



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

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

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June 12, 2015

Dr. Gregory S. Woodward
President
Carthage College
2001 Alford Park Drive
Kenosha, WI 53186-5593

Re: OCR #05-15-2053 and #05-15-2086

Dear Dr. Woodward:

On December 15, 2014, the U.S. Department of Education (Department), Office for Civil Rights (OCR) received a complaint of discrimination on the basis of sex against Carthage College (College). On January 7, 2015, OCR received a second complaint of discrimination on the basis of sex against the College.

Specifically, Student 1, the complainant in 05-12-2053, alleged that the College discriminated against him on the basis of sex by failing to promptly and equitably respond to his complaint of sexual harassment by a College student (Student 3) during the fall 2014 semester.

Student 2, the complainant in 05-15-2086, alleged that the College discriminated against him on the basis of sex by failing to promptly and equitably respond to his complaint of sexual harassment by Student 3 during the Fall 2014 semester. Student 2 also alleged that because he filed a complaint of sexual harassment in Fall 2014 the College retaliated against him when a) in December 2014 the Dean of Students withdrew his offer to write a letter of recommendation, and b) in January 2015 the President removed Complainant 2 from the President's Task Force on Innovative Student Learning.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex. Title IX also prohibits retaliation for activities protected under Title IX. As a recipient of Federal financial assistance from the Department, the University is subject to Title IX.

During its investigation, OCR reviewed documentation provided by Student 1, Student 2 and the College, and interviewed Student 1 and Student 2 and pertinent College employees. After carefully considering all of the evidence, OCR has determined that the preponderance of the evidence supports a finding that the District violated Title IX by failing to provide an equitable resolution to Student 1 and Student 2's complaints of sexual harassment. OCR also determined

that the evidence is insufficient to establish that the College retaliated against Student 2 as alleged. The bases for OCR’s determinations are set forth below.

Legal Standards and Policy Guidance¹

Sexual Harassment

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

Under Title IX, schools that receive Federal financial assistance are responsible for providing students with a nondiscriminatory educational environment. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual 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.

¹ 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>.

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.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that sexual 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 harassment did not occur in the context of an education program or activity, a recipient must consider the effects of the off-campus sexual 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 harassment while at school or in an off-campus education program or activity.

Sexual 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 harassment). Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual 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;²
- 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 harassment, 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 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;

² OCR evaluates on a case-by-case basis whether the resolution of sexual harassment 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 recognizes that the investigation process may take longer 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."

- 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 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. Even if a criminal investigation is ongoing, a school must still conduct its own Title IX investigation.

For Title IX purposes, if a student requests that his or her name not be revealed to the accused or asks that the recipient not investigate or seek action against the accused, the recipient should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the accused. The recipient should notify students of the information that will be disclosed, to whom it will be disclosed, and why. The recipient should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. If the student still requests that his or her name not be disclosed to the accused or that the recipient not investigate or seek action against the accused, the recipient will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the harassment. If the school determines that it can respect the student's request not to disclose his or her identity to the accused, it should take all reasonable steps to respond to the complaint consistent with the request.

If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own inaction may subject the student to a hostile environment. If it does, the

recipient will be required to remedy the effects of both the initial sexual harassment and the effects of the recipient's failure to respond promptly and appropriately. A recipient's obligation to respond appropriately to sexual harassment complaints is the same irrespective of the sex or sexes of the parties involved.

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

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.

College Policies and Procedures³

The College publishes a Student Community Code (Code) prohibiting multiple forms of student conduct. Within that Code is the College's policy against sex discrimination and harassment⁴ and sexual violence,⁵ (collectively referred to here as the College's 'sexual misconduct policy'). The sexual misconduct policy is available online and is easily accessible to members of the College community. It advises that the College will not tolerate any acts of harassment and will ensure that "appropriate investigation and action is instituted whenever an act of discrimination or sexual harassment is brought to the attention of the College." The Code's prohibitions against sex discrimination, sexual harassment and sexual violence encompass students, staff, and third parties. The sexual misconduct policy provides the name, title, and contact information

³ The College revised its sexual harassment and sexual violence policies in early 2015. Unless otherwise noted, all references herein are to the College's revised policy.

