



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., SUITE 1620  
DALLAS, TX 75201-6810

REGION VI  
ARKANSAS  
LOUISIANA  
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TEXAS

**VIA MAIL**

John L. Crain, President  
Southeastern Louisiana University  
Box 10784  
Hammond, LA 70402

Re: OCR Complaint No. 06-13-2301

Dear Dr. Crain:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its processing of the above-referenced complaint. The complaint was filed against Southeastern Louisiana University (SELU or University), in Hammond, Louisiana. The complainant alleged that, during the 2012-13 academic year, SELU: (1) failed to promptly and effectively respond to the gender-stereotype harassment directed at a male student (hereinafter referred to as the “Student”), which was sufficient to constitute a hostile environment, of which the University had notice or should have had notice; and (2) subjected the Student to retaliation (i.e., XX—phrase redacted—XX) after he complained to University officials about the gender-stereotype harassment.

OCR is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to the Department, are in compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, *et seq.*, and its implementing regulations at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex. In addition, the retaliation provision of Title VI of the Civil Rights Act of 1964, at 34 C.F.R. §100.7(e), is incorporated by reference into the Title IX regulation at 34 C.F.R. §106.71. Because the University is a recipient of Federal financial assistance from the Department, OCR has jurisdictional authority to process this complaint for resolution under Title IX.

Based on the complainant’s allegations, OCR opened for investigation the following legal issues:

1. Whether, during the 2012-13 academic year, SELU discriminated against the Student on the basis of sex by failing to take prompt and effective action to address the gender-stereotype harassment directed at him by other students and a faculty member, which was sufficient to constitute a hostile environment, of which the University had notice or should have had notice, in violation of Title IX, at 34 C.F.R. § 106.31; and

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

2. Whether, during the 2012-13 academic year, SELU subjected the Student to retaliation (*i.e.*, XX—phrase redacted—XX) because he complained to University officials about the gender-stereotype harassment, in violation of Title IX, at 34 C.F.R. § 106.71.

During its investigation, OCR reviewed information provided by the University, the complainant, and the Student. OCR also conducted interviews with relevant witnesses, including University personnel and the Student.

A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (*i.e.*, sufficient evidence to prove that it is more likely than not that unlawful discrimination or retaliation occurred). Based on our review and analysis of the information obtained during this investigation, OCR has determined that there is sufficient evidence to support a conclusion of noncompliance with Title IX regarding Issue 1. Regarding the Issue 2, OCR has determined that there is insufficient evidence to support a determination that retaliation occurred. The bases for these determinations are outlined below.

### Issue One

#### **Legal Standard**

The Title IX implementing regulation, at 34 C.F.R. § 106.31(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient of Federal financial assistance. Specific obligations are set forth at 34 C.F.R. § 106.31(b), including a recipient's obligation to ensure that its students are not denied or limited in their ability to participate in or benefit from the recipient's programs or activities on the basis of sex.

When investigating or otherwise resolving incidents of sexual harassment of students, OCR will consider whether: (1) the school has a policy prohibiting sex discrimination under Title IX and effective grievance procedures; (2) the school appropriately investigated or otherwise responded to allegations of sexual harassment; and (3) the school has taken immediate and appropriate corrective action responsive to the sexual harassment, including effective actions to end the harassment, prevent its recurrence and, as appropriate, remedy its effects.

Both sexual harassment and gender-stereotype harassment are forms of prohibited sex discrimination. Sexual or gender-stereotype 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. If a recipient knows or reasonably should have known about gender-based harassment that creates a hostile environment, Title IX requires the recipient to take prompt and effective steps reasonably calculated to end the harassment, prevent its recurrence 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.

If OCR establishes that conduct constituting gender-stereotype harassment occurred, OCR examines additional factors to determine whether a hostile environment existed. Hostile environment harassment based on gender stereotypes may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping by an employee, by another student, or by a third party that is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or receive benefits, services, or opportunities in the institution's program.

In determining whether this denial or limitation has occurred, OCR examines all the relevant circumstances from an objective and subjective perspective, including: the type of harassment (*e.g.*, whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (*e.g.*, teacher-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the college or university; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. For example, a single instance of rape is sufficiently severe to create a hostile environment.

