



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

July 30, 2018

Kim A. Wilcox
Chancellor
University of California, Riverside
4108 Hinderaker Hall
Riverside, California 92521

(In reply, please refer to case no. 09-18-2061.)

Dear Chancellor Wilcox:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against University of California, Riverside (University). OCR investigated whether the University denied the OCR Complainant an equitable process in a sexual harassment investigation, in which he was the responding student.¹

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 education programs and activities receiving financial assistance from the Department. The University is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX.

OCR's investigation to date consists of a review of the University's relevant policies and procedures and the documents submitted to OCR by the Complainant and the University regarding the case at issue. With respect to whether the University provided a prompt and equitable resolution under Title IX, prior to OCR completing its investigation, including conducting interviews and reviewing additional documents, the University expressed an interest in a voluntary resolution, and OCR agreed it was appropriate to do so. The legal standards, facts gathered, and the reasons for OCR's determinations in this matter are summarized below.

LEGAL STANDARDS

Sexually Hostile Environment and Duty to Respond Promptly and Equitably

¹ OCR previously provided the University with the identity of the Complainant. We are withholding his name from this letter to protect his privacy.

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

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

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

Title IX and its implementing regulations are intended to protect students from discrimination on the basis of sex, not to regulate the content of speech. In cases of alleged sexual harassment, OCR considers the protections of the First Amendment of the U.S. Constitution where issues of speech or expression by students or employees are concerned.

FACTUAL FINDINGS

Sexual Harassment Policy and Procedure

The University of California “Sexual Violence and Sexual Harassment Policy” (SV/SH Policy), issued on January 1, 2016, directs the University to designate a Title IX officer and provide adequate resources and independence to the Title IX officer so that she/he can carry out compliance responsibilities, which include but are not limited to coordinating compliance activities and providing prompt and equitable responses to complaints of sexual harassment and sexual violence. Under the policy, sexual harassment is defined as unwelcome sexual advances, unwelcome requests for sexual favors and other unwelcome verbal, nonverbal or physical conduct of a sexual nature. Sexual harassment is defined as creating a hostile environment when such conduct is sufficiently severe or pervasive that it unreasonably denied, adversely limits or interferes with a person’s participation in or benefit from the education, employment or other programs and services of the University and creates an environment that a reasonable person

would find to be intimidating or offensive. Consideration is given to the totality of the circumstances in which the conduct occurred.

The policy describes several timeframes for the completion of various steps of the complaint investigation and sanctions processes: formal investigations are to be conducted within 60 business days, and the entire formal resolution process must be resolved within 120 days from the date of notification of investigation through the conclusion of any appeal process. No timeframes are specified for early resolution.

The formal investigation is described as resulting in a written report, including findings of fact and the positions of both parties and application of a preponderance standard. Following the completion of the Title IX office's complaint resolution process, the office transfers the case to the University office with appropriate oversight when either a finding is made against the respondent or the respondent is referred for sanctions / corrective action at the conclusion of an alternative resolution process. If the Title IX office does not make a finding against the respondent or otherwise identify other conduct charges appropriate for referral, then the case is closed.

If the responding party is a student, the Title IX office and the student conduct office jointly issue a written notice of investigative findings and recommended sanctions to the respondent and the complainant. At the same time, the conduct office informs the parties of disciplinary sanctions. The policy requires that University use the following mandatory minimum sanctions: cases involving sexual assault, domestic/dating violence or stalking where certain factors are present (force, violence, deliberate effort to make another person to become inebriated, and recording/photographing/transmitting intimate or sexual images) carry a minimum two-year suspension or dismissal from the University. For other types of sexual assault contact, defined as touching of an intimate body part, the conduct office applies a minimum one-year suspension (absent exceptional circumstances). Parties can appeal the conduct finding and/or sanctions to an appeal body composed of one to three individuals who are University staff or academic appointees who have received appropriate training. An appeal from either party must be submitted within 10 business following issuance of the case outcome letter. The appeal process should normally be completed within 60 business days from the date of the appeal request. The appeal decision is final.

