



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

REGION IX  
CALIFORNIA

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Robert Perl, Psy.D.  
Dean, Clinical Psychology Program  
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Argosy University, San Francisco Bay Area  
1005 Atlantic Avenue  
Alameda, CA 94501

(In reply, please refer to case no. 09-16-2226.)

Dear Dr. Perl:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of a complaint filed against Argosy University. The Complainant, a former clinical psychology graduate student in the American School of Professional Psychology (Student),<sup>1</sup> alleged that the University subjected her to discrimination on the basis of disability and sex and retaliated against her for making complaints about sexual harassment. OCR investigated the following issues:

1. Whether the University failed from October XX, 2015-April XX, 2016 to provide the Student with academic accommodations necessary to ensure that she could participate in the education program in a nondiscriminatory manner;
2. Whether the Student was subjected to harassment by students and faculty based on her disability, and the University failed to respond appropriately and effectively to notice of the harassment;
3. Whether the University provided the Student with a prompt and equitable resolution to her report that she had been subjected to sexual harassment at a practicum site by another student; and
4. Whether the University retaliated against the Student after she complained of sexual harassment by referring her to the Student Conduct Committee.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. As a recipient of federal financial assistance, the University is subject to Section 504 and its implementing regulations.

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<sup>1</sup> The identity of the Student is withheld in this letter in order to protect her privacy.

OCR is also responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, which prohibit discrimination on the basis of sex, including sexual and gender-based harassment, in education programs or activities operated by recipients of Federal financial assistance. The University receives funds from the Department, and is subject to Title IX and its implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the Student and the University, and by interviewing the Student and members of the University's staff and faculty. OCR concluded that the preponderance of the evidence did not establish a violation of Section 504 with respect to issues one and two, or retaliation in violation of Title IX with respect to issue four.

With regard to issue three, OCR concluded that the preponderance of the evidence did not establish that the University failed to respond promptly and equitably to notice that the Student had been subjected to sexual harassment. However, OCR concluded that the University's procedures for responding to allegations of sexual harassment were not in compliance with Title IX. In addition, although OCR did not complete its investigation of the University's notice of nondiscrimination on the basis of sex and its notice of the identity of its Title IX coordinator, it identified deficiencies in these areas. Prior to OCR completing its investigation in these areas, the University expressed its willingness to enter into a Resolution Agreement (Agreement) to resolve the areas of noncompliance and identified deficiencies raised in connection with issue three.

The applicable legal standards, factual findings, and OCR's resolution of each issue investigated in the complaint are summarized below.

### *Background*

The Student was enrolled in the graduate program in Clinical Psychology at Argosy University-Bay Area from fall 2013 until May 2016. She was registered with the University Disability Services Coordinator and was recognized by the University as an individual with a disability. During the 2015-16 school year, the Student was enrolled in a year-long practicum class (Practicum I and Practicum II), which included placement at an off-campus practicum site. The Student was terminated from the practicum site in March 2016, and terminated from the graduate program in May 2016. The allegations of this complaint concern events in the Practicum II class and the practicum site and the decision to terminate the Student from the program. Based upon the complaint, OCR investigated the following issues.

*Issue 1:* Whether the University failed from October XX, 2015-April XX, 2016 to provide the Student with her approved accommodations necessary to ensure that she could participate in the education program in a nondiscriminatory manner.

### Legal Standard

The Section 504 regulations, at 34 C.F.R. §104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education

program of a recipient. The Title II regulations, at 28 C.F.R. §35.130(a), contain a similar prohibition applicable to public postsecondary educational institutions.

