

September 21, 2018

Kent Syverud  
President  
Syracuse University  
900 South Crouse Avenue  
Syracuse, New York 13244

Re: Case Number 02-18-2198  
Syracuse University

Dear President Syverud:

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 Syracuse University (the University). The complainant alleged that the University discriminated against his client (the Student), on the basis of his sex (male), by issuing a no contact order (NCO) on or about November 1, 2017, in response to a female student's (Student A's) accusation that the Student had engaged in "harassing and threatening" conduct, without proffering any charges that the Student violated the University's Code of Student Conduct (the Code) (Allegation 1). The complainant also alleged that the University's Director of the Office of Student Rights and Responsibilities (OSRR) discriminated against the Student, on the basis of his sex, by barring the Student, on November 9, 2017, from attending an earlier section of a XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX class (the course), in which Student A was enrolled, without proffering any charges that the Student violated the Code (Allegation 2). In addition, the complainant alleged that the University discriminated against the Student, on the basis of his sex, by failing to investigate the following reports that the Student made to various University staff: a report made in or around November 2017, that Student A had "made death threats against [him]" (complaint 1); and, reports made on December 19, 2017 (complaint 2), January 31, 2018 (complaint 3), and April 2, 2018 (complaint 4), that Student A had provided false information to the University, which led to the issuance of the NCO against him (Allegation 3).

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(a), provides that 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 program or activity operated by a recipient. The regulation, at 34 C.F.R. § 106.31(b)(4), specifically prohibits a recipient, on the basis of sex, from subjecting any person to separate or different rules of behavior, sanctions or other treatment.

Enforcement of a rule or application in a discriminatory manner is prohibited intentional discrimination. When similarly situated students of different sexes are treated differently, discrimination can be a reasonable explanation for the different treatment. Intentional discrimination can take many forms, however, and can be proven even without the existence of a similarly situated student. For instance, OCR examines whether the recipient treats students in a manner that is inconsistent with its established policies, practices and procedures or whether any other evidence of discrimination based on sex exists. OCR generally asks the following questions to determine whether different treatment has occurred:

1. Did the recipient treat a student or group of students differently from a similarly situated student or group of students of another sex, and thereby limit or deny the student(s) educational services, benefits, or opportunities?
2. Did the recipient have any legitimate, non-discriminatory reason for its actions?
3. Was the reason given a pretext for unlawful discrimination?

In its investigation, OCR reviewed documents and information that the complainant and the University submitted. OCR also interviewed the Student and University personnel. OCR made the following determinations.

OCR determined that during academic year 2017-2018, the Student was enrolled as a XXXXXX year XXX student at the University. Student A was also enrolled as a XXXXXX year XXX student. During the fall semester 2017, Student A and the Student were registered for two of the same classes: XXXXXXXXXXXX XXX and XXXXXXXXXXXX XXXXXX XXXXXX.

### **Allegation 1**

The complainant alleged that the University discriminated against the Student, on the basis of his sex, by issuing the NCO on or about November 1, 2017, in response to Student A's accusation that the Student had engaged in "harassing and threatening" conduct, without proffering any charges that the Student violated the University's Code. The complainant stated that on November 1, 2017, the University issued the NCO, which prohibited the Student from contacting Student A by any means, and required that he leave any public place in which Student A was present. The complainant stated that the Student denied that he had harassed or threatened Student A; rather, he asserted that they were previously friendly, but that he had attempted to end contact with Student A in September 2017. The Student stated that on October 31, 2017, he sent a text message to Student A requesting that she cease communicating with him; and, she responded by requesting that the University issue an NCO against him. The Student further asserted that Student A obtained the NCO by providing false information to the University's Department of Public Safety (DPS) without giving him the opportunity to contest it; and to date,

the University continues to enforce an NCO between the Student and Student A, despite never having filed any charges against him for violating the Code.