⁴ <https://www.carthage.edu/community-code/harassment-policy-procedure/>

⁵ <https://www.carthage.edu/community-code/sexual-violence-policy/definitions/>

including an email address for the Title IX Coordinator and contains a definition of consent; however, it is silent on the admission of evidence of past relationships between parties or whether victims have the right to pursue a criminal investigation independent of the College's Title IX process.

The following College publications contain statements prohibiting discrimination on multiple bases, including sex: the Harassment Policy and Procedure, the Title IX Resources, the Student Community Code (Code), and the Sexual Violence Policy. The College disseminates this information through the College's web site, through printed and electronic versions of its Student Handbook and in all application materials. The College maintains a separate document entitled "2014-15 Title IX Resources: Information about Title IX at Carthage College." Although there is a reference to Title IX's prohibition against retaliation in this document, neither the Code or sexual misconduct policy prohibit retaliation. This document also contains a statement of the school's jurisdiction over Title IX complaints; information about on- and off-campus support services available; information about interim measures available; and contact information for the Title IX Coordinator and Deputy Coordinators. OCR's review of the College's policies and procedures governing sexual misconduct notes that that relevant information is found in several locations on the College's website.

The Associate Dean of Students (Dean) is the College's Title IX Coordinator. As the Title IX Coordinator he is responsible for overseeing all Title IX investigations. The Title IX Coordinator told OCR that he is responsible for coordinating the College's Title IX policy reforms, public notifications, pamphlets. He is also responsible for coordinating training for staff involved with Title IX investigations and hearings.

The College's Title IX policies and procedures include a few designated timeframes. For example, the Title IX Coordinator and the two members of the investigative staff will respond to such a written complaint within five business days. Finally, "Unless written notice is provided by the committee to the individual filing the complaint with an estimated date for completion of an investigation, the investigation **will be** completed within five days of the initial response to the complaint."⁶ (emphasis in original). Finally, the policies and procedures do not contain a provision requiring the College to notify students of the ongoing status of an investigation.

The Code does contain assurances for adequate, reliable, and impartial investigation of sexual misconduct complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and other evidence. It requires that the parties disclose witnesses prior to any hearing held. It allows each party to bring an advisor but this individual can act only in a supporting role, not as an advocate. The Code specifies that the standard used to evaluate the evidence will be a preponderance of the evidence.

⁶ <https://www.carthage.edu/community-code/sexual-violence-policy/resources/>

The Code allows either party to appeal the hearing officer's decision. It specifies the bases under which an appeal may be filed, including new evidence, hearing officer bias, a belief that the sanction is not supported by the evidence, or other extenuating circumstances. The Code requires the hearing officer to provide all parties to a formal hearing written notice of the outcome of the hearing.

In addition, the Code contains information about resources available to "anyone who suspects that sexual violence has occurred." This section contains information about resources within the College as well as the community.⁷ However, the Code does not specify that counseling services are available to the accused. The Code provides information about potential interim and final remedies for students including counseling, housing assistance, academic support; possible sanctions against perpetrators; and identifies resources for counseling, advocacy and support.

The Code and the College's sexual misconduct policy do not provide an assurance that the College will take steps to prevent recurrence of any harassment and to correct the discriminatory effects on the complainant and others, if appropriate.

The College's sexual misconduct policy contains adequate definitions of sexual harassment, including sexual violence, as well as an explanation as to when such conduct creates a hostile environment. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, explicit sexist remarks, and verbal, written, or physical contact of a sexual nature when:

- (1) Submission to such contact is made either explicitly or implicitly a condition of an individual's employment or academic advancement;
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such an individual;
- (3) Such conduct has the purpose or effect of substantially interfering with an individual's work or academic performance or creating an undesirable working, studying or living environment; or
- (4) Such conduct is directed toward the sexual orientation of an individual with the intent to demean, embarrass or "out" the individual.

