

CONFIDENTIAL
INVESTIGATION REPORT

Issue: Possible Violation of SPG 201.89 or 201.89-1
Sexual Harassment and Harassment/Discrimination on the Basis of Race,
National Origin, Sex and Religion

Complainant: University of Michigan

Respondent: John Rubadeau

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Date: April 30, 2018

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Executive Summary

Six women, all of whom are employees of the University and who have or had offices in the proximity of the English Department, each expressed concerns about Respondent's behavior towards them. Respondent is a lecturer in the English Department.

Witness 1 said that Respondent walked into her office in December 2013 wearing a sweater decorated with reindeer on it and pointed out to her that the reindeer had penises that were visible; that he persistently asked her for hugs during the 2013-14 and 2014-15 academic years, which she persistently declined; and that on September 8, 2016, he made several requests for hugs, all of which she declined, and then brushed the middle of her back with his hand as he walked by her in the hallway. Witnesses 2, 3, and 4 each described unwelcome interactions with Respondent, all of which started the first time they met him when he entered their offices without knocking or identifying himself. During each of those interactions, Respondent made race-, religion-, national origin- and/or gender-based comments. In some instances he used profanity in front of them, and in one instance he indicated he was looking for a male colleague with whom to share a dirty joke. Witness 5, a woman of color in the English Department, said that although Respondent had been calling her by her correct name for the past two years, this past September, on a couple of occasions, Respondent addressed her by the name of another woman of the same race who also works in the Department. Witness 6 said that Respondent, who encountered her dog and her at work once about ten years ago, has regularly handed her dog biscuits when he encounters her in the workplace ever since, and even after she communicated to him that she wanted Respondent to stop bringing her dog biscuits.

Respondent initially acknowledged that he had commented about the reindeer's genitalia on his sweater and moments later stated that he could not remember whether he owned such a sweater. He acknowledges that he has asked Witness 1 for hugs numerous times, knowing her answer would always be no, and says that this is a game he plays with her. He denies that he brushed Witness 1's back with his hand while walking by her in the hallway. Respondent largely acknowledges the interactions he had with Witnesses 2, 3, and 4 in their offices, but does not believe they are problematic, because he says he always walks into people's offices without knocking if their doors are open, and he invites all new GSI's to come see his office, where he keeps an extensive photo collection of past students. Respondent said that he did not recall Witness 5 by name, but if he did call her by another professor's name, it is because they look alike, he sees them infrequently, and so he does not easily recognize them. He acknowledges regularly bringing Witness 6 dog biscuits, even after she told him to stop. He also acknowledges using profanity and telling dirty jokes regularly while at work.

The preponderance of the evidence supports a finding that Respondent has violated the [Sexual Harassment Policy](#) (Standard Practice Guide ("SPG") 201.89). Respondent's persistent request for hugs from Witness 1 in spite of her consistent refusal and his telling dirty jokes in the work place constitute "hostile environment" sexual harassment in violation of 201.89. Respondent's conduct towards Witnesses 2, 3, 4, 5 and 6, while not violations of University policy, was inappropriate.

The Investigation Process

The Offices for Institutional Equity (OIE) and Academic Human Resources (AHR) became aware in late September 2017 that several employees who work in or near the English Department had expressed concerns about potentially harassing behavior by Respondent that had occurred in early- to mid-September.¹ On September 27, October 4, and October 19, 2017 we had separate meetings with each of four witnesses (Witness 2, 3, 4 and 5). At the outset of each interview, we informed each witness that if she participated in the interview she would be protected from retaliation for her involvement and encouraged her to contact OIE if such retaliation concerns were to arise. We also encouraged each witness to refrain from discussing this matter with others and informed them how their statements would be used. Each witness then shared her concerns about Respondent. Subsequently, we sent each witness a draft summary of her statement to review for accuracy and completeness. All comments and suggestions that the witnesses provided were reviewed and relevant and clarifying information was incorporated, as appropriate.

In 2016, another witness (Witness 1) expressed related concerns about Respondent's behavior. Witness 1 was informed that if she participated in the interview she would be protected from retaliation for her involvement and was encouraged to contact OIE if such retaliation concerns were to arise. She also was asked to refrain from discussing this matter with others and informed how her statement would be used. Witness 1 was sent a draft summary of her statement to review for accuracy and completeness. All comments and suggestions that Witness 1 provided were reviewed and relevant and clarifying information was incorporated, as appropriate. At that time, Witness 1 decided that she did not wish to participate in OIE's process. However, Witness 1 decided subsequently that she was willing to participate as part of this investigation.

On December 13, 2017 we contacted Respondent via email to request to speak with him regarding this matter. We asked to arrange two meetings with him. The purpose of the first meeting was to discuss the policy, investigation process and provide specific information about the allegations. The purpose of the second meeting was for Respondent to have the opportunity to respond to the allegations. We informed Respondent that he could bring a support person, including an attorney, to the meetings if he wished. We also emphasized the University's prohibition on retaliation. In our initial email to Respondent, we also shared the following: the Information for Respondents document, the [*Sexual Harassment Policy*](#) (SPG 201.89) and the [*Discrimination and Harassment Policy*](#) (SPG 201.89-1) and OIE's [*Procedural Guidelines for Handling Discrimination and Harassment Complaints*](#).

Respondent was first available to meet on January 8, 2018.² We discussed the policy and process documents that we had emailed Respondent and advised him not to take any retaliatory action against any individuals involved in this matter. We thoroughly discussed the points raised in the Information for Respondents document. We also provided Respondent the opportunity to ask questions before proceeding. We provided specific details about the witnesses' concerns. Respondent signed a copy of the Information for Respondents document. After a short recess

¹ Since the allegations expressed were of a similar nature and concerned several different employees, the University is serving as Complainant in this matter.

