



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

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December 21, 2017

Dr. James E. Brenneman
President
Goshen College
1700 South Main Street
Goshen, Indiana 46526

Re: OCR Docket #05-17-2066

Dear Dr. Brenneman:

This is to notify you of the disposition of the above-referenced complaint filed against Goshen College (College) with the U.S. Department of Education (Department), Office for Civil Rights (OCR).

Specifically, the complaint alleged that the College subjected a female student (Student A) to discrimination based on sex in fall 2016 when it failed to provide Student A a prompt and equitable grievance procedure for a sexual harassment complaint she filed concerning harassment that occurred in 2014.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 - 1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibits discrimination on the basis of sex by recipients of Federal financial assistance. The College is a recipient of Federal financial assistance from the Department, and therefore is subject to the provisions of Title IX.

During its investigation, OCR reviewed data from the College and the complainant and interviewed College personnel and Student A. Based on its investigation, OCR determined that the College failed to adopt grievance procedures that provide for the prompt and equitable resolution of Title IX complaints as required by Title IX, failed to provide a prompt and equitable response to Student A's report of sexual harassment, and failed to determine whether Student A was subjected to a hostile environment and, if so, what actions were required to address the hostile environment. On December 13, 2017, the College entered into the enclosed Resolution Agreement (Agreement) to resolve the issues in the complaint. The basis for the determination is set forth below.

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states that no individual may, because of sex, be excluded from participation in, be denied the benefits of, or be subjected to

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

discrimination in any education program or activity operated by a recipient of Federal financial assistance from the Department.

Hostile Environment Created by Sexual Harassment

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, regardless of the sex of the student. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. The harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Sexual harassment of a student creates a hostile environment if the conduct is so severe, persistent, or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program or activities.

OCR considers a variety of related factors to determine if a sexually hostile environment has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct affected one or more students' education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age of the alleged harasser and the subject of the harassment; the size of the school, the location of the incidents, and the context in which they occurred; and other incidents at the school. The more severe the conduct, the less the need to show a repetitive series of incidents.

Nature of the Recipient's Responsibility to Prevent and Address Sexual Harassment

The Title IX regulations establish the following procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment.

- *Publish Notice of Non-discrimination*

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires a recipient to implement specific and continuing steps to notify all 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 its educational programs or activities, and that it is required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

- *Designate Title IX Coordinator*

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. The Title IX Coordinator must have knowledge of the requirements of Title IX and of the recipient's own policies and procedures on sex discrimination. If a recipient designates more

than one Title IX Coordinator, then one coordinator should be designated as having ultimate oversight responsibility. Further, the recipient is required by the Title IX implementing regulation, at 34 C.F.R. § 106.8(a), to notify all students and employees of the name (or title), office address, email address, and telephone number of the designated employee(s).

- *Respond When Know or Should Have Known*

A recipient has notice of harassment based on sex if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment or who has the duty to report to appropriate officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility. Accordingly, recipients need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

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 or other inquiry 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 if one has been created, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility regardless of whether or not the student who was harassed makes a complaint or otherwise asked the recipient to take action. If, upon notice, a recipient fails to take prompt and effective corrective action, the recipient's own failure has permitted the student to be subjected to a hostile environment. If so, the recipient will be required to take corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the student that could reasonably have been prevented had the recipient responded promptly and effectively.

- *Offer Interim Measures*

It may be appropriate for a recipient to take interim measures during the investigation of a complaint. In fairly assessing the need for a party to receive interim measures, a recipient may not rely on fixed rules or operating assumptions that favor one party over another, nor may a recipient make such measures available only to one party. Interim measures should be individualized and appropriate based on the information gathered by the Title IX Coordinator, making every effort to avoid depriving any student of her or his education. The measures needed by each student may change over time, and the Title IX Coordinator should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' evolving needs.

- *Immediate and Appropriate Action to Address Retaliation*

When a recipient knows or reasonably should know of possible retaliation, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires recipients to protect against retaliation; at a minimum, this includes making sure that individuals know how to report retaliation, making follow-up inquiries to see if any retaliation or new incidents of harassment have occurred, and responding promptly and appropriately to address any new or continuing concerns.