The University confirmed that on November 1, 2017, DPS issued a temporary NCO against the Student at the request of Student A, based on Student A's report to a DPS officer (officer 1). In Student A's sworn statement to officer 1, dated November 1, 2017, she stated that although she and the Student were "not friends," "never hung out," and that she did not "wish to have any sort of relationship with him," the Student had repeatedly made inappropriate contact with her since the beginning of the fall 2017 semester. Student A further reported in the statement that the Student sent her a "rude text message in late September" stating that they were not friends; and, when she confronted him about the text message, he accused her of "disingenuously flirting" with him. In addition, Student A reported in the statement that she had informed the Student that she did not "like him romantically" and he had misconstrued her conversations with him. Student A further reported in her statement that after she declined the Student's invitation to hang out one weekend, he "sent [her] a disturbing message on Tuesday (10/31/17) which read: [Student A] you are a lying piece of shit. You weren't busy this weekend. You almost had me fooled. Don't ever speak to me again." Student A reported to DPS that the Student's text message "freaked her out" and prompted her to seek help from the University.

According to Section 4 of the Code, DPS may issue a temporary NCO when necessary to "prohibit communication to or among designated students when there is reason to believe that continued contact is not in the best interest of the involved students to promote their safety and security." Temporary NCOs are to be subsequently reviewed by staff within the OSRR to determine whether the NCO should be continued, amended, or removed. OCR determined that the Code does not specify that students requesting an NCO file a formal complaint against another student; and, University staff informed OCR that the University may issue NCOs prohibiting communication between students even absent a request by a particular student. Pursuant to Section 4 of the Code, either party to the NCO may appeal the NCO by submitting a written request to OSRR containing specific information.<sup>1</sup> Section 4 specifically states that NCOs will not be considered for removal or amendment if the appeal does not contain the required information.

The University advised OCR that Student A did not pursue a formal complaint against the Student at the time she made the report to DPS; however, based on the information Student A presented to DPS, DPS issued a temporary NCO to the Student on November 1, 2017, pursuant to its stated policy. Thereafter, OSSR reviewed the temporary NCO and the supporting materials to determine whether the NCO should be continued, amended, or removed. On November 3, 2017, the OSSR notified the Student by letter that the NCO would remain in effect unless and until removed by the University, but that he could appeal the NCO pursuant to OSSR's specified

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<sup>1</sup> A student is required to address the following in an appeal: a description of the events resulting in the NCO being issued; the names of those listed on the NCO; the reason(s) the NCO should be removed or amended; plans to prevent any negative incidents from occurring between parties listed in the order; and, communication of the understanding that Syracuse University is not responsible for negative behaviors that may result from removal or amendment of the NCO if the individual requesting the removal or amendment of the NCO is the person who requested its issuance.

procedure contained within Section 4 of the Code.<sup>2</sup> The University advised OCR that it determined that the NCO should remain in place to “prevent further negative incidents between the Student and Student A”; and, made that determination based on the information provided by the Student and Student A.

The University informed OCR that the Student did not appeal the NCO until April 16, 2018. On July 10, 2018, the University’s Director of the OSRR (the director) issued a written determination regarding the Student’s appeal, in which she revised the NCO to prohibit either party from contacting the other, but removed the provision requiring the Student to leave any public place in which Student A was present. Student A has not pursued a formal complaint against the Student since the OSRR made the determination on November 3, 2017, that the temporary NCO would be continued, and thereby be made permanent.

OCR determined that the University has enforced the NCO between the parties since DPS issued the temporary NCO on November 1, 2017. To date, the University has not filed charges against the Student based on Student A’s report to DPS on November 1, 2017; and, Student A has not filed any subsequent complaints against the Student.

The University provided documentation to OCR indicating that it issued NCOs to 91 students during academic year 2017-2018. OCR determined that of these 91 students, 40 students (19 male and 21 female) were issued NCOs without being charged with having violated the Code or otherwise referred to OSRR for disciplinary sanctions.