² Eric Scheible, an attorney, served as Respondent's support person and attended this meeting.

during which he consulted with his support person, Respondent elected to provide his response to the concerns rather than wait for the second meeting. After his interview, we sent Respondent a draft summary of his statement to review for accuracy and completeness. Respondent's comments and suggestions were reviewed and relevant and clarifying information was incorporated, as appropriate.

During our interview with Respondent, we asked him if he was aware of any relevant witnesses, documents or other information related to this matter. Respondent suggested that we speak with two individuals who could confirm his opinion that Witness 2 was "mean" and "not a nice person." Since such information would have no bearing on the concerns at issue in this matter, we declined to interview those individuals.

As a result of information provided by Witness 1, which indicated that Witness 7 may have witnessed part of the interactions between Witness 1 and Respondent on September 8, 2016, on February 10 and February 23, 2018, David Baum interviewed Witness 7.

On February 28, 2018, Witness 6 contacted Mr. Baum to share concerns about Respondent's behavior towards her. On that same day, Mr. Baum interviewed Witness 6. He informed her that she would be protected from retaliation for her involvement and encouraged her to contact OIE if such retaliation concerns were to arise. He also encouraged her to refrain from discussing this matter with others and informed her how her statement would be used. Witness 6 then discussed her concerns about Respondent. Subsequently, Mr. Baum sent her a draft summary of her statement to review for accuracy and completeness. All comments and suggestions that Witness 6 provided were reviewed and relevant and clarifying information was incorporated, as appropriate. On March 1, Mr. Baum informed Respondent via e-mail about the concerns raised by Witness 6. Respondent provided a response to Witness 6's concerns via e-mail to Mr. Baum on March 2. Respondent's response to these concerns were included in the summary of the evidence, described in the next paragraph.³

On March 16, 2018, after completing the interviews and reviewing relevant documentation, we sent Respondent a draft of this report which contained a summary of the evidence OIE had received and which would be considered in reaching a finding in this matter. Specifically, we sent him everything in this report from this section forward except the Analysis of Evidence and Finding and Conclusion sections. Respondent was provided with the opportunity to review and comment upon the draft report and also to suggest any additional evidence that had not yet been considered. Respondent did not offer comments.

The Allegations

Witness 1

Witness 1, who is female, joined the English Department faculty in 2003 and is currently an associate professor. She states that she has experienced or witnessed the following:

³ On February 10 and 23, Mr. Baum interviewed the faculty member referenced in Witness 1's allegations and footnote 4, below.

In approximately December 2013, Respondent walked into her office wearing a Christmas sweater with reindeer on it. He then proceeded to ask her to “look at the cocks” and exclaimed “They have cocks! They have cocks!” Witness 1 says that the anatomy of the reindeer would not have been obvious had Respondent not pointed it out. She also noted that he was wearing the sweater on what seemed to be a teaching day.

Witness 1 states that during the time she has worked in the Department, Respondent has repeatedly asked to hug her and questioned why she does not want to be hugged. After brief and incidental periods of time when he would ask for hugs over the past decade, Witness 1 says that the behavior increased in the 2013 and 2014 school years. She says he would typically stop by her office, ask how she was doing, and then ask “Can I have a hug?” and wonder aloud “if I hug my children, if I hug my husband, and what I’ve got against hugs.” She says that in response to the last question, she explicitly replied, “It’s not professional behavior” and that she “should be able to feel comfortable in [her] workplace.” Witness 1 always stated refusal; on two separate occasions, Respondent responded to her refusal not with conciliation but instead with a supposedly humorous story “about [Respondent’s] hugging [a former LSA Dean] in conclusion to their meeting regarding the inappropriateness of physical contact,” an action to which the Dean responded with an expletive. Witness 1 says that in the fall of 2015, she told Respondent to stop even asking her for hugs and that she would not hug him despite any future requests. Witness 1 says that “it felt like [hugging] was the only thing he could talk about,” so she told Respondent she would not chat with him any longer “if he would not stop persisting in talking about hugging [her].” Witness 1 says that “for the school year 2015-16, he desisted and seemed to be able to interact normally.”

Witness 1 says that on September 8, 2016, Respondent made several requests to hug her, all of which she refused. She says he then told her “I just want to hug you. You’re so huggable. Every time I see you,” and gave her “an appraising inspection from head to toe.” She says he then followed her into the coffee room of the English Department Writing Program, repeating that she is “so huggable,” to which she replied, “No, I’m not, I’m prickly.”

Witness 1 says that she exited the coffee room and then stopped to talk with a colleague, Witness 7, who is a female professor in the English Department. Witness 1 says that while she stood in the hallway looking into Witness 7’s office, Respondent brushed her mid back with his hand. She noted that his behavior, particularly since she had specifically asked him to stop, “makes [her] extremely uncomfortable” and that she feels his behavior that day “was lewd and, because of previous conversations [she’d] had with [Respondent], aggressive.” She added “because he was fully aware of my feelings against requests for hugs, he was intentionally demeaning me; the fact that he combined his request with obvious ogling, pursuit, and actual touching, suggests that he knowingly sought to harass me.” Witness 1 says that after this incident, she kept her door closed during office hours that day because she “didn’t want him entering the space as he sometimes did to ask for a hug.”

Witness 2

Witness 2 is a female PhD student in History. In the Fall 2017 term, she had an appointment as a graduate student instructor in the English Department.

