

REPORT TO THE

OFFICE OF THE PRESIDENT OF OLD DOMINION UNIVERSITY

UNIVERSITY COUNSEL OF OLD DOMINION UNIVERSITY

**CONCERNING COMPLAINTS OF SEXUAL MISCONDUCT
AGAINST FORMER OLD DOMINION UNIVERSITY
VISITING PROFESSOR BLAKE BAILEY, THE UNIVERSITY'S
RESPONSE TO THOSE COMPLAINTS, AND THE
CIRCUMSTANCES SURROUNDING THE MAY 26, 2021
STATEMENT TO THE VIRGINIAN-PILOT**

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Date: November 30, 2021

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INTRODUCTION

Multiple allegations of sexual misconduct, as detailed in a June 2021 news article in *The Virginian-Pilot* (“*The Pilot*”), have been raised against former Old Dominion University (“ODU” or the “University”) professor Blake Bailey (“Bailey”) as a result of his time at the University from 2010 to 2016. This report examines those allegations, what, if anything, was reported to ODU, and whether ODU’s response was appropriate under relevant law and ODU policies.

An independent review of the facts and circumstances reveals two substantiated allegations of sexual misconduct by Bailey: (1) in April 2010, Bailey grabbed ODU Linguistics Professor Bridget Anderson (“Professor Anderson”) on her unclothed vaginal area, without her consent, in a hot tub during a Creative Writing outing in Sandbridge, Virginia, and (2) in October 2010, Bailey engaged in unwanted physical touching and attention toward a graduate student at a bar near ODU’s campus.

Other allegations concerning Bailey’s actions toward Professor Anderson, a visiting writer, and a second graduate student were investigated, as well. However, varying witness recollections exist concerning these additional events, and some witnesses with direct knowledge declined to meet with us, including the visiting writer and the graduate student from 2014. Given the passage of time—approximately seven to eleven years ago, depending on the allegation—and the lack of contemporaneous documents to confirm the recollections of witnesses, we were unable to make definitive findings regarding these additional allegations.

We also conclude, while Bailey was still a professor at ODU, concerns over his behavior involving Professor Anderson and graduate students were brought to the attention of ODU faculty and administrators and, in some instances, those concerns were not escalated to the ODU Office of Institutional Equity and Diversity (“OIED”). However, due to the limitations of the

factual record we reviewed, we cannot definitively state that there were any violations of Title VII, Title IX, or other applicable law or policy in the response of ODU administrators.

This report further examines the role of the ODU legal department and administration in the drafting and editing of the statement provided to *The Pilot* by the law firm of Kaufman & Canoles, P.C., on May 26, 2021 (the “Statement”). The Statement, ultimately published by *The Pilot* in full, was aggressive and dismissive toward the alleged complainants in both tone and substance, and was in some instances, factually untrue. We discuss in detail the role of particular ODU officials in the drafting and editing of the Statement, notably former University Counsel Earl Nance, Senior Associate University Counsel James Wright, Vice President for Administration and Finance Gregory DuBois, and former ODU President John Broderick.

BACKGROUND

A. Title IX of the Education Amendments of 1972

Title IX of the Education Amendments of 1972 (“Title IX”) prohibits any educational program or activity receiving federal funding from discriminating on the basis of sex:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.¹

Title IX’s protections apply to both students and employees. The statute does not specifically mention sexual harassment or sexual assault as constituting discrimination “on the basis of sex,” but courts and federal agencies recognize that unwanted conduct of a sexual nature can deny or limit, on the basis of sex, a person’s ability to participate in or receive benefits, services, or opportunities from a school’s program. Title IX has consistently been interpreted to

¹20 U.S.C. § 1681(a).

apply to sexual harassment through private rights of action and administrative enforcement by the federal agencies that provide funding to educational programs.

1. Case Law

Title IX does not define sexual harassment or delineate the circumstances under which a school or educational program may be liable for such conduct; instead, the standard for such liability has been supplied by the courts. The Supreme Court first addressed institutional responsibility for actionable sexual harassment under Title IX in *Gebser v. Lago Vista Independent School District*.² In *Gebser*, the Court held that an educational institution may be liable for faculty-on-student harassment only when an “appropriate person” has actual knowledge of such alleged conduct, and the institution’s response to those allegations is so deficient that it amounts to “deliberate indifference.”³ An “appropriate person,” under *Gebser*, is “an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient’s behalf.”⁴ *Gebser* explicitly rejected the theory that an institution would be vicariously liable for such harassment.

The institution’s conduct, rather than the harassment itself, was also the touchstone of institutional liability in *Davis v. Monroe County Board of Education*,⁵ decided the following year. *Davis* expanded on *Gebser*’s deliberate-indifference standard and explained that this “high standard” requires that the institution’s conduct causes a student to undergo harassment or makes the student more vulnerable to it.⁶ The Court clarified that an institution’s response to allegations of harassment amounts to deliberate indifference only if it is “*clearly unreasonable* in light of the

²524 U.S. 274 (1998).

³*Id.* at 289-90.

⁴*Id.* at 290.

⁵526 U.S. 629 (1999).

⁶*Id.* at 643-45.

known circumstances.”⁷ Conversely, an institution is not liable under Title IX when its response to allegations of sexual harassment is merely not reasonable.

Federal circuit courts have split regarding Title IX application to employment relationships. The United States Court of Appeals for the Fourth Circuit has held that an employee may bring a claim of gender discrimination under Title IX.⁸

2. Regulations

In addition to enforcement through an implied private right of action, Title IX is also enforced by federal agencies that provide funding to educational programs, principally the United States Department of Education’s Office for Civil Rights (OCR). Title 20 U.S.C. § 1682 authorizes and directs federal departments and agencies empowered to extend federal financial assistance to any education program or activity to effectuate the provisions of Title IX “by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.” Pursuant to this authority, the Department of Education has established regulations under Title IX.

Regulations issued in 1975, which remained in effect during the relevant time period, did not specifically address sexual harassment or sexual assault as forms of sex discrimination, but provided, among other things, for each institution to designate a responsible employee to coordinate its Title IX compliance efforts, and to “adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action” discriminating based on sex.⁹ Subsequent regulations specifically addressing sexual

⁷*Id.* at 648 (emphasis added).

⁸*Preston v. Comm. of Va. ex. rel. New River Cmty Coll.*, 31 F.3d 203, 205-06 (4th Cir. 1994) (holding that a separate right of employment discrimination exists under Title IX).

⁹45 C.F.R. § 86.8.

harassment and sexual assault did not take effect until August 14, 2020, well after the relevant time period.

3. Relevant Administrative Guidance

Although *Gebser* and *Davis* (and lower courts' subsequent interpretations and applications of them) supply the standards for institutional liability under Title IX, they do not define the scope of an institution's responsibilities under Title IX in the administrative-enforcement context. In that regard, OCR has issued a series of guidance documents setting forth its interpretation of Title IX with respect to sexual harassment, which has differed at times from the judicial analysis for liability under Title IX outlined in *Gebser*, *Davis*, and others. These guidance documents have evolved over time and previous guidance documents have been rescinded with changing presidential administrations. Such guidance does not carry the force of law; however, it is critical to the Title IX enforcement regime. The following discusses guidance in effect from 2010 through 2016.¹⁰

a. 2001 Revised Sexual Harassment Guidance

OCR's 2001 Revised Sexual Harassment Guidance on the Harassment of Students by School Employees, Other Students, or Third Parties¹¹ (the "2001 Guidance") outlined the compliance standards OCR uses for enforcing and investigating violations of Title IX in the context of sexual harassment, which it defined as "unwelcome conduct of a sexual nature."¹² It

¹⁰OCR withdrew the 2011 DCL and 2014 Q&A (discussed below) in September 2017 pending the development and implementation of new Title IX regulations. Following this withdrawal, the Department of Education continued to rely on the 2001 Guidance.

¹¹See Office for Civil Rights, U.S. Dep't of Educ., *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (Jan. 2001), available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.

¹²*Id.* at 2.

explicitly did not address sexual harassment of employees, but noted that such conduct “may be prohibited by Title IX.”¹³

The 2001 Guidance underscored that Title IX compliance requires institutions to adopt grievance procedures that provide prompt and equitable resolution of complaints of sexual harassment.¹⁴ Generally, educational institutions must respond to sexual harassment with “prompt and effective action calculated to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects.”¹⁵ If the “school, upon notice of the harassment, responds by taking prompt and effective action to end the harassment and prevent its recurrence, the school has carried out its responsibility under the Title IX regulations.”¹⁶

For purposes of determining whether harassment triggers a school’s responsibilities under or violates Title IX, the 2001 Guidance recognized a distinction between *quid pro quo* harassment (which is automatically considered harassment that limits or denies a student’s ability to participate in or benefit from the school’s program)¹⁷ and hostile-environment harassment (which requires a fact-specific evaluation of all circumstances relevant to the situation).¹⁸ Where a teacher or employee commits harassment, the extent of the institution’s responsibilities depends on whether the harassment occurred within “the context of the employee’s provision of aid, benefits, or services to students” (i.e., in the context of their job responsibilities).¹⁹ If it did, and the harassment limits or denies a student’s ability to benefit from or participate in an educational program, then the institution must address the discriminatory conduct under the 2001

¹³*Id.* at 24 n.1.

¹⁴*Id.* at 19.

¹⁵*Id.* at iii.

¹⁶*Id.* at 12.

¹⁷*Id.* at 5.

¹⁸*Id.* at 5-7.

¹⁹*Id.* at 10.

Guidance and stop the behavior, prevent its recurrence, and remedy the effects of harassment for the victim.²⁰

Even when employees commit harassment outside the scope of their job, the institution has a duty to stop the harassment and prevent its recurrence if it has notice of the behavior.²¹ OCR deemed an institution to have notice of a sexually hostile environment if a “responsible employee” “knew, or in the exercise of reasonable care should have known” of the harassment, regardless of whether the complainant uses the appropriate grievance procedures to complain of the harassment.²² A responsible employee, according to the 2001 Guidance, is “any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.”²³ The concept of a “responsible employee” is thus broader than that of the “appropriate person” described in *Gebser* as relevant to determining institutional responsive obligations: “even if a responsible employee does not have the authority to address the discrimination and take corrective action, he or she does have the obligation to report it to appropriate school officials.”²⁴ An institution with notice of alleged sexual harassment “should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.”²⁵

²⁰*Id.*

²¹*Id.* at 11-12.

²²*Id.* at 13.

²³*Id.*

²⁴*Id.* at 34 n.74.

²⁵*Id.* at 15.

The 2001 Guidance set forth factors used to evaluate hostile-environment sexual harassment, which factors include the severity and frequency of the conduct and the identity of relationship between the alleged harasser and the subject of the harassment, among others.²⁶ It explained that “[t]he more severe the conduct, the less the need to show a repetitive series of incidents,” and specifically cited “attempts to grab any student’s genital area” as sufficiently severe to create a hostile environment even if the conduct is not persistent.²⁷ With respect to the identities of the alleged harasser and victim, the 2001 Guidance noted that, “due to the power a professor or teacher has over a student, sexually based conduct by that person toward a student is more likely to create a hostile environment than similar conduct by another student.”²⁸

Under the 2001 Guidance, an institution on notice of conduct that may constitute a sexually hostile environment does not violate Title IX if it takes prompt and effective action to stop the harassment and prevent its recurrence.²⁹ However, schools cannot take such action or ensure that the educational environment is free from discrimination “without determining if sexual harassment complaints have merit.”³⁰ To make sure that schools have the information they need to evaluate and address such complaints, the 2001 Guidance stressed that institutions should train their employees to identify harassment and ensure that all responsible employees understand that they are obligated to report sexual harassment to appropriate school officials.³¹

b. 2011 Dear Colleague Letter

On April 4, 2011, OCR issued a Dear Colleague Letter (the “2011 DCL”) to supplement its 2001 Guidance. The 2011 DCL focused particularly on sexual violence (defined as “physical

²⁶*Id.* at 5-6.

²⁷*Id.* at 6.

²⁸*Id.* at 7.

²⁹*Id.* at 12.

³⁰*Id.* at 35 n.86.

³¹*Id.* at 13.

sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol”) and confirmed that Title IX’s requirements pertaining to sexual harassment also cover sexual violence.³² This focus reflected the Department of Education’s concern that sexual violence affects students’ ability to feel safe in their school and thereby their opportunity to benefit fully from the school’s programs and activities.³³

The 2011 DCL focused on institutions’ obligations under Title IX with respect to peer-to-peer harassment, rather than harassment by a teacher.³⁴ Among other things, it outlined elements of an institution’s grievance procedures that OCR deemed critical to providing “prompt and equitable resolution of sexual harassment complaints.”³⁵ Perhaps most notably, the 2011 DCL stated that, “in order for a school’s grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard.”³⁶ This represented the first guidance to impose an evidentiary standard on schools’ investigations and left many institutions scrambling to review and update their policies and procedures to account for this and other new requirements discussed in the 2011 DCL.

The 2011 DCL stated that “[s]chools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school’s education program or activity.”³⁷ Accordingly, the school must process a student’s complaint in accordance with its established procedures regardless of where the conduct occurred, and consider any continuing effects of the off-campus conduct when evaluating whether there is a hostile

³²Office for Civil Rights, U.S. Dep’t of Educ., Dear Colleague Letter (Apr. 4, 2011), *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf> at 1.

³³*Id.* at 2.

³⁴*See* Office for Civil Rights, U.S. Dep’t of Educ., Dear Colleague Letter (Apr. 4, 2011), *available at* <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

³⁵*Id.* at 9.

³⁶*Id.* at 10-11.

³⁷*Id.* at 4.

environment on campus.³⁸ The 2011 DCL did not specifically address whether the same principles apply to off-campus conduct by employees, and elsewhere noted that schools' obligations in responding to sexual harassment committed by employees "may be different from those described in this letter."³⁹ The letter referred readers to the 2001 Guidance for more information about employee harassment of students.⁴⁰

c. 2014 Questions and Answers on Title IX and Sexual Violence

In response to institutional struggles to interpret and implement the 2011 DCL, OCR issued Questions and Answers on Title IX and Sexual Violence on April 29, 2014 (the "2014 Q&A"). The 2014 Q&A clarified aspects of institutions' obligations to investigate allegations of sexual harassment and to use appropriate interim measures to protect complainants while investigations are pending. It "further specified in detail the requirements of Title IX with respect to the responsibilities of a school's Title IX Coordinator (the employee required by regulation to coordinate a school's compliance with Title IX), the elements expected in a school's written grievance procedures for responding to complaints of sexual violence, and which individuals qualify as responsible employees who are required to report allegations of sexual violence to a school's Title IX Coordinator."⁴¹

B. Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), prohibits discrimination in the terms and conditions of employment based on race, color, religion, sex, and national origin.⁴² It also prohibits retaliation against applicants or employees because they

³⁸*Id.*

³⁹*Id.* at 2 n.8.

⁴⁰*Id.*

⁴¹Jared P. Cole & Christine J. Back, *Title IX and Sexual Harassment: Private Rights of Action, Administrative Enforcement, and Proposed Regulations*, Cong. Research Serv. (Apr. 12, 2019), available at <https://crsreports.congress.gov>; see 2014 Q&A at 10-18.

⁴²See 42 U.S.C. § 2000e.

opposed sex discrimination prohibited by Title VII, filed a charge of sex discrimination under Title VII, or participated in an investigation or proceeding related to a claim of sex discrimination under Title VII.⁴³ The United States Court of Appeals for the Fourth Circuit has held that an employee of an educational institution subject to Title IX may pursue claims for sex discrimination under both Title VII and Title IX.⁴⁴

The Equal Employment Opportunity Commission (“EEOC”) is charged with administrative enforcement of Title VII. EEOC regulations confirm that harassment on the basis of sex is a violation of Title VII, and describes what conduct constitutes sexual harassment—generally divided into the categories of quid pro quo and hostile work environment harassment—as follows:

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.*⁴⁵

Employer vicarious liability for harassment by employees generally depends on whether the harasser was acting as the agent of the employer under basic agency principles. Under the EEOC regulations, an employer may also be responsible for acts of sexual harassment between coworkers “where the employer (or its agents or supervisory employees) knows or should have

⁴³42 U.S.C. § 2000e-3(a).

⁴⁴*Preston v. Com. of Va. ex rel. New River Cmty. Coll.*, 31 F.3d at 205-06.

⁴⁵29 C.F.R. § 1604.11(a) (emphasis added).

known of the conduct, unless it can show that it took immediate and appropriate corrective action.”⁴⁶

A claimant alleging discrimination under Title VII must file a timely charge with the EEOC.⁴⁷ Generally, charges must be filed within 180 days of the occurrence of the alleged unlawful employment practice, but Subsection 706(e) of Title VII extends the charge-filing period from 180 to 300 days if three conditions are present: (1) the jurisdiction has “a State or local law prohibiting the unlawful employment practice alleged” in the charge, (2) the jurisdiction has “a State or local agency with authority to grant or seek relief from such practice[,]” and (3) the charging party has “initially instituted proceedings with [that] State or local agency.”⁴⁸ Virginia has the requisite state law and enforcement agency to qualify as such a “deferral state” under Title VII.

C. Virginia Human Rights Act

The Virginia Human Rights Act (“VHRA”) prohibits unlawful discrimination in employment based on sex, among other protected characteristics.⁴⁹ An aggrieved employee must file a complaint with the Virginia Office of the Attorney General, Division of Human Rights (“DHR”), which enforces the VHRA, within 180 days of the alleged discriminatory event.⁵⁰ Because DHR is a “deferral agency” under Title VII, charges filed with either DHR or the EEOC are considered “dual filed” with both agencies.⁵¹

⁴⁶29 C.F.R. § 1604.11(d).

