



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

December 22, 2016

Daniele C. Struppa  
President  
Chapman University  
One University Drive  
Orange, California 92866

(In reply, please refer to case no. 09-15-2476.)

Dear President Struppa:

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 Chapman University (University). The Complainant alleged that the University discriminated against him on the basis of sex because the University failed to provide him with a prompt and equitable process in addressing a complaint filed against him alleging sexual harassment, and the complaint he filed against the reporting party.<sup>1</sup> He further alleged that the University's handling of his complaint, and its finding that he was responsible for sexual harassment, was adverse and retaliatory because he advocated for himself in the process.

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 University is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.

In order to resolve this complaint, OCR investigated the following issues:

- 1) Whether the University complied with Title IX requirements regarding development and dissemination of notice of nondiscrimination pursuant to 34 C.F.R. § 106.9;
- 2) Whether the University complied with Title IX requirements regarding the designation and notice of a Title IX Coordinator at 34 C.F.R § 106.8(a);
- 3) Whether the University's sexual harassment/violence policies and procedures comply with Title IX and the regulation at 34 C.F.R § 106.8(b); and

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<sup>1</sup> OCR notified the University of the names of the Complainant and reporting student when it opened its investigation and is not disclosing their names in this letter to protect their privacy.

- 4) Whether the University provided the Complainant a prompt and equitable resolution to the complaint of sexual harassment filed under 34 C.F.R. §§ 106.31 and 106.8? If not, did the University's treatment of the Complainant subject him to retaliation because he filed a counter complaint and/or advocated on his behalf in the complaint process.

OCR gathered evidence by interviewing the Complainant, the Title IX coordinator, staff in the conduct office, and the Dean of Student who served as the appeals officer. OCR also reviewed extensive documentation of the individual complaints, including written notes, interviews, notices to both parties, and documentary evidence, including copies of e-mails, texts and social media posts and transcripts from the hearing. OCR also reviewed the University's policies and procedures that govern sexual harassment and the student conduct code. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the District.

### 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, require 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 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 University is a private university located in Orange, California. It enrolls approximately 8,300 students and offers graduate education in law, education and business. The Complainant attended the law school, as did the Reporting Student.

### Factual Findings and Analysis

#### **1. Whether the University disseminated a notice of nondiscrimination on the basis of sex in compliance with 34 C.F.R. § 106.9.**

Findings of Fact, Analysis and Conclusion

The University's notice of nondiscrimination on the basis of sex is published on its website.<sup>2</sup> The notice contains a prohibition against discrimination on the basis of sex in all of its

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<sup>2</sup> <https://www.chapman.edu/students/health-and-safety/title-ix/index.aspx>

programs, identifies the Title IX coordinator, the purpose of the Title IX office and how to file a complaint, all of the required contact information, and ways to contact the Title IX coordinator, support staff in the Title IX office and ways to contact through multiple means, including office hours. The current Title IX policy and grievance procedure also includes an adequate notice of nondiscrimination. Confidential and other community resources are listed with links on the University's website.

The University's notice of nondiscrimination complies with 34 C.F.R. 106.9. Additionally, the notice is available in multiple locations in University materials in compliance with Title IX requirements. For these reasons, OCR found that the University in compliance with Title IX and the regulations with respect to this issue.

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

Findings of Fact, Analysis, and Conclusion

OCR interviewed the Title IX Coordinator, who is also the Associate Vice-Chancellor for Student Services, and collected information about the training, knowledge, and skills of the Title IX Coordinator. The policy identifies the roles of the Title IX Coordinator, including monitoring overall compliance with Title IX, ensuring appropriate training and overseeing the University's investigation, response and resolution of complaints made under the policy. OCR reviewed documentation showing that the Title IX Coordinator attended close to 200 hours of professional regarding Title IX compliance and investigations and was otherwise qualified to carry out the responsibilities of coordinating the investigations and response using the appropriate legal standards. In addition, OCR confirmed that the University paid for and sponsored specialized trainings for all of its investigators and hearing officers and notified the campus community of the same through its policy. OCR also found that the Title IX Coordinator investigated the complaint in this matter and appropriately identified her responsibilities for coordinating Title IX activities, including investigation and resolution of complaints. The website has clear information and links about how to report a complaint, as well as support resources and confidential reporting.

For these reasons, OCR found that the University was in compliance with Title IX with respect to this issue.

