

Overview of the Holland & Knight Investigations

August 2018

I. Introduction

Phillips Exeter Academy (“PEA”), through its outside legal counsel, engaged the law firm of Holland & Knight LLP (“Holland & Knight”) in April of 2016 to investigate allegations of past misconduct by PEA faculty and staff toward individuals who were students at PEA at the time the alleged misconduct occurred. With few exceptions, the individuals who reported past misconduct contacted PEA directly through various means. Accordingly, a protocol was established by PEA that began upon its receipt of a report of alleged past misconduct. As part of that protocol, PEA first provided notice of the reported past misconduct to the Exeter Police Department (“EPD”) and, after receiving clearance by the EPD, PEA (through its outside legal counsel) referred matters to Holland & Knight for investigation. Holland & Knight then contacted and sought to interview the individuals regarding the reported misconduct, including individuals impacted by the misconduct, individuals accused of the misconduct, witnesses to the misconduct, and faculty and staff (past and present) who may have had knowledge of or should have had a role in regard to the misconduct. Some individuals willingly spoke to Holland & Knight (sometimes on several occasions), while other individuals stated, either directly or through their own legal counsel, that they did not wish to participate. Some individuals did not respond in any way to Holland & Knight’s multiple efforts through varied means (such as phone, email, letter) to speak with them. Some key witnesses had died many years ago or suffered from health conditions that impacted their ability to take part in the investigations.

Through this process, Holland & Knight was assigned and completed 28 investigations. The first of these matters was assigned to Holland & Knight in April of 2016 and the last in January of 2018. Of those 28 matters, 26 involved reported misconduct of a sexual nature by a PEA faculty or staff member towards a PEA student occurring at various points spanning from the 1950s to the 2010s. Two of those 28 matters did not involve allegations of sexual misconduct by a PEA employee towards a PEA student. Rather, these two matters involved allegations that PEA and certain of its employees failed to respond properly to certain events on campus, some involving sexual assault, and some involving other student health and safety issues. Among the issues investigated in those two matters were whether PEA and certain of its employees met their obligations to report certain issues internally at PEA and/or externally to appropriate state agencies. All of these 28 investigations have been concluded as of this date.

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During the course of these 28 investigations, Holland & Knight conducted approximately 294 interviews of over 170 individuals. The persons interviewed were located in various states, as well as in multiple countries. The interviews were conducted by phone or in person. Holland & Knight attempted to conduct approximately 50 additional interviews with persons who could not be reached or declined to be interviewed. Also, in conducting these 28 investigations, Holland & Knight reviewed thousands of pages of relevant documents and materials, including personnel files, PEA administrative records, documents provided by persons interviewed, photographs and videos, and other publicly available information.

For each investigation conducted, Holland & Knight shared with PEA its factual findings. On certain investigations Holland & Knight also shared with PEA systemic concerns that became apparent through the investigations. For example, in the course of conducting the investigations, Holland & Knight learned of a dual record-keeping system that existed at PEA at least as early as the 1970s and which continued into the 2010s. This dual record-keeping system included a personnel file held by the equivalent of a human resources office, and a “confidential” file that was often held by the Principal and/or Dean of Faculty of PEA. In some cases, this dual record-keeping system resulted in other administrative staff members having an incomplete view of the conduct history in the confidential file. Another example of a systemic concern was an absence of an established and clear protocol for students, faculty, and employees to raise complaints and training for PEA administrators on how to respond to concerns of misconduct by faculty or staff impacting students. The presence of an effective protocol would have, in turn, resulted in PEA formalizing opportunities to educate its community, and to train its administrators on how to respond to, investigate, and follow up on concerns of inappropriate conduct, including whether and when to report allegations of misconduct to the appropriate authorities. Reflective of this absence of protocol was that some individuals who experienced different forms of sexual misconduct at various points were not able to seek assistance or, when they sought assistance, were not treated consistently or fairly. Emerging from these systemic deficiencies was a pattern of PEA failing to respond to, investigate, and communicate internally regarding reported misconduct in an effective and appropriate manner and, in certain circumstances, failing to report misconduct to the appropriate authorities.

Through its investigations, Holland & Knight determined that in seven of the 26 investigations of reported sexual misconduct by employees toward students, the information learned during the investigation led to a finding that some or all of the reported sexual misconduct did occur. In those seven matters, the sexual misconduct included sexual penetration, fondling, and/or kissing of a PEA student by a PEA faculty or staff member. In five other investigations, Holland & Knight determined that there existed some level of conduct of a sexual nature or inappropriate attention to boundaries in the form of physical touching of students, including by hugs, back rubs or other touching, and/or verbal interactions or innuendo with students. In one matter involving a report of sexual abuse, including oral and anal sex, by a faculty member on a student in the late-1940s/early-1950s,

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the report was made by a PEA alumnus directly to PEA and bore indicia of reliability. However, Holland & Knight was unable to investigate the matter because the alleged perpetrator was deceased and the reporting party did not wish to participate in the investigation. In two other investigations, involving allegations of sexual misconduct in the form of a sexual relationship between a PEA faculty member and a PEA student, Holland & Knight could not make any determination, because neither the PEA student, the accused PEA faculty, nor any other material witnesses participated in the investigation. In five other investigations, Holland & Knight could not make a determination regarding the allegations of sexual misconduct because there was no identified complaining party or the complaining party would not participate in the investigation. In six other investigations, Holland & Knight determined that there was no sexual misconduct. In regard to the two investigations that did not involve allegations of sexual misconduct by faculty or employees, Holland & Knight determined that in a number of situations PEA employees failed in their responsibilities to address alleged misconduct impacting the health, safety, and welfare of students in a proper and effective manner.

During the course of Holland & Knight's investigations, PEA independently created the Principles of Disclosure that it shared in a March 2, 2017 letter to the Exeter community. Presented below are overview summaries of seven investigations, which PEA determined satisfied its Principles of Disclosure. The misconduct that is the subject of those seven investigations and presented in the overview summaries was alleged to have occurred during various points of time in the 1970s, 1980s, 1990s and 2000s. In preparing these overview summaries, Holland & Knight took a number of steps to respect the privacy of the individuals who experienced the misconduct, including not providing specific names, dates, locations, or other details that betray personal and sensitive information shared. The persons accused of the misconduct (and found to have engaged in certain misconduct which PEA determined satisfied its Principles of Disclosure) are as follows (presented in alphabetical order): Donald Foster, Steve Lewis, George Mangan, Barry Pomerantz, Richard Schubart, Edleff Schwaab, and an individual referred to as the Unknown Male.

Finally, we wish to thank the individuals who participated in the 28 investigations. In particular, we thank and acknowledge the courage of the student survivors who shared their experiences.

II. Overview Summaries of Referenced Investigations

1. Donald Foster

In October of 2016, Holland & Knight was asked to investigate former faculty member Donald Foster ("DF") with regard to his alleged inappropriate conduct with students of PEA. The specific allegations that Holland & Knight investigated included:

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- A. DF pinned a student against a wall and forcibly kissed her and put his tongue down her throat on her graduation day in the 1980s. This person will be referred to as Student A in this section.
- B. DF forcibly kissed a student on her final day of class as a junior in the 1980s. This person will be referred to as Student B in this section.
- C. DF requested that a recent graduate move closer to New Hampshire so that she could be sexually available to him. DF then pinned this student against a wall and forcibly kissed her and stuck his tongue in her mouth while pressing against her with an erection. This person will be referred to as Student C in this section.

