



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

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

REGION V
ILLINOIS
INDIANA
IOWA
MINNESOTA
NORTH DAKOTA
WISCONSIN

June 4, 2015

Dr. Michael R. Lovell
President
Marquette University
Zilber Hall 441
Milwaukee, WI 53233

OCR Case No. 05-14-2516

Dear Dr. Lovell:

The U.S. Department of Education's Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against Marquette University. The Complainant alleges that the University discriminated against her on the basis of sex by failing to respond promptly and equitably to her multiple reports of sexual harassment by another University student (Student A) during the XXXXXX semester. The Complainant also alleges that the University failed to take appropriate action after learning that Student A and his friends repeatedly retaliated against her for reporting sexual harassment, and that the University threatened to retaliate against her by withholding her diploma if she continued to complain of sexual harassment and retaliation.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681–1688, and Title IX's implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. Title IX also prohibits retaliation.

OCR investigated this complaint by interviewing the Complainant, her parents, and University staff. OCR also reviewed documents submitted by both parties. For the reasons set out below, OCR finds by a preponderance of the evidence that the University has violated Title IX with respect to several of the allegations in this complaint.

University Policies and Procedures

The University maintains a Sexual Misconduct Policy,¹ which defines sex discrimination, sexual harassment, and consent. The Policy is available online and is easily accessible to members of the University community. It provides that the University "will take prompt corrective action and impose appropriate sanctions" to end sexual harassment and prevent it from recurring. The Policy applies on and off campus, and encompasses, students, staff, and third parties. The Policy provides the name, title, and contact information for the Title IX Coordinator.

¹ http://www.marquette.edu/osd/policies/sexual_misconduct_policy.shtml.

The Sexual Misconduct Policy provides clear instructions for filing a complaint of harassment. It advises individuals that they have the right to pursue a police report independent of the University's Title IX process. The Policy describes interim measures available to victims, such as counseling, modification of living arrangements, interim suspension, no-contact orders, and changes in academic schedules. The Policy lists a range of possible sanctions and notes that confidentiality will be preserved to the extent possible. Retaliation is prohibited.

The student conduct process is described in both the Sexual Misconduct Policy and the Student Code of Conduct.² Both parties have an equal opportunity to participate in a student conduct hearing, and to bring a representative or advocate. The University disallows evidence of past relationships between parties. The Code sets out a mechanism to avoid conflicts of interest in the panel members assigned to hear a case. The University applies the preponderance of the evidence standard. Both parties are to receive written notice of the outcome of a hearing, and have an equal right to appeal. There are no informal hearings or mediations allowed in cases of sexual misconduct.

In addition, the University maintains a Sexual Misconduct resources page that provides links to the above-mentioned policies, resources within the University and the community, and information about the Title IX Coordinator.³

The University's Title IX policies and procedures do not include designated and prompt timeframes for the investigation of complaints of sexual harassment. Although the Code of Conduct sets out timeframes for the appeals process, it does not do so for the other major stages of the investigation. The policies and procedures also do not contain a provision requiring the University to notify students of the ongoing status of an investigation.

The University's nondiscrimination policy, which appears prominently on the University website,⁴ states that the University prohibits discriminate on the basis of gender. The policy applies in all University programs and activities, including employment and admissions. The policy does not specifically state that discrimination on the basis of gender is prohibited by Title IX, or that inquiries about gender discrimination may be referred to the Title IX Coordinator or to OCR. The policy lacks contact information for the Title IX Coordinator.

Statement of Facts

The Complainant and Student A dated XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XX. According to the
Complainant, Student A sought to reestablish their relationship over the following weeks,
and became belligerent and verbally abusive toward her when she declined. On XXXXXXXX
she reported to the University's Department of Public Safety (DPS) XXXXXXXXXXXX

² http://www.marquette.edu/osd/policies/conduct/conduct_procedures.shtml.

³ <http://www.marquette.edu/sexual-misconduct/sexual-misconduct-policy.shtml>.