**3. Whether the University 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).**

Findings of Fact

The University's grievance procedures for complaints of sexual harassment against students are provided in the *Student Conduct Code*. In addition, the University has a document entitled "Frequently Asked Questions about Title IX Investigations" on its website. The section of the

*Student Conduct Code* entitled, “Reports and Charges for Incidents Related to Sexual Misconduct” describes the procedures for the initial reporting and investigation of allegations of sexual harassment.

*Policies and Grievance Procedures and Investigation by Title IX Coordinator*

According to the *Student Conduct Code*, a report of sexual harassment goes to the Title IX Coordinator, who then investigates to determine if the charges “have merit and/or requests additional information to support the charges.” The University’s policy and Conduct Code is silent as to the standard of review at this point in the process, how or when students are notified of the investigation and the allegations, the type of information gathered in the investigation, the timeframes for completion of the investigation, and the documentation requirements for the investigation, including whether a written report by the Title IX Coordinator is required. It also lacks timeframes for the investigation. The Conduct Code, and other information available on the website, is also silent on notice requirements such as if there are any delays in an investigation and what the process should be if the parties agree to an informal resolution to ensure that mediation is not utilized for sexual violence complaints and that the informal process can end at any time on other complaints.

The Conduct Code does include specific provisions regarding interim protections, such as no contact notices, and changes to academic and living situations. The University’s Harassment and Discrimination Policy commits to make every reasonable effort to preserve an individual’s privacy and protect the confidentiality of information that it receives in connection with a report of sexual misconduct. The University further describes that in its process, it will not rely on evidence of past relationships in determining whether conduct was consensual. Finally, the policy expressly prohibits retaliation. Application of a preponderance standard is not explicitly described in the Conduct Code or the Discrimination policy but is referred to in the separate FAQ on the University’s website (General Title IX Reporting and Investigation FAQ).

Once the Title IX Coordinator completes his/her investigation, the written policy provides, the next steps depend on whether or not the Title IX Coordinator concludes that the charges have “merit” and whether or not one or all parties either accept or reject the Title IX Coordinator’s conclusions. The policy does not describe any process to avoid conflicts of interest. If the Title IX Coordinator concludes through an investigation that the charges have merit, the process ends if the complainant and respondent concur with the findings and sanctions. If one or more of the parties rejects the findings and/or sanctions, or if neither the complainant nor respondent respond to the notice of findings and sanctions, then additional steps occur. The policy states that if one or both of the parties object to the findings and sanctions, then they may request a formal hearing. If neither party responds to notice of the findings and sanctions, or if only one party responds, then the next step is an administrative review.

The Student Conduct Code does not provide timelines for when a complainant or respondent must respond to the Title IX Coordinator's decision (i.e., either to accept the findings and sanctions or to request a formal hearing).

#### *Administrative review*

The policy defines an administrative review as a University process by which the Vice Chancellor and Dean of Students or designee appoints a conduct officer to review a Title IX report and its findings.<sup>3</sup> "The conduct officer may accept or modify any of the findings of a report based upon the preponderance of the evidence standard. Sanctions can be modified based on a respondent's cumulative conduct history or to stop the discrimination, remedy its effects, and limit its recurrence."<sup>4</sup> Students retain the right to appeal the outcome of an administrative review in Title IX investigations, even where the administrative review occurred because the party did not respond to notice of the Title IX Coordinator's investigation decision. The policy requires that all appeals be filed within 7 days.

#### *Student rights and preparation for hearing*

The policy provides that students who are parties to a Title IX investigation "will be notified of the policies alleged to have been violated and any resulting hearing proceedings at least 7 business days prior to the hearing (or a shorter time by mutual consent)."<sup>5</sup>

The parties will be provided notice of identities of the hearing officer(s) at least 7 business days prior to the hearing.<sup>6</sup> There is a process described for requesting a different hearing officer if a party notifies the University that s/he "has concerns about a hearing officer's "ability to render a fair, impartial and objective decision."<sup>7</sup>

The parties have a right to receive the "investigative report" from the Title IX Coordinator that supports the charge(s)."<sup>8</sup> Complainants and respondents may "inspect and/or request the reports that pertain to the charges of the particular case."<sup>9</sup> In addition, the policy states how complainants and respondents may request additional materials, information, or witnesses employed by the University.<sup>10</sup>

#### *Formal Hearing*

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<sup>3</sup> Student Conduct Code, Article I, B.

<sup>4</sup> Student Conduct Code, Article I, B.

<sup>5</sup> Student Conduct Code, Article IV, D.3.