- *Adopt, Publish and Implement Grievance Procedures*

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment. The procedures for addressing and resolving complaints of sexual harassment should be written in language that is easily understood, should be easily located, and should be widely distributed.

In evaluating a recipient's grievance procedures, OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the recipient:

- 1) provides notice to students and employees of the procedures, including where complaints may be filed;
- 2) applies the procedures to complaints alleging discrimination and harassment carried out by other students, employees or third parties;
- 3) ensures an adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;
- 4) designates and follows reasonably prompt timeframes for the major stages of the complaint process;
- 5) notifies the parties of the outcome of the complaint; and
- 6) provides assurance that the recipient will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred and to remedy its discriminatory effects, as appropriate.

There is no fixed time frame under which a recipient must complete a Title IX investigation. OCR will evaluate a school's good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.

An equitable investigation of a Title IX complaint requires a trained investigator to analyze and document the available evidence to support reliable decisions, objectively evaluate the

credibility of parties and witnesses, synthesize all available evidence—including both inculpatory and exculpatory evidence—and take into account the unique and complex circumstances of each case.

Once it decides to open an investigation that may lead to disciplinary action against the responding party, a recipient should provide written notice to the responding party of the allegations constituting a potential violation of the school's Title IX policy, including sufficient details and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved, the specific section of the code of conduct allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident. Each party should receive written notice in advance of any interview or hearing with sufficient time to prepare for meaningful participation. The investigation should result in a written report summarizing the relevant exculpatory and inculpatory evidence. The investigator(s), or separate decision-maker(s), with or without a hearing, must make findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of the school's sexual misconduct policy. If the complaint presented more than a single allegation, a decision should be reached separately as to each allegation.

The decision-maker must offer each party the same meaningful access to any information that will be used during informal and formal disciplinary meetings and hearings, including the investigation report. The parties should have the opportunity to respond to the report in writing in advance of the decision of responsibility and/or at a hearing to decide responsibility. Any process made available to one party in the adjudication procedure should be made equally available to the other party.

If all parties voluntarily agree to participate in an informal resolution that does not involve a full investigation and adjudication after receiving full disclosure of the allegations and their options for formal resolution and if a recipient determines that the particular complaint is appropriate for such a process, the recipient may facilitate an informal resolution, including mediation, to assist the parties in reaching a voluntary resolution.

Recipients are cautioned to avoid conflicts of interest and biases in the adjudicatory process and to prevent institutional interests from interfering with the impartiality of the adjudication. Decision-making techniques or approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the adjudication proceeds objectively and impartially.

If a recipient chooses to allow appeals from its decision regarding responsibility and/or disciplinary sanctions, the recipient may choose to allow appeal (i) solely by the responding party; or (ii) by both parties, in which case any appeal procedures must be equally available to both parties.

Facts

Grievance Procedures

The College notifies students and employees that the College “is in compliance with all federal regulations pertaining to nondiscrimination on the basis of sex... in its recruitment, admission, educational, athletic, financial aid and employment policies and programs.”¹ The notice does not specifically state that Title IX requires that the College does not discriminate on the basis of sex nor does it direct complaints or inquiries concerning the application of Title IX and its implementing regulation to the Title IX Coordinator or to OCR.

The College’s Policy on Sexual Assault and Misconduct (Policy)², which became effective in its current form in 2014, states that the College will provide an environment free of inappropriate treatment of individuals because of sex, including sexual harassment. The Policy applies to students, employees, and third parties. The Policy prohibits all forms of sex discrimination, harassment and misconduct, including but not limited to, unwelcome sexual comments and conduct of a sexual nature, unwelcome demands or requests for sexual favors, and nonconsensual sexual contact. It “encompasses misconduct that does not reach the level of actionable sexual harassment, misconduct that is sufficiently severe and pervasive that it rises to the level of sexual harassment, and sexual misconduct that involves criminal penalties.” The Policy contains an assurance that that the College will take any measures to remedy the discriminatory effects on the complainant and others, if appropriate, when unlawful harassment is substantiated.

