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INVESTIGATION REPORT

ISSUE: Possible Violation of SPG 601.89
Policy on Sexual and Gender-Based Misconduct

COMPLAINANT: Steven Shields
Former Volunteer Director of Player Development Men's Ice Hockey

RESPONDENT: Melvin Pearson
Graham Family Head Men's Ice Hockey Coach

INVESTIGATORS: WILMERHALE

DATE: May 5, 2022

RECIPIENTS: Warde Manuel
Donald R. Shepherd Director of Athletics

Rob Rademacher
Executive Senior Associate Athletic Director and Chief Operating Officer

COPIES TO: Tami Strickman
Executive Director, Equity, Civil Rights and Title IX
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Executive Summary

Steven Shields (“Complainant”), a former volunteer Director of Player Development for the Men’s Ice Hockey Team, filed a Formal Complaint against Graham Family Head Men’s Ice Hockey Coach Melvin Pearson (“Respondent”) on September 2, 2021. Complainant alleged that Respondent retaliated against him because, from 2020 to 2021, Complainant raised a series of complaints about Respondent’s leadership of the hockey program. Complainant alleged that Respondent briefly terminated his access to Yost Arena in April 2021 and fired him from his volunteer position in August 2021 because Complainant expressed concerns to Respondent and to others about the following:

- ξ The continued employment of Athletic Department employees who Complainant believed had contemporaneous knowledge of sexual misconduct committed by former University physician Dr. Robert Anderson;
- ξ Mistreatment of several women associated with the hockey program by Respondent and another male staff member;

§ Respondent's failure to adhere to the University's COVID-19 safety protocols, including by pressuring student athletes to lie on contact-tracing forms; and

§ Retaliation against and unfair treatment of student athletes by Respondent.

Shortly after Complainant submitted his complaint to the Equity, Civil Rights, and Title IX Office ("ECRT"),¹ the University referred it to our law firm, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale"), for investigation and adjudication. Our firm recently conducted an independent investigation into allegations of sexual misconduct by Dr. Anderson. Because Complainant's Formal Complaint included allegations that employees had contemporaneous knowledge of Dr. Anderson's sexual misconduct, the University asked WilmerHale to step into the shoes of ECRT to investigate Complainant's claims and provide a fair and timely resolution of this matter. To carry out our assignment, we followed the University's *Policy on Sexual and Gender-Based Misconduct* ("the Policy") and the *Employee Procedures*, as ECRT does for its own investigations and adjudications.

ECRT conducted the initial intake interview with Complainant. Thereafter, WilmerHale conducted two interview sessions with Complainant and four interview sessions with Respondent. Complainant asserted that he raised concerns about all four issues identified in his Formal Complaint either with Respondent directly or with others in the University's Athletic Department on multiple occasions. Respondent asserted that he had no knowledge that Complainant ever raised complaints related to Dr. Anderson, the mistreatment of female staff members who worked with the hockey program, or adherence to COVID-19 protocols; Respondent was aware of Complainant's concerns about the mistreatment of student athletes, but that awareness came largely from conversations Respondent had with hockey program alumni who described their own conversations with Complainant. Respondent further asserted that the

¹ ECRT was formerly known as the Office of Institutional Equity ("OIE"). For consistency, this report refers to the office as "ECRT" throughout.

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revocation of Complainant's access to Yost Arena was a mistake that was quickly corrected and that Respondent's decision to terminate Complainant from his volunteer position was in no way connected to any of the issues that Complainant raised in his Formal Complaint. Rather, Respondent asserted, Complainant's termination was prompted by Complainant's "divisive" behavior, statements Complainant made to individuals outside of the program about Respondent's "mismanagement" of the program, and Respondent's opinion that Complainant was no longer a "good fit" for the program.

To investigate Complainant's allegations, we contacted nineteen witnesses who we believed might have relevant information.² Sixteen agreed to be interviewed.³ Several witnesses described a program where all staff, regardless of gender, were treated equally and student athletes were treated fairly and with respect; others described an environment rife with tension, favoritism, and inequitable treatment of female staff members and certain student athletes. Multiple female staff members voiced concerns about the culture within the hockey program, and one said she was afraid she would be retaliated against by Respondent for participating in our investigation. Another witness relayed widespread concerns among student athletes on the hockey team that if they raised issues about the leadership of the program, Respondent would reduce their playing time or otherwise retaliate against them by interfering with their professional prospects. An individual at the center of Complainant's allegations about improper treatment of student

athletes declined to speak to us; a female staff member, who Complainant alleged to be a target of mistreatment, did not respond to our request for an interview. In addition, multiple University administrators described receiving reports, not just from Complainant, of inequitable treatment of female employees associated with the hockey program and/or retaliation against student athletes who raised concerns about the program. These reports, as relayed to us in interviews, frequently involved Respondent directly or called into question his supervision of the program, specifically including his supervision of one member of his staff.

We were charged with investigating whether it was more likely than not that Respondent took retaliatory actions against Complainant for raising concerns about conduct that violated the Policy. We were not tasked with conducting a comprehensive culture review of the hockey program. Not all conduct that Complainant or others may consider inappropriate or unprofessional violates the Policy; rather, the Policy applies only to *sexual or gender-based* misconduct. Complainant's concerns pertaining to employees' knowledge of Dr. Anderson's sexual misconduct and to the mistreatment of female staff members implicate the Policy; his complaints pertaining to adherence to COVID-19 safety protocols and the treatment of student athletes do not. Thus, our inquiry was a relatively narrow one: Did Respondent retaliate against Complainant because Complainant voiced concerns about the continued employment of staff members with knowledge of Dr. Anderson's sexual misconduct and/or concerns about the mistreatment of female staff members?

² Pursuant to the *Employee Procedures*, we provided Complainant and Respondent with a preliminary report summarizing our interviews of the parties and witnesses as well as relevant evidence provided to us. Both Complainant and Respondent provided comments on the preliminary report and submitted additional evidence for our consideration.

³ We also collected and reviewed hundreds of pages of emails, audio recordings, University reports, and other documents provided to us by the parties and by witnesses.

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We conclude, based on a preponderance of the evidence, that Respondent did *not* take adverse actions against Complainant for raising concerns about those two issues. In particular, the evidence does not show that Complainant was locked out of Yost Arena for a short period in April 2021 or was terminated from his volunteer position in August 2021 *because* Complainant raised concerns related to Dr. Anderson or the mistreatment of female staff members. Indeed, the evidence suggests that Respondent was not even aware of Complainant's concerns about Dr. Anderson before taking adverse action against him. The evidence shows that, despite what Respondent told us in his interviews, Respondent was aware of Complainant's concerns about mistreatment of female staff members, but it does not show that Respondent took any adverse actions against Complainant in retaliation for expressing those concerns.

Instead, the weight of the evidence suggests that Respondent acted against Complainant because Respondent believed that Complainant was working with student athletes and alumni to undermine Respondent's leadership of the hockey program, including by raising concerns about Respondent's purported failure to adhere to COVID-19 protocols and Respondent's alleged mistreatment of student athletes. Respondent's decision to terminate Complainant, though motivated at least in part by Complainant's efforts to bring attention to what he considered Respondent's poor leadership of the hockey program, does not violate the Policy.

* * *

In sum, we conclude that the preponderance of the evidence does not demonstrate that Respondent took any adverse action against Complainant because Complainant reported conduct prohibited by the Policy. Accordingly, we conclude that Respondent has not committed retaliation against Complainant as defined by the Policy. The University should review, however, whether Respondent's conduct violates other University policies, including but not limited to Standard Practice Guide 601.90, Protection from Retaliation. Finally, as we discuss below, our investigation did identify cultural issues within the hockey program that warrant attention.

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The Parties

Complainant

Complainant is the former volunteer Director of Player Development for the Men's Ice Hockey team at the University of Michigan ("UM" or "the University"). He attended UM from 1990-1994 and played on the men's ice hockey team as a goaltender. After retiring from a professional hockey career, Complainant was asked by Respondent to serve as a volunteer coach at Michigan Tech, where Respondent was then the head coach of the men's ice hockey team. Complainant volunteered at Michigan Tech from 2011-2013.

Complainant returned to UM in 2015 when former Head Coach Red Berenson invited him to serve as a volunteer coach working primarily with the hockey team's goaltenders. Beginning in 2017, Complainant shifted toward a student athlete development role with the hockey team. The UM Athletic Department hired Complainant on a one-year part-time contract for 2019-2020; Complainant's paid position was not renewed the following year at least in part because of COVID-19-related budget cuts. In October 2020, Complainant transitioned to a volunteer position as the Director of Player Development for the hockey program. Complainant reported to Respondent in both his paid and volunteer positions.

Respondent

Respondent is the Graham Family Head Men's Ice Hockey Coach at the University. He started in that position in 2017 after serving as head coach of the men's ice hockey team at Michigan Tech beginning in 2011. Before Michigan Tech, Respondent served as an assistant coach at UM for more than 20 years. Respondent helped recruit Complainant to UM as a student athlete, coached Complainant when he played hockey for UM in the early 1990s, invited Complainant to work as a volunteer coach at Michigan Tech in 2011, and kept Complainant on staff at UM when Respondent succeeded Red Berenson as head coach. Respondent reports to Athletic Director Warde Manuel.

The Allegations

Complainant submitted a Formal Complaint to ECRT on September 2, 2021. Complainant alleged that Respondent retaliated against him based on complaints that Complainant made about (1) the continued employment of staff members who purportedly had contemporaneous knowledge of sexual misconduct committed by Dr. Robert Anderson; (2) mistreatment of women associated with the hockey program by both Respondent and Director of Hockey Operations Rick Bancroft;⁴ (3) Respondent's failure to adhere to proper COVID-19 protocols; and (4) retaliation by Respondent against student athletes.

⁴ Under the Policy, "Sex and Gender-Based Discrimination" includes "conduct that is based upon an individual's sex" that "[a]dversely affects a term or condition of an individual's employment." *Policy* § XI.B.7. Based on Complainant's allegations, we treat his assertion of workplace mistreatment of female employees associated with the hockey program as raising a complaint of gender-based discrimination.

Dr. Anderson Complaints

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In his Formal Complaint submitted to ECRT, Complainant alleged that he was retaliated against for complaining to Respondent that current employees had contemporaneous knowledge of Dr. Anderson's sexual misconduct. Complainant later said that he was "not sure" whether his statements about current employees' knowledge of Dr. Anderson's misconduct were "part of why I was retaliated against." Complainant instead emphasized that his complaint focused more on other issues that occurred in the hockey program from February to August 2021.

Complainant stated that he told Respondent there were staff members in the hockey program who were at UM in the 1990s and who, in Complainant's opinion, "knowingly allowed us to go to Dr. Anderson." Complainant could not recall when he made this comment to Respondent. Complainant said that he had made these types of comments to Respondent on "multiple occasions."

Complainant stated that he referenced Mr. Bancroft in his comments to Respondent because Mr. Bancroft was one of the employees who "we know to have known" about Dr. Anderson and who is still employed by UM. Complainant stated that Mr. Bancroft's "history with Dr. Anderson came up" in a conversation with Respondent in August 2020. Complainant stated that he said

something to Respondent to the effect of, “with all this stuff with Dr. Anderson and the history, I’ve talked to a lot of our players and I know what I know. This guy [Mr. Bancroft] knew, he’s one of these guys that knew.” According to Complainant, Respondent “didn’t really acknowledge” what Complainant said.

Gender-Based Discrimination Complaints

Complainant said that he complained to Respondent and to University officials in the Athletic Department, Human Resources, and ECRT about Respondent’s and Mr. Bancroft’s mistreatment of female staff members.

Complaints about Respondent

Complainant said that he complained to Respondent about Respondent’s treatment of women. Complainant stated that he approached Respondent in February 2021 after he heard Respondent “bullying” Associate Director of External Communications & Public Relations Kristy McNeil. Complainant was with Strength and Conditioning Coach Joe Maher when they heard Respondent yell at Ms. McNeil over her scheduling of a Zoom interview for two players. Complainant said that Respondent continued to raise his voice at Ms. McNeil while she tried to explain that Mr. Bancroft, who was also present, had given her permission to schedule the interview. Complainant said that Ms. McNeil was on the verge of tears. Complainant said that rather than apologize to Ms. McNeil, Respondent walked away from her, and Mr. Bancroft remained silent. Complainant stated that he raised this incident with Respondent the next day, telling Respondent his behavior was not acceptable and that “we can’t treat people like this,” but Respondent “blew it off” or said something to the effect of, “let’s wait until after the season.”

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Complainant stated that he reported this incident to Tiffany Raymond, Director of Human Resources in the Athletic Department. He also stated that he “mentioned things” to Sport Administrator Josh Richelew⁵ about mistreatment of women in the hockey program.

Complaints about Mr. Bancroft

Complainant stated that he raised concerns to Respondent about Mr. Bancroft’s treatment of women on “multiple occasions.” He described Mr. Bancroft as a “bully, in general, for a lot of people,” but noted that Mr. Bancroft’s behavior was “directed way more at females than males.” Complainant said that Mr. Bancroft is Respondent’s “right-hand man” so there is no accountability for Mr. Bancroft’s behavior. Complainant identified three women whom he says Mr. Bancroft has mistreated: Ms. McNeil, Director of Performance Nutrition Caroline Mandel,⁶ and retired Administrative Assistant Lora Durkee.

Complainant said that he raised the issue of Mr. Bancroft’s mistreatment of women in an August 2020 meeting with Respondent, telling Respondent, in sum or substance, “we know Rick doesn’t behave himself around women,” or “this guy’s got his history with women.” Complainant stated that Respondent did not say “anything meaningful” in response to that allegation.

Complainant stated that he approached Respondent about Mr. Bancroft again in March 2021

soon after witnessing Mr. Bancroft “bully” Ms. Mandel. Complainant said that on March 10, he heard from Video Coordinator Evan Hall that Mr. Bancroft “just went off on” Ms. Mandel or had “lost it again.” Complainant said that he heard from others that afternoon that Mr. Bancroft had yelled at Ms. Mandel over the phone and then hung up on her. Complainant approached Ms. Mandel and encouraged her to report Mr. Bancroft’s behavior to Human Resources or to her supervisor, Senior Associate Athletic Director and Chief Health & Welfare Officer Darryl Conway. Complainant stated that he said something to Respondent soon after the incident to the effect that “we have to do something about this, this is insane,” referencing Mr. Bancroft. According to Complainant, Respondent grew annoyed and replied by saying something to this effect: “I don’t want to fucking hear it.”

Complainant stated that he knows that some female staff members spoke to Respondent about issues they were experiencing with Mr. Bancroft.

COVID-19 Protocol Complaints

Complainant stated that he was retaliated against for raising concerns about the hockey team’s handling of COVID protocols surrounding a March 2021 NCAA Tournament in Fargo, North Dakota. Complainant stated that on March 26, 2021, he was called by two student athletes who were at the NCAA Tournament. Complainant stated that the student athletes told him that they had been instructed by Respondent to provide false information on their COVID contact-tracing forms. A roommate of the two student athletes (who was also a teammate) tested positive for COVID before the team left for the tournament. As relayed by Complainant, the student athletes

⁵ During the relevant time period, Mr. Richelew’s job title was “Assistant Sport Administrator.” His title recently changed to “Sport Administrator,” and we use that title throughout this report.

⁶ Ms. Mandel did not respond to a request to be interviewed as part of this investigation.

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who called him traveled to the tournament, where they were told to report on contract-tracing forms that they had not had close contact with a COVID-positive person. While attending the tournament, one of those student athletes tested positive for COVID, and the other reported feeling sick. According to Complainant, the two students were “put in a van” for the 18-hour drive back to Ann Arbor and “were extremely upset” because they “felt like they were being snuck out of North Dakota.” Complainant stated that he immediately reported these concerns to Executive Senior Associate Athletic Director and Chief Compliance Officer Elizabeth Heinrich.

Complainant stated that he did not express his concerns about COVID protocols directly to Respondent.

Student Athlete Retaliation Complaints

Complainant said that he was retaliated against for complaining about Respondent’s retaliatory behavior toward student athletes. He stated that he approached Respondent about what he viewed as Respondent’s retaliation against student athletes “multiple times.” Complainant stated that this was the “main reason why [Respondent] needed [him] gone.”

Complainant stated that Respondent retaliated against goaltender and team captain Strauss Mann. Complainant said that, after the March 2021 NCAA Tournament, Respondent was “tipped off” that Mr. Mann was the “ringleader” of a group of student athletes who sought to express

concerns about how Respondent was running the hockey program. Complainant stated that in response, Respondent “isolated” Mr. Mann and “basically got rid of him.”

Complainant said that he was “updating [Mr. Richelew] in real time” about how Respondent “was carrying out this retaliation against [Mr. Mann],” and asking Mr. Richelew, “What are you doing about it? Why aren’t you stopping this?” Complainant stated that Mr. Richelew told him that if Complainant had a problem, Complainant should reach out to Mr. Manuel. Complainant said that he did reach out to Mr. Manuel, who told Complainant, “We take the threat of retaliation very seriously. We’re looking into it.”

Complainant stated that he met with Respondent on May 12, 2021, and “confronted him” about his treatment of Mr. Mann. Complainant stated that, during conversations with Respondent about Mr. Mann, Respondent denied having a role in Mr. Mann’s departure from the UM hockey team and stated that “some of the guys on the team didn’t like [Mr. Mann] anymore.”

Complainant said that Respondent also told him that Mr. Mann had “played his cards.”⁷ Complainant stated that Respondent was “lying to [him]” about this.

⁷ Pursuant to Section VII.F of the *Employee Procedures*, the parties were given an opportunity to submit additional evidence in response to their review of the preliminary report. On April 1, 2022, as part of his response to the preliminary report, Complainant provided an audio recording of a conversation between him and Respondent that Complainant asserts took place on May 12, 2021 (“the recording”). As the recording shows, Complainant asked Respondent about the circumstances surrounding Mr. Mann’s departure, and Respondent replied that Mr. Mann “did not have to go” and that Mr. Mann “played his cards.” When asked why Complainant had not provided the recording to WilmerHale earlier in the investigation, counsel for Complainant said that Complainant “was not sure if he had already shared it with [us] previously.” Complainant did not reference a recording of any conversations with Respondent when we interviewed him.

Retaliation by Respondent

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Complainant stated that, because he raised concerns about contemporaneous knowledge of or acquiescence in Dr. Anderson’s misconduct, gender-based discrimination, failure to follow COVID protocols, and retaliation against student athletes, Respondent was involved in revoking Complainant’s access to hockey program facilities and then terminating him.

Revocation of Yost Arena Access

Complainant stated that his access credentials for Yost Arena were revoked in April 2021, shortly after the hockey team returned from the NCAA Tournament. He stated that he first discovered that he no longer had access to Yost Arena when Ice and Operations Technician Kevin Bushey⁸ called Complainant in mid-April and stated that Mr. Bushey had been told by Mr. Bancroft not to let Complainant into Yost Arena. Complainant said the revocation of his access occurred shortly after Equipment Manager Ian Hume told Complainant that Mr. Bancroft had stated that Complainant “won’t be here very long.”

Complainant said that he immediately notified Ms. Raymond in Human Resources and that his

access credentials were soon reactivated, but “no one ever really addressed” the issue with Complainant. Complainant stated that he brought up the Yost Arena access situation in a discussion with Respondent on May 12, 2021. Complainant said that during the same conversation, he referenced Mr. Mann and made a statement to Respondent to the effect of, “You guys take away my access, like you think I’m involved in this thing with Strauss.” Complainant stated that Respondent’s response was that the Yost Arena access issue was “just a mix-up.”⁹

Complainant stated that he warned Mr. Richelew and Ms. Heinrich around this time that Respondent was going to retaliate against him. Complainant also said that he emailed Mr. Manuel to voice concerns about the hockey program and that shortly thereafter, Tanya Castrogiovanni in ECRT informed the hockey staff and student athletes that ECRT was conducting a climate survey of the team. Complainant stated that at least one employee refused to fill out the survey for fear of retaliation. Complainant also said that Mr. Mann told him that Respondent had approached the team and “basically told them not to do the survey.”

Termination

Complainant stated that he met with Respondent in July 2021 as part of Respondent’s series of meetings with all hockey program staff members. Complainant stated that during this conversation, Respondent suggested that Complainant speak with Ms. Heinrich about broadening the student athlete development program. Complainant said that he and Respondent ended the meeting “in a good place.”

Complainant stated that Respondent terminated his volunteer position on August 11, 2021, during a meeting between Complainant and Respondent that Associate Head Coach Bill Muckalt

⁸ Mr. Bushey did not respond to a request to be interviewed as part of this investigation.

⁹ As reflected in the recording, Complainant asked Respondent if he knew why Complainant’s “credentials were revoked here a couple weeks ago.” Respondent replied that the revocation “was a mistake.”

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also attended. Complainant stated that Respondent told him, “We’re going to go in another direction.” Complainant said that Respondent refused otherwise to explain why Complainant was being terminated. Complainant said that he reacted to the termination by saying, “Oh this is about Strauss,” and Respondent replied that he did not know what Complainant was talking about. Complainant said that he then turned to Mr. Muckalt and said, in sum or substance, “Guys that knew that we were being abused get to stay and guys like me leave.”

Complainant stated that Respondent initially gave him two weeks to wrap up his volunteer position, and Complainant recalls saying, in sum or substance, “Well, it’s a good thing we have two weeks, we’ll be able to discuss this and get this all out in the open.” Complainant said that he then left Respondent’s office and went to the coaches’ locker room. Complainant said that he does not definitively recall the details of his next interaction with Respondent, but that Respondent may have approached Complainant and tried to shake his hand, saying something to the effect of, “Oh, it’ll be fine.” Complainant said that he responded, “[Respondent], you’ll be fine,” and walked out.

