

August 24, 2017

Reverend James J. Maher, C.M.
President
Niagara University
P.O. Box 2015
Niagara University, New York 14109-2015

Re: Case No. 02-16-2332
Niagara University

Dear President Maher:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against Niagara University (the University). The complainant alleged that the University discriminated on the basis of sex, by failing to respond appropriately to a complaint she made to University staff on xxxx xx, 2016, in which she alleged that a professor subjected female students to sexual harassment in his xxxx course (the course).

OCR is responsible for enforcing 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, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides generally that, except as provided elsewhere in the regulation, “no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any . . . education programs or activities” operated by recipients of federal financial assistance. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature and can include sexual advances, request for sexual favors, and other verbal, nonverbal, or physical conduct. Hostile environment sexual harassment is sexually harassing conduct that is sufficiently serious to limit an individual’s ability to participate in or receive benefits, services or opportunities in the recipient’s program. If OCR establishes that conduct of a sexual nature occurred, OCR will examine additional factors to determine whether a sexually hostile environment exists. If OCR

determines that a sexually hostile environment exists, OCR will then determine whether the recipient took immediate and effective corrective action reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. OCR has identified a number of elements necessary in evaluating if grievance procedures are prompt and equitable, including whether the procedures provide for: (a) notice to students and employees of the procedures, including where complaints may be filed, that is easily understood, easily located, and widely distributed; (b) application of the procedures to complaints alleging discrimination or harassment carried out by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) notice to parties of the outcome and any appeal; and, (f) an assurance that the recipient will take steps to prevent further harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX, including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by the regulation implementing Title IX. It also requires each recipient to notify all of its students and employees of the name, office address and telephone number of the employee or employees so designated.

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, 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 the educational program or activity which it operates, and that it is required by Title IX and this part not to discriminate in such a manner. Such notification shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto, unless Subpart C does not apply to the recipient, and that inquiries concerning the application of Title IX and this part to such recipient may be referred to the employee designated pursuant to § 106.8, or to OCR's Assistant Secretary. Section 106.9(b) requires each recipient to include the notice of non-discrimination in each announcement, bulletin, catalog, or application form which it makes available to the types of persons described in §106.9(a), or which is otherwise used in connection with the recruitment of students or employees.

In its investigation, OCR interviewed the complainant and University staff. OCR also reviewed documentation that the complainant and the University submitted. OCR made the following determinations.

Title IX Coordinator

OCR determined that at the time of the complainant's complaint, the University designated one individual as its Title IX coordinator; the Executive Director of University Planning and Assessment (the Title IX coordinator).¹ Accordingly, OCR determined that the University satisfied the requirement of 34 C.F.R. § 106.8(a) to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX and its implementing regulation.

The University publishes the Title IX coordinator's name, telephone number, office location, and email address on the Human Resources page of its website.² The University also includes the Title IX coordinator's name, telephone number, office location, and email address on its Sexual Misconduct Awareness & Response Policy, which is available online.³ Accordingly, OCR determined that the University satisfied the requirement of 34 C.F.R. § 106.8(a) to notify all students and employees of the name, office address, telephone number and email address of its designated Title IX coordinator.

Nondiscrimination Notice

OCR determined that the University has several different versions of a nondiscrimination notice (the Notice) that appeared in some of its publications. The Notice found on the Human Resources webpage of the University's website (Notice 1)⁴ states that the University recognizes its responsibility to provide for all employees an environment that is free of discrimination and harassment on several bases. Notice 1 states that inquiries regarding Title IX may be referred to the Title IX coordinator; however, OCR determined that Notice 1 fails to state that inquiries concerning the application of the regulation may also be referred to OCR, as required by the regulation implementing Title IX, at 34 C.F.R. § 106.9(a). The nondiscrimination notice found on the University's Employment Application (Notice 2) states that the University does not discriminate on the basis of sex, but does not state that any inquiries concerning the application of Title IX and its implementing regulation may be referred to the University's designated Title IX coordinator or to OCR.⁵ OCR determined that previously, although the Undergraduate and Graduate Course Catalogs contain an "Affirmative Action Policy" that states that the University does not discriminate on the basis of sex in educational or employment opportunities (Notice 3), Notice 3 did not state that inquiries concerning Title IX may be referred to the University's Title IX coordinator or OCR; however, as of August 21, 2017, the Undergraduate and Graduate Catalogues provide that reports regarding sexual assault, dating violence, domestic violence and stalking may be reported to the Title IX coordinator, and the Graduate Catalogue provides that questions pertaining to the Sexual Misconduct Policy may be directed to the Title IX coordinator. OCR reviewed the University's undergraduate and graduate student applications found on the University's website, and did not find a notice of nondiscrimination in either