If a recipient knows or reasonably should have known about sexual or gender-stereotype harassment that creates a hostile environment, Title IX requires the recipient to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. When responding to alleged sexual or gender-stereotype harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. 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 law enforcement investigation does not relieve the recipient of its independent Title IX obligation to investigate the conduct. A recipient should not wait for the conclusion of a criminal investigation or criminal proceeding to conduct its own Title IX investigation; and if needed, must take immediate steps to protect the complainant from further harassment prior to the completion of the Title IX investigation/resolution.

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 recipient is further required, by the Title IX implementing regulation at 34 C.F.R. § 106.9(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s).

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires that recipients notify applicants for admission and employment, students, 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 education programs or activities, and that it is required by Title IX not to discriminate in such a manner. Such notification shall state at least that the requirement not to discriminate in the education program or activity extends to employment. The notice must also

state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

Additionally, 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. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and gender-stereotype harassment complaints. A recipient may use student disciplinary or other separate procedures for these complaints. However, any procedures used to adjudicate complaints of sexual or gender-stereotype harassment, including disciplinary proceedings, must afford the complainant a prompt and equitable resolution.

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR considers whether the procedures provide for: (1) notice to students and employees of the procedures, including where complaints may be filed; (2) application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties; (3) adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; (4) designated and reasonably prompt timeframes for the major stages of the complaint process; (5) notice to the parties of the outcome of the complaint and any appeal; and (6) an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

Pending the outcome of an investigation, a recipient should take steps to protect the complainant from further harassment as necessary, including taking interim steps before the final outcome of the investigation. The recipient should undertake these steps promptly once it has notice of a sexual or gender-stereotype harassment allegation. It should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the recipient may prohibit the alleged perpetrator from having contact with the complainant pending the results of the investigation. When taking steps to separate the complainant and the alleged perpetrator, a recipient should minimize the burden on the complainant and thus should not, as a matter of course, remove the complainant from classes or housing while allowing the alleged perpetrator to remain. In addition, recipients should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling services, and their right to file with local law enforcement.

In addition, if there is an incident involving potential criminal conduct, the university should determine, consistent with state and local law, whether appropriate law enforcement or other authorities should be notified. But a university's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve a university of its independent Title IX obligation to investigate the conduct. A university therefore should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation and, if needed, must take immediate steps to protect the complainant in the educational setting. These duties are a university's responsibility, regardless of whether a student has complained, asked the university to take action, or identified the harassment as a form of discrimination.

If the complainant requests confidentiality or asks that the complaint not be pursued, a university should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If the complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, a university should inform the complainant that its ability to respond may be limited. A university also should tell the complainant that Title IX prohibits retaliation and that university officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

Grievance procedures generally may include voluntary informal mechanisms (*e.g.*, mediation) for resolving some types of harassment complaints. However, it is improper for a complainant to be required to work out the problem directly with the alleged perpetrator and certainly not without appropriate involvement by the recipient (*e.g.*, participation by a trained counselor, a trained mediator, or, if appropriate, a faculty member or administrator). The complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process.

Throughout the recipient’s investigation and in any hearing, both parties must have equal opportunity to present relevant witnesses and other evidence. The recipient should maintain documentation of all proceedings. Moreover, in cases involving allegations of sexual assault/violence, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault/violence complaints.

### **Findings of Fact and Analysis**

On August 27, 2013, OCR Dallas notified SELU and the complainant that OCR would investigate whether, during the 2012-13 academic year, SELU discriminated against the Student on the basis of sex by failing to take prompt and effective action to address the gender-stereotype harassment directed at him by other students and a faculty member, which was sufficient to constitute a hostile environment, of which the University had notice or should have had notice, in violation of Title IX, at 34 C.F.R. § 106.31.

The complainant alleged that the Student was subjected to gender-stereotype harassment based on his perceived sexual orientation. Specifically, the complainant claimed that the Student was regularly subjected to verbal and physical harassment because other students believed that he was homosexual. According to the Student, he was “targeted by other students for XXXX XXXX.” The Student claimed that XX—to end of sentence redacted—XX. The Student further alleged that a faculty member’s derogatory remarks regarding his sexual orientation contributed to the hostile environment.