<sup>6</sup> Student Conduct Code, Article IV, D.3.

<sup>7</sup> Student Conduct Code, Article IV, D.9.

<sup>8</sup> Student Conduct Code, Article IV, D.7.

<sup>9</sup> Student Conduct Code, Article IV, D.5.

<sup>10</sup> Student Conduct Code, Article IV, D.5, 7

The University's Student Conduct Code states that: hearings will be conducted in private, admission of anyone to the hearing will be at the discretion of the Hearing Body in consultation with the Conduct Officer (if applicable) or Presiding Officer for that hearing; and hearings involving more than one respondent may be conducted together at the Hearing Officer's discretion and with the approval of all respondents and complainants.

Complainants and respondents are each responsible for speaking on their own behalf. Each, however, has equal rights to have a Support Person of their choice. The Student Conduct Code provides that a Support Person may be an attorney, and if an attorney, s/he must conform to the same requirements as applied to a Support Person. Specifically, the Support Person may not be a witness, and may not participate directly in the hearing. The Support Person may participate in quiet communication with the student they are accompanying but may not interfere with the hearing. The Support Person "may be removed from a hearing for reasons including, but not limited to disruption, waste of time, sharing irrelevant, immaterial or unduly repetitive information, or failing to adhere to requests by hearing administrators."

Following the hearing, the Hearing Body determines whether or not the responding student(s) is responsible for the alleged misconduct. The determination that a student is responsible results in the imposition of sanctions determined by the conduct body. Alternatively, a case may be deferred when there is a finding that a violation occurred, but the conduct body holds the violation charges "in abeyance provided that there are no future violations."

The Student Conduct Code includes a range of possible sanctions that may be imposed on a student found responsible for violating the code. These include formal warning, conduct review, deferral, probation, probation with loss of privileges, suspension, deferred suspension, expulsion, revoking of admission/degree, and withholding of degree.

#### *Appeal of outcomes*

Under the University's appeal process, the complainant and respondent have equivalent rights to request an appeal of the outcome of a hearing or administrative review. They retain this right even if they have not participated in or contested the outcome of the hearing or administrative review.

Appeal requests must be submitted in writing within seven business days of the decision dated by the Conduct Body or Conduct Officer. Appeal requests must be "thoughtful, well-reasoned, substantive", and demonstrative of one or more of the following criteria: a substantive procedural error that may have prohibited the hearing from being conducted fairly in light of the charges; insufficient facts to establish that a violation of the Student Conduct Code occurred; evidence that the sanction imposed was not appropriate for the violation of the Student Conduct Code for which the student was found responsible and the student's conduct history; or new evidence that was not available at the time of the hearing has become available

and is potentially sufficient to alter the decision. Both parties are allowed to submit a written response to an appeal that is accepted.

After receipt of the request, the Appeal Officer will review the request to determine if the appeal has merit. If not, the appeals body retains the decision of the conduct body. If any of the conditions are met, the appeal body may hear the full appeal, hear only a circumscribed portion of the appeal, render a decision without a hearing involving the parties; or remand to the hearing body for consideration of new evidence.

### Analysis and Conclusion

Pursuant to Title IX and the regulations, OCR found the University's policy and procedure for resolving complaints and reports of sexual misconduct raised concerns because the policies/procedures do not include regular notice of status of investigation, stated timeframes for complaint investigation, a description of how an informal resolution process works for sexual harassment and sexual assault complaints, namely that for sexual violence, mediation is not appropriate and that the informal process can end at any time and the formal process begin, a statement regarding maintenance of documentation of investigations and process for doing so, and a description of the appeal process for complaints against staff/faculty and third parties, as well as timeframes that would apply in consideration of appeals in general. The University expressed an interest in revising its policy and procedures, and training relevant staff on these changes, in order to address these areas of concern, and OCR agreed it was appropriate to do so. Prior to completing its investigation regarding the interplay between such policies, the University entered into Resolution Agreement described below.

**4. Whether the University provided the Complainant a prompt and equitable resolution to the complaint of sexual harassment filed under 34 C.F.R. §§ 106.31 and 106.8? If not, did the University's treatment of the Complainant subject him to retaliation because he filed a counter complaint and/or advocated on his behalf in the complaint process.**

### Findings of Fact

In the 2014-2015 academic year, the Complainant was a law student at the University. He was dating a female law student (Reporting Student) at the University at different times during the school year. The Reporting Student filed complaints against the Complainant once the school year ended alleging that he had harassed and stalked her, and the Complainant subsequently filed complaints against the Reporting Student. During the investigation, the Complainant and the Reporting Student filed additional complaints against each other.