⁴⁷42 U.S.C. § 2000e-5(e)(1).

⁴⁸*Id.*

⁴⁹Va. Code Ann. §§ 2.2-3900(B), 2.2-3901, & 2.2-3905(B).

⁵⁰Va. Code Ann. § 2.2-522.

⁵¹*McIntyre-Handy v. W. Telemarketing Corp.*, 97 F. Supp. 2d 718, 724-28 (E.D. Va. 2000).

D. The Clery Act and the Violence Against Women Reauthorization Act

Section 485(f) of the Higher Education Act of 1965, as amended (“HEA”),⁵² otherwise known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), requires institutions of higher education to comply with certain campus safety and security related requirements as a condition of their participation in financial aid programs under Title IV of the HEA. The Clery Act requires institutions to file annual security reports that include statistics for various criminal offenses, including forcible and non-forcible sex offenses and aggravated assault. It also requires institutions to inform students of procedures complainants should follow, including to whom offenses should be reported.

In 2013, President Obama signed the Campus SAVE Act to amend the Clery Act as part of the Violence Against Women Reauthorization Act (“VAWA”). VAWA amended the Clery Act to require institutions to compile and report statistics of dating violence, domestic violence, sexual assault, and stalking, in addition to the categories previously mandated under the Clery Act, and to include certain policies, procedures, and programs pertaining to these incidents in their annual security reports. VAWA requires institutions’ policies to include information on victims’ option to (or not to) notify and seek assistance from law enforcement and campus authorities, as well as their rights, and the institution’s responsibilities, regarding no-contact, restraining, and protective orders.

VAWA also requires new students and new employees to be offered “primary prevention and awareness programs” that promote awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking, which training programs must include, among other

⁵²20 U.S.C. § 1092(f).

things, definitions of those offenses and the definition of consent, with reference to sexual offenses, in the applicable jurisdiction.

E. Old Dominion University Policies

At all times relevant to this legal review, ODU has maintained institution-wide policies intended to provide students and employees with an environment free of sexual harassment and other forms of discriminatory conduct. For purposes of this review, the relevant ODU policies are the 1997 Sexual Harassment Policy, 2011 Sexual Harassment Policy, 2008 Sexual Assault Policy, 2011 Sexual Misconduct Policy, and 2011 Stalking Policy. The following is a discussion of the key provisions of each policy.

1. Policies Concerning Sexual Harassment

a. 1997 Sexual Harassment Policy

During the entirety of 2010 through September 30, 2011, ODU's then-operative sexual harassment policy (the "1997 Sexual Harassment Policy") denounced sexual harassment as "reprehensible" and set forth policies and procedures intended to avoid and address sexual harassment that might affect the learning and working environment at the University.⁵³ The 1997 Sexual Harassment Policy defined "sexual harassment" as "unwelcomed and unsolicited conduct of a sexual nature, physical or verbal, by a member of the university community" under certain circumstances, including where "[s]uch conduct is known or should have been known to interfere with such person's work or academic performance, by creating an intimidating, hostile, or offensive working or educational environment."⁵⁴ Such conduct might include, but was not limited to, "uninvited physical contact or touching such as pinching or intentional brushing

⁵³Old Dominion University Policy # 6320, *Sexual Harassment Policy* (rev. May 1, 1997), at 1.

⁵⁴*Id.* at 2.

against the body.”⁵⁵ For purposes of the policy, a “member of the university community” meant a “student or employee, or an alumnus, alumna, or volunteer involved in any university sponsored activity.”⁵⁶

The 1997 Sexual Harassment Policy outlined procedures by which members of the ODU community could make complaints of sexual harassment. According to the policy, the first step was for “[a]ny individual in the university community who believes she or he has been the victim of sexual harassment” to “contact the EO/AA director”—at the time, ReNee Dunman—“or a member of the University Committee on Sexual Harassment,” within two years of the date of the alleged harassment if the complainant was a student and within 120 days of the alleged harassment for any other member of the university community.⁵⁷

The complainant could then “elect an informal process” to resolve the complaint “without the necessity of disciplinary action or of the more formal procedures for processing a complaint,” or, alternatively, elect to file a formal complaint, which would trigger an investigation.⁵⁸ The 1997 Sexual Harassment Policy allowed for complaints of sexual harassment to be pursued “in accordance with the appropriate university complaint resolution procedure” depending on the status of the complainant—e.g., student or faculty—and identified the relevant procedures and contact persons.⁵⁹

In the second step of the procedure outlined in the policy, the complainant could elect to “proceed with the charge” before “the appropriate administrative tribunal,” and sanctions, if

⁵⁵*Id.*

⁵⁶*Id.*

⁵⁷*Id.* at 4.

⁵⁸*Id.*

⁵⁹*Id.* at 6.

appropriate, would be imposed “in accordance with applicable University disciplinary and sanction procedures.”⁶⁰

Although the 1997 Sexual Harassment Policy spoke broadly to the responsibilities of members of the ODU community in connection with the policy, it did not set forth specific obligations or procedures for persons other than complainants who became aware of possible sexual harassment. Thus, the policy provided in general terms that “[i]t is the responsibility of each member of university administrators and supervisors [*sic*] to assure that effective measures are taken to implement the procedures outlined in this policy,” and that “[t]he University’s EO/AA director must be advised of all complaints or reported incidents of sexual harassment.”⁶¹ The policy did not specify whether, or to what extent, particular members of the ODU community were obligated to report possible instances of sexual harassment. Specifically, the 1997 Sexual Harassment Policy did not identify which members of the ODU community would be considered “responsible employees” within the meaning of federal Title IX guidance, and thus did not apprise those employees, or the broader ODU community, of precisely who was obligated to report suspected harassment and under what circumstances.

b. 2011 Sexual Harassment Policy

ODU implemented a revised sexual harassment policy on September 30, 2011 (the “2011 Sexual Harassment Policy”) and in several respects, the 2011 policy was more expansive and more detailed than the 1997 policy.⁶² The 2011 Sexual Harassment Policy’s definition of “sexual harassment” was substantially similar to its definition under the 1997 Policy; however, the revised definition focused on the “purpose *or* effect” of the harasser’s conduct rather than

⁶⁰*Id.* at 5-6.

⁶¹*Id.*

⁶²Old Dominion University Policy # 6320, *Sexual Harassment Policy* (rev. Sept. 30, 2011).

whether the harasser knew or should have known that the conduct would interfere with another person's work or education.⁶³ The revised policy also recognized that conduct that interferes with participation in extracurricular activities, as well as conduct that interferes with work or academic performance, may constitute prohibited sexual harassment.⁶⁴ In addition to its more expansive definition of "sexual harassment," the 2011 Sexual Harassment Policy also broadened its applicability to "all employees, students, volunteers, employees of affiliated organizations, and visitors to the institution," including "guests, uninvited guests[,] and all other persons located on property[] owned, leased, or otherwise controlled by the University."⁶⁵

The 2011 Sexual Harassment Policy set forth more detailed procedures concerning reporting and addressing sexual harassment than the 1997 policy. The revised policy encouraged any member of the University community who believed that he or she had been the victim of sexual harassment to contact the Office of Institutional Equity and Diversity ("OIED"), whereupon the accuser could elect to follow either the informal complaint procedure or formal complaint procedure outlined by the policy.⁶⁶ Even if the accuser elected the informal process, the 2011 Sexual Harassment Policy authorized OIED to "determine that because of the seriousness of the allegations the informal process is inappropriate and instead inform the accuser that the formal complaint procedure will be utilized."⁶⁷ Under the 2011 Sexual Harassment Policy, a faculty complainant who wished to submit a formal complaint of sexual harassment could proceed under either the university's Sexual Harassment Policy's Formal Complaint Procedure through OIED or the Faculty Grievance Procedure.⁶⁸

⁶³*Id.* at 1-2 (emphasis added); *compare with* 1997 Sexual Harassment Policy at 2.

⁶⁴2011 Sexual Harassment Policy at 1-2.

⁶⁵*Id.* at 2.

⁶⁶*Id.* at 2-3.

⁶⁷*Id.* at 3.

⁶⁸*Id.* at 3-4.

The 2011 Sexual Harassment Policy was also more specific than the previous policy with respect to the responsibilities of administrators, supervisors, and faculty in reporting and responding to sexual harassment. Under the 2011 Sexual Harassment Policy, such persons, “and others who are performing instructional or academic advising duties[,] have an added responsibility of reporting any claim or concern of sexual harassment to the OIED.”⁶⁹ Although the 2011 Sexual Harassment Policy did not specifically identify such individuals as “responsible employees” within the meaning of federal Title IX guidance, elaborate on the circumstances under which their reporting obligations would be triggered, or identify reporting options available to administrators and faculty members who received a disclosure, the policy generally established the requirement that such persons bring any “concern” about sexual harassment to the OIED’s attention.⁷⁰

2. Policies Concerning Sexual Assault

a. 2008 Sexual Assault Policy

Although sexual assault arguably falls within the definition of “sexual harassment” set forth in both the 1997 and 2011 Sexual Harassment Policies, ODU also maintained separate sexual assault policies during the relevant time period. The University’s Sexual Assault Policy dated September 2, 2008 (the “2008 Sexual Assault Policy”) defined “sexual assault” as “rape, forcible sodomy, sexual penetration with an inanimate object, fondling or touching of an unwilling person’s intimate parts (genitalia, groin, breast or buttocks, covered or uncovered), [whether committed through] the use of force, the threat of force, by intimidation, or not forcibly/against the person’s will, such as when the victim is incapable of giving consent due to

⁶⁹*Id.* at 3.

⁷⁰*Id.*

the substantiated use of alcohol or drugs or for other verified reasons.”⁷¹ Under the 2008 Sexual Assault Policy, “[a] sexual assault of any University student, faculty or staff member which occurs either on or off campus and is perpetrated by another student, faculty or staff member will be adjudicated by using the disciplinary process appropriate to the alleged assailant.”⁷²

The 2008 Sexual Assault Policy identified several avenues for reporting incidents of sexual assault, including “contacting the Dean of Students and Chief Student Affairs Officer, a residence hall staff member, the Women’s Center, Counseling Services, Student Health Services or the Department of Public Safety,” each of which had personnel trained to handle such reports. The policy also required “any staff or faculty member [who] receive[d] a report of sexual assault” to report it (anonymously, if the victim requested) to the Sexual Assault Free Environment (“SAFE”) Program Coordinator in ODU’s Women’s Center within 24 hours by completing and submitting a Sexual Assault Incident Report (“SAIR”) form. The 2008 Sexual Assault Policy designated the Dean of Students and Chief Student Affairs Officer as having responsibility for the policy.

b. 2011 Sexual Misconduct Policy

On October 2, 2011, ODU’s sexual assault policy was superseded by a more expansive Sexual Misconduct Policy (the “2011 Sexual Misconduct Policy”). That policy defined “sexual misconduct” to encompass any “[n]on-consensual sexual activity . . . occurring on or off campus,” including, but not limited to, “[a]ny sexual intercourse . . . and any intentional sexual touching, however slight, with any object by a person upon another person.”⁷³ Consent, under the

⁷¹Old Dominion University Policy # 4600, *Sexual Assault Policy* (rev. Sept. 2, 2008).

⁷²*Id.*

⁷³Old Dominion University Policy # 4600, *Sexual Misconduct Policy* (rev. Oct. 2, 2011), at 1.

2011 Sexual Misconduct Policy, required “[a] voluntary and positive affirmation that all parties involved want to engage in sexual activity[;]” consent was to be “active and not passive.”⁷⁴

The 2011 Sexual Misconduct Policy stated that “[s]exual contact with another person without consent and/or with coercion is prohibited and will not be tolerated from any member of the University community or visitors to the campus.”⁷⁵ Similar to ODU’s 2011 Sexual Harassment Policy, its terms applied to “all employees, students, volunteers, employees of affiliated organizations[,] and visitors to the institution,” including “guests, uninvited guests and all other persons located on property[] owned, leased, or otherwise controlled by the University.”⁷⁶

The 2011 Sexual Misconduct Policy set forth certain “Additional Procedures for Employees Who Are Victims of Sexual Misconduct,” who were invited to file a report with the ODU Police Department or other police department in the employee’s jurisdiction, or to make a report to the OIED, the Department of Human Resources, or a supervisor.⁷⁷ It also established the following reporting requirements for a broader class of employees, but a narrower category of reports, than the 2008 policy: “When any University employee, including a student employee, receives a report of sexual assault *involving a student*,” the employee was required to submit a SAIR to the Women’s Center within 24 hours.⁷⁸ Notwithstanding that broad prescription, the 2011 Sexual Misconduct Policy cautioned complainants that “[s]ome offices on campus may maintain complete confidentiality” when in receipt of reports of sexual misconduct while others “are required to take action when an individual reports his/her victimization to them.” Thus,

⁷⁴*Id.*

⁷⁵*Id.* at 2.

⁷⁶*Id.*

⁷⁷*Id.* at 4.

⁷⁸*Id.* (emphasis added).

complainants were encouraged to consult a “University Confidentiality Chart” to determine the “degree[] of confidentiality” applicable to disclosures to various offices on campus.⁷⁹ The policy listed the Dean of Students, Employee Relations Manager for Human Resources, and Assistant Vice President for Undergraduate Studies as the responsible officers for students, classified/wage employees and AP faculty, and faculty, respectively.

3. Policy Concerning Stalking

ODU also maintained a policy to “prohibit stalking, outline the procedures for reporting and adjudicating stalking, and provide information on support services and resources for victims of stalking,” whether or not related to sexual harassment or sex-based discrimination. The version of the policy in effect as of August 26, 2011 (the “2011 Stalking Policy”) defined “stalking” as “[c]onduct, occurring on more than one occasion, that is directed at another person or persons with the intent to place, or that an individual reasonably should know the conduct places, that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that person or to that other person’s family.”⁸⁰ The 2011 Stalking Policy applied to “all employees, students, [and] volunteers[;]” however, “[r]eporting requirements, adjudication and disciplinary actions will depend on who is involved as the alleged victim and stalker.” If the alleged stalker was an employee, the alleged victim (student or employee) should report the incident to the OIED, which would notify the appropriate office of the allegations for disposition in accordance with the appropriate policy depending on the accused employee’s classification.⁸¹ The 2011 Stalking Policy also identified support services available to victims of stalking.⁸²

⁷⁹*Id.*

⁸⁰*Id.*

⁸¹*Id.* at 2-3.

⁸²*See id.* at 3.

F. Relevant Parties

Old Dominion University (“ODU”): ODU is a public research institution located in Norfolk, Virginia. Founded in 1930, ODU has a total enrollment of more than 24,000 students in seven academic colleges and three schools, including the College of Arts & Letters, which houses the English Department.

Office of Institutional Equity and Diversity (“OIED”): The mission of the OIED is to provide leadership and support on matters relating to equity, diversity, respect and inclusiveness for all members of the ODU community. The staff provides guidance, support and delivery of programming, services and educational initiatives to ODU faculty, staff, and students to support diversity, inclusiveness, equal access, equitable treatment, cultural understanding and the prevention of prohibited discrimination and harassment. ODU has designated the director of OIED as the Title IX coordinator. As such, OIED is responsible for monitoring compliance with Title IX regulations, including complaints of sexual harassment, sexual violence and sexual assault. During the relevant time period, the director of OIED and Title IX Coordinator was ReNee Dunman.

Blake Bailey (“Bailey”): Bailey is an author who served as a writer-in-residence in the ODU English Department in the spring of 2010, and as the Mina Hohenberg Darden endowed Chair of Creative Writing (the “Darden Chair”), an untenured annual position, from fall 2010 through spring 2016.

University Counsel (“ODU Legal”): University Counsel is the in-house legal department for ODU. Attorneys who serve as University Counsel are Assistant Attorneys General for the Office of the Attorney General of the Commonwealth of Virginia (“OAG”), and they are assigned to a particular university. During the relevant time period, ODU Legal consisted of University Counsel Earl Nance and Senior Associate University Counsel James Wright.

ODU was fully cooperative throughout this investigation. All requests for documents and responses to written questions were given immediate attention, and responses were received in a timely manner.

This Report begins with an Executive Summary of key findings, followed by an Investigation section outlining the scope of our investigation and methods used, a Factual Summary of key facts and evidence, and a Conclusion.

No constraints were placed on our work beyond those imposed by the terms of our engagement letter, nor were any efforts made to influence the outcome of our investigation. The findings set forth in this report are our own.

EXECUTIVE SUMMARY

Many of the underlying facts concerning allegations of sexual misconduct against former ODU professor Blake Bailey (“Bailey”) are unable to be definitively established, due to a lack of documentation and physical evidence, the significant passage of time, and divergent recollections. However, we do find that Bailey grabbed Professor Anderson’s vaginal area without her consent in April 2010 and engaged in unwanted physical touching and attention toward a graduate student in October 2010. And, that certain ODU faculty and administrators became aware of these incidents.

Similarly, much of what may or may not have been reported to ODU regarding these allegations and the actions taken in response also cannot be fully documented by our investigation. ODU administrators were notified of Bailey’s conduct and an investigation was conducted in 2012, during which the Title IX Coordinator interviewed Professor Anderson and another faculty member, and met with Bailey directly. However, it is unclear what, if any, additional steps were taken, and Bailey remained on campus for four more years.

That is not the case concerning the facts and circumstances surrounding the ODU Statement to *The Pilot* on May 26, 2021. The evidence is clear that senior members of the ODU administration were intimately involved in the University’s response to *The Pilot’s* inquiry. The Statement to *The Pilot* was ill-conceived, insensitive to complainants and witnesses, and inaccurate regarding certain facts, causing harm to the University and its community.

