

RESOLUTION AGREEMENT
University of California, Berkeley
OCR Case No. 09-14-2232

The University of California (U.C.) system is comprised of ten campuses, including the Berkeley campus. Throughout this Resolution Agreement (Agreement), the term University refers to U.C. Berkeley. The University agrees to implement this Agreement to resolve the violations and compliance concerns identified by the U.S. Department of Education, Office for Civil Rights (OCR), under Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation in the above-referenced OCR case number.

I. NOTICE OF NONDISCRIMINATION

- a. Consistent with the requirements of 34 C.F.R. §§ 106.8 and 106.9, the University will amend its notice of nondiscrimination to include a statement that students may direct inquiries to the OCR.
- b. **Reporting Requirement:** By March 1, 2018, the University will provide OCR with a copy of its amended notice of nondiscrimination for review and approval. Within 45 days of OCR's approval of the notice of nondiscrimination, the University will provide OCR with documentation of its dissemination of the notice of nondiscrimination, and a link to the updated statement on the Office for the Prevention of Harassment and Discrimination (OPHD) website, and any other relevant websites.

II. POLICIES AND PROCEDURES

- a. The University of California, Office of the President, has agreed to revise its system-wide policies and procedures, which apply to the University, as set forth in section II(b) and (c) below, including, but not limited to: the University's Sexual Violence and Sexual Harassment Policy (SV/SH Policy), and its corresponding faculty, staff and student disciplinary frameworks.
- b. The system-wide policies and procedures will be revised to:
 - i. Include an assurance that any sexual harassment or sexual violence investigation against a faculty or staff employee under the SV/SH Policy, and the notice of outcome to both parties including any subsequent decision regarding sanctions, will be completed in a reasonably prompt manner depending on the severity and extent of the harassment and complexity of the matter.
 - ii. include language clarifying that any alternative, informal or early resolution process that is used instead of a formal investigation to resolve a complaint of behavior prohibited under the SV/SH policy (hereinafter "alternative resolution process") will: a) conclude in a reasonably prompt manner, depending on the complexity of the matter and the severity and extent of the

harassment; b) provide timely notice to the parties that (1) the alternative resolution process has been chosen, (2) the alternative resolution process requires voluntary agreement of the parties; (3) the parties can request a formal investigation prior to the expiration of the alternative resolution process, and 4) the alternative resolution process includes notice of the outcome to both parties at the conclusion of the process.

iii. include language clarifying that students, faculty and staff may also file complaints against third parties alleging sexual harassment or sexual violence prohibited under Title IX and by the SV/SH policy. The type of appropriate steps that the University should take will differ depending on the level of control that the University has over the third party.

c. Applicable system-wide policies and procedures will be revised to include cross-references to the Sexual Violence and Sexual Harassment Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel in order to provide adequate notice to students, faculty and staff regarding the applicable Title IX grievance procedure.

d. Reporting Requirements:

i. After applicable University review and comment processes have elapsed, but no later than February 28, 2019, unless good cause dictates, the University will provide OCR with any revisions to system-wide policies and procedures and related documents for review and approval.

ii. Within 90 days of receipt of OCR's approval, the University will provide documentation to OCR showing that it has adopted the revised policies and procedures, provide notification of the same on its website and through an electronic mail message to all faculty, staff, and students, and provide documentation to OCR regarding the same, including links to the updated website, a copy of the electronic mail message, a copy of and/or link to any updated printed publications containing the revised policies and procedures, such as the OPHD web page, other relevant websites, and any additional documentation that the University has regarding its distribution.

iii. The University will provide notice to OCR in writing of any other modifications to the revised policies and procedures related to sexual harassment / sexual violence during the period of the Agreement. Such notice will be provided at least 90 days before the University proposes to adopt the modifications to ensure consistency with this Agreement.

iv. For complaints against faculty and staff, for the school year following the University's implementation of revised sexual harassment and sexual violence policies and procedures, the University will provide documentation to OCR of all formal Title IX investigations that are referred to the faculty or staff

discipline process. Specifically, the University will provide notice of the outcomes including, but not limited to, the outcome of the Title IX investigation and any sanctions for the respondent that may relate to the complainant and/or other remedies that address the hostile environment.

