



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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February 11, 2020

Sent by email only to: president@ithaca.edu

Shirley Collado
President
Ithaca College
Peggy Ryan Williams Center, 3rd Floor
953 Danby Road
Ithaca, New York 14850

Re: Case No. 02-18-2335
Ithaca College

Dear President Collado:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against Ithaca College (the College). The complainant alleged that the College discriminated against him, on the basis of his sex, by failing to respond appropriately to a complaint of sexual assault that a female student (student A) filed against him on or about XXXXXXXX XX, XXXX.

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 College is a recipient of financial assistance from the Department. Accordingly, OCR has jurisdiction to investigate this matter under Title IX.

APPLICABLE LEGAL AND REGULATORY STANDARDS

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: “Except as provided elsewhere in this part, 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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.” What constitutes a recipient’s program or activity for purposes of Title IX broadly includes “all of the operations of ... [a] college, university, or other postsecondary institution, or a public system of higher education.” 34 C.F.R. § 106.2(h)(2)(i).

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The regulation implementing Title IX contains a number of procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to comply with Title IX, that includes the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX, or alleging any actions which would be prohibited by Title IX. *See* 34 C.F.R. 106.8(a). In addition, the regulation implementing Title IX requires recipients to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation; and, to publish a notice of nondiscrimination stating that it does not discriminate on the basis of sex. *See* 34 C.F.R. § 106.8(b) and 34 C.F.R. § 106.9(a), respectively.

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. OCR examines the conduct from an objective perspective and a subjective perspective. In determining whether sexual harassment exists, OCR looks at the totality of the circumstances, and considers a variety of factors, including the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in which they occurred; other incidents at the school; and, whether there were also incidents of sex-based but non-sexual harassment.

Sex-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature, is also a form of discrimination to which a school must respond if it rises to a level that denies or limits a student's ability to participate in or benefit from the educational program. In assessing all related circumstances to determine whether sex discrimination exists, incidents of sex-based harassment combined with incidents of sexual harassment constitute sex discrimination, even if neither the sex-based harassment alone nor the sexual harassment alone would be sufficient to do so.

OCR enforces the requirements of Title IX consistent with the requirements of the First Amendment of the U.S. Constitution. The laws that OCR enforces protect students from discrimination but are not intended to restrict the exercise of protected speech in violation of the First Amendment. Thus, for example, in addressing harassment allegations, OCR has recognized that the fact that a particular expression is offensive, standing alone, is not a legally sufficient basis to establish sex discrimination under the statutes enforced by OCR.

Under Title IX, a school has a responsibility to respond promptly and effectively to notice of sexual harassment or sex-based harassment. This includes taking appropriate steps to investigate or otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. It may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved. Interim measures include counseling, extensions of time or other

course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

A school has a duty to respond to harassment about which it knows or reasonably should have known. A school has notice of sexual harassment if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.

A school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed student(s) knows how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems. In cases where the harassment is widespread, the school may need to provide training for the larger school community to ensure that individuals can recognize harassment if it recurs and know how to respond.

FACTUAL INFORMATION, LEGAL ANALYSIS AND CONCLUSIONS

In its investigation, OCR reviewed documents and information that the complainant and the College submitted. OCR also interviewed the complainant, and College staff and administrators. OCR made the following determinations.

The complainant alleged that the College discriminated against him, on the basis of his sex, by failing to respond appropriately to a complaint of sexual assault that student A filed against him on or about XXXXXXXX XX, XXXX. The complainant asserted that, throughout the College's response to student A's complaint, the College treated him as though he was "presumed guilty." The complainant asserted that the College failed to adequately notify him of student A's accusations against him until two months after the disciplinary process was underway; and, he did not receive pertinent information about the complaint student A had filed against him until he requested and received a copy of the complete investigative file. The complainant also asserted that the assigned investigator's report included only a cursory summary of his interview, omitted significant portions of the information that he provided to her during his interview, and summarized his interview in a "biased manner" that suggested that the complainant was not credible. The complainant further asserted that the investigator did not provide him with the opportunity to submit an impact statement but allowed student A to do so. In addition, the complainant asserted that although the investigator interviewed student A twice, she interviewed the complainant only once, even though the investigator's audio recording of the complainant's interview had been corrupted. The complainant also asserted that during the Conduct Review Board hearing (the board hearing), the College placed him behind a screen and outside of the board's view, while student A was seated directly in front of the board, which placed the

complainant at a disadvantage and signaled that the College did not value his statements as much as student A's. The complainant further asserted that during the board hearing, the board did not allow him an opportunity to cross-examine or ask follow-up questions of student A. In addition, the complainant asserted that, in violation of the College's procedures for adjudication of sexual misconduct cases, the board did not allow him to make an impact statement regarding sanctions and allowed student A to raise the complainant's prior sexual history with one of his witnesses. The complainant asserted that, without any stated rationale, the board found him responsible for the conduct student A alleged, and suspended him for three years, although student A would graduate in XXX years. The complainant further asserted that the College's determination of his subsequent appeal failed to include a rationale for upholding the board's determination. The complainant also asserted that, during his suspension, he made a reasonable request for a "criminal trespass waiver," which would have allowed him limited access to campus in order to participate in a XXXXXXXX XXXXXX program that was to take place on the College's campus, but the College denied his request without explanation.

OCR determined that during academic year 2017-2018, the complainant and student A were both XXXXXXXXXX students in the College's Department of XXXXXXXX XXXX. OCR determined that the College's Student Conduct Code for academic year 2017-2018 (the code) set forth its procedure for the investigation and adjudication of alleged misconduct, including sexual misconduct.

On XXXXXXX XX, XXXX, student A's professor notified the College's Title IX office that student A had reported an incident of sexual assault that allegedly occurred on XXXXXXXX XX, XXXX.¹ On the same day, the College's Deputy Title IX Coordinator contacted student A by email to schedule a meeting with the Title IX Coordinator. This email included information about Title IX generally; the College's counseling services, advocacy center, and Office of Public Safety; and, student A's right to have an advisor join her for the meeting. The email also stated that student A was not obligated to meet with the Title IX Coordinator.

