



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

December 4, 2017

**VIA ELECTRONIC MAIL**

Geeta Brown  
President  
InterCoast Colleges  
388 West Cerritos Avenue, Bld. 7  
Anaheim, California 92868

(In reply, please refer to case no. 09-17-2430.)

Dear President Brown:

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved the above-referenced complaint against InterCoast Colleges (the College). The Student alleged that the College discriminated against her on the basis of sex.<sup>1</sup> Specifically, OCR investigated:

1. Whether the College responded promptly and equitably to the Student's complaints of sexual harassment; and,
2. Whether the Student was harassed on the basis of her sex when her teacher asked her who she was attracted to, and forced the Student out of her class when the Student did not show up to a potluck.

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 U.S. Department of Education (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 and the College. The applicable legal standards, the facts gathered during the investigation, and the reasons for OCR's determinations and the terms of the Resolution Agreement (Agreement) entered into by the College are summarized below.

**Legal Standards**

The regulations implementing Title IX, at 34 C.F.R. §106.31, prohibit discrimination based on sex by recipients of Federal financial assistance. Colleges are responsible under Title IX and the

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<sup>1</sup> OCR previously provided the College with the identity of the Student. We are withholding her name from this letter to protect her privacy.

regulations 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.

Colleges provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities either (1) conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct, or (2) engages in sexual harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the college is responsible for the discriminatory conduct whether or not it has notice.

Under Title IX and the regulations, if a student is sexually harassed by an employee, the college is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the college must conduct a prompt, adequate and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, prevent the recurrence of harassment, and remedy the effects of the harassment on the student who was harassed. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment.

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 college does not tolerate harassment and will be responsive to any student reports of harassment. The college also should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

In addition, the Title IX regulations establish procedural requirements that are important for the prevention and correction of sex discrimination, including sexual harassment. These requirements include issuance of a policy against sex discrimination (34 C.F.R. § 106.9) and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination (34 C.F.R. § 106.8[b]). The regulations also require that recipients designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. § 106.8[a]).

34 C.F.R. § 106.9 requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, employees, 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 (34 C.F.R. § 106.9(b)) and, the college 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).

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.

**Issues 1 and 2: Whether the College responded promptly and equitably to the Student's complaints of sexual harassment, and whether the Student was harassed on the basis of her sex when her teacher asked her who she was attracted to, and forced the Student out of her class when the Student did not show up to a potluck.**

#### Facts Gathered to Date

##### *Policies and Procedures*

The College identified the President as the Title IX Coordinator and staff person responsible for investigating and responding to complaints and reports of sexual harassment. The President is not identified as the Title IX Coordinator in the Anti-Harassment Policy, Anti-Discrimination Policy, School Catalog, or Employee Manual.

According to the College, all students are required to read and sign the Anti-Harassment Policy and Anti-Discrimination Policy. The Student signed both policies on September X, 2015, and the Instructor signed both policies on December XX, 2015.<sup>2</sup> According to the College's narrative response, the Anti-Harassment Policy and Anti-Discrimination Policy are posted at each of the College's campuses.

The Anti-Harassment Policy states the College "prohibits harassment of employees and students by supervisors, co-workers, students, faculty, and staff" and will "attempt to protect employees and students from harassment by non-employees in the workplace." All faculty are required to participate in a minimum two hour sexual harassment training every two years, and students will be provided Harassment Prevention Training generally within 60 days of starting school. The Anti-Harassment Policy provides examples of harassment, including specific examples of sexual harassment. The Anti-Harassment Policy states: "Any incident of harassment should be reported promptly to your supervisor, the Campus Director, to any other manager, or to

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<sup>2</sup> The Student and Instructor signed the same version of the Anti-Harassment Policy (revision date 9/19/11), but they signed different versions of the Anti-Discrimination Policy. The difference between the two versions of the Anti-Discrimination Policy is negligible, one uses "tagging" as an example of harassment, but the other does not.

president@intercoast.edu. You are not required to complain to your supervisor or teacher if that person is the one harassing you or if you are uncomfortable doing so.” Furthermore, “[e]very reported complaint of harassment will be investigated thoroughly, promptly, and with as much confidentiality as possible.” The Anti-Harassment Policy prohibits retaliation against any employee for cooperating in an investigation or filing a complaint. Lastly, the Anti-Harassment Policy discusses discipline for harassment, ranging from warnings to immediate termination, and other resources, including the California Department of Fair Employment and Housing and the Equal Employment Opportunity Commission.