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. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

### Findings of Fact

The Student alleged that she had been denied necessary academic accommodations while she was a student at the University. She did not provide specific examples of approved accommodations that she did not receive during the period covered by this investigation.<sup>2</sup>

According to the Disability Services Coordinator at the University's Bay Area campus, the process for a student to obtain accommodations for a disability is as follows: A student contacts the Disability Services Coordinator or is referred to him or her, and is asked to provide documentation of the disability and the requested accommodation. Once documentation is provided, the student and the Disability Services Coordinator work together to complete an accommodations agreement. Each semester the Disability Services Coordinator prepares instructor notification letters for the student to provide to each of their instructors. Students are informed that it is their responsibility to notify the Disability Services Coordinator if they are not receiving accommodations.

Pursuant to this procedure, the Student requested accommodations in her classes during the 2013-14 and 2014-15 school years. OCR verified that the University issued instructor notification letters for academic accommodations to be provided in her classes in both years.

The Student informed OCR that she did not request accommodations for her 2015-16 classes because she felt that doing so singled her out to other students and staff as a person with a disability. The Disability Services Coordinator confirmed that, because the Student had not requested class accommodations during that year, no instructor notification letters were issued. However, the Student was referred to the Student Conduct Committee (SCC) prior to her May 2016 termination from the program, and requested that she be provided the accommodation of extra time to review documents before that hearing. The Disability Services Coordinator informed OCR that, in response to this request, the date of the hearing was pushed back to give the Student additional time to prepare. The Student's disability services file includes an Accommodations Notification Letter for the SCC hearing.

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<sup>2</sup> Pursuant to the regulations governing OCR investigations at 34 C.F.R. §107(c), complaints must be filed within 180 days after an alleged incident of discrimination. For this reason, OCR accepted for investigation only allegations referring to incidents that occurred during the 180 days before the complaint was filed.

### Analysis and Conclusions of Law

OCR determined by a preponderance of evidence that the University did not violate Section 504 by failing to provide the Student with approved academic accommodations. OCR found that the Student was aware of the process for requesting accommodations and had done so for a number of classes in previous semesters. In addition, the Student told OCR that she had requested accommodations for her SCC hearing in 2015-2016, and the University provided documentation establishing that these accommodations were granted. However, as both the Student and the Disability Services Coordinator told OCR, the Student did not request accommodations for any academic class during 2015-2016. For this reason, the University's failure to provide accommodations did not violate Section 504.

*Issue 2:* Whether the Student was subjected to harassment by students and faculty based on her disability, and the University failed to respond appropriately and effectively to notice of the harassment.

### Legal Standard

The regulations implementing Section 504, at 34 C.F.R. §104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. Universities are responsible under Section 504, and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Under Section 504 and the regulations, once a university has notice of possible disability-based 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 Section 504, Title II 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 school 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 engages in disability-based 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 Section 504, Title II, and the regulations, if a student is harassed based on disability 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 promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the harassment, eliminate the hostile environment, 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.

#### Findings of Fact: Peer Harassment

The Student alleged that during the complaint time period, she was harassed by students in her Practicum II class who falsely told the professor that the Student had not completed any assessments at her practicum site. She told OCR that she did not file a harassment complaint with the University based on this incident because no one at the University supported her.

OCR determined that the “Student Acknowledgement of Responsibilities” concerning disability services, which the complainant received, states that if a student has a concern related to their disability they should contact the Disability Services Coordinator. In addition, the University has adopted Student Grievance Procedures for complaints of disability-based discrimination, which are handled by the Director of Student Services. The course instructor, the Disability Services Coordinator, and the Director of Students Services all informed OCR that the Student did not inform them of disability-related harassment.

#### Analysis and Conclusions of Law: Peer Harassment

OCR determined that the University did not fail to respond appropriate and effectively to notice of harassment because it was not provided with notice that the Student was allegedly experiencing disability-based harassment. The Student acknowledged that she did not report the alleged harassment, and OCR found no evidence that the University should reasonably have known about it. Additionally, OCR found that the single incident identified by the Student as harassing – having classmates falsely tell a professor that she not completed any assessments – does not constitute harassment sufficiently serious as to deny or limit the Student’s ability to participate in or benefit from the program. The Student did not provide additional evidence of the severity of the harm of this single incident, nor could it be corroborated by the professor of the Practicum II class. OCR concluded that the University had not violated Section 504 in connection with this allegation.

