



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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November 22, 2023

**Via email only to: Chris@ssaportland.com**

Mr. Chris Huffstutter  
School Director Summit  
Salon Academy  
8820 Southwest Center Street Portland,  
Oregon 97223

Re: **Summit Salon Academy**  
**OCR Reference No. 10222163**

Dear Mr. Huffstutter:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint against Summit Salon Academy. OCR investigated whether the Academy discriminated against students based on sex by failing to respond in a manner consistent with the requirements of Title IX of the Education Amendments of 1972, when it received reports that students were sexually harassed by an instructor during 2021 and 2022. OCR also investigated whether the Academy retaliated against the Complainant, XXXXXX, because she reported sexual harassment, by XXXXXXXXXXXXXXXX.

OCR investigated this case under the authority of Title IX of the Education Amendments of 1972, 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 educational programs and activities that receive federal financial assistance. As a recipient of federal financial assistance from the Department, the Academy is required to comply with Title IX.

As part of its investigation, OCR interviewed the Complainant, 12 current and former Academy students, the Academy's Operations Manager (Manager), and the Academy's Director (Director). OCR also reviewed documents provided by the Academy related to its compliance with Title IX, including the Academy's Title IX policies and procedures.

After careful review of the evidence gathered during the investigation, OCR has determined that the Academy violated Title IX by: (1) failing to respond to a report of sexual harassment in a manner consistent with the Title IX regulations, including a failure to promptly discuss available supportive measures and provide information about how to file a formal written complaint; (2) failing to respond to a written complaint of sexual harassment in a manner consistent with the grievance process described in the Title IX regulations, including conducting an investigation into the allegations and providing remedies designed to restore or preserve equal access to the

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Academy's education program or activity; and (3) failing to comply with the procedural requirements of Title IX; specifically, not including in the Academy's grievance procedures the provisions required by Title IX; not prominently displaying on its website the name and contact information for its Title IX Coordinator and a non-discrimination statement; failing to ensure its Title IX Coordinator promptly contacted complainants to discuss the availability of supportive measures and to explain the process for filing a formal complaint; and not maintaining records as required by Title IX.

With regard to the Complainant's allegation of retaliation, OCR determined that the evidence is insufficient to establish that the Academy failed to comply with Title IX with respect to this issue.

OCR has determined that it is appropriate to resolve the identified Title IX violations through a Resolution Agreement pursuant to Section 303(c) of the OCR *Case Processing Manual* (CPM), which provides for resolution agreements in cases with "mixed determinations" when some allegations result in a finding of a violation and other allegations result in a finding of insufficient evidence. Below is an explanation of the applicable Title IX legal standards OCR applied in making its determinations, along with its factual findings and legal conclusions.

### **Legal Standards**

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), 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 a recipient of Federal financial assistance.

Sexual harassment is defined under 34 C.F.R. § 106.30(a) and, as relevant to this case, includes the following definition: unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

Title IX and its implementing regulations, at 34 C.F.R. § 106.44, require a recipient with actual knowledge of sexual harassment in an education program or activity of the recipient to respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent if its response is clearly unreasonable in light of known circumstances. The regulation at 34 C.F.R. § 106.44 further states that a recipient's response must treat complainants and respondents equitably by offering supportive measures as defined in § 106.30, and by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or non-supportive measures. Additionally, the regulation states that a Title IX Coordinator must promptly contact a complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

As defined under 34 C.F.R. § 106.30(a), supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Examples of supportive measures in the regulation include, among other things, counseling, course related adjustments, modification of class schedules, mutual restrictions on contact between the parties, monitoring of certain areas, and other similar measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

In response to a formal complaint filed by a complainant, the regulation implementing Title IX, at 34 C.F.R. § 106.44(b)(1), requires that a recipient follow a grievance process that complies with 34 C.F.R. § 106.45. The regulation implementing Title IX, at 34 C.F.R. § 106.8(c), provides that a recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30.

For postsecondary institutions, the regulation implementing Title IX, at 34 C.F.R. § 106.45(b)(6)(i), requires that the recipient's grievance process must provide for a live hearing. The regulation implementing Title IX, at 34 C.F.R. § 106.45(b)(7)(i), requires that the decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. .

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires that each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the “Title IX Coordinator.” The regulation implementing Title IX, at 34 C.F.R. § 106.8(b)(2), provides that each recipient must prominently display on its website and in each handbook or catalog that it makes available the contact information for the recipient’s Title IX Coordinator.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b)(1), requires that a recipient must also notify persons that the recipient does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate.

