



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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October 19, 2023

Brock McMurray
Superintendent/President
Taft College
29 Cougar Court
Taft, CA 93268

By email only to: bcmurray@taftcollege.edu

Re: Taft College
OCR Case No. 09-21-2010

Dear President McMurray:

The U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Taft College (the College). The complainant (the Student)¹ alleged that the College discriminated against her on the basis of sex in violation of Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. §§ 1681-1688, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex under any education program or activity receiving Federal financial assistance. The College receives funds from the Department and is therefore subject to Title IX. In opening the Student's complaint, OCR investigated the following issues:

- 1) Whether employees of the College discriminated against the Student on the basis of sex by repeatedly referring to the Student by the incorrect name and pronouns and referring to transgender and non-binary individuals or issues in a derogatory manner in the presence of the Student, other students, and [redacted content], and whether the College failed to respond promptly and effectively to notice of this alleged harassment; and
- 2) Whether the College failed to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination.

To investigate this complaint, OCR conducted interviews of the Student and the faculty advisor for the College's [redacted content] student group and reviewed documents and other information provided by the Student and the College. Based on the facts gathered to date, OCR concluded that the College was not in compliance with Title IX and its implementing regulation with regard to Issue No. 1. OCR also identified compliance concerns with respect to Issue No. 2. Prior to OCR completing its investigation of Issue No. 2 and making a compliance determination, the College expressed interest in voluntary resolution pursuant to Section 302 of

¹ OCR notified the College of the identity of the Student when the investigation began. We are withholding the Student's name from this letter to protect the Student's privacy.

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OCR's Case Processing Manual (CPM),² and OCR determined it was appropriate to do so. The legal standards, facts gathered, OCR's findings, and the terms of the resolution agreement (the Agreement) are summarized below.

I. Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states 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."

Under the Title IX regulations in effect at the time of the incidents at issue in this case, schools had a responsibility to respond promptly and effectively to notice of sex-based harassment. *See* 34 C.F.R. § 106.8(b). Sex-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if the harassment is sufficiently serious to deny or limit the individual's ability to participate in or benefit from the recipient's education program or activity. In determining whether sex-based harassment exists and has created a hostile environment based on sex for students, OCR looks at the totality of the circumstances, and considers a variety of factors, including whether the conduct was unwelcome to the student, 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; and any other incidents at the school. OCR examines the conduct from an objective perspective and a subjective perspective.

When the school has actual or constructive notice of such harassment, it must take appropriate steps to investigate or otherwise determine what occurred, and 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 sex-based harassment. 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 locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. If a school's investigation or other appropriate steps to determine what occurred identify student-on-student sex-based harassment that creates a hostile environment, schools are responsible for taking prompt and effective action to stop the harassment and prevent its recurrence. A school also may be responsible for remedying the effects of the harassment on the student who was harassed.

When evaluating the extent of a recipient's responsibilities if an employee harassed a student based on sex, OCR considers if the employee engaged in the harassment in the context of carrying out their day-to-day job responsibilities for providing aid, benefits, or services to students that denies or limits a student's ability to participate in or benefit from the school's

² Case Processing Manual (July 18, 2022) at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

program on the basis of sex. The following factors are considered in determining whether an employee has engaged in harassment in the context of the employee's provision of aid, benefits, or services to students: 1) the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aid, benefits, or services to students, to direct and control student conduct, or to discipline students generally; 2) the degree of influence the employee has over the particular student involved, including the circumstances in which the harassment took place; 3) where and when the harassment occurred; 4) the age and educational level of the student involved; and 5) as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable to believe that the employee was in a position of responsibility over the student, even if the employee was not. When an employee harasses a student based on sex outside of their daily job responsibilities, OCR evaluates if the harassment created a hostile environment for the student, using the factors discussed above with respect to hostile environment harassment.

In addition, the Title IX regulation in effect at the time of the incidents at issue in this case contained 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 any actions that Title IX would prohibit. 34 C.F.R. § 106.8(a). The Title IX regulation also required recipients to publish a notice of nondiscrimination covering Title IX, 34 C.F.R. § 106.9(a), 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, 34 C.F.R. § 106.8(b).