Individual Complaint

The female student and the OCR Complainant (hereinafter referred to as the Respondent) were both second year graduate students in the graduate XXXXXXXXXXXX program and shared the same advisor, and were lab mates. On September XX, 2016, the female student contacted the Title IX Coordinator and requested a meeting regarding how to file a sexual harassment complaint against a male graduate student (the Respondent) who was in her same program. On the next day, the female student met with a Title IX response team coordinator (Title IX Coordinator) and explained that she was seeking a formal complaint investigation. The female student reported that her graduate advisor had already moved the Respondent out of the lab based on her complaint.

On September XX, 2016, the Director met with the female student who alleged that the male graduate student had subjected her to unwelcome touching. The female student requested a formal investigation and a no contact order. On the next day, September XX, 2016, the Title IX Coordinator and Student Conduct Director issued notifications to both parties about the initiation of the investigation and that the issue under investigation was whether the male graduate student, the Respondent, had engaged in “unwelcome physical contact and kissing between March 2016 through September 2016.”

No Contact Order

The University also issued the no contact order on September XX, 2016, which specified that the Respondent was restricted from “instigating any further contact or communication (physical, verbal, written, email, Instant Message, etc.)” with the female student. Both parties were notified that if the Respondent violated the no contact order, the female student was to immediately report it to the University. The Respondent was specifically informed that his failure to comply with the no contact order may result in an additional violation of the student conduct code.

On September XX, 2016, the Respondent met with the University Title IX Investigator (Investigator) and was provided a description of the allegations against him, and a list of resources. A second meeting occurred on October X, 2016, but according to the Respondent, the Investigator did not explain the no contact order. The Respondent told OCR that he understood the no contact order to mean that he could not approach or talk to the female student without her consent.

On October X, 2016, the female student notified the University that the Respondent had violated the no contact order when he talked to her and texted her on that same day. She described that early in the morning, he texted her, asking “can we talk? No pressure or anything” Later, while on campus, the Respondent approached her as she was exiting a classroom, and asked her, “can we talk about things?” She stated that she told him that she did not want to talk to him. He allegedly responded “let’s talk, why don’t you talk to me? You already got me kicked out of lab.” The Respondent talked to her as they walked to the XXXXXXXXXXXX building, and then she entered her lab and the Respondent left her. Later that afternoon, the Respondent sent her a text message that said “trying to apologize.”

The Respondent told OCR that on October X, 2016, the female student gave him a face nod/expression when he saw her near the XXXXXXXXXXXX building and that made him think it was acceptable for him to talk. So, on October XXX, the next day, he approached the female student because he thought he had her consent to talk to her. When he talked to her, she stopped walking and engaged him in a conversation which he thought were signs of consent.

On October X, 2016, the Title IX Coordinator and Student Conduct Director issued an update of charges against the Respondent to include the failure to comply with the directions of a University official, and violation of terms of a disciplinary action. The notification includes a reminder about the no contact order and that failure to adhere to the no contact order may result in “further curtailment of privileges,” including interim suspension.

On October XX, 2016, the Investigator met with the Respondent to discuss the violation of the no contact order. He confirmed knowing about the no contact order, and understanding it, but thought maybe she had not been informed about it.

On or around October XX, 2016, the Respondent completed a Title IX intake form which is used for intake for all Title IX complaints. In the notes section, the Respondent stated that the female student did not indicate that she found his contact unwelcomed. He also stated that because the no contact order did not apply to her, he felt at risk of violating it every time he saw her at the department building. Accordingly, the Respondent stated that he asked for a no contact order against the female student.

Based on email documentation between the Student Conduct Coordinator, the Respondent also made prior contact with other University staff as early as October XX, 2016, requesting a mutual no contact order. In e-mail correspondence between Title IX office staff members on October XX, 2016, the Title IX Coordinator stated that she believed that the University had issued mutual no contact orders in the past, and the Investigator responded that it was true that the University has issued mutual no contact orders, but based on this request (which was made to the student conduct office), the Respondent was referred to the respondent support office. The Investigator also thought that no contact orders as a rule were applied to respondents but the Title IX Coordinator thought that the University would issue a no-contact against a complaining party at the request of the respondent.

