



INVESTIGATION REPORT

TO: Boise State University (Dr. Marlene Tromp, Boise State University President)

FROM: Hawley Troxell (John Ashby)

DATE: May 19, 2021

RE: Investigation of University Foundations (UF) 200 Courses

I. INVESTIGATION SUMMARY

This law firm (Hawley Troxell) was engaged by Boise State University (BSU) to conduct an independent investigation of certain allegations regarding an alleged instance of a student being mistreated during classroom instruction. Specifically, on March 15, 2021, BSU was contacted by a concerned community leader (the “Complainant”) who is not a student at BSU. The Complainant reported having viewed a video from a friend’s phone in which a Caucasian student was singled out by an instructor in a BSU class and was mistreated and demeaned. The class discussion was allegedly on the topic of structural inequality, economics, and white privilege. It was alleged that the student was forced to apologize in front of the class for being “white” or for the student’s “white privilege” and was then subjected to taunts, name-calling, and other verbal attacks from other students. It was alleged that the word “stupid” was used during the incident and that the student left the class in tears.

Based on the alleged topic of discussion, BSU surmised that the class in question was likely a University Foundations (UF) 200 course. Upon receiving the report of this alleged incident, and after consultation with the faculty senate and academic leadership, BSU temporarily suspended all UF 200 courses and then contacted this law firm to conduct an independent investigation. In light of the serious nature of the allegations, we believe that BSU’s action in temporarily suspending the UF 200 courses was appropriate and warranted under the circumstances.



As BSU requested, we conducted an investigation that was truly independent. Our instruction from BSU was to investigate the specific concerns raised by the Complainant, but to also report on other serious concerns raised by students or potential BSU policy violations. We were given authority to communicate directly with BSU students and faculty members. BSU provided us with all information we requested and answered all questions we asked.

As part of our investigation, we interviewed the Complainant, approximately thirty (30) students and multiple UF 200 instructors and other BSU employees.

After conducting a thorough and independent investigation, we were unable to substantiate the alleged instance of a student being mistreated in a UF 200 course as described by the Complainant. No students reported being forced to apologize for the color of their skin. Nor did any student report being personally singled out based on skin color or being subjected to taunts, name-calling, or other degrading behavior from an instructor or other students based on skin color, beliefs, or ideas.

Throughout the course of our investigation, we did not uncover any evidence of conduct on the part of a BSU instructor that would, in our opinion, constitute a violation of BSU's Non-Discrimination and Anti-Harassment policy or that would otherwise constitute mistreatment of a student.

Additional details of our investigation and findings are set forth in this report.

II. BACKGROUND

UF 200 is broadly a course about ethics and diversity. BSU added the course to its required University Foundations curriculum a few years ago. The course was designed to address input provided in response to inquiries made to employers about what things employers were looking for in new hires regardless of the sector of economy. Along with other identified topics, employers responded that they wanted new hires to have familiarity with ethical frameworks within which decisions are made and the ability to work in diverse settings. UF 200 is designed to address those two learning outcomes and provide exposure to different ethical frameworks about how to think. As stated by the University Foundations Acting Director, the course strives to teach different frameworks for thinking or "how to think, not what to think."

One of the goals of the UF 200 course is to encourage discussion about ethics and diversity in the larger community and world. As such, the UF 200 courses are supposed to promote an open and welcoming learning environment. Indeed, BSU provides a template syllabus for all UF 200 courses that specifically sets out certain expectations for instructors, including among others, that the instructor will:

- encourage any perspective about the questions raised in our course that can be reasonably defended with evidence;

- appreciate the diversity in the subject of this course as well as in our classroom community and endeavor to promote inclusivity [];
- always be open to (and encourage) constructive conversation about how we can make our collective experience better.

The template syllabus further provides that instructors will “present significant questions and different responses to those questions, but [the instructor] will not present the ‘right answer’ to the big questions of the course.” Likewise, the template syllabus provides that students are expected and “encouraged to contribute their perspectives and experiences.”

