Mr. Steven Litvack  
President  
Jersey College School of Nursing  
546 Route 46 West  
Teterboro, New Jersey 07608

Dear Mr. Litvack:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint, which was filed on August 21, 2013, against Jersey College School of Nursing (College), alleging discrimination on the bases of disability (Bipolar Disorder) and sex. The Complainant was a student at the Jacksonville, Florida campus nursing program (Program) during the spring 2013 semester. Specifically, the Complainant alleged the following:

a) She was sexually harassed when the Dean stated to her in a private meeting that he was her “husband” while she was at the school and she should only be concerned with making him happy.

b) She was subjected to disability harassment when both the Dean and one of her instructors on separate occasions questioned the Complainant about whether she should rethink becoming a nurse because of her disability.

c) She alleged that the hostile environment created by the sexual and disability-based harassment culminated with her dismissal from the Program.

LEGAL ISSUES

Issue One: Whether the College discriminated against the Complainant by failing to respond promptly and equitably to an incident of sexual harassment, thereby, subjecting her to a hostile environment, in noncompliance with the Title IX implementing regulation at C.F.R. §§106.8, 106.31.

Issue Two: Whether the College discriminated against the Complainant by failing to respond promptly and effectively to incidents of disability harassment, thereby, subjecting her to a hostile environment.

---

1 The complaint was originally filed against the Center for Allied Health; however, the name changed, during the course of the investigation, to Jersey College School of Nursing (College). The school will be referred to as the College throughout this document.
environment, in noncompliance with the Section 504 implementing regulation at 34 C.F.R §§ 104.4, 104.7, and 104.43.

In reaching its determination, OCR reviewed documentation submitted by the College. OCR also conducted interviews with the Complainant and College staff. OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the evidence is sufficient to support a conclusion that a recipient, such as the College, failed to comply with the laws and regulations enforced by OCR, or whether the evidence is insufficient to support such a conclusion. Based on the evidence obtained, OCR found sufficient evidence of compliance concerns regarding the College's procedures. Set forth below is a summary of OCR’s factual findings and conclusions.

LEGAL STANDARDS

Title IX Standards

The Title IX regulation at 34 C.F.R. § 106.31, 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 academic, extracurricular or other education program or activity operated by a recipient of Federal financial assistance. Sexual harassment of students, including sexual violence, is a form of prohibited sex discrimination. Sexual harassment is unwelcome conduct of a sexual nature that has the effect of interfering with, denying, or limiting, on the basis of sex, a student’s ability to participate in or to benefit from any education program or activity. Sexual harassment may include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. Thus, sexual harassment prohibited by Title IX can include conduct such as touching of a sexual nature; making sexual comments, jokes, or gestures; writing graffiti or displaying or distributing sexually explicit drawings, pictures, or written materials; calling students sexually charged names; spreading sexual rumors; rating students on sexual activity or performance; or circulating, showing, or creating e-mails or websites of a sexual nature. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Regardless of whether a formal complaint of sexual harassment has been filed, in order to ensure that there is not a hostile environment that denies or limits the affected students right to participate in or benefit from the institution’s program or activities, recipient institutions that know or reasonably should know about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the

2 The applicable legal standards described herein are more fully set forth in OCR’s 2011 Dear Colleague Letter on Sexual Violence, which is available at: http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html (Apr. 4, 2011); for further clarification, see “Questions and Answers on Title IX and Sexual Violence” (Apr. 29, 2014), which is available at: http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf. See also OCR’s Dear Colleague Letter on Harassment and Bullying, which is available at http://ww2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html (Oct. 26, 2010); and OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties at: http://www.ed.gov/about/offices/list/ocr/docs/shguide.html (Jan. 19, 2001).

3 Sexual violence includes rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.
Complaint, the age of the students involved, the size and administrative structure of the school, and other factors. However, in all cases, the investigation must be prompt, thorough, and impartial.

If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out responsibilities over students engages in sexual harassment and the harassment denies or limits a student’s ability to participate in or benefit from a school program on the basis of sex, the recipient is responsible for the discriminatory conduct. The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has “notice” of the harassment. If an OCR complaint alleges harassment by a recipient employee, the recipient receives actual notice and an opportunity to take corrective action before a finding of noncompliance is made.

The Title IX regulation at 34 C.F.R. § 106.9 requires that each recipient publish a statement (notice) that it does not discriminate on the basis of sex in its education programs or activities. The notice must state, at a minimum, that the recipient does not discriminate on the basis of sex in its education program or activity, including in admission to or employment in its education programs or activities. The notice should indicate that inquiries concerning Title IX may be referred to the Title IX coordinator or to OCR. The Title IX regulation at 34 C.F.R. § 106.9(b) requires that the notice of nondiscrimination be displayed prominently in each announcement, bulletin, catalog, or application form used in connection with its education program and activity and in recruitment of students or employees and it should include the name, office address, and telephone number for the designated Title IX coordinator.

