



DATE: April 24, 2020

TO: Aaron Kunin; Valorie Thomas; Kyla Tompkins

FROM: Brenda Rushforth and Sue McCarthy

SUBJECT: Statement of Policy Violations/Results Notification Memorandum

## INTRODUCTION

On October 3, 2019, Professor Valorie Thomas and Associate Professor Kyla Tompkins (collectively “Complainants”) filed a complaint under relevant College policy against Associate Professor Aaron Kunin (“Respondent”). As set forth below, the primary allegations involved race discrimination and retaliation; in addition, concerns were expressed regarding gender bias as to specific actions allegedly taken by Respondent in his role as Chair of the English Department. Given the inclusion of a gender bias allegation, pursuant to College policy this investigation proceeded under the relevant [Pomona College Sexual Misconduct, Harassment and Discrimination Policy and Procedures](#) under the supervision of the Title IX<sup>1</sup> and Human Resources offices. (Brenda Rushforth, Associate Vice-President, Human Resources, facilitated the interview schedules and served as coordinator working with the Investigator, parties, and witnesses.)

The College retained a neutral third-party investigator, Angela Reddock of the Reddock Law Group, to conduct an investigation into whether there was a violation of the College policies set forth below. Reddock Law Group interviewed each of the Complainants and Respondents over multiple sessions and witnesses as suggested by the parties or the other evidence collected.

## PURPOSE OF THIS STATEMENT OF POLICY VIOLATIONS/RESULTS NOTIFICATION MEMORANDUM

The purpose of this Statement of Policy Violations/Results Notification Memorandum and Addenda (SPV/RNM) is to provide the parties with a comprehensive statement and summary of the claims that were investigated, the factual findings of the Investigator including credibility assessments, the Investigator’s application of those findings to College policy and her determination of whether or not there were violations.

Given the scope and nature of the allegations and findings, the College does not re-summarize her findings here, but instead shares the investigator’s verbatim findings by providing all three parties to this complaint investigation with four comprehensive documents attached as Addenda to this Statement of Policy Violations/Results Notification Memorandum. These documents are unredacted complete sections of the Investigator’s Report related to her claims, findings, and conclusions; specifically, they are (1) the Investigator’s “Executive Summary,” pages 4 – 22 of

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<sup>1</sup> Each of the parties was provided notice of Title IX application by December 4, 2019, email from Title IX Coordinator Sue McCarthy.

the March 17, 2020, Investigation Report, attached to this SPV/RNM as Addendum A<sup>2</sup>, (2) pages 26 – 53 of the Report, designated “Chronology of Relevant Facts and Events” by the Investigator, attached here as Addendum B<sup>3</sup>, and (3) the “Analysis & Findings” of the Investigator, at pages 167 – 178, attached here as Addendum C.<sup>4</sup> Finally, the College is also providing the “Table of Exhibits,” set forth here as Addendum D.<sup>5</sup>

**With two exceptions, this memorandum incorporates Addendums A, B and C in their entirety as to the allegations made, the factual conclusions and credibility assessments reached by the Investigator, and her policy-related findings. Concerning the first exception: as detailed below in the section entitled “Findings and Conclusions Adopted by College,” the College concludes that as to “Allegation 1” (see Addenda A and C) the Investigator has not provided evidence pursuant to a “preponderance of the evidence” standard sufficient to support her finding of “gender bias” in violation of College policy. As to the second exception: the College concludes that while Complainant Kyla Tompkins was clearly aggrieved over her experiences with Kunin both prior to and during his service as Department Chair, the investigator has not provided evidence demonstrating that Professor Tompkins suffered an adverse employment action based on race, gender or retaliation for protesting Kunin’s actions. The College credits the Investigator’s findings confirming Tompkins’ credibility, but as further described below, nowhere does the investigator link actions by Kunin to a policy violation resulting in an adverse employment action to Tompkins. The College recognizes the importance of this exception, and further details its reasoning below.**

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<sup>2</sup> The Investigator’s Confidential Investigation Report is 178 pages long, not including 243 Exhibits. Due to the extreme length of the report, the availability of a comprehensive “Analysis & Findings” (the final 11 pages of the Report), and the extensive redaction that would be required to provide the Report in its entirety in order to ensure witness confidentiality where appropriate, the College is providing the “Analysis & Findings” section (Addendum C) in its entirety, together with the materials provided in Addendums A ,B, and the Table of Exhibits (Addendum D).

<sup>3</sup> On page 53 of Addendum B, Investigator Reddock states that she completed her investigation and submission her report on February 20, 2020. Thereafter, Reddock was asked to provide further detail and clarification of her findings, and to apply those findings to College policy. Reddock submitted her final report to the College on March 17, 2020.

