



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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SAN FRANCISCO, CA 94105

REGION IX  
CALIFORNIA

June 9, 2016

Jonathan Veitch  
President  
Occidental College  
1600 Campus Road  
Los Angeles, California 90041

(In reply, please refer to # 09-13-2264.)

Dear President Veitch:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Occidental College (College). The complaint alleged that the College discriminated against students on the basis of sex because the College's policies and procedures do not comply with Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, and the College failed to provide students with a prompt and equitable process in addressing their claims of sexual violence, and/or retaliated against them in violation of the same.

OCR is responsible for enforcing Title IX and its implementing regulations, which prohibit discrimination on the basis of sex in education programs and activities receiving Federal financial assistance from the Department. The College is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.

OCR investigated the following issues, and the specific allegations raised in the complaint, under each of these issues:

- A. Whether the College disseminated a notice of nondiscrimination on the basis of sex in compliance with 34 C.F.R. § 106.9;
- B. Whether the College appointed and disseminated information with respect to a Title IX Coordinator in compliance with 34 C.F.R. § 106.8(a);
- C. Whether the College adopted procedures that *as written* provide for a prompt and equitable response to sexual harassment/violence complaints and reports in compliance with 34 C.F.R. § 106.8(b);
- D. Whether *in practice* the College provided a prompt and equitable resolution to complaints and reports of sexual harassment/violence which it knew about, or should have known about, in compliance with 34 C.F.R. § 106.31;
- E. Whether the College's alleged failure to respond promptly and equitably to complaints and reports of sexual harassment/violence which it knew about, or should have known about, or

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other actions created/perpetuated a hostile environment for students on the basis of sex in violation of 34 C.F.R. § 106.31; and

- F. Whether the College engaged in retaliatory conduct against students and faculty who advocated for changes in the College's sexual misconduct policy in violation of 34 C.F.R. §106.71.<sup>1</sup>

#### LEGAL STANDARDS

Sexual harassment is unwelcome conduct of a sexual nature and is a form of sex discrimination prohibited by Title IX. Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of the student's ability to participate in or receive education benefits, services, or opportunities.

##### *Notice of Nondiscrimination*

The regulations implementing Title IX, at 34 C.F.R. § 106.9, requires the recipient to take specific and continuing steps to notify applicants for admission and employment, student and parents, employees, sources of referral of applicants, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its education programs and activities, including with respect to employment. The notice of nondiscrimination must include that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR and must identify and include contact information, including the name, address, and phone number for the Title IX Coordinator. The notice must also include an email address for the Title IX Coordinator.

##### *Title IX Coordinator*

The Title IX regulations, at 34 C.F.R § 106.8(a), require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance. This provision further requires that the recipient notify all of its students and employees of the name (or title), address, and telephone number of the employee(s) so designated; recipients must also notify all students and employees of the email address of the Title IX Coordinator(s). The recipient must ensure that employees designated to serve as Title IX Coordinators and all persons involved in implementing a recipient's grievance procedures have adequate training or experience in handling sexual harassment complaints and in the operation of the recipient's grievance procedures.

##### *Grievance Procedures*

The Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination. These requirements include issuance of a policy against sex discrimination (34 C.F.R. § 106.9) and adoption/publication of grievance procedures providing for a prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8(b)).

##### *Sexually Hostile Environment*

Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including acts of sexual violence. Sexual

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<sup>1</sup> In the course of the investigation, students who were advocating for changes in enforcement of Title IX on campus described to OCR a number of incidents alleging retaliation by College staff; OCR analyzed this information and conducted an investigation of all allegations.

violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol or an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape and sexual assault.

When a student sexually harasses another student, the harassing conduct creates a hostile environment if it is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program.

If a recipient knows or reasonably should know about student-on-student harassment, Title IX requires the recipient to respond in a prompt and equitable manner by taking immediate action to eliminate the harassment, prevent its recurrence, and address its effects. Even if the misconduct did not occur in the context of an education program or activity, a school must consider the effects of the off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity because students often experience the continuing effects of off-campus sexual violence while at school or in an off-campus education program or activity. Recipients should also take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation, as well as to prevent its recurrence, and address its effects if appropriate. Regardless of where the conduct occurred, the recipient must process complaints in accordance with its procedures.

If an employee who is acting, or reasonably appears to be acting, in the context of carrying out their responsibilities either (1) conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct, or (2) engages in sexual harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the recipient is responsible for the discriminatory conduct whether or not it has notice.

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The inquiry must be prompt, reliable, and impartial. Pending the outcome of an investigation, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim measures. The recipient also should take steps to prevent any retaliation against the student who made the complaint or those who provided information. Other actions may be necessary to repair the educational environment.

#### *Retaliation*

The Title IX regulations, at 34 C.F.R. §106.71, incorporate 34 C.F.R. §100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibits recipients from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Title IX. When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in an activity protected by the laws or regulations OCR enforces, and was subsequently subjected to a materially adverse action, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks the recipient to provide a nondiscriminatory or nonretaliatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the evidence establishes that the adverse action was in fact retaliation.

With respect to adverse action, the recipient's action must have been significant enough to (1) substantially disadvantage or restrict the individual with respect to his/her status as a student or ability

to participate in or benefit from the recipient's programs, (2) reasonably act as a deterrent to further protected activity, or (3) deter the individual from pursuing discrimination claims.

#### BACKGROUND

The College is a small private liberal arts college located in Los Angeles, California. It enrolled approximately 2,100 students during the 2015-2016 academic year. Approximately 56% of the students are female and 44% are male.

The complaint described allegations on behalf of 46 students, former students and staff/faculty. Several of the allegations referenced actions outside of OCR's 180-day timeframe and were dismissed. OCR identified timely claims from approximately 26 anonymous and named individuals; only three eventually gave OCR consent forms. However, of the three, OCR confirmed that two had settled all claims with the College. Therefore, OCR investigated the one timely claim of the remaining student complainant who had given OCR consent and who had not settled with the College. During OCR's investigation, one new complaint was filed with OCR (Case No. 09-15-2029), which OCR dismissed pursuant to 110(b) of its case processing manual (CPM) because the respondent filed a case in court making the same allegations. Consistent with its CPM, OCR informed the respondent that he could refile with OCR within 60 days after the court case had terminated, if there has been no decision on the merits or settlement of the complaint allegations; the case is currently set for hearing in September of 2016.

OCR requested and reviewed documentation from the College, including the College's current and prior Title IX policies and procedures; notices and information to students and faculty/staff; descriptions of training on sexual harassment/violence for students and faculty/staff, and descriptions of training provided to individuals responsible for investigating complaints. OCR reviewed records and reports of all complaints of sexual harassment/violence filed with the College during four academic years (2010-11, 2011-12, 2012-13, and 2013-14) to determine whether each complaint was addressed in a prompt and equitable manner. The file review included the College's formal adjudication of 26 complaints of student-on-student sexual harassment/violence and 23 informal complaints of student-on-student sexual harassment/violence and staff-on-student sexual harassment. OCR also evaluated the College's response to 719 complaints regarding sexual harassment/violence filed through the College's anonymous reporting system during the same time period.

During two on-site visits to the campus in September and November 2013, OCR conducted interviews with 14 former and current students, six faculty and staff members and 20 administrators, including the College's President, Dean of Students, Director of Campus Safety and the former and current Title IX Coordinators, as well as administrators and faculty who have served as investigators or hearing panelists as part of the adjudication process. OCR also conducted focus group interviews with students representing a variety of student groups on campus, including resident advisors, athletes, first year orientation team members, student government officers and members of sororities and fraternities.

#### FACTUAL FINDINGS AND ANALYSIS

- A. Whether the College disseminated a notice of nondiscrimination on the basis of sex in compliance with 34 C.F.R. § 106.9.**

Throughout the period of investigation, the College published a notice of nondiscrimination on the basis of sex in its Student Handbook and on its website.<sup>2</sup> The notice contains a prohibition against discrimination on the basis of sex in its educational, extracurricular, athletic, or other programs and in the context of employment, and identifies the Title IX Coordinator and Deputy Coordinators, the purpose of the Title IX office, all of the required contact information, and ways to contact the Title IX Coordinator and Deputies through multiple means, including office hours. The current Sexual Misconduct Policy and grievance procedure (hereinafter Policy when referring to the entire policy and Grievance Procedure<sup>3</sup> when referring to Appendix A of the same) also include the notice of nondiscrimination and provides information about how to file a complaint with OCR. For these reasons, OCR found that the College was in compliance with Title IX and the regulations with respect to this issue.

**B. Whether the College appointed and disseminated information with respect to a Title IX Coordinator in compliance with 34 C.F.R. § 106.8(a).**

OCR found that throughout the period of investigation, except for an approximately two-month period where there was a change in staffing, the College employed and properly identified a dedicated and full-time Title IX Coordinator and, in later years, Deputies. The current Policy identifies the roles of the Title IX Coordinator, including monitoring overall compliance with Title IX, ensuring appropriate training and education and overseeing the College's investigation, response and resolution of reports made under the Policy. The College's "Sexual Misconduct" website page<sup>4</sup> clearly identifies individuals to contact regarding any incident of sexual misconduct and provides links to the College's Grievance Procedure. The website link "How to Report" provides information about how to contact an appropriate staff person 24 hours a day for immediate assistance, as well as links to relevant resources.