In our opinion, the factual record supports the following:

A. Allegations against Blake Bailey

In the June 10, 2021, *Virginian-Pilot* article, *Blake Bailey was an ODU star. Faculty and students say he abused and harassed women for years* (the “Article”), it is alleged that Bailey engaged in multiple acts of sexual misconduct at ODU from 2010 through 2014. The allegations

include multiple incidents involving ODU Professor Bridget Anderson, including an April 2010 hot tub incident, where Bailey grabbed Professor Anderson's vaginal area, unwanted sexual comments made to Professor Anderson in a bar in 2010, a threat to rape Professor Anderson in April 2011, an attempt to kiss Professor Anderson without her consent in summer 2011, and an incident in the English Department mailroom in 2012, during which Professor Anderson claims that she had to use a knife to defend herself against Bailey; harassment of a graduate student at a bar in October 2010; unwanted kissing of a visiting writer in October 2011; and harassment of another graduate student in 2014.

The facts and evidence lead us to conclude that Bailey grabbed Professor Anderson's vaginal area in a hot tub without her consent, at a beach house in Sandbridge, Virginia, in April 2010. We are unable to fully substantiate any of the other alleged incidents involving Bailey and Professor Anderson.

The facts and evidence also lead us to conclude that, in October 2010, Bailey engaged in unwanted physical touching and attention toward a graduate student at a bar near ODU's campus.

We received conflicting reports concerning Bailey's alleged sexual misconduct toward two remaining women, a visiting writer (in October 2011) and a second graduate student (in 2014). Because the complainants failed to respond to our repeated inquiries, we could not substantiate the allegations that Bailey harassed the visiting writer and kissed her without her consent in October 2011, and harassed the second graduate student in 2014.

B. Reporting of the Allegations and ODU's Response

Between 2010 and 2012, reports of Bailey's alleged inappropriate behavior toward women were made to multiple ODU faculty and administrators, including the Title IX Coordinator.

1. Professor Bridget Anderson

According to Professor Anderson's account, she reported her concerns regarding Bailey to ODU English Department administrators on multiple occasions from 2010 through 2012. She first reported issues with Bailey following the April 2010 unwanted touching incident. Professor Anderson claims to have immediately reported Bailey's actions in the hot tub to (now deceased) then-Chair of the English Department Jeff Richards ("Richards"). She did not ask for or expect anything to be done, but wanted others to know what had happened. Richards told her he would meet with then-incoming Dean Charles Wilson ("Wilson") and tell him what had happened. A week later, Professor Anderson states that Richards told her that Wilson said he would have English Professor Michael Pearson ("Pearson") talk to Bailey about his behavior.

Professor Anderson also claims to have directly reported the incident to Dr. Dana Heller ("Heller") when she became Chair of the English Department in September 2010, as well as, Wilson in October 2010.

Following the alleged rape threat in 2011, Professor Anderson states that she reported the threat, along with Bailey's earlier misconduct in 2010, to Heller. Professor Anderson says she went to Heller first, who referred her to Wilson. According to Professor Anderson, Heller stated she would speak to Pearson about Bailey's conduct. Professor Anderson recounts both Heller and Wilson responded that nothing could be done because it was off campus.

Professor Anderson also told us that following the alleged attempted kiss in the summer of 2011, she spoke with Heller within a week of the incident, and told her the entire story. During the same meeting, Professor Anderson says she also reported an incident with Bailey that had happened at a bar called "Bardo's" in 2010, where Bailey allegedly made sexually

inappropriate comments to her. According to Professor Anderson, Heller told her she would talk to Wilson.

Professor Anderson states that she then met with Wilson in his office and told him the series of incidents involving Bailey, including the hot tub, Bardo's, and the attempted kiss. Professor Anderson states that Wilson was sympathetic but judgmental about the hot tub incident, asking her if she took any personal responsibility. Professor Anderson states that she told Wilson that she wanted to speak to then-Title IX Coordinator ReNee Dunman ("Dunman") because the attempted kiss happened on campus. Professor Anderson states that Wilson specifically told her not to go to Dunman, that he wanted to deal with it within the college. Wilson told Professor Anderson he would have Pearson speak to Bailey.

Professor Anderson states that she met with Heller and Wilson again, separately, following an incident where Professor Anderson believed Bailey was harassing her at a public lecture she gave in November 2011. She reported Bailey's conduct as "stalking," which they disputed. Professor Anderson states that she suggested to Wilson that a report be made to Dunman and Wilson, again, told her not to do so. Anderson says both administrators told her Bailey's conduct involved free speech and was not sexual, and that he had a right to attend the lecture. Ultimately, Professor Anderson did not report the lecture incident to Dunman.

Following the lecture incident, Professor Anderson did not report any other incidents involving Bailey. Specifically, the mailroom incident, during which she claims to have defended herself with a knife. However, according to Professor Anderson, someone else reported the incident because shortly after it happened, she was summoned to a meeting with Wilson and Bailey concerning the matter.

Both Wilson and Bailey deny that such meeting ever occurred, and Bailey denies the knife incident, altogether. Moreover, Wilson states that he never spoke to Professor Anderson or anyone about Bailey's conduct, and never received any reports concerning inappropriate behavior by Bailey toward Professor Anderson. Heller does not recall specific discussions with Professor Anderson concerning Bailey, but states that she ultimately encouraged Professor Anderson to report her concerns directly to Dunman, which Professor Anderson did.

It is noteworthy that during the relevant time period, Professor Anderson served on a University committee, with Dunman, that had the responsibility of reviewing existing ODU sexual misconduct policies and improving them. By her own account, Anderson played a primary role in drafting the 2011 Sexual Misconduct Policy.

2. Graduate Students

In October 2010, the graduate student who was the subject of Bailey's unwanted physical touching and attention at a bar, reported the incident to an ODU adjunct professor. After speaking with the professor, the graduate student reported the incident to Heller. Heller asked the student if she wanted to file an official complaint, which she declined to do. Evidence suggests a primary reason for the student's decision not to file a complaint was a representation to her that Heller would recommend that Bailey's annual appointment not be renewed.

Heller did not recall meeting with the graduate student. However, she stated that she was inclined to believe the student's account that the two of them spoke. Heller did recall reporting the bar incident to Wilson, who requested that Heller meet with Bailey. Heller subsequently met with Bailey in her office to discuss his behavior toward women. Heller did not have any additional discussions with either Bailey or the graduate student concerning the incident, and she took no further action.

Also in the fall of 2010, Luisa Igloria (“Igloria”), then-Director of the MFA Program, reached out to the graduate student to check on her because she had heard about the bar incident. Igloria asked the student if she was okay. The graduate student responded that she was okay, and stated that everything was taken care of. Igloria took no further action.

Approximately one year later, on October 12, 2011, graduate student Valarie Clark (“Ms. Clark”) spoke with Igloria regarding her concerns with Bailey’s behavior, after witnessing his interactions with a visiting writer on October 7, 2011. Ms. Clark told Igloria that Bailey “repeatedly physically separated [the visiting writer] from everyone else, including dragging her down several blocks when we tried to leave the party.”⁸³ In addition to the incident with the visiting writer, Ms. Clark also mentioned the bar incident with the other graduate student. Prior to Ms. Clark’s conversation with Igloria, graduate student Tara Burke (“Ms. Burke”) informally told Igloria that Bailey was a “problem,” without providing any specific details. Igloria encouraged the students to speak directly to the department chair because she believed it was the complainant’s decision to file a complaint. She considered the complaints “anecdotal” in nature, and took no further action

3. OIED and the Title IX Coordinator

In May 2012, ODU’s Assistant Vice President for Institutional Equity and Diversity and Title IX Coordinator ReNee Dunman (“Dunman”), since retired, commenced an official investigation of Bailey. Because nearly every official record of the investigation no longer exists, and Dunman herself could not recall, we do not know precisely what prompted Dunman’s investigation. However, the evidence leads us to conclude that it was likely the result of a report Heller made to Dunman concerning Bailey’s actions toward Professor Anderson.

⁸³ Ms. Clark email to Ms. Burke, October 12, 2011, 6:51 pm.

During the course of the investigation, Dunman spoke with Professor Anderson at least twice, possibly three times, concerning her interactions with Bailey. Professor Anderson states that she told Dunman everything except the knife incident. Dunman also spoke with retired ODU professor Stephanie Sugioka (“Sugioka”), who Professor Anderson had spoken to about her problems with Bailey. There is no record of OIED interviewing anyone else regarding Bailey.

There is a single document in OIED’s records concerning Bailey. The document is dated July 18, 2012, and appears to be Dunman’s prep notes for a meeting with Bailey concerning his behavior. Dunman does not specifically recall meeting with Bailey; however, she assumes, based on the notes, that such a meeting occurred.

There is no record of any additional follow-up with Bailey or any actions taken against him by ODU as a result of the allegations involving Professor Anderson, the graduate student, or anyone else.

C. Violations of ODU Policies, Title VII, and Title IX

1. Individual Employees’ Obligations to Report Allegations of Sexual Harassment

Given the vague and conflicting accounts of what various individuals reported concerning Bailey’s alleged sexual misconduct to ODU faculty, staff, or administrators, we cannot state at this time that any of those reports clearly established a violation of Title VII, Title IX, or other applicable law or policy.

The determination of whether particular conduct is unlawful under the anti-discrimination statutes is best made contemporaneously by individuals with the appropriate training, experience, and specialized knowledge to assess the allegations and investigate and evaluate the circumstances surrounding them so that appropriate responsive action, if necessary, can be taken. At ODU, these functions reside primarily within the OIED. Obviously, OIED could not have

evaluated or investigated allegations it never received, even if the University would be charged with constructive knowledge of those concerns or reports because they were known to supervisors, “responsible employees” (as that concept was developed under federal Title IX guidance), or “appropriate persons” (under the *Gebser* standard for attributing knowledge to the institution). Accordingly, individual employees’ reporting obligations were essential to ensuring compliance with federal law and effectuating ODU’s policies.

Under Title VII, an employer is responsible for addressing a hostile work environment created by a co-worker of the complaining party, if the employer knew or should have known of the sexual harassment. Under Title IX guidance in effect during the relevant time period, responsible employees were expected to promptly disclose concerns and reports of potential harassment to appropriate University officials. However, at the University level, in ODU’s 1997 Sexual Harassment Policy—which originated prior to the Title IX 2001 Guidance that highlighted the role of responsible employees, but remained in effect at the time of the 2010 Sandbridge gathering and its immediate aftermath—that obligation was not clearly published. Thus, although that policy emphasized the role of “university administrators and supervisors” in implementing ODU’s procedures with respect to sexual harassment, it did not clearly articulate reporting requirements expected of those individuals or any others.⁸⁴

ODU’s 2011 Sexual Harassment Policy, in contrast, imposed reporting obligations broadly, effectively treating all administrators, supervisors, faculty, and other persons with instructional or academic advising duties as responsible employees. Therefore, as of September

⁸⁴Although the 2008 Sexual Assault Policy required staff or faculty who received a report of a sexual assault to promptly report it to the Women’s Center, such a report does not seem calculated to apprise the University for purposes of triggering a response under Title IX, especially if the Women’s Center was a confidential resource.

30, 2011, the policy's effective date, such persons who received a report of potential sexual harassment were required to escalate the report to OIED.

Based on our review of the facts, at least some allegations concerning Bailey's conduct were escalated to OIED as required, which prompted an OIED investigation during the spring and summer of 2012. Certain allegations raised by Professor Anderson were reported to OIED, most likely by Heller. Reports of alleged inappropriate conduct toward a graduate student by Bailey were made to OIED, as well.

However, not all concerns regarding Bailey's apparent patterns of conduct were reported to OIED by individuals who became aware of them. For example, Igloria never reported concerns raised to her by graduate students to OIED. The evidence also supports the conclusion that Heller received a complaint from the graduate student who was harassed by Bailey at a bar in October 2010 and she did not escalate the complaint to OIED. However, Heller states that she informed Wilson of the bar incident and she spoke with Bailey directly about his actions toward women. Heller also asked the graduate student if she wanted to file a formal complaint, which she declined to do.

As a matter of best practices, such concerns should have been escalated to OIED for evaluation and, if warranted, investigated and appropriate responsive action taken. Even if the individuals who became aware of those concerns did not believe that anti-discrimination laws or policies were implicated; even if the concerns did not, in fact, implicate those laws or policies, OIED needed to be informed of those concerns to ensure that ODU investigated and responded appropriately, especially in light of the totality of the allegations concerning Bailey's conduct toward women at ODU.

2. ODU's Response to Allegations of Sexual Harassment

ODU was at least constructively aware of alleged improper conduct by Bailey during a significant period of his employment at the University. Even if the alleged conduct did not constitute unlawful harassment or sex-based discrimination, we conclude that such concerns warranted responsive action by the University to address them and prevent harassment or sex-based discrimination. Under Title VII obligations, then-applicable Title IX guidance, and ODU policy, such action likely should have involved OIED.

There is no dispute that ODU was made aware of Professor Anderson's allegation that Bailey grabbed her vaginal area in a hot tub in an offensive, nonconsensual manner. Under both Title VII and Title IX, a single instance of sexual assault, as was described by Professor Anderson, may be sufficient to create a hostile work environment based on sex and deny a person equal access to an educational program or activity. Here, analysis under both laws is complicated by the circumstances of the hot tub incident, which occurred off-campus (which fact alone does not place it outside the scope of the relevant laws) and in connection with a gathering that was not clearly connected to a work environment or an educational program.

Regardless of whether the hot tub incident falls within the scope of Title VII, Title IX, or any other law or policy, Bailey's act was nonconsensual and clearly inappropriate, and should have triggered a more careful consideration of his conduct. Against that backdrop, ODU should have viewed any additional reports concerning Bailey with heightened scrutiny. And, ODU did become aware of other reports, learning of alleged inappropriate conduct by Bailey toward at least one graduate student. It is not clear that the severity of the conduct reported regarding each incident, in isolation, rose to the level of harassment in violation of any applicable law or policy. However, in light of Professor Anderson's allegations concerning the hot tub incident, those reports ought to have raised significant concerns regarding Bailey.

A review of the facts leads to the conclusion that ODU had actual or constructive notice of several concerns regarding Bailey's actions toward women, and that the University appears to have addressed them, at least to some extent, with Bailey directly. In 2012, OIED conducted an investigation concerning Bailey's actions. As part of the investigation, Dunman spoke with Bailey concerning his actions toward women. Other than the meeting with Bailey and interviews of Professor Anderson and Sugioka, it is unclear what else the investigation entailed. As such, we cannot definitively state whether the University's response was appropriate or not under applicable laws and policies.

Following the investigation, it is unclear what, if any, corrective or monitoring actions ODU took thereafter, and Bailey's employment with the University was renewed for several years. We cannot conclude, on the limited evidence available, that further action was necessarily required as a matter of law. However, we believe that further and ongoing action was seemingly justified as a matter of policy and prudence.

D. Drafting of the May 26, 2021, Statement

The drafting and editing process of the May 26, 2021, Statement (the "Statement") to *The Pilot* was led by ODU Legal and Kaufman & Canoles, P.C. Prior to publishing the Article, *The Pilot* contacted ODU requesting comment on the topic of Bailey and sexual misconduct during his time at ODU. Former ODU President John Broderick ("Broderick"), in consultation with Vice President for Administration and Finance Gregory DuBois ("DuBois"), decided that ODU should respond to *The Pilot's* request. ODU's response was spearheaded by University Counsel Earl Nance ("Nance") and Senior University Counsel James Wright ("Wright"), with full guidance from and consultation with Broderick and DuBois. Due to restrictions on ODU Legal's ability to communicate with the press, as well as specific allegations raised by *The Pilot* concerning Wright, it was decided that outside counsel would be retained to communicate with

The Pilot. Nance recommended Kaufman & Canoles and they were retained with the OAG's approval.

Nance and Wright conducted a limited internal investigation by interviewing current and former ODU faculty and staff regarding the alleged incidents. Notes from the witness interviews were provided to counsel at Kaufman & Canoles, who in turn, drafted the Statement. It was agreed among ODU Legal, DuBois, Broderick, and Kaufman & Canoles that the purpose of the information provided to *The Pilot* was to deter them from publishing the story. To that end, they intended the response to be aggressive in both tone and substance.

The Pilot request for comment was received on May 20, 2021, and Kaufman & Canoles submitted the Statement to *The Pilot* on ODU's behalf on May 26, 2021. In that short time period, interviews were conducted, and the Statement was drafted and edited. Nance led all of the interviews, except for one, which was led by Wright. Due to concerns that contacting her could be viewed as coercive or retaliatory, a conscious decision was made to not interview Professor Anderson. As for the other complainants, former University Counsel Earl Nance reported, "they ran out of time."

DuBois and Broderick were regularly updated as ODU Legal conducted interviews and Kaufman & Canoles crafted a response. Once the initial statement draft was complete, Kaufman & Canoles sent the document to Nance and Wright. Nance shared the document with Sylvia Jones ("Jones") and Deborah Love ("Love"), his superiors at the OAG. Nance also shared the document with Broderick and DuBois. Love did not edit the Statement. It also appears from the evidence that DuBois did not edit the Statement. Both Nance and Wright edited the Statement before it was finalized. Jones provided minor grammatical edits, but nothing substantive. Although the evidence is not definitive on this point, it is likely that Broderick edited a hard copy

of the Statement, as well. We can definitively state that Broderick reviewed the Statement and approved it before Kaufman & Canoles sent it to *The Pilot*.

As notable as the individuals who were involved in the drafting of the Statement, equally notable is the glaring absence in the drafting process of Assistant Vice President for Strategic Communication and Marketing Giovanna Genard, current Title IX Coordinator Arianna Wright, any OIED staff, or any ODU female administrators or staff.