OCR’s investigation included interviewing the Student; interviewing faculty and staff involved in addressing the Student’s complaint allegations, including the XXXX XXXX XXXX XXXX XXXX, the XXXX XXXX XXXX XXXX XXXX XXXX XXXX, several of the Student’s instructors, and a member of the SELU Police Department; reviewing all relevant University policies; reviewing all documents concerning the University’s response to the Student’s

allegations; and reviewing the University’s handling of other sexual harassment, sexual assault, and gender harassment complaints.

*Review of University’s Notice of Nondiscrimination*

OCR identified a notice of nondiscrimination in the University’s 2012-13 *Student Handbook*. Specifically, the Sexual/Racial/Gender Harassment Policies in the *Student Handbook* included the following statement at the time of the Student’s grievance, in the Gender Discrimination Grievance Procedures portion of that section:

Southeastern Louisiana University complies with the provisions of Title VI and [sic] of the Civil Rights Act of 1964, as amended, and Title IX of the Education Amendments of 1972, which designates that no person in the United States shall, on the basis of color, gender, creed or national origin, be excluded from participating in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal assistance.

University policies affecting students will be administered in a non-discriminatory manner. Students will not be subjected to discrimination on the basis of gender with regard to admission; recruitment; housing and other facilities; access to course offerings; counseling and use of appraisal and counseling materials; financial assistance; employment assistance; health and insurance benefits and services; marital and parental status; athletics; and educational programs and activities.

Inquiries regarding compliance with Title IX may be directed to Gene Pregeant, EEO/ADA Compliance Officer (Room 120, Administration Building, telephone 504-549-5888) or the Director of the Office for Civil Rights, Department of Health, Education and Welfare.

The Sexual Harassment Policy portion of the section includes the following statement:

It is the policy of Southeastern Louisiana University that all employees and students or users of University facilities be able to enjoy a campus environment free of all forms of discrimination, including sexual harassment. No employee or student, male or female, should be subjected to unsolicited and unwelcomed sexual overtures or conduct, either verbal or physical.

In tandem, these statements are directed to students and employees and reference admission. The statements otherwise comply with Title IX by stating that Title IX prohibits discrimination based on sex and directing individuals with questions to the EEO/ADA Compliance Officer or OCR, although it misidentifies OCR as part of the “Department of Health, Education and Welfare” rather than the U.S. Department of Education.

The Gender Discrimination Policy in the 2016-17 *Student Handbook* includes the same statement as the Gender Discrimination Grievance Procedures portion of the 2012-13 *Student Handbook*,

with the exception of the EEO/ADA Compliance Officer’s name and contact information. The 2016-17 *Student Handbook* omits the Sexual Harassment Policy portion that appears in the 2012-13 *Student Handbook*. The notice of nondiscrimination in the 2016-17 *Student Handbook* therefore contains no reference to employees or employment, beyond referencing “employment assistance.” As explained above, at a minimum, the notice of nondiscrimination must state that the requirement not to discriminate in the education program or activity extends to employment. The 2016-17 *Student Handbook*’s notice therefore does not comply with that requirement but otherwise complies with Title IX.

In sum, although the Sexual/Racial/Gender Harassment Policies section of the 2012-13 included a complete and compliant notice of nondiscrimination, the 2016-17 *Student Handbook* fails to specify that the requirement not to discriminate in the education program or activity extends to employment. The 2016-17 notice of nondiscrimination therefore does not comply with Title IX.

#### *Review of University’s Title IX Grievance Procedures*

With respect to Title IX grievance procedures, the University’s grievance procedures available to students who raised allegations of sexual harassment and sexual assault/violence during the 2012-13 academic year was published in two separate sections of the *Student Handbook*: (1) the Student Code of Conduct; and (2) the Sexual Harassment Policy. The Student Code of Conduct was the primary mechanism for outlining SELU’s expectations for student behavior and holding students accountable for violating University policies. Article IV.B.4. of the Student Code of Conduct (*i.e.*, Prohibited Conduct) addressed “sexual harassment, abuse, and/or assault.” The acts of sexual misconduct were defined as “any sexual act, including but not limited to sexual intercourse against another person which forces, attempts to force, and/or acts against another person’s will to engage in sexual activity” and “acts committed when the victim is incapable of giving consent or when the act is committed in an unlawful, forcible, non-forcible or coercive manner.”

