



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
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WASHINGTON, DC

XXXX

Dr. Jane K. Fernandes
President
Guilford College
Office of the President
5800 West Friendly Avenue
Greensboro, North Carolina 27410

Re: OCR Complaint No. 11-14-2009
Letter of Findings

Dear Dr. Fernandes:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received from the Complainant against Guilford College (the College) on XXXX. In letters dated XXXX, OCR notified the Complainant and the College that it had opened the Complainant's complaint for investigation. During the course of its investigation, OCR investigated whether the College discriminated against the Complainant and other students on the basis of their sex. Specifically, OCR investigated the following allegations¹:

1. Whether the College maintains appropriate grievance procedures that provide for the prompt and equitable resolution of complaints of discrimination on the basis of sex, including sexual harassment and sexual assault/violence.
2. Whether the College failed to promptly and equitably respond to complaints of sexual harassment, including sexual assault/violence, of which it had notice, including the Complainant's complaints, filed during the XXXX and XXXX academic years, of (a) sexual assault/violence and retaliatory harassment XXXX, and (b) additional retaliatory harassment XXXX, from approximately XXXX through XXXX; and whether as a result, students at the College, including the Complainant, were subjected to a sexually hostile environment.
3. Whether the College retaliated against the Complainant for her complaints of sexual harassment and sexual assault/violence XXXX.

¹ In the letters dated XXXX, OCR notified the Complainant and the College that it had opened the following allegations for investigation – that the College engaged in discrimination in violation of Title IX of the Education Amendments of 1972 (Title IX) during the XXXX and XXXX academic years when it: (1) failed to appropriately respond to the Complainant's allegations of sexual harassment, including sexual assault/sexual violence; (2) failed to provide appropriate grievance procedures regarding sexual harassment, including sexual assault/sexual violence; (3) failed to provide adequate and impartial investigations of sexual harassment, including sexual assault/sexual violence; (4) discriminated against the Complainant based on sex because it permitted a hostile environment when she was subjected to XXXX; (5) failed to respond appropriately when the Complainant was retaliated against XXXX in response to the Complainant's filing of a sexual assault report with the College; and, (6) retaliated against the Complainant by XXXX after she engaged in a protected activity.

JURISDICTION

OCR enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the College receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Title IX.

After carefully considering all of the information obtained during the investigation, OCR identified compliance concerns and violations regarding the College's compliance with Title IX, which the College agreed to resolve through the enclosed Resolution Agreement, dated January 19, 2018, pursuant to Section 302 and Section 303(b), respectively, of OCR's *Case Processing Manual*. OCR appreciates the College's cooperation during the investigation and resolution of this complaint. OCR also acknowledges that the College has already taken affirmative steps in furtherance of its efforts to come into compliance with Title IX. OCR's findings and conclusions are discussed below.

LEGAL ISSUES

- A. Whether the College complied with the Title IX requirements regarding the designation and notice of Title IX coordinator. 34 C.F.R. §§ 106.8(a) and 106.9(a).
- B. Whether the College complied with the Title IX requirements regarding notice of non-discrimination. 34 C.F.R. § 106.9.
- C. Whether the College's sexual harassment and sexual violence policies and procedures, as written, comply with Title IX. 34 C.F.R § 106.8(b).
- D. Whether the College provided prompt and equitable responses to complaints/reports of sexual harassment and sexual assault/violence of which it had notice, including the Complainant's complaint and other individuals' complaints/reports of sexual harassment and sexual assault/violence. 34 C.F.R. §§ 106.8 and 106.31.
- E. Whether the College's failure to provide a prompt and equitable response allowed individuals, including the Complainant, (to continue) to be subjected to a sexually hostile environment that denied or limited the individuals' ability to participate in or benefit from the school's program. 34 C.F.R. §§ 106.8 and 106.31.
- F. Whether the College subjected the Complainant to retaliation, as previously described in Allegation 3 above. 34 C.F.R. § 106.71.

LEGAL STANDARDS

Sexually Hostile Environment and Duty to Respond Promptly and Equitably

Title IX prohibits discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. The Title IX regulation, at 34 C.F.R. § 106.31(a), states 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 educational program or activity operated by a recipient of Federal financial assistance.

Sexual harassment that creates a hostile environment is a form of discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature, regardless of the sex of the individual. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.² Sexual harassment of an individual creates a hostile environment if the conduct is so severe, persistent, or pervasive that it denies or limits an individual's ability to participate in or benefit from the recipient's program or activities.

OCR considers a variety of related factors to determine if a hostile environment based on sex has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct affected one or more individuals' ability to participate in or benefit from the recipient's program or activities; 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 of the alleged harasser and the subject of the harassment; the size of the recipient; the location of the incidents and the context in which they occurred; and other incidents at the recipient.

