



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

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February 26, 2018

Carol T. Christ  
Chancellor  
University of California, Berkeley  
Office of the Chancellor  
200 California Hall, #1500  
Berkeley, California 94720-1500

(In reply, please refer to case no. 09-14-2232, 09-15-2392, and 09-16-2399.)

Dear Chancellor Christ:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaints against the University of California, Berkeley (University).

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities receiving financial assistance from the Department. The University is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter.

In case no. 09-14-2232, the complainant alleged that the University failed to respond promptly and equitably to notice that she<sup>1</sup> and other students at the University had been subjected to sexual harassment and/or sexual violence. The complaint included information collected from a number of students with similar allegations and allegations that the University's policies and practices did not comply with Title IX and its implementing regulation. Complainant A (case no. 09-15-2392) and Complainant B (case no. 09-16-2399) made similar allegations regarding the University's failure to respond promptly and equitably to their individual complaints of sexual harassment and/or sexual violence. OCR consolidated these cases for purposes of investigation and resolution.

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<sup>1</sup> For purposes of addressing the individual allegation in this complaint, OCR has determined that administrative closure is appropriate under Case Processing Manual (CPM) section 110(b) because of a federal court decision issued in 2016. The separate systemic allegations in complaint number 09-14-2232 are addressed herein through OCR's review of policies and procedures and investigation of resolution files.

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

OCR investigated the following issues:

- A. Whether the University complied with Title IX requirements regarding development and dissemination of notice of nondiscrimination pursuant to 34 C.F.R. §§ 106.8(a) and 106.9;
- B. Whether the University complied with Title IX requirements regarding the designation and notice of a Title IX Coordinator pursuant to 34 C.F.R. § 106.8(a);
- C. Whether the University's sexual harassment and sexual violence policies and procedures, as written, comply with Title IX pursuant to 34 C.F.R. § 106.8(b);
- D. Whether the University provided a prompt and equitable response to incidents of sexual harassment and sexual violence of which it had notice pursuant to 34 C.F.R. §§ 106.31 and 106.8; and
- E. Whether the University's failure to provide a prompt and equitable response to notice of sexual harassment and/or sexual violence allowed the Complainants and/or affected students to be subjected to or to continue to be subjected to a sexually hostile environment pursuant to 34 C.F.R. §§ 106.31 and 106.8.

The legal standards, facts gathered, and the reasons for OCR's determinations in this matter are summarized below.

## LEGAL STANDARDS

### *Sexually Hostile Environment and Duty to Respond Promptly and Equitably*

The regulation implementing Title IX, at 34 C.F.R. § 106.31, 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 . . . education program or activity” operated by recipients of Federal financial assistance. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including acts of sexual violence.

When a student sexually harasses another student, the harassing conduct creates a hostile environment if it 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. If a recipient knows or reasonably should know about student-on-student harassment, Title IX requires the recipient to respond in a prompt and equitable manner by taking immediate action to eliminate the harassment, prevent its recurrence, and address its effects.

If an employee who is acting, or reasonably appears to be acting, in the context of carrying out his/her responsibilities either (1) conditions an educational decision or benefit on a student's

submission to unwelcome sexual conduct, or (2) engages in sexual harassment that is so severe, persistent, or pervasive to deny or limit a student's ability to participate in or benefit from the recipient's programs or activities, the recipient is responsible for the discriminatory conduct whether or not it has notice.

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The inquiry must be prompt, reliable, and impartial. Pending the outcome of a response to a report or an investigation of a complaint, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim measures. The recipient also should take steps to prevent any retaliation against the student who made the complaint and/or those who provided information.

A recipient must consider the effects of off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity. This includes a review of misconduct that did not occur in the context of an education program or activity but may have had such an impact.

Title IX and its implementing regulations are intended to protect students from discrimination on the basis of sex, not to regulate the content of speech. In cases of alleged sexual harassment, OCR considers the protections of the First Amendment of the U.S. Constitution where issues of speech or expression by students or employees are concerned.

#### *Grievance Procedures and Notice of Nondiscrimination*

34 C.F.R. § 106.8(a) requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX, including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by Title IX. 34 C.F.R. § 106.8(b) requires that a recipient adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by Title IX. OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Finally, 34 C.F.R. § 106.9 requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, 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 any educational program or activity which it operates, and that it is required by Title IX and its implementing regulation not to discriminate in such a manner. The notice of

nondiscrimination must include a statement that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR (34 C.F.R. § 106.9(b)) and, the University must provide adequate notification of the contact information, including the name (or title), address, and phone number for the Title IX Coordinator (34 C.F.R. § 106.8).

## BACKGROUND AND SUMMARY OF INVESTIGATION

The University is a campus of the University of California (U.C.) system, and is located in Berkeley, California. To investigate this matter, OCR conducted on-site visits on nine days between June, 2014 and August, 2016, and interviewed University administrators, including the University's Title IX Coordinator (Title IX Coordinator), who is also the Director of the Office for the Prevention of Harassment and Discrimination (OPHD), the Dean of Students, the Vice-Provost for Faculty, the Director of the Center for Student Conduct, the Assistant Vice-Chancellor for Residential Life, and the Chief of the U.C. Police Department. In addition, OCR interviewed individuals responsible for providing support and counseling services, including staff from University Health Services, the Gender Equity Resource Center, the confidential care advocate's office, and respondent support services. OCR interviewed individual students who contacted OCR during the investigation or attended office hours. OCR also conducted student focus groups in February, 2015, which included meetings with graduate students, resident advisors, orientation leaders, members of fraternities and sororities, members of men's and women's athletic teams, student government representatives, and peer educators.

OCR reviewed the University's response to oral reports and written complaints of sexual harassment and/or sexual violence during the 2011-12, 2012-13, 2013-14, and 2014-15 academic years.<sup>2</sup> OCR also reviewed Complainant B's case and one matter, which was brought to OCR's attention for review, both of which the University began addressing during the 2015-16 academic year. Other than these two matters, OCR's investigation does not include a review of the University's response to any oral reports and written complaints of sexual harassment and/or sexual violence after May 29, 2015. OCR also reviewed the University's policies and procedures related to sexual harassment and sexual violence in effect during the 2011-12 academic year and all subsequent revisions and updates through December 1, 2017.

Finally, OCR reviewed information regarding the University's sexual harassment and sexual violence training for students and staff. Starting in the 2015-16 academic year, the University required freshmen and transfer students to receive in-person training on the University's definitions of sexual harassment and sexual violence, including standards of consent, and how to access University resources and file sexual harassment and sexual violence complaints. Following changes in January, 2016 to the University's Title IX sexual harassment and sexual violence policies, the University conducted mandatory training for faculty and staff, appeals panel members, and OPHD investigators.

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<sup>2</sup> For the 2014-15 academic year, OCR's review included all files identified by the University as including reports / complaints of sexual violence and all files identified by the University as including reports / complaints of sexual harassment and/or sexual violence by students against faculty.

## FACTUAL FINDINGS AND ANALYSIS

### **A. Whether the University complied with Title IX requirements regarding development and dissemination of notice of nondiscrimination pursuant to 34 C.F.R. §§ 106.8(a) and 106.9.**

#### Factual Findings

OCR reviewed the University's notice of nondiscrimination on the basis of sex published on its public facing website with respect to sexual harassment and sexual violence.<sup>3</sup> It identifies OPHD as the University office responsible for Title IX compliance and states that the University's Title IX Coordinator is housed within OPHD. The notice provides information regarding the purpose of the Title IX office, how to file a complaint, and required contact information for reporting sexual harassment and sexual violence, including multiple methods of contacting the Title IX Coordinator and OPHD support staff. The University's notice contains information about filing complaints with the Berkeley Police Department (BPD) and U.C. Police Department (UCPD). However, it does not include the statement that inquiries regarding Title IX may be referred to OCR.

While the University's course catalog and schedule of classes previously contained notice to students regarding the above-described non-discrimination information, starting with the 2014-15 academic year, the University stopped issuing a hard copy version of its course catalog and all course information is available exclusively in a browser-based online format. As such, additional notice to students is provided on other University-maintained webpages, which contain links to the OPHD webpage, where the Title IX Coordinator's contact information is located, along with a listing of sexual violence resources.<sup>4</sup> Finally, the University's online employment portal contains links to the U.C. Office of the President (UCOP) and its "discrimination and harassment prevention and response" page, which provides notice of non-discrimination on the basis of sex, information regarding who to contact and how to report complaints, and additional resources. However, none of these resources or websites state that inquiries regarding Title IX may be made to OCR.

Prior to the publication of these online notices, OCR examined notice provided to the campus community through its system-wide sexual harassment policies and procedures. The "Sexual Harassment Policy" in place between the 2010-11 and 2013-14 academic years did not include information about the Title IX Coordinator, where to make a report or complaint and that inquiries regarding Title IX may be made to OCR. These omissions were corrected on February 25, 2014, when the UCOP issued its "Sexual Harassment and Sexual Violence Policy". This

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<sup>3</sup> <http://survivorsupport.berkeley.edu/>, last reviewed November 2, 2017 and December 5, 2017.