#### Findings of Fact: Faculty to Student Harassment

The Student alleged that, during the complaint time period, she was subjected to disability-based harassment by two faculty members: the professor of her Practicum II class and the Dean of the Clinical Psychology Program (Program Dean). The Student told OCR that she did not make a complaint of harassment to anyone at the University regarding either of these incidents.

The Student told OCR that her Practicum II professor harassed her during class based upon her disability by preventing her from discussing assessments that she was conducting at an

organizational site that was not her practicum site. She did not explain why she believed this prohibition was based on her disability. The Practicum II professor told OCR that the Student never informed her that she believed she had been subjected to harassment.

The Director of Clinical Training for the Clinical Psychology Program (Training Director) told OCR that the Practicum II class was designed to complement the hands-on training students were receiving at their practicum sites. The Student had informed her that she was volunteering at an organization that was not her practicum site in order to get additional assessment experience. This organization was not an approved practicum site and was not affiliated with the University. Although the Training Director ultimately arranged for the Student to receive recognition for the work at this organization, she made it clear to the Student that it could not be credited as a practicum placement.

The Student also alleged that the Program Dean harassed her by talking to her in a mocking voice, acting in a condescending manner, and telling her that “she won’t make it” on or around April XX, 2016.

OCR found that the Student was terminated from her practicum site in March 2016, and was told that, as a result, she could no longer attend her Practicum II class. The Program Dean told OCR that there was concern that the Student disrupted the class when she continued to attempt to attend. Pursuant to an agreement with the Campus President, the dean met the Student outside the class on or around April XX and escorted her to the office of the Campus President, who was to tell her that she was not permitted to attend the class. The Program Dean stated that the Student was very upset during this encounter, but he denied mocking or harassing her.

The Disability Services Coordinator told OCR that she attended the April XX meeting with the Student, Campus President, and Program Dean and that she did not witness harassment by the Program Dean during this meeting.

#### Analysis and Conclusions of Law: Faculty to Student Harassment

OCR determined that a preponderance of evidence did not establish that either the Practicum II professor or the Program Dean subjected the Student to disability-based harassment. With respect to the professor’s alleged harassment, OCR did not find any evidence to link her disability to the professor’s alleged refusal to let her discuss her work at a non-practicum site in a practicum support class. OCR concluded that, even if the Student’s allegations about this refusal were true, it would not have risen to the level of disability-based harassment sufficient to deny or limit the Student’s ability to participate in or receive educational benefits, services, or opportunities.

OCR also found that the preponderance of the evidence did not establish that the Program Dean harassed the Student. OCR found the Program Dean’s testimony credible that he had been requested to escort the Student to the President’s office because the Student had engaged in disruptive behavior, and that, although his presence under these circumstances upset the Student, he did not harass her by using a mocking voice, acting condescending, or telling her she “won’t make it”.

Because the evidence did not establish that the Student was subjected to disability-based harassment by either employee, OCR concluded that the University had not violated Section 504 by failing to respond to incidents of disability-based harassment.

*Issue 3:* Whether the University provided the Student with a prompt and equitable resolution to her report or complaint of sexual harassment.

The Student alleged that she was subjected to sexual harassment by another student at a practicum site where she was placed as part of the University program, that she notified the University of this harassment, and that the University failed to provide her with a prompt and equitable resolution to her complaint. In order to investigate this allegation, OCR reviewed the University's policies, procedures, and public notifications concerning discrimination on the basis of sex, as well as the specific circumstances of the Student's complaint.

a. Notice of Nondiscrimination on the Basis of Sex

Legal Standard

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires the recipient to take specific and continuing steps to notify applicants for admission and employments, student and parents, employees, sources of referral of applicants, 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 its education programs and activities, including with respect to employment, and that it is required by Title IX not to discriminate in such a manner. The notice must include that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR. The regulation implementing Title IX, at 34 C.F.R. 106.9(b), requires recipients to include the notice of nondiscrimination in each announcement, bulletin, catalog, or application form that it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees. The notice must identify and include contact information, including the name, address, and phone number for the Title IX Coordinator.