The Policy describes the Title IX complaint procedures (Procedures) which provide for the adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence. It provides that a report may be directed to “campus resources or local law enforcement officials.” The Procedures describe interim measures available to students including, but not limited to, “available resources, including medical care, counseling or other mental health services, and spiritual guidance and support” upon the request of a complainant or respondent, and indicate that the College will take “reasonable steps” to alter the complainant or respondent’s academic or living situation if necessary, which may include a change in residence hall, course reassignment, or scheduling of assignments. The Procedures state that, if an individual is found to have engaged in sexual misconduct, he or she will be subject to appropriate disciplinary action, up to and including expulsion.

The College’s website contains a page titled “Sexual Assault and Misconduct”³ that specifies the various ways a student may report an incident of sexual harassment to the College and explains the investigative process when a complaint is submitted to the College. This webpage includes a statement that the College “strives to provide an environment free of inappropriate treatment of individuals because of sex” and identifies the Title IX Coordinator and Title IX Committee

¹ <https://www.goshen.edu/about/diversity/>

² <https://www.goshen.edu/wp-content/uploads/sites/73/2016/03/Policy-on-Sexual-Assault-and-Misconduct-Spring-2016.pdf>

³ <https://www.goshen.edu/sexual-assault/>

members and provides their contact information. The webpage also includes a link to the Policy and a link to a “Reporting Form.” It indicates that the form is one way to inform the College of sexual harassment, but that an individual may also make a report to any employee, including a faculty advocate, a member of the Title IX committee, or any Residence Life staff. Reports of incidents involving students will be processed by the Dean of Students, who also serves as a Title IX Committee member under the supervision of the Title IX Coordinator.

The Sexual Assault and Misconduct page also contains a tab to a section titled “Reporting,” which provides the various ways to explore “formal action.” It provides the option to go directly to the local hospital/emergency room; to seek assistance from a trained advocate for Victim Assistance Services for the Elkhart County Prosecuting Attorney’s office; to call 911 and make a report to local law enforcement; or to call the resident director, campus security, student services, or any member of the Sexual Misconduct Response Team (SMRT) who can explain reporting options and steps for processing an incident on campus.

The Sexual Assault and Misconduct page provides further detail as to the Procedures. It advises students that “reports of sexual assault and misconduct on campus begin with a report to a member of the [SMRT].” After the report is received by a member of the SMRT, the complainant signs the report to indicate confirmation of its accuracy. The section specifies that the SMRT will take “immediate administrative action,” including “disciplinary or other corrective action where appropriate” to end the harassment, provide support and prevent the recurrence of violations. Following the initial meeting with the complainant, the two-person investigative team assigned from among the SMRT members shares a summary of the complainant’s report with the respondent and interviews the respondent and any witnesses. After all evidence is collected into a report (investigative report), the report is reviewed with the respondent, who signs the investigative report to indicate confirmation of its accuracy. The Procedures do not indicate that the complainant is provided an opportunity to review the investigative report after all evidence is collected. The Procedures state that the investigative team meets with remaining members of the SMRT to review the available data and reach a conclusion whether the report has been “Substantiated,” “Unsubstantiated,” or “Inconclusive” using a preponderance of evidence standard. The SMRT presents a written statement of its findings to the Dean of Students, who is the administrative designee for SMRT processes, for inclusion in formal Memos of Understanding. The Memo of Understanding is the mechanism for communicating the outcome of the investigation and the response of the SMRT to the complainant and the respondent. The Procedures state that the SMRT shall complete an investigation and implement any response within 60 days of receiving the complaint and provide that either party may appeal the decision to the Title IX Coordinator within 3 days of receiving the Memo of Understanding. The Procedures require the SMRT team to maintain “confidential reports of sexual misconduct and information obtained in the investigations.”