A recipient has notice of harassment based on sex if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate officials sexual harassment or any other misconduct by students, employees, or third parties, or an individual who a student or other party could reasonably believe has this authority or responsibility. Accordingly, a recipient needs to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

Sexual harassment of a student or other individual by a faculty member or other recipient employee violates Title IX. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out the employee's day-to-day responsibilities (such as teaching, counseling, supervising, and advising) engages in sexual harassment, the recipient is responsible for remedying any effects of the harassment on the complainant³, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has notice of the harassment.

² From this point onwards, when OCR generally refers to "sexual harassment," such references may be assumed to include sexual assault and sexual violence.

³ The term "complainant" as used throughout this document refers to an individual who is the subject of any alleged sexual harassment, including sexual assault and sexual violence. The term "respondent" refers to an individual accused of any alleged sexual harassment, including sexual assault and sexual violence.

A recipient has notice of peer or third party sexual harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject individuals to a hostile environment.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation or other inquiry reveals that sexual harassment created a hostile environment, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment if one has been created, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility regardless of whether or not the student or other party who was harassed makes a complaint or otherwise asked the recipient to take action. If, upon notice, a recipient fails to take prompt and effective corrective action, the recipient's own failure has permitted the student to be subjected to a hostile environment. If so, the recipient will be required to take corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the student that could reasonably have been prevented had the recipient responded promptly and effectively.

A recipient must consider the effects of off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity. This includes a review of misconduct that did not occur in the context of an education program or activity but may have had such an impact within the recipient's programs and activities.

In situations where reported sexual harassment may constitute a criminal act, a recipient should notify a complainant of the right to file a criminal complaint with local law enforcement, and should not dissuade a complainant from doing so either during or after the recipient's internal Title IX investigation. Additionally, recipients must take immediate steps to protect the complainant and allow continued access to the recipient's programs and activities. Because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve a recipient of its duty to respond promptly and effectively.

It may be appropriate for a recipient to take interim measures during the investigation of a complaint. In fairly assessing the need for a party to receive interim measures, a recipient may not rely on fixed rules or operating assumptions that favor one party over another, nor may a recipient make such measures available only to one party. Interim measures should be individualized and appropriate based on the information gathered by the Title IX Coordinator (or other designated responsive employee(s)), making every effort to avoid depriving any student of her or his education, or an individual's ability to participate in or benefit from the recipient's program or activities. The measures needed by the complainant and the respondent may change over time, and the Title IX Coordinator should communicate with each party throughout the investigation to ensure that any interim measures are necessary and effective based on each party's evolving needs. The recipient also should take steps to prevent any retaliation against the complainant and/or those who provided information.

Once it decides to open an investigation that may lead to disciplinary action against the respondent, a recipient should provide written notice to the respondent of the allegations constituting a potential

violation of the school’s Title IX policy, including sufficient details and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved, the specific section of the code of conduct allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident. Each party should receive written notice in advance of any interview or hearing with sufficient time to prepare for meaningful participation. The investigation should result in a written report summarizing the relevant exculpatory and inculpatory evidence. The investigator(s), or separate decision-maker(s), with or without a hearing, must make findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of the recipient’s sexual misconduct policy.

For Title IX purposes, a recipient should also provide written notice of the outcome of disciplinary proceedings to the complainant and the respondent concurrently. This notification must include any initial, interim, or final decision by the institution; any sanctions imposed by the institution; and the rationale for the result and the sanctions.⁴ The recipient should inform the complainant whether it found that the alleged conduct occurred, any individual remedies offered to the complainant or any sanctions imposed on the respondent that directly relate to the complainant, and other steps the recipient has taken to eliminate the hostile environment, if the recipient found one to exist.

When a recipient knows or reasonably should know of possible retaliation, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires recipients to protect against retaliation; at a minimum, this includes making sure that individuals know how to report retaliation, making follow-up inquiries to see if any retaliation or new incidents of harassment have occurred, and responding promptly and appropriately to address any new or continuing concerns.

There is no fixed timeframe under which a recipient must complete a Title IX investigation. OCR will evaluate a recipient’s good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.

An equitable investigation of a Title IX complaint requires a trained investigator to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence – including both inculpatory and exculpatory evidence – and take into account the unique and complex circumstances of each case. In addition, a recipient should ensure that all designated employees have adequate training as to what conduct constitutes sexual harassment and are able to explain how the grievance procedure operates.

Any rights or opportunities that a recipient makes available to one party during the investigation should be made available to the other party on equal terms.

Recipients are cautioned to avoid conflicts of interest and biases in the adjudicatory process and to prevent institutional interests from interfering with the impartiality of the adjudication. Decision-making techniques or approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the adjudication proceeds objectively and impartially.

Title IX Coordinator, Grievance Procedures, and Notice of Non-Discrimination

⁴ With respect to postsecondary institutions, such notice is required by the Clery Act.

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by Title IX.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual assault/violence. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints, including sexual assault/violence complaints.