II. Facts Gathered to Date

According to the Student, she identifies as "trans femme" but she was not "out" as a transgender woman when she applied for admission to the College. She enrolled in the College's [redacted content] Program in [redacted content] 2018 and graduated in [redacted content]. The Student used her previous male name and associated email address during her [redacted content] first semester at the College. The Student stated that she came out to her classmates and at least three members of the College's faculty in [redacted content], and that one of these faculty members responded that she (the faculty member) would inform other faculty members. The Student told OCR that she does not know if the faculty member did so, but that her (the Student's) female gender identity was widely known to [redacted content] Program faculty by the [redacted content] Semester.

The College told OCR that the Student matriculated under her previous name in [redacted content] 2018, began using non-binary (plural) pronouns and a new female name to refer to herself early in the [redacted content] Semester of [redacted content], and began using female pronouns around [redacted content]. The College stated that it had no record of the Student submitting a "Student Information Change Form" or otherwise informing the College in writing that she had officially changed her name. According to the College, faculty and staff learned about the Student's name and pronoun changes through conversations with the Student or by "word of mouth" from other students or faculty.

A. Academic Year [Redacted Content]

The Student told OCR that in [redacted content], she came out to a professor of [redacted content] (Professor 1), including telling him that she used plural pronouns. The Student stated that she did so in part because Professor 1 had made “problematic and heteronormative statements” during class about sex and gender. According to the Student, after she informed Professor 1 that she did not agree with his comments and that they caused her to feel depressed, he responded by asking her whether she had “ever thought about just not thinking about it [her gender identity].”

The Student stated that in [redacted content] she also informed the Director of the [redacted content] Program (the Director) of her preferred pronouns. According to the Student, the Director insisted that she would notify faculty members. The Student did not know whether the Director did so. The Student told OCR that faculty and staff members continued to refer to her by her previous male name and pronouns (misgendered her) on an almost daily basis, sometimes several times a day, for over a year from [redacted content] until she graduated in [redacted content]. For example, according to the Student, on or around [redacted content], another professor of [redacted content] (Professor 2) repeatedly addressed the Student by her previous male name in front of other students. The Student stated that she explained to Professor 2 after class that she felt humiliated by being referred to by her previous male name in front of other students, as well as felt unsafe because it outed her as transgender. According to the Student, Professor 2 apologized and in subsequent classes referred to the Student with her correct female name; however, Professor 2 continued to refer to the Student with male pronouns throughout the remainder of the year.

According to the narrative response the College provided to OCR, Professor 2 inadvertently addressed the Student by her previous male name and met with the Student after class and apologized. Professor 2 reported her conversation with the Student to the Director. The College stated that on [redacted content], the Director, Professor 2, and the Dean of Student Success (the Dean) met and discussed ways to ensure that they were using the Student’s preferred name and pronouns. They also decided that Professor 2 should contact a mental health professional at the College and ask them to reach out to the Student. The College told OCR that no notes exist from this meeting.

On [redacted content], the Student emailed the faculty advisor (the Advisor) for the College’s “[redacted content]” ([redacted content]) student club and stated that Professor 2 had called her by her previous male name at least three times in front of other students during class, and that other [redacted content] Program faculty were also misnaming the Student and using incorrect pronouns to refer to her, even though the Director had assured the Student that she would speak with the faculty to inform them of her correct pronouns. The Student also told the Advisor that [redacted content] Program faculty neglected to “even try to use [the Student’s] proper pronouns.” The Advisor told OCR that she suggested to the Student that she begin documenting her experiences in a journal.