⁴ <http://www.marquette.edu/tools/non-discrimination.php>.

XXXXXXXXXXXXXXXXXX told OCR that if two individuals subject to a Stay-Away Directive find themselves at the same location and it becomes necessary for one of them to leave, the University expects the party arriving second to leave; the person who arrived first may stay.

Stay-Away Directives are reciprocal, meaning that the Complainant was likewise issued a written directive not to contact Student A. After issuing the Stay-Away Directive, the University did not offer to provide the Complainant with any additional, interim remedies (e.g., escort services, academic support, housing assistance) beyond the information that DPS provided to her initially.

Alleged Ongoing Harassment

The Complainant contends that Student A engaged in a pattern of continued harassment against her after she reported the XXXXXX incident. She asserts that some of Student A's harassment violated the Stay-Away Directive, and that other acts of harassment were permissible under the terms of the Stay-Away Directive, revealing it to be ineffective at protecting her from ongoing harassment and retaliation by Student A and his friends. The Complainant contends that although she reported these encounters to the University, it did not take sufficient steps to protect her.

XXXXXXXXXXXXXXXXXXXX

On XXXXXXX, the Complainant and a friend went to a local bar called XXXXX in the evening. The Complainant told OCR that she saw Student A at the bar, and so she and her friend left and went to a different bar, called XXXXXXX. The Complainant told OCR that she later saw Student A at the second bar. Although he did not attempt to speak with her, she said that he stayed within about ten feet of her for the rest of the evening.

On that same date, a friend of the Complainant's, Student D, told the Complainant that Student A had approached her to discuss the Stay-Away Directive. In a written statement that OCR reviewed, Student D informed the University that she replied saying she did not want to discuss the matter, but that Student A "pressed me more." Student D noted in her written statement that Student A called her again on XXXXXX XX, again seeking to discuss the Complainant and the Stay-Away Directive.

XXXXXXXXXXXX Game

On XXXXX, the Complainant attended a University XXXXXXX game with several friends. She told OCR that tickets for the game were general admission, and that there were not assigned seats. She noticed that while she was attending the game, Student A arrived and sat XXXXXXX behind her XXXXXXX. The Complainant told OCR that there were many available seats, and that she felt that Student A sat near her deliberately in order to intimidate her.

The XXXXXXXX also said he told the Complainant on XXXXX that there was no evidence that Student A had violated the Stay-Away Directive, as mere “incidental contact” is not considered a violation. The University’s narrative to OCR states that Student A’s encounters with the Complainant “were deemed incidental and not substantial enough to conduct additional conduct hearings.”

XXXXXXXXXXXXXXXXXXXX

On XXXXX, the Complainant called DPS regarding an incident that occurred at the XXXXXXXXXXXX. She informed DPS that she was attending a XXXXX game at the XXXX and noticed that Student A sat down at a table near her. She waited approximately 20 minutes to see if he would leave, and when he did not, she called DPS. The Complainant told OCR that she waited outside for an officer to arrive, as the dispatch officer had told her to do. An officer arrived in approximately 40 minutes. The DPS report states that the Complainant told the officer that the XXXX XXXXXXXX had recently strengthened the Stay-Away Directive, but notes that she was unable to produce a copy.

According to DPS’s written report, Student A told DPS that the Complainant was trying to set him up by going to events that he regularly attended, such as XXXX at the XXXXX. The XXXXXXXXXXXX told OCR that video footage showed that the Complainant had placed herself in an area that Student A would have to pass in order to leave the Annex. The Complainant responds to this assertion by pointing out that she waited for an officer where DPS dispatch told her to wait, and that there was only one door to that area of the XXXX, so it was inevitable that Student A would have used that door if he left.

On XXXX, the XXXXXXXX sent Student A an e-mail clarifying the Stay-Away Directive. The e-mail states, “You will not remove yourself from situations just because [the Complainant] is present, but will do anything you can to create the most distance between you and her to avoid further reported incidents.”