DF was an instructor in the History Department beginning in 1973. In 1980, he focused his teaching on anthropology and was PEA's only anthropology teacher until his retirement in 2011. Through his attorney, DF declined to be interviewed by Holland & Knight. PEA stripped DF of his emeritus status on March 2, 2017; he was also banned from campus on February 23, 2017.

Student A

Student A graduated from PEA in the 1980s. Student A stated that she loved anthropology and took every one of DF's classes that she could during her time at PEA. Student A stated that on graduation day, DF invited her to his apartment because he had a gift for her. When Student A arrived at DF's apartment, she stated that he handed her a book and, as he was handing it to her, he "pinned" her against the wall. Student A described that DF's body was pushed against her and he kissed her with his tongue in her mouth. Student A stated that she was able to kick DF and "get out the door" to stop the behavior.

Student B

Student B graduated from PEA in the 1980s. Student B stated that DF was her favorite teacher at PEA and she took all of the courses DF offered which, at the time, she estimated to be three or four courses. Student B stated that DF was known to make odd comments to girls, and she said that DF would occasionally come to the games and practices of the sport that Student B played and he would "pat girls on the butt when sending them on to the field." Student B stated that this was "kind of harmless back then" and no one ever complained.

Student B stated that towards the end of the spring semester in her junior year, when she was 16 years old, DF had her class watch a movie in the theater in a main building, the name of which she did not recall. Student B stated that she stayed in the theater as the other students were leaving to ask DF a question about the class subject matter. She stated that there was initially another male student with her, but she did not remember his name, and then he left and there were no other students around. Student B described that she was

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standing between DF and a bolted row of chairs in the theater. When she approached DF, she stated that he “grabbed” her and said “I’m really going to miss you when you go to [Student B’s study abroad location] next year.” Student B said that DF then tried to kiss her on the mouth. Student B stated that she turned her head so DF’s kiss landed on her cheek instead of her mouth. She then stated that she broke from his grasp and immediately left the theater. Student B stated that she was angry that DF thought he could do that to her and his conduct caused her to question his prior interactions with her. She stated to Holland & Knight that her thoughts at the time were about “all [of DF’s] comments on my blouse or my hair, all came back to ‘did he like me? Why did he do that? Did I earn those grades?’”.

Following this interaction with DF, Student B stated that she went to the Dean’s Office to share what DF had done to her. During her interview, Student B stated that she did not remember with whom she spoke in the Dean’s Office. (Holland & Knight determined that Student B spoke with the Dean of Students.¹) Student B indicated that the person she spoke with listened to her and then required her to go to the infirmary and speak to a PEA counselor.

Student B stated that the police came to her house following this event, but they questioned her about conduct that she shared with the PEA counselor that occurred prior to her time at PEA. Following her interview with Holland & Knight, Student B confirmed with her mother that neither PEA nor the local police that visited her had mentioned the conduct of DF to her or her mother.

Holland & Knight interviewed the Dean of Students, who relied on her contemporaneous notes to confirm that Student B did approach her and conveyed to her virtually identical information to that which Student B conveyed to Holland & Knight. Holland & Knight also interviewed an individual who worked as a counselor at PEA in the 1980s in the Health Center. That counselor recalled speaking with Student B, but not about DF. Rather, the counselor stated that she reported to New Hampshire’s Department of Children, Youth, and Families, as well as the local police in Student B’s hometown, the conduct that Student B had shared with her regarding potential peer sexual abuse that occurred before Student B began at PEA.

Holland & Knight also reviewed a memorandum written by the Principal of PEA, in the 1980s.² In his memorandum, the Principal stated that the Dean of Students had informed him about Student B’s allegations, “which the student believed to be sexually motivated” and that DF “had tried to kiss her at the end of a class when no one else was present.” The Principal’s memorandum stated that he and the Dean of Faculty had met

¹ The Dean of Students at the time was Susan Herney. As indicated in subsequent footnotes, Holland & Knight identifies the PEA employees referenced in each of these seven sections, as different persons filled various roles during the periods of time encompassing the investigations.

² The Principal at the time was Steven Kurtz. Mr. Kurtz died in 2008.

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with DF soon after the inappropriate conduct with Student B.³ The Principal's memorandum indicated that DF stated to him and the Dean of Faculty that "he had no intention of embarrassing the student and had only wished to give her a kiss on the cheek." The Principal's memorandum stated that DF denied that he tried to kiss Student B on the mouth. The Principal's memorandum also indicated that DF had "the habit of putting his hand on students' arms or shoulders," and he thought that "expressions of affection were helpful" to students. DF offered to apologize to the mother of Student B and Student B herself and report back. The Principal's memorandum indicated that DF reported back the following Monday and "said that his apologies had been accepted."⁴ The Principal concluded this portion of his memorandum by stating that "[a]t no time did either [Student B] or [DF] testify to anything beyond what turned out to be a clumsy quick embrace."

The Principal's memorandum also stated that another faculty member had approached the Dean of Faculty and the Principal the same year to report "embarrassing encounters" with DF, which were described as his standing "very close to her and look[ing] at her in a way that she believed [was] deliberate at her bosom. ...[This individual] had heard of the incident [involving Student B] with consternation and believed that [DF] had problems that should be seriously examined." She also indicated "another young woman on the faculty had been affronted by his actions in the same way." The Principal's memorandum also conveyed that another person had "several encounters with [DF]" and another PEA faculty-witness stated that DF came up from behind a female member of the History Department and put his arms around her in the recent past. The woman in question rejected this advance "angrily, saying that she would kick him where it would hurt if he didn't leave her alone."

The Principal's memorandum concluded that he then spoke with an advisor to PEA counselors, as well as the Head Counselor, and concluded that DF must "seek out the help of a psychiatrist if he is to continue on the faculty."⁵ DF apparently met with a local psychologist over the following summer. That psychologist stated that, after examination, "[t]here was no evidence that [DF] might be suffering from an underlying severe character flaw or propensity to sexual perversion." The letter continued that the psychologist did "feel [DF's] intentions were innocent and paternal, and cautioned him to practice greater restraint with his female students."

Student C

In June of 2018, another PEA alumna, who will be referred to as Student C, contacted Holland & Knight to share information. Student C stated that she graduated in the 1970s. She stated that, as a recent alumna in the fall following her graduation, she had returned to campus to talk with DF, whose classes she had taken in 10th and 12th grade and

³ The Dean of Faculty at the time was Jack Heath. Mr. Heath was too ill to speak with Holland & Knight during its investigation. He died in 2018.

⁴ Student B informed Holland & Knight that DF had never apologized to her or her mother, and there was no indication from the files reviewed by Holland & Knight that the Principal or anyone from PEA sought to confirm DF's statement.

⁵ The Head Counselor at the time was Michael Diamonti.

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whom she viewed as a trusted teacher and mentor. Upon stating that she was unhappy at her college, DF stated that Student C should move closer to New Hampshire so as to “be available to him,” which Student C interpreted as implying she be “sexually available.” Student C stated that, as she was leaving moments later, DF pushed her against the wall and had an erection that was pressing against her, and then stuck his tongue in her mouth and kissed her. Student C stated that she pushed away from DF and immediately left his classroom.

