

SAMPLE OUTCOME LETTER FOR TITLE IX CASES

Personal and Confidential

[Name]
[Address]
[Date]
[Via]

Dear [Name],

Thank you for your patience and cooperation as the [University or College] has worked to conduct a thorough, neutral fact-finding investigation into the allegation of sexual misconduct involving student [Responding Party], alleged to have occurred on [Date]. While we know that it can be difficult to wait, we take the seriously the responsibility to seek and evaluate all available and relevant evidence. This letter serves to inform you that the investigation into the allegation is now complete. Having reviewed all the evidence including written reports, voluntary written statements, evidence provided by both parties and several witnesses, and using the required “preponderance of the evidence” standard, the [University or College] has concluded that the evidence does not support a finding that [Responding Party] has violated the sexual misconduct policy.

In forming decisions about allegations of sexual misconduct, the school reviews all available, relevant evidence. **[Optional section on credibility when needed: When some of the evidence requires the evaluation of one person’s word against another, colleges are encouraged to follow guidance from the Office for Civil Rights to weigh evidence and credibility. In the absence of any first-hand, third-party witnesses to the alleged incident, the evaluation of evidence and credibility may take into account:**

- ***Detail and Consistency:*** The accuracy of each person’s account should be compared in an attempt to evaluate honesty and consistency.
- ***Demeanor:*** While emotional responses vary widely, each party’s reactions and behavior after the alleged incident could be evaluated as part of a decision.
- ***Action Taken:*** The timing of a report may be considered, although either an immediate or delayed report could be reasonably explained.
- ***Other Contemporaneous Evidence:*** Verbal or electronic communication with friends or family (and their reactions), any other form of written details, and the timing of such communications may be factors in a decision].

While there were details that aligned with each party’s version of the events of that day – including the recollection that oral and vaginal sexual intercourse took place – the investigation also revealed two distinctly different accounts of the sexual encounter. Weighing the details of the allegation, the following points were persuasive to the investigators in reaching their conclusion. While none of the rationale used below can establish that sexual misconduct did not occur, numerous inconsistencies undermine proof that sexual misconduct did occur, ultimately resulting in a finding of insufficient evidence:

- Taking into account possible effects that trauma or medication may have had on [the Reporting Party’s] memory; there were numerous inconsistencies in [Reporting Party]’s account of the events that occurred before, during and after the alleged incident. By way of contrast, [Responding Party]’s account of the events remained consistent over all of the interviews with him, including the first time he was questioned about the incident without advanced warning of the investigation.

- [Reporting Party] indicated that after the alleged incident, she and [Responding Party] did not have any substantive conversation. [Responding Party] stated that after the alleged incident, he and [Reporting Party] talked about getting together later that same evening and that her roommate would be away for the night, which, in fact, she was. It seems that [Responding Party] likely would not have known this information unless [Reporting Party] had shared this with him.
- [Responding Party] reported that after the incident, they left his residence hall room, holding hands, discussing getting in contact later in the evening and parting with a kiss. [Reporting Party]'s statements about the interaction with [Responding Party] after the alleged incident varied over the investigation. Initially [Reporting Party] stated that she quickly departed while [Responding Party] stayed behind in the hallway speaking with another student. Later in the investigation [Reporting Party] stated that they parted ways outside [Responding Party]'s residence hall after a short kiss.
- [Reporting Party]'s description of her body position and [Responding Party]'s body position during intercourse varied significantly over the course of the investigation and included a description of [Responding Party] supporting himself on top of [Reporting Party] while holding down her shoulders, an unstable position in which intercourse would be unlikely to take place.
- [Reporting Party] provided inconsistent statements about her alcohol consumption, varying initially from having only a few sips of an alcoholic drink, to reporting to the [Police Department] the next day that she had three mixed drinks, even though she doesn't typically drink. She later acknowledged bringing a 750ml bottle of tequila and approximately 15 frozen tequila popsicles to the party, and consuming three mixed drinks and two of the popsicles at the party.
- [Reporting Party] reported to [Police Department] that there was no physical contact with [Responding Party] at the party at the lacrosse house, although several witnesses and [Responding Party] himself stated otherwise, observing [Reporting Party] and [Responding Party] flirting, kissing and hugging during the party. After additional inquiry, [Reporting Party] acknowledged that kissing occurred.
- Initially, [Reporting Party] reported that [Responding Party] held her down by lying over her legs while placing a condom on before penetrating her. Later, she recollected that they may have been lying side by side when he placed the condom on his penis. [Responding Party] consistently reported that [Reporting Party] was on top of him the entire time.
- When [Police Department] coordinated the rape kit, they inquired if [Reporting Party] had had any other sexual partners, to which she responded she had not had any other sexual partners with the exception of her boyfriend with whom she had most recently been intimate approximately one year prior to this reported incident. When the rape kit found traces of semen, [Reporting Party] stated that she had been sexually intimate with another individual two weeks prior to the alleged incident with [Responding Party]. When later asked if she had been intimate with anyone else after the alleged incident, [Reporting Party] stated that she had not. Later, she indicated that she had intimate contact, which did not include sexual intercourse, on [Date].
- When [Police Department] asked [Reporting Party] if it was possible that [Responding Party]'s penis may have come in contact with her vagina prior to placing the condom on, [Reporting Party] stated it was possible. When asked this question again by the [University or College] investigators, [Reporting Party] stated that [Responding Party]'s penis did not come into contact with her vagina prior to placing the condom on at any time.

For these reasons, we find that the evidence does not support a finding that [Responding Party] has violated the sexual misconduct policy.

Both parties to the complaint have the right to appeal this finding within five (5) business days, as described on page 5 of the attached policy.

If you have any questions regarding this letter or the appeal process, please do not hesitate to contact us.

Thank you again for your cooperation and patience.

Sincerely,