

EXECUTIVE SUMMARY

I, Christine Wechsler, Esq., External Investigator, of Elliott Greenleaf, P.C.¹ issue the following executive summary of my findings pursuant to an investigation commissioned by the Office of the President of Swarthmore College to discern whether any current student of the College participated in behaviors documented in the unofficial “minutes” of the Phi Psi and Delta Upsilon fraternities and whether any current² student at the College was the subject of published accounts in a Tumblr³ page entitled, “*Why Swarthmore’s Fraternities Must Go.*” My investigation consisted of sixteen witness⁴ interviews, a review of the unredacted “minutes” of Phi Psi, redacted “minutes” of Delta Upsilon⁵, and the unredacted submissions to the Tumblr account as maintained by its owner. I also reviewed the College’s *Task Force on Student Social Events and Community Standards Report* and all published articles regarding Phi Psi and Delta Upsilon’s meeting “minutes.” I performed outreach to an additional nineteen individuals that were identified as having potentially relevant information. These individuals either failed to respond to my contact or expressly declined to participate in this investigation.⁶

In brief, I was not able to discover any direct evidence of substantive policy and/or code of conduct violations by or against any current students at the College. Rather, the investigation revealed that there are merely vague, unsubstantiated, and overly generalized allegations regarding conduct at both fraternities.

¹ On May 1, 2019, the Office of the President of Swarthmore College (“the College”) formally engaged Elliott Greenleaf, P.C. (“EG”) to conduct an independent, external investigation after the College’s student newspapers published two sets of redacted “minutes” dated from 2013 through 2016 from the Phi Psi and Delta Upsilon fraternities on April 18, 2019 and May 2, 2019, respectively. In addition, EG was engaged to investigate social media reports anonymously written on a Tumblr page and published as “first-or second-hand accounts of the past four years (2015-2019).” EG’s work under this engagement was provided at the request of the Office of the President for the purpose of discerning whether any of the behaviors described in the documents were ongoing and whether any current student has been involved. Specifically, EG’s retention and work was necessary for the purpose of determining whether any student violated the tenets of Pennsylvania’s applicable antihazing laws, and/or College policies, and/or Code of Conduct. EG understood that the College administration would specifically rely upon EG’s compilation, interpretation, and assessment of necessary information, documents, policies, practices, and cultural norms in determining whether any current student engaged in any conduct that potentially violated state law and/or College policies. This investigation did *not* include any Title IX assessments and/or determinations. It was determined that any reports of information regarding allegations of sexual misconduct and/or gender-based harassment would be referred to the Title IX Coordinator.

² “Current Students” refers to those students enrolled at the College as of May 1, 2019, and/or during the pendency of this investigation.

³ Tumblr is a microblogging and social networking website owned by Verizon media and published on-line.

⁴ I have maintained interview records of the witnesses that provided information during this investigation but due to privacy concerns declines to specifically identify those individuals in this report.

⁵ Due to a lack of cooperation, I was not able to secure unredacted meeting “minutes” of Delta Upsilon.

⁶ The College’s process does not compel student participation.

A Lack of Cooperation Impeded the Investigation of the Fraternities

I was not able to discover any direct evidence of hazing, incidents, and/or occurrences that constitute potential violations of applicable Pennsylvania statutes and/or College policy by or against current students at the College in spite of the meeting “minutes” and despite reports by witnesses that “hazing”⁷ occurred at Phi Psi and/or Delta Upsilon (“the Fraternities”).

Only one former member of Phi Psi- a 2016 pledge of the fraternity and graduate of the College- participated in this investigation.⁸ No members of Delta Upsilon participated in this investigation. Individuals identified by witnesses as having potentially relevant information, such as former fraternity members, fraternity leadership, and the partners of fraternity members, declined to participate in this investigation.⁹ As a result, I was not able to discover relevant information about any alleged incidents, potential misconduct, and/or occurrences of hazing and/or its impact on current students. I was also unable to discover and/or query anyone regarding the contents of any meeting “minutes.”

The sixteen individuals that did cooperate with this investigation had little to no information regarding incidents and/or instances of misconduct by fraternity members. They raised allegations regarding their belief that the Fraternities engaged in “hazing.” However, the information that was reported was cursory, speculative, and could not be corroborated or substantiated. These witnesses were also unable *or* unwilling to identify current students that have engaged in any behavior that would potentially constitute a violation of policy. If and where witnesses purported to have information, they were unwilling to actually identify students that engaged in objectionable behavior. I asked why no one was willing to identify those who allegedly engaged in objectionable behavior and was told repeatedly that current students did not want to engage in any type of traditional action and/or get fellow students in trouble. Multiple witnesses stated that they brought information to my attention for the “awareness.”

The failure of witnesses to identify peers alleged to have engaged in conduct that potentially violated policies and/or the College’s code of conduct, impeded the investigation and resulted in an inability to appropriately and fully gather information to assess whether escalating reports on campus regarding the poor “culture” at fraternities could be corroborated or the result of anecdotal and/or cursory, unsubstantiated, and speculative insinuations and allegations regarding fraternity members’ “behavior.”

⁷ I determined in my discretion that it is proper to utilize Pennsylvania’s definition of hazing to analyze the information gathered during this investigation.

⁸ This individual, (“XY” for purposes of this report) reported that he was a pledge in 2016 and was never “hazed.” XY reported that Phi Psi held activities that members and pledges elected to participate in and there was an option for individuals who did not drink alcohol to participate *if and when* activities involved drinking. In addition, XY reported that there was a designated upperclassman to serve as a point of contact if a pledge did not want to do something during pledge season and no one was ever required to engage in conduct if they were uncomfortable. XY reported all activities were voluntary.