The regulation implementing Title IX, at 34 C.F.R. § 106.71, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Title IX or who files a complaint, testifies, assists, or participates in a proceeding under Title IX.

For each sexual harassment investigation conducted by the recipient, the regulation at 34 C.F.R. § 106.45(b)(10)(i) requires the recipient to maintain records for a period of seven years,

including any determination regarding responsibility, any discipline imposed on the respondent, and any remedies provided to the complaint. For each response required of under § 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complaint with supportive, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

## **Issue 1: The Academy's Response to Reports of Sexual Harassment**

### **Findings of Fact**

The Academy is a cosmetology school with locations in several states. The incidents at issue in this investigation took place at the Academy's location in Tigard, Oregon, a suburb of Portland. The Academy teaches esthetics, hair design, and nails. According to its website, the Academy employs three to five educators in its educational program. Academy records indicate that 183 students attended the Academy at different times from 2020 through 2022. The Complainant worked at the Academy as an educator from March 2021 until June 20, 2022, when the Academy terminated her employment.

As described below, numerous students shared information with OCR about sexual comments and behavior by one of the Academy instructors (Instructor). Two students specifically told OCR that they were sexually harassed by the Instructor and that they reported it to the Academy. These students are referred to below as Student 1 and Student 2.

#### **1. Student 1's Report of Sexual Harassment**

The Complainant reported to OCR that in XXXXXX, XXXXXXXXXXXXX, the Instructor told her that he had just completed teaching a class on Brazilian waxing, and while demonstrating how to conduct a Brazilian wax on Student 1, he had inserted his fingers into her vagina. The Complainant told OCR that when the Instructor shared this information with her, he did not appear to suggest that his conduct had been accidental. The Complainant told OCR that the Instructor was giggling and she described his demeanor as "giddy." The Complainant told OCR that immediately following the Instructor sharing this with her, she reported this incident to the Manager. When OCR interviewed the Manager, she stated that the Complainant never reported this incident. OCR's review of all available documents did not resolve these conflicting statements.

In an interview with OCR in XXXXXXX, Student 1 relayed to OCR that in early spring of 2022<sup>1</sup> while in the Academy's Brazilian waxing class, she and two other students volunteered to

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<sup>1</sup> Witnesses provided conflicting dates for this incident. The Complainant recalled that the incident was reported to her by the Instructor in June 2022. Student 1 told OCR that it occurred in "the spring" of 2022.

be persons on whom other students could practice waxing. Student 1 explained that the Brazilian waxing class took place behind closed doors, and that the only Academy staff member present was the Instructor.

Student 1 told OCR that the Instructor came over to assist the two students who were practicing on her and began joking and making comments such as, “I can see your lungs.” Student 1 told OCR that the Instructor then “flicked” her vagina during the waxing procedure. Student 1 indicated that soon after the incident, the Instructor started making comments in the break room, in front of other people, such as “I’ve been inside of you.” She stated that these types of comments from the Instructor continued from the time of the incident until XXXXXX. Student 1 shared with OCR that following the incident, she found it hard to get out of bed in the morning and did not want to attend her classes at the Academy. As a result, she missed a number of school days. She explained that the Academy fines students \$60-\$80 if they miss a day of school.

At the time of Student 1’s XXXXX interview with OCR, she had not yet made a report to the Academy about the Instructor’s conduct. In a second interview with OCR on XXXXXXXX, Student 1 told OCR that on XXXXX she had met in-person with the Manager and the Director and disclosed to them the events that occurred in the Brazilian waxing class. During the interview with OCR, Student 1 did not detail what she said during the XXXXXX meeting; rather she shared her written notes which she told OCR she read from directly to the Director and the Manager.

According to her notes, Student 1 reported to the Director and the Manager that “last year I was sexually assaulted” when the Instructor “flicked my clit[oris] twice...during an intimate waxing” demonstration. The notes reflect that she also reported that during the procedure, the Instructor said “how I like it rough in bed because I laugh at the pain of my Brazilian [a]nd other things a teacher shouldn’t say.” The notes further reflect she told them that after the incident “he would tell me he’s been / seen inside of me.” The notes also state that the Instructor made comments about her breast size and her sex life, all in front of other students. The notes reflect she told the Director and Manager that she was having anxiety, post-traumatic stress, depression and suicidal thoughts because of this event, and this was the big reason she had been missing school. The notes also reflect that she told the Director and the Manager that she “fear[ed] for others,” and she referred to the Instructor as a “predator.”