XXXXXXXXXXXXXXXXXXXX

On XXXXXXX, the Complainant told OCR that she was studying in the XXXX when she noticed Student A entering the room across from her. She called DPS because Student A did not leave, as she thought he was required to do under what she believed was a revised Stay-Away Directive. The DPS report shows that the Complainant again referenced the revised Stay-Away Directive to the DPS officer, but was unable when requested to produce a copy of it. The Complainant contends that DPS was unable to assist her on both XXXX and XXXXX because the XXXXXXXX had refused to provide her with a copy of the revised Stay-Away Directive that he issued on XXXXXXXX. The DPS report says the officer told OCR that he could not force Student A to leave the area because the XXXXXXXX had told him he need not leave an area simply because the Complainant is there. Student A again complained to DPS that the Complainant was harassing *him*.

Revised Stay-Away Directive

The Complainant requested another meeting with the XXXXXX on XXXXXX. The XXXXXXXXXXXXX issued on that date a written revised Stay-Away Directive. It is addressed to Student A, and opens: “this letter is an attempt to clarify the requirements for your stay-away order.” The letter continues: “You are required to remove yourself from any situation wherein you may have any contact with [the Complainant]. Example: if you and [the Complainant] find yourselves in close proximity (despite who arrives first), you are required to remove yourself from the area immediately.” On the same date, the XXXXXXXXXXXXX wrote a letter to the Complainant stating, “it is imperative that you not engage [Student A] in any campus venue....[Student A] has indicated that you have attempted to create casual contact....[Student A] has advised this office of his intent to file a harassment complaint, I want you to be mindful of your actions as it relates to these matters.”

The Complainant told OCR that when the XXXXXXXXXXXXX handed her the letter, he told her that if she continued filing harassment complaints against Student A, she could be charged with harassment herself, and that this could cause her to lose her diploma. In his interview with OCR, the XXXXXXXX denied making this remark.

On XXXXXXXXXXX, the XXXXXXXXXXXXX held a meeting with the Complainant. According to the Complainant, the XXXX “cautioned me to be careful about what I was doing and where I was going.” OCR asked the XXXX whether she made these comments, and the XXXX could not recall. The XXXX said, though, that she would have indicated that Student A was free to continue filing harassment complaints against her, and that the Complainant should be aware of this. During her interview with OCR, the XXXX stated that the Complainant “is very emotional” and “repeats herself a lot.” The XXXX also told OCR that the Complainant “was having a hard time moving on.”

XXXXXXXXXXXXXXXXXX

The final alleged incident of harassment occurred on XXXXXXXXXXX, the day that Student A and the Complainant graduated from the University. As part of the graduation weekend, the University offered a XXXXXXXXXXXXX to seniors. The Complainant informed OCR that her brother has a XXXXXXXXXXXXX, and that her family therefore requested in advance to have seating in the XXXXXXXX of the XXXXXX. The Complainant told OCR that neither Student A nor his family members have any apparent XXXXXXXXXXXXX, yet they sat in the XXXXXXXX near the Complainant. The Complainant believes that Student A—who knew of Complainant’s XXXXXXXXXXXXX—directed his family there in order to make his presence known, as a means of intimidation. The Complainant did not inform administrators of the incident.

Student A's June 2014 Letter to the Complainant

The Complainant informed OCR that several weeks after she graduated, she received a parcel in the mail from Student A. It contained a letter XXXXXXXXXXXXXXXX
XX
XXXXXXXXXXXXXXXXXXXX.

XX
XX
XX
XX
XX
XX
XX
XX.

Applicable Legal Standards

OCR investigated the alleged discrimination and retaliation in this case consistent with federal statutory authority, the Department's regulations, policies, and pertinent case law.¹⁰ The Title IX regulation, at 34 C.F.R. § 106.31(a), provides generally that, except as provided elsewhere in the regulation, no person shall on the basis of sex or gender be excluded from participation in, denied the benefits of, or subjected to discrimination in education programs or activities operated by recipients of Federal financial assistance.