The Anti-Discrimination Policy declares the College’s “goal to create and sustain an anti-discriminatory environment” and “[d]iscrimination on the basis of gender, religion, disability, race, color or descent, or national or ethnic origin, sexual preference, or age is unacceptable behavior.” The Anti-Discrimination Policy discusses training for staff and students and provides examples of discrimination offenses. The Complaint Procedures section of the Anti-Discrimination Policy states that the “procedures may include but are not limited to”:

- 1) Directly address the alleged offender.
- 2) Participate in appropriate mediation with the alleged offender.
- 3) File a grievance to remain on file (no immediate action required).
- 4) Have the appropriate staff address the issue with the alleged offender as directed.
- 5) File a police report through the President’s Office if the alleged offense is a criminal offense.
- 7) File a formal written complaint.

The Anti-Discrimination Policy states that a complaint must be filed within 90 days of the alleged discrimination occurring. When a formal complaint is submitted, the President is responsible for deciding the appropriate offices and/or staff to review the complaint. The Anti-Discrimination Policy also contains a prohibition on retaliation for “having in good faith utilized or assisted others in using the racial discrimination complaint procedures” and a section on remedies if the person charged in the complaint is found to have violated the Anti-Discrimination Policy. The remedies may range from educational trainings to various levels of disciplinary action.

The School Catalog, also known as the Student Handbook, contains excerpts of the Anti-Harassment Policy and Anti-Discrimination Policy. The Catalog also describes three steps of the Student Grievance Procedures. First, students who have difficulties or other complaints should request a conference with the instructor or staff member to discuss the matter within 48 hours of the incident. Second, if the problem is not resolved, then the student should make an appointment to speak with the program director or, if no program director exists, the campus president (the College has multiple campuses, and the leader of each campus is known as the campus president). Third, if the second step has not resolved the grievance within three days of the first step, then the student may write all the facts of the grievance “using the available link on the school website” or by sending an email to a listed email address. Based on OCR’s review of the College’s website, OCR found one link to an online grievance form.<sup>3</sup> According to the President, all submissions using this online grievance form go to her.

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<sup>3</sup> <https://app.smartsheet.com/b/publish?EQBCT=fa1fe711256944be8fb05daad7a1352a>

The Student Grievance Procedures further describes that within four days of receiving the written grievance, the campus president will schedule a Grievance Committee hearing, where all persons, or their representatives, involved with the incident will have an opportunity to discuss the grievance before a committee of the campus president, member of the College's corporate staff, and three staff or faculty not involved in the incident. The decision of the Grievance Committee will be communicated to those involved in the incident with 48 hours, and the decision is final. The complaining student who seeks further resolution, after exhausting all complaint and grievance procedures, may contact the President at a specific email address, which is listed in the procedure. Lastly, the Student Grievance Procedures direct students who are unable to resolve their complaint with the College to file a formal complaint with the Bureau for Private Postsecondary Education, the Accrediting Council for Continuing Education and Training, and the Board of Vocational Nurses & Psychiatric Technicians (for vocational nursing students). The Student Grievance Procedures prohibit retaliation against a student for participating in the complaint or grievance process. The President told OCR that the Student Grievance Procedure described in the Catalog applies to grievances regarding grades, attendance, and other academic issues, and it does not apply to discrimination grievances. However, neither the Student Grievance Procedure in the Catalog nor the online grievance form as written defines the scope and application of this procedure.

According to the College's narrative response, students are directed to report any incident of sexual harassment to the President directly. If a report of sexual harassment is made to a supervisor, manager, campus president or the President, then the President, with the assistance of counsel, will direct any investigation and respond to the complaint.