III. PREVENTATIVE EDUCATION FOR FACULTY AND TECHNICAL EDUCATION FOR PEER REVIEW COMMITTEE MEMBERS

- a. The University will continue to provide comprehensive biannual preventative education to all faculty, in addition to specialized training for faculty assigned to its Peer Review Committee. The preventative education program will consist of information about the University's prohibition of sexual harassment, sexual violence, and retaliation, and the University's responsibilities under Title IX to address such conduct. The programs will include, at a minimum:
 - i. the University's revised system-wide policies and procedures for Title IX as described in section II. supra;
 - ii. identifying which employees are considered responsible employees, defined to include any employee who has authority to take action to redress sexual harassment, who has the duty to report to appropriate officials regarding sexual harassment or other types of misconduct by students or employees, or an individual who a student could reasonably believe has such authority or responsibility, and the obligation when they receive notice about possible sexual harassment / sexual violence to promptly report to the Title IX Coordinator; and
 - iii. information about Title IX's prohibition of retaliation and how to recognize such retaliation.

For the Peer Review Committee members, the University will also provide technical education to explain how it conducts adequate, reliable, and impartial Title IX investigations, including complaints of retaliation that ensure equity between the parties and include an opportunity to present witness testimony and evidence.

- b. Beginning with the 2017-2018 academic year, the University will ensure that all new faculty assigned to its Peer Review Committee complete the technical education within six months of their appointment to such committee.
- c. **Reporting Requirements:**
 - i. Within 60 days of the effective date of this Agreement, OCR will review and approve program materials for the Peer Review Committee(s) received by OCR on October 20, 2017.

- ii. Within 60 days of the effective date of this Agreement, the University will provide OCR with the education materials for faculty.
- iii. The University will provide documentation that the programming in section III has been provided by June 1, 2018 and every two years thereafter during the term of this Agreement. Documentation will include a copy of the program materials, dates(s) and the name and contact information of the individual(s) who conducted the preventative and technical education. For the Peer Review Committee members, the University will also provide the sign-in sheet(s) identifying the name and position of each individual who received the programs within 15 days of completion.

IV. GRADUATE STUDENT TRAINING

- a. The Title IX Coordinator, or her designee, will ensure implementation of mandatory sexual harassment / sexual violence training for all graduate students who enroll in the University or become graduate student instructors in the University after June 1, 2018.
- b. The training, whether in person and/or online, will include but is not limited to the following topics (based on the program and employment status of the graduate student):
 - i. the University's revised sexual harassment / sexual violence policies and procedures;
 - ii. the University's prohibition against sexual harassment, sexual violence, and retaliation and how to recognize such forms of sex discrimination when it occurs;
 - iii. how and to whom any incidents of sexual harassment, sexual violence, and retaliation should be reported, including identifying that graduate student instructors, when acting in that capacity, are considered responsible employees and their obligation when they receive notice about possible sexual harassment / sexual violence to promptly report to the Title IX Coordinator; and
 - iv. Title IX, the rights this law confers on students to equity in the grievance process, the rights available to both parties in the process, including the right to an adequate, reliable and impartial investigation and to present witnesses and other evidence, the interim measures, supports, and resources available to students, and the role of OCR to respond to inquiries or complaints with respect to Title IX; and
 - v. the rights of students and/or complainants to file Title IX reports and criminal complaints simultaneously.

c. These trainings should be presented in lay terms familiar to students, and illustrated with examples relevant to student life at the University.

d. Reporting Requirements:

i. By May 31, 2018, and May 31, 2019, the University will provide OCR, for review and approval, the proposed training materials and any agendas to be used in the trainings conducted pursuant to section IV. The University will also provide OCR information regarding the name and contact information of the individual(s) who conducted the training.

ii. By July 31, 2018, and July 31, 2019, the University will provide documentation to OCR showing that the individuals who are required to receive the training required by section IV. have done so.