The Title IX Coordinator met with student A on XXXXXXXX X, XXXX, during which time student A provided details about the alleged XXXXXXX XXXXXXXX.² The Title IX Coordinator summarized the incident in her meeting notes; and, on XXXXXXXX XX, XXXX, she sent the

¹ Under the College's procedures, the professor was considered a "responsible employee," who was required to report instances of sexual misconduct to the Title IX Coordinator.

² Student A stated that she and the complainant lived in the same XX-XXXXXX apartment at the time of the incident. She further stated that on one occasion prior to Thanksgiving in XXXX, they engaged in consensual XXXXXXX XXXXXXXXXXXX, but that student A thereafter informed the complainant that she did not wish to have XXXXXXX XXXXXXXXXXXX again. Student A reported that the complainant continued to request XXX via text message, notwithstanding her requests that he stop sending her such messages. She stated that on XXXXXXXX XX, XXXX, while she and the complainant watched a movie on the complainant's bed, the complainant began to rub her inner thigh, and stopped when his roommate walked into the room. The parties then exchanged text messages about the complainant's desire to engage in XXXXXXX XXXXXXXXXXXX with student A. Student A stated that she then left the complainant's room, and that the complainant followed her to her room and asked to watch a video with her. Student A stated that the complainant began XXXXXXX her, and that although she agreed to XXXXXXX, she told the complainant not to touch her below the chin; however, the complainant continued to touch her below her chin and tried to XXXX her XX XXX of him, while continuing to ask for XXXXXXX XXXXXXXXXXXX. Student A reported that the complainant placed his XXXXXXX into her XXXXXXX, and that after student A moved away, the complainant XXXXXXXXXXXX and XXXXXXXXXXXX onto her XXXXXXX.

notes to student A by email for her review and edits.³ By email dated XXXXXXXX XX, XXXX, student A confirmed with the Title IX Coordinator that she wished to proceed with an investigation through the College’s judicial process rather than pursue criminal charges. In her email, student A also requested that the complainant be removed from courses in which they were both enrolled, starting the following day, if possible.⁴ The Title IX Coordinator contacted the Chair of the Department of XXXXXXXX XXXX (the department chair) on the same day, to initiate a request that the complainant be moved to a new section of a course effective the following day.⁵

On XXXXXXXX XX, XXXX, the Title IX Coordinator sent an email to the complainant, stating that student A had made her aware of “a report that may be a violation of our XXXXXXXX XXXXXXXXXXXX policies.” The email did not provide the date or location of the alleged incident, or any other details about student A’s allegations.⁶ In her email, the Title IX Coordinator stated that she would like to meet with the complainant to provide him with information, support, and resources; and, that the Title IX Coordinator’s office would initiate an investigation. She requested that the complainant meet with her on XXXXXXXX XX, XXXX, but noted that he had no obligation to do so.⁷ She also notified the complainant that he was to have no contact with student A, and that the complainant would switch sections for the two courses he had in common with student A. She added that it was possible he might be asked not to attend the classes on XXXXXXXX when the sections met XXXXXXXX. Similar to student A, the Title IX Coordinator further provided information about Title IX, the College’s counseling and other support services, the Office of Public Safety, and the complainant’s right to have an advisor. On XXXXXXXX XX, XXXX, the complainant responded to the Title IX Coordinator’s email, stating that he was unavailable to meet at the requested time and requested a different time to meet.

³ As discussed further below, on XXXXXXXX XX, XXXX, student A submitted to the Title IX Coordinator her edits to the Title IX Coordinator’s notes.

⁴ Although student A and the complainant both had rooms in the same XX-XXXXXX apartment in a College residence hall, the College did not change their housing arrangements as an interim measure. OCR did not find evidence that either party made such request; and, student A stated during a meeting with the Title IX Coordinator and a sergeant from the Office of Public Safety on XXXXXXXX XX, XXXX, that she did not fear the complainant, and that she felt safe in her housing.

⁵ The department chair sent an email to the two relevant professors, stating that due to an upcoming confidential judicial action, the Title IX Coordinator had requested that the complainant be moved to a different section of the XXXXXXXX class beginning the following morning. The professors noted that their two sections met for a joint session on Fridays, after which the Title IX Coordinator confirmed that student A’s request to remove the complainant was only with respect to the classes during which the sections met separately.

⁶ The code provided that documentation regarding an incident of misconduct was to be forwarded to the Office of Judicial Affairs and reviewed by the Assistant Director of Judicial Affairs, who would determine whether the accused student would be charged with a violation of the code. If a student was charged, the Assistant Director of Judicial Affairs or designee sent the accused student a charge letter that included the date, time, location, and factual allegations concerning the alleged violation; a reference to the specific provision of the code underlying the charge; the possible sanctions; and, a time and location for the accused student’s individual administrative hearing. The complaining student would also receive notification of an individual administrative hearing.

⁷ The Title IX Coordinator informed OCR that the complainant was not obligated to meet with her at this stage, because she was not the assigned investigator, and her purpose in requesting a meeting with him was only to provide information about the process and the available resources.

The College informed OCR that student A elected to have the Office of Public Safety conduct the investigation.⁸ On or about XXXXXXXX XX, XXXX, the Office of Public Safety assigned a lieutenant (the investigator) to conduct the investigation of student A’s complaint, and the Title IX Coordinator so notified student A. On F XXXXXXXX XX, XXXX, the Title IX Coordinator sent an email to the complainant, to ask whether he had any questions; whether he felt that he could continue to be successful academically; and, to offer any interim resources. She also informed him that he could contact her with any requests to modify the terms of the no contact order. The complainant responded on XXXXXXXX XX, XXXX, describing the negative effects that student A’s complaint was having on him, including exacerbating his XXXXXXXX and XXXXXXXX XXXXXXXX and XXXXXXXXXXXXXXXX XXXXXXXX ; socially isolating him from the XXXXXXXX department; and, causing other students to make comments about the complainant being “kicked out of school.” The complainant asked the Title IX Coordinator for suggestions. The Title IX Coordinator responded on XXXXXXXX XX, XXXX, offering to connect the complainant to the College’s counseling services and student accessibility services. The complainant and Title IX Coordinator exchanged additional emails in which the complainant expressed the desire to speak with a counselor, and in which they agreed to meet.