Witness 2 says she moved into her office in the English Department on the first day of classes that term. When she moved in, her office was set up so that when she was seated at her desk, her back was to the office door. About a week after she moved into her office, in the middle of the afternoon on September 12, 2017, she was seated at her desk when she heard a male voice behind her ask, “Are you the Turkish girl?” She turned to see an older white man with a white beard whom she did not know standing in her office. The man was later identified to her as Respondent, a lecturer in the English Department. The office door had been open, and Respondent had not knocked or otherwise announced himself before entering.

Witness 2 was bothered by the fact that Respondent assumed she was from a foreign country because her skin is brown and also because he referred to her as a “girl.” She says she replied that she was not Turkish and that she classified herself as a woman; he appeared to smirk at this. Respondent then asked her name. She told him her first name, which begins with the letter “J,” and he then told her his name was “John.” She says he then said, “[Witness 2’s name] and John – we would make a good pair,” or words to that effect, but did not clarify what he meant. She says she wondered if he thought she would be his grader or research assistant, or if he was trying to find someone other than her. Respondent then said, “You should come to my office,” or words to that effect, but he did not explain to Witness 2 why she should come to his office. He also did not say any more about himself, such as identifying his affiliation with the University or describing his teaching or research interests, nor did he ask her more about herself. Witness 2 replied “Why? Do you have a window?” Respondent replied that he did not have a window and then left Witness 2’s office.

Witness 2 says she was bothered by this interaction, so she reported it to her supervisor via email. She also says that she subsequently moved her desk so that her back was no longer facing the office door. She explained why she rearranged the layout to her office mate, Witness 3, who is a GSI in English and a student in Comparative Literature; Witness 3 is of Turkish descent. Witness 2 also described her interaction with Respondent to Witness 3. She says that Witness 3 then told her that she had two interactions with Respondent, during which he had made her feel uncomfortable.

Witness 3

Witness 3, is a woman who is a PhD student in Comparative Literature. In the Fall 2017 term, she had an appointment as a graduate student instructor (“GSI”) in the English Department Writing Program.

Witness 3 says that on Thursday, September 7, 2017 she was alone in her office on the third floor of Tisch Hall holding office hours when a man whom she did not know walked into her office without knocking and without identifying himself to her. She says he simply started speaking with her, observing that she was new and asking her name and where she was from. She says she told him her name and that she was from Turkey, and then asked him who he was; he replied “John,” without offering his last name or providing any other information about himself. Respondent then said, “So you’re from Turkey. I have a friend whose wife is from Turkey. It would be fun for you to become friends with his wife,” or words to that effect. Witness 3 says that she was confused that Respondent was saying these things to her. She says he then remarked that she was studying Comparative Literature and asked her if she knew his office

mate, who is an assistant professor in the Comparative Literature department; she answered that she did know him. She says Respondent left her office and that as he was leaving, he saw someone in the hallway to whom he remarked in a joking manner, “Where the fuck do you think you’re going?” or words to that effect. Witness 3 says that at the time Respondent left her office, she did not know who he was. The man was later identified to her as Respondent, a lecturer in the English Department.

Witness 3 says that soon thereafter, Witness 2, her office mate, told her about her own interaction with Respondent, including the fact that he had come by their office looking for “the Turkish girl.” Witness 3 says that she and Witness 2 agreed that they would raise concerns about their interactions with Respondent their supervisor. Consequently, Witness 2 sent an email to their supervisor, the director of the English Department Writing Program, which Witness 2 also forwarded to Witness 3.

Witness 3 described another interaction with Respondent, which occurred on September 12. She says that she and a classmate were standing in the hallway in Angell Hall trying to determine the location of a classroom for an upcoming class session. Respondent approached them and offered to help them find the classroom for which they were looking, and then pointed them in the right direction. As Witness 3 and her classmate parted ways with Respondent, Witness 3 heard him remark to someone else in a joking tone, “Where the fuck do you think you’re going?” or “What the fuck do you think you’re doing?” or words to that effect.

Witness 3 described a third interaction she had with Respondent, which occurred on September 14. She was sitting in her office with her husband. She says that Respondent appeared at her office doorway, and without knocking or announcing himself, said “You are the Turkish girl, right? You should meet Sean.” Witness 3 responded “Who’s Sean?” to which Respondent replied, “Sean is my friend whose wife is Turkish.” Witness 3 says she was confused about why Respondent was saying this to her. She says that Respondent then left her office doorway. Witness 3 says that she does not want Respondent to come to her office anymore, and that if he wants to speak with her, she would want to know his reasons for speaking with her up front.

Witness 4

Witness 4 is a female lecturer who has worked at the University of Michigan since 2012.

Witness 4 first became aware of Respondent at a ceremony recognizing winners of Sweetland writing awards, which took place about two years ago. She says that while Respondent was presenting an award to one of his students, he told the audience that he had accompanied the student to purchase her first training bra, or words to that effect, which had nothing to do with the student’s work or the award. She says that she and many of her colleagues were appalled by this.

In September 2017, Witness 4 assumed additional duties as a lecturer in English Department Writing Program (“EDWP”) and, as a result, her office moved from North Quad into Tisch Hall on the third floor. In mid-September, she says she was sitting at the desk in her office to hold office hours, with the door cracked open. Respondent came into the office without knocking or introducing himself and walked over to Witness 4 where she was sitting and asked her who she

was. She says she told him her first name. He stuck out his hand, and Witness 4 shook it. She says Respondent then said “I love a woman with a strong grip.” She says Respondent then said that he was looking for Witness 4’s office mate, who is male, to tell him that he was nominating him as “the department asshole.” Witness 4 responded that her office mate was not there. Witness 4 says that up to this point in the interaction, Respondent was standing over her as she sat at her desk; she felt like he was looking down her shirt. She also says that at some point, Respondent said his name was “John,” and that this prompted her to remember him from the Sweetland awards ceremony described above.