OCR found that since February of 2014, the Title IX Coordinator had participated in 23 trainings<sup>5</sup> comprising over 100 hours of training and was otherwise qualified to carry out the responsibilities of coordinating the investigation and response using the appropriate legal standards. In addition, OCR found that the College provided specialized trainings for all of its investigators and hearing officers and notified the College community of the same through its Policy. For these reasons, OCR found that the College was in compliance with Title IX with respect to this issue.

**C. Whether the College adopted procedures that *as written* provide for a prompt and equitable response to sexual harassment/violence complaints and reports in compliance with 34 C.F.R. § 106.8(b).**

Since 2010, the College has had four versions of policies that address sexual harassment and violence, the 2010-2011 Policy, 2011-2013 Policy, August 2013 "Interim Sexual Misconduct Policy," and the current Policy, which went into effect on February 8, 2016, as modified on May 23, 2016. As discussed below, all of the adjudicated complaints reviewed and discussed, *infra*, were considered prior to the implementation of the February 8, 2016 Policy. OCR reviewed each of the four versions of the policies.

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<sup>2</sup> <http://www.oxy.edu/sexual-respect-title-ix/policies-procedures> (last viewed June 6, 2016).

<sup>3</sup> *Id.*

<sup>4</sup> <http://www.oxy.edu/sexual-respect-title-ix> (last viewed June 6, 2016).

<sup>5</sup> Training topics include: Title IX Coordinator and Administrator Training Certification, Clery requirements, "Drunken hook-ups"; Violence Against Women Act; Fair and Effective Investigations; Issues of Gender Violence in LGBT Communities; and Campus Discipline and Judicial Boards.

Concerns with respect to application of prior versions of the policies to individual complaints filed are discussed with respect to issue D. A chronology of the changes is as follows:

#### 2010-11 Policies

The College maintained two separate policies: a Sexual Assault Policy and a Sexual Harassment Policy. Both provided informal and formal mechanisms for resolution of complaints. The Sexual Assault Policy applied to complaints filed by students against other students. Consent was defined as either verbal agreement or positive physical cooperation. Formal complaints were resolved through a two stage process. The first stage consisted of an investigator interviewing witnesses, determining whether there was a "reasonable suspicion" that the College's policies had been violated, writing a report and recommending resolution. The policy notified the complainant of the right to proceed with a criminal investigation and a Title IX complaint simultaneously. The policy also described how to file a report with the local police department. The policy specified that as an "immediate response" the College would separate the complainant and respondent in all common areas, residence halls, campus buildings, and student activities, provide options to change either the complainant or respondent's academic or living situation, as requested, remove the complainant or respondent from a hostile living situation, provide support, medical services, and reporting options, and put in place a stay away order.

Final individual remedies were provided to the complainant after the investigation. The complainant and respondent were provided notice and given an opportunity to review the report. If reasonable suspicion was found, the respondent could accept the decision and the sanction. If the respondent did not accept responsibility, a *de novo* hearing was held before a three-member panel with equal rights for the parties. The complainant could request a hearing if the respondent was found not responsible or the complainant disagreed with the sanction. The hearing panel prepared a findings document based on a preponderance of the evidence standard; if a respondent was found "responsible," the College considered a range of sanctions, which were contained in the policy. However, with respect to "rape" the policy stated that any student found to have committed rape would be "expelled." In the policy, rape was defined as an:

act of sexual penetration (oral, anal, or vaginal) committed against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another. Sexual penetration is considered non-consensual and, therefore, rape when the person is incapable of giving consent because the individual is incapacitated from alcohol and/or drugs, or a mental disorder or developmental or physical disability renders the victim incapable of giving consent. Any sexual penetration, however slight, is sufficient to complete the offense.

An appeal was available for both parties.

The Sexual Harassment Policy applied to complaints filed by students against other students, employees or third parties. Complaints were investigated by a Designated College Office (DCO) selected from among six identified administrators. The DCO conducted an investigation, completed a report and made findings and recommendations concerning responsibility and sanctions. The policy included a list of "accommodations" and stated that the College would "intervene promptly and effectively"; the accommodations for complainants included removing the respondent from the environment and moving the respondent or complainant to different living situations, classes or work environments. Either party could appeal the determination by requesting a hearing. The parties had equal rights during

the hearing and had a right to another level of appeal after the hearing concluded and a decision was rendered.

#### 2011-12 and 2012-13 Policies

The College adopted a combined sexual assault and sexual harassment policy and procedure, although the investigative and adjudicative stages were different for assault and harassment. All except one of the cases adjudicated during the initial three-year period OCR reviewed were adjudicated under these procedures. The policy applied to complaints alleging discrimination or harassment carried out by employees, other students, and third parties. The definition of sexual misconduct was expanded to explicitly include sexual exploitation, including non-consensual video or posting of images, voyeurism and stalking and definitions of non-consensual sexual contact and non-consensual sexual intercourse with specific elements were included. For example, the policy stated that non-sexual contact is “any intentional touching, however slight, with any object, by a man or a woman upon a man or a woman, that is without consent and/or by force.” It provided that non-consensual sexual contact includes: “[i]ntentional contact with the breasts, buttock, groin, or genitals, touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.” The definition of consent was clarified to provide that consent can “be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in sexual activity” but continued to allow either verbal or physical consent. The policy specified that “[s]ilence, in and out itself, cannot be interpreted as consent,” and that previous relationships, prior consent or consent to one form of activity cannot imply consent to future or other sexual acts. Incapacity was further defined as a state where someone cannot make reasonable decisions because they lack the capacity to give knowing consent; the policy provided that consumption of alcohol or drugs alone is insufficient to establish incapacitation and that incapacitation will be determined on a case-by-case basis, and involve an analysis of whether a responding party “should have known” that the complainant was incapacitated, or played a role in the incapacitation.

The policy continued to notify the complainant of the right to proceed with a criminal investigation and a Title IX complainant simultaneously. The policy continued to provide for interim measures to protect the complainant immediately after the complaint was filed and included a more extensive list of measures, including providing for class withdrawals, incomplete grades, and alternative course completion.

Complaints were filed directly with the Title IX coordinator who was in the Dean of Students office. The complainant was given the opportunity to decide whether or not to go forward with a formal complaint. If the complainant chose not to go forward with a formal complaint, if the College had the name of the respondent, the Title IX coordinator or the deputy would contact the respondent, describe the claim, and explain the sexual misconduct policy. If the complainant chose to go forward, the Title IX coordinator assigned two investigators who were part of a pool of investigators, composed of faculty and administrative staff, who were recruited and trained for this purpose. Investigators were charged with identifying witnesses, conducting interviews, gathering physical evidence (e.g., phone records and text messages), synthesizing what they learned and identifying discrepancies and consistencies. If during this process, a respondent admitted responsibility, the case was forwarded to the Title IX coordinator for action. Otherwise, the investigators developed a summary of this information, but did not make a finding of responsibility or non-responsibility. The report was provided to the Title IX

coordinator. The complainant and respondent were provided notice and given an opportunity to review the investigative report.

If a respondent was found responsible, and the respondent accepted the finding, the Dean of Students Office would impose a sanction after consultation with the Title IX Coordinator. If a respondent would not accept the finding, a hearing was convened by the Title IX Coordinator who designated three trained hearing officers from a pool of staff and faculty. The hearing panel determined by a preponderance of the evidence whether the respondent violated the policy after "reviewing all available information"; the investigators findings were admitted but not binding on the deciders of fact. Steps were taken to reduce the possibility of the complainant and respondent having to meet, either in the hearing room, or en-route. Both sides were also given the opportunity to participate remotely through teleconference or Skype.

Hearings took between 2-6 hours, depending on the complexity of the case. The lead investigator reviewed the charge, and the consistencies and inconsistencies in the evidence. The hearing panel decided which witnesses would testify, based on its review of the record, and taking into consideration requests by the complainant and respondent. Both sides were given an opportunity to ask questions, but the hearing panel had the discretion to allow and disallow questions. The questions were directed through the panel members. Each party was allowed an advisor to accompany them, but this person could not be an attorney. Both sides were allowed the opportunity to make "closing remarks." Hearing panelists told OCR that they met subsequent to the hearing, several times if necessary, to review evidence. The hearing panel then made a determination based on a preponderance of the evidence standard and the Chair of the hearing panel "recommend[ed] appropriate sanctions within the parameters provided by the Dean of Students Office. If a respondent was found in violation, after consultation with the Title IX Coordinator, the Dean of Students Office imposed "appropriate sanctions" for the violation with the intent to "end discrimination, prevent its recurrence, and remedy its effects on the complainant and the college community." The Title IX Coordinator or designee then informed both the complainant and respondent of the outcome in writing.

The Title IX coordinator for this time period told OCR that determinations on sanction were based on severity of violation, previous student conduct charges, and age, probability of recurrent behavior, and attitude and level of acceptance of responsibility. Appeals on adverse findings were allowed, and appeals on sanctions were initially allowed and then removed in December 2012. Appeals then only were allowed on the overall finding of responsibility, based on new evidence or procedural error.