The Instructor completed Workplace Harassment Employee Training on October X, 2017. The Employee Manual from January 2015, which was initialed and signed by the Instructor, contains the College's sexual harassment and anti-discrimination policies:

InterCoast does not tolerate sexual harassment or discrimination of any kind. Employees are provided the detailed Sexual Harassment and Anti-Discrimination policies of InterCoast, and are asked to follow such policies and procedures closely.

The Employee Manual from August 2017 also contains policies on "Harassment, Discrimination and Retaliation Prevention," "Harassment Prevention," and "Non Discrimination." In the "Harassment Prevention" section, the Employee Manual prohibits harassment, disrespectful, or unprofessional conduct by any employee of the College.

#### *Complainant's Complaint of Sexual Harassment*

The College offers Alcohol and Drug Counseling Studies, which, according to the Student Catalog, takes 47 weeks to complete if a student enrolls for evening classes. Alcohol and Drug Counseling Studies has a number of required modules, including PSY 101 and PSY 201 (psychology courses), MHR 101 and 102 (mental health courses), AD 111 (Counseling Intro & Overview/Law & Ethics), AD 112 (Physiology and Pharmacology/Personal Growth for Counselors), AD 113 (Case Management), and AD 114 (Practice & Theory of Counseling).

The Instructor, who is female, taught the Alcohol and Drug Counseling modules at the College's XXXXXXXXX campus starting in December 2015. The Student is female, and she was enrolled in Alcohol and Drug Counseling modules with the Instructor. The classes met XXXXXX XXXXXXXX XXXXXXXXXXXX XXX XXXXXXXX XXXXXX XXX XXXXXXXX XXXX XXXX X XX XXXXXX XXXXXX XXX XXXXXXXXXXXX XXXXXXX XXX XXXXXXXX XXXX XXXX XXXX XX XXXXXX XX XXXXXX XX.

The Student's transcript shows that she received the following grades for the Alcohol and Drug Counseling modules taught by the Instructor: X---paragraph redacted---X.

The Student evaluated the Instructor on January X, 2016. She wrote that the Instructor "has really listened to our concerns & cares about our success" and rated her 5/5 for all fourteen metrics, except three where she gave the Instructor 4/5. The Student's classmates were similarly positive, with one student giving the Instructor all 5/5 scores. One student gave the Instructor a 2/5 for "Instructor's acceptance of different views and opinions from students," but three students, including the Student, gave her a 5/5 for the metric.

In June 2016, the Instructor taught AD 113 (Case Management) to a class XX XXXX students, XX male and XXX female, including the Student. The Student told OCR that the Instructor treated her and the other female student differently from XXX XXX male students. Specifically, the Student felt that the Instructor held her and the other female student to a higher academic standard. The Student described how the Instructor made sure she and the other female student completed their presentations while allowing the male students to "get away" with not completing classwork. The Instructor told OCR that if there was work due, she would remind the male and female students to complete it. OCR spoke to one of XXX XXX male students (Student 2), and he stated that the Instructor did not favor male students but instead specifically favored XXX XXXXXX male student in the course. According to Student 2, the Instructor gave the other male student extensions on his assignments and liked him even though he did not complete his work, yet she demanded Student 2 and XXX XXX female students, including the Student, turn in their work on time and occasionally turn it in early. Student 2 characterized the Instructor as very inflexible, and he felt that she treated him unfairly. Specifically, Student 2 said the Instructor kicked him out of a previous module though he explained his absences were a result of XXXXXX XXXX.

### *Discussing Sexual Orientation*

According to the Student, in June 2016, the Instructor talked about being gay in class. The Student said the Instructor's mentioning her own sexual orientation was not inappropriate given the program's subject matter. The Instructor provided further context to OCR and described that her statement of her sexual orientation occurred as she was teaching about the Addiction Severity Index, a long questionnaire which includes a question about sexual orientation. The Instructor told OCR that none of the students reacted to her statement that she is gay.