Complainant said that soon thereafter, Mr. Richelew called him and told him his position would be terminated immediately because there had been reports that he had used “threatening language.” Complainant said that he could not understand how Respondent would feel

threatened by anything he said.

Complainant stated that he received a phone call the following day from a University of Michigan Police Department (“UMPD”) officer who told him that Respondent was very concerned about Complainant.

Complainant said that Respondent “blackballed” him from obtaining other work within Michigan Athletics or professional hockey.

Response to the Allegations

Respondent denied that his decision to terminate Complainant’s volunteer position had anything to do with Complainant raising complaints about staff members with contemporaneous knowledge of Dr. Anderson, the mistreatment of female staff members, failure to follow COVID protocols, or retaliation against student athletes. Respondent further stated that the deactivation of Complainant’s access to Yost Arena in April 2021 was a “mistake.”

Response to the Alleged Dr. Anderson Complaints

Respondent stated that he never had a conversation with Complainant about Dr. Anderson. Regarding Complainant’s statement that he told Respondent in August 2020 that Mr. Bancroft was “one of the guys that knew” about Dr. Anderson’s sexual misconduct, Respondent said that he “never had that conversation with [Complainant] in August or ever.”

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Response to the Alleged Gender-Based Discrimination Complaints

Complaints about Respondent

Respondent said that he does not recall any conversations with Complainant about Respondent mistreating female staff members. Respondent said that he had “no recollection” of a conversation with Complainant in February 2021 about Respondent’s treatment of Ms. McNeil. Respondent said that he does not recall any February 2021 incident in which he allegedly yelled at Ms. McNeil.¹⁰ Respondent stated that he has requested that Ms. McNeil only schedule interviews early in the week and that “we had an issue with some interviews and some responsibilities that she set up after that.” Respondent stated that this interview scheduling concern is “the only thing I can think of in February [2021] that we would have that discussion about.” He also stated that he had conversations with Ms. McNeil about job-related duties that he thought she could do better.

Complaints about Mr. Bancroft

Respondent said that he does not recall having any conversations with Complainant about the mistreatment of female staff members by Mr. Bancroft. Respondent stated that he “want[ed] to make it clear” that he “never had a conversation with [Complainant] in regards to [Mr.

Bancroft]’s behavior of [sic] any of our female staff.” Respondent said that he recalled a conversation with Complainant about Mr. Bancroft’s “rude” treatment of a female hotel employee during a team trip to Minneapolis. Respondent stated that he has never seen Mr. Bancroft mistreat female employees at UM. But Respondent noted in his March 30, 2022 response to the preliminary report that “Mr. Bancroft has been reprimanded on a couple occasions in regards to his behavior.”

Respondent denied that he had a conversation with Complainant in August 2020 in which Complainant raised concerns about Mr. Bancroft’s mistreatment of women. Respondent stated that he does not recall any conversations with Complainant about Mr. Bancroft’s treatment of Ms. McNeil or Ms. Mandel.

Respondent stated that Ms. Durkee once told him that Mr. Bancroft was “taking things away from her,” particularly “work that she enjoyed doing,” and that she was having “difficulty” with Mr. Bancroft. Respondent said that he could not recall if he spoke with Mr. Bancroft about Ms. Durkee’s statements. Respondent stated that, to his knowledge, Ms. Durkee’s decision to retire had nothing to do with any friction between Ms. Durkee and Mr. Bancroft.

Response to the Alleged COVID-19 Protocol Complaints

Respondent stated that he never discussed the COVID issues at the NCAA Tournament with Complainant. Respondent further stated that he had no role in instructing players how to fill out their contact-tracing forms and that he deferred to UM employees who managed the University’s

¹⁰ In his March 30, 2022 response to the preliminary report, Respondent asserted that he did not “bully” Ms. McNeil and has “never belittle[d]” or “yelled at” Ms. McNeil. He asserted that he “had a candid conversation with her about not following [his] interview policy.”

response to COVID. Respondent said that he trusted those same employees to handle testing of players before the NCAA Tournament and obtaining clearance to travel.¹¹

Respondent stated that, following the NCAA Tournament, he was asked “a lot of questions” he could not answer about why the Michigan team was expelled from the tournament while other teams in similar positions were not. Respondent said that he did not receive any other “feedback” about his handling of COVID protocols. Aside from the UMPD report that followed, Respondent never heard anyone complain about how student athletes were instructed to report COVID exposure on contact-tracing forms.

In a third interview, Respondent stated that, since news of WilmerHale’s investigation was publicly reported, “a number” of student athletes on the hockey team came forward to him and/or to Mr. Muckalt in early February 2022 to talk about Complainant. According to Respondent, those players said that Complainant had reached out to members of the team in Spring 2021 to “rally them” to have Respondent removed by “getting them to tell people that [Respondent] was telling them to lie” on their COVID forms. Respondent stated that he believes Complainant was “using these players as pawns” in a possible effort “to get me and my staff removed and get his people in place.” Respondent said that these players generally told Complainant that they did not wish to get involved, but Respondent understands that Complainant convinced one or two players to join “his side.” Respondent stated that he was not sure if Mr. Mann was involved.

Response to the Alleged Student Athlete Retaliation Complaints

Respondent initially stated that he “never had a conversation with [Complainant] about how the student athletes were being treated.” After reviewing the recording provided by Complainant in response to the preliminary report, *see supra* note 7, Respondent recalled that he had spoken with Complainant about the treatment of student athletes, and Mr. Mann in particular, during a meeting held at some point in or around May 2021.¹² Respondent also noted that Complainant brought up Mr. Mann during the August 2021 termination meeting. Respondent said that during that meeting, Complainant asked, “does it have something to do with Strauss Mann?” and Respondent said he “had no idea” what Complainant was talking about.

Respondent stated that Mr. Mann’s departure from the hockey team had nothing to do with any friction between Respondent and Mr. Mann. Respondent said that Mr. Mann chose to leave the hockey team in consultation with his advisors and that Mr. Mann’s advisors had approached

¹¹ In his March 30, 2022 response to the preliminary report, Respondent asserted that he had “no say” in how two student athletes on the hockey team—one of whom had tested positive for COVID-19—were transported back to Ann Arbor. He noted that he “wish[ed] we could [have] flown them home.”

¹² In his March 30, 2022 response to the preliminary report, Respondent asserted that he “did not discuss Mr. Mann with” Complainant; that a May 12, 2021 conversation with Complainant “never took place”; and that Complainant’s allegations that such a conversation occurred were “false.” The recording shows that Respondent and Complainant did discuss the circumstances surrounding Mr. Mann’s departure from the Michigan hockey team. We provided the recording to Respondent and asked him about it during his fourth interview session on April 12, 2022. Respondent confirmed that the Complainant and he are the speakers in the recording and that the recorded conversation took place sometime around May 2021. Respondent stated that Complainant did not ask for permission to record the conversation and that he did not know the conversation had been recorded until WilmerHale provided the recording to him for his review.

Respondent about a month and a half before the season ended to tell him Mr. Mann would likely pursue a professional contract.

Respondent stated that, after the team returned from the March 2021 NCAA Tournament, he met with Mr. Mann and the two other team captains to address any issues among the players and “get[] the overall temperature, really, of what was going on with their team.” Respondent also said that he had an additional meeting with Mr. Mann, which was also attended by Mr. Hall. Respondent said that, in those meetings, Mr. Mann and others may have asked questions about why the team was removed from the NCAA Tournament, but did not raise concerns about the program’s adherence to COVID protocols. Respondent stated that “one thing that did come up was that the players weren’t all treated the same.” Respondent stated that disparities in treatment were inevitable given the choices he had to make about which players would be allowed to travel and how much time they would get to play in each game. Respondent said that the tenor of these meetings was consistent with that of typical year-end meetings he has with student athletes.

In his initial interview, Respondent stated that he did not think that Mr. Mann was attempting to undermine him or have him removed as head coach in April 2021. When asked in a follow-up interview whether he told alumni, agents, or anyone associated with the hockey program that Mr. Mann was trying to get him fired, Respondent stated that he does not recall, though he “might have said something at some point.” In the same follow-up interview, Respondent said he does not recall speaking with Mr. Richelew about Mr. Mann’s role on the team or telling Mr. Richelew that Mr. Mann was trying to get him fired.

Respondent stated that Mr. Mann was an “unbelievable young man, extremely talented goaltender, [and] excellent student” who was “one of [Respondent’s] favorite players on the team.” Respondent said that he has remained in touch with Mr. Mann since he started playing professionally in Europe.

Respondent stated that Mr. Mann and Complainant were “[e]xtremely close” and “very tight.” Respondent said that he and other staff members were concerned about whether Complainant “was toeing the company line” and staying “on the same page and delivering the same message as the coaches” in Complainant’s interactions with student athletes. Respondent stated that this concern about Complainant “didn’t affect our relationship with [Mr. Mann].” Respondent does not recall speaking with Mr. Richelew about Mr. Mann’s relationship with Complainant.

Response to the Alleged Retaliation by Respondent

Revocation of Yost Arena Access

Respondent stated that the revocation of Complainant’s access to Yost Arena in April 2021 was a “mistake.” Respondent said that he knew Complainant’s access would be shut off and assumed that it was standard practice for volunteer coaches to have their access discontinued at the end of a sports season. Respondent said that he believes that either Mr. Bancroft or Mr. Barnes asked him in April 2021 if Complainant’s access to Yost Arena should be revoked and that his response was, “[Y]eah, that’s fine. If we normally do it with volunteers, yes to do it.” Respondent stated that “once I found out no, it was not just automatic, then we put his access back on.” He said that Complainant’s Yost Arena access was reinstated no later than the next

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day. Respondent said that he cannot recall if Mr. Bancroft was involved in the Yost Arena access incident but believed that it “probably” would have been Mr. Bancroft who managed the mechanics of discontinuing Complainant’s access.

Respondent stated that, as of April 2021, he had not made any “final decisions” about whether to separate Complainant from the hockey team, but there were “some conversations regarding moving in that direction.” Respondent said that he tried to reach Complainant to schedule a conversation meant to gauge his interest in remaining with the team, but that Complainant never responded to his outreach. Respondent stated that “for probably three months prior” to that point, “it became apparent that [Complainant] didn’t have the interest or was no longer involved in the program,” and that Respondent “had trouble getting a hold of him.”¹³ Respondent stated that he either drafted or “okayed” a letter provided by Mr. Bancroft, dated April 9, 2021, terminating Complainant because, based on Complainant’s lack of response, Respondent believed that Complainant was “not interested in being part of our program.” Respondent described the letter as “just in preparation in case we decided to go that way, if I could not eventually get a hold of [Complainant].” Respondent stated that he never sent the letter because he wanted to speak with Complainant first. Respondent stated that he does not know “why the letter got derailed other than the fact that I wanted to try to sit down with [Complainant] face to face and have a conversation.” Respondent said that he does not recall whether he forwarded the letter to or discussed the idea of terminating Complainant with anybody in Human Resources in April 2021 but said he “might have.” He said that the revocation of Complainant’s Yost Arena access was “separate” from this draft termination letter.

Respondent stated that he had heard from individuals he knew in the hockey world that

Complainant was “undermining the program” by criticizing aspects such as recruitment and coaching style. Respondent said that alumni had called him to ask, “What’s going on with [Complainant]?”¹⁴ Respondent stated that similar issues arose when he worked with Complainant at Michigan Tech, noting that Complainant is “very opinionated.” Respondent said that these actions played a role in his decision to terminate Complainant, as Complainant’s “acts were detrimental to the well-being of the hockey program.”

Respondent stated that the April 2021 draft termination letter did not have anything to do with Complainant’s complaints about gender-based discrimination, COVID protocol issues, or retaliation against student athletes.

Respondent said that he believes the May 2021 climate survey conducted by ECRT was prompted by the COVID issues surrounding the NCAA Tournament. He said that he did not know if the survey resulted from complaints (by Complainant or anyone else) to Human

¹³ In his April 1, 2022 response to the preliminary report, Complainant stated that he “attended 90% of practices” and that members of the “fulltime coaching staff w[ere] not around more than [he] was.” The recording shows that Complainant expressed a concern that “something’s going on” because Mr. Maher and Mr. Muckalt were not talking to him. Respondent replied that Mr. Maher and Mr. Muckalt “haven’t been around” Yost Arena recently.

¹⁴ The recording shows that Respondent told Complainant that alumni had reached out to Respondent with concerns “about what [Complainant is] saying about the program.”

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Resources. Respondent stated that he never had any communications with anyone connected to the hockey program about whether or how to complete the survey.

Termination

Respondent stated that he met with Complainant in July 2021 as part of an effort to meet with each hockey staff member individually. Respondent said that he encouraged Complainant at that point to pursue a broader student athlete development position.

Respondent stated that as of the July 2021 meeting, he had not made a decision whether to terminate Complainant. Respondent said that over the next month, he reflected on the conversation he had with Complainant and talked to Mr. Hall, who expressed a willingness to take on more responsibility. Respondent stated that he believed it would be beneficial for a full time staff member such as Mr. Hall to serve in the student athlete development role because he could be present more often. Respondent also stated that Complainant had been “very divisive with the staff,” prompting complaints from staff about Complainant’s behavior and inducing stress among the staff. Respondent said that staff complained that they could not trust Complainant and that he was creating a “very tense and uncomfortable situation,” in part because he was complaining outside of the program about “mismanagement” in recruiting and player retention. Respondent said that he decided, after meeting with his staff, that Complainant was no longer a “good fit.”

Respondent said that he spoke with Ms. Raymond once he decided to move forward with terminating Complainant to ask her about “the process, and, what I needed to do to do it in a proper fashion.” Respondent said that he does not recall speaking with Mr. Richelew about terminating Complainant. Respondent stated that he never consulted with a lawyer or anyone in

the Office of General Counsel about whether Respondent's volunteer status affected Respondent's authority to terminate him or the termination process.

Respondent stated that he terminated Complainant on August 11, 2021, during a previously scheduled meeting that was also attended by Mr. Muckalt. Respondent said he did not give his staff prior notice that he was planning to terminate Complainant, but he contacted Human Resources to inform them of his plans and may have also informed Mr. Richelew. Respondent stated that he encountered Complainant in the locker room after their meeting and that Complainant slapped him on the back and said, in sum or substance, "Don't worry, [Respondent]. It's going to be OK. You're going to be right where I am soon." Respondent said that he interpreted Complainant's statement to mean that Respondent would soon be terminated, too. After meeting with his staff later that same day, Respondent became concerned about whether Complainant might pose a threat to his physical safety and to the safety of his staff.

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Witness Statements and Other Evidence

All of the witnesses stated that they knew Complainant as a former volunteer staff member with the hockey program and Respondent as the Head Men's Ice Hockey Coach.¹⁵

Complainant's Role and Performance

Rick Bancroft: Director of Hockey Operations

Mr. Bancroft said he spoke with Respondent in the 2018 to 2021 period about Complainant's passion for the student athlete development role and "how good of a job he was doing."

Mr. Bancroft said that he and Complainant did not interact much over Complainant's final year with the hockey program and that Complainant was only in the office for "very limited times." Mr. Bancroft stated that when Complainant did come into the building during that final year, Complainant could be "very confrontational." Mr. Bancroft said that Complainant poked his head into Mr. Bancroft's office, "scream[ed] something for ten seconds," and then left.

Bill Muckalt: Associate Head Coach, Men's Ice Hockey

Mr. Muckalt stated that Complainant "did a good job in" his student athlete development role and "took pride in" it.

Mr. Muckalt said that Complainant's loss of his paid position with the hockey program because of funding cuts prompted by the COVID pandemic negatively impacted his attitude and performance. Mr. Muckalt said that Complainant became disgruntled, in part because he felt Respondent did not push for him to keep his paid position.

Mr. Muckalt stated that Complainant “wasn’t really around” for a period of time following the March 2021 NCAA Tournament and that “when he was, he kept his office door shut and there was no communication.”

Evan Hall: Video Coordinator, Men’s Ice Hockey

Mr. Hall stated that he saw Complainant around Yost Arena fairly regularly at first, but less often as time went on, and did not have much communication with Complainant after the March 2021 NCAA Tournament. Mr. Hall said that he thought Complainant was doing a good job in his student athlete career development role, taking it seriously and putting in a lot of effort. Mr. Hall said that, once he learned that Complainant would no longer be involved with the hockey program, he asked Respondent if he could take on some of the student athlete career

¹⁵ As part of this investigation, WilmerHale conducted interviews of Senior Associate General Counsel Debra Kowich and Senior Associate General Counsel and Chief Litigation Counsel David Masson. Both referred to communications subject to the University’s attorney-client privilege, which the University has not waived. Accordingly, summaries of those interviews are not included in this report. To the extent that any other witnesses referenced privileged communications in their interviews, we have redacted them from the transcripts. Our findings and conclusions are not based on any privileged information.

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development work Complainant had been doing because Mr. Hall thought that it was important work.

Ian Hume: Equipment Manager, Men’s Ice Hockey

Mr. Hume stated that Complainant “did a good job” in his student athlete development work and that Complainant was “a valued member of the staff.”

Mr. Hume stated that Complainant displayed mood swings that led people affiliated with the hockey program to express concerns about him. Mr. Hume described Complainant as occasionally secretive and difficult to track down. Mr. Hume stated that “nobody had talked to [Complainant] or seen him for weeks after we got back from” the NCAA Tournament.

Kris Barnes: Facility Manager for Yost Arena

Mr. Barnes said that Complainant seemed like he was “good” in his position. Mr. Barnes recalls that Complainant once said he would come to the rink early so that he would not have to see any other hockey team staff members.

Joe Maher: Strength and Conditioning Coach, Athletics

Mr. Maher first met Complainant when Complainant started as a volunteer hockey coach in 2015, and they “worked together pretty closely” and shared an office. According to Mr. Maher, when Complainant transitioned into a player development role, Complainant spoke with student athletes “about resumes and about job interviews” and “set up career night” for the student athletes. Mr. Maher stated that, once the team returned from the March 2021 NCAA Tournament, Mr. Maher did not “see [Complainant] much after that.” Mr. Maher noted, however, that “our program was pretty much shut down” toward the end of the semester and Mr. Maher “was not there much during that time” either.

Kristy McNeil: Associate Director, External Communications & Public Relations, Ice Hockey

Ms. McNeil stated that Complainant was serving in a player development position when Ms. McNeil joined UM, and that the two were friendly but did not work closely together.

Ms. McNeil said that she did not see Complainant around Yost Arena between early March and May or June 2021. She said that the hockey season had ended, and she was also away from Yost Arena for much of this time.

Lora Durkee: Former Administrative Assistant

Ms. Durkee stated that she got “along very well” with Complainant, who she described as a “very passionate” person and an individual “who cares about people.” Ms. Durkee said that she worked closely with Complainant developing a player mentorship program during the last six to eight months of her tenure (2020-2021).

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Josh Richelew: Sport Administrator

Mr. Richelew stated that Complainant did a “good job” in his volunteer goalie coaching role but that Complainant’s passion had shifted to “helping [student athletes] with life after hockey.” Mr. Richelew said that for the 2019-2020 season, Complainant was hired into a “trial” one-year paid player development role that had a “set start and a set end time.” Mr. Richelew said that, at the end of the 2019-2020 season, he discussed the position with Complainant, Respondent, and Mr. Manuel, and, because of the COVID pandemic, a decision was made not to renew Complainant’s paid position. Mr. Richelew said that Respondent wanted Complainant to continue in a similar role, and Complainant was later slotted into a volunteer position for the 2020-2021 season with somewhat different responsibilities.

Tiffany Raymond: Director of Human Resources, Athletics

Ms. Raymond stated that she was consulted about moving Complainant from a temporary paid position to a volunteer capacity.

Elizabeth Heinrich: Executive Senior Associate Athletic Director and Chief Compliance Officer

Ms. Heinrich stated that she had been aware that Complainant was serving as a volunteer assistant coach with the hockey team but did not interact with him until Complainant first contacted her in March 2021. Ms. Heinrich said that Complainant was working with student athlete development and that she was pleased he was making an effort to get players focused on their careers. She said that the Athletic Department already had employees working in similar student development roles.

Warde Manuel: Athletic Director

Mr. Manuel stated that his authorization was “probably” necessary to hire Complainant into a paid, part-time player development position for the 2019-2020 season, which was a decision Mr. Manuel said he made at the recommendation of Respondent. Mr. Manuel also said that it was

his decision not to move forward with the broader student development position that Complainant discussed with him during a March 24, 2021 meeting also attended by Mr. Berenson.

Red Berenson: Special Advisor to the Athletic Director, Former Head Coach for Men's Ice Hockey

Mr. Berenson stated that after he retired, he and Complainant discussed Complainant's effort to establish a broader student athlete development position within the Athletic Department. Mr. Berenson said he supported the idea and spoke with Complainant and Mr. Manuel about the position on a conference call in Spring 2021.

Brian Wiseman: Former Assistant Coach, Men's Ice Hockey

Before Mr. Wiseman left the University in 2019, he served on the coaching staff with Complainant and Respondent. Mr. Wiseman said that Complainant got along well with the

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student athletes and coaching staff and that Complainant's relationship with Respondent "seemed fine."

Dr. Anderson Complaints

Rick Bancroft: Director of Hockey Operations

Mr. Bancroft said he does not recall having any specific conversations with Complainant about the allegations related to Dr. Anderson, but he stated that there may have been "general banter" about the allegations when they were initially publicized. Mr. Bancroft said he does not recall Complainant ever raising a concern about Dr. Anderson until the August 11, 2021 meeting in which Complainant was terminated. Mr. Bancroft stated that after the termination meeting, Complainant came by his office and asked him when he had started working at the University.

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Gender-Based Discrimination Complaints

Rick Bancroft: Director of Hockey Operations

Mr. Bancroft stated "unequivocally" that Complainant never raised any concerns with him about the treatment of female staff members by anyone in the hockey program, and that he had no

knowledge of Complainant raising those concerns with anyone else in the hockey program, including Respondent.