The Director’s notes from this XXXXXX meeting reflect much of the same information that Student 1 told OCR she read to them from her notes. The Director’s notes reflect that Student 1 reported that during the waxing instruction the Instructor “flicked her clitoris twice” and made comments during the procedure such as “I bet your [sic] nasty in bed.” In his notes, the Director characterized these comments as “inappropriate conversation.” The notes also reflect that Student 1 reported that she was having suicidal thoughts as a result of the incident and that she expressed “fear for other people because it may happen again.”

Student 1 told OCR that at the meeting on XXXXXXXX, the Manager and Director expressed concern for her well-being and asked if she needed counseling, to which Student 1 responded that she was already in counseling. Student 1 also provided OCR with an email sent to her by the Manager after she reported the incident, in which the Manager gave Student 1 the names of three different cosmetology schools to consider transferring into. Student 1 told OCR that she saw the email as reflective of concern on the part of the Director and Manager that Student 1 might harm herself if she stayed at the Academy.

During their interviews with OCR, the Director and Manager indicated that the intent of providing Student 1 with names of other schools was not to encourage her to leave. Rather, they each stated that they provided this information to Student 1 in order to give her options to continue her education in case she felt so unsafe at the Academy as to not want to return.

The Director and Manager also told OCR that after Student 1 reported the sexual conduct by the Instructor, she requested, and they granted, a leave of absence for her pending the resolution of her allegations. Academy records indicate the leave began on XXXXXXXX, and was not for more than two weeks. The Director explained to OCR that a leave of absence does not count against a student with respect to the Academy's attendance requirements. There is no indication in the record that the Director or Manager discussed with Student 1 whether, instead of a leave of absence, there were supportive measures they could offer that would have enabled Student 1 to return to her classes while the resolution of her report was pending.

The Director also told OCR that prior to Student 1's report to them about the incident, she was already having attendance issues and already owed the Academy fees related to missed days. The Director told OCR that, at the time of Student 1's report, neither he nor the Manager addressed with Student 1 the issue of her prior absences or payments due because of them and there is no indication in the record that they addressed her representation to them that the absences were related to the conduct of the Instructor.

The record does not reflect that following Student 1's report of sexual harassment, the Academy's Title IX Coordinator contacted her to discuss the availability of supportive measures, inform her of the availability of supportive measures with or without the filing of a formal complaint, and explain to her the process for filing a formal complaint. Similarly, Student 1 told OCR that neither the Director nor the Manager provided her information about the Title IX complaint process or about how to file a formal written complaint. The Director confirmed this and explained to OCR that they never discussed the filing of a written complaint following Student 1's verbal report on XXXXXXXX, because the Academy had already determined to investigate her allegations based on her verbal report. The Director also told OCR that on XXXXXXXX the Instructor was put on administrative leave pending completion of the Academy's investigation.

The Manager and Director told OCR that following Student 1's report, the Director began an investigation on XXXXXXXX. The Director told OCR that he was the person responsible for

investigating and responding to this report of sexual harassment and that the Academy's Title IX Coordinator was not involved in the response to this incident.

The Director told OCR that he interviewed the Instructor about Student 1's allegations, and the Instructor explained that some wax had dripped inside her [Student 1's] vagina and, consistent with how this procedure is done, he 'flicked' it off of her. The Director explained to OCR that "flicking" is the term used for this action during a waxing. The Director told OCR that the Instructor denied saying "I've been inside you" to Student 1 but acknowledged to the Director that after the waxing he said, "now we are really close." The Director told OCR that he could not conclude, based on this information, that the Instructor had touched Student 1 inappropriately since the act of "flicking off" dripped wax was consistent with how the practice is done. The Director provided no further detail about the appropriate process and the notes did not provide further information about how the Director reached this conclusion.

The Director also interviewed two employees and one student. His notes from the employee interviews do not reflect that the Director asked about the sexual conduct or comments alleged by Student 1, but rather asked, "Have you ever heard or witnessed a staff member speak inappropriately to a student?" In response, both answered "yes" without any further elaboration reflected in the notes and both identified the Instructor as the perpetrator. The Director then asked, "what was your response?" and both indicated they told the Instructor he should not speak to students that way. The interview notes do not reflect that the Director asked the employees what comments they had heard the Instructor make, whether they were sexual, or to whom the Instructor made them. The Director confirmed to OCR that he did not ask for any additional details from the employees and he did not follow up on the information they provided, citing student privacy as the reason for not seeking details. The student who the Director interviewed had been in the waxing class but said she was looking down focused on her own work and didn't see anything inappropriate. There is no record of interviews with students who may have witnessed the alleged waxing incident, including the two students who had been practicing the procedure on Student 1.