Article VI of the Student Code of Conduct (*i.e.*, Disciplinary Procedures), in effect during the 2012-13 academic year, provided that “any member of the University community” may file a complaint of misconduct “which occurs on University premises, at University sponsored activities, or off-campus conduct that adversely affects the University Community and/or has a detrimental impact on the University’s educational function” (misconduct included acts of sexual harassment, abuse, and/or assault). The disciplinary procedures provided notice concerning how and where to file a complaint, *i.e.*, complaints were to be submitted in writing and directed to the Office of Student Conduct (OSC) or to the Residential Conduct Officer, depending on the location where the incident occurred. OCR found that the OSC was responsible for determining violations of the Student Code of Conduct. The disciplinary procedures delineated the informal dispute resolution steps and formal grievance process for students who were charged with violations of the Student Code of Conduct. A student accused of misconduct had the option to resolve the complaint informally by meeting with a Hearing Officer through the “Preliminary Administrative Disciplinary Conference” process. The disciplinary procedures stated that the administrative disciplinary conference was intended “to provide the student an opportunity to review the alleged offense/s with the Hearing Officer, to examine evidence, to discuss the Student Code of Conduct and the discipline process . . . Further,

the student and the Hearing Officer will determine if the matter can be resolved through mutual agreement, including, but not limited to, the charges/complaints being rendered null and void; an administrative agreement being signed which indicates the student assumes responsibility for a violation/s of the Student Code of Conduct; or, a referral to mediation. If, at the administrative disciplinary conference, the respondent assumes responsibility for an infraction, the student may sign an administrative agreement and waive any further proceedings and/or appeals. If the complaint cannot be disposed of by mutual consent, the matter will be referred to a hearing involving a Student Conduct Hearing Board or an Administrative Hearing Board.” OCR’s review revealed that the disciplinary procedures provided specific procedural guidelines and timeframes for the operations of the Student Conduct Hearing Board and the Administrative Hearing Board.

OCR’s examination of Article VI.E. of the Student Code of Conduct (*i.e.*, Typical Range of Sanctions) revealed that any student “found responsible” for committing an incident of sexual assault was subject to disciplinary sanctions. For incidents involving sexual assault, a student could face a maximum penalty of a one-year suspension and/or expulsion from the University. OCR observed that no penalties were listed for committing an incident of sexual harassment.

The University’s Sexual Harassment Policy, in effect during the 2012-13 academic year, applied to any student, employee, or “other member of the University community.” The Sexual Harassment Policy expressly stated that sexually harassing conduct was prohibited and summarized the process for initiating a report of sexual misconduct. However, the Sexual Harassment Policy did not contain detailed Title IX grievance procedures, as explained below. OCR observed that the University’s Sexual Harassment Policy did not contain procedures outlining the grievance process for persons who wished to file complaints, as outlined the disciplinary procedures referenced above in the Student Code of Conduct. The Sexual Harassment Policy included a section, entitled *Complaint Procedure*, which served as the University’s grievance procedures for students, employees, and other individuals who alleged sexual harassment.<sup>1</sup> The grievance procedures identified University employees whose responsibilities included handling complaints of sexual harassment; *i.e.*, a supervisor (when the reporting party is a University employee), the Human Resource Director, Equal Employment Opportunity Compliance Officer, Director of Student Health Center, or a “Department Head.” The grievance procedures listed in the Sexual Harassment Policy and referenced below outlined the steps for filing a complaint alleging sexual harassment:

Any official receiving a complaint should notify the EEO Coordinator to make certain that follow-up action is coordinated. The EEO Coordinator will serve as a clearinghouse for all related actions. If satisfaction is not adequate at initial levels, any affected individual should feel free to bring the matter to the attention of the Vice Presidents, the Provost, or the President. Confidential assistance is also available through the University Counseling Center. Action will be taken to examine impartially and resolve promptly any complaint. Complaints that cannot be resolved by informal means, through help of officials and services listed above,

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<sup>1</sup> The University’s *Complaint Procedure* applies exclusively to allegations of sexual harassment, including sexual violence and gender-based harassment. Other prohibited forms of harassment and discrimination (*e.g.*, gender, racial) are addressed under separately established complaint/grievance procedures.

may be resolved through the University's formal student, staff or faculty grievance procedures . . . Upon request to any of the above officials[,] a special committee or procedure may be established by the President to consider a complaint and possible resolution. Any such committee will consist of no less than three members and no more than five, and may include faculty members, administrators, staff members and students in a mix suitable to deal with the complaint.

