



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

November 9, 2018

VIA ELECTRONIC MAIL

Dr. Dianne G. Van Hook
Chancellor
College of the Canyons
26455 Rockwell Canyon Road
Santa Clarita, California 91355

(In reply, please refer to case no. 09-16-2033.)

Dear Chancellor Van Hook:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the College of the Canyons (College). The Complainant alleged that the College discriminated against the Student on the basis of sex.¹ Specifically, OCR investigated the following issues:

1. Whether the College failed to provide a prompt and equitable response to notice of harassment by a peer based on sex when the Student and the Student's parents reported that she was subjected to harassment by another male student during the 2014-15 school year.
2. Whether the College retaliated against the Student for reporting that another male student was sexually harassing her by subjecting her to adverse actions, including having her called in to speak to a Dean and having a no-contact order imposed on her.
3. Whether the College has failed to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination.

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

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Student, the Student's parents, and the College. With regard to

¹ OCR previously provided the College with the identity of the Student and the Complainant. We are withholding their names from this letter to protect their privacy.

issue 1, prior to OCR concluding the investigation, the College agreed to a voluntary resolution regarding the issue of whether the College provided a prompt and equitable response to notice of harassment by a peer based on sex. With regard to issue 2 involving retaliation allegations, OCR found that the College did not violate Title IX and its implementing regulations. Regarding issue 3 involving the College's grievance procedures, OCR concluded that the College was not in compliance with Title IX requirements. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

Issue 1: Whether the College failed to provide a prompt and equitable response to notice of harassment by a peer based on sex when the Student and the Student's parents reported that she was subjected to harassment by another male student during the 2014-15 school year

Legal Standards:

Sexually Hostile Environment and Duty to Respond Promptly and Equitably

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides that “. . . no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any . . . education program or activity” operated by recipients of Federal financial assistance. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including acts of sexual violence.

When a student sexually harasses another student, the harassing conduct creates a hostile environment if it is so severe, persistent, or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program or activities. If a recipient knows or reasonably should know about student-on-student harassment, Title IX requires the recipient to respond in a prompt and equitable manner by taking immediate action to eliminate the harassment, prevent its recurrence, and address its effects.

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The inquiry must be prompt, reliable, and impartial. Pending the outcome of a response to a report or an investigation of a complaint, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim measures. The recipient also should take steps to prevent any retaliation against the student who made the complaint and/or those who provided information. A recipient must consider the effects of off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity.

Other actions may be necessary to repair the educational environment. These may include special training or other interventions, the dissemination of information, new policies, and/or other steps that are designed to clearly communicate the message that the recipient does not tolerate discrimination and will be responsive to any student reports of discrimination.

Factual Findings: Allegations 1 and 2

The Student attended the College from August XX, 2014 – June X, 2015.

In April 2015, the College became aware of a conflict between the Student and another male student, Student 1, when Student 1 provided notice of some kind of harassment. The College submitted typed notes to OCR and informed OCR that these notes were prepared by the former Dean of Student Services at the College (Dean), who responded to the notice. The Dean currently holds the position of Dean of Student Development. The notes state that the Dean prepared the notes while investigating matters relating to the Student. However, the document does not reflect the date on which the Dean prepared these notes. The notes provide a chronology of the interactions the Dean had with Student 1 and the Student in April 2015 while he was investigating the allegations that both students made about each other. In these notes, the Dean states that the Student never reached out to him, his staff or any other college staff and alleged, either verbally or in writing, that she was the recipient of any sexual harassment, stalking or battery during her time as a student at the College.

According to the typed notes by the Dean, on April X, 2015, Student 1 visited the Dean to report harassment by the female friend of the Student, either on her behalf and/or with her knowledge. The notes state that an example of the harassment is an alleged death threat made by the Student's friend. The Dean's notes do not include more specifics on the alleged harassment but just state that the Student and her friend were individuals who were harassing and threatening Student 1. On the next day, April X, 2015, he sent a letter to the Student requesting that she come to his office to discuss alleged behavior and possible conduct violations. A similar letter was sent to the Student's friend. The College did not submit a copy of this letter to OCR for review.

