



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION IX  
CALIFORNIA

December 22, 2016

Mr. Gene Block  
Chancellor  
University Of California-Los Angeles  
405 Hilgard Ave  
Los Angeles, CA 90024

(In reply, please refer to case no. 09-15-2103.)

Dear Chancellor Block:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has reached a resolution in the above-referenced complaint that was filed against the University of California, Los Angeles (University). The Complainant<sup>1</sup> alleged that the University discriminated against her on the basis of race, sex, and disability. OCR specifically opened the following allegations for investigation:

1. The University failed to respond adequately to an internal complaint the Complainant made on September XX, 2014, alleging the Complainant was subjected to sexual harassment by several male students in a University Residence Hall.
2. The University failed to respond adequately to an internal complaint the Complainant made alleging that she was harassed on the basis of race (African American) and was subjected to sexual harassment by a dormitory resident assistant. Specifically, it is alleged that the resident assistant entered the Complainant's room during a fire drill, saw her while she was undressed, used a racial epithet and also made demeaning comments in reference to the Complainant's race.
3. The University retaliated against the Complainant by evicting her from the dormitory after she complained about race and sex harassment by the dormitory resident assistant.
4. The University discriminated against the Complainant on the basis of disability when it evicted her from the dormitory because it did not consider the effects of her disability on the Complainant's ability to respond to a fire drill.
5. The University discriminated against the Complainant on the basis of disability when it failed to consider providing academic adjustments so that the Complainant could participate in the education program in a nondiscriminatory manner.

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<sup>1</sup> OCR previously informed the University of the Complainant's identity. OCR is withholding her name from this letter to protect her privacy.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), and their implementing regulations. Section 504, Title VI, and Title IX respectively prohibit discrimination on the basis of disability, race, color, national origin, and sex by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990, as amended, (Title II) and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The University receives Department funds, is a public education system, and is subject to the requirements of Section 504, Title II, Title VI, Title IX, and their regulations.

OCR gathered evidence through interviews with the Complainant and a review of documents submitted by the University and the Complainant. Based on the information collected, OCR found that there is insufficient evidence to support a conclusion of noncompliance as to issues 1, 3, 4 and 5. With regard to issue 2, pursuant to Section 302 of OCR's Case Processing Resolution Manual, prior to the conclusion of the investigation, when the University expresses an interest in resolving the allegation, and OCR determines that it is appropriate to resolve the allegation with an agreement during the course of an investigation, OCR may resolve the issue without making a compliance determination.

On September 30, 2016, the University expressed an interest in resolving issue 2 and OCR has determined that this issue is appropriate for resolution. On December 22, 2016, the University entered into the attached resolution agreement which when fully implemented is intended to address the issues raised in allegation 2. The facts gathered during the investigation, the applicable legal standards, and the reasons for OCR's determinations are summarized below.

### **Findings of Fact, Analysis and Conclusions of Law**

*Allegation 1: Whether the University failed to respond adequately to an internal complaint the Complainant made on September XX, 2014, alleging the Complainant was subjected to sexual harassment by several male students in a University Residence Hall.*

#### **Legal Standards**

The regulations implementing Title IX, at 34 C.F.R. §106.31, prohibit discrimination based on sex by recipients of Federal financial assistance. Universities are responsible under Title IX and the regulation for providing students with a nondiscriminatory educational environment. Sexual harassment of a student can result in the denial or limitation, on the basis of sex, of the student's ability to participate in or receive education benefits, services, or opportunities.

Under the Title IX and the regulations, once a university has notice of possible sexual harassment between students, it is responsible for determining what occurred and responding appropriately. The university is not responsible for the actions of a harassing student, but rather for its own discrimination in failing to respond adequately. A university may violate Title IX and the regulations if: (1) the harassing conduct is sufficiently serious to deny or limit the

student's ability to participate in or benefit from the educational program; (2) the university knew or reasonably should have known about the harassment; and (3) the university fails to take appropriate responsive action. These steps are the university's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the university to take action.

Universities provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these 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 sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the university is responsible for the discriminatory conduct whether or not it has notice. Under Title IX and the regulations, if a student is sexually harassed by an employee, the university is responsible for determining what occurred and responding appropriately.

OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the university must conduct a prompt, thorough and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment if one has been created, and remedy the effects of the harassment on the student who was harassed. The university must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

### Findings of Fact

- The Complainant is an African-American woman and transferred to the University in July of 2014. She was a Junior during the 2014-15 school year.
- The Complainant alleged to OCR that she filed a complaint with the University on September XX, 2014 in which she alleged that she had been subjected to sexual harassment by other students in her residence hall. The University asserted to OCR that it had no record of the Complainant making a September 2014 sexual harassment complaint. The Complainant was not able to provide OCR any supporting documentation establishing that she filed such a complaint.
- In interviews with OCR in February 2015, the Complainant informed OCR that she had never identified to the University any students who had sexually harassed her in her residence hall. The Complainant also did not provide such evidence to OCR.
- The only evidence of the Complainant notifying the University of sexual harassment during that school year was in an October X, 2014 email that the Complainant sent to the University Dean of Students in response to multiple parking tickets that she received. In the October X

email, the Complainant stated that she did not feel safe “navigating through campus at any time given the unwanted and unwarranted physical advances that I receive from male students and staff” and that her “fear of being sexually assaulted on campus resulted in [my] acquiring of eight parking tickets . . .”

- The Dean of Students forwarded the email to the Campus Assault Resources and Education (CARE) advocate, whose role is to provide free, confidential support and advocacy services to student survivors of sexual assault, intimate partner violence and stalking, through the University’s Counseling and Psychological Services (CAPS). The role of CARE advocates on campus is to assist students in finding resources, in navigating the criminal justice system and university adjudication process, and in receiving campus accommodations.
- On October X, 2014, an advocate from the University CARE emailed the Complainant two separate times during that day, stating that she was reaching out on behalf of the Dean of Students in response to the Complainant’s October X, 2014 email. In the first email, the CARE Advocate offered to meet with the Complainant to discuss her concerns, but the Complainant did not reply.
- In the CARE Advocate’s second email to the Complainant on October X, 2014, the CARE Advocate stated that she was reaching out on behalf of the Dean of Students in response to the Complainant’s October X, 2014 email, to make her aware of safety options, support services, and sexual harassment reporting options on campus. The CARE Advocate provided contact information for reporting options (the University Sexual Harassment Prevention Office/Title IX Office, the Office of the Dean of Students, and the University Police Department), as well as CAPS confidential resources and the Rape Treatment Center at the University, Santa Monica. The CARE Advocate also provided information about the University Police Department’s evening escort service and about how to obtain a restraining order. Finally, The CARE Advocate offered to meet with the Complainant to provide additional information about each option. The Complainant did not reply to this second email.
- On October XX, 2014, the CARE Advocate contacted the University’s Title IX Coordinator to advise her of the Complainant’s October X, 2014 email.
- On October XX, 2014, the CARE Advocate attempted to contact the Complainant again. However, the Complainant did not respond.
- The University stated to OCR that, given the generalized nature of the Complainant’s October X, 2014 email complaint of sexual harassment, the thoroughness of the CARE Advocate’s response to it and the Complainant’s lack of response, no further response was provided after this date.
- Complaints of sexual harassment made against students are handled by the University’s Office of the Dean of Students. Students may also report sexual harassment to any manager, supervisor, or other designated employee at the University. These individuals are responsible for forwarding reports of sexual harassment to the Title IX Coordinator, Office of the Dean

of Students, or other official designated to review and investigate sexual harassment and sexual violence complaints. The University told OCR in its narrative response that whenever a student reports sexual harassment, the University will implement appropriate remedial measures to ensure the student's continued safety, well-being, and academic progress, regardless of whether the student pursues a formal investigation and regardless of the outcome of any adjudication.

### Analysis and Conclusions of Law

The Complainant alleged to OCR that she complained to the University in September about being sexually harassed by male students in her residence hall. OCR was not able to corroborate or find any evidence that the Complainant made this September 2014 complaint. However, OCR found that the Complainant sent a written communication to the University's Dean of Students, regarding concerns about sexual harassment that she experienced from students and staff "navigating through campus". OCR found that the Complainant did not support these concerns with specific information, such as names of alleged perpetrators or location of incidents and did not respond to the University's attempts to meet with her about the complaint.

OCR concluded that the University made three separate attempts to reach out to the Complainant to clarify the Complainant's concerns and obtain further information. In those communications, the University provided resources and information about accessing services and other interim measures, reporting option information, and information about filing a complaint with law enforcement. The Complainant did not respond.