Findings of Fact

OCR did not request information about the University's Notice of Nondiscrimination ("Notice"), but reviewed the notice provided on its website. OCR determined that the Institutional Policies section of the University catalog, which is available online, includes a notice stating:

Argosy University does not discriminate on the basis of race, color, national origin, sex, gender, sexual orientation, disability, age, religion, genetic marker, or any other characteristic protected by state, local or federal law, in our programs and activities. Each campus has designated a staff member to handle inquiries and coordinate individual campus compliance efforts regarding the nondiscrimination policy."<sup>3</sup>

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<sup>3</sup> [http://catalog.argosy.edu/content.php?catoid=4&navoid=60#Notice\\_of\\_Nondiscrimination](http://catalog.argosy.edu/content.php?catoid=4&navoid=60#Notice_of_Nondiscrimination)

OCR was not able to locate the Notice in any other locations of the University's website, and it does not appear that online job postings contain the Notice.<sup>4</sup>

### Analysis and Conclusions of Law

The information reviewed by OCR suggests compliance deficiencies, in that the Notice is not widely distributed and prominently published, appearing only in the catalog portion of the University's website, and that this publication lacks information including the identity and contact information for the University's Title IX Coordinator, that that the University is required by Title IX not to discriminate on the basis of sex, and that questions regarding Title IX may be referred to the College's Title IX Officers or to OCR.

Prior to the completion of OCR's investigation, the University expressed an interest in voluntarily resolving these issues, and OCR agreed that it was appropriate to do so.

#### b. Appointment of a Title IX coordinator

### Legal Standard

The regulations, at 34 C.F.R § 106.8(a), require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance. This provision further requires that the recipient notify all of its students and employees of the name (or title), office address, and telephone number of the employee(s) so designated.

### Findings of Fact

In response to OCR's initial request for data, the University identified the Vice President of Student Affairs (Vice President) as the University-wide Title IX coordinator, and stated that she is responsible for "coordinating the campus' efforts to comply with and carry out the campus' responsibilities under Title IX, including compliance with its sexual misconduct/relationship violence policy and procedures, as well as for helping coordinate any investigations under this policy and procedures." OCR also located this information in the policies and procedures section of University catalog published on its website.<sup>5</sup> The University's data response did not provide contact information for the Vice President, nor could OCR locate her specific office address and phone number online.

The University identified the Director of Student Services as the individual responsible for receiving and investigating complaints of sexual and/or disability harassment complaints at the University's Bay Area campus. The Director of Student Services also told OCR that she is the Title IX Coordinator for the University's Bay Area campus, but clarified that her role and responsibilities in this position are limited to complaints of discrimination and harassment that take place on campus. The Training Director told OCR that she is responsible for receiving and responding to complaints of sexual harassment or discrimination at off-campus practicum sites

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<sup>4</sup> [https://edmc.hua.hrsmart.com/ats/js\\_job\\_details.php?reqid=36794](https://edmc.hua.hrsmart.com/ats/js_job_details.php?reqid=36794)

<sup>5</sup> <http://catalog.argosy.edu/content.php?catoid=59&navoid=11228>



such as the one at which the Student was located. There is no information on the University's website concerning this division of responsibilities.

The University informed OCR that the Training Director did not have specific training regarding Title IX, but that she had experience navigating complaints, including those concerning harassment and unfair treatment, and that she consulted with written policies and knowledgeable University personnel when handling a complaint. The University did not provide information as to whether the Director of Student Services had adequate training or experience concerning Title IX and sexual harassment.