Mr. Bancroft stated that he was not aware of any incidents involving the mistreatment of Ms. McNeil, Ms. Durkee, or Ms. Mandel and that he was not aware of Complainant ever bringing up any incident involving any of those three individuals. Mr. Bancroft stated that the level of interaction that he, Respondent, or Complainant would have had with the three individuals was “minimal at best.”

Bill Muckalt: Associate Head Coach, Men’s Ice Hockey

Mr. Muckalt said that he does not recall hearing that Complainant raised concerns with Respondent about mistreatment of female staff members by Respondent or by Mr. Bancroft.

Mr. Muckalt said that he does not recall hearing about or witnessing any mistreatment of female staff by Respondent or by Mr. Bancroft. Mr. Muckalt said he does recall speaking with Respondent about job-related duties that they thought Ms. McNeil could do better. Mr. Muckalt also described an incident in which, during a road trip to Minneapolis, Mr. Bancroft raised his voice at a female hotel manager after the hotel made a mistake and did not have room keys ready for the team. Mr. Muckalt said he does not recall discussions within the hockey program reflecting any frustration over female staff members reporting mistreatment to Human Resources.

Evan Hall: Video Coordinator, Men’s Ice Hockey

Mr. Hall said that he has never spoken with Complainant, Respondent, or Mr. Bancroft about the treatment of female staff members or heard anyone else raising concerns about the treatment of female staff. Mr. Hall said he could tell that Complainant was occasionally bothered by things that went on in the hockey program because Complainant made his feelings clear, but Mr. Hall does not know if that specifically related to concerns about the treatment of women.

Mr. Hall said he did not recall any incident from March 2021 where Mr. Bancroft yelled at Ms. Mandel over the phone and did not recall speaking with Complainant about any such incident.

Ian Hume: Equipment Manager, Men’s Ice Hockey

Mr. Hume stated that Complainant told him that Complainant had raised concerns to Respondent about Mr. Bancroft’s treatment of women around February 2021. Mr. Hume said that Complainant occasionally complained about Mr. Bancroft to Executive Associate Athletic Director Doug Gnodtke as well.

Mr. Hume stated that Mr. Bancroft has mistreated current and former support staff affiliated with the hockey program and Athletic Department, including Ms. McNeil, Ms. Durkee, Ms. Mandel, Assistant Ticket Manager Jamie Kuhn, former Facilities Manager Andrew Hicks, and Academic Counselor Ashley Korn. Mr. Hume said he believes Ms. Durkee and Mr. Hicks left their jobs at least in part due to Mr. Bancroft. Mr. Hume stated that Respondent and Mr. Bancroft have an “M.O.” of making work uncomfortable for people they do not like so that those people will leave. Mr. Hume said that, for example, he heard Respondent and Mr. Bancroft “say so many

mean things about Kristy McNeil ... about how they were going to get rid of her.”¹⁸ Mr. Hume stated that he does not think Mr. Bancroft’s bullying is necessarily targeted toward women, but rather toward support staff members that Mr. Bancroft “views as less significant than he is.”

Mr. Hume stated that he has complained to Respondent about Mr. Bancroft. Mr. Hume also stated that soon after complaints are made about Mr. Bancroft, Mr. Bancroft invariably learns about them. Mr. Hume said that Respondent has not threatened Mr. Hume’s job as a result of Mr. Hume making complaints. Mr. Hume stated that Human Resources has received a number of complaints about Mr. Bancroft’s bullying, but nothing comes of those complaints because Respondent protects Mr. Bancroft or assures Human Resources that he will handle it by speaking with Mr. Bancroft.

Kris Barnes: Facility Manager for Yost Arena

Mr. Barnes stated that he has not witnessed mistreatment of female staff nor discussed the issue with any women associated with the hockey program. Mr. Barnes stated that Complainant mentioned to him in passing that Ms. Durkee was treated poorly. Mr. Barnes heard from other staff members that one day Ms. Durkee was mistreated by someone “upstairs” and left in tears.

Joe Maher: Strength and Conditioning Coach, Athletics

Mr. Maher stated that Complainant never told Mr. Maher that he complained to Respondent about how female staff members were treated, and Respondent never told Mr. Maher that Complainant had raised such complaints to Respondent.

Mr. Maher said he does not recall any incident in February 2021 during which Respondent yelled at Ms. McNeil.

Kristy McNeil: Associate Director, External Communications & Public Relations, Ice Hockey

Ms. McNeil said she believes Complainant was terminated in part because he raised concerns about how she and others were treated. Ms. McNeil stated that “at one point last year,” Complainant saw that she was being mistreated by Respondent and Mr. Bancroft and pulled her aside to encourage her. Ms. McNeil said that Complainant told her in Spring 2021 that he had raised concerns to Respondent shortly after witnessing a February 2021 incident in which Respondent yelled at Ms. McNeil.

¹⁸ In his March 30, 2022 response to the preliminary report, Respondent asserted that he never made any comments to Mr. Hume “about getting ‘rid of’ Ms. McNeil.”

Ms. McNeil stated that both Respondent and Mr. Bancroft have discriminated against her because of her gender, including by belittling her, prohibiting her from entering the hockey locker room, and excluding her from team activities and meals.¹⁹ Ms. McNeil said that Mr. Bancroft told her that her gender “was an issue” because she was working with a men’s hockey team and that as long as her gender “was an issue,” she would not be able to do certain things with the team. Ms. McNeil also said that Respondent unjustifiably yelled at her in front of players and other staff members in February 2021.

Ms. McNeil stated that neither Respondent nor Mr. Bancroft made direct comments to her about women reporting mistreatment to Human Resources or ECRT, but Respondent and Mr. Bancroft have “made comments about people who have reported things” and about how “we’re supposed to keep it in-house.” Ms. McNeil stated that Ms. Durkee told Ms. McNeil in December 2019 that Ms. Durkee tried to report concerns to Human Resources, but that Respondent learned of the reports and had been displeased. Ms. McNeil believes that these reports focused on Mr. Bancroft’s treatment of players, staff, and others not affiliated with the program. Ms. McNeil believes that Mr. Bancroft treated Ms. Durkee poorly because of complaints Ms. Durkee made. Ms. McNeil also stated that Ms. Durkee did not want to retire but felt that she had to do so because she could not be around Mr. Bancroft every day.

Lora Durkee: Former Administrative Assistant

Ms. Durkee said that Complainant observed Mr. Bancroft’s “very rude” behavior toward Ms. McNeil. Ms. Durkee said that Complainant told her that he “wanted to” discuss concerns about mistreatment of women with Respondent but that she is not sure if Complainant ever raised those concerns to Respondent.

Ms. Durkee retired from her position at UM in May 2021. She stated that the “main reason” she retired was that the environment surrounding the men’s hockey program was “toxic,” and, as the University brought employees back to in-person work, she did not wish to return to that environment. She stated that her retirement had “a lot to do” with Mr. Bancroft and the University’s failure to address her concerns, which she had reported to Respondent and Human Resources, about his “rude” behavior that made her feel uncomfortable. Ms. Durkee stated that she generally did not share with her colleagues her actual reason for retiring, but instead shared the “politically correct” rationale, which was that she wanted to spend more time with her mother and grandchildren. Ms. Durkee stated that, after her retirement, she received telephone calls from colleagues in the Athletic Department expressing their hope she was “not retiring because of what’s going on in hockey,” and specifically referencing Mr. Bancroft.

¹⁹ Respondent stated that Ms. McNeil’s access to the hockey team locker room has not been an issue and that he has “a wide-open locker room policy.” Respondent also stated, however, that there may have been “a certain instance at some point where I asked her or told her she couldn’t come in.” Respondent said that, for the most part, he does not know when Ms. McNeil is or is not in the locker room. In his March 30, 2022 response to the preliminary report, Respondent asserted that Ms. McNeil “has had access to the locker other than at unappropriated [sic] times. Team meals have never included certain staff members at the request of staff. They are provided per diem.”

Ms. Durkee said that she believes that the May 2021 climate survey may have been triggered by a conversation she had with Ms. Castrogiovanni, as well as in response to other complaints received by Human Resources.

Josh Richelew: Sport Administrator

Mr. Richelew said he does not recall hearing that Complainant raised concerns to Respondent about mistreatment of female staff members by Respondent or by Mr. Bancroft.

Mr. Richelew stated that Complainant spoke with him around March or April 2021 regarding Complainant's concerns about treatment of women in the hockey program. Mr. Richelew stated that Complainant provided him with examples of Mr. Bancroft "yelling" at female employees, having conversations with female employees that left them in tears, and "placing undue expectations [on them] or just not treating them with respect." Mr. Richelew said he does not recall Complainant specifically saying these staff members were discriminated against because they were women.

Tiffany Raymond: Director of Human Resources, Athletics

Ms. Raymond stated that, in April 2021, Complainant mentioned that he believed Ms. McNeil and Ms. Mandel had concerns "regarding [Respondent] and [Mr. Bancroft]." Ms. Raymond said that she does not believe Complainant raised any specific allegations but that she recalls Complainant saying that Mr. Bancroft was "rough on the edges and not an easy person for anybody to work with." Ms. Raymond stated that she reached out to both Ms. McNeil and Ms. Mandel. Ms. Raymond said that based on Complainant's concerns about gender-related mistreatment and her conversations with both women, she decided to report the issue to ECRT. Ms. Raymond stated that she believes the May 2021 climate survey came about after an individual associated with the hockey program told Ms. Raymond that "it was a toxic environment and that she had concerns with the way that she was being treated but was not willing to really share any sort of specific information." Ms. Raymond said the climate survey was offered anonymously at the suggestion of Ms. Castrogiovanni due to concerns about retaliation against participants.

Ms. Raymond said she cannot recall whether Complainant told her that he had reported his concerns about gender-based mistreatment of female employees to Respondent. She said she does not recall whether Respondent told her that Complainant had complained to him about the mistreatment of female employees. Ms. Raymond said she was aware of a general concern that Complainant was discussing "issues within hockey" outside of the program, possibly to former student athletes or donors.

Elizabeth Heinrich: Executive Senior Associate Athletic Director and Chief Compliance Officer

Ms. Heinrich said she does not recall hearing that Complainant raised concerns to Respondent about mistreatment of female staff members by Respondent or by Mr. Bancroft.

Ms. Heinrich said she became aware around April or May 2021, through conversations with Mr. Richelew and Ms. Raymond, that Complainant had raised concerns about Mr. Bancroft mistreating women in the hockey program. Ms. Heinrich stated that Human Resources and

ECRT tried to gather more information from the women Complainant named, but those women were not interested in coming forward. Ms. Heinrich said that Complainant described mistreatment of Ms. Mandel and Ms. McNeil and that Ms. Heinrich had heard about mistreatment of Ms. Durkee. Ms. Heinrich said she thinks that none of those three women were willing to lodge complaints. Ms. Heinrich stated that she met with Complainant on August 5, 2021, and at that time Complainant raised various concerns about the hockey program but did not mention gender-based discrimination.

Ms. Heinrich said she believes that complaints of mistreatment raised by Complainant and others were focused largely on Mr. Bancroft, but said that there is a perception that Respondent is

aware of Mr. Bancroft's conduct and does not intervene to address it.

Ms. Heinrich stated that the Athletic Department and ECRT chose to commission an anonymous climate survey in May 2021 because they could not get anyone to come forward and speak on the record about issues in the hockey program, including the concerns Complainant had raised about gender discrimination, due to fears of retaliation.

Ms. Heinrich said that she did not see anything that led her to believe that Complainant was terminated from his volunteer position specifically for raising concerns about gender discrimination in the hockey program.

Warde Manuel: Athletic Director

Mr. Manuel stated that he was "aware" that there were complaints made by Complainant about the treatment of women in the hockey program. Mr. Manuel said he believes that Human Resources looked into those complaints. He stated that he was unaware of any allegations of mistreatment of female employees in the hockey program prior to hearing about Complainant's complaints.

Red Berenson: Special Advisor to the Athletic Director, Former Head Coach for Men's Ice Hockey

Mr. Berenson said he does not recall hearing that Complainant raised concerns to Respondent about mistreatment of female staff members by Respondent or by Mr. Bancroft.

Brian Wiseman: Former Assistant Coach, Men's Ice Hockey

Mr. Wiseman stated that he never saw female employees being mistreated by male employees. He said that he may have seen Mr. Bancroft act rudely to female employees, but Mr. Bancroft acted similarly towards male employees. Mr. Wiseman has not seen Respondent act rudely to female employees.

Mr. Wiseman had conversations with Complainant during which Complainant said that he had raised concerns with individuals at the University about the mistreatment of female staff members. Mr. Wiseman is not sure if Respondent was one of those individuals.

Mr. Wiseman said that he and Ms. McNeil have discussed her concerns about her treatment as a female member of the hockey staff.

Additional Evidence from Parties and Witnesses

§ In a February 11, 2021 email to Respondent, Ms. McNeil asked Respondent to meet with her "to see how we can get together in a positive way," noting it "was not helpful for either of us to be pushing against each other." Ms. McNeil's email to Respondent expressed concerns about her "professional credibility when the players and other coaches see us have the kinds of incidents like the one today." Ms. McNeil stated in an interview that Respondent never replied to this email. Respondent stated that he does not recall Ms. McNeil emailing him about any incident in February 2021.

§ In a February 11, 2021 email to Associate Athletic Director, External Communications &

PR Kurt Svoboda, Ms. McNeil stated that “today and yesterday I was mistreated and belittled by [Respondent] at Yost in front of others,” calling it “an on-going problem.” Ms. McNeil referenced Respondent’s “verbal attacks and mind games” and told Mr. Svoboda, “I’m not the only person this happens to.”

§ In an April 17, 2021 email from Mr. Richelew to Ms. Raymond, Mr. Richelew wrote that Complainant told him on April 13 that Mr. Bancroft was “bullying” Ms. Durkee, Ms. McNeil, and Ms. Mandel.

§ Notes made by Ms. Raymond on April 19, 2021 state that Complainant spoke with Ms. Raymond that day and told her that Mr. Bancroft and Respondent were mistreating women in the hockey program, naming Ms. Mandel and Ms. McNeil. In the same notes, Ms. Raymond wrote that Complainant provided her with an example in which Ms. McNeil was “setting up interviews with two players and [Respondent] yelled at her in front of others that he ‘wants to know everything.’ [Ms. McNeil] explained she did notify [Mr. Bancroft], but [Respondent] continued to yell at her.”

§ In an April 20, 2021 email to Complainant, Ms. Raymond told Complainant that she would be “filing a report with [ECRT] today” regarding Complainant’s concerns about mistreatment of women. Notes made by Ms. Raymond the same day show that she also contacted Ms. McNeil about Complainant’s gender discrimination concerns. According to Ms. Raymond’s notes, Ms. McNeil told Ms. Raymond, “Both Rick Bancroft and [Respondent] have treated her differently due to being a woman,” and that she “is fearful of retaliation.”

§ In a May 5, 2021 email to Mr. Manuel, Complainant expressed various concerns about the hockey program, including that some individuals “have felt mistreated based on their gender and other factors.”

§ In a May 21, 2021 email to Respondent, Ms. Durkee stated that she was retiring to spend more time with her mother and grandchildren. Ms. Durkee’s email contains no reference to Mr. Bancroft and does not reference any instances of mistreatment.

§ In a July 23, 2021 email to Ms. Castrogiovanni, Complainant stated that he asked Respondent in a July 19 meeting “why he has and continues to tolerate Rick Bancroft’s mistreatment of women in the workplace,” to which Respondent replied, “yeah, [Mr.

Manuel] had mentioned something to me about that.” In the same email, Complainant wrote to Ms. Castrogiovanni that a female staff member “who was the target of discrimination and/or bullying by Rick Bancroft” approached Complainant and told him she feared retribution if she were to be honest on the climate survey. Complainant wrote that “[m]ost of the staff are aware that one of our colleagues bullies women and it may rise to the level of discrimination,” noting that “[o]ther women have previously made the department aware of this fact.”

§ Notes made by Mr. Muckalt of the August 11, 2021 meeting at which Respondent terminated Complainant’s volunteer position do not mention Complainant raising gender discrimination concerns during the meeting. Notes of the same meeting made by Respondent do not mention gender discrimination complaints either.

COVID-19 Protocol Complaints

Rick Bancroft: Director of Hockey Operations

Mr. Bancroft stated that he is not aware if Complainant raised concerns about COVID protocols to Respondent and indicated that he did not speak with Respondent about any concerns Complainant had raised about COVID protocols.

Mr. Bancroft said that he thought the May 2021 climate survey could have been prompted by “some uneasiness about how the COVID protocol was handled in North Dakota.” He said he did “not necessarily” associate the survey with Complainant because Complainant was not with the team at the NCAA Tournament.

Bill Muckalt: Associate Head Coach, Men’s Ice Hockey

Mr. Muckalt stated that he does not know whether Complainant raised concerns about COVID protocols to Respondent and did not speak with Respondent about any concerns Complainant had raised about COVID protocols.

Evan Hall: Video Coordinator, Men’s Ice Hockey

Mr. Hall said he did not recall Complainant raising concerns about the hockey program’s failure to follow COVID protocols and did not speak with Respondent about COVID-related issues. Mr. Hall said he did not recall hearing that Respondent asked players to lie on COVID forms.

Ian Hume: Equipment Manager, Men’s Ice Hockey

Mr. Hume stated that Mr. Bancroft fed rumors that Complainant tipped off the NCAA that the Michigan hockey team traveled to the NCAA Tournament with players who had been exposed to COVID.

Kris Barnes: Facility Manager for Yost Arena

Mr. Barnes stated that Complainant told him around Spring 2021 that Complainant was going to raise concerns to Respondent. Mr. Barnes said he does not recall if those concerns related to

COVID protocols around the NCAA Tournament or “other things related to what the team was doing.” Mr. Barnes said that Complainant also told him that Complainant was speaking with some former players and alumni regarding his concerns with the hockey program.

Mr. Barnes stated that Complainant did not think it was the right decision to allow close contacts of a COVID-positive player to travel to the NCAA Tournament. Mr. Barnes said that he does not recall Complainant saying he was going to speak with Respondent about his concerns.

Joe Maher: Strength and Conditioning Coach, Athletics

Mr. Maher never spoke with Complainant about any issues related to COVID, and Respondent never told Mr. Maher that Complainant had complained to Respondent about adherence to COVID protocols.

Kristy McNeil: Associate Director, External Communications & Public Relations, Ice Hockey

Ms. McNeil stated that she saw rumors circulate on social media and among parents and players that the hockey program was not following proper COVID protocols after the team was removed from the NCAA Tournament following a positive COVID case, while other teams were allowed to compete despite having players test positive. Ms. McNeil said the rumors included speculation that Respondent had asked players to lie on COVID questionnaires. Ms. McNeil said that she informed her supervisor Mr. Svoboda about these rumors and that Mr. Svoboda told Ms. McNeil that he spoke to Mr. Richelew about the issue and that “everything was fine.”

Lora Durkee: Former Administrative Assistant

Ms. Durkee said that Complainant had mentioned concerns about adherence to COVID protocols and that some of the concerns came from student athletes on the team. Ms. Durkee said she does not know whether Complainant took his concerns to Respondent or anyone else.

Josh Richelew: Sport Administrator

Mr. Richelew stated that he had two conversations with Complainant to explain the University’s COVID protocols and to inform him that Respondent was not involved in any COVID-related decision-making. Mr. Richelew stated that he told Complainant that those decisions were instead made by Mr. Conway and public health officials. Mr. Richelew said that during his second conversation with Complainant, Complainant listened to his explanation, thanked him for explaining the situation to him, and stated that he had “a better understanding” after the conversation.

Mr. Richelew said he does not recall Complainant telling him that Complainant had raised the same COVID concern with Respondent. Mr. Richelew stated that his standard response to Complainant in conversations such as the one he had with Complainant about COVID was that Mr. Richelew was raising the matter “with the appropriate parties.”

Tiffany Raymond: Director of Human Resources, Athletics

Ms. Raymond stated that Complainant contacted her in Spring 2021 with several concerns, including that Respondent had inappropriately instructed student athletes on how to complete COVID contact-tracing forms.

Ms. Raymond stated that Complainant mentioned to her that he had made a comment to Mr. Barnes and reached out to Ms. Heinrich about COVID protocol issues. Ms. Raymond said that she had “very little involvement” in this issue and did not speak with Respondent about any concerns Complainant had raised about COVID protocols.

Elizabeth Heinrich: Executive Senior Associate Athletic Director and Chief Compliance Officer

Ms. Heinrich stated that she spoke with Complainant for the first time in March 2021, when Complainant reached out to her with concerns about the hockey team’s COVID protocols. Ms.

Heinrich said she then contacted Mr. Conway, who explained to her that proper protocols were followed and that Respondent was not involved in decision-making regarding COVID protocols. Ms. Heinrich said that Complainant repeatedly raised the issue of COVID protocols to her and she repeatedly told him that the hockey team had followed proper protocols.

Ms. Heinrich said that she did not speak with Respondent about any concerns Complainant had raised about COVID protocols.

Warde Manuel: Athletic Director

Mr. Manuel stated that the Athletic Department looked into complaints that COVID protocols were not followed and could not corroborate those allegations. Mr. Manuel said that Mr. Conway assured him that the proper protocols were followed and that Respondent had not overridden “anything that the medical professionals had told him to do.”

Red Berenson: Special Advisor to the Athletic Director, Former Head Coach for Men’s Ice Hockey

Mr. Berenson believes that Michigan hockey did a great job following COVID protocols and has never heard from anyone associated with the hockey program that COVID protocols were not handled properly.