The Student stated that College faculty discriminated against other transgender individuals as well. For example, in [redacted content], while the Student was assisting with a [redacted content] clinic, a transgender [redacted content] requested that [redacted content] staff address

the [redacted content] with plural pronouns. According to the Student, a [redacted content] (Professor 3) responded by throwing up his hands and stating that he was “too old to deal with” the [redacted content]’s request. The Student stated that she reported Professor 3’s conduct to the Director the next day, and the Director responded that it would be easier for staff not to use any pronouns and just refer to [redacted content] by their full names. The Student stated that the Director’s response ignored Professor 3’s disrespectful actions and made her feel marginalized. The Student stated that she also asked the Director whether the [redacted content] clinic could include pronoun options other than “he” and “she” on its [redacted content] intake forms, and the Director refused and stated that plural pronouns were invalid and not commonly used except among members of the LGBTQ community. According to the Student, the Director also asked her why she cared so much about these issues and suggested that maybe the College was not the right place for the Student, and that she should consider becoming an activist.

The Student told OCR that she met with the Dean on a number of occasions between [redacted content] and [redacted content] and complained that she was being misnamed and misgendered by College faculty and staff, specifically mentioning Professor 1, Professor 2, and the Director. The Student stated that she asked the Dean how to file a complaint, and that the Dean responded that it was not in the Student’s best interest to file a formal complaint at that time and that the Student should wait until she graduated because members of the [redacted content] Program might retaliate against her. According to the Student, the Dean also told her that the [redacted content] Program faculty were “looking for a reason to kick her out of the program” and for reasons to give the Student bad grades. The Student stated that as a result of the Dean’s response, she did not file a complaint.

According to the narrative response the College provided to OCR, the Dean had no recollection of the Student reporting harassment or discrimination on the basis of sex or gender identity, nor did she recall discussing with the Student that faculty and other students were misgendering or misnaming the Student. The College also stated that the Dean had no recollection of the Student saying that she wanted to file a formal discrimination or harassment complaint with the College’s Title IX Coordinator, nor of informing the Student that she should be concerned about retaliation if she filed a complaint. The College informed OCR that the Dean is no longer employed by the College, and OCR did not interview the Dean.

The Student stated that during [redacted content], she told the Advisor that faculty and staff frequently misgendered and misnamed her, and that the Dean had dissuaded her from filing a formal complaint. The Advisor told OCR that the Student informed her in [redacted content] that the College staff did not use the Student’s new name and pronouns and did not make other students use her correct name and pronouns. The Advisor stated that the Student also told her that she had talked to the Dean and the Director about being misgendered, and that they were not helpful in their responses, including that the Dean had informed the Student that she risked retaliation if she made a complaint. The Advisor told OCR that the Student had once shared with [redacted content] club members that a faculty member said they would not refer to the Student with female pronouns because she “did not look feminine enough,” and that the Student was extremely upset by this remark. The Advisor further stated that, based on her conversations with the Student, it was her impression that the Student was misgendered by College faculty every day, and that she had told the Student to document the comments.

The Advisor told OCR that she informed the Student that she could use the College's grievance process to make a complaint. The Advisor also stated that she did not know, specifically, what the grievance process entailed, but that she believed it involved the Vice President of Student Services, whom she stated may be the College's Title IX Coordinator.

B. Academic Year [Redacted Content]

The Student stated that College faculty and administrators continued to misgender her on an almost daily basis during the [redacted content] academic year. For example, according to the Student, on or around [redacted content] Professor 2 misgendered her multiple times during class, and then apologized to her in front of the class by stating that when she "looks at [the Student]," all she sees is the Student's "physical appearance." The Student stated that on [redacted content], Professor 1 referred to the Student by her previous male name in front of a [redacted content]. The Student also stated that on [redacted content], Professor 4 misgendered her in front of a College staff member, and that during the week of [redacted content], Professor 4 misgendered her during class. With respect to this later incident, the Student told OCR that she left class and did not return because she feared being misgendered in front of other students again, and that Professor 4 apologized to her later and they discussed the importance of using correct pronouns.

According to the narrative response the College provided to OCR, Professor 4 inadvertently misgendered the Student when Professor 4 started to say "he," then quickly corrected herself, such that it came out as "he-she." The College stated that the Student told Professor 4 that she was leaving class because she did not feel well and did not mention Professor 4's accidental misgendering. The College reported that there was no further follow-up to this incident. The Student told OCR that in [redacted content], another [redacted content] Program professor (Professor 5) referred to the Student using male pronouns on at least two occasions, each time the Student corrected her, and on one occasion, Professor 5 responded that using the Student's correct pronouns "wasn't [her] priority." The Student further stated that Professor 1 and Professor 2 each misgendered the Student during [redacted content].