The Student and the Complainant (her father) attended a meeting with the Dean on April XX, 2015. The Dean's notes state that during the meeting, he asked the Student to describe her relationship with Student 1. She stated that she did not know him well, she only went XXXXX XXXXXXXX with him once in August 2014, and that she hung around him during fall 2014, including XXXXXXXX XXX XX XXX XXXXX XX October XX, 2014. She stated that she did not date Student 1, and they were just friends. She also reported some contact in March of 2015 on campus. She stated that she did not have Student 1's phone number or access to him through Facebook. She described her friend as someone who was a friend of a friend whom she first met in fall 2014. The Dean stated that when he asked the Student if she knew anything about her friend threatening to kill Student 1, the Student confirmed that she was aware that her friend threatened Student 1. The Dean further noted that during this meeting, there was no mention by the Student or the Complainant that the Student had been subjected to sexual harassment, stalking or unwanted touching.

The Complainant told OCR that he was not aware of the Student being sexually harassed until the April XX, 2015 meeting, when he recalled that she told the Dean that Student 1 had been harassing her. The Complainant described the harassment as described by the Student as "stalking" and "sexual harassment." The Complainant stated that during the meeting on April

XX the Student told the Dean that even though she explained to Student 1 that she was not his girlfriend, he would still put his hands around her and make unwanted advances at her.

In the Student's interview with OCR, the Student stated that she told the Dean during the April XX, 2015 meeting that Student 1 gave her unwanted attention, which she described as unwanted hugs or he would put his arm around her or rub her shoulders when she did not want him to do so. She stated that she told the Dean that she told Student 1 to stop doing these things and that she was not his girlfriend. She further stated that Student 1 would also text her all the time, even when she told him that she was busy. She recalled describing her friend's contact with Student 1 as an attempt to defend her and keep her relaxed. The Student stated that she never provided information in writing about the alleged harassment to the Dean, only verbally during this meeting.

The Dean met with the Student's female friend on April XX, 2015. In the Dean's notes, he stated that the friend reported that she knew the Student XXXXX XXXX XXXXXX and had a friendly and on-going relationship with the Student. The Dean stated that the friend reported making the threat to Student 1. In a cell phone conversation, Student 1 told the friend that he was thinking of dropping out and going to a different school because of all the harassment from the Student and her friends. The Student was listening in on the conversation, and was upset to hear that Student 1 might be leaving. The friend responded during the call by telling Student 1: "If I see you on campus, I am going to kill you", and "if I see you talking to her I am going to rip your head off." According to the friend, the Student was present and heard the entire conversation.

In his chronology notes, the Dean stated that on April XX, 2015 and April XX, 2015, Student 1 provided him with copies of text and Facebook messages between him and the Student from March XX, 2015 and April XX, 2015. He described the following examples of the messages from the Student to Student 1 in his notes:

- March XX, 2015: "Hey, do you want to talk on Wednesday XX XX? I don't want to lose u as a friend [Student 1] even if it's just friends and not close friends. [The Student's friend] was only helping me out and she got mad.
- April XX, 2015: "Hey, please text me I want to talk to you."

The College did not produce a copy of these text and Facebook messages to OCR as evidence. As part of its data response, the College submitted to OCR an undated, handwritten letter that it said was from the Student to Student 1's parents. The College included a note on the letter stating that the Student prepared and gave this letter to Student 1's mother in October 2014. The letter includes in relevant part that the Student was apologizing for the "entire situation" between her and Student 1, that some of the Student's friends thought Student 1 was trying to "flirt with her", but that he was really just trying to "comfort" her through some "rough days." She said that her friend had taken her phone at one point, and that she knows that should not have happened. She promised that it would never happen again. The College told OCR that it considered the information in this letter as evidence that the Student had not been forthcoming about her relationship with Student 1.

The Dean met with the Student a second time on April XX, 2015. In his notes, the Dean stated that the Student acknowledged that she went on a few dates with Student 1, had a Facebook connection with him and also texted with him. According to the Dean, the Student admitted to knowing her friend for XXXXX XX XXXX years, even though she had not been forthcoming in the prior interview. When he asked the Student about her texts to Student 1 on April XX, 2015, when she previously told the Dean that she didn't know his phone number, the Student stated that she used someone else's phone, not her own to text Student 1. The Dean also stated that the Student admitted to not telling the truth about both of these facts in the first interview. The notes indicate that the Dean elected not to move forward on a conduct violation for the Student being untruthful and hampering an administrative process.

