Respondent to “go away.” Complainant stated Respondent’s actions made her uneasy and as a result, she subsequently made a report to the Title IX Coordinator.

Respondent did not communicate any intention cause bodily injury to Complainant or others in his interactions with Respondent outside her class or residence hall.

The disputed matter for the Decision Maker(s) is whether or not Respondent had an intent to place the Complainant in reasonable fear of bodily injury or to cause substantial emotional

distress to the Complainant by appearing outside her class and residence hall. Importantly, the Decision Maker(s) must determine whether it is more likely than not that Respondent's conduct could cause a reasonable person to fear for their safety or to suffer substantial emotional distress and Complainant did, in fact, fear for her safety or suffer substantial emotional distress.

Alleged Non-Regulatory Violation

- **Non-Regulatory Sexual Assault - Sexual Penetration Without Consent:** Any penetration of the mouth, sex organs, or anus of another person, however slight by an object or any part of the body, when Consent is not present. This includes performing oral sex on another person when Consent is not present.
- *Relevant Definition – Consent: Elements*
 - *Element 1: Knowing and Voluntary agreement;*
 - a) *Not made as a result of coercion, intimidation, force, or threat of harm;*
 - b) *Made when an individual is not incapacitated due to alcohol or drug use or sleep or otherwise without capacity;*
 - *Element 2: To engage in specific sexual activity;*
 - *Element 3: At the time of the activity and ongoing through the activity;*
 - *Element 4: Communicated through clear actions and/or words;*
 - *Element 5: Where the communication is mutually understood.*

The charge was brought for Non-Regulatory Sexual Penetration Without Consent because, while the conduct occurred in the United States, it occurred at an off-campus apartment. Therefore, the conduct did not occur as part of the education programs or activities of the University.

There are two alleged acts of Non-Regulatory Sexual Assault – Sexual Penetration Without Consent to consider: (1) Oral Sex and (2) Sexual Intercourse.

Oral Sex

Sexual Penetration Without Consent

- *Element 1: Any penetration of the mouth, sex organs, or anus of the Complainant by any object or part of the body;*
- *Element 2: When Consent is not present.*

Complainant performed oral sex on Respondent. Complainant stated the oral sex was consensual at the beginning. However, Complainant indicated that she felt uncomfortable when Respondent placed his hands on her head and felt pressured to continue.

Consent is defined as a knowing and voluntary agreement to engage in specific sexual activity at the time of the activity, communicated through clear actions and/or words that are mutually understood. In order to be valid, consent must be active, present and ongoing. Consent can be withdrawn at any time and consent to one form of sexual activity is not necessarily consent to other forms of sexual activity.

Complainant admitted that she consented to kissing Respondent and to oral sex in the beginning; however, the question is whether consent was present throughout the act. Complainant stated she felt uncomfortable and pressured when Respondent placed his hands on her head. Respondent stated he did not push or hold her head, and when she removed his hands, he did not try to put them there again.

The Decision Maker(s) must determine whether consent was active, present, and ongoing throughout the act of oral sex.

Consent is not present when an individual is incapacitated due to alcohol, drugs, or sleep, or otherwise without capacity to provide consent due to intellectual or other disability or other condition. When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. Although both parties admit to consuming alcohol, the Decision Maker(s) must determine whether Complainant's level of intoxication reached the level of incapacitation at the time of each sexual act.

Complainant stated she began to feel dizzy at some time after midnight while she and Respondent were on the rooftop deck. Complainant also remembered moving from the rooftop deck to the bedroom in the apartment where the party took place "at some point". Complainant remembered performing oral sex on Respondent for several minutes before going to the bathroom, returning from the bathroom to the bedroom, and laying down. Complainant had no further memory until she woke up at 9:00 a.m. the next day.

Respondent said he knew Complainant had been drinking but that he was not aware of how much she consumed. Respondent said he knew Complainant was "pretty buzzed" because she was slurring her words but she was able to walk on her own.

Witness West stated both Complainant and Respondent consumed a good deal of alcohol at the party and both appeared buzzed.

Decision Maker(s) must determine whether it is more likely than not that Complainant withdrew consent to performing oral sex by removing Respondent's hands.