On XXXXXXXX XX, XXXX, student A submitted to the Title IX Coordinator her edits to the Title IX Coordinator’s notes from their meeting on XXXXXXXX XX, XXXX. Through these edits, student A provided additional details about her text messages with the complainant, including the statements the complainant allegedly made repeatedly during the incident requesting that student A have XXXXXXXX XXXXXXXXXXXX with him; and, more details regarding the alleged XXXXXXXX XXXXXXXX.⁹ Student A also deleted an earlier reference in the Title IX Coordinator’s notes to the complainant’s XXXXXXXX pulling her XXXX towards his XXXXXXXX and XXXXXXXX putting his XXXXXXXX XX her XXXXXXXX, and replaced it with a description of him asking her for XXXX XXX. Student A’s edits also included changes and additions to her statements regarding the impact that the incident had on her. The Title IX Coordinator forwarded the edited version of the meeting notes to the investigator.

On March 6, 2018, the investigator interviewed student A; the investigator could not recall the length of this meeting and there were no other witnesses present. Student A recounted the details of the alleged assault, and drafted a written “voluntary statement,” which she reviewed and

⁸ The College informed OCR that in instances in which both the Title IX Office and the Office of Public Safety have jurisdiction, such as for allegations of on-campus sexual misconduct, the complaining student may choose to have either the Title IX Office or the Office of Public Safety conduct an investigation, which would include interviewing the parties and any witnesses, and collecting other evidence. Thereafter, the assigned investigator would submit his/her findings to the Office of Judicial Affairs. The College’s written records did not contain any references to student A’s preference to have the Office of Public Safety conduct the investigation. The records show only that by email to the Title IX Coordinator on XXXXXXXX XX, XXXX, student A confirmed her desire for an investigation with the Title IX Coordinator, and that the Title IX Coordinator then contacted the sergeant about beginning the investigation.

⁹ Student A further detailed the complainant’s alleged physical contact with her, including his XXXXXXXX her XXXXXXXX on his XXXXXXXX, XXXXXXXX, and XXXXXXXX; XXXXXXXX her XXXXXXXX against his; placing intense pressure on her XXXXXXXX which subsequently caused XXXXXXXX; and, XXXXXXXX her to give XXX XXXX XXX despite her refusal to do so. Student A also added that the complainant asked her if he could XXXXXXXX her XXXXXXXX, and that student A replied that he could, after which the complainant XXXXXXXXXXXX XXXXXXXXXXXX her.

signed.¹⁰ This voluntary statement became part of the College’s investigative case file, along with the Title IX Coordinator’s original meeting notes and the version of those notes that student A had edited. The investigator’s interview of student A was not recorded.

On XXXXXXXX XX, XXXX, the investigator and the complainant met for 10 to 20 minutes¹¹ in the Office of Public Safety, during which time the investigator had the complainant sign the no contact order. According to the investigator’s notes, the investigator advised the complainant that the purpose of the meeting was to talk about the allegations and to issue the no contact order. The investigator asserted to OCR that because the complainant stated that he had to leave to go work in approximately ten minutes, she “did not get into specifics” regarding the alleged incident involving student A. In addition, the investigator asserted to OCR that the complainant acknowledged at this meeting that he was aware of the incident about which student A had complained, and that he believed he had her consent for his actions. The complainant informed OCR that he was on his way to work at the time of this meeting and that he believed that the purpose of the meeting was only for him to sign the no contact order; however, the investigator placed him in an interrogation room and asked him what happened during the incident. The complainant further asserted to OCR that he informed the investigator that he did not know what kind of sexual misconduct he was alleged to have engaged in; and, that the investigator then told him that student A’s allegation concerned the XXXXXXXX XXXX the parties had engaged in sexual activity, but did not provide any details. The complainant asserted to OCR that he generally stated that he had student A’s consent but that the investigator continued to ask him questions without specifying student A’s accusations, at which point the complainant insisted that he needed to leave to go to work.¹² OCR determined that, at this time, the investigator did not offer the complainant an opportunity to provide a written “voluntary statement” similar to the one that the investigator had allowed student A to provide.

On XXXXX XX, XXXX, the Title IX Coordinator met with the complainant, along with his attorney, to discuss the investigation process and review the available resources.¹³ The complainant asserted to OCR that the Title IX Coordinator did not share any details about student A’s accusations against him; and, that when his attorney asked the Title IX Coordinator whether the complainant would be informed of student A’s allegations, the Title IX Coordinator responded that he would find out at his administrative hearing. Although the Title IX Coordinator had drafted notes of her interview with student A and allowed student A to review and edit those notes, the Title IX Coordinator informed OCR that she did not take a statement from the complainant at this time, because she was not the assigned investigator. The Title IX Coordinator informed OCR that she did not recall exactly what she had stated to the complainant about student A’s accusations against him; she added that because no charges were pending with the Office of Judicial Affairs at the time, it is possible that she told the complainant that she did not have all of the information. The Title IX Coordinator also asserted that she did not recall refusing to provide the complainant

¹⁰ The College’s Office of Public Safety uses a form entitled “Voluntary Statement,” on which individuals type their statements and sign their names to affirm that they have reviewed the statement for truth and accuracy.

¹¹ The investigator asserted that the meeting lasted approximately 10 minutes, and the complainant asserted that it lasted approximately 20 minutes.

¹² As discussed further below, the complainant asserted to OCR that the investigative report omitted most of what he stated during this meeting.

¹³ The College informed OCR that it does not have written notes from this meeting.

with details; but stated that she typically describes allegations at such meetings by saying something akin to “non-consensual XXXXXX XXXXXXXX .”