Based on the foregoing, OCR determined that the University proffered a legitimate, non-discriminatory reason for issuing the temporary NCO at Student A’s request, and thereafter continuing to enforce the NCO without filing charges against the Student; namely, the University determined that continued contact between the Student and Student A was not in their best interests. OCR did not find evidence that the University’s proffered reason was a pretext for discrimination because the basis for Student A’s request for an NCO was well-documented; the decisions DPS and OSRR made to issue the NCOs were consistent with the Code; and, the University did not treat the Student differently from other similarly-situated students, regardless of sex. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the University discriminated against the Student, on the basis of his sex, by issuing an NCO on or about November 1, 2017, in response to Student A’s accusation that the Student had engaged in “harassing and threatening” conduct, without proffering any charges that the Student violated the Code. Therefore, OCR will take no further action regarding Allegation 1.

## **Allegation 2**

The complainant alleged that the director discriminated against the Student, on the basis of his sex, by barring the Student, on November 9, 2017, from attending the course in which Student A was enrolled, without proffering any charges that the Student violated the Code. The Student

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<sup>2</sup> Temporary NCOs may be removed or amended prior to the completion of the student conduct process through an appeal to the OSRR. Also, temporary NCOs are addressed during the student conduct process and can become permanent, time limited, or removed based on the evidence considered during the process.

stated that he had previously obtained permission from the professor of the course to attend a different section of the course because his assigned section was held at a time that conflicted with his participation in extracurricular events. Specifically, the complainant asserted that the Student attended a different section of the course on two dates in or around November 2017, because his assigned section conflicted with meetings of the XXXXX XXXXXXXXXX XXXX. The Student further asserted that after the director barred him from attending the earlier section of the course on November 9, 2017, he was not able to attend a movie screening on campus as a result.<sup>3</sup>

OCR determined that prior to the issuance of the NCO, the Student had obtained permission from the professor of the course to attend the earlier section of the course, which was the section in which Student A was enrolled; and, he attended the earlier section on at least two dates in or around November 2017. OCR determined that after OSRR notified the Student on November 3, 2017, that the NCO would remain in effect, the Student requested confirmation from the Associate Director of OSSR (associate director) that he would be able to continue to attend the earlier section of the course when necessary. The associate director confirmed via an email dated November 6, 2017, that he could do so as long as he sat away from Student A and did not contact her.

Student A subsequently informed the Title IX coordinator that she felt uncomfortable with the Student's attending the course; and, she requested that OSRR prohibit him from attending any further classes in which she was enrolled. On November 9, 2017, the director informed the Student that he could not continue attending the section of the course in which Student A was enrolled; and, despite his repeated requests that she reconsider, the director refused to permit him to do so.

OCR determined that the University does not have a specific policy or practice governing students' ability to attend courses (or sections of courses) in which they are not officially enrolled. Section 4.4 of the Code generally grants University administrators "authority to take specific administrative actions to promote the safety and well-being of members of the University community, and to enforce other administrative policies," regardless of whether the University brings student conduct charges against a student. The University also informed OCR that University staff may temporarily suspend students from academic classes in which they are enrolled, or may otherwise adjust student schedules, when necessary to ensure that future negative interactions do not occur between students and/or University staff.<sup>4</sup>

The University provided documentation to OCR indicating that during academic year 2017-2018, it adjusted one other student's schedule in order to separate parties subject to an NCO.<sup>5</sup> In

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<sup>3</sup> The Student acknowledged that the movie screening was not related to any of his academic courses, and his participation was not required by any extracurricular activities.

<sup>4</sup> For example, the University may adjust a student's schedule in order to enforce an NCO between students and/or between students and University staff. In addition, Section 4.4 of the Code states that the Title IX Coordinator is authorized to provide interim relief "such as removing a student from class on a temporary basis, issuing a temporary no contact order, or other actions consistent with the University's responsibilities" when responding to alleged violations of Title IX.

