



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 1, 2018

Changzhen Gong, Ph.D.
President
American Academy of Acupuncture and Oriental Medicine
1925 West County Road B2
Roseville, MN 55113

RE: OCR Case No. 05-18-2211
Complainant: XXXXXXXXXXXX

Dear Dr. Gong:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the complaint filed on May 7, 2018, against American Academy of Acupuncture and Oriental Medicine (Academy), alleging discrimination on the basis of sex. Specifically, the complaint alleges the Academy discriminated against a student (the Complainant) on the basis of sex (female) during the spring 2018 semester when it failed to promptly and equitably respond to the Complainant's January 2018 sexual harassment complaint against a male student (Student A) of which it had notice, thereby creating a sexually hostile environment.

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 from the Department of Education. As a recipient of Federal financial assistance from the Department, the Academy is subject to the requirements of Title IX and its implementing regulation.

During its investigation, OCR interviewed the Academy President, Academy employees, and the Complainant. OCR also reviewed documentation provided by the Complainant and the Academy. Based on its investigation, OCR determined using a preponderance of the evidence standard that the Academy failed to comply with Title IX, at 34 C.F.R. §§ 106.8(a), 106.8(b), and 106.9. Specifically, OCR finds that the Academy failed to publish a compliant notice of nondiscrimination and designate a Title IX Coordinator consistent with the requirements of Title IX. In addition, the Academy has not adopted and published grievance procedures that provide a prompt and equitable resolution of complaints alleging action prohibited by Title IX. Finally, in this case, the Academy did not provide a prompt and equitable resolution of the Complainant's complaint. The reasons for OCR's determination are set forth below.

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

Background

The Academy was founded in 1997 by its current President. The Academy offers a Master of Science Program in Acupuncture and Oriental Medicine (MS Program) and a doctorate program of Oriental Medicine. The Academy also offers a Chinese Tuina massage certificate program. The Academy enrolls approximately 70 students.

Academy Policies and Procedures

The Academy publishes an annual Catalog, which provides information on the Academy's mission, enrollment, curriculum, and policies. The Catalog is available on-line¹ and refers students to the Academy's "Student Handbook" for the "official policies and procedures of the Academy" and to the "Clinic Handbook" for the official policies of the student clinic. The Catalog states the Student Handbook is provided to all students entering the Academy² and that students are expected to be familiar with the policies and procedures. The Academy also has an "Administration and Faculty Handbook" (Faculty Handbook), which is provided to all faculty members. Students and faculty are required to sign a form stating they have read and understand the contents of their respective handbooks.

- *Nondiscrimination Statement*

The Catalog and Faculty Handbook include the Academy's nondiscrimination statement, which states that:³

The Academy is committed to a policy of equal opportunity. We do not discriminate against any student, faculty, or staff member for reasons of race, religion, gender, sexual preference, age, handicap, citizenship, national origin, or political philosophy.

The Student Handbook includes an "Equal Opportunity Statement" that provides that the Academy does not discriminate on various bases, including gender. The Faculty Handbook's "Equal Opportunity Statement" states the Academy adheres to federal and state laws controlling equal access/equal opportunity by establishing procedures to ensure that no applicant, employee, or student is discriminated against because of various characteristics, including sex.

Both the Student and Faculty Handbooks include a "Sexual Harassment Policy" that states the Academy "takes the issue of sexual harassment very seriously" and that faculty and administrators are "urged to adhere to standards set by state and federal regulations." The Sexual Harassment Policy refers to Student Handbook Section 5.10.6 and Faculty Handbook Section 4.4 for its complete policy.

Section 5.10.6 of the Student Handbook and Section 4.3 of the Faculty Handbook state the Academy is "committed to taking all reasonable steps to prevent discrimination and

¹ <http://www.aaaom.edu/wp-content/uploads/AAAOM-Catalog-2017-2018-2.pdf>.

² The Student Handbook is not available online.

³ The statement is available online at: <http://www.aaaom.edu/admissions/non-discrimination-policy/>.

harassment from occurring” and specifically states that sexual harassment is prohibited and will not be tolerated.

None of the nondiscrimination statements or sexual harassment policies identify the Academy’s Title IX Coordinator or refer questions regarding Title IX to the Title IX Coordinator or to OCR.