<sup>4</sup> Reddock identifies her Report as Attorney-Client Privileged/Attorney Work Product. It is the intent of the College to provide these limited materials (Addendums A, B, C and D) to the parties without implying additional waiver of existing privilege, including that related to the remainder of the Report, unless and until provided to the parties under a further limited waiver of privilege set forth in writing.

<sup>5</sup> Exhibits shall be made available to any of the parties upon request; all Exhibits requested and provided to one party shall then be provided to all parties.

## **INVESTIGATOR’S METHODOLOGY, INCLUDING LIST OF WITNESSES INTERVIEWED**

The following “methodology” section of the investigation report (pages 22 – 25 of the Report), detailing the Investigator’s approach to the process and findings, is taken verbatim from the Report (without footnotes).

### **I. METHODOLOGY**

The investigation consisted of interviewing witnesses and reviewing documents relevant to the allegations, as is detailed below.

#### **A. Persons Interviewed**

I interviewed a total of 18 individuals, in a total of 21 interview sessions. I interviewed Complainant Tompkins two times and Respondent Kunin three times. I conducted all witness interviews in person, except where otherwise noted.

The witnesses I interviewed are as follows:

#### **Complainants & Respondent**

- Complainant Valorie D. Thomas, Professor of English, on November 13, 2019;
- Complainant Kyla W. Tompkins, Associate Professor of English and GWS, on November 19, 2019 and January 24, 2020 (via Zoom); and
- Respondent Aaron Kunin, Associate Professor of English, on December 6, 2019; December 12, 2019 and January 14, 2020.

#### **Current & Former Administrators**

- Audrey Bilger, former Dean and Vice President of Academic Affairs, on December 5, 2019 (via telephone);
- Tony Boston, Associate Dean and Diversity Officer, on December 20, 2019;
- Mary Coffey, former Senior Associate Dean, on December 12, 2019;
- Robert Gaines, Dean, on November 8, 2019;
- Brenda Rushforth, Chief Human Resources Officer, on November 7, 2019;
- Nicole Weekes, Harry S. & L. Madge Rice Professor of Psychology and Neuroscience and former Associate Dean of Diversity from 2016-June 30, 2019, on December 20, 2019;

## **Department Faculty**

- Kevin Dettmar, Professor of English, on December 12, 2019;
- Jordan Kirk, Associate Professor of English, on January 14, 2020;
- Jonathan Lethem, Professor of English, on December 12, 2019;
- Sarah Raff, Associate Professor of English, on December 10, 2019;
- Colleen Rosenfeld, Associate Professor of English, on December 10, 2019;
- Prageeta Sharma, Professor of English, on December 10, 2019; and
- Kara Wittman, Director of College Writing and Assistant Professor of English, on December 10, 2019.

## **Other Witnesses**

- Nyree Gray, Department Mediator and Associate Vice President of Diversity & Inclusion & Chief Civil Rights Officer at Claremont McKenna College, on December 20, 2019; and
- Zayn Kassam, Professor of Religious Studies, on November 10, 2019.

### **B. Documents & Exhibits**

There were several documents provided and reviewed as a part of the investigation. The Table of Exhibits, attached separately, reflects the documents and exhibits I relied on in reaching my findings and conclusions. See Exhibits 1-244.<sup>6</sup>

Additionally, I will provide a separate Appendix of all documents received by each of the parties and witnesses in this matter.

I am aware that I may not have acquired every relevant document, nor had the opportunity to interview every pertinent witness. However, I am confident that my findings reflect an accurate assessment of the allegations.

### **C. Evidentiary Standard**

I used the “preponderance of the evidence” standard to determine whether the allegations were sustained or not sustained. “Preponderance of the evidence,” for purposes of this report, means that the evidence on one side outweighs, or is more than, the evidence on the other side. This is a qualitative, and not a quantitative, standard.

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<sup>6</sup> Errata: here the Investigator references 244 exhibits, but the Table of Exhibits (Addendum D) references 243 exhibits, and the Appendix of Exhibits contains 243 exhibits.

#### **D. Independence**

Independence is an important component of this investigation. The College and its representatives allowed me full discretion to conduct the investigation as I determined necessary. I was provided complete access to all requested witnesses and documents. No party interfered with, or attempted to influence, the investigation or the findings of this report.

#### **E. Factual vs. Legal Findings**

I was not engaged to make judgments about whether the conduct gives rise to legal liability on the part of any person or entity. Rather, I was retained to make factual and policy findings only.