V. REVIEW OF SPECIFIC CASES AND INTERNAL ASSESSMENT

a. As identified in the Resolution Letter issued with this Agreement, in the six student reports or complaints against graduate student instructors or faculty in which the University unilaterally required an alternative resolution process, the University will identify whether any of the original complainants and impacted parties continue to be enrolled in the University. If they are current students, the University will identify whether they may continue to experience conduct that is creating a hostile environment on the basis of sex. If the University determines that the current students may continue to experience conduct that is creating a hostile environment on the basis of sex, the University will first determine if interim measures may be appropriate and as indicated, offer interim measures, and second identify to the complainants and impacted parties their options for a formal complaint or an alternative resolution process, or neither of the above. If requested, the University will then proceed with a prompt and equitable complaint process, under the revised procedures as specified in this Agreement. Consistent with the revised procedures as specified in this Agreement, the University will not proceed with an alternative resolution process without the voluntary agreement of the parties.

b. With respect to a case identified in the Resolution Letter issued with this Agreement where OCR found that the respondent was denied an equitable resolution process because he did not receive any notice of the identity of the complainant or when the alleged incident occurred, the University will determine what, if any, equitable relief is appropriate.

c. With respect to the case identified in the Resolution Letter issued with this Agreement where two students were targeted with sexually harassing statements by other students while participating in a University extracurricular activity, the University will assess whether the two students are currently enrolled in the University and if yes, whether they either continue to participate and may be subjected to a hostile environment or may believe they are denied access to the

extracurricular activity on the basis of sex. If so, the University will proceed with providing a prompt and equitable process under the revised procedures as specified in this Agreement. The University will also assess whether additional training regarding the University's policy against sexual harassment is needed for the students participating in the extracurricular activity.

- d. During the 2018-2019 and 2019-2020 academic years, the University will conduct an internal annual review of complaints / reports of sexual harassment / sexual violence that were resolved through an alternative resolution process. The review will include a timeline for each complaint / report that identifies key investigative steps, including the initial notification to both parties, documentation of the parties' voluntary agreement to use an alternative resolution process, the ultimate resolution, including any discipline or sanctions applied, and notice to the parties of the final resolution and sanction, including the date upon which such notification was provided. The University will consider the results of the review to determine whether any changes to policy or practice are needed to ensure a prompt and effective resolution of the complaints / reports.

e. **Reporting Requirements:**

- i. By July 31, 2018, the University will provide for OCR's review and approval the results of its review and any steps taken under its revised policies and procedures as described in section V.(a)-(c) of this Agreement. If OCR determines that the University must take further action(s), OCR will provide the University with notice of the proposed corrective action(s) and an opportunity to discuss the scope of the action. The University will initiate the corrective action(s) within forty-five (45) calendar days of receipt of OCR's determination.

By August 1, 2019, and August 1, 2020, the University will provide OCR with a summary of the results of the internal annual review described in section V.(d) above, including its assessment of whether the resolution process was prompt and equitable. The University will provide any proposals for addressing concerns identified as a result of the annual review to OCR for review and approval. To the extent OCR identifies any cases for further review after reviewing the summary, OCR will provide notice to the University, and the University will promptly provide the case files to OCR for review.

VI. MONITORING

The University understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, the University understands that during the monitoring of this Agreement, OCR may visit the University, interview staff and students and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Title IX, at 34 C.F.R. Part 106, which was at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close and dismiss this case.

The University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) days to cure the alleged breach.

_____/s/_____

Carol T. Christ, U.C. Berkeley Chancellor

_____02/20/2018_____

Date