According to the investigative report, on October XX, 2016, the Title IX Coordinator reviewed the Respondent's request and did not approve it, and the Investigator informed the Respondent of this decision. The Respondent told OCR that the Investigator also called him on that same date and told him they were rejecting his request for a no contact order against the female student because she told the Investigator that she was not going to contact the Respondent at all. As such, they did not see a reason to grant his no contact order request.

There is no other evidence of the Respondent violating the no contact order after October X, 2016.

In its response to OCR, the University stated that at the time the no contact order was issued, the Title IX office did not routinely implement mutual no contact orders when there was no allegation by the respondent that the female student had also violated the Sexual Violence/ Sexual Harassment policy. It acknowledged that the Respondent requested the no contact order, but that he waited almost one month (on October XX, 2016) after the no contact order was issued against him, and two weeks after he violated it and had been warned of this violation by the University. The University stated that it had no evidence that the female student ever contacted the Respondent during the case investigation. It concluded that the University now routinely issues mutual no contact orders to "prevent a situation where a respondent is contacted by a complainant and is confused about whether or how to respond."

Complaint Investigation

OCR confirmed that there were two Investigators assigned to the complaint; the first worked on the case until November XX, 2016, after which a second investigator was assigned.

The Investigators investigated the following issues, based on the female student's allegations that the Respondent subjected her to unwanted physical touching, as follows: 1) sometime in March 2016, the Respondent touched her shoulder after a class lecture, 2) while at a pool party on July X, 2016, the Respondent came up to her in the pool, and attempted to pinch her hip, hug her from behind, and whisper in her ear "hold your breath," 3) while at an off-campus party on July X, 2016, the Respondent, while dancing the salsa, grabbed her food and spun her around, 4) on September X, 2016, the Respondent hugged and kissed her on the cheek, after asking her "can we hug?" The University later added a fifth allegation of the Respondent violating the no contact order on October X, 2016.

The investigative report was completed on January XX, 2017, or 129 days after the female student filed her complaint. The investigation focused on the four incidents at issue in the investigation. The investigation consisted of interviews with the female student, the Respondent, and two other students from the Department of XXXXXXXXXXXX. It also consisted of a review of documents and texts provided by both parties and the review of some video that was taken at the second party on July X, 2016. The Respondent said he knew the two students from the Department of XXXXXXXXXXXX and confirmed that they were there the day of the lab incident in which he hugged and kissed the female student on September X, 2016.

In addition, the investigator considered the history between the Respondent and the female student. In late 2015 and other occasions during the 2015-2016 academic year, the Respondent sent the female student text messages telling her that he had a crush on her and that he loved her. On two occasions, in March 2016 and on XXX XXXXXXXXX in April 2016, the female student reported that the Respondent hugged her from behind. She said on both occasions, she told the Respondent that his action made her uncomfortable. The female student also stated that on or around June 2016, she told the Respondent "no physical touching" without her permission because he continued to hug her from behind and pat her head without permission. The Respondent acknowledged to the Investigator that the female student told him that she didn't like hugging from behind and she preferred front hugs. He told the Investigator that he tried to avoid hugging the female student from behind after she told him not to but one time he forgot, she reminded him not to do this, and he apologized. Further, according to the investigative report, sometime during the summer of 2016, the Respondent informed the female student that he applied for the same internship program in XXXXXXXX that the female student been accepted to attend. The Respondent was accepted into the program and would be in attendance from October 2016 –March 2017. After the Respondent learned that the female student was attending the internship in the spring of 2017, commencing from April 2017 and lasting until June/July 2017, he changed his internship dates to the same dates as the female student. The female student stated that the Respondent asked her about housing in XXXXXXXX and asked if they could room together and she told him no.