#### **F. Witness Credibility**

I considered the following factors in assessing the credibility of each party and witness, and in making my findings:

- **Direct or indirect corroboration**
  - *Is the statement supported by physical evidence, written documentation, or witness accounts?*
- **Inconsistencies**
  - *Does the witness make contradictory statements?*
  - *Are there direct contradictions between the parties?*
- **Inherent plausibility**
  - *Is the statement believable on its face?*
  - *Does it make sense?*
- **Bias, interest, motive**
  - *Is the witness biased toward or against the complainant or respondent?*
  - *Does the individual have a motive to lie or omit relevant information?*
  - *Does the witness have a personal connection to the complainant or respondent that may influence them to lie or to attempt to protect their co-worker(s) or supervisor(s)?*
- **Past record**
  - *Does the respondent(s) have a history of similar behavior?*

## FINDINGS AND CONCLUSIONS ADOPTED BY COLLEGE

As set forth above, with two exceptions the College adopts the findings of the Investigator as set forth in Addenda A and C and incorporates them here by reference. Specifically, the College finds as follows:

***Allegation No. 1: Kunin’s Alleged Abuse of Process: Did Kunin’s Implementation and Use of Roberts Rules of Order and Other Budgeting and Administrative Processes During His Time as Department Chair Constitute Misconduct Toward Complainants Based on Their Race or Gender, or in Retaliation Against Complainants for Their Prior Complaints Against Him, in Violation of the College’s Non-Discrimination Policy?***

**The College adopts the Investigator’s Conclusions as to Allegation No. 1 in their entirety with the exceptions noted in paragraph 3 below:**

1. Kunin’s initial adoption of Robert’s Rules and other budgeting and administrative processes, such as the deliberation and reimbursement processes, did not violate Policy. This structure was found to be proposed and implemented for legitimate, non-discriminatory reasons.
2. Kunin’s implementation of the rules was inconsistent and unnecessarily burdensome, and the inconsistencies and manner of implementation are found to have targeted and singled out Complainant Thomas; further, there is no legitimate business reason supporting these inconsistencies and the challenges Kunin posed to Thomas’ various requests, and the College adopts the Investigator’s finding that Kunin’s actions were in retaliation for Thomas’ protected assertions of racial discrimination.
3. **Exception to Investigator’s findings:**
  - a. While Complainant Tompkins joined Thomas in many of these protected activities, the College does not find by a preponderance of the evidence that there was a nexus between these activities and an adverse employment action toward Tompkins. The College notes the Investigator referenced that the targeting and singling out of *Complainants’* affected “Complainant Thomas in particular,” but does not produce evidence of any similar adverse action toward Tompkins.<sup>7</sup>
  - b. The Investigator has not supported her conclusion by a preponderance of the evidence that gender bias played a role in Kunin’s actions related to either Thomas or Tompkins. The College recognizes the allegations made as an assertion of intersectional discrimination but does not find that the Investigator demonstrated evidence of such discrimination. Rather, the

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<sup>7</sup> See, further, Investigator’s findings that as to Allegation No. 2, alleging that Kunin’s disrespect of Complainant’s and their views violated the College’s Non-Discrimination Policy, was not sustained, including Tompkins’ allegation regarding Kunin’s “Kyla, please” comment at the September 11, 2019 Department meeting.

College finds that the evidence supports a finding of the race-retaliation nexus identified above as to Complainant Thomas.

***Allegation No. 2: Kunin’s Disrespect of Complainants & Their Views***

***Did Kunin Disrespect Complainants and Devalue Their Perspectives? If so, Did Such Conduct Violate the College’s Non-Discrimination Policy?***

The Investigator found that the allegations related to the above assertion of a policy violation concerning (a) the April 2019 vote regarding Thomas’ request for conversion from a dual appointment to a single appointment in the English Department, (b) the allegations regarding the conduct of the September 11, 2019 Department meeting, and (c) the alleged devaluing of Complainants’ perspectives regarding diversity in the Department, were “not sustained” and did not constitute violations of College policy.

**The College adopts the Investigator’s findings as to Allegation No. 2 in their entirety.**

***Allegation No. 3: Kunin’s Alleged Racist Ideologies***

***Question: Did Kunin’s Fall 2019 Proposal to Teach the Five American Authors Course in the Spring of 2020, Including Ellison and Without Reference to Race, Suggest Kunin Was Racist in His Ideologies? If so, Did Such Conduct Violate the College Non-Discrimination Policy?***

***Additionally, did this alleged conduct constitute retaliation against Complainants based on Kunin’s Disagreement with Complainants’ Prior Complaints and Criticisms of Him Based on His Management Style and Alleged Racist Ideologies?***

**The College adopts the Investigator’s Conclusions in their entirety with the exceptions identified in paragraph 3 below:**

1. The Investigator finds that “on its face, Kunin’s proposal to teach the Five American Authors course is not based on any discriminatory or retaliatory intent or motive toward Complainants.” She bases this finding on principles of academic freedom and Kunin’s “belief that literary works should be analyzed based on aesthetics and not based on other factors such as race.” She notes that Kunin is within his right to see his work and teachings in this manner.
2. Of greater relevance to the allegation, however, the Investigator concludes that “his viewpoint went too far when it had the effect of appearing retaliatory toward Complainants for their complaints and criticisms of his prior work and views, along with his management style.” She adds that “Kunin’s retaliatory intent is evident in the way he proceeded with proposing the course in the Fall of 2019. Following extensive review of facts and chronology of events surrounding the competing course proposals of Kunin and Complainant Thomas, the Investigator concludes that “[b]ased on the surrounding facts and a preponderance of the evidence, the only reasonable conclusion is that Kunin pushed for his own course proposal, in lieu of others, to prove a point to Thomas and Tompkins based on their prior and repeated complaints and criticisms against him.”

