


ARIZONA STATE UNIVERSITY

July 31, 2018

VIA ELECTRONIC MAIL

(mel.thomson@mtpconnect.org.au)

Dr. Melanie J. Thomson
15 Kurrajong Crt
Ocean Grove
Victoria, 3226
AUSTRALIA

Dear Dr. Thomson:

The Determination on the investigation conducted by the Office of Equity and Inclusion is enclosed, finding that the Respondent violated ACD 401 by his conduct directed towards a third party that you witnessed. Responsive administrative action is being taken to prevent any further recurrence of similar conduct.

All parties who make complaints or participate in an investigation are protected from retaliation. If you have any concern related to retaliation, please report it to the Office of Equity and Inclusion immediately. A link to the policy prohibiting retaliation is included here.

<https://www.asu.edu/aad/manuals/acd/acd401.html>

This concludes the complaint review process. Thank you very much for your cooperation.

Sincerely,



Mark Searle
Executive Vice President and University Provost

Enclosure: Determination

**OFFICE OF THE EXECUTIVE VICE PRESIDENT AND PROVOST
OF THE UNIVERSITY**

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July 31, 2018

DETERMINATION OF COMPLAINT OF VIOLATION OF ACD 401

The Office of Equity and Inclusion (OEI) is charged with the responsibility for investigating potential violations of the University's policies prohibiting discrimination, harassment and retaliation, ACD 401: Prohibition Against Discrimination, Harassment and Retaliation <https://www.asu.edu/aad/manuals/acd/acd401.html>. OEI received a complaint from an external party (Reporting Party) that a male professor (Respondent) had touched the breast of another female attendee at a convention while the female was taking a selfie photograph of the two.

Pursuant to the Complaint and Investigation Procedure, P20, <https://provost.asu.edu/policies/procedures/p20>, OEI initially opened an inquiry into this allegation in July 2017. OEI concluded at that time that there was insufficient evidence to find that any violation of ACD 401 had occurred. OEI re-opened its review of this allegation in February 2018, because new witnesses to the alleged underlying event were identified. The Provost has reviewed the investigation conducted by OEI and concurs with its conclusion, using the preponderance of the evidence standard, that the Respondent's conducted violated ACD 401. Responsive action will be taken.

The incident occurred on November 26, 2016, while the Respondent was attending an overseas convention for which he was an invited speaker. The University funded Respondent's airfare travel from Canberra to Melbourne, Australia where the convention was held and Respondent received per diem reimbursement on the day of the incident, the prior day and the subsequent day.

The incident occurred during a gala reception and dinner at the end of the first day of the convention. Respondent had given his presentation during the first day. An unnamed female asked to take a selfie photograph with the Respondent. The photo shows the Respondent's right arm and hand coming over the female's shoulder but his hand is in mid-air. The female told OEI, that after the photo was taken the Respondent grabbed her right breast with his right hand. She reported that she immediately addressed it on the spot with the Respondent to let him know that she was not okay with his action. According to the female, the Respondent told her "Don't post that to Facebook." The Respondent, however, denied having touched the female's breast and denied making the statement about Facebook. When looking at the redacted photograph¹ Respondent tried to recall why his arm would have been raised. He suggested that perhaps she'd begun to lose her balance while taking the photograph and he'd touched her arm to help steady her. Alternatively, the Respondent suggested that his hand might have been raised to protect his eyes from an anticipated flash of the camera.

I accept the finding of OEI that Respondent did grab the right breast of the woman in the photograph based upon the consistent information provided by the female involved in the incident, two guests at the gala reception and dinner who actually witnessed the incident as it occurred from a respective

¹ The Reporting Party provided OEI with a redacted photograph in July 2017. The Reporting Party had been given permission to share the photograph with OEI by the woman who had taken the selfie, so long as the woman's face was first redacted so as to remain anonymous.