Additional Conduct

Several additional individuals shared with Holland & Knight their own uncomfortable experiences with DF when they were students. For example, one alumna who graduated in the 1990s described DF as invading students’ personal space by doing things such as moving very close to students when talking to them (“he is a close talker”) and constantly touching the arms or shoulders of females while talking to them. She stated that female students would warn each other to “watch out” for DF or to “make sure you wear your sweater” in his class for fear of DF looking at their cleavage or breasts.

Another alumna who graduated in the 2000s (prior to DF’s retirement) stated that DF would often put his hand on her shoulders during class discussions and would leave his hand on her shoulder for upwards of five minutes at a time. She stated that on certain occasions, while DF’s hands were on her shoulders, he would twirl the ends of her hair while talking to her. She said this could go on for a “long time.” This alumna also stated that DF’s conduct was well known to students at PEA. She stated that female students did not want to sit in the seats next to DF or directly across from DF while seated at the table. She stated that it was typical that the “last girl to enter the room would get stuck sitting next to him.” This alumna also stated that on a small number of occasions she went to see DF outside of class to get extra help. She stated that DF would put his hands on her upper shoulders for three to five minutes. This alumna stated that these meetings were so uncomfortable that she stopped attending after the second or third time it happened. This alumna also conveyed that her female friends and older female students had told her that “if you sat next to him and let him touch your shoulder, then you’d get a better grade.” Other older female students had told her that “if you want to get a good grade sit... across from him in a low cut shirt.” She said older students had also told her to “watch out for him.”

In the course of reviewing PEA records for this investigation, Holland & Knight also learned that DF was accused of sexually harassing a more junior faculty member in the 1990s. This historical allegation made by an adult faculty member was beyond the scope of Holland & Knight’s investigation and, consequently, Holland & Knight did not independently investigate this allegation. However, it provided relevant historical information regarding information that PEA had about DF at the time it was raised. Contemporaneous notes indicated that the employee alleged that DF “grabbed her and kissed her” and DF contemporaneously responded by admitting he did kiss the employee, but did not remember if it was on the mouth or the cheek. The employee also alleged that

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DF “touched her in ways that [she] found uncomfortable.” The Dean of Faculty wrote to the employee, stating that “in spite of differences in yours and [DF’s] accounts, your complaint is justified...The behavior of [DF] that you found offensive was, indeed, inappropriate.”⁶

2. Steve Lewis

In April 2016, Holland & Knight was asked to investigate alleged inappropriate conduct by former PEA art instructor Steve Lewis (“SL”) involving students at PEA. The conduct at issue included:

- A. Engaging in a sexual relationship with a PEA student in the 1980s. That person will be referred to as Student A in this section.
- B. Engaging in sexualized “photo shoots” with female PEA students during a time spanning at least the early-1990s through approximately 2016 (the year PEA terminated SL’s employment).

SL was employed at PEA from 1983 until PEA terminated his employment and barred him from campus in April 2016 after he admitted to a sexual relationship with Student A in the 1980s. SL worked in various capacities as an instructor in the art department at PEA during the course of his career. SL’s lawyer informed Holland & Knight in June 2016 that SL would not participate in an interview as part of the Holland & Knight investigation. However, before the Holland & Knight investigation began, SL was interviewed by the EPD and the publicly available, though heavily redacted, EPD report of that investigation reflects that SL admitted to a sexual relationship with Student A while she was a student in the 1980s. During the interview with EPD, SL admitted to kissing Student A on multiple occasions while she was a student, and admitted to a sexual encounter with Student A approximately one week after she graduated from PEA.

Student A

Through her attorney, Student A informed Holland & Knight that she declined to participate in the investigation. On April 6, 2016, EPD interviewed Student A and the publicly available EPD report reflects that Student A said that she had a sexual relationship with SL when she was a senior at PEA. The EPD report states that Student A described that certain of the sexual activities with SL took place in the photography department dark room at PEA.

Two of Student A’s friends from PEA participated in interviews with Holland & Knight. While they expressed hesitation and caution about wanting to respect Student A’s privacy, they shared their contemporaneous knowledge of a sexual relationship between SL and Student A. For example, one witness, who was friends at PEA with Student A, and shall be referred to herein as Witness B, stated that SL’s sexual relationship with Student

⁶ The Dean of Faculty at the time was Andrew Hertig.

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A was “common knowledge” in their dorm. Another witness, who was close friends with Student A, and shall be referred to herein as Witness C, stated that Student A told her (Witness C) that SL was kissing and groping Student A after they played tennis on many Sunday mornings. Witness C also stated that Student A told her that she had sexual intercourse with SL shortly after graduation in a hotel in a city to which they traveled from Exeter (Witness C thought it was Boston).

Holland & Knight also reviewed a memorandum written in the 1980s by the Dean of Faculty.⁷ The memorandum discusses “rumors” regarding SL and a “senior girl” that would align with the conduct involving Student A. However, the memorandum does not identify the “senior girl” and is unclear as to the timing of when the rumored conduct occurred. (As referenced above, the Dean of Faculty was not able to be interviewed for health reasons.) There was no indication from other PEA records (or persons interviewed) that PEA investigated the rumors described in the memorandum. Rather, the Dean of Faculty wrote in his memorandum that he discussed the issue with SL but “did not ask whether the rumor was true, since it was obvious that he [SL] was shocked and dismayed about it....”

Additional Conduct

A PEA graduate in the 1990s, herein referred to as Student D, reported that it was well known that SL asked certain students to pose for photos, even those who were not in his classes. Student D said that SL asked her if she wanted to have him take photos of her, and based on what Student D had heard about his selection criteria, she was flattered and thought that SL must have thought she was pretty. At SL’s direction, Student D met him at some off-hour, either after classes or on a weekend, in a photography room at PEA. She stated that this occurred either her 11th or 12th grade year at PEA. Student D said that after she arrived, SL had hair gel and lipstick for her to put on for the photographs and touched her in ways that were inappropriate and she felt were designed to test her to see if she was interested in a sexual experience. Student D did not respond in a way that prompted any further physical conduct and/or touching by SL. SL provided Student D with the photographs he took of her, and she kept them and provided them to the investigators. Student D said that the photos were not an accurate representation of her appearance at the time, and that she appears much more sexually stylized in the photos than she actually was at the time.

Another PEA graduate from the 1990s, referred to herein as Student E, stated that SL took sexually charged and stylized photographs of two students who lived in her dorm her 11th grade year. Student E said that these students did not want to be contacted by the investigators, but Student E recounted certain details of their experiences with SL. Student E said that one student, who did not graduate from PEA, told her that SL tried to recreate a Calvin Klein ad photograph with her in his apartment, and that he asked this student to take off her bra for the photographs. Student E said that another student in her dorm went

⁷ The Dean of Faculty at the time was Jack Heath, who could not be interviewed because of his poor health.

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on a photo shoot with SL off-campus and returned to the dorm in different clothes than those in which she had left.

At the time of his termination from employment at PEA in 2016, SL maintained a website that included a photograph of a then-current female PEA student. All matters involving that photograph and that specific student were outside the scope of the Holland & Knight investigation, and were addressed by PEA.

3. George Mangan

In April of 2016, Holland & Knight was asked to investigate deceased faculty member George Mangan (“GM”) with regard to his alleged inappropriate conduct with a student of PEA. Specifically, Holland & Knight was asked to investigate whether GM forcibly kissed and groped the student on the night of her graduation in the 1980s. This person will be referred to as Student A in this section.

GM was an instructor in the English Department. At the time of his death in 2009, GM was an emeritus instructor of English.