Witness 4 says that Respondent then said, “Do you have a minute? You’ve got to come see my office,” or words to that effect. Witness 4 says that, to be polite, she followed Respondent to his office. On the way, Respondent said, “You know how sometimes people say that something is really great, and then it turns out not to be that great? Well, my office really is great,” or words to that effect. When they arrived at his office, Respondent went into the office. She initially followed him into the office, but then quickly retreated back to the doorway. She says the office was plastered floor to ceiling with photographs of students; she described it as “very weird.” She says that she made small “oohs” and “aahs.” She says she started backing away to leave, and Respondent started pulling out photo albums for her to look at and pointing out additional photos hanging in the office. It seemed to Witness 4 that Respondent was trying to draw her more into his office and prolong the interaction; she stayed in the doorway, not wanting to go in any further. She says that at some point Respondent asked her what her last name is. She told him, and he then asked her whether she was Italian. She responded that she was Jewish. Respondent then asked “How do you pronounce chutzpah?” Witness 4 responded, “Uh . . . chutzpah.” Respondent said, “I’m trying to think of other Yiddish words but I cannot think of any” Then Witness 4 left Respondent’s office. Later that same day, she informed her supervisor, the director of the EDWP, about her interaction with Respondent.

Witness 4 says she had two more interactions with Respondent. The first of these took place the week following the first interaction. Respondent peeked in her office and said, “I’m looking for [Witness 4’s office mate], but he’s not here;” he then left. The next interaction took place sometime during the week of September 25. Respondent again peeked in her office and said “I was looking for [Witness 4’s office mate] to tell him an obscene joke, but he’s not here. Bye.” Respondent then left.

Witness 4 also described a situation she learned about from a male colleague, in which Respondent told this colleague and a female undergraduate student who was present a joke that was about having intercourse with a sheep. While telling the joke, Respondent used the words “fucking sheep.”

Witness 4 described her interactions with Respondent as “uncomfortable.” She believes that some of the comments he makes may seem innocuous, but on the whole seem intended to test boundaries and create discomfort.

Witness 5

Witness 5 is a female assistant professor in the English Department. She began working in the Department in 2014 and is in her third year on a tenure track.

Witness 5 has known Respondent since she started her employment in 2014. She says that up until this year, Respondent addressed her by her first name. In September of this year, however, she says she had two interactions with Respondent during which he called her “Aliyah.” There is an assistant professor in the English Department whose first name is “Aliyah.” Witness 5 described both herself and the other assistant professor as women of color. Witness 5 says that she and this other assistant professor do not look alike.

Witness 5 characterized this behavior on Respondent’s part as aggressive. Each time Respondent has called her “Aliyah,” it has happened in the stairwell. Respondent has called after her saying “Aliyah, give me your name one more time,” or words to that effect, and intimates that he cannot pronounce her name correctly. During the first of these interactions, Witness 5 simply responded “No,” and kept walking. During the second interaction, Witness 5 told Respondent, “It has been three years,” or words to that effect, and kept walking. Because of these interactions, Witness 5 says she has been avoiding Respondent.

Witness 5 says she discussed these interactions with a female associate professor in the English Department, to get advice about how to handle this situation. The associate professor told her that she believed that Respondent was trying to get a reaction out of Witness 5.

Witness 5 said during the OIE interview that she thinks the matter has been resolved, because the week before the interview, when Respondent and she passed each other, he looked at her and simply said, “Hello.”

Witness 6

Witness 6 is a female faculty member in the English Department. She has been teaching at the University of Michigan since 1999. She says she has known Respondent since about one or two years after she started teaching here.

Witness 6 says that one day about ten years ago, on a cold winter day when her power at home was out, she happened to bring her dog, along with her children, into Angell Hall. She says that Respondent encountered the dog and her children in a friendly and appropriate way that day. She says that what it set in motion, though, was a “bizarre ritual that Respondent has performed these [past] ten years and continues to perform”: whenever he sees her on campus, he gives her a dog biscuit.

Witness 6 says that at first, when Respondent would give her a dog biscuit as they ran across each other in the hallway, or on the elevator or stairs, she thought it was an act of friendship, based on their mutual love of dogs. She says the ritual slowly began to become tedious, as he would hand her a biscuit at inopportune times, such as when she was on her way to teach. She says that it then “began to feel insidious, a strange manipulative gesture in which [Respondent] positioned himself as the ‘master’ and positioned [her], by contrast, as ‘the pet’ . . . or . . . even, symbolically, as ‘the submissive bitch.’”

Witness 6 says that approximately two or three years after Respondent started insisting that she accept his dog biscuits, she “communicated her displeasure at this behavior” and “made it clear

that [she] was not a consenting participant in this interchange.” Nonetheless, she says that Respondent has continued to insist on handing her dog biscuits. She has stopped accepting them, except on rare occasions when other people are present (so as not to make a scene) or when she simply does not feel like confronting him.

She says that once about four or five years ago, Respondent threw a biscuit towards her while they were in the hallway outside the English Department offices, in front of other people. She did not reach for the biscuit, nor did she pick up its remains on the floor. On another occasion around this time, she says she found the plastic bin attached to the wall outside her office halfway filled with about 30 dog biscuits.