#### 2013 Interim Sexual Misconduct Policy

The interim Sexual Misconduct Policy was posted on the College website on August 24, 2013 and was updated throughout the period of OCR's investigation of the case. The 2013 Interim policy is comprehensive. This policy included language to encourage reporting and includes extensive descriptions of interim remedies and resources for complainants.

OCR first reviewed the interim policy and procedure published by the College in August, 2013 and determined it generally met Title IX's prompt and equitable requirements. OCR, however, had concerns related to three areas to further clarify the procedures and eliminate confusion with respect to:



1. the interplay between the College's decision making about the informal process and the voluntary nature of that process and the process for appealing a determination made at the Title IX Initial Assessment (Initial Assessment) of the proceeding;
2. the preponderance of the evidence standard applying to all stages of the proceeding from Initial Assessment to Hearing; and
3. whether law enforcement's initial investigation would delay resolution of the College's investigation, such that it was no longer prompt.

With respect to the Initial Assessment, the policy provided that the Title IX team conducted an initial assessment of all reports of sexual misconduct. The team would assess the nature of the report, the safety of the individual and the campus community, and the complainant's expressed preference for resolution. Based on that assessment, the Title IX team was permitted to conclude that informal resolution was appropriate, and also could take into consideration the complainant's expressed preference for informal resolution, although informal resolution was not required. In either case, informal resolution would involve mediation between the complainant and respondent, if the complainant was willing. Informal resolution could also involve the imposition of individual and community remedies, including targeted and broad-based educational programming or training, and sanctions for the respondent. Participation in informal resolution was voluntary, and a complainant could request to end informal resolution at any time. Mediation, even if voluntary, could not be used in cases of sexual violence or assault. OCR had concerns because of conflicting language in the policy that suggested that the Title IX Coordinator might have been able to override a decision not to end the informal process; in addition, OCR was concerned that the initial assessment might also result in the dismissal of a complaint at an early stage without a chance to appeal and the standard of review for making this decision was not specified. In the final policy, all of the concerns identified with the interim policy were addressed as discussed further in the next section.

#### Current Sexual Misconduct Policy

The policy analysis described immediately below addresses compliance as written with respect to the policy that is currently being utilized by the College.

The Policy prohibits all forms of sexual or gender-based discrimination, harassment and misconduct, including sexual assault, non-consensual sexual contact, intimate partner violence, sexual exploitation and stalking against any College community member<sup>6</sup> and prohibits retaliation. It states that the College will take prompt and equitable action to eliminate the prohibited conduct, prevent its recurrence, and remedy its effects. It includes the following steps for investigation of complaints or reports: intake meeting; first and second threshold determination; informal resolution or/and formal resolution; sanctions; and appeal. At the conclusion of the intake meeting with the complainant, the Title IX Coordinator or Deputy makes two threshold determinations:

- 1) Does the Complainant's report state facts that, if true, could constitute a violation of the College's Sexual Misconduct Policy?
- 2) If yes, should the College proceed through formal or informal resolution?

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<sup>6</sup> The Policy defines a community member as including all "students, faculty, administrators, staff, volunteers, vendors, contractors, visitors, and individuals regularly or temporarily employed, conducting business, studying, living, visiting or having any official capacity with the college or on its property."

These two threshold determinations must be made within three calendar days of the intake meeting and the findings must be communicated in writing to the Complainant.

OCR found that the current Policy provides students and other campus community members with information on how and where to file a complaint of sexual misconduct, how to report a criminal complaint, and how to make an anonymous complaint through a link on its website. All of this information is additionally provided to community members through various training sessions. It provides for the parties to receive notice of each stage of the process, the applicable procedures, and notice of the issues to be considered at a hearing. The Policy includes information for how to file a complaint with OCR and encourages filing by providing for amnesty for students who report with respect to other violations, such as consumption of alcohol.

It also provides an explanation of applicability that meets Title IX requirements, in that the Policy applies to all community members. It provides that any party may file a complaint of sexual harassment or discrimination, including third parties. It explains the procedures that may be used for complaints of sexual misconduct occurring on or off College property and that off campus conduct that is likely to have a substantial adverse effect on, or poses a threat of danger to, any member of the College is covered. The Policy expressly states that there is no time frame for reporting, ensuring that all complaints of violations of Title IX will be addressed.

The grievance process has safeguards to ensure an adequate, reliable, thorough and impartial resolution of complaints. In this regard, the Policy states that the College will investigate and resolve all reports in a fair and impartial manner. The process for investigation includes an interviewing procedure (with the opportunity for every witness interviewed to check the accuracy of the interview and the parties to respond to summaries prepared by the College) and provides that the complainant and respondent have an opportunity to review and respond to the preliminary report and any addendum issued prior to the final determination. The Policy states that past sexual history is not relevant, except when there is a relationship between the complainant and respondent and the respondent alleges consent.

At each stage, the parties have an equal opportunity to challenge the investigator(s), sanctioning panel members, and Appeal Officer for conflicts or bias. OCR had raised a concern with the College about the Policy because there was no provision to challenge the Title IX Coordinator/Deputy assigned to the matter for bias or conflict, which the College has remedied in a revision published on May 23, 2016.

With respect to appropriate notice of the outcome, OCR found that both parties are provided written notice of the preliminary report, final investigative report, and sanctions; and that, appropriately, the respondent is not provided with information about any specific remedies (e.g., counseling) provided to the complainant. The possible sanctions listed include warning, censure, disciplinary probation, restitution, removal from campus housing, suspension, expulsion, revocation of admission and/or degree, and withholding degree. Suspension, expulsion and withdrawal pending disciplinary action are permanently noted on a student's transcript. OCR had one concern that if both parties proceed through informal resolution, the Policy did not provide for notice related to any resolution achieved, which could result in one or either party lacking clarity about remedies and an appropriate way to ensure implementation. The College has remedied this concern in a revision published on May 23, 2016.

The Policy appropriately designates responsible employees as any employee who has authority to take action to redress harassment; has the duty to report; or a student could reasonably believe has the

authority or responsibility to take action. It also provides exceptions for confidential professionals. It states that Investigators, Review Panel Members and Appeal officers receive specific training.

The preponderance of evidence standard is expressly applied at every stage of the investigative process. The appeal stage has a different procedural standard because of its limited nature, but there is no fact finding at that stage. If the appeal panel finds an error or that new evidence should be considered, it is returned to the investigators to re-determine using the preponderance of evidence standard.

The Policy properly states that the College will impose remedies as necessary to provide for the safety of the complainant and campus community, end the conduct, address the effects of the conduct, and prevent recurrence. It identifies a range of sanctions, including expulsion, and personal and academic remedies for the victim and non-disciplinary administrative measures for the safety of the campus community as appropriate. It contains a section on interim measures and provides that either party can access such protections. The Policy expressly prohibits retaliation and contains adequate definitions of sexual harassment and sexual violence and of privacy, confidentiality, consent, force, coercion and incapacity to provide consent.

The Policy limits the informal process to a set of complaints that does not include sexual assault, provides that informal resolution generally will be facilitated by the Title IX Coordinator, and that parties have the right to end the process at any time and proceed to formal resolution.

The Policy appropriately addresses confidentiality; it states that when a complainant requests confidentiality, the College must balance the request with its dual obligation to provide a safe and non-discriminatory environment for all community members and sets out factors to weigh in conducting the balancing analysis. The Title IX Coordinator retains records of all reports, complaints, and files from complaints that have gone through the conduct process are maintained in the Dean of Students Office indefinitely.

The Policy states that the College may not delay conducting its own investigation unless specifically requested by law enforcement and, even then, the College shall defer only during the time that law enforcement is gathering evidence, which should not exceed 10 days absent extenuating circumstances. It provides that the College will nevertheless communicate with the parties, if appropriate, regarding Title IX rights, procedural options, and the implementation of interim measures.

With respect to whether the Policy provides for a prompt resolution, the total timeline from intake until receipt of the sanctions determination will be approximately 55 days, assuming no objections related to conflict or bias. With objections, the timeline is approximately 64 days, but this does not account for any time required to replace an individual removed for conflict or bias. However, the Policy states that the complainant and respondent will be notified in writing of any delays and can request a status update.

For these reasons, pursuant to Title IX and the regulation, OCR found that the College's Policy concerning sexual misconduct and procedures for resolving complaints and reports of sexual misconduct as written provides a prompt and equitable resolution of complaints of sexual harassment, including sexual violence. As the College is now implementing a new process for resolving complaints and reports, the College entered into an Agreement, pursuant to which OCR will monitor the implementation of the new Policy, in part, to assess whether investigations are being completed in a timely manner.

**D. Whether *in practice* the College provided a prompt and equitable resolution to complaints and reports of sexual harassment/assault which it knew about, or which it should have known about, in compliance with 34 C.F.R. § 106.31.**

*Overview of Reports and Complaints, Investigations and Hearings for 2010-2014*

OCR reviewed complete records and reports of all complaints of sexual harassment/violence filed with the College during four academic years (2010-11, 2011-12, 2012-13, and 2013-14) and the complete investigation files for such reports and complaints. OCR reviewed the College's formal adjudication of 26 complaints of student-on-student sexual harassment/violence and 23 informal complaints of student-on-student sexual harassment/violence and staff-on-student sexual harassment. OCR also evaluated the College's response to 719 complaints regarding sexual harassment/violence filed through the College's anonymous reporting system.