There are 36 faculty members who teach 55 different sections of UF 200. Although the targeted learning outcomes for each section are the same, each instructor is allowed to select his or her own case studies, material, and course topics (or themes). As such, the course offerings are broad and diverse, ranging from Ethics and Diversity in Sports to Ethics and Diversity in Social Problems and everything in-between.

Each individual section or course of UF 200 has approximately 25 students. In Fall 2020, there were 1,521 students enrolled in UF 200 courses. In Spring 2021, there were 1,299 students enrolled in UF 200 courses.

III. SCOPE OF INVESTIGATION

The primary purpose of this investigation is to determine whether the incident reported by the Complainant can be substantiated and to otherwise determine what happened in the class at issue.

Secondarily, we have been asked to determine whether the incident at issue (or other concerns raised by students) violates university policy. For example, if substantiated, the allegations raised by the Complainant – an instructor requiring a student to apologize for the color of that student’s skin while other students taunt and humiliate that student – would be a clear violation of BSU’s Non-Discrimination and Anti-Harassment policy (University Policy 1060). That policy prohibits (1) treating an individual or group differently or less favorably on the basis of a protected class, i.e., race, color, gender, age, national origin, disability, etc.; or (2) harassing or offensive behavior that is based upon an individual’s or group’s protected class.

Finally, we have been asked to investigate any other concerns raised by students that would constitute serious mistreatment of a student or otherwise inappropriate conduct on the part of a BSU instructor.

IV. INVESTIGATION PROTOCOL

The alleged incident was reported to BSU on March 15, 2017. Given the serious nature of the allegations, BSU suspended all UF 200 courses. In light of the serious nature of the allegations, we believe that decision was appropriate and warranted under the circumstances.



BSU initially invited anyone with questions or concerns about UF 200 courses to contact the University Foundations office directly. Thereafter, a dedicated email address (uf200investigation@boisestate.edu) was created for the purpose of allowing individuals to report concerns. The email in-box was directly monitored by Hawley Troxell and an email was sent out to all 2,820 students that were enrolled in UF 200 in either Fall 2020 (1,521 students) or Spring 2021 (1,299 students). Separate emails were sent to students enrolled in the Spring and Fall urging students to report any concerns about their, or a classmate's, experience in UF 200 and to report "any form of bias" they believed they might have encountered in the course and to provide "any information" they believed may be relevant or helpful to the investigation. Various methods of reporting were provided for the students, including options for reporting concerns anonymously. The emails also made clear that the identities of students who raised concerns would not be revealed. A similar email was sent to UF 200 instructors inviting them to report any concerns.

Hawley Troxell monitored the uf200investigation@boisestate.edu inbox and received multiple emailed responses from various students and instructors. Those responses ranged widely from students raising concerns to students praising their UF 200 instructors. We reached out to and requested interviews of all students who identified a concern with their UF course or expressed a desire to speak with an investigator. We then interviewed all students who responded to our invitation for interviews, which ultimately was approximately thirty (30) students.

At the beginning of each student interview, we informed each student that we had been retained by BSU to conduct an independent investigation into allegations concerning UF 200; that we are not legal counsel for the student and could not offer legal advice; that we were conducting an investigation and that a report would be compiled and presented to BSU; that the student's name would not appear in the report; and that nothing the student reported or said would be relayed to their instructor. It was explicitly made clear to each student that their name would not be released or appear in any report or be conveyed to BSU in any manner.

In addition, we interviewed multiple UF 200 instructors, BSU's President, and BSU's University Foundations Acting Director and Acting Associate Director, as well as various members of the community. We also reviewed various UF 200 course materials, syllabi, and other documents related to the UF 200 courses.

Finally, after several failed attempts, Hawley Troxell was able to interview the Complainant. The Complainant spoke openly about concerns that BSU is indoctrinating students. The Complainant reported being aware of multiple inappropriate interactions between BSU instructors and students. However, the Complainant declined to identify any student and declined to describe in any detail what he has seen or heard from students other than that it was "really inappropriate." The Complainant stated that he did not have possession of the video he had seen and declined to provide any information on how it could be obtained.