Student A

Student A graduated from PEA in the 1980s and she was 17 years old at the time of her graduation. Student A stated that GM was revered by students because he was smart, irreverent, and adversarial towards authority figures, including PEA administrators. In her words, GM made students feel like grown-ups.

Student A told Holland & Knight that on the evening of her graduation, her parents hosted a graduation party for her at the family’s house in a nearby town in New Hampshire. Student A stated that GM and his wife were invited to the party because they were friendly with her parents. She could not recall if other faculty members were invited or attended. Student A recalled that the adults at the party were drinking, including GM. Student A stated that she was not drinking because she was underage and it was a family party.

Student A recalled that at some point in the evening, GM approached her and one of her best friends, who was also at the party, and asked if they wanted to leave the party and take a walk on the beach. Student A stated that there was a sea wall along their walk to the beach and GM asked her and her friend to sit on either side of him with their backs against the sea wall. Student A stated that while they were sitting against the sea wall, GM put his hands under her bathing suit top. Student A stated that GM also kissed her and put his tongue in her mouth. Student A’s friend also said that GM touched her inappropriately, and she recalled feeling GM’s hand “on my shoulder and then mov[ing] quickly down my body” while they were sitting against the seawall. Student A’s friend remembered feeling

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GM's hands inside her shirt and stated that she immediately pushed him away when his hands moved to her breast area.⁸

At this point, both Student A and her friend recalled that Student A's friend stood up and indicated that she was leaving to return to Student A's house. Her friend wanted Student A to accompany her, but GM told the friend to leave so he could be alone with Student A. Student A stated that she was left alone with GM for a short period of time, but her friend quickly returned and said something to the effect of "your mom wants you now." Student A indicated that her friend made the urgency of the request clear so they both ran back to the house, where the party was still in progress.

Student A recalled that she and her friend immediately reported what had happened to family members who were at the party, and both young women were told to stay in a back bedroom while GM, who had returned to the party, was escorted from the home by his wife. Student A informed Holland & Knight that later that evening GM called her and asked her to come pick him up in Exeter. Student A refused to do so.

The day after the party, GM's wife returned to Student A's home alone to apologize to her mother for GM's conduct. Student A informed Holland & Knight that the Principal⁹ had been informed about what had occurred. Student A recalled that she was asked what she wanted to happen to GM, but she remembered that she felt that she could not ask for GM to be fired because she knew GM's family (including his children) and it was "too much responsibility" for her to decide what should happen to him. She remembered asking that GM be removed from the girls' dormitories and that he get help for his drinking. Student A recalled subsequently receiving a letter from the Principal in the days following the report, but his note "always seemed off to her...even as a 17 year old."

Holland & Knight reviewed two notes sent by the Principal in the 1980s to Student A and her parents, respectively. In the note to Student A, the Principal characterized GM's conduct as an "unfortunate incident." He informed her that GM was in the hospital and he had "never been anything but a good and responsible teacher and person as I've known him these ten years." The Principal then stated his "hope" that Student A "won't lose faith in people or hate men. If you would ever like to talk to me, I'd be very glad and not make it all clammy." In the note to Student A's parents, the Principal wrote that he was "very sorry all the way around about this very unfortunate matter." He stated that he would "know what is right to do as time goes along. On behalf of the Academy, I want to say how sad and sorry I am."

In addition to the report to the Principal in the 1980s, GM's inappropriate conduct with Student A was also relayed to the Principal, the Dean of Faculty, and the Dean of

⁸ Student A's friend at the time of the misconduct shared her experiences with Holland & Knight to support Student A, but she asked that Holland & Knight not further investigate GM's behavior towards her.

⁹ The Principal at the time was Steven Kurtz, who died in 2008.

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Students at various additional points in the 1980s and 1990s.¹⁰ For example, the Dean of Students wrote several memoranda regarding GM to the Principal and the Dean of Faculty, one of which included the following:

On several occasions I have talked with you concerning my serious reservations about [GM's] ability to work appropriately with students at [PEA] and in the dormitory. ... It has been alleged that [GM] sexually assaulted two former students several years ago, after which he admitted himself to Hampstead Hospital for treatment for alcohol abuse. At that time he was removed from Dunbar Hall for a year. When I became [D]ean of [S]tudents...[The Principal] told me never to put him in a girls' dormitory again.

The Dean of Students stated that she did not recall the names of the two students referenced in her memorandum, but she believed one of them may have been Student A. The Dean stated that the Principal did not share with her the details surrounding his directive regarding keeping GM away from girls' dormitories. Despite these memoranda and according to his personnel records, GM remained active in dormitory life, with roles in Ewald South until 1990, when he was moved to a PEA owned residence until approximately 1998. There was no indication that GM was sanctioned by PEA for his conduct or that PEA conducted further investigation into whether his conduct with Student A was an isolated incident or part of a broader pattern concerning GM's conduct with students or others.

There was also no indication from GM's personnel file that the Principal or anyone from PEA reported GM's inappropriate conduct to law enforcement or any other governmental entity in the 1980s. This was so notwithstanding the fact that both Student A and her friend were 17 years old at the time of the graduation party. There was also no indication that anyone from PEA discussed the steps it took with GM internally, if any, with Student A or her family. In neither of the Principal's correspondence does he ever refer to GM's conduct as sexual assault or even sexual misconduct, or as anything worse than an "unfortunate incident" or an "unfortunate matter."

4. Barry Pomerantz

In December of 2017, Holland & Knight was asked to investigate alleged misconduct by a former PEA employee, Barry Pomerantz ("BP"), with regard to his conduct with a PEA student in the 1990s. The conduct in question involved a student to whom BP, a licensed social worker, was providing counseling in his position as Coordinator of the PEA Student Assistance Program ("ASAP") and Counselor. That person is referred to as Student A in this section. PEA terminated BP's employment after information was brought to the attention of PEA administration about BP's conduct with

¹⁰ In addition to Principal Kurtz, these persons included Principal Kendra Stearns O'Donnell, Dean of Faculty Andrew Hertig, and Dean of Students Susan Herney.

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Student A and BP admitted to the Dean of Faculty that he had hugged Student A and kissed him on the cheek.¹¹

Student A

Student A saw BP for individual counseling during a portion of his junior and senior year at PEA. In addition, at BP's suggestion, during the summer after BP's junior year, Student A participated in individual counseling sessions, as well as family counseling sessions with his parents, with BP at BP's private practice. (Student A was 17 years old when he was a junior. He turned 18 during the spring of his senior year.)

Student A recalled no inappropriate conduct by BP during his junior year or the summer following his junior year, except that during the summer BP would call his home and hang up at times. (Student A had noticed the frequent hang-ups, and when he used reverse call tracking to dial the number, BP answered. BP said he had called to see how Student A was doing.)

Student A described the following conduct involving BP that occurred during his senior year at PEA:

- At BP's request, Student A stopped meeting in BP's office and had counseling sessions with BP at BP's on-campus apartment. BP would take him to a restaurant for dinner followed by a therapy session at BP's apartment, on a consistent (typically weekly) basis.
- While at BP's apartment, BP told Student A to take his shirt off to prove he was not anorexic, and when he did so, BP would linger in front of him. (Student A said he saw this as a transparent ploy to get him to take his shirt off and not related to any medical/physical health concern.)
- While at BP's apartment, BP told Student A: "I want to touch you right now," and "I want to kiss you." Student A declined BP's advances.
- While at BP's apartment, on two and possibly three occasions, BP kissed Student A by placing his lips directly on Student A's lips. Student A said he told BP that he needed to stop.