- *Title IX Coordinator*

The Academy informed OCR that the Academy’s Chief Operating Officer is the Academy’s designated Title IX Coordinator. However, during her interview with OCR, the Chief Operating Officer said she “handles any and all complaints,” but was unable to describe her responsibilities as the Title IX Coordinator. As for training, she indicated she reviewed documents on the Clery Act in the fall of 2017, which were forward to her by the Academy President. The Title IX Coordinator could not specifically recall receiving any training on Title IX or the Academy’s policies and procedures related to Title IX. A staff member interviewed by OCR could not identify the Academy’s Title IX Coordinator.

The Academy has not notified students and employees of the name or contact information for its designated Title IX Coordinator. The Title IX Coordinator’s contact information is not posted on the Academy’s website or included in the Academy’s Catalog, Student Handbook, or Faculty Handbook. This information is not included in the Academy’s nondiscrimination notice.

- *Grievance Procedures*

The Academy has a “Complaint Procedure” for complaints of sexual harassment, which is published in its 2017-2018 Student and Faculty Handbooks. The Complaint Procedure requires students or employees who believe they have been sexually harassed, or are aware of harassment of others to “provide a written or verbal complaint to the Academic Dean as soon as possible” and include information regarding the incident. The Complaint Procedure states that all reported incidents of sexual harassment will immediately receive an “effective, thorough and objective” investigation. At the conclusion of the investigation, the determination of whether the harassment occurred will be communicated to the complaining party and the accused harasser. The Complaint Procedure does not describe how to contact the Academic Dean to file a complaint and does not specifically state that the procedure applies to complaints alleging discrimination carried out by employees, other students, and third parties. The Complaint Procedure does not state that it provides notice to the accused party of the allegations, or the opportunity for both parties to present information and witnesses. The Complaint Procedure does not designate timeframes for major stages of the investigation. The Complaint Procedure is silent regarding whether any interim services will be offered while the investigation is pending.

The Complaint Procedure provides that the Academy will take remedial action to deter any future harassment, as well as appropriate disciplinary action against the harasser if the Academy determines sexual harassment has occurred. The Complaint Procedure further states the Academy “will take appropriate action to remedy any loss to the student or employee resulting from the sexual harassment.”

The Catalog, Student Handbook, and Faculty Handbook also include the general student grievance procedures. The first step in the student grievance process requires the student to “attempt to resolve the issue directly with the individual or parties concerned.” If the dispute is not resolved, the complaining party “may arrange a meeting with the Academic Dean for appropriate consideration and resolution of the problem.” If, after meeting with the Academic Dean, the complaining party feels the grievance has not been resolved satisfactorily, the complaining party may make a written request to the Academic Dean for a hearing with the Academy’s “Grievance Committee.” The procedure states that a three person grievance committee will be chosen by the President,⁴ a hearing will be held within 30 days from the date the written request is received by the Academy, and the grievance committee will resolve the grievance. The grievance procedure states that if the individual believes the resolution is unfair, he or she may contact the Minnesota Office of Higher Education or the Accreditation Commission for Acupuncture and Oriental Medicine.

Factual Summary

The Complainant enrolled in the Academy’s MS Program in XXXXXXXXX. The Complainant alleges that shortly thereafter Student A began asking her inappropriate personal questions, touching her without permission, staring at her, and standing too close to her, which made her feel uncomfortable. The Complainant reported Student A’s behavior to the Academy instructor she was most familiar with (Instructor A) on XXXXXXXXX, 2018. The Complainant alleges that Student A again asked her inappropriate personal questions in an intimidating manner and stared menacingly at her on XXXXX, 2018, which she reported as sexual harassment to the Academy President on XXXXXXXX, 2018. The Complainant alleges the Academy did not take appropriate action in response to her reports of sexual harassment by Student A.

Complainant’s January 2018 Report

According to the Complainant, during her first meeting with Student A in XXXXXXXXXXXX, he asked to XXXXXXXXX, which he said was a course assignment. While Student A was XXXXXXXXXXXXXXXXXXXX he asked her personal questions about her XXXXXXXXX, and invaded her personal space. The Complainant stated that following their first encounter through the remainder of the winter 2017 term, Student A repeatedly asked her about XXXXXXXXXXXX in a mocking tone in front of other students. At one point, he tried to take her hat off her head. She responded by telling him not to touch her. The Complainant stated that she attempted to ignore Student A, but he did not XXXXXXXXX. He continued attempting to engage with her.

