



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

April 11, 2018

VIA ELECTRONIC MAIL

George Blumenthal
Chancellor
University of California, Santa Cruz
1156 High Street
Santa Cruz, California 95064

(In reply, please refer to OCR case numbers 09-15-2272 and 09-16-2279.)

Dear Chancellor Blumenthal:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has resolved its investigation of the above-referenced complaints against the University of California, Santa Cruz (University). On September 21, 2017, OCR notified the University that it would be investigating two individual complaints (OCR case nos. 09-16-2279 and 09-15-2272) filed by students at the University (Complainant 1 and Complainant 2 respectively) alleging sex discrimination in violation of Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulations, at 34 C.F.R. Part 106.¹ OCR investigated whether the University failed to respond promptly to complaints of a sexual assault and sexual harassment.

OCR is responsible for enforcing Title IX and its implementing regulations, which prohibit discrimination on the basis of sex in 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 under Title IX.

To investigate these complaints which were consolidated for investigation and resolution purposes, OCR conducted interviews and reviewed documents and other information provided by the complainants and the University. Prior to OCR completing its investigation, the University voluntarily agreed to address the areas of concern identified by OCR with respect to the issues investigated. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the University.

¹ OCR notified the University of Complainant 1's and Complainant 2's identities when the investigation began. OCR is withholding their names from this letter to protect their privacy.

Legal Standards

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.

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. 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.

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.

Facts Gathered to Date

The applicable grievance procedure in effect at the time of Complainant 1 and Complainant 2’s reports stated that the University’s timeframe for completing an investigation and issuing notice was 60 working days, unless extended by the Title IX Officer for good cause and followed by written notice to the complainant and respondent of the reason for the extension and the projected new timeline.

University Response to Complainant 1’s Complaint (09-16-2279)

During the 2015-2016 school year, Complainant 1 was a XXXXX XXXX XXXXXXXXXXXXXXX student at the University. On January X, 2016, Complainant 1 reported to her professor that she had been sexually assaulted by Respondent 1, another student in the professor’s class. At the time of the report, Respondent 1 was a XXXXX XXXX XXXXXXXXXXXXXXX student. On January X, 2016, the professor emailed the Title IX Officer, copying Complainant 1, to report the sexual assault allegation and inform the Title IX Officer that Respondent 1 was in the class with Complainant 1 that quarter. That same day, the Title IX

Officer responded to Complainant 1 with information on reporting options, including the University's policy prohibiting retaliation, and a referral to the Campus Advocacy Resources & Education (CARE) advocates. The Title IX Officer also offered to talk to Complainant 1 about her resolution options.

On January X, 2016, Complainant 1 met with the Title IX Officer and alleged that Respondent 1 sexually assaulted her XXXX XXXXX during the winter and spring quarters in 2015. The alleged conduct occurred on and off campus.

During the January X, 2016 meeting with the Title IX Officer, Complainant 1 requested a formal investigation and also provided the names of five witnesses. On January X, 2016, the Title IX Officer sent Respondent 1 an investigation notification letter, which included a "no contact" directive requiring that both Complainant 1 and Respondent 1 not speak or interact with each other. The Title IX Officer decided that, as an interim measure, Respondent 1 should no longer attend the lecture portion of the professor's class, since Complainant 1 was also enrolled in the class. The Title IX Officer asked Respondent 1 to meet with her or the professor to discuss course alternatives, and Respondent 1 subsequently decided to withdraw from the professor's class on January XX, 2016 and take a different XXXXXXXXXXXX class. In addition to the aforementioned actions, the Title IX office provided Complainant 1 with the following interim remedies: academic tutoring and support, a parking pass because Complainant 1 expressed fear in walking around the campus, and additional sessions at the campus Counseling & Psychological Services beyond the standard hours limit.

The Title IX Officer emailed Respondent 1 on January X, 2016 to schedule a meeting and interview him regarding the alleged conduct. Respondent 1 informed the Title IX Officer that he was interested in retaining legal counsel. January XX, 2016 was a holiday. On January XX, 2016, the Title IX Officer received an email from Respondent 1's attorney with a letter of representation. On February X, 2016, Respondent 1 provided a release so that the University could communicate with the attorney on his behalf. On February X, 2016, the Title IX Officer sent a request to schedule Respondent 1's interview. Through emails on February X and XX, 2016, the Title IX Officer and Respondent 1's attorney emailed back and forth to negotiate the date of Respondent 1's interview.