¹ On or about February 2, 2017, the University designated a new individual as Title IX coordinator, effective February 6, 2017; an Assistant General Counsel.

² See: <http://www.niagara.edu/nondiscrimination-statement> (last visited on August 21, 2017).

³ See: <https://mynu.niagara.edu/mynu2/policy/documents/policy-Sexual-Misconduct-Policy-2016-2%20copy.pdf> (last visited on August 21, 2017).

⁴ See: <http://www.niagara.edu/nondiscrimination-statement> (last visited on August 21, 2017).

⁵ See: <https://www.niagara.edu/assets/hr/Application-For-Employment.pdf> (last visited on August 21, 2017).

application.⁶ Based on the foregoing, OCR determined that the University is in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.9.

Grievance Procedures

The University explained in their position statement, prepared by counsel and submitted to OCR, that the University's Harassment & Discrimination policy (policy 1)⁷ and the University's Sexual Misconduct Awareness & Response policy (policy 2)⁸ are the policies the University uses for complaints filed by students, employees and third parties regarding sexual harassment, and other forms of harassment, discrimination, and retaliation.⁹ According to the position statement and its related exhibits, policy 1 governs reports of sexual and other forms of harassment, discrimination and retaliation involving employees; and, policy 2 governs reports of sexual assault and dating/domestic violence involving students, employees and third parties. OCR determined that the applicable University policy for investigating the complaint of sexual harassment filed by the complainant is policy 1; however, University staff testified that policy 2 applied to the complainant's complaint, and were unaware of the existence of policy 1. Accordingly, OCR reviewed policies 1 and 2.

Policy 1 applies to complaints filed by employees alleging discrimination or harassment carried out by employees or students, but it does not specifically indicate that it applies to third parties. Policy 1 defines prohibited conduct, including sexual harassment and other discrimination based on sex, and provides examples of such prohibited conduct. Policy 1 also explicitly states that retaliation is prohibited.

According to policy 1, allegations of harassment of students by employees should be directed to the following Complaint Officers: the Director of the Office of Human Resources (the director) or the Director of Recreational & Intramural Sports. Policy 1 states that when a complaint is first received by an individual other than a Complaint Officer, the individual receiving the complaint shall relay it to the appropriate Complaint Officer immediately but no later than seven (7) working days after receiving it.

Policy 1 states that "upon receipt of the complaint, the Complaint Officer will conduct an immediate investigation of the charges." The policy further states that "if a Complaint Officer has knowledge of or has reason to know of any alleged harassment, the University is obligated,

⁶ The undergraduate and graduate applications are available online with a registered account and password: <https://recruiter.niagara.edu/Datatel.ERecruiting.Web.External/Pages/Login.aspx> and <https://graduaterecruiter.niagara.edu/Datatel.ERecruiting.Web.External/Pages/Login.aspx> (last visited on August 21, 2017).

⁷ Policy 1 became effective on November 22, 2009. Policy 1 is posted on the University's website. See <http://www.niagara.edu/assets/university-general-counsel/A06HARASSMENT.pdf> (last reviewed on May 25, 2017).

⁸ Policy 2 became effective on September 30, 2014, and was revised on August 30, 2016, to be in compliance with the New York State "Enough is Enough" Act of 2015. Policy 2 is posted on the University's website. See <https://mynu.niagara.edu/mynu2/policy/documents/policy-Sexual-Misconduct-Policy-2016-2%20copy.pdf> (last reviewed on May 25, 2017).