INVESTIGATION

A. Scope of the Investigation

Pursuant to the scope of work outlined in the engagement letter, dated August 12, 2021, and the accompanying directive from the Office of the Attorney General, our investigation was limited to a legal review of ODU's actions relating to allegations against former professor Bailey, from the start of his employment at ODU in 2010 through the present, and an evaluation of whether ODU's intake, handling, and response to any and all complaints made against Bailey complied with ODU policies and procedures, Title IX, Title VII, and the Clery Act (as amended by VAWA).

The scope of engagement also includes a review of ODU's May 2021 engagement with outside counsel to conduct an investigation concerning the Bailey complaints and the development, review, and/or release of position/media statements for the same matter, as well as the identification by name and role of each ODU representative who interacted with prior outside counsel and/or were involved in the drafting or editing of any position/media statements.

Nixon Peabody was not granted subpoena power pursuant to this authority. As such we did not have the power to compel any person to appear for an interview, or respond to our questions and requests for documents.

B. Interviews Conducted

Nixon Peabody interviewed 24 individuals during the course of this investigation, some more than once. Interviews were conducted virtually, primarily by Zoom or Webex, with a handful conducted by telephone. Most interviews lasted two to three hours; however, a few were as short as twenty minutes. Professor Anderson's interviews are particularly notable, as she was interviewed for more than ten hours over the course of four separate days and she provided us

with numerous journal entries, emails, and other related materials. We also had follow up discussions with Professor Anderson by email.

All interviews were attended by two Nixon Peabody attorneys, except for the interviews of Professor Anderson, which were attended by three attorneys. Notes were taken of all interviews and official interview reports were written. Interviews were not recorded by audio or video. Written questions were also submitted to three individuals and ODU in order to gain additional information. The first interview took place on September 3, 2021, and the last interview took place on November 19, 2021.

Interviews were conducted of current and former ODU faculty and staff, including the former ODU president, former dean of the College of Arts & Letters, current associate dean of the College of Arts & Letters, current and former chairs of the English Department, and current and former directors of the Office of Institutional Equity and Diversity, who also serves as Title IX director. Interviews were also conducted of former English Department graduate students.

There are three notable exceptions to the list of interviewees. Two of the alleged complainants, the visiting writer and the graduate student from 2014, did not respond to our multiple requests to be interviewed. The third notable exception is Bailey. Bailey, through counsel, declined our invitation to be interviewed. However, he did submit, through counsel, a one-page response to a list of 105 written questions posed to him. Bailey did not respond to specific questions; instead, he issued a blanket statement that the allegations are untrue. Bailey also denied any inappropriate interactions with ODU students and he labeled the allegations by Professor Anderson as false, specifically referencing the falsity of allegations that he attempted to kiss her in her office, harassed her at a faculty meeting, cornered her in a mailroom where she

was forced to defend herself with a knife, threatened to rape her, and that there was a meeting with Dean Charles Wilson to discuss her complaints against Bailey.

With no authority to compel these individuals to appear for an interview, or to subpoena materials to be produced by them, we were left without recourse. Without the ability to evaluate allegations from the other complainants directly, it was particularly difficult to determine the veracity of what was alleged to have occurred between those two individuals and Bailey.

It is also important to note that some witnesses, even those who ultimately spoke with us, were hesitant to cooperate with our investigation. Some key witnesses only agreed to speak with us after repeated efforts by our team to convince them to do so. Other key witnesses declined to be interviewed or never responded, altogether.

As typical in such investigations, we also found some witnesses to be less forthcoming than others. In particular, former ODU President John Broderick (“Broderick”) was the least forthcoming of any of the witnesses interviewed. During his two interview sessions, Broderick repeatedly responded to questions with “I do not recall,” although the focus of the questions were events from May and June 2021. Moreover, *The Pilot* Article was such a significant event for the ODU community and happened so close in time to Broderick’s planned retirement, it strains credulity that Broderick would fail to recall so many details only four months later.

More concerning, was Broderick’s claimed lack of knowledge regarding the May 26, 2021 Statement. In his initial interview, Broderick was adamant that he never saw the Statement until it was printed in *The Pilot* Article. He was asked this point multiple times and his answer remained the same. However, Broderick’s claim is contradicted by an email on May 26, 2021, from Broderick, that includes a letter in which he directly quotes from the Statement.⁸⁵ When

⁸⁵See Broderick email to Nance and DuBois, May 26, 2021, 1:20 pm.

confronted with this email in his second interview, Broderick attempted to explain away the falsehood by stating that those were quotes from the outside law firm's "report" and he did not view the "report" as a statement; that he was not sure that he ever saw the full "report" and he likely just asked University Counsel to provide him with those particular sections; and, if he was provided with the full "report," he probably just skimmed it and never actually read the entire document.

ODU was responding to a press inquiry concerning serious allegations of sexual misconduct by a former professor. It is not credible that the then-president would be aware of the situation, involved in the response, and choose to only skim over the written response or not see it at all before it was sent. Not only did Broderick demonstrate an excessive lack of recall and the ability to convey falsehoods, he was also defensive, even combative at times, when responding to questions, especially in his second interview.

C. Materials Reviewed

During the course of our investigation, we reviewed more than 35,900 pages of documents, records, emails, journal entries, and other materials from ODU and individual witnesses. It is important to note that the amount of responsive records provided by ODU was impacted by the University's records-retention policy, which limits retention of many of the records responsive to our review to three years, after which time records are purged. There is no way to know how many responsive documents, if any, no longer exist as a result of this policy.

Materials were provided to Nixon Peabody by uploading materials to a secure link or emailing requested materials directly to one of the assigned attorneys. Subsequently, materials were uploaded to the document review platform Relativity for review and analysis. At all times, access was restricted to the Nixon Peabody investigation team and internal IT staff specifically assigned to assist in this matter.

We reviewed news articles, press releases, and media coverage related to Bailey and Old Dominion University.

We also researched and reviewed relevant statutes, regulations, and policies, including Title IX, Title VII, The Clery Act, the Violence Against Women Reauthorization Act, the Virginia Human Resources Act, and relevant sections of ODU policies and handbooks.

These materials were referenced to better understand the legal responsibility of ODU in handling allegations of sexual misconduct, as well as the policies and procedures employed by the University. The applicable statutes, policies, and procedures guided our analysis of the appropriateness of ODU's actions regarding Bailey.

FACTUAL SUMMARY

The allegations of sexual misconduct against Bailey span 2010 through 2014. Contemporaneous records, emails, and similar documentation are sparse. Additionally, memories of events approximately ten years ago are faded and strained, and various witness accounts diverge significantly. We also take into account the fact that we conducted interviews subsequent to a significant amount of media coverage of the events in question, much of which most of the witnesses had been exposed to. We recognize this may have impacted certain witness recollections. However, we are able to definitively find that Bailey grabbed Professor Anderson's vaginal area in a hot tub, in April 2010, without her consent. We also find that Bailey inappropriately grabbed and followed a graduate student at a bar, in October 2010.

Furthermore, various reports of Bailey's inappropriate behavior were made to ODU faculty and administrators between 2010 and 2012.

Lastly, the evidence supports the finding that members of ODU's senior leadership, including University Counsel Earl Nance and former ODU President John Broderick, were directly involved in the May 26, 2021, Statement to *The Pilot*.

The following is not intended to be a full recitation of all related facts and circumstances. Rather, it is a summary of the key facts and circumstances relevant to our review and findings.

A. Allegations against Blake Bailey

Professor Anderson raises multiple allegations of sexual misconduct by Bailey between 2010 and 2012. Additional allegations of sexual misconduct by Bailey between 2010 and 2014 involving graduate students and a visiting writer are also raised, either by the alleged complainant directly or by an alleged eyewitness. The details of these allegations are discussed below.

1. Bailey and Professor Bridget Anderson

Dr. Bridget Anderson (“Professor Anderson”) is a tenured Associate Professor of English, whose specialization is Linguistics. Witnesses describe her as “brilliant” and “passionate.” One witness, in particular, stated that “some might perceive her as eccentric, but she’s sharp as a tack, she’s funny, total open book.”

We found Professor Anderson animated and engaging. She had a very specific and vivid recollection of the details and conversations concerning Bailey, despite the passage of time. Professor Anderson’s recollections were aided in some instances by personal journal entries. Professor Anderson was fully cooperative and forthcoming throughout the investigation. During our interviews, Professor Anderson was frequently emotional and in tears when discussing Bailey, and the reactions that she perceived various faculty members and administrators had to her disclosures about him.

Some details of events involving Bailey that Professor Anderson recounted to us varied among our interviews with her, particularly the details of the Sandbridge 2011 Creative Writing gathering, and some details did not match the report of other witnesses. We discuss below the significant events Professor Anderson reported concerning her interactions with Bailey, the

recollections of other witnesses concerning those events, and related materials we were able to identify during our investigation.

a. Sandbridge 2010 hot tub incident

In April 2010, the ODU graduate program for Creative Writing hosted a weekend event at a beach house in Sandbridge, Virginia, for professors and their significant others (“Sandbridge 2010”). Graduate students were typically invited to attend on the Saturday of the weekend for music, food, and socializing. Bailey, who had been selected as the Darden endowed chair for the upcoming 2010–11 school year, was invited to attend, and did so.

Professor Anderson recounted that she attended Sandbridge 2010 because her then-close friend, ODU Professor John McManus (“McManus”), asked her to attend. He also invited Professor Kevin Moberly (“Moberly”). Professor Anderson and Moberly arrived at approximately 4 p.m. on Saturday, April 24th. Students arrived later in the day for a cookout.

Professor Anderson states that faculty and students were drinking alcohol. She had a few drinks and refrained from drinking more as alcohol causes her migraines. According to Professor Anderson, she was not intoxicated, remembers everything about the evening, and remained in total control of her faculties. Following dinner, individuals began singing karaoke, and Professor Anderson sang Appalachian ballads, at which time, she noticed Bailey “leering” at her.

Professor Anderson states that at approximately 11 pm, she, McManus, and Moberly entered a hot tub that was located on a deck outside the house. She and Moberly were not as intoxicated as McManus. They were clothed in bathing suits and talking when McManus recounted “a tradition of the creative writers taking suits off underwater and playing truth game.” He described the game as one in which they would ask a series of questions of each other, and while they were vulnerable and unclothed, they had to answer the questions truthfully. Moberly disrobed and Professor Anderson did, as well. They all remained covered by water and it was

dark outside. Although Bailey had retired to his room with his wife, he suddenly appeared and got in the hot tub. They had been in the hot tub for approximately 20 minutes when Bailey showed up.

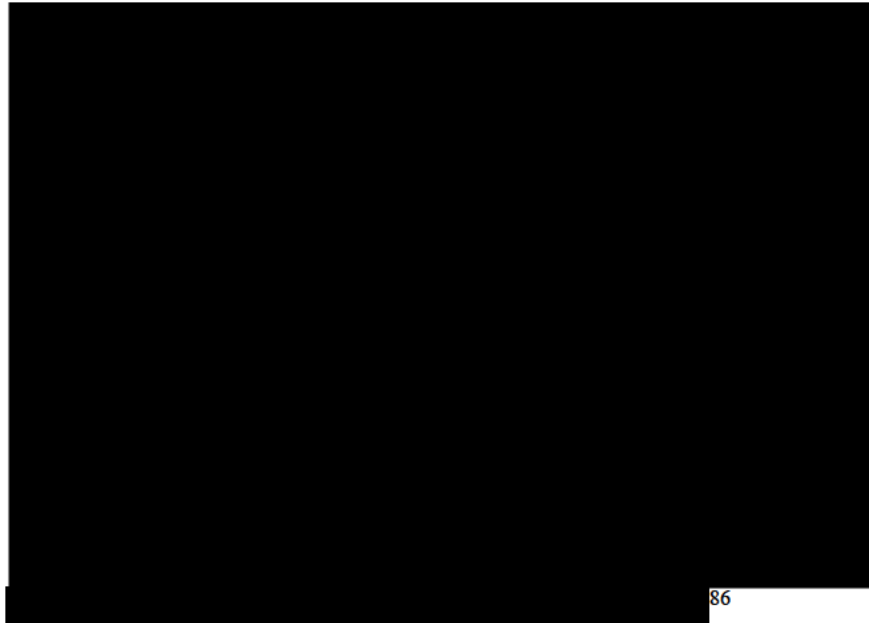
Professor Anderson states that they discussed the question McManus had posed, and he introduced her and Moberly to Bailey. Within five minutes of the introduction, “out of nowhere,” Bailey grabbed Professor Anderson’s vaginal area. She jumped up and yelled “he grabbed my cooter,” and Bailey wrapped his arms around her from behind and jerked her forcefully toward his lap. Professor Anderson started struggling and Moberly stood up, separated her from Bailey, and a struggle ensued between Moberly and Bailey. During the course of the struggle, Bailey broke a whiskey bottle causing glass to fall into the hot tub. Moberly then stepped on the broken glass cutting his foot. Professor Anderson demanded an explanation from Bailey about why he had grabbed her, and he responded, “because of your ballad singing and your hip to breast ratio.”

Professor Anderson states that she immediately left the hot tub, followed by Moberly, who had a significant cut on his foot, which created a trail of blood in the house. She was sobbing, humiliated, and fearful that Bailey would come to her room. Accordingly, Professor Anderson locked the bedroom door and asked Moberly to stay the night with her. After retrieving bandages for the cut on his foot, Moberly spent the night on the floor next to her bed. Professor Anderson states that she never went to the beach with Bailey that day, either before or after the hot tub incident.

According to Professor Anderson, the following day, she got up around 6 am and encountered Professor Sheri Reynolds (“Reynolds”) cleaning up glass and blood in the house. Professor Anderson and Moberly told Reynolds what had happened the night before, specifically that Bailey had grabbed her in the hot tub. After the others had arisen, they all went to breakfast

together. Professor Anderson went to breakfast with the group; however, she did not speak to Bailey and sat at the far end of a large table away from him and his wife. At the end of the breakfast, Bailey asked Moberly, “Are we good?” and Moberly did not respond.

Professor Anderson shared the following journal entry from April 24, 2010, regarding Sandbridge 2010:



We interviewed Moberly and McManus regarding their recollection of the events. Moberly recalled the events somewhat differently. His recollection was that he attended Sandbridge 2010 at Professor Anderson’s invitation. While there, he learned that others in the house had been naked in the hot tub the evening before and remembers McManus describing it as a ritual. He, Professor Anderson, and McManus entered the hot tub sometime between 11 pm and midnight and disrobed. Bailey joined them in the hot tub approximately 20 minutes later and was also naked. All of them had been drinking alcohol, and the three men were intoxicated. Moberly recalls leaving the hot tub at some point to retrieve towels and more beer, and

⁸⁶The entry is cut off at this point. Professor Anderson states that she ended the entry there and must have been interrupted while writing.

encountering Professor Michael Pearson (“Pearson”) inside the house. At some point, they all left the hot tub unclothed, went to the beach, splashed around in the water, and returned to the hot tub. Moberly has a clear recollection of going to the beach because he fell on his face and the others teased him about it. Moberly believes he cut his foot on the beach.

Moberly states that after going to the beach, the group returned to the hot tub and shortly thereafter, Professor Anderson jumped up and exclaimed “OMG you grabbed my cooter.” Bailey grabbed Professor Anderson and pulled her back down, and she got really upset. At that point, Moberly intervened and separated the two, grappling with Bailey. Bailey said something to the effect that it was Professor Anderson “singing those folk ballads, it was your hip to breast ratio.” Professor Anderson was immediately upset and the atmosphere in the hot tub changed. Moberly and Professor Anderson later began kissing, then left the hot tub to retire to their room. They had been in the hot tub for approximately an hour and a half.

According to Moberly, once in the room, he and Professor Anderson did not discuss the incident with Bailey further. He states that he stayed in the room with Professor Anderson as previously planned, not due to her fear of Bailey. Moberly did not recall suffering any significant injury to his foot and said it did not require bandages, but the following morning, he learned that Reynolds was cleaning up blood. The hot tub incident was not discussed with anyone the following day. Moberly went to breakfast with Professor Anderson, McManus, Bailey, and Bailey’s wife. As they were leaving, Bailey asked him if things were alright between them.

McManus confirms that Professor Anderson and Moberly arrived together. Everyone was drinking alcohol and McManus stated he was intoxicated, but recalls the evening pretty well. McManus entered the hot tub with Professor Anderson and Moberly, and Bailey joined them shortly afterward. At some point, they all were naked. He recalled being in the hot tub for a long

time, during which the group got out, went into the ocean, and returned. At some point, McManus heard Professor Anderson say “Blake grabbed my cooter” in a shocked voice. She asked McManus and Moberly if they had seen it—they had not. They had a conversation about the word “cooter” and the conversation then moved on to something else. He did not remember anyone dwelling on what happened for long.

McManus recalls that the “grabbing” incident happened early during their time in the hot tub. He did not recall Moberly acting in response, or any struggle between Moberly and Bailey, but could not say for certain that it did not happen. What he did clearly recall was that it was not an evening-ending incident after which Professor Anderson angrily left the hot tub. He states, rather, they remained in the hot tub for some time afterward. The evening came to an end when they realized how late it was—he was certain it was at least 3 a.m. The next morning, McManus, Professor Anderson, Moberly, and Bailey ate brunch at a nearby restaurant. He did not observe hostility between Professor Anderson and Bailey during breakfast.