February XX, 2016 was a holiday, and on that day, the Title IX Officer emailed the five witnesses, whom Complainant 1 identified, to schedule witness interviews. On February XX, 2016, Respondent 1 sent the Title IX Officer a written statement of his account related to one of the allegations of sexual assault. On February XX, 2016, Respondent 1 sent another written statement with his account of the other four allegations of sexual assault. On February XX, 2016, the Title IX Officer interviewed Respondent 1 with his attorney present. On February XX, February XX, February XX, and February XX, 2016, the Title IX Officer interviewed the five witnesses identified by Complainant 1.

On March X, 2016, Respondent 1 emailed the Title IX Officer to inform her that Complainant 1 had walked past him at a bus stop that day and briefly made eye contact with him. According to Respondent 1, he did not say anything to Complainant 1. The Title IX Officer confirmed that he should have ignored her. The following day, Respondent 1 emailed again about the bus stop

incident, and the Title IX Officer responded that she would remind Complainant 1 about the no contact directive. She also told Respondent 1 that she did not feel the incident was a violation of the no contact directive since Complainant 1 walked by Respondent 1 without speaking to him.

On March X, 2016 and March XX, 2016, the Title IX Officer conducted follow-up interviews with Complainant 1. The winter 2016 quarter ended on March XX, 2016, and there was a week of no classes before the spring 2016 quarter began on March XX, 2016. On March XX, 2016, which was a holiday according to the University's calendar, the Title IX Officer sent a notification letter to Complainant 1 via email. It included the no contact directive, and a note from the Title IX Officer explaining that she realized that she failed to send the notification letter when going through Complainant 1's file and that the notification letter is a formality under the new UC policy. The Title IX Officer also attached copies of the policies for Complainant 1.

Four days before the start of the spring 2016 quarter, on March XX, 2016, the Title IX Officer learned that Complainant 1 and Respondent 1 were again registered for the same XXXXXXXXXXXX course. The Title IX Officer determined that Respondent 1's completion of the course was a requirement for graduation, and therefore, Complainant 1 would need to enroll in a different course. The Title IX Officer, faculty from the XXXXXXXXXXXX department, Complainant 1, and the Complainant's CARE advocate attempted to find alternatives (for instance, videotaping the class for Complainant 1), but the alternatives were not feasible. Ultimately, in an email on March XX, 2016, the Title IX Office recommended that Complainant 1 take the XXXXXXXXXXXX course the following year, since it was not required for XXX XXXXXXX XXXXXXXXXXX XXXXXXX, and offered assistance to enroll Complainant 1 in another XXXXXXXXXXXX course for the spring 2016 quarter.

On March XX, 2016, Complainant 1 emailed the Title IX Officer for an update on her case. On April X, 2016, the Title IX Officer responded to notify Complainant 1 that she would need additional time to investigate her complaint. The Title IX Officer explained that Complainant 1's case was progressing but had been delayed for at least a month because Respondent 1 had retained legal counsel, and she had to schedule his interview late in February 2016 to allow his counsel to be present. She told Complainant 1 that she hoped to have the investigation report completed by the third week of April 2016.

On April XX, 2016, the Title IX Officer conducted a final interview with Complainant 1.

On April XX, 2016, Respondent 1 emailed the Title IX Officer again about the no contact directive. He reported that on April XX, 2016, when Complainant 1 saw Respondent 1 and his three friends on a campus sidewalk, Complainant 1 had walked between Respondent and his three friends, and she did not walk in a different direction or take a different route. The Title IX Officer responded that she would contact Complainant 1 about the no contact directive.

The Title IX Officer sent Complainant 1 an email on April XX, 2016 about Respondent 1's report and reminded her that both Complainant 1 and Respondent 1 should walk away when they see each other. On April XX, 2016, Complainant 1's CARE advocate responded to the Title IX Officer requesting the Title IX Officer no longer contact Complainant 1 directly and instead direct communication through the CARE advocate. The Title IX Officer responded to both

Complainant 1 and the CARE advocate explaining that communication must go to Complainant 1, but confirmed that she understood Complainant 1 wanted no further communication from the Title IX Officer until the final notification letter.