<sup>4</sup> <http://ejce.berkeley.edu>, last reviewed on August 16, 2017 and December 5, 2017. In addition, the University maintains a "Sexual Violence Prevention and Response" webpage which contains information about non-confidential and confidential resources on campus. The webpage for the UCPD contains links to University Health Services, the Gender Equity Resource Center, and additional community resources. <http://ucop.edu/local-human-resources/op-life/sexual-harassment-violence-support.html>, last reviewed on August 16, 2017 and November 7, 2017. <http://ucpd.berkeley.edu/campus-safety/report-crime/case-sexual-violence>, last reviewed on August 16, 2017 and November 7, 2017.

policy covered student admissions and access to University programs and activities and, among other things, discussed the prohibition against discrimination and harassment on the basis of sex, and explained the University's complaint procedure, the process that campus community members must follow to file a complaint, how to contact OPHD and the Title IX Coordinator, and that inquiries regarding Title IX may be made to OCR. The U.C. system-wide "Sexual Violence and Sexual Harassment Policy" in effect January 1, 2016, to at least the date of last review on November 6, 2017, includes the same required information. This policy is also posted on the University's website.

### Analysis and Conclusion

OCR found that the University's notice of nondiscrimination is available in multiple locations on the University's website. OCR also found that the University was not in compliance with Title IX requirements between the 2010-11 and 2013-14 academic years because its policies and procedures lacked some of the required information about the Title IX Coordinator and a statement that inquiries may be made to OCR. The University brought these documents into compliance on February 25, 2014. The University's current notices of nondiscrimination posted on its website comply with Title IX requirements, with the exception that they do not include a statement that inquiries regarding Title IX may be referred to OCR. On October 20, 2017, the University provided OCR with amended draft notification to address this issue. Prior to OCR completing its assessment regarding whether the revised notices had been properly distributed, the University expressed an interest in voluntary resolution of this issue, and OCR agreed it was appropriate to do so.

### **B. Whether the University complied with Title IX requirements regarding the designation and notice of a Title IX Coordinator pursuant to 34 C.F.R § 106.8(a).**

#### Factual Findings

The University's current Title IX Coordinator has overseen Title IX investigations from at least August, 2011 through at least January 25, 2018. OCR confirmed that between August, 2011 and June, 2014, the Title IX Coordinator has attended multiple sessions of professional training regarding Title IX compliance and investigations and University policies and procedures. OCR further confirmed that OPHD staff members, student conduct hearing officers, and peer review committee members attended training sessions on sexual harassment and sexual violence and University policies and procedures. The various iterations of the University's Title IX policies and procedures describe the Title IX Coordinator's responsibilities: monitoring overall compliance with Title IX; ensuring appropriate training; and overseeing the University's investigation, response to, and resolution of complaints made under the policy. As discussed above, the University's website and OPHD web page contain the contact information for the Title IX Coordinator, including her phone number, email, and office address.

### Analysis and Conclusion

OCR found that the University had designated a Title IX Coordinator from August, 2011 through at least January 25, 2018, and the Title IX Coordinator attended professional training during that

time regarding Title IX compliance and investigations and University policies and procedures. As such, OCR found that the Title IX Coordinator was otherwise qualified to carry out the responsibilities of coordinating Title IX investigations. In addition, OCR confirmed that the University provided trainings for others involved in the investigation process, specifically OPHD investigators, student conduct hearing officers, and peer review committee members. The University's website includes the contact information, including name, address, email, and phone number, for the Title IX Coordinator and OPHD investigators. Accordingly, OCR found the University in compliance with Title IX and its implementing regulation with respect to this issue.

**C. Whether the University's sexual harassment and sexual violence policies and procedures, as written, comply with Title IX and the regulation pursuant to 34 C.F.R § 106.8(b).**

Factual Findings

*1. Overview*

OCR reviewed the applicable sexual harassment and sexual violence policies and grievance procedures contained in U.C. system-wide and local policies and procedures and in student, staff, and faculty codes of conduct in effect from August, 2011 through January 25, 2018. During this time period, the UCOP issued four significant revisions to these documents.

The U.C. "Sexual Harassment Policy" (SHP) in effect from August, 2011 until February, 2014 provided only a broad description of resolution approaches, stating that each campus would provide a prompt and effective response through an informal ("early") or alternative resolution, formal investigation, or targeted training.<sup>5</sup> The SHP did not provide any guidelines describing how the Title IX Coordinator would determine which one of these three options was the most appropriate response. During this period, neither alternative resolution nor a formal investigation was described or defined.

In February, 2014, the U.C. "Sexual Harassment and Sexual Violence" policy (SHSVP) replaced the SHP, and, among other things, the SHSVP provided additional guidance on how reports and complaints of sexual harassment and sexual violence should be processed. The SHSVP specified that complainants would be informed about all "options" and that individual U.C. campuses were "encouraged to utilize [alternative resolution] when the parties desire to resolve the situation cooperatively and/or when a [f]ormal [i]nvestigation is not likely to lead to a satisfactory outcome." The SHSVP stated that alternative resolution could include an "inquiry into the facts, but typically does not include a formal investigation", and included the following options for resolution: mediating an agreement between the parties, referrals for counseling, negotiating an agreement for disciplinary action, conducting targeted preventative training, and providing "remedies to the individual harmed by the offense."

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<sup>5</sup> The University's Title IX Coordinator is located in the OPHD office. The OPHD office is charged with responding to all oral reports and written complaints of sexual harassment and sexual violence filed by members of the University community.

The SHSVP and subsequent iterations of this policy stated that the Title IX Coordinator or his or her designee could conduct a formal investigation in cases where alternative resolution was inappropriate or attempted unsuccessfully. The formal investigation was described as resulting in a written report, including findings of fact and the positions of both parties. With respect to the Title IX Coordinator's decision to proceed to formal investigation, the "wishes of the individual making the request [for formal investigation]" were considered but not "determinative in the decision to initiate [f]ormal [i]nvestigation." The current U.C. "Sexual Violence and Sexual Harassment Policy" (SV/SH Policy), last revised in September 1, 2017, states that after making a report or filing a complaint, only the complainant has the right to request a formal investigation, but that the Title IX Officer has final authority for determining whether to initiate such an investigation or proceed with an alternative resolution process.

Following the completion of OPHD's complaint resolution process, OPHD transfers the case to the University office with appropriate oversight when either a finding is made against the respondent or the respondent is referred for sanctions / corrective action at the conclusion of an alternative resolution process. If OPHD does not make a finding against the respondent or otherwise identify other conduct charges appropriate for referral, then the case is closed. Throughout the period under review, the sanctions process has differed based on the category of the responding party (student, faculty or staff) as follows:

- If the responding party is a student, OPHD forwards the complaint to the Center for Student Conduct (CSC), which applies the University's code of conduct for students. The "Berkeley Campus Code of Student Conduct" (Student Code of Conduct), in effect as of OCR's last review in September 1, 2017 was last revised in January, 2016. The University implemented a corresponding policy, the Interim Sexual Misconduct Policy, updated on September 27, 2013 and effective until December 31, 2015, which modified the conduct process described in the Student Code of Conduct specifically for complaints involving sexual misconduct. On January 1, 2016, the Sexual Violence and Sexual Harassment Student Adjudication Framework (Student Adjudication Framework) and revised Student Conduct and Discipline Policy, which amended the Student Code of Conduct provisions specific to sexual violence and sexual harassment, went into effect.
- If the responding party is a faculty member, OPHD forwards complaints with a finding of responsibility to the Office of the Vice-Provost for Faculty, which has authority to initiate the sanctions process pursuant to the University's Faculty Code of Conduct. On July 1, 2017, the U.C. Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Senate and Non-Senate Faculty (Faculty Framework) went into effect. This policy further revised the discipline process for respondent faculty members.
- If the responding party is a staff person, from at least September, 2011 through June 30, 2017, OPHD forwarded complaints with a finding of responsibility to the department where the respondent was employed. During this time period, all determinations regarding corrective action were made in accordance with University staff policies and / or applicable union contracts. On July 1, 2017, the U.C. Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel (Staff Framework) went into effect. Under the Staff Framework,



OPHD forwards complaints against staff with a finding of responsibility to the respondent's supervisor or other appropriate administrative authority to determine appropriate sanctions.

2. *Reports and Complaints against Students*

a. *2011-13 Academic Years*

For the 2011-12 and 2012-13 academic years, the SHP and the Student Code of Conduct applied to all oral reports and written complaints of sexual harassment and sexual violence. OCR found the University out of compliance during 2011-13 academic years for several reasons. First, the SHP did not provide students and complainants with any information about where to file complaints or the procedures the University would follow to resolve such complaints. Second, both the SHP and the Student Code of Conduct failed to provide: an assurance that the complainant and respondent would be provided equal opportunities to present witnesses and evidence; reasonably prompt timeframes for major stages in the complaint process to ensure a prompt resolution of complaints; and notice of the outcome of the investigation and complaint resolution to either party. In addition, while the SHP contained an assurance that complainants would be protected from retaliation, neither the SHP nor the Student Code of Conduct contained a similar assurance for respondents who participated in OPHD investigations. Further, the Student Code of Conduct provided respondents with the opportunity to access and provide evidence and the right to an advisor during the hearing process but did not explicitly provide any of these rights to complainants. Neither of these policies provided an assurance that a party could end the alternative resolution process and begin a formal investigation process, if the alternative resolution process was inequitable or ineffective.

b. *Beginning of 2013 Academic Year until February 24, 2014*

From the beginning of the 2013-14 academic year until February 24, 2014, the SHP remained in effect and worked with the University's Interim Sexual Misconduct Policy, which modified the Student Code of Conduct for sexual misconduct matters. OCR found that the University's policies and procedures were also not in compliance with Title IX requirements during this period. In this regard, the Interim Sexual Misconduct Policy addressed only three of the compliance issues discussed above, namely, adding a requirement to provide notice of the outcome of the student conduct process following OPHD's investigation to both parties, a provision against retaliation applicable to both respondents and complainants, and a provision regarding equitable access to information and right to an advisor for complainants.

c. *February 25, 2014 through the end of the 2014-15 Academic Year*

The SHSVP went into effect on February 25, 2014 and replaced the SHP. With the implementation of the SHSVP, working in conjunction with the Interim Sexual Misconduct Policy, additional issues were remedied: the SHSVP provided adequate notice to students and employees about complaint procedures and where complaints of sexual harassment and sexual violence should be filed (namely, with the Title IX office or a responsible employee, such as a supervisor or manager). It also provided for an adequate and reliable investigation with respect

to an equal opportunity for complainants and respondents to present witnesses and evidence and a reasonably prompt timeframe for resolution of formal investigations (60 working days, with the possibility for an extension).