<sup>5</sup> The University assigned a student (Student B) to a different section of a course after his professor (professor 2) reported that Student B had engaged in sexual harassment.

addition, the University temporarily suspended 18 students from attending classes when the students were accused of engaging in harassment, in order to “prevent future negative interactions” between the students and their classmates.<sup>6</sup>

Based on the foregoing, OCR determined that the director proffered a legitimate, non-discriminatory reason for prohibiting the Student from attending the section of the course in which Student A was enrolled; namely, Student A had informed the Title IX coordinator that she was uncomfortable with the Student’s attending her class, there was an existing NCO between the Student and Student A that prohibited the Student from being in the same public places as Student A, and the Student was actually registered for another section of the course. OCR did not find any evidence to indicate that the director’s proffered reason was a pretext for discrimination, because the existence of the NCO was well-documented; the director’s directive to the Student was consistent with her authority under the Code; and, the University treated a similarly situated student in a similar manner. Further, OCR determined that with the exception of the movie screening on campus, which was not related to the Student’s coursework or extracurricular activities, the director’s directive did not limit the Student’s participation in the University’s programs and activities. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the director discriminated against him, on the basis of his sex, by barring the Student, on November 9, 2017, from attending an earlier section of the course, in which Student A was enrolled, without proffering any charges that the Student violated the Code. Therefore, OCR will take no further action regarding Allegation 2.

### **Allegation 3**

The complainant alleged that the University discriminated against the Student, on the basis of his sex, by failing to investigate the following reports that he made to various University staff: a report made in or around November 2017, that Student A had “made death threats against [him]” (complaint 1); and, reports made on December 19, 2017 (complaint 2), January 31, 2018 (complaint 3), and, April 2, 2018 (complaint 4), that Student A had provided false information to the University which led to the issuance of the NCO against him.

#### *Complaint 1*

With respect to complaint 1, the complainant alleged that the University failed to investigate the Student’s report, made in or around November 2017, that Student A had “made death threats against [him].” The Student asserted that on September 11, 2017, around 8:45 a.m., Student A arrived approximately fifteen minutes late to a XXXXXXXXXXXX XXXXXX XXXXXX class (course 2); and, after the Student commented on Student A’s tardiness,<sup>7</sup> Student A stated to the Student, “I’m going to kill you, [the Student’s first name].” The Student stated that thereafter, on November 28, 2017, he attempted to report Student A’s death threat to DPS,<sup>8</sup> and played an

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<sup>6</sup> The University prohibited the 18 students from attending classes, but provided them with academic accommodations to ensure that the students received information and academic materials distributed during their classes.

<sup>7</sup> The Student stated that he commented, “You’re early to class...for tomorrow.”

<sup>8</sup> The Student explained that he delayed reporting the incident because he did not take it seriously at the time it happened. The Student informed OCR that after Student A filed a false police report against him, he became concerned about what else Student A might be capable of, and started to consider her threat more seriously.

audio recording of the threat to a DPS officer (officer 2) several times.<sup>9</sup> He further asserted that he asked officer 2 to speak to Student A about the alleged death threat, but officer 2 claimed that he could not hear the alleged threat on the audio recording; speculated that Student A's alleged threat could have been directed at someone else; and, refused to allow the Student to file a written report. The Student further asserted that officer 2 accused him of trying to "get back" at Student A for filing an NCO against him. The Student asserted that officer 2 never asked him to make a written statement, and that officer 2 suggested that the Student "clean up" the audio recording.

The University confirmed that the Student met with officer 2 on November 28, 2017, and played an audio recording of what he asserted was Student A making a death threat against him. The University stated that the audio recording was of poor quality, and officer 2 was unable to hear the alleged threat. As a result, officer 2 informed the Student that he had not provided sufficient information for DPS to proceed with a report alleging a violation of the Code by Student A. Officer 2 informed OCR that in order to process a complaint, at minimum, a complainant must allege a University code of conduct violation and provide some information or evidence to "back up" their claim, such as a voluntary affidavit in support of their complaint. OCR reviewed the Code and noted that it does not speak to what evidence is necessary in order for DPS to process a Code violation; rather, it states that OSRR will determine whether the complaint demonstrates sufficient information of wrongdoing to warrant further investigation and/or commencement of the student conduct process.<sup>10</sup>

Officer 2 informed OCR that he was unable to verify the Student's allegation that Student A threatened him, because the only evidence of the alleged threat, the audio recording, was inaudible. Officer 2 stated that he listened to the Student's audio recording, but did not hear any person make a threat; he heard what sounded like several people in a classroom talking, but it was unclear who was talking and what was being said. Further, officer 2 asserted that the Student did not offer to provide a voluntary affidavit in support of his allegation. Officer 2 informed OCR that he asked the Student if he wanted to make a statement and the Student declined to do so. The Student denied that officer 2 asked him to provide a statement and that he refused. Officer 2 did not recall whether he offered to speak with Student A regarding the Student's complaint.