On April XX, 2016, the Title IX Officer interviewed three witnesses previously identified by Respondent 1 during his February XX, 2016 interview and through email on March X, 2016. According to Complainant 1, on May XX, 2016, the CARE advocate asked the Title IX Officer for an update on Complainant 1's case, and the Title IX Officer responded that she was still conducting the investigation. On May XX, 2016, Complainant 1 filed a complaint with OCR because the University had not resolved her complaint, and it had been 139 days since she filed it. In her OCR complaint, Complainant 1 expressed fear knowing that Respondent 1 remained on campus, and requested that the University complete the investigation as soon as possible.

May XX, 2016 was a holiday. June X, 2016 was the end of spring 2016 quarter. On June XX, July XX, and July XX, 2016, the Title IX Officer informed the CARE advocate at case management meetings that she was drafting the investigation report. On July X, 2016, the Title IX Officer also emailed Respondent 1 to inform him that she was writing the investigation report. On August X, 2016, Complainant 1 told OCR that her CARE advocate informed her that the Title IX Officer was continuing to work on the investigation.

On August XX, 2016, the Title IX Officer informed Complainant 1 and Respondent 1 of the outcome of the investigation. The Title IX Officer investigated five allegations of sexual assault. The investigation report found insufficient evidence for allegations 1, 2, 3, and 5. The investigation report found sufficient evidence for allegation 4, which involved Respondent 1 physically forcing Complainant 1 to engage in an unwanted sexual act.²

The University told OCR that the delays in completing the investigation were due to the complexity of the investigation, specifically that the investigation involved five incidents of alleged sexual assault that occurred in different locations over a four-month period, and interviews with ten people, including Complainant 1 and Respondent 1.

University Response to Complainant 2's Complaint (09-15-2272)

At the time of her complaint, Complainant 2 was a XXXXXX XXXX XXXXXXXXXXXXXXXX student at the University XXX XXXXXX XX X XXXXXXXXXXX XXXXXXXX XXXX during the 2014-15 academic year. On October XX, 2014, Complainant 2 reported to XXX XXXXXXXXXXXX, the XXXXXXXXXXXX XXX XXXXXXXXXXXX XXXXXXXXXXX XXXXX, that Respondent 2, XXXX X XXXXXXXXXXXX XXXXXXXX, had sexually harassed her. Respondent 2 XXXXXX XX XXXXXXXXXXXXXXXX XXXXXXXX meaning that XXXX XXXXXX XX XXX XXXX XXXXXXXXXXXX XXXX. The XXX referred Complainant 2 to the Title IX office. He also offered to find Complainant "temporary living space" on campus.

² Respondent 1 appealed the decision finding he violated the University's policy against sexual harassment and sexual violence and the sanction, which was a two year suspension. An appeal hearing was held on November XX, 2016, and the University denied the appeal on November XX, 2016.

On October XX, 2014, Complainant 2 met with the Title IX Officer. At the meeting, she alleged a series of incidents of sexual harassment between the beginning of September, 2014 and October XX, 2014 involving Respondent 2, which included Respondent 2 allegedly attempting to look up her dress, lying down next to her, making unwanted comments about her appearance and manner of dress and about other students' sexual interest in her, and, on October XX, 2014, engaging in unwelcome sexual touching.

The Title IX Officer provided reporting options to Complainant 2, and she requested a formal Title IX investigation. On October XX, 2014, the Title IX Officer emailed the XXX and Complainant 2 regarding an "interim safety plan." The XXX reported that he and Assistant College Administrative Officer (CAAO) had met with Respondent 2 and explained that Complainant 2 was no longer comfortable in his presence and that his behavior upset her. The XXX reported that Respondent 2 was advised to avoid all contact with Complainant 2, including by social network, phone, or in person. The XXX also directed Respondent 2 to remain out of Complainant 2's XXXX XX XXX XXXXXXXXXXXX XXXX unless absolutely necessary and to not discuss the complaint or investigation with other RAs. Complainant 2 was advised to report any attempts to contact her or any retaliation. Complainant 2 was also referred to the campus's counseling services and confidential victim advocate. In addition to the aforementioned actions, the Title IX office provided Complainant 2 with a referral to counseling, health, and mental health services.

Complainant 2 reviewed the written complaint prepared by the Title IX Officer and signed it on November X, 2014. The Title IX Officer met with Respondent 2 on November X, 2014 and explained the complaint resolution process to him. That same day, she provided Respondent 2 a notification letter advising him not to contact Complainant 2 and advised him not to discuss the complaint in a public manner with members of the University community except staff who may serve as support resources for him. The documentation provided by the University does not state whether or when the Title IX Officer provided written notification of the no contact directive or an advisement to not speak publically about the complaint to Complainant 2.