However, the SHSVP continued to lack a reasonably prompt timeframe for complaints resolved through an alternative resolution or notice of the outcome of such process. OCR also identified an inequity for the respondent because, during the alternative resolution process, only the complainant could request to initiate the formal investigation process, which included due process protections for both parties.

*d. 2015-16 and 2016-17 Academic Years*

For the 2015-16 academic year, the SHSVP was in effect until January 1, 2016, when the SV/SH policy took effect. In addition, the Student Adjudication Framework and revised Student Conduct and Discipline Policy took effect on January 1, 2016, amending the Student Code of Conduct for sexual harassment and sexual violence cases. Additional revisions made on September 1, 2017 included an update on offices responsible for policy implementation and several links to staff and faculty adjudication frameworks.

The revised policies and procedures in place from January 1, 2016 through at least December 1, 2017 do not address the issues of noncompliance previously identified in the SHSVP with respect to the alternative resolution process. In addition, the SV/SH policy does not state that the alternative resolution process is voluntary or that its coverage applies to complaints of sexual harassment and sexual violence against third parties, such as individuals in the University community whose conduct may create a hostile environment for students, faculty, or staff in the University's programs or activities.

*3. Reports and Complaints against Faculty*

From September 1, 2011 through at least December 1, 2017, the University had in effect the following policies and procedures applicable to sexual harassment and sexual violence complaints against faculty: the Faculty Code of Conduct (APM-015), the Policy on Faculty Conduct and the Administration of Discipline (APM-016), and a local faculty discipline process. Under the policies and procedures, although OPHD had already issued a finding of responsibility, the Vice-Provost for Faculty then initiated a separate faculty investigation and discipline process. In this second process, the Vice-Provost for Faculty appointed a small committee of faculty investigators to determine if the faculty member "could be charged" with a violation of University policies with respect to sexual harassment and/or sexual violence. None of the policies and procedures pertaining to faculty conduct or discipline contained any timeframes, reasonable or otherwise, for completion of the major stages in the investigation and discipline process. They also did not provide equity for complainants with respect to receipt of notice of the outcome of the investigation and sanctions process; the opportunity to present evidence, witnesses, or access the investigative file; or representation during hearing proceedings before the Privilege and Tenure Committee (P & T Committee), all of which were provided to respondents.

On July 1, 2017, the University's new Faculty Framework went into effect. The Faculty Framework describes a complaint procedure for sexual harassment and sexual violence complaints against faculty that, in conjunction with the SV/SH policy and updates to local faculty discipline procedures, provides for notice to the complainant of various reporting options, an initial complaint assessment by the Title IX Coordinator, interim measures, and resolution through the SV/SH policy's alternative resolution and formal investigation processes. Under the Faculty Framework, complainants and respondents are provided with: notice of the initiation of the investigation, findings, and, as applicable, sanctions; equal opportunities to present testimony and evidence and to have an advisor present; notice of the timelines for completion of the Title IX investigation and, if applicable, the discipline process.

Under the Faculty Framework, if OPHD finds a respondent faculty member violated the SV/SH policy, then this finding triggers the initiation of the faculty discipline process under APM-015 and APM-016. Both parties have an opportunity to respond to the finding from OPHD under the SV/SH policy prior to the Vice-Provost for Faculty's consultation with the University's Peer Review Committee regarding the range of appropriate corrective actions. The Faculty Framework also includes a 40-day timeframe for the Vice-Provost for Faculty to, in consultation with the Peer Review Committee, enter into an early resolution with the faculty member in accordance with APM-016, file charges against the faculty member to initiate the P & T Committee disciplinary hearing process, or close the matter without taking formal disciplinary action. However, the Faculty Framework fails to include a reasonably prompt timeframe for completion of the early resolution, P & T Committee hearing, or appeal / reconsideration process. It states only that faculty discipline will be imposed within three years of a complainant's initial report of sexual harassment and/or sexual violence. As written, three years is not a reasonably prompt timeframe for concluding an investigation and issuing an effective response for a complaint of sexual harassment and/or sexual violence.

OCR also notes that, under the Faculty Framework and applicable Academic Senate bylaws that govern the P & T Committee hearing process, a respondent faculty member may be permitted to directly cross-examine a complainant who provides witness testimony during a P & T Committee hearing involving a complaint of sexual violence and/or sexual harassment. However, because the University and not individual complainants initiate charges before the P & T Committee, the Academic Senate bylaws do not provide for complainant-witnesses to be able to cross-examine respondent faculty members during P & T Committee hearings.<sup>6</sup>

OCR also notes that under APM-015 and APM-016, the P & T Committee uses the clear and convincing evidence standard for the faculty discipline process. As such, the University has a two-tier system with different standards of proof.

#### *4. Reports and Complaints against Staff*

From September 1, 2011 through at least December 1, 2017, the University had in effect several personnel policies for staff members (specifically relevant here, PPSM 62 and 64) related to

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<sup>6</sup> Although this does not address the equity issue between the complainant and the respondent, OCR notes there are other options, such as cross-examination of either party by a third party, an advisor, or the University, available. Regardless of the method employed, the University will need to ensure equity between the parties.

violations of University policies. Neither PPSM 62, 64, or other PPSMs applicable to conduct that violates University policies included a resolution process for sexual harassment and/or sexual violence complaints against staff and, as such, did not contain any timeframes, reasonable or otherwise, for completion of major stages in the resolution of complaints or provide for notice of the outcome of the investigation to complainants or respondents.

OCR found that the Staff Framework, which went into effect July 1, 2017, remedied many deficiencies present under PPSMs 62 and 64. Specifically, the Staff Framework describes a complaint procedure for sexual harassment and sexual violence complaints against staff that, in conjunction with the SV/SH policy, provides for notice to the complainant of various reporting options, an initial complaint assessment by the Title IX Coordinator, interim measures, and resolution through the SV/SH's alternative resolution and formal investigation processes through OPHD with a 60 business day timeline. Both parties are provided with: notice of the initiation of an investigation, findings, and sanctions; equal opportunities to present testimony and evidence and have an advisor present; and notice of timelines for completion of the Title IX investigation and, if applicable, discipline process. Both parties are provided with an opportunity to respond to OPHD's finding of responsibility "to express their perspectives and address what outcome they wish to see" prior to any determination concerning discipline and/or other corrective action. If the Title IX office finds a respondent staff member violated the SV/SH policy, then the respondent's supervisor and the Chancellor's designee are notified and review the parties' submission, if any, and make a determination regarding the appropriate sanction from a range of available sanctions up to and including termination.

While PPSMs 62 and 64 broadly describe applicability to sexual misconduct cases and give the University authority to issue sanctions to staff for misconduct, these PPSMs were not amended on September 1, 2017 to include a specific cross-reference to the new Staff Framework. As such, PPSM 62 and 64 continue not to include timeframes for any process or information about the rights of complainants and respondents to provide evidence and witnesses.

### Analysis and Conclusion

Overall, while the University's policies and procedures have been effectively amended since 2011 to improve the equity and promptness of resolutions, OCR identified several remaining areas where the policies and procedures do not meet Title IX requirements. Specifically, the SV/SH policy contains no timeframe for completion of the alternative resolution process and does not provide for any notice of the outcome to the parties who engage in such process. The alternative resolution process is not voluntary for the parties. The complainant and respondent may not end the alternative resolution process and initiate the formal investigation process, even where it has not equitably addressed the allegations or has not concluded in a reasonably prompt manner. In addition, the SV/SH policy does not state that its coverage applies to complaints of sexual harassment and sexual violence against third parties, such as individuals in the University community whose conduct may create a hostile environment for students, faculty, or staff in the University's programs or activities.

Further, the Faculty Framework fails to include a reasonably prompt timeframe for completion of the P & T hearing process or early resolution process, if one is chosen. Finally, because there are

no cross-references in staff PPSMs to the Staff Framework, these staff policies lack effective notice as to which grievance process applies. If PPSM 62 and 64 do still apply, they are not in compliance because they do not include reasonably prompt timeframes for major stages of the complaint process or information about the rights of complainants and respondents to present witnesses and other evidence. Accordingly, for the reasons stated herein, OCR found that the University's current policies and procedures are not compliant with Title IX and its implementing regulation.