By examining all formally adjudicated complaints, OCR confirmed that all parties were provided an opportunity to present evidence from relevant witnesses and other sources. For complaints that were informally resolved, OCR confirmed that the College met with complainants to discuss the allegations and concerns and provide them an opportunity to provide evidence and witnesses and documented the same, including any follow-up steps. Complainants were also provided information about complaint filing options, including the option to file a formal complaint. OCR also confirmed that the College consistently applied the preponderance of the evidence standard in conducting its investigations. OCR found sufficient evidence that both parties were accorded equal rights and treatment in the process and that the College applied an adequate definition of sexual harassment/assault. OCR did not find evidence that the College allowed evidence of complainant's past relationships to be considered in the investigative processes.

Through this file review, OCR also found that interim measures were provided to complainants, including interim suspension for respondents as to all or some educational programs and activities, changes in academic and living situations, counseling and support, and issuance of no-contact orders. The College also took steps to ensure protection of complainants and respondents against retaliation. OCR did not find any evidence that the College attempted to mediate formal or informal resolution of complaints of sexual assault and it provided adequate and appropriate notice of the right of a complainant to proceed with a criminal investigation simultaneously.

OCR also found that the College maintained documentation of all complaints and has been providing annual mandatory training to staff responsible for implementing the grievance procedures. OCR did not find any evidence that the College has ignored or failed to address a concern raised by any party about a conflict of interest or bias. Furthermore, since September 2013, the College has hired outside investigators and hearing adjudicators to help ensure impartiality.

OCR confirmed that the College investigated all complaints of sexual misconduct in which complainants elected to go forward with a formal complaint, as well as two reports of assault filed in the 2010-11 year, in which the College went forward with an investigation even where the complainant did not want to file a formal complaint because of concerns about student safety and impact on the College community. For the two cases where the complainants chose not to proceed formally, in the first case, a parent contacted the college about a student. The student did not want to pursue a formal grievance, but the College conducted an assessment and made a determination to conduct a formal investigation

based on the information provided by the student's parent. The College provided the student with referrals for free counseling, academic accommodations and a stay away letter. The case was resolved in 69 days, including two weeks over winter break; the respondent was found responsible and was required to complete his degree requirements online. In the second case, a student reported the respondent being physically aggressive and using sexually derogatory language, but then withdrew her complaint. The College provided the student with a referral for counseling support and a stay away letter. The College conducted an initial investigation and concluded the situation did not present a claim of sexual harassment but nevertheless referred the matter to the student conduct process. OCR did not identify any concerns or violations related to the handling of these two complaints.

Specifically, in the 2013-14 school year, the College formally resolved three sexual assault complaints, and two sexual harassment complaints; the College first applied the 2013 Sexual Misconduct policy for all complaints resolved during this school year.

With respect to the three sexual assault complaints, all three complaints were resolved in excess of 60 days (105, 100 and 120 days, respectively).

1. the first concerned an allegation of non-consensual sex, and resulted in the respondent being found responsible of sexual misconduct and expelled. The investigator interviewed 14 witnesses (including the complainant and respondent). Delays occurred related to difficulty in contacting witnesses and the resignation of the respondent's advisor.
2. the second was a counter-claim by the respondent of the complaint discuss in paragraph 1, above in which the respondent had been found responsible of sexual misconduct and expelled. The College reviewed the complaint, and the respondent did not consent to an interview. Based on a review of the previous investigation that the college conducted concerning the same underlying facts, the non-cooperation of the respondent, and a determination that no new evidence had been presented, the College determined not to proceed further with the formal investigative process. The delay in the determination in this complaint was related to the respondent not availing himself for an interview.
3. the third sexual assault complaint concerned an allegation of non-consensual contact. The College concluded that the respondent ended contact when consent was withdrawn, and therefore was not responsible for sexual misconduct; the College's outside investigator found that the respondent did not engage in non-consensual sexual conduct. In this case, the College elected not to go to hearing after an investigation was completed. OCR did not receive any documentation that the complainant appealed the determination, appealed the investigator's finding or the determination. The processing of this complaint was delayed by the respondent having to travel overseas for medical treatment for two months. The respondent was not available for interviews during this time.

With respect to the two sexual harassment complaints, both were resolved in less than 60 days.

- In the first, the complainant alleged that a professor made sexual advances toward her; the College provided the complainant with resources, reporting options, counseling and support. The professor resigned 9 days after the student made the report and the complainant was immediately notified of the same. The College did not provide remedies to other students

because the information gathered did not indicate that other students had been impacted or that other students witnessed the incident in question.

- In the second, a female student alleged that a male student called her obscene names and sent her text messages with the same derogatory names. The investigation by the College concluded that the conduct did not rise to the level of sexual harassment, and the College did not go forward with a hearing. The investigation took 55 days. OCR reviewed the investigative file, which supported a conclusion that the respondent's actions did not meet the definition of sexual harassment; no appeals were recorded.

During the four-year period, the College received 23 informal reports of sexual misconduct. All complainants met with Title IX office staff, and were provided resources and notice of complaint procedures. At minimum, the College also met with every respondent within two weeks, discussed what had been alleged, reviewed the College's sexual harassment prohibitions and procedures, and informed them that the complainant could file a formal complaint at any time. A summary of the steps taken by the College for each of the informal complaints is provided below:

- a. In 2010, two students reported non-consensual sex by the same student when they blacked out after becoming intoxicated at two separate parties. In both cases, the College met with the complainants on numerous occasions; neither student wanted to pursue a complaint process or have stay away orders issued, however, as to the second case, the College issued a stay away order. In both cases, the College met with the respondent to discuss the allegations. Neither complainant would provide the College with specific information indicating where the alleged incidents occurred or the names of any witnesses.
- b. Nine complaints alleged student-on-student sexual harassment; in seven of the cases, the College met with the respondent and provided information about the College's sexual misconduct policy. In three cases, the College issued stay away orders. In two cases, the College looked into the cases and found insufficient information describing possible harassment.
- c. Three complaints involved sexual harassment allegations against a faculty member. In one case, a student reported to her professor that another faculty member "invaded her personal space"; the College met with the faculty member to describe the allegation and the misconduct policy. In a second case, a student alleged that a professor made sexually suggestive comments; the faculty member resigned shortly after the complaint was filed. In the third case, a student in an abroad program reported that after returning to campus, a faculty member affiliated with the foreign university made inappropriate comments and advances to a staff person at the foreign university. The College severed its relationship with the program.
- d. Two complaints involved students alleging harassment by two different staff persons. In the first, the complainant wished not to file a complaint or otherwise be identified. The Title IX office staff contacted the respondent's supervisor who engaged the staff person in a conversation about the College's sexual misconduct policy and prohibitions about specific conduct. In the second complaint, the staff person in question had already resigned and the alleged incident occurred two years prior. In this second case, the student was provided course accommodations.

- e. Two complaints alleged harassment by individuals unaffiliated with the College in study abroad programs. In one case, the College severed its relationship with the program because the respondent was related to program staff. In the second complaint, the respondent had no relationship to the program (and the incident was in an off-campus location) but the College asked the study abroad program to respond to the student's concern. The program pledged to increase programming for students about safety in the general environment.
- f. Two complaints alleged sexual assault by non-students in a non-affiliated program activity in Mexico (spring break). Both complainants were provided resources and support.
- g. Three complaints alleged harassment by individuals not currently affiliated with the College (former students and a student attending a different college). All respondents were sent stay away orders.

During the 2010-11 and 2011-12 school years, the College received four anonymous reports; between July 1, 2012 and September 18, 2013, the College received 65 anonymous reports. Of the complaints alleging either sexual harassment or assault, 19 identified a respondent but some had multiple reports. For each identified respondent (10 total), OCR confirmed through documentation that, at minimum, the College met with the respondent, generally within two weeks of the anonymous report, to discuss the allegation and review the sexual misconduct policy. Three of the identified respondents were already party to formally adjudicated complaints at the time the anonymous complaints were filed: one had been expelled, one was participating in a formal adjudication process which resulted in expulsion, and one had already graduated. Based on a review of the anonymous reports, documentation of the steps taken for follow-up kept by the College related to such reports, and interviews with College staff charged with assessment and follow-up, OCR found that the College assessed each anonymous report for possible impact on the larger college community, if there was information indicating the location of the alleged harassment or assault, and/or other witnesses identified in the anonymous report. For example, in one case, an anonymous reporter indicated that her sorority president discouraged her from filing a complaint about sexual assault at a fraternity. A College administrator met with the members of both the sorority and fraternity to review the College's Sexual Misconduct Policy, resources for support and the importance of making reports.

From September 19, 2013 through June 30, 2014, the College received an estimated 650 anonymous complaints on an on-line reporting portal. OCR found that the College carefully reviewed all complaints and that none of the anonymous complaints filed during this period appeared to be made in good faith or named a real respondent. The College provided OCR with a copy of the anonymous complaint logs that included the verbatim text from the complaints as submitted to the College and OCR confirmed that the entries contained lurid, false, and/or nonsensical allegations, against individuals including the College's mascot, well-known actors and public figures, and other individuals with made-up names; the entries appeared to be an organized hoax.