Witness 6 estimates that in all, Respondent has been handing her dog biscuits every time he encounters her, that is, more or less on a monthly basis for the past ten years. Since this past fall, about the time the #MeToo movement started, she says she has stopped looking at him or acknowledging his presence whenever possible; however, he sometimes corners her in front of students, and she feels forced to preserve appearances in front of them. She says that Respondent’s persistent behavior feels to her like a “weird, sexist power trip.” She adds that “[a]s a former Director of Undergraduate Studies, as a tenured professor, and as a woman, I seem to irritate or provoke him. Handing off this biscuit to me as if I am his own pet, in need of his reward, bizarrely expresses, and placates, his own issues with women, and perhaps with women in authority.”

Witness 6 says she would prefer it if Respondent would not approach her any more.

Response to the Allegations

John Rubadeau

Respondent is a male and a Senior Lecturer in the English Department. He has been teaching at the University since 1986.

Response to Witness 1’s claims

At the beginning of the interview with Respondent, while the OIE investigator was informing Respondent about Witness 1’s claim that in December 2013 he walked into her office wearing a Christmas sweater with reindeer on it and exclaimed to her that the reindeer “had cocks,” Respondent said, “That was a good one,” and remarked that he had used the word “dicks” and not “cocks.” A few minutes later, after Respondent had been informed of all of the claims and the OIE investigator began to interview him, Respondent said that he could not remember that he had a particular sweater like this. He said that he previously had a number of sweaters with images of deer on them but could not recall if any of the deer on his sweaters had penises. He said that “this was a phase,” and he no longer had any sweaters containing deer images.

Respondent estimated that he has asked Witness 1 for hugs about 100 times. To him, it was a game; he would ask her, “Do you want a hug?” knowing that her answer would always be “no.” He noted that he “plays the same game” with another female employee in the department, and

that it does not bother her. He said that this employee responds to him by saying “Get out of here!”

Respondent says that Witness 1 never told him to stop asking for hugs and that if she had, he would have stopped. He added, “Apparently, [Witness 1] does not like to be kidded.” He says never once has he hugged Witness 1. He also mentioned that there was another employee whom he asked if she wanted a hug. That employee told him that she did not like hugs, so he stopped asking her. Respondent says that these interactions with the other employee occurred a long time ago and that the employee no longer works in the department, so he does not remember the identity of this employee.

With respect to Witness 1’s claims that Respondent asked her for hugs and brushed her back with his hand on September 8, 2016, Respondent said initially that he did not remember any interaction on this particular date. When the OIE investigator refreshed his recollection by telling him that he made several requests to hug her on that day and that some of the interactions took place in the English Department’s coffee lounge, Respondent said that Witness 1 said that she did not like to be hugged. Respondent denied that she said that hugging in the work place was not professional. When asked whether he brushed her back with his hand while walking behind her in the hallway as she stood in another professor’s office doorway, he said that he “has never touched her, so the incident in the hallway never happened,” and that Witness 1’s claim is baseless.

Response to Witness 2’s claims

Respondent said that he walked into Witness 2’s office in September 2017 and asked her if she was “the Turkish girl,” because he thought she was Witness 3.⁴ When asked if he knocked before entering Witness 2’s office, he said that he did not and that it never occurred to him to do so, because the door was open. He said that Witness 2 responded that she is not Turkish and that she is a woman, so Respondent then asked her where “the Turkish woman” was. He said he asked her name, and when she told him, he said “[Witness 2] and John – we’d make a good dance team,” because Witness 2’s name begins with a “J,” and he liked that their names were alliterative.

When asked if he identified himself to Witness 2 by telling her his last name and that he was a teacher in the Department, he replied that he did not, because everyone knows him. He said he asked Witness 2 to come to his office. When asked if he noticed her reaction, Respondent said that she was not smiling and was mean. He said that he has not spoken with Witness 2 since that day, because she is not the type of person he wants to befriend.

Response to Witness 3’s claims

Respondent said that he walked into Witness 3’s office in September 2017 and asked her name and where she was from. When she told him she was from Turkey, he asked her if he wanted to meet one of his colleagues whose wife is also Turkish. He assumed Witness 3 would want to

⁴ Witness 3 is Witness 2’s office mate, whom Respondent had met previously. When Respondent met Witness 3, he learned she was Turkish. See Response to Witness 3’s claims, below.

meet him, because she was new here and would therefore want to meet his colleague's wife. When asked about how Witness 3 reacted, Respondent said that her response was "unconcerned" or "indifferent."

Respondent could not remember whether, upon leaving Witness 3's office, he said to another person who was passing by, "Where the fuck do you think you're going?" He also said, however, that he could have said this, as it is a way that he likes to kid people. He does not remember whether he made the same sort of remark to someone in the hall after interacting with Witness 3 again a few days later, but that he might have because he has said this many times. When asked, he said that he swears all the time at work.

Respondent does not remember returning to Witness 3's office a few days later and asking her again if she was the Turkish girl and whether she wanted to meet his friend whose wife is Turkish, but he said that he might have done that.⁵

Response to Witness 4's claims

Respondent initially did not recall walking into Witness 4's office in September 2017 and approaching her as she sat at her desk, but when he learned that she was the office mate of a male in the department whom he knows, he did remember parts of that interaction. He did tell her that he was looking for her office mate to tell him that he was nominating him as "the department asshole." He added that he has said this many times about this male colleague, and that he means it endearingly, because he loves him. He did not recall specifically shaking Witness 4's hand and remarking to her that he loves a woman with a strong grip, but he might have said that to her, because he says this to all men and women whom he meets the first time and who shake hands firmly.