On XXXXXXXXXX, the Director concluded his investigation, and the Academy issued a formal written response to Student 1. The response states that the Director conducted interviews of "all employees and students possible" and that, although the Academy "could not confirm all of [Student 1's] allegations, it does appear that inappropriate behavior and violations of Academy policy took place, specifically in violation of the sexual harassment policy." The Director explained to OCR that his conclusion was based on the information he had gathered during the investigation indicating that the Instructor had spoken "inappropriately" to students.

The Director told OCR that on this same day, he terminated the Instructor's employment for having violated the Academy's policies regarding sexual harassment. There is no indication in the record that the Academy's response included measures designed to remedy the effects of the Instructor's sexual harassment of Student 1.

The records provided by the Academy to OCR regarding its response to Student 1's report do not document why its response was not deliberately indifferent, what supportive measures it took to restore or preserve equal access for Student 1 to the Academy's programs, or if they did not provide supportive measures, the reasons such a response was not clearly unreasonable in light of the known circumstances. Additionally, the records do not include any audio or audiovisual recording or transcripts of a hearing nor do the records reflect why the Academy did not hold a hearing.

## 2. Student 2's Report of Sexual Harassment

Student 2 informed OCR that in XXXXXXXX, the Instructor pulled the top of her dress out and poured glitter down her dress and onto her breasts in front of other students. In an interview with OCR, another student, who witnessed the event, corroborated Student 2's account of what occurred, stating that the Instructor poured glitter onto Student 2's breasts. This witness also stated that at the time the Instructor poured glitter on Student 2, he made a comment insinuating that Student 2 was a "hooker" and should be on the side of the street. The witness stated to OCR that she was so uncomfortable with the Instructor's behavior that she told him that what he did was "not ok."

Student 2 told OCR that on XXXXXXXX, within several days of the incident, she made a complaint about the Instructor's conduct to the Manager in an email. Records the Academy provided indicate that Student 2 sent an email to the Manager on XXXXXXXXXX, complaining in writing that the Instructor had poured glitter on her, that he made her uncomfortable, and his behavior was "not okay." In her email, Student 2 also raised concerns about the education she was receiving at the Academy, unrelated to the sexual harassment allegations.

Student 2 told OCR that following this written complaint, she met with the Manager and the Director together to discuss her allegations. Student 2 told OCR that at the meeting, she reiterated that the Instructor had poured glitter down her dress. She also told OCR she reported that the Instructor had made sexual comments to her that made her uncomfortable. Records the Academy provided OCR corroborate this information. Specifically, the Director's notes from the meeting indicate that Student 2 recounted the glitter incident and also reported comments the Instructor had made to her which she expressly identified as sexual harassment. The notes reflect that Student 2 gave examples of sexual comments made to her by the Instructor. Student 2 said that the Instructor had once suggested that she create videos of herself eating and post them to a website that hosts sexual content. She also said that he made comments anytime she wore something fitted, and once referred to her clothing as a "nighty." Further, the Director's notes of the meeting indicate that Student 2 complained about the Instructor sexually harassing other students. Specifically, the notes reflect that Student 2 told the Director and Manager that the Instructor "pushes things over the line," and gave an example of him commenting on a student's "bubble butt."

In an interview with OCR, the Manager stated that she did not understand Student 2's complaint about the Instructor to be one alleging sexual harassment. She stated that she interpreted the



report to be about an act of silliness on the Instructor's part that made Student 2 uncomfortable. However, the Director's contemporaneous notes from the meeting reflect that Student 2 was expressly alleging sexual harassment. The Director told OCR that Student 2 did not tell him or the Manager specifically that the glitter was poured onto her "breasts;" he stated, rather, that Student 2 said the Instructor poured glitter over her head and that it hit her "chest." The Director's meeting notes, however, refer to the glitter incident as "the day he [the Instructor] poured glitter on her chest."

There is no indication in the record that following Student 2's complaint of sexual harassment, the Academy's Title IX Coordinator contacted her to discuss the availability of supportive measures, inform her of the availability of supportive measures with or without the filing of a formal complaint, and explain to her the process for filing a formal complaint.