The Title IX regulation at 34 C.F.R. §106.8(a) requires a recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the Title IX regulation, including any investigation of any complaint communicated to such recipient alleging its noncompliance or alleging any actions that would be prohibited by the Title IX regulation. The recipient must notify all its students and employees of the name, office address and telephone number of the appointed employee or employees. The Title IX coordinator must have knowledge of the requirements of Title IX, of the recipient’s own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the recipient.

The Title IX regulation at 34 C.F.R. §106.8(b), requires a recipient 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. In evaluating whether a recipient’s grievance procedures satisfy this requirement, OCR reviews all aspects of a recipient’s policies and practices, including the following elements that are necessary to achieve compliance with Title IX:

1. notice to students and employees of the grievance procedures, including where complaints may be filed;
2. application of the grievance procedures to complaints filed by students or on their behalf alleging sexual harassment carried out by employees, other student, or third parties;
3. provision for adequate, reliable and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
4. designated and reasonably prompt time frames for the major stages of the complaint process;
5. written notice to the complainant and alleged perpetrator of the outcome of the complaint; and
6. assurance that the school will take steps to prevent recurrence of any sexual harassment and remedy discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual harassment, including violence, the potential consequences for such conduct, and how the recipient processes complaints, the recipient’s Title IX grievance procedures should also include the following in writing:

1. a statement of the recipient’s jurisdiction over Title IX complaints;
2. adequate definitions of sexual assault and an explanation as to when such conduct creates a hostile environment;
3. reporting policies and protocols, including provisions for confidential reporting;
4. identification of the employee or employees responsible for evaluating requests for confidentiality;
5. notice that Title IX prohibits retaliation;
6. notice of a student’s right to file a criminal complaint and a Title IX complaint simultaneously;
7. notice of available interim measures that may be taken to protect the student in the educational setting;
8. the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint;
9. notice of potential remedies for students;
10. notice of potential sanctions against perpetrators; and
11. sources of counselling, advocacy and support.

The procedures for resolving complaints of sexual harassment should be written in language that is easily understood, be easily located, and should be widely distributed. It is permissible for a school to have either one grievance procedure that applies to all sex discrimination and harassment or separate procedures for discrimination and harassment. However, a recipient’s grievance procedures for handling discrimination complaints must meet the Title IX requirement of affording a complainant a prompt and equitable resolution. In addition, a school may have one grievance procedure for complaints by students and employees or separate procedures for complaints by students and complaints by employees.

In addition, recipients should provide training to employees about its grievance procedures and their implementation. All persons involved in implementing a recipient’s grievance procedures (e.g., Title IX coordinators, investigators and adjudicators) must have training or experience in handling complaints of sexual harassment, and in the recipient’s grievance procedures as well as applicable confidentiality requirements. In sexual violence cases in particular, the fact-finder
and the decision-maker also should have adequate training or knowledge regarding sexual violence. Recipients should also provide training about its grievance procedures and their implementation to any employees likely to witness or receive reports of sexual harassment; including teachers, recipient law enforcement unit employees, recipient administrators, recipient counselors, general counsels, health personnel, and resident advisors. Recipients need to ensure that their employees are trained so that they know to report sexual harassment to appropriate officials, and so that employees with the authority to address sexual harassment know how to respond properly.

Section 504 Standards

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) and (b)(1)(i)-(iv) provides that no person in the United States shall, on the basis of disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program governed by Section 504. Specifically, a recipient under any program to which Section 504 applies may not, directly or through contractual or other arrangements, on the grounds of disability: (i) deny an individual any service, financial aid, or other benefit provided under the program; (ii) provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program; (iii) subject an individual to segregation or separate treatment in any matter related to the receipt of any service, financial aid, or other benefit under the program; or (iv) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program.

Disability harassment under Section 504 includes intimidation or abusive behavior toward a student based on disability that is sufficiently serious that it creates a hostile environment by interfering with or denying a student’s participation in or receipt of benefits, services, or opportunities in the institution’s program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Once a college learns that disability harassment may have occurred, the college must investigate the incident promptly and respond appropriately. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action to end the harassment and prevent it from recurring and, where appropriate, remedying the effects on the student who was harassed. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out responsibilities over students engages in disability harassment that denies or limits a student’s ability to participate in or benefit from a school program the recipient is responsible for the discriminatory conduct. The recipient is, therefore, also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has “notice” of the harassment. If an OCR complaint alleges harassment by a recipient employee, the recipient receives actual notice and an opportunity to take corrective action before a finding of noncompliance is made.

