



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
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VIA ELECTRONIC MAIL

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(In reply, please refer to OCR Case number 09-19-2144)

Ms. Roman and Ms. Roman:

On January 29, 2019, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint against American Beauty College (the School). OCR has now completed its investigation into whether or not the School discriminated against the Student on the basis of sex and disability.¹ Specifically, OCR investigated the following issues:

1. Whether the Student was denied accommodations based on her disability which would allow her to participate in the education program in a nondiscriminatory manner, when administrators would not agree to make adjustments to its attendance policy when it denied her a method to make up hours;
2. Whether the Student was denied accommodations based on her disability that would have allowed her to participate in the education program in a nondiscriminatory manner when school administrators met with her without an advocate present;
3. Whether the College failed to provide a prompt and equitable response to the Student's report that another female student subjected her to unwanted touching and comments based on sex; and
4. Whether the Student was dismissed from the program in retaliation for her filing a sexual harassment complaint.

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

¹ OCR previously provided the School with the identity of the Complainant and Student. Their names are not included in this letter for privacy reasons.

discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is also 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). As a recipient of federal financial assistance, the School is subject to Section 504, Title IX and their implementing regulations.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the School. After careful review of the information gathered in the investigation, OCR concluded that the School violated Section 504, Title IX, and their implementing regulations with respect to Issues 2 and 3. OCR further concluded that there is insufficient evidence of non-compliance with respect to Issues 1 and 4. The applicable legal standards, factual findings, and resolution of this matter are summarized below.

Legal Standards

Section 504

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.

Under the requirements of Section 504, a student with a disability is obligated to notify the college or university of the nature of the disability and the need for a modification, adjustment, aid or service. Once a college or university receives such notice, it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the college or university may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

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.

Title IX

The regulations implementing Title IX, at 34 C.F.R. §106.31(a), state as follows: “Except as provided elsewhere in this part, 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 academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.”

The Title IX regulation contains a number of procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient’s efforts to comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX, or alleging any actions which would be prohibited by Title IX, 34 C.F.R. 106.8(a). In addition, the Title IX regulation requires recipients to publish a notice of nondiscrimination covering Title IX, and to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.9(a); *see also* 34 C.F.R. § 106.8(b).

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. In determining whether sexual harassment based on sex exists, OCR looks at the totality of the circumstances, and considers a variety of factors, including the degree to which the conduct affected one or more students’ education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in which they occurred; other incidents at the school; and whether there were also incidents of sex-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

Under Title IX, a school has a responsibility to respond promptly and effectively to sexual harassment. This includes taking appropriate steps to investigate or otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. It may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

A school has a duty to respond to harassment about which it knows or reasonably should have known. A school has notice of sexual harassment if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. A responsible employee

would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.

A school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems. In cases where the harassment is widespread, the school may need to provide training for the larger school community to ensure that individuals can recognize harassment if it recurs and know how to respond.

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

When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the college, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the college can provide a non-retaliatory 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.

Facts

The following facts are relevant to OCR's analysis:

The Student enrolled in a barber program at the School in February 2018. Based on her start date, the Student was expected to graduate in February 2019. The School, which has a day program and a night program, was operated primarily by the Owner and her two daughters. One daughter served as the Director over the School's two sites (hereinafter "the Director"), and the other daughter served as the Assistant Director responsible for the location where the Student attended (hereinafter the "Assistant Director").

The Student has XXXXXXXXXXX XXXXXXXXXX, which manifests itself in the Student experiencing anxiety and having regular periods of depression followed by occasional manic periods. According to the Complainant and Student, the Student took medications that made her very tired and made it difficult to get up in the morning. In addition, because of her anxiety, she regularly had to take breaks at school.

The Student identified herself as an individual with a disability due to anxiety in her enrollment documents, though she did not identify any needs for accommodations at that time.