Finally, the Title IX regulation, at 34 C.F.R. § 106.9, requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in any educational program or activity which it operates, and that it is required by Title IX not to discriminate in such a manner. The notice of non-discrimination must include a statement that inquiries concerning Title IX may be referred to the Title IX Coordinator or to OCR (34 C.F.R. § 106.9(a)) and, the College must provide adequate notification of the contact information, including the name (or title), address, and phone number for the Title IX Coordinator (34 C.F.R. § 106.8(a)).

BACKGROUND AND SUMMARY OF INVESTIGATION

The College is a private, four-year, liberal arts, undergraduate and graduate educational institution located in Greensboro, North Carolina; it is chartered by the State of North Carolina to a Board of Trustees. The College has one main campus and offers undergraduate programs in approximately 41 major areas of study, as well as a graduate program in one area of study. For the 2016-2017 academic year, the College enrolled approximately 1,776 students. The College informed OCR that it has a longstanding mission to provide a transformative and practical liberal arts education that produces critical thinkers in an inclusive, diverse environment, guided by Quaker testimonies of community, equality, integrity, peace, and simplicity, and by emphasizing the creative problem-solving skills, experience, enthusiasm and international perspectives necessary to promote positive change in the world.

During the course of its investigation, OCR reviewed documentation that the Complainant and the College submitted, including the College's policies and procedures regarding discrimination on the basis of sex, including sexual harassment and sexual assault/violence, to determine whether these comply with the requirements of Title IX. OCR also interviewed the Complainant and College personnel, including: the former College President; the Vice President for Student Affairs and Dean of Students (the Student Dean); the Director of Judicial Affairs/Hearing Officer (the Director); the Associate Dean of Students (Associate Dean); other investigative personnel within the Office of Judicial Affairs; the Coordinator of Sexual Assault Response, Prevention and Education; the Director of Counseling; the Director of Public Safety (Public Safety Director); the Faculty Advisor for Students Allied Against Sexual Assault, a student sexual violence awareness group; and, the College's Director of Human Resources, who served as the College's Title IX Coordinator (the Coordinator) through the

2015-2016 academic year.⁵ OCR also reviewed other relevant publicly available information. Further, OCR reviewed the College's handling of individual complaints/reports of sexual harassment and sexual assault/violence made between the 2012-2013 and 2015-2016 academic years.⁶

FACTUAL INFORMATION and ANALYSIS

A. Whether the College complied with the Title IX requirements regarding the designation and notice of Title IX coordinator. 34 C.F.R. §§ 106.8(a) and 106.9(a).

At the outset of OCR's investigation of the instant complaint, the College acknowledged that it failed to appoint a Title IX Coordinator between April 2013 and July 2014. On July 21, 2014, the College designated the Director of Human Resources as its Title IX Coordinator (the Coordinator), who reported to the College's Vice President of Finance.⁷ However, as of the 2016-2017 academic year, and based upon information contained on its website, the College also appears to have designated the Associate Academic Dean as its Title IX Coordinator, but other College publications continue to refer to the Coordinator [the Director of Human Resources] as the designated Title IX Coordinator.⁸ The College's website has a section for "Current Students," with a subsection entitled "Title IX Statement and Contacts," which did not provide the complete contact information for the Title IX Coordinator [identified in this instance as the Associate Academic Dean] because it did not provide her office address, telephone number, or email address.⁹ Further, the College's Student Handbook (the Handbook) for the 2016-2017 academic year did not contain the name, correct title, office address, or

⁵ During OCR's investigation, the College made significant personnel changes. For example, in April 2014, the College's Board of Trustees appointed a new College President. In July 2014, the College hired a chief human resources professional and a Title IX Coordinator. In or about December 2015, the Director, and the then Associate Dean, who were primarily responsible for the investigation and adjudication of all complaints of sexual harassment and sexual assault/violence, left the College. In January 2015, the College hired a new Vice President for Student Affairs and Dean of Students. Within that month, the College placed him and the Director for Residence Life (who previously served as a hearing officer) in charge of the investigation and adjudication of all complaints of sexual harassment and sexual assault/violence. In or around July 2015, the College created a full-time Wellness Coordinator position; the faculty member previously assigned to serve, in part, as the Coordinator of Sexual Assault Response, Prevention and Education assumed this position. In April 2016, the College hired a new Public Safety Director. Further, as discussed below, as of the 2016-2017 academic year, the College also appears to have designated the Associate Academic Dean as its Title IX Coordinator.

⁶ In addition, between April 23 and April 25, 2014, OCR conducted seven on-site focus group sessions with various student populations, including resident advisors, College Senate members, and athletes; it also held open office hour sessions to obtain information concerning the College's response to complaints of sexual harassment and sexual assault/violence.

⁷ The College stated that between 2012 and 2014, the Coordinator attended a Title IX Coordinator and Administrator training sponsored by the North Carolina Independent Colleges and Universities (NCICU), which included training that he received prior to being designated as the College's Title IX Coordinator.