**D. Whether the University provided a prompt and equitable response to incidents of sexual harassment and sexual violence of which it had notice pursuant to 34 C.F.R. §§ 106.31 and 106.8; and**

**E. Whether the University's failure to provide a prompt and equitable response to notice of sexual harassment and sexual violence allowed the Complainants and/or affected students to be subjected to or to continue to be subjected to a sexually hostile environment pursuant to 34 C.F.R. §§ 106.31 and 106.8.**

*1. Complainant A – 09-15-2392*

Factual Findings

During the 2013-14 academic year, Complainant A was a female undergraduate at the University and a member of a University athletics team. Student 1 was a male undergraduate student who was a member of the same athletics team as Complainant A. Complainant A and Student 1 engaged in a consensual sexual relationship that ended in or around June, 2013 and, thereafter, Complainant A and Student 1 continued to see each other socially. On June X, 2014, Student 1 called 911 to report that Complainant A was intoxicated and making threats XX XXX XXXXXXXXXXXX XXXXXXXXXXXX. Student 1 provided a written statement to the Berkeley Police Department (BPD) for inclusion in a police report. Complainant A later contacted BPD to file her own police report, alleging that on June X, 2014, Student 1 had pushed her and threatened to rape her. Because Complainant A declined to provide a witness statement and requested that BPD take no further action, only Student 1's police report was initially forwarded to the University.

On June X, 2014, the Associate Athletics Director emailed Complainant A asking if she was available to meet; Complainant A responded, “[u]nless you are messaging me about the sexual assault, in which case I decided NOT to press charges.” The Associate Athletics Director reported Complainant A's statement to the Title IX Coordinator and emailed Complainant A with campus resources and information about OPHD. There are no records in the OPHD case file reviewed by OCR indicating that Complainant A responded to this message.

On July XX, 2014, CSC issued an “Alleged Violation Letter” charging Complainant A with violations of University policies outside the scope of the University's SHSVP policy stemming from her conduct during the June X, 2014 incident. On July XX, 2014, CSC met with Student 1 and learned that, previous to the June X, 2014 incident, Complainant A had allegedly XXXXXX XXXXXXXXXXXX XXXXXX and physically assaulted him. CSC offered Student 1 a no-contact directive, and Student 1 declined. On August X, 2014, CSC forwarded Student 1's BPD

police report, written statement, and notes from the July XX, 2014 meeting to the Title IX Coordinator. CSC requested that OPHD determine whether Complainant A's conduct fell within OPHD's authority to respond to Title IX matters under the SHSVP.

On August XX, 2014, Complainant A contacted CSC regarding her pending conduct charges and reported that Student 1 had sexually assaulted her. On August XX, CSC met with Complainant A and temporarily suspended<sup>7</sup> other unrelated pending conduct charges against Complainant A to first proceed with the grievance process under the SHSVP because Complainant A's sexual assault allegation arose from the same June X, 2014 incident as Student 1's allegations. CSC provided Complainant A with information about on-campus resources and offered Complainant A a no-contact directive. Complainant A declined the no-contact directive, and CSC informed Complainant A that all information concerning her allegation would be shared with OPHD. CSC forwarded all meeting notes and correspondence with Complainant A to the Title IX Coordinator.

In an August XX, 2014, email, Complainant A XXXXXXXXX XXXX XXX XXXXXXXXXXXX XXXXXXXXXXXX XXXX. The team Coach forwarded this email to the Associate Athletics Director, who forwarded it to the Title IX Coordinator. The Title IX Coordinator scheduled a meeting with CSC, University Counsel, and UCOP Counsel to determine an appropriate response. Before the group could make a determination, Student 1 requested a no-contact directive because Complainant A had threatened another student. The Associate Athletics Director connected this student to UCPD, and the Title IX Coordinator drafted a response to Complainant A's August XX, 2014 email. In this response, sent on September XX, 2014, Complainant A was notified that she should not have to XXXXXX XXXX XXX XXXX due to her allegations against Student 1. Complainant A was again informed of campus resources, the University's policies prohibiting retaliation for reporting sexual harassment and sexual violence, and notified that OPHD had been contacted because Complainant A's allegations against Student 1 concerned conduct prohibited by the SHSVP.

On September XX, 2014, OPHD notified Complainant A and Student 1 that their respective allegations (the University characterized Student 1's allegation against Complainant A as "dating violence" and Complainant A's allegation against Student 1 as "sexual assault / dating violence" based on the June X incident and statements made to CSC) would be formally investigated by OPHD under the University's SHSVP. Also on September XX, 2014, OPHD issued mutual no-contact directives that included prohibiting communications with each other; "[s]peaking negatively about the other individual to mutual friends or acquaintances"<sup>8</sup>; and indirect threats or intimidation. OPHD informed the Associate Athletics Director that notices of investigation and mutual no-contact directives had been issued, confirmed that OPHD staff had been assigned to investigate each party's allegations, and authorized the Associate Athletics Director to notify the team Coach of the same.

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<sup>7</sup> Following the conclusion of OPHD's investigation on January X, 2015, Complainant A's conduct charges outside the scope of the SHSVP stemming from the June X, 2014, incident were reinstated.

<sup>8</sup> OCR interprets its regulations consistent with the requirements of the First Amendment, and all actions taken by OCR must comport with First Amendment principles. No OCR regulation should be interpreted to impinge upon rights protected under the First Amendment of the U.S. Constitution or to require recipients to enact or enforce codes that punish the exercise of such rights.

OPHD's investigation was conducted by two investigators trained in the University's SHSVP. Between September XX, 2014, and January X, 2015, OPHD interviewed Complainant A and Student 1 multiple times and interviewed seven additional witnesses identified by Complainant A and Student 1. OPHD made multiple requests for each party to provide documentary evidence and – while Student 1 provided call logs, text messages, photographs of his injuries allegedly caused by Complainant A, and other documents – Complainant A shared only the police report she had filed with BPD. Complainant A promised, but ultimately never provided, evidence of injuries allegedly caused by Student 1 during the June X incident or messages from Student 1 corroborating Complainant A's statement that Student 1 had previously threatened to rape her.

On October X, 2014, Complainant A was placed on interim suspension for conduct unrelated to the OPHD investigation. Later that same day, Complainant A appealed the interim suspension asserting that the underlying allegations were a false accusation that had been made against her in retaliation for reporting Student 1's alleged sexual assault. In response, on October XX, 2014, CSC modified the interim suspension to allow Complainant A to attend classes and access counseling resources. On October XX, 2014, CSC followed up with Complainant A to determine if additional supports were needed, and Complainant A reported that the team Coach had previously asked Complainant A questions that made her uncomfortable. On October XX and November X, 2014, OPHD followed up with Complainant A, her father, and, later, the team Coach to address these concerns.

On October XX and November X, 2014, Student 1 notified CSC and OPHD, respectively, that Complainant A had called Student 1 a "rapist" in a text message to another student. OPHD followed up with Student 1 to learn more about the incident, and Student 1 reported that, among other things, Complainant A had allegedly threatened to harm XXXXXXXX XXXXXXXXXXXX. On November X, 2014, CSC issued an Alleged Violation Letter charging Complainant A with violating the no-contact directive. On November XX, 2014, CSC met with Complainant A, who asserted that she did not understand the no-contact directive, and she did not believe her behavior violated its terms. CSC reviewed the directive with Complainant A and counseled her on future interactions with Student 1 and third parties. On November XX, 2017, CSC notified Complainant A that no disciplinary action would be taken. Thereafter, no further reports were received concerning Complainant A's failure to comply with the no-contact directive.

On January X, 2015, OPHD issued a report dispositive of all allegations made by Complainant A and Student 1. Written notice of findings was provided to both parties, and Complainant A and Student 1 were informed that they could request a redacted copy of the report. In April, 2015, Complainant A and Student 1 requested and received copies of the report. Citing definitions of prohibited conduct, including dating violence, sexual assault, and sexual harassment, described in the SHSVP, the report classified Complainant A's allegations against Student 1 as sexual assault / dating violence and Student 1's allegations against Complainant A as dating violence. The report considered all witness interviews, documentary evidence, and additional information obtained during OPHD's investigation. Using a preponderance of the evidence standard, the report included the following findings:

- Complainant A's conduct during the June X, 2014, incident constituted dating violence under the University's policy and, therefore, Complainant A violated the SHSVP then in effect.
- Student 1's conduct before and during the June X, 2014, incident did not constitute dating violence, sexual assault, or any other violation of the SHSVP and, therefore, Student 1 did not violate University policies then in effect.

As the University proceeded with the conduct process against Complainant A, all parties were provided with contemporaneous notice concerning each step in the conduct process and equal opportunities to participate, present evidence, have an advisor present, and review information presented by the other party.

#### Analysis and Conclusion

OCR found that the University provided the parties with an equitable complaint resolution process because it conducted an adequate, reliable, and impartial investigation. After Complainant A reported her allegation of sexual assault / dating violence to CSC on August XX, 2014, OPHD initiated a formal investigation of the allegations under the SHSVP. The University provided Complainant A and Student 1 with written notice of all allegations and applicable University policies. OPHD's investigation was conducted by two trained investigators. The investigation included a review of all relevant information produced by Complainant A, Student 1, and other witnesses identified by Complainant A and Student 1. When Complainant A and Student 1 raised new concerns, OPHD sought out additional information and worked with CSC, the Athletics Department, and other University departments to implement interim measures and other supports and information, including offering and eventually implementing mutual no-contact directives, providing both parties with information concerning on-campus resources, modifying Complainant A's interim suspension, and meeting with Complainant A and explaining the no-contact directive after Student 1 alleged that she had violated its terms.