The policy references its commitment to maintaining the privacy of everyone involved in a report of sexual violence. And the sexual misconduct policy acknowledges its duty to balance the privacy needs of those involved with its duty to investigate claims of alleged sexual violence. The policy does not state whether there is someone designated to make determinations on whether to proceed when confidentiality has been asserted.

⁷ <https://www.carthage.edu/community-code/sexual-violence-policy/resources/>

The Student Conduct Process

The filing and student conduct hearing process begins with the complainant filing a signed statement alleging sexual misconduct. The Title IX staff will then contact the complainant to explain resources, options and the investigative process. This initial contact must occur within five days of the initial filing. Title IX staff explain to the complainant the hearing process and that the report itself may become part of the College's obligation under the Clery Act. Although the process allows the complainant to choose whether or not to contact the local police department, it does not clearly state that the complainant has the right to proceed with a criminal investigation and a Title IX complaint simultaneously. It specifies that unless circumstances warrant, an investigation will be conducted within five days of the initial response to the complaint. The procedures further provide that complainants will be offered interim measures, including – as the situation warrants – modifications to class schedule and housing, counseling services, medical treatment and a 'no contact order' against the accused, noting that "all reasonable efforts will be made to accommodate the request."

After its receipt of the complaint, the accused will be contacted and will have the option of admitting or contesting the charges. If the accused admits the charges the Student Conduct Officer will conduct an informal hearing, which consists of reviewing the accused's prior disciplinary infractions, and deciding on the appropriate sanction. The complainant is not included in the informal hearing and as evidenced in the handling of the instant case, the complainant's perspective is not solicited as part of this process. If the accused contests the charges, the Student Conduct Officer will conduct an investigation. The Code provides that an investigation will be conducted within five days of the School's initial response to the complaint. If the Student Conduct Officer "is unable to make a determination regarding responsibility for the charges, then a formal hearing may be necessary."

If the matter is referred for a formal hearing that hearing will be conducted by a Student Conduct Officer from the Office of Student Life (Officer), one trained in Title IX investigations. Any student involved in this process may consult with a member of the College faculty, staff or student body. The parties can challenge the Student Conduct Officer's objectivity/potential conflict of interest in the case. Both parties receive 24 hours' notice before the hearing. The parties have the right to hear and submit questions to the conduct officer to dispute relevant information and to provide witnesses.

After making a determination as to liability, the Officer will assess sanctions consistent with the Code. Either party may appeal the determination or the sanctions assessed.

Factual Summary

In fall 2014, Student 1, Student 2 and Student 3 were enrolled at the College. Student 3 contacted both Student 1 and Student 2 on social media and expressed a sexual interest in them. Student 1 and Student 2 told OCR they were not interested in Student 3 sexually.

On September 21, 2014, Student 2 filed a complaint of sexual harassment against Student 3 with College Security asserting that Student 3 had sexually harassed him persistently since September 2, 2014. He asserted that Student 3 made multiple sexual explicit comments and propositioned him sexually. He reported that Student 3 communicated with him on XXXXXXXXXXXX. The Associate Dean told OCR that Student 2's sexual harassment complainant was the first complaint filed against Student 3.

The following day Student 2 met with the Associate Vice President for Student Life and Dean of Students (the Dean) regarding his complaint. On that same day, the College informed Student 3 that he was being charged with sexual harassment. The Associate Dean of Students (Associate Dean), charged with investigating and adjudicating Student 2's complaint against Student 3, met with Student 3. Student 3 then submitted a statement of admission. On September 24, 2014, the Associate Dean held a student conduct hearing with Student 3. Student 2 was not invited to or present at the hearing. The Associate Dean determined that Student 3 violated the College's Sexual Harassment Policy in that he made "unwanted sexual communications with another student." On that day the Associate Dean issued the following sanctions against Student 3: dismissal from the College effective September 29, 2014; barred from contacting Student 2; and banned from campus without prior approval of the Dean. The College did not give Student 2 a copy of the September 24 letter or advise him verbally of the determination.