#### Analysis and Conclusions of Law

The University has designated at least one employee, the Vice President of Student Affairs, to coordinate compliance with the regulations including coordination of investigations of complaints alleging noncompliance. OCR located information about the Vice President's role as Title IX Coordinator in the sexual misconduct/relationship violence policy and procedures in the University's online catalog; however, the information did not include her office address or phone number. For its Bay Area campus, the University appears to have designated two individuals with Title IX-related duties: the Director of Student Services (for on-campus complaints of sexual harassment and discrimination) and the Training Director (for off-campus complaints sexual harassment and discrimination at practicum or internship placements). OCR was not able to locate any information about the Training Director's role with regard to Title IX compliance on the University's website, including whether she is designated as a Deputy Title IX Coordinators. Additionally, OCR identified a deficiency in that the University's Training Director, who is responsible for investigating complaints of sexual harassment and discrimination at practicum sites, reported that she had never received training specifically about Title IX. OCR was unable to determine whether the Director of Student Services had adequate training or experience in handling sexual harassment complaints and in the operation of the recipient's grievance procedures because the University did not respond with this information.

Prior to the completion of OCR's investigation, the University expressed an interest in voluntarily resolving these issues, and OCR agreed that it was appropriate to do so.

- c. Whether the University has adopted policies and procedures that provide for a prompt and equitable responses to sexual harassment complaints and reports as required by 34 C.F.R. § 106.8(b).

#### Legal Standard

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. If the investigation reveals that discriminatory harassment has occurred, a recipient must take timely, appropriate, and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. The recipient also should take steps to prevent any retaliation against the individual

who made the complaint or those who provided information, testified, participated, or assisted in any manner with the investigation.

To carry out these requirements, 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 sexual harassment complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment, including sexual violence, including disciplinary proceedings, must afford a prompt and equitable resolution.

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

#### Finding of Fact

The University has identified its Sexual Misconduct & Relationship Violence Policy; Procedures for Handling Sexual Misconduct and Relationship Violence Complaints (policy and procedures) as the procedures that should be used by individuals who believe they have been subjected to sexual harassment.<sup>6</sup> As a result, OCR evaluated the Sexual Misconduct and Relationship Violence Policy to ascertain whether they provide for a prompt and equitable response to sexual harassment complaints and reports.

Among other things, OCR determined that the complaint investigation and determination process that is outlined in the policy and procedures does not adequately address allegations where the respondent is a third party. The policy and procedures state that they apply in situations where harassment is allegedly perpetrated by a fellow student, faculty member, or third party. However, the portions of the policy and procedures that specifically describe the procedures for investigating complaints and reaching determinations apply only when the respondent is a student or staff or faculty member. There is no investigative or determination procedure for complaints where the respondent is a third party.

OCR also found that the policy and procedures do not include information about the procedures to be used when sexual harassment allegedly occurs at a practicum site, such as the one at issue in the Student's complaint. Specifically, the policy and procedures do not make it clear that a complaint of sexual harassment at a practicum site is investigated by the Training Director, rather than the Director of Student Services.

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<sup>6</sup> The University has also adopted a Student Grievance Procedure for Internal Complaints of Discrimination and Harassment, which refers individual with sexual harassment grievance to the sexual misconduct policy and procedures.

OCR also determined that although the policies and procedures contain a substantial list of available interim remedies for a complainant, they lack assurance that the University will take steps to prevent the recurrence of harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

#### Analysis and Conclusions of Law

OCR concluded that the University's sexual misconduct policies and procedures do not provide clear notice of the procedures that are used to investigate and resolve a complaint of harassment that allegedly occurred at a practicum site, or where a respondent is not a student, staff, or faculty member of the University. In addition, the policies and procedures do not provide an assurance that, where sexual harassment has been found to occur, the University will take steps to prevent the recurrence of harassment and correct its effects. For these reason, OCR concluded that the policies and procedures are not compliant with the requirements of Title IX and the regulation.