⁸ OCR is unaware to whom the Associate Academic Dean reports in her capacity as Title IX Coordinator. Prior to her recent designation as Title IX Coordinator, the Associate Academic Dean served as a Judicial Advocate for students and informed OCR that as of the 2015-2016 academic year, she had received training in Title IX issues such as domestic/relationship violence and sexual harassment, assault, and violence; and she had received training at the College on sexual assault awareness, including with respect to the campus climate, mandated reporting, and campus resources available to the College's community.

⁹ See <https://www.guilford.edu/media/667>. In addition, this subsection identified two individuals that serve in a "complimentary role to the Title IX Coordinator to facilitate reporting across the student body," the Vice President of Student Affairs/Dean of Students and the Senior Women's Administrator in Athletics. The website did not provide any further information about the roles of these individuals, their responsibilities, or how they interact with the Title IX Coordinator with respect to his/her Title IX responsibilities pertaining to sexual harassment, including sexual assault and sexual violence.

correct email address for the Title IX Coordinator [identified in this instance as the Director of Human Resources].¹⁰

Based on the foregoing, OCR determined that the College did not designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under the requirements of Title IX until July 2014.¹¹ Even after making such a designation, the identity of the designated individual(s) remains unclear as of the 2016-2017 academic year and into the 2017-2018 academic year; and, the College failed to effectively notify all students, employees, and beneficiaries of the name and/or title, office address, email address, and telephone number of the designated Title IX Coordinator(s), as required by 34 C.F.R. § 106.8(a) and 106.9(a), or an email address, in some of its publications. On January 19, 2018, the College agreed to implement the enclosed Resolution Agreement, which commits the College to take specific steps to address the violation, pursuant to Section 303(b) of OCR's *Case Processing Manual*.

B. Whether the College complied with the Title IX requirements regarding notice of non-discrimination. 34 C.F.R. § 106.9.

OCR reviewed the College's non-discrimination notices on its website as of the 2016-2017 academic year. Specifically, the section of the College's website dedicated to Human Resources includes a link to a general "Nondiscriminatory Policy Statement"¹² (the Policy Statement), which addresses discrimination on the basis of sex, among other bases. Although the Policy Statement states that the College "rejects" discrimination on the basis of sex, it does not explicitly state that the College does not discriminate on the basis of sex or that it is required by Title IX not to discriminate in such a manner, and it does not state that inquiries concerning the application of Title IX may be referred to the Title IX Coordinator or to OCR. The Policy Statement does state that it is applicable to educational programs and activities, employment, and admission, including students and applicants. However, it does not extend its notice to sources of referral of applicants for admission and employment, or union or professional organizations holding collective bargaining or professional agreements with the College. The College's website also has a "Title IX Statement and Contacts" link

¹⁰ See <https://www.guilford.edu/sites/default/files/2017-05/2016-2017%20Student%20Handbook%20final.pdf>. The Handbook lists the Coordinator's title as Director of Human Resources and Payroll, instead of Director of Human Resources or the Associate Academic Dean. In addition, the College's "Wellness and Supportive Resources for Transgender and Gender Non-Binary Students and/or Survivors of Gender-Based and Sexual Violence" information sheet also did not identify the College's designated Title IX Coordinator or provide his/her relevant contact information. See <https://www.guilford.edu/sites/default/files/2017-05/Wellness%20Supportive%20Resources.pdf>.

¹¹ However, during interviews with the Coordinator [the Director of Human Resources] and other College personnel, the College informed OCR that, at least as of the 2015-2016 academic year, the Student Dean was primarily responsible for the investigation and adjudication of sexual misconduct complaints, and he was trained in this regard. In this capacity, the Student Dean conducted an initial meeting with complainants, assigned investigators to investigate the complaint, assigned hearing officers to adjudicate the complaint, and provided guidance to the investigators and hearing officers. The Senior Women's Administrator in Athletics had no role or responsibilities regarding sexual harassment and sexual assault/violence complaints; rather, she handled Title IX issues related to the College's athletics program. In addition, although the College hired the Coordinator in July 2014, the College's former Director of Judicial Affairs [the Director], who was primarily responsible for the investigation and adjudication of sexual harassment and sexual assault/violence complaints, informed OCR that prior to the fall of 2014, she did not communicate with the Coordinator regarding any such complaints. Further, as of the 2015-2016 academic year, based upon OCR's review of sexual harassment and sexual assault/violence complaints, as well as interviews with College personnel including the Coordinator, OCR determined that the Coordinator exercised little to no oversight over the College's investigation of student on student sexual misconduct complaints.

¹² See https://www.guilford.edu/sites/default/files/2017-05/Nondiscriminatory_Policy.pdf.

as discussed above in Section A; however, it did not contain a notice of non-discrimination. Moreover, the College’s “Sexual Misconduct Reporting Protocol,” as contained in the Handbook for the 2016-2017 academic year¹³, or the “Wellness and Supportive Resources for Transgender and Gender Non-Binary Students and/or Survivors of Gender-Based and Sexual Violence” information sheet also discussed in Section A, all do not include a notice of non-discrimination. OCR also reviewed several job announcements and a student application found on the College’s website, and did not find that any of these contained an appropriate notice of non-discrimination.