The syllabus for the barber program included a statement at the bottom instructing students to consult with the instructor to address “any special needs or disabilities.” It further stated, that “[r]easonable effort and accommodations will be made for effective learning. Please provide documentation of your disability during the first week of class. All information provided is strictly confidential.”

On June XX, 2018, the Student received a counseling report for being suspected of being under the influence following lunch break. She was suspended until July X, 2018 and required to write an essay. In that essay, dated July X, 2018, the Student stated that she had XXXXXXXXXX XXXXXXXXXX and depression. Between July and December 2018, the School issued the Student counseling reports and other notices regarding the Student falling behind on her hours requirements due to attendance issues. During this time (from June through December 2018) the Student did not request accommodations due to a disability.

On January X, 2019, the Assistant Director gave the Student a letter explaining that the Student was being expelled due to attendance issues and for smoking marijuana. After receiving the letter, the Student contacted her mother (the Complainant), who came to the School. That same day, the Student and the Complainant met with the Assistant Director, a meeting which was recorded with the consent of all parties. The Complainant and the Assistant Director discussed the attendance and drug allegations, including whether the Student had provided doctor’s notes for any days she had been absent or tardy. As a result of that conversation, the Assistant Director determined that the Student would be allowed to return to the School.

During that meeting, the Complainant explained to the Assistant Director that the Student had XXXXXXXX XXXXXXXX and was on medications that made her very drowsy. The Complainant told the Assistant Director that the Student needed a “mental health advocate” if she was ever “talked to” again. The Assistant Director noted that the School could look into that request and stated that “we can figure that out for future reference.” The meeting included discussion of whether the Complainant should act as the advocate or whether someone else could perform that role. There was no discussion about any process that the Complainant or Student should follow to obtain accommodations for the Student’s disability, including the requested “mental health advocate”.

In the January XXX meeting, the Complainant and the Assistant Director also discussed that the Student needed to make up some hours. The Student requested to attend both the day and the night programs in order to make up hours, and the Assistant Director stated that was not allowed. The Assistant Director told OCR that day students were generally not allowed to attend at night and vice versa. OCR did not find any evidence that the Student had ever asked to attend both the day and night programs as an accommodation for her disability. According to the Student, she told the School that she wanted to attend both the day and the night program because she had missed hours and wanted to graduate on time.

On January XX, 2019, the Complainant and the Student went to the School and the Student filled out an incident report in which she alleged that another student (Student A) had sexually harassed her at school by touching her inappropriately without her consent and making comments about her appearance that the Student found harassing. She stated that the form also described other allegations of bullying by Student A and other students that were not sexual in nature. The Student's incident report form did not specify when the alleged harassment occurred. It also did not provide detail regarding how often other incidents occurred or what the nature of the other alleged sexual incidents were. The Student stated to OCR that Student A's behavior of rubbing her legs or trying to kiss her went on throughout the time she and Student A were enrolled.

On the same day, the Owner and the Assistant Director met with the Student, the Complainant, and the Student's sister about the incident report. In the meeting, which was led by the Owner and lasted approximately 15 minutes, the Student briefly described what happened. According to the Assistant Director, the Owner told the Student that she understood that the situation may have made her uncomfortable, but that Student A may not have "meant it that way." During the meeting, the Owner also asked the Student why she had not raised the issue earlier given that the incident report referenced events that occurred a few months prior. According to both the Assistant Director and Complainant, the Owner said she did not know exactly what the sexual harassment policy was. According to the Complainant, the Owner also stated that sexual harassment laws were only for employees and that they could not control what other students would do. The Assistant Director did not recall the Owner making this statement.

At one point in the meeting, the Owner put her hands on the Student's sister's leg to demonstrate that maybe Student A was just "touchy-feely" like the Owner, and the Complainant suggested that the Owner was being harassing. As described in a later email by the Assistant Director, the Owner then told the Complainant that if she felt that her daughter was being harassed, she would need to leave "as would be customary for anyone who is feeling harassed." The Complainant and the Student's sister were then asked to leave the School. The Complainant was thereafter prohibited from returning to the School.