Sexual Intercourse

Sexual Penetration Without Consent

- *Element 1: Any penetration of the mouth, sex organs, or anus of the Complainant by any object or part of the body;*
- *Element 2: When Consent is not present.*

The charge was brought for Non-Regulatory Sexual Penetration Without Consent because, while the conduct occurred in the United States, it occurred at an off-campus apartment. Therefore, the conduct did not occur as part of the education programs or activities of the University. Respondent stated he had sexual intercourse with the Complainant. The Complainant does not remember having sexual intercourse, but she woke up noticed red marks on the bicep area of

her arms, her vagina was sore, and her dress was on a table across the room. Neither party disputes sexual intercourse occurred.

Consent is defined as a knowing and voluntary agreement to engage in specific sexual activity at the time of the activity, communicated through clear actions and/or words that are mutually understood. In order to be valid, consent must be active, present and ongoing. Consent can be withdrawn at any time and consent to one form of sexual activity is not necessarily consent to other forms of sexual activity.

Consent is not present when an individual is incapacitated due to alcohol, drugs, or sleep, or otherwise without capacity to provide consent due to intellectual or other disability or other condition. When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication.

Complainant stated she did not consent to sexual intercourse. Complainant said that after performing oral sex on Respondent, she went to the bathroom and put her dress back on. She went back to lay on the bed. Complainant did not have any further memory until she woke up in the morning at 9:00 a.m. Complainant noticed red marks on the bicep area of her arms, her vagina was sore, and her dress was on a table across the room. Witness Phillips photographed the red marks on Complainant's arms.

Respondent stated he asked Complainant if she wanted to have sex about twenty to thirty minutes after Complainant performed oral sex on him. Respondent claims Complainant did not say anything but she stood up and removed her underwear. Respondent interpreted this action as consent to engage in sexual intercourse with Complainant. Respondent left the room for five to ten minutes to find a condom and when he returned, had sexual intercourse with the Complainant.

In addition, Respondent's teammates and friend, Witness West and Witness Branson, stated that Respondent has previously drank alcohol to excess at parties and has engaged in sexual activity with intoxicated girls. This is memorialized in the photograph of Respondent that was posted on Twitter. Respondent acknowledged that the photograph was of him, but could not explain why his friends would post it with the noted caption.

The Decision Maker(s) must determine whether it is more likely than not that consent was active, present, and ongoing throughout the act of sexual intercourse.

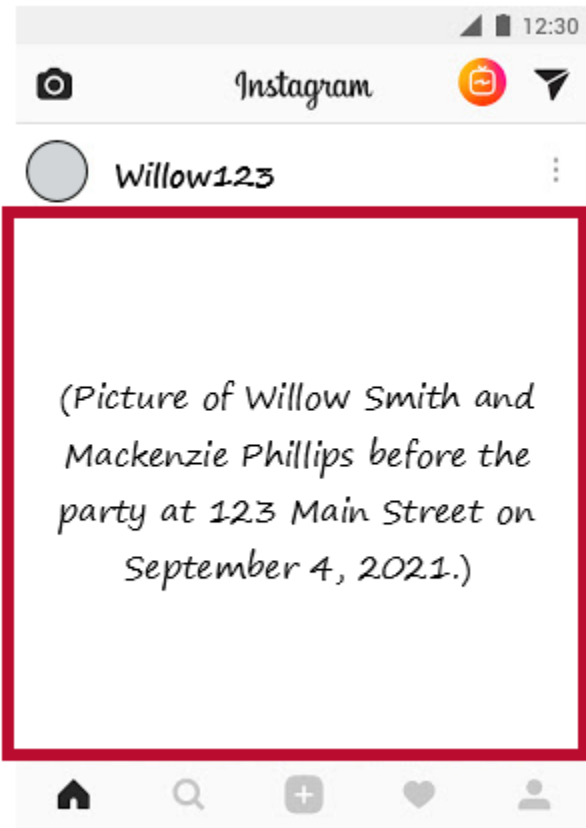
The Decision Maker(s) must also determine whether it is more likely than not that Complainant's level of intoxication reached the level of incapacitation at the time of sexual intercourse.