Based on the foregoing, OCR determined that as of the 2016-2017 academic year, the College has not developed a notice of non-discrimination that complies with Title IX, including that any inquiries concerning the application of Title IX regulation may be referred to the College’s designated Title IX coordinator or to OCR, or that the College does not discriminate on the basis of sex. Further, the College has not taken continuing steps to notify applicants for employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the College that it does not discriminate on the basis of sex in the education programs or activities it operates, as the College has not published the appropriate notice in each announcement, bulletin, catalog, or application form that it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees, as required by 34 C.F.R. § 106.9. On January 19, 2018, the College agreed to implement the enclosed Resolution Agreement, which commits the College to take specific steps to address the violation, pursuant to Section 303(b) of OCR’s *Case Processing Manual*.

C. Whether the College’s sexual harassment and sexual violence policies and procedures, as written, comply with Title IX. 34 C.F.R § 106.8(b).

When OCR initiated its investigation on November 18, 2013, the College provided OCR with the following documents in terms of its policies and grievance procedures regarding Title IX, which were all contained within the Handbook for the 2013-2014 academic year: “Harassment Policy” (the Policy); “Sexual Misconduct Reporting Protocol” (the Protocol); and, “Student Code of Conduct: Rights and Responsibilities” (the Code), which outlined the College’s disciplinary/judicial policies and procedures. During the course of OCR’s investigation, and as of the 2015-2016 and 2016-2017 academic years, the College revised the Policy, the Protocol, and the Code; at a minimum, all were published in the Handbook. Between the 2015-2016 and 2016-2017 academic years, the College made some minor changes to the Policy, the Protocol, and the Code, but all remained substantially similar.¹⁴ First, OCR will provide a brief summary regarding the content of each current policy and grievance procedure, which were reviewed as of the 2016-2017 academic year. OCR will then summarize the policies and procedures based on the elements identified below.

OCR has identified a number of elements in determining if grievance procedures are prompt and equitable, including whether the procedures provide for: (a) notice to students and employees of the procedures, including where complaints may be filed, that is easily understood, easily located, and widely distributed; (b) application of the procedures to complaints alleging discrimination or harassment carried out by employees, students, and third parties; (c) adequate, reliable, and impartial

¹³ See <https://www.guilford.edu/sites/default/files/2017-05/2016-2017%20Student%20Handbook%20final.pdf>, p. 80-86.

¹⁴ In revising its policies and procedures between the 2013-2014 and 2015-2016 academic years, the College generally retained the structure of the Policy, the Protocol, and the Code.

investigation, including an equal opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) written notice to parties of the outcome and any appeal; and, (f) an assurance that the institution will take steps to prevent further harassment and to correct its discriminatory effects on the complainant and others, if appropriate. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment or sexual assault, including disciplinary proceedings, must afford the complainant and the respondent a prompt and equitable resolution.

Current Policies and Grievance Procedures – Academic Year 2016-2017

*The Policy*¹⁵: The College published the Policy in the Handbook for the 2016-2017 academic year. The Policy is a general harassment policy, but it also includes specific sections pertaining to sexual harassment. With respect to sexual harassment, the Policy is applicable to complaints filed by and against students, employees, and third parties who allege sexual harassment, including sexual assault and sexual violence.¹⁶

*The Protocol*¹⁷: In reviewing the College’s materials as they specifically pertain to incidents of sexual misconduct, OCR notes that the Protocol does not appear to be a separate grievance procedure, as it does not explain how the College will respond to complaints of sexual harassment, including sexual assault and sexual violence. Rather, the Protocol appears to put forth guidelines for the treatment of complainants and respondents after such complaints have been filed, and it references the Code as the means by which the College will respond to such complaints.¹⁸ The Protocol is only applicable to complaints of sexual harassment, including sexual assault and sexual violence, filed by students against students.

*The Code*¹⁹: The Code generally addresses student conduct requirements and issues, but it also includes specific sections pertaining to sexual misconduct, including sexual harassment and sexual assault/violence. The Code is not well-organized, and as a result, it is difficult to understand the various processes contained therein, and the individuals responsible for them, including: the complaint reporting process; the investigative process; the various types of hearing processes; the appeal process; and the sanctioning/discipline process based on a point system. Further with respect to the section pertaining to complaints of sexual harassment, including sexual assault and sexual violence, the Code

¹⁵ See <https://www.guilford.edu/sites/default/files/2017-05/2016-2017%20Student%20Handbook%20final.pdf>, p. 38-43.