The Student told OCR that during this meeting on April XX, 2015, she told the Dean that she did not feel safe around Student 1. She also stated that she told the Dean for a second time that Student 1 sexually harassed her, including constantly texting her, putting his arms around her and touching her. She said that the Dean told her that there were misunderstandings to clear up and he asked her about how long she knew her friend. The Student stated that she clarified that in the first meeting she told the Dean that she had known her friend for a few months because she felt that the Dean's question in the first meeting was unclear. The Student explained that during this second meeting on April XX, 2015, she explained to the Dean that she has known her friend since XXXX XXXXXX but they became closer in college. Also, she acknowledged telling the Dean that she misspoke when she said that she only knew her friend for a few months, but that she misunderstood the Dean's initial question. The Student told OCR that she never admitted that she lied to the Dean. The Student told OCR that the Dean did not offer her any academic support or counseling after she informed him about Student 1 sexually harassing her during this meeting on April XX, 2015. However, she acknowledged that he talked to her about a no contact order after she requested a "restraining order."

On April XX, 2015, the Dean sent a letter to the Student describing an "informal agreement of resolution" of the matter. In this letter, the Dean stated that the College did not make a finding that the Student "knowingly furnished false information to the College and disrupted the administrative process." The letter states that the case involves another party, "with whom you have had a falling out, and other students who seem to want to act on [your] behalf . . . [Student 1] made a request to the office that "you no longer contact him on campus . . ." The College elected to impose a mutual no contact order as a resolution, effective April XX, 2015, "to avoid any further action which may be construed as violations of the Student Conduct Code." The mutual no contact order requires the Student and Student 1 to maintain separation from each other on campus at a specified minimum distance and prohibits both students, and others at their direction, from intentionally interacting with, contacting, telephoning or disturbing the peace of the other student. The letter goes on to state that "college disciplinary action may be pursued if, over a two year period, there exists a reasonable suspicion you have engaged in misconduct related in nature to the conduct that occasioned this Agreement." The same letter was sent to Student 1.

In her interview with OCR, the Student did not describe ongoing contact or harassment from Student 1 after the issuance of the no-contact order on April XX, 2015.

As of June 2015, the Student stopped attending the College. The Complainant told OCR that the Student was unable to attend the College during the next school year because she was traumatized by the events during the 2014-2015 school year, including sexual harassment by Student 1 and retaliation by the College.

The Complainant told OCR that on or around September X, 2015, he made verbal reports to the College's Head of Campus Safety and the Campus Security Officer that Student 1 sexually harassed the Student from August 2014 until April 2015 during an in person meeting on this date. The context of this meeting was that a friend of Student 1 had a physical altercation with the Complainant's son, and he was concerned about his son's safety on campus. The Complainant stated that even though the purpose of the meeting was to discuss his son's safety, he brought up that the Student was sexually harassed by Student 1 and that he was unhappy with how the Dean handled the situation.

The Student's mother told OCR that when she learned that Title IX covered harassment and stalking, she began trying to contact the College's Title IX Coordinator to file a Title IX complaint report that the Student had been sexually harassed by Student 1. The Student's mother stated that she had difficulty locating the Title IX Coordinator. She called several people at the College but nobody she talked to knew what she was talking about when she asked for the Title IX Coordinator. Eventually, she stated that she had a meeting with the Vice President of Human Resources on October XX, 2015 and notified her that the Student was sexually harassed by Student 1 from August 2014 until April 2015, providing relevant details. The Student's mother submitted an email to OCR, dated October XX, 2015, confirming the meeting occurred; in the email, the Student's mother thanked the Vice President of Human Resources for agreeing to meet with her on that day. The Student's mother stated that the Vice President of Human Resources listened to her during the meeting and then told her that she would send her some paperwork and would call her back to discuss the matter. Neither the Vice President of Human Resources nor the Title IX Coordinator ever got back in touch with her.