The Section 504 implementing regulation, at 34 C.F.R. § 104.7 and the Title II implementing regulation at 28 C.F.R. § 35.107 require that a recipient designate a responsible employee to coordinate compliance with the statutes, as well as adopt grievance procedures that incorporate
due process standards and that provide for prompt and equitable resolution of complaints.

Further, the Section 504 implementing regulation, at 34 C.F.R. § 104.8 and the Title II implementing regulation, at 28 C.F.R. § 35.106, require that a recipient publish a notification stating that it does not discriminate on the basis of disability in the educational programs or activities which it operates.

The legal standards concerning grievance procedures under Title IX mentioned above are applicable under Section 504.

Hostile Environment Standard

OCR considers a variety of related factors to determine if a sexually or disability-based hostile environment has been created and also considers the conduct in question from both an objective and subjective perspective. In making this determination, OCR examines the context, nature, scope, frequency, duration, and location of harassing incidents, as well as the identity, number, age, sex (if relevant) and relationships of the persons involved. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. A single or isolated instance of sexual or disability-based violence may create a hostile environment. Even if the harassment/violence did not occur in the context of an education program or activity, a recipient must consider the effects of off-campus harassment/violence when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity because students often experience the continuing effects of off-campus harassment/violence while at school or in an off-campus education program or activity.

FACTUAL FINDINGS

RECIPIENT & COMPLAINANT BACKGROUND

The Complainant enrolled in the College’s Nursing program (Program) in 2011 at the Jacksonville, Florida campus. At the time of her enrollment, the Complainant did not identify herself as a student with a disability or seek any type of disability-related accommodations from the College.

Issue One: Whether the College discriminated against the Complainant by failing to respond promptly and equitably to an incident of sexual harassment, thereby, subjecting her to a hostile environment, in noncompliance with the Title IX implementing regulation at C.F.R. §§106.8, 106.31.

POLICIES AND PROCEDURES

Statement of Nondiscrimination

The College’s nondiscrimination statement states that applicants will be considered for admission without regard to race, ethnicity, religion, gender, national origin, age or veteran status. Disabilities will be considered only to the extent to which it may prevent applicants from
acquiring the knowledge and skills necessary to complete their program. The nondiscrimination statement as stated is not compliant with respect to individuals with disabilities and it does not include a prohibition of discrimination based on color.

Prior to the completion of OCR’s investigation, the College submitted a draft of an updated nondiscrimination statement, which states:

Jersey College does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities. The Director of Institutional Effectiveness has been designated to handle inquiries regarding the nondiscrimination policies. This individual can be reached at 546 U.S. Highway 46, Teterboro, NJ 07608, (201) 489-5836.

Title IX Coordinator and Section 504 Coordinator

The College’s President informed OCR that he is the designated Title IX and Section 504 Coordinator. He stated that he has received training on the requirements of Title IX and Section 504.

Discrimination and Harassment Policy

The College provided a copy of its Academic Catalog, which includes the College’s Discrimination and Harassment Policy. The policy states the College is committed to providing an environment that respects and encourages the development and growth of all students, faculty and staff. Discriminatory and harassing behaviors that unfairly or unlawfully interfere with an individual’s educational pursuits violate the College’s policies and procedures. Such forms of discrimination and harassment include, but are not limited to, discrimination or harassment on the basis of race, ethnicity, sex, gender identity, religion, sexual orientation, national origin, physical or mental disability, age, or military veteran status (individually and collectively, a protected status). The College also prohibits all forms of reprisals, or adverse or negative actions, taken against an individual because the individual has complained about alleged discrimination or harassment, or has participated as a party or witness in an investigation relating to such allegations.

The policy defines discrimination and harassment as follows: Discrimination is the unlawful and intentional act of unfair treatment of a person based on a protected status. Harassment is unwelcome, hostile, or inappropriate conduct directed toward an individual because of his or her protected status. Such conduct violates the College’s policies if it (i) has the purpose or effect of creating an intimidating, hostile, or offensive working, living, or learning environment for the affected individual; or (ii) substantially interferes with that individual’s working, living, or learning environment. This can include persistent comments or jokes about an individual’s religion, race, age, or gender; verbal behavior, including insults, remarks, epithets, or derogatory statements directed at an individual or group; nonverbal behavior, including graffiti, inappropriate physical advances short of physical violence; and assault, including physical

---

4 This draft statement has not been published as of the date of this document; therefore, the analysis is based on the published nondiscrimination statement.
violence or the threat of physical violence.