V. FINDINGS

As described above, a non-student Complainant reported that he had viewed a video from a friend's phone in which a Caucasian student was singled out in a class at BSU by an instructor and was mistreated and demeaned. The class discussion was allegedly on the topic of structural inequality, economics, and white privilege. Specifically, it was alleged that the student was forced to apologize in front of the class for being "white" or for the student's "white privilege" and was then subjected to taunts, name-calling, and other verbal attacks from other students. It was alleged that the word "stupid" was used during the incident and that the student left the class in tears.

After inviting all students enrolled in either the Fall 2020 or Spring 2021 UF 200 courses to report any concerns or instances of bias or mistreatment; after reviewing the emails received at the uf200investigation@boisestate.edu email address; and after interviewing approximately 30 students, as well as various instructors and members of the community, we were not able to substantiate that the alleged incident, as reported by the Complainant to BSU, occurred.

Notably, in written responses to the uf200investigation@boisestate.edu email inquiries and in interviews, multiple students described an incident in a UF 200 course that occurred in the week prior to March 15, 2021, and that matches some of the elements of the reported incident. We reached out directly to multiple members of that specific UF 200 course and received responses from eight (8) students through emails and telephonic interviews. Hawley Troxell also interviewed the instructor of the course and interviewed the student directly involved. All accounts of the incident from the eight (8) students were substantially similar and were confirmed both by the student directly involved in the incident and the instructor. The basic facts of the incident are as follows:

- The class that day was held via Zoom, but was not recorded. The topic of discussion in class that day was described by various students as "structural inequality," "capitalism and racism," and "race and economics."
- Some of the students recalled that the discussion drifted into a debate about universal healthcare and quickly escalated resulting in a "heated" exchange between the instructor and a student who will be referred to as Student 1.
- Others could not recall the exact topic at the moment, but recalled that at some point the discussion escalated and became more heated and an exchange between Student 1 and the instructor ensued.
- As recounted by Student 1, at some point in the discussion, Student 1 felt like the instructor had made a comment that contradicted something the instructor had previously stated and that the instructor's logic was inconsistent. Student 1 stated

that in the moment Student 1 struggled to find the right wording and ended up saying to the instructor that Student 1 felt like the “instructor’s logic was stupid.”

- Student 1 reported that other students in the class then began calling her out, mostly in the chat feature, saying things like “you can’t call the instructor stupid” and “not cool.”
- The instructor noticed what was happening and intervened. The instructor expressly told the class that, although “stupid” may not have been the best word to use, the instructor did not think that Student 1 had called the instructor stupid but was only taking issue with the logic used.
- Student 1 stated that she became frustrated because other students were misinterpreting what was meant because Student 1 was not calling the instructor stupid but was taking issue with the instructor’s inconsistent logic. Student 1 indicated that she ultimately left the Zoom session early and was crying.
- Student 1 expressly stated that she did not feel like the instructor was disrespectful to her in any way and that the instructor checked in with Student 1 after class to make sure she was okay.

The above facts were corroborated by the instructor of the course as well as all other members of the class we interviewed. None of the students reported the discussion that day as mentioning white privilege. Likewise, with the exception of the use of the word stupid as described above, none of the students reported any instances of name calling by anyone in the class nor any instances of taunting, demeaning or humiliating remarks. There were no reports of anyone being forced to apologize for being white or Caucasian.

Accordingly, although some elements of the above-described incident align with parts of the alleged incident as reported by the Complainant, i.e., a Caucasian student, the time-frame, the topic of class discussion, and the mention of the word “stupid,” there are sufficiently dissimilar elements, i.e., the mention of white privilege, singling out of a student, name-calling and taunting, and the act of apologizing for being white, that we cannot confirm that the two incidents are the same.

That being said, we did not receive reports of any other incidents that came anywhere near matching the alleged incident as it was described by the Complainant.

Throughout the course of our investigation, we did not uncover any evidence of conduct on the part of a BSU instructor that would, in our opinion, constitute a violation of BSU’s Non-Discrimination and Anti-Harassment policy or that would otherwise constitute serious mistreatment of a student. Specifically, it is our opinion that the incident that most closely matches the description that was provided did not rise to the level of a policy violation or student



mistreatment as Student 1 stated that she did not feel mistreated and that she did not feel like the instructor had disrespected Student 1, all of which was corroborated by the instructor and other students in the class. Indeed, it is our opinion that the instructor responded appropriately to the situation.