On November XX, 2014, in advance of Respondent 2's interview, the Title IX Officer contacted Complainant 2 to advise her that she was interviewing Respondent 2 later that day and described her plan to interview the other witnesses that Complainant 2 had identified. The Title IX Officer interviewed Respondent 2 on November XX, 2014. After the interview, Respondent 2 provided the Title IX Officer documentation to support the statements he made in his interview, namely a series of text messages and emails contextualizing those messages.

Between December X, 2014 and January XX, 2015, the Title IX Officer interviewed eight of the eleven witnesses identified by Complainant 2 and Respondent 2. On January XX, 2015, Complainant 2 informed XXXXXXXX XXXXX and the Title IX Officer that she believed that Respondent 2 had told XXXXX XXX about her Title IX complaint and that she believed she was being treated poorly as a result. She also stated that she was worried that Respondent 2 may have been speaking to XXX XXXXX XXX about the investigation in an effort to influence their testimony during their interviews with the Title IX Officer. Complainant 2 stated that she felt ostracized and no longer welcome XX XXX XXXX.

On January XX, 2015, the Title IX Officer replied to Complainant 2's email. She offered to speak with college staff and explore the possibility of Complainant 2 XXXXXX XXXX X XXX XXXXXXXX XX XX XX. Complainant 2 responded expressing her interest in XXXXXX XXXXX. Later that evening, the Title IX Officer told Complainant 2 that, in the absence of disciplinary findings, no changes could be made in XX XXXXXXXX XXXXXXXXXXXX. She informed Complainant 2 that she had completed the final interview for her investigation and all that was left was to write up the report. She anticipated having the report completed as soon as possible, and advised Complainant 2 to "hang tight" until it was complete. Complainant 2 told OCR that after being denied a XXXX XX X XXXXXXXXXXXX XXXX, she decided to XXXX XXX XXX XX XX XX. She said that even though she loved XXX XXX, she no longer felt comfortable XXXXXXXX XXXX Respondent 2.

On February XX, 2015, the Title IX Officer interviewed a witness requested by Respondent 2 and on March X, 2015 she interviewed two witnesses requested by Complainant 2. The evidence provided by the University indicates that these witnesses had been requested at the outset of the investigation and were not last minute requests. On April XX, 2015, the Title IX Officer completed her report summarizing her investigation and conclusions. By a preponderance of the evidence, her report concluded that Respondent 2 made statements of a sexual nature to Complainant 2 on two occasions, but that the remainder of Complainant 2's allegations could not be corroborated. In addition, the account regarding the unwelcome sexual touching that occurred on October XX, 2014 was undermined, in part by testimony from other witnesses. In sum, the report found, by a preponderance of the evidence, that Respondent 2's conduct did not create a hostile environment on the basis of sex, and therefore did not constitute a violation of the University's policy against sexual harassment.

The total time from notification to resolution of the complaint was 175 days. The University told OCR that it a reason for the delay was the fact that there were eleven witnesses to interview and there were multiple incidents to assess. The University also recognized that the delays in completing the investigation created "understandable anxiety and uncertainty" for Complainant 2.

The University also told OCR that workload in the Title IX office impacted the investigative timelines in both matters. To address the significant rise in complaints over the past two years, the University reported to OCR that it had added two additional full time employees in investigative roles in the Title IX office in January 2014 and acquired a new database system as of May 2016. The University stated that these resources took longer than anticipated to implement. On November X, 2017, the University posted a job announcement for a new Title IX Officer and appointed a staff person to serve as interim Title IX Officer. As of the date of this letter, the University has not hired a new Title IX Coordinator.

Analysis

Based on the facts gathered thus far, OCR has concerns that Complainant 1's and Complainant 2's reports of sexual harassment/sexual assault were not resolved promptly. When analyzing whether a complaint was resolved in a reasonably prompt timeframe, OCR completes a case-by-case, fact-specific analysis, which takes into account the complexity of the investigation, the

severity of the allegations and other mitigating factors, such as intervening school breaks, short breaks for concurrent law enforcement activity, and requests by the parties for extensions.