Other faculty in attendance at Sandbridge 2010 overnight reported that they were aware that Professor Anderson, Moberly, McManus, and Bailey were in the hot tub late into the evening. Some witnesses observed the group in the hot tub having what appeared to be a party, and saw Professor Anderson floating naked in the middle of the hot tub. She beckoned them to join and they declined. Professor Janet Peery (“Peery”) recalled that, while they were discussing how shocked they were about what they had seen in the hot tub, Moberly entered and requested a Band-Aid because he had fallen down while walking on the beach. None of the individuals who attended Sandbridge 2010 recalled Professor Anderson complaining about the hot tub “grabbing” incident the following morning.

Both McManus and Moberly state unequivocally that Professor Anderson was completely surprised by Bailey grabbing her vaginal area, and that it was not invited or consensual as had been claimed in ODU's statement to *The Pilot*.⁸⁷ Nearly all witnesses in attendance that evening recall that Bailey was drinking heavily. When questioned through counsel, Bailey did not specifically deny, as he did other allegations, that he grabbed Professor Anderson in the hot tub at Sandbridge 2010.

b. 2010–11 academic year/bar incident

Professor Anderson described one specific incident with Bailey, during fall 2010, at a bar named "Bardo's," where she went one evening with McManus and Pearson. According to Professor Anderson, Bailey showed up and tried to sit next to her. After approximately ten minutes, Bailey said "if [she] gave in, he'd leave [her] alone." He stated that he was "obsessed with sleeping with her." He used the words "compulsion" and "itch," as in an itch he needed to scratch. Professor Anderson responded "never, you better leave me alone and stop targeting me." Bailey told her she should be honored and flattered by his attention. Professor Anderson told him to stay away and she would never forgive him for the assault.

Professor Anderson provided a journal entry, dated September 15, 2010, in which she wrote:

[REDACTED]

McManus stated that approximately once a semester, he would go to Bardo's with Bailey, and that Pearson, his wife, and Peery, would sometimes go as well. McManus did not

⁸⁷McManus categorically denied telling ODU counsel that Professor Anderson "gave every indication of happiness and excitement" when Bailey grabbed her and said their record that he had made such a statement was outrageous.

recall ever being there with Professor Anderson and Bailey together, although he could not definitively say it did not happen. He also did not recall Bailey telling Professor Anderson that he would leave her alone if she just gave in and slept with him. Pearson does not recall being at Bardo's with Professor Anderson and Bailey, but states that it is possible. He states that he never heard Bailey make comments of the type described by Professor Anderson.

c. Sandbridge 2011

On the weekend of April 14-17, 2011, the ODU Creative Writing Program again reserved a beach house in Sandbridge, Virginia. Professor Anderson recalled that on Friday, April 15, 2011, she traveled to the beach house with McManus. Professor Anderson stated she only agreed to return because McManus promised that Bailey would not attend.

According to Professor Anderson, she and McManus were first to arrive at the house and they went for a walk on the beach. Approximately 20–30 minutes later, Bailey arrived and found them. From the moment Bailey showed up, he was furious and hostile to her. He immediately started an argument with Professor Anderson. In an angry tone, Bailey stated he was “pissed” because the administrative assistants knew about their issues and she had turned them against him. From there, “he went on to rage about a number of issues” including that she called him “cooter grabber,” would not shut up about what happened, and she had complained to Heller. They walked on the beach for approximately 20–30 minutes, then returned to the house.

Professor Anderson states that for a couple of hours, Bailey “alternated between being hostile and pissed,” and saying something sexually suggestive to her. He started drinking alcohol right away and became more and more hateful. They sat at the kitchen table and Bailey said if he could figure out a way to rape Professor Anderson and get away with it, he would. In response, Professor Anderson recited her home address and said, if he had a suicide wish, he could come by and break through her fence. Bailey then spoke about drugging and restraining her. This all

happened in the presence of McManus, who responded by screaming at the top of his lungs, “stop, just stop.” Professor Anderson recalled that Bailey stopped after McManus became upset.

When asked about an entry in her journal concerning Sandbridge 2011 that referenced Bailey getting into bed with her and McManus, which she failed to mention in her initial account of the weekend, Professor Anderson added that when she went to her room, McManus came with her to comfort her. After a while, Bailey entered the room and threw himself on the bed, putting his arms around Professor Anderson and McManus, acting playful. Eventually, they got him out of the bed and out of the room. Professor Anderson states that was the last she dealt with him until the following day. Professor Anderson recalls that Bailey was intoxicated and McManus had been drinking, but was not intoxicated. She denied drinking alcohol at all that day. Professor Anderson states unequivocally that she spent no time alone with Bailey without McManus being present.

During our first interview of Professor Anderson, she stated that the following day, the others arrived at the house and she told them what Bailey had said to her. She gathered the group in the living room and told them that Bailey had found them on the beach, was mad at her, and had said he would rape her if he could get away with it. Professor Anderson stated that she was done with Bailey and the gathering. She then left and went home early Saturday afternoon.

Professor Anderson provided the following journal entry, dated April 16, 2011:

[REDACTED]

[REDACTED]

The following day, April 17, 2011,⁸⁸ Professor Anderson's journal entry states, in part, [REDACTED]

[REDACTED]

[REDACTED]⁸⁹

During a subsequent interview with Professor Anderson, in which we sought to clarify some of her journal entries, she described the events of the second day at Sandbridge 2011 differently, as follows. Professor Anderson and McManus left the house early to go hiking. She learned that Bailey was trying to find them. She knew that early Saturday morning, he went out to get a newspaper and coffee. Professor Anderson states that interaction with Bailey that Saturday morning was awkward and tense, and she just wanted to leave.

Professor Anderson identified two additional journal entries as references to Sandbridge 2011. She stated that a journal entry several months later, dated February 28, 2012, discusses a dinner discussion with McManus and two other close friends. The entry states, in part:

[REDACTED]

⁸⁸The entry is dated April 17, 2010, but Professor Anderson states that was in error – the year was 2011.

⁸⁹During our multiple interviews of her, Professor Anderson had not reported that Bailey said this phrase. When later asked to explain this journal entry, she reported that this was a comment Bailey made at the kitchen table.

Professor Anderson said that “Sandbridggets” was a term McManus would call her in relation to their visits to Sandbridge. Conversely, McManus said he had never heard the term before. We noted to Anderson that this journal entry states that Bailey got into bed and put his arms around her “[REDACTED]” but Anderson said this was an error as she only stayed at Sandbridge 2011 one overnight with Bailey in the house, and left the following day.

The second journal entry contained a reference to a “drug store” that Professor Anderson had not mentioned during our interviews. That entry, dated April 22, 2021, captures Anderson’s reaction to the publication in the *New York Times* of allegations against Bailey involving sexual abuse against former students. The entry reads, in part:

[REDACTED]

Because Professor Anderson had not mentioned anything about a drug store during our interviews, we followed up with her for an explanation. She responded in writing as follows:

I am referencing part of one of Blake Bailey’s rape threats. He told me the Saturday of Sandbridge 2011 (SB 2) that when he had went out to get coffee and a *New York Times*, that he had also gone to a drug store (I do not know which one, but it would have been in Sandbridge) and gotten a “Plan B” to keep on hand for if he was ever able to rape me. I do not like thinking or talking about this detail. It totally freaked me out. When he told me that, I believed him. I thought it showed pre-meditation and that it was a Plan B “rape kit.” That’s what I thought at the time. That said, he did not SHOW me a Plan B, and he might have just been trying to scare me. But it was such a specific and creepy concrete detail-- and the way he said it-- I believed him. He did not know I would be leaving Sandbridge early, when he was out buying coffee, a *NYT*, and (if he was telling the truth) a rape kit-- but I always wondered if it might be possible to track down a record of it, if he did buy that at a pharmacy. Back then (in 2011), I am pretty sure Plan B had to be

purchased from the actual pharmacist (not just from an aisle in the pharmacy). This is not something I like to think about, or discuss, but it was such a creepy detail-- it scared the crap out of me. If he was being truthful, it shows pre-meditation combined with opportunism, which is what made me wonder (when the *NYT* article came out about his other victims) about whether it might be possible to track down a record of it from the pharmacy. Like I said, I don't know if he was being truthful or not--only he knows. But if he really had purchased a Plan B rape kit, there ought to be a record of that at the pharmacy, I would think. His claim that he had purchased one along with a *NYT* and coffee creeped me out for a number of reasons: 1. He did not know my birth control status, but was planning in advance (if he was being truthful). 2. If he raped me, would he have forced me to swallow a Plan B pill? 3. His rape threats were scaring the crap out of me. Fortunately, I left Sandbrige 2 before he was able to make good on his threat. I truly believe, to this day, that something horrible would have happened that Saturday night if I had not left. My room had a lock on the door, but I had barely slept Friday night (Blake had passed out from whiskey downstairs & my room was upstairs) because I was worried that the lock might be easy to pick with a credit card etc. I was vigilant all night and hardly slept. But I left Saturday & went back home-- even though there were dangerous tornadoes in the region that evening! I did not have any problem getting home, but I did risk my life given that there was severe weather, and a tornado was reported in Walters (I don't recall that it actually touched down), which is less than 10 miles from my house. And there was a reported tornado in Windsor, which is also not far from my house. There were severe weather advisories about dangerous storms-- which I typically would NEVER drive in, but I was determined to get home, and was able to with no problem (thank God).

McManus' recollection of the Sandbridge 2011 encounter involving Professor Anderson and Bailey varied in some critical respects. Initially, McManus also stated that he and Professor Anderson arrived at Sandbridge on Friday, where they were later joined by Bailey, and that she left the following day. McManus demonstrated a vague recollection of being in the house two evenings with Professor Anderson, but ultimately settled on the belief it was only one overnight—Friday to Saturday.

After we interviewed him, we asked McManus to provide us with any photographs of Professor Anderson and/or Bailey from Sandbridge 2011.⁹⁰ Those photographs contained metadata setting the date and time, and included the following:

Thursday, April 14, 2011

6:36 pm two photos of Professor Anderson and Bailey walking adjacent to each other on the beach.

6:56 pm Professor Anderson and Bailey on the beach, facing the camera and smiling. In this photo, Bailey has his arm around Professor Anderson and they are in a side embrace.

McManus stated these photos were taken on the beach during a walk that he, Professor Anderson, and Bailey took about an hour before sunset. In the first two photos, Professor Anderson is holding a wine glass containing a clear liquid and Bailey is also holding a drink.

Friday, April 15, 2011

11:21 am Professor Anderson on a deck facing the ocean, with two others (not Bailey).

12:02 pm Professor Anderson on the beach, facing the camera and smiling.

5:33 pm Professor Anderson seated on a couch with a wine glass in hand, smiling toward the camera.

9:38 pm Professor Anderson seated on the bottom of a bunk bed, looking at her cell phone.

Upon review of these photos, McManus indicated that they establish that he and Professor Anderson arrived on Thursday, April 14th (later joined by Bailey), and stayed overnight. However, he now believes that Professor Anderson also stayed overnight on Friday, April 15th, as well. All witnesses, including Professor Anderson, agree that she left the beach house on Saturday, April 16th. Professor Anderson stated that she has no journal entries for Thursday, April 14th, or Friday, April 15th.

⁹⁰McManus noted that, although the photographs are authentic, he does not intend to suggest that Professor Anderson's account is somehow untruthful.

Regarding the events of Thursday, April 14th, McManus recalled walking on the beach with Professor Anderson and Bailey, and Professor Anderson and Bailey were both drinking alcohol. McManus was no longer drinking alcohol, and did not have any. He did not recall any argument between Professor Anderson and Bailey at the beach. Rather, they returned to the beach house and McManus was preparing dinner, with Professor Anderson and Bailey nearby. Suddenly, he heard Professor Anderson and Bailey screaming at each other. He did not know what they were screaming about, but it was a very angry argument. McManus tried to calm down the situation, told them to stop shouting at each other, and shouted “stop!” Both Professor Anderson and Bailey seemed stunned and stopped arguing. Then, it calmed down and they were all laughing again. They all had dinner and McManus went to bed at approximately 9:30 pm because he planned to rise early for a long bike ride. Professor Anderson and Bailey were still awake when he went to bed.

McManus stated the argument concerned Professor Anderson calling Bailey “cooter grabber” in the office and turning the secretaries against him. However, McManus had no recollection that the discussion included Bailey telling Professor Anderson that he would rape her if he could get away with it, Bailey drugging or restraining Professor Anderson, or Professor Anderson providing her address to Bailey and stating that he should come over if he had a suicide wish.

McManus did not recall Bailey entering the room where he and Professor Anderson were laying on a bed, getting in the bed, and putting his arms around them. Instead, he recalled that the following day, while he and Professor Anderson were walking on the beach, she told him that Bailey had done that to her. He said Professor Anderson described how persistently Bailey wanted to have sex with her the night before, and that she had said no. McManus also stated that

Professor Anderson told him that she had told Bailey that he did not have a condom and she knew she was fertile; if they had sex, she would get pregnant; and if she had a girl, she would name her Bailey Bailey and if she had a boy, she would name him Blake Bailey, Jr. She told McManus that Bailey only backed off after the line about naming the child. McManus recalled that Professor Anderson left Sandbridge earlier than she had planned, stating that she needed to get home to care for her animals.

Peery, who also attended Sandbridge 2011, reports that months after Sandbridge 2011, Bailey contacted her because he had been summoned to speak to Dunman and he did not know why. In speculating about the reason, he stated that he had sex with Professor Anderson at Sandbridge 2011, and that Professor Anderson made the remark about what she would name the child if she got pregnant. Bailey then told Peery that after having sex with Professor Anderson at Sandbridge 2011, he got the morning-after-pill the following morning. Peery recalled Bailey going to the pharmacy that morning and returning with the *New York Times*, and that there was “strain” between Bailey and Professor Anderson that morning. Peery, and another faculty member who was present, recalled that Professor Anderson left the night before the rest of the group, right before Bailey’s wife was scheduled to arrive, and that she had increasingly become agitated about her dogs being left alone.

d. Summer 2011 attempted kiss

Professor Anderson reports that the next incident involving Bailey happened at the end of June or early July of 2011. She was on campus moving to a new office, and was unpacking boxes in her new office with the assistance of then-English Department Receptionist Linda Hero (“Hero”). Bailey ran into her office, grabbed her in his arms and tried to kiss her. As she struggled to resist him and clamped her mouth down, Bailey pried her mouth open with his hand

and continued to try to kiss her. Bailey then ran off, and Hero proceeded to question Professor Anderson about what she had just observed.

Professor Anderson initially reported to us that at the time of the attempted kiss, Hero told Heller what she had witnessed. However, in a subsequent interview, Professor Anderson stated she does not know whether anyone ever spoke to Hero about the incident, and she never followed up with Hero to ask. Professor Anderson provided no personal journal entries regarding this particular incident.

Hero denied ever seeing Bailey grab or attempt to kiss Professor Anderson. She further denied ever seeing the two of them alone together, including in Professor Anderson's office, and reported that any interactions she observed between them consisted of "just normal business routine."

e. November 2011 Professor Anderson lecture

Professor Anderson reported that the next time Bailey harassed her was on November 22, 2011, during a public lecture she gave at ODU's intercultural center. The lecture included discussion of the use of a Native-American themed mascot at the College of William & Mary. Bailey, who had taught at William & Mary prior to ODU, attended the lecture. According to Professor Anderson, he "menaced" her during the question and answer period. Professor Anderson states that Bailey attacked the premise of the lecture stating that he was part Cherokee and if he did not think a certain mascot was offensive, then it was not. Professor Anderson "was frozen," and felt certain Bailey was "trolling" her. She believed he was stalking her.

f. April 2012 mailroom knife incident

Professor Anderson reported a final significant encounter with Bailey that she alleged took place in April 2012. Professor Anderson's account is as follows. She attended the spring meeting of the English Department in the ninth floor conference room. She sat down, and Bailey

entered and sat in the chair beside her. Professor Anderson twice moved seats, and both times Bailey moved and sat beside her. After ten minutes, Bailey reached over and tried to put his hand on Professor Anderson's knee. She was humiliated and left the room. Professor Anderson ran down the stairs to her office and then went to the mailroom on the fifth floor to check her mailbox before going home.

Professor Anderson states that Bailey followed her and entered the mailroom behind her. He backed her into the corner and grabbed her arm. Bailey did not say anything, but had "this look on his face." Professor Anderson states she reached into her pocketbook and grabbed a pocket knife that she carried for protection.⁹¹ Professor Anderson opened the knife and put it to Bailey's throat. Bailey then dropped her arm. Professor Anderson told Bailey, "If you ever maul, molest me, put hands on me again, try to scare me that you're going to rape or hurt me, I will slit you from ear to ear, let you bleed out, put your blood on me like war paint."

Professor Anderson states that she then saw former Professor Sarah Appleton ("Appleton") standing "horrified" at the entrance to the mailroom. Professor Anderson began crying and went to the bathroom. She then returned to her office for her belongings and left campus.

During our investigation, we made repeated efforts to speak to Appleton, including submitting written questions by email, specifically asking whether she had seen or heard what

⁹¹Professor Anderson reports that in the spring of 2012, she told Heller that she felt unsafe on campus and would begin carrying a knife for protection. According to Professor Anderson, she showed the knife to Heller and provided her with a document about the legal rights to carry a knife in Virginia, which Heller placed in Anderson's personnel file. We requested all department and personnel files for Professor Anderson and no document concerning the carrying of a knife was ever located. Heller reported that she does not recall Professor Anderson telling her that she intended to carry a knife for protection, and that Professor Anderson never showed her a knife.

happened between Bailey and Professor Anderson in the mailroom. Appleton refused to speak with us or respond to our written questions.⁹²

In his written response to our questions, Bailey, through counsel, specifically states that the mailroom knife incident is false.