Because the University promptly followed up with the Complainant's vague allegation by providing her with specific resources, information about interim measures, how to file a complaint and report through different means, and by requesting a further meeting to obtain further information, and the Complainant was unresponsive after the initial communication, OCR found that the University's response to the Complainant's allegation in this circumstance was appropriate. OCR found insufficient evidence to support a finding that the University violated Title IX or its implementing regulation with respect to this allegation.<sup>2</sup>

*Allegation 2: Whether the University failed to respond adequately to an internal complaint the Complainant made alleging that she was harassed on the basis of race (African American) and was subjected to sexual harassment by a dormitory resident assistant.*

### Legal Standards

OCR reviewed the sexual harassment component of this allegation using the legal standards for Title IX that are described above under allegation 1. OCR reviewed the racial harassment component of this allegation using the legal standards for Title VI. The Title VI regulation, at 34

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<sup>2</sup> OCR did not review the University's Title IX grievance or other policies and procedures for compliance in this investigation because these policies and procedures are currently under review in a separate ongoing OCR investigation, Case No. 09-14-2352. OCR will reach findings regarding the compliance status of the University's Title IX policies and procedures under that case number.

C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. Universities are responsible under Title VI and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color or national origin can constitute a form of discrimination because it can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Under Title VI and the regulations, if a student is harassed by an employee on the basis of race, color or national origin, the University is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the university must promptly conduct an impartial inquiry designed to reliably determine what occurred. If a university's grievance procedures encompass race discrimination, it must apply such procedures consistently and in a manner that does not constitute Title VI discrimination.

In analyzing claims of harassment under Title VI, OCR first considers the totality of the circumstances to determine whether a hostile environment has been created, *i.e.*, whether the harassing conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program. These circumstances include the type of harassment, context, nature, scope, frequency and severity, age, race, duration, and location of the harassment incidents, as well as the identity, number, and relationships of the persons involved.

#### Findings of Fact

- The Complainant received notice on January XX, 2015 of a possible conduct violation during a fire drill at her residence hall on the evening of January XX, 2015, because she allegedly did not evacuate on time in accordance with the University regulations.
- On January XX, 2015, the Complainant responded to the January XX notice by emailing the resident hall coordinator. In that email the Complainant alleged that the resident assistant discriminated against her on the basis of race and sex during the January XX, 2015 fire drill when he came to her room to enforce compliance with the evacuation drill. She specifically stated that she was "seeking justice" due to what the resident assistant did to her and her friends, and included in her email that she was alleging racial and sexual harassment and stalking, among other alleged violations. She did not provide examples of the racial discrimination, harassment, or stalking. On that same day, the Complainant filed the instant complaint with OCR.
- In her OCR complaint, the Complainant asserted that the resident assistant, who is a white male, burst into her room during the fire drill. The Complainant asserted that she was not clothed and the resident assistant saw the Complainant undressed from the waist up. She further stated that the resident assistant said to her "Who do you think you are" and in response to her request for privacy as she dressed, he became angry and said, "You aint special" and then used the "N" word. The Complainant stated that this was the one and only

time that he made any racial remark or comment. She did not allege that he made any further comments related to sex. The Complainant did not provide these details to the University.

- On January XX, 2015, the University emailed the Complainant requesting a meeting for January XX to discuss the fire drill violation.
- On January XX, 2015 the resident hall coordinator sent the Complainant an email informing her that the January XX meeting was to discuss the fire drill violation and requested a separate meeting to discuss her complaint about the resident assistant. The resident hall coordinator also asked the Complainant for further detail about her concerns about the resident assistant.
- On January XX, 2015, the Complainant emailed the University stating that she was deferring to OCR to conduct an investigation concerning the allegations.
- On January XX, 2015, the University met with the Complainant about the fire drill violation. According to the University, during that meeting the University asked the Complainant about her discrimination and harassment allegation regarding the resident assistant. According to the University, the Complainant explained that she had felt disrespected by the resident assistant's tone with her during the fire drill, but she offered no further information. The Complainant never scheduled a separate meeting to discuss her allegations regarding the resident assistant nor did she provide any further details or information to support her racial or sexual harassment allegations.
- In an interview with OCR, the Complainant asserted that she believed that the resident assistant's disrespectful tone with her "instigated" the incident, which led to her receiving the January XX notice of a possible conduct violation. She acknowledged that she did not provide the University with specific information about racial or sexual harassment.
- Other than the alleged harassing comments that the Complainant asserted to OCR in her complaint, the Complainant stated to OCR that the only other harassing behavior from the resident assistant was that at times he would stare at her intently or stand in his doorway when she walked by. She stated that she never reported this to anyone other than what she communicated in her January XX email to the resident hall coordinator.
- The University asserted to OCR that the resident assistants are student employees of the University. According to the University, the University counsel's office interviewed the resident assistant as well as another resident assistant who had been present on the Complainant's floor during the fire drill and that both denied that any comments had been made on the basis of race or sex to the Complainant during the fire drill. Both resident assistants are no longer employed by the University. Because the Complainant would not provide the University further information about the allegations, the University found no evidence to support the Complainant's allegations. As a result, the University closed the complaint against the resident assistant. The University also closed the fire drill complaint against the Complainant and issued her a No Further Action notice. The University did not

provide the Complainant a written response to her discrimination allegation against the resident assistant.