On June X, 2015, the Reporting Student reported to the Associate Dean for Student Affairs and Administration (Associate Dean) at the law school that she had been harassed by the Complainant during the 2014-2015 academic year. The Associate Dean notified the Reporting Student that she would provide the information to the University's Title IX Coordinator, and the

Title IX Coordinator and the Reporting Student made arrangements to speak for the first time on June X, 2015. She reported that the Complainant had caused her to fear for her safety on several occasions when he yelled at her, made insulting statements about her, prevented her from leaving his residence despite her wish to do so, and repeatedly sent texts and made telephone calls to her which she felt were harassing. She further alleged that in February 2015, the Complainant confronted the Reporting Student on campus and prevented her from exiting through a door by physically blocking her, grabbing her hands, and not releasing them when she tried to pull away. In another allegation, she alleged that the Complainant became angry, refused to allow her to exit his car, refused to drive her to her car, and shouted at and insulted her. She further alleged that he posted two videos on social media in which he referenced the Reporting Student in a demeaning manner, including using the term "bitch."

The University provided written notification of the investigation to the Reporting Student on June X, 2015, and on June X, 2015, issued a no contact order between the Reporting Student and the Complainant. The Reporting Student contacted the Title IX Coordinator again to report several incidents of alleged harassment through social media of her and another law student. The Complainant was notified of the investigation and allegations verbally on June X, 2015.

On June X, 2015, the Complainant reported to the Title IX Coordinator that the Reporting Student and two witnesses subjected him to sexual harassment on June X, 2015 when they posted pictures of them on social media in order to harass him. In the month of June, the Title IX Coordinator interviewed the Reporting Student twice and received copies of texts and emails between the Reporting Student and the Complainant, interviewed the Complainant twice and received copies of texts and a written statement from him, and interviewed six witnesses.

The information from one of the witnesses led to an additional charge against the Complainant by the University. The Complainant had asked the Title IX Coordinator to speak with this witness in order to corroborate some of the information he had provided. The witness shared email communications from the Complainant to her which instructed her to delete their communications and refuse to speak with the Title IX Coordinator.

On July XX, 2015, the Complainant submitted another complaint against the Reporting Student stating that on September 2014, the Reporting Student approached him while they were at a bar, whispered to him, "You will never kiss me again. [Expletive] you," then spit on him." He also alleged that she threw a drink at him at a bar in December 2014 and propositioned him for sex while her daughter and mother were in the next room, and became angry when the Complainant declined.

In the month of July 2015, the Title IX Coordinator continued her investigation. Her activities included four additional interviews with the Complainant, and interviewing and re-interviewing several witnesses whom she had first spoken to in June 2015. She notified the parties that she would no longer be taking additional information for her investigation after the month of July.

The Coordinator told OCR that over the summer, the Complainant began to barrage her with e-mails that were highly fraught emotionally and accusatory against her. His behavior in meetings with her became aggressive. For example, he would physically move close to her as possible and sometimes “stare intently” at her. Some of her meetings with him lasted more than two hours and he would talk about suicide. She tried “multiple times” to connect him with support services, including counseling.

On August XX, 2015, the Complainant emailed the Coordinator and notified her that on the next Monday, he would “be sitting, peacefully and quietly in your lobby waiting room in silent protest.” He also sent an 8-page document to the University which detailed his grievances against the University. According to University employees whom OCR interviewed about the Complainant’s “silent protest,” the Complainant sat quietly working on his laptop outside of the office and was not disruptive in any way.

On September X, 2015, the University provided to the parties a cover letter summarizing the Title IX Coordinator’s conclusions. The more detailed “Confidential Title IX Investigation Report and Findings” and attachments was redacted and made available to the parties (but not delivered electronically). The investigation report addressed the allegations between the Complainant and the Reporting Student together. It is 29 pages (not including the attachments), thorough, and well-organized.

The evidence gathered from the Complainant, Reporting Student, and 18 witnesses, including their testimony, recollections, emails, text messages, social media communications, and parking and attendance data, showed that the Complainant’s assertions frequently conflicted with those of the Reporting Student and witnesses. Therefore, the report stated, it was necessary to make credibility determinations regarding the Complainant and the Reporting Student. The report laid out the following factors as relevant to the investigator when making a credibility decision: “(1) the inherent plausibility of each person’s story; (2) corroborating evidence that would tend to support or contradict each person’s story; (3) admissions of untruthfulness; and (4) each person’s demeanor, that is whether the person appeared to be telling the truth when interviewed about the incident.”