Student A stated that BP continued to contact him during the summer after he graduated, and while he was at college. BP asked to meet Student A for dinner. There were email exchanges between them. Student A believed that BP made telephone calls to his family's home and hung up if Student A did not answer.

¹¹ The Dean of Faculty at the time was Jack Herney.

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Student A confided in a PEA alumnus about BP's conduct. That friend told Student A to "turn BP in" because of his potential danger to other PEA students. Student A decided not to do so. Instead, Student A wrote a very strongly worded letter to BP about his conduct and told him never to contact him again. He also warned a friend at PEA whom he believed was receiving help from BP about BP's behavior. (Student A could not recall the identity of that friend.) Student A believed that one of those two friends may have told other students at PEA about BP's conduct. Student A believed this led to other PEA students informing administrators at PEA about BP's inappropriate conduct. He believed that, in turn, led to PEA forcing BP to resign. Student A said that BP called Student A at college, saying that he was kicked out of PEA, and that he "wanted me [Student A]," which Student A interpreted as a sexual overture. BP continued to contact Student A while he was at college. BP told Student A that he needed to talk to him and things were going badly for him. Student A had a difficult time getting BP to stop calling him. Student A, with the help of a friend, worked out a script for Student A to use to be forceful so BP would stop calling.

Student A wrote a letter to his parents while in college in which he described BP's misconduct. (Student A provided Holland & Knight with a copy of that letter.)

Student A did not tell any adults at PEA about BP's inappropriate conduct to him.

Barry Pomerantz

BP was employed by PEA for approximately three years and four months during the 1990s.

As reflected in PEA records, the Dean of Faculty confronted BP in the fall semester of his last year of employment about a concern raised about his having made an advance towards a student. After initially denying the conduct, BP admitted to the Dean of Faculty and also to the Dean of Students that he hugged and kissed Student A on the cheek after a counseling session.¹² BP made this same admission to Holland & Knight.

When interviewed by Holland & Knight, BP admitted that during Student A's senior year, he took Student A to dinner off campus and had counseling sessions with him in his (BP's) apartment. BP described Student A as psychologically vulnerable.

BP told Holland & Knight that the timeframe of when he hugged and kissed Student A on the cheek was during Student A's junior year, and that occurred in the context of Student A having told him after a counseling session that he liked the person that he was becoming. BP also admitted to Holland & Knight that he kissed Student A on the lips on one occasion during Student A's senior year after a counseling session, but he could not recall the context. In regard to his admission of having kissed Student A on his lips, BP stated that Student A said "I don't want that." BP said that he told Student A that it was

¹² The Dean of Students at the time was Kathleen Brownback.

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his (BP's) job to deal with this because he, BP, crossed a boundary and he should not have. BP told Student A that it was his (BP's) responsibility to make sure that the boundary is not crossed again. BP told Holland & Knight that when the Dean of Faculty confronted him, he did not inform him about the kiss on the lips because he knew that conduct was wrong.

BP denied to Holland & Knight that he asked Student A to remove his shirt, told Student A that he wanted to touch or kiss him, or that he kissed Student A on the lips more than one time. BP denied to Holland & Knight that he made repeated contact with Student A in the summer after his junior year, but acknowledged limited contact with Student A after he graduated. BP admitted that he sent an email or a letter to Student A because he felt things had been "unfinished" between them when the counseling relationship ended (but could not elaborate about what was "unfinished"). BP acknowledged that he sent an email or a letter to Student A after Student A had told him that he did not want to hear from him and he described Student A's reply to him as an "angry" email.

BP acknowledged to Holland & Knight that his employment at PEA ended due to his admission to the Dean of Faculty that he hugged and kissed Student A on the cheek.

BP also told Holland & Knight that, prior to being confronted by the Dean of Faculty, he previously had told his supervisor, the Director of Counseling, about the hug and kiss immediately after it occurred because he realized he had crossed a boundary and he was upset by his own conduct.¹³ BP told Holland & Knight that he did not get much of a response from the Director when he told her this, and it was his sense that she was not overly concerned about what he told her. The Director of Counseling informed Holland & Knight that BP mentioned to her that he put his arm around a student and kissed the student on the head (she recalled this as a kiss on the head, not cheek). The Director of Counseling said she believed that BP told her that either during that fall semester or at the end of the prior spring semester. The Director of Counseling said that BP told her that he felt "funny" about it, and stated along the lines of "wow, I can't believe I did that." The Director of Counseling told Holland & Knight that she did not believe that BP's self-reported conduct (putting his arm around a student and kissing the student on the head) was a real transgression. She acknowledged that she did not make follow up inquiries about the conduct or the context in which it occurred, and she did not review the counseling records of the student to assess the need to have follow up with that student or others regarding what BP had told her.

PEA records reflect that there was discussion as to whether BP's conduct was to be reported to the relevant licensing or other state agencies, but those records are unclear as to the outcome of such discussion. PEA records do not reflect that it took actions to determine the extent of BP's conduct towards Student A, the impact of that conduct on Student A, or the existence of any similar conduct by BP with other PEA students. (None

¹³ The Director of Counseling at the time was Jeanne Stern.

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of the persons interviewed had any recollection of such actions, except that Student A informed Holland & Knight that PEA did not contact him about BP's conduct.)

5. Richard Schubart

In May of 2017, Holland & Knight was asked to investigate former faculty member Richard Schubart ("RS") with regard to his conduct with students at PEA. Four individuals alleged specific forms of sexual misconduct that included the following:

- A. RS having inappropriate sexual contact with a student in the 1970s. This person will be referred to as Student A in this section.
- B. RS having inappropriate sexual contact with a second student in the 1980s. This person will be referred to as Student B in this section.
- C. RS inappropriately kissing a third student in the 1980s. This person will be referred to as Student C in this section.
- D. RS giving a fourth student an unsolicited and inappropriate gift of underwear in the 1980s. This person will be referred to as Student D in this section.

A fifth individual, who graduated from PEA in the 1980s and described RS as a trusted teacher and mentor while she was a student at PEA, alleged that RS inappropriately kissed her after an informal alumni gathering that occurred several years after she graduated, off of PEA's campus, and in a different state. This person will be referred to as Alumna A in this section.

Several additional individuals shared with PEA brief, and occasionally vague, concerns regarding RS through various means during 2016; however, many of these individuals did not respond to Holland & Knight's multiple outreach efforts in the course of the investigation. Other individuals who did speak with Holland & Knight expressed their belief or knowledge of RS behaving in a "creepy" way or with a lack of appropriate boundaries, even if his conduct did not impact them personally.