The Sexual Harassment Policy was unclear on how the University investigated sex discrimination incidents once they were reported. The Sexual Harassment Policy did not contain any timelines for any stages of the grievance process and there was no discussion regarding either the anticipated length of an investigation or when the parties would receive notification of the outcome. Moreover, there was no indication in the Sexual Harassment Policy as to what circumstances may affect the length of an investigation or if the parties would be given periodic updates during an investigation. OCR noted that the grievance procedures published in the Sexual Harassment Policy failed to provide the campus address for any employees designated to receive sexual harassment complaints, as required by 34 C.F.R. § 106.8(a). OCR's review further revealed that the grievance procedures did not include the name or title of a specific individual who was designated to coordinate the University's efforts to comply with Title IX.

Overall, OCR determined that the University's grievance procedures, as outlined in the Sexual Harassment Policy, did not provide for the prompt and equitable resolution of complaints of sexual harassment and violence. While OCR found that SELU had adopted a grievance procedure for complaints of sexual harassment, OCR determined that the grievance procedure was incomplete, as it did not include: (1) designated and prompt timeframes for the investigation of complaints of sexual harassment or designated and prompt timeframes for any hearing procedure; (2) any provision requiring the University to notify the parties of the outcome of the complaint and any appeal; (3) a statement that parties may present witnesses and other evidence; nor (4) an assurance that the University will take steps to prevent recurrence of the harassment and to correct its discriminatory effects on the complainant and others. Additionally, OCR noted that the University's grievance procedures did not make any references to harassment complaints based on gender-stereotype.

Moreover, OCR determined that the numerous ways to file a complaint may cause confusion for an individual seeking to file a complaint. Specifically, the disciplinary procedures outlined in Article VI of the Student Code of Conduct stated that a person may file a complaint with either the OSC or the Residential Conduct Officer. In contrast, the grievance procedures outlined in the Sexual Harassment Policy directed persons to file a complaint with one or more of the following University employees, *i.e.*, his/her supervisor, Human Resource Director, Equal Employment Opportunity Compliance Officer, Director of Student Health Center, or Department Head. Overall, the multiple filing procedures available to the reporting party for the same issues of sexual harassment/assault/discrimination in the aforementioned policies and procedures are not easily understood.

Additionally, none of the University's policies in either the Student Code of Conduct or the Sexual Harassment Policy stated that they applied to complaints alleging discrimination or

harassment carried out by third parties. The *Complaint Procedure* contained within the Sexual Harassment Policy stated that complaints may be brought by an employee, student, or “other member of the University community.” The exact language of the Sexual Harassment Policy does not indicate that a complaint may be brought against a third party.

OCR reviewed seventeen (17) complaint files that the University produced in response to OCR’s request for all complaints or grievances filed by current or former students, faculty/staff, and any other individuals during the 2011-12 and 2012-13 school years.<sup>2</sup> (SELU’s response to OCR’s request included documentation concerning complaints or grievances filed during the 2013-14 school year.) OCR’s review of the aforementioned complaints and grievances is summarized below:

- 3 of the complaints involved allegations of sexual assault or sexual violence;
- 10 of the complaints involved allegations of student-on-student harassment;
- 4 of the complaints involved allegations concerning harassment of students and/or employees by a faculty member or other University employee;
- 5 of the complaints included some form of investigation by the SELU PD; and
- 5 of the complaints resulted in a disciplinary hearing before the University’s Student Conduct Hearing Board.