On September 28, 2014, Student 3 appealed this decision. The Dean conducted an appeal hearing on October 3, 2014. He decided to defer Student 3's dismissal until 12-9-14 "based on [his] acceptance of responsibility, remorse and stated plan to adjust and learn from the situation." Student 2 was also not invited to participate in the appeal process and was not issued a no contact order, protecting him from Student 3.

On November 11, 2014, Student 2 sought and received a restraining order against Student 3 from the local law enforcement authorities. Student 2 filed an additional report with Campus Security expressing concerns with Student 3 being allowed to access the shuttle system and any dorm building. He questioned why he was not afforded a "no contact order" and why Student 3 was allowed to remain on campus. Student 2 provided a copy of the restraining order to the Dean who then, three days later, modified the sanctions against Student 3 to include a ban from the campus shuttle as well as the campus dorms. In a November 14 letter to Student 3, the College notified Student 3 that the sanctions had been modified based on a restraining order from the local law enforcement authority and additional reports from Student 2. The letter notified Student 3 that should he violate the College's directives, he could receive further judicial sanctions including but not limited to removal from campus, suspension or dismissal.

Student 2 received a separate letter dated November 14, 2014 signed by the Title IX coordinator that stated, “In accordance with the Department of Education Office for Civil Rights, this letter serves an update notification of the hearing held on October 3rd. Due to the restraining order filed and your report of feeling unsafe, the following sanctions have been applied to (Student 3): 1. Banned from use of the parking lot shuttles. 2. Banned from visiting the residence halls.”

On November 19, 2014, Student 1 filed a complaint of sexual harassment against Student 3 with the College asserting that Student 3 had sexually harassed him from September 8, 2014, through November 10, 2014. He told OCR that Student 3 made multiple sexual explicit comments and propositioned him in a sexually crude way. Specifically, he reported that Student 3 communicated with him XXXXXX. He reported that other communications from Student 3 to another student referenced Student 1. He felt that these contacts also made it “clear that Student 3 had been following me around campus or something to that effect.” Student 3 allegedly told the other student to tell Student 1 that XXXXXXXXXXXXXXXXXXXX. XXXXXXXXXXXXXXXXXXXX. XXXXXXXXXXXXXXX. Student 3 also sent Student 1 graphic images of himself and repeatedly asked Student 1 to come to his dorm. After repeated rejection from Student 1, Student 3 told Student 1 he would “find him.”

Student 1 asserted that after he complained of the harassment, the College did not speak with him or conduct an investigation into his complaint. The College did not provide Student 1 with notice, written or otherwise, to him about the outcome of his complaint and did not investigate the need for or offer remedial services (e.g., counseling, academic support).

The College reported to OCR that his residence hall director was aware of Student 1’s complaint of sexual harassment because she assisted him with filing the complaint. After receiving the complaint, Campus Security met with Student 1 who declined to report Student 3’s conduct to the Kenosha Police Department; Student 1 further advised security that he did not have any safety concerns. The next morning, Campus Security forwarded the complaint to the Office of Student Life and the AVP of Student Life. Upon reviewing the complaint, the Dean determined that Student 3’s conduct was not in compliance with the sanctions issued in the complaint filed by Student 2 redressing a violation of the Sexual Harassment Policy and permanently dismissed Student 3 for “behavioral reasons.” Because Student 3 had a previously scheduled meeting with the Dean, the Dean informed him at that time of Student 1’s complaint and his determination.