The Student told OCR the other female student in the class was complaining to the Instructor that one of the male students was mean. The Student participated in the conversation and stated that

normally this male student is the type of person she was attracted to. After the other female student left the classroom, the Student told OCR the Instructor asked her who she was attracted to. According to the Student, she responded that she was attracted to men, and the Instructor said she favored women. The Student said she ended the conversation and left the classroom. The Student told OCR that she felt there was sexual tension during this conversation.

The Instructor told OCR that during one class when XXX XXX male students did not attend, XXX XXX female students, including the Student, expressed to her how they were uncomfortable with one of the male students. The Instructor told them it was important to understand their issues around this particular man because they may meet someone similar to him in their future work environments. The Instructor told OCR that at no point during the Alcohol and Drug Counseling program did she ask the Student who she was attracted to.

The Student's attendance rate was 77.22% for AD 112, which took place in the first half of June 2016, and 90% for AD 113, which took place the second half of June 2016. Her previous attendance rates were 80% for AD 116, which began March XX, 2015, and 86.11 % for AD 111, which began March XX, 2016.

#### *Potluck*

According to the Instructor, there was a potluck scheduled for the last day of every Alcohol and Drug Counseling module, and these potlucks were not mandatory.

There was a potluck on XXXXXXXX, July XX, 2016, the last day of module AD 113. The Student did not attend the potluck because she was working that day and there was an accident and subsequent traffic which prevented her from attending the potluck after work. The Student said she texted the Instructor that she was unable to attend the potluck and the Instructor responded OK, but she was not able to produce any documentation of these text messages because she has a new phone since summer 2016. According to the Student, only one male student (not Student 2) attended the potluck.

The Instructor did not recall if the Student informed her that the Student would not be able to attend the July XX, 2016 potluck. The Instructor also did not remember which students attended the July XX, 2016 potluck, as there were a number of potlucks during the Alcohol and Drug Counseling program and various students attended some and missed others.

#### *First Day after Potluck*

Module AD 114 followed module AD 113, and it was scheduled to begin on XXXXXXX, July XX, 2016. The Student told OCR that the Instructor missed the first four days of AD 114 due to an illness. The students still attended class, though there was no substitute teacher and they left two hours early each evening. According to the Instructor, AD 114 began as scheduled on XXXXXXX, July XX, 2016. She taught the class immediately following the potluck, and she told OCR she did not believe she was sick following the potluck.

According to the Student, when the Instructor returned to class, two students—the Student and Student 2—were in attendance. The Student asked the Instructor if she was missing any work, and the Instructor responded no. The Instructor also told the Student she was hurt that students blew off the potluck and that is why she was sick. The Student told the Instructor that she needs to look at her motives and she should not feel hurt over the potluck. Then, the Instructor said the Student was causing the whole class to suffer and she would be a bad counselor. The Student continued to argue that the Instructor should not blame the Student for making her sick, and the Instructor then said the Student was missing work and dropped the Student's grade. The Student told the Instructor that she was grading the Student down because she was mad at the Student, and the Instructor did not respond. She said that the Instructor made her inability to attend the potluck personal and assigned emotional meaning to the Student. The Student also told OCR that the Instructor would get hurt and upset if the Student disagreed with her.

On July XX, 2016, the Instructor told OCR she discussed absenteeism with the students. She wanted to discuss absenteeism at the outset of AD 114 because she noticed spotty attendance from students, including the Student, during the previous module. According to the Instructor, the Student stated that she previously told the Instructor that she was not going to attend all the classes, especially if she was working overtime or if she felt overwhelmed. The Instructor said she recalled the Student previously said this, but she wanted to remind everyone that attendance is important and she expected attendance. The Student then raised her voice, stating that she was not going to attend all of the classes and that she was a paying student with the right to come to class or not. The Instructor acknowledged the Student's choice to attend or not but reiterated her expectation that students attend class. The Student became verbally argumentative, so the Instructor asked her to leave the class and discuss this with the acting Campus President.

The Student told OCR that the Instructor discussed attendance after the potluck. According to the Student, the Instructor told the Student that she had missed two days and was starting not to attend, and the Student responded that she made up those missing classes, which is something that students are allowed to do to maintain the 90% overall course attendance requirement.