Based on our review of the documentation, OCR concluded that the University took prompt and effective action to investigate the complaints of sex discrimination referenced above, to prevent the recurrence of discrimination (as applicable), and to remedy any related effects of the discrimination. Through our review, OCR observed that University personnel notified all relevant parties when a complaint was filed (*i.e.*, the complaining party, the alleged perpetrator, University administrators/officials); took immediate action to protect the complaining party from further discrimination (*e.g.*, issued “no contact” orders to the alleged perpetrator); restricted (temporarily or permanently) the alleged perpetrator from visiting or entering the University’s campus; suspended (temporarily or permanently) the alleged perpetrator from living in University housing until the complaint was resolved; conducted formal disciplinary proceedings in a reasonable timeframe, when necessary; and instituted appropriate disciplinary sanctions, as warranted.

Notwithstanding OCR’s observation that the University took prompt and appropriate steps to resolve the complaints of sex discrimination, we noted some inadequacies concerning the University’s complaint/grievance procedures. Specifically, the grievance procedures included in the Sexual Harassment Policy lacked designated and reasonably prompt timeframes for the major stages of the complaint process. Additionally, OCR’s review of the University’s responses to complaints of harassment filed by its employees disclosed that the University’s actions were inconsistent regarding the provision of notice to the parties of both the outcome of the complaint and the opportunity to appeal the findings of the complaint. Further review disclosed that, while the University responded to the complaints provided to OCR for review in some manner,

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<sup>2</sup> The complaint files reviewed by OCR did not include the complaint filed by the Student during the 2012-13 academic year.

documentation of the University’s actions was not consistent and files lacked information as to the disposition or the content of the investigation.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging discrimination on the basis of sex. In the course of the investigation, OCR examined SELU’s grievance procedures to determine whether they met these requirements. OCR’s review revealed that the grievance procedures failed to include all necessary elements required by the Title IX implementing regulation, as noted in the above paragraph. Therefore, OCR has determined that the University’s grievance procedures are not effective and do not provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of sex. Accordingly, OCR has determined that SELU is not in compliance with the Title IX regulation at 34 C.F.R. § 106.8(b).

*Whether the University appropriately investigated or otherwise responded to Student’s allegations of sexual harassment*

OCR’s investigation established that the Student was enrolled at the University during the 2012-2013 academic year. Information obtained by OCR revealed that the Student filed a complaint of sexual harassment with the University’s Office of Student Conduct (OSC) on XXXX XXXX, XXXX. The XXXX XXXX XXXX XXXX XXXX (XXXX XXXX) advised OCR that he met with the Student and the Student’s XXXX on the same date that the complaint was filed. Although the Student indicated on the OSC complaint form that he had been subjected to sexual harassment, the XXXX XXXX stated that the Student did not complain to him about any acts of sex harassment or gender-stereotype harassment. According to the XXXX XXXX, the Student complained about being bullied by other students; however, the XXXX XXXX recalled that the Student did not indicate that the bullying was related to his sex or his failure to conform to gender stereotypes. The XXXX XXXX stated that he asked the Student to identify the individuals responsible for the harassing conduct, but the Student was able to identify only one alleged harasser by name. OCR’s review established that, on XXXX XXXX, XXXX, the XXXX XXXX held a disciplinary conference with the accused harasser regarding the Student’s allegations. According to the XXXX XXXX, the accused harasser acknowledged that XX—to end of phrase redacted—XX; however, XX—to end of phrase redacted—XX. OCR’s review showed that the University did not have any information to indicate that the accused harasser made any harassing comments based on sex or sex-stereotyping to the Student. OCR’s review further showed that the XXXX XXXX gave a warning to the accused harasser and advised XXXX to discontinue any contact with the Student. OCR’s review showed that the XXXX XXXX investigation was completed on XXXX XXXX, XXXX, two days after the Student’s complaint was received. OCR’s review showed that there were no additional incidents involving the accused harasser and the Student after XXXX XXXX, XXXX.

In an e-mail message dated XXXX XXXX, XXXX, the Student notified the University’s XXXX XXXX XXXX XXXX XXXX (XXXX) that he had been “XXXX XXXX XXXX XXXX XXXX XXXX” during the XXXX XXXX semester. The Student’s e-mail provided details of the incidents outlined above, including an allegation that his XXXX Instructor (Instructor) provoked the harassment by making offensive comments about him outside of his presence.