The Assistant Director said that she and the Owner subsequently called in Student A on the same day to speak to her about the allegations. She said that Student A was upset by and denied the allegations. The Owner also told OCR that Student A had acknowledged part of the alleged conduct but said that it was friendly and not harassment as the Student had portrayed it. According to the Assistant Director, the meeting lasted about five minutes, and they then asked Student A to meet with the Student, and she agreed to do so. According to the Assistant Director, they then met with the Student, who agreed to meet with Student A about the matter. The Student, however, stated that she was very upset after the Complainant and her sister were asked to leave, and that when a School staff member instructed her to meet with School administrators, she was surprised when she walked in and saw that Student A was there as well. She stated that she was not ready to talk with Student A and felt pressured into doing so.

The Assistant Director told OCR that the meeting with the two students lasted at most twenty minutes and that it ended positively. She said that the students were told that "this behavior cannot happen" and that if the School heard of this type of behavior again they would be

withdrawn from the program. She said that she and the Owner asked the students if they would be able to coexist and that the students said they could go their separate ways and avoid each other.

After the meeting with the students, the Assistant Director said that they also talked with two of the students' instructors and asked whether they had noticed any behavior out of the ordinary and both reported that they had not. She told OCR that it was a very short conversation with each instructor and that she was not sure if she mentioned the names of the two students in those conversations. The Assistant Director also noted that she reviewed Student A's file and found that she had perfect attendance and was a good student with no counseling reports. The Assistant Director said that the Student did not bring up any witnesses except for a letter that one of the Student's friends had written to Student A about her treatment of the Student. The Assistant Director did not request a copy of that letter and she did not interview any other students with regard to the allegations. The Student told OCR that other students would have witnessed Student A being touchy with her and also said that she told two close friends at the School about the issues with Student A.

At the bottom of the initial incident report form filled out by the Student, the Assistant Director wrote under "Action Taken" that she "met with [the Student and Student A] notified them about sexual harassment policies, if either fail to comply with policy then can be expelled. Both have been notified that they have the right to file charges outside of school if deemed necessary by either party. Students will be reminded of sexual harassment policies." The School did not assess whether either student needed interim supportive measures such as a no contact order, did not make a final determination with regard to whether the Student was subjected to sex discrimination and if so whether additional steps were needed to address the allegations, and did not communicate an outcome to either student.

The Owner told OCR that she had told both students that they needed to fix the problem or be expelled because both of the students "had the problem."

The Student told OCR that being at the School in the same program as Student A after the sexual harassment report was awkward and uncomfortable. On January XX and XX, 2019, the Student submitted written requests to the School to switch to the night program. Her January XX request stated that "the day class isn't benefitting me anymore. I'm too uncomfortable here and I'm unable to get my work done and concentrate. I also have issues waking up in the morning and being productive during the day due to my medication. So I feel that the night program will benefit me more." Her January XX request did not provide specificity regarding whether she was requesting supportive measures due to the alleged harassment or whether she was seeking an accommodation due to her disability. The Student stated to OCR that even after she switched to the night program, she would see Student A for approximately an hour each day when she went in early to make up hours.

Her January XXXX request stated that "I've decided to switch to the night program. I'm going to stay XXXXXXXXXXXX XXXXXXXXXXXX. I will also start making up hours XXXXXXXXXXXX XXXX and XXXXXX XXXXXX. Failure to do so I already know I'll be kicked out unless I have doctor's notes." The Student told OCR that one of the School's administrative staff told

her she needed to write that she would be kicked out if she did not have doctor's note for absences. That same day, a "contract addendum" was approved by a school administrator. That contract showed five hours per day Monday through Thursday (and did not list any additional hours for make up on Fridays).