Summary

The Decision Maker(s) should view the case in its entirety and weigh the presented evidence and any evidence presented at a future hearing to determine if a policy violation occurred by a preponderance of the evidence.

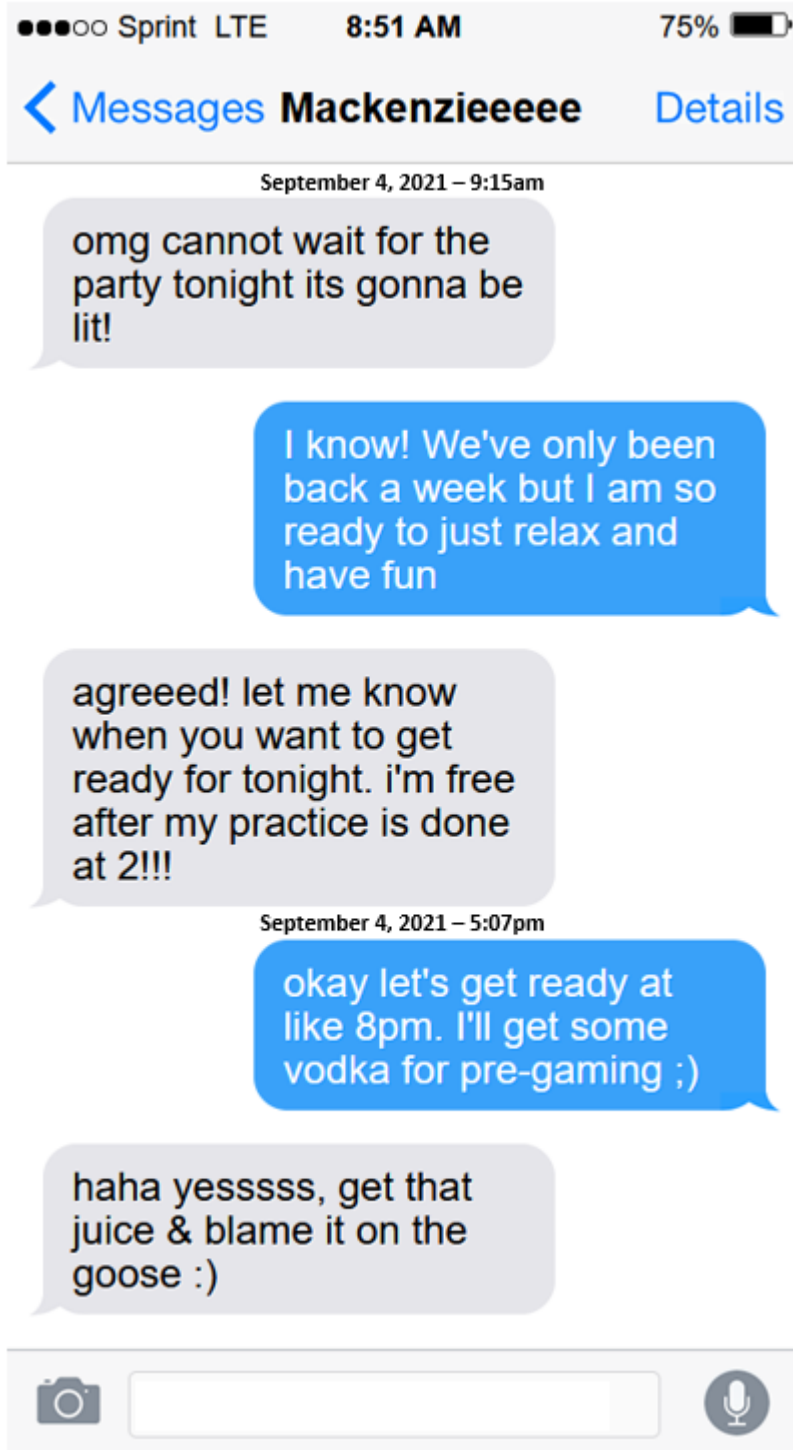
Appendix 1 (Provided by Complainant)