The Student told OCR that on [redacted content], she spoke with the College's Admissions and Records Director (the Records Director) about the incidents described above, specifically identifying faculty and staff members who had misnamed and misgendered her. According to the Student, the Records Director took notes and asked her if she would like to file an official report, and that she responded no, because the Dean had previously told her that filing a complaint would not be in her best interest due to concerns about retaliation.

The Student told OCR that her grades suffered and she experienced hair loss, anxiety, and depression, and felt suicidal on occasion as a result of being misnamed and misgendered repeatedly by College staff and faculty, especially when it occurred in front of other students. For example, according to the Student, during [redacted content], the Director began the class by saying, "Listen up ladies," and then paused and looked at the Student and said "...and people." On [redacted content], during a conversation with the Student and another student about [redacted content], Professor 2 stated that the Student needed to adjust "his mask."

The College told OCR that it was never notified of any alleged harassment on the basis of sex or gender identity, and that no complaints were filed with the College's Title IX Coordinator. The College also stated, however, that faculty members had "inadvertently misgendered or 'deadnamed'" the Student on three occasions. In addition to the incident with Professor 2 on [redacted content], and the incident with Professor 4 on [redacted content], (both described above), the College stated that in [redacted content], Professor 6 misgendered the Student when Professor 6 asked another student to repeat their response louder because "he" (referring to the Student) was seated in the back of the room and could not hear the response. According to the College, the Student approached Professor 6 after class and "expressed embarrassment at being incorrectly identified with a male pronoun," and Professor 6 apologized and vowed to "think before [she] speak[s]" so that she would not repeat this mistake. The College stated that there was no evidence that the Student complained about this incident to the College's Title IX office or anyone else. The College further stated that on all three occasions, "the faculty members either corrected their error or apologized and promised to try to use correct gender pronouns and name in the future." The Student told OCR that such apologies were not sufficient to address the problem in a context where she was being repeatedly misgendered by College faculty members.

C. Publication of Title IX Policies and Procedures

The Student told OCR that she was not aware of the protections of Title IX or the College's Title IX complaint process, including whether the College had a Title IX Coordinator and what the role of a Title IX Coordinator was. During the time the Student was enrolled at the College between [redacted content] 2018 and [redacted content], the Title IX regulation required the College to publish a notice of nondiscrimination with the contact information for a designated Title IX coordinator as well as grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its regulations. On August 14, 2020, amendments to the Department's Title IX regulation took effect that required a revised notice of nondiscrimination and revised grievance procedures specific to sexual harassment, as defined in the regulation. OCR reviewed the College's Title IX notice of nondiscrimination, grievance procedures, and policies that were in effect while the Student was enrolled as well as the current sexual harassment procedures and policies to determine if the College updated them.

The College's notice of nondiscrimination appears in its Board Policy (BP) and Administrative Procedures (AP) 3410. In 2018-2019 and currently, BP 3410 prohibits discrimination based upon gender, gender identity, and gender expression and because any person is perceived to have one or more of these characteristics. AP 3410 states that the term "'gender' means sex, and includes a person's gender identity and gender expression," as defined in the [California] Penal Code. The College's BP 3430 entitled, *Prohibition of Harassment*, previously and currently prohibits harassment based on sex, gender, gender identity, gender expression and because any person is perceived to have one or more of these characteristics. During academic years 2018-2019 and 2019-2020, the College's BP 3430 stated that all complaints involving unlawful harassment, including harassment based on sex, gender, gender identity, or gender expression, should be reported by following the procedures described in AP 3435. During academic years 2018-2019 and 2019-2020, AP 3435, entitled *Discrimination and Harassment Complaints and Investigation*, stated that complaints that involve allegations of "sexual misconduct," defined as sexual harassment and sexual violence including unwanted conduct of a sexual nature, should be

reported to the College's Title IX Coordinator immediately. The College's AP 3435 listed the Title IX Coordinator as the Vice President of Student Services, but did not include that person's name, and the contact information was provided later in a separate section where students might miss it. During the relevant period, AP 3435 did not clarify whether allegations of harassment based on sex, gender, gender identity, or gender expression other than allegations of sexual misconduct that were sexual in nature could be reported to the Title IX Coordinator.

