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President Michael Roth
Wesleyan University
229 High Street
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Re: Report of External Audit

Dear President Roth:

In June 2016, Wesleyan University learned that Scott Backer, then the Associate Dean of Student Affairs at Wesleyan, had been terminated from his prior employment at Vermont Academy for alleged impropriety with a minor student. Although Wesleyan checked Mr. Backer's references, this information was not disclosed by Vermont Academy or Mr. Backer. Had those circumstances been known to Wesleyan at the time he sought employment with the University, they would have precluded his hiring. After confirming the circumstances of Mr. Backer's departure from Vermont Academy, Wesleyan quickly terminated Mr. Backer's employment.

At the same time, given the scope of Mr. Backer's role within Student Affairs at Wesleyan, which included involvement in procedures conducted pursuant to Title IX of the Education Amendments of 1972 ("Title IX"), President Michael Roth engaged us to conduct an external audit of the cases involving Mr. Backer to evaluate whether Mr. Backer's participation in University processes impacted the equitable, fair, and impartial investigation and resolution of reports of sexual harassment and sexual violence under Title IX.¹ As detailed below, the initial scope of the audit focused on cases from the three most recent academic years in which Mr. Backer had played an active role. We reviewed cases in which Mr. Backer chaired or participated in the Administrative Panel, a University body authorized to adjudicate alleged violations of the University's Code of Non-Academic Conduct, to determine whether there was an evidentiary basis and articulable rationale for the outcome and sanction, and whether there was any discernible indication of bias, conflict of interest, or abuse of discretion based on Mr.

¹ At the time, Gina Maisto Smith and Leslie M. Gomez were partners at Pepper Hamilton LLP. As of February 2017, Smith and Gomez moved their practice to Cozen O'Connor.

Backer's participation in those matters. The review concluded, based on the available documents and interviews of campus implementers, that there was no discernible evidence of actions or improper influence by Backer that would violate Title IX, University policy, or the University's commitment to fair and impartial process.²

On May 15, 2017, almost a year after his dismissal from the University, Mr. Backer was arrested in Connecticut for allegedly propositioning someone he believed to be a minor female through the anonymous application Yik Yak. In light of this new information, which was similar in nature to his reported conduct at Vermont Academy, the University extended the scope of this review to include the available files for all Title IX cases in which Mr. Backer was involved. Additionally, the University provided Cozen O'Connor with a copy of electronic records from Mr. Backer's pst file (Mr. Backer's email account), which had been preserved, as well as a custodial disaster recovery backup of server-based data (which included files Mr. Backer saved to the University's server). The University also created an online forum to invite campus community members to share any concerns.

President Roth communicated the extended review to the Wesleyan community as follows:

Last year when we became aware of Mr. Backer's history and promptly fired him, we brought in a leading national outside firm to audit the Title IX cases with which he had been involved. The auditors found that he had followed the university's policies and procedures in his handling of these cases. Given recent developments, we've decided to extend the independent review by professionals in the field.³

Our review of the expanded number of Title IX case files does not alter our conclusion that there was no discernible evidence of actions or improper influence by Mr. Backer that would violate Title IX, University policy, or the University's commitment to fair and impartial process. The review reveals that there was no discernible bias or process anomaly based on Mr. Backer's participation in the resolution of Title IX reports. Our review of the electronic data provided from Mr. Backer's computer and the University server, however, revealed seven (7) concerning image files. We notified the University of the existence of the image files to enable the University to take further action consistent with Connecticut state law.

Our conclusions are limited to what we were able to discern from the Title IX case files and implementer interviews, as supplemented by the review of electronic data and an open invitation to the community to share any concerns. We are unaware of any specific complaints of sexually inappropriate or related misconduct by Mr. Backer during his tenure at Wesleyan.⁴

² The review was limited, necessarily, to information within University official case files.

³ See May 26, 2017 Letter from Michael Roth to the Wesleyan Community. <http://equity.wesleyan.edu/>.