2. Bailey and Graduate Students

a. Unwanted attention at a bar in October 2010

In October 2010, ██████████ (“██████████”) was an adjunct professor and graduate student in the Master of Fine Arts in Creative Writing program (the “MFA Program”) at ODU. One evening, during an off-campus social gathering at a local bar, ██████████ encountered Bailey on the dance floor. According to ██████████, she was dancing with friends when Bailey approached her and attempted to dance with her. ██████████ did not want to dance with Bailey, but her attempts to move away from him were futile. Bailey grabbed ██████████’s arms and continued tightening his grip. Ultimately, ██████████ was able to free herself from Bailey by dropping her weight and whirling around, in what she described as a self-defense technique. ██████████ was scared and she immediately fled to the restroom to collect her thoughts. When she exited the restroom, Bailey was standing immediately outside the restroom door waiting for her. At that time, a friend of ██████████’s came over and distracted Bailey while ██████████ left the bar and drove home.

██████████ also recalls a conversation she had with Bailey concerning what happened at the bar. During this conversation, ██████████ told Bailey that his actions made her uncomfortable.

⁹²In an apparent reference to Appleton, Part 2 of *The Pilot* Article regarding Bailey, dated June 16, 2021, reports that the professor was just outside the mailroom and heard Professor Anderson say, “You come any closer, I’m going to hurt you,” but did not look inside.

Bailey replied that he was sorry [REDACTED] was misinterpreting his behavior, but she needed to stop talking to people about the bar incident because he has a family and this could “ruin” him.

Messages exchanged between [REDACTED] and former ODU Professor [REDACTED] (“[REDACTED]”) in late October 2010 serve as a contemporaneous record of [REDACTED]’s recollection of the bar incident. The incident is also corroborated by three individuals who witnessed Bailey’s interactions with [REDACTED] at the bar. ODU Professor Peery witnessed Bailey approach [REDACTED] on the dance floor and touch her arm. She also saw [REDACTED] rip her arm away from Bailey and walk away. ODU graduate student Tara Burke (“Ms. Burke”) saw Bailey put his hand on [REDACTED]. Lastly, ODU graduate student Valarie Clark (“Ms. Clark”) saw Bailey seated close to [REDACTED] at the bar with his arm draped around her, touching her arm and hair. Ms. Clark described Bailey’s demeanor as “overly familiar,” and [REDACTED] as appearing “distinctly uncomfortable.” Subsequently, [REDACTED] approached the group of people Ms. Clark was with, and someone raised the fact that Bailey appeared to have been in [REDACTED]’s personal space. [REDACTED] whispered in response, “He wouldn’t let me leave.” Ms. Clark also saw Bailey waiting outside the restroom and when [REDACTED] exited, he tried to prevent her from walking away.

b. Inappropriate comments/behavior toward a student in Bailey’s own class in 2014

We make no factual findings concerning the ODU graduate student who allegedly experienced inappropriate comments and advances at the hands of Bailey in the spring of 2014. This alleged complainant declined to speak with us; therefore, we are aware of her allegations only through the *The Pilot* Article. The only witness who was able to provide minimal first-hand information of the graduate student’s allegations was Ms. Burke. Ms. Burke recalls the graduate student mentioning that she had uncomfortable conversations with Bailey in his office and, on

one occasion, he closed the door to his office, which made her unsure of his intentions. Also regarding these specific allegations, Peery, who was on the graduate student's thesis defense panel with Bailey and another professor, stated that she did not observe anything untoward between Bailey and the graduate student. Given the foregoing, we are unable to either confirm or refute the graduate student's allegations.

3. Bailey's interaction with a visiting writer in October 2011

We also make no factual findings concerning Bailey's interactions with an ODU Writer-in-Residence at an October 2011 party. On the evening of October 7, 2011, Bailey hosted a Literary Festival ("LitFest")⁹³ party at his house where members of the ODU English Department were in attendance, including the fall 2011 Writer-in-Residence ("visiting writer"), Ms. Burke, and Ms. Clark. Ms. Burke and Ms. Clark witnessed Bailey's interactions with the visiting writer that night, and are the primary sources of information on this topic, as the visiting writer did not respond to our multiple requests for an interview.

During the party, Ms. Burke witnessed Bailey flirting with the visiting writer, including putting his hand on her shoulder and pulling her hair back and talking in her ear. However, Ms. Burke was not able to tell whether the visiting writer was bothered by Bailey doing these things. Earlier in the week, the visiting writer asked Ms. Burke and Ms. Clark for their opinions as to whether Bailey had been hitting on her. During that conversation, the visiting writer told Ms. Burke and Ms. Clark that she might call on them in the future to rescue her if she encounters an uncomfortable situation with Bailey. Ms. Clark did not witness her and Bailey's interactions over the course of the party because she was primarily engaged in another conversation. However, the

⁹³The ODU Literary Festival is a yearly event the Creative Writing Program hosts that typically takes place over the course of several days, the week before the fall break in October. It features readings throughout the day by faculty and guest writers, and other literary events.

visiting writer later told Ms. Clark that Bailey and other faculty members were aggressively “flirty” with her at the party.

According to both Ms. Burke and Ms. Clark, when they left the party with the visiting writer and walked outside to Ms. Clark’s car, Bailey appeared, grabbed the visiting writer’s hand or arm, and forcefully walked her down the road. Ms. Burke did not perceive Bailey to be angry, and she says that he was not aggressively dragging the visiting writer down the street. Bailey told the visiting writer that he had to tell her something, but she was saying goodbye and trying to leave. Bailey took the visiting writer far enough down the street that Ms. Burke and Ms. Clark could not see or hear what was going on between them, and they remained there for several minutes. When Bailey and the visiting writer returned, the visiting writer appeared very subdued. Ms. Burke described the visiting writer as upset and shaking.

Ms. Clark then drove the visiting writer back to her hotel, where the visiting writer, who is married, told Ms. Clark that, when Bailey took her down the road, he kissed her without her permission.

According to Ms. Clark, the visiting writer wrote about the incident with Bailey in a memoir, though she does not provide names. Pearson read the visiting writer’s memoir, came across a passage describing a relationship she had when she was a visiting professor, and interpreted it as a reference to Bailey. Pearson was aware that Bailey and the visiting writer had intimate dinners together, and he did not see anything non-consensual in their interactions.

Peery also read the visiting writer’s memoir and picked up on a character she believed to be Bailey. Subsequently, Bailey told Peery of his affair with the visiting writer. According to Peery, Bailey and the visiting writer had at least a year-long, long-distance, sexual relationship.

In light of the foregoing disparate accounts, our investigation was not able to confirm whether or not the interactions between Bailey and the visiting writer occurred as alleged, or whether any interactions between them were consensual or non-consensual.

B. Reports of Bailey's Actions and ODU's Response

Between 2010 and 2012, reports of Bailey's alleged inappropriate behavior toward women were made to multiple ODU faculty and administrators, including the Title IX Coordinator. The following is a description of those reports and ODU's response.

1. Professor Bridget Anderson

Professor Anderson stated that she persistently reported her allegations about Bailey to numerous ODU English Department administrators between 2010 and 2012. As soon as she returned to campus, following Sandbridge 2010, she and Moberly reported Bailey's action in the hot tub to her (now deceased) then-Chair of the English Department Jeffrey Richards ("Richards"). She did not ask for or expect anything to be done, but wanted others to know what had happened.

According to Professor Anderson, she and Moberly met in Richards' office, and she became so upset that Richards suggested they go for ice cream across the street so the office manager would not hear. Richards told her that he would meet with Charles Wilson ("Wilson"), the incoming dean of the College of Arts & Letters, and tell him what had happened. A week later, Richards told her that Wilson said he would have Pearson, the then-most senior male in the Creative Writing program, talk to Bailey to make sure he understood that nothing like this was going to happen again. Professor Anderson also told other faculty members what had happened to make sure the community knew about Bailey. As an act of resistance, she began to call Bailey "cooter grabber."

Several ODU witnesses we spoke with recalled that Professor Anderson frequently repeated the story about Bailey grabbing her in the hot tub. Faculty members also heard Professor Anderson referring to Bailey as “cooter grabber.” Every witness we spoke with who heard Professor Anderson make these references stated that people believed she was recounting what had happened in a joking manner. Some witnesses stated they never had the impression Professor Anderson was recounting the hot tub “grabbing” as sexual assault; although, they now realize that she may very well have experienced it in that manner.

Moberly states that he never reported what happened in the hot tub to anyone on campus. He believed it was a one-time thing and they had all been drinking. Moberly does recall Richards taking him and Professor Anderson to get ice cream the week following Sandbridge 2010, but states that the hot tub incident was not discussed.

Professor Anderson reported to us that when Dr. Dana Heller (“Heller”) became Chair of the English Department (in September 2010), she met with Heller to tell her about the hot tub incident with Bailey at Sandbridge 2010. Professor Anderson provided a journal entry dated Tuesday, September 13, [2010], that reflects a “[REDACTED].” The journal entry states, in part:

[REDACTED]

Professor Anderson reports that she also spoke to Wilson after he became dean to warn him about Bailey. Her journals contain an entry for October 6, 2010, which she believes reflects the discussion she had with Wilson. The journal entry states:

[REDACTED]



Professor Anderson states that in reporting to Heller and Wilson what Bailey had done in the hot tub, she was not trying to get him fired. She only wanted her department chair and dean to be aware.

Professor Anderson states that when she returned to campus following Sandbridge 2011, she did not report Bailey’s threat to rape her to anyone in writing. Instead, she “added it to [her] narrative” about him that she recounted to administrators. She states that she specifically reported the rape threat, along with his earlier misconduct in 2010, to Heller. Professor Anderson states she went to Heller, who referred her to Wilson. According to Professor Anderson, Heller further told her that she would speak to Pearson about Bailey’s conduct.

According to Professor Anderson, both Heller and Wilson “seemed flustered” with her report concerning Bailey’s conduct. They told her “it’s impossible to get stuff done for off campus stuff that’s not mandatory for you to attend.” They were clear that she had to take responsibility for who she spent time with off campus. Professor Anderson accepted this explanation, and did not think she could “get [Bailey] for things that happened off campus.”

Professor Anderson stated that she never complained to Human Resources (“HR”) because she was following her “chain of command” by reporting to Wilson. Professor Anderson

further stated that she did not complain to ReNee Dunman (“Dunman”) because Wilson told her he did not want it to leave the College of Arts & Letters.

Following Bailey’s attempted kiss, Professor Anderson told us that she sought out Heller within a week of the incident, and told her the entire story from the start. When she spoke with Heller, Professor Anderson says she also reported the incident with Bailey that had happened at Bardo’s in 2010. According to Professor Anderson, Heller told her she would talk to Wilson about the forced kiss incident, and stated in reference to Bailey’s actions, “maybe he was just being friendly.” Professor Anderson states that Heller later told her she reported the incidents to Wilson, and that Professor Anderson should speak with him as well.

Professor Anderson states that within a week of meeting with Heller, she met with Wilson in his office and told him the series of incidents involving Bailey, including the hot tub, Bardo’s, and the attempted kiss in her office. Professor Anderson states that Wilson was sympathetic but judgmental about the hot tub incident, asking her if she took responsibility for her own choices. Professor Anderson states that she told Wilson that she wanted to speak to Dunman because the attempted kiss happened on campus. Professor Anderson states that Wilson specifically told her not to go to Dunman, that he wanted to deal with it within the College of Arts & Letters. Professor Anderson listened to him because he was the head of her college. Wilson’s response was that he would have Pearson speak to Bailey.

Professor Anderson reports that she also spoke to Pearson herself about being told he was supposed to deal with Bailey, but could not recall when. She further states that Heller told her that she had spoken to Pearson about Bailey’s conduct. Pearson denies Professor Anderson ever complained to him about Bailey, or that anyone, including Wilson and Heller, ever spoke to him about Bailey’s behavior. Moreover, he never spoke to Bailey about the subject.

According to Professor Anderson, following the encounter with Bailey at her lecture concerning Native American mascots, she met with Heller and Wilson, separately, to complain. She reported Bailey's conduct at the lecture as "stalking," a label both administrators disputed. Professor Anderson again suggested to Wilson that a report be made to Dunman because Pearson had not made any traction with Bailey, and Wilson told her not to speak to Dunman. Professor Anderson says both administrators told her Bailey's conduct involved a free speech issue and was not sexual, and that he had a right to attend the lecture. When asked why she did not go to Dunman herself to report his conduct as "stalking," Professor Anderson stated she was not "totally committed to that interpretation" of Bailey's actions at the lecture.

Professor Anderson stated, unlike other incidents involving Bailey which she reported, she had no intention of reporting the mailroom incident because she feared possible criminal charges for her use of a knife. She hoped Bailey would be so embarrassed that he would not report her. However, according to Anderson, someone did report the incident because shortly thereafter, in April 2012, she was summoned to a meeting on the topic in Wilson's office.

According to Professor Anderson, when she arrived, Bailey was already in Wilson's office. During the meeting, Wilson told Professor Anderson that Janet Katz ("Katz"), Associate Dean of the College of Arts & Letters, was helping him decide how to deal with this episode because he did not know what to do. Wilson asked Professor Anderson what she had to say for herself. She responded that it was self-defense and Bailey had chased her out of the faculty meeting. She said they should look into the fact that he followed her three times in the meeting, cornered her in the mailroom, and grabbed her. Professor Anderson also reported that Bailey had put his hand on her leg during the faculty meeting.

According to Professor Anderson, Wilson responded by stating that he didn't know what to do and he was getting additional input from Katz. Wilson told Professor Anderson that Katz thought she needed anger management-type counseling from the Women's Center. At some point, Katz came in and gave Professor Anderson a card with the name Joann Bautti from the Women's Center, and told her they were insisting that she set up a counseling appointment. Professor Anderson challenged that Bailey was not being asked to go to counseling. Bailey said nothing during the entire meeting and was never asked to explain his conduct. Professor Anderson provided no personal journal entries discussing the mailroom incident or the meeting she says followed with Wilson and Bailey.

Professor Anderson states that, due to the knife incident, she attended counseling with Joann Bautti ("Bautti") at the Women's Center on at least three occasions. According to Professor Anderson, Bautti stated she was required to fill out a report after the sessions to show administrators her progress. Professor Anderson reported that Heller subsequently showed her a two-page form with paragraphs Bautti had completed that was maintained in Anderson's file in the English Department Chair's office.

We interviewed Bautti, who currently serves as the director of student affairs at Eastern Virginia Medical School. Bautti did not recall Professor Anderson, nor did she recall any faculty or staff member ever seeking counseling services as a victim. However, Bautti did caution that her lack of recall was not dispositive because she saw hundreds of victims and survivors in her time at ODU and does not remember all of them. Bautti also stated that she did not provide anger management counseling, as it is not her area of expertise. She stated that the Women's Center primarily served students and would not have treated a faculty member who was required to attend counseling by their department because the Center's services were completely voluntary.

Bautti had no recollection of an ODU dean ever requiring someone to see her, nor did she ever hear about an incident in which a faculty member pulled a knife on someone.

We also interviewed the current and former English Department administrators to whom Professor Anderson claimed to have reported her allegations concerning Bailey. Their responses to Anderson's claims are as follows.

Dr. Charles Wilson

Dr. Charles Wilson ("Wilson") served as Dean of the College of Arts & Letters beginning in the 2010–11 academic year and throughout the period of time Bailey served as the Darden Chair at ODU. Wilson denied ever speaking to Professor Anderson or anyone about Bailey's conduct, including Bailey himself. He had no recollection of speaking to Professor Anderson at LitFest and specifically denied that Anderson ever used the term "cooter grabber" with him, told him about Bailey making comments to her in a bar, reported Bailey trying to kiss her in her office, or complained about Bailey's conduct at a lecture regarding mascots. He also was never told that Bailey put his hand on Professor Anderson's leg during a faculty meeting or that she later pulled a knife on him in the mailroom.

Wilson did not recall ever hearing about an incident in a hot tub involving Professor Anderson and Bailey until he read about it in *The Pilot*, and said that also was the first time he learned about an alleged incident involving a knife. He denied that Heller told him about any incidents involving Bailey or Professor Anderson. Wilson specifically denied ever saying he would have Pearson speak to Bailey. He stated he never would have done so as it would be inappropriate to ask a peer to speak to another colleague about such topics and such conversations would not take place without the department chair or dean being involved. Wilson vehemently denied forbidding Professor Anderson from going to Dunman with a complaint or

saying that he wanted to deal with the allegations within the college, and indicated that he regularly sought assistance from administrators outside the college when warranted.

Wilson said he has no recollection of ever meeting with Professor Anderson in his office alone, and states that she was never in his office the six years he served as dean. He stated that it was his practice to handle issues involving faculty members through the chair of the respective department. The only time he would see a faculty member alone was if there was an issue with the faculty's chair; otherwise, the chair would be in the room.

Wilson also told us that he never met with Bailey alone in his office. However, when we asked him to search his electronic calendar which contained appointments back through 2010 for "Bailey" he located a single thirty-minute entry, dated January 18, 2011, regarding "a candidate," which Wilson believed must have pertained to a discussion with Bailey about renewal of Bailey's position for the following year. A search of "Anderson" returned no results. Wilson said he never met with Bailey and Professor Anderson together in his office, and neither he nor Katz required Professor Anderson to attend counseling. He never asked any faculty member to attend counseling. He stated, and Katz confirmed, that Katz worked with undergraduate students, not faculty, unless faculty specifically sought her out for assistance on their own.