The report detailed multiple incidents in which the Complainant provided explanations that were implausible, admitted to lying to witnesses and the Title IX Coordinator, was shown to have lied based on other evidence, and displayed aggression toward the Title IX Coordinator. Therefore, the Title IX Coordinator concluded that the “totality of the information” undermined his credibility.

With respect to the Reporting Student, the Title IX Coordinator explained that the information she provided was largely corroborated by other witnesses and by documentary evidence, and that her demeanor was consistent and did not appear evasive. Therefore, the Title IX Coordinator concluded that the Reporting Student was credible.

Overall, the Title IX Coordinator reached the conclusion that the Complainant's allegations against the Reporting Student were not substantiated. However, the Title IX Coordinator concluded that the preponderance of the evidence supported the allegation by the Reporting Student against the Complainant for stalking her, and sending her harassing e-mail and texts. The University further found that the Complainant had physically obstructed her, prevented her from exiting his car, and had posted several demeaning and offensive comments in social media. The University found the Complainant's answers to the Title IX Coordinator's questions about these events were evasive and inconsistent. In addition, the Title IX Coordinator was able to corroborate these actions with witnesses. The Title IX Coordinator also concluded that the Complainant had intentionally interfered with the investigation when he pressured a witness to refuse to speak with the Title IX Coordinator and warned the witness that she needed to protect herself by deleting all of her communications with him.

The Title IX Coordinator recommended that the Complainant be suspended from September 2015 through August 15, 2017, and if he reenrolled for the 2017-2018 academic year, he would not be permitted to enroll in course sections with the Reporting Student or a witness, assigned to any projects with the Reporting Student or a witness, or otherwise be proximate to the Complainant or the same witness. In addition, she recommended that if the Complainant reenrolled, he would be placed on permanent deferred expulsion and would be required to participate in programming related to relationship abuse and interpersonal violence and professional ethics. The no-contact order would remain in place. Additionally, the Complainant would be required to complete several "reflective research" papers following reenrollment.

The letter to the Complainant provided the option of accepting the conclusions and conditions and waiving the right to a hearing. Conversely, it stated, the Complainant could opt for conduct adjudication through a hearing. The Complainant was given the deadline of September X, 2015 to notify the Title IX Coordinator of his choice. It also stated that if he did not contact her by that date, the matter would be automatically referred for a student conduct hearing. Lastly, the letter reminded the Complainant of the University's prohibitions on retaliation against anyone involved in the investigation, and requested that the information be kept confidential.

After issuing the report, the Vice Chancellor of Student Affairs issued a no contact order against the Complainant regarding the Title IX Coordinator. He told OCR he did this because the tone of the Complainant's e-mail communications were becoming "really personal, derogatory, and personally demeaning." In order to assist the Complainant, the University assigned a Program Coordinator in the Conduct Office as his sole point of contact for the logistics of the hearing as well as to answer procedural questions (not the same individual who eventually served on the hearing panel).

The Complainant requested an extension for his decision on whether or not to request a conduct adjudication, and on September XX, 2015, notified the University that rejected the findings in the investigation and the proposed sanctions. On October X, 2015, the Complainant submitted an "official statement" of his views of the investigation and conclusions made against him. The 11-page document includes the following information: that he has been

threatened with suspension because he had a “dysfunctional relationship,” that the Investigator did not provide him enough information to rebut information by the Reporting Student, and that in general, the Investigator “did not like him,” called him a “liar” and buried “exculpatory evidence.”

In an interview with OCR, the Title IX Coordinator denied calling the Complainant a “liar” during any of the multiple interviews she had with him. She described her multiple attempts to provide the Complainant opportunities to respond to evidence, and based on some of these conversations, re-interviewed witnesses.

On September XX, 2015, October X, 2015, and October X, 2015, the Complainant received notice of the hearings regarding the Reporting Student’s allegations against him and his allegations against the Reporting Student. The October X, 2015 notice amended the September XX, 2015 because it inadvertently omitted one of the policies alleged to have been violated. The notices included specific cites to the *Student Conduct Code* regarding the information about the violations alleged, and instructions on how to submit documentation, witness statements, and witness lists for the hearings.