OCR also found that the University completed the investigations in a reasonably prompt manner. On June X, 2014, Complainant A first reported her allegation against Student 1 in an email message to the team Coach. This message was forwarded to the Title IX Coordinator, who drafted a reply message with University resources and contact information for OPHD. OCR did not obtain any evidence showing that Complainant A responded to this message. OPHD's investigation concluded on January X, 2015, 142 days after Complainant A reported her allegation to CSC on August XX, 2014. OCR determined that the University provided a sufficiently prompt resolution of Complainant A's complaint given the case's complexity and volume of documentary evidence submitted by the parties, and the level of coordination required amongst University departments to provide an equitable response to Complainant A's and Student 1's allegations. Accordingly, with respect to its response to this complaint, OCR found the University in compliance with Title IX and its implementing regulation.



2. *Complainant B – 09-16-2399*

On August XX, 2017, OCR learned that Complainant B had resolved her allegations through mediation with the University, and she requested to withdraw her OCR complaint per the terms of a private settlement agreement reached with the U.C. Regents. OCR confirmed that this private settlement agreement was reached through a resolution process comparable to one provided by OCR, and any remedy obtained constituted a final resolution of the same issues, concerns, and individual allegations raised by Complainant B. As such, OCR determined that Complainant B's individual allegations were appropriate for administrative closure under CPM section 110(a)(2), and, accordingly, is administratively closing them.

3. *Review of Title IX Reports and Complaints Received by the University during the 2011-12 through 2014-15 Academic Years*

Factual Findings

a. *Overview of Complaint and Resolution Types*

For the years 2011-12 through 2014-15, in which the University provided OCR with a breakdown of case information, the University received 401 oral reports or written complaints (reports / complaints) that the University classified as sexual harassment and/or sexual violence. Of that number, the University identified 171 reports / complaints that involved student-to-student sexual harassment and/or sexual violence. The University identified that it resolved the majority (123 or 72%) of these matters through an alternative resolution process. From all Title IX reports/complaints received by the University from the 2011-12 through the 2014-15 academic years, the University classified 31 reports / complaints as allegations of faculty-to-student sexual harassment and/or sexual violence. The University identified that it resolved the majority (27 or 87%) of these reports / complaints through an alternative resolution process. From the 2011-12 through the 2014-15 academic years, the University classified 23 reports / complaints as allegations of staff-to-student sexual harassment and/or sexual violence. The University identified that it resolved the majority (20 or 87%) of these reports / complaints through an alternative resolution process. During the 2011-12 through the 2014-15 academic years, the University identified that it formally resolved 56 reports / complaints. Of that number, the University classified 33 as allegations of sexual violence.

b. *Files Reviewed by OCR*

OCR's review included 128 case files for reports / complaints of sexual harassment and/or sexual violence received from the 2011-12 through the 2013-14 academic years, as well as 71 files from

reports / complaints filed in the 2014-15 academic year,<sup>9</sup> and one matter in the 2015-16 academic year that was brought to OCR's attention. Through this review of files, OCR identified compliance concerns and made noncompliance findings as follows:

Overall, OCR identified compliance concerns with respect to equity when the University used an alternative resolution process. The alternative resolution process resulted in complaints being resolved without the voluntary agreement of, or, in some matters, notice of the outcome being provided to the complainant and/or respondent. In some matters, the alternative resolution process also resulted in complaints being resolved without interviews of the impacted parties or an assessment of whether a sexually hostile environment had been created and/or whether interim measures or other remedies were necessary.

#### *Student-to-Faculty Member Reports and Complaints*

From the files reviewed and for example, in four matters, where students alleged unwelcome sexual conduct and/or comments by faculty member respondents, OPHD was on notice of previous complaints concerning the same faculty members but went forward a second (third or fourth) time with an alternative resolution process. In three of these matters, the alternative resolution process was completed after a department advisor or chair engaged in counseling conversations with respondents concerning their alleged sexually harassing behaviors. One of these cases eventually went through a formal resolution.

With respect to one of the matters involving complaints by three female undergraduate students against a faculty member, on August XX, 2011, the Title IX Director sent a letter to the faculty member regarding complaints dating back to the 2009-10 and 2010-11 academic years. The three reports described unwanted physical contact from the faculty member during one-on-one meetings during his office hours. The cited conduct was the faculty member sitting close on his office sofa; touching students' legs, shoulders and back; giving them extended hugs with close body contact; and one attempt to kiss a student on her face or neck. The faculty member was directed to remove the sofa from his office, change the lighting in his office, and to adopt a "hands off" policy in meeting with students. The file does not indicate that the complaining students were provided any interim measures, or notice of the outcome.

In July 2013, a graduate student reported to OPHD that the same faculty member, who had previously XXXXXX XX XXX XXXXXXXXXXXXXXXXXXXXXXX, subjected her to persistent questioning about why XXX XXXXX XX XXX XXX XXX XX XX XX XXX XXXXXXXXXXXX while they were attending XX XXX XX XXXXX XXXXXXXXXXXX conference related to their subject of study. The graduate student alleged that the conduct that ultimately led her to ask the faculty member XXX XX XX XX XXX XXXXXXXXXXXX included having her stay in his office for extended amounts of time related to subjects unrelated to her research and research topic, which suggested to her that he was trying to engage in a personal relationship with her. When she responded by asking him XXX XX XXXXX XX XXX XXXXXXXXXXXX because she felt he compromised professional boundaries, he told her, using crude language, that when she looks at

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<sup>9</sup> For the 2014-15 academic year, OCR's review included all files identified by the University as including reports / complaints of sexual violence and all files identified by the University as including student reports / complaints of sexual harassment and/or sexual violence against faculty.

him, it looks like she wants to have sex with him. Over the next four days, XXXXXXXXXX  
XXXXXX XXXX XXXXXXXX XXXXXXXX XX XXXXXXX, the faculty member sent the  
graduate student seven personal messages on social media, all unanswered, demanding with  
increasing urgency that she respond to him. The Title IX Coordinator, along with the dean of the  
college and the chair of the department, met with the faculty member in September 2013. The  
faculty member received a letter in December 2013 outlining the concerns about his  
inappropriate conduct with students and notes from the meeting with him, in which he  
committed to respecting “personal boundaries” and was instructed not to engage in further  
contact with the graduate student. The letter described no specific disciplinary sanction or  
additional corrective actions for the faculty member. The complainant was informed that the  
complaint would be resolved through a counseling meeting with the faculty member and an  
instruction that he cease contact with her.

In a second matter, documentation reviewed by OCR raised a compliance concern that although  
the University received notice from several students of repeated incidents of unwelcome sexual  
conduct by a faculty member, the University did not consider whether interim measures were  
appropriate for the complainants nor did it provide notice to all of the complainants regarding the  
outcome of their complaints. In addition, OCR found the University in noncompliance because  
the complaints were not promptly resolved.

On July XX, 2014, a faculty member contacted OPHD concerning two students who alleged  
incidents of unwelcome conduct of a sexual nature from a faculty member in their department.  
During the course of the investigation, two additional students contacted OPHD to report further  
incidents of unwelcome conduct from the same faculty member. These reports, submitted by  
students who were undergraduates or graduate students at the time that the alleged conduct  
occurred, described more than ten incidents between 2001 and 2010 of unwanted touching and  
comments of a sexual nature including, but not limited to: unwanted hugging and kissing;  
unwanted touching of students’ shoulders, necks, knees, legs, and private parts; and discussions  
of specific sexual encounters during a former relationship by the faculty member. OPHD’s  
interviews and correspondence with the complainants and other witnesses included in the  
casefile indicated that the majority of these alleged incidents occurred on campus, in transit to or  
from a university-related program, or at academic conferences for the faculty and students in  
their respective field. OPHD’s investigative report and materials included in the case file  
reviewed by OCR do not indicate whether, as part of its response to notice of the alleged conduct  
in each of these cases, the University individually assessed whether interim measures were  
needed for each of the complainants.

On July XX, 2014, OPHD opened a formal investigation of these complaints under the  
University’s SHSVP then in effect. The investigation consisted of eight interviews – the three  
individuals who decided to proceed as complainants, the respondent faculty member, and four  
additional witnesses – and a review of past complaints from 2011, 2013, and 2014 regarding  
alleged sexually harassing behavior by the faculty member that OPHD had resolved through  
alternative resolution processes in prior years. The prior reports and complaints included  
allegations of XXXXXXXXX XXX XXXX XXXXXXXX XX X XXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXX and former student and researcher reports of unwelcome  
conduct of a sexual nature against this faculty member. These reports from former students and

researchers were shared by faculty at other institutions to the faculty member's department chair. On June XX, 2015, OPHD issued an investigative report that found, based on a preponderance of the evidence, that the faculty member's conduct constituted sexual harassment in violation of University policies. Specifically, the report concluded that the faculty member's conduct violated the SHP in effect at the time the reported incidents were alleged to have occurred because his behavior toward the complainants was unwelcome and sexual in nature and pervasive. OPHD also found that the faculty member's status in the department coupled with the pervasive nature of the unwelcome sexual conduct created an intimidating and hostile learning environment for the students. The respondent faculty member and complainants were provided notice of these investigative findings and an opportunity to request OPHD's report.