Photograph Complainant posted on Instagram of Complainant and Witness Phillips



Appendix 2 (Provided by Complainant)

Copies of text messages between Witness Phillips and Complainant



haha yesssss, get that juice & blame it on the goose :)

September 4, 2021 - 7:15pm

okay I'm heading back to the room now....can't wait for tonight!!!!!!

haha yesss

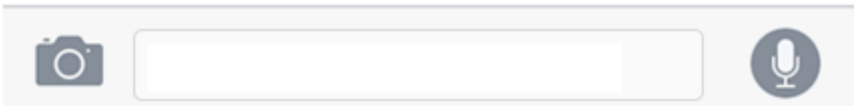
September 5, 2021 - 9:04am

where are you???

WTH where are you? I tried to take you home but you were wasted and wanted to stay with Blake

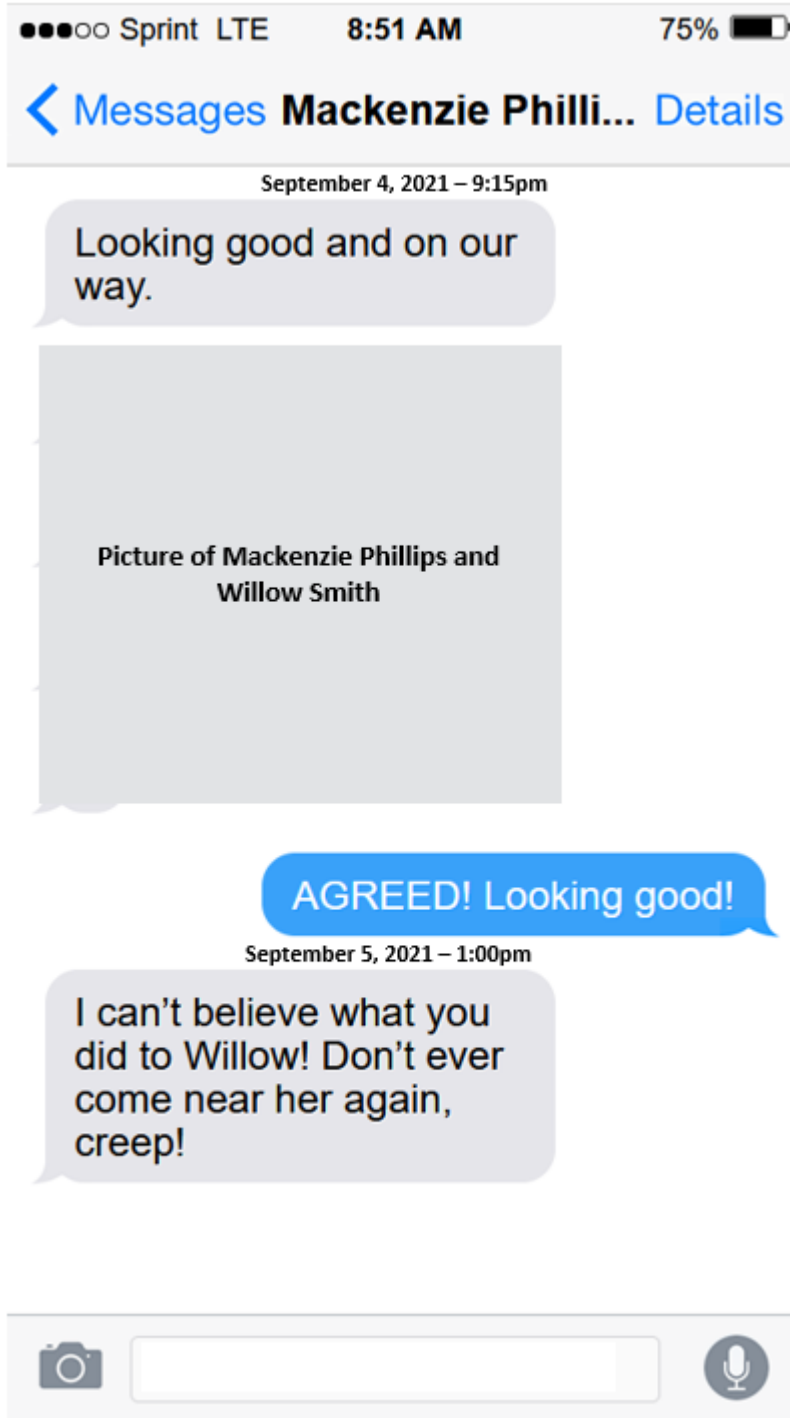
September 5, 2021 - 9:15am

where are you???