The hearing panel members consisted of a Program Coordinator for Student Conduct, the Director of Student Conduct, and a Resident Director. OCR confirmed all three had attended extensive training on Title IX investigations. Of the three, the Program Coordinator reported to the Associate Vice Chancellor for Student Services, who happens also to be the Title IX Coordinator and investigator for this complaint. The same Program Coordinator also reports to the Director of Student Conduct, who sat on the same panel. According to witnesses interviewed by OCR, the Student Conduct office is staffed by two program coordinators who alternately serve as investigators and hearing panel members, along with the Title IX Coordinator. Case assignments are made when complaints are docketed and roles are strictly maintained, regardless of other duties.

The hearing on the Reporting Student’s allegations against the Complainant was conducted on October XX-XX, 2015. The hearing on the Complainant’s allegations against the Reporting Student was conducted on October XX, 2015. OCR reviewed documentation provided by the University showing that each panel member had been sufficiently trained in investigating sexual harassment allegations, and each is experienced in hearing these types of allegations. In interviews with OCR, each panel member described extensive preparation prior to the hearings in order to ensure a thorough and comprehensive review of each allegation. OCR received and listened to an audio recording of the hearings, and also received voluminous statements, emails, panel notes, and other documentation from the University. The panel members acted professionally throughout the process.

On November X, 2015, the hearing board notified the parties of its findings and conclusions regarding the Reporting Student’s allegations against him. The letter details the University policies applied, the standard of proof, the procedural history of the hearing, summaries of the information provided in the hearing, an analysis of the credibility of the individuals who

testified at the hearing, the hearing board's findings, the sanctions against the Complainant determined to be appropriate, and instructions for appealing the decision, if the Complainant desired. The letters to the Complainant and the Reporting Student were substantially similar.

The hearing panel's decisions regarding each of the allegations investigated and heard were consistent with the decisions reached by the Title IX Coordinator. Like the Title IX Coordinator, the hearing panel found that the Complainant lacked credibility and this was consistently a significant element in the hearing panel's decisions that the Complainant had violated the *Student Conduct Code*. His credibility also undermined his allegations against the Reporting Student. The hearing board also analyzed the Title IX Coordinator's credibility in light of the Complainant's assertions that she was biased in her investigation and findings, omitted exculpatory text messages and emails in her report, did not like him, called him a liar, and took an inconsistent amount of notes given the length of time of the meetings and conversations. The hearing board asked the Title IX Coordinator for an explanation of how she took notes during meetings and other questions related to the Complainant's allegations about her. The hearing board concluded that the Title IX Coordinator's explanations regarding her investigation process, the amount of notes, and omissions of certain text messages and emails were all appropriate in the investigation, and found her to be a credible individual.

The hearing board reached the same conclusions as the Title IX Coordinator with respect to the Complainant's violations of the *Student Conduct Code* and issued the same sanctions. The letter notified the Complainant that he could submit a request for appeal of the findings and/or sanctions within seven business days.

On November X, 2015, the Complainant submitted an appeal to the Vice Chancellor for Student Affairs/Dean of Students rejecting the hearing board's findings and sanctions. Overall, he argued, "no reasonable person could look at what happened between us [Complainant and the Reporting Student] and see a disciplinary case. [...] It was a bad relationship, to be sure. But not the kind of relationship that my law school should punish me for – or even have anything to do with." More specifically, the Complainant alleged that the Title IX Coordinator ignored evidence that the Reporting Student had changed her stories about what had happened. The Vice Chancellor for Student Affairs/Dean of Students notified the Complainant on December XX, 2015 that he would consider his appeal.

The Vice Chancellor described for OCR that he reviewed the determination made against the Complainant by listening to all the hearing tapes, reviewing all the records, to determine if the sanctions were commiserate with the facts and if there was any evidence of procedural error or bias. He said it took him approximately seven weeks (including over a holiday period) to complete the review because he needed to set aside three to four days to examine all of the material. On February X, 2016, he issued his decision on the Complainant's appeal (92 calendar days after receiving the appeal request), upholding the decision of the hearing panel. The rejection of the Complainant's appeal addressed each of the Complainant's points. He concluded that after reviewing the case, there was no reason to conclude that the hearing board's decision was flawed, and that the factual discrepancies highlighted by the Complainant

did “not carry nearly as much weight as the evidence challenging [the Complainant’s] credibility, including evidence that [he] provided false information on a number of occasions.” Similarly, the Vice Chancellor for Student Affairs/Dean of Students found no basis to alter the sanctions imposed.