Student A’s Sexual Harassment Complaint

The alleged sexual harassment occurred in 2014, when Student A and Student B were both freshmen. During the 2016-2017 academic year, Student A was a junior at the College. At the time Student A filed her complaint of sexual harassment and during the College’s investigation, Student B was in Peru for the Study-Service Term (SST).

On August 30, 2016, Student A emailed two members of SMRT (Member A and Member B) and the Title IX Coordinator stating that she would like to file a report with SMRT. Later that same day, Member A met with Student A to gather initial information about the report. Student A filed a complaint alleging that in fall 2014, Student B subjected her to “unwanted attention” in the College’s Core 100 class, including an incident where he “grabbed her physically and needed to be pushed away.” Student A also reported that “disagreements” with Student B about “personal boundaries” made it difficult for her to be in class together. Student A told OCR that Member A did not make sure that she was aware of her “survivor’s rights.” Member A acknowledged that at the August 30 meeting, he did not provide Student A with an in-depth description of a student’s right during the process, but referred to the Policy and Student A’s rights and responsibilities generally. Member A told OCR that he also confirmed Student A did not require any immediate interim measures such as counseling services. Member A’s notes from the meeting with Student A indicate that Member A informed Student A of “documents describing the process” and “next steps.” Member A’s notes include that Student A was “not concerned about her own personal safety, nor [was] she aware of any specific current situations that require immediate intervention.”

On September 5, 2016, Member A and Member B interviewed Student A. Student A reported the following incidents of sexual harassment beginning at the start of the fall 2014 semester and continuing for approximately 6 weeks: (1) Student B asked her questions about her sexual activity for approximately 15 to 20 minutes on one bus ride; (2) Student B repeatedly commented about Student A’s body and clothing, such as “That skirt looks really nice,” and “Your legs look good” during Core 100 class; and (3) Student B put his arm around Student A and tried to hug her on one occasion. Member A told OCR she informed Student A that the College would instruct Student B to not initiate any contact with Student A and advise Student B that retaliation was prohibited. Member B told OCR that during the interview, they discussed with Student A interim measures, including counseling services, but Student A did not identify any interim measures needed. Student A confirmed to OCR that during the September 5 meeting, Member A informed her of the rights of a student reporting sexual misconduct. Student A did not indicate to OCR that the College failed to provide her any necessary interim measures.

Student A provided the College with names of three student witnesses (Student C, Student D and Student E).⁴ On September 8 and 9, 2016, Member A and Member B interviewed these three students separately. The notes of the interviews indicate Student C could not recall the specific incidents alleged by Student A, but recalled that in 2014 Student B had been in her “personal space” and “said things that were inappropriate” to a group of students that included her and Student A, although she could not recall any specific comments. The notes also indicate that Student D recalled that Student B violated boundaries and made inappropriate sexual comments in fall 2014 and that Student E recalled that Student A reported difficulties interacting with Student B in fall 2014.

⁴ Additionally, Student A provided a written statement from a male student dated August 31, 2016, reporting that he received complaints from other female students that Student B had “made them feel uncomfortable or that he said something incredibly sexist.”

On September 12, 2016, Member A and Member B contacted Student B's SST Leader in Peru to schedule an interview with Student B. The College reported to OCR that after the SST Leader consulted with the Director of International Education (Director) regarding the situation, the College staff and the SMRT determined they could interview Student B in Peru.

On September 27, 2016, the Director conducted a face to face interview of Student B via Skype on behalf of the SMRT investigators. According to the Director, and as indicated in notes of the conversation, the report of Student B's alleged misconduct was described to Student B. In response, Student B said he did not recall the described conduct, but said he may have attempted to hug Student A.

On September 28, 2016, Student B sent the SMRT investigators an email requesting a second interview stating that he had additional information. On October 4, 2016, the SMRT investigators conducted the second interview of Student B via Skype. The notes of this interview indicate that Student B said he did not recall any conversation with Student A on the bus and did not recall trying to hug Student A or to have conversation about Student A's person's dress or body. The notes also indicate that Member A notified Student B, "We understand that the timing is horrible. Having to have this conversation on SST is very unfortunate. We want to be sensitive to the challenges that this causes ... We can say now that we don't sense any imminent danger, and given the fact that [Student B] will not be on campus until December or January, we will deliver the report personally at that time ... It was agreed that we would meet as soon as possible upon his return in December."