⁹ Specifically, in counsel's position statement dated December 2, 2016 (position statement 1), counsel directed OCR to the position statement dated August 19, 2016, and prepared by general counsel in the context of OCR Case No. 02-16-2269 (position statement 2) for information regarding the University's sexual harassment policies.

even in the absence of a complaint, to investigate such conduct promptly and thoroughly.” The complaining party may elect to have such investigation be informal or formal. If the complaining party requests an informal investigation, the Complaint Officer will speak to the alleged harasser on the complaining party’s behalf or arrange for a meeting or mediation between the complaining party and the alleged harasser. In some circumstances, the Complaint Officer may decide that it is necessary to address the harassment beyond an informal discussion. If the complaining party does not wish to pursue the informal procedure, or if the informal procedure does not produce a satisfactory result, the Complaint Officer will initiate a formal procedure by interviewing the complaining party, any witnesses with knowledge of the complaint or persons who may have related information, and the alleged harasser. The Complaint Officer shall record and document all information received in the investigation of complaints. Policy 1 does not specifically provide for an equal opportunity for the parties to present witnesses and evidence.

Immediate steps are to be taken to protect the complainant or others, including but not limited to, removal or transfer of an employee. Policy 1 does not specifically provide that the parties to the complaint will be advised of the results of the investigation and of the University’s response. Based upon the results of the investigation, immediate and corrective action will be taken; including discipline or discharge in accordance with the employee guide/related policies or provisions of the Collective Bargaining Agreement (CBA). Policy 1 does not include designated and reasonably prompt timeframes for major stages of the grievance process.

While OCR determined, based on the language of policy 1 and the University’s position statement, that policy 1 applied to the instant case, at no time during OCR’s interviews of University staff did any University staff reference or indicate that policy 1 applied to complaints of sexual harassment filed by or on behalf of students against University staff. Rather, during the course of OCR’s investigation, University staff, including the Complaint Officer (as defined by policy 1) and the Title IX coordinator, informed OCR that policy 2 applies to all complaints of sexual harassment filed by or on behalf of students against all parties, including University staff.

Policy 2 explicitly applies to complaints filed by students, employees, contractors and third-parties alleging sexual misconduct, defined as sexual assault, dating violence, domestic violence, or stalking, on campus or in association with the University’s programs. According to policy 2, complaints alleging such conduct are governed by policy 2, and harassment and other forms of sex discrimination are not; however, policy 2 states that, “[a]ll trustees, officers, and employees are required to inform the Title IX coordinator and the Director of Campus Safety regarding allegations of behavior that violates Title IX; this includes...harassment and gender discrimination.” Policy 2 explicitly states that retaliation is prohibited.

Pursuant to policy 2, allegations of sexual misconduct against students should be directed to the Title IX coordinator.¹⁰ Policy 2 states that upon becoming aware of an allegation of sexual misconduct against a student, the Title IX coordinator will initiate an investigation and take actions deemed necessary to protect the rights of all parties involved. Policy 2 provides that

¹⁰ Policy 2 also indicates that reports may also be made to the Dean of Students and Associate Director of Human Resources, and provides their contact information, including telephone numbers and addresses.

interim measures will be offered regardless of whether the alleged victim chooses to file a formal report, and provides examples of such interim measures.¹¹

Policy 2 states that upon receipt of a complaint, the Title IX investigator will initiate an investigation; and during the investigation, will keep all parties abreast of the investigation process. Policy 2 does not specifically include designated and reasonably prompt timeframes for major stages of the investigation process. Policy 2 also does not specifically indicate that both parties will be afforded an opportunity to present evidence and witnesses. Pursuant to Policy 2, at the conclusion of the investigation, the investigators will provide a summary of the findings to the Title IX coordinator, who will review such summary and offer an administrative resolution to the case that will include findings and sanctions, when appropriate. Policy 2 indicates that the Title IX coordinator will present his administrative resolution to the parties. In the event that either party disagrees with the proposed resolution, the matter will be forwarded for review by a hearing panel. If the matter proceeds to a hearing, both parties are entitled to present evidence and witnesses during the hearing and to be accompanied by an advisor of their choice.¹² Policy 2 explicitly states that the hearing panel will apply a preponderance of the evidence standard and that the hearing will be recorded. The findings of the hearing panel, including any sanctions imposed, will be communicated to both parties, in writing, within five (5) business days of the hearing. Policy 2 affords both parties an opportunity to appeal the findings of the hearing panel within five (5) business days of receiving the hearing panel's decision; and, appeal decisions must be rendered, in writing, to both parties, regardless of who appealed, within five (5) business days of the appeal hearing.