At the beginning of the spring 2017 term, Student A aggressively hugged the Complainant while stepping on her feet so she could not move, wrapped his arms around her body in a way that pinned her arms to her sides, and pressed his body against hers. The Complainant said, “[Student A] came out of nowhere and grabbed me and his body was pressed up against mine and he never said a word. It was at least five seconds, and then he let go and walked away.” The Complainant said she was unable to move and had difficulty breathing.

⁴ If the President is involved in the grievance, the Board of Directors will select the committee.

The Complainant reported to OCR that she did not reciprocate the Complainant’s “hug” and she did not report it to anyone at the time. After this incident, during spring 2017, Student A again asked the Complainant at least six times about XXXXXXXXXXXXXXXXXXXX, to which the Complainant responded by telling him never to ask about XXXX again.

The Complainant did not see or interact with Student A after the hug incident or at any point for the remainder of the spring 2017 term and through the fall 2017 term. The Complainant believed that Student A had left the Academy.

On XXXXXXXXXXX, 2018, during the first meeting of an XXXXXXXXXXX course the course instructor (Instructor B) told the students to select partners for a project. Student A pointed at the Complainant and asked her to partner with him. The Complainant said she ignored Student A. A female classmate (Student B) told Student A that she and the Complainant were partners so he would have to find another partner. The Complainant said that after class Student A looked “enraged,” and looked at her and Student B with an expression that she described as “utterly hateful and mean.”

After this incident, on XXXXXXXXXXX, 2018, the Complainant emailed Instructor A and reported “experiencing a problem with” Student A and described Student A’s history of harassing behavior towards her in detail. She explained in her email that she was seeking advice from Instructor A because she knew him better than other instructors in the Academy. In the email, the Complainant described Student A’s behavior as “an almost sexual harassment situation.”⁵ According to the Complainant, in response to her email, Instructor A told the Complainant that he considered Student A’s behavior to be sexual harassment and recommended she report it to the Academy President. Instructor A acknowledged labeling the conduct as harassment, but denied telling the Complainant it was sexual harassment. Instructor A also recommended the Complainant write a detailed account of her experiences with Student A to provide to the President.

On XXXXXXX, 2018, the Complainant met with the President and verbally complained about Student A. The Complainant told OCR that the President told her that Student A’s XXXXXXXXXXXXXXXXXXXX. The Complainant said she told the President he was supposed to do something when there was an issue with a student, but he did not offer anything to the Complainant. The President reported to OCR that the Complainant told him that Student A made her uncomfortable, but that it was not clear if the Complainant was filing a formal complaint of harassment against Student A, even though he asked her several times whether she intended to file a sexual harassment complaint.

On XXXXX, 2018, the President met with Student A and informed him that a complaint had been filed against him by a student. The President did not identify the Complainant but provided enough information about the complaint for Student A to ascertain the identity of the person who filed the complaint. The President informed Student A that their conversation constituted XXXXXXX and directed Student A to write a formal letter acknowledging the President’s warning and the student’s complaint and promising to refrain from such behavior in the future. Student A did not produce the letter promptly. The President told OCR that he

⁵ Instructor A spoke with the Academy President and forwarded the Complainant’s email to him on January 6, 2018.

requested that Student A submit the letter several times over the next few months, but he did not impose a due date on the completion of the letter. Student A submitted a text⁶ to the President on XXXXXXXX, 2018, which was addressed to the Academy staff and students. The President said he shared the text with the Title IX Coordinator only.

In addition to meeting with Student A, the President also spoke with Instructor A by phone. According to the Academy, the President discussed with Instructor A that it remained unclear whether the Complainant was alleging sexual harassment or reporting concerns that Student A made her uncomfortable, given that the Complainant characterized it as an “almost sexual harassment situation.”

Instructor A informed Instructor B about the Complainant’s concerns and asked Instructor B to “keep an eye” on Student A. Instructor A also offered to XXXXXXXXXXXXXXXXXXXX at the end of class if she felt unsafe, just as he would for any student. Instructor A said that thereafter, he XXXXXXXXXXXX a handful of times at her request.

On XXXXXXXX, 2018, the Complainant sent an email directed to the President (via Instructor A) in which she quoted the Academy’s policy regarding sexual harassment complaints, stated that she expected the Academy to follow its policy, and attached a detailed account of her previous interactions with Student A⁷ from the winter of 2017 through XXXXXX, 2018. The President reported to OCR that the Complainant’s XXXXXX email was the first time the Complainant had labeled Student A’s behavior as sexual harassment and requested that the Academy follow its procedures for handling sexual harassment complaints.