Appendix 3 (Provided by Respondent)

Copies of text messages between Respondent and Witness Phillips, including the selfie that Witness Phillips texted Respondent



AGREED! Looking good!

September 5, 2021 – 1:00pm

I can't believe what you did to Willow! Don't ever come near her again, creep!

September 5, 2021 – 1:45pm

What are you talking about?

Mac why are you calling me a creep? what do you think I did?

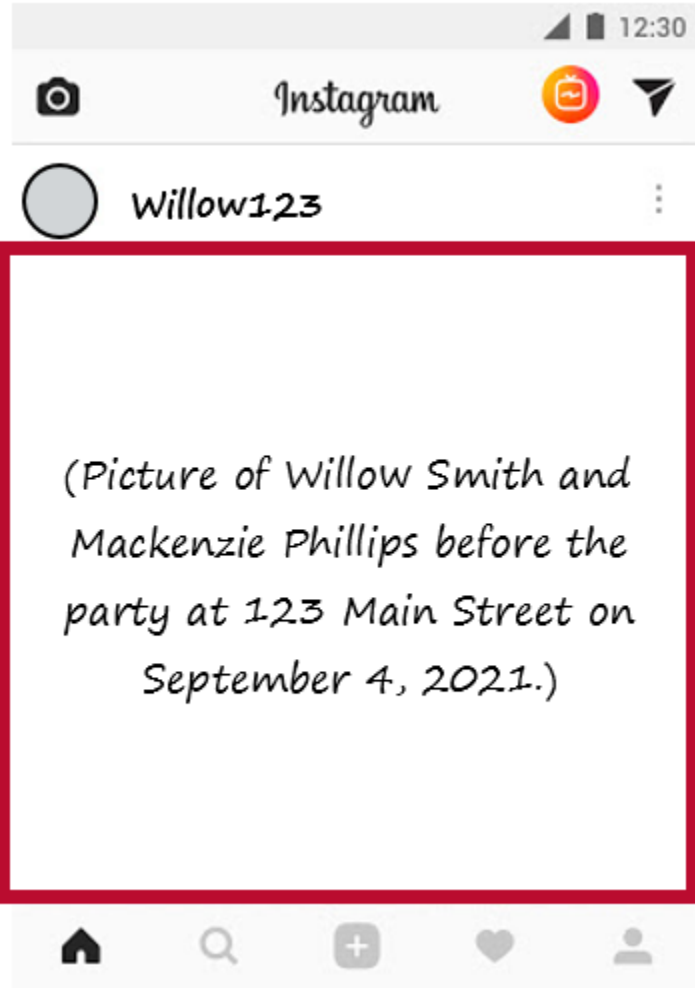
September 5, 2021 – 2:30pm

hellooooo?