The Title IX regulation, at 34 C.F.R. § 106.8(b), provides that a recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action which would be prohibited by the regulation.

The Title IX regulation, at 34 C.F.R. § 106.8(9), provides that a recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex or gender in

¹⁰ The applicable legal standards described herein are more fully discussed in OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (2001 Guidance) dated January 19, 2001, and found online at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>, OCR's 2011 Dear Colleague letter on Sexual Violence (2011 DCL), dated April 4, 2011, which is available online at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>, and OCR's "Questions and Answers on Title IX and Sexual Violence" (2014 FAQs) dated April 29, 2014, which is available online at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

the educational program or activity which it operates, and that it is required by Title IX and this part not to discriminate in such a manner.

The regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d–2000d-7, at 34 C.F.R. 100.7(e), is incorporated by reference into Title IX at 34 C.F.R. §106.71. Under Title IX a recipient is prohibited from retaliating against an individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a complaint, testified, assisted or participated in any manner in an investigation, hearing or proceeding under this part.

Harassment on the Basis of Sex or Gender

Under Title IX, schools that receive Federal financial assistance are responsible for providing students with a nondiscriminatory educational environment. Sexual or gender-based harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual or gender-based harassment is unwelcome conduct of a sexual nature. Sexual or gender-based 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. Sexual or gender-based harassment of a student creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program or activity.

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. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Conduct is unwelcome if the student did not request or invite the conduct and regarded it as undesirable or offensive. OCR considers the conduct in question from both an objective perspective and the subjective perspective of the person allegedly subjected to harassment.

To establish a violation of the Title IX regulations prohibiting sexual or gender-based harassment, OCR must find based on the totality of the circumstances that the student was subjected to a sexually hostile environment, specifically unwelcome conduct of a sexual or gender-based nature in a school-related program or activity that was sufficiently serious to deny or limit the student's ability to participate in or benefit from the corporation's program. These circumstances include the context, nature, scope, frequency, duration, and location of the incidents, as well as the identity, number, age 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. Indeed, a single or isolated incident of sexual or gender-based harassment may create a hostile environment if the incident is sufficiently severe. In assessing whether a student was subjected to a sexually hostile environment, OCR considers the relationship between the alleged harasser and the subjects of the harassment.

Once a recipient knows or reasonably should know of possible sexual or gender-based harassment, it must take immediate and appropriate action to investigate or otherwise

determine what occurred. If an investigation reveals that sexual or gender-based harassment created a hostile environment, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility, regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. A recipient has notice of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment.

Even if the sexual or gender-based harassment did not occur in the context of an education program or activity, a recipient must consider the effects of the off-campus sexual or gender-based harassment when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity because students often experience the continuing effects of off-campus sexual or gender-based harassment while at school or in an off-campus education program or activity.

Sexual or Gender-based Harassment Grievance Procedures

The Title IX regulation, at 34 C.F.R. § 106.8(a), provides that a recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including, but not limited to, any investigation of any complaint communicated to it alleging noncompliance with Title IX (including allegations that the recipient failed to respond adequately to sexual or gender-based harassment). Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual or gender-based harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. This provision further requires that the recipient notify all its students and employees of the name, office address and telephone number of the employee or employees so designated.

In evaluating whether a school's grievance procedures satisfy this requirement, OCR will review all aspects of a school's policies and practices, including the following elements that are critical to achieve compliance with Title IX.

- notice to students, parents of elementary and secondary students, and employees of the procedure, including where complaints may be filed;
- application of the grievance procedures to complaints filed by students or on their behalf alleging harassment carried out by employees, other students, or third parties;
- provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and other evidence;
- designated and reasonably prompt timeframes for the major stages of the complaint process;¹¹

¹¹ OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. OCR has noted that, based on its experience in typical cases, there is a 60-calendar day timeframe for investigations. "Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. OCR

- written notice to the parties, complainant and alleged perpetrator, of the outcome of the complaint; and
- an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the school processes complaints, a school's Title IX grievance procedures should also explicitly include the following in writing, some of which themselves are mandatory obligations under Title IX.