### Analysis and Conclusions of Law

In this case, the Complainant simultaneously filed an allegation of race and sex discrimination regarding the resident assistant with the University and with OCR. OCR's investigation focused on whether the University responded appropriately to her complaint to the University.

OCR found that the Complainant sent an email to her resident hall coordinator alleging that the resident assistant discriminated against her. She did not provide examples of discrimination and instead made generalized allegations of racial discrimination, sexual harassment, and stalking. The only specific information the Complainant provided to the University was that the resident assistant used a disrespectful tone during the evacuation fire drill.

OCR found that the University followed-up with interviews with the resident assistant alleged to have engaged in discrimination and harassment and with another resident assistant who had been present during the first drill. Both resident assistants denied that any comments had been made on the basis of race or sex to the Complainant during the drill or that any disrespectful tone was used. The University requested that the Complainant provide further information about any harassing statements or conduct of any nature made by the resident assistant and to meet to discuss her allegations in detail with the resident coordinator. The Complainant declined to provide further information other than to state that she felt "disrespected" by the resident assistant. The Complainant also informed the University through an email that she would prefer that OCR proceed with its investigation and did not move forward with the University's process. Other than the allegations above regarding the fire drill, the Complainant told OCR that the resident assistant had not made any other comments of a racial or sexual nature. She asserted that the only harassing or stalking behavior was that the resident assistant sometimes stared at her or stood in his doorway when she walked by.

The University's ability to investigate the Complainant's allegation was hampered by her unwillingness to provide further information to the University or meet about her allegations. The University nonetheless took steps to timely investigate the incident through interviews with the resident assistant in question and another resident assistant.

Prior to the conclusion of OCR's investigation into this allegation, the University expressed an interest in resolving this allegation and OCR agreed that such a resolution was appropriate. In order to complete the investigation, OCR would need to review additional documentation regarding the investigation conducted by the University and, potentially, interview the former resident assistant. Pursuant to the resolution agreement, the University will provide the Complainant with a written determination regarding its investigation into her allegation of sexual and racial harassment and to ensure that the No Further Action notice does not appear on her student record.

*Issue 3: Whether the University retaliated against the Complainant by evicting her from the dormitory after she complained about harassment by her resident assistant and other students.*



### Legal Standards

The Title VI implementing regulations, at 34 C.F.R. § 100.7(e), prohibit universities from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Title VI. A similar prohibition is located in the Title IX implementing regulations at 34 C.F.R. § 106.71.

When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to a materially adverse action by the university under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR determines whether the university can provide a nondiscriminatory reason for the adverse action. OCR then evaluates whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

### Findings of Fact

- The Complainant alleged that the University retaliated against her because she made a discrimination complaint against the resident assistant. She initially alleged that the University retaliated against her by evicting her from her dormitory and subsequently also asserted that the University retaliated against her by serving the eviction notice to her dormitory address over the December holidays.
- On October XX, 2014, the Complainant emailed members of the University Crisis and Housing Team stating that she was \$600 short of paying the total amount for student housing. She further stated that she was being threatened by University Housing with imminent eviction. The Complainant stated that the University cut off her meal plan and was refusing to work out any payment plan and asked for help or to be referred to someone who can help her.
- Later that same day, the Complainant received an email from the Student Affairs Crisis Manager acknowledging the Complainant's email. The Crisis Manager asked the Complainant if she had discussed her situation with her financial aid counselor, and also stated that she would email her "housing colleagues right away to see if they could offer some sort of arrangement".
- On October XX, 2014, the Complainant received an email from a financial aid counselor telling her that although the Complainant had been awarded financial aid up to her cost of attendance budget, "it look[ed] like [the University] [might] be able to process an add-on request for [her] medical and dental expenses." The Complainant was asked to complete an attached Budget Adjustment form with copies of her medical and dental bills and proof of payment.