OCR determined that later the same day, on November 28, 2017, the Student reported to the director by email that Student A had made a death threat against him on September 11, 2017;

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<sup>9</sup> The Student informed OCR that he records all of his lectures and was recording course 2 when Student A made the alleged death threat against him.

<sup>10</sup> Part 5 of the Code states that upon receipt of a complaint, OSRR "will determine whether a complaint concerns students and/or recognized student organizations and whether the complaint concerns subject matter falling within the jurisdiction of the University Student Conduct System." OSRR will "further determine whether the complaint demonstrates sufficient information of wrongdoing to warrant further investigation and/or commencement of the student conduct process. The standard of proof applied within the University Student Conduct System is preponderance of the evidence, which requires a demonstration that it is "more likely than not" that the respondent or recognized student organization has violated the Code of Student Conduct. Further, it states that "some allegations of student misconduct require investigation prior to determining whether further student conduct proceedings are warranted. As appropriate, the University will conduct an investigation concerning the allegations. The investigation may be conducted by DPS or another appropriate University office or representative. In cases involving alleged criminal conduct, DPS can assist a complainant in making a criminal complaint."

and, stated that Student A had previously threatened his life on two other prior occasions, but stated that the incident on September 11, 2017, was the only one that he was able to “prove” because of the audio recording. In the same email, the Student also reported that a few days after Student A threatened him on September 11, 2017, she followed him to a friend’s apartment and insisted on talking to him after he told her that he was not her friend and did not want to talk to her.<sup>11</sup>

The director responded to the Student by email on November 28, 2017, informing him that he should file a complaint with DPS if he believed his safety was threatened. The Student responded to the director’s email by stating that he had spoken with officer 2 earlier that day and attempted to file a complaint, but was not allowed to do so. The director then responded to the Student’s email by stating that she had spoken with officer 2 and that officer 2 informed her that the Student’s audio recording was from September 2017; it included a group of individuals speaking inaudibly; and, that the recording was not “proof” that Student A threatened to kill the Student. Further, the director informed the Student that if he continued to believe that his safety was being threatened, he should contact DPS to file a written report and discuss options for safety planning.

The Student asserted that he again attempted to file a written report with DPS on December 7, 2017, regarding Student A’s previous threat, but the responding DPS officer (officer 3) would not take his report; and, officer 3 did not ask him to submit a written statement. The Student stated that he informed officer 3 that OSRR had advised him to file a written report with DPS and showed officer 3 the director’s email of November 28, 2017; however, officer 3 still refused to take his report. The DPS’s records confirm that the Student attempted to file a written police report with DPS on December 7, 2017; and, that the Student spoke to officer 3, who informed him that he needed to provide “proof” in support of his allegation that Student A threatened him.

Following his interaction with officer 3, on December 7, 2017, the Student sent a complaint to the director via email, stating that he had attempted to file a written complaint with DPS on multiple occasions, but DPS was unwilling to take a written report from him regarding Student A’s threat because the Student did not have enough evidence. In this email, the Student wrote, “Because of DPS’s unwillingness to investigate, I continue to fear for my safety and well-being.”<sup>12</sup> In response to this email, the director and an Office of Student Assistance (OSA) case manager scheduled a meeting with the Student for December 13, 2017.

The director and OSA case manager met with the Student on December 13, 2017, to discuss Student A’s alleged threat and the Student’s concern that OSRR was not responding to his complaint that Student A had allegedly threatened to kill him. During the meeting, the director informed the Student that he should file a complaint with DPS because OSRR did not have sufficient information to proceed with a complaint against Student A and OSRR had not received

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<sup>11</sup> In a subsequent email to the director on December 7, 2017, the Student asserted that on September 27, 2017, Student A followed him to his friend’s apartment and insisted on talking with him.