On XXXXXX, January XX, 2019, according to an incident report provided by the School, the Assistant Director noticed the Student sleeping XX XXX XXXXXX XXX in the XXXXXX room. The report stated that the Assistant Director called a teacher and asked her to advise the Student that she was not allowed to be sleeping. The School's attendance records reflect that the Student left at approximately XXXX that day.

That same day, the Complainant posted a negative review of the School on a social media site, which was later removed by the social media site. The Complainant also emailed the Assistant Director that day to object to the January XX, 2019 meeting in which the Assistant Director had called the Student into her office without a mental health advocate. She noted that the Student had problems with communication, "crippling anxiety," and also that the financial aid clerk made the Student sign a document stating that if she was late again her enrollment would be terminated.

The Assistant Director responded by email acknowledging that they met with the Student about her attendance and the consequences for her "continued absences and tardies." She also stated that the School meets with its students as necessary and cited privacy considerations for not including the Complainant as the Student's advocate in communications with the Student. The Assistant Director further stated that to be able to allow the Complainant to serve as the Student's advocate, they would need to speak with the Student first on each occasion and obtain her permission. She also stated that the Complainant's "negative and false" review on a social media site implicated the Student with regard to the School's "malice intent policy." The School's course catalog stated that "a student will be terminated or transferred to another school for any of the following...2. Gossiping or causing animosity with malice intent." Finally, the Assistant Director's email noted that "the sexual harassment claim was dealt with when we brought [the Student] in for discussion. ... That was the first and only time [the Student] brought it to our attention and we dealt with it the same day. Students were reminded of the ABC sexual harassment policy and that expulsion from the school was discussed if it did not cease immediately. No other incident has been brought to our attention since."

On January XX, 2019, the Complainant filed a complaint with OCR. That same day, the Complainant, the Student, the Student's sister and another friend of the Student posted negative reviews of the School on the social media site.

On XXXXXXXX February X, 2019, the School's Director received an email alerting her to a different social media site in which an account (the account) was created that referred to the School as a "scam." The Director told OCR that she believed that the Student had created the account because the Student and her family members were at the top of the list of names following the account. The Student told OCR that she did not create the account.

The Director told OCR that after the account was posted, other students started contacting School staff about the account. The Director said that School staff were distraught and that she knew at that point that the School needed to terminate the Student's enrollment.

On February X, 2019, the Director called the Student into the office as soon as she arrived at school. She told OCR that the Student wanted to call the Complainant, but the Director said that the Complainant was not allowed to come to the School (based on the January XX, 2019 incident), so she suggested that the Student call XXX XXXXXXXXXXXX. The Student told OCR that the February X, 2019 meeting was attended by XXX XXXXXXXXXXXX, the Owner, the Director, and the Assistant Director. The Student told OCR that based on that meeting she believed that the central reason for her enrollment being terminated was because she and members of her family followed the account the School accused her of creating, which was interpreted as "malicious intent."

A letter to the Student from the School that same day stated that "you are Withdrawn...as of today, due to excessive absences, including behavior with malice intent."

The Assistant Director stated that, with respect to the attendance issue referenced in the letter, the Student had previously been told that she could not be absent or tardy any more, but that on XXXXXX January XX, 2019, the Student clocked in at XXXXXX and left at XXXX without telling anyone she was leaving. OCR found that XXXXXXXX were generally used for makeup hours for all students. The Assistant Director said that the Student had contracted to come in during makeup hours and so was therefore required to be there on that XXXXXXXX. The January XX, 2019 contract addendum, however, stated that the Student was enrolled XXXXXXXX through XXXXXXXX for five hours per night, and did not list any hours on XXXXXXXX.