- A statement of the school's jurisdiction over Title IX complaints;
- Adequate definitions of sexual or gender-based harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;
- Reporting policies and protocols, including provisions for confidential reporting;
- Identification of the employee or employees responsible for evaluating requests for confidentiality;
- Notice that Title IX prohibits retaliation;
- Notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
- Notice of available interim measures that may be taken to protect the student in an educational setting;
- The evidentiary standard that must be used (preponderance of the evidence) i.e., more likely than not that sexual violence occurred in resolving a complaint;
- Notice of potential remedies for students;
- Notice of potential sanctions against perpetrators; and
- Sources of counseling, advocacy and support.

In some situations, if the school knows of incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents. The specific steps in a recipient's investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. At the conclusion of a school's investigation, both parties must be notified, in writing, about the outcome of the complaint, i.e., whether harassment was found to have occurred.

When taking steps to separate an alleged target of harassment from the alleged perpetrator during and subsequent to an investigation, a school should minimize the burden on the complainant, and thus should not, as a matter of course, remove the complainant from his or her classes while allowing the alleged perpetrator to remain. Additionally, during the course of a school's investigation, school officials should notify the complainant of his or her right

recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks. A school may need to stop an investigation during school breaks or between school years, although a school should make every effort to try to conduct an investigation during these breaks unless so doing would sacrifice witness availability or otherwise compromise the process." See F-8, in "Questions and Answers on Title IX and Sexual Violence."

to file a criminal complaint and should not dissuade a victim or his or her parent from doing so during or after the school's internal Title IX investigation. For instance, if a complainant wishes to file a police report, the school should not tell the complainant that it is working toward a solution and instruct, or ask, the complainant to wait to file the report. A school may also be required to provide other services to the student who was harassed if necessary to address the effects of the harassment on that student.

If a recipient delays responding to allegations of sexual or gender-based harassment or responds inappropriately, the recipient will have violated Title IX by failing to provide a prompt and equitable response and the recipient's own actions or inaction may subject the student to a hostile environment, in violation of Title IX. Under such circumstances, the recipient will be required to remedy the effects of both the initial sexual or gender-based harassment and the effects of the recipient's failure to respond promptly and appropriately.

Depending on how widespread the harassment was and whether there have been any prior incidents, the school may need to provide training for the larger school community to ensure that students, parents, and teachers can recognize harassment if it recurs and know how to respond.

Finally, the recipient should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. At a minimum, the recipient's responsibilities include making sure that the harassed students and their families know 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.

Retaliation

A prima facie case of retaliation is established when it is determined that (1) an individual engaged in a protected activity (opposed a discriminatory policy, asserted protected rights, or participated in an OCR complaint or proceeding); (2) the recipient knew of this activity; (3) the recipient took an adverse action contemporaneous with or subsequent to the protected activity; and (4) there is an inferable causal connection between the protected activity and the adverse action. In considering whether an individual has been subjected to an adverse action, OCR evaluates whether the recipient's action significantly disadvantaged the individual and whether the challenged action might reasonably have been expected to deter or preclude the individual from engaging in further protected activity. OCR considers whether the alleged adverse action caused lasting harm or had a deterrent effect. Merely unpleasant or transient incidents are not considered adverse.

If all of the elements of a prima facie case of retaliation are met, OCR then considers whether the recipient presented a legitimate, non-retaliatory justification for taking the adverse action, and whether the reason is a pretext for retaliation. Pretext may be shown by evidence demonstrating that the explanation for the adverse action is not credible or believable or that

XXXXXXX. However, the evidence shows that he disputed the length of time, as well as the use of force. The XXXXXXXXXX—who was one of two hearing officers for the case—told OCR that the length of time the Complainant was detained was relevant information in determining the appropriate sanction.