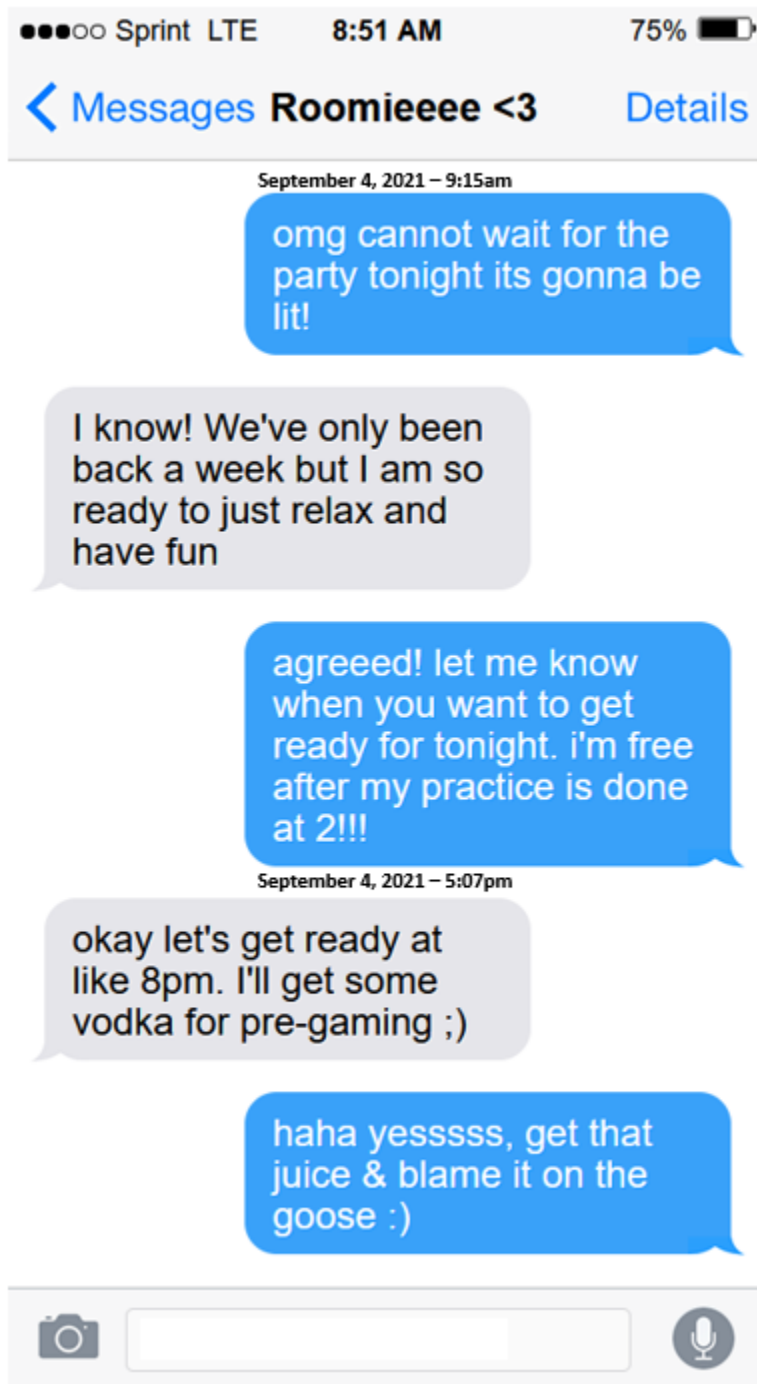
Appendix 4 (Provided by Respondent)

Instagram photograph of Complainant and Witness Phillips



Appendix 5 (Provided by Witness Phillips)

Copies of text messages between Witness Phillips and Complainant



haha yesssss, get that juice & blame it on the goose :)

September 4, 2021 - 7:15pm

okay I'm heading back to the room now....can't wait for tonight!!!!!!

haha yesss

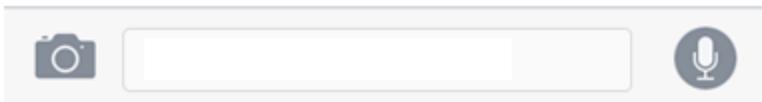
September 5, 2021 - 9:04am

where are you???

WTH where are you? I tried to take you home but you were wasted and wanted to stay with Blake