- On December XX, 2014, the Complainant received an eviction notice. She asserted to OCR that she was not properly served with the eviction notice because it was served to her at her dormitory address.
- The Complainant emailed the Vice Chancellor and Provost on January XX, 2015, to request assistance. The University Financial Aid office emailed the Complainant to acknowledge receipt of her email and to assure her that her status would be reviewed. The Complainant emailed the University Housing Services on January XX, 2015, to request a temporary release of the Housing Hold on her record so that she could register for classes. Housing Services temporarily released the hold on her housing for 24 hours (this was subsequently extended for additional time). The Complainant acknowledged on January XX, 2015, that her registration and financial aid had been processed and that she would pay her housing bill once she received her financial aid disbursement.
- On January XX, 2015, Housing Services emailed the Complainant and stated that a payment agreement could be worked out for the remaining balance of her rent.
- Records of the Superior Court of California, County of Los Angeles show that on February X, 2015, the Unlawful Detainer brought by the University against the Complainant was dismissed.
- On March X, 2015, Housing Services emailed the Complainant to clarify her account status and to confirm that the eviction notice/unlawful detainer had been terminated.
- The Complainant acknowledged to OCR that University Housing staff and Student Financial Aid staff did try to work with the Complainant to assist her with her housing situation during this time period and were able to resolve her housing issue.

#### Analysis and Conclusions of Law

To determine whether the University retaliated against the Complainant, OCR first examined whether the Complainant engaged in a protected activity. In this case, the Complainant alleged to the University that she believed she was discriminated against on the basis of race and sex by her dormitory resident assistant. OCR finds that alleging discrimination based on race and sex constitutes a protected activity. OCR then examined whether the Complainant was subjected to an adverse action under circumstances that suggest a causal connection between the adverse action and the protected activity. In this case the Complainant initially asserted that she was evicted from her dormitory. She subsequently asserted that serving her notice of the eviction to her dormitory address was the retaliatory adverse action.

The information provided to OCR does not support the Complainant's assertion that the University evicted her from her dormitory. While a notice of eviction would generally be considered an adverse action, OCR found insufficient evidence to support the assertion that the manner in which she was served with the eviction notice was retaliatory. Complainant's own communications at the time reflect that her understanding of the reason for the original eviction notice was that she had not paid her rent, which was consistent with the University's reason for

issuing the notice. The Complainant also acknowledged to OCR that University staff members were helpful in preventing her from being evicted and resolving her housing issue. OCR found no evidence to support the Complainant's contention that the eviction notice itself or the manner in which the eviction notice was served were actions taken in response to the Complainant's discrimination complaint(s) made to the University. As such, OCR found that there was insufficient information to support a finding of noncompliance with respect to this issue under Title IX, Title VI and their implementing regulations.

*Allegation 4: Whether the University discriminated against the Complainant on the basis of disability when it evicted her from the dormitory because it did not consider the effects of her disability on the Complainant's ability to respond to a fire drill.*

#### Legal Standards

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1)(iii) a recipient public university may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, provide a qualified disabled individual with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the university provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the university's actions were based on the individual's disability.

The Section 504 regulations, at 34 C.F.R. §104.44(a), require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Under the Title II regulations, at 28 C.F.R. §35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program or activity. Section 35.103(a) provides that the Title II regulations shall not be construed to permit a lesser standard than is established by the Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges and universities to provide necessary academic adjustments to the same extent as is required under the Section 504 regulations.

Under the requirements of Section 504 and Title II, a student with a disability is obligated to notify the college or university of the nature of the disability and the need for a modification, adjustment, aid or service. Once a college or university receives such notice it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the college or university may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

### Findings of Fact

- As described above, the complainant emailed members of the University Crisis Team and Housing Team on October XX, 2014, alerting them that she was being threatened with imminent eviction. She asked for help or to be referred to someone who can help her. She received an eviction notice on December XX, 2014. Also as described above, on January XX, 2015 the Complainant received a notice of a possible conduct violation during a fire drill at the dormitory that took place on January XX, 2015 because she did not evacuate on time.
- The Complainant asserts that the eviction and January conduct violation notice were the result of the University's failure to accommodate her disabilities. As noted above, while the Complainant received notice of eviction proceedings, she was ultimately not evicted from the dormitory.
- In an email dated January X, 2015, from the Complainant to the Office for Students with Disabilities' (OSD) LDP Coordinator, the Complainant requested certain accommodations for the semester. OCR found that none of these requested accommodations related to the Complainant's student housing situation, or her ability to respond to a fire drill in a dormitory. At that time, the Complainant was not yet identified as a student with a disability, as she had not yet submitted the documentation necessary to establish that she was a disabled student. (This is further discussed under Allegation 5 below.)
- In an email to OSD dated February XX, 2015, the Complainant for the first time included a request for assistance with routine fire drill/earthquake evacuation exercises, as sometimes occur in residential dormitories.
- The OSD LDP Coordinator responded to the Complainant on February XX, 2015 with information about the evacuation plans for the Complainant's dormitory including procedures pertaining to persons with disabilities.