⁴ We are aware of one post-May 2017 complaint raised in a non-Title IX student conduct matter where the complainant reported to the University that Mr. Backer used close physical proximity and unwelcome physical contact during his interactions with the complainant. The University shared documents related to this complaint with us, and the information in those documents does not change the underlying findings in this report.

We remain open, however, to receiving any additional information that would inform this review.

I. Background⁵

A. Backer's Prior Employment and Hiring at Wesleyan

Scott Backer was hired by Wesleyan in 2007. He came to Wesleyan following a position at Vermont Academy, a secondary boarding school, where Mr. Backer served as the Assistant Dean of Students. During the hiring process at Wesleyan, when asked why he was leaving Vermont Academy, Mr. Backer told Wesleyan he was looking to relocate. Mr. Backer provided three references from Vermont Academy; the University contacted all three references, and all of them uniformly provided positive feedback about Mr. Backer. Neither Mr. Backer, Mr. Backer's references, nor anyone else from Vermont Academy informed Wesleyan that Mr. Backer had been terminated from employment at Vermont Academy for reported impropriety with a minor student.

B. Boston Globe

On May 6, 2016, the Boston Globe published an article entitled *Private Schools, Painful Secrets*. The article described how more than five dozen private schools in New England had responded to reports that their staff sexually abused or harassed students. Although the article did not identify Mr. Backer by name, with respect to Vermont Academy, the article reported that:

In a 2010 lawsuit, a former boarding student alleged she was subjected to "outrageous sexual activity" by an adviser and teacher at the school when she was 15. The teacher was fired in 2007, the lawsuit said. The case was settled in 2011.⁶

The article provided a link to the civil lawsuit – brought in Massachusetts state court by a former student – which named Mr. Backer as the adviser and teacher in question. The plaintiff reported that Mr. Backer sent her lewd text messages containing sexual advances, and then retaliated against her when she complained about his conduct, encouraging other students to call her derogatory names on Facebook. The lawsuit alleged that Mr. Backer was fired for this conduct.

On June 9, 2016, a reporter from the Boston Globe contacted Wesleyan to inquire about Mr. Backer. On June 10, 2016, after learning about and then verifying the information about the circumstances of Mr. Backer's termination, Wesleyan terminated Mr. Backer's employment.

C. Backer's Role at Wesleyan

Mr. Backer served as Wesleyan's Associate Dean of Students until June 2016. As Associate Dean of Students, one of Mr. Backer's responsibilities was to serve as the chair of Administrative Panels; he also served as a Panel member in some instances. The Administrative Panels were tasked with adjudicating violations of Wesleyan's Code of Non-Academic Conduct, including cases involving Discriminatory Harassment and/or Sexual Misconduct (sexual

⁵ We were not asked to investigate the circumstances surrounding Wesleyan's hiring of Mr. Backer. This information was provided by the University and from available public records and media accounts. See October 2, 2016, Email to the Community by Mike Whaley, Vice President for Student Affairs, <http://newsletter.blogs.wesleyan.edu/2016/10/02/campus-update/>.

⁶ <https://www.bostonglobe.com/metro/2016/05/06/private-schools-painful-secrets/OaRI9PFpRnCTJxCzko5hkN/story.html>.

harassment or violence under Title IX). Administrative Panels are comprised of four University employees: two male and two female staff or faculty drawn from the pool of advisors or hearing officers who have been trained on how to adjudicate cases of sexual harassment or assault under Title IX. In his role as Chair or as Panel member, Mr. Backer's first interaction with an individual matter was after the fact-gathering portion of the investigation was complete and a written report had been prepared. His role as Chair was to convene an Administrative Panel, schedule a hearing date, and facilitate the hearing, following the procedures set forth in the Code of Non-Academic Conduct. Typically, Mr. Backer guided the parties through the hearing process and conducted most, but not all, of the questioning of the parties and witnesses by the Administrative Panel. Following the hearing, the Administrative Panel determined, by majority vote, whether a policy violation had been established by a preponderance of the evidence and, if so, the appropriate sanction(s). Mr. Backer served as a voting member of the Administrative Panels, and as Chair memorialized the Panel's rationale in writing and notified Dean Rick Culliton of the outcome. Under the Code, both a complainant and a respondent have the right to appeal an Administrative Panel's finding on the basis of 1) violation of fair process, 2) new evidence that was not reasonably available at the time of the hearing, and 3) procedural error, if the error adversely affected the outcome of the hearing.