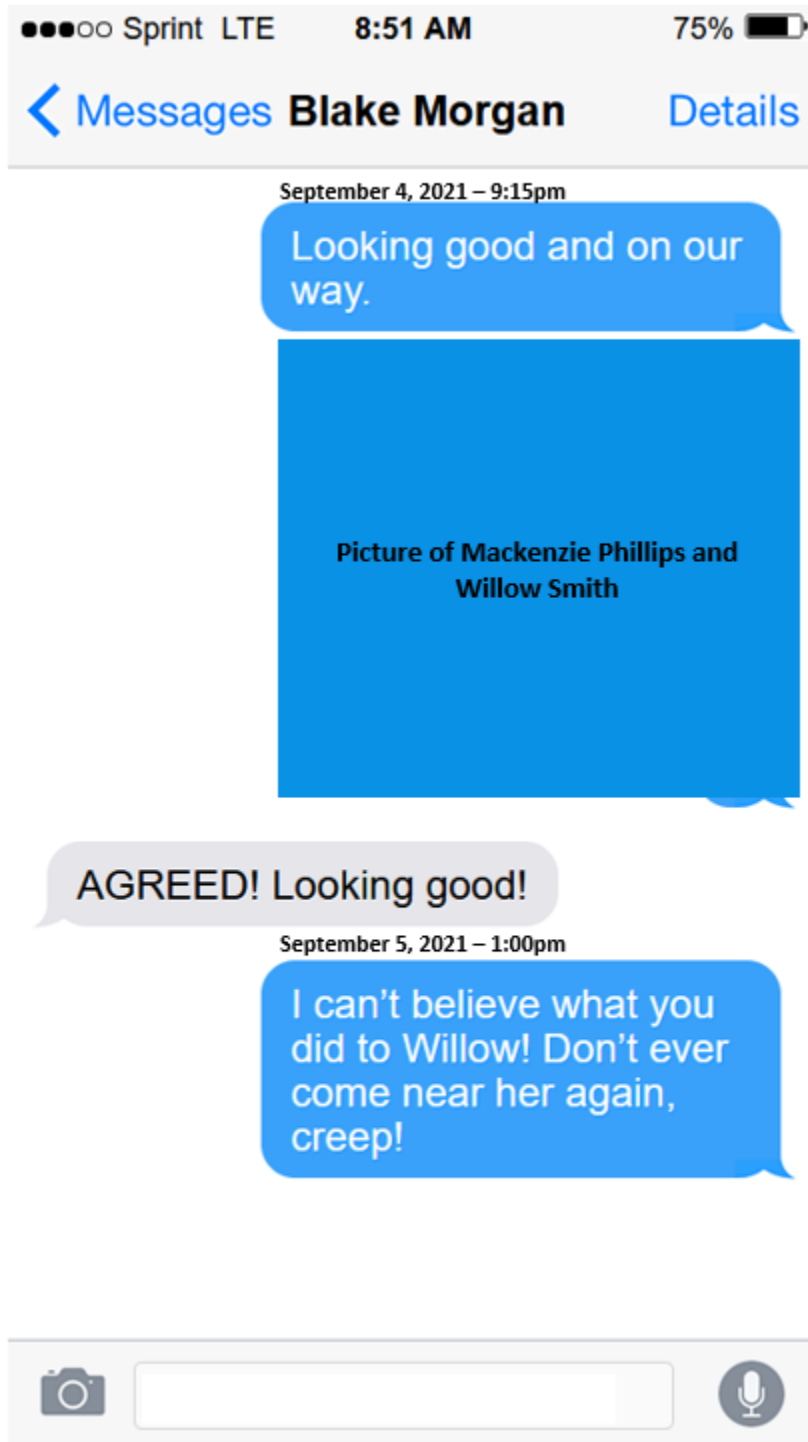
September 5, 2021 - 9:15am

where are you???



Appendix 6 (Provided by Witness Phillips)

Copies of text messages between Respondent and Witness Phillips



AGREED! Looking good!

September 5, 2021 – 1:00pm

I can't believe what you did to Willow! Don't ever come near her again, creep!

September 5, 2021 – 1:45pm

What are you talking about?

Mac why are you calling me a creep? what do you think I did?