On November 20, 2014, the Dean notified all department heads that Student 3 had been dismissed from the College effective immediately. The Dean’s notification did not contain an explanation for the dismissal, but the Dean told OCR that he dismissed Student 3 from the College because of Student 1 and Student 2’s complaints against Student 3.

Analysis and Conclusion

OCR finds by a preponderance of the evidence that the College violated Title IX when it did not provide Student 1 or Student 2 with an equitable response to their complaints. More specifically, the College did not provide Student 1 with an equal opportunity to participate in the disciplinary proceedings, written notice of the outcome of his complaint or offer remedial services. The College did not take broader action to assure that such conduct does not occur in the future, e.g., training for College students.

As to Student 2, the College conducted an investigation into Student 2's complaint of sexual harassment against Student A, but it did not provide Student 2 with an equal opportunity to participate in the disciplinary proceedings, written notice of the outcome of his complaint (although the College did advise him that Student 3 was banned from certain areas) or offer remedial services. The College did not take broader action to assure that such conduct does not occur in the future.

Further, OCR determined that the College's policies and procedures, as written and as applied in these cases, do not contain an assurance that the College will take steps to prevent any recurrence of harassment and to correct its discriminatory effects on the complainant and others, as appropriate. Moreover, the College's practices, at least in response to Student 1's complaint did not meet that requirement.

The College's sexual harassment policies and procedures do not comply with the requirements of Title IX to provide specific and continuing steps to notify students and employees that it does not discriminate on the basis of sex or apprise them of the protections of Title IX. For example, the procedures do not provide an assurance that the College will take steps to prevent recurrence of harassment and to correct its discriminatory effects on a complainant and others, if appropriate. The policies and procedures do not prohibit against retaliatory acts against those involved in reporting or those who witness sexual harassment. As implemented, the College does not always issue a written determination to the complainant or offer appropriate interim services.

The procedures also do not contain several of OCR's recommendations and best practices. Specifically, the grievance procedures also do not state that sexual assault complaints are not to be mediated even on a voluntary basis, do not notify the complainant of the right to proceed with a criminal investigation and a Title IX complaint simultaneously, do not prohibit conflicts of interest (real or perceived) by those handling the procedures, and do not specify that complainants will be informed at regular intervals of the status of the investigation.

On June 11, 2015, College voluntarily executed the enclosed Resolution Agreement (Agreement) which, when fully implemented, will resolve the issues raised in the complaints. The provisions of the Agreement are aligned with the complaint allegation and the information obtained during OCR's investigation, and consistent with the applicable regulations. OCR will monitor the

College's implementation of the Agreement until the College is in compliance with Title IX and its implementing regulations at issue in these complaints.

Retaliation

Factual Summary

Student 2 alleged that because he had filed a complaint of sexual harassment in September 2014, the Dean of Students' retaliated against him when he withdrew his offer to write a letter of recommendation for Student 2 and the President retaliated against Student 2 when he removed him from the President's Task Force on Innovative Student Learning. During Student 2's freshman year the President asked him to be a member of his Task Force on Innovative Student Learning (also known as the Dream Team). According to Student 2, the Dean of Students recommended him for the Dream Team. The Dean of Students did not sit on the committee. According to both Student 2 and the Dean of Students, the two had many interactions over the years and developed a positive relationship, so much so that in the fall of 2014, Student 2 asked the Dean of Students to write him a letter of recommendation for law school. The Dean initially agreed to provide a letter to Student 2 but after he learned that Student 2 secretly recorded a meeting the two had in the fall of 2014 his opinion of Student 2 changed significantly. As such, he no longer felt that he could provide Student 2 with a positive letter of recommendation. Student 2 told OCR that he has been accepted to more than one law school.