OCR's file review raised a concern that some sexual assault complaints are being or have been resolved in more than 60 days without adequate justification. OCR found that the College met its time frame in 12 out of 22 adjudicated cases during the initial three year period. In an additional three cases, the College completed the process close to the 60-day time frame (65-75 days). The College's reasons for significantly missing the 60-day timeframe for 7 of the 22 adjudicated complaints were based on complexity of the investigation, filing dates close to the end of the school year, and difficulty

coordinating schedules of relevant staff and students particularly over the summer vacation. OCR found evidence for each of the 7 cases, showing that College staff overall made consistent progress in completing investigations, but that scheduling hearings, particularly over the summer months, added time to completion timeframes. OCR found a violation with respect to three cases decided in 2012-13, because the delays were due in large part to staffing vacancies and unavailability of hearing officers and could have been anticipated; in specific, in one case that coincided in part with a summer break the hearing officers were unavailable and in the other two cases the Title IX officer was out on medical leave and no one assumed her responsibilities. Also, in the three 2013-14 sexual assault cases, which were concluded in over 100 days, OCR found the delays could not have been anticipated but the cases were nevertheless not timely in relation to the College's own policy and OCR's recommendations. The College was diligent in its process but had difficulty in contacting numerous witnesses in one case, could not proceed sooner because of the lack of availability of the respondent who was out of country for health reasons in another, and, in the third, could not proceed because the complainant, who was a respondent in a prior case that had been decided against him, would not cooperate or be interviewed.

OCR's investigation also raised concerns that until fall of 2013 the College did not keep the parties apprised about the progress of adjudication. These concerns have since been resolved through policy and practice change and after reviewing individual cases in which both parties were informed of delays during the 2013-14 school year, OCR finds insufficient evidence to raise compliance concerns on this point for the 2013-14 school year.

For these reasons, OCR concludes that there is insufficient evidence to support a claim that the College's response to notice of sexual misconduct failed to provide an equitable resolution of complaints of sexual harassment, including sexual assault. However, OCR also determined that three complaints were not promptly resolved during the 2012-13 school year. Those complaints were resolved under a prior policy but OCR has concerns about the timeliness of complaint resolution under the current Policy because the policy itself has a timeframe for resolution that could extend well-beyond 60 days. OCR will review complaints resolved during monitoring to make a determination as to whether the new process provides for prompt and effective resolution of complaints. The College entered into a voluntary resolution agreement with OCR wherein it will proactively review complaints and assess timeliness, as well as provide the complaints files to OCR for review, to ensure there is a prompt and effective process.

#### *Findings Specific to OCR Complaint Allegations*

In addition to its systemic examination outlined above, OCR's investigation focused on several discrete areas of alleged noncompliance as alleged by the complainants:

- a. College investigators fail to interview all relevant witnesses during the formal adjudication process.*

The OCR complaint alleged that the College failed to interview all relevant witnesses in two cases. While the complainants' allegations only included two cases of concern, OCR investigated this issue by reviewing the records of all 26 formally adjudicated cases. OCR found that the College's investigators consistently interviewed the complainant, respondent and all relevant witnesses, and maintained comprehensive notes of the interviews.

Three of the cases involved allegations of intimate partner sexual assault where alcohol was not involved and there were no witnesses to the sexual assault. In all three of these alleged incidents,



neither the parties nor the investigators identified any additional witnesses. In these three cases, the College interviewed only the parties.

In the other 19 cases, investigators interviewed both parties and all relevant witnesses. The interviews of such witnesses included inquiries about observations and knowledge of interactions between complainant and respondent and also consumption of alcohol, other behavior and functioning level. Two of these 19 cases were the cases identified by the complainants as ones where all witnesses were not interviewed. OCR interviewed the complaining party in both of these two cases. The first case involved a student who stated that a witness she named who had no personal knowledge of the incident was not interviewed. The investigative report shows that no witnesses were called or interviewed because neither party could identify individuals who witnessed any of the three incidents in question. OCR did not obtain any information from either the investigative file or the interview with the complainant that anyone saw the parties together either before or after the incidents at issue. The complainant also told OCR that the witness would have testified to what the complainant told the witness about her interactions with the respondent and that the witness had no personal knowledge.

OCR interviewed the complaining student in the second case also. She stated that two of her witnesses were not interviewed, according to the College “because they would not add to the narrative.” The College interviewed four other witnesses, all identified by the complainant. The College’s investigative report states that the two additional witnesses identified by the complainant were not interviewed because, based on the complainant’s description of what they would say, the same information had already been provided by previous witnesses.

OCR found that in the two cases identified by the complainants, the College’s failure to interview all identified witnesses did not result in a failure to provide an equitable response. Since the fall of 2013, the College indicated that interviews have been conducted of all identified witnesses regardless of whether they have specific direct knowledge of the alleged incidents. OCR confirmed this assertion through a review of later complaints that the College has interviewed all witnesses that were identified regardless of whether they have specific direct knowledge of the incidents.

*b. The College fails to take interim steps to protect complainants before the final outcome of the investigation.*

The complaint alleged that the College should immediately and automatically suspend all respondents named in complaints of sexual assault. To comply with Title IX and its implementing regulations, once the College has notice of a sexual harassment or violence allegation, the College is required to respond in a prompt and equitable manner by taking immediate action to eliminate the harassment, prevent its recurrence, and address its effects. When responding to alleged sexual harassment, the College must take immediate and appropriate action to investigate or otherwise determine what occurred. The inquiry must be prompt, reliable, and impartial. Pending the outcome of the College’s investigation, Title IX requires the College to take steps to protect the complainant (and others) from further harassment as necessary, including taking interim measures and customize them to meet the complainants’ needs. Nothing in the Title IX requirements mandate immediate or automatic suspension of all respondents named in complaints of sexual assault.

Based on review of all complaint files, OCR found that the College routinely issues “stay away” letters on behalf of complainants, and sometimes for respondents (who may request such a letter to protect

themselves from new allegations). The letters were generally in effect for one year, but could be extended upon request. OCR confirmed that such letters typically describe any areas on campus and time periods that the respondent needs to be aware of to ensure that the “stay away” is observed.

OCR found that the College, in specific cases, applied interim suspensions of respondents from some College activities, pending the completion of an adjudication process. OCR found that the College has removed respondents from shared living environments or classes and that as a matter of practice the College makes counseling available to victims of sexual assault at the on-campus student health center. The College also offers off-campus counseling options for students, including taxi vouchers to travel to and from counseling. The complainant indicated that the College imposed a limit of 10 private counseling sessions. However, OCR confirmed that the College made exceptions to this policy as needed. One witness confirmed that she benefitted from ongoing counseling after completion of the adjudication process. Another stated that she continued to receive counseling after she exceeded her 10 sessions.

OCR confirmed that the College also provides complainants with academic accommodations, such as “incomplete” grades and extra time to complete assignments, taking school months off without penalty, or an opportunity to postpone test dates. OCR did not find instances during its file review that suggested that interim measures were not provided. For these reasons, OCR found that College provided complainants with interim measures.

- c. *Respondents receive inadequate sanctions, and/or are allowed to have their sanctions reduced through appeal.*

The complaint alleged that the College’s decision to change its policy on sanctions in 2011 violated Title IX; the policy had required “expulsion” for any person convicted of “rape”, which was defined more narrowly than sexual assault. The policy change allowed for the imposition of sanctions other than expulsion. Title IX does not prescribe the sanction to be imposed; each individual is entitled to a prompt and equitable process. However, OCR reviewed all 16 cases where a respondent was found responsible for any type of sexual misconduct, including but not limited to nonconsensual touching or sex. The sanctions in the cases are below:

- Eight were expelled.
- Two were suspended for one semester.
- Three were put on probation (two for a semester, one for a year) and required to complete certain activities under supervision.
- One was ordered to complete his studies on-line and not allowed to return to campus.
- One who had graduated was required to complete training before receiving his transcript.
- One was ordered to cease spreading rumors about the complainant (this respondent had not been found responsible for sexual assault).

The complainants also stated that when consequences consisting of educational activities were given they were not taken seriously by the respondents. OCR reviewed the three cases of concern in which the respondent was asked to complete educational assignments as part of a sanction. In the first case, the complainant alleged that she at first engaged in consensual sexual conduct with the respondent and then she communicated she no longer wanted to participate in sexual conduct and withheld her consent but the respondent pressured her to continue. When the complaint was presented to the respondent

by the Title IX Coordinator, the respondent accepted responsibility. The respondent was sanctioned with one semester of probation, required to resign from all leadership positions, write a formal letter of apology, and complete an educational project. This project involved meeting with a professor weekly to discuss sexual misconduct and developing an “active consent” awareness campaign. OCR reviewed the records and confirmed that the respondent completed the required assignments.

In the second case, the complainant alleged that while asleep on the floor of a dormitory room, after drinking, she awoke to find the respondent attempting to place his hands up her skirt. She moved his hand away forcefully and he left. A hearing panel concluded that nonconsensual sexual contact occurred. The respondent was sanctioned to one year probation, required to write a 1000 word reflection paper about the incident, design a flyer on how to show romantic interest appropriately, and participate in training regarding consent. OCR reviewed the records and confirmed that the respondent completed the required assignments.