OCR's review showed that the XXXX sent an e-mail message of acknowledgment to the Student on XXXX XXXX, XXXX, and referred his concerns to the XXXX XXXX XXXX XXXX XXXX XXXX XXXX (Dean) for further action. OCR's investigation found that the Dean and XXXX staff conducted a prompt and equitable investigation of the Student's complaint regarding the Instructor's alleged conduct. The Dean's investigation, which included a statement of denial from the Instructor, did not substantiate the Student's claims that the Instructor engaged in any form of harassment or was aware of any harassing conduct that allegedly occurred in her classroom. The Dean advised OCR that no further actions were taken regarding the Student's complaint against the Instructor, based on the results of the investigation. Through OCR's review of the University's investigation, OCR did not find evidence that the University provided notification to the Student regarding the outcome of the investigation.

Additionally, OCR's interviews of University personnel, including the Instructor and the Dean, did not disclose information to support the Student's allegations of harassment. The Student admitted to OCR that he did not have personal knowledge of any incidents wherein the Instructor made any sexually offensive remarks about him outside of his presence. When requested by OCR, the Student was unable to provide the names of any individuals who may have witnessed any incidents of harassing conduct, and there were no other sources of information concerning these alleged incidents. Although the Student claimed that each of his instructors had witnessed various acts of harassing conduct, all of the instructors interviewed by OCR denied that they witnessed any harassing conduct by other students or heard any sexually derogatory comments directed toward the Student during their classes.

After a thorough review of the above-described information, OCR has determined that there is insufficient evidence to establish that the University failed to promptly investigate or otherwise respond to the Student's allegations of gender-stereotype harassment. The evidence suggests that the University applied the appropriate legal standards, consistent with Title IX, in reaching its determination that conduct constituting a hostile environment did not occur. Specifically, the XXXX XXXX promptly interviewed the Student and the accused harasser after receiving the Student's complaint on XXXX XXXX, XXXX. Additionally, the University attempted to identify other alleged harassers and possible witnesses to the alleged harassment, but the Student was unable to provide any identifying information. Moreover, the University's investigation of the Instructor's behavior failed to uncover evidence to suggest that a hostile environment existed in the Student's XXXX class.

In light of the foregoing, OCR has determined that there is insufficient evidence to establish either that the Student was subjected to gender-stereotype harassment or that the University failed to take prompt and effective action to address a hostile environment. Therefore, OCR has concluded that there is insufficient evidence to establish a violation of Title IX with respect to this issue.

## Issue Two

### **Legal Standard**

In order for an allegation of retaliation to be sustained, OCR must determine whether:

- (1) An individual (*i.e.*, the complainant or other alleged injured party) experienced an adverse action caused by the recipient;
- (2) The recipient knew the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and
- (3) There is some evidence of a causal connection between the protected activity and the adverse action.

If any one of these elements cannot be established, then OCR finds insufficient evidence of a violation. If, however, all of the aforementioned elements are established, OCR inquires as to whether the recipient can identify a legitimate, non-retaliatory reason for taking the adverse action. If so, OCR considers whether the reason given is merely a pretext for retaliation; in other words, whether the reason is not credible or believable.

### **Findings of Fact and Analysis**

The first step in OCR's retaliation analysis is to determine whether the University subjected the Student to an adverse action. An act of intimidation, threat, coercion, or discrimination constitutes adverse action for purposes of the anti-retaliation regulations if it is likely to dissuade a reasonable person in the Student's position from making or supporting a charge of discrimination or from otherwise exercising a right or privilege secured under the statutes or regulations enforced by OCR. Under that perspective, petty slights, minor annoyances, and lack of good manners will not normally constitute adverse actions. There are no *per se* exclusions, however; the surrounding circumstances are critical to OCR's investigation. Whether an action is adverse is judged from the perspective of a reasonable person in the Student's position.

Based on a review of the evidence, OCR determined that the University subjected the Student to adverse actions when he was: XX—to end of sentence redacted—XX.

OCR next considers whether the University had notice of the Student's protected activities. A recipient must have notice of any protected activity for OCR to conclude that it retaliated because of the protected activity. OCR determined that the University had notice of the Student's protected activities when he: (1) filed a complaint of harassment with the OSC on XXXX XXXX, XXXX, and (2) sent a letter of complaint to the XXXX on XXXX XXXX, XXXX, concerning the Instructor's alleged harassing conduct.