On October XX, 2015, the Complainant filed a document titled "Claim Form" with the College on behalf of the Student stating that in August 2014 and on-going until May 2015, the Student was sexually harassed and stalked by Student 1 and "also technically battered by same." On the form, the Complainant states that the College "failed to adequately protect the claimant and advise the claimant of her rights pursuant to Title IX and . . . breached a fiduciary duty of care to the claimant. The College failed to provide due process and retaliated against the claimant." The written document does not indicate how the College was previously put on notice of the harassment. The Complainant requested damages. The College returned the Claim Form to the Student on November XX, 2015, stating in a letter that "the claim" was not presented within six months after the event or occurrence. OCR asked the Complainant if any ongoing harassment, subsequent to the issuance of the no-contact order, precipitated the written notice. The Complainant said "no."

The Vice President of Student Services for the College, who is currently serving as the College's Title IX Coordinator, stated to OCR that he received and reviewed a copy of the Claim Form that the Complainant filed with the College in October 2015. The Title IX Coordinator told OCR that the College did not conduct any further inquiries regarding the Complainant's sexual

harassment complaint that was included on the Claim Form because he knew that both the Student and Student 1 no longer attended the College at that point, and the College had already investigated the complaint made by Student 1 about the Student and addressed and resolved the allegations.

Analysis:

When a College has notice of alleged sexual harassment of one student by another student, the College is responsible for determining what occurred and responding appropriately. The Complainant alleged that the Student was denied equitable treatment when she was subjected to a no contact order. It is undisputed that the College imposed a mutual no contact order on April XX, 2015 and that after that date, no other contact between the parties occurred. The Complainant and Student stated that the imposition of a no contact order for both parties was inequitable, because it implied that the Student had harassed Student 1, when she stated to the College that she was the impacted party. OCR found that the College imposed a mutual no contact order after it received credible evidence that the Student's friend had threatened Student 1. OCR did not obtain any evidence that would show that such measure was inequitable in its application or that it otherwise limited the Student's ability to access her education or the programs or activities of the College. Rather, after its imposition, the Student reported to OCR that any alleged conduct by Student 1 ceased. As such, OCR found that there is insufficient evidence that the application of the mutual no contact order violated Title IX requirements.

The Complainant also alleged that the College received notice of the allegations of sexual harassment by Student 1 on multiple occasions. The College disputes that it had any notice by the Student that Student 1 sexually harassed her while she was a Student. However, it is undisputed that on October XX, 2015, during the in-person meeting with the Vice President of Human Resources and again, on October XX, 2015, through the filed tort claim, the Student's mother and the Complainant provided notice to the College of alleged sexual harassment by Student 1. It is also undisputed that an inquiry into the allegations was not conducted and that notification of the outcome of such an inquiry was not provided during the Student's enrollment at the College. The Vice President of Student Services stated that he reviewed a copy of the tort claim submitted by the Complainant but did not conduct any inquiries or provide notice of his decision because he felt that the matter had been resolved and both students were no longer attending the College. OCR has not completed its investigation or made any findings with regard to this allegation, but the facts gathered to date raise a concern that the College may have received notice of the sexual harassment allegations while the Student was in attendance and may not have conducted an adequate inquiry or provided adequate notice of the outcome to the parties involved regarding the same. Prior to completing its investigation, the College expressed an interest in voluntary resolution of the complaint OCR pursuant to Section 302 of OCR's case processing manual, and OCR agreed that it was appropriate to do so.

Issue 2: Whether the College retaliated against the Student for reporting that another male student was sexually harassing her by subjecting her to adverse actions, including having her called in to speak to a Dean and having a no-contact order imposed on her.

Legal Standard:

The Title IX regulations, at 34 C.F.R. §106.71, incorporate 34 C.F.R. §100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibits Colleges from intimidating, coercing, or retaliating against individuals because they engage in activities protected by Title IX.

When OCR investigates an allegation of retaliation, it examines whether an individual experienced an adverse action caused by the recipient, and the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future, and there is some evidence of a causal connection between the adverse action and the protected activity so that OCR is able to conclude an inference of unlawful retaliation is raised. OCR will then determine if a College has identified a facially legitimate, non-retaliatory reason for the adverse action. If a College identifies a facially legitimate, non-retaliatory reason for the adverse action, OCR next conducts a pretext inquiry to determine whether this reason is genuine or is a cover for retaliation. OCR examines all available evidence to determine whether the recipient's proffered reasons are credible and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

Factual Findings:

The relevant facts are summarized above under issue 1.