Brian Wiseman: Former Assistant Coach, Men’s Ice Hockey

Mr. Wiseman stated that Complainant told him that Complainant had raised concerns with individuals at the University about adherence to COVID protocols. Mr. Wiseman was unsure if Respondent was one of those individuals. Mr. Wiseman thinks Respondent was aware that Complainant had concerns about the COVID situation on the team.

Additional Evidence from Parties and Witnesses

§ In an April 3, 2021 email to Mr. Richelew and Ms. Heinrich, Complainant stated that he had alerted Ms. Heinrich on March 26, 2021 that two student athletes told him they had

been instructed to lie on COVID contact-tracing forms. Complainant emailed Mr. Richelew and Ms. Heinrich again on April 5, 2021 to raise concerns about the hockey program’s handling of COVID protocols, noting that two parents of student athletes had contacted him expressing similar concerns. In the same email, Complainant expressed his worry that Respondent had learned that Complainant was in contact with Mr. Richelew and Ms. Heinrich about his concerns.²⁰

§ Notes written by Mr. Mann²¹ summarized recent events in preparation for an April 3, 2021 meeting between Mr. Mann, Mr. Richelew, and Ms. Heinrich. Those notes began by explaining “COVID concerns” among team members and then traced discussions between Mr. Mann and his teammates about the possibility of “voic[ing] our concerns to compliance.” Mr. Mann stated that Athletic Trainer Brian Brewster “made clear” to the team that players were to answer “no” to questions about close contacts with COVID positive individuals on contact-tracing forms. Mr. Mann noted that “many of us immediately assumed” Mr. Brewster had provided that guidance “under [Respondent’s]

direction.” In an April 5, 2021 email to Mr. Richelew and Ms. Heinrich, Mr. Mann wrote, “I have decided to retract my statements [in the April 3 meeting] as well as these notes.”

ξ According to a report by the UMPD, an anonymous female caller contacted UMPD on April 4, 2021 to report that Respondent had forced players to lie on COVID contact tracing forms. UMPD spoke with Mr. Brewster, Mr. Conway, Respondent, Washtenaw County Medical Director Juan Marquez, and others, all of whom indicated that the hockey program had followed proper COVID protocols. Respondent told UMPD that he would never tell someone to lie on a COVID contact-tracing form. UMPD closed the investigation.

ξ In an April 29, 2021 email to Ms. Castrogiovanni, Ms. Raymond told Ms. Castrogiovanni about a conversation Ms. Raymond had with Complainant on April 27 and described concerns that Complainant raised in that conversation about COVID protocols. Ms. Raymond noted for Ms. Castrogiovanni that “[t]he issue of [Respondent] directing [student athletes] to lie about their covid contact and screening has been vetted and resolved by UMPD. [Complainant] is not aware of this.”

ξ The May 2021 climate survey report noted that “[m]ultiple respondents reported that [Respondent] directed players to lie on health forms and to NCAA personnel at the NCAA Tournament about whether they had had close contact with someone who had tested positive for Covid, which upset and scared them.”

ξ In a June 7, 2021 email, Complainant followed up with Ms. Castrogiovanni about his concern that student athletes said “they were asked to lie on public health forms and to NCAA personnel.” Complainant later reiterated those concerns, leading Ms.

²⁰ In his March 30, 2022 response to the preliminary report, Respondent stated that he “never knew [Complainant] had contact with Mr. Richelew and Ms. Heinrich.”

²¹ Mr. Mann declined to participate in the investigation. We obtained Mr. Mann’s notes from Mr. Richelew.

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Castrogiovanni to reply on July 8, 2021, noting that “the concern that [Respondent] instructed players to lie about their close contacts does not implicate the policies which [ECRT] upholds.” She further stated that while Complainant’s COVID concerns might implicate the Athletic Department’s Compliance policies, “[i]f the matter was previously reported and addressed, I am not sure that a subsequent report would trigger another investigation.”

Student Athlete Retaliation Complaints

Rick Bancroft: Director of Hockey Operations

Mr. Bancroft said that he cannot recall any specific conversations with Complainant about Respondent’s interactions with players. Mr. Bancroft stated that Respondent has a “typical coach-student athlete” relationship with the players on the hockey team.

Bill Muckalt: Associate Head Coach, Men’s Ice Hockey

Mr. Muckalt stated that he had a conversation with Respondent shortly after the March 2021 NCAA Tournament in which Respondent raised concerns about Complainant's job performance and about a conflict between Respondent and Mr. Mann. Mr. Muckalt said he does not recall Respondent mentioning that Complainant had voiced complaints about Mr. Mann's treatment. Mr. Muckalt said that Respondent discussed concerns about Complainant and Mr. Mann as two separate issues.

Mr. Muckalt stated that around the time of the conflict with Mr. Mann, Respondent told Mr. Muckalt that Mr. Mann was very unhappy and was pushing for changes in the hockey program. Mr. Muckalt stated that Respondent said he had spoken to other players and that those players did not share Mr. Mann's concerns. Mr. Muckalt said he does not believe that Mr. Mann left the hockey program because of a conflict with Respondent. Mr. Muckalt said he believes that Respondent and Mr. Mann still communicate and appear to be on good terms.

Evan Hall: Video Coordinator, Men's Ice Hockey

Mr. Hall said that he is sure Complainant mentioned concerns to him about how, in Complainant's opinion, Respondent treated student athletes unfairly, but he never had an extended conversation about it with Complainant.

Mr. Hall said that he attended an April 2, 2021 meeting between Respondent and Mr. Mann and wrote down notes after the meeting. He attended because Respondent asked him to sit in and serve as a witness. Mr. Hall said he did not know the context surrounding why this meeting was taking place and Respondent never explained it to him. Mr. Hall said that he could tell there was some underlying issue that had prompted this meeting but was never told what had happened.

Mr. Hall said that Mr. Mann started the meeting by telling Respondent that he was coming to him on behalf of all the players and wanted to talk about "respect." Mr. Hall said that Respondent listened to Mr. Mann but became frustrated when Mr. Mann did not offer any substance about his concerns aside from emphasizing "respect." Mr. Hall said that Respondent was "firm" but never harsh or demeaning.

Mr. Hall said Respondent told Mr. Mann he was welcome to come back the next season but would have to earn back the trust of his teammates and may not be captain or have much playing time relative to the team's other goalie. Mr. Hall said that Mr. Mann became upset toward the end of the meeting and left the office area. Mr. Hall went to check on him to "make sure that he was okay as a person." Mr. Hall said that he asked Mr. Mann if he wanted to return after a short break, but Mr. Mann was "visibly upset" and declined to come back to the office. Mr. Hall noted that Respondent was upset as well. Mr. Hall said he did not understand Respondent's statements about the captaincy and playing time to be "retaliation against [Mr. Mann]" for raising complaints. Mr. Hall said he felt Respondent wanted to make sure Mr. Mann understood he could return the next season if he wanted to. Mr. Hall said that Respondent never said there would not be a place for Mr. Mann on the team the next year.

Mr. Hall said Respondent never told him that Mr. Mann or others were raising concerns to alumni or trying to get him fired, but Mr. Hall "got the sense that something was going on." Mr. Hall said that Respondent may have referenced, during his meeting with Mr. Mann, that he felt like people were coming after his job and wanted to give Mr. Mann an opportunity to express any concerns. Mr. Hall stated that neither Respondent nor Mr. Mann mentioned COVID protocol issues or the NCAA Tournament during this meeting.

Mr. Hall said that he does not recall if Complainant was directly referenced in this meeting and that Complainant “wasn’t a big topic” if he came up at all. Mr. Hall said that Respondent never directly mentioned that Complainant was involved, but Mr. Hall felt that it was “implied” because Mr. Mann and Complainant had a “tight relationship.”

Mr. Hall said that Complainant mentioned Respondent’s treatment of Mr. Mann to him on one occasion after the April 2, 2021 meeting between Respondent and Mr. Mann. Mr. Hall said Complainant referenced that he knew Mr. Hall attended the meeting and made a “passing comment, ‘you’ve got to support players,’ or something along those lines referring to Strauss.” Mr. Hall said he did not respond.

Ian Hume: Equipment Manager, Men’s Ice Hockey

Mr. Hume said he “firmly” believes that Respondent thought Complainant was behind a push by Mr. Mann to get Respondent fired. Mr. Hume said he thinks that many others associated with the hockey team also had the impression that Complainant got Mr. Mann “fired up” about Respondent.

Mr. Hume stated that Respondent claimed Mr. Mann went to the administration and tried to get Respondent fired.²² Mr. Hume said that other players told Mr. Hume that Mr. Mann was attempting a mutiny. Mr. Hume said he believes that Mr. Mann misjudged the level of support among players for confronting Respondent.

²² In his March 30, 2022 response to the preliminary report, Respondent stated that he “never told Mr. Hume that Mr. Mann went to administration to get me fired.”

Kris Barnes: Facility Manager for Yost Arena

Mr. Barnes stated that Complainant said he planned to raise concerns to Respondent about Respondent’s coaching style. Mr. Barnes said he does not recall Complainant mentioning specific issues with the way Respondent treated players.

Joe Maher: Strength and Conditioning Coach, Athletics

Mr. Maher said that Complainant was “opinionated” on the topic of the treatment of players and whether all players were being treated fairly, but Mr. Maher was unaware of Complainant making any “formal complaints” about the issue. Complainant never spoke with Mr. Maher about how Respondent treated Mr. Mann, and Respondent never told Mr. Maher that Complainant had raised concerns about the treatment of student athletes.

Mr. Maher does not recall Respondent raising concerns that Mr. Mann or anyone else was trying to have Respondent fired. Respondent spoke with Mr. Maher, in December 2021 and February 2022, about how Complainant was talking with alumni of the program about Respondent’s treatment of players on the team.

Kristy McNeil: Associate Director, External Communications & Public Relations, Ice Hockey

Ms. McNeil said that, around April 2021, Mr. Hume told her that he thought Complainant would soon be terminated from his volunteer position because Complainant was too close to the players, including Mr. Mann, who had made complaints about the hockey program. Ms. McNeil said that she began to notice around this time that Complainant was no longer included on certain staff emails, which Ms. McNeil thought was odd. Ms. McNeil said that Respondent did not mention Complainant to her in connection with Mr. Mann's departure from the hockey program.

Ms. McNeil stated that Respondent called her to Yost Arena in April 2021 and informed her that Mr. Mann was no longer with the hockey program. Ms. McNeil said that Respondent told her to reach out to Mr. Mann to discuss releasing a statement. Ms. McNeil said that she spoke with Mr. Mann by phone on April 28, 2021, and that Mr. Mann was very uncomfortable and told her he was being forced to leave the hockey program. Ms. McNeil stated that she reached out to a colleague for advice and that the colleague told her to do what was best for the hockey program. Ms. McNeil stated that she followed up with Respondent and Mr. Muckalt, who told her that a statement about Mr. Mann's departure needed to be released by April 30. Ms. McNeil stated that she drafted a statement that Mr. Mann approved after minor edits and that Respondent signed off on the statement before it was released on April 30.

Ms. McNeil stated that she contacted Ms. Raymond on May 3, 2021 to report that Respondent had retaliated against Mr. Mann.

Lora Durkee: Former Administrative Assistant

Ms. Durkee stated that Complainant was "concerned about Strauss [Mann] and what was going to happen to him." She stated that she never discussed the issue with Respondent.

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Josh Richelew: Sport Administrator

Mr. Richelew stated that Complainant raised concerns with him about differential treatment of student athletes on the hockey team and the treatment of Strauss Mann in particular. Mr. Richelew said that on the day after the team returned from the NCAA Tournament, Complainant called Mr. Richelew and told him that "Strauss was upset" and wanted to speak with someone about concerns that members of the team had. Mr. Richelew said he thanked Complainant for calling and told Complainant to let Mr. Mann know that he was available for a discussion.

Mr. Richelew said that he, Ms. Heinrich, and Mr. Mann met shortly after the NCAA Tournament. Mr. Richelew stated that, after the meeting, Mr. Mann retracted the statements he had made about retaliation by Respondent. Mr. Richelew said that Mr. Mann was afraid that Respondent would retaliate against him and damage his professional opportunities.

Mr. Richelew said that there were "a lot of feelings" among players and coaches immediately after the NCAA Tournament. Mr. Richelew stated that around this time, Respondent called him and told him that Mr. Mann was trying to get Respondent fired.²³ Mr. Richelew said he responded by trying to get Respondent to "calm down," assuring Respondent that was not the case, and informing Mr. Manuel of the conversation. Mr. Richelew also said that Respondent told Mr. Richelew that some of the players were "talking to [Complainant]." Mr. Richelew stated that this comment was a "general type of thing" and that Respondent did not tell Mr. Richelew that Complainant was "raising issues."

Mr. Richelew stated that, during an April 2022 exit interview with a group of eight senior student athletes on the hockey team, many voiced concerns that Respondent “holds grudges” and that if student athletes were to “complain or criticize [Respondent],” they “won’t play.” According to Mr. Richelew, the student athletes also told him that, when Mr. Mann approached Respondent to discuss concerns with the program after the 2021 NCAA Tournament, Respondent threatened to revoke Mr. Mann’s scholarship and to demote him from his captaincy; Respondent told the professional hockey team with which Mr. Mann was communicating not to sign him to a professional contract; and Mr. Mann had opted to “ke[ep] his mouth shut” to avoid additional consequences. Mr. Richelew also stated that the student athletes said that Mr. Mann’s experience raising concerns to Respondent made other members of the hockey team “afraid of the consequences” if they “came forward.”²⁴

²³ In his March 30, 2022 response to the preliminary report, Respondent wrote that he told Mr. Richelew that he “had heard from current players that Mr. Mann was trying to get me in ‘trouble,’ not get fired.”

²⁴ In his April 28 and 29, 2022 responses to the transcript from Mr. Richelew’s April 2022 interview with WilmerHale, Respondent denied that he had ever threatened Mr. Mann’s scholarship or captaincy; denied that he had ever told a professional hockey team not to sign Mr. Mann; and denied ever reaching any type of agreement with Mr. Mann for Mr. Mann to refrain from criticizing Respondent and the UM hockey program in exchange for Respondent dropping any efforts to interfere with Mr. Mann’s ability to play professionally. Respondent further asserted that all playing-time decisions are based on the student athletes’ performance and not on whether any student athletes have criticized or complained to Respondent.

Tiffany Raymond: Director of Human Resources, Athletics

Ms. Raymond stated that Complainant reached out to her in Spring 2021 with concerns that Respondent was retaliating against Mr. Mann for speaking up about issues in the hockey program. Ms. Raymond said that she did not speak with Respondent about the concerns Complainant raised.

Ms. Raymond said that her understanding from Complainant was that an interaction between Respondent and Mr. Mann did “not go well” and “that’s when Strauss decided to leave” the University. Ms. Raymond stated that Ms. McNeil also expressed her concerns to Ms. Raymond about the way Mr. Mann was treated.

Elizabeth Heinrich: Executive Senior Associate Athletic Director and Chief Compliance Officer

Ms. Heinrich stated that Respondent called her shortly after the NCAA Tournament. She said Respondent was very agitated, telling Ms. Heinrich that players were trying to get him fired and that he wanted to hold a team meeting to address that issue. Ms. Heinrich said she tried to “talk him down” and “get him to step back a little bit,” advising Respondent that holding a team meeting would not be productive. Ms. Heinrich said that she heard from Complainant and Mr. Mann that Respondent was reaching out to alumni of the UM hockey program to tell them that Complainant and Mr. Mann were stirring up trouble. Ms. Heinrich said that she spoke with Mr. Mann around March 28, 2021, and that Mr. Mann raised concerns about Respondent’s management of the team but was hoping to gather more support from his teammates before speaking out further.

Ms. Heinrich stated that when Complainant raised concerns to her that Respondent was retaliating against Mr. Mann, Ms. Heinrich reached out to Mr. Richelew because she felt that it was more appropriate for Mr. Richelew to handle any discussions with Respondent given Mr. Richelew's role as the Sport Administrator. Ms. Heinrich stated that she does not know how, or even if, Respondent learned of Complainant's complaints, as Complainant alleged in an April 5, 2021 email to Ms. Heinrich and Mr. Richelew. Ms. Heinrich said she believes that Mr. Manuel felt that he, rather than Mr. Richelew, should be the one to discuss issues involving the treatment of players with Respondent. Ms. Heinrich thinks that after the May 2021 climate survey, Mr. Manuel told Respondent that he had to be more open to feedback from players.

Ms. Heinrich stated that she "absolutely" thinks that Mr. Mann left the hockey program because of a conflict with Respondent and that she wishes that the Athletic Department had done more to support Mr. Mann. Ms. Heinrich said she believes that pressure from coaching staff to stop raising concerns prompted Mr. Mann to retract his complaints about Respondent.

Warde Manuel: Athletic Director

Mr. Manuel stated that the Athletic Department looked into complaints that Respondent was retaliating against student athletes. Mr. Manuel stated that the May 5, 2021 email from Complainant to Mr. Manuel in which Complainant stated that Mr. Mann was being retaliated against by Respondent was not the first time Complainant had voiced this concern within the Department. Mr. Manuel said that his understanding was that Department staff had tried to

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speak with Mr. Mann and others and could not corroborate the allegation that student athletes felt they were being retaliated against by Respondent.

Mr. Manuel said that he spoke with Respondent about the allegations that Respondent was retaliating against players. Mr. Manuel stated he "would never tolerate a coach retaliating against a player for speaking their mind." Mr. Manuel stated that in his opinion, Respondent "never felt that he was retaliating against Mr. Mann." Mr. Manuel stated that his understanding was that Mr. Mann left the University "on his own."

Red Berenson: Special Advisor to the Athletic Director, Former Head Coach for Men's Ice Hockey

Mr. Berenson stated that he was very surprised by Mr. Mann's departure because Mr. Berenson spoke with Mr. Mann's father a few months before Mr. Mann left the team about how Mr. Mann was happy at Michigan and thought the school was a good fit. Mr. Berenson said he spoke with Respondent "vaguely" about the departure of Mr. Mann. Mr. Berenson said that Respondent told Mr. Berenson that Respondent was going to speak with Mr. Mann because Mr. Mann had problems with the way the team was run or how players were feeling. Mr. Berenson stated that he also heard that "there was a falling out" and "other players were involved in the falling out against Strauss."

Brian Wiseman: Former Assistant Coach, Men's Ice Hockey

Mr. Wiseman said that he never observed student athletes being treated poorly for raising concerns with team leadership. He recalls Complainant saying on numerous occasions that he had concerns with how Respondent was managing the program and how Respondent was

treating players. Mr. Wiseman has had several conversations with former teammates and other friends about Complainant's concerns with the hockey program.

Mr. Wiseman heard from several alumni of the program that Respondent was telling people that Mr. Mann was trying to get him fired. Mr. Wiseman heard that Complainant may have been "supporting" or "guiding" Mr. Mann's conversation with Respondent.

Additional Evidence from Parties and Witnesses

§ Mr. Hall made notes of the April 2, 2021 meeting between Respondent and Mr. Mann that Mr. Hall attended as a witness. According to those notes, Mr. Mann "mentions the word respect, but does not give substance behind who, when, how etc." Respondent "was firm and slightly upset" after he "pressed to give [Mr. Mann] the opportunity to be more transparent," but Mr. Mann declined to elaborate. Respondent told Mr. Mann he "would need to earn the trust of his teammates back if he was going to come back," and that Mr. Mann "was welcome back, but it was wide open and potentially no letter." Mr. Mann "felt like he wasn't welcome back and if he did [return,] he wouldn't play."

§ In an April 3, 2021 email to Mr. Richelew and Ms. Heinrich, Complainant wrote that he had called them on March 28, 2021 to tell them that Mr. Mann had contacted Complainant and told him Respondent was "acting erratically, and making statements on

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the phone to Strauss Mann that made him feel unsafe." Complainant further stated that Mr. Mann was "being slandered by [Respondent]," who "was telling people outside Michigan Hockey that [Mr. Mann] was attempting to have him fired." In an April 5, 2021 follow-up email, Complainant told Mr. Richelew and Ms. Heinrich that he believed Respondent had learned about his conversations with them.

§ Notes made by Mr. Mann state that Mr. Mann met with Mr. Richelew and Ms. Heinrich on April 3, 2021, and detailed his concerns about retaliation by Respondent. Mr. Mann's notes indicate that Respondent began calling hockey program alumni on March 28 and telling them that Mr. Mann was trying to have Respondent fired. The notes also state that Respondent brought Mr. Mann into his office on or around April 2 and indicated that Mr. Mann was no longer welcome in the Michigan hockey program. In an April 5, 2021 email to Mr. Richelew and Ms. Heinrich, Mr. Mann wrote, "I have decided to retract my statements [in the April 3 meeting] as well as these notes."

§ Notes made by Ms. Raymond on April 27, 2021 state that Complainant called her that day and told her that multiple student athletes had contacted Complainant to discuss approaching Respondent about making changes in the hockey program. Complainant told Ms. Raymond that Respondent had learned about these conversations and called the student athletes, saying, "this is my fucking job, this is how I make my livelihood and you aren't going to take my job." According to these notes, Complainant told Ms. Raymond that Respondent told Mr. Mann that he would no longer be the starting goalie and that he should leave the hockey program. Complainant told Ms. Raymond that an NHL agent then called Complainant to tell him that Respondent had contacted the agent to say that Mr. Mann was "trying to take him down over covid and that [Respondent] thinks [Complainant] is the ringleader." Ms. Raymond's notes reflect that Complainant

told Ms. Heinrich and Mr. Richelew that “he feels [Respondent] is going to get rid of him.” Complainant told Ms. Raymond that Respondent and Complainant had missed each other’s calls and “have not talked in a week.”

§ In a May 4, 2021 email to Mr. Richelew, Complainant wrote that “Strauss Mann was being targeted and retaliated against by [Respondent] for standing up for his teammates that they felt are being mistreated by [Respondent].” Complainant wrote that Respondent had “spread misinformation” about both Complainant and Mr. Mann. Complainant referred to an April 30, 2021 Twitter post announcing Mr. Mann’s departure from the hockey team as “the obvious culmination of [Respondent]’s campaign to intimidate and silence Strauss Mann.”