The SMRT held a meeting on October 14, 2016, at which it reviewed information about the investigation and deliberated as to the findings. The minutes of this meeting indicate that the SMRT concluded that Student B violated the College policy prohibiting sexual harassment, but did not violate Title IX; the notes did not elaborate on what it meant by the statement that Student B did not violate Title IX. Member A and Member B told OCR that although Student B denied the conduct alleged by Student A, they determined that the evidence substantiated the complaint. They based their determination on the witness statements and acknowledgements made by Student B during the investigatory interview, including that Student B admitted that in the past he had "freedom to touch" his "small social circle," but has learned "many people are not there" and so he has "slowly learned about touch and verbal boundaries." Members A and B told OCR that the SMRT did not determine whether the substantiated conduct constituted sexual harassment that created a hostile environment for Student A.

By e-mail message dated October 14, 2016, the Dean of Students notified Student A that the SMRT had finished its investigation and made its determination, but planned to hold its response until the parties could be notified on the same day. The email indicated in order to resolve the "logistical difficulties" with informing the parties of the determination on the same day while Student B resided in another country, the parties would not receive a determination until Student B returned from SST at the conclusion of the fall 2016 semester. Student A did not express to the College any objections to the delay at the time. Member A told OCR that in deciding to refrain from communicating the decision to the parties immediately, the SMRT considered that Student B was "shook up" about the matter and was residing in a foreign country with little to no access to supports and resources. The minutes of the October 14, 2016 meeting state, "To respondent ...

acknowledge timing [during study abroad] was unfortunate, and you handled this gracefully.” The minutes also say, “respondent ... inform him that we have it [decision], to wait. We don’t know when he will get it ... [he] is really the one who should choose.”

On November 30, 2016, after the SST had ended and Student B returned to the country, the Dean of Students, on behalf of the SMRT, issued to Student A a written notification that the College determined that the complaint was “substantiated because there is a preponderance of the evidence to substantiate that a violation [of the Policy] occurred”, although the notification did not indicate whether Student B engaged in sexual harassment that created a hostile environment.⁵ The notification also informed Student A that “we have taken remedial action designed to prevent any future violations of [College] policy by [Student B].” The remedial action, which was not delineated in the notification to Student A, included requiring Student B to meet two times during spring 2017 semester with a College counselor to reflect on his self-awareness in terms of comfort and physical and conversational boundaries, and how to improve his ability to recognize and honor such boundaries. Student A was also offered an opportunity to write an impact statement to be shared with Student B. Member A told OCR that the SMRT determined counseling was appropriate because they found that Student B’s conduct was not intended to make anyone uncomfortable, that Student A and other students described Student B as “oblivious,” that several students indicated when they advised Student B his behavior was unwanted or inappropriate he was receptive, and that Student B was in the process of changing his communication style. Member A and Member B told OCR that the SMRT decided counseling would be the appropriate corrective action to prevent future behavior of the sort in which Student B had previously engaged. In particular, Member B said counseling could improve Student B’s self-awareness and understanding that he must respect boundaries and ask permission before touching another student. Member B told OCR that they did not consider discipline to be appropriate because the behavior happened two years earlier and Student B “liked and respected [Student A],” so they did not believe discipline would be “helpful.”

Student A did not inform OCR that she required remedies as a result of the College’s handling of her harassment complaint. Member A’s notes of the August 30 meeting indicate that Student A requested that the College employ an outside mediator to assist the parties at “bringing restitution from this experience of harassment.” Member A told OCR that Student A wanted the College to hire a mediator from the Center for Community Justice; he said that these mediators work to find alternatives to punishment for matters which typically involve an “offender” who is in jail and a judge that orders a mediator as a means to have an offender address a victim’s needs. He told OCR that as the SMRT deliberated as to how to address Student B’s conduct, they referred back to Student A’s desired remedy but concluded it was not appropriate because of the amount of time that had elapsed since the incidents and the nature of the conduct. He said the SMRT members felt that the opportunity they offered Student A to write a statement was comparable and similarly addressed Student A’s desire for a mediation.