Between XXXX XX and XX, XXXX, the investigator and the complainant exchanged messages regarding scheduling a second meeting; and on XXXXX XX, XXXX, the investigator interviewed the complainant, with the complainant’s attorney present. The complainant asserted to OCR that at the time of this interview, he did not know the nature of what student A was alleging or how his interaction with her could be seen as sexual misconduct; and, that the investigator informed him only that student A’s allegation concerned the XXXXXX XXXX the parties had engaged in XXXXXX XXXXXXXX. During the interview, the complainant provided his account of the alleged incident for the first time in the course of the investigation; and, identified three witnesses who could provide information in the investigation of student A’s complaint against him. The complainant informed OCR that the investigator seated herself between him and his attorney, making him feel as if he could not consult with his attorney during the meeting. OCR determined that the investigator still did not offer the complainant an opportunity to provide a “voluntary statement” during the meeting as she had done for student A. The investigator informed OCR that in the absence of criminal charges, she has discretion not to take a voluntary written statement from a respondent during an investigation conducted by the Office of Public Safety.¹⁴

According to both the complainant and the investigator, the investigator made an audio recording of the complainant’s interview on XXXXX XX, XXXX; she did not take any notes during the interview. The investigator subsequently discovered that the audio file was corrupted, and the contents of the recording were not usable.¹⁵ The investigator then prepared a summary of the complainant’s interview from memory. The investigator did not notify the complainant about the corruption of the audio file. The investigator told OCR that the complainant’s statements about the incident were largely consistent with student A’s. She stated that they differed only with respect to the complainant’s assertion that he had student A’s consent for each sexual activity in which they engaged; and, two details that the complainant added about student A’s XXXXXXXX her own XXXXX and being XXXXXXXXXXXX and XXXXXX him while the parties were XXXXXXXX, which the complainant asserted were further evidence of student A’s consent. In the summary of the complainant’s account of the incident in the investigative report, the investigator noted these two inconsistencies and wrote that “[t]he rest of [the complainant’s] recollection of the incident was very similar to that of [student A], except that he believed that he had consent for all of his actions.” In addition, the investigative report noted that the complainant had consumed some alcohol prior to the incident but was not impaired.

Following her interview of the complainant on XXXXX XX, XXXX, the investigator sent emails requesting interviews to student A and to the three witnesses that the complainant had identified. The investigator interviewed one of the complainant’s witnesses (student B) on XXXXX XX,

¹⁴ The investigator further stated that at the time she made the decision during the interview not to obtain a voluntary statement from the complainant, she believed both that she had an audio recording of the complainant’s interview and that the College’s judicial process would be a “friendlier” place than the Office of Public Safety for the complainant to give a statement.

¹⁵ The investigator did not seek to obtain a voluntary statement from the complainant after she learned that the audio file of the complainant’s interview had been corrupted. The Title IX Coordinator informed OCR that it is her office’s process to provide each party and each witness with the opportunity to review their respective statements before the statements became final.

XXXX,¹⁶ and a second witness (student C) on XXXXX XX, XXXX.¹⁷ On XXXXX XX, XXXX, the investigator conducted a follow-up interview with student A, wherein student A provided additional clarification about the incident and her statement to the Title IX Coordinator.¹⁸ OCR determined that the investigator did not offer to interview the complainant again in light of the issue with the recording, or permit him to review a copy of her summary of his interview based on her recollection prior to finalizing her investigative report.¹⁹

On XXXXXX XX and XX, XXXX, respectively, the investigator and the Title IX Coordinator sent emails to the complainant, stating that the investigator planned to submit her report to the Office of Judicial Affairs on or about XXXXX XX, XXXX.²⁰ In her email to the complainant, the Title IX Coordinator also stated that the Assistant Director of Judicial Affairs (the assistant director) would contact the complainant in the near future. Additionally, the Title IX Coordinator offered to meet with the complainant to review the process; and, provided a link to a list of the College's trained advisors.²¹

On XXXXX XX, XXXX, the investigator submitted her investigative report to the Administrative Lieutenant in the Office of Public Safety, who forwarded it to the Office of Judicial Affairs. The investigative report summarized student A's interview with the Title IX Coordinator on XXXXX XX, XXXX, and with the investigator on XXXXX XX, XXXX; and, attached student A's voluntary statement and the screenshot of text messages that student A had provided. The investigative report also summarized the investigator's initial meeting with the complainant on XXXXX XX, XXXX, and the complainant's interview on XXXXX XX, XXXX, as described above. The investigative report further summarized the interviews of student B and student C; and, noted that the investigator had not received responses from three additional witnesses, one of

¹⁶ According to the investigative report, student B reported that she did not have firsthand knowledge, but that she had spoken with each party after the incident. She stated that both parties' accounts were the same except that student A believed that the complainant had manipulated her, while the complainant believed that the incident was consensual. Student A further stated that a few days prior to the incident, after the parties had had consensual intercourse, she heard student A and the complainant joking about wanting to have XXXXXXX XXXXXXXXXXXXXXX.

¹⁷ According to the investigative report, student C stated that he was the complainant's XXXXXXXXXX at the time of the incident; and, that he saw the complainant and student A watching a movie in his room, after which he saw them go into student A's room. Student C also stated that he had spoken to both parties after the incident and neither behaved as if there was something wrong.

¹⁸ The investigator asked student A which XXXXXXXXXX of XXXXXXXXXX had been removed from either party. Student A stated that her XXXXXXX and XXXXXXXXXXX and the complainant's XXXXX and XXXXXXXXXXX had been removed. She stated that she could not recall whether their XXXXXXX were removed, though she was inclined to say that her XXXXX had been removed. When asked about the differences between the Title IX Coordinator's original notes and student A's subsequent edits on XXXXX XX, XXXX, student A stated that she could not recall if the details she had deleted had actually occurred; namely, whether the complainant had XXXXXXX her XXXX towards XXX XXXXX and put XXX XXXXX in XXX XXXXX.

¹⁹ The investigator asserted to OCR that at the time she prepared her investigative report, her memory of the complainant's interview was clear. She also asserted that the complainant's account of the incident was nearly identical to student A's, with the exception of the distinctions she described in her investigative report. The investigator further stated that because the case would proceed through the College's judicial process, she decided not to inconvenience the complainant by subjecting him to an additional interview.

²⁰ The College's records did not include a similar email to student A; however, the records included an email from the complainant's attorney to the investigator, dated XXXXX XX, XXXX, requesting a status update.

²¹ Student A received a similar email from the Title IX Coordinator on XXXXX XX, XXXX

whom the complainant had identified and two of whom student A had identified.²² The investigative report also noted that the audio recording of the complainant’s interview was corrupted. Finally, the investigative report stated that the investigator was referring the matter to the College’s Office of Judicial Affairs because student A “felt pressured, manipulated, and coerced” into engaging in XXXXXX XXXX.²³

In an email sent on XXXXXX XX, XXXX, the assistant director requested that student A meet with him and one other hearing officer, the residence director, to discuss the alleged incident and student A’s rights in the process.²⁴ OCR determined that this meeting was to be student A’s administrative hearing. Student A’s administrative hearing took place on XXXXXX XX, XXXX. OCR determined that student A brought a friend with her to act as her advisor. The assistant director informed OCR that at student A’s administrative hearing, student A summarized her account of what happened during the incident and emphasized that she did not provide consent for the XXXXXX XXXXXXXXXXXX that occurred between her and the complainant. The assistant director also informed OCR that he and the residence director asked student A about the factual discrepancies highlighted in the investigative report regarding whether and how student A’s XXXXX was removed, and regarding student A’s edits to the Title IX Coordinator’s summary of the complainant’s pushing student A’s XXXX XXXX when requesting that she give him XXXX XXX. The College did not document or record any part of student A’s administrative hearing, including questions or responses.