The duration of the detention and the use of force are relevant circumstances that should also have been considered in determining what steps would be necessary to end the harassment, eliminate the hostile environment, prevent the harassment from recurring, and remedy its effects. The difference between XXXXXXXXXXXXXXXX XXXXXXXX is substantial; the use or absence of physical violence also is an important fact for determining an appropriate response under Title IX. The XXXXXXX XXXX nevertheless conceded that she and her fellow panelist made no findings as to the duration of the detention or the use or absence of physical force.

The University's limited, ineffective response

As a result of the University's failure to conduct a thorough and adequate investigation of Student A's conduct on XXXXXXXX, and to make a determination as to what occurred, the actions it took in response to the complaint were not adequate. Specifically, the University failed to assure that the Complainant would be free from further harassment, and would receive appropriate remedies (e.g., escort service, appropriate counseling, housing support, academic services) both during the investigation and after the University's final determination. The University notes that in response to Complainant's appeal of the probation sanction it modified the sanction to suspension in abeyance, but the evidence suggests that there was no practical difference between this and probation. The University allowed Student A to remain on campus and continue to encounter the Complainant in academic and social settings. Both sanctions served as warnings only; they were not accompanied by actions that were reasonably calculated to end the harassment (e.g., an effective no-contact order) and did not in fact prevent the harassment from recurring.

The University's failure to address Student A's ongoing harassment of the Complainant

The University allowed the hostile environment to persist by failing to put an end to Student A's continued harassment of the Complainant. The Complainant provided credible evidence, with corroboration from witnesses, of over a half-dozen episodes over the spring semester when Student A seemed to be following her. She perceived these encounters as his efforts to intimidate her and remain close to her, notwithstanding the Stay-Away Directive and her stated desire to end their relationship. Instead of viewing each incident separately and determining whether, standing alone, the incident was severe, the University should have evaluated the totality of the circumstances, including the prior incident and the persistent, ongoing nature of the harassment. Such an evaluation would have allowed it to determine if the conduct was sufficiently serious so that it interfered with or limited the

Complainant's ability to participate in or benefit from the University's program or activity.

University staff informed OCR that they did not find the Complainant's reports of harassment to be credible. However, the University formed this conclusion without considering corroborating evidence that the Complainant provided. She provided written evidence to the University that Student A had stalked another Marquette student after the end of a romantic relationship. OCR asked XXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXX about this evidence, but neither could recall whether they considered it. Moreover, the University did not consider that the Complainant initially requested the Stay-Away Directive and repeatedly asked the University to strengthen it, whereas Student A expressed his discomfort with the directive in a written statement, stating that he would like to speak to the Complainant. In view of the University's failure to consider this evidence, OCR rejects the University's justification for not taking prompt action to end the reported ongoing harassment.

Further, following the Complainant's repeated complaints of harassment, the University failed to strengthen the Stay-Away Directive or tailor it to the circumstances of the case. The University did not modify the Stay-Away Directive until approximately six weeks after the first report of harassment. When the XXXXX XXXXXX eventually agreed to issue a revised Stay-Away Directive, the evidence indicates that it was unclear, and that it was not reduced to writing in time to address several additional harassing incidents. OCR finds that the University's delays and failure to take appropriate responsive action subjected the Complainant to a hostile environment in violation of Title IX.

Retaliation

OCR also considered whether the University retaliated against the Complainant by threatening to withhold her diploma and pursuing student conduct charges against her for allegedly violating the Stay-Away Directive.

The evidence indicates that the Complainant engaged in a protected activity by reporting the Complainant's sexual harassment on XXXXXXXX to DPS. She engaged in additional protected activities with each report of harassment. OCR assumes for purposes of analysis that threatening to withhold the Complainant's diploma and subjecting her to a conduct hearing on charges of violating the Stay-Away Directive amount to adverse actions. The proximity in time between the protected activities and the adverse actions creates a causal connection.