In the third case, the complainant alleged that the respondent, who was a friend, had nonconsensual sex with her even though he knew she was emotionally upset and under the influence of alcohol; force was not involved. The respondent believed the sexual conduct was consensual. This case went to a hearing and the panel determined that because the two students knew each other well, the respondent should have known that the complainant’s level of alcohol consumption impaired her ability to provide consent. The respondent was found responsible for nonconsensual sex. He was sanctioned with a one semester suspension, required to write a formal letter of apology, and write a five page research paper. OCR reviewed the records and confirmed that the respondent completed the required assignments.

In all three cases, OCR found that the educational assignment was only one part of a remedy that also included other sanctions, including suspension, a formal letter of apology, probation, resignation from leadership positions, and/or training.

The OCR complaint further alleged that when respondents appealed their sanctions, the sanctions were reduced without basis. Of the 16 cases where a respondent was found responsible, nine respondents appealed. In seven of the nine cases, there was no change in sanction against the respondent. For the two appeals where the sanction was reduced, records showed that the complainant was notified and given an opportunity to provide input. In one complaint, a respondent who had been sanctioned with expulsion appealed the decision based on procedural errors, specifically that his past sexual history (unrelated to sexual harassment or assault) was used against him. In response to the appeal, the College agreed that a procedural error impacted the outcome of the hearing, and required the hearing panel to reconsider its ruling by disregarding testimony regarding the respondent’s prior sexual history. The hearing panel reconsidered its ruling and still found him responsible for nonconsensual sexual intercourse (a lesser offense than assault). The dean of students notified the parties that, because of the procedural error and appeal decision, she was rescinding the expulsion and modifying the sanction to two years of suspension and an educational remedy (reflection paper).

In a second complaint, the respondent appealed the adverse determination, arguing that because of his inebriation, he was unable to determine that the complainant was too inebriated to provide consent. He also claimed that being required to participate in the hearing by Skype for the entire proceeding put him at a disadvantage because he was not able to face the panelists and witnesses. The dean of students informed the respondent by letter that she considered his arguments and “in the

interest of justice” reduced his sanction by eliminating a one semester suspension, but retaining the community service and educational remedies. In an interview with OCR, the dean of students stated that she agreed that the respondent was put at a disadvantage procedurally because he was not allowed at any time to face the hearing panel. The case was resolved at the end of the 2011-12 school and the respondent never returned to the College. OCR determined that the dean’s decision to reduce the sanction balanced due process concerns and Title IX obligations and was not substantially disproportionate. In the two instances where the respondents’ sanctions were reduced after appeal, the evidence showed that the College was attempting to balance the due process rights of the respondent with the rights of the complainant; the complainant was notified and given an opportunity to provide input. The modified sanctions were still within College guidelines.

Title IX requires that the actions taken by the College be effective in stopping the current sexual misconduct and preventing it from recurring. Recipients are required to take steps that are reasonably calculated to prevent the recurrence. OCR found insufficient evidence that the College failed to sanction respondents consistent with its stated guidelines or to take steps reasonably calculated to prevent the recurrence of harassment or assault under Title IX. The College applied sanctions, including expulsions, lengthy suspensions and probation. In half of the sexual assault cases where the respondent was sanctioned, the sanction was expulsion. The evidence did not show that only educational remedies were applied in any sexual misconduct cases; rather they were just one of several sanctions. Further, the evidence did not confirm the allegation that educational remedies were not followed through by the respondents or were not monitored by the College. OCR did not find evidence that respondents’ use of the appeal process resulted in unwarranted reductions in sanctions.

*d. The College does not take into account multiple sexual assaults committed by the same respondent during its investigations and when determining sanctions.*

The complaint alleged that the College’s lack of adequate response to incidents of sexual assault due to investigations that exceed mandated timeframes and sanctions that are ineffective has allowed four serial rapists to victimize other students because their actions are not effectively addressed. OCR investigated each of the four cases and found that while the College was investigating incidents, additional victims would step forward about incidents that occurred prior to the first complaint that was filed. A summary of these cases is as follows:

- Respondent 1: The first complaint against this respondent was filed in September of 2011 regarding an incident in January of 2011; the respondent was found responsible and expelled in November 2011. During the proceedings, a second complaint was filed in October 2011 about an incident that had occurred in 2010. The complainant was found not responsible for the 2010 conduct on the same day he was expelled. OCR found that the College did not know about the 2010 incident at the time the January 2011 incident occurred.
- Respondent 2: The first complaint against this respondent was filed in October 2011 regarding an incident in 2009; the respondent was suspended and ordered off campus pending the outcome. While he was suspended, a second complaint was filed in November 2011 for an incident in 2010. OCR found that the College had no notice of the first incident at time the second incident occurred; resolution processes for both complaints overlapped. The respondent accepted responsibility for the 2010 conduct and was found responsible for the 2009 conduct and sanctioned with expulsion on December 5, 2011 (two months after the College received

notice). A third complaint was filed against the respondent in March 2012 for an incident in September 2011; by the time the third complaint was filed, OCR found that the respondent had been removed from campus since October 2011 (first because of interim suspension, and then by expulsion imposed on December 5, 2011).

- Respondent 3: The first complaint against this respondent was filed in November 2011 regarding an incident in August 2011. The two students had engaged in consensual conduct but the complainant alleged she had withdrawn consent. The respondent accepted responsibility when notified of the complaint and was given educational sanctions. The respondent graduated in May 2012. A second complaint against the same respondent was filed in late April of 2012 regarding two incidents, which had occurred on the same night in the fall of 2011. They also involved allegations of withdrawal of consent after a period of consensual activity. The University investigated the second complaint and issued a hearing decision on July 19, 2012. The complainant was found responsible for not properly securing consent to sexual activity. At this point, the respondent had graduated but the University required the respondent to complete educational sanctions prior to receiving his transcript.
- Respondent 4: The first complaint against the respondent was filed in August 2012 regarding an incident in August 2011. The complainant alleged that while intoxicated and asleep on the floor of a friend's bedroom, the respondent attempted to touch her inappropriately. The respondent admitted responsibility, and on October 12, 2012, was sanctioned with one year probation,<sup>7</sup> and required to conduct a research project on the ethics of sexual consent. The sanction was consistent with College guidelines specific to the nature of the alleged conduct. A second complaint against the same respondent was filed in May 2013 for an incident of nonconsensual sexual intercourse in March 2013. In this case, the second incident did occur after the first complaint was filed and adjudicated and during the period in which the respondent was on probation. The College found the respondent responsible for nonconsensual sexual intercourse and sanctioned him with expulsion.

For these reasons, there is insufficient evidence to show that the College did not take into account multiple sexual assaults committed by the same respondent during its investigations and when determining sanctions.

*e. The College does not follow up on informal and anonymous complaints, and does not follow up on complaints involving students from other colleges.*

The complaint alleged that the College does not follow up on informal complaints, such as oral complaints made to the Dean's office, complaints logged into the anonymous on-line reporting system, or reports arising from an internal system for mandatory reporters. Prior to July 2012, members of the College community were able to file anonymous reports through an on-line link; the report form prompted a description of the sexual harassment/assault, the names of complainants and/or

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<sup>7</sup> Under the College's policies, **disciplinary probation is defined as:** "[e]xclusion from participation in privileged activities for a specified period of time (privileged activities may include, but are not limited to, elected or appointed ASOC offices, student research, athletics, some student employment, and study abroad). Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other College policy violations may result in further disciplinary action."

respondents, and whether the person filing the report wished the College to follow-up. The reports were maintained in a spreadsheet. When a new report was made, an e-mail notification went to the Dean of Students' office. On July 2, 2012, the College changed the format of its anonymous reporting form, but the process remains essentially the same. A discussion of the College's response to informal and anonymous complaints is provided in section D, above.

The complaint also alleged that the Title IX coordinator, or staff from the Dean's office, would discourage students from filing formal complaints. In talking to students during focus groups and students identified in the complaint, OCR found that some thought (usually second hand) that the staff in the Dean's office asked too many questions or that the complaint process was difficult and taxing. However, none of the students provided, and OCR was unable to identify, any specific examples of situations where College staff discouraged the filing of formal complaints.

The complaint alleged that the College does not follow-up on complaints when the respondent is an individual who is not affiliated with the College. The complainant identified two witnesses who assert that the College was not responsive; OCR investigated both cases. In the first case, OCR found that the College responded in a prompt and equitable manner; in the second case, there was a significant delay in sending a stay away letter to the respondent but there was no evidence of recurrence by the off campus student during the delay. In addition, OCR found that in all other instances of complaints against students about off-campus conduct, the College provided resources to the complainant and contacted the other institution.

For these reasons, OCR found insufficient evidence that the College failed to respond or failed to respond appropriately to informal or anonymous complaints of sexual harassment/assault.

*f. The College failed to respond to reports that XX XXXXXXXX XXXXXXXX was sexually harassing students in 2009, and again in 2013.*

The complaint alleged that the College failed to respond adequately to a report of sexual harassment in 2009 by the XXXX XXXXXXXX employed by the College for over XX years to work with student athletes. As a result, they allege, the same individual harassed additional student athletes in February of 2013.