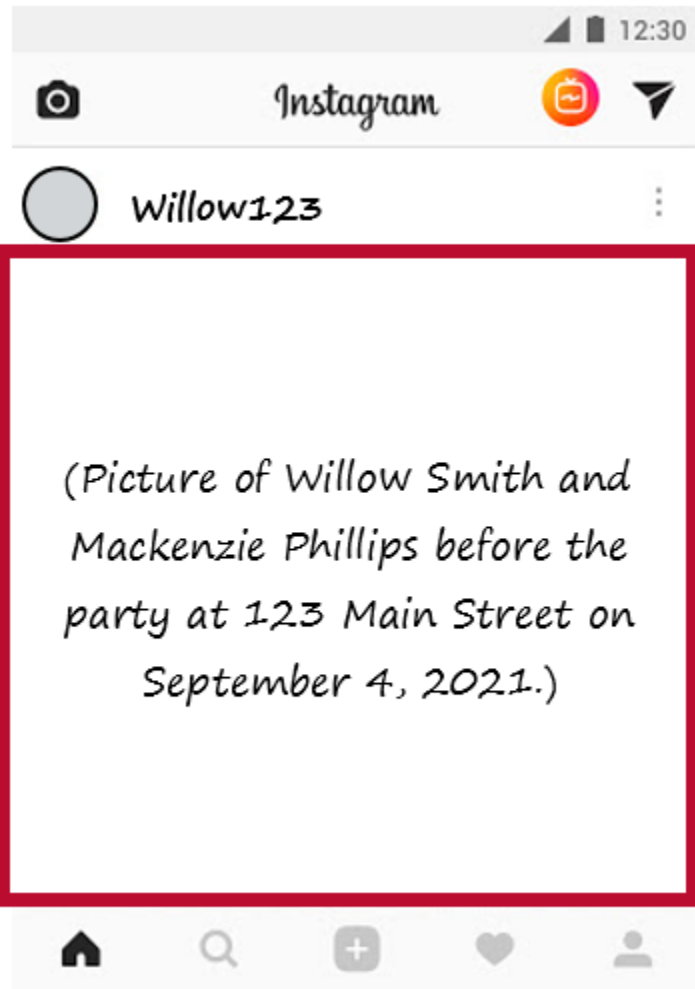
September 5, 2021 – 2:30pm

hellooooo?



Appendix 7 (Provided by Witness Phillips)

Instagram photograph of Complainant and Witness Phillips



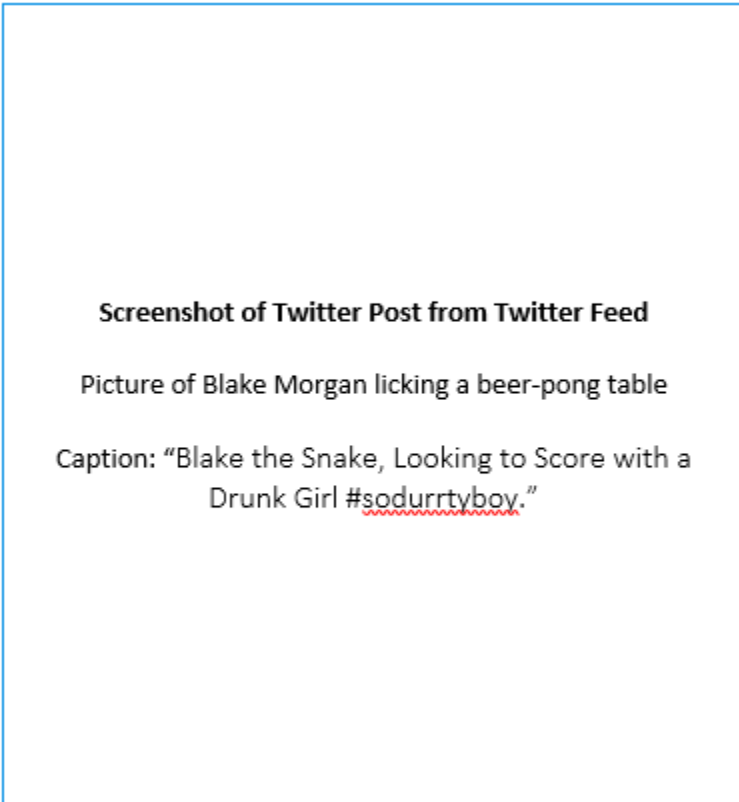
Appendix 8 (Provided by Witness Phillips)

Photograph of Complainant's arms taken by Witness Phillips on September 5, 2021



Appendix 9 (Provided by Witness West)

Photograph from Twitter of Respondent (posted by Tyler Branson)



Appendix 10 (Provided by Witness Branson)

Photograph from Twitter of Respondent, posted on August 28, 2021