§ In a May 5, 2021 email to Mr. Manuel, Complainant wrote that Respondent “retaliated against Strauss and silenced the rest of the team.” Mr. Manuel responded the next day, informing Complainant that he was aware of the retaliation allegations, was taking them seriously, and had asked his staff to look into the matter.

§ In response to the preliminary report, Complainant provided a recording of what he asserts is a May 12, 2021 meeting with Respondent. That recording shows that Complainant asked Respondent about the circumstances surrounding Mr. Mann’s

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departure from the hockey team. Respondent stated that “there was an issue that happened at the end of the year” involving Mr. Mann. Respondent also said that Mr. Mann’s “advisors told me a month before we went to the Regionals that he was probably going to sign, that that was his plan.” Complainant then asked if Respondent thought Mr. Mann “had to go,” to which Respondent replied “no, he did not have to go.” Complainant also stated that he felt like he was “getting blamed for things like ‘why is [Mr. Mann] leaving.’” Complainant also told Respondent that student athletes “feel like guys are mistreated,” and that Complainant had encouraged them to speak up, but “it seems to me that they’re scared now.”

§ In a June 7, 2021 email to Ms. Castrogiovanni, Complainant wrote that “[a] staffer has been heard saying, ‘Strauss Mann isn’t here anymore because he went to administration and tried to have the coach fired.’” Complainant later clarified in an interview that the staffer in question was Mr. Hume. Complaint also wrote, “I believe that the head coach did approach student athletes to tell them the [climate] survey wasn’t important and they could ignore it if they wanted.” Complainant also wrote that “[t]eam members are aware that Strauss Mann went to compliance regarding retaliation by [Respondent]. He is now gone and now the team are scared of what might happen to them if they ever speak up.”

§ In a June 23, 2021 email to Mr. Richelew, Complainant wrote that “there is a lot of outside noise and I’ve heard from people asking me what has been happening at Yost and why is Strauss off the team.” Complainant also wrote that “[s]ome of our staff have been spreading the word that Strauss Mann is off the team because he went to the administration to have [Respondent] fired.”

§ In an August 4, 2021 email to Mr. Richelew, Complainant followed up with Mr. Richelew to clarify that his “frustration is solely based on the fact that our student athletes are very

scared and will not speak up because they saw what happened to Strauss Mann.”

§ Notes made by Mr. Muckalt of the August 11, 2021 meeting at which Respondent terminated Complainant state that, once Complainant learned he was being terminated, he “ask[ed] if this was about Strauss Mann and [Respondent] replied ‘what are you talking about?’”

§ Respondent provided what he described as text messages between him and Mr. Mann from October 2021. In the text, Respondent congratulated Mr. Mann on the start of his professional career and thanked Mr. Mann for tutoring another student athlete, calling Mr. Mann “a tremendous example and teacher.” In the text, Mr. Mann thanked Respondent, saying “It’s been fun to watch from afar and I can’t wait to see what else you guys accomplish this year!”

Revocation of Yost Arena Access and Termination

Rick Bancroft: Director of Hockey Operations

Mr. Bancroft stated that he had no idea why the decision had been made to terminate Complainant from his volunteer position in April 2021 and that Mr. Bancroft “wasn’t consulted.” Mr. Bancroft said that it was his understanding that Complainant’s access to Yost Arena was revoked in April based on a determination by Human Resources and the Athletic Department. Mr. Bancroft stated that he was verbally instructed to revoke Complainant’s access to Yost Arena by either Ms. Raymond or Respondent, and shortly thereafter, he was orally instructed by one of those same two people to restore Complainant’s Yost Arena access. Mr. Bancroft said he was never told why he was instructed to disable access and then restore it later that day or the next day. Mr. Bancroft stated that he understood at the time that Complainant had been terminated.

Mr. Bancroft stated that he found the experience of being asked to turn off Complainant’s access to Yost Arena and then being asked to quickly turn it back on to be “very stressful” and “tense” because Human Resources was telling him to do one thing and then immediately to do another, and because Complainant was “very confrontational” about the issue and Mr. Bancroft did not have the answers for him.

Mr. Bancroft said he believes the decision to consider terminating Complainant in April could have been made because the hockey program or the Athletic Department had decided “to go in a different direction.”

Mr. Bancroft stated that his “assumption” was that the May 2021 climate survey of the hockey program was commissioned because Complainant raised complaints about the program and because the team was not permitted to play at the NCAA Tournament. Mr. Bancroft stated that, around the time of the survey, Complainant was “very confrontational” and “not happy.”

Mr. Bancroft stated that he was not consulted before Respondent terminated Complainant from his volunteer position in August 2021 and did not know why Respondent made that decision. Mr. Bancroft said he has not spoken with Respondent about his decision to terminate Complainant since the meeting at which Complainant was dismissed.

Mr. Bancroft said that immediately after that meeting, Complainant came to his office and asked Mr. Bancroft when he started at the University. Mr. Bancroft stated that he answered and the conversation concluded. Mr. Bancroft also stated that he heard that, during Complainant's meeting with Respondent, Complainant said something to the effect of, "Can't believe you're gonna keep him who set us up with a child molester," referring to Mr. Bancroft. Mr. Bancroft stated that it was "pretty stressful" hearing that Complainant said that "out of nowhere" but that he understood that Complainant was "very disgruntled" and "very emotional."

Bill Muckalt: Associate Head Coach, Men's Ice Hockey

Mr. Muckalt said he understood, from conversations with Respondent, that Respondent's concerns with Complainant leading up to his termination included Complainant's change in attitude, engagement level, and attendance since losing his temporary paid position;

Complainant's communications to players being out of sync with Respondent's messaging; and Complainant's attempts to undermine Respondent by expressing concerns about Respondent and the hockey program to alumni and others affiliated with the program.

Mr. Muckalt stated that he and Respondent discussed the May 2021 climate survey and wondered what had prompted it, but Respondent never indicated that he believed complaints by Complainant had led to the survey. Mr. Muckalt said he does not know whether Respondent ever told players or staff that they did not have to complete the survey.

Mr. Muckalt said that Respondent did not inform Mr. Muckalt in advance that Complainant would be terminated from his volunteer position. Mr. Muckalt said that he believes that Respondent and Complainant had met previously to discuss Respondent's concerns and that the meeting had gone poorly. Mr. Muckalt said he was present during the August 11, 2021 meeting at which Respondent terminated Complainant and provided Ms. Raymond with notes summarizing the meeting later that day.

Evan Hall: Video Coordinator, Men's Ice Hockey

Mr. Hall said that he had a "vague memory" of Complainant losing access to Yost Arena around April 2021 but does not know any details and was not aware of plans to terminate Complainant at that time. He said that someone (possibly Mr. Bancroft) asked him around this time if Complainant had a University computer or instead used a personal device. Mr. Hall said he did not understand this question to be connected to an effort to turn off Complainant's credentials, but rather "an end of the year thing," since it was not clear at this point if Complainant was coming back the next season.

Mr. Hall said that he may have heard in passing around April 2021 that Complainant was badmouthing the hockey program or Respondent, but it was "never a big discussion." Mr. Hall said, "It was more like questioning, 'What's [Complainant] doing?'" Mr. Hall said he does not recall who asked those questions. Mr. Hall said there were some general conversations around this time about how "something was going on" in the hockey program and how some of the

players seemed upset. Mr. Hall agreed it would be fair to say he had the sense that Complainant might have been involved in “whatever was going on” in the hockey program.

Mr. Hall said he did not know beforehand that Respondent was planning to terminate Complainant in August 2021 and was never told why Respondent terminated Complainant. He said his opinion was that in 2021 Complainant was not consistently present when he was needed and that “there was something that was bothering him.” Mr. Hall said that Respondent was focused on keeping the team positive, and when Respondent said he was “going to go in a different direction” from Complainant, it made “perfect sense” to Mr. Hall. Mr. Hall referenced Complainant “leaving in the middle of practice” and “show[ing] up late.”

Ian Hume: Equipment Manager, Men’s Ice Hockey

Mr. Hume stated that it would not have been standard operating procedure to revoke Complainant’s access to Yost Arena at the end of the hockey season in April 2021. Mr. Hume said that shortly after Complainant’s access to Yost Arena was revoked, Mr. Hume asked Respondent about the incident, and Respondent told Mr. Hume that it never should have

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happened. Mr. Hume said that around this time, he had the impression that Complainant’s days with the hockey program were numbered, at least in part because Respondent and Mr. Bancroft believed Complainant was behind Mr. Mann’s push to have Respondent fired. Mr. Hume stated that he “firmly believes” Respondent revoked Complainant’s access to Yost Arena because Complainant was pushing Mr. Mann to take on Respondent.

Mr. Hume stated that Respondent did not discourage Mr. Hume from completing the May 2021 climate survey, but that Respondent was “very inquisitive” about the survey and asked Mr. Hume if the University was investigating the hockey program.²⁵

Mr. Hume said he believes that Respondent did not terminate Complainant from his volunteer position between April and August 2021 because Respondent is generally nonconfrontational. Mr. Hume said he thinks that Mr. Bancroft encouraged Respondent to terminate Complainant between April and August 2021, before the new hockey season was set to begin.

Mr. Hume said he does not recall expressing concerns in the aftermath of Complainant’s termination that Complainant might pose a safety risk. Mr. Hume, however, described Complainant as “erratic.”

Kris Barnes: Facility Manager for Yost Arena

Mr. Barnes stated that Mr. Bancroft called in April 2021 and asked him to revoke Complainant’s access privileges to Yost Arena. Mr. Barnes said that he and Mr. Bancroft then discussed how Mr. Barnes would notify other facilities staff in case Complainant attempted to access Yost Arena, which Mr. Barnes described as a typical step in the process of revoking an individual’s facilities access. Mr. Barnes said that Mr. Bancroft did not tell him who instructed Mr. Bancroft to revoke Complainant’s access. Mr. Barnes said he then revoked Complainant’s access through an online program and informed Mr. Bushey and two other facilities staff members. Mr. Barnes stated that the following day, either Mr. Bancroft or Respondent told Mr. Barnes to restore Complainant’s access. Mr. Barnes said he did not inquire why Complainant’s access was being reinstated just one day after it was deactivated. Mr. Barnes said he does not know if it is standard practice to revoke access for volunteer coaches at the end of the sports season but said that he

frequently grants and revokes access when told to do so by team personnel and/or Human Resources. Mr. Barnes said he does not think he spoke with Human Resources or Compliance about revoking or reinstating Complainant's access to Yost Arena.

Mr. Barnes stated that he never spoke with Respondent about the May 2021 climate survey and never heard that Respondent told players or staff that they did not need to take the survey.

Mr. Barnes stated that he was present when Mr. Richelew escorted Complainant into Yost Arena to collect his belongings after Complainant was terminated. Complainant said something to Mr. Barnes to the effect of, "We almost had him. I almost had him. Couldn't get the corroboration."

²⁵ In his March 30, 2022 response to the preliminary report, Respondent stated that he "never asked Mr. Hume about the survey" or whether the "hockey program was being investigated."

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Mr. Barnes said he understood Complainant to be saying that he had almost been able to get Respondent or Mr. Bancroft fired.²⁶

Mr. Barnes said he recalls hearing from Respondent or Mr. Bancroft after Complainant was terminated that Complainant was "making threats," and interpreted that statement to mean that Complainant was terminated for that reason.

Joe Maher: Strength and Conditioning Coach, Athletics

Mr. Maher stated that, beginning in 2019, the relationship between Respondent and Complainant started to change. Mr. Maher described Complainant as "very opinionated" and noted that Complainant had "differences in opinion" with Respondent, mostly about game strategy, styles of play, and the schedules and other formalities of how the team was managed.

Mr. Maher stated that he had no knowledge of the revocation of Complainant's access to Yost Arena or of any plans to terminate Complainant in April 2021. Mr. Maher said he recalled hearing about the May 2021 climate survey and described Respondent as "pretty open to" the survey and encouraging everyone to "fill out the survey as you choose." Mr. Maher said he does not think that the survey had any connection to Complainant's standing in the program.

Mr. Maher said that Respondent did not explain why he was terminating Complainant. Mr. Maher said the decision was not surprising and thought that Respondent had simply decided not to renew Complainant's one-year contract.

Kristy McNeil: Associate Director, External Communications & Public Relations, Ice Hockey

Ms. McNeil stated that after Complainant was terminated from his volunteer position in August 2021, Respondent contacted her to remove Complainant's name from the website. She said that Respondent told her that the circumstances surrounding Complainant's firing were complicated and that he did not want to explain further.

Ms. McNeil stated that Mr. Berenson told her in September or October 2021 that he thought Complainant was terminated from his volunteer position due to mental health issues or because

he was mentally unstable.

Ms. McNeil stated that she asked Respondent on November 5, 2021 why Complainant had been terminated from his volunteer position. Ms. McNeil said that Respondent told her that everything had ended fine with Complainant and that he was terminated because the hockey program no longer had funding for Complainant's position.

²⁶ In his April 1, 2022 response to the preliminary report, Complainant stated that he did not mean that he had almost been able to get Respondent fired. Instead, Complainant stated that he meant to express to Mr. Barnes that, since Complainant had been terminated, there was no one left to "hold [Respondent] accountable for what was being reported."

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Lora Durkee: Former Administrative Assistant

Ms. Durkee stated that, in April 2021, she was told by Mr. Hume that Mr. Bancroft had "cut" Complainant's access to Yost Arena by "call[ing] down to Kris Barnes." She stated that she did not know why Mr. Bancroft terminated Complainant's access but noted that "there was tension" between Complainant and Mr. Bancroft because Complainant "wasn't a fan" of Mr. Bancroft's "rude" behavior.

Ms. Durkee said she does not believe complaints from Complainant were the impetus for the May 2021 climate survey. She said she has never heard about Respondent telling anyone not to complete the survey.

Josh Richelew: Sport Administrator

Mr. Richelew stated that, after the hockey team returned from the NCAA Tournament in March 2021, he received a draft letter from Mr. Bancroft terminating Complainant's volunteer position. Mr. Richelew said that he referred the letter to Human Resources after he received it, explaining that his "concern was a lot of stuff was happening very quickly" and that he was not sure "how things should be handled." Mr. Richelew stated that he was not involved in the decision as to whether to terminate Complainant after that point. Mr. Richelew said that he did not have any conversations with Respondent or Mr. Bancroft about the draft termination letter or about Complainant's access to Yost Arena.

Mr. Richelew stated that he was not involved in the administration of the May 2021 climate survey. Mr. Richelew said that, at some point after the survey was conducted, Complainant may have told Mr. Richelew that Respondent was telling student athletes not to complete the survey, but Mr. Richelew cannot recall for certain. Mr. Richelew said he did not have conversations with Respondent about the survey. Mr. Richelew also said that, during the April 2022 exit interview, the student athletes told him that Respondent told them that the climate survey was "not a big deal" and that completing the survey was optional. Mr. Richelew stated that the student athletes said they were "afraid" to complete the survey because they did not know "whether or not the survey was truly anonymous."²⁷

Mr. Richelew said that he was not involved in conversations with Respondent about

Complainant's termination prior to August 11, 2021, and that those conversations were between Respondent and Ms. Raymond. Mr. Richelew stated that he understood that Respondent would make the decision about terminating Complainant's volunteer position.

Mr. Richelew said that after Respondent terminated Complainant, Mr. Richelew called Complainant to follow up and to explain how he could collect his personal property. Mr. Richelew said that he told Complainant that his position was ending immediately, but Mr. Richelew was not involved in the decision to end the position immediately rather than give Complainant two weeks to finish up. Mr. Richelew said that during the call, Complainant said

²⁷ In his April 28 and 29, 2022 responses to the transcript from Mr. Richelew's April 2022 interview with WilmerHale, Respondent stated with respect to the climate survey that he encouraged student athletes to "complete it and it wasn't a big deal." He further stated that he never told anyone how to complete the survey.

that he was surprised that he was being asked to leave immediately after being told he had two weeks; that he disagreed with Respondent's account of the termination meeting; and that he may sue over the situation. Mr. Richelew said that he responded that he was just the messenger and was trying to move forward with Complainant. Mr. Richelew said he does not recall discussing Complainant's termination with Respondent after it occurred.

Tiffany Raymond: Director of Human Resources, Athletics

Ms. Raymond stated that Mr. Bancroft advised Mr. Barnes to shut off Complainant's access to Yost Arena in April 2021. She further stated that Mr. Bancroft called her around April 7, 2021 to inquire about Complainant's appointment and raise concerns about Complainant remaining on staff. Ms. Raymond said she does not know why Mr. Bancroft wanted to "remove [Complainant's] facility access so quickly." Ms. Raymond stated that the unresolved issues that Complainant had raised around April-May 2021 were "enough to raise a concern" about moving forward with his termination. Ms. Raymond said that she spoke with Mr. Richelew on April 9 about the "need to hold on moving forward with [Complainant]" until the issues he had raised were reviewed or addressed. She said she advised Mr. Bancroft that same day not to move forward with terminating Complainant.

Ms. Raymond said she spoke with Complainant later in April 2021 about what Complainant viewed as the "athletics administration trying to remove his access" to Yost Arena, which Complainant learned about from a text message he received from Mr. Barnes.

Ms. Raymond said that she and Mr. Manuel both discussed the May 2021 climate survey with Respondent and told Respondent the survey was anonymous to ensure that participants had the opportunity to share their thoughts. Ms. Raymond said she thinks that Respondent "might have alluded to" his belief that the survey was commissioned because of Complainant's complaints but does not recall Respondent saying so explicitly. Ms. Raymond stated that Respondent, like other employees involved in ECRT reviews, seemed anxious for the survey to be concluded so that he could move forward.

Ms. Raymond said that she was made aware before August 2021 that Respondent wanted to terminate Complainant's volunteer position and learned of the exact date of the termination in early August. Ms. Raymond said Respondent told her that he was "moving in a different direction" and that the work Complainant was doing was similar to the work already performed

by the Student Development Office.

Ms. Raymond stated that, in her opinion, Respondent terminated Complainant because they had “a differing of opinions” and because Respondent did not see “the value” in Complainant’s position given that other employees within the Athletic Department provided similar services to student athletes. She said that Respondent commented on Complainant’s “negativity.” Ms. Raymond also said that she spoke with Respondent about Complainant between April and August 2021 and that she learned Respondent and Complainant “did not have a lot of interactions over the summer.”

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Elizabeth Heinrich: Executive Senior Associate Athletic Director and Chief Compliance Officer

Ms. Heinrich stated that she did not learn that Respondent planned to terminate Complainant from his volunteer position until after Complainant’s access to Yost Arena had been revoked in April 2021.

Ms. Heinrich said she does not know who told Respondent not to terminate Complainant in April 2021 but recalls that Mr. Manuel had several conversations with Respondent around that time. Ms. Heinrich said she believes that Mr. Bancroft revoked Complainant’s access to Yost Arena and thinks that Mr. Manuel or someone else may have told Mr. Bancroft, rather than Respondent, not to terminate Complainant. Ms. Heinrich said that she and others, including Mr. Manuel, Mr. Richelew, and Ms. Raymond, did not feel it would be appropriate for Respondent to terminate Complainant at this time because Complainant had reported a number of concerns about the hockey program that the University was still in the process of investigating, including through the climate survey. She and others were “mindful of that, at the time that it was going to look like retaliation.”

Ms. Heinrich said she believes that Mr. Manuel spoke to Respondent about the climate survey, explaining why the Athletic Department and ECRT were conducting the survey and telling Respondent that he should not influence how anyone responded to the survey. Ms. Heinrich said she believes she heard some rumblings about Respondent attempting to influence responses to the survey but cannot remember the details.

Ms. Heinrich said she does not know who gave Respondent the go-ahead in August 2021 to terminate Complainant. Ms. Heinrich stated that she was “surprised” that Complainant was terminated at that point because “it still felt like it was awfully close to the events at hand to not worry about the image and appearance of retaliation.”

Ms. Heinrich said she believes Respondent terminated Complainant from his volunteer position because Complainant was at odds with Respondent over Respondent’s management of the hockey team, was reinforcing Mr. Mann’s concerns about Respondent’s leadership, and was “stirring up” complaints from student athletes about COVID protocols.

Warde Manuel: Athletic Director

Mr. Manuel stated that he may have been told that Complainant’s access to Yost Arena had been

revoked after the hockey team returned from the NCAA Tournament but is not certain. Mr. Manuel stated that he was not aware of who gave the instruction to terminate Complainant's access but noted that it did not come from his office and that head coaches are authorized to "take away credentials of people on the staff" if they wish to make personnel changes. Mr. Manuel stated that he was not involved in restoring Complainant's access to Yost Arena.

Mr. Manuel stated that the May 2021 climate survey was likely conducted because the Department wanted to "investigate if there were any cultural issues on the team" and to "figure out how to get at the sensitive complaints." Mr. Manuel said he likely discussed the results of

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the survey with Respondent but cannot recall anything in the survey that caused him "significant concerns."

Mr. Manuel stated that his understanding from Respondent was that Respondent felt that Complainant was "trying to undermine his leadership" and was not communicating with coaches in a way that was "helpful to the program." Mr. Manuel stated that Respondent felt that Complainant was "not a part of taking the team in the direction that [Respondent] felt was in the best interest of the team." Mr. Manuel stated that he spent more time discussing Complainant with Respondent than he did discussing all the other volunteers in the Athletic Department with all the other head coaches combined.