Respondent added that he has taken it upon himself to teach a number of students from India how to shake hands firmly, because people from India shake hands with weak grips. He thinks that teaching them how to shake hands firmly will help them in the business world.

When asked whether he stood over Witness 4 at her desk and looked down her shirt, Respondent said that he might have stood over her as she sat at her desk, but he did not look down her shirt. He said that he is a 77-year-old man and was not interested in Witness 4 sexually.

Respondent did not recall that he invited Witness 4 to his office that day, but he added that it is likely that he did, because he invites all the new GSI's to come see his office, in which he displays a collection of photographs of a large number of the students he has taught over the years. He also said that he would not have introduced himself to Witness 4 or told her he teaches in the Department, because everyone knows who he is, and his assumption is that the new employees will know he is a teacher in the Department once he tells them he has an office.

⁵ After reviewing a draft of his statement, Respondent said that he is certain that he did not return to Witness 3's office and ask her again if she was the Turkish girl and if he wanted to meet his friend whose wife is Turkish.

Respondent said that he does not remember asking Witness 4 how to pronounce the word “chutzpah” or trying to think of other Yiddish words to discuss with her, but he might have done that, because he gets confused between Yiddish words and Arabic words.

Respondent said that he did return to Witness 4’s office a week or two later and told her that he was looking for her office mate to tell him an obscene joke. He said he has stopped by this office to tell the office mate obscene jokes many times.⁶

Response to Witness 5’s claims

Respondent said that he does not know anyone in the Department who goes by Witness 5’s name, which the OIE investigator pronounced a couple of times for him. He said that if he did call Witness 5 by the name “Aliyah,” it’s because she looks like another professor in the Department whose name is Aliyah. When asked, Respondent did not recall Witness 5 telling him that he had known her for a few years and that he should know her name by now.⁷

Response to Witness 6’s claims

Respondent was asked in an email if he engaged in the following behavior with Witness 6:

- He has been handing Witness 6 dog biscuits at work regularly for approximately the past ten years whenever he sees her.
- After the first two or three years, Witness 6 communicated to him that she did not like this and wanted Respondent to stop bringing her dog biscuits.
- On one occasion approximately four or five years ago, in front of other people, he threw a biscuit towards Witness 6 while she and Respondent were in the hallway outside the English Department offices.
- On one occasion about four or five years ago, he put about 30 dog biscuits in the plastic bin attached to the wall outside Witness 6’s office.

Respondent’s response was “David, guilty of all charges. Mea culpa, mea culpa, mea maxima culpa.” He did not otherwise comment on or deny the behavior.

⁶ After reviewing a draft of his statement, Respondent said “Certainly, I have stopped by my male colleague’s office many times. However, while I may have said ‘obscene’ in my interview, that was probably a mistake. When my wife read this summary, she said ‘That’s ridiculous. You always say “dirty jokes.”’ So I probably said ‘dirty jokes’ rather than ‘obscene jokes.’*” Respondent added, “*NB. Since our meeting . . . I actually remembered that joke. It’s a great one. A real winner. Of course, I did not tell it to Witness 4 because I had just met her. I only told her that I had a dirty joke to tell her officemate.”

⁷ After reviewing a draft of his statement, Respondent said, “I believe I told you that these two professors were Indian women and that I saw them infrequently; ergo, I didn’t easily recognize them.”

Respondent's additional statements

Unprompted, Respondent referenced a meeting he attended in July, 2017 with Pamela Heatlie, Associate Vice Provost for Academic and Faculty Affairs and Senior Director of the Office for Institutional Equity and English Department Chair David Porter, at which the fact that he hugs people at work and other issues were discussed. Respondent said that since this meeting, he has been using his class syllabi to inform students that if they did not want to be hugged, they should call or email him and tell him so, and that they were free to express their gender identities to him as they saw fit.⁸

When asked whether he tells dirty jokes at work, Respondent said that he does so frequently. He stated he likes dirty jokes. He said he tells them to Witness 4's office mate and everyone else who is a friend of his. He said he has told dirty jokes to friends at work for the last 32 years, even when there are other people present whom he does not know or who are not his friends. The presence of someone he does not know or who is not a friend does not stop him from telling dirty jokes.

Respondent said he tells dirty jokes to students in class and during office hours. Sometimes he tells dirty jokes to students to teach them about proper language usage. Sometimes he tells dirty jokes to students, friends and other people in the workplace just for fun.

Other Witnesses

Witness 7

Witness 7 was asked whether she had any knowledge or independent recollection of Respondent walking by her office and lightly touching Witness 1's back on September 8, 2016. In response, Witness 7 said that she did not have a recollection about this incident, nor did she recall that Witness 1 said anything to her about the incident at the time. She also said that she has spoken several times with Witness 1 about Respondent's unwelcome conduct towards her, including one conversation in Witness 1's office, during which Witness 1 grew visibly upset out of frustration that Respondent persistently bothered her and would not leave her alone.

Other Evidence

Documentation

No additional relevant documentation was presented by Respondent or any of the witnesses.

Relevant Disciplinary History

Respondent has previously been the subject of other complaints at the University of Michigan.

⁸ After the interview, Mr. Baum asked Respondent if he could provide a syllabus that contains this language. Respondent replied that he could not send a syllabus "because these instructions were oral when going over the syllabi," adding "[h]owever, you can ask any student I taught this semester or last semester, and that student will corroborate my claim."