Threatening to withhold the Complainant's diploma

OCR did not find sufficient evidence to establish that the University threatened to withhold the Complainant's diploma. The Complainant contends that this threat was made verbally, rather than in writing, by the XXXXXXXX on XXXXX. The XXXX XXXXXXXXXXXX denies having made this statement, and OCR was unable to find

corroborating evidence to support it. As such, the evidence is insufficient to establish that the University retaliated against the Complainant in this regard.

Charging the Complainant with violating the Stay-Away Directive

With respect to charging the Complainant with violating the Stay-Away Directive, the University asserts that it filed conduct charges and required her to participate in a conduct hearing based on a DPS report filed by two students, Students B and F. Those students filed a DPS report asserting that the Complainant had violated the Stay-Away Directive by approaching their table in the cafeteria. These charges proved to be unfounded, and were dismissed at the hearing. The evidence corroborates that Students B and F indeed filed the DPS report in question.

OCR nevertheless considered whether the University's explanation is a pretext for retaliation. The University's practice is to file conduct charges whenever it receives a credible report of harassment. The University followed that practice in the Complainant's case, by filing conduct charges based on the report of Students B and F. However, the University did not follow that practice in Student A's case, failing to charge him with harassment despite repeated reports by Student A. This inconsistency could suggest that the University's explanation is not legitimate.

Although the University's behavior was inconsistent in this respect, OCR found no other evidence of retaliation. The evidence indicates that the University filed harassment charges against the Complainant but not Student A not in retaliation, but because it found the Complainant not credible, and because it found her reports of Student A's harassment to involve "incidental contact" not warranting further conduct charges. However, as indicated above, the University assessed the parties' credibility without considering critical evidence. Moreover, the University should have considered Student A's harassment in its totality, rather than solely as individual acts. While OCR therefore finds that the University has a legitimate, non-retaliatory, non-pretextual reason for its actions, and that the evidence is insufficient to establish that the University retaliated against the Complainant as alleged, OCR also finds that the University's failure to pursue the Complainant's conduct charges likely amplified the hostile environment.

Title IX Policies & Procedures

The Title IX regulation, at 34 C.F.R. § 106.8(b), provides that a recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action which would be prohibited by the regulation. The University's Title IX policies and procedures do not comply with section 106.8(b) in two respects. First, they do not include designated and prompt timeframes for the investigation of complaints of sexual harassment. The Code of Conduct sets out timeframes for the appeals process, but does not do so for the other major stages of the investigation. Second, the policies and procedures do not contain a provision requiring the University to notify students of the ongoing status of an investigation.

In addition, the University is not in compliance with 34 C.F.R. § 106.8(9) in that the University's notice of nondiscrimination does not specifically state that sex discrimination is prohibited by Title IX, or that inquiries about sex discrimination can be referred to the Title IX Coordinator or to OCR. The notice does not provide the name and contact information for the Title IX Coordinator.

Conclusion

The evidence establishes that the Complainant notified the University of gender-based harassment, including the XXXXXX assault and the ongoing harassment by Student A. The evidence indicates that the Complainant's ability to participate in and benefit from the University's educational program was adversely effected by the harassment. The evidence further indicates that the University failed to take appropriate steps to investigate the XXXXXXXX incident and determine what occurred (i.e., investigate the circumstances of the assault), failed to offer and provide appropriate interim measures to protect the Complainant, and failed to take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, prevent the harassment from recurring, and remedy its effects. The University's failure to do so allowed the Complainant to continue to be subjected to a hostile environment. OCR therefore finds by a preponderance of the evidence that the University has violated Title IX.

The enclosed Resolution Agreement is aligned with the complaint allegations and the applicable legal standards. OCR will monitor the University's implementation of the Agreement. We look forward to receiving initial documentation from the University by July 30, 2015.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information 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,

Page 23

personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

We wish to thank you and your staff for the cooperation extended to OCR during our investigation. In particular, we would like to thank XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX. If you or your staff have any questions about this matter, please do not hesitate to contact Ms. Amy A. Truelove, Senior Equal Opportunity Specialist, at 312-730-1610.

Sincerely,

Aleeza Strubel
Supervisory Attorney

Enclosure