*Discrimination and Harassment Reporting*

The College’s policy states that individuals who believe that they have been harassed, discriminated or retaliated against in violation of Jersey College’s policies may attempt to resolve the concern informally or formally. Informal resolutions may involve direct communication by the claimant with the alleged violator or communication through a representative, including, but not limited to a selected colleague, faculty member or staff member. In the handling of informal complaints, concerns or inquiries about alleged acts, omissions, improprieties, and/or broader systemic problems, third-parties should listen, offer options, facilitate resolutions, informally investigate, or otherwise examine the issues independently and impartially and seek an appropriate resolution. If the matter cannot be satisfactorily resolved through such informal communications, a formal complaint should be initiated.

Formal resolutions of alleged incidents of discrimination, harassment, or retaliation require individuals to submit a Statement of Complaint. Formal complaints should be filed as soon as possible after the date of the alleged misconduct, but in no event later than six months after the alleged incident. The formal complaint should be submitted to the Campus Director or if the Campus Director is the party involved in the incident, to a Dean or a Program Chair. In the latter case, the Dean or Program Chair will forward the complaint to the President of Jersey College for investigation. All members of Jersey College’s community have an obligation to make sure that complaints of discrimination, harassment, sexual harassment, or retaliation are directed to the appropriate administrative personnel for investigation and evaluation. The Statement of Complaint must be written and include the following information: (i) the full name and address of complainant, who must be the individual claiming to be harmed by the discrimination; (ii) the name of respondent(s) and complainant’s relationship to the respondent (i.e. respondent is student, faculty member, staff member, etc.); (iii) the protected category or activity under which the complainant is filing the complaint; (iv) a clear and concise written statement of the facts that constitute the alleged discriminatory acts, harassing behavior, or retaliation, including pertinent dates and sufficient information to identify any other individuals who can provide information; (v) a statement by the complainant verifying that the information supporting the allegations of discrimination is true and accurate to the best of the complainant’s knowledge; and (vi) complainant’s signature. In addition, the complainant must attach all documentation supporting the occurrence of the incident to the Statement of Complaint.

*Discrimination and Harassment Investigation*

Upon receipt of a properly completed Statement of Complaint, the Campus Director (or the President if the Campus Director is the respondent) will investigate the circumstances of the complaint. As part of this process, the respondent will be notified of the complaint and will be provided with an opportunity to respond to the allegations. In addition, individuals with the information relevant to the complaint (as identified by the complainant or the respondent) will be interviewed. The investigation process should also include a review of all relevant evidence, which may include review of photographs, computer files, email accounts, voice mail records,
and other records. The purpose of the investigation is to establish whether there has been a violation of Jersey College’s policies with respect to discrimination, harassment, or retaliation. It is the responsibility of the investigator to weigh the credibility of all individuals interviewed and to determine the weight of information received during the course of the investigation. Conduct alleged to constitute discrimination or harassment will be evaluated according to the objective standard of a reasonable person. Based on the investigation, the investigator will determine whether the evidence supports the claim and if supported, implement appropriate remedies. Such remedies may include, among other things, reinstatement of a student, modification of academic records, agreement by the respondent to stop the behavior, a formal apology, training, counseling, and coaching regarding discrimination and harassment policies, disciplinary action, which could include a written reprimand placed in the respondent’s employment or academic file; loss of merit pay; employment or academic suspension; discharge or expulsion. Any party disciplined as an outcome of the complaint process who believes the discipline is unfair or violates personnel policies may grieve the discipline through appropriate grievance policies (See Institutional Grievance Process). If a claim is found to be unsupported and the investigator finds that the filing of the complaint was intentionally dishonest or made maliciously without regard for truth, the complainant will be subject to disciplinary action.

**Faculty Title IX and Section 504 Grievance Procedures/Complaint Reporting Process**

The procedures for faculty are located in the Faculty Handbook. They provide for such reports to be made to their immediate supervisor, up their supervisory chain, or an alternate, unidentified person if they feel uncomfortable with the former options. For complaints not filed in the supervisory chain, the procedures state that the complainant must also contact the President’s Office, but there is no alternate filing procedure delineated in circumstances where such a complaint may be brought against the President or a member of his office. Although these procedures are located in the Faculty Handbook, it is unclear how widely distributed these materials are and whether they are readily available to faculty on the College’s website. It does not state whether this procedure applies to all complaints alleging discrimination or harassment on the basis of sex carried out by students, other faculty, or third parties. The procedures do not state the evidentiary standard to be applied to the investigation.