On XXXXXX, 2018, the President notified the Complainant via email that he had XXXXX Student A XXXXXXXX on XXXXXXXXXXX, 2018, and that Student A’s instructors had been advised to monitor his behavior. Between XXXXXXXX and XXXXXXXXXXX, 2018, the Academy did not receive any reports from the Complainant or any others about Student A.

Complainant’s May 2018 Report

On XXXXX, 2018, the Complainant emailed the President describing an encounter she had with Student A the day before. The Complainant stated she was sitting in a common area when Student A approached her from behind and asked her in an intimidating tone of voice, “XXXXXXXXXX” The Complainant stated that she did not answer immediately, but then said “fine.” The Complainant responded by asking her the question again more slowly and with “more vehemence.” The Complainant said she responded “fine” again, gathered her things to leave, and Student A stepped closer and squared his body facing her. The Complainant said she was trembling and Student A walked away slowly while watching her and said “good.” The Complainant told the President she felt intimidated and feared for her safety during the interaction.

⁶ The text message indicates that Student A was unclear as to the complaint allegations, characterizing his discussion with the President as “vague.” In the text message Student A says he will be conscious of his behavior to not hurt others feelings, but also indicates he would like those who he hurt to express their feelings to him directly.

⁷ The Complainant characterized Student A’s behavior as “harassment” in the attachment.

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, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility. Accordingly, schools 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 may have 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.

The required response must include steps tailored to the specific situation, and a series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment. A recipient 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. In addition to taking disciplinary action against the harasser, effective corrective action may require changes to the recipient's overall services or policies.

Depending on how widespread the harassment was and whether there have been any prior incidents, a recipient also may need to provide training for the larger school community to ensure that staff and students can recognize harassment if it recurs and know how to respond. At a minimum, the recipient's responsibilities include making sure that the harassed students 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.

- *Offer Interim Services*

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.

Procedural Requirements of Title IX

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 Nondiscrimination*

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 Knowledgeable 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, including any investigation of any complaint communicated to the recipient alleging noncompliance with Title IX or its implementing regulation. 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. 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).

- *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 sex discrimination should be written in language that is easily understood, should be easily located, and should be widely distributed.

Title IX does not require a recipient to provide separate grievance procedures for sexual misconduct and other types of sexual harassment complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to resolve complaints of sexual harassment, including disciplinary proceedings, must afford both parties a prompt and equitable resolution.

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, parents of elementary and secondary students, and employees of the grievance procedure, including where complaints may be filed; (2) applies the procedures to complaints alleging discrimination carried out by employees, other students, or third parties, (3) ensures adequate, reliable, and impartial investigation of complaints, including the opportunity 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 found to have occurred and to remedy its discriminatory effects on the complainant and others, 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. In addition, a recipient should ensure that all designated employees have adequate training as to what conduct constitutes sex discrimination and are able to explain how the grievance procedure operates.

Any rights or opportunities that a recipient makes available to one party during the investigation should be made available to the other party on equal terms.

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.

The specific steps in an investigation will vary depending on 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. However, in all cases the inquiry must be prompt, thorough, and impartial. In some situations, if a recipient knows of isolated incidents of harassment, the exercise of reasonable care should trigger an investigation that would lead to a discovery of additional incidents.

At the end of an investigation, a recipient should notify the complaining and responding parties of the outcome of its investigation, i.e., whether the complaint was found to be credible and whether or not harassment was found to have occurred.

Analysis

The preponderance of the evidence establishes that the Academy failed to comply with Title IX, at 34 C.F.R. §§ 106.31, 106.8(a), 106.8(b), and 106.9 by not publishing a compliant notice of nondiscrimination, not designating a knowledgeable or adequately trained Title IX Coordinator, not providing appropriate notice with respect to the Title IX Coordinator, and failing to provide a prompt and equitable Title IX grievance procedure, both as written and as implemented in this case.

Nondiscrimination Notice (34 C.F.R. § 106.9)

OCR finds the Academy's nondiscrimination notice does not comply with the requirements of Title IX. The notice does not state that the Academy is required by Title IX not to discriminate on the basis of sex in its educational programs or activities, nor does it state that questions regarding Title IX may be referred to the Title IX Coordinator or OCR. The notice does not identify or provide the contact information for the Academy's Title IX Coordinator.