The Investigator also reviewed several text messages between the two parties from December 2015 through fall 2016. According to the Respondent, the text messages used in the report only reflected what the female student provided, and not what he shared. The Respondent did not provide OCR with any text messages that were not considered by the Investigator. OCR reviewed the file and all of the text messages provided by the Respondent were considered by the Investigator.

The Respondent submitted a list of 35 witnesses that the Investigator considered but did not follow-up with to conduct interviews. The only witnesses on the Respondent's list that were interviewed were the two graduate students who served as witnesses of the final alleged incident in the lab on September X, 2016. Both witnesses confirmed that the Respondent hugged and kissed the female student after a conversation and that the female student was upset by the interaction. The first witness confirmed that the female student had made it clear to the Respondent that she wanted "zero touching" and he ignored that.

OCR reviewed the 18 pages of notes the Respondent provided the Investigator regarding the 33 other individuals who could provide testimony, mostly about his relationship with the female student. Many witnesses were listed for more than one purpose.

The Respondent's identified witnesses consisted of the following groups:

- He submitted the names of two witnesses who could confirm that the professor touched the shoulder of the female student during class instead of him. However, the Respondent admitted to the Investigator that he touched the female student on the shoulder but clarified that he touched her shoulder after class instead of during class.
- The Respondent provided the name of a student who took a video of the Respondent and the female student dancing at the second party on July X, 2016, which he said would have recorded if he gave the female student an unwanted hug. The Respondent told OCR that the Investigator reached out to the witness for the video but she did not provide it. However, the notes from the investigative file show that the Respondent did provide the Investigator with some video of him and the female student dancing at the party.
- The Respondent also identified two additional students who were at the dance party on July X, 2016 and allegedly witnessed the interaction of the female student and the Respondent on the dance floor.
- He also identified three students who could describe the interaction between him and the female student during the July X, 2016 pool party. One of the three students identified was the same witness who was present during the dance party incident on July X, 2016 and took a video of the Respondent and female student dancing.
- The Respondent provided the names of three students who observed him on August XX, 2016 asking the female student for a hug, she accepted the hug, he spun her around after the hug, and she told him for the first time that she doesn't like when he spins her around. The Respondent stated and/or confirmed that two of these three students also witnessed

the incident on September X, 2016 in the lab where he asked the female student for a hug, she said not today, and then he hugged her and gave her a kiss on the cheek.

- The Complainant also listed the two students who observed the incident in the lab; these witnesses were ultimately interviewed by the Investigator.
- The Respondent further submitted the names of eighteen people who he had mutually hugged in the past year and who had allegedly not complained about it. The Respondent submitted the names of two female witnesses who he has kissed on the cheek. He offered these witnesses to rebut the claim that he singled out the female student for hugs and kisses. He also listed the names of ten additional people who he gets along with but has not hugged out of respect because they did not initiate it.
- The Respondent provided the names of nine other witnesses who could provide general information but nothing specific to the allegations that were under investigation. The Respondent also provided the name of a witness who told him that she thought the female student never liked him. Four other witnesses could provide testimony about the graduate advisor or other faculty who could show prejudice against the Respondent. One other witness could verify that the Respondent complained about the female student treating him unfairly. A final witness, who served as his mentor, could provide general testimony in support of the Respondent.

OCR spoke to the University about its response to the Respondent's request to interview his requested witnesses. The University maintained that eighteen of the Respondent's witnesses were not interviewed for very specific reasons, and these were outlined in the investigative report. For example, seven witnesses whom the Respondent identified as having testimony on the classroom shoulder touching, the Respondent's conduct at a pool party and the incident where Respondent spun the female student around on the dance floor at a party, would not have information that could change the conclusion because the alleged conduct was not a violation of policy. The University also acknowledged not interviewing eleven other witnesses because they were not described as observing the alleged conduct in any of the five allegations that the female student made in her complaint. The investigative report did not explain why other witnesses were not interviewed, such as those that the Respondent listed as people that he mutually hugged in the past year, or people he did not hug out of respect since they did not initiate the hug.