Similarly, Student 2 told OCR that neither the Director nor the Manager discussed supportive measures with her, such as counseling, schedule adjustments, or other ways in which they might be able to minimize contact between her and the Instructor. Student 2 indicated that, on her own, after the meeting, she took steps to reduce her interactions with the Instructor, including seeking out other educators if she needed help and only interacting with the Instructor if she had a question and no one else was available. Student 2 stated that following her report, the Instructor minimized interactions with her for a day or two, but soon resumed daily contact with her, including making sexually harassing comments. Student 2 told OCR that she never received any information indicating that there was an investigation into her report or whether the Academy took any action in response to her report.

The Academy's records indicate that, following Student 2's report, the Academy interviewed the Instructor and four students. Academy records reflect that the interview of the Instructor was on XXXXXXXXXX, three weeks after Student 2's report, but there are no dates given for the student interviews. The notes from these interviews indicate that the Instructor and the students were asked questions about educational issues raised by Student 2 unrelated to sexual harassment. No questions were asked about the glitter incident or the alleged sexually harassing comments. When asked about this by OCR, the Director said that he had spoken to the Instructor about the glitter incident and the Instructor stated that he was "playing around." The Director told OCR that he and the Manager directed the Instructor to stay away from Student 2 because that's what they understood Student 2 wanted as result of her complaint. However, as explained above, Student 2 told OCR that following her complaint, the Instructor stayed away from her for only 2 days and then resumed his harassing behavior towards her. OCR notes that for the remainder of Student 2's time at the Academy, until she graduated in September 2022, the Instructor remained at the Academy and, as reported by Student 2, his sexually harassing behavior remained unchanged. There is no indication in the record that the Title IX Coordinator was consulted or played any role in the response to Student 2's complaint and the Director told OCR that no further action was taken in response to Student 2's complaint.

Academy records, provided by the Academy to OCR regarding its response to Student 2's sexual harassment complaint, do not document its determination regarding the Instructor's

responsibility for the alleged conduct, what, if any, discipline was imposed, and what, if any, remedies were provided to Student 2. There is also no documentation explaining the Academy's basis for concluding that its response was not deliberately indifferent, or that a decision not to discipline the Instructor and provide Student 2 with supportive measures, was not clearly unreasonable in light of the known circumstances.

### 3. Other Harassing Behavior of the Instructor

The Complainant told OCR that the Instructor made comments about students' bodies and clothes, and that his comments made students uncomfortable. As stated above, based on this information, OCR conducted interviews with 12 current and former Academy students, including Students 1 and 2.

Four of the students indicated to OCR that the Instructor made sexual comments about their bodies or appearance that made them uncomfortable. Of the students interviewed, seven told OCR that during their time at the Academy they heard the Instructor make sexual jokes and sexual comments regarding students' bodies. One student told OCR that the Instructor made sexual and inappropriate comments "all the time," "all day," and "every day." Another told OCR that the number of sexual comments was "more than what would be appropriate at any normal school or normal job," and that the Instructor made sexual comments and jokes that made her uncomfortable every single day. She recalled one day specifically when the Instructor spoke at length about penis size in a manner that made her very uncomfortable. Another student echoed this, stating that the Instructor's sexual comments occurred "at least every day."

Another student told OCR that the Instructor had said to her, "you're lucky someone doesn't walk up to you and grab your ass." This same student also told OCR that the Instructor made comments about her clothing and body so frequently that she started wearing baggy clothes to school. Three other students independently told OCR that they had heard the Instructor make unwelcome sexual comments to this student about her body.

Other student witnesses told OCR that they observed the Instructor touching students in ways that appeared to make those students uncomfortable. One student told OCR that the Instructor gave shoulder massages and played with the hair of students, particularly younger students. She added that the Instructor's touching of students occurred on a daily basis, and that there were students who shied away from the Instructor but didn't know how to set a boundary with him. One student told OCR that she had spoken up to the Instructor and told him to stop touching another student after that student had specifically asked the Instructor not to touch her, yet he had persisted.

Students also described concerns specifically with the way the Brazilian waxing portion of the Academy's Esthetics Course was structured. As described to OCR, the Instructor pressured or "guilt tripped" students into volunteering to be the subject for waxing demonstrations. One student expressed discomfort with the way the Instructor conducted the Brazilian waxing demonstration. The student added that student volunteers were exposed without any draping and

there was no concern for the privacy or modesty of the volunteering students. She explained that once a volunteer was selected, that student could be on the demonstration table for an hour or more while students practiced pulling a wax strip off the student.