<sup>12</sup> The Student explained in his email of December 7, 2017, that immediately after Student A threatened to kill him on September 11, 2017, he “briefly feared for [his] safety, but dismissed the matter later. However, [Student A’s] reaction to my rejecting her friendship has caused me to again be concerned for my safety. This is not the first time she had made a threat against my life. Last semester, she said, “I’m going to strangle you.” She also threatened to destroy my vehicle.”

a DPS report identifying the alleged Code charges against Student A. In addition, during the meeting, the director raised the possibility that if the Student filed a complaint against Student A, it could be considered retaliatory given that the Student had waited several months after the alleged death threat and had not pursued a complaint against Student A until she requested the NCO against him.

Based on the foregoing, OCR determined that between November 2017 and December 2017, the Student complained to University staff on at least three occasions that Student A had threatened to kill him, and presented to University staff an audio recording that purportedly contained the alleged threat.<sup>13</sup> OCR further determined that the Student's allegation that Student A had threatened to kill him would state a potential violation of the Code, regardless of whether he presented an audible recording of the alleged threat.<sup>14</sup> However, DPS refused to process the Student's complaint on the basis that the Student failed to provide sufficient evidence of a potential violation of the Code. OSRR also refused to process the Student's allegation against Student A because DPS had not forwarded a report to OSRR alleging a Code violation. The director informed OCR that the Student could nonetheless have filed a complaint directly with OSRR by submitting an online complaint form, which OSRR could process without a DPS report identifying code of conduct charges. The director asserted, and the Student confirmed, that the Student never submitted a complaint through OSRR's online complaint process; however, OCR determined that the director did not advise the Student that he could have nonetheless filed a complaint directly with OSRR by submitting an online complaint form.

#### *Complaints 2-4*

The complainant alleged that the University discriminated against the Student, on the basis of his sex, by failing to investigate reports the Student made on December 19, 2017 (complaint 2), January 31, 2018 (complaint 3), and, April 2, 2018 (complaint 4), that Student A had provided false information to the University which led to the issuance of the NCO against him.

With respect to complaint 2, the Student stated, and the University confirmed, that on December 19, 2017, the Student filed complaint 2 with the New York State XXXXXXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX for the XXXXX XXXXXXXXXXX XXXXXXXXXXX, copying his XXXXXXXXXXX XXXXXXX XXXXXXX Professor and OSRR, in which he reported that Student A had violated the rules of professional conduct by providing false and fraudulent information on

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<sup>13</sup> OCR determined that the Student played the audio recording of Student A's alleged death threat to officer 2 and the Student's OSA case manager, and both asserted that the threat was inaudible. The Student also provided a copy of the audio recording to OCR. OCR staff were also unable to identify the alleged threat in the audio recording.

<sup>14</sup> The Code of Student Conduct prohibits behavior including but not limited to physical harm or threat of physical harm to any person or persons, including, but not limited to assault, sexual abuse, or other forms of physical abuse; harassment, whether physical, verbal or electronic, oral, written or video, which is beyond the bounds of protected free speech, directed at a specific individual(s), easily construed as "fighting words," and likely to cause an immediate breach of the peace; and, conduct, whether physical, verbal or electronic, oral, written or video, which threatens the mental health, physical health, or safety of any person or persons including, but not limited to hazing, drug or alcohol abuse, and other forms of destructive behavior. Also, the University acknowledged that threatening behavior includes, but is not limited to general oral or written threats (in any medium, including email and social media) to people or property, such as, "You better watch your back" or "I'll get you" or "I'll ruin your car"; and, threats made in a "joking" manner. See <http://safetydivision.syr.edu/threat-assessment-management-team/preventing-and-recognizing-threats/> (site last visited on September 17, 2018.)

an affidavit and police report in order to obtain an NCO against him. The Student requested that the New York State XXX XXXXXXXXXXXX review Student A's XXXXXXXX to XXXXXXXX XXX. The University explained that it did not respond to complaint 2 because it was directed to an outside entity and included a request for relief (i.e., review of Student A's XXXXXXXX to XXXXXXXX) that the University was unable to grant.