On July X, 2015, the Vice-Provost for Faculty (Vice Provost) met with the faculty member to discuss OPHD's findings and the next step in the process, which was the referral to faculty adjudication and discipline process under APM-015 and APM-016. Rather than proceed with the formal faculty hearing process, on July XX, 2015, 355 days after complainants provided notice to the University, the University sent the faculty member a letter memorializing an agreement reached between the Vice Provost and the faculty member through an early resolution process wherein the faculty member agreed to comply with University policies and procedures, including the SHSVP and APM-015, and was prohibited from engaging in specific behaviors with students. University counsel informed OCR that the Faculty Code of Conduct and other applicable University policies encouraged the resolution of complaints against faculty members through agreements reached between the Vice Provost and the respondent-faculty member. In this regard, local faculty discipline procedures state that "[b]efore filing formal charges with P&T, the [Vice-Provost for Faculty] may offer a settlement involving a proposed sanction. If the settlement is accepted by the accused faculty member, a hearing [before the P & T Committee] shall not be necessary." Documentation provided to OCR suggested that only one of the three complainants received notice of these provisions that resolved their complaints.

On October XX, 2015, the complainant who received notice of the provisions of the agreement told the University that there were "approximately 10 other women who did not feel comfortable coming forward in the first Title IX complaint, but who have been sexually harassed / assaulted [by the respondent] in the past." In an October XX, 2015, follow-up message with OPHD, this complainant stated that "[s]ome of these people are willing to file a complaint" with OPHD but were concerned about potential retaliation. The University responded that anyone with a complaint should contact OPHD regardless of whether the complaint concerned past or current conduct. Shortly thereafter, the faculty member resigned from the University.

In this matter, OCR identified a concern that the University handled prior reports / complaints against the faculty member with an alternative resolution process that was not voluntarily agreed to by the parties and did not include reasonably effective steps to prevent further harassment. OCR also identified a concern with the formal investigation completed by OPHD on June XX, 2015 because the documents provided did not show whether, as part of the University's response to notice of the alleged conduct, the University assessed if interim or other measures were appropriate for the complainants during the investigation or at its conclusion to address any ongoing hostile environment. Likewise, while the faculty member was provided with a letter memorializing the agreement reached on July XX, 2015, there was no

documentation in the file indicating that any notice of this outcome was provided to the other two complainants. OCR's review of OPHD documentation showed that only one complainant requested, and was provided with, this written information. The University's policies and procedures at the time did not provide for notice to student complainants regarding the outcome of the faculty adjudication and discipline process in matters involving faculty sexual harassment and sexual violence. In order to make a noncompliance finding with respect to equity, OCR would have needed to conduct further investigation, including but not limited to interviews with the OPHD investigator assigned to this matter. Prior to completing OCR's investigation, the University expressed an interest in entering into a voluntary resolution agreement to remedy the above-identified compliance concerns, and OCR agreed it was appropriate to do so.

However, with respect to whether the complaints were promptly resolved, the case file provided to OCR did not contain any evidence of extension requests by the parties, and OCR did not find any mitigating factors, such as the complexity of the matter, which could have contributed to the extended timeframe for resolving the complainants' Title IX complaints. Accordingly, OCR found that the University was not in compliance because it did not provide the parties with a prompt complaint resolution process. In this regard, 355 days passed between the complainants' initial notice to the University and the completion of the faculty adjudication and discipline process through a resolution agreement between the University and the faculty member subsequent to OPHD's finding that the faculty member's conduct violated the SHP.

In two other matters involving two different faculty members making unwanted sexual comments to graduate students, OPHD provided an alternative resolution process to respond to notice of ongoing similar conduct, even though OPHD had already utilized the alternative resolution process and students continued to make similar complaints against these faculty. In both cases, the OPHD files did not document that the University followed-up with the graduate students to determine if the second use of an alternative resolution process was effective at stopping the alleged sexually harassing conduct.

Whereas the above cases were either only or primarily handled through the alternative resolution process, in cases involving formal resolutions of student complaints against faculty during the period of review, University files did not include documentation showing that the complainant had been informed of the outcome of the process, including but not limited to whether a violation had been found under applicable faculty adjudication and discipline policies and procedures, and whether any applicable corrective actions affecting complainants had been issued. In addition, as discussed previously, during the period of review, the faculty adjudication process did not include a timeframe, reasonably prompt or otherwise for completion of the process and issuance of a final determination. In practice, OCR also identified a concern that such cases were not being resolved in a reasonably prompt manner.

Turning to another matter, OCR found that the University's response was not reasonably prompt. On March XX, 2016, a graduate student filed a complaint against a faculty member alleging that the faculty member engaged in unwelcome conduct on the basis of sex starting in the 2011-12 academic year and continuing through May, 2014. As outlined in the investigative report, the complainant alleged that the faculty member, XXX XXX XXX XXXXXXXXXXXXXXXX XXXXXXXXXXX XXXXXXX XXX XXXXXXXXXXX XXXXXXX XXX X XXXXXXX XX XXX

XXXXXXXXXXXXXXXX XXX XXXXXXXXXXXXXXXXXXXX, engaged in increasingly intimate behavior towards her XX XXX XXXXXXXX XXXX, in his office, and in transit to or from discussions related to academic programming. In addition, over an eight month period from October 2013 to May 2014, the complainant alleged that the faculty member engaged in unwelcome conduct of a sexual nature.

The University commenced an investigation on May X, 2016. On May XX, 2016, the Title IX Coordinator provided written notice to the complainant and the faculty member of the specific allegations against the faculty member under the SV/SH policy. The investigative report states that the investigation was initially delayed because the faculty member XXX XXX XX XXX XXXXXXXX for slightly less than a month, and the faculty member's attorney was unavailable to meet XXXXX XX XXX XXXXXXXX XXXXXXXX XXXXXXXX. Upon the faculty member's return, a mutual no-contact directive was issued. The investigator interviewed the complainant, the faculty member, and sixteen additional witnesses. The investigator also reviewed multiple documents submitted by both the complainant and the faculty member.

On October XX, 2016, 195 days after the complaint was reported, the complainant and the faculty member were provided with written notice of the outcome, as the investigator found that the faculty member's conduct constituted sexual harassment under the SV/SH policy. As a result, consistent with the procedures applicable at the time, this finding was sufficient to trigger the next step in the grievance process, referral of the complaint to the faculty adjudication and discipline process under APM-015 and APM-016. While both parties requested a copy of the investigative report, there is no documentation in the file indicating whether such reports were provided. While the University informed OCR that the faculty member has been referred to the P & T Committee for a hearing regarding possible disciplinary sanctions, as of January XX, 2018, the University has not provided any information to OCR regarding the outcome of the P & T hearing, or whether sanctions and/or other corrective actions were imposed subsequent to the hearing, and/or whether the complainant was notified of the same.

Based on a review of this case, OCR found that the University did not provide the parties with a prompt resolution process, because as of January XX, 2018, OCR had not received any information from the University indicating that the faculty grievance process has concluded and a final outcome reached and communicated to the parties.<sup>10</sup>

To address the compliance issues discussed herein, the Agreement reached with the University in this matter includes, among other things, revisions to its policies and procedures to provide an assurance that any violation or non-violation finding against a faculty member, and any decision regarding sanctions, will be made in a reasonably prompt amount of time, and to provide additional training on Title IX to faculty members, and on Title IX rights and grievance procedure options for graduate students.

### *Student-to-Graduate Student Instructor Reports and Complaints*

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<sup>10</sup> OCR also notes that the documents reviewed also did not address the initial delay in determining whether a no-contact order or other interim measures were needed for the parties.

In three other matters where undergraduate or graduate students alleged unwelcome conduct including comments of a sexual nature by graduate student instructor respondents, the alternative resolution process was utilized. In two of the three matters involving graduate student instructors, the documentation provided raises a concern that notice of the outcome of the process was not provided to the complainants, and the cases were closed with no further action or follow-up to assess whether the alleged sexual harassment had stopped. In all three cases, the University did not reach a determination as to whether the conduct occurred and if it did, whether it created a hostile environment on the basis of sex.

In one matter, on May XX, 2012, an undergraduate female student reported to a department administrator and faculty member that her graduate student instructor was sending her unwelcomed messages with sexual content through two social media sites. His messages identified her address, her current and past boyfriends, and his estimation of when she would get her next period. In addition, the graduate student threatened to tell her father who she was having sex with. He also sent her messages under a pseudonym account that she confirmed was associated with him that contained degrading comments about her poor academic showing in the class along with questions about her having sex with him. The female student explained her reluctance to file a complaint because of fear of retaliation in her major classes by other graduate student instructors who were friends with him. The department administrator and faculty member reported to the Title IX Coordinator, who spoke to the female student on May XX, 2012. On June X, 2012, the Title IX Coordinator asked the department administrator and faculty member to engage the graduate student instructor in a counseling session describing behavior expectations and demanding an end to his out of class contact with the undergraduate student. There is no documentation in the file indicating whether OPHD communicated back to the female student what actions had been taken, or checked in with her later to confirm that the conduct had stopped and/or to see if she had been subjected to any retaliation by other graduate students in her major classes.