Analysis:

The Complainant alleges that the College retaliated against the Student because she reported to the Dean that another male student, Student 1, was sexually harassing her by: 1) calling her into the Dean's office for questioning on two occasions and 2) imposing a no-contact order upon her prohibiting her from contacting or interacting with Student 1.

The evidence shows that on or around April X, 2015, the Dean sent the Student a letter requesting that she come to his office to discuss alleged conduct and possible conduct violations. The Student then scheduled a meeting with the Dean on April XX, 2015 where the Dean questioned the Student about a harassment complaint that Student 1 filed against her. The Dean had a second meeting with the Student on April XX, 2015 to ask her additional questions. The Student alleges that during the meetings on April XX and XX, 2015 she provided verbal notice to the Dean that Student 1 sexually harassed her. As described earlier, the Dean's notes from the meeting do not confirm that the Student ever notified him that she was subjected to sexual harassment, stalking, or unwanted touching by anyone. Under some circumstances, the Dean's act of requiring a student to come in for questioning might constitute an adverse action, for example, if the questioning was for the purpose of coercing a student into withdrawing a legitimate discrimination complaint. However, OCR found insufficient evidence that the Dean's act in this matter was adverse because the questioning was related to the College's legitimate investigation into the complaint made by Student 1 about the Student and her friend's threats and was part of the College's investigation process under its conduct code. Furthermore, the Student's allegation is that she provided the Dean with verbal notice that Student 1 was sexually harassing her for the first time on April XX, 2015. Assuming for sake of argument without deciding that the Student did in fact provide notice to the Dean of sexual harassment by Student 1 on April XX, 2015, then her act of notifying the Dean about a sexual harassment complaint

would constitute protected activity under Title IX. However, there is insufficient evidence to show a causal connection between the Student's protected activity and the alleged adverse action because the alleged adverse action (the Dean's act of calling her into his office for questioning) occurred 12 days before the protected activity. Accordingly, there is insufficient evidence to support her retaliation claim with regard to the Complainant's first alleged adverse action.

The Complainant also alleged that the College took an adverse action against the Student by imposing a no-contact order against the Student prohibiting her from contacting or interacting with Student 1, even though she alleged that she was the victim of sexual harassment by Student 1. As explained above, there are no facts that would show that such measure limited the Student's ability to access her education or the programs or activities of the College. Rather, after its imposition, the Student reported to OCR that any alleged conduct ceased. In addition, subsequent to the imposition of the mutual no contact order, the Complainant and her family made a separate complaint to College police and filed a Tort Claim with the College. Accordingly, OCR does not find that this act is an adverse action that would dissuade a reasonable person from making or supporting a charge of discrimination. Because an adverse action has not been established with regard to this second retaliation allegation, OCR found that the College was in compliance with Title IX and its implementing regulations with respect to this issue.

Issue 3: Whether the College has failed to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination.

Legal Standard:

To carry out the requirements of Title IX, the recipient is required to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8[b]). Title IX does not require a recipient to provide a separate grievance procedure for such complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints, including disciplinary proceedings, must afford a prompt and equitable resolution.

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging harassment by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any harassment and to correct its discriminatory effects.

34 C.F.R. § 106.8(a) requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX, including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by Title IX. 34 C.F.R. § 106.8(b) requires that a recipient adopt and

publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by Title IX.

Finally, 34 C.F.R. § 106.9(a)(1) requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, employees, students and parents of elementary and secondary school students, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in any educational program or activity which it operates, and that it is required by Title IX and its implementing regulation not to discriminate in such a manner. The notice of nondiscrimination must include a statement that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR. The recipient must provide adequate notification of the contact information, including the name (or title), address, and phone number for the Title IX Coordinator, to students and employees (34 C.F.R. § 106.8).