Based on the foregoing, OCR determined that the University has failed to adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging discrimination on the basis of sex, including sexual harassment and violence. The University's failure to adopt and publish such grievance procedures violates 34 C.F.R. § 106.8(b). Specifically, policy 1 does not indicate that it applies to third parties, provide for an equal opportunity for the parties to present witnesses and evidence, provide that the parties to the complaint will be advised of the results of the investigation and of the University's response, or include designated and reasonably prompt timeframes for major stages of the grievance process; and, policy 2 does not include designated and reasonably prompt timeframes for major stages of the investigation process or indicate that both parties will be afforded an equal opportunity to present evidence and witnesses.

The University advised OCR that it provides annual training on its sexual harassment and misconduct policies at the beginning of each academic year. The University also holds forums for all new students and segments of the population it has determined may be particularly vulnerable to incidents of sexual assault/harassment/misconduct; including international students, athletes, student leaders, and residence life staff.

¹¹ Policy 2 states further that interim measures will remain in place for an indefinite period of time or until the investigative and/or disciplinary process has ended.

¹² Policy 2 includes provisions for accommodating the reporter's requests not to see the accused during the hearing and explicitly prohibits cross-examination of the parties by each other.

The University's Title IX coordinator explained that, in practice, complaints of sexual harassment are immediately referred to him for processing. Upon receipt of a report of sexual harassment, the Title IX coordinator conducts a "threshold analysis" to determine if the complaint is actionable under Title IX or is governed by a different policy or process. OCR determined that policies 1 and 2 do not include any provision for conducting a "threshold analysis" prior to commencing an investigation of a complaint of sexual harassment or misconduct. According to the Title IX coordinator, the threshold analysis includes an intake interview with the complainant and any witnesses identified by the complainant, as well as a review of any evidence provided. The Title IX coordinator stated that at the intake interview with the complainant, he would assess the need for interim measures to mitigate the impact of the alleged harassment and prevent recurrence while the investigation proceeds. If an investigation is warranted, the Title IX coordinator will develop an investigative strategy. The investigation may be conducted by either University personnel or outside investigators, depending on the nature and scope of the investigation. The Title IX coordinator stated that investigations are targeted to be completed within 60 calendar days of the date the complaint was received; although, this timeframe is not included in policies 1 or 2. The Title IX coordinator stated that for cases involving employees, accused individuals found responsible for policy violations are referred to their supervisors for disciplinary action per either the appropriate CBA or disciplinary policy. Records of the proceedings are maintained by the Title IX coordinator.

The Complainant's Allegation

The complainant alleged that the University discriminated on the basis of sex, by failing to respond appropriately to a complaint she made to University staff on xxxx xx, 2016, in which she alleged that a professor subjected female students in the course to sexual harassment. The complainant asserted that the University's response was inappropriate because the University failed to respond to her complaint in a timely manner and conducted a deficient "threshold analysis" in which it inappropriately concluded that the professor's conduct did not constitute sexual harassment.