We also asked Wilson to search his electronic calendar for the date of October 5, 2010. Wilson saw no entry for a meeting with Professor Anderson, but reported that it was LitFest week and there was a 6 pm reception in the Music Department and at 7:30 pm, Bailey was the featured presenter of a literary reading, an event Wilson probably attended. Wilson had no

recollection of speaking to Professor Anderson about Bailey at this event, and he reiterated that he never spoke with Professor Anderson about Bailey.⁹⁴

Associate Dean Janet Katz

Associate Dean of the College of Arts & Letters Janet Katz (“Katz”) has served at ODU for 41 years. Katz told us that no issues involving Professor Anderson and Bailey ever came to her attention, and she never discussed either person with Wilson. She does not recall ever having a conversation about these matters, and she never sent Professor Anderson to counseling or discussed doing so with Wilson. Katz states she has never sent a faculty member to counseling. Katz reported that she is as certain as she can be that she never met with Bailey or Professor Anderson about each other, and never discussed these issues with either. She did not learn about any incidents between Professor Anderson and Bailey until she read about them in the news.

Dr. Dana Heller

Dr. Dana Heller (“Heller”) served at ODU for 28 years, including two terms as Chair of the English Department, between 2010 and 2016. Heller currently serves as Dean of the College of Arts & Sciences at Eastern Michigan University. Heller reported that Professor Anderson raised issues with her about other faculty members but “just like in a normal way, people grouse, saying so and so is driving me nuts.” Heller did not recall a time when Professor Anderson wanted to take action against another member of the department. Heller stated Professor Anderson’s complaints to her were “just normal venting,” and Heller did not remember any conflicts Professor Anderson had with another faculty member that was out of the ordinary.

Regarding Professor Anderson’s specific alleged complaints involving Bailey, Heller said she heard about the hot tub incident before becoming chair because it was a “scandal.” She also

⁹⁴Wilson keeps a “faculty problems” electronic file, where he recorded issues with faculty members. He reviewed it during our interview and did not find any documents related to Professor Anderson or Bailey.

remembers hearing, possibly from Professor Anderson, about Bailey's conduct at Professor Anderson's speech on Native American mascots. Finally, Heller recalled being aware of an incident involving Professor Anderson using a knife against Bailey. She did not believe Professor Anderson was the source of the report about the knife directly, but rather she believed Professor Anderson told other faculty about it, stating she had to protect herself. Heller did not recall ever hearing that Professor Anderson had been ordered to attend counseling and did not know that could be done.

Heller stated that she "would imagine" that Professor Anderson spoke to Wilson about Bailey, but did not have any details about such discussions taking place. She recalls speaking with Wilson herself about Bailey and the pattern of behavior that was developing around him. Heller believes she also "must have talked to Janet [Katz] about it," but again did not remember any specifics about when or how many times these conversations took place.

Heller states her concern about Bailey was that there seemed to be a pattern developing with him that usually involved a party, alcohol, and inappropriate behavior toward women. Heller stated that Wilson was aware of this concern and, although she could not recall whether he specifically expressed it, her impression was that Wilson wanted to try to keep it within the college.

Heller did not remember whether Wilson ever told her that he would ask Pearson to speak with Bailey, but stated that Wilson followed the rules and, for that reason, it made sense that if not Pearson, Wilson would tell the then-director of the MFA Program Luisa Igloria to speak with Bailey. Heller did not recall Wilson ever specifically telling Professor Anderson that she could not go to Dunman to complain about Bailey. To the contrary, Heller stated that many people told Professor Anderson to file a formal complaint against Bailey, but she "seemed to

want to manage it herself.” As discussed below, the evidence supports that Heller reported Professor Anderson’s concerns about Bailey to Dunman, and encouraged a then-reluctant Professor Anderson to speak with Dunman directly.

2. Graduate Students

The reports and responses summarized below pertain to Bailey’s conduct toward ██████ in October 2010 at an off-campus bar. Our investigation did not uncover any reports made to ODU faculty or administrators by or about the graduate student whom Bailey allegedly harassed in 2014.

a. Fall 2010

██████ first reported Bailey’s unwanted advances at the bar to Professor ██████ (██████) the same night as the incident. ██████ shared an office with ██████ and when ██████ left the bar, she went to the office. ██████, who was working late that night, listened as ██████ cried and recounted Bailey’s inappropriate behavior toward her. ██████ then shared with ██████ what she had heard about the hot tub incident involving Bailey and Professor Anderson. ██████ encouraged ██████ to report Bailey to Heller, and she helped ██████ draft an email to Heller requesting a meeting.

During ██████’s meeting with Heller, Heller responded that she had heard about the incident from others, as well. According to ██████, Heller told her that she would talk to Bailey and that she would not renew his one-year contract. Heller asked ██████ if she wanted to file an official complaint, which she declined to do, in part because of Heller’s statement that Bailey would not be rehired.

██████’s memory of her reporting of the Bailey incident is supported by contemporaneous messages between ██████ and ██████, in which ██████ wrote in reference to Bailey: “I don’t feel the need to take further actions against him. I just wanted to be

sure the university knows his number to prevent future problems;” and “University officials are aware of the situation and ‘taking it seriously.’ That’s enough for me.”⁹⁵ At the time these messages were exchanged, ██████ had already spoken with Heller and Igloria about the incident, and ██████ had shared ██████’s allegations with other ODU faculty.

Heller did not recall meeting with ██████; however, she could not say for certain that it did not occur. Heller said that she told ODU Legal as much, and that the Kaufman & Canoles Statement indicating that she recalls having never spoken to ██████ is inaccurate. Heller added that after she read the June 2021 Article in *The Pilot*, she was inclined to believe ██████’s account that the two of them spoke. Heller specifically referenced a line from the Article, “Heller told her it was good that the incident was so public because that meant she wouldn’t have to tell Bailey that the graduate student was the one who reported it,”⁹⁶ and said that when she read this, she thought it was exactly the kind of thing she would have said.

Heller recalls reporting the bar incident to Wilson and Wilson requesting that Heller meet with Bailey. Heller says that she and Bailey met in her office to discuss his pattern of behavior toward women, and she referenced the hot tub incident with Professor Anderson, as well as the bar incident with ██████. Heller also reminded Bailey that his position was not tenured and that he could be removed at any time. Bailey apologized for any awkwardness and proceeded to provide his perspective on the bar incident. He told Heller that he and ██████ were having a social conversation when ██████ became very agitated and left quickly to go to the restroom. Bailey was concerned for ██████’s well-being, so he stood outside the restroom and, when

⁹⁵Facebook Messenger messages exchanged between Professor ██████ and ██████, October 25, 2010, beginning at 8:02 pm.

⁹⁶The Virginian-Pilot, *Blake Bailey was an ODU star. Faculty and students say he abused and harassed women for years*, June 10, 2021, available at <https://www.pilotonline.com/news/vp-nw-bailey-odu-20210610-cuzrop4ibrh55daovoqk43rluy-htmlstory.html>.

she came out, asked her if she was okay. Bailey noticed then that [REDACTED] was upset and wanted him to back off, which surprised him. Heller did not have any additional discussions with either Bailey or [REDACTED] on these topics.

Also in the fall of 2010, Luisa Igloria (“Igloria”), then-Director of the MFA Program, reached out to [REDACTED] because she had heard about the bar incident. [REDACTED] recalls Igloria asking if she was okay. [REDACTED] responded that she was okay, and told Igloria that everything was taken care of. [REDACTED] gave this response because she was under the impression that ODU would decline to renew Bailey’s contract. Igloria provided a similar account of their conversation, stating that [REDACTED] said she was upset, but fine, and that [REDACTED] did not provide details about the situation.

When asked why she did not escalate the issues she heard about Bailey’s behavior through appropriate channels, Igloria said it was her understanding at the time that it was the complainant’s choice to file a formal complaint or not. Igloria did not feel that it was her place to report a grievance to upper administration unless the grieving party wished to do so. In fact, in a June 2021 email to Sheri Reynolds (“Reynolds”), current Chair of the English Department, Igloria wrote she “felt like [her] hands were tied.”⁹⁷ Igloria was clear that she did not consider the allegations she heard regarding Bailey’s behavior to be allegations of sexual assault.

b. Fall 2011

On October 12, 2011, Ms. Clark, one of the graduate students who witnessed the bar incident, spoke with Igloria regarding her concerns with Bailey’s behavior. Ms. Clark was prompted to do so after witnessing the interaction between Bailey and the visiting writer on October 7, 2011. According to Ms. Clark, Igloria told Ms. Clark that [REDACTED] reported the bar

⁹⁷Igloria email to Reynolds, June 17, 2021, 2:22 pm.

incident when it happened, which led Heller to speak with Bailey and give him a warning. Ms. Clark memorialized this and other salient points from her conversation with Igloria in a same-day email to Ms. Burke, the other graduate student who witnessed the bar incident. Igloria does not recall telling Ms. Clark this information, and she stated that she was not aware of whether ██████ went forward with a complaint against Bailey. Igloria does not recall any specific details of her conversation with Ms. Clark, though she does remember Ms. Clark and Ms. Burke raising concerns about Bailey being flirtatious with students.

This is consistent with Ms. Burke's account that prior to Ms. Clark's meeting with Igloria, Ms. Burke raised general complaints with Igloria about Bailey's behavior. Ms. Burke told Igloria that Bailey was a "problem," but her comments were made in the course of informal conversations because she did not want to provide specific details. Ultimately, Igloria felt the complaints she received from students were "anecdotal" in nature and did not rise to the level of a reportable sexual assault.

3. The Visiting Writer

During the same October 12, 2011 conversations with Igloria concerning ██████, Ms. Clark and Ms. Burke, separately, also spoke with Igloria about the incident with the visiting writer. The visiting writer did not want either of them to report what occurred, so they were both circumspect in what they reported to Igloria. According to an email Ms. Burke wrote to Ms. Clark after meeting with Igloria, Igloria asked her directly about the incident with the visiting writer "because [Igloria] was already noticing and observing some crude Blake behavior."⁹⁸ Ms. Burke wrote in her email that she told Igloria "a few things without saying too much or being specific and also emphasized that the author requested her story [be] kept quiet."⁹⁹

⁹⁸Ms. Burke email to Ms. Clark, October 12, 2011, 8:48 pm

⁹⁹*Id.*

Ms. Clark stated she met with Igloria because she viewed Bailey as having a problem respecting women's boundaries. In a contemporaneous email to Ms. Burke, Ms. Clark wrote that she did not tell Igloria about Bailey kissing the visiting writer, but she did report that Bailey "repeatedly physically separated [the visiting writer] from everyone else, including dragging her down several blocks when we tried to leave the party."¹⁰⁰ Igloria does not recall Ms. Clark telling her this, but she noted that this conversation would have happened a long time ago, indicating that it would be difficult to remember specifics. Igloria noted that she uniformly tells students that if they have concerns of a serious nature that they feel need to be addressed, they should escalate their complaints to upper administration. Igloria feels that the MFA Program Director does not have a lot of power and that it would not be her place to act on a student complaint; rather, it would be up to the complainant to officially file a report if he or she wishes to do so.

4. OIED and the Title IX Coordinator

In May 2012, ODU's Assistant Vice President for Institutional Equity and Diversity and Title IX Coordinator ReNee Dunman ("Dunman") commenced an investigation regarding Bailey's conduct toward women. Witness interviews and Professor Anderson's journal entries lead us to conclude that Dunman likely became involved after being notified of Bailey's conduct by Heller. The complaint concerned Bailey's actions toward Professor Anderson, and originated with then-ODU professor Stephanie Sugioka ("Sugioka"), who informed Heller, who then notified Dunman.

According to Sugioka, in the fall of 2011, Professor Anderson spoke to her about Bailey. Professor Anderson reported to Sugioka that Bailey had groped her and he would not stop. Professor Anderson further told Sugioka that she had threatened Bailey with a knife, but he still

¹⁰⁰Ms. Clark email to Ms. Burke, October 12, 2011, 6:51 pm.

would not leave her alone. Sugioka's understanding was that the incidents happened at various social gatherings, maybe a bar or someone's home, and included an incident at a retreat in Sandbridge. Sugioka did not recall where Anderson said the knife incident happened, but did not believe it was on campus because she would have remembered that detail. The nature of the threats Professor Anderson reported were not violent, but of the nature "you're not going to get rid of me—I'm going to be here." Professor Anderson told Sugioka that Bailey's behavior happened over a period of several weeks and months.

Sugioka believed the English Department Chair should be informed of the situation. According to Sugioka, Professor Anderson told her she could make a report to Heller. However, Professor Anderson did not want her name to be used beyond the discussion with Heller. Professor Anderson informed Sugioka she had previously told Heller about Bailey's conduct, but only after requesting that it not leave Heller's office.

Sugioka told Heller what Professor Anderson had said about Bailey.¹⁰¹ Sugioka got the impression that Heller had previously heard about these issues from Professor Anderson, but Heller did not know the full details. Sugioka believes Heller contacted Dunman, who in turn, contacted Sugioka shortly after Sugioka had spoken to Heller. Sugioka then spoke with Dunman, at length. Sugioka did not use Professor Anderson's name, but had the impression Dunman knew who she was discussing.

Heller told us that she encouraged Professor Anderson to speak to Dunman as part of Dunman's investigation because Professor Anderson was very angry at Bailey, kept calling him out in public about the hot tub incident, and it was a source of tension. Heller also told us that she

¹⁰¹Sugioka's report was based entirely on what Professor Anderson told her. Sugioka states her sole observation of any interaction between Professor Anderson and Bailey was at Professor Anderson's mascot lecture, during which Bailey made a comment she deemed derogatory and argumentative.

believes she referred Professor Anderson to Dunman because she could sense Wilson’s reticence concerning the issue.

Professor Anderson provided a journal entry, dated May 8, 2012, that she stated are notes from her phone call with Heller about participating in Dunman’s investigation. According to the notes, Heller told Professor Anderson that Sugioka had gone to Dunman and that Dunman wanted “██████████,” to which Professor Anderson replied “██████████.” The notes further reflect that Heller told Professor Anderson that her name would not be used, and no one would know that she had come forward. The notes reflect that Heller asked Professor Anderson to have a “██████████” with Dunman and “██████████ ██████████.”

According to the notes, Heller told Professor Anderson nothing would probably come of Dunman’s inquiry. Professor Anderson’s notes also state that Heller said she had told Dunman about the hot tub incident and she urged Professor Anderson, as a faculty member, to speak up.

Professor Anderson states that after speaking with Heller, she had a discussion with Dunman by telephone. Professor Anderson’s journal contains a May 8, 2012, entry she described as notes of her initial discussion with Dunman. Dunman is recorded in Professor Anderson’s notes as being supportive. Dunman recommended that Professor Anderson go to “██████████ ██████████” to talk it through. She provided a name (“██████████”) and number of a counselor to help Professor Anderson—who reported being “██████████.” An additional journal entry from the same date states the following:

██
██
██
██
██

In a subsequent undated journal entry, Professor Anderson writes about seeing “[REDACTED]” at the “[REDACTED].” There are also two additional journal entries, dated May 16, 2012, and June 4, 2012, that reference “Joanne” and the “Women’s Center.” Professor Anderson is adamant that she attended counseling sessions because she was required to do so by Katz and Wilson following the mailroom knife incident. However, the evidence supports the conclusion that Professor Anderson voluntarily attended counseling at the Women’s Center after being referred there by Dunman.

Professor Anderson reports meeting with Dunman three times in her office and her conference room, and having “numerous phone calls.” She told Dunman “everything except the knife incident . . . , including that [Wilson] had discouraged me in going to her with complaints.” Professor Anderson also told us that she reviewed journal entries with Dunman.

Professor Anderson further reported that Dunman called and gave her an update right after Dunman interviewed Bailey. According to Professor Anderson, Dunman told her that she had concluded the interview phase of her investigation, had “all kinds of disturbing information,” and was going to recommend that he be terminated. Dunman also said that Bailey’s termination would have to be approved by ODU Legal, but Bailey was such a liability to the University that she could not imagine it would not be approved.

Professor Anderson reported that not long after this call, she received another call from Dunman during which Dunman reported that she “met with [ODU] Legal, and Legal is going to treat it as one incident and for that reason you just give a warning.” According to Professor Anderson, Dunman said ODU Legal, specifically James Wright, had asked her to pass along to Anderson not to talk to anyone about the allegations.

ReNee Dunman

ReNee Dunman (“Dunman”) served as ODU’s Assistant Vice President for Institutional Equity and Diversity for over 25 years, including the time period during which Bailey worked at ODU. Dunman also served as ODU’s Title IX coordinator for 23 years.

Dunman explained that there was a single record concerning her investigation that remains in OIED’s files, the Bailey meeting prep notes, dated July 18, 2012. Concerning Bailey and Professor Anderson, Dunman could not recall the source of the initial report, and she did not believe the complaints against Bailey ever rose to the level of a “formal complaint” requiring specified procedures.

Dunman recalled speaking with Professor Anderson more than once. Some details about Professor Anderson’s complaint stood out because they were unique—namely, that the incident took place in a hot tub. Professor Anderson reported that she was in the hot tub with two guys, one of whom was her best friend. Bailey joined them and tried to slip himself under her or tried to touch her, but Dunman could not remember the details. Dunman stated that Professor Anderson never mentioned being naked in the hot tub. Dunman recalled that when Professor Anderson responded to whatever the overture from Bailey was, her response was not “extraordinary”—her friend interjected and said something like “you’re drunk, get out of here.” And, Professor Anderson said that was the end of it. Professor Anderson never mentioned anything about a knife incident.

Dunman recalled that Professor Anderson “was fairly broken, very upset about it.” Professor Anderson wanted anonymity and was mostly concerned others would learn she reported Bailey. She did not want him fired and did not want the responsibility for that, which Dunman said was typical in cases involving employee reports against other employees.