The procedures provide an assurance that the College will make a prompt, thorough and impartial investigation. It also assures that it will take appropriate corrective action, and will handle problems promptly.

**Analysis and Conclusion**

As noted above, the College has a statement of nondiscrimination (as published in the academic handbook), which prohibits discrimination on the basis of race, ethnicity, religion, sex, national origin, age or veteran status. The College’s printed nondiscrimination statement incorrectly states that the College will take into consideration an applicant’s disability with respect to their ability to acquire the knowledge to complete the program. The College must publish and disseminate a corrected and approved notice of nondiscrimination as it relates to the admission of applicants with disabilities and that includes the prohibition of discrimination based on color.
The College’s President informed OCR that he is the designated Title IX and Section 504 Coordinator and he has received Title IX and Section 504 training. In order to avoid a conflict of interest, the College should appoint someone other than the President as the designated Title IX and Section 504 Coordinator(s). The College may appoint one person to handle the responsibility under both statutes or appoint two different individuals. The College will need to publish the name, title, and contact information (including physical address and telephone number) of the designated person(s).

OCR concludes that the College’s policies and procedures do not conform fully to OCR’s policy requirements.\(^5\) The Academic Catalog does not provide clear notice of where complaints may be filed—it lists several titles of individuals, but no specific contact person with specific contact information. It is not clear if these procedures apply to discrimination or harassment carried out by employees and third parties. The procedures as published do not include the address and the telephone number for the employee responsible for receiving complaints. The procedures do not include discrimination and harassment based on “color,” and do not state that oral complaints are permitted (only written complaints). The procedures use an incorrect standard that says harassment must “substantially” interfere with an individual’s working, living, or learning environment; rather than stating it must be sufficiently serious that it adversely affects a student’s ability to participate in or benefit from the school’s program. It indicates that discrimination and harassment can include “persistent” comments or jokes, which is misleading because the behavior does not have to be “persistent” to be harassing or discriminatory. Also, the procedures state that only the individual claiming to be harmed is allowed to file a complaint; rather than allowing a staff member or third party to file a complaint. The procedures state that the person filing the complaint must state the protected category or activity under which the complainant is filing the complaint without clarifying the meaning of this requirement. Furthermore, there are no designated timeframes for the major stages of the complaint investigation, and no assurance that the College will take steps necessary to prevent recurrence of harassment and to correct its discriminatory effects on the complainant and others, if appropriate, or interim steps to protect the complainant before the final outcome of the recipient’s investigation, if appropriate. The procedures do not explicitly identify the “preponderance of the evidence” as the standard used during the investigation and it does not state that the complainant and respondent will be provided with a written report of the outcome of the investigation. The procedures also lend itself to the possibility of retaliation as it states “If a claim is found to be unsupported and the investigator finds that the filing of the complaint was intentionally dishonest or made maliciously without regard for truth, the complainant will be subject to disciplinary action.” This language must be removed. Finally, the procedures do not include notice of a student’s right to file a criminal complaint and a Title IX complaint simultaneously, or explain how criminal complaints are handled (i.e., the role of law enforcement) and the effect of criminal complaints on either Title IX or Section 504.

OCR concludes that the procedures within the Faculty Handbook do not fully conform to OCR policy requirements. A search of the College’s public website did not provide access to the

---

\(^5\) OCR’s Revised Sexual Harassment Guidance, January 19, 2001, [http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html](http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html); Dear Colleague Letter, October 26, 2010, [http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html); and Dear Colleague Letter, April 4, 2011, [http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html)
Faculty Handbook or the grievance procedure therein. The procedure does not state that it applies to all complaints alleging discrimination or harassment on the basis of sex carried out by students, other faculty, or third parties. The procedure does not state the evidentiary standard, provide an equal opportunity for all parties to present witnesses and relevant evidence, provide designated and prompt timeframes for all major stages of a grievance, provide written notice of the outcome of the complaint to all parties, or provide assurances that the institution will take steps to prevent recurrence of harassment and to correct its discriminatory effects. Finally, the procedure does not explain how criminal complaints are handled (i.e., the role of law enforcement) and the effect of criminal complaints on either Title IX or Section 504.