Through his attorney, RS declined to be interviewed for this investigation. However, RS had admitted to PEA administrators the conduct described herein with regard to Student A in December of 2011, and RS had admitted to PEA administrators the conduct described herein with regard to Student B in February of 2015. RS began working at PEA in 1973, and was a very well-known and popular member of PEA's History Department until his forced resignation in 2011. RS' forced resignation was a result of his admission to a sexual relationship with Student A in the 1970s.¹⁴

¹⁴ While RS was forced to resign in 2011 after PEA learned about the allegations from Student A, PEA allowed him to retain emeritus status and permitted him to attend certain alumni events. PEA stripped RS of his emeritus status and formally severed ties with him after a second allegation of inappropriate conduct with another student (Student

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Student A

Student A graduated from PEA in the 1970s. A faculty member who joined the faculty in the mid-1990s had heard rumors about RS and Student A for many years after she joined the faculty, but she did not know if the rumors were true and did not know exactly when she first heard the rumors of the alleged conduct. She stated that she did not share the rumors with PEA until November 2011, after PEA's Principal held a faculty meeting to discuss lessons that could be learned from the "Penn State scandal."¹⁵ According to the faculty member, and confirmed by the Principal, in November 2011 the Principal announced at a faculty meeting that if anyone had any suspicion of impropriety, "you don't have to prove it, we just want to know." The next morning, the faculty member reported to the Principal what she heard about RS' alleged conduct with Student A. According to the faculty member, within the same day or shortly thereafter, she spoke with other Academy administrators, and PEA's outside legal counsel, who then brought her to the EPD to share the allegations with law enforcement.

PEA affirmatively reached out to Student A after receiving the initial report about RS' inappropriate conduct in 2011. Following that discussion, PEA administrators had several subsequent interviews and conversations with Student A at various times during 2012 and 2015-2016. Student A subsequently declined to speak with Holland & Knight, stating that she felt as though she already had shared with PEA what had happened to her, although she did engage in a limited email exchange with Holland & Knight. Through these sources – Holland & Knight's limited email exchange, the contemporaneous notes of her prior conversations with PEA administrators, and Holland & Knight's interviews with those administrators – Holland & Knight learned that Student A approached RS during her senior year to request assistance with what she described as a social issue. Student A stated that other students suggested she contact RS, in particular, because he could be understanding and helpful to students. At the end of their conversation, RS kissed Student A on the lips, which she said was startling and made her uncomfortable. Student A stated that RS began providing her significant attention and that attention quickly developed into a sexual relationship, both on and off campus.

Following Student A's graduation, RS found her a place to live near campus and the sexual relationship continued over the summer until Student A left for college. At that point, RS continued to write her letters through her first year at college. Student A stated that RS was married and, at one point, his pregnant wife walked in on Student A and RS and she (RS' wife) "intuited" that something was inappropriate. Student A stated that, while she consented to the sexual activity, she was 18 at the time it began and was vulnerable. Student A informed PEA that, in her opinion, many students suspected what was happening, as did perhaps even a faculty member.

B) was brought to PEA's attention in January of 2015. At that time, PEA also learned that RS had a leased space in Academy-owned property located very close to campus, and, after learning of the second allegation in 2015, PEA required that RS remove his belongings and vacate that space.

¹⁵ The Principal at the time was Thomas Hassan.

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Student B

PEA learned about Student B in 2015 through a letter from her attorney stating that RS had sexually abused her when she was a student in the 1980s. Student B said that she felt out of place and uncomfortable upon matriculating to PEA, and RS was one of the first to provide her a warm welcome. RS maintained a friendly relationship with Student B until the winter of her senior year. At a party that winter, RS initiated a kiss on Student B's lips under a mistletoe, which then progressed to Student B being brought to a stairwell where RS continued kissing her in a sexual manner (with tongue). Student B described this as shocking. Student B stated that RS' conduct progressed over the following months and RS took her to various locations on campus to kiss her, touch her bare breasts, and he occasionally rubbed his exposed penis against her body until he ejaculated. Student B stated that there were several instances in which she and RS were both naked during these encounters. Student B stated that RS told her he could not have sexual intercourse with her because he had sex with a student before and his wife found out. Student B stated that, on one occasion, she and RS were planning to have sexual intercourse, but RS told her that she needed to get birth control. When the PEA infirmary told her she needed to obtain her parents' permission first, Student B left without birth control. Student B stated that this conduct – inappropriate kissing, touching, and body-rubbing – occurred a “couple of times a week” during the second semester of her senior year.

Student B described RS as being a mentor to her at PEA, and she stated that RS also had responsibility over her dormitory, which heightened her vulnerability. At one point during RS' misconduct, Student B told RS that she wanted to speak to a counselor and she recounted that he said words to the effect that “you can't tell them about our relationship because you'll get kicked out and I'll get in trouble.” Student B ultimately spoke with a counselor affiliated with PEA and she believed that the counselor “pieced together” that her experiences were with RS. (The counselor is no longer affiliated with PEA and refused to respond to Holland & Knight's requests to speak with him.)

Shortly following the public disclosure that another faculty member, Lane Bateman, had been terminated for possessing child pornography in 1992, Student B stated that she wrote to the Principal to alert her to other faculty misconduct.¹⁶ Specifically, Student B wrote that “[w]hile at Exeter, I was involved in a sexual and, for me, intensely emotional relationship with a faculty member... I feel strongly that this faculty member acted irresponsibly and should have responded in a completely different manner.” The Principal wrote back to Student B approximately a month later, asking her to “consider sharing with us more information about the incident and the name of the faculty member involved[.] If we receive such information, we will conduct an inquiry into the matter and take appropriate action. Obviously we cannot guarantee your anonymity, but we promise to treat the matter as sensitively, discreetly, and fairly as possible. You should also know that we may need to make a report to legal authorities.” Student B stated that she did not reply to the Principal's letter and there was no indication from the file or interviews that the

¹⁶ The Principal at the time was Kendra Stearns O'Donnell.

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matter was further addressed at that time. Moreover, additional PEA staff that Holland & Knight interviewed stated that they had no knowledge about Student A or Student B's interactions with RS.¹⁷

Student C

Student C graduated from PEA in the 1980s. She said that, during the winter of her senior year, she was crossing campus and she ran into RS. Student C stated that it was dark at the time and, upon departing, RS kissed her on the lips and put his tongue in her mouth. Student C stated that she was shocked by this conduct and made sure to keep her distance from him from then on. Student C stated that when she told another friend, she received empathy but not surprise, which made her wonder how widely known RS' conduct was at PEA. Student C stated that, years later, she would see RS at reunions and she remembered that he got "very handsy" with her at her 15th or 20th reunion. Student C shared that RS also "came on really hard to another one of [her] friends." Student C did not feel comfortable sharing the identity of this individual and the individual did not accept Holland & Knight's request to speak, which was conveyed via Student C. Student C stated that "as a woman, you deal with this stuff so much and so often that it's not a big deal, you get immune to it. But this was a big deal because we were kids and kids shouldn't have to deal with this stuff."

Student D

Student D graduated from PEA in the 1980s. Student D stated that, while she did not remember the particular details, she remembered that RS gave her a pair of underwear as a gift "completely out of the blue," when she was a senior at PEA. Student D stated that, she was "pretty impervious to social offenses" at the time, but she remembered thinking or hearing rumors that RS was creepy. Student D stated that it was an isolated event and RS did not do anything else inappropriate to her. Student D did not know why she viewed RS as having a reputation of being creepy, but she felt that it always lingered around him, and she believed that if she knew as a student that RS was creepy, administrators at PEA must have known too.

Alumna A

Alumna A graduated from PEA in the 1980s. Alumna A stated that she had RS as a teacher and dorm head while a student at PEA. She stated that she did not experience sexual misconduct from RS while she was a student. She said she had a close mentoring relationship with him. She stated that she observed that some of his interactions with certain students appeared to her to have a sexual undertone, but she felt that he valued her

¹⁷ There was an allegation that another faculty member may have known about RS' inappropriate conduct with Student A and Student B. Holland & Knight investigated that issue and determined that it was likely that the other faculty member had seen correspondence in the 1970s, after Student A had graduated, that indicated that RS was involved in some questionable manner with Student A. Holland & Knight lacked sufficient information to make the same determination with regard to that other faculty member's knowledge about RS' inappropriate conduct with Student B.