In a second matter, on November XX, 2011, a department chair reported to OPHD that he had received a report from his XXX XXXXXXXX on or around November XX, 2011 that a male graduate student instructor was making unwelcome sexually explicit comments to undergraduate and graduate students XX XXX XXX. For example, a female graduate student reported that the graduate student instructor told her over numerous occasions that he found her attractive, discussed in detail what female body types he found attractive, and on one occasion made a comment about her physique, as she was bending down to plug in a computer cable XX XXX XXX. In addition, the XXX XXXXXXXX reported that an undergraduate female student recounted the graduate student instructor telling her that he found unshaved body hair on women as “appetizing”. Another undergraduate female student told the XXX XXXXXXXX that while he was her graduate student instructor, he would send her social media “friend requests” under a pseudonym he was associated with, and that his social media site contained pictures of him wearing only his underwear; this student subsequently left XXX XXX. On November XX, 2011, an OPHD investigator spoke to the graduate student instructor’s advisor and told her to counsel the graduate student instructor, and check-in with affected students about resources. However, the University OPHD file does not contain documentation indicating that it followed up with or interviewed any of the three impacted students, made an inquiry into the allegations of

possible sexual harassment, or otherwise followed up to assess whether the conversation was effective in stopping the alleged conduct.

In a third matter, on September XX, 2011, a female undergraduate student filed a police report with the University police department regarding a male graduate student instructor after he engaged in unwelcome conduct, such as repeatedly messaging her on a social media site after-school hours and insisting on walking her home. Subsequently, the undergraduate female student contacted a faculty member about ongoing problems with the graduate student instructor, including an interaction where the graduate student instructor told her, but not other students, that her grade would be impacted unless she shared her class notes with him. Although OPHD reported that the female student sought a no contact order, the information in the file does not include whether such an order was ever issued.

On November X, 2011, the faculty member contacted OPHD to discuss the situation. On November XX, 2011, after meeting with the undergraduate female student, the Title IX Coordinator determined that a formal investigation was not appropriate and advised the faculty member to meet with the graduate student instructor to describe how the graduate student instructor's behaviors were considered unwelcomed, explain University policy, and advise him to cease all contact with any undergraduate student who he may have offended. The file includes written confirmation in a follow-up e-mail to the male student summarizing what was discussed. The Title IX Coordinator advised the faculty member to also reach out to the female student. The file includes a copy of the e-mail the faculty member proposed sending, which includes a description of a meeting he had with the graduate student instructor, an explanation of how he will personally review the grading of all her submitted work to ensure that she was not retaliated against, and an advisement that she can contact OPHD with any further problems. There is no documentation in the file to show that OPHD checked in with the female student later to confirm that the conduct had stopped and/or to see if she had been subjected to any retaliation in the class.

Further, in the course of OCR's investigation, several graduate student witnesses approached OCR to describe a lack of understanding about the University's complaint process, including with respect to their role in that process and ability to be protected from retaliation, if they reported sexual harassment. For example, several graduate students told OCR that they were unsure if faculty members had a duty to promptly report all allegations of sexual harassment and sexual violence to the Title IX Coordinator. Two other graduate students reported that, even though they were aware of faculty members sexually harassing graduate students, they were reluctant to make a report because of potential reprisals that could damage them professionally. These graduate students were unaware if they themselves had a duty to promptly report such allegations while acting in their role as graduate student instructors. They also stated that they were unaware if they were protected from retaliation should they report possible sexual harassment. Based on the witness statements and after identifying the case files discussed above wherein graduate students either identified that they did not timely report due to fear of retaliation or were alleged to have engaged in sexual harassment in their role as a graduate student instructor, OCR identified a concern that the University may not have provided adequate notice to graduate students about the University's Title IX policy against sexual harassment and the applicable grievance procedure.



### *Student-to-Student Reports and Complaints*

OCR also identified compliance issues with respect to the use of the alternative resolution process for student-to-student matters involving unwelcome sexual conduct and/or comments.

In one matter, in two complaints filed by students involving allegations that another student engaged in unwanted sexual touching<sup>11</sup>, including unwanted touching under the clothes, OCR identified that the University was not in compliance because it did not provide the complainants with notices of the outcome of the alternative resolution process until 235 days after the alleged misconduct was reported to the University. OCR did not identify any mitigating factors that might have explained the extended timeframe, such as the complexity of the investigation or the need to coordinate with a pending police investigation, and the University took no action to investigate for two months while the respondent was allowed to participate in a University-sponsored program. In addition, OCR identified a concern because the notice provided was not adequate because, among other things, it only stated that the matter had been “explored and resolved” and did not describe an outcome, including whether a hostile environment had been created and, if it had, whether any measures were necessary to allow the complainants continued access to the University’s educational programs and activities. OCR also had a concern that the University’s resolution was not equitable because neither the respondent nor the complainants were provided adequate notice of the procedure that the University had chosen to resolve the complaint. Finally, OCR had a concern that the University was unable to confirm that it exercised appropriate oversight to ensure that the sexual harassment prevention training it identified as a remedy for the student group that hosted the event where some of the alleged conduct occurred was provided.

In a second matter, documentation reviewed by OCR raised a compliance concern that the University proceeded with an alternative resolution process without providing adequate notice of the grievance resolution options and an opportunity to proceed with a formal investigation to the complainant or respondent, even when there was evidence that the alternative resolution process was not effective or adequate. In this regard, on May XX, 2015, a female student made an e-mail inquiry to the Title IX Coordinator about being sexually harassed by a male student. A document in the OPHD file from the complainant includes the statement: “I filed a student conduct report against a student on campus who has been harassing me through blackmail and sexual harassment.” In response, the female student was provided an opportunity to make an appointment to discuss her concern and a list of resources and reporting options. On June X, 2015, an OPHD investigator met with the complainant who stated that a male student who was in an on-campus club with her had sent her text messages threatening to spread rumors of a sexual nature and to e-mail the complainant’s family with negative statements of a sexual nature. The complainant stated she felt “unsafe” on campus because of him. The notes in the file reflect that she told the investigator that she wanted the conduct to stop and that she wanted a no-contact directive.

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<sup>11</sup> These complaints are related to complaints filed by the student who filed an individual allegation in case no. 09-14-2232.

On June X, 2015, OPHD sent mutual no-contact directives to both parties.<sup>12</sup> Between then and March, 2016, there was much back and forth about the implementation of the no-contact order and how to ensure that both students, who were majors in the same academic department, would be enrolled in the same classes but have separation. A month after the no-contact order was put in place, the complainant notified OPHD that the respondent had allegedly sent messages to the complainant's mutual friends about her sex life; after that date, the complainant notified OPHD multiple times that the no-contact order was not effective because she saw the respondent in a University facility where she worked and where he frequently attended academic events. The Title IX Coordinator did not reconsider whether the alternative process was appropriate. Rather, OPHD issued verbal directives requiring the respondent to make changes to his seating, class schedule, and attendance at University facilities both parties frequented to accommodate the no-contact order. Finally, on October XX, 2015, OPHD issued an amended no-contact directive to both parties, describing measures to be taken to avoid the other party in shared classes and in a University facility both frequented. At different times during the process, each of the parties expressed their dissatisfaction with the University's response.

On March XX, 2016, the complainant's supervisor requested assistance from OPHD because the respondent had registered for an event at the University facility where the complainant worked, and the event coincided with the complainant's work schedule. On the same day, the OPHD investigator informed the supervisor that OPHD had received no additional information about ongoing harassment and that the case was closed, and that the supervisor could send an email to her supervisor or to the CSC if assistance was needed.

Here, OCR identified a concern with the University's response because the documents do not reflect that the respondent was informed of his right to contest the restrictions placed on him or request a formal investigation into the allegations to prove that the allegations were unsubstantiated. OCR also identified a concern because the complainant was likewise not informed that she could request a formal investigation. Further, the University never determined whether the respondent's behavior had occurred or created a hostile environment under Title IX because it was severe, persistent or pervasive under the applicable University procedures before unilaterally closing the complaint. To address these concerns, the University has agreed to revise its policies and procedures to ensure that the alternate resolution process is voluntary and to provide notice to both parties regarding the resolution options available under the University's Title IX grievance procedures.

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<sup>12</sup> In relevant part, the mutual no-contact directive states: "you are to have absolutely no contact with [the other student], directly or indirectly. You may not have contact with the aforementioned individual through any means or media, including, but not limited to in-person contact, phone, voicemail, text message, [] or other on-line communities, instant messenger, email . . .you will take reasonable measures to maintain a distance of 100 feet away from the aforementioned individual. If he or she is present in an area that you enter, it is your responsibility to remove yourself from the area immediately. It is also your responsibility to minimize visual contact as much as possible . . . you will not directly threaten the aforementioned individual, speak negatively about [the other student] to mutual friends or acquaintances. . . in any shared class or shared extracurricular activity, you will sit as far away from the individual as possible . . . failure to comply would violate the campus code of conduct and/or [University] policies and may lead to this matter being referred to [the student conduct process]."