**Alleged Sexually Harassing Incident**

The Complainant alleged that Dean 1 met with her on several occasions while he was the Program Chair. The Complainant stated that on the third time that she met with Dean 1, he took her into his office without a witness and she did not know why he wanted to meet with her. She stated that Dean 1 was talking very fast, told her that he had been watching her for some time, and told her he felt that she was manipulative. She reported to OCR that when she started crying at the meeting, he “backed off.” The Complainant stated that as they walked out of his office, he opened the door to the hallway and then stopped; he said “this may sound funny, but when you are here at the school I am your husband and I am the only one that you have to worry about pleasing.” After she responded “ok,” he fully opened the door and they both exited the room. The Complainant stated that she did not complain about the harassment because Dean 1 was the person responsible for hearing the complaint. She alleges there were no witnesses for this meeting.

The Complainant told OCR that the following day, after she forgot to bring her stethoscope to a clinical and was required to return to campus, Dean 1 told her to come with him. As she sat outside the office of Dean 1’s supervisor she overheard Dean 1 trying to convince the supervisor to terminate the Complainant because of the incident concerning the stethoscope. The supervisor stated that she would not terminate the Complainant, and Dean 1 stormed out of the supervisor’s office. The Complainant stated that “it was strange to be around him” afterwards.

The Complainant was dismissed from the Program effective July 30, 2013, following multiple absences from her practicum. The Complainant alleged her termination was a continuation of the sexual harassment. The Complainant did not provide any additional information in regards to alleged sexually harassing comments made to her nor did she allege specific acts of sexual harassment connected with the dismissal.

**Evidence Concerning Alleged Harassing Incident**

OCR interviewed Dean 1 whom the Complainant alleged was responsible for the sexual harassment. Dean 1 explained he was not the Dean at the time of the alleged incident and that his former title was Program Chair. He indicated that the person that was the Dean at that time (Dean 2) no longer works at the College. Dean 1 stated that he never made a comment to the

---

6 Dean 1 is the current Dean at the College, but was not the Dean at the time of the allegations. Dean 2, the former Dean at the time of the alleged incidents, no longer works for the College.
Complainant that she should think of him as her husband while at the school, and that as required by the College, he never met with the Complainant alone; he had a third party present for their meetings. He explained that his responsibility was to oversee the student’s progress. Dean 1 stated that he met with the Complainant on at least two occasions while she was enrolled and in both sessions they discussed her attendance.

OCR also interviewed the Student Services Coordinator (Coordinator), who confirmed that it is College policy to have a third person present for meetings between faculty and students. The Coordinator was present for a meeting between the Complainant and Dean 1 in August 2013, when the Complainant was no longer a student and asked the Dean to speak with her about the reasons for her termination. The Coordinator reported that the Complainant asked Dean 1 whether he “remember[ed] pulling [her] in [his] office, saying that [she] should think of [him] as [her] husband” and when the Complainant asked this question, Dean 1 responded, “what are you talking about?” According to the Coordinator, during the meeting, the Complainant started acting confused and became agitated when Dean 1 tried to focus the conversation on her attendance. The meeting ended when Dean 1 asked the Complainant to leave after she became hostile and stood up. Dean 1 directed the Coordinator to open the office door for the Complainant to leave. The Complainant just kept looking around and saying she could not find her keys or her phone. The Coordinator stated that she and Dean 1 both stated that the items were in her hand, and the Complainant looked confused.

The Complainant was terminated from the Program as alleged, Dean 1 told OCR that he did not make the decision to terminate the Complainant and that decision was the responsibility of Dean 2, who is no longer employed at the College. The Complainant did not allege, and the evidence does not establish, that any sexual comments, innuendo or gestures occurred in connection with the termination. Nor was there any other evidence that the termination was connected with conduct of a sexual nature.

Additionally, the Complainant does not contend and the evidence does not show that the Complainant’s absences were related to any sexually harassing incidents. Rather, in reference to her absences, the Complainant informed OCR that she assumed two of her absences were excused and she disputes one additional absence saying she was on campus but missed roll call. The evidence shows that the Complainant was counseled regarding her absences and that she was found to be off campus running errands or at lunch, and one counseling record shows that she admitted to returning to campus after lunch, but that she was in the restroom. The evidence does not show that the Complainant’s absences were due to any alleged harassment.

College’s Response to Alleged Harassment

The Complainant did not file a complaint with the College. The College received actual notice of the Complainant’s allegation from OCR in a letter dated September 19, 2013. The College’s President informed OCR that he investigated the allegation after receiving notice from OCR.