¹⁶ The Policy states that it is the “intent” for Guilford to prevent discrimination on multiple bases, including “actual or perceived” sex, gender identity, and gender expression. The Policy states that the College further “intends” for the environment of the community to be “free of any intimidation or sexual or other discriminatory harassment of job applicants, employees, or students.” As with the College’s Policy Statement, as discussed in Section B, the Policy does not clearly state that the College prohibits discrimination on the basis of sex, including sexual harassment and sexual assault and violence.

¹⁷ See <https://www.guilford.edu/sites/default/files/2017-05/2016-2017%20Student%20Handbook%20final.pdf>, p. 80-86.

¹⁸ During the 2015-2016 academic year, OCR also noted that there were two different versions of the Protocol. One was published in the Handbook for the 2015-2016 academic year on the College’s website and was entitled “Sexual Misconduct Policy and Protocol”; and the other was published on the “Student Life” section of the College’s website, under the subsection “Sexual Assault, Intimate Partner Violence, and Sexual Violence Information” and was entitled “Sexual Misconduct Reporting Protocol”. Based on OCR’s review of both documents, it appeared that College intended to publish only one version of the Protocol, but it failed to standardize that version across all documents.

¹⁹ See <https://www.guilford.edu/sites/default/files/2017-05/2016-2017%20Student%20Handbook%20final.pdf>, p. 63-80 and p. 88-93.

includes two separate sections regarding an “Investigative Process” and “Appellate Process” for complaints of sexual misconduct, which explains that the College is committed to conducting prompt and equitable resolution of complaints of sexual harassment or assault, as well as acting to prevent any recurrence or retaliation.²⁰ However, despite the inclusion of these two sections, it is unclear whether and how the College’s response to sexual misconduct complaints will differ from other types of complaints.

- *(a) Notice to Students, Employees, and Third Parties of the Procedures, including Where Complaints May be Filed/Easily Understood/Easily Located and Widely Distributed*

The Policy, the Protocol, and the Code do not provide adequate notice to students, employees, and third parties of the procedures, including where complaints may be filed. Specifically, these policies and procedures do not sufficiently identify the individuals with whom complaints should be filed, such as the name and/or title, office address, email address, and telephone number of the individual(s) designated to receive Title IX complaints. Moreover, the Policy, the Protocol, and the Code are not organized, coherent, or easily understood. Notably, all three documents are contained within the Handbook, but there is no explanation/directive regarding the overlap between the three policies and procedures, how they interact with one another, or how they otherwise differ.

- *(b) Application of the Procedures to Complaints Alleging Discrimination and Harassment Filed by and against Students, Employees, and Third Parties*

The College does not have grievance procedures that apply to complaints of discrimination on the basis of sex and sexual harassment, including sexual assault and sexual violence, filed by and against students, employees, and third parties. Specifically, with respect to the Policy, in processing complaints/reports, the Policy refers to a secondary procedure, the “Student Grievance Policy” (the Grievance Policy), which is unclear as to how the College will respond appropriately to a complaint/report of sexual assault and sexual violence pursuant to the Policy. In addition, although the Policy appears to apply to complaints filed by and against students, employees, and third parties, it only includes a reporting process for students, and it does not include, or provide an accurate reference to a reporting process for employees and third parties. The Protocol and the Code are only applicable to complaints of sexual harassment, including sexual assault and sexual violence, filed by students and against students. However, with respect to incidents involving Early College students²¹, the Code does not indicate whether the College will respond to or otherwise investigate or initiate disciplinary action against such students on its own accord.

- *(c) Procedures that Provide for an Adequate, Reliable, and Impartial Investigation, including an Equal Opportunity to Present Witnesses and Evidence*

²⁰ The Code further states that “Action on the part of the College will not be limited to ‘official complaints’ but will include anonymous and third-party, as well as cyber-harassment complaints,” and the College may seek to respond to remediate or provide interim steps in cases where the complainant may request confidentiality. However, the corresponding “Appellate Process” states that it is only applicable for complaints of sexual assault, but not other types of sexual harassment or violence.

²¹ The Early College program is a program for high school students taking advanced courses.

The College does not have grievance procedures that provide for an adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and evidence. Specifically, the Policy, the Protocol, and the Code do not specify that the College will conduct an adequate, reliable, and impartial investigation, including providing an equal opportunity to present witnesses and evidence for both the complainant and the respondent. In addition, the Policy's complaint investigation, resolution, and hearing procedures are unclear and confusing. The Protocol provides that the complainant may have a student conduct advisor during the appeal process, but not the respondent. Further, the Code does not permit the complainant to file an appeal regarding the denial of a fair hearing as it does for the respondent.

- *(d) Procedures that Provide Designated and Reasonably Prompt Timeframes for Major Stages of the Grievance Process*

The College does not have grievance procedures that provide designated and reasonably prompt timeframes for major stages of the grievance process. The Policy does not designate timeframes for any stage/step of the Policy. The Protocol states that the College is committed to completing cases of sexual misconduct within sixty (60) days or less; however, it does not otherwise include a timeframe for the completion of the appeal process. The Code does not designate timeframes for each stage/step of the Code, including with respect to any fact-finding/investigative process, issuing a determination after the hearing, and sanctioning.