The Instructor told OCR that the Student did not ask if she was missing any work, since it was the first day of the module. During the first class, the Instructor explained the concept of somaticizing, which is a manifested physical ailment for something that is psychological or stress related. She provided an example of somaticizing, such as feeling hurt because students did not attend the potluck which then manifests in getting a cold. The Instructor told OCR she did not recall the Student telling her she needs to look at her motives and should not get her feelings hurt over a potluck; she mostly remembered the Student raising her voice and insisting that she did not need to attend class if she did not feel like it. The Instructor denied telling the Student she would be a bad counselor and dropping the Student's grade in her gradebook.

The Student told OCR that the Instructor was not using the potluck and a cold as an example of somaticizing but instead meant it literally. The Student told OCR that the Instructor talked about somaticizing throughout the modules, and the Instructor had previously given real-life examples of when she held in her feelings and they manifested in sickness.

*Second Day after Potluck*

According to the Student's complaint, in the next class, the Instructor verbally attacked the Student and told the Student to leave the class. The Instructor allegedly forced the Student to finish the course online, which she previously told the Instructor she did not want to do.

The Student's testimony describing the next day in class differed from her complaint. According to her interview with OCR, the Instructor did not kick the Student out of class the day after the initial confrontation about the potluck. Instead, they continued to argue again about why the Instructor was focused on the Student missing the potluck when other students had as well. The Student told OCR that the Instructor said she would speak to the other students about missing the potluck, but when those students came to class, she did not say anything to them. According to the Student's interview with OCR, the Instructor removed her from class the next day (third day after the Instructor's return to AD 114) and forced her to complete the Alcohol and Drug Counseling Studies program online.

The Student told OCR that Student 2 was present when the Instructor verbally attacked her. OCR spoke to Student 2 who stated that the Instructor and the Student got into arguments about the Instructor's favoritism of the other male student in the class. On the day the Student left the class, Student 2 said the Student and Instructor were arguing about assignments and the Instructor's bias towards the other male student. When the Instructor tried to end the argument, the Student spoke up again to get the last word in, and at that point, the Instructor sent the Student out of class.

According to the Instructor's written narrative and interview with OCR, on July XX, 2016, the Student attended class and the Instructor asked if she would like to have a discussion to resolve the issues from the first day. The Student said she did not want to talk to the Instructor at all. The Instructor replied that since the Student was studying to be a counselor, it is important for her to engage in conflict resolution, and the Instructor reminded her that there was likely some transference occurring as the Student's anger was heightened and was not warranted for the situation. The Student murmured something the Instructor did not hear, and she remained in class. When the Instructor called on the Student to answer a question, the Student responded with sarcasm, and the Instructor stated that the Student's demeanor was inappropriate. The Student then became caustic and accused the Instructor of needing control and take over the lives of the students. The Instructor asked the Student to leave and told her that this situation must be resolved so the classroom environment could be safe for everyone. The Instructor also directed the Student to the policies on appropriate behavior.

In her testimony, the Instructor told OCR that on the second day of AD 114 (July XX, 2017), she again instructed the Student to speak to the acting Campus President. The Student left the class and did not return that evening or after.

The Student's attendance record shows she was present for the first week of AD 114 (July XX through July XX, 2016) and the first two days of the second week of AD 114 (July XX through XX, 2016). According to the attendance record, the Student did not attend AD 114 starting July XX, 2016.

*Remainder of the Alcohol and Drug Counseling Program*

The Student told OCR that after the Instructor asked her to leave the class, the Student attempted to speak to someone at the College's XXXXXXXXXX campus about the Instructor. She tried to meet with the acting Campus President, but he did not follow-up with her. Despite the Student's request, there was no meeting among her, an administrator, and the Instructor to resolve the issues, and thus, the Student said she had to complete the Alcohol and Drug Counseling Studies program online. According to the President, the Student did not speak to the acting Campus President about sexual harassment because if she had, the acting Campus President would have called the President immediately and he did not.