Mr. Manuel stated that Respondent and Complainant had a "long relationship" and that, because Respondent cared for Complainant, it was "not an easy decision" for Respondent to terminate Complainant from his volunteer role. Mr. Manuel stated that he cannot recall if he knew Respondent was going to terminate Complainant prior to August 11, 2021, but that it was Respondent's decision which personnel were best for his program. Mr. Manuel stated that Respondent informed him about the August 11 termination conversation with Complainant after it occurred and that Complainant's termination was not something Mr. Manuel tried to prevent or undo.

Red Berenson: Special Advisor to the Athletic Director, Former Head Coach for Men's Ice Hockey

Mr. Berenson stated that he does not know why Complainant left the hockey program. Mr. Berenson described Complainant as "pretty erratic and volatile and impulsive."

Brian Wiseman: Former Assistant Coach, Men's Ice Hockey

Mr. Wiseman said that he heard from Complainant about Complainant's access to Yost Arena being cut off. Mr. Wiseman said that he did not know why that had occurred and that he had no awareness of any plans Respondent had to terminate Complainant's volunteer position, either in April-May 2021 or August 2021.

Mr. Wiseman said that Complainant told him about the August 2021 meeting when Respondent terminated Complainant, but not the reason given for the termination.

Additional Evidence from Parties and Witnesses

ξ In an April 7, 2021 email to Ms. Raymond, Mr. Bancroft asked if the two could speak, writing “[t]his is somewhat urgent and should only take a few minutes.”

ξ In an April 8, 2021 email from Mr. Bancroft to Mr. Richelew, copying Respondent, Mr. Bancroft wrote, “This is the letter [Respondent] would like to send to [Complainant]. I have already discussed the process with [Ms. Raymond], and with your approval of the letter I will move forward” Mr. Bancroft attached a draft termination letter addressed from Respondent to Complainant and dated April 8, 2021. The draft letter stated:

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I would like to thank you for your dedication and hard work with the Michigan Hockey Program. Your initiative to connect alumni with current players to help create a strong network and further career development is outstanding. This is an initiative I will continue to support in conjunction with the Athletics Career Center.

I have attempted to contact you on several occasions after the conclusion of our season to set-up a year end meeting. Due to the lack of a response and the inability to schedule this meeting, I will need to move forward and conclude your appointment as a volunteer with our program.

Please schedule a time with Rick Bancroft to gain access to Yost in order to gather your personal belongings. As of today your access to athletic department files, calendars, etc. will end.

Please call if you would ever like to sit down and discuss anything. My door is open to you.

Thank you again for your service to Michigan Hockey and good luck with your future endeavors.

ξ In an April 9, 2021 email to Ms. Raymond, Mr. Bancroft wrote, “Upon your approval, I will submit the JOT form and sent [sic] the email we previously discussed to you and Jerry about terminating access.” Mr. Bancroft attached a draft termination letter addressed from Respondent to Complainant and dated April 9, 2021. The draft letter stated:

I have attempted to contact you on several occasions after the conclusion of our season to set-up a year end meeting. Due to the lack of your response and the inability to schedule this meeting, I am informing you your appointment as a volunteer program assistant with Michigan hockey will not be renewed.

Please schedule a time with Rick Bancroft to gain access to Yost in order to pick up your personal belongings. As of today your access to athletic department files, calendars, etc. will end.

If you have any questions, please feel free to contact me.

Thank you for your service to Michigan Hockey and good luck with your future endeavors.

§ Ms. Raymond forwarded Mr. Bancroft's April 9, 2021 email to Mr. Richelew a few minutes after she received it, writing, "My understanding is that you asked [Mr. Bancroft] to hold off, correct?" Within an hour, Ms. Raymond then responded to Mr. Bancroft, telling him, "At this time, we need to hold off on sending the letter to [Complainant] or contacting him. We can revisit next week."

§ In a screenshot of a text conversation dated April 14, Mr. Barnes wrote to Mr. Bushey on April 14 that "[Mr. Bancroft] had me remove [Complainant]'s access to the facility. FYI in case he asks you to get in." Complainant provided the screenshot to Ms. Raymond in a May 3, 2021 email.

§ In a screenshot of a text conversation labeled with the date of April 27, Mr. Barnes wrote to Complainant, in part, "Hey, sorry about the facility access snafu. I was just doing what was asked of me" and "You have access again. They asked me to restore it the next day." Complainant provided the screenshot to Ms. Raymond in a May 3, 2021 email.

§ Notes made by Ms. Raymond on April 27, 2021 of a call with Complainant state that Complainant told her he learned his Yost Arena access had been revoked when Mr. Bushey called Complainant to apologize and told Complainant that he got a text from Mr. Bancroft that Complainant "should not be allowed into the building." The same notes state that "[Complainant] has still not talked to [Respondent]. I encouraged him to do so and determine the current status of his appointment."

§ In an April 28, 2021 email to Ms. Raymond, Complainant stated that he was planning to email Respondent to set up a meeting.

§ In a May 3, 2021 email to Ms. Raymond, Complainant wrote that he planned to speak with Respondent "when he's in the office this week."

§ In a May 4, 2021 email to Mr. Richelew, Complainant said that he became aware his Yost Arena access was revoked on April 14, 2021, and then "was never informed of why that was the case." Complainant reminded Mr. Richelew that, in an April 3, 2021 email, he had told Mr. Richelew and Ms. Heinrich that "I was concerned [Respondent] would do this if he found out I was speaking to compliance." Complainant also told Mr. Richelew that Mr. Barnes informed him on April 27, 2021 that his access to Yost Arena had been restored.

§ In a May 5, 2021 email to Mr. Manuel, Complainant wrote that "my access to Yost has been revoked, then reinstated without my knowledge so my time is probably limited."

§ Notes made by Ms. Raymond on May 12, 2021 describe a conversation she had that day with Respondent about Complainant.²⁸ Her notes reflect that Respondent said Complainant "goes off script," "is causing rifts and division within the team and staff," and "makes comments to the [student athletes] like 'coaches should have played you more.'" Respondent told Ms. Raymond he believed Complainant "may be frustrated since his position was paid at one point and now is no longer paid." Respondent further

indicated that he heard from alumni after the hockey season that Complainant had

²⁸ Respondent said that he does not specifically recall a May 12 meeting with Ms. Raymond. He stated that he “probably had talked to [Ms. Raymond] a few times,” and “would have asked her, just given the circumstances with [Complainant’s] actions that are detrimental to the overall success of the program, what can I do about it?” Respondent said that he does not recall Mr. Bancroft urgently pushing to have Complainant terminated in April or May 2021.

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reached out to the alumni and seemed to be criticizing Respondent’s relationship with student athletes. According to Ms. Raymond’s notes, “At the end of the season, [Respondent] reviewed all staff and realized [Complainant] is not positive with players or staff and would be best to remove him from [the] program.” Ms. Raymond wrote that Respondent “discussed his frustrations regarding [Complainant] with [Mr. Manuel] in early April and [Mr. Manuel] encourage[d] [Respondent] to let him go.” Ms. Raymond wrote that Complainant and Respondent “have not recently spoken.” Ms. Raymond wrote that she asked why Mr. Bancroft called her “3-4 times in one afternoon, eager and with urgency to remove [Complainant] from the program.” Ms. Raymond wrote that Respondent “explained that [Mr. Bancroft] was acting out of emotion, as he too was also upset that [Complainant] was speaking negatively about the program.”

§ Undated notes by Ms. Raymond state that Respondent notified her on August 11, 2021 that he was going to tell Complainant “that his appointment would be ending at the end of August.” Ms. Raymond asked Mr. Muckalt to provide a statement describing his recollection of the August 11 meeting at which Complainant was terminated. Mr. Muckalt provided the following statement:

The purpose of this email is to acknowledge being a witness to an honest unbiased account of the details of the meeting today between [Complainant] and [Respondent]. The meeting occurred at [approximately] 10:30 AM at Yost Arena ([Respondent]’s office). The meeting started prior with [Complainant] walking in and asking me if I was sitting in on the meeting. I was sitting in Coaches office and said “Yes,” Coach started the meeting by greeting with “good morning” then thanked [Complainant] for all his years of service to the program and the great things he did for the best interest of the program. At this time, [Respondent] stated However at this time we have decided to move in another direction and we will no longer need your services. He then requested that he would need to turn in his keys and his last day of access would be August 27. [Complainant] preceded [sic]to ask if this was about Strauss Mann and [Respondent] replied “what are you talking about?” [Complainant] then replied “You really want this? You[] are going to get it, you will end up like me. I am going to take you down!” My next recollection of the day was towards me, and he said “you guys are going to get rid of me and keep that guy?” while pointing to Rick Bancroft’s office and said “he let a man sexually abuse both of us, looking at me.” [sic] [Respondent] stood up and tried to shake his hand when he felt things were getting unruly, [Complainant] told him “I’m not shaking your fucking hand.” I went to my office and I was literally trying to process what occurred and [Complainant] came in to my office and said “Are you really going to go down with him, I need to talk to you!” This summarizes the meeting with [Complainant].

Afterwards, we had a meeting with members of our staff, and we expressed our concerns for [Complainant]'s stability, all of our safety and [Respondent]'s.

ξ In a memorandum sent to Ms. Raymond on August 12, 2021, Respondent described some of the events that took place on August 11. Respondent wrote that he met with Complainant and Mr. Muckalt at 10:30 a.m. on August 11, at which point he thanked

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Complainant for his work and “went on to say we are headed in a different direction as a program and his services will no longer be needed.” Respondent wrote that he told Complainant his last day would be August 27. Respondent further wrote that:

[Complainant] asked why this was happening and I replied, “I do not want to get into specifics and the decision is final.” [Complainant] went on to say, “Is this the way you want to play this?” and went on to say, “I’m in.” He then said, “I’m going to get you!” He said, “Does this have anything to do with Strauss Mann?” I responded I did not know what he was referring to and perhaps he could elaborate. He then said, “You are going to fire me and keep him?” as he pointed to the office of Rick Bancroft our Director of Hockey Operations. He then leaned over and mumbled some words to Billy Muckalt. Since it was a mumble and I could not hear I responded with, “Pardon me”. At this point, he became more agitated and angry and said, “I’m ready, let’s go.” At that point I knew it was best to end the meeting so I stood up and put my hand out to shake his hand. He looked at my hand and said, “I’m not going to shake your fucking hand.”

ξ Respondent’s August 12, 2021 memorandum reflects that he met with the team captain at 11:00 a.m. to inform him that Complainant “would no longer be with the team.” Respondent then called a meeting with Mr. Muckalt, Mr. Bancroft, Mr. Brewster, Mr. Hall, and Mr. Hume to “discuss[] the situation.” According to Respondent’s memorandum, Mr. Hume and Mr. Muckalt expressed “concern for their safety and my safety.” Respondent then called Ms. Raymond “and informed her that my meeting with [Complainant] had taken place and that I had some concerns for the safety of the staff.” Respondent wrote that he then ran into Complainant in the coaches’ locker room, where Complainant “patted me on the back and said, ‘Don’t worry [Respondent,] it’s going to be ok’ and he went on to say ‘You are going to be right where I am soon.’”

Analysis of Evidence and Findings

For the purposes of determining whether conduct constitutes retaliation under the Policy, the following definition is used:

Retaliation means an adverse action taken against a person for making a report or Formal Complaint of Prohibited Conduct; being alleged to have committed Prohibited Conduct; or assisting or participating, or refusing to participate, in any proceeding under this Policy. Retaliation may include intimidation, threats, coercion, or discrimination including adverse employment or educational actions that would discourage a Reasonable Person from engaging in activity protected under this Policy.

Section XI of the Policy enumerates specific categories of Prohibited Conduct:

Prohibited Conduct under this Policy includes Sexual and Gender-Based Misconduct (i.e., Sexual Assault; Sexual Exploitation; Sexual Harassment; Gender Based Harassment; Sex and/or Gender-Based Stalking; Intimate Partner Violence; Sex and Gender-Based Discrimination; Retaliation and Violation of Supportive Measures) and Title IX Misconduct (i.e., *Quid Pro Quo* Sexual Harassment; Severe, Pervasive and Objectively Offensive Sexual Harassment; Sexual Assault; and Sex-Based Intimate Partner Violence and Stalking; as defined by and within the scope of Title IX).

For ECRT to find that a Respondent retaliated against a Complainant in violation of the Policy, the evidence must show that (1) Complainant made a report or Formal Complaint of Prohibited Conduct; (2) the report or Formal Complaint of Prohibited Conduct was known to Respondent; (3) after learning of the report or Formal Complaint of Prohibited Conduct, Respondent took adverse action against Complainant; and (4) there is a causal connection or nexus between the report or Formal Complaint of Prohibited Conduct and the adverse action. An adverse action taken by a Respondent against a Complainant because of a report or Formal Complaint made by the Complainant that does not implicate conduct prohibited by the Policy does not constitute retaliation under the Policy. In instances where a Complainant makes multiple reports—some implicating conduct prohibited under the Policy and some implicating other conduct that falls outside the scope of the Policy—the finder of fact must determine if the Respondent took an adverse action against the Complainant for making a report of Prohibited Conduct or for reporting other conduct outside the Policy’s scope.

In assessing allegations of retaliation under the Policy, the University uses a “preponderance of the evidence standard.” Under this standard, the Respondent is presumed not to have engaged in the alleged retaliatory conduct unless the evidence demonstrates that it is “more likely than not” the conduct occurred.²⁹

²⁹ *Employee Procedures* § VI.A.3.

In his Formal Complaint and in his interviews with WilmerHale, Complainant alleged that Respondent engaged in retaliation when he revoked Complainant's access to Yost Arena and when he terminated Complainant's volunteer position. According to Complainant, Respondent took these actions because Complainant raised concerns about: (1) the continued employment of individuals who purportedly had contemporaneous knowledge of sexual misconduct committed by Dr. Robert Anderson; (2) the mistreatment of female staff by Respondent and Mr. Bancroft; (3) Respondent's failure to follow COVID-19 protocols; and (4) retaliation by Respondent against student athletes.

Only Complainant's assertions that he was retaliated against for raising concerns related to the continued employment of individuals who purportedly had contemporaneous knowledge of Dr. Anderson's sexual misconduct and the mistreatment of female staff raise possible violations of the Policy. The concerns Complainant raised about Respondent's alleged failure to follow COVID protocols and his alleged mistreatment of student athletes do not fall under any of the categories of Prohibited Conduct enumerated under Section XI of the Policy and thus cannot lead to a finding of misconduct against Respondent, *even if* Respondent was aware of Complainant's concerns about those matters and took adverse actions against him for raising those concerns.³⁰ Nevertheless, we analyze the evidence related to each of the four retaliation claims brought by Complainant in his Formal Complaint. We do so to determine why Respondent ultimately took adverse action against Complainant and whether the preponderance of the evidence supports a finding that Respondent did so in violation of the Policy.

Respondent denied that he took adverse action against Complainant in retaliation for any of the four categories of concerns Complainant allegedly raised. Respondent described the revocation of Complainant's access to Yost Arena as a "mistake." And Respondent claimed that he terminated Complainant because Complainant was divisive, undermined Respondent's authority with student athletes and staff, and was no longer a "good fit" for the program. Respondent also stated that he believed a full-time staff member would be better able to handle the student athlete development duties that Complainant had been performing.

As discussed below, the preponderance of the evidence does not support the conclusion that Respondent retaliated against Complainant in violation of the Policy. Instead, the evidence supports the conclusion that Respondent terminated Complainant for other reasons, including concerns Complainant raised that do not implicate the Policy.

Respondent's Awareness of Complainant's Reports of Prohibited Conduct

As an initial matter, we must determine whether Complainant made a report or Formal Complaint of Prohibited Conduct under the Policy, and whether Respondent was aware of the report or Formal Complaint.

³⁰ Although Complainant has framed part of his complaint in terms of "retaliation" against student athletes, he does not allege that Respondent retaliated against student athletes for reporting conduct that the Policy prohibits. *See Policy* § XI.B.8.

Complainant's Reports Related to Dr. Anderson

Emails show that Complainant raised concerns to ECRT in June 2021 about current Athletic Department employees who purportedly had contemporaneous knowledge of Dr. Anderson's sexual misconduct. In response to a question about Dr. Anderson, Complainant told Ms. Castrogiovanni that "[t]he department is aware that some current staffers who knew of this previous behavior and failed to act are still here and they've done nothing about it." Complainant may have also raised a concern to Mr. Richelew about Mr. Bancroft's purported knowledge of Dr. Anderson's sexual misconduct before Complainant's termination in August 2021—referring to Mr. Bancroft as a "sexual predator"³¹—but Mr. Richelew said that, at the time, he did not understand that to be a reference to Dr. Anderson.³²

The preponderance of the evidence therefore supports the conclusion that Complainant raised concerns about the continued employment of individuals who were contemporaneously aware of Dr. Anderson's sexual misconduct.

Respondent's Awareness of Complainant's Reports Related to Dr. Anderson

Complainant stated that Respondent was aware of these reports because he told Respondent on "multiple occasions" that Mr. Bancroft had contemporaneous knowledge of Dr. Anderson's sexual misconduct. Complainant identified one specific report: an August 2020 conversation in which Complainant purportedly told Respondent, in sum or substance, that Mr. Bancroft was "one of these guys that knew" about Dr. Anderson.

Respondent denied that he ever discussed Dr. Anderson with Complainant. Respondent specifically denied speaking with Complainant about Mr. Bancroft's contemporaneous knowledge of Dr. Anderson, stating that he "never had that conversation with [Complainant] in August [2020] or ever."

No witness recalled hearing Complainant raise concerns to Respondent about employees with contemporaneous knowledge of Dr. Anderson's misconduct prior to Complainant's termination on August 11, 2021. Four witnesses (Mr. Barnes, Mr. Maher, Mr. Wiseman, and Ms. Durkee) stated that Complainant spoke with them about concerns related to Dr. Anderson before Complainant's termination, but none knows whether Complainant brought those concerns to Respondent's attention. An additional witness (Mr. Hume) stated that he thought it likely that Complainant expressed concerns to Respondent about Mr. Bancroft's knowledge of Dr. Anderson's misconduct, but Mr. Hume does not know that Complainant actually did so.

Moreover, no documentary evidence corroborates Complainant's account that he raised concerns to Respondent about Mr. Bancroft's (or anyone else's) purported knowledge of Dr. Anderson's

³¹ In his April 1, 2022 response to the preliminary report, Complainant asserted that he did not recall making this statement and did not think that Mr. Bancroft was a sexual predator.

³² During the August 11, 2021 meeting in which Respondent informed Complainant that his volunteer position would be terminated, Complainant made a statement to Mr. Muckalt alluding to Complainant's belief that Mr. Bancroft had contemporaneous knowledge of Dr. Anderson's misconduct. This statement, which Complainant made *after* he learned of his termination, does not support his allegation that Respondent knew that Complainant had raised complaints related to Dr. Anderson *before* the termination.

misconduct. Nor is there evidence to suggest that Respondent learned of Complainant's

statement to Ms. Castrogiovanni or anyone else. While Complainant may have intended to express to Mr. Richelew his contention that Mr. Bancroft had contemporaneous knowledge of Dr. Anderson's misconduct, Mr. Richelew did not understand Complainant to be making such a claim at the time.³³

The preponderance of the evidence does not support the conclusion that Respondent was aware of Complainant's report about current Athletic Department employees with contemporaneous knowledge of Dr. Anderson's sexual misconduct either prior to Complainant's access to Yost Arena being revoked or prior to his termination. Therefore, we conclude that Respondent did not take an adverse action against Complainant for raising such concerns.³⁴

Complainant's Reports of Gender-Based Discrimination

Emails and notes provided by the parties and witnesses show that, by April 13, 2021, Complainant had raised concerns about the mistreatment of female staff members by Mr. Bancroft to Mr. Richelew. On April 19, Complainant told Ms. Raymond that Mr. Bancroft and Respondent mistreated Ms. Mandel and Ms. McNeil. Complainant also raised concerns about the mistreatment of female staff to Mr. Manuel on May 5 and to Ms. Castrogiovanni on July 23. The May 5 report was shared with Ms. Raymond and Ms. Heinrich.

The preponderance of the evidence thus supports the conclusion that Complainant reported concerns about the mistreatment of female staff by Respondent and Mr. Bancroft.

Respondent's Awareness of Complainant's Reports of Gender-Based Discrimination

Complainant asserted that he raised concerns about mistreatment of female staff to Respondent on at least three occasions: (1) in an August 2020 meeting where Complainant told Respondent that they both knew Mr. Bancroft had a "history with women"; (2) in a February 2021 meeting where Complainant told Respondent that his treatment of Ms. McNeil was not acceptable; and (3) in a March 2021 meeting where Complainant raised concerns about Mr. Bancroft's treatment of Ms. Mandel.³⁵ Respondent denied that he ever spoke with Complainant about Respondent's or Mr. Bancroft's alleged mistreatment of women associated with the hockey program.

³³ In his April 1, 2022 response to the preliminary report, Complainant clarified what he believed and intended to convey to Mr. Richelew, *i.e.*, that Mr. Bancroft "knew on some level that Dr. Anderson was a sexual predator and he did nothing to protect me from his abuse."

³⁴ Complainant alleged in his Formal Complaint that Respondent retaliated against him for raising concerns about employees who had contemporaneous knowledge of Dr. Anderson's misconduct. But when he was interviewed by WilmerHale, Complainant said that he was "not sure" whether his statements about current employees' knowledge of Dr. Anderson's misconduct were "part of why I was retaliated against."

³⁵ Complainant also told Ms. Castrogiovanni in a July 23, 2021 email that he asked Respondent on July 19 "why he has and continues to tolerate Rick Bancroft's mistreatment of women in the workplace." In an interview, Complainant described a July 2021 meeting with Respondent but did not mention that the two had discussed Complainant's concerns about mistreatment of female staff; Respondent told us he did not recall any such discussion in July 2021.