In 2012, concerns were raised about Respondent rubbing his beard on English Department employees and some concerning comments he had made to some students. As a result, Anthony Walesby, the former Associate Vice Provost for Academic and Faculty Affairs and Senior Director of the Office for Institutional Equity, Christine Gerdes, Associate General Counsel, and Jeffery Frumkin, Associate Vice Provost for Academic and Faculty Affairs and Senior Director, Academic Human Resources met with Respondent and his attorney to address these issues.

In 2015, Respondent made a remark at the ceremony recognizing winners of the Sweetland writing awards about which some attendees raised concerns. (See the reference to this incident in the “Witness 4” subsection of the “Allegations” section, above.)

In 2017, a student in Respondent’s class complained that Respondent would not let the student use preferred pronouns in his class. This caused the student to drop the class. As a result, and pursuant to some concerns raised by the English Department’s Executive Committee, Pamela Heatlie, Associate Vice Provost for Academic and Faculty Affairs and Senior Director of the Office for Institutional Equity, and David Porter, English Department Chair, met with Respondent and his attorney to address these issues.

Analysis of Evidence and Finding

The [*Discrimination and Harassment Policy*](#) provides that:

For the purposes of determining whether a particular course of conduct constitutes discrimination or harassment under this policy, the following definition will be used:

Conduct that is based upon an individual’s race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight or veteran’s status that:

1. adversely affects a term or condition of an individual’s employment, education, living environment or participation in a University activity;
2. is used as the basis for or a factor in decisions affecting that individual’s employment, education, living environment or participation in a University activity; or
3. has the purpose or effect of unreasonably interfering with an individual’s employment or educational performance or creating an intimidating, hostile, offensive, or abusive environment for that individual’s employment, education, living environment, or participation in a University activity.

See SPG 201.89-1.

For the purpose of determining whether certain behaviors constitute sexual harassment under the University's [*Sexual Harassment Policy*](#), the following definition is used:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute harassment when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education, living environment, or participation in a University activity;
2. submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a University activity; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's employment or educational performance or creating an intimidating, hostile, offensive, or abusive environment for that individual's employment, education, living environment, or participation in a University activity.

See *Sexual Harassment Policy*, SPG 201.89.

In assessing allegations of discrimination, harassment and sexual harassment under these policies the University uses a "preponderance of the evidence" standard. Under this standard, individuals are presumed not to have engaged in the alleged conduct unless a "preponderance of the evidence" supports a finding that the conduct occurred. This "preponderance of the evidence" standard requires that the evidence supporting each finding be more convincing than the evidence offered in opposition to it. As discussed more fully below, Respondent's persistent request for hugs from Witness 1 in spite of her consistent refusal and his telling dirty jokes in the work place constitute "hostile environment" sexual harassment in violation of 201.89. Respondent's conduct towards Witnesses 2, 3, 4, 5 and 6, while not violations of University policy, was inappropriate.

Findings of Fact

Unwelcome requests for hugs and unwanted touching

Witness 1 asserts and Respondent admits that he solicited hugs from her numerous – as many as "about 100," according to Respondent – times. Every time Respondent asked, Witness 1 declined Respondent's offer for a hug. Respondent says that to him, this was a game, and that he knew that Witness 1 would always decline his request for a hug. Respondent claims that Witness 1 never told him to stop asking for hugs and that if she had, he would have stopped. But Witness 1 says she did tell Respondent to stop asking her for hugs in the fall of 2015, and that after that, he stopped requesting hugs for the remainder of the 2015-2016 academic year, but resumed again in the fall of 2016. Whether or not Witness 1 told Respondent to stop asking for hugs, Respondent should have known from Witness 1's constant and consistent refusals that his conduct was unwelcome.

With respect to the incident of September 8, 2016, Witness 1's claim that Respondent made several requests to hug her on that day is supported by Respondent's acknowledgement that the

interactions occurred and that he said he heard Witness 1 say that she did not like to be hugged. Witness 1 asserts that Respondent lightly touched her on the back while walking behind her, but Respondent denies that he ever touched her. Witness 7, to whom Witness 1 was speaking at the time, does not recall the incident. There is insufficient evidence upon which to conclude that Respondent touched Witness 1.

Sexualized jokes

Respondent acknowledges, as reported by two of the witnesses, that Respondent engages in telling “dirty jokes” in the work place.

Witness 1 says that Respondent walked into her office sometime in December 2013 wearing a sweater with reindeer on it, asked her to look at the sweater, and pointed out that the reindeer had visible penises, which Respondent says he referred to as “dicks.” During the OIE interview, Respondent first admitted that this interaction occurred and said he used the word “dicks.” A few minutes later, he claimed not to remember whether he ever had a particular sweater like this at all. We do not find this latter assertion to be credible.

Witness 4 related an anecdote she heard from a male colleague in which Respondent told him a joke in the presence of a female undergraduate student that involved having intercourse with a sheep, during which Respondent used the words “fucking sheep.” Respondent did not address this particular incident during the OIE interview.

Respondent said that he likes dirty jokes, and has told them frequently in the workplace over the past 32 years. He tells them to friends, even when there are other people present whom he does not know or who are not his friends. Respondent said he tells dirty jokes to students in class and during office hours, and that he sometimes uses dirty jokes to teach students about proper language usage. He also said that he sometimes tells dirty jokes to students, friends and other people in the workplace just for fun.

Putting aside the issue of use of “dirty jokes” to teach proper English usage in the classroom, the evidence establishes that Respondent tells sexualized jokes regularly and without establishing whether the people who are present when he is telling them care to hear them or not.