### Analysis and Conclusions of Law

The information provided to OCR does not support the Complainant's assertion that she was evicted her from the dormitory because the University did not consider the effects of her disability on the Complainant's ability to respond to a fire drill. OCR found that the Complainant received an eviction notice prior to her participation in a fire drill evacuation event, and that the Complainant did not request disability-related accommodation for evacuation events until well after the January fire drill event. As noted above, the reason the Complainant received

an original eviction notice was that she had not paid her rent. OCR found insufficient evidence to connect the Complainant's participation in a January fire drill, her February request for disability related accommodation in such drills, and the December eviction notice.

The evidence also does not support the Complainant's assertion that the University failed to implement approved accommodations related to the January XX fire drill. The evidence shows that the Complainant's accommodation request to OSD on January X (prior to the fire drill) did not raise any requests for accommodations related to her housing, such as evacuation assistance. The University is not obligated to implement an accommodation related to housing or evacuation that was not raised by the Complainant or agreed to through an interactive process. At the time, the Complainant had not yet been identified as an eligible student with a disability, and she had not requested any assistance from the University related to a disability and her housing.

For the foregoing reasons, OCR found that there was insufficient information to support a finding of noncompliance with respect to this allegation under Title II, Section 504 and their implementing regulations.

*Allegation 5: Whether the University discriminated against the Complainant on the basis of disability when it failed to consider providing academic adjustments so that the Complainant could participate in the education program in a nondiscriminatory manner.*

#### Legal Standards

OCR investigated this issue pursuant to the Section 504 regulations, at 34 C.F.R. §104.44(a) and the Title II regulations, at 28 C.F.R. §35.130(b)(7) which are described more fully under allegation 4 above. Additionally, the Section 504 regulations, at 34 C.F.R. §104.3(j)(1)(i), and the Title II regulations, at 28 C.F.R. §35.104, defines an individual with a disability as one who has a mental or physical impairment that substantially limits one or more major life activities. Under the Section 504 regulations, at 34 C.F.R. §104.3(l)(3), with respect to postsecondary education services, a qualified individual with a disability is one who meets the academic and technical standards requisite to admission or participation in the college or university's education program or activity. Similarly, the Title II regulations, at 28 C.F.R. §35.104, defines a qualified individual with a disability as one who, with or without reasonable modifications to rules, policies, or practices, the removal or architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or participation in the college or university's programs and activities.

A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual. Further, an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

### Findings of Fact

- The University policy requires that all students with permanent or temporary disabilities seeking to register with the OSD shall provide documentation of their disability from a qualified professional, which identifies the student's functional limitations. Absent this documentation, the University policy permits only limited, provisional accommodations.
- On December XX, 2014, the Complainant contacted OSD to request academic accommodations, based on the lingering effects of a concussion she had suffered in an automobile accident. The Complainant presented a doctor's letter dated November X, 2014, indicating that she had been injured, needed to be off school from November X to November XX, 2014, and could return to school after the end date.
- OSD staff met with the Complainant on December XX, 2014, and verified her status as a person with a temporary disability (acquired brain injury). Notes from this meeting indicate that OSD found the Complainant eligible to receive class notes for one class, as well as assistance from the Learning Disabilities (LD) Program Coordinator in emailing her professors to verify her absences.
- OCR reviewed correspondence reflecting that the LD Program Coordinator sent emails to the Complainant's professors in the Fall 2014 regarding accommodating her needs including excused absences for specific classes the Complainant missed and additional time for a final paper. The correspondence reflects that these accommodations were granted.
- On January X, 2015, the Complainant provided the LD Program Coordinator with additional information about her medical condition. The information included a medication prescription, a record of a doctor's visit indicating no diagnosis or health problems, and a form indicating that the Complainant could return to school with no restrictions starting January X, 2015, but that ongoing assessment of her condition would be necessary. The information provided did not include a diagnosis or describe the Complainant's functional limitations.
- In a follow-up email on January X, 2015, the LD Program Coordinator informed the Complainant that she needed further information that would clarify the manifestations and functional limitations deriving from the Complainant's disability. Further emails on January X, 2015 between the LD Program Coordinator reflect that the OSD approved the Complainant for provisional accommodations but noted that because the Complainant had not yet enrolled, OSD could not take further action on her behalf.
- Email correspondence between the Complainant and the LD Program Coordinator show that the Complainant continued to request accommodations, without providing documentation from a qualified professional that identified her disability and functional limitations. The Complainant sought the following accommodations: assistance with note taking, assistance with communicating with her professors as needed, early registration, and parking accommodations. The email correspondence reflects that the LD Program Coordinator

continued to provide accommodations on a provisional basis, and continued to request further documentation from the Complainant. The LD Program Coordinator also suggested that the Complainant contact the University ADA Compliance Officer for assistance, if she preferred not to meet with the LD Program Coordinator.