OCR reviewed the College's [redacted content] Program Handbook from the [redacted content] academic year when the Student was enrolled for information as to how to make a complaint of sex-based harassment. The Handbook includes an "Equal Opportunity Statement," which states that the College does not discriminate based on multiple bases, including "sex, pregnancy, sexual orientation, gender identity/expression." Handbook at 31. This Statement does not explain how to file a complaint of sex discrimination or provide information about a Title IX Coordinator. Under a section entitled, "Sexual Harassment," the Handbook states:

Sexual harassment is a form of discrimination which includes any repeated, unwelcome sexual attention. It can happen with [redacted content], instructors, or peers. It is the policy of Taft College that sexual harassment is not tolerated. Problems of sexual harassment should be immediately brought to the attention of faculty or staff. In addition, the incident should be discussed with the clinic leads and/or department chair. TC [redacted content] Department follows campus policy concerning sexual harassment.

This section does not refer to a Title IX Coordinator, nor did any other part of the Handbook.

OCR also reviewed the College's website. It includes a "Title IX Resources" webpage that identifies the Title IX Coordinator as the Vice President of Student Services.³ The Title IX Resources webpage includes a "Reporting Options" section stating that victims of discrimination based on sex or gender expression, or of sexual misconduct have the option of reporting alleged incidents to "either or both" the Taft College Campus Safety Office or the Taft Police Department. The webpage also states: "You may report to the campus Title IX Coordinator, who will provide information regarding complaint procedures for investigating and addressing the incident." The webpage does not clarify whether the Title IX Coordinator is a "reporting option" apart from or in addition to Campus Safety and the College Police Department.

OCR also reviewed the College's current Title IX policies and procedures to determine if the College updated them to comply with the 2020 amendments to the Department's Title IX regulations. OCR found that the College has a separate BP and AP entitled *Prohibition of Sexual Harassment under Title IX* and that its current AP 3430 distinguishes between "sexual harassment" as defined in the amended Title IX regulation and other sex-based harassment. Specifically, AP 3430 defines "general harassment" based on sex, gender, gender identity, and gender expression and separately defines "sexual harassment" consistent with the definition in the amended Title IX regulation. AP 3430 states that complaints about sexual harassment under Title IX must proceed under BP 3433, *Prohibition of Sexual Harassment Under Title IX*, and AP

³ See <https://www.taftcollege.edu/campus-life/title-ix-resources/>.

3434, *Responding to Harassment based on Sex Under Title IX*. AP 3434 provides the name and contact information for the “Student Title IX coordinator” and the “Employee Title IX Coordinator” and explains that reports and formal complaints of sexual harassment may be made to the Title IX coordinator.

AP 3430 further states that complainants should use the procedures in AP 3430 for “other forms of sexual harassment or gender-based harassment” and should immediately report such incidents by following the procedures in AP 3435. AP 3435, entitled *Discrimination, Harassment, Bullying, or Retaliation Complaint Investigation Procedure*, opens by stating that complaints of sexual harassment under Title IX must proceed under BP 3433, AP 3433, and AP 3434, and that the procedures in AP 3435 apply to “other forms of sexual harassment or gender-based harassment.” AP 3435 explains how to file a complaint about these other forms of sex-based harassment but does not allow filing such complaints with the Title IX coordinator. AP 3435 states that “Complaints must be filed with the Vice President of Human Resources [HR] unless the Party submitting the Complaint alleges discrimination, harassment, bullying, or retaliation against the responsible district officer, in which case it should be submitted directly to the Superintendent/President or the State Chancellor of the California Community Colleges [CCCCO].” AP 3435 allows students to file a complaint about these other forms of harassment using a form available on the CCCCCO website or to make a “verbal Complaint” to the Vice President of HR, who will record the verbal Complaint in writing.