II. Scope of the Review

A. Review of Case Files

We reviewed case files from the Title IX matters in which Mr. Backer participated on the Panel for any indication of bias, conflict of interest, or abuse of discretion. The file review included a total of 38 case files:⁷ one (1) case file from the 2009-2010 academic year; three (3) case files from the 2010-2011 academic year; three (3) case files from the 2011-2012 academic year; two (2) case files from the 2012-2013 academic year; eighteen (18) case files from the 2013-2014 academic year; nine (9) case files from the 2014-2015 academic year; and (2) case files from the 2015-2016 academic year. Mr. Backer chaired the Panel in 34 of these cases, and served as a panelist in two cases⁸. In addition, we listened to a representative sample of the available audio transcripts of the hearings in which Mr. Backer chaired the Panel, as follows:

- 3 audio transcripts from the 2013-2014 academic year (of 4 available transcripts)
- 3 audio transcripts from the 2014-2015 academic year (of 4 available transcripts)

⁷ A three year look back period was initially selected, in consultation with Wesleyan, with the understanding that if concerns were observed about Mr. Backer's involvement in these cases, the look back period would be extended for the entirety of his employment. The three-year time frame was consistent with the typical scope of review by the U.S. Department of Education's Office for Civil Rights, as well as the recognition that the most recent three years of cases were the most likely to impact current Wesleyan students. Wesleyan provided us with open access to information through files and personnel and the determination of the scope of review was not limited, nor dictated, by Wesleyan. The initial three year period included the 2013-2014, 2014-2015, and 2015-2016 academic year (a total of 28 cases). The case files for the 2013-2014 academic year were hard copy files. The case files for the 2014-2015 and 2015-2016 academic years were maintained in Maxient.

⁸ The documents in a case file from 2011-2012 do not reveal the identity of Panel members, but the case file does include copies of email communications Mr. Backer had with the Respondent in the matter; this case has been included in the count of 38 case files reviewed. The documents in the case file from 2009-2010 do not reveal who chaired the Panel, but do indicate that Mr. Backer was a Panel member if not the chair; this case has been included in the count of 38 case files reviewed and is considered one of the two cases where Mr. Backer was a Panel member. A 2010-2011 case did not proceed to a Panel hearing, but the file does include copies of emails between Mr. Backer and the parties; this case has been included in the count of 38 case files reviewed.

- 1 audio transcript from the 2015-2016 academic year (of 1 available transcript)

For each case, we reviewed the case file and considered the following elements: the nature of the incident, scope of investigation, evidence in the case file, charge, evidence considered by the Administrative Panel, finding (determination of responsibility), rationale, sanction(s), appeal, and outcome of appeal. We compared these categories of information across cases and analyzed the data, individually and in the aggregate, for patterns or trends.

B. Implementer Interviews

In addition to the review of comprehensive case documents, we interviewed the following University employees, each of whom worked closely with Mr. Backer:

- Richard Culliton, Dean of Students
- Antonio Farias, Vice President of Equity & Inclusion and Title IX Officer
- Debbie Colucci, Equity Compliance Director and Deputy Title IX Coordinator
- Karen Karpa, administrative assistant in the Office of Student Affairs.

We also interviewed two individuals who served on Administrative Panels with Mr. Backer: Maureen Isleib, Associate Director of Residential Life, and Elisa Cardona, Director of Student Activities. In addition, we interviewed Alysha Warren, the University's Sexual Violence Resource Coordinator.

In addition, Wesleyan confirmed that no human resources, Title IX, or other complaints about Mr. Backer were filed at the University during his tenure.

C. Pst File and Disaster Recovery Server-Based Data Set

Wesleyan provided us with access to electronic data available through Mr. Backer's hard drive and data available through the server. We reviewed approximately 1200 emails and other documents from the .pst file and the disaster recovery server-based data set that were identified through a set of search terms devised from the review of the case files.