- *(e) Procedures that Provide for Written Notice to Parties of the Outcome and Any Appeal*

The College does not have grievance procedures, including the Policy, the Protocol, and the Code, that provide for written notice to parties of the outcome and any appeal.

- *(f) Procedures that Provide an Assurance that the College Will Take Steps to Prevent Further Harassment and Correct Its Discriminatory Effects on the Complainant and Others, if Appropriate*

The Protocol provides an assurance that the institution will take steps to prevent further harassment and to correct its discriminatory effects on the complainant and others, if appropriate, but the Policy does not. The Code states that the College will act to prevent any recurrence, but it does not state that it will correct any discriminatory effects on the complainant and others, if appropriate.

Overall, OCR determined that the College has failed to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student, employee, and third-party complaints alleging discrimination on the basis of sex, as required by the Title IX regulation, at 34 C.F.R. § 106.8(b). This applies both to the College's former policies and procedures, as well as the current and revised versions of the Policy, the Protocol, and the Code, as of the 2016-2017 academic year.²² On

²² During the course of OCR's investigation, OCR determined that in practice, at least through the 2015-2016 academic year, the College acknowledged that it only used the Code to investigate and adjudicate all complaints of sexual misconduct filed against students. Regarding complaints filed by students against College faculty/staff, and vice versa, the College used the Protocol. The College did not explain how it adjudicated complaints filed by and against third parties. To the extent that OCR has concerns regarding the College's prior practices, OCR's concerns are reflected in its analysis of the

January 19, 2018, the College agreed to implement the enclosed Resolution Agreement, which commits the College to take specific steps to address the violation, pursuant to Section 303(b) of OCR's *Case Processing Manual*.

D. Whether the College provided prompt and equitable responses to complaints of sexual harassment and sexual assault/violence of which it had notice, including the Complainant's complaint and other individuals' complaints/reports of sexual harassment and sexual assault/violence. 34 C.F.R. §§ 106.8 and 106.31.

E. Whether the College's failure to provide a prompt and equitable response allowed individuals, including the Complainant, (to continue) to be subjected to a sexually hostile environment that denied or limited the individuals' ability to participate in or benefit from the school's program. 34 C.F.R. §§ 106.8 and 106.31.

Other Complaints/Reports of Sexual Harassment and Assault/Violence

OCR reviewed approximately XXXX complaints of sexual harassment, including allegations of sexual assault and sexual violence, which were filed with the College by, on behalf of, or against students, staff, faculty, or third parties between the XXXX and XXXX academic years, and included incidents involving complainants and respondents of the same sex or opposite sex.²³ Based on OCR's review, OCR noted that the files appeared to be missing or did not contain the information and documentation that would otherwise indicate that the investigative file was complete.²⁴ Consequently, OCR made repeated requests for any and all documentation contained or pertaining to each complaint sexual harassment, including sexual assault and sexual violence; and, it questioned College personnel about the absence of information/documentation in specific investigative files.²⁵ Below, OCR has provided a summary analysis of the concerns identified in its review of all XXXX complaints. OCR's review of the complaints/reports revealed that OCR had concerns with respect to the College's failure to:

1. Respond, take any action, or otherwise undertake any assessment, with respect to complaints/reports of sexual harassment, including sexual assault and sexual violence, filed by (a) complainants/reporters, who were completely anonymous or unknown, or (b) on behalf of complainants who wanted to remain anonymous (but whose identities were known) or were reluctant to proceed with an investigation, despite having actionable information including but not limited to: the name of the respondent, the date and/or location of the incident, and specific

College's response to such complaints, including the Complainant's complaints, as discussed in Sections (D) and (E) below.

²³ OCR conducted a paper audit of the College's handling of these complaints, and reviewed all documentation contained within the investigative files, which included: complaints filed by or on behalf of student and other complainants; correspondence between the College and complainants, respondents, witnesses, law enforcement, and third parties; interview notes; witness statements; emails; text messages; and, social media postings.

²⁴ Further, OCR noted that the College did not maintain a consistent and reliable system for assigning and tracking incident numbers to each investigative file; in some instances, the same incident number was assigned to more than one investigative file.

²⁵ For example, although the College provided OCR with summary "incident reports," which appeared to be created for the purposes of the instant OCR investigation, the College did not provide OCR with any investigative reports, despite OCR's specific requests for investigative reports; rather, the College referred to the collection of documents contained in the investigative files as "investigative reports."

or an identifiable group of witnesses (e.g., XXXX). This included a failure to assess whether the risk to the campus community outweighed the request for confidentiality.