### Analysis and Conclusion

By examining the records of the sexual harassment complaint filed against the Complainant, and his counter claim against the Reporting Student, OCR considered whether the Complainant was afforded a prompt and equitable process, which includes an adequate, reliable and impartial investigation. OCR first confirmed that the Title IX coordinator, who was the designated investigator, met with both the Complainant and Reporting Student about their respective complaints, and provided notice to each of the allegations. OCR noted that notice to both parties was not specific about the policies alleged to have been violated. OCR further confirmed that the Title IX coordinator allowed each party to provide documentary evidence, such as copies of social media posts and texts, and witness statements and interviewed both parties. OCR noted that the Title IX Coordinator interviewed the Complainant a total of six times (four times in July), in part because of ongoing e-mails from the Complainant and additions of new allegations against the Reporting Student and interviewed the Reporting Student once. The Title IX coordinator also re-interviewed some witnesses based on new information she received. In total, the Title IX Coordinator interviewed 18 witnesses in order to investigate both complaints. Upon completion of the investigation, the Title IX Coordinator prepared a thorough and clearly written report that described the evidence gathered, application of a preponderance standard for review, the policy requirements and her conclusions. This report was made available to the parties but not delivered electronically. Both parties were provided the same cover letter summarizing the conclusions, and explaining next steps, particularly for the Complainant for whom there were findings of sexual harassment. The letter to the Complainant provided the option of accepting the conclusions and conditions (including a two year suspension) or the option for conduct adjudication through a hearing. Upon review of all this information, OCR found sufficient evidence that the University afforded the Complainant an adequate, reliable and impartial investigation, and provided him the same level of investigation that was provided to the Reporting Student.

The Complainant argued to OCR that the investigation took an excessive amount of time, and certainly in excess of the 60 days noted in the FAQ on its website regarding Title IX investigation. The Complainant filed his counter complaint, on June X, 2015 and amended his complaint on July XX, 2015. The University submitted its investigative report and conclusions on August XX, 2015. Counting back from the date he submitted his original counter complaint, it took the Title IX Coordinator 85 days to complete the investigation. Although this timeframe exceeds the University’s own standard by 25 days, OCR considered the following mitigating factors presented by the University: the Complainant submitted a counter complaint, and then amended it, adding three additional allegations to be investigated, and both complaints were submitted during summer vacation when witnesses are harder to track down. The Title IX Coordinator met with the Complainant four times in July. On August XX, 2015, the Complainant

sent the Title IX Coordinator an e-mail demanding the report be completed and indicated that he would be sitting in her office on August XX, 2015 in order to wait for it; the report was given to him in person on that day. Upon review, OCR concludes that the University provided the Complainant a sufficiently prompt investigation, despite the complexity of the complaints, the addendum of new allegations, and the time of year when the complaints were filed.

OCR next considered the University's provision of a hearing process which the Complainant requested because he did not accept the findings made against him and also did not accept the findings that the Reporting Student was not responsible for sexually harassing him. OCR reviewed transcripts and recordings of the hearing, and interviewed the hearing panel members. The Complainant requested a hearing on September XX, 2015. The hearings were conducted approximately one month later: the hearing on the Reporting Student's allegations against the Complainant was conducted on October XX-XX, 2015; the proceeding on the Complainant's allegations against the Reporting Student was conducted on October XX, 2016. Each panel member described for OCR the complexity of the complaints, the preparation required before the proceedings, and the process used to review evidence for each allegation individually and as a panel and make determinations. OCR confirmed that each panel member received adequate training to review the evidence and testimony. Several panel members told OCR that their determination relied heavily on witness testimony that contradicted the Complainant, and his lack of credibility based on his efforts to intimidate witnesses. In weighing this evidence, they did not find his allegations of investigator bias as credible. In reviewing the Complainant's evidence for bias, OCR noted that his arguments were primarily his assertions that she had allegedly made statements such as "I don't believe you" or "you are lying" during his multiple meetings. The hearing panel returned its finding and conclusion on November X, 2015, approximately 3 weeks after the hearing. The letter of finding sufficiently described the University's policies, the standard of proof, summaries of information examined, an analysis of credibility, the hearing board's finding and the process for appeal, if desired. Overall, OCR found insufficient evidence that the Complainant was provided an inequitable process that when compared to the Reporting Student in the hearing process, including opportunity to present evidence and access to counsel.