Factual Findings:

The College posts links to its sexual harassment policies and procedures on a Title IX website.² There is a pull-down menu of resources, a section about who to talk to on campus, and a reporting form. This information is listed under “Sexual Assault – What to Do” (which it notes includes sexual harassment) and refers all members of the community to contact the Title IX coordinator, who is identified by title only as the Assistant Superintendent/Vice President of Human Resources. The College’s Administrative Procedure (AP) 3410, “Nondiscrimination” statement (in effect from at least June 11, 2014 to October 4, 2018) includes the phone number and email address but not the physical address for the Title IX Coordinators. While AP 3435, “Discrimination and Harassment Investigations” (last College review date 1/25/16) does state that inquiries regarding Title IX can be made to OCR, AP 3410 and AP 3430, “Prohibition of Harassment,” (last College review date 1/25/16), do not include this information.

The College investigates complaints under Title IX using AP 3435, “Discrimination and Harassment Investigations.” The versions of AP 3435, which were effective at the time the Student was responding to the Dean, in April 2015 and amended on January 24, 2016, both state that any student or employee may file a complaint, as long as he or she has personally suffered unlawful discrimination or harassment, and that or any employee who has learned of unlawful discrimination in his or her official capacity as an employee at the College may also file a complaint. The College investigates “complaints involving acts that occur off campus if they are related to an academic or work activity.” A complaint must be filed on a specified form with the Chancellor’s Office of the Santa Clarita Community College District, the Assistant Superintendent/Vice President of Human Resources of the College District or the State Chancellor’s Office to be investigated under the grievance procedure. There are no exceptions for individuals with disabilities whose impairment(s) may impact their ability to provide information in writing. All complaints must be filed within one of year of the alleged unlawful

² <http://www.canyons.edu/Offices/Health/SA/Pages/CollegePolicies.aspx> (last OCR reviewed October 4, 2018).

discrimination or harassment, or within one year after which the complainant should have known that the facts of the underlying allegation represented unlawful discrimination or harassment.

The AP 3435 process for informal resolution only provides the complainant and not the respondent with notice in the informal process and the right not to participate/end the process. Notice of the outcome of the investigation and the right to appeal are provided to the complainant but not the respondent.

Analysis and Conclusion:

With respect to the College's policies and procedures under Title IX, OCR identified current non-compliance issues because of inequities for the respondent and complainant, including lack of notice to both parties of the outcome of the investigation; lack of appeal rights for the respondent, and as part of the informal process, denial of notice to the respondent that the informal process is voluntary/can be ended at any time. The Title IX regulations at 34 C.F.R. § 106.8 provides that recipients must provide a prompt and equitable resolution of any "student and employee complainants alleging any actions which are prohibited by" Title IX. To the extent the College receives complaints of alleged harassment on the basis of sex that are actionable under Title IX that may have been reported outside of the one-year period for filing complaints stated under AP 3435, the College does not identify a prompt and equitable response process for addressing such complaints. In addition, the College's limitation to accepting only complaints filed by students on a specific form and by those who have been personally impacted by discrimination, and excluding students who witness or observe such discrimination, is not consistent with the requirement to provide a prompt and equitable process for all students and employees who have alleged actionable harassment under Title IX.

With respect to the notice of nondiscrimination, OCR also identified noncompliance because the website did not include the address and phone number for the Title IX Coordinator(s) and AR 3420 does not include required contact information --- the physical address of the Title IX Coordinator. The College's notification of nondiscrimination is also deficient because a statement that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR is not included in several notices of nondiscrimination.

For the reasons stated herein, OCR found that the College's notice of nondiscrimination and Title IX grievance procedures non-compliant with Title IX and its implementing regulations. As a matter of technical assistance, OCR also recommends that the College explain the roles of the two Title IX Coordinators, to ensure that students and employees know where to report.

Conclusion

Based on the commitments made in the enclosed resolution agreement (Agreement), OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. The enclosed Agreement requires the College requires to revise its notice of nondiscrimination and grievance procedures and provide notice of the same to the College community. When fully implemented, the Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the Agreement until the College

is in compliance with its terms. Upon completion of the obligations under the Agreement, OCR will close the case.

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 College 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 law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Sewali Patel, Civil Rights Attorney, at (415) 486-XXXX or sewali.patel@ed.gov.

Sincerely,

/s/

Ava De Almeida Law
Acting Team Leader

Enclosure: Resolution Agreement

cc: Stephen Harber, Counsel for the College