Interactions with new female employees

With respect to the interactions described in the next two paragraphs, Respondent either admitted that they occurred or did not recall specifically whether they occurred but acknowledged that they might have taken place. He did not claim that any of these interactions did not occur. We therefore find that a preponderance of the evidence establishes the following:

On at least one occasion, Respondent entered the offices of Witnesses 2, 3, and 4, each a new female employee whom he had not previously met, at least one of whom had her back to the door, and without knocking or identifying himself first. Respondent’s conversations with each witness proceeded similarly, with Respondent asking questions of each one to learn more about them, revealing very little about himself, never telling them his employment status in the English

Department, and then inviting Witness 2 and 4 (but not Witness 3) to come see his office without explaining why.

There were distinct aspects of Respondent's conversations with each witness. He asked Witness 2, an adult woman of color, if she was "the Turkish girl," mistaking her for her office mate (Witness 3). He asked Witness 3 where she was from, and upon learning she was from Turkey, proceeded to tell her she would enjoy becoming friends with the Turkish wife of a friend of his. Before leaving Witness 3's office, he asked someone who was passing by, "Where the fuck do you think you're going?" At a subsequent interaction in the hallway with Witness 3, as they were parting ways, he again used profanity as he addressed another person who was passing by. He walked up to Witness 4 while she was sitting at her desk, stood over her at an angle where he could see down her shirt, and when she shook his hand, told her, "I love a woman with a strong grip." He told Witness 4 he was looking for her office mate to tell him he was nominating him as "the department asshole." He asked Witness 4 about her nationality, and when she told him she was Jewish, he started asking her questions about the meaning of Yiddish terms. He stopped by her office again and said he was looking for her office mate to tell him a dirty joke.

Respondent has not provided information that his actions were welcome or he would have reason to believe they were. Witness 2, 3, and 4 were each bothered by their interactions with Respondent enough to complain about them to their supervisor, the director of the English Department Writing Program. And after her interaction with Respondent, Witness 2 subsequently moved her desk so that her back was no longer facing the office door.

Interactions with Witness 5

On a couple of occasions, Respondent has called Witness 5, a woman of color, by the name of another professor in the English Department, also a woman of color, even though Respondent has known her for three years and had previously consistently called her by her given name. Respondent explained that the "two professors are Indian women" that he sees infrequently, and that therefore he did not easily recognize them.

Interactions with Witness 6

Respondent acknowledges that Witness 6's assertions are true. We therefore find that Respondent has been bringing dog biscuits to Witness 6 on almost a monthly basis for about 10 years, including about seven or eight years after she told him that his behavior was unwelcome. We also find that on one occasion, Respondent threw a dog biscuit towards her in front of others, and on another occasion he put about 30 dog biscuits in a bin located immediately outside her office.

Determinations with respect to 201.89 and 201.89-1

The preponderance of the evidence establishes that Respondent violated the *Sexual Harassment Policy*. He repeatedly asked Witness 1 for hugs over a long period of time, in spite of her constant and consistent refusals, and asked her again after she specifically asked him to stop. Respondent has also consistently told sexualized jokes in the work environment without regard to whether those present wanted to hear them. Unwelcome references to "dicks" and

“fucking sheep” are not appropriate the work environment. When viewed in light of the totality of the circumstances, Respondent’s behavior was sufficiently persistent and pervasive as to have created a sexually harassing hostile environment in violation of SPG 201.89. We note that Respondent indicates that he never intended to harm anybody through his actions. While intent may be a factor considered in determining how to respond to policy violations, it is not a factor in determining whether sexual harassment has occurred. Specifically, SPG 201.89 provides:

This policy addresses intentional conduct. It also addresses conduct which results in negative effects even though such negative effects were unintended.

As such, Respondent’s actions and their impact on those to whom he subjected them were used to reach this conclusion, not his self-stated intent to be funny or friendly.

With respect to Respondent’s statement that he now informs students that if they do not want to be hugged by him, they should call or email him to notify him, we note that the burden here should not be on his students. Rather, Respondent should not engage in hugging, telling sexualized jokes, or any other conduct of a sexual nature unless he knows the behavior is welcome.

Respondent has engaged in other inappropriate behaviors in the work environment, which, when viewed collectively, are concerning and should be addressed. As detailed above, Respondent has engaged in inappropriate comments or behaviors related to gender, race, national origin and religion. Even if these behaviors at this time are not so pervasive or persistent as to violate the University’s discrimination policies, they are highly inappropriate and not consistent with the expectations the University has for its faculty. It is also concerning that most of the individuals described as experiencing these behaviors are women. Action should be taken to ensure that Respondent does not repeat similar behaviors, so that those with whom Respondent interacts can enjoy a non-discriminatory, respectful, inclusive and welcoming environment.

Respondent has described some of his behaviors as being funny or friendly, and does not seem to accept that his behavior is demeaning or derogatory, or understand the impact that behavior has on those around him. It is important that action is taken so that, going forward, Respondent interacts with those in his work environment in a more respectful and inclusive manner.

Conclusion

The preponderance of the evidence supports the conclusion that Respondent has violated the [Sexual Harassment Policy](#) (SPG 201.89). His behavior was not sufficiently severe, persistent or pervasive as to violate the [Discrimination and Harassment Policy](#) (SPG 201.89-1). Respondent has, however, engaged in conduct that, while not rising to the level of a policy violation, was inappropriate and regarding which action should be taken. We are referring this matter to you for follow-up. Please do not hesitate to reach out to OIE if we might be of assistance to you in this regard. Finally, please let us know what action has been taken to address the policy violation and inappropriate behavior outlined above.