On XXXXXX XX, XXXX, the assistant director sent an email to the complainant, attaching a letter regarding scheduling an administrative hearing. The attached letter stated, “It has been reported to [sic] that on XXXXXXXXXXXX XX, XXXX in [apartment name and unit] you have allegedly violated the Ithaca College Student Code of Conduct. You were allegedly involved in non-consensual XXXXXX XXXX with another Ithaca College student.” OCR determined that this letter did not provide any additional details about student A’s allegations. The letter requested that the complainant attend a meeting (the complainant’s administrative hearing) on XXXXXX XX, XXXX; and, noted that the complainant could reschedule the meeting, but that if he chose not to appear at the meeting, he would waive his right to a hearing and be sanctioned as needed based on the available evidence. The letter further stated that the charges could result in suspension or expulsion; and, provided the text of the relevant provision of the code. The letter also informed the complainant about his right to have an advisor attend his administrative hearing.

²² One of student A’s witnesses (student D) subsequently contacted the investigator, and the investigator interviewed that witness on XXXXXX XX, XXXX. According to the investigator’s summary in the College’s case file, student D stated that she understood that the complainant could be persistent, but “could not provide any other information that was relevant to this investigation.”

²³ On XXXXXX XX and XX, XXXX, the Title IX Coordinator and department chair exchanged emails with the complainant and student A regarding the parties’ final XXXXXXXXXXXXXXXXXXXX scheduled for XXXXXX XX, XXXX; specifically, student A requested that the complainant not be allowed to XXXXX her XXXXXXXXXXXX her XXXXXX, after which the complainant made a mutual request. OCR determined that the Title IX Coordinator and department chair equitably sought input from both parties to address each of their desires not to have the other XXXXXX their XXXXXXXXXXXXXXXXXXXX, while ensuring that neither party missed the opportunity to XXXXXX all other students’ XXXXXXXXXXXXXXXXXXXX, by rearranging the schedule of XXXXXXXXXXXXXXXXXXXX to accommodate both parties. The complainant sent an email to the Title IX Coordinator and the department chair on XXXXXX XX, XXXX, thanking them for the manner in which they accommodated both parties’ requests, and confirming that he had a “positive experience” during the XXXXXXXXXXXXXXXXXXXX.

²⁴ In his email, the assistant director informed student A about her right to bring an advisor to the meeting.

The complainant responded to the assistant director by email dated XXXXX XX, XXXX, requesting that his administrative hearing be rescheduled to allow him to consult with his attorney. The complainant also requested a copy of the investigative record, stating that he wanted to be “more clear with what I am being charged with.” Later, on XXXXX XX, XXXX, the assistant director advised the complainant that he could pick up the investigative records on the following day. The complainant picked up the investigative records on XXXXX XX, XXXX. The complainant informed OCR that prior to his request, no one at the College had offered him the opportunity to review the record. The complainant and the assistant director exchanged emails between XXXXXX XX and XX, XXXX, in which they scheduled the complainant’s administrative hearing for XXXXX XX, XXXX.

On Sunday, XXXXX XX, XXXX, the complainant sent an email to the investigator, with a copy to the assistant director, expressing several concerns about the investigative report. Specifically, he asked how the audio recording of his interview had become corrupted; questioned why the investigator chose to include a lengthy description of student A’s statements, while including only a half-page summary of the complainant’s statements; asked why the investigator omitted any mention of the impact that the complainant had described he was experiencing, while including a paragraph discussing the impact on student A; asserted that his witnesses were also concerned that much of the information they had shared during their 30-45-minute interviews was omitted from the report; and, asserted that the investigator had improperly accepted several of student A’s statements as objective facts. The complainant asserted in his email that the investigative report reflected the investigator’s biased perception that he was guilty from the start. OCR determined that no one from the College responded to the complainant’s email; however, his email became part of the College’s case file.

The investigator informed OCR that she discussed the complainant’s email with her supervisor; and that ultimately, the investigator and her supervisor determined that because the case was already pending with the Office of Judicial Affairs, they would not take any action in response to the complainant’s email and allow the case to “run its course.” The assistant director informed OCR that he discussed the issue of the corrupted audio file with the investigator; and, determined that because the complainant would have an opportunity to share any and all information he wished during his administrative hearing, any omissions from the investigative report were not of concern. In contrast, the complainant asserted that the investigator’s choice of what information to include or omit, as reflected in her investigative report, would likely sway the board, given the investigator’s role in the process. In addition, the complainant asserted that the absence of a complete interview in the case file would negatively affect him, as any additional or clarifying details he might provide at a subsequent hearing could be seen as his attempt to fabricate information based on what he had reviewed in the file.

The complainant’s administrative hearing took place on XXXXX XX, XXXX, with the complainant’s attorney present.²⁵ The complainant presented his account of the alleged incident,

²⁵ According to the code, during a party’s administrative hearing, the hearing officers would explain the administrative procedures and charges; review documentation and evidence; and, provide each party with an opportunity to present evidence and discuss the relevant information from the incident. The code also provided that each party could have a

including the reasons for his belief that he had student A’s consent throughout the incident. OCR determined that the College did not document, transcribe, or record the complainant’s administrative hearing, so there was no written statement from the complainant or recording of his own words that was part of the evidentiary record.²⁶ The assistant director informed OCR that the complainant shared copies of text messages that he had exchanged with student A, and these became part of the College’s case file. The assistant director and residence director asked the complainant several follow-up questions.²⁷ The assistant director acknowledged to OCR that the complainant voiced frustration with the investigative report, but the assistant director also asserted that the administrative hearing was the complainant’s opportunity to supplement whatever information he felt was missing or incorrect.²⁸

On XXXXX XX, XXXX, the assistant director and the residence director issued their determination regarding the complainant’s administrative hearing. In the written determination letter issued to the complainant that same day, they stated that they found the complainant responsible for violating the code; quoted the provision A that the complainant was found to have violated; and, stated that his sanction was a two-year suspension, the beginning of which was deferred from XXXX XX until XXXX XX, XXXX, to allow the complainant to complete his final exams. This determination letter did not include a rationale for either the determination of responsibility or the sanction.²⁹ The determination letter stated that the complainant could appeal the determination by submitting a written request for a board hearing to the Director of Residential Life and Judicial Affairs within 72 hours.