The President told OCR that he met with the Provost in December 2014. The Provost provided him with a copy of a chronology Student 2 had written outlining Student 2's complaint of sexual harassment, the College's response to the complaint and Student 2's attempts to learn more about his complaint and the entire process, including his attempts to gain support from College faculty. The chronology revealed that Student 2 had secretly recorded at least one meeting he had with the Dean of Students. The President told OCR that the chronology was "filled with incorrect and exaggerated [faculty member] statements." The President said that because of the chronology, and learning that the Complainant secretly recorded a meeting with the Dean of Students, his trust in Complainant had "degraded" and he could no longer have him participate in Dream Team meetings. The President said, "this is a confidential group of trusted advisors. It would not be able to function if the conversations were recorded." According to the College, the Dream Team is a confidential, personal committee created to help the President create a 5-year plan for his vision for the College. Complainant 2 participated in the handful of Dream Team meetings held over the years without incident.

Legal Standard

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.

If all of these elements 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 treatment of the person was inconsistent with the treatment of similarly situated individuals or established policy or practice.

Analysis and Conclusion

Student 2 engaged in a protected activity in September 2014 when he filed a complaint of sexual harassment with the College and the College was aware of that complaint.

Letter of Recommendation

OCR next considered whether the Dean of Students' refusal to write Student 2 a letter of recommendation was an adverse action that followed Student 2's protected activities, and from which a causal connection can be inferred. OCR will consider an action to be adverse if it significantly disadvantaged a student, or might reasonably be expected to deter or preclude a student or complainant from engaging in further protected activities. OCR determined that the Dean's refusal to provide a letter of recommendation after he had committed to do so is an adverse action. A causal connection may be inferred due to the proximity of time between the protected activity and the adverse action. Thus, a *prima facie* case of retaliation has been established.

OCR next considered whether the Dean provided a legitimate, non-discriminatory justification for his refusal, and whether the justification is a pretext for retaliation. The Dean explained that Student 2's conduct in secretly recording a meeting the two had in fall 2014 significantly damaged his opinion of Student 2. The decision to write a letter of recommendation is typically based on familiarity with the student as well as a positive opinion of the student. While the Dean and Student 2 had enjoyed a positive relationship for years, and the Dean recommended Student 2 for the Dream Team, he told OCR that his opinion of Student 2 changed based on Student 2's conduct. As such, he no longer felt that he could provide Student 2 with a positive letter of recommendation. OCR found no information that any other student engaged in similar activity and still received a letter of recommendation from the Dean of Students.

Removal from the Dream Team

OCR determined that the President's removal of Student 2 from the Dream Team was an adverse action. A causal connection may be inferred due to the proximity of time between the protected activity and the adverse action. Thus, a *prima facie* case of retaliation has been established.

OCR next considered whether the President provided a legitimate, non-retaliatory justification for his removal of Student 2, and whether that justification is a pretext for retaliation. The President told OCR that the chronology was "filled with incorrect and exaggerated [faculty member] statements" and that because of the chronology, and learning that Student 2 secretly recorded a meeting with the Dean of Students, his trust in Student 2 had "degraded" and he could no longer have him participate in Dream Team meetings. The President said the task force "is a confidential group of trusted advisors. It would not be able to function if the conversations were recorded." The description of the President's task force as method specifically established to help the President create a plan for the College's future supports the President's characterization of the private and confidential nature of the team. OCR found no information that any another student who engaged in similar activity was not removed from the Dream Team.

Accordingly, and after a careful review of all the information, OCR has determined by a preponderance of the evidence that both the Dean of Students and the President had a legitimate, non-retaliatory explanation for the adverse action and the explanations were credible, believable and not a pretext for retaliation. OCR found no evidence that the justifications were a pretext for retaliation. Therefore, OCR has concluded that the College did not retaliate against Student 2 as alleged.

This concludes OCR's investigation of these complaints. 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. The Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

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 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.

We appreciate the cooperation you and your staff extended to OCR during the course of the processing of this complaint. We particularly appreciate the cooperation of the College's

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counsel, Mr. Phillip Godin. If you have any questions, please contact Susan Johlie at 312-730-1586 or by email at Susan.Johlie@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure

cc: Phillip R. Godin, Esq.