When OCR interviewed the Manager and the Director, both denied knowing about any additional incidents of sexual harassment by the Instructor apart from the specific reports made by Student 1 and Student 2. They each told OCR that they were aware of instances of the Instructor acting unprofessionally with students, and that this was a subject of ongoing professional development with him.

No students other than Students 1 and 2 told OCR that they reported sexual harassment on the Instructor's part to the Academy. One student told OCR that she did not feel she could talk to anyone at the Academy about her concerns about sexual harassment. By way of explanation, this student told OCR that she knew that Student 2 had reported an incident of sexual harassment to the Academy and that nothing happened in response. In response to OCR's data request, the Academy produced no records to OCR regarding any complaints of sexual harassment other than those concerning Students 1 and 2.

### **Title IX Grievance Procedures and Designation of Title IX Coordinator**

OCR reviewed the documents provided by the Academy in response to OCR's request for its Title IX policies and procedures. One policy was from an undated employee handbook, a second and different policy was contained in the student course catalogs from 2021 and 2022. There is no reference to either policy in the records related to the Academy's response to the sexual harassment reports of Student 1 or Student 2, and the responses to those reports do not appear to track either policy.

The policy in the employee handbook broadly covers all types of harassment, including sexual harassment. The policy includes a definition of sexual harassment, who employees can report harassment to, that investigations will be conducted impartially and may involve interviews, a prohibition against retaliation for making a report of harassment, and what consequences may occur for employees who violate the policy. A review of the employee handbook also establishes that it does not include the name and contact information for the Academy's Title IX Coordinator.

The Academy's policy contained in the 2021 and 2022 student course catalogs, entitled "Harassment (Sexual or non)," provides a definition of harassment. The policy includes a specific procedure to be followed in cases of sexual harassment. It provides that, "A Review Board, made up of school directors, administrators and the school owners will, within five business days, meet to discuss and hear evidence regarding the sexual harassment complaint..." The policy states that questions about a party's medical condition are not permitted without consent. The policy states that those involved in an investigation are requested not to discuss the investigation with others. The policy also states that there can be no retaliation for making a complaint or participating in an investigation. This policy does provide contact information for

the Title IX Coordinator, identified as the Academy's Director of Financial Aid. In an interview, the Director confirmed to OCR that the Academy did not have any additional written policies regarding sexual harassment beyond those it had provided to OCR.

A review of the Academy's website as of the date of this letter establishes that it does not include the name and contact information for the Academy's Title IX Coordinator, nor a statement that the Academy does not discriminate, on the basis of sex, in its program or activity. During OCR's interview with the Director, he was not able to locate the name and contact information for the Academy's Title IX Coordinator or a nondiscrimination statement anywhere on the Academy's website.

### **Issue 1: Response to Sexual Harassment – Analysis and Conclusion**

OCR has determined that the Academy failed to respond to reports of sexual harassment in a manner consistent with the requirements of Title IX and its implementing regulations at 34 C.F.R. §§ 106.44 and 106.45.

#### **1. The Academy's Response to Student 1's Complaint of Sexual Harassment**

Regarding Student 1, OCR has determined that the Academy had actual knowledge of sexual harassment when on XXXXXXXX, Student 1 made a report to the Academy Manager and Director about sexual conduct and sexual comments directed at her by the Instructor. Upon receiving this report, the Academy failed to discuss with Student 1 the availability of supportive measures, consider Student 1's wishes with respect to supportive measures, inform her of the availability of supportive measures with or without the filing of a formal complaint, and explain to her the process for filing a formal complaint as required by 34 C.F.R. § 106.44.

While the Academy granted Student 1 a leave of absence following her report, OCR finds that, under the circumstances, this was not a sufficient supportive measure designed to restore or preserve Student 1's equal access to the Academy's education program as required by 34 C.F.R. § 106.44. The Academy was aware that Student 1 was already having attendance issues prior to her report, yet instead of discussing supportive measures that may have allowed Student 1 to safely attend classes pending the investigation, they offered only a leave of absence which caused her to miss even more school. Further, in XXXXXX, when Student 1 reported the Instructor's sexual conduct, which occurred in the XXXXXXXX, the Academy did not consider whether her absences and accrued fees from the preceding year may have been a direct result of the impact of the harassment, nor did they offer supportive measures that would restore Student 1's access to the education program, such as, for example, to put a hold on collecting any outstanding fees pending an investigation of her report.