The College notes that the appearance of an action being retaliatory, without more, is insufficient to support a finding of retaliation under College policy. The College, however, adopts the Investigator’s finding of evidence of retaliatory intent in Kunin’s sustained effort to thwart Thomas’ efforts to teach her proposed course in favor of his own proposal, motivated at least in part by Thomas’ prior and sustained complaints regarding her sincerely held concerns over the race issues associated with his proposal and more generally within the Department.

The College is particularly concerned about this occurring in the context of Kunin serving as Chair of the Department; based on the factual detail set forth in the Report, it can be reasonably concluded that **Kunin made no attempt to separate his own personal interests from his leadership and administration of the Department’s business, including the conflict associated with the competing course proposals. As Chair, Kunin was in a powerful position to avoid this specific conflict with Thomas and rise above the curriculum dispute by working *with her* to ensure that a 170 course was offered in the Spring semester; this could have gone a long way toward healing the divide within the English Department.** Instead, the College finds that Kunin abused the authority associated with his role as Chair and did everything in his power to thwart Thomas’ interests and knowingly exacerbate her deep concerns about racism within the Department.

3. **Exception to Investigator’s findings:**

- a. The Investigator sustains her finding of a policy violation concerning Allegation No. 3 as to *both* Thomas and Tompkins: *“[b]ased on the surrounding facts and a preponderance of the evidence, the only reasonable conclusion is that Kunin pushed for his own course proposal, in lieu of others, to prove a point to Thomas and Tompkins based on their prior and repeated complaints and criticisms against him.”* (Emphasis added.) While the College does find that Kunin’s actions were observed by Tompkins and were understandably frustrating and upsetting to her, it notes the Investigator does not find that they were so severe or pervasive as to create a hostile environment *for Tompkins*. Most important, a finding of retaliation requires an adverse action based on the protected activity; even taking into account that Tompkins repeatedly joined Thomas in expressing concerns regarding racial discrimination within the Department associated with Kunin’s leadership, the Investigator does not demonstrate a relationship between such activity by Tompkins and a material *adverse action against Tompkins* (i.e., nothing similar to the denial of Thomas’ course proposal, or Thomas’ several requests for budget items, etc.). Accordingly, while we find Tompkins is a material witness to the actions taken against Thomas, we do not find as to Allegation No. 3 that Kunin engaged in a policy violation against Tompkins.

**Please refer to Addenda A, B and C for comprehensive details concerning the Investigator’s findings.**



## PROCEDURAL NEXT STEPS

The distribution of this SPV/RNM and included Addenda concludes the investigation portion of this Complaint.

Each party may now submit an Impact or Mitigation statement, no longer than 1,500 words, to Sue McCarthy and Brenda Rushforth for review by Dean Gaines for a determination of sanctions. The Impact Statement is a written statement describing the impact of the Respondent's conduct on the Complainant(s) and expressing a preference about the sanction(s) to be imposed. The Mitigation Statement is a written statement explaining the factors that the Respondent believes should mitigate or otherwise be considered in determining the sanction(s) imposed. **The deadline for submitting an Impact or Mitigation statement is 4:00 p.m. on Monday, May 4, 2020 and should be sent to [sue.mccarthy@pomona.edu](mailto:sue.mccarthy@pomona.edu) and [Brenda.Rushforth@pomona.edu](mailto:Brenda.Rushforth@pomona.edu).**

### **Admonition regarding Retaliation**

This memorandum also serves as a reminder that the Policy prohibits retaliation, as outlined in Section IV(B) *Sexual Misconduct, Harassment, and Discrimination Complaint Procedures; Retaliation Policy*. Retaliation is defined as: the taking of an adverse action taken by any student, faculty or staff member against another individual as a result of that individual's exercise of a right under this Policy, including participation in the reporting, investigation or hearing as provided in this Policy. Retaliation includes adverse actions intended to improperly deter involvement of another in these procedures set forth in this policy and may involve actions intended either to intimidate or penalize individuals for their participation. Retaliation is strictly prohibited by law and this Policy; any person found to have engaged in retaliation shall be subject to disciplinary action.

If you have any questions regarding this memorandum, you are welcome to contact Brenda Rushforth by email [brenda.rushforth@pomona.edu](mailto:brenda.rushforth@pomona.edu).