⁹ One former roommate of a Phi Psi pledge participated in this investigation. However, they did not provide any substantive evidence of “hazing.”

I further determined that the “minutes” of the Fraternities are historical and did not find any additional, relevant documented evidence regarding potential misconduct by or against any current students that are members of the Fraternities. Notably, there is an acknowledgment in the “minutes” of Delta Upsilon that hazing is “illegal,” and a statement that “none of us do it.”¹⁰

Finally, there were no substantiated reports of derogatory and/or exploitative conduct by fraternity members reported during the course of this investigation and no direct evidence of misconduct and/or behaviors that violated College policy and/or the Code of Conduct.

Tumblr: “Why Swarthmore’s Fraternities Must Go” is Properly Referred to the Title IX Coordinator

As of May 9, 2019, a Tumblr account entitled “*Why Swarthmore’s Fraternities Must Go*” featured seventy accounts of incidents and/or instances of alleged sexual misconduct by members of the College community, absent identifying information. I determined that the content of the Tumblr account was primarily authored by two individuals. I also determined that most incidents and events alleged in the Tumblr account implicate potential discrimination based on sex or gender, including sexual harassment, sexual assault, and other forms of sexual misconduct. In addition, the Tumblr account described behavior that potentially threatened the learning, living, and work environments at the College. Accordingly, after securing the original, unredacted submissions to the Tumblr blog from the account’s owner, I referred all substantive reports of potential misconduct published on Tumblr to the College’s Title IX Coordinator. This referral ensures that all substantive reports from Tumblr and any allegations regarding potential prohibited forms of conduct will be investigated so that the College may properly discern whether there was a violation of policy and address any potential for discrimination on the basis of sex, including sexual harassment, gender-based harassment, sexual violence, sexual assault, and other forms of sexual misconduct.

I caution that the proper investigation of the published reports in the Tumblr account requires adherence to proper administrative procedures and the rules designed to ensure that reliable judgments are made regarding the accuracy of the information reported. Notably, I determined that one published submission to the Tumblr account was not only unsubstantiated, but false. Indeed, I determined that a College alumnus submitted a bogus story to the Tumblr in order to check whether the account owner would attempt to corroborate and/or validate and/or authenticate the report of information prior to its publication on the blog. This submission was removed from the Tumblr when it was revealed that the submission was false.

¹⁰ The last two pages of the Delta Upsilon “minutes” purports to be a letter to fraternity brothers regarding a member’s attendance at a Delta Upsilon regional leadership seminar and discusses a speaker’s presentation. The third paragraph of the letter details an exchange with a Penn State student regarding a hazing and states, “So I explained to our Penn State brother that hazing was illegal and none of us do it.”

Generalized Reports Regarding the “Culture” of Fraternities at Swarthmore is Properly the
Purview of the Task Force

On April 27, 2019, President Valerie Smith suspended fraternity activities pending the outcome of this external investigation. President Smith was clear to differentiate my work from the College’s Task Force on Student Social Events and Community Standards. Whereas the purpose of this investigation was to discern whether any of the behaviors described in the documents were ongoing and whether any current student has been involved, the Task Force was specifically charged “to consult broadly throughout the community and to critically examine social life on campus—including Greek life and programming in campus social spaces.”¹¹ Notwithstanding the clear distinctions President Smith made between this investigation and the work of the Task Force, the majority of reports by witnesses in this investigation focused on cultural issues pertinent to Greek life and fraternity programming on campus, as well as social spaces on campus. Overwhelmingly, interviewees reported generalized, negative complaints about the following: 1) Fraternities and allegations that fraternity members engage in sexual violence, racist and/or homophobic behaviors, and/or misogynist conduct, and/or insensitive and disrespectful conduct; 2) The concept that it is inequitable for fraternities to have exclusive control over a College-owned social space; 3) issues pertaining to alcohol at social events; 4) the difficulty planning social events on campus; 5) the inability to access designated space to hold social events on campus; 6) concerns regarding disparate treatment of students by Public Safety.

I determined that the reports of information by witnesses regarding broader issues within the College community were beyond the scope of my investigation and properly the subject of the Task Force’s nearly year-long review and the subsequent decisions¹² by President Smith.

Conclusion

Witnesses that elected to participate in this investigation provided little or no direct evidence of hazing, incidents, and/or behaviors that constitute potential violations of College policy and/or statute. In some instances, witness complaints did not rise to the level of a potential violation (e.g., “I heard he called us bitches”). In most reports, the information provided was cursory, generalized, and absent relevant detail. Finally, if and where witnesses purported to have information, they were unwilling to actually identify students that engaged in objectionable behavior. When asked why witnesses were not willing to identify those who allegedly engaged in objectionable behavior, I was repeatedly told that those who were subjected to objectionable behavior did not want any type of traditional action. I was also told that the information was being reported generally to bring “awareness” to issues. Accordingly, I was not able to discover any direct evidence of substantive policy and/or code of conduct violations by or against any current students at the College.

¹¹ See *Final Report Task Force on Student Social Events and Community Standards*, dated Friday, May 3, 2019 (found at <https://www.swarthmore.edu/sites/default/files/assets/documents/presidents-office/Task%20Force%20Report%20-%20Final.pdf>).

¹² See communication by President Smith on May 10, 2019 (<https://www.swarthmore.edu/presidents-office/student-social-events-and-community-standards-update>).