OCR also considered the promptness of the hearing process. OCR notes that the Complainant requested an extension to prepare a statement for consideration of the hearing panel. The hearing panel also had to issue multiple notices of hearing, because of the complexity of the two complaints and multiple allegations under review. Based on the complexity of the two complaints, and multiple allegations, OCR found that the University's scheduling of the hearing within a month of the request of a hearing as reasonable. Further, given the substance of the findings by the Hearing Board, OCR found the three weeks between the end of the hearing and issuance of its findings, as adequately prompt and responsive.

Following the issuance of the hearing decision, the Complainant filed for an appeal on November X, 2015, approximately one week after receiving the decision. The Complainant rejected the finding by the hearing panel and the recommended sanctions. He argued that allegations of sexual harassment amounted to "protected speech" and described why he

believed the Title IX coordinator was biased and/or did not conduct an adequate investigation. The appeal was reviewed by the Vice Chancellor for Student Affairs. The Vice Chancellor took 92 days after the submission of the Complainant's appeal to complete his review and issue a letter that ultimately confirmed the determination and sanction made by the hearing panel. The Vice Chancellor explained to OCR that it took him that length of time because of the complexity of the matter and volume of evidence, he set aside 3-4 days to complete the adequate review of facts and evidence, including reviewing all of the audio transcripts, and the review coincided with November and December holidays. OCR confirmed that the appeal decision adequately addressed all of the arguments raised by the Complainant, including questions about investigator bias. OCR's investigation raised concerns that the University's current procedures governing an appeal process lacks timeframes, which would have guided the Vice Chancellor and could have resulted in a quicker turnaround but based on the factors discussed above did not find that the appeal decision was not promptly issued. As discussed above, this concern will be addressed in the University's revision of its policy and procedures.

While OCR found no evidence in support of the Complainant's argument that the investigator in the Complainant's case was biased, or that the University's determination that the Complainant lacked credibility was not adequately supported, OCR discussed with the University Counsel a general potential conflict of interest in having an employee, as a member of a hearing panel, review the investigative work of the individual who on some level supervises her (because in this case, the Title IX Coordinator was the investigator). In response, the University Counsel confirmed some follow-up action to separate the duties of the two program coordinator staff members whose work is also directed by the Lead Title IX Coordinator on Title IX matters, including segregating personal evaluations, and imposing a strict policy on investigators not discussing relevant information about a determination in an investigation with hearing officers except in the hearing where both the complainant and respondent are able to review and respond to that information. The University also provided recent training for all investigators and hearing officers on reviewing decisions in an investigation or following a hearing to ensure that all decisions are reached by mutual discussion and consensus and that hearing panelists know that they are empowered to make decisions based on their own personal judgment. In sum, OCR found the hearing panel and appeals officer conducted an appropriate analysis of the facts of the complaints, found insufficient evidence that any potential conflict of interest in the process resulted in an unfair process for the Complainant in this matter. As discussed above, in addition to the training already provided, the University has committed to addressing any other potential conflicts of interests through revisions to policies and procedures as outlined in the enclosed Resolution Agreement.

OCR next considered evidence of any retaliation in the University's actions toward the Complainant.

To determine whether the University retaliated against the Complainant, OCR first confirmed that the Complainant engaged in a protected activity when he advocated for himself as a respondent in a Title IX claim, and as a complainant in his own counter claim of sexual harassment. OCR further confirmed that the University's findings that he violated its Sexual

Harassment Policy, and the application of a two-year suspension, constituted an adverse action, and both actions occurred subsequent to his protected activity. However, given the preceding finding that the University afforded him a valid, reliable and impartial investigation, and did not subject him to different treatment in the process compared to the Reporting Student on the basis of sex, OCR finds insufficient evidence that the University's finding against him was pretextual. Therefore, OCR finds insufficient evidence that the University's actions were retaliatory.

### 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 University violated Title IX with respect to the investigation and resolution of the complaints of sexual harassment against the Complainant, or that he was subjected to different treatment on the basis of sex or to a process that was not prompt and equitable to retaliate against him because he was a respondent and complainant in sexual harassment complaints. OCR further found that the University in compliance with respect to its notice of nondiscrimination and Title IX Coordinator. OCR identified discrete areas of concern in the University's policy and procedure that governs its response to allegations of sexual misconduct. The University 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) revision and addition of the University's policy and procedure consistent with OCR's concerns; 2) notification of the new policy and procedure; and 3) training of University staff on the revised policy and procedure.

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 University 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 University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant 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 University 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.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Ava De Almeida Law, Senior Investigator, at (415) 486-5513.

Sincerely,

/s/

Sara Berman  
Team Leader

Enc.