According to the Instructor, on the first and second days of AD 114, she informed the acting Campus President about the Student's disruptive and disrespectful conduct, and he responded there would be a meeting with him, the Instructor, and the Student to resolve the problem. However, the meeting did not occur because the Student decided to complete her coursework online so she did not have to return to the classroom setting.

The School Catalog describes the student conduct and behavior policy. The policy describes disruptive behavior as conduct that "interferes with student learning and causes distress among other students and faculty," and provides examples such as rude language, sarcasm, and raised voices or yelling in a hostile manner. Furthermore, the policy states, "Unruly conduct or any conduct that interferes with the progress of others and operation of the school is cause for dismissal." An instructor must document the disruptive behavior and the discussion with the student and bring the issue to the campus president, who will decide on a case-by-case basis to apply disciplinary action.

According to the President, the Student met with the Director of Student Affairs about transferring online and only stated she had an issue in class which is why she was finishing the program online. She did not mention anything to the Director of Student Affairs about sexual harassment.

The Student told OCR she started the online Alcohol and Drug Counseling Studies program on September X, 2016. According to the Student's complaint and testimony, the website was missing attachments and videos, and the materials that were posted were not relevant. In her complaint, the Student said she complained to the College several times. Because of the issues with the online program, the Student was unable to graduate and disenrolled from the College in November 2016. The Student's transcript shows a Withdrawal for AD 114.

According to the Student, on November X, 2016, she submitted a written complaint on the College website, specifically the website for the College's corporate office in Sacramento, but the College did not follow-up with her. The Student said she did not have a copy of what she submitted to the College, but she described to OCR what she complained about. Specifically, she wrote that she was a student attending class and achieving good grades until the potluck incident occurred and the Instructor blamed her for getting sick. The Student wrote that the Instructor singled her out when the Instructor did not talk to the other students about missing the potluck, and she felt like the Instructor's conduct was sexual in nature because the Instructor was

hurt that the Student did not personally attend the potluck. The Student also wrote that the Instructor previously asked her who she was attracted to.

The Student told OCR she submitted her complaint at a particular website address. OCR reviewed the website and did not find a link to submit an online grievance form, and the Student did not respond to OCR's request for more information about where she submitted her complaint. According to the College, there were no reports of sexual harassment made by the Student. The College's first notice of any sexual harassment allegation was OCR's notification letter. The College also told OCR there have been no other complaints as to the Instructor.

### Analysis

In order to analyze whether the College responded promptly and equitably to the Student's complaints of sexual harassment, OCR first analyzed the College's grievance procedure for student complaints alleging sex discrimination.

#### *Review of Policies and Procedures*

The College has two policies addressing sexual harassment: the Anti-Harassment Policy and the Anti-Discrimination Policy. Because sexual harassment is a form of sex discrimination, both policies can apply to a student complaint of sexual harassment, yet they list different procedures. Under the Anti-Harassment Policy, incidents of harassment should be reported to a supervisor, Campus Director, a manager, or the President, and the complaints will be investigated thoroughly, promptly, and with as much confidentiality as possible. The Anti-Discrimination Policy describes six complaint procedures, which are listed separately. One of the six complaint procedures is filing a formal written complaint. However, while the complaint procedure says that the President will investigate the complaint, the procedure does not state where to file the complaint and the President's contact information is not listed. Two of the six complaint procedures in the Anti-Discrimination Policy offer an informal process ("Directly address the alleged offender") and mediation ("Participate in appropriate mediation with the alleged offender") but do not state that the informal process and mediation is voluntary. Though both policies describe remedies, the remedies do not include steps to prevent the recurrence of harassment and to correct its discriminatory effects on the reporting student and others, if appropriate, and there is otherwise no assurance that the College will take such steps.

Neither policy contains any timeframes for the major stages of an investigation or notice of the outcome of the complaint. Moreover, the Anti-Discrimination Policy requires that formal complaints be filed within 90 days of the alleged discrimination, yet the College may have a duty to address complaints outside of the 90 day period to ensure a nondiscriminatory environment and there is no other process for resolving such reports or complaints.