- Throughout February 2015, the LD Program Coordinator continued to attempt to obtain the documentation needed from the Complainant to identify her as a student with a disability and also communicated to the Complainant that she was approved for provisional accommodations. The Complainant appeared to interpret the requests for documentation as denials and communicated this perception to OSD in emails throughout February. The LD Program responded by assuring her that her provisional accommodations were approved and requesting in-person meetings with the Complainant.
- Emails from January and February 2015 reflect that the Complainant was provided the links and directions to access notetaking. The Complainant stated to OCR that she recalled receiving the notetaking accommodation in the winter of 2015. However, she stated that she was enrolled in three courses and did not receive her approved accommodations for one of the courses, XXXXXX. Specifically, she recalled that the professor did not grant her more time to submit the final because of how late the Complainant started that semester.
- The Complainant also recalled that the OSD reviewed her accommodation requests with her during in-person meetings, physically showed her how to evacuate a building, reiterated the priority registration process, and showed her how to request notes through the OSD's portal/website.
- On December XX, 2015, the Complainant was approved as an eligible student with a disability. The Fall quarter had ended on December 11, 2015.
- The Complainant subsequently alleged to OCR that in 2016 the University again did not provide all of her accommodations. The Complainant specifically alleged that she was not allowed to make up missed work and absences.
- Documentation from January 2016 between OSD and the Complainant shows that OSD approved the Complainant to receive priority registration, notetaking, and 50% additional time for in-class quizzes, tests, and exams. OSD also agreed to communicate with the Complainant's professors about her approved accommodations.
- With regard to two of the Complainant's accommodation requests in 2016 (extensions for assignments and excused absences), documentation reflects that OSD did not deny the requests, but informed the Complainant that they would work with her on a case-by-case basis regarding these accommodations. Specifically, in a January X, 2016 email from OSD to the Complainant, OSD informed her that with regard to extensions for assignments, all such requests would be viewed independently and all "academic adjustments are based upon an interactive dialogue and must be reasonable. Therefore, we will address this on a case by case basis." With regard to excused absences, OSD expressed a willingness to work with the

Complainant on such requests and informed her that OSD would need to know that each absence is disability-related before they could intervene.

- Email correspondence between the Complainant and OSD in May and June of 2016 reflect that she sought an extension to submit a midterm, to be able to re-take a pop quiz with an OSD proctor, and excused absences for four absences in her XXXX Section and two to three absences in her XXXXX class. OSD communicated to the Complainant regarding obtaining the extension she needed for her midterm, arranging for the re-take of the pop quiz, and asking the Complainant whether the absences that she sought to be excused were disability-related. Email correspondence shows that the XXXX professor granted the requested accommodations but noted to OSD that the Complainant had more than four absences in her class.
- On May XX, 2016, OSD communicated to the Complainant that both her professors expressed concerns to OSD about her poor attendance and its impact on her grades for the quarter. One professor noted that the Complainant missed more than four classes, had not submitted any assignments, and had not taken any tests in the class. OSD offered to meet with the Complainant about these concerns from her professors. The Complainant responded stating that she had asked for “arrangements to make up missed work and absences” and had yet to hear how she could do so.
- On May XX, 2016, the Complainant emailed OSD expressing disappointment that she did not obtain accommodations and that every single one of her professors suggested that she withdraw from their courses. She did not specify in her email to the University which accommodations she was not provided. In an interview with OCR, the Complainant stated that she believed that one of her professors did not understand how she could make up the work she missed, and that the OSD did not provide sufficient guidance to the professor regarding this issue.
- Also on May XX, the Complainant emailed OSD stating that she experienced discrimination because her XXXX professor is having a difficult time believing she is disabled because she does not look “ill” and this prompts a conversation in which she has to prove that she is ill. She asserts that this is humiliating and a form of discrimination. She further stated that she believed the same professor was retaliating against her. The Complainant told OCR that she received an “A” grade from her XXXX professor.
- On June X, 2016, a University Vice Chancellor emailed the Complainant to inform her that her complaint was being investigated by the ADA/504 Compliance Office and that an investigation report would be sent to her the following week. The University subsequently informed OCR that because the professor was not available for an interview during the summer, the investigation into the Complainant’s 2016 complaint was delayed.