No witness statements or documentary evidence corroborates Complainant's assertion that he raised concerns about Mr. Bancroft's "history with women" with Respondent in August 2020 or

about Mr. Bancroft's treatment of Ms. Mandel in March 2021. Ms. Mandel did not respond when asked to participate in this investigation. Mr. Hall, whom Complainant identified as a witness to the March 2021 incident involving Ms. Mandel, said he had no recollection of the incident or any conversation with Complainant about it.

As for whether Respondent was aware that Complainant raised concerns about the interaction between Respondent and Ms. McNeil, two witnesses—Ms. McNeil and Mr. Hume—stated that Complainant told them that he had raised concerns to Respondent about mistreatment of women in the hockey program in February 2021. In addition, Ms. Durkee said that Complainant told her he “wanted to” raise those concerns with Respondent, but she does not know if Complainant did so.

We note that ultimate disposition of the Formal Complaint does not depend on whether the underlying conduct that Complainant reported in fact occurred. In other words, Respondent could have violated the Policy if he retaliated against Complainant for raising concerns about mistreatment of women in the hockey program even if Complainant's concerns were not well founded. But the evidence that we collected during our investigation about the alleged underlying conduct does bear on our credibility determinations. With respect to the alleged incident with Ms. McNeil in February 2021, Respondent stated that he did not recall ever yelling at Ms. McNeil. Mr. Maher, who Complainant alleged was present during the February 2021 incident involving Ms. McNeil, also did not recall the incident. But Ms. McNeil sent separate emails to Respondent and Mr. Svoboda on February 11, 2021, describing a confrontation with Respondent. She wrote to Respondent that she hoped to avoid “the kinds of incidents like *the one today*”; she wrote to Mr. Svoboda that “*today and yesterday* I was mistreated and belittled by [Respondent]” (emphases added). Given this contemporaneous evidence, we find it more likely than not that there was an incident between Respondent and Ms. McNeil in February 2021. In his March 30, 2022 response to the preliminary report, Respondent acknowledged that an incident of some kind occurred, writing, “I did not ‘bully’ Ms. McNeil. I had a candid conversation with her about not following my interview policy. [Complainant] never came in the following day to raise any concerns in regard to Ms. McNeil.” Given this statement, and the evidence that Respondent's conversation with Ms. McNeil struck her and Complainant as inappropriate, we do not find Respondent's characterization of the incident or his assertion that Complainant did not discuss it with him to be credible. Accordingly, we also find it more likely than not that Complainant voiced concerns about the interaction between Respondent and Ms. McNeil to Respondent.

The evidence does not suggest that Respondent otherwise learned of Complainant's reports to Ms. Raymond, Ms. Castrogiovanni, Mr. Richelew, Ms. Heinrich, or Mr. Manuel about the mistreatment of female staff. Respondent denied learning of the reports, and no witnesses stated that they believed Respondent knew about Complainant's reports to these University administrators. Although Complainant told Mr. Richelew and Ms. Heinrich in an April 5, 2021 email that he thought Respondent was aware of their conversations, that email related to Complainant's concerns about COVID protocols and student athlete retaliation. Moreover, Mr. Richelew stated that Respondent referenced Complainant only in discussing conflict regarding student athletes.

We note that Complainant's statements about Mr. Bancroft's behavior towards other University employees—and Complainant's allegation that Respondent failed to address that behavior—are consistent with multiple witness statements. In his interviews, Respondent denied having any

conversations with Complainant about the mistreatment of female staff members by Mr. Bancroft, yet in his March 30, 2022 response to the preliminary report, Respondent wrote that “Mr. Bancroft has been reprimanded on a couple occasions in regards to his behavior.” Several witnesses stated that Mr. Bancroft bullied colleagues, possibly based on their gender, and that Respondent was aware of this behavior but took no action to stop it. For example, Mr. Hume said that he had complained to Respondent that Mr. Bancroft mistreated support staff at the University. Ms. Durkee said that she relayed concerns about Mr. Bancroft to Respondent and that Mr. Bancroft’s “rude” behavior contributed to her decision to retire.³⁶ Ms. McNeil stated that both Mr. Bancroft and Respondent discriminated against her based on her gender, noting that Mr. Bancroft called her gender “an issue” and indicated that it would limit her professional opportunities with the hockey program. Ms. Heinrich described a perception that Respondent was aware of Mr. Bancroft’s conduct but did not intervene to address it. In contrast, Mr. Bancroft, Mr. Muckalt, Mr. Barnes, and Mr. Hall stated that they had not witnessed any mistreatment of women in the hockey program. Mr. Barnes noted that he had heard in passing about one incident in which Ms. Durkee was treated poorly, but he did not recall any further details. Mr. Wiseman—who last worked at the University in 2019—said that he did not witness any mistreatment of female employees, but that he had discussed concerns about mistreatment with Ms. McNeil.

Witnesses also described a culture within the hockey program in which women are hesitant to report mistreatment. Ms. McNeil stated that she feared retaliation by Respondent for expressing concerns about mistreatment by Respondent and Mr. Bancroft, both when she was contacted by Ms. Raymond in April 2021 and again in interviews with WilmerHale. Ms. Heinrich and Ms. Raymond both said that the Athletic Department and ECRT pursued the option of an anonymous climate survey because no one was willing to speak on the record about issues in the hockey program, including gender discrimination concerns, for fear of retaliation. Mr. Hume said that complaints about Mr. Bancroft always made their way back to Respondent. Those witness statements lend credibility to Complainant’s comment, in a July 23, 2021 email to Ms. Castrogiovanni, that a female staff member “who was the target of discrimination and/or bullying by Rick Bancroft” did not want to complete the climate survey candidly for fear of retaliation.

Given the evidence from witnesses and documents detailing the prevalence of concerns related to the treatment of women in the hockey program, the perception that Respondent was aware of those concerns, and Respondent’s acknowledgment that Mr. Bancroft was reprimanded for his behavior several times, we do not find Respondent’s claim that he was unaware of any issues

³⁶ While Ms. Durkee acknowledged that she told Respondent she was retiring to spend more time with her family (and did not tell Respondent her retirement was influenced by any issues with Mr. Bancroft), she also noted that she had reported Mr. Bancroft’s behavior to Respondent and to Human Resources. Ms. Durkee also said that colleagues in the Athletic Department reacted to the news of her retirement by asking if her decision was related to Mr. Bancroft. When asked if Ms. Durkee had raised concerns to him about Mr. Bancroft, Respondent said he recalled that Ms. Durkee had complained to him in the past about Mr. Bancroft taking away job duties from her, but Respondent could not remember additional details.

with mistreatment of female staff credible. Rather, the evidence suggests that Complainant confronted Respondent about the mistreatment of women in the hockey program on at least one occasion and that hockey program staff understood Respondent to be aware of complaints that Mr. Bancroft bullied his female colleagues. The preponderance of the evidence therefore

supports the conclusion that Respondent knew before Complainant's access to Yost Arena was revoked and before Respondent terminated Complainant that Complainant had reported mistreatment of female staff.

Complainant's Reports Related to COVID-19 Protocols

Witness statements and documentary evidence show that Complainant reported concerns about Respondent's handling of COVID protocols to Ms. Heinrich and Mr. Richelew.

Both Ms. Heinrich and Mr. Richelew said that Complainant raised this issue with them multiple times. Ms. Raymond stated that Complainant reported concerns about COVID protocols to her as well, but she said she had "very little involvement" in this issue. Email evidence shows that after Complainant initially contacted Ms. Heinrich with his concerns on March 26, 2021, he emailed her and Mr. Richelew to provide additional details on April 3 and April 5. Complainant raised the issue of COVID protocols in a telephone conversation with Ms. Raymond on April 27. In a July 7 email to Ms. Castrogiovanni, Complainant sought to follow up on his concern that student athletes were "asked to lie on public health forms and to NCAA personnel."

The preponderance of the evidence therefore supports the conclusion that Complainant reported concerns about Respondent's purported failure to follow COVID protocols.

Respondent's Awareness of Complainant's Reports Related to COVID-19 Protocols

Complainant stated that he did not discuss his concerns about COVID protocols with Respondent, and no witness told us they recalled hearing that Complainant directly reported his COVID protocol concerns to Respondent. Ms. Heinrich, Mr. Richelew, and Ms. Raymond each stated they did not discuss with Respondent the concerns Complainant voiced to them about COVID protocols. Respondent stated that the only feedback he received about COVID protocols in the wake of the March 2021 NCAA Tournament involved questions about why the Michigan team had been expelled from the tournament while other teams in similar positions were not. Respondent said he never discussed the issue with Complainant and, aside from the UMPD report that followed, never heard anyone complain about how student athletes were instructed to report COVID exposure on contact-tracing forms.³⁷

In contrast, the evidence suggests that Respondent was aware of concerns about his management of the hockey program and that he attributed those concerns, at least in part, to a set of interrelated issues that Complainant was raising at the time, including Respondent's alleged failure to follow COVID protocols during the March 2021 NCAA Tournament. According to witnesses, controversy over Respondent's handling of COVID protocols around this time

³⁷ In response to an anonymous report, the University investigated the hockey program's adherence to COVID protocols, and, after speaking with Athletic Department personnel and local health officials, closed the investigation without finding any wrongdoing.

attracted significant attention, caused Respondent to fear for his job, and sparked a conflict between Respondent and Mr. Mann that would end with Mr. Mann leaving the team a month later. Ms. McNeil described how the hockey team's abrupt exit from the NCAA Tournament led to rumors, which she flagged for her supervisor, that the program had failed to follow proper COVID protocols. Mr. Mann's notes from his meeting with Respondent indicate that COVID

protocol concerns prompted Mr. Mann to consult his teammates about issues with Respondent's leadership and the possibility of "voic[ing] our concerns to compliance" in the final days of March 2021. Around the same time, Mr. Mann brought COVID protocol concerns to the attention of Complainant, who relayed them to Mr. Richelew and Ms. Heinrich.

The evidence also indicates that Respondent was deeply troubled by these reported COVID protocol concerns. Mr. Richelew said that Respondent called him around late March or early April 2021 and said Mr. Mann was trying to get him fired. Ms. Heinrich stated that Respondent called her around the same time to express similar concerns. In an April 3, 2021 email to Mr. Richelew and Ms. Heinrich, Complainant wrote that Respondent had asked student athletes to lie on contact-tracing forms during the previous week's NCAA Tournament and that Respondent was "telling people outside Michigan Hockey that [Mr. Mann] was attempting to have him fired." The COVID protocol issue continued to loom as UMPD launched an investigation into an anonymous report of noncompliance during the first week of April. Respondent participated in UMPD's inquiry, telling them he would never tell anyone to lie on a COVID contact-tracing form.

We find it more likely than not that Respondent tied these COVID protocol concerns to Complainant. Complainant told Ms. Heinrich and Mr. Richelew in an April 5, 2021 email that he believed "[Respondent] has learned that I've been speaking with you."³⁸ Ms. Heinrich stated in an interview that she does not know why Complainant believed that Respondent learned about their conversations. But Respondent's own statements indicate that he had heard Complainant was contacting alumni around this time to raise concerns about his management of the hockey program. Mr. Hall stated that he thought it was "implied" that Complainant was connected to the conflict between Respondent and Mr. Mann. Mr. Hume said that Mr. Bancroft helped spread rumors that Complainant had reported to the NCAA that Michigan hockey had failed to adhere to COVID protocols. Moreover, in his third interview, Respondent linked COVID protocol issues to Complainant more directly. He described how a number of student athletes had recently told him that Complainant had sought to "rally" the players to get Respondent fired. Respondent specifically mentioned that Complainant was attempting to have the student athletes "tell people that [Respondent] was telling them to lie" on COVID forms.

The preponderance of the evidence therefore supports the conclusion that Respondent was aware that Complainant reported concerns about Respondent's failure to follow COVID protocols.

Complainant's Reports of Student Athlete Retaliation

Complainant stated that he reported concerns about Respondent's treatment of student athletes on multiple occasions, raising the issue with Mr. Richelew, Mr. Manuel, and Respondent

³⁸ In his March 30, 2022 response to the preliminary report, Respondent noted that he "never knew [Complainant] had contact with Mr. Richelew and Ms. Heinrich."

himself. Witness statements and documentary evidence corroborate this account. Mr. Richelew and Mr. Manuel, as well as Ms. Heinrich and Ms. Raymond, each said that Complainant contacted them with concerns that Respondent was retaliating against student athletes. Emails show that Complainant first reported his concerns to Mr. Richelew and Ms. Heinrich by April 3, 2021, and possibly as early as March 28. Between April and August 2021, Complainant followed up with Mr. Richelew multiple times and contacted Ms. Raymond, Mr. Manuel, and

Ms. Castrogiovanni about the same complaints.

The preponderance of the evidence thus supports the conclusion that Complainant reported concerns about Respondent retaliating against student athletes.

Respondent's Awareness of Complainant's Reports of Student Athlete Retaliation

Complainant stated that he reported these concerns directly to Respondent “multiple times.” He said that he recalled confronting Respondent about Respondent’s treatment of Strauss Mann during a May 12, 2021 meeting. According to Complainant, Respondent denied having a role in Mr. Mann’s departure from the team and told Complainant that Mr. Mann had “played his cards.” Initially Respondent asserted that the May 12, 2021 meeting that Complainant described did not occur, and he denied ever speaking with Complainant about Mr. Mann or the treatment of student athletes before he terminated Complainant. Only after reviewing the recording provided by Complainant did Respondent acknowledge that he had spoken to Complainant about Mr. Mann and about concerns related to student athletes more broadly prior to terminating Complainant. In the recording, Complainant is heard to express concerns to Respondent about the circumstances surrounding Mr. Mann’s departure; to state his belief that others blame Complainant for Mr. Mann leaving the hockey team; and to state his belief that student athletes felt mistreated but were afraid to come forward about their concerns.

Respondent further denied that Mr. Mann’s departure from the hockey team was related to any conflict between Mr. Mann and him. Respondent stated that he met with Mr. Mann twice after the March 2021 NCAA Tournament—once in a group with the other team captains and once in a meeting also attended by Mr. Hall. Respondent described those meetings as typical of the year end meetings he had with other student athletes. Respondent initially stated that he did not think Mr. Mann was attempting to undermine him or have him removed as head coach; in a follow-up interview, however, Respondent acknowledged that he “might have said something at some point” to alumni, agents, or others associated with the hockey program about how Mr. Mann was trying to get him fired. Respondent said he did not recall discussing Mr. Mann with Mr. Richelew.

We do not find Respondent’s account of his interactions with and regarding Mr. Mann around April 2021 credible. As noted above, Mr. Richelew and Ms. Heinrich stated that Respondent expressed concerns that student athletes were trying to get him fired. Mr. Hume also said that Respondent claimed Mr. Mann tried to get him fired. At the very least, the evidence is clear that Mr. Mann believed that his status with the hockey program was in serious jeopardy because of friction with Respondent. In his notes, Mr. Mann wrote that Respondent called hockey program alumni beginning on March 28, 2021, and told them that Mr. Mann was trying to get him fired. Mr. Mann also wrote that Respondent indicated in their April 2, 2021 meeting that Mr. Mann was no longer welcome in the hockey program. Mr. Hall stated that, during the April 2 meeting,

Respondent said that he could not guarantee Mr. Mann would keep his captaincy or maintain his level of playing time if he returned for another season. Mr. Hall noted that this meeting left both Mr. Mann and Respondent upset.

Other witnesses also described a conflict that counters Respondent’s account. Mr. Muckalt stated that he spoke with Respondent about issues between Respondent and Mr. Mann following the March 2021 NCAA Tournament. Ms. McNeil stated that Mr. Mann told her in an April 28, 2021

phone call that he was being forced to leave the hockey program. She said that she contacted Ms. Raymond on May 3 to report that Respondent had retaliated against Mr. Mann. And Mr. Richelew reported hearing from senior student athletes on the hockey team during an April 2022 exit interview that, in response to Mr. Mann raising concerns with the program, Respondent had threatened Mr. Mann's scholarship and captaincy and told a professional hockey team not to sign Mr. Mann to a contract.

We find that Respondent more likely than not believed that Complainant reported concerns about the treatment of Mr. Mann or other student athletes. In fact, the recording that Complainant provided indicates that Complainant raised concerns of this nature *to Respondent*. Several witnesses indicated that Respondent tied Complainant to concerns raised by Mr. Mann and other players. For example, Mr. Richelew stated that in a conversation in late March or early April 2021, Respondent told Mr. Richelew that student athletes were "talking to [Complainant]." Mr. Richelew noted, however, that Respondent did not say he thought Complainant was himself "raising issues." Ms. Heinrich said that, although she does not know if Respondent learned that Complainant was raising concerns about the treatment of student athletes, Complainant and Mr. Mann told her that Respondent was reaching out to alumni to tell them that Complainant and Mr. Mann were "trying to stir up trouble."

Others associated with the hockey team made similar statements. Mr. Wiseman said he heard from alumni that Respondent was telling people that Mr. Mann was trying to have Respondent fired and that Complainant may have been "supporting" or "guiding" Mr. Mann. Mr. Hume stated that he believes Respondent thought Complainant was working with Mr. Mann to get Respondent fired. Mr. Muckalt recalled that, in early April 2021, he and Respondent discussed both Complainant's job performance and a conflict between Respondent and Mr. Mann, though Mr. Muckalt described these concerns as two separate issues. Mr. Hall stated that he does not recall any direct references to Complainant during the April 2, 2021 meeting between Respondent and Mr. Mann, but he feels it was implied that Complainant was involved in the situation because of Complainant's close relationship with Mr. Mann.

These accounts reveal a widespread assumption within the hockey program that Respondent linked Complainant to issues surrounding the treatment of student athletes and in particular Respondent's conflict with Mr. Mann. And, as noted above, Respondent appeared to view the concerns being raised by Mr. Mann as a serious threat to his position as Head Coach.

The preponderance of the evidence therefore supports the conclusion that Respondent was aware that Complainant reported concerns about the treatment of Mr. Mann and other student athletes.

Causal Connection Between Complainant's Reports and Respondent's Actions

As explained above, we conclude that Respondent was aware that Complainant had made reports about (1) the mistreatment of female staff members by Mr. Bancroft and Respondent; (2) Respondent's failure to adhere to COVID-19 protocols; and (3) retaliation by Respondent against student athletes, including Mr. Mann.³⁹ There is no dispute that Complainant experienced adverse employment actions when his access to Yost Arena was temporarily disabled in April 2021 or when Complainant was terminated from his volunteer position in August 2021. Thus, we must

determine whether there is a causal connection between Respondent's awareness of Complainant's reports that implicate the Policy—*i.e.*, that female staff members were experiencing mistreatment from Mr. Bancroft and/or Respondent—and the adverse employment actions that Complainant experienced.

Revocation of Yost Arena Access in April 2021

According to Complainant's account, as well as the documentary evidence, Complainant's access to Yost Arena was revoked on April 14, 2021, and then reinstated the following day. Complainant said that around this time, Mr. Hume told him that Mr. Bancroft had said Complainant "won't be here very long." Complainant stated that he raised the issue with Respondent when he met with him on May 12, 2021, suggesting to Respondent that he revoked Complainant's access to Yost Arena because "you think I'm involved in this thing with Strauss [Mann]." ⁴⁰

Respondent stated that revoking Complainant's access to Yost Arena was a "mistake" and that he approved the revocation of Complainant's access because he believed standard operating procedure for volunteer staff members was to discontinue their access to facilities at the end of a sports season. Respondent stated that he had not yet made a final decision to terminate Complainant in April 2021 but that there had been "some conversations regarding moving in that direction."

We do not find Respondent's statement that the revocation of Complainant's access to Yost Arena in April 2021 was a "mistake" to be credible. Witness statements and documentary evidence suggest that Mr. Bancroft asked Mr. Barnes to revoke Complainant's access based on the understanding that Complainant was being terminated from his volunteer position. Mr. Bancroft said that he did so at the instruction of either Respondent or Ms. Raymond. By contrast, Ms. Raymond stated that Mr. Bancroft called her on April 7, 2021 to raise concerns about Complainant remaining on staff and to seek urgent revocation of Complainant's access to hockey program facilities. The evidence supports Ms. Raymond's account. Emails show that Mr. Bancroft emailed Ms. Raymond on April 7 to ask if she had time to speak about a "somewhat urgent" matter. On April 9, Mr. Bancroft sent Ms. Raymond a draft termination

³⁹ As noted above, *see supra* pp. 53-54, we conclude that Respondent was *not* aware that Complainant had raised concerns that current employees at the University had contemporaneous knowledge of Dr. Anderson's misconduct. Accordingly, we do not reference those concerns below because they cannot give rise to a violation of the Policy.

⁴⁰ As reflected in the recording, Complainant and Respondent discussed the revocation of Complainant's access to Yost Arena as well as Mr. Mann's departure from the Michigan hockey team.

letter addressed from Respondent to Complainant. Notes made by Ms. Raymond of a May 12 conversation reflect that she raised this incident with Respondent, asking him why Mr. Bancroft called her "3-4 times in one afternoon, eager and with urgency to remove [Complainant] from the program."

Other witness statements cast further doubt on Respondent's characterization of the Yost Arena access issue as a "mistake." Mr. Barnes said he does not know if it is standard practice to revoke access for volunteer coaches at the end of a sports season and that he revokes access when told to do so by team personnel or Human Resources. Mr. Hume stated more definitively that it would

not have been standard practice to revoke Complainant's access at the end of the season. Ms. Raymond, Mr. Richelew, and Ms. Heinrich each indicated that they viewed the revocation of Complainant's Yost Arena access as reflective of Respondent's desire to terminate Complainant's volunteer position in April 2021. Mr. Bancroft also said he understood when he asked Mr. Barnes to revoke Complainant's Yost Arena access that Complainant had been terminated. Ms. McNeil noticed around this time that Complainant was no longer included on certain staff emails.

The preponderance of the evidence thus supports the conclusion that Complainant's access to Yost Arena was intentionally revoked at the direction of Respondent or with Respondent's knowledge in April 2021.