While the Anti-Harassment Policy states that the College will attempt to protect employees and students from harassment by non-employees, this protection is limited to the workplace and may not protect students from third party harassment. Additionally, neither policy states that its respective grievance procedures apply to allegations of discrimination and harassment carried out by third parties or to programs and activities of the College, including off-campus

misconduct that may create a hostile environment in such programs and activities. The grievance procedures also do not provide an opportunity for either the complainant or respondent to provide evidence or documents. Accordingly, for the reasons described above, OCR finds that the College's grievance procedures do not comply with Title IX requirements.

Furthermore, OCR has concerns that notice about which grievance procedure applies is not adequate because a student may report alleged sexual harassment using the Student Grievance Procedures in the School Catalog or the online grievance form as neither states that these processes apply only to academic grievances, not discrimination. The confusion stemming from alternative grievance procedures that do not specify their purpose may result in insufficient notice to students and employees interested in filing discrimination complaints. OCR also has a concern that while both the Anti-Harassment Policy and the Anti-Discrimination policies prohibit retaliation, the Anti-Discrimination Policy only protects employees and students who have utilized or assisted others in using the "racial discrimination complaint procedures," and it is not clear what the racial discrimination complaint procedures are or whether the prohibition on retaliation only applies to race discrimination complaints.

#### *Notice of Nondiscrimination*

OCR also found that College's notice of nondiscrimination does not comply with Title IX requirements. In response to OCR's request for the College's notice of nondiscrimination, the College provided the Anti-Harassment Policy and the Anti-Discrimination Policy, which it stated were posted at each campus. However, neither statement identifies the College's Title IX Coordinator or his or her contact information or states that inquiries regarding Title IX can be addressed to OCR.

#### *Response to the Student's Complaint*

When allegations filed with OCR have been investigated by a recipient's internal grievance procedures, OCR will first review the recipient's investigation and resolution to determine whether the recipient provided a resolution and remedy using legal standards that meet Title IX. If OCR finds that that the recipient has met these requirements, OCR generally will not conduct its own independent investigation. If OCR finds that that the recipient has not met these requirements, OCR will conduct its own independent investigation or develop a remedy appropriate to address the issue of noncompliance.

There is a dispute as to whether the Student provided notice of her allegation of harassment. The Student told OCR she informed the College about the Instructor's alleged harassment in person to the acting Campus President and in writing using the College's online complaint form. The President told OCR that the Student did not inform the acting Campus President of any alleged sexual harassment nor was there an online complaint form submitted by the Student. Prior to completing the investigation into whether the College responded to the Student's complaints of sexual harassment, the College expressed a desire to voluntarily resolve this complaint and OCR agreed that a resolution of this issue was appropriate. In order to complete the investigation, OCR would need to interview the acting Campus President and the Director of Student Affairs, both of whom interacted with the Student following her removal from the Instructor's class.

*Allegation of Sexual Harassment*

With respect to the underlying allegation of sexual harassment by the Instructor, an employee who is acting, or reasonably appears to be acting, in the context of carrying out her responsibilities may not engage in sexual harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program. There is no dispute that prior to OCR's investigation, the College did not conduct an investigation into the Student's allegation that the Instructor sexually harassed her by asking her who she was attracted to and forcing her out of the class when she did not show up to the potluck for module AD 113. Because the matter involves alleged harassment by an employee, for which the College may be responsible whether or not it receives notice, and OCR found that the College's grievance procedures did not comply with Title IX, OCR conducted its own investigation into the Student's allegations of sexual harassment.