OCR also found that the Academy's failure to provide Student 1 with information about her right to file a formal written complaint denied her the benefits of a grievance process pursuant 34 C.F.R. § 106.45, including the obligation for the Academy to conduct an investigation into her allegations. Instead of an investigation that met the requirements of the Title IX regulations, OCR has determined that the Academy made a limited inquiry into Student 1's report that was

not reasonably calculated to determine whether the Instructor engaged in the conduct as alleged. During the interviews of employees, the Director did not seek to determine whether the Instructor made the comments alleged by Student 1, nor did he interview witnesses who were most likely to have been in a position to observe the waxing incident. While the Academy did conclude that the Instructor engaged in sexual harassment, it did not follow a grievance process that complied with the requirements of 34 C.F.R. §106.45 before imposition of any discipline sanctions on the Instructor, as required by 34 C.F.R. §106.44.

Based on the forgoing, OCR finds that the Academy did not comply with the requirements of the Title IX regulations when it received Student 1's report of sexual harassment. The Academy failed to discuss with Student 1 the availability of supportive measures, consider her wishes with respect to supportive measures, inform her of the availability of supportive measures with or without the filing of a formal complaint, and explain to her the process for filing a formal complaint as required by 34 C.F.R. § 106.44. To the extent that the Academy did a limited investigation and sanctioned the Instructor, the Academy failed to follow a grievance process that complied with the requirements of 34 C.F.R. §106.45. OCR finds that the Academy violated Title IX with regard to Student 1's report because its response was deliberately indifferent as defined by 34 C.F.R. § 106.44.

## 2. The Academy's Response to Student 2's Complaint of Sexual Harassment

OCR has determined that Student 2's email complaint and the subsequent supporting information she provided the Academy constituted a formal sexual harassment complaint. This formal written complaint triggered the Academy's obligations under 34 C.F.R. 106.44(b)(1) to follow a grievance process consistent with the requirements of the regulation, including an investigation meeting the specific requirements of 106.45(b)(5). While the Academy suggested they did not understand Student 2's complaint to be about sexual harassment, and that they were under the impression that glitter was poured on Student 2's head not her breasts, OCR has determined that the facts did not support that interpretation of the complaint.

OCR has determined that upon receipt of Student 2's sexual harassment complaint, the Academy failed to discuss or offer supportive measures designed to restore or preserve Student 2's equal access to the Academy's education program as required by 34 C.F.R. § 106.44. By their own admission, the Academy's sole measure taken in response to the Instructor's alleged physical and verbal sexual harassment of Student 2 was to direct the Instructor to "stay away" from Student 2. In the context of the Academy's hands-on learning environment, with only a few Instructors available to teach students, this response served to impede rather than protect Student 2's equal access to the educational program.

OCR has also determined that the Academy failed to provide Student 2 with a grievance process consistent with the requirements of 34 C.F.R. § 106.45(b). Specifically, OCR has found that no investigation was conducted into the complaint allegations that satisfied the requirements of 34 C.F.R. § 106.45(b)(5) and no hearing was conducted as required by 34 C.F.R. § 106.45(b)(6). The Director and the Manager told OCR that they interviewed the Instructor and other students

following Student 2's complaint. However, the interview records do not substantiate that an investigation occurred into the sexual harassment allegations. The records show only that the Director asked questions about Student 2's complaints unrelated to sexual harassment. The Director told OCR that he did ask the Instructor about the allegation that he poured glitter down Student 2's dress and the Instructor said he was "playing around." No further inquiry was made to determine what actually occurred, including interviewing witnesses to the incident. And, because an investigation did not occur, none of the rights pursuant to a sexual harassment investigation were afforded to either party, including notice of what the Academy understood the allegations to be, an opportunity to provide witnesses, an opportunity to view the Academy's records on the matter, a live hearing, and ultimately a determination regarding responsibility, and notice of any findings, as required by 34 C.F.R. § 106.45.

Finally, OCR has determined that the Academy failed to respond to actual notice that the Instructor's sexual harassment may have extended to other students. The Academy's own records indicate that Student 2 reported to them that the Instructor made sexually harassing comments to other students, yet the Academy made no effort to determine if the reports were substantiated. Had the Academy properly followed up on this allegation, it would have likely learned of the widespread nature of the Instructor's sexual comments to other students. The implication of the Academy's failure to pursue this information is underscored by OCR's interviews of the 12 students described above, many of whom reported pervasive verbal sexual harassment of students by the Instructor.