The next step in OCR's analysis involves determining whether there is evidence of a causal connection between the protected activities and the adverse actions. An adverse action can be considered retaliatory only if it was motivated by a protected activity. Absent direct evidence of a retaliatory motive, a causal connection is inferred in cases where the adverse action occurs in close proximity in time to the protected activity. Other indicia of a causal connection can include, but are not limited to, inconsistent treatment of the alleged victim of retaliation before and after the protected activity, inconsistent or harsher treatment of the alleged victim as compared to individuals who did not engage in protected activity, and evidence that the recipient's actions would not have been the same absent the protected activity. OCR's analysis of the information revealed that the adverse actions referenced above occurred approximately five to six months after the University received notice of the Student's protected activities. OCR will assume, without deciding, that the proximity in time between the University's receipt of

notice of the protected activities and the adverse actions is sufficiently close that the existence of a causal relationship between the protected activities and the adverse actions can reasonably be inferred.

Having established a *prima facie* case of retaliation, OCR next considers whether the University had one or more legitimate, non-retaliatory, non-pretextual reasons for taking the adverse actions in question. In its written statement to OCR, the University denied that the adverse actions were taken in retaliation for the Student's XXXX XXXX complaints. Based on our review and analysis of the information obtained during this investigation, and for the reasons set forth in detail below, OCR has determined that the University has articulated legitimate, non-retaliatory, non-pretextual reasons for the adverse actions.

XX—paragraph redacted—XX

XX—paragraph redacted—XX

XX—paragraph redacted—XX

In summary, the information obtained during the investigation revealed that the University provided OCR with legitimate, non-retaliatory reasons for the actions of the XXXX XXXX XXXX XXXX XXXX. The reasons provided by the University are supported by documentation, video evidence, and information gathered through interviews with University personnel. OCR finds that information to be credible. Further, OCR did not discover and the complainant, when given the opportunity, did not provide any information that would call into question the legitimacy of the reasons provided by the University (*i.e.*, that the Student was treated inconsistently before and after the University received notice of his protected activity, that the Student was treated differently than any similarly situated persons who did not engage in protected activity, or that the University deviated from any established policy or practice in its dealings with the Student upon receiving notice of his protected activity); the investigation did not reveal any direct evidence of pretext. For the reasons stated above, OCR has determined that there is insufficient evidence to indicate that the University retaliated against the Student in violation of Title IX, as alleged.

I. Conclusion:

In conclusion, OCR's investigation revealed that neither the University's notice of nondiscrimination nor its grievance procedures comply with the requirements of Title IX today and the grievance procedures also did not do so at the time of the Student's grievance. The University's investigation of the Student's grievance also did not comply with Title IX's requirements.

The University submitted the enclosed Resolution Agreement (Agreement) to resolve this complaint; the University's representative signed the Agreement on June 29, 2017. OCR has determined the provisions of the Agreement are aligned with the complaint allegations and appropriately resolves them. Further, OCR accepts the Agreement as an assurance the University will fulfill its obligations under Title IX with respect to this complaint. The dates for

implementation and specific actions are detailed in the enclosed Agreement. OCR will actively monitor the University's implementation of the Agreement. Please be advised that if the University fails to adhere to the actions outlined in the Agreement, OCR will immediately resume its compliance efforts.

There are no further complaint allegations appropriate for resolution; therefore, OCR is closing the investigation of the above-referenced complaint as of the date of this letter. The complainant has been notified of this action. This letter is not intended, nor should it be construed to cover, any other matters may exist and are not specifically discussed herein.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

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

Under the Freedom of Information 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 have the right to file a private suit in Federal court whether or not OCR finds a violation.

Thank you for the cooperation extended to OCR in our efforts to resolve this complaint. If you have any questions regarding this letter, please contact Katherine Fearn, the attorney assigned to the matter, at (214) 661-9653 or Katherine.Fearn@ed.gov, or Supervisory Attorney/Team Leader Melissa Huling Malonson, at (214) 661-9600.

Sincerely,

/s/

Taylor D. August, Director  
Office for Civil Rights  
Dallas Office