On XXXXX XX, XXXX, the assistant director sent an email to student A, containing information similar to that included in the determination letter regarding the complainant’s administrative hearing, and notifying her of the complainant’s sanctions resulting from the complainant’s administrative hearing. The assistant director informed student A that if she or the complainant appealed the determination to the board, the determination from the administrative hearing would be “thrown out.” The assistant director informed OCR that the complainant’s determination letter did not include this explanation regarding the effect of appealing to the board because the assistant director had already relayed this information to the complainant at the administrative hearing and

“silent, non-participating” advisor; and, had the right to exclude their prior sexual history with non-parties. In addition, each party could make an impact statement when the judicial hearing officers considered appropriate sanctions.

²⁶ As previously stated, the College also did not transcribe or record student A’s administrative hearing.

²⁷ The assistant director informed OCR that he and the residence director asked the complainant about the text messages in which the complainant appeared to acknowledge that what he had done was wrong; and, that the complainant stated that he took the blame because he wanted to become friends with student A again. The complainant informed OCR that he was also asked about his reaction to student A’s accusations, why he felt the incident was consensual, whether he was intoxicated, whether his first and second XXXXXX encounters with student A felt different, whether he was going to participate in the College’s XXXXXX program the following year, and where he planned to live the following year.

²⁸ Following the complainant’s administrative hearing, the assistant director contacted student A and the investigator to clarify some information; however, neither the assistant director nor the investigator could remember the specific content of these conversations. The College’s records indicate only that the assistant director asked student A about “two statements that [the complainant] made that were very different from” student A’s; and, that he asked the investigator about the complainant’s assertions that the complainant’s witnesses had given more information than was presented in the investigative report.

²⁹ The code required that the hearing officers make a decision based on a preponderance of the evidence; and, that they notify the parties of their determination, in writing, within seven days of the hearing. The notice of outcome was required to include the findings of fact, the decision and sanction, and the rationale for the decision and sanction.

by telephone; however, the complainant informed OCR that he did not recall whether the assistant director had explained this information during the administrative hearing, and further asserted that he had no telephone calls with the assistant director about the board hearing.

Upon receiving the administrative hearing determination, the complainant sent an email to the assistant director on XXXXX XX, XXXX, requesting a board hearing.³⁰ The assistant director responded on XXXXX XX, XXXX, stating that the complainant's request for a board hearing caused the determination from the administrative hearing to "drop"; meaning that the case was reverted to pending, without a determination or sanction.³¹ By email dated XXXXX XX, XXXX, the assistant director informed student A of the complainant's request for a board hearing. In his emails to each party, the assistant director also stated that his aim was to schedule the hearing for the end of final exams or the beginning of the following week; and, that the parties could participate in the hearing remotely if they planned to leave campus immediately after final exams.

Between XXXX X and X, XXXX, the assistant director sent emails to each party to schedule the board hearing and individual meetings with each party beforehand ("pre-board meetings") to discuss the process and review case materials.³² The board hearing was scheduled for XXXXX XX, XXXX.³³ Student A's pre-board meeting occurred on or about XXXXX XX, XXXX,³⁴ and the complainant's meeting occurred on XXXXX XX, XXXX. The assistant director informed OCR that at student A's pre-board meeting, she requested a privacy screen to separate her from the complainant at the hearing; and, that at the complainant's pre-board meeting, he notified the complainant of student A's request. The complainant disputed the assistant director's account, asserting to OCR that although the assistant director told him that either party could request a privacy screen, he did not tell the complainant that student A had done so.

³⁰ The code provided that at the conclusion of the administrative hearing process, either party could appeal the outcome to the board by submitting a written request to the Assistant Director of Judicial Affairs (or designee) within 72 hours of receipt of written notification of the administrative hearing decision. The code required that the board convene within 14 calendar days of receipt of the request for an appeal; and, that the board consist of three students, one male faculty/staff member, and one female faculty/staff member. The board hearing was the first time in the process that the parties would be present together.

³¹ The code provided that in the event that a student was eligible to have their case heard before a board and chose to do so, the decision rendered in the administrative hearing would become null and void, and the student would continue without a sanction (other than any interim measures or sanctions that may be in effect) until the board hearing process was completed.

³² The code provided that, prior to the board hearing, each party would meet separately with the chairperson of the board to review the process and discuss any request to testify behind a screen at the hearing. Each party could have a "silent non-participating" advisor; have their prior sexual history with non-parties excluded; and, submit a list of witnesses and/or questions for the other party to the chairperson at least 24 hours before the hearing.

³³ In emails dated XXXX X, X, and X, XXXX, the complainant and the assistant director discussed the complainant's request for a later hearing date and his concerns about having adequate time to prepare between his final exams and an out-of-town XXXXXXXXXX, from which he would not return until the morning of the scheduled hearing on XXXX XX, XXXX. The assistant director informed OCR that he was trying to schedule the hearing as soon as possible as the semester had ended and the available pool of student panelists was narrowing as students were leaving campus.

³⁴ Through emails to the Title IX Coordinator on XXXXX XX, XXXX, student A's mother stated that student A requested a College-trained advisor; and, complained that student A was not previously informed of the ability to access such an advisor. The Title IX Coordinator referred this inquiry to the assistant director, who maintained the list of advisors. The assistant director connected student A to an advisor.

On XXXXX XX, XXXX, student A submitted a list of five questions for the complainant, which the assistant director forwarded to the complainant; and, on XXXXX XX, XXXX, the complainant submitted a list of 18 questions for student A, which the assistant director forwarded to student A.³⁵ The complainant also listed three witnesses he wished to call at the hearing; the assistant director notified student A of this in an email dated XXXXX XX, XXXX. Each party also submitted copies of text messages that they had sent to one another.