OCR confirmed that, in January of 2009, the College learned that female athletes were subjected to sexual harassment XX XXX XXXXXXXX XXXX when the XXXX XXXXXXXX made inappropriate comments that were sexual in nature. OCR found that the College's actions consisted of 1) placing a letter of reprimand in the XXXXXXXX personnel file, 2) reassigning him, and 3) requiring that he attend off-campus sexual harassment training.

OCR did not find evidence that the College had information that the previous response was not effective in stopping inappropriate sexual conduct towards female athletes. The athletic director, coaches, and student athletes interviewed by OCR said that they were not aware of any sexually harassing conduct after 2009, until February 2013. The College reported that it continued to survey athletes XX XXX XXXXXXXX XXXX throughout the period and received no complaints regarding harassing conduct of a sexual nature.

On February 5, 2013, a coach reported to the assistant athletic director that the same XXXX XXXXXXXX made a male athlete uncomfortable because of inappropriate touching. The Title IX Coordinator and

Human Resources Director conducted meetings with the student. The administrators placed the XXXX XXXXXXXX on administrative leave on February 9, 2013. The coach then put out a notice to all College athletes, asking athletes to report any concerns they had about the XXXXXXXX XXXX. Two other male athletes made similar reports of inappropriate touching. On March 1, 2013, the Human Resources Director contacted the XXXX XXXXXXXX to discuss initial findings from the College investigation. The XXXX XXXXXXXX offered to resign, and the College accepted his resignation. The College provided follow-up counseling and services to affected students; XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXX XXXXXXXX XXXX XXXX XXXXXXXX.

Further, OCR has confirmed that beginning in the 2013-14 school year, the College increased the number and depth of trainings to students, with respect to how to report sexual harassment. Therefore, in considering the College's actions overall, OCR found insufficient evidence to support the allegation that the College's failed to respond to incidents of staff-on-student sexual harassment by the XXXXXXXX XXXXXXXX.

**E. Whether the College's alleged failure to respond promptly and equitably to sexual harassment/violence or other actions, which it knew about or should have known about, created a hostile environment for students on the basis of sex in violation of 34 C.F.R. §106.31.**

When assessing whether there was a hostile environment on the basis of sex for students at the College, OCR interviewed staff, faculty and students and multiple student groups about the general atmosphere on campus regarding this issue, and reviewed relevant documents, available climate survey information and information about training and outreach provided to staff, faculty and students. Evidence of a divisive or hostile environment on campus obtained by OCR included the following:

- Comments made in public by members of an advocacy group on campus that the President, campus counsel, and the Dean of Students should be fired. Students told OCR that the atmosphere was so emotionally charged, particularly at the end of the 2012-13 school year, that people were reluctant to express their opinion publicly about matters such as the definition of consent.
- There were public discussions about whether the College's alerts to the campus community about possible sexual assaults were beneficial. Beginning in March 2013, in response to criticism about a lack of notification, the College began sending out e-mail campus alerts regarding reported incidents of sexual assault. Some students told OCR that they felt the alerts were ambiguous and alarming; other students told OCR that the alerts were contributing to a vigilante culture because students were using social media to identify alleged perpetrators and victims.
- A student in a focus group told OCR that there was a perception among some students that the process favored complainants because of the pressure placed on the College by on-campus advocacy groups and media reports.
- Two students told OCR that there is a widely held perception that the College trivializes complaints and for that reason, students are reluctant to come forward. One student indicated that based on what she heard from other students, the formal adjudication process was emotionally difficult, and that College staff were not compassionate and caring. This student had no direct experience as a complainant or witness.

- Most students reported that by fall 2013, some of the strain on campus had dissipated. However, public disagreements remain.

The College told OCR that it has attempted to respond to concerns raised by an on-campus advocacy group by convening town hall meetings, creating taskforces, and adding resources for students. Between March and August of 2013, the College president posted four "Letters to the College Community," and wrote a letter in the College's newspaper, describing the College's efforts to respond to criticism, including hiring consultants and a full-time survivor advocate, and enhanced training for staff, faculty and students.

In March 2013, the College hired two consultants to review and revise the College's Title IX policies and procedures and to conduct an audit of the adequacy of the College's process to respond to and investigate complaints of sexual harassment and assault. On October 22, 2014, the consultants produced a report which recommended that the College finalize procedures for resolution of complaints, hire a hearing coordinator, designate one individual to coordinate all training under Title IX, identify a model for consistent investigative protocols, and conduct a climate assessment.

Starting in the 2013-14 school year, the College hired external investigators and adjudicators for all sexual assault complaints and stated that the use of external investigators and adjudicators has increased the level of trust on campus regarding the fairness of complaint processing. It has finalized its policies and procedures, changed its investigation model, and conducted a climate assessment. In spring 2015, the College released the results of the assessment, which revealed:

- Of 634 respondents, 51 (8%) reported experiencing sexual assault while at the College. Another 23 (4%) reported they were unsure whether they had been assaulted.
- Ten percent of female respondents said they had been assaulted, compared to 4% of male respondents.
- 49% of reported assaults occurred in the residence halls; 31% occurred off campus.
- 60% of sexual assaults occurred during the students' first year at the College.
- 87% of victims said that their assailant was another student at the College; 78% said the assailant was someone they knew. Alcohol was a factor in more than 75% of the reported assaults.
- 60% believed that the College will take a report of sexual assault seriously and will conduct a careful investigation.

OCR also found that during the period of review all staff and faculty were required to complete on-line sexual harassment training every two years. The training includes a review of the definitions of sexual harassment, how to respond if a faculty or staff member are made aware of sexual harassment, tools for stopping improper behavior, retaliation, and theories regarding the origins of sexual harassment. The College offered two Title IX training sessions by the outside consultants for all individuals on campus involved in the grievance process in August and September 2013.

OCR found that the College requires all students to complete an on-line training program and acknowledge reviewing the College's Policy each summer before registering for classes. For the 2013-14



academic year, the College changed its on-line mandatory program to “Think About It,”<sup>8</sup> which includes information about sexual misconduct, including definitions of consent and capacity to consent.

The College’s program for freshmen and transfer students has included one mandatory session on sexual misconduct for the last three years and resident advisors provide additional training. The College also had orientation staff review the new sexual misconduct policy in detail. OCR reviewed student evaluations of orientation and students reflected on the emphasis on sexual misconduct; some students said that they were confused by the emphasis, or found it was too excessive; other students reported finding the discussions helpful and described how they had used bystander training.

Specific for athletes, the College’s confidential Survivor Advocate attends all athletic eligibility mandatory meetings for all 450 student athletes on campus. In the 2014-15 school year, the College provided training consisting of one-hour sessions on the following topics: myths and facts about sexual misconduct, consent, signs of unhealthy relationships, bystander intervention, and resources on campus. In addition, the College identified nineteen student athletes who participated in a “train-the-trainer” program regarding violence prevention.

The complaint described a contentious environment evident on campus that was evidence of hostile environment on the basis of sex. However, based on focus group interviews, OCR found that the atmosphere on campus at the time of the investigation (spring to fall 2013) was the result of disagreements within the campus community regarding important matters of policy and practice. OCR found no direct or indirect expressions of the College administration failing to address sexual misconduct, or expressions of negativity toward complainants of sexual misconduct. OCR’s review indicated that the tense atmosphere resulted from these policy disagreements, and not from a failure of the College to implement Title IX requirements.

OCR also found that the College’s overall response to notice of sexual harassment/assault complied with Title IX, except in the three cases that were not promptly decided. In those cases, OCR did not find that a hostile environment resulted due to the delays. For all of these reasons, OCR found insufficient evidence that the College’s actions created a hostile environment on the basis of sex. However, the 2015 campus survey results and Clery data raised concerns for OCR that more prevention and education training must be provided to prevent sexual assault and to ensure that students who experience it come forward and report; as discussed below, the College addressed these concerns through the provisions in the voluntary resolution agreement attached hereto.

**F. Whether the College engaged in retaliatory conduct against students and faculty who advocated for changes in the College’s sexual misconduct policy in violation of 34 C.F.R. § 106.71.**

The complaint alleged a number of retaliatory actions by College personnel, which OCR investigated.

- a. A sorority whose members advocated for changes to Title IX policies and procedures was subjected to extra oversight by the College when one of its members filed a formal complaint of sexual assault.*

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<sup>8</sup> An online curriculum that focuses on minimizing the risks associated with alcohol, drugs and sexual violence. It is used by a number of colleges across the country and has won several awards for excellence in training design and content.

The complaint alleged that a College administrator approached the president of a sorority about underage drinking during a party after which a member of the same sorority filed a sexual assault complaint with the College against a male student who attended the party. The complainant's intoxication was an issue in the complaint. Through the complaint investigation, the College administrator, who was the investigator, learned that underage drinking was occurring and met with the sorority about it. The complainant alleged that it was inappropriate and retaliatory for the administrator to approach her sorority; she stated that it reflected "victim blaming."