We also reviewed files from the .pst file and the custodial disaster recovery backup server-based data set that had identifiable image or video file extensions.

D. Online Reporting Forum

As part of the expanded review, Cozen O'Connor created an online forum where Wesleyan students, faculty, staff and other members of the Wesleyan community could provide information, anonymously or with identifying information, to Cozen O'Connor as part of its review. In a May 2017 letter to the community, President Roth noted that members of the "Wesleyan community who [wish] to report inappropriate interactions with Mr. Backer" should use the site. The link to the site was posted by the University on its Equity@Wesleyan page on May 26, 2017.

III. Findings

We were not asked to reinvestigate – or re-adjudicate – any of the cases we reviewed. The purpose of the audit was not to substitute the external reviewer's judgment for that of the Panel members, who had the opportunity to assess the credibility of the parties and witnesses

directly. Rather, the purpose of the audit was to assess whether Mr. Backer's involvement impacted the University's provision of an equitable, fair and impartial resolution of reports under Title IX.⁹ We reviewed the case files and selected audio transcripts to determine whether there was an evidentiary basis and articulable rationale for the outcome and sanction(s), and whether there was any indication of bias, conflict of interest, or abuse of discretion based on Mr. Backer's participation in those matters.

A. Review of Case Files

Based on our review of case files, we do not find any discernible evidence of bias, conflict of interest, or abuse of discretion based on Mr. Backer's participation. Based on the review of audio hearings, Mr. Backer conducted the hearings consistently and in compliance with procedures set forth in the Code of Non-Academic Conduct. The review of the audio recordings of the hearings also revealed that Mr. Backer conducted himself in a professional manner. His explanations of the procedures were thorough and readily understandable.

We also observed that Wesleyan's internal operating protocols helped ensure the consistency in the conduct of hearings. For some years during the time period in question, the University relied upon a rubric in the form of a procedural checklist for the Panel to follow, and Mr. Backer followed the checklist. Wesleyan's judicial process for Title IX cases is also constructed in a manner that prevents any one panelist from asserting undue influence. At least 19 different panelists participated in the 38 cases we reviewed. The large number of participants on Administrative Panels over a number of years, from diverse departments on campus, make it unlikely that Mr. Backer would have been able exercise undue influence that would significantly impact or control the outcome of hearings.

With respect to the outcomes from the Administrative Panels:

- In more than two thirds of the cases reviewed that went to a hearing, the vote count of the members of the Administrative Panel was included in the case file. The vote was unanimous in nearly all of these cases (4-0 or 3-0). The repeated unanimity of Panel members suggests that Mr. Backer's decision-making was consistent with that of his peers.
- In more than half of cases reviewed that went to a hearing, the complainant, respondent, or both appealed the outcome of the Panel. The finding of the Panel was upheld in every appeal, confirming that the President or Provost in the 2009-2010 to 2013-2014 academic years and the Appeals Board¹⁰ in the 2014-2015 and 2015-2016 academic years, reviewed the case and agreed that there was 1) no violation of fair process, 2) no new evidence that was not reasonably available at the time of the hearing, and/or 3) no procedural error that adversely affected the outcome of the hearing.

⁹ Mr. Backer was not involved in the fact-gathering of Title IX cases. Rather, once the written investigation report was complete, in his role as Chair, Mr. Backer was responsible for overseeing the process elements of the adjudication of Title IX complaints, and for serving as a voting member of the Panel.

¹⁰ Mr. Backer did not sit on any Appeals Boards. Under the Code of Non-Academic Conduct, "Appeals Board members will not have been involved in the adjudication of the case being appealed."