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as a person and did not consider her in a sexual way when she was a student. Alumna A stated that it was this respect that she felt she received from RS that made his later inappropriate conduct feel like an even greater violation to her.

Alumna A stated that she experienced inappropriate conduct by RS after she had graduated and while at a small, informal, out-of-state alumni reunion event at a bar. Alumna A recounted that RS manipulated her to stay at the bar after everyone else had left. Alumna A offered to give RS a ride to his car and, when they got to his car, RS leaned over and gave her a full kiss on the mouth with tongue. Alumna A stated that this kiss was not welcome and she did not know how to respond. Alumna A stated that she could recall RS' face and it did not indicate any awareness that he had crossed a line or done something wrong. Alumna A felt that RS' conduct was a betrayal of their relationship, which had developed while she was a student and during a time period where RS was a trusted mentor. Alumna A stated that she subsequently considered applying for a staff position at PEA after the inappropriate conduct, but when she realized RS was still a faculty member she determined that she could not be on campus with him so she did not apply. Alumna A described this type of outcome as a hidden impact of RS' conduct.

Additional Conduct

Additional witnesses who spoke with Holland & Knight described RS as having little respect for personal boundaries. For example, one parent of Academy students stated that RS kissed her on the lips without consent, and several witnesses described him with terms like "lecherous" or "creepy." Other individuals stated that RS was constantly testing to see how far he could go with female students and several witnesses indicated that RS' popularity may have served to protect him within PEA. Accordingly, individuals believed they would be ignored if they raised the issues with PEA.

6. Edleff Schwaab

In January 2017, Holland & Knight was asked to investigate alleged misconduct by former PEA psychologist Edleff Schwaab ("ES") involving students at PEA. The conduct at issue included:

- A. During a psychological testing session in the 1970s with a PEA student, ES grabbed her, gave her a French kiss and said he wanted to take her to Europe. This person will be referred to as Student A in this section.
- B. During a psychological counseling session with a PEA student in either the late-1960s or the early-1970s, ES invited him to come to join him in Amsterdam so that ES could take the student to the city's Red Light District and introduce him to sexual experiences with prostitutes. This person will be referred to as Student B in this section.

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- C. During a psychological counseling session with a PEA student in approximately 1970, ES inappropriately asked him about his masturbation practices. This person will be referred to as Student C in this section.

Two additional students also alleged inappropriate conduct by ES. These persons shall be referred to as Student D and Student E in this section. Both of these students are represented by an attorney, and Holland & Knight was not allowed to interview them. Consequently, Holland & Knight has only limited information about the allegations made by Student D and Student E, and is not aware of the specific nature of the alleged misconduct or the setting in which it took place.

ES died in 2003. PEA records indicate that PEA terminated ES' employment in April of 1976, before the school year had ended. All of the conduct described above took place before the termination of ES' employment. The basis for the termination of ES' employment is not specified in PEA's records. However, the Dean of Students stated that she was present at a meeting at Logan Airport with ES and the Principal to confront ES about an incident involving a female student to whom he provided counseling that involved ES hugging and/or kissing her.¹⁸ The Dean of Students stated that ES was informed his PEA employment was terminated at that meeting. While the Dean of Students did not remember an exact date of the meeting at Logan Airport, she believed it occurred in 1976. At the time of the termination, ES had been employed by PEA for eleven years as the school psychologist.

Student A

Student A graduated from PEA in the 1970s. In March 2016, after the PEA community announcement regarding, among other things, the conduct of, and PEA's response to, former PEA faculty Steve Lewis and Richard Schubart, Student A contacted PEA and stated that ES had sexually assaulted her when she was a student. Student A initially shared information with Holland & Knight by email. In her email to Holland & Knight, Student A stated:

In the spring of [year redacted], I was meeting with the school psychologist, [ES]. At one point he grabbed me, gave me a French kiss and said he wanted to take me to Europe with him. It was entirely unsolicited by me and quite frightening at the time. I did not report it to Academy staff. . .

During her interview, Student A stated she had a series of one-on-one office visits with ES at the PEA health center, and when ES grabbed and kissed her it was the only time she had any physical contact with him. Student A stated that upon being kissed by ES, she pulled away from him and did not believe she returned for any kind of counseling or other

¹⁸ The Principal at the time was Steven Kurtz, who died in 2008. The Associate Dean of Students at the time was Susan Herney.

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services with him. She did not remember seeing ES in any capacity again after he kissed her. Student A said that she did not disclose the incident to anyone at the time, in part because she was embarrassed by it.

Student B

Student B contacted PEA in May 2017, after reading a newspaper article that disclosed that ES had engaged in sexual misconduct at PEA. Student B stated that when he was a student at PEA in the 1970s, he went to see ES for some psychological counseling. Toward the end of his 10th or 11th grade year, Student B said that ES told him that he (ES) was going to Europe for the summer and suggested that Student B join him in Amsterdam so that ES could take Student B to the city's Red Light District and introduce him to sexual experiences with prostitutes. Student B said that he declined this invitation, but continued to have counseling sessions with ES thereafter. At the time, Student B thought that the invitation was inappropriate, but did not think it was a "big deal" and did not report or disclose it. Student B informed Holland & Knight that with the benefit of adult hindsight, ES' invitation was "grotesquely inappropriate."

Student C

In October 2017, Student C emailed a PEA administrator about his concerns.¹⁹ Student C transferred from PEA in the 1970s before graduating. He informed PEA that he had been sent to ES for counseling because he had been caught smoking. Student C wrote that at the counseling session, ES asked him about his "masturbation practices." Student C stated: "It was a creepy enough line of questioning that I took the risk of ending the interview by getting up and leaving his office." Student C followed up with PEA with another email, also in October 2017, that stated in pertinent part:

Before the masturbation questions [ES] asked me if my roommate was selling pot. So I figured out at the very start that the meeting had nothing to do with my mental health, and absolutely nothing do with me smoking cigarettes. It was an interrogation, that clearly had to have been sanctioned by the dean or some other school authority. And my indignant exit from that office was at least as much about feeling betrayed by the school as it was about [ES'] creepy predation. As I mused over this memory today I realized that whatever vestigial anger I feel about the incident is directed at the Academy for this egregious ethical lapse. I don't imagine anyone knew that [ES] might use sex talk as part of his interrogative strategy but – countenanced or not – he must have felt he had free rein to go about it however he pleased. The whole situation is stomach-churning for me to contemplate.

¹⁹ The administrator was not involved in the conduct in question, but served to receive the report.

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I have no wish to speak with investigators. I see no value in it. This all happened [redacted] years ago. Memories are unreliable. The guy is dead. I was not damaged by the encounter with him. And though I hold Exeter of [the 1970s] in low regard, I know it is a very different place today.

Respecting Student C's wishes, Holland & Knight did not contact him.