The amended Title IX regulations require training the Title IX coordinator and others on the requirements for sexual harassment complaints. *See* 34 C.F.R. § 106.45(b)(1)(iii). When OCR asked the College about its Title IX training, the College stated that it requires faculty and staff to complete a two-hour training on sexual harassment every other year. The College provided OCR with a summary of its sexual harassment training during the 2019-2020 academic year, and these materials did not include any information showing that staff were receiving training on harassment based on sex stereotypes.

III. Legal Analysis and Resolution

OCR analyzed the facts summarized above under the legal standards set forth at the start of this letter to evaluate the two legal issues that OCR investigated in this case. Based on the evidence obtained to date, OCR found that the College violated Title IX with respect to Issue 1 and identified compliance concerns regarding Issue 2, as discussed below.

Issue 1: Whether employees of the College discriminated against the Complainant on the basis of sex by repeatedly referring to the Complainant by the incorrect pronouns and name and referring to transgender and non-binary individuals or issues in a derogatory manner in the presence of the Complainant and other students and [redacted content], and whether the College failed to respond promptly and effectively to notice of this harassment.

For the reasons given below, OCR found that the College failed to respond promptly and effectively to notice of sex-based harassment of the Student, and that as a result the College subjected the Student to a hostile environment in violation of the Title IX regulations in place at that time.

The Student told OCR that in [redacted content], she came out to College faculty, including notifying them of her new female name. The Student stated that thereafter, on average, College employees called her by her previous male name and/or male pronouns on an almost daily basis, sometimes several times a day, for over a year from [redacted content] until she graduated in [redacted content]. The Student provided details of more than a dozen specific incidents during which seven different College staff and faculty members referred to her by her previous male name and/or with male pronouns. The Advisor also told OCR that it was her impression that the Student was being called by her prior male name and male pronouns every day. The Student stated that she told the Dean and the Director on a number of occasions that she was being misnamed and misgendered by College faculty and staff. The Advisor's account was consistent with the Student's account in this respect as well. The College told OCR that it had no notice of this alleged sex-based harassment; however, the College also stated that it was aware of three incidents during which two [redacted content] Program faculty members "inadvertently" referred to the Student using male pronouns or her previous male name, including one incident which occurred after the Director, Dean, and Professor 2 had met to discuss "ways to ensure that they were using the Student's preferred name and pronouns."

OCR was concerned that College employees also may have harassed the Student on the basis of sex, including sex stereotypes, in two respects. First, the evidence raised a concern that the Director criticized the Student's pronoun choice and provided program advice that differed based on sex by telling the Student that plural pronouns were "invalid" or legitimate only among members of the LGBTQ community, and that maybe the College was not the right place for the Student. Second, OCR was concerned that employees harassed the student for her alleged lack of conformity with female sex stereotypes. For example, the Student reported Professor 2's remark that when she "looks at the Student," all she sees is the Student's "physical appearance" and the Advisor's statement that the Student had reported a faculty member telling the Student that they would not refer to the Student with female pronouns because she did not look "feminine enough." The Student stated that these incidents made her feel humiliated, embarrassed, and dismissed and negatively impacted her education because she left class and did not return to avoid being misgendered again on some occasions, such as in Professor 4's class on [redacted content].

OCR found that the College did not respond promptly or effectively to the Student's reports that she was being subjected to sex-based harassment by multiple College faculty and staff, and did not take steps to remedy the alleged harassment and prevent its recurrence. The Student stated that she was misgendered or misnamed by College employees almost every day, sometimes multiple times a day, until she graduated, and that these actions affected her grades as well as caused her to feel suicidal. The Student stated that she twice informed Professor 1 that she felt depressed and suicidal as a result of sex-based harassment, and that he responded by suggesting that she not think about her gender identity. Additionally, the College stated that Professor 2, the Dean, and the Director were aware that the Student was feeling suicidal due to the alleged persistent sex-based harassment. Based on the evidence, OCR found that the College failed to take prompt and effective steps to address and prevent the recurrence of the harassing conduct that the Student had described.

Issue 2: Whether the College failed to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sex discrimination.