Based on the forgoing, OCR finds that the Academy did not comply with the requirements of the Title IX regulations when it received Student 2's complaint of sexual harassment. The Academy failed to treat Student 2's complaint as a formal complaint of sexual harassment, failed to follow a grievance process compliant with the requirements of 34 C.F.R. § 106.45, including failing to investigate the sexual harassment allegations, and at no point in the process did the Academy discuss or offer Student 2 supportive measures. OCR finds that the Academy violated Title IX with regard to Student 2's complaint because its response was deliberately indifferent as defined by 34 C.F.R. § 106.44.

#### **Title IX Grievance Procedures as Written and Designation of Title IX Coordinator**

During the course of its investigation into the complaint allegations, OCR determined that the Academy's Title IX policies regarding responding to sexual harassment do not comply with the requirements of 34 § C.F.R. 106.45. Specifically, the policies fail to address, among other requirements of the regulation, a presumption of non-responsibility with respect to the person alleged to have committed sexual harassment prior to the conclusion of the grievance process; time frames for the conclusion of the grievance process; the standard of evidence that will be used to determine whether sexual harassment occurred; and a description of the range of supportive measures available to all parties.

OCR has also determined that the Academy failed to comply with 34 § C.F.R. 106.8(b)(2)

because the name and contact information for the Academy’s Title IX Coordinator are not prominently displayed on the Academy’s website as required by the Title IX regulations, and because the Academy does not prominently state on its website that it does not discriminate on the basis of sex in its education program or activities.

OCR has also determined that the Academy failed to comply with 34 C.F.R. 106.44(a) because, although the Academy designated its Director of Financial Aid as its Title IX Coordinator, there is no indication that, in response to either Student 1’s report of sexual harassment or Student 2’s complaint of sexual harassment, the Academy’s Title IX Coordinator met the regulatory obligation to promptly contact Student 1 and Student 2 about the availability of supportive measures or to explain the process for filing a formal complaint.

As such, OCR has concluded that the Academy violated the procedural requirements of Title IX with regard to its grievance procedures, notice of the name and contact information for the Title IX coordinator, notice of nondiscrimination, and the requirements of 34 C.F.R. 106.44(a) with respect to the responsibilities of the Title IX coordinator to promptly contact complainants with regard to supportive measures and information about filing a written complaint.

### **The Academy’s Record Keeping**

OCR finds that the records provided by the Academy to OCR regarding its responses to Student 1’s report of sexual harassment and Student 2’s complaint of sexual harassment, do not meet the record keeping requirements of 34 C.F.R. § 106.45(b)(10)(i). For Student 1’s report, there is no documentation regarding why the Academy believed its response was not deliberately indifferent, what supportive measures it took to restore or preserve equal access for Student 1 to the Academy’s programs, or if they did not provide supportive measures, the reasons why such a response was not clearly unreasonable in light of the known circumstances. For Student 2, there is no documentation of the Academy’s determination regarding the Instructor’s responsibility for the alleged conduct, what, if any, discipline was imposed, and what, if any, supportive measures or remedies were provided to Student 2. There is also no documentation explaining the Academy’s basis for concluding that its response was not deliberately indifferent, or that a decision not to discipline the Instructor and provide Student 2 with supportive or remedial measures, was not clearly unreasonable in light of the known circumstances.

As such, OCR finds that the Academy is in violation of the record keeping provisions of Title IX at 34 C.F.R. § 106.45(b)(10)(i).

### **Issue 2: Retaliation against Complainant**

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### **Resolution**

Pursuant to Section 303(b) of the CPM, it is appropriate to resolve a complaint through a resolution agreement in cases where OCR has determined that the recipient has failed to comply with applicable statutes and regulations. Discussions with the Academy resulted in the Academy signing the attached Agreement, which when fully implemented, will address the violations and the concern identified by OCR in this investigation.

OCR will monitor the Academy's implementation of the Agreement until the Academy complies with the terms of the Agreement and the statutes and regulations at issue in the 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.

This concludes OCR's investigation of this complaint. The Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the Academy may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about this letter, please contact Brittany Whittle by telephone at (206) 607-1608 or by email at [brittany.whittle@ed.gov](mailto:brittany.whittle@ed.gov).

Sincerely,

David Kauffman  
Supervisory Attorney