---

7 According to College records (including attendance records, a status form, and a counseling record) and the College Administrator, who had counseled the Complainant concerning her attendance, the Complainant was dismissed from the Program because of her attendance problems during a summer 2013 Practicum, which resulted in a second failure of a required course, and under College policies a second failure results in dismissal.
The investigation included interviews with the Campus Administrator, Student Services Coordinator, Dean 1, and an Instructor. It also included a thorough review of the Complainant’s academic file, including her application for enrollment, grades and promotion history, attendance records, counseling forms, records related to disability, and a search for requests for accommodation. In addition, an investigating team conducted a review of the personnel files of the individuals listed in the complaint and those who had any involvement with the Complainant (including the Dean, Instructor, Student Services Coordinator, and the Campus Administrator), which entailed an examination of student reviews of the employees, employee performance evaluations, and complaints or disciplinary letters or actions in the employees’ file. None of the employee files contained complaints or disciplinary letters/actions.

Analysis and Conclusion

Based on a review of the foregoing evidence, the College’s application of its grievance procedures do not fully conform to the Title IX standards. As discussed above, the College applied its grievance procedures in response to receiving notice of the instant complaint from OCR. The College conducted all steps of the investigation, including file reviews and interviews, between September 30, 2013, and October 7, 2013, which was prompt. The Complainant was not provided a chance to present evidence or witnesses to the College in connection with her claims. Witnesses interviewed by the College were given an opportunity to provide supporting witnesses; yet, the College did not interview the Complainant. Based on the College’s investigatory report, there are no indications the College gave written notice of the outcome and an opportunity for appeal to the parties. Therefore, there was a lack of involvement of the Complainant in the College’s investigation, whether through clarifying her allegation or providing testimony, offering supporting witnesses or evidence, or notice of the findings and an opportunity for appeal, these actions give rise to a failure to apply the procedures in the investigation to be “equitable” as required by the regulations.

Based on the preponderance standard, there is insufficient evidence to support a conclusion that a private meeting between the Complainant and Dean 1 occurred, or that in a conversation he referred to himself as her “husband” and told the Complainant she only needed to worry about pleasing him. Thus, the evidence is insufficient to demonstrate that the Complainant was subjected to a sexually hostile environment as alleged and any failure by the College to provide an equitable response did not result in the Complainant being subjected to a hostile environment.

Other Reported Sexual harassment Incidents

OCR inquired about other complaints of harassment at the College within the last three years and the College reported that there have been no other complaints of sexual harassment.

Issue Two: Whether the College discriminated against the Complainant by failing to respond promptly and effectively to incidents of disability harassment, thereby, subjecting her to a hostile environment, in noncompliance with the Section 504 implementing regulation at 34 C.F.R §§ 104.4, 104.7, and 104.43.

Alleged Disability Harassing Incident
The Complainant identifies herself as having Bipolar disorder. The Complainant stated that Dean 1 and her Instructor for XXXXXXXX (Instructor) discriminated against her on the basis of disability because on two separate occasions she was asked by both Dean 1 and the Instructor if she should be in Nursing because the stress of nursing could trigger her Bipolar disorder. The Complainant stated that she told Dean 1 that she was Bipolar because she wanted to let him know the medications she took could cause side effects. The Complainant also contends that her dismissal was an act of disability-based harassment.

**Evidence Concerning Alleged Harassing Incidents**

OCR interviewed Dean 1 and he denied ever being told that the Complainant was Bipolar and stated that he never had a conversation with the Complainant concerning whether Nursing might trigger symptoms of that condition.

OCR interviewed the Instructor, who stated that although she was not the Complainant’s clinical instructor, she had been present during some of the counseling the Complainant received because of her attendance. She stated that she did not know nor had she heard of the Complainant having a disability. She denied saying anything to the Student about her being Bipolar.

OCR notes that a memo authored by Dean 2 (no longer employed at the College) demonstrates that he was aware that the Complainant was taking medication because the memo mentions that the Complainant had attributed her confusion with the day of the week to her medication. However, the memo does not mention a disability.

Based on the above, there is no evidence of the Complainant being asked about her ability to remain in the Program because of her disability and the Complainant did not provide any evidence in support of this allegation; thus, the evidence does not corroborate that the alleged harassing incidents occurred.

With respect to the dismissal of the Complainant from the Program, the evidence shows that neither Dean 1 nor the Instructor made the dismissal decision. Rather, according to Dean 1, the dismissal decision was made by Dean 2. The Complainant does not contend that Dean 2 made any comments or engaged in any other conduct that constituted disability-based harassment. Further there is no evidence of any disability-based harassing incidents leading up to the dismissal of the Complainant from the Program.

Additionally, the Complainant does not contend and the evidence does not show that the Complainant’s absences were related to her disability or any alleged harassing incident based on disability. As noted above, the Complainant disputes one absence and contends that she assumed two of the absences were excused.