In addition to attendance issues, the Assistant Director also told OCR about several other issues that impacted the School's decision to terminate the Student's enrollment. She noted that the Student posted a negative social media site review and that she believed the Student was affiliated with the account where someone was taking photos of the School and posting them out of context. The Assistant Director also stated that the Student was regularly posting negative things about the School on her personal social media accounts. She said that this was leading other students to question their education at the School. The Director and the Assistant Director also noted to OCR several other issues regarding the Student's conduct and not related to her sexual harassment complaint.

The same day the Student's enrollment was terminated, the School sent a notice about sexual harassment to all students through the School's learning platform. Also on that day, the Complainant emailed the School to complain that she was not allowed to advocate for the Student and stated that they terminated the Student's enrollment because of the social media site review.

On the same day the Student's enrollment was terminated, the School also terminated the enrollment of a second student (Student B) because of his connection to the account and his negative posts about the School.

Since the Student's enrollment was terminated, the School has not provided the Student with a copy of her transcript.

Title IX Policies

The School provided OCR with a copy of its sexual harassment policy, which was a document entitled "Sexual Harassment at School: Know Your Rights." That document provides an overview of what behavior constitutes sexual harassment and a summary of relevant state and federal law. It does not make reference to what a student at the School should do if they have been sexually harassed and does not describe a grievance procedure.

OCR also identified a different document on the School's web site under a link for "Additional School Policies." That document includes a general paragraph on sexual harassment, which includes the statement that any employee who becomes aware of sexual harassment should "file a notification...with the Administration Office." It then states that the "Administration will then determine..." but then the document ends mid-sentence. The Assistant Director told OCR that the School did not have any specific procedures for what would happen when a student files a sexual harassment complaint.

OCR also separately found a paragraph about a "grievance policy" in the School's 2018-2019 "catalog" on the School web site. That paragraph does not explain what types of grievance can be submitted under that policy and does not mention Title IX. It provides that the school will provide a written response to all grievances within 10 business days.

Analysis

Issue 1: Whether the Student was denied accommodations based on her disability that would have allowed her to participate in the education program in a nondiscriminatory manner when administrators would not agree to make adjustments to its attendance policy when it denied her a method to make up hours.

Under the requirements of Section 504, a student with a disability is obligated to notify the school of the nature of the disability and the need for a modification, adjustment, aid or service. Once a school receives such notice, it has an obligation to engage the student in an interactive process concerning the student's disability and related needs.

One modification related to the Student's disability was that on January XX, 2019, the Student requested to begin attending night classes instead of day classes. The Student explained in writing that the request was based in part on the fact that she had "issues waking up in the morning and being productive during the day due to my medication." The School granted that request.

The Student also made a separate request in the January X, 2019 meeting. In that meeting, the Student asked whether she could attend both the day and night classes in order to make up hours that she had missed. The Assistant Director denied this request and told OCR that individuals who attended day classes were generally not allowed to attend night classes, and vice versa. The

School allowed the Student, like all students, to use the normal makeup hours between 4:00 p.m. and 5:30 p.m. Monday through Thursday, and all day on Fridays.

OCR found that there was not sufficient evidence to conclude that the Student had asked to attend both day and night classes as a request for accommodation for her disability. Rather, OCR found that when the request was made in the January X, 2019 meeting, there was no discussion of the Student's disability as the basis for the request. Given that the School was not on notice that the requested schedule was a request for accommodation for a disability, OCR found that the School's denial of that request without engaging in an interactive process was not a violation of Section 504 or its implementing regulations.

Issue 2: Whether the Student was denied accommodations based on her disability that would have allowed her to participate in the education program in a nondiscriminatory manner when school administrators met with her without an advocate present.

OCR found that with respect to the request that the Student have an advocate present, the Student did provide the School with notice of her disability and the Complainant did make a request for accommodation on the Student's behalf. Specifically, on January X, 2019, in a meeting with the Student, Complainant, and Assistant Director, the Complainant told the Assistant Director that the Student was diagnosed with XXXXXXXX XXXXXXXX and requested that an advocate be present for future meetings because of the Student's anxiety.

