

Report of the Administrative Board Hearing of September 19, 2011

On September 19, 2011, the Administrative Board conducted a hearing on the complaint of _____, a 2011 graduate of the law school, against _____, a third-year student at the law school. The complaint alleged that the student had violated the rules against sexual harassment, more specifically that he violated the provisions of Guideline 3 of the Policy and Guidelines Related to Sexual Harassment (1995), Handbook of Academic Policies 105: “No member of the Law School community shall subject any other member of the Law School community to any ... speech or conduct of a sexual nature that (i) is unwelcome; and (ii) is abusive or unreasonably recurring or invasive; and (iii) has the purpose or effect of unreasonably interfering with an individual’s work or academic performance or creating an intimidating, demeaning, degrading, hostile, or otherwise seriously offensive working or educational environment at Harvard Law School.”

The facts, as alleged by the complaint and found by the Board, are as follows.

In the evening of January 14, 2011, at about 8:30 p.m., the student (then a 2L) was invited to the complainant’s apartment in Cambridge. When he arrived, a female close friend of the complainant, who was not a law student, was present. Over the next two hours or so, the three of them drank a large quantity of liquor (about four drinks) and some beer. During that time, another male friend of the complainant arrived, who also drank a lot. He was a 1L student.

At about 10:30 p.m., the four went together to the Middlesex Lounge, a bar in Cambridge. There was a crowd there, including a considerable number of law school students. A 1L section was having a party there that night. The 1L student was a member of that section, and he did not spend much time after he arrived with the other three.

The complainant, her friend, and the student continued to drink heavily. They left the Middlesex Lounge together at about 2:30 a.m. and returned to the complainant’s apartment. He entered the apartment with the two women, if not at the complainant’s invitation then with her acquiescence. They were all quite drunk. They fell onto her bed, she on one side, her friend on the other, and the student in the middle. All three fell asleep. The friend and possibly the complainant passed out. Later that night, at around 3:00 a.m., the complainant woke up to find the student on top of her, with his tongue in her mouth. He fondled her and put his hand on or

near her crotch, probably beneath at least one layer of clothing. When he initiated this conduct, he was aware that she was incapable of consenting. She pulled his hair and pushed his hand away from her body, which he took as indicating that she objected to what he was doing, and he stopped.

While this was going on, the complainant looked over at her friend, who was naked from the waist up. In response to the complainant's questions, the student acknowledged that he had removed the friend's clothing above her waist. He had fondled her breasts and probably inserted his finger into her vagina. He was aware that the friend was incapable of consenting.

The Board found that the student had initiated sexual conduct with the complainant while she was asleep or unconscious, and not capable of consenting. It found that after she pulled his hair, he stopped. It found that he had initiated sexual contact with the friend while she was incapable of consenting and that he stopped after the complainant objected.

The Board concluded that the student's conduct toward the complainant was unwelcome and abusive or invasive, and that it had the effect of unreasonably interfering with her work or academic performance and/or created an intimidating, demeaning, degrading, hostile, or otherwise seriously offensive working or educational environment at Harvard Law School. It found further that his conduct toward the friend in the presence of the complainant was unwelcome, and abusive or invasive, and had the effect of unreasonably interfering with the complainant's work or academic performance, and/or created an intimidating, demeaning, degrading, hostile, or otherwise seriously offensive working or educational environment at Harvard Law School.

The Board imposed a sanction of dismissal.

September 21, 2011