In a third student-to-student matter, students participating in a University extracurricular group traveling in a convoy of buses of students to a University activity distributed 45 copies of documents that contained lyrics, passages, images, and text to student passengers in their bus. Much of the content was read aloud or sung to the other students on the bus while they were in transit. Nineteen days later, the administrator of the University's extracurricular group reported to OPHD that the documents contained "sexist, racist, explicit, and pornographic" material. The administrator initially requested that the incident be handled by him. When told that he would have to report, he had already destroyed all copies of the documents; the OPHD file does not contain the documents, but rather written statements from several of the seven accused male students, as well as interview statements from the administrator. With respect to the allegedly sexually harassing statements relevant here, one of the students identified that the material included "images of people in sexually compromising positions", a song targeted at a female student where the students "strongly sexually objectif[ied] the woman, and call[ed] her a slut, implying that [she] existed basically solely for the [students] sexual pleasure" and a second song sexually "objectifying" another female student and "implying" that she was the male students' "property". Several of the seven students identified that the practice of creating, distributing, reading aloud and singing the material in the documents during the trip to this specific University event was an unsanctioned long-standing tradition associated with the group.

A document in the OPHD file states that several students had come forward to complain about the incident on the bus, but the file does not provide any further information about the nature of their complaints. In addition, no interviews were conducted with these complaining students; further, there is no documentation in the file reflecting that the University assessed whether the conduct created a hostile environment on the basis of sex for the two targeted female students. After speaking with the administrator, OPHD proceeded with an early resolution process in which the students wrote a reflective essay, received a warning, and were required to complete a training. The administrator informed OPHD that he also suspended the seven students for three weeks from participating in the University activity. The file does not reflect that the complaining students received any notice of the outcome of the alternative resolution process or that such process had been selected to address their reports.

*Anonymous Person (Possible Student) to Staff Complaint*

In a case against a staff member, documentation reviewed by OCR identified a violation in that the University's response was inequitable for the respondent. On September X, 2014, an anonymous complainant left a phone message with OPHD. On September XX, 2014, after phone calls back and forth with OPHD, she provided a general statement, indicating that she had been touched inappropriately by a University staff person during X XXXXXXXX on August XX, 2014.<sup>13</sup> Based on this information, on September XX, 2014, the University placed the staff person on administrative leave, pending the investigation. The University elected to proceed with a formal investigation.

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<sup>13</sup> The complainant did not identify her connection to the University, but the University assumed she was a student based on her reliance on the student counseling center.

On September XX, 2014, in a response to an e-mail request from OPHD that he appear for an interview four days later, the respondent answered in an e-mail that he spoke a language other than English and required an interpreter for any interview. The OPHD investigator replied and asked if the respondent planned to bring someone to provide translation. The respondent asked the OPHD investigator to speak to his friend who could explain what he required. The investigator spoke to the friend who confirmed that the respondent would not understand questions asked of him in English. The investigator's notes indicate that he told the friend that he was not sure of his ability to obtain an interpreter. The investigator then asked the friend if she knew of someone who could serve this purpose, and she said she did not know anyone who could interpret for such an interview. On October XX, 2014, the investigator sent an e-mail to the respondent, wherein he stated that he had rescheduled the interview using a telephone translation service. Later that afternoon, and upon not hearing back, he called the respondent who told the investigator that he required an in-person interpreter. The investigator subsequently located an interpreter and rescheduled the interview for October XX, 2014.

Because the complainant wished to remain anonymous, her name and the date and time of XXX XXXXXXXX in question were not disclosed to the respondent. OPHD asked the complainant general questions about XXXXXXXX XX XXXX during the month of August 2014. He stated that he normally provided XXXX XXXXXXXX a day, and he did not recall X XXXXXXXX in which anything unusual had happened. He denied touching any XX XXX XXXXXXXX inappropriately.

OPHD also interviewed the respondent's direct supervisor and a former supervisor. The current supervisor confirmed that the respondent had been employed as X XXXXXXXX XXXXXXXX for four years and had no complaints made against him.

On November XX, 2014 or 72 days after notice was provided, OPHD completed the investigative report. In the analysis, OPHD acknowledged that it was "troubling" to analyze a complaint from a witness who wished to remain anonymous. However, OPHD reasoned that she had "nothing to gain" from filing the complaint, as her testimony was consistent and related to her motive to prevent future similar conduct. After reviewing the testimony, OPHD concluded that there was sufficient evidence that the respondent violated the University's SHSVP.

On November XX, 2014, consistent with the next step for the staff discipline procedure then in effect, OPHD forwarded the finding to the respondent's place of work and the human resource department on campus for further review and disposition. On November XX, 2014, the investigator provided the respondent with e-mail notification of the report, and the conclusion that his "conduct violated the Policy." The investigator informed the respondent that he could request a copy of the redacted report. The respondent sent a reply requesting a copy of the investigative report be sent to him by mail.

On December X, 2014, the file confirms that University facility where the respondent worked informed the respondent that he was being terminated based on the findings of the OPHD investigation. Also on December X, 2014, the OPHD investigator sent the complainant an e-mail, confirming that on November XX, 2014, he had a conversation with her confirming that the investigation was completed, and a finding was made against the respondent. The notice

included a copy of the redacted investigation report, but did not include a description of the sanction against the respondent.

On December X, 2014, the respondent sent an e-mail stating that he had not yet received a copy of the investigative report. The investigator replied on the same day, stating that the report was sent out three days earlier.

OCR identified a violation because the University failed to afford the respondent with an equitable investigation. The respondent was not provided with an equitable process because he was asked to respond to questions about alleged inappropriate conduct without receiving information about when and with whom the alleged misconduct occurred. OCR also identified a concern that OPHD did not have a process or procedure in place to assist parties when either is not proficient in English. In this regard, the investigator initially told the respondent's friend that he was not certain of where to find an interpreter, and had to delay the interview for approximately one month to locate one. While both parties were provided notice of the conclusion of the investigation, including that the respondent violated the policy, OCR identified a concern because the respondent may not have been provided with an opportunity to provide a response before being terminated. In this regard, PPSM 64 provides that after receiving notice of the intent to terminate, including a statement of reasons for the intended action and any materials upon which it is based, the employee has a right to respond either orally or in writing within eight calendar days of the date of such notice. To address the identified violation and compliance concerns with respect to this matter, the University will determine what, if any, equitable relief is appropriate.

#### *Other Compliance Concerns*

In complaint responses reviewed by OCR before the SHSVP went into effect on February 25, 2014, OCR also identified that the University's files lacked information about the University's notice to both parties about the specific nature of the allegations at issue and the complaint resolution process chosen. However, in files reviewed of complaints filed from September, 2014 forward, OCR noted that OPHD investigators more regularly provided e-mail notifications to both parties, which included a list of resources and support services on campus for both complainants and respondents, the specific nature of the allegations at issue, and a designation as to whether the complaint would be resolved through an alternative resolution process.

With respect to whether investigations were resolved in a reasonably prompt manner, in 12 matters, OCR also identified a compliance concern. One complaint in the 2011-12 academic year took eight months to resolve and two complaints from the 2012-13 academic year took 11 and 14 months to resolve, respectively. Of the remaining nine complaints, which were all resolved during the 2014-15 academic year, two were resolved in over 12 months, four were resolved in 10 to 12 months, and three were resolved in eight-to-nine months. None of the complaint files reviewed included information about mitigating circumstances which might have contributed to the delay, including but not limited to: the complexity of the investigation; the need for coordination with a separate criminal process; or the unavailability of witnesses or parties due to school breaks or medical emergencies.

Prior to completing its investigation with respect to the other files reviewed by OCR in subsection D./E.3.b. wherein OCR identified compliance concerns, the University expressed an interest in a voluntary resolution, and OCR agreed it was appropriate to do so. The University also informed OCR that it has initiated a climate survey for its faculty, students, and staff and will be analyzing the results to determine if any other measures are needed to prevent and address sexual harassment and sexual violence and provide a prompt and equitable resolution to reports and complaints regarding the same.

### Overall Conclusion

The University has entered into the enclosed Agreement to address the compliance concerns and violations identified in these consolidated matters. The Agreement includes:

- Revisions to the U.C. system-wide policies and procedures including, but not limited to, changes to the alternative resolution process to provide for a reasonably prompt process that is voluntary for both parties and includes the ability to proceed to formal investigation and adequate notice of the outcome, and an assurance that findings against a faculty or staff employee under the SV/SH policy and any decision regarding actions taken to prevent the recurrence of harassment, including sanctions, will be made in a reasonably prompt amount of time, factoring in the complexity of the matter and severity of the allegations;
- Review by the University of eight matters where OCR identified significant concerns and/or violations with respect to whether an equitable process was provided;
- OCR review of the University's notices of outcome for all formal Title IX investigations involving faculty or staff and that are referred to a discipline process for the school year following the University's implementation of its revised sexual harassment and sexual violence policies and procedures;
- Ongoing training for faculty and members of the faculty peer review committees on the University's revised policies and procedures, and the prohibition on retaliation when an individual makes a complaint of sexual harassment or sexual violence; and
- Training for graduate students regarding definitions of sexual harassment and sexual violence, how to respond to notice of sexual harassment and sexual violence in their role as graduate student instructors, and their rights and options with respect to making complaints of sexual harassment and sexual violence.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of these consolidated complaints as of the date of this letter. When fully implemented, the Agreement is intended to address the violation findings and compliance concerns identified in this investigation. OCR will monitor the implementation of the Agreement until the University is in compliance with the statute(s) and regulations at issue in the case. OCR's determination in this matter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in these consolidated cases. 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 University may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, any individual may file a complaint with OCR 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please call OCR San Francisco at (415) 486-5555.

Sincerely,

/s/

Laura Faer  
Regional Director

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