VI. OTHER OBSERVATIONS

While this investigation was ongoing, the Idaho legislature passed, and the Governor signed, House Bill 377, which provides in relevant part:

(a) No public institution of higher education ... shall direct or otherwise compel students to personally affirm, adopt, or adhere to any of the following tenets:

(i) That any sex, race, ethnicity, religion, color, or national origin is inherently superior or inferior;

(ii) That individuals should be adversely treated on the basis of their sex, race, ethnicity, religion, color, or national origin;
or

(iii) That individuals, by virtue of sex, race, ethnicity, religion, color, or national origin, are inherently responsible for actions committed in the past by other members of the same sex, race, ethnicity, religion, color, or national origin.

Importantly, the purpose of our investigation was not to determine whether any concerns reported by students would constitute a violation of House Bill 377. Such an inquiry would fall outside the scope of our investigation and would require a broader investigation.

However, we did interview approximately 30 students, and we asked all students to describe any concerns they have related to BSU. Despite interviewing approximately 30 students, some of whom reported a variety of concerns, we were not presented with specific reports of conduct of a nature that would appear to implicate the prohibitions set forth in House Bill 377.

To be clear, some students did report isolated concerns about particular classes or instructors at BSU. A few of those students raised concerns that particular course materials were too one-sided or that an instructor's approach on a particular topic leaned either too far to the left or too far to the right on the social or political spectrum. Other students praised their instructors for facilitating open and even-handed discussion on important issues and otherwise fostering a good learning environment.



We do not have sufficient information to determine (and we have not endeavored to fully investigate) whether any particular BSU instructor has engaged in conduct that would implicate House Bill 377. However, we note that, throughout the course of our investigation, no students reported being directed or otherwise compelled to personally affirm, adopt, or adhere to the tenets prohibited by House Bill 377. Specifically, no students reported being taught that “any sex, race, ethnicity, religion, color, or national origin is inherently superior or inferior” or that “individuals should be adversely treated on the basis of their sex, race, ethnicity, religion, color, or national origin.” (Notably, such instruction would appear to constitute a clear violation of BSU’s Non-Discrimination and Anti-Harassment Policy.) Nor did any student report being personally singled out and being subjected to taunts or name-calling, shamed or otherwise degraded for expressing views contrary to the tenets prohibited by House Bill 377. No student specifically raised concerns about being indoctrinated or being instructed on the tenets of “critical race theory.”

Notably, every BSU representative we interviewed, from the University President to individual instructors, consistently expressed the goal of an open learning environment in which students are taught how to think, not what to think. Those expressions were uniformly consistent with the goal of the class, as stated in the template syllabus as described in more detail above, to encourage dialogue in the classroom and to “encourage any perspective about the questions raised in” the course. Moreover, every BSU representative we interviewed expressed shock and concern that the alleged incident described by the Complainant could have occurred at BSU. All agreed that such conduct on the part of an instructor – requiring a student to apologize for being white – would be extremely inappropriate. Indeed, BSU suspended all UF 200 courses immediately after receiving a report of such alarming conduct.

Finally, we find it appropriate to comment on BSU’s approach to this investigation. Our instruction from BSU was to investigate the specific concerns raised by the Complainant, but to also report on other serious concerns raised by students. We were given authority to communicate directly with any BSU students or faculty members. BSU provided us with all information we requested and answered all questions we asked. In summary, BSU’s approach to this independent investigation was wholly consistent with its stated goal of investigating concerns raised by BSU students so that it could address those concerns.

VII. CONCLUSION

After conducting our investigation, we were unable to substantiate the alleged instance of a student being mistreated in a UF 200 course as described by the Complainant. No students who participated in the investigation reported that they were ever forced to apologize for the color of their skin. Nor did any student report being personally singled out for their skin color or being subjected to taunts, name-calling, or other degrading behavior from an instructor or other students based on their skin color, beliefs or ideas.

END REPORT