**College’s Response to the Alleged Disability-Based Harassment by Dean 1 and Instructor**

The Complainant did not file a complaint with the College regarding her allegation of disability harassment. Upon receiving notice of this complaint from OCR, the College immediately conducted an investigation of the Complainant’s allegations and found them to be
unsubstantiated. Details of the College’s investigation which was conducted simultaneously with the investigation of the aforementioned issue are discussed above.

**Analysis and Conclusion**

With respect to the College’s response to the complaint allegations, the College conducted one investigation of the Complainant’s allegations of sex and disability-based harassment. The noncompliance with OCR policy requirements under Title IX (discussed above) similarly apply under Section 504. OCR found that the College conducted all steps of the investigation, including file reviews and interviews, between September 30, 2013, and October 7, 2013, which was prompt. The Complainant was not provided a chance to present evidence or witnesses to the College in connection with her claims. Witnesses interviewed by the College were given an opportunity to provide supporting witnesses; yet, the College did not interview the Complainant. Based on the College’s investigatory report, there are no indications the College gave written notice of the outcome and an opportunity for appeal to the parties. Therefore, there was a lack of involvement of the Complainant in the College’s investigation, whether through clarifying her allegation or providing testimony, offering supporting witnesses or evidence, or notice of the findings and an opportunity for appeal, these actions give rise to a failure to apply the procedures in the investigation to be “effective” as required by the regulations.

Based on the preponderance of the evidence, there is insufficient evidence to support a conclusion that any disability-based statements, derogatory or otherwise, were made to the Complainant by Dean 1 or the Instructor in reference to her ability to succeed as a nurse. There is no evidence that the Complainant was dismissed because of her disability. Thus, there is no evidence that the Complainant was subjected to a disability-based hostile environment as alleged and any failure by the College to provide an effective response did not result in the Complainant being subjected to a hostile environment.

**Pre-Admission Inquiry**

OCR noted that the College’s application for admission includes two impermissible questions—“Are you taking any medication?” and “Do you have any limitations that would affect your ability to meet the technical standards?” The Complainant’s application for admission dated November 16, 2011, states that she takes multivitamins and “Celexa (anti-depressant).” She affirmed in her application that she does not “have any limitations that would affect [her] ability to meet the technical standards.” The application packet also includes a Student Health History and Physical Examination Record form and a section on the form titled “Physical Examination Affirmations,” asks for an examining physician’s signature affirming that the applicant has no medical condition that would prohibit him/her from participating fully in all activities and he/she is physically able to safely assume the role of a healthcare professional with direct patient contact.

**Resolution**

On August 25, 2014, the College agreed to implement the enclosed Resolution Agreement (Agreement), which commits the College to take specific steps to address the identified areas of
noncompliance. When fully implemented, the Agreement entered into by the College will resolve the issues of noncompliance.

The Agreement commits the College to the following:

1. Issuing an Anti-Harassment statement (Statement), approved by OCR, to all students, staff, and administrators.

2. Drafting a combined Notice of Nondiscrimination\(^8\) that prohibits discrimination based on race, color, national origin, sex, disability, and age, and identifies by name/title, address, and telephone number, the employee(s) designated to oversee compliance with Title VI, Title IX, Section 504 and the Age Discrimination Act (Age Act).

3. Revising for OCR for review and approval, all policies applicable to sexual harassment and disability harassment complaints and investigations.

4. Implementing annual training of all staff on the College’s revised Policies and how to recognize and appropriately address possible sexual harassment and violence under Title IX and Section 504.

5. Compiling a report of all complaints of disability harassment and sexual harassment received by the College during the 2014-2015 school year.

6. Reviewing and revising, in accordance with the requirements of Sections 504, its policies, procedures, and application forms relating to the admission of students.

7. Initiating annual training of all admissions staff on the Section 504 requirements that all prospective students, regardless of disability, must be treated in a nondiscriminatory manner in the application, admission and enrollment process and on the Section 504 prohibitions concerning inquiries into whether an applicant is a person with a disability or has a health condition.

OCR will closely monitor the College’s implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the College has fulfilled the terms of the Agreement and is in compliance with Title IX with regard to the issues raised. As stated in the Agreement, if the College fails to fully implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9 and 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the College written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

---

\(^8\) For guidance regarding drafting a statement of nondiscrimination, see OCR’s website at [http://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html](http://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html)
This concludes OCR’s investigation of the complaint and 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 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 he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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

This concludes OCR’s consideration of this complaint. If you have any questions about this letter, please contact Wendy Gatlin, Compliance Team Leader, at (404) 974-9356.

Sincerely,

/s/

Cynthia G. Pierre, Ph.D.
Regional Director