OCR interviewed all participants at the meeting (including the complainant) and confirmed that a College administrator warned the sorority, and suggested different policies in the future to prevent underage drinking. The sorority was not sanctioned or otherwise adversely affected. No witness to the conversation told OCR that the College administrator discussed the complainant or otherwise broke confidentiality. Nevertheless, when the complainant alleged that the College administrator was biased a few days later, the College replaced the College administrator with a new investigator.

OCR concluded that the College administrator's meeting with the sorority did not constitute an adverse action. Even if it had, the College provided a legitimate non-retaliatory reason, namely its responsibility to prohibit illegal underage drinking. To the extent the College administrator's meeting could be seen as creating a bias against the complainant, the College addressed it by assigning a different investigator.

*b. A student worker in the XXXXXX office was reprimanded after reporting that a former respondent in a sexual harassment complaint was on campus.*

OCR interviewed a student worker assigned to the XXXXXX office who is also a member of an on-campus advocacy group. Her friend filed a sexual assault complaint in 2012 against a respondent who was found not responsible. A year later, the respondent, who had graduated, came to visit someone he knew in the XXXXXX office. The student worker told OCR she was appalled that some of the professional staff were friendly to him. She left her work station to report to a friend that the respondent was on campus, and referred to him as a "rapist." The student worker said that her supervisor in the XXXX XX XXXXXXXXXX office accused her of breaking confidentiality and said she no longer trusted her. At the end of the semester, she was informed that all student workers would be moved out of the XXXXXX office but was offered other on-campus employment. The student worker told OCR that she felt moving her job was retaliatory because she was advocating on behalf of students who experienced sexual assault.

Assuming for sake of analysis that the student engaged in protected activity because she reasonably believed that she was raising concerns about bias by those in the XXXXXX office and in warning another student about the possibility of a hostile sexual environment created by the male student based on the College's perceived failure to respond to the complainant, the supervisor's actions raised concern about an appropriate response to such activity. However, OCR did not find that the supervisor's comments or change in job location substantially disadvantaged the student so as to rise to the level of an adverse action in a retaliation analysis. The student's employment status, her number of working hours and her pay were not affected. OCR also found that the student was not deterred from future advocacy based on its interview with the student who confirmed she continued to publicly advocate.

*c. Faculty members associated with an on-campus advocacy group were asked to have their College-issued computers scanned during the OCR and Clery investigations.*

In response to notification of the filing of this complaint with OCR, the College contracted with outside counsel to prepare responses to data requests. College counsel informed OCR that in order to ensure that documentation be properly preserved, the College issued a notice of "document preservation" to staff who had been involved in processing Title IX complaints. The notice requested, but did not require, that employees have their campus-issued laptop computers scanned and the information sent to a third-party document preservation company. The College told OCR its intent was to ensure that relevant documentation that it might be obligated to provide the Department not be destroyed.

Several faculty interviewed by OCR received this notice since they had served as advisors to complainants in sexual misconduct cases. They stated that the notice was adverse and intimidating and refused to surrender their computers; the College did not require it if they objected.

The evidence did not show that the request for the computer information substantially affected or disadvantaged faculty members. They were not deterred from pursuing further protected activity; OCR confirmed that they continued to advocate and advise students. However, even if the request for the computer contents was an adverse action, the College provided a legitimate non-retaliatory reason for the action. Specifically, the College stated that the decision to send out the notice was directly related to the College's obligation to identify and preserve all relevant documents that OCR might request. Moreover, the faculty experienced no adverse impact on their employment, or their roles as advocates.

*d. Students who worked as student employees on campus were subjected to adverse actions because of their advocacy.*

Student #1 served as a student employee. She told OCR that her supervisor informed her that she should consider herself an employee of the College and should not be an activist on the issue of the College's handling of sexual misconduct. Student #1 ignored this directive and participated in public rallies on sexual misconduct issues, and was not subject to negative personnel action. Student #2 was also told by her supervisor that because she was a College employee, she could not speak at an on-campus rally criticizing the College on sexual misconduct. Student #2 continued to participate in public demonstrations and was not subject to negative personnel action. Student #3 told OCR that she was not selected for a particular position in August of 2013 because of her well-known advocacy on the issue of sexual misconduct. OCR learned the student served as a resident assistant and wanted to serve in another campus position at the same time.

In these cases (and another, where the student did not provide OCR with consent to investigate), the College conveyed to the student or prospective employees that it did not believe it was appropriate for them to publicly criticize the College on its response to sexual misconduct and told them to stop; such statements by College staff could unlawfully intimidate or coerce a student to stop engaging in protected activity under Title IX. However, in the cases of student #1 and student #2, the College did not subject either to negative personnel action and the students ignored the statements and continued to engage in public advocacy. OCR found that the College's actions did not constitute adverse actions in that they did not disadvantage the two students as to their status as employees and did not deter them from protected activity. As to student #3, the College stated a legitimate non-retaliatory reason for denying the position, namely the blanket requirement that resident assistants not hold another position requiring more than 10 hours per week. The fact that student #3 was subsequently offered a position on an advisory body addressing sexual misconduct issues on campus contradicts an inference of pretext.

- e. *A student who appeared on the local news in February 2013 to discuss the College's failure to issue a timely warning was labeled as someone who wanted to "embarrass" the College in an e-mail sent out by the president.*

A student complainant told OCR that as a member of an on-campus advocacy group, she participated in a local television news feature in February of 2013 in which she criticized campus administrators for not notifying the campus community about an alleged rape.<sup>9</sup> On March 5, 2013, the College president directly addressed the criticism by writing a letter to the campus community that included the following:

I'm dismayed that having agreed to that conversation, a number of well-intentioned people have chosen to cast our motives into doubt; vilify dedicated, hard-working members of Student Affairs; question the sincerity of our response; and actively sought to embarrass the College on the evening news.

On March 19, 2013, the College president sent a second letter in which he: "apologiz[ed] for a tone that might have alienated those I most wanted to reach--the students and faculty who care most about the issue of sexual assault" and stated that he was "sorry if [he] gave the impression that students or faculty should not be speaking to the media on an issue as important as this one."

The student in this case engaged in protected activity. OCR notes that the president on behalf of the College generally has a right to respond to public criticism of the College. Here, however, the comments made by the president referred to a group of individuals and raised concerns for OCR because they could have had the effect of chilling or interfering with protected activity for the student at issue and other students. However, because the College president publicly apologized and took a number of subsequent steps to improve policy and practice at the College to address the concerns raised, OCR concluded that the evidence was not sufficient to establish an adverse action as to the individual student. Without further interviews, OCR could not reach a conclusion as to whether the statements may have had the effect of chilling or interfering with protected activity for other students.

Overall OCR concluded that there was insufficient evidence to establish that staff at the College subjected individual students to unlawful retaliation but the cases raised concerns as to whether College staff understand the definition of protected activity and that their responses can have an impact on whether students feel comfortable advocating for Title IX protections and reporting complaints of sexual harassment/violence. The College is resolving these concerns with terms in the attached agreement requiring training for members of the College community on the prohibition against retaliation.

#### OVERALL CONCLUSION

Based on the factual information gathered to date during the investigation of this case and applying Title IX statutory and regulatory principles, OCR concluded that the preponderance of the evidence does not support a conclusion that the College violated Title IX, except with respect to the issue of promptness in several cases during the 2012-13 school years. Since that time, the College has revised its Policy to eliminate the hearing panel, created a new process to determine responsibility and sanctions, and has hired Deputy Coordinators. OCR remains concerned, however, that timeliness may continue to be a

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<sup>9</sup> A formal complaint regarding this incident was filed with the College on February 23, 2013.

problem under the current Policy. The College, to address OCR's concerns, therefore agreed to enter into a voluntary resolution agreement that OCR will monitor.

Further, as discussed above, while OCR did not find sufficient evidence of a violation related to the specific examples provided by the complainants' cases, the cases alleging retaliation raised concerns as to whether College staff had sufficient understanding regarding the different forms that retaliation (and the related claim of interference) can take and as to whether statements made during an intense period of debate on campus, even if reasonably responding to public criticism, could have impacted the willingness of other students on campus to come forward with a report or complaint; to determine an impact, if any, would be difficult without further student interviews. Finally, OCR has related concerns that the climate on campus may not be sufficiently supportive of students' ability to file complaints, based on the results of the campus' climate survey, which shows that far more students on campus (54 of 634 respondents in 2015) believe they have experienced a sexual assault than are reporting the same.

The College has expressed an interest in entering into a voluntary resolution agreement pursuant to Section 302 of OCR's Case Processing Manual to address these concerns. The agreement provides for: 1) training for administrators and employees about retaliation and how to prevent and respond to it; 2) creation of an annual standard process to measure the climate on campus regarding sexual assault and respond to concerns; and 3) monitoring by OCR related to the promptness of the resolution process for the next three years to ensure the College's response is prompt and effective.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter. When fully implemented, the resolution agreement is intended to address OCR's compliance concerns in this investigation. OCR will monitor the implementation of the agreement until the College is in compliance with the statute(s) and regulations at issue in the case.

OCR's determination in this matter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Page 30 - (09-13-2264)

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact me at the San Francisco OCR office at (415) 486-5555.

Sincerely,

/s/

Laura Faer  
Chief Attorney