The Investigator concluded the following in the investigative report:

- On Allegation #1, regarding the shoulder touching incident, the Investigator found insufficient evidence that the touch had a "sexual connotation" and concluded that this incident by itself did not rise to the level of sexual harassment. The Investigator noted that the Respondent did not ask the female student if he could touch her shoulder.
- On Allegation #2, regarding the pinching in the pool incident, the Investigator noted that the female student clarified in her second interview that she was sitting in the pool and the Respondent did not touch her. The Investigator acknowledged that while the

Respondent may have pushed the female student into the pool, that activity did not rise to the level of sexual harassment and would not be considered an unwelcome sexual advance. The Investigator noted that the Respondent did not ask the female student if he could push her in the water.

- On Allegation #3, the Investigator found evidence that the Respondent spun the female student around on the dance floor at a party without asking permission, but concluded that the conduct did not rise to the level of sexual harassment. The Investigator noted that it did not appear that the Respondent asked the female student for her consent to grab her and spin her around.
- On Allegation #4, based on the Respondent's admission that he hugged and kissed the female student on the cheek despite her saying "no," the Investigator concluded that this conduct met the definition of sexual harassment and that the conduct was unwelcome.
- Regarding Allegation #5, the Investigator found sufficient evidence that the Respondent violated the no contact directive because he was fully aware it was in place and that his contact with her through two texts and a conversation on campus was retaliatory.

The Respondent told OCR that he understood from his conversation with the Investigator in January 2017 and his review of the report that the University concluded that the hug in the lab was part of a pattern of unwanted conduct. The Investigator acknowledged that the report did not reflect that the University had made a finding based on the totality of the evidence. He told OCR that the analysis should not have included findings on each individual allegation, and then a finding on Allegation #4 (regarding the hug and kiss incident), implying that this one action was severe. He stated that the analysis in the report should have reflected that all of the evidence viewed together supported the pattern of the Respondent being persistent in a relationship with the female student that she did not want. He told OCR that he also considered the impact of the Respondent's conduct on the female student and found that the multiple incidents caused a hostile environment for the female student because she reported that she could not concentrate and she was afraid to be around the Respondent.

Conduct Process and Appeal

On February XX, 2017, the University's conduct office issued a letter to the Respondent indicating that he would be sanctioned to one year plus one quarter (four quarters total) for his conduct.

On March XX, 2017, both parties submitted appeals to an appeals officer identified by the University (who is employed by an outside law firm). In his appeal, the Respondent contested the finding on the grounds that there were numerous procedural errors and the sanction on the ground that it was excessive. Specific to the procedural errors, he stated that the University failed to apply the definition of sexual harassment because it did not properly analyze whether the conduct was based on sex and was not welcomed and that the conduct was a reflection of his Latino culture. He named three witnesses who could testify that he treated the female student "in a platonic way" because he treated her the same way he treated them. The female student

contested the lack of severity of sanction (she wanted the Respondent not to be permitted on campus until after her graduation from the program). On June X, 2017, both parties were notified about the other party's appeal, and were provided an opportunity to respond, which they did.

On August XX, 2017, the Respondent sent the same list of 35 witnesses that he had previously sent to the Investigator and proposed new documentary evidence consisting of emails, text messages, photos or web pages to the Hearing Coordinator to support his request for appeal. The Respondent argued that he and the female student had a friendly relationship and that previous contact had in fact been consensual. He stated that his list of witnesses could confirm that the conduct was not a pattern, and that he and the female student had a friendly relationship that went back months.

On September X, 2017, the appeal hearing was convened. Only the parties, the Investigator and the Student Conduct Coordinator testified at the appeals hearing. In the appeals process, the Title IX Investigator stated that he found that the one incident of a hug and a kiss met the standard of sexual harassment because it was the "final action in a pattern of physical actions," that created a sexually hostile environment for the Complainant.