Student D and Student E

In 2017, PEA received written communications from Student D and Student E, two additional female students who attended PEA in the 1970s, describing sexual assault/sexual misconduct by ES in the time frame that they attended PEA. On March 3, 2017, Student D wrote to PEA:

I am writing to confirm that I too experienced sexual misconduct from Dr. Swaab [sic] in [year redacted]. I reported it at the time along with another student. The lack of support I received was very wounding for me. The whole experience was treated poorly and [ES] was allowed to continue on at PEA when his behavior today would have been cause to terminate his employment. I am surprised that I was not contacted during this investigation due to the fact that my complaint was open and I was asked to speak in front of a large group of faculty so that they could decide what to do in reference to [ES]. I was never offered counseling or support of any kind.²⁰

As noted, Student D is represented by an attorney, that attorney has been in direct contact with PEA, and Holland & Knight was not permitted to interview Student D.

That same attorney also represents Student E, and the attorney wrote to PEA in April 2017 that Student E was "repeatedly sexually abused by [ES] from approximately [year redacted] when [Student E] was approximately 16 years of age to approximately [year redacted] when [Student E] was approximately 18 years of age." Holland & Knight was also not permitted to interview Student E.

Additional Conduct

While PEA records reflect that ES' employment was terminated in 1976, these records do not provide information as to whether or not PEA took any actions to reach out to the impacted individuals or make any efforts to provide them support. It is unclear if any reports were made to any state or licensing boards regarding ES' conduct. Holland & Knight is not aware of any documentation of Student D's complaint. To the extent that the complaint was received and not acted upon by PEA administration, the lack of action may

²⁰ PEA was unable to locate any records of such a meeting.

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have put more students at risk given that ES was terminated by PEA thereafter for sexual misconduct.

7. Unknown Male

In January of 2018, Holland & Knight was asked to investigate alleged misconduct towards a student of PEA by a male adult whom the student believed was someone who worked on the PEA grounds crew, but whose identity was then, and continues to be, unknown. That adult male is referred to as the unknown male or “UM” in this section. The conduct at issue involved sexual contact between the UM and the student, referred to herein as Student A, in a bathroom at the PEA gym during the late-1980s time frame. More specifically, Student A alleged that the UM solicited sexual activities in the PEA bathroom and when Student A responded to the solicitation he was aggressively made to perform oral sex on this adult male, the UM.

Student A

PEA learned about Student A’s experience after Student A posted the following on his publicly available blog site on November 10, 2017:

In the winter of [year redacted], when I was 15 years old, I went away to a very prestigious, top-rated boarding school in New England. Shortly after I arrived, I noticed some graffiti in the mens’ locker room of the athletic center, which set a time for some gloryhole action. Being a horny teenager, I showed up at the indicated time and through the gloryhole²¹ (what HS gym has glory holes?!)... I acted on my impulses, and after a little while, was invited to come into the next stall. I was surprised and taken aback that it wasn’t another student, but was someone in his 30s that I’d later find out was a member of the grounds crew. He finished, left me in an untidy state and unsatisfied. ... My first sex. At 15, with a 30-something man in the men’s room of my HS gym. I’d never felt so dirty... I did tell my parents about it, and they wanted to sue the school and have the man fired. Though I was openly gay, I didn’t want to be the guy who’d had gloryhole sex in the bathroom. I didn’t want to be the kid who hooked up with a member of the grounds crew (elite schools come with snobby thinking.) I didn’t want to be have to defend myself and tell the story over and over again. In fact, this is the first time I’m publicly telling it.

During his interview, Student A stated that he expected to encounter another student in the gym bathroom, and was surprised and felt powerless when, after a series of non-verbal communications, he went to the adjacent stall and encountered an adult, whom he estimated was in his 30s at the time. The UM then aggressively solicited and made Student

²¹ At his interview, Student A clarified that the glory hole was likely a small hole, which could have been at the base of the toilet roll holder, and which allowed one to peer into the adjacent stall.

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A perform oral sex on him. Student A stated that there were no words spoken before or after the incident, and that he encountered no one else in the bathroom before, during, or after the incident. He also stated that he never told anyone at PEA about the incident. Student A described the immediate and negative impact that the incident had on him, physically and emotionally.

Student A stated that at the time of the incident, he had never seen the UM before and there was nothing that he learned during the incident that helped him place who the UM was, where he worked, or what work he performed. Student A said that after the incident, he saw the UM on the PEA campus on a few occasions. They did not acknowledge one another. Student A said that on one of the occasions when he saw the UM on campus he seemed to be working in a groundskeeping capacity, but Student A could not recall any additional details, such as where he was, what he was doing, or whether he was wearing a uniform.

Holland & Knight made significant attempts through interviews and historical documents reviewed to identify the UM, but the investigation did not lead to the identity of the UM.

III. Overview of Other Investigations

In addition to the investigations presented in Section II, there were investigations of other reports of misconduct of a sexual nature and/or boundary crossing that were assigned to Holland & Knight where Holland & Knight found the reported conduct to be credible. These reports are referenced in Section I and are described below in an anonymized way,²² and include the following:

1. A PEA graduate from the 1980s reported that a PEA employee treated her for a sprained ankle and, during the treatment, told her that she would have to take her shirt off so that he could do a scoliosis exam. The student credibly reported that there was no medical basis for the request for a scoliosis exam, and instead that the request was merely a vehicle to serve the employee's prurient interest.
2. A number of PEA graduates from the 1980s through the 2010s reported various instances of uncomfortable physical and/or verbal contact with a PEA faculty member. The verbal conduct included inappropriate commentary, often about the dress of the female students, some of it with sexual overtones. Some of the physical conduct included unwanted touching of students' legs, shoulders, and hair. PEA administration was made aware of student complaints regarding this type of conduct identified above as early

²² It is Holland & Knight's understanding that PEA determined that these matters do not satisfy its Principles of Disclosure and therefore they are not included in Section II.

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as the 1980s, and thereafter, but in various ways ineffectively investigated, communicated about, and attempted to remedy the matters at issue.

3. A number of PEA graduates and employees reported in the 2010s that a PEA faculty member engaged in physical interactions with students that made them uncomfortable when they observed it. The physical interactions included the faculty member rubbing and/or massaging students on the back and hugging students, and students sitting on the faculty member's lap. A number of the students who were recipients of these physical interactions indicated that the conduct was welcomed or that they did not mind the conduct and they did not find anything sexual about it. Others who observed (but did not experience) the physical contact thought it was inappropriate and a boundary violation, particularly as it happened in the dorm context. PEA administration was made aware of some of these issues, and while it did take some steps to understand and address the issues that were raised, it did so in a way that was incomplete and communicated to the faculty member at issue in a way that lacked clarity.
4. A PEA graduate from the 1980s reported that a PEA faculty member gave him unwanted massages in his dorm room on occasion. Another PEA graduate from the 1980s reported that the same faculty member sometimes asked him to stay after class and at that time massaged his back and neck in a manner that was unwelcome. A number of other students who were recipients of this faculty member's massages reported that they did not mind them or that they may have been awkward, but did not find anything sexual about them.
5. A PEA graduate from the 1980s reported that a PEA faculty member made her feel uncomfortable in class and in a private study session by touching her shoulders and making comments about her hair and dress that contained sexual innuendo. In the 1990s, PEA administration had been made aware of other similar student complaints about the same faculty member and took responsible remedial steps with that faculty member.

IV. Conclusion

Holland & Knight has concluded all of the investigations assigned to it and it is not currently assigned any additional matters to investigate. We reiterate our gratitude to the individuals who took the time and care to speak with us, especially the survivors of sexual misconduct. Many of these individuals expressed their hope that their participation in the investigations would contribute to the betterment of PEA – for the institution, its students, and its alumni. We believe that their participation has done so.