OCR reviewed a transcript of the board hearing, which took place on XXXXX XX, XXXX. The board comprised three students, one staff member, one faculty member, and the non-voting chairperson; in this case, the assistant director. At the hearing, the board sat along one long side of a rectangular table, with student A seated directly across from them. The complainant and his attorney were seated at the head of the table, with a privacy screen placed between the complainant and student A. The complainant asserted to OCR that the privacy screen not only blocked the parties' view of each other, but also obstructed the board's view of the complainant. The assistant director asserted to OCR that the privacy screen was set up at a 45-degree angle, with its purpose being to block the parties' view of each other while permitting the complainant and the board to see one another; however, the assistant director acknowledged that the board members needed to push their chairs back in order to see the complainant. The complainant informed OCR that in some instances, board members did not adjust their seats when he was speaking; therefore, they were not looking at him as he spoke.

At the outset of the board hearing, the assistant director read the charges pending against the complainant; and, further stated that student A would provide her statement first and then answer the board's questions, after which the complainant would provide his statement and then answer the board's questions.³⁶ Before providing her statement, student A raised the complainant's prior sexual history with a non-party, asserting that one of the complainant's witnesses had had a sexual relationship with the complainant and therefore that witness's testimony might have been potentially biased in the complainant's favor. OCR determined that neither the assistant director nor any board members responded to or addressed student's A statement. Student A provided her prepared statement, in which she stated that she had not given the complainant affirmative consent for the incident in question.³⁷ The board then asked student A one question; namely, how many years she had left at the College. After stating that he had XXX years remaining before graduating, the complainant then provided a copy of a written statement he had prepared for the board and gave his oral statement. He referred the board to his written statement for the details of the alleged incident; and, otherwise explained the intent behind the text messages he had sent to student A

³⁵ In his email to student A, the assistant director informed her that she did not have to answer any questions with which she was uncomfortable. The assistant director did not make a similar statement to the complainant in writing. At the conduct review board hearing, the assistant director orally advised both parties they did not have to answer questions that made them uncomfortable.

³⁶ The code provided that, at the hearing, the board would receive previously submitted questions from each party, copies of all statements, and any other evidence available. Each party could present a written or oral statement, as well as any witnesses to the incident; and, the board could ask questions of the parties and witnesses. The code provided that the board would make its decision based on a preponderance of the evidence and a majority vote.

³⁷ The code defines affirmative consent as a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. According to the code, silence or lack of resistance, in and of itself, does not demonstrate consent.

after the incident, as well as the effects that student A’s allegations had on him. The board then asked him 11 questions, to which the complainant provided responses.³⁸

The assistant director then asked student A and the complainant, respectively, to read all of their questions for each other; and, each party provided their respective responses after each full set of questions had been read. The board then heard from three of the complainant’s witnesses. These witnesses collectively testified about what the complainant and student A had told them about the alleged incident; an argument among the parties and their apartment mates that took place after the incident; and, their understanding of the distinctions in terminology between “manipulation” and “assault.” Then, the investigator testified, providing a summary of student A’s allegations; a description of her efforts to recover the corrupted audio file of the complainant’s interview; and, a summary of the facts in dispute between the parties. Finally, the complainant and student A, respectively, gave closing statements.³⁹

The board deliberated immediately after the parties’ closing statements; and at the conclusion of the deliberation, the assistant director announced that the board had found the complainant responsible and recommended that he be suspended for three years (i.e., six semesters), because that was the maximum amount of time that the board could suspend anyone.⁴⁰ The board members then added that they commended student A’s courage and empathized with her, and that another factor they considered in selecting a three-year suspension was that it was unlikely that the complainant would attempt to re-enroll in the College after three years.⁴¹ The assistant director then explained that the board’s determination was only a recommendation, which was to be reviewed by the Director of Residence Life and Judicial Affairs (the director), who would consider the hearing transcript and all case materials.⁴² The assistant director also noted that one final

³⁸ The board’s questions for the complainant included the following topics: the complainant’s understanding of affirmative consent; whether he received affirmative consent from student A; the meaning behind some of his text messages to student A; whether and when the complainant felt it was acceptable to ask an intimate partner to engage in acts to which she had already said no; how the complainant had asked for student A’s consent; and, the meaning behind a reference to a message the complainant had received about his lack of respect towards women.

³⁹ Student A requested that she give her closing statement second. The code provides that both parties will have the opportunity to make an impact statement before the board begins deliberating, which the board will then consider in determining the appropriate sanction(s). The code does not specify the order in which the parties will make such statements.

⁴⁰ The assistant director witnessed the board’s deliberation. In his interview with OCR, the assistant director explained that other factors the board considered in its determination included the parties’ initial agreement that student A did not consent to contact below the neck, and evidence (e.g., text messages) supporting that the complainant pressured her into additional contact. In addition, the assistant director stated that the board considered the text message in which the complainant appeared to acknowledge that he had pressured student A. With respect to how the board considered the corruption of the audio file of the complainant’s interview, the assistant director stated that the board felt that they still had complete information from the complainant, including through his testimony. In addition, with respect to student A’s reference to the sexual relationship between the complainant and one of his witnesses, the assistant director stated that the board did not feel that it affected the witness’ testimony, and that they still found the witness to be credible even they ultimately found the complainant responsible for the alleged conduct.

⁴¹ The assistant director informed OCR that, although student A was scheduled to graduate within XXX years, the board considered her statement that she wished to be an active alumna as a factor in recommending a three-year suspension.

⁴² The code provided that, upon conclusion of the hearing, the board would submit its recommendation to the Associate Provost for Student Life (or designee) who would review the case and issue the final written decision to both parties within five business days from the board hearing.

appeal was available after that, but that any sanction confirmed by the director would remain in place pending the final appeal.

By letter dated XXXXX XX, XXXX, the director notified the complainant that she agreed with the board's recommendation, confirming that he was found responsible for the alleged charge and was suspended for three years. OCR determined that this letter did not provide a rationale for the finding that the complainant was responsible for the alleged charge, or for the sanction imposed.⁴³ It explained the complainant's right to appeal, including the appeal process.⁴⁴ Separately, the assistant director notified student A by email that the director had upheld the board's decision to suspend the complainant for three years and noted that the complainant had the right to appeal. OCR determined that the assistant director's email to student A did not contain a rationale for the director's determination.