#### Analysis and Conclusions of Law



Regarding the 2014-2015 accommodation requests by the Complainant, the information reviewed by OCR does not support the Complainant's assertion that she was denied academic adjustments for which she was eligible and had been approved. Documentation reviewed by OCR shows that, in December 2014, the Complainant informed the University of a temporary impairment resulting from an auto accident. A temporary impairment does not constitute a disability for purposes of Section 504 and Title II. With respect to the Complainant's continued request for academic adjustments/services for the winter 2015 quarter, OCR found that the supporting medical documentation available to the University did not establish that the Complainant was a qualified individual with a disability at that time.

Despite the lack of sufficient medical documentation to support the Complainant's status as an eligible student with a disability and to support her accommodation requests, the University nevertheless notified the Complainant that she would be provided with some temporary academic adjustments/services through the winter 2015 quarter, even before she was registered for classes. The University clarified that the Complainant was approved for the following provisional accommodations: note-taking and assistance with communication with faculty. These were to remain in place until the end of the winter 2015 quarter but would require supporting medical documentation if the Complainant wanted to continue them beyond that point.

With regard to the 2014-2015 school year, based on the documentary record, OCR finds that the University met its obligation under Section 504 and Title II to engage in an interactive process with the Complainant to consider and arrange for suitable academic adjustments, but that the Complainant did not participate in a manner that allowed the University to verify her eligibility for these adjustments. OCR therefore found that there was insufficient information to support a finding of noncompliance with respect to this allegation related to the 2014-2015 school year.

During the course of OCR's investigation, the Complainant also alleged that she was not provided accommodations as requested in May and June 2016. The evidence reflects that by the winter 2016 quarter, the Complainant was identified by OSD as a qualified individual with a disability and was approved for accommodations (priority registration, notetaking, and 50% additional time on exams). In May 2016, she sought assistance from OSD in obtaining an extension for a midterm, and to have several absences excused (four absences in one class and two to three in another). The evidence shows that OSD communicated with the Complainant's professors to obtain the extension and the excused absences. Though her professors agreed to provide these specific requests, both professors communicated a concern to OSD that the Complainant had, in fact, missed many more classes than the absences she sought to excuse, and in one of the classes she had not submitted any assignments or taken any of the tests. According to the Complainant, her professors all recommended to her that she withdraw from their classes.

OCR finds that with regard to the Complainant's approved accommodations of priority registration, notetaking, and additional time on exams, there is no evidence that the University failed to provide these accommodations to the Complainant. The Complainant's focus of her complaint is regarding her request to have an extension of time to submit a midterm and to have multiple absences excused. The evidence shows that OSD informed the Complainant when her accommodations were approved in January of 2016 that extensions of time and excused absences

would be determined on a case-by-case basis. The evidence shows that OSD worked with the Complainant and professors to obtain the excused absences that she sought and the midterm extension. Because the Complainant missed many more classes and assignments than what she sought excused absences for, her professors expressed a concern to OSD and the Complainant. This, however, does not reflect that the Complainant was not provided her approved accommodations. OCR therefore found that there was insufficient information to support a finding of noncompliance with respect to this allegation related to the events in 2016.

OCR notes that during the course of this investigation, the Complainant communicated to the University that she believed she was being discriminated and retaliated against based on her disability by her XXXX professor. OCR did not complete an investigation into whether or not the University responded appropriately to these complaints made by the Complainant because prior to concluding OCR's investigation the University expressed an interest in resolving this issue. In order to complete the investigation, OCR would need to review additional documentation regarding the investigation conducted by the University into the Complainant's allegations. Pursuant to the resolution agreement, the University will provide the Complainant with a written determination regarding its investigation into her allegations of disability discrimination and retaliation.

### Conclusion

This concludes OCR's investigation of the complaint and 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. OCR is informing the Complainant of the complaint resolution by concurrent letter.

On December 22, 2016, the University entered into a resolution agreement with OCR in which the University agreed to provide the Complainant with written determinations regarding her January 2015 sexual and racial harassment allegations and her May 2016 disability-discrimination allegations. The University also agreed to ensure that the "No Further Action" notice related to the January 2015 fire drill incident does not appear on her student record. When fully implemented, the resolution agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implement of the resolution agreement until the University is in compliance with Title VI, Title IX, and their regulations that were at issue with regard to allegation 2; and Section 504, Title II, and their regulations raised by the Complainant's May 2016 allegations with regard to allegation 5.

The Complainant may file a private suit in Federal court whether or not OCR finds a violation.

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

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the 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 we will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Rosalie Gendimenico at (415) 486-5517, or Rosalie.Gendimenico@ed.gov, or me at (415) 486-5555.

Sincerely,

/s/

James Wood  
Team Leader

Enclosure

Cc: Lane Dilg, General Counsel