OCR determined that by email dated xxxx xx, 2016, to the director, the University's Executive Vice President (vice president) and the University's general counsel, the complainant reported that "some information has come to my attention about [the professor's] conduct with female undergraduates" (the xxxx 2016 complaint). The complainant, who xxxxx, stated in the email that another University professor (professor A) had informed her and a xxxxx (professor B) that professor A could "confirm" rumors that the professor was continuing to engage in conduct that formed the basis of a complaint against him in xxxx (the xxxx complaint).¹³ The complainant further reported that during the course, the professor stated that he was "xxxx xxx xxxx" (incident 1); discussed his romantic relationship with xxxx University xxxx (incident 2); xxxx xxxx he made of his lectures for "off-topic remarks" which "veer[ed] into strange territory" (incident 3); and, insisted that students communicate with him by xxxxxx rather than through University xxxxx (incident 4). The complainant also reported that the professor might be involved in a xxxx relationship with a University xxxxxx (incident 5). The complainant noted that she learned of incidents 1-3 via xxxxx xxxx (student 1), who was enrolled in the course;

¹³ In xxxx, the University received a complaint alleging that the professor subjected female students to sexual harassment. The University resolved the xxxx complaint by requiring that the professor xxxxxxxxxxxx.

however, the complainant did not identify professor A or student 1 to the University by name, pursuant to xxxxx request. The complainant further noted that she learned of incidents 4 and 5 through “very concerned alumni.”¹⁴

The director advised OCR that after receiving the xxxx 2016 complaint, she notified the complainant, by email dated xxxx xx, 2016, that she would discuss the matter with general counsel and would also meet with the complainant “at some point” to gather additional information from the complainant regarding her complaint.¹⁵ The director informed OCR that she did not forward the xxxx 2016 complaint to the Title IX coordinator, because she did not believe it was clear from the information provided that the alleged incidents constituted sexually harassing conduct or rose to the level of a hostile environment; the comments and behavior attributed to the professor with respect to incidents 1, 3 and 4 were not inherently sexual in nature; the information provided was hearsay; information regarding many of the incidents was vague; the director did not understand what “strange territory” meant with respect to incident 3; and, it was unclear whether the allegations concerned past or present alleged behavior.

After the email on xxxx xx, 2016, the director was not in contact with the complainant again until xxxx xx, 2016. On that date, in an email response to an inquiry from the complainant regarding the status of her complaint, the director asked the complainant to meet to discuss her complaint. The director informed OCR that she did not offer to meet with the complainant to discuss the xxxx 2016 complaint prior to xxxx xx, 2016, because the complaint was filed at the end of the academic year and there were personnel changes at that time that required the director to manage significant employment changes within the University, which took priority over the complainant’s report.¹⁶ On August 18, 2016, the director and the Assistant Director of the Office of Human Resources (assistant director) met with the complainant. The director asked the complainant to provide names of witnesses to the alleged incidents, and the complainant responded that the director should interview all students enrolled in the professor’s xxxxxx courses during academic year 2015-2016. The complainant asserted that during the meeting, the assistant director suggested forwarding the complaint to the Title IX coordinator. Therefore, by email dated xxxx xx, 2016, the complainant forwarded her xxxx 2016 complaint to the Title IX coordinator. The complainant copied the director, general counsel, and vice president on her email to the Title IX coordinator.

General counsel responded by email on xxxx xx, 2016, requesting that the complainant call her to “engage in a bit of discussion [to] help address [the complainant’s] concerns.” The complainant alleged that during a telephone call later that day, general counsel told her that her concerns raised issues related to “general University policy,” and that the University did not need to commence an investigation pursuant to the sexual harassment policy but instead should seek “creative solutions.” General counsel denied telling the complainant that the University did not need to commence an investigation of the xxxx 2016 complaint pursuant to the sexual

¹⁴ The complainant noted in her email that some alumni who were inspired by a xxxx xxxxx were considering “taking action” on the xxxx xxxxx, to “warn female undergraduates” about the professor.

¹⁵ The director informed OCR that she was unfamiliar with the xxxx complaint because it was addressed prior to her tenure with the University.

¹⁶ The vice president and general counsel informed OCR that they did not follow up with the complainant about her complaint directly, because they believed that the director was handling the complaint.

harassment policy. Later that day, General counsel sent an email to the complainant to schedule a meeting with the complainant, Title IX coordinator, Dean of the College of Arts and Sciences (the dean), and a union representative to discuss the complainant's concerns.