#### d. Sexual Harassment

##### Legal Standard

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 --- severe, persistent, or pervasive --- 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.

OCR evaluates the appropriateness of the responsive action to alleged discrimination on the basis of sex by assessing whether it was prompt, thorough, and effective. What constitutes a reasonable response to discrimination will differ depending upon the circumstances. However, in all cases the university must promptly conduct an impartial inquiry designed to reliably determine what occurred. The response must be tailored to stop the discrimination, and remedy the effects of the discrimination on the student who was discriminated against. The university must also take steps to prevent the discrimination from recurring. 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 university does not tolerate discrimination and will be responsive to any student reports of discrimination. The university also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

Findings of Fact:

The Student alleged to OCR that she was harassed by a male graduate student from another university at her practicum site from July 2015 until February 2016. She stated that the male student harassed her by including her on group texts and group emails notifying her of lunchtime meetings with other students, sending her individual emails and texts, and coming by her work station and “bothering” her. She alleged that she informed the male student that she did not want to receive his texts and emails and did not want him to come by her work station, but that his behavior continued.

The Student told OCR that the male student “never said anything overtly sexual” to her, but that he “did not respect her boundary” or recognize that she needed to get work done. She stated that the male student once told her he may have confused her phone number with his wife’s, but she stated that he made no other comments that she considered sexual. She refused to provide OCR with copies of the allegedly harassing texts and emails she received from the male student.

The Student provided OCR with a copy of her written response to questions that were asked of her by the University’s Student Conduct Committee on May X, 2016, before she was dismissed from the graduate clinical psychology program. In response to the question, “Did you file a sexual harassment claim at the practicum site? If not, why?” the Student answered: “I did not think [the male student]’s text messages or behavior was sexual, but that he was bothering me and did not respect my boundaries.”

The Student told OCR that she complained more than once to the site supervisor that the male student was “bothering” her. She said that the site supervisor’s response to her complaints was to have a group meeting among the three of them, where the supervisor told her that the male student’s texts and emails were necessary to inform her of lunchtime group meetings, that she needed to participate in the meetings because they were a forum for students to discuss the work they were doing at the practicum site, and that if she did not attend them she would be terminated. The Student told OCR that after the meeting the site supervisor required them all to go to lunch together. The Student told OCR that she considered this resolution, as well as the requirement that she attend a meeting with the male student, to be harassment.

The practicum site supervisor, who is not an employee of the University, declined to be interviewed by OCR. However, in phone conversations with the Training Director on March X and March X, 2016, the site supervisor described her interactions with the Student concerning the male student. The Training Director drafted Student Advisor Notes detailing her conversations with the site supervisor immediately after they occurred. According to the notes, the site supervisor stated that she noticed that the Student appeared increasingly isolated from her cohort at the practicum starting in early January 2016. The site supervisor said she approached the Student, who said that she felt “uncomfortable” with the male student because he had “crossed a boundary” by including her on lunch invitations that were sent to the entire training

cohort. The supervisor suggested that the Student talk to the male student; when the Student later indicated that she had not done so, the supervisor facilitated a meeting between the students. The supervisor reported that the meeting had gone well and they had reached a resolution. The Training Director informed OCR that the site supervisor also reported having reviewed the texts and emails between the Student and the male student and determining them to be appropriate. In February 2016, the male student left the practicum site to accept another position.

The Student told OCR that in addition to complaining to the site supervisor, she had complained about the male student's actions to the Training Director, the Program Dean, the Director of Student Services, the Disability Services Coordinator, the Practicum II class professor, and another professor. She stated that she first told the Training Director in August 2015 that the male student was making her "uncomfortable;" she could not remember specific dates on which she complained to the other University faculty and administrators about the alleged harassment.