On September XX, 2017, the appeals panel issued a decision and upheld the Investigator's finding but reduced the sanction from one year and one quarter to just one year. In the appeal decision, the Hearing Coordinator wrote that the appeal panel invited both parties to submit a list of witnesses, and proposed questions but only the Respondent submitted a list of witnesses. During the hearing, the appeal panel determined that the "proposed witnesses were not going to provide relevant testimony . . . and therefore declined to permit those witnesses to testify." The appeal panel also stated that they declined to consider the Respondent's proposed new documentary evidence because the panel determined that the evidence was not relevant to the issues on appeal. The panel acknowledged that the conduct office misinterpreted the UC system-wide sanctioning minimum guidelines which only apply to sexual assault (not harassment). Since no minimum applied in cases like this one, the appeals panel imposed a three quarter suspension, taking into account the violation of the no contact order.

The Respondent had one more level of appeal afforded to him, which he pursued with an appeal to the Chancellor (or designee) on the grounds that the University failed to follow its procedures and that the sanction was excessive. The Respondent's original appeal submission was considered. On October XX, 2017, the Interim Provost and Executive Vice Chancellor (Interim Provost) issued a final decision on the last level of appeal, upholding the investigation finding but reducing the sanction to one quarter and requiring the Respondent to complete sexual harassment and sexual violence prevention training. The Interim Provost also noted that the Respondent would have to serve two additional quarters if he violated the no contact order or if he did not complete required training. The University's counsel told OCR that it was his understanding that the Interim Provost made the decision to reduce the Respondent's sanction to one quarter because she researched the history of sanctions in other cases at the University with similar conduct and imposed a similar sanction to be consistent. The Interim Provost rejected the Respondent's argument that there were any procedural errors. She wrote that the Respondent's disagreement with how the evidence was weighed with respect to the totality of the evidence did

not describe a procedural error. With respect to witness interviews, she stated that if one specific witness testimony was elicited, even if the testimony “corroborated Respondent’s perception that one or more of the incidents was welcome, it would not have materially affected the outcome (i.e., the finding that the pervasive conduct, including sexual in nature and unreasonably denied the [female student] access to her learning environment) . . .”

ANALYSIS AND CONCLUSION

The Respondent alleges that the University denied him an equitable process in the sexual harassment investigation for three reasons: 1) the University refused to grant him a mutual no-contact order as an interim measure during the investigation, 2) the University failed to consider relevant witness testimony that he proffered in making its determination, and 3) the University did not follow its sanctioning guidelines and the evidence in its investigative report when it suspended him one year and one quarter as a sanction for his conduct.

First, the Respondent alleges that the University denied him an equitable process by refusing to grant him a mutual no-contact order as an interim measure during the investigation. The University acknowledges that it denied the Respondent’s request for a mutual no-contact order but explained that it made this decision because the female student told the Investigator that she was not going to contact the Respondent at all. In addition, the University noted that the only contact the Respondent reported was when he saw the female student on campus and later approached her because she allegedly raised her eyebrows and appeared to nod at him in a greeting. The University told OCR that at the time the no contact order was issued to the Respondent, the Title IX office did not routinely implement mutual no contact orders when there was no allegation by a respondent that the female student had also violated the Sexual Violence/Sexual Harassment policy. The University stated to OCR that the Respondent requested a mutual no contact order against the female student only after he had violated the no contact order issued to him. The University also clarified that per the current University policy, it now routinely issues mutual no contact orders to prevent a situation where a respondent is contacted by a complainant and is unsure whether or how to respond. OCR determined that while it would have been more equitable for the University to have issued a mutual no contact order upon the Respondent’s request, since that time the University has revised its practice. In addition, OCR found sufficient evidence that the Respondent was informed of the specific content of the directive, when it was provided to him in writing, and his request for a mutual order was not made until after he made contact with the female student, both in person and through text messages, a month after it had been in effect. Furthermore, after the University identified the violation, no other concerns were raised by either party regarding the scope or implementation of the no contact order.

Second, the Respondent alleges that the University failed to consider relevant witness testimony in making its determination. The Respondent confirmed to OCR that the two student witnesses interviewed and relied upon in the investigative report were physically present to observe his last interaction with the female student, when he hugged and kissed her in a lab on September X, 2016. The Respondent also listed these students on the witness list he submitted to the Investigator. However, the Respondent states that he was denied an equitable process during the

investigation because the Investigator and the appeals panel considered the female student's information but refused to interview 33 or the 35 witnesses that he proffered.