Attempt to Terminate Complainant in April-May 2021

Respondent stated that he considered terminating Complainant in April 2021 and signed off on the draft termination letter that Mr. Bancroft sent to Ms. Raymond because Complainant did not respond to Respondent's attempts to get in touch, leading Respondent to believe that Complainant was "not interested in being part of our program." Respondent acknowledged that he also thought about terminating Complainant around this time because of reports that Complainant was criticizing Respondent's recruitment and coaching style in conversations with alumni and others outside the hockey program. Respondent described this conduct as "detrimental to the well-being of the hockey program."

There is evidence supporting Respondent's explanation of why he considered terminating Complainant at this time. The draft termination letter from early April 2021 cites the reason for ending Complainant's appointment as Complainant's "lack of ... response" to Respondent's attempts to contact him. Mr. Muckalt, Ms. McNeil, Mr. Hume, Mr. Maher, and Mr. Hall each said that they thought Complainant was not regularly present or was difficult to get in touch with after the March 2021 NCAA Tournament. Mr. Maher and Ms. McNeil acknowledged, however, that staff members do not come into the office nearly as often after the end of the season; Respondent himself acknowledged in the conversation with Complainant captured by the recording provided by Complainant that others on the hockey staff, such as Mr. Muckalt and Mr. Maher, were not regularly present around this time either.

Witnesses also noted that they had heard that Complainant criticized Respondent in conversations with hockey program alumni. Mr. Barnes stated that Complainant told him that he planned to raise concerns about Respondent's coaching style with Respondent and that Complainant said he was speaking with alumni about his concerns with the hockey program.

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Mr. Muckalt said he believed that Complainant's conversations with alumni regarding his concerns about Respondent and the hockey program influenced Respondent's eventual decision to terminate Complainant.

Notes made by Ms. Raymond of a May 12, 2021 conversation with Respondent show that Respondent told her he wanted to terminate Complainant because Complainant was "causing rifts and division within the team and staff" and telling student athletes that "coaches should have played you more." Ms. Raymond also wrote that Respondent said alumni told him Complainant was reaching out to them to criticize Respondent's relationship with student athletes. Ms. Raymond's notes reflect that, when she asked Respondent why Mr. Bancroft had

called her about urgently revoking Complainant's Yost Arena access, Respondent said that Mr. Bancroft did so because he was "also upset that [Complainant] was speaking negatively about the program." Respondent stated that he does not recall this May 12 discussion with Ms. Raymond, but he "might have" discussed the idea of terminating Complainant with Human Resources. Ms. Raymond's notes lend support to the account Respondent gave during a follow up interview that he considered terminating Complainant around this time because Complainant was taking actions that Respondent viewed as detrimental to the hockey program.

The evidence further indicates that, in the days and weeks before Respondent approved the draft letter terminating Complainant around April 9, 2021, Respondent told others that Mr. Mann, with the possible support of Complainant, was threatening his position as head coach. Mr. Richelew and Ms. Heinrich stated that Respondent called them in late March or early April 2021 and told them that student athletes were trying to get him fired.⁴¹ Both described efforts to reassure or calm down Respondent over the phone. Mr. Hume said he believed at the time that Respondent wanted to terminate Complainant because Respondent believed Complainant was behind a push by Mr. Mann to have Respondent fired. Mr. Muckalt stated that he and Respondent discussed issues with Complainant's performance as well as Mr. Mann's conflict with Respondent shortly after the NCAA Tournament ended in late March 2021.

During this time, Complainant's reports focused on Respondent's alleged failure to follow COVID protocols and retaliation against student athletes. Those concerns prompted Complainant to reach out to Ms. Heinrich for the first time on March 26, 2021 and to Mr. Richelew on March 28. Those same concerns were the subject of Complainant's April 3 email to Mr. Richelew and Ms. Heinrich, in which Complainant wrote that Respondent "was telling people outside Michigan Hockey that [Mr. Mann] was attempting to have him fired"; they also featured prominently in Complainant's April 5 email to Mr. Richelew and Ms. Heinrich, in which he told them that he believed Respondent had learned about his conversations with them. By contrast, Complainant first reported concerns about the mistreatment of female staff to Mr. Richelew on April 13 and to Ms. Raymond on April 19.

Contemporaneous documents indicate that, after Complainant's Yost Arena access was restored, Complainant attributed the revocation to his complaints relating to COVID protocols and retaliation against student athletes. In a May 4, 2021 email to Mr. Richelew, Complainant wrote that the revocation of his Yost Arena access vindicated a concern he had expressed to Mr.

⁴¹ In his March 30, 2022 response to the preliminary report, Respondent wrote that he told Mr. Richelew that he "had heard from current players that Mr. Mann was trying to get me in 'trouble,' not get fired."

Richelew and Ms. Heinrich in early April that Respondent would retaliate against him "if he found out I was speaking to compliance." The only concerns that Complainant raised directly to Ms. Heinrich, the Chief Compliance Officer, related to COVID protocols and treatment of student athletes. Complainant also stated in an interview that, in his May 12, 2021 meeting with Respondent, he referenced Mr. Mann and made a statement to Respondent to the effect of, "You guys take away my access, like you think I'm involved in this thing with Strauss."

The University administrators who discussed Respondent's desire to terminate Complainant in April and May 2021 attributed Respondent's motivation to issues other than Complainant's reports about mistreatment of women. Ms. Heinrich noted that she and others were "mindful ... that it was going to look like retaliation" if Respondent terminated Complainant around this time.

She explained that Complainant had raised a number of complaints about the hockey program that the University was still in the process of addressing, including through the May 2021 climate survey. Ms. Raymond made a similar statement. Although some University administrators worried that Complainant's termination could appear retaliatory or discourage individuals from participating in the climate survey, none suggested that they believed Respondent sought to terminate Complainant because he had reported concerns about mistreatment of women. Ms. Heinrich stated that she does not think Complainant's concerns about mistreatment of women motivated Respondent's actions. She instead pointed to Complainant's COVID protocol reports and noted that she believes Respondent thought Complainant was "stirring up the student athletes" to make complaints. Ms. Raymond said that she thinks Respondent had a difference of opinion with Complainant and was particularly put off by what he viewed as Complainant's "negativity."

Against this backdrop, Respondent's version of events—which downplays the significance of the concerns related to COVID protocols and student athletes—is not credible. The evidence overwhelmingly establishes that these concerns were a focus of Respondent and the hockey program at this time. By the first week of April, Respondent had informed Mr. Mann that his position in the hockey program was at risk and signed off on a draft letter terminating Complainant's volunteer position. At the same time Respondent also expressed concern that his job was in jeopardy.

The evidence shows that Respondent considered terminating Complainant in April and May 2021 for a number of reasons, including his difficulty getting in touch with Complainant and his belief that Complainant was badmouthing Respondent's management of the hockey program to alumni. Intermingled with these issues were the complaints that Complainant and Mr. Mann had made about COVID protocols and student athlete retaliation, which Respondent viewed as a threat to his job. The preponderance of the evidence therefore supports the conclusion that Respondent attempted to terminate Complainant, leading to the revocation of Complainant's access to Yost Arena, at least in substantial part because Complainant had raised concerns about COVID protocols and student athlete retaliation. As noted above, however, seeking to terminate Complainant and/or revoking his access to Yost Area for those reasons does not violate the Policy.

By contrast, the preponderance of the evidence does not support the conclusion that Respondent considered terminating Complainant because he reported concerns about the employment of individuals with contemporaneous knowledge of Dr. Anderson's misconduct or the mistreatment

of female staff. As noted above, we find that Respondent was not even aware of Complainant's reports related to Dr. Anderson, let alone motivated by those complaints to take action against Complainant. And we found little evidence suggesting that Complainant's reports about the treatment of female employees played a role in Respondent's decision-making. Therefore, we conclude that Respondent did not direct or permit the revocation of Complainant's access to Yost Arena and/or consider terminating Complainant in April and May 2021 because Complainant had made reports of conduct prohibited by the Policy.

Complainant's Termination in August 2021

Respondent stated that he terminated Complainant in August 2021 because he had decided, in consultation with his staff, that Complainant was no longer a "good fit" for the program.

Respondent stated that Complainant was “undermining the program” in conversations with others in the hockey community outside the University, including by complaining about “mismanagement” in recruiting and player retention and “badmouthing” the program. Respondent also said that, between July and August 2021, Mr. Hall expressed interest in taking on Complainant’s student athlete development work, and Respondent determined that it would be beneficial for a full-time staff member who could be present more often to be doing that work.

Witness statements corroborate this account. Mr. Muckalt said that, based on his discussions with Respondent at the time, he believes Respondent terminated Complainant because of issues with Complainant’s attendance and attitude and because Complainant undermined Respondent in conversations with student athletes and alumni. Mr. Manuel stated that Respondent indicated to him that he felt Complainant was “trying to undermine his leadership” and was taking the team in a negative direction. Ms. Raymond said that when Respondent told her in early August that he was “moving in a different direction,” he noted that the work Complainant was doing was similar to work already performed by the Student Development Office. She said that Respondent commented on Complainant’s negativity as well. Ms. Raymond said she also learned that Respondent and Complainant “did not have a lot of interactions over the summer.”

When asked why they thought Respondent terminated Complainant in August 2021, several witnesses echoed Respondent’s explanations. Ms. Raymond expressed her opinion that Respondent terminated Complainant in August 2021 because the two had a “differing of opinions” and because Respondent viewed Complainant’s student athlete development work as duplicative of other University resources. Ms. Heinrich said she believed Complainant’s termination could be attributed to his conflict with Respondent over management of the hockey team, his support for Mr. Mann, and his concerns about COVID protocols. Mr. Hall said that Complainant would show up late and leave in the middle of practice. Mr. Hall said that, since Respondent was focused on keeping the team positive, it made “perfect sense” to him when Respondent said he was “going to go in a different direction.”

Complainant’s own reaction to his termination suggests that Complainant believed his termination was motivated by Complainant’s relationship with Mr. Mann and the student athletes. When Respondent informed Complainant on August 11, 2021 that his position would be terminated, Complainant said, “Oh, this is about Strauss.” Complainant also said that he made a comment during the termination meeting to Mr. Muckalt that implicitly referenced Dr. Anderson, stating, “Guys that knew that we were being abused get to stay and guys like me

leave.” In referencing Dr. Anderson, however, Complainant did not indicate that he thought he had been terminated because of concerns that he had previously raised about employees with contemporaneous knowledge of Dr. Anderson’s misconduct.⁴² Contemporaneous notes of the meeting made by Respondent and Mr. Muckalt corroborate this account. Neither Complainant nor Respondent nor Mr. Muckalt mentioned any discussion of the treatment of female staff or adherence to COVID protocols during this meeting.

As a whole, the evidence indicates that a set of interrelated issues prompted Respondent to consider terminating Complainant in April and May 2021 and ultimately to move forward with the termination in August. These issues include: Respondent’s perception that Complainant was difficult to get in touch with and possibly no longer interested in being a part of the hockey program; Respondent’s belief that Complainant was undermining his authority in conversations with student athletes and alumni; and what Respondent believed to be Complainant’s role in

what Respondent viewed as an effort by Mr. Mann to get Respondent fired. Given the concerns that Respondent expressed to witnesses about Mr. Mann threatening his job, the assumption among witnesses that Complainant was implicated in that conflict, the reaction of Complainant and witnesses to Complainant's termination, and our finding that Respondent's account of his interactions with Mr. Mann is not credible, we find it more likely than not that Respondent terminated Complainant because he believed Complainant raised concerns about COVID protocols and Respondent's treatment of student athletes. As noted above, however, terminating Complainant's position for these reasons is not conduct prohibited under the Policy.

The preponderance of the evidence does not show that Respondent terminated Complainant for making a report of conduct prohibited under the Policy. As noted above, Respondent was not aware of Complainant's reports related to Dr. Anderson. Although we find it more likely than not that Respondent was aware that Complainant reported concerns about the mistreatment of female staff, the statements of the parties and witnesses, as well as documentary evidence, suggest that those reports did not cause Respondent to take any adverse actions against Complainant. Concerns related to Respondent's management of the hockey program, his alleged handling of COVID protocols, and his treatment of student athletes dominated the many conversations that took place in the days and weeks preceding Respondent's approval of the draft termination letter in early April 2021. Although Complainant made additional reports related to the mistreatment of female staff to Mr. Richelew, Mr. Manuel, and Ms. Castrogiovanni between April and August 2021, there is no evidence that Respondent learned of those additional reports; in any event, Respondent's reasons for dismissing Complainant remained consistent between April and August. The preponderance of the evidence therefore does not support the conclusion that Respondent terminated Complainant for making reports related to conduct prohibited under the Policy.

* * *

Although we do not find that Respondent violated the University's *Policy on Sexual and Gender Based Misconduct*, we do have concerns about the culture and operation of the men's hockey program. We identified multiple instances in which team leadership acted unprofessionally—

⁴² As noted above, Complainant expressed doubts in his interview that Respondent terminated him in retaliation for raising complaints related to Dr. Anderson.

especially in interactions with female staff members and in treatment of student athletes. Several witnesses told us that Mr. Bancroft is abusive with staff, particularly women, and that Respondent is either unable or unwilling to hold him responsible. Others told us about the fears of retaliation that permeated the hockey program under Respondent's leadership. Nearly a year ago, ECRT and Athletic Department leadership opted to administer an anonymous survey about the program because they were concerned that individuals would not come forward with open feedback otherwise. A witness in our investigation expressed a deeply rooted fear that she would face professional consequences from Respondent if she shared information with us. Senior student athletes on the hockey team told Mr. Richelew that Respondent would dock playing time for raising complaints and described their fears of suffering the same damage to their future careers that they believed Respondent had inflicted on Mr. Mann.

These issues facing the hockey program require attention. Despite prior efforts to assess and respond to allegations regarding the culture of the program, additional work remains to be done.

Specifically, the University should review whether Respondent's conduct violates other University policies, including but not limited to Standard Practice Guide 601.90, Protection from Retaliation. In addition, the Athletic Department should take steps to address a number of issues discussed in this report, including (1) the mistreatment of female staff members by Mr. Bancroft; (2) Respondent's inability or unwillingness to hold Mr. Bancroft accountable for his conduct; (3) pervasive fears among both student athletes and staff members of retaliation by Respondent for raising issues; and (4) inconsistencies in Respondent's recollection, perception, and/or characterization of key incidents and issues as compared with other participants.

Conclusion

The preponderance of the evidence does not support the conclusion that Respondent engaged in conduct that constitutes a violation of the Policy.

Appendix: Timeline of the Investigation Process

On August 13, 2021, ECRT received a report that Respondent had retaliated against Complainant by terminating him from his volunteer position.

On August 16, 2021, Complainant contacted ECRT Senior Investigator Tanya Castrogiovanni to inform her that he had hired an attorney to assist with a retaliation claim. Ms. Castrogiovanni informed Complainant that the University's Office of General Counsel would contact Complainant's counsel and determine the appropriate course of action.

On August 19, 2021, Ms. Castrogiovanni provided Complainant and Complainant's counsel with a copy of the Information for Complainants (Employee Procedures) document and links to the Interim Policy on Sexual and Gender-Based Misconduct, the Employee Procedures, and the Our Community Matters resource guide.

On August 31, 2021, Complainant met with Ms. Castrogiovanni. Complainant indicated that he wanted to move forward with a Formal Complaint. A transcript of this interview is included in the Electronic Evidence File (“File”).

On September 2, 2021, Complainant filed a Formal Complaint with ECRT alleging that Respondent had retaliated against him by terminating him from his volunteer position.

On September 8, 2021, WilmerHale informed Complainant that ECRT had referred his Formal Complaint to WilmerHale for investigation.

On October 6, 2021, WilmerHale met with Complainant and Complainant’s counsel to interview Complainant about the allegations in his Formal Complaint.

On October 21, 2021, WilmerHale met with Complainant and Complainant’s counsel for a follow-up interview about the allegations in Complainant’s Formal Complaint.

On October 28, 2021, WilmerHale notified Respondent of the allegations and advised him that ECRT had referred Complainant’s Formal Complaint to WilmerHale for investigation.

WilmerHale provided Respondent with a copy of the Information for Respondents (Employee Procedures) document; links to the Policy on Sexual and Gender-Based Misconduct and the Employee Procedures; and additional information about resources available to him.⁴³

WilmerHale also noted the University’s prohibition against retaliation. Also on October 28, 2021, WilmerHale notified Complainant and his counsel that the Policy violations alleged by Complainant did not involve Title IX Misconduct, and would accordingly be investigated pursuant to the Sexual and Gender-Based Misconduct process. In addition, WilmerHale

⁴³ On October 1, 2021, the University issued a revised Policy on Sexual and Gender-Based Misconduct, which replaced the Interim Policy on Sexual and Gender-Based Misconduct, as well as a revised set of Employee Procedures. As applicable here, the substantive definition of “retaliation” is the same under both policies; however, because the University’s revised policies and procedures grant the parties additional appeal rights beyond what was permitted under the interim policies and procedures, WilmerHale has conducted its investigation pursuant to the revised policies, as indicated in the October 28, 2021 notices it issued to both Complainant and Respondent.

provided Complainant and his counsel with links to the *Policy on Sexual and Gender-Based Misconduct* and the *Employee Procedures*.

On November 2, 2021, Complainant appealed the determination that the potential Policy violations at issue did not involve Title IX Misconduct.

On November 8, 2021, WilmerHale notified Complainant and Respondent that Complainant’s appeal had been received and explained the appeal process.

On November 9, 2021, WilmerHale met with Respondent to interview him about the allegations in Complainant’s Formal Complaint.

On November 12, 2021, WilmerHale received Respondent’s response to Complainant’s appeal.

On November 15, 2021, WilmerHale transmitted Complainant’s appeal and Respondent’s response to Complainant’s appeal to ECRT Director Tami Strickman for a determination.

On November 19, 2021, ECRT Director Strickman notified Complainant and Respondent that ECRT had affirmed WilmerHale's determination that the potential Policy violations at issue did not involve Title IX Misconduct.

On December 20, 2021, WilmerHale sent Complainant copies of the transcripts of his October 6, 2021 and October 21, 2021, interviews and a draft summary of his interviews. On January 3, 2022, Complainant provided comments on the October 6, 2021 transcript and the interview summary; on January 10, 2022, Complainant's counsel confirmed that Complainant had no comments on the October 21, 2021, transcript. Complainant's comments were reviewed, and relevant and clarifying information was added to the summary of his interviews. The transcripts and summary of his interviews, including Complainant's comments, are included in the File.

On December 20, 2021, WilmerHale also sent Respondent a copy of the transcript of his November 9, 2021, interview and a draft summary of his interview. Respondent did not provide comments in response to the transcript or summary.

On January 25, 2022, WilmerHale met with Respondent for a follow-up interview about the allegations in Complainant's Formal Complaint. On February 8, 2022, WilmerHale sent Respondent a copy of the transcript of his follow-up interview and an updated summary of his combined interviews. Respondent did not provide comments in response to the transcript or summary.

On February 11, 2022, Respondent contacted WilmerHale to request a second follow-up interview about the allegations in Complainant's Formal Complaint. This interview took place on February 15, 2022. On March 1, 2022, WilmerHale sent Respondent a copy of the transcript of his February 15, 2022 interview and an updated summary of his combined interviews. Respondent did not provide comments in response to the transcript or summary.

WilmerHale contacted 19 potential witnesses,⁴⁴ 16 of whom agreed to be interviewed.⁴⁵ WilmerHale interviewed the 16 witnesses between November 4, 2021 and April 18, 2022. Transcripts and summaries of 14 of the witness interviews are included in the File.⁴⁶ Documentary evidence provided by the witnesses and the parties is also included in the File. Each witness was provided with a copy of the transcript and a draft summary of his or her interview. Any comments the witnesses provided on their transcripts and/or interview summaries were reviewed, and relevant and clarifying information was added to their interview summaries as appropriate.

On March 18, 2022, WilmerHale sent the parties the Preliminary Report with a link to the File, excluding the Executive Summary, Analysis of Evidence and Findings, and Conclusion. The parties were given the opportunity to review and comment upon that information and to suggest any additional evidence that had not yet been considered by March 28, 2022. At the request of the parties, this deadline was extended to April 1, 2022.

Respondent submitted written comments on March 30, 2022 and April 1, 2022. Complainant submitted written comments and provided additional evidence on April 1, 2022. The parties'

written comments are appended to this report.

On April 7, 2022, Respondent contacted WilmerHale to request a third follow-up interview about the allegations in Complainant's Formal Complaint and about the evidence that Complainant provided in response to the Preliminary Report. This interview took place on April 12, 2022. On April 14, 2022, WilmerHale sent Respondent a copy of the transcript of his April 12, 2022, interview and an updated summary of his combined interviews. Respondent did not provide comments in response to the transcript or summary. The transcripts and summary of Respondent's four interviews are included in the File.

On April 27, 2022, WilmerHale sent the parties additional transcripts and summaries. Respondent submitted additional written comments on April 28 and April 29, 2022. On April 29, 2022, counsel for Complainant stated that Complainant would not submit any further written comments.

WilmerHale proceeded to make a final determination in this matter.

⁴⁴ The parties provided names of witnesses they indicated may have information relevant to our investigation. WilmerHale contacted and/or interviewed those witnesses we thought might have information that could assist us in determining whether Respondent violated the Policy.

⁴⁵ Mr. Mann declined to participate in an interview. Ms. Mandel and Mr. Bushey did not respond to our requests for an interview.

⁴⁶ As explained above, WilmerHale interviewed Mr. Masson and Ms. Kowich from the University's Office of General Counsel. Both referred to communications subject to the University's attorney-client privilege, which the University has not waived. Accordingly, the transcripts and summaries of those interviews were not provided to the parties, have not been incorporated into this report, and have not been included in the File.