Here, the Title IX Officer's intake interview with Complainant 1 occurred on January X, 2016 and she informed the parties of the outcome of the investigation on August XX, 2016. A total of 229 days passed between Complainant 1's complaint and the completion of the investigation. With respect to Complainant 2, the formal investigation began on November X, 2014, and the investigation was not completed until April XX, 2015, a total of 175 days from the date the complaint was filed. OCR recognizes that both investigations involved multiple incidents over a several month period, and that in each case, the Title IX Officer interviewed multiple witnesses – 8 in Complainant 1's investigation and 11 in Complainant 2's investigation. Other than the need to conduct multiple interviews and address multiple incidents, the documentation provided to OCR did not contain other information about mitigating factors, such as a delay in investigation resulting from a concurrent police investigation, introduction of new evidence or witnesses at a late stage in the investigation, or the use of a complex investigative method (e.g., testing of physical evidence). Furthermore, OCR did not find that breaks or holidays in the University calendar caused a delay in interviewing witnesses or parties.

OCR notes that with respect to Complainant 1, the Title IX Officer informed Complainant 1 that the investigation was delayed due to Respondent 1 seeking counsel, which delayed his interview to February XX, 2016. However, the majority of the delay occurred after the Title IX Officer interviewed Respondent 1. Specifically, notice of the outcome of the investigation was not issued to the parties until August XX, 2016, 119 days after the Title IX Officer had completed all witness interviews, including the Respondent's interview. With respect to Complainant 2, the Title IX Officer completed all interviews on March X, 2015, but provided notice of the outcome on April XX, 2015, 44 days after the completion of the interviews. The documentation reviewed to date does not show evidence of any mitigating factors that would explain a four month delay for Complainant 1 and a one-and-a-half month delay for Complainant 2 in providing notice of the outcome of the investigation, after all of the interviews were completed and the evidence received by the Title IX Officer.

The University also reported that the investigations took longer than expected because the Title IX office was impacted by a significant rise in complaints, which raised a concern that the University may not have a plan for sufficient resources to respond to reports and complaints received. While the University reported that it has purchased a new database vendor and increased its staffing, the University, as of the date of this letter, does not have a permanent Title IX coordinator. OCR has not yet assessed the impact of these staffing and resource changes on the University's ability to provide a reasonably prompt response to reports and complaints of sexual harassment/sexual violence.

OCR is also concerned that the delayed resolution of the case may have limited the Complainants' access to the University's programs and activities. For example, with respect to Complainant 2, the investigation remained pending for nearly the entire school year, and the University's attempts to address her concern about XXXXXX XXX XXXXXXXX XX XXX

XXXX XXXX as Respondent 2 were unsuccessful.³ Prior to reaching a compliance determination for these cases with respect to whether the University provided a prompt resolution under Title IX and its implementing regulations, the University expressed an interest in voluntarily resolving the allegations, and OCR agreed it was appropriate to do so.

Conclusion

The University has entered into the enclosed Agreement to address OCR's concern that the University may have failed to provide a prompt resolution to the Complainants' reports of sexual harassment. The Agreement requires the University to: conduct a self-assessment on the promptness of formal Title IX investigations from the 2017-2018 academic year, including the timeframe between the date a complaint was filed and date when parties were notified of the outcome of the investigation, and the University's capacity to resolve Title IX complaints in a reasonably prompt time frame, taking into account the complexity of the matter and severity of the allegations; and, provide a report to OCR regarding the timeliness of formal Title IX investigations and assessment of University capacity for providing a prompt resolution.

This concludes OCR's investigation of these consolidated OCR complaints 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. This letter sets forth OCR's determination in these consolidated OCR 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. OCR is closing the investigation of the consolidated complaints as of the date of this letter, and notifying the complainants concurrently. Complainants may have the right to file a private suit in Federal court whether or not OCR finds a violation.

When fully implemented, the Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the Agreement until the University is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

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, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by the law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

³ During the course of the investigation, the University provided both Complainants with interim measures and services to resolve the individual concerns raised during the investigation related to prevention of any further harassment and address the effects of any harassment, and/or delays in the investigation, such as additional counseling hours and a parking space in the XXXXXXXXXXXX XXXX XXXXX.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Abony Alexander or Annie Lee at the San Francisco OCR office at (415) 486-5555.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure (1): Resolution Agreement

cc: Lorena Peñaloza, Chief Campus Counsel (via email only)
Liv Hassett, Associate General Counsel (via email only)