Based upon the evidence gathered to date, OCR identified a compliance concern that the College may not have provided adequate notice to students, staff, and faculty of how to make a complaint of sex-based harassment under Title IX and may have failed to adequately notify the College community of its Title IX Coordinator and how to contact this person. The College's policy for reporting allegations of sex-based harassment during the 2018-2019 and 2019-2020 academic years, AP 3435, did not identify the Title IX Coordinator and seemed to indicate that only allegations involving unwanted conduct of a sexual nature could be reported to the College's Title IX Coordinator, and not allegations of harassment based on sex, gender, gender identity, or gender expression. The College's [redacted content] Program Student Handbook did not include information about the College's grievance procedures for complaints of sex-based harassment or the identity of and contact information for the Title IX Coordinator and did not include any information that would notify students that the type of harassment that occurred here could be addressed through the Title IX grievance procedure. In addition, the evidence included that the Student stated that she was not aware of the identity of the College's Title IX Coordinator, or that she could make a complaint of harassment using the College's grievance procedures in the [redacted content] academic years. The Advisor also told OCR that she was not aware of the specifics of College's grievance procedures for complaints of sex-based harassment, other than she believed the Student could have reported her concerns to the Vice President of Student Services, whom the Advisor believed might be the College's Title IX Coordinator.

Further, the College's Title IX Resources website contained confusing information about the process for making a complaint of sex-based harassment. The website stated that a victim of sex or gender expression-based discrimination or sexual misconduct has the option of reporting the incident to "either or both the College's Campus Safety Office and College Police Department." The Title IX coordinator is not included among these "reporting options"; however, a later section of the webpage states that a person "may report to the campus Title IX Coordinator," who will provide them with information about the applicable College complaint procedures, resources, and information about their "rights and options." It is not clear from this language what types of conduct a person should "report" to the Title IX Coordinator, and whether such a report is in addition to, or separate from, reporting to the Campus Safety Office and College Police Department.

Similarly, the College's current Title IX policies (BP) and procedures (AP) could be confusing to students about how to file a complaint about harassment based on sex if the conduct does not involve harassment of a sexual nature. For example, when the conduct involves staff refusing to use and/or repeatedly misusing a student's preferred name and pronouns, as the Student alleged in this case, this may constitute sex-based harassment that could create a hostile environment under Title IX and such harassment could be reported to the Title IX coordinator. However, this is not clear from any of the College's Title IX or harassment policies or procedures; indeed most of them do not even reference Title IX among the relevant laws referenced at the top of each AP and BP. Presently the College has separate procedures for complaints of sexual harassment (AP 3433 and AP 3434) and other complaints of sex-based harassment (AP 3430 and AP 3435). As noted above, AP 3435 states that complaints of sexual harassment under Title IX must proceed under BP 3433, AP 3433, and AP 3434, and that the procedures in AP 3435 apply to "other

forms of sexual harassment or gender-based harassment.” AP 3435 leaves unclear if “gender-based harassment” may be reported under Title IX. OCR is also concerned that AP 3435 does not allow filing such complaints with the Title IX coordinator.

The attached Resolution Agreement will resolve OCR’s concerns in this case by requiring the College to revise its policies and procedures regarding harassment to clarify for students that when employees or students refuse to use a student’s preferred names and pronouns or repeatedly misuse them, this may constitute harassment based on sex that can create a hostile environment under Title IX and such harassment may be reported to the Title IX coordinator.

Conclusion

To address the violation and compliance concern identified above, the College agreed to enter into a resolution agreement that when fully implemented would resolve the violation and compliance concern. This concludes OCR’s investigation of the complaint and 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. OCR is closing the investigation of this complaint as of the date of this letter and notifying the Student concurrently. 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.

Please be advised that the College may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, the individual subjected to such retaliatory treatment may file another complaint alleging retaliation.

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, personally identifiable 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 OCR attorneys Matthew Wood at Matthew.Wood@ed.gov or Lele Yutzy at Lele.Yutzy@ed.gov.

Sincerely,

/s/

Anamaria Loya
Chief Attorney

Enclosure