On xxxx xx, 2016, the Title IX coordinator spoke with the complainant to discuss the xxxx 2016 complaint and confirm her assertions. The University asserted that during the conversation, the complainant provided additional information regarding her xxxx 2016 complaint; specifically, the University asserted that the complainant told the Title IX coordinator that the professor posted a picture of a xxxxx xxxxx on his xxxxx feed with the caption "xxxxxx."¹⁷ The University further asserted that the complainant provided information that allowed the Title IX coordinator to determine the identity of professor A and student 1; namely, that the complainant advised the Title IX coordinator to cross reference the class roster with University xxxxx, because student 1 was the only student enrolled in the course at that time who was xxxxxxxx. The complainant asserted that she did not provide any additional information during the meeting with the Title IX coordinator. Specifically, the complainant asserted she did not provide the Title IX coordinator with the xxxxx post until after the Title IX coordinator commenced the threshold analysis; and, that the University had enough information to deduce the identities of professor A and student 1 in xxxx 2016, when she initially filed the xxxx 2016 complaint.

Upon receipt of this purported additional information, the Title IX coordinator commenced a "threshold analysis" of the xxxx 2016 complaint. As part of his threshold analysis, the Title IX coordinator interviewed professor A on xxxxx xx, 2016,¹⁸ who confirmed that student 1 reported to professor A that the professor stated that he is "xxxxx"; mentioned he had a relationship with a xxxxxx; and, xxxxx lecture xxxxx to make inappropriate remarks. Professor A informed the Title IX coordinator that student 1 was not willing to discuss the matter with the Title IX coordinator. Based on the information provided by the complainant and professor A, the Title IX coordinator determined that the professor's alleged conduct, even if true, would not constitute a violation of Title IX. The Title IX coordinator stated that he did not have evidence to conclude that the alleged conduct was sexual in nature; and, using a subjective analysis, even if he had determined that the alleged conduct was sexual in nature, there was no evidence that the alleged conduct was sufficiently severe or pervasive to rise to the level of a hostile environment. The Title IX coordinator informed OCR that he did not interview any students enrolled in the course during his threshold analysis, as he did not believe such information was needed to make the threshold determination.

The Title IX coordinator notified the complainant of his determination by email dated xxxx x, 2016. In the email, the Title IX coordinator stated that although the professor's alleged behaviors were "concerning," the behaviors were "not actionable under Title IX as they do not represent potential gender-based discrimination." The Title IX coordinator stated that he would forward the matter to the dean to ensure the professor's conduct did not violate the terms of the CBA. By email dated September 8, 2016, the Title IX coordinator informed the complainant that the provost and vice president would follow up with the complainant regarding any personnel

¹⁷ OCR reviewed a copy of the xxxx post the University provided to OCR and determined that the professor's caption read in full: "xxxxxxxxxxxxxx."

¹⁸ The complainant declined to provide professor A's name, but the coordinator was able to identify professor A based on information provided by the complainant.

issues raised by her xxxx 2016 complaint. In early xxxx 2016, the provost met with the complainant, and the complainant expressed her dissatisfaction with the Title IX coordinator's threshold analysis.

On or about xxxx xx, 2016, University alumni xxxxx a xxxx on the xxxxx xxxxx regarding the professor's alleged sexually harassing behavior towards them in xxxx. The xxxx itself did not include names of any current or former students, but comments posted on the xxxx included names, as well as details of specific alleged acts of harassing conduct that allegedly occurred both in xxxx and xxxx.¹⁹ The Title IX coordinator learned of the xxxx on or about xxxx xx, 2016; conducted a threshold analysis of the allegations raised in the comments to the xxxx; and determined that if true, the alleged acts could constitute a violation of Title IX.²⁰ The Title IX coordinator therefore initiated an investigation on xxxx xx, 2016, which was conducted by an outside firm.

The firm initially determined that there was sufficient preliminary information to charge the professor with a violation of the CBA. Accordingly, in or around early xxxx 2016, the professor was xxxxxxxxxxxx. The professor refused to participate in the investigation and xxxxxx effective xxxx xx, 2016.