As noted above, once a request for accommodation is made, colleges and universities are required to engage in an interactive process with the Student to determine what accommodations are appropriate and can be provided. Here, OCR found that, when the request was made on January X, 2019, the Assistant Director suggested that the School could accommodate the request and that they would "figure that out for future reference," but that the School did not do any further follow up or communicate a process that the Student should follow to obtain the requested accommodation.

While the initial discussion about the need for an advocate did not precisely define what types of meetings an advocate would be needed for, OCR found that the meetings with the Student on both January XX, 2019 and January XX, 2019 were reasonably within the scope of what the Complainant and Student had requested. On January XX, 2019, the School initially allowed the Complainant to participate in their meeting with the Student, but then continued to meet with the Student after they told the Complainant she had to leave because she had accused the Owner of harassing the Student. Furthermore, on January XX, 2019, the School called the Student into the office to require her to sign something saying her enrollment would be terminated if she had any further absences or tardies.

OCR found that the School in effect denied the request for an advocate (either the Complainant or someone else) on those two occasions without having engaged in an interactive process with the Student to determine what accommodations the Student needed.

The Assistant Director told OCR that she believed the School's actions were appropriate because the Student did not make any further requests after the January X, 2019 meeting, but OCR found

that the Student and the Complainant's January X, 2019 request was sufficient to trigger the School's obligation to provide the accommodation or otherwise engage in the interactive process. That is, after that request, if the School did not intend to allow the Student to include an advocate in future meetings with School administrators, the School was obligated to engage in an interactive process with the Student to determine whether an alternate accommodation was appropriate. It did not. OCR therefore found that the School's actions violated Section 504 and its implementing regulations.

Issue 3: Whether the College failed to provide a prompt and equitable response to the Student's report that another female student subjected her to unwanted touching and comments based on sex.

Under Title IX, once a school has notice of possible sexual harassment between students, it is responsible for determining what occurred and responding appropriately. Part of providing an appropriate response is that a school must conduct a prompt, adequate, and impartial inquiry designed to reliably determine what occurred.

Here, OCR found that the Student had alleged to the School that Student A had sexually harassed her, and the School did not conduct an adequate inquiry to reliably determine what occurred. Instead, the School's investigation consisted primarily of a five-minute conversation with Student A asking her whether she had committed the harassment, which she denied. The Assistant Director also said that she spoke to two instructors to ask them if they had seen anything out of the ordinary, but the Assistant Director could not confirm that she mentioned the Students' names in that conversation. OCR did not find any evidence that the School asked the Student whether there were any witnesses to the conduct she described, or otherwise attempted to corroborate the Student's allegations.

Although the Student communicated to the School that she was uncomfortable attending the program after having filed her complaint, the School also did not assess whether interim supports were needed by the Student. The School also did not make any findings as to whether or not the alleged harassment occurred and if so, whether they Student was subjected to sex discrimination; and did not inform the parties of the outcome of the investigation. Instead, the School's response was to issue a warning to both students and to return the students to class. The School also threatened to expel both students if there were any further issues. Threatening a complainant of sexual harassment with expulsion is not an appropriate response to notice of harassment. OCR therefore found that the School's response did not comply with Title IX and its implementing regulations.

OCR also found that the School was not in compliance with the requirement that schools adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination. Rather, the School provided OCR with a document that describes conduct that constitutes sexual harassment but includes no procedures for how the School will respond to complaints of sexual harassment. For example, the document does not give notice to students about how to file complaints, does not address how the school will conduct adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence, and does not provide any designated and reasonably

prompt timeframes for major stages of the complaint process or any notice to the parties of the outcome of the complaint. The Assistant Director similarly told OCR that she was not aware of any policy or procedure about how the School would resolve complaints of sexual harassment.