The University told OCR that the Student never complained to anyone at the University that she was experiencing behavior that she explicitly described as sexual harassment at her practicum site. The Practicum II class professor and the Program Dean stated that she had never mentioned the male student's behavior to them at all.

An Associate Professor who had previously taught the Student told OCR that the Student had complained to her that a student in her practicum had emailed or texted her and that she felt it was inappropriate that he had this communication with her. The professor stated that the Student had not made it clear what was troubling to her about the communication, and that she said she had already spoken with the Training Director. The Associate Professor could not recall when she had this conversation with the Student.

The Training Director, who is responsible for receiving and investigating complaints of harassment at practicum sites, told OCR that the Student did not complain to her of sexual harassment at the practicum site in August 2015. She stated that she first became aware of the Student's difficulties with the male student when the practicum site supervisor contacted her on March X, 2016, and that the first time the Student told her about the male student was on March X, 2016. According to her March X Student Advisor Note, the Student mentioned only that she had "trouble" with a male student who was no longer at the placement.

The Training Director told OCR that she scheduled a meeting with the Student and the Director of Student Services for March X, 2016, to follow up on the concerns raised by the site supervisor. At that meeting, according to a contemporaneous Student Advisor Note, the Student explained that the male student had included her on emails and texts to the group of students in the practicum from his personal email and phone number. The Student reportedly acknowledged that the nature of the communication would be within reason for his role at the practicum, but stated that she did not give him her number and believed his method of communication to be a 'boundary violation' for her." The Training Director told OCR that the Student did not refer to the male student's texts or emails as sexually-themed, sexual, or sexually-harassing during their phone call on March X or their meeting on March X. She stated that the Student refused to show her and the Director of Student Services the allegedly harassing emails or text messages from the

male student. Both the Training Director and the Director of Student Services told OCR that they did not consider the concerns raised by the Student to involve possible sexual harassment.

The Disability Services Coordinator told OCR that she met with the Student and the Director of Student Services on April XX, 2016, in preparation for a meeting between the Student and the SCC, and that the Student complained to her for the first time at that meeting about the male student's conduct, describing it as "inappropriate" and "harassing." The Disabled Services Coordinator suggested that she talk to the Program Dean or the Practicum professor.

The University has adopted a sexual misconduct policy and procedure that defines sexual harassment consistent with the requirements of Title IX. The procedure includes a complaint investigative process, discussed below.

### Analysis and Conclusions of Law

Pursuant to Title IX, when a university is informed of possible sexual harassment of a student by another student or a third party, it is responsible for conducting a prompt and thorough investigation to determine what occurred and for taking appropriate responsive action. This responsibility does not depend on a student submitting a formal complaint of discrimination or using specific words, such as "sexual harassment" or "discrimination" to describe the harassing conduct. However, the university is only required to respond to information that reasonably notifies it that sexual harassment may have occurred.

OCR determined by a preponderance of evidence that the Student did not notify the University that she had been subjected to conduct that could reasonably be considered possible sexual harassment. The University and the Student agree that she reported to the Training Director, Director of Student Services, Disability Services Coordinator, and site supervisor that a male student at her practicum site had engaged in behavior that she considered "inappropriate," "harassing," and "boundary crossing." However, there is no evidence that the Student ever reported that the male student's alleged behavior was sexual in nature. To the contrary, the Student specifically told OCR and the University that the male student's alleged conduct was not sexual, including in an interview with OCR where she stated that the male student never said or did anything overtly sexual and in a written statement to the SCC where she stated that she did not consider the male student's text messages or behavior to be sexual. OCR did not find the male student's alleged comment that he may have confused the Student's phone number with his wife's to be sexual in nature.

The Training Director and Director of Student Services also provided OCR with credible testimony that the Student did not describe the male student's alleged behavior to them as sexual. In addition, the Student refused to provide either OCR or the University with any of the allegedly harassing emails or texts, and did not provide OCR with separate sufficient evidence of a potential allegation of sexual harassment.