Designation of Knowledgeable Title IX Coordinator (34 C.F.R. § 106.8(a))

OCR finds the Academy has not designated a Title IX Coordinator consistent with the requirements of Title IX, at 34 C.F.R. § 106.8(a). The Title IX Coordinator was unaware that she had been designated this responsibility and could not identify her responsibilities under Title IX. She has not received relevant training on Title IX or investigating complaints of discrimination based on sex. The Title IX Coordinator is not identified, nor is her contact information available, on the Academy's website or in other documentation that the Academy provides to students and employees. The Academy did not demonstrate that the Title IX Coordinator had any oversight responsibilities as it relates to coordinating the Academy's response to complaints made pursuant to Title IX.

Academy's Grievance Procedures (34 C.F.R. § 106.8(b))

OCR further finds the Academy has not adopted, published and implemented grievance procedures providing for the prompt and equitable resolution of complaints alleging action that is prohibited by Title IX. Although the Academy has a "Complaint Procedure" for complaints of sexual harassment, which is provided to all students and employees, and states all reported incidents will receive an "effective, thorough and objective" investigation, the procedure does not in fact provide for the prompt and equitable resolution of complaints. The Complaint Procedure does not specifically state that it applies to complaints alleging discrimination carried out by employees, other students, and third parties. The Complaint Procedure states complaints should be provided to the "Academic Dean" without providing contact or other identifying information about this person. The Complaint Procedure does not discuss any steps that the Academy will take with respect the investigation, including whether it will provide notice of the allegations to be investigated to the parties or the opportunity for the parties to present evidence and witnesses to ensure an adequate, impartial

and thorough investigation. The Complaint Procedure is silent regarding the timeframes for major stages of the complaint process. The procedure does not discuss interim services that may be available to the parties.

Equitable Response to the Complainant's Allegations (34 C.F.R. § 106.8(b))

Finally, OCR finds the Academy failed to provide an equitable response to the Complainant's complaints regarding Student A. The Academy acknowledged that it failed to conduct any investigation into the incidents described by the Complainant. Specifically, the Academy did not notify the Complainant of the charges filed against him, interview the Complainant or Student A regarding the alleged incidents, interview witnesses to the parties' encounters, nor did it notify the parties of the outcome of the report, i.e., whether sexual harassment was found to have occurred.

Although the Academy stated that it was unclear whether the Complainant initially was complaining of sexual harassment, and the evidence supports that there may have been some ambiguity in her January 5 and 8 reports, the Complainant clearly referenced the Academy's Title IX sexual harassment policy and grievance process on January 10, 2018, at which point the Academy should have conducted an investigation consistent with the requirements of Title IX to determine whether sexual harassment had occurred and, if so, taken appropriate responsive steps. However, the Academy did not make a determination regarding whether Student A's conduct constituted sexual harassment, or any other type of harassment, in violation of the Academy's harassment policies, instead issuing a verbal warning. When the Complainant made a second complaint regarding Student A's actions in May 2018, although the Academy responded promptly, the Academy's response was not consistent with the requirements of Title IX. The evidence indicates that Student A was not given appropriate notice of the allegations made against him, or a meaningful opportunity to respond to the allegations. The Academy also failed to make a determination regarding whether Student A's conduct constituted sexual harassment. Furthermore, OCR found no evidence that the Academy considered or offered interim services to either the Complainant or Student A.

The Academy notified both parties of the XXXXXXXXXXXX Student A, but it did not conduct any investigation into Student A's conduct, and it did not notify either party whether it found the complaint to be credible or whether sexual harassment occurred.

Conclusion

On October 31, 2018, the Academy signed the enclosed Resolution Agreement, which is aligned with the complaint allegations and, when fully implemented, will resolve the compliance issues identified by OCR.

This concludes OCR's investigation of the complaint and should not be interpreted to address the Academy'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 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. Please be advised that the Academy 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 a complaint alleging such treatment. The complainant may 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.

OCR would like to thank the Academy for the cooperation and courtesy extended during the investigation of this complaint. OCR looks forward to working with the Academy during the monitoring of the Resolution Agreement.

If you have any questions, please contact me by phone at 312-730-1560 or by email at ann.cook-graver@ed.gov.

Sincerely,

Ann Cook-Graver
Supervisory Attorney

Enclosure