Under Title IX, investigators have discretion not to interview witnesses who, for example, would not provide evidence that is relevant to the investigation or would only provide evidence that is cumulative. In the investigative report, the University did not explain why it did not interview witnesses that the Respondent listed as people that he mutually hugged in the past year and people he did not hug out of respect, since they did not initiate the hug, or who could provide general information about him that was not specific to the allegations under investigation. However, OCR did not find that this decision created an inequity because there was no evidence that these witnesses had relevant information to offer, because they did not witness any of the conduct and the information provided would not be probative of the issue of whether the Respondent sexually harassed the female student.

However, the University's rationale that some of the percipient witness interviews were unnecessary because the University already determined that the alleged conduct observed by these witnesses did not constitute a policy violation is not supported in light of its oral finding that the Respondent engaged in a pattern of unwelcomed sexually harassing conduct towards the female student that included the incidents observed by these witnesses. For example, OCR identified witnesses who the Respondent described as having potential information that the Respondent did not subject the female student to sexual harassment or unwelcome conduct at the two parties in July 2016 and when the Respondent touched the female student on the shoulder on March X, 2016. Further, the Respondent identified a witness who he alleged could testify that contact on the dance floor between the parties prior to August XX, 2016 was consensual. Accordingly, OCR is concerned that the University's decision not to interview any of the witnesses who allegedly observed incidents #1-3 or could testify to the consensual nature of contacts between the parties may have resulted in an inequitable process for the Respondent. With respect to this compliance concern, prior to OCR completing its investigation, the University expressed an interest in a voluntary resolution, and OCR agreed it was appropriate to do so.

Finally, the Respondent alleges that the University did not follow its sanctioning guidelines and the evidence in its investigative report when it issued him a sanction of a suspension for three quarters. After considering the evidence in the investigative report and the findings, the Conduct Officer sanctioned the Respondent with a four quarter suspension based on his belief that there was a minimum one year sanction for a violation of the University's Sexual Harassment/Sexual Violence Policy. He added a quarter to the suspension because the Respondent violated the no contact order. On appeal, the appeals panel found that the Conduct Officer misinterpreted the UC system-wide sanctioning minimum guidelines which only apply to sexual assault (not sexual harassment) and reduced the suspension to three quarters, taking into account the violation of the no contact order. On the second level of appeal, the University considered the findings in the investigative report and sanctions in similar cases and reduced the Respondent's suspension to one quarter. Therefore, because the University identified and corrected the error on appeal and there was no evidence of discrimination on the basis of sex related to the initial sanction, OCR found insufficient evidence of noncompliance with Title IX and its implementing regulation.

Overall Conclusion

The University has entered into the enclosed Resolution Agreement (Agreement) which requires it to provide training to investigators, conduct staff, and administrators/faculty who serve on the hearings appeal panels to ensure equity between the parties with respect to an opportunity to present witness testimony and evidence during Title IX investigations. The Agreement also requires the University to review the University's resolution of the complaint at issue to determine if any further investigative steps are warranted, including interviews with witnesses provided by the Respondent. The University will consider the results of the review to determine if it provided a Title IX compliant investigation and if not, any further steps that need to be taken with respect to remedies for either party.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter. When fully implemented, the Agreement is intended to address the compliance concerns identified in this investigation. OCR will monitor the implementation of the Agreement until the University is in compliance with its terms. OCR's determination in this matter 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. The complainant 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 this case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. Please be advised that the University may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, any individual may file a complaint with OCR alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, 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 Sewali Patel, Civil Rights Attorney, at (415) 486-XXXX or sewali.patel@ed.gov.

Sincerely,

/s/

Ava De Almeida Law
Acting Team Leader

Enclosure: Signed Resolution Agreement

cc: Leslie Van Houten and David Bergquist, Counsel for University (via email)