Dunman described a disconnect between how upset, emotional, and fearful Professor Anderson was and the fact that she was okay with “just tell him to leave me alone” as a resolution. Dunman’s understanding was that, after the touch in the hot tub, nothing else happened concerning Bailey. According to Dunman, Professor Anderson described the hot tub incident as if she had handled it. However, it did not make a whole lot of sense to Dunman that Professor Anderson had seemingly handled the matter but seemed so broken up about it.

Dunman said that there would have been some form of follow-up with Professor Anderson after their meeting, but she could not recall what it was. OIED had a relationship with the counseling center, so for someone in Professor Anderson’s emotional state, Dunman said, she would have referred her or offered to walk her over. Although ODU generally did not provide counseling services to their employees, they would do so for someone in the emotional state Professor Anderson was in. Dunman did not recall whether she spoke with Professor Anderson after their meeting, but she believed that she did follow up with her at the conclusion of the investigation, as was her typical practice.

Dunman remembered meeting with Wilson and telling him that there should be no more retreats like Sandbridge. Each year, Dunman met with the deans to discuss the past year and complaints from their respective college, OIED’s concerns and recommendations, and any community members to keep an eye on. Dunman was not sure whether she told Wilson that retreats like Sandbridge should not be happening as part of one of those yearly sit-downs or in a separate, more immediate conversation. Dunman also could not recall whether she had flagged Bailey as someone “to keep an eye on.” Although she did not specifically recall discussing Bailey with Wilson, Dunman was clear that she “wouldn’t have had a case like this and not talked to the dean.”

Dunman recalled a second report, which she believed followed Professor Anderson's, concerning Bailey and a graduate student. Dunman did not recall whether the second report came from the graduate student directly or someone else, but believed it came from a professor. Dunman did not remember the substance of the report, only that it involved inappropriate comments. Dunman said that the second report was how OIED was "able to align the facts and conclude that there was an issue" with Bailey.

Dunman could not remember specifically speaking with Bailey but said, "I know I met with him," because she prepared the above-referenced prep notes for the meeting, which she authenticated. The prep notes refer to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]."¹⁰² Dunman stated that the [REDACTED]

[REDACTED]

[REDACTED]

Dunman also indicated that the prep notes for the Bailey meeting focused on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dunman denied telling Professor Anderson that she recommended that Bailey be fired. She states that she was disturbed to read that allegation and "would never, ever tell any complainant that degree of detail about any case. And, it didn't happen! Not procedurally, not as a modus operandi . . . that doesn't even make sense to me." Dunman states that she would never

¹⁰²Dunman's Blake Bailey Meeting Notes, July 18, 2012, at p. 1.

violate personnel policy to give details, and that in any event, ODU Legal would not directly overrule her recommendation. But, Dunman observed, she could give advice to someone in the chain of command of the faculty, and if they did not want to take that advice, they could call ODU Legal or HR and say “what are my other options,” and they would respond in kind.

Dunman told us, and said that she also told ODU Legal in connection with *The Pilot* review, that she likely would have recommended Bailey’s non-renewal under the circumstances. In this case, Bailey was a restricted employee; whenever a restricted employee is involved in anything remotely related to sexual harassment or assault, OIED recommends not renewing the contract.

C. The May 26, 2021, Statement to The Virginian-Pilot

In May 2021, a reporter with *The Virginian-Pilot* (“*The Pilot*”) reached out to ODU requesting comment concerning allegations of sexual misconduct raised in research being conducted for an article on Bailey. In response to *The Pilot’s* inquiry, ODU University Counsel (“ODU Legal”) sought and received approval from the Office of the Attorney General (“OAG”) to engage Kaufman & Canoles, P.C., as outside counsel regarding the matter. What followed was a mini internal investigation conducted by ODU Legal and a statement issued to *The Pilot* on ODU’s behalf by Kaufman & Canoles on May 26, 2021 (the “Statement”). The Statement was widely viewed as aggressive and victim-blaming, a characterization we find to be accurate. The following recounts the key facts and circumstances leading up to the issuance of the Statement to *The Pilot*.

1. The Virginian-Pilot Inquiry and Retention of Outside Counsel

The Pilot contacted ODU concerning Bailey on April 28, 2021, in a Freedom of Information Act (“FOIA”) request. The FOIA request was emailed to Assistant Vice President for Strategic Communication and Marketing Giovanna Genard (“Genard”), OIED, and others.

The Pilot requested any records concerning “all reports of abuse, assault or harassment involving Blake Bailey” and other related materials.¹⁰³ ODU conducted a search of its records and the only responsive document located was one page of notes, dated July 18, 2012, from OIED that appeared to have been prepared in anticipation of a meeting with Bailey concerning his behavior toward women. Ultimately, ODU determined that the document was exempt from FOIA as a personnel record and it was not disclosed to *The Pilot*.

On May 20, 2021, *The Pilot* contacted ODU stating that it was preparing to run a story stating that Bailey had committed multiple acts of sexual misconduct toward women while at ODU. The message was emailed to Genard and Senior Associate University Counsel James Wright (“Wright”) and asked whether ODU, Wright, or then-ODU President John Broderick (“Broderick”), since retired, had a response to the allegations or the list of specific questions *The Pilot* included in the message.¹⁰⁴ The email gave a response deadline of noon, Wednesday, May 26, 2021.¹⁰⁵

Upon receiving *The Pilot* email, Genard and Wright notified University Counsel Earl Nance (“Nance”) the same day, who then discussed the matter with Wright. Nance, in turn, notified ODU Vice President for Administration and Finance Gregory DuBois (“DuBois”). It was Nance’s initial recommendation to not respond to *The Pilot*’s inquiry. Nance further advised that, if they did respond, they should request additional time to do so and it would have to be through someone else because OAG policy precluded Nance and Wright from interacting with the press. Nance also notified ODU’s Title IX Coordinator Ariana Wright, as well as his

¹⁰³*The Pilot* FOIA request email, April 28, 2021, 10:36 am.

¹⁰⁴*The Pilot* email, May 20, 2021, 12:27 pm.

¹⁰⁵*Id.*

superiors at the OAG, Section Chief Deborah Love (“Love”) and Deputy Attorney General Sylvia Jones (“Jones”), concerning this matter.

The following day, DuBois reached out to Broderick, who was on vacation in Florida, by telephone to notify him of *The Pilot* request for comment. Broderick’s response was that the University should respond and that they should do so without requesting additional time. Once advised by DuBois that Broderick wanted to respond, Nance recommended that outside counsel be retained to interact with *The Pilot*. The recommendation to retain outside counsel was made due to the OAG restricting ODU Legal’s interactions with the press, as well as the fact that *The Pilot* inquiry specifically referenced Wright’s actions. ODU Legal had previously used Kaufman & Canoles for employment-related matters and Nance recommended that they be retained. DuBois agreed with the recommendation to retain outside counsel.

Approval for Kaufman & Canoles to be retained as outside counsel in this matter was requested by ODU, and the OAG granted that request. Attorneys Burt Whitt and John Bredehoft of Kaufman & Canoles’ labor and employment practice were responsible for the engagement.

2. ODU Legal Department’s Investigation

It was determined that ODU Legal would investigate the matter by conducting interviews, report the information to Kaufman & Canoles, and Kaufman & Canoles would communicate with *The Pilot*. Collectively, ODU Legal and DuBois, in consultation with Kaufman & Canoles, made the decision to not interview Professor Anderson out of concern that it would be viewed as retaliatory. Whether or not to interview the other complainants was not discussed. Ultimately, the other complainants were not interviewed because ODU wanted to meet the May 26th deadline and ODU Legal ran out of time, not because of any conscious decision to avoid doing so.

ODU Legal proceeded to interview current and former ODU faculty and administrators, including members of the English Department, deans, department chairs, and Title IX coordinators. ODU Legal made the determination as to whom should be interviewed. Interviews were conducted over telephone by Nance and Wright. Typically, Nance would ask all of the questions. However, Wright did question one interviewee alone, due to Nance's unavailability. ODU Legal also received a few written witness accounts by email. Interview notes were emailed to Kaufman & Canoles updating them on witness accounts and the progress of the investigation. Nance also regularly updated DuBois regarding witness interviews and the progress of the investigation. DuBois, in turn, updated Broderick by telephone on a daily basis. Broderick did not return from his vacation until May 25th.

The consensus between ODU Legal, Dubois, Broderick, and Kaufman & Canoles was that the information gained in the internal investigation, which contradicted the facts alleged in *The Pilot* email, would be shared with *The Pilot* in a manner that would hopefully deter them from running the story. Or, at least lead *The Pilot* to reevaluate the premise of the story that Bailey had committed multiple acts of sexual misconduct and ODU did nothing in response.

ODU Legal, DuBois, and Broderick all stated that it was never their intention that the Statement become public, only that it be strong enough to dissuade *The Pilot* from running a story that depicted ODU in such a negative light. However, upon receiving the Statement from Kaufman & Canoles on May 26, 2021, *The Pilot* informed Kaufman & Canoles and ODU's Genard by email that they intended to include the "full statement" with the story.¹⁰⁶ Kaufman & Canoles then notified Nance and Wright,¹⁰⁷ and Nance notified Broderick and DuBois, cc'ing

¹⁰⁶See Gary Harki email to John Bredehoft and Giovanna Genard, May 26, 2021, 2:32 pm.

¹⁰⁷See John Bredehoft email to Nance and Wright, May 26, 2021, 2:38 pm.

Genard and his superiors at the OAG, Jones and Love.¹⁰⁸ A full two weeks prior to the story being published and the Statement becoming public, ODU knew of *The Pilot's* intention to publish the Statement and took no steps to prevent it.

3. Drafting and Editing of the May 26, 2021, Statement

Based on the information gathered through ODU Legal's limited internal investigation, Kaufman & Canoles drafted a position statement in response to *The Pilot* email. Neither ODU Legal nor anyone within the ODU administration specifically requested Kaufman & Canoles draft a statement on ODU's behalf. That decision was made solely by Kaufman & Canoles. The guidance from ODU administration was that they wanted to respond to *The Pilot*; they did not dictate the form that response should take.

On May 25, 2021, Kaufman & Canoles shared a draft of the Statement with Nance and Wright.¹⁰⁹ Nance provided comments and edits to Kaufman & Canoles via email.¹¹⁰ After receiving the draft, Wright discussed particular facts attributed to former Title IX Coordinator Dunman with Dunman by telephone. Based on that conversation, Wright made a few edits in conformance with the information conveyed by Dunman.

That same day, Nance also emailed a draft of the Statement to his superiors at the OAG, Love and Jones.¹¹¹ Jones reviewed the Statement and submitted minor grammatical edits by email.¹¹² Love did not respond to Nance's email. Neither Jones nor Love dictated the substance of the Statement. However, they also did not counsel Nance that it should not be submitted to *The Pilot*.

¹⁰⁸See Nance email to Broderick and DuBois, May 26, 2021, 6:41 pm.

¹⁰⁹Kaufman & Canoles email with draft Statement, May 25, 2021, 5:27 pm.

¹¹⁰Nance Response email with feedback on draft Statement, May 26, 2021, 12:29 am.

¹¹¹Nance email to Love and Jones with draft Statement, May 25, 2021, 2:14 pm.

¹¹²Jones email to Nance with edits to Statement, May 25, 2021, 4:38 pm.

Nance then shared the draft Statement with Broderick and DuBois during an in-person meeting the afternoon of May 25, 2021. During this meeting, Nance summarized the investigation conducted by ODU Legal and provided a hard copy of the draft Statement for review, comment, and approval. DuBois reviewed the Statement but did not provide any edits. According to Nance, Broderick reviewed the Statement after the meeting and provided handwritten comments and edits.

Another meeting was held among Nance, Wright, and Harry Minium (“Minium”), a former *Pilot* reporter who currently works in ODU’s Strategic Communications office writing articles for the athletic department. During this meeting, Minium reviewed the Statement, made a few suggestions, and provided his general input about *The Pilot* reporter who was writing the Article.

Once Nance obtained final approval from Broderick, he informed Kaufman & Canoles that they could move forward with finalizing the Statement. Before contacting Kaufman & Canoles to notify them that the Statement could be sent to *The Pilot*, Nance specifically received approval to do so from Broderick and DuBois, as was the normal course of business in such sensitive matters. Kaufman & Canoles then finalized the Statement and emailed it to *The Pilot* on May 26, 2021.¹¹³

Broderick initially claimed to have not seen the Statement until it was printed in *The Pilot* on June 10, 2021. However, this claim is directly contradicted by a May 26, 2021, email from Broderick to Nance and DuBois, in which Broderick forwarded a draft letter for their review and comment.¹¹⁴ In the letter, Broderick directly quotes from the Statement, demonstrating his awareness of its existence and content. When confronted with this email, Broderick surmised

¹¹³Kaufman & Canoles email to *Pilot* with Statement, May 26, 2021, 11:24 am.

¹¹⁴See Broderick email to Nance and DuBois May 26, 2021, 1:20 pm.

that perhaps he only received those particular paragraphs from University Counsel and never saw the entire Statement; or, if he did see the entire Statement, he only skimmed over it and never read the entire document in detail.

In what he characterized as an effort to maintain attorney-client privilege, Nance did not share the draft Statement with current Title IX Coordinator Ariana Wright or anyone else at OIED. In fact, neither OIED nor Assistant VP for Strategic Communications Genard were consulted during the drafting or editing of the Statement.

4. The Virginian-Pilot June 10, 2021, Article and ODU's Response

On June 10, 2021, *The Pilot* Article, *Blake Bailey was an ODU star. Faculty and students say he abused and harassed women for years* (the "Article"), was published detailing allegations of sexual misconduct against Bailey. The Article included a redacted full copy of ODU's May 26, 2021, Statement. Almost immediately upon release of the Article, the administration began receiving an influx of negative responses from the University community. Many individuals, especially those within the English Department, voiced disappointment via email directly to Broderick and the administration. English Department Chair Sheri Reynolds also received multiple emails from outraged faculty members. In response to the Statement and the Article, a number of faculty members within the English Department created a petition in support of ODU survivors of sexual misconduct, assault, and harassment. Ultimately, a letter, together with the petition, was sent to Broderick suggesting a list of four things the University should do in response to the Article.

In response, Broderick convened a meeting among certain ODU administrators and ODU Legal to discuss a public response to *The Pilot* Article. The following individuals attended this meeting: (1) Broderick, (2) Nance, (3) Genard, (4) DuBois, (5) Karen Meir (ODU Community Relations), and (6) an unnamed individual from a crisis management firm. These individuals,

along with September Sanderlin, VP for Human Resources (“Sanderlin”), and Provost Austin Agho (“Agho”) were involved in the drafting of a response to the Article.

Prior to the meeting convened by Broderick, on June 10, 2021, Wright had reached out to Kaufman & Canoles at the request of Broderick for them to draft a short response statement for ODU to publish if the administration received further inquiries.¹¹⁵ Kaufman & Canoles immediately drafted a response statement and shared it with Nance and Wright on June 11, 2021.¹¹⁶ The response statement was first edited by Wright and it was further revised by Broderick and DuBois.¹¹⁷ Nance and Phillip Walzer (ODU employee and former reporter for *The Pilot*) also reviewed the statement and provided input.¹¹⁸

On June 14, 2021, Broderick sent an email to the ODU community responding to the Article.¹¹⁹ In the email, Broderick apologized to the victims, indicated that a transparent and independent investigation had been conducted, and stated that ODU was establishing a task force to review and address concerns raised in the petition “in support of ODU survivors of sexual misconduct, assault and harassment.”¹²⁰

Subsequently, on June 24, 2021, Broderick sent a follow-up email to the ODU community reassuring the community that ODU was taking appropriate steps to investigate the matter and to enhance ODU’s reporting mechanisms for sexual misconduct.¹²¹ Prior to this follow-up email being sent, it was reviewed by Broderick’s staff, including Nance, DuBois, and Genard.

¹¹⁵Wright email to Kaufman & Canoles regarding response to the Article, June 10, 2021, 11:41 am.

¹¹⁶Kaufman & Canoles emails with draft Response Statement, June 11, 2021, 11:34 am and 3:16 pm.

¹¹⁷Wright email to Kaufman & Canoles regarding Revised Privileged Draft Statement, June 11, 2021, 4:15 pm.

¹¹⁸Nance email to Kaufman & Canoles with revisions, June 13, 2021, 1:32 am; Walzer email to Nance with revisions, June 13, 2021, 6:15 pm.

¹¹⁹Broderick email to Monarch Community, June 14, 2021, 5:36 pm.

¹²⁰*Id.*

¹²¹Broderick email to Monarch Community, June 24, 2021, 8:32 pm.

CONCLUSION

Sexual misconduct of any kind is a serious issue across college campuses. Unfortunately, Old Dominion University is not exempt from this problem. It is essential that complainants be treated with respect and such matters be handled with appropriate care. We are cognizant of the ever-changing legal landscape concerning sexual misconduct and institutions of higher learning. And, we also recognize the difficulty in conducting a factual review of events which took place long ago. Although there may have been no clear violation of Title VII, Title IX, or any other applicable law or policy, best practices dictate that ODU should have done more to address the Bailey allegations at the time.

The most concerning aspect of our review is the involvement of former ODU senior administration officials in the editing and approval of the insensitive May 26, 2021, Statement to *The Pilot* concerning the Bailey allegations. The Statement blamed complainants, instead of providing the care and support they deserve. The Statement also made ODU appear indifferent to the issues of sexual misconduct, and caused unnecessary damage to the University community.

The current ODU administration has taken the important steps of identifying shortfalls and correcting mistakes. ODU should continue down this path to ensure the ODU campus is an environment free from sexual misconduct and discrimination. The administration should also continue to strive to ensure every member of the ODU community is aware of their rights and responsibilities regarding allegations of sexual misconduct.