First, OCR analyzed whether the Instructor asked the Student about her sexual orientation and whether, if the Instructor did, this constituted sexual harassment. The Student told OCR that after class in June 2016, the Instructor asked the Student who she was attracted to. The Instructor told OCR she never asked the Student who she was attracted to. OCR obtained conflicting testimony from the parties, but even presuming, for the sake of analysis, that the Instructor asked the Student about her sexual orientation, the conduct was not sufficiently serious as to limit or deny the Student's ability to participate in or benefit from the services, activities or privileges provided by the College. The evidence shows that the Student continued to attend class at the about same rate she previously attended. Nor did the alleged question impact the Student's performance in the modules that occurred in June, as she earned an X in AD 112 and a X grade in AD 113, which is similar to the X and X grades she previously earned. The Student told OCR she felt "sexual tension" from the Instructor, but she defined this as holding XXX XXX female students to a higher standard than the male students, a feeling that was not shared by the Student's female classmate or one of XXX XXX male classmates in their evaluations of the Instructor. Thus, based on a preponderance of the evidence, OCR found that the Instructor did not harass the Student when she allegedly asked the Student who she was attracted to.

Second, OCR analyzed whether the Instructor's removal of the Student for failing to attend the AD 113 potluck was harassment based on sex. An employee who is acting, or reasonably appears to be acting, in the context of carrying out her responsibilities may not condition an educational decision or benefit on a student's submission to unwelcome sexual conduct. In this case, neither the potluck nor the Instructor's alleged hurt feelings over the Student's absence from potluck were sexual conduct. The potlucks occurred at the end of every module, and these gatherings were not sexual advances from the Instructor towards any of the students. Furthermore, the potlucks were not mandatory. Though the Instructor spoke to the class about attendance at the outset of module AD 114, there is insufficient evidence that this was specific to the Student. According to Student 2, the Instructor held all the students in the class, except her favored student, to a high standard. There is insufficient evidence that the Instructor was especially sensitive to the Student's absence or that that purported sensitivity was sexual conduct. Therefore, there is insufficient evidence the Instructor conditioned the Student's continuation in the Alcohol and Drug Counseling Program on the Student's submission to

unwelcome sexual conduct because OCR did not find any evidence of sexual conduct, unwelcome or otherwise, on the part of the Instructor.

The Student also alleged that the Instructor engaged in sexual harassment when she kicked the Student out of the class, and the Student subsequently could not finish the Alcohol and Drug Counseling Program. The Student Catalog describes the behavior policy, which prohibits disruptive behavior that interferes with student learning and causes distress among students and faculty, such as sarcasm and raised voices or yelling in a hostile manner. According to the Instructor, the Student raised her voice and was sarcastic at the outset of module AD 114. Student 2 confirmed that the Student was arguing with the Instructor. OCR found, by a preponderance of the evidence, that the Instructor's conduct of removing the Student from class was not based on the Student's sex and therefore, did not constitute harassment on the basis of sex. Accordingly, OCR found insufficient evidence of sexual harassment because the preponderance of the evidence shows that the Instructor removed the Student because she was disruptive in class and not on account of sex.

## **Conclusion**

This concludes the investigation of this complaint.

The College, without admitting to any violation of law, entered into the enclosed Agreement which is aligned with OCR's findings and concerns. Under the Agreement, the College will revise its grievance procedure and notice of nondiscrimination to comply with Title IX and applicable regulations, and it will distribute the new grievance procedure and notice of discrimination to employees and students. Furthermore, the College will develop and distribute a written guidance memorandum or memoranda to all employees and students that summarize the new grievance procedure, notice of nondiscrimination, and the Title IX Coordinator's contact information. Lastly, the College will provide sexual harassment training to College employees at the Fairfield campus who are responsible employees and who are responsible for investigating sexual harassment complaints according to the new grievance procedure.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Student concurrently. When fully implemented, the Agreement is intended to address OCR's compliance concerns and findings in this investigation. OCR will monitor the implementation of agreement until the College is in compliance with the statutes and regulations at issue in the case.

OCR's determination in this matter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Student may have the right to file a private suit in federal court whether or not OCR finds a violation.

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

Please be advised that the 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Annie Lee, Civil Rights Attorney, at 415-486-5594 or [Annie.Lee@ed.gov](mailto:Annie.Lee@ed.gov).

Sincerely,

/s/

Zachary Pelchat  
Team Leader

Enclosure (1): Agreement

cc: XXXXX XXXXXX, Counsel for the College (via email only)