Two other documents on School's web site offer elements of a grievance procedure, but OCR found that neither was sufficient. For example, the "additional policies" link on the web site includes some language that could have been the beginning of a grievance procedure, but it cuts off mid-sentence. Similarly, the course catalog contains a general grievance policy, but that policy does not specify what types of complaints can be filed under that procedure and it does not offer any explanation for how complaints under that procedure would be investigated. Neither did the School act in accordance with this general grievance procedure in the Student's case.

OCR therefore found that the School did not have a grievance procedure complying with Title IX and its implementing regulations and failed to provide a prompt and effective resolution to the Student's allegation of sexual harassment.

Issue 4: Whether the Student was dismissed from the program in retaliation for her filing a sexual harassment complaint.

The Complainant and Student engaged in protected activity under Title IX (filing a complaint of sexual harassment on January XX, 2019 and then a complaint with OCR on January XX, 2019). The Student was subsequently subjected to an adverse action when her enrollment was terminated on February X, 2019. The adverse action was close in time to the protected activity and raised a potential inference that the adverse action was retaliatory. As such, OCR evaluated whether the School had a non-retaliatory reason for the adverse action.

In its letter terminating the Student's enrollment, the School cited attendance issues and behavior with "malice intent." OCR found that while the Student did have attendance issues, those issues did not appear to be the precipitating cause of the termination of the Student's enrollment. Specifically, OCR found that the only evidence that the Student missed any time without a doctor's note after December 2018 was on XXXXXX, January XX, 2019, and the Student's contract did not mandate that she attended on XXXXXX. As such, OCR found that while the Student's attendance issues may have contributed to the School's decision, the Student's alleged failure to attend school on the afternoon of XXXXXX, January XX, 2019 was not the precipitating cause of the Student's enrollment being terminated.

OCR found, rather, that the preponderance of evidence was that the School's decision to terminate the Student was motivated by its concerns about other aspects of the Student's behavior in January and February of 2019. This included concerns about her behavior at school (including one incident where she was allegedly sleeping at school). This also included concerns about reviews that the Student and the Complainant had posted on a social media site. OCR found, however, that the event that directly led to the Student's termination was that the Student was associated with a social media account criticizing the School, and the Director's belief that the Student had created the account.

Several factors supported OCR's conclusion that the social media account was the precipitating cause of the Student's termination. Specifically, the Student told OCR that, based on her meeting with the School administrators, she believed that the account was the most important factor. This was consistent with the Director's statement indicating that she believed the Student was responsible for the account and that her enrollment should be terminated as a result of it. Finally, the School's decision to also terminate a second student that same day for his connection to the account supports the conclusion that the Student's perceived connection to the account was the primary motivating factor in terminating her enrollment.

OCR did not find evidence to support the conclusion that the Student's connection to the account was a pretext for terminating her because the Student had submitted a sexual harassment complaint or a complaint to OCR. Rather, OCR found that, with respect to the Student's sexual harassment complaint, School administrators believed that they had appropriately addressed the complaint on January XX, 2019 and were not concerned with it as of February X, 2019.

Therefore, OCR found insufficient evidence that the Student was terminated from the School in retaliation for submitting her sexual harassment complaint or because the Complainant had filed a complaint with OCR.

Overall Conclusion

This concludes the investigation of this complaint.

To address the non-compliance determinations with regard to Issues 2 and 3, the School, without admitting to any violation of law, entered into the enclosed resolution agreement which is aligned with the issues and the findings made by OCR. The Resolution Agreement (Agreement) requires that all School staff receive training regarding Title IX and Section 504 issues. The Agreement also requires that the School create a Title IX grievance procedure that is in compliance with the Title IX regulations and requires the School to release the Student's transcript to her.

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

OCR's determination in this matter should not be interpreted to address the School'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 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 complainant has a right to appeal OCR's determination with regard to Issues 1 and 4 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the School 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 Blake Thompson, Civil Rights Attorney, at (415) 486-XXXX or at blake.thompson@ed.gov.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Enclosure