distance of 20 feet and 10 to 15 feet, and two other guests who did not witness the incident but who were individually told about the incident by the unnamed female in the photograph the evening the incident occurred. The two witnesses who directly witnessed the incident did not observe the woman being unsteady on her feet. One described the female as body checking the Respondent after the touching occurred. The second individual observed the female react with shock and physically move away from the Respondent. One of these witnesses, the Reporting Party, spoke with the unnamed woman after the media outlet story ran and she asked the unnamed woman about the Respondent's quoted statement that he often puts his hand up in front of a camera if the flash on the camera is being used. The Reporting Party stated that the unnamed woman had said that the phone that she owned at the time did not have the capability for a flash when using the front facing camera in "selfie" mode, however, I note that OEI's report does not indicate whether Respondent was aware of that information. While Respondent may from time to time raise his hand to shield his eyes from a camera flash, I do not find that explanation persuasive against the weight of the evidence from the other witness statements. I also note that one attendee who witnessed the conduct and two attendees who directly heard from the female about the conduct respectively described her demeanor after the incident as being "annoyed or distracted," "frazzled and troubled," and "shocked."

The female involved in the incident did not make a report to the convention organizers about the incident and declined to participate in OEI's initial review of the matter or to speak to the media outlet. When she did speak with OEI in March 2018, she stated the information described above and also that she did not feel victimized, felt it was a clumsy interpersonal interaction and thought she had handled it in the moment. She had not wanted her friend to make a report of it. She also stated to the OEI investigator that the incident did not merit the man losing his career.

In the course of discussing the foregoing incident with OEI, the Reporting Party also commented on a second matter in which she felt Respondent had made an inappropriate comment.² I do not find that the preponderance of the evidence substantiates an ACD 401 policy violation on this unrelated matter.

It is the policy of ASU to provide an environment free of discrimination, harassment or retaliation for the entire university community and the University expressly prohibits discrimination, harassment or retaliation by its employees. ACD 401 provides that "inappropriate conduct need not raise to the level of a violation of federal or state law to constitute a violation of this policy and to warrant disciplinary action." ACD 401 defines sexual harassment as "unwelcome behavior or conduct of a sexual nature

² The Reporting Party stated that the Respondent joined a photograph with her and another female attendee at a convention while making a comment about "girl on girl action." There are two photographs of this matter – the first one depicts the Reporting Party and the other attendee who has a lipstick kiss on her left cheek and whose right arm is shown extending outward but is cut off by the frame of the photograph. The second photograph depicts Respondent joining the two women. I do not agree that he "photobombed" the picture as OEI concluded. The woman with the lipstick kiss on her cheek is smiling similarly in both photos and she has her right arm around Respondent. The Reporting Party has a slightly different look on her face but I don't find that it is an intentional grimace, as the Reporting Party stated. It is just as likely a bad photograph of the Reporting Party. Respondent denied making the alleged comment. The other female attendee in the photo had no specific recollection of anything being said by the Respondent. She did recall, however, the Reporting Party making a throw away comment of how she could not stand Respondent/didn't like him. To the extent that the Reporting Party's expression purposefully changed, that is another possible reason for it.

(including unwelcome sexual advances or activity), which is sufficiently severe or pervasive as to create an intimidating, hostile, or offensive environment for academic pursuits, employment, or participation in university-sponsored programs or activities.”

In this case, the University provided funding support for Respondent, in the form of in-country airfare and per diem reimbursements, as he was an invited speaker at the convention hosted by a third party. While the female who was the subject of the non-consensual touching was not a student or employee of the University, she was an attendee at an academic conference at which the Respondent, as a representative of the University, was a featured speaker. The inappropriate behavior was also witnessed by other conference attendees. The evidence supports the conclusion that Respondent’s conduct created an offensive environment for academic pursuits by the unnamed female attendee as well as other conference attendees. Respondent’s conduct also violates the Code of Ethics (ACD 204-01) which requires a faculty member “[t]o conduct one’s public and private lives so as to avoid bringing dishonor to oneself and the university” under Responsibilities to the Community and to not engage in “[h]arassment as explained in . . . and ACD 401, ‘Nondiscrimination, Anti-Harassment, and Nonretaliation’ under Responsibilities to Research, Scholarship, and/or Creative Activities.

Responsive action will be taken to prevent a recurrence of this conduct.

This Determination concludes the complaint review process.