Student A withdrew from the College at the end of the fall 2016 semester.

⁵ The College did not document that Student B was given an opportunity to review and sign the investigative report to confirm its accuracy, as specified in the Procedures, nor did it indicate that Student A received such an opportunity.

Analysis and Conclusions

Grievance Procedures

OCR determined that the College's Policy does not comply with the standards in Title IX to provide for prompt and equitable resolution of complaints alleging noncompliance with Title IX, including complaints of sexual harassment. The Policy is inequitable on its face because, when explaining the procedure for sexual misconduct complaints, the website advises students that after all evidence is collected into a report, including the complainant's and the respondent's statements, the investigative report is reviewed with the respondent who then signs the report to indicate confirmation of its accuracy, but the procedure does not likewise provide the complainant an opportunity to review the investigative report for accuracy. OCR also notes a technical violation with the College's Notice of nondiscrimination.

Based on the above, OCR determined that the College is not in compliance with the Title IX regulation, at 34 C.F.R. §106.8(b) and §106.9.

Hostile Environment

OCR must often weigh conflicting evidence to determine whether the preponderance of the evidence substantiates the allegation. In this case, the evidence established that, upon receiving Student A's report of sexual harassment, the College promptly met with Student A and notified Student A of its Title IX policy and her right to interim measures. The College initiated an investigation by interviewing Student A, the witnesses she identified, and Student B. The evidence established that, under these unique circumstances in which Student B was out of the country and the College notified Student A for the reason for the delay, including the absence of any concern for the safety of Student A or other students, the College took reasonably prompt actions as it provided notice of its finding to both parties as soon as Student B returned to the country and required counseling for Student B. However, in making its findings the College did not determine whether the conduct it substantiated created a hostile environment for Student A and, if so, what actions were required to address the hostile environment.⁶

Based on the above, OCR determined that the College is not in compliance with the Title IX regulation, at 34 C.F.R. § 106.8(b) and 106.31.

⁶ OCR will provide technical assistance to the College regarding the appropriate response when other students report alleged sexual harassment during an ongoing investigation.

Overall Conclusion

On December 13, 2017, the College submitted the enclosed Resolution Agreement that, when fully implemented, will resolve the issues in this complaint. The provisions of the Agreement are aligned with the allegation and OCR's compliance determination, and are consistent with the applicable regulations.

The Agreement requires the College to take the following actions:

- develop and publish a statement to all College students and employees that the College does not tolerate harassment on the basis of sex;
- review the College's sexual harassment policies and procedures;
- provide all responsible employees effective training on sexual harassment;
- provide training to all College staff who are directly involved in processing, investigating and/or resolving complaints or other reports of sexual harassment;
- provide training to new and returning students on sexual harassment;
- offer Student A an opportunity to discuss her experience in the Title IX process and concerns about the manner in which it was handled; and
- maintain documents relating to specific complaints or other reports of sexual harassment of students.

Based on the commitments the College has made in the Agreement described above, OCR has determined that it is appropriate to close the investigative phase of this complaint. OCR will monitor the implementation of the Agreement.

This letter sets forth OCR's determination in an individual OCR complaint. It 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.

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 individual may file another complaint alleging such treatment.

Additionally, 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.

The complainant may file a private suit in federal court whether or not OCR finds a violation.

OCR greatly appreciates the ongoing cooperation received from the College during the investigation and resolution of this case. We particularly appreciate the cooperation of Mr. Kenneth F. Newbold, Jr., Provost and Executive Vice President. If you have any questions, please contact Salina Gamboa, Senior Equal Opportunity Specialist, at 312-730-1627 or by e-mail at Salina.Gamboa@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. Kenneth F. Newbold, Jr.