By email dated XXXXX XX, XXXX, the complainant appealed the director's determination to the Vice President for Student Affairs and Campus Life (the vice president), on the grounds that the hearing was inconsistent with established procedures,⁴⁵ and the sanction was unduly harsh.⁴⁶ Along with his statement of appeal, the complainant attached his email to the investigator, dated XXXXX XX, XXXX, as well as the determination letters from the administrative hearing and the board hearing. By letter dated XXXXX XX, XXXX, the vice president denied the complainant's appeal. OCR determined that the vice president's determination letter did not contain a rationale for her decision.⁴⁷

When the complainant submitted his appeal to the vice president on XXXXX XX, XXXX, he included in his email a request for a meeting to discuss his participation in a XXXXXXXX program hosted by a XXXXXXXX XXXXXXXX, for which the complainant had secured a full scholarship and which would take place on the College's campus (the XXXXXXXX program). OCR determined that the vice president did not respond to the complainant's request for a meeting; when she issued

⁴³ According to the code, the notice of outcome was required to include the findings of fact, the decision and sanction, and the rationale for the decision and sanction.

⁴⁴ If either party disagreed with the board's decision or the sanction, s/he could submit a final written appeal to the Provost/Vice President for Educational Affairs (or designee) (the provost) within three business days after receipt of written notification of the decision. The code specified the following three grounds for appeal: the hearing was inconsistent with the established judicial procedures; the sanction imposed was not in keeping with the gravity of the violation; and, new and relevant evidence is available. The provost was responsible for reviewing the appeal based on the preponderance of the evidence standard. The provost could uphold the decision, amend the decision as necessary, or order the case be heard again by a new board. The provost was to notify the complaining student and the accused student of the decision, in writing, within 10 business days of the request for an appeal.

⁴⁵ With respect to procedural inconsistencies, the complainant asserted that he had not received sufficient notice of the charges against him until just before his administrative hearing, as the College's written notices to him failed to contain the required details about student A's allegations; the investigative report omitted most of what he and his witnesses had stated in their interviews; the board allowed student A to raise the complainant's prior sexual history with his witness; the physical setup of the board hearing was biased against him; he was not afforded the opportunity to make an impact statement regarding sanctions; and, the director's determination letter failed to contain a rationale.

⁴⁶ With respect to the sanction, the complainant asserted that student A would graduate in XXX years and the director's determination letter failed to provide a rationale for issuing a three-year suspension; and, that the sanction was disproportionate to the gravity of the alleged conduct, particularly given that there was no claim that the complainant posed a threat to anyone else on campus.

⁴⁷ By email dated XXXX X, XXXX, the complainant asked the vice president to explain the rationale behind her determination; however, the vice president did not respond to this question.

her appeal determination, she stated only that she had asked that the complainant be given a refund for his housing, as he could not live on campus that XXXXX. Subsequently, on XXXXX XX, XXXX, the complainant sent an email to the Director of Public Safety, requesting a criminal trespass waiver which would allow him limited access to the campus in order to participate in the XXXXXX program. The complainant provided the schedule for the program, specified that he had coordinated with the XXXXXXXX to secure off-campus housing and minimize his presence on campus, and offered to check in with the Office of Public Safety each day. The College denied the complainant's request, without providing a rationale for its denial.⁴⁸ Although the vice president had indicated that the complainant should be refunded his money for XXXXXX housing, the complainant informed OCR that he did not receive this refund.⁴⁹

Based on the foregoing, OCR determined that the College failed to provide an equitable process in the adjudication of student A's complaint against the complainant, including that the College failed to provide the complainant with notice of sufficient details regarding the facts and circumstances forming the basis for student A's complaint against him with sufficient time prior to his initial interview; the Title IX Coordinator allowed student A to review and edit interview notes that the Title IX Coordinator had created during student A's initial interview, but the Title IX Coordinator did not take notes during her interview with the complainant; the investigator allowed student A to draft a written "voluntary statement," but did not provide this opportunity to the complainant; the investigator conducted a follow-up interview with student A, but not with the complainant, even after she learned that the recording of the complainant's interview was corrupted; the assistant director allowed both parties to submit questions prior to the Board hearing, but only advised student A that she did not have to respond to questions with which she was uncomfortable; the Board sat student A directly in front of them during the Board hearing, but sat the complainant behind a privacy screen, which made it difficult for the Board to see the complainant; and, the College failed to state a basis for any of the College's determinations throughout the process, including after the administrative hearing, board hearing, and appeal. OCR also determined that the case file that the board received prior to the hearing contained four written statements or summaries of the alleged incident from student A, while providing only the investigator's incomplete summary of the complainant's oral statement to her, which focused only on instances when the complainant's version of events deviated from student A's. Accordingly, OCR found that there was sufficient evidence to substantiate the complainant's allegation that the College discriminated against him, on the basis of his sex, by failing to respond appropriately to a complaint of sexual assault that student A filed against him on or about XXXXXXXX XX, XXXX.

On October 4, 2019, the College signed the enclosed resolution agreement (the Agreement) to remedy the compliance issues identified in this investigation. OCR will monitor the implementation of the Agreement. Upon the College's satisfaction of the commitments made under the Agreement, OCR will close the case.

⁴⁸ The vice president informed OCR that the College denied the complainant's request for a criminal trespass waiver based on information that student A may be on campus for a part of the XXXXXX.

⁴⁹ In addition, the complainant asserted to OCR that he and his attorney called the College multiple times because they had not received a response, despite informing the College that the XXXXXXXX needed a response by noon on XXXXX XX, XXXX. Ultimately, the Director of Public Safety denied the request at XXXX a.m. on XXXXX XX, XXXX. The complainant further asserted to OCR that the College did not respond to the complainant's requests to return to campus to retrieve his belongings from his dorm, which caused the complainant to send his friends to pack his belongings for him.

This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 College may not harass, coerce, intimidate, or discriminate against any individual because the individual 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 any questions regarding this matter, please contact Jessica Daye, Compliance Team Investigator, at (646) 428-3812 or jessica.daye@ed.gov, or Felice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/
Timothy C. J. Blanchard

Encl.

cc: Philip Garin, Esq. (via email)