- In the cases that were appealed, the appeals resulted in only two changes to the Administrative Panel’s decision: 1) in one case, the sanction was increased from a two semester suspension to a three semester suspension, and 2) in the second case, the sanction was reduced from a one semester suspension to disciplinary probation. The rationales for these changes in sanctions were not related to Mr. Backer’s involvement in the hearing.
- Of the appeals cases, two specifically raised concerns about Mr. Backer’s conduct. In one case, the respondent alleged that Mr. Backer was biased because he “appeared to have a friendly relationship with the complainant.” The sole basis for this allegation was the assertion that the complainant called Mr. Backer by his first name. In the second case, the respondent briefly mentioned in a footnote a concern that Mr. Backer interrupted the respondent’s opening statement twice, once to allegedly comfort the complainant who was crying, thus allegedly “calling [Mr. Backer's] objectivity into question.” No other evidence in the case files supported these allegations of bias, there was sufficient factual foundation in the record to support the findings, and the appeals were not substantiated.

B. Implementer Interviews

The individuals interviewed – those who had routine interactions with Mr. Backer, served on Administrative Panels with him, and/or had the opportunity to assess the impact of the process in which he was involved on participants – consistently communicated their confidence in the decisions of the Administrative Panels that Mr. Backer chaired. The interviewees described Mr. Backer as a “consistent, moderate voice,” “professional and dedicated,” and “sensitive to the needs of the complainant and also the challenges the respondent was facing.” Not a single interviewee was able to identify a Title IX case in which they believed Mr. Backer affected the outcome or in which his conduct raised any concerns.

C. Pst File and Disaster Recovery Server-Based Data Set

Based on our review of the available electronic data, seven image files of a concerning nature, including images of nude or partially nude females, were identified in the .pst file and the custodial disaster recovery backup server-based data set. All image files were reviewed by a board-certified child abuse pediatrician who was unable to conclusively determine whether the images were of minors, but nonetheless recommended that the images be reported to law enforcement.

D. Online Reporting Forum

We received four reports in the online reporting forum. Only one of the reports explicitly raised concerns about Mr. Backer’s role. That report, by a complainant who raised concerns about the appropriateness of a question about alcohol asked by Mr. Backer, was reviewed contemporaneously by the University. At the time, the University interviewed the relevant parties, including hearing panel members, and concluded that the question was appropriate and the issue did not warrant a change in the outcome of the matter. A second report questioned the selection of outside counsel for this review. A third report shared the “general student sentiment on campus.” The author described “a deep divide of mistrust between the administration and

students,” but did not identify any specific concerns about Mr. Backer’s involvement in the Title IX process. Finally, a fourth report raised concerns about Mr. Backer’s treatment of staff members through his affiliation with the Neighborhood Preschool (NPS) Board of Directors, concerns that were addressed contemporaneously through NPS.

IV. Conclusion

The scope of this review involved review of data (case files) and interviews with University implementers, as supplemented by available electronic data related to Mr. Backer. We did not speak with the complainants or respondents in the cases reviewed, but note that both participants had equal opportunity to appeal under University policy. With the exception of two appeals identified above, and the one report in the online reporting forum, no participant in the process challenged the finding or sanction based specifically on the actions of Mr. Backer. In addition, the University’s process included multiple checks and balances during the process, including the separation of the investigation and adjudication; the sharing of all information with the parties; the involvement of multiple trained and experienced investigators and panelists; the opportunity to appeal a finding and outcome; the provision of outcome, sanction and rationale to the parties; and the oversight of the University’s Title IX Coordinator and legal counsel. No administrator identified concerns about Mr. Backer’s participation in the process, either contemporaneously or after learning the circumstances of Mr. Backer’s termination from Vermont Academy.

In sum, our review reveals there was no discernible bias or process anomaly based on Mr. Backer’s participation in the resolution of Title IX reports. As noted above, our conclusions are limited to what we were able to discern from the Title IX case files and implementer interviews, as supplemented by the review of electronic data and an open invitation to the community to share any concerns. This is neither confirmation nor conclusion that Mr. Backer committed no misconduct during his tenure at the University. His recent arrest, which prompted this expanded review, and the subsequent discovery of concerning images from his electronic data are concerning.

We again encourage any concerned constituent to share their concerns directly with the University, with law enforcement, or through the online forum available here: https://www.research.net/r/CozenOConnor_WesleyanUniversity-ExternalTitleIXReview. To the extent additional information becomes available we will reopen the review accordingly.

Sincerely,

COZEN O’CONNOR



Gina Maisto Smith



Leslie M. Gomez