With respect to complaint 3, on January 31, 2018, the Student sent an email to the University's Title IX Coordinator, alleging that he had evidence that Student A provided false and misleading information on an affidavit and police report she had filed with DPS, in which she alleged that the Student had harassed and threatened her, which led to the issuance of an NCO against the Student.<sup>15</sup> The Title IX Coordinator responded by email dated February 1, 2018, copying the director, associate director, and the Student's OSA case manager, in which she stated that the Student's allegations fell under the jurisdiction of OSRR and not the Title IX office. OCR determined that OSRR did not thereafter follow-up with the complainant about his complaint; rather, the University asserted that the Student had been informed on numerous occasions prior to this email that the proper procedure to bring forth his concerns regarding Student A providing false information in order to obtain an NCO against him was by appealing the NCO, which the Student did not do until April 2018.

With respect to complaint 4, on or about April 2, 2018, the Student submitted a written complaint to the Dean of the University's XXXXXXXX of XXX (XXX School), in which he alleged that Student A violated "the law" and the XXX School's Code of Student Conduct by providing false and misleading statements in an affidavit and police report that she had filed with DPS, which led to the issuance of an NCO against the Student. The Student met with the XXX School's associate dean (the associate dean) on or about April 16, 2018; and, the associate dean informed the Student that the XXX School would not investigate his complaint because his allegations against Student A failed to establish a prima facie case of a violation of the XXX School's Code of Conduct, which the associate dean asserted exclusively addresses issues of academic integrity. Further, the associate dean asserted that she suggested that the Student contact OSRR if he wished to appeal the imposition of the NCO. OCR determined that the XXX School's Code of Student Conduct states that its purpose is to "set out the boundaries of impermissible conduct by XXX students in regard to matters that may have a direct impact on or relationship to the College of XXX." The rules of conduct are referred to as "Academic Integrity Expectations" and prohibit conduct such as: engaging in conduct involving moral turpitude or other conduct which would unreasonably interfere with the operation of the College of XXX; and, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, including knowingly making a false statement of law or material fact.

The University informed OCR that the director, DPS staff, and the associate dean interpreted the Student's complaints 2, 3, and 4 against Student A as all pertaining to his disagreement with the facts upon which the University relied to issue the NCO; and as a result, the Student's recourse was to appeal the NCO.<sup>16</sup>

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<sup>15</sup> Specifically, the Student asserted that he had evidence in the form of text messages, witness statements, social media posts, and a sworn affidavit that would disprove Student A's statements.

<sup>16</sup> As stated previously, the Student eventually appealed the NCO on April 16, 2018, and the director issued a decision on the appeal on July 10, 2018. The decision stated that the director did not find sufficient information to

On September 21, 2018, the University signed the enclosed resolution agreement to resolve Allegation 3 without further investigation, pursuant to section 302 of OCR's Case Processing Manual. OCR will monitor the implementation of the Agreement. If the University fails to comply with the terms of the resolution agreement, OCR will resume its investigation of Allegation 3. Upon the University's satisfaction of the commitments made under the Agreement, OCR will close the case.

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 a 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 Joy M. Purcell, Senior Compliance Team Attorney, at (646) 428-3766 or [joy.purcell@ed.gov](mailto:joy.purcell@ed.gov); Amy Randhawa, Compliance Team Attorney, at (646) 428-3781 or [sandeep.randhawa@ed.gov](mailto:sandeep.randhawa@ed.gov); or Félice A. Bowen, Compliance Team Leader, at (646) 428-3806 or [felice.bowen@ed.gov](mailto:felice.bowen@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Gabriel M. Nugent, Esq.

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suggest that Student A provided false information to obtain the NCO against the Student; however, OCR noted that the director did not specify how she arrived at this determination. In addition, the decision amended the conditions of the NCO by issuing a NCO against Student A prohibiting her from contacting the Student. The director also modified the NCO so that the parties could attend the same activities in public.