The University nevertheless continued the investigation, during which the firm interviewed 74 individuals, including former students of the professor, students enrolled in the course (including student A), and professor 1. The firm also reviewed reports regarding more recent comments of the same nature as those the complainant reported in xxxx 2016. The firm completed its investigation on xxxx xx, 2016, and submitted an Investigative Report to the University in the first week of xxxx 2017. The Investigative Report concluded that the professor had repeatedly made inappropriate gender-based comments to both male and female students that amounted to sexual harassment and created a hostile environment based on gender. The University did not specifically notify the complainant of the outcome; the provost, general counsel, and coordinator advised OCR that they did not believe that this investigation was related to the complainant's report.

The University informed OCR that it intends to take the following actions pursuant to the recommendations in the Investigative Report: (1) implement sexual assault and harassment training for faculty and staff in the University's Colleges of the Sciences; (2) implement sexual assault and harassment training for the entire student population; and, (3) offer support services to all students interviewed as part of the investigation.²¹ The University did not specify a timeframe for taking these actions.

¹⁹ The comments described the following conduct: the professor allegedly told female students that they were "xxxx" and that "xxxxxx," told male students "xxxxxxxxxx" and stated that he had done so; and, announced that he was cancelling a test because he xxxx the previous night.

²⁰ General counsel and the coordinator asserted to OCR that the xxxx differed from the complainant's xxxx 2016 complaint because the xxxx included student names and details of alleged pervasive conduct that was clearly sexual in nature. The complainant asserted that the xxxx pertained to the same underlying issue raised in the xxxx 2016 complaint; namely, that the professor was allegedly sexually harassing students by behaving inappropriately and making inappropriate comments that were sexual in nature.

²¹ The professor remains xxxxxxxx and is allowed xxxxxx only with xxxx from the director for events that take place at the University chapel.

Based on the foregoing, OCR determined that the University's investigation of the complainant's allegation that the professor subjected female students in the course to sexual harassment was not prompt. Specifically, the complainant filed her complaint with the director, who is designated as the Complaint Officer in the sexual harassment policy, on xxxx xx, 2016; however, the director was not in contact with the complainant again until xxxx xx, 2016. The University did not provide sufficient justification for this delay; specifically, the fact that the complaint was filed xxxx xxxx xxx xxx xxxx xxxx and the director had other priorities does not justify a three month delay in commencing the investigation. The complainant forwarded the complaint to the Title IX coordinator on xxxx xx, 2016, and the Title IX coordinator made a determination on xxxx x, 2016; however, this determination was made based on an incomplete investigation. Specifically, the Title IX coordinator did not attempt to interview the professor or any other students in the professor's class; nor did he attempt to determine if there was any other information that might be relevant to his investigation, such as reviews of other possible complaints against the professor. It was not until after learning about the xxxxx xxxx, which alleged the same underlying behavior as that which the complainant alleged in xxxx 2016, that the Title IX coordinator initiated an investigation into such allegations through a private firm on xxxx xx, 2016. The University did not complete an investigation of the complaint allegation until xxxx 2017. OCR further determined that the University has provided no evidence that it has taken any steps to remediate the effects of the sexual harassment and hostile environment created by the professor, as determined by the investigation initiated in xxxx 2016. Therefore, OCR determined that there was sufficient evidence to substantiate that the University failed to respond appropriately to the complainant's xxxx 2016 complaint, in which she alleged that the professor sexually harassed female students in the course. The University's failure to respond promptly and appropriately violated 34 C.F.R. §§ 106.8 and 106.31.

On August 21, 2017, the University signed the enclosed resolution agreement to resolve the compliance issues identified above. OCR will monitor the implementation of the resolution agreement.

This letter 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. 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 individual may file a 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 law, personally identifiable information that, if

released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have questions regarding OCR's determinations, please contact Eboné Woods, Compliance Team Attorney, at (646) 428-3898 or ebone.woods@ed.gov; or Lisa Khandhar, Compliance Team Attorney, at (646) 428-3778 or lisa.khandhar@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

cc: xxxxxx

Encl.