Because the preponderance of evidence shows that the Student did not complain to the University of conduct that was sexual in nature, OCR concluded that the University did not violate Title IX by failing to provide her with a prompt and equitable response to her complaint.

*Issue 4:* Whether the University retaliated against the Student after she complained of sexual harassment by referring her to the Student Conduct Committee.

#### 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 universities 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 the alleged victim engaged in a protected activity and was subsequently subjected to an 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 asks whether the university can provide a nondiscriminatory or nonretaliatory reason for the adverse action. OCR then determines 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

As described above, the Student informed her practicum site supervisor that a male student was bothering her and not respecting her boundaries. The Student alleged that after she raised this complaint, “everyone” at the practicum site “turned against” her. She alleged that, as a result, she was terminated from the practicum, referred to the University’s Student Conduct Committee (SCC), and ultimately dismissed from her graduate program.

The University provided OCR with documentation of a series of concerns about the Student’s behavior and academic progress, including previous referral notices to the SCC and remediation plans that predated her participation in the practicum, as well as information about the process it engaged in to try to address the concerns prior to her dismissal. The SCC’s letter terminating her from the graduate program cites these earlier incidents as well as her dismissal from the practicum.

#### Analysis and Conclusions of Law

In order to conclude that a complainant has been subjected to retaliation in violation of Title IX, OCR must first find that s/he has engaged in an activity that is protected by Title IX or its implementing regulations. As discussed in issue 3, OCR determined that the Student did not provide the University with notice that she believed that she had been subjected to sexual harassment, because the alleged conduct she complained about was not sexual in nature. OCR concluded that the Student’s complaint about the behavior of the other student was not protected under Title IX. For this reason, OCR concluded that the University did not retaliate against the Student in violation of 34 C.F.R. §106.71 and 34 C.F.R. §100.7(e).

OCR notes that, even if the Student had complained of sexual harassment, the University had a legitimate nondiscriminatory reason for referring her to the SCC based on the University’s prior

concerns as documented in evidence of documents reviewed, interviews conducted, and process undertaken by the University.

### Conclusion

On March 29, 2017, the University entered into the enclosed Agreement with OCR that is designed to address the areas in which OCR identified deficiencies or noncompliance with Title IX procedural requirements. The Agreement requires the University to revise its Sexual Misconduct and Relationship Violence Policy and Procedure to address situations where the respondent is a third party, and to state that the University will take steps to prevent the recurrence of harassment and correct its effects. The University will also inform students prior to their placement at practicum sites that the University's Sexual Misconduct Policy and Procedures apply to complaints of sexual harassment/sexual misconduct at practicum sites, and that reports or complaints of such conduct should be made to the Director of Clinical Training; ensure that all its Title IX officers, including Deputy Title IX Coordinators and other individuals with Title IX-related complaint investigation duties on the San Francisco Bay Area campus, receive appropriate training and are knowledgeable about the University's Sexual Misconduct Policy and Procedures; and will revise its Notice of Nondiscrimination to include the phone number, office location, and email address of its Title IX Coordinator.

OCR will monitor the implementation of the Agreement until the University is in compliance with Title IX, 20 U.S.C. § 1681(a), and its implementing regulations, 34 C.F.R. §§ 106.31(a)-(b) and 34 C.F.R. § 106.31(b)(4).

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 closing the investigation of this complaint as of the date of this letter, and notifying the Student concurrently. 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. The Student may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 a 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, it 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.

OCR would like to thank the University for its assistance in resolving this complaint. If you have any questions please contact OCR attorney Matthew Wood at 415-486-5591 or [matthew.wood@ed.gov](mailto:matthew.wood@ed.gov).



Sincerely,

/s/

Kendra Fox-Davis  
Team Leader

Enclosure

Cc: XXXXXX XXXXX, Esq.

Via email only