2. Conduct a prompt and equitable investigation or appeal, including the opportunity to present witnesses and evidence for both parties. In addition, the Colleges sometimes failed to consider available evidence, including reported physical evidence of a sexual harassment or sexual violence.
3. Provide interim measures and final remedies to complainants.
4. Provide written notice of the investigation, hearing, and/or appeal outcomes to both the complainant and the respondent.
5. Monitor the implementation and efficacy of sanctions imposed upon a respondent, which were the result of a determination of sexual harassment or sexual assault/violence.
6. Respond promptly and equitably to complaints/reports of retaliation and retaliatory harassment filed by complainants.
7. Identify any patterns in complaints with respect to specific campus locations or the identities/affiliations of respondents, and take action to address/remedy those patterns and prevent their recurrence.²⁶
8. Determine whether complainants, witnesses, or the broader College community were subjected to a hostile environment based on sex, or otherwise assess and determine whether other remedies were necessary to ensure the provision of a safe and non-discriminatory campus environment.
9. Maintain appropriate records/documentation during the complaint reporting process, investigation/resolution/hearing processes, and appeal processes, including but not limited to²⁷:
 - a. Records indicating why the College failed to pursue, dropped, or otherwise declined to pursue charges of sexual misconduct, including sexual assault/violence, against respondents.
 - b. Interview statements and other correspondence with complainants, respondents, and other witnesses.
 - c. Records of interim measures (e.g. counseling and no-contact orders) and final remedies and sanctions (e.g. counseling, community service, and suspensions) with respect to both complainants and respondents.
 - d. Records of whether the College considered other evidence, including physical evidence proffered by complainants and respondents, during the course of any investigation and/or hearing, and why or why not.
 - e. Records of the hearing process and hearing outcome.
 - f. Records indicating how and on what basis the College reached a determination as to whether the evidence substantiated that sexual harassment, including sexual harassment and sexual assault/violence, had occurred.

²⁶ OCR's review revealed three identifiable patterns of complaints, which the College failed to remediate and/or take action to prevent their recurrence. Specifically, during the XXXX academic year, XXXX separate reports were filed indicating that there were XXXX. Further, also during the XXXX and XXXX academic years, XXXX separate reports were filed indicating that XXXX. In addition, during the XXXX academic year, XXXX separate reports were filed with respect to the XXXX.

²⁷ Further, the College redacted the names of individuals, as well as other information, contained within the investigation files; and, regarding names, the College consistently replaced the redacted names with the first initial of both the first and last name (e.g., Jane/John Doe would be redacted and replaced with a "J.D."). Based upon contextual information, OCR noted that the redactions, coupled with the replacement of names with initials, often appeared to be erroneous, such that individuals were misidentified.

- g. Records indicating how and on what basis the College granted/denied a complainant's/respondent's request for an appeal.
- 10. Further, OCR found that during the XXXX and XXXX academic years, there was no involvement of, or oversight by, the College's designated Title IX Coordinator(s), and during the XXXX and XXXX academic years, the involvement of the designated Title IX Coordinator(s) was minimal.

Based on the above, OCR determined that the College failed to provide prompt and equitable response(s) to other complaints of sexual harassment, including sexual assault and violence, of which it had notice, in violation of the Title IX regulation, at 34 C.F.R. §§ 106.8 and 106.31. However, as discussed, given the inadequacy and unreliability of the documentation of these complaints, OCR is currently unable to determine whether the College's failure to provide a prompt and equitable response allowed the individuals to continue to be subjected to a sexually hostile environment that denied or limited their ability to participate in or benefit from the College's program. On January 19, 2018, the College agreed to implement the enclosed Resolution Agreement, which commits the College to take specific steps to address these compliance concerns/violations, pursuant to Section 302 and Section 303(b) of OCR's *Case Processing Manual*.²⁸

The Complainant's Complaints/Reports of Sexual Assault/Violence and Retaliatory Harassment²⁹

Item (a): The Complainant's Complaints/Reports of Sexual Assault/Violence

XXXX 5 PARAGRAPHS REDACTED XXXX

XXXX SENTENCE REDACTED XXXX.

XXXX 7 PARAGRAPHS REDACTED XXX

XXXX 1 PAGE REDACTED XXXX

Item (b): The Complainant's Additional Complaints/Reports of Retaliatory Harassment

With respect to Item (b), the Complainant alleged that the College failed to respond to her additional complaints of retaliatory harassment by the Respondent and other students, including XXXX, from approximately XXXX through XXXX. Specifically, on XXXX, the Complainant appealed the inadequacy of the sanctions imposed upon the Respondent. XXXX 2 SENTENCES REDACTED XXXX. The College could not confirm or provide any documentation indicating that it notified the

²⁸ Specifically, OCR found a Section 303(b) violation on the issue of whether the College responded promptly and equitably to complaints/reports of sexual harassment and sexual assault/violence, and a Section 302 compliance concern on the issue of whether the failure to respond allowed students to be subjected to a sexually hostile environment.

²⁹ As previously discussed, during the College's investigation of the Complainant's complaints/reports, the College had not yet appointed a Title IX Coordinator.

Respondent of his right to appeal, of the Complainant's appeal, or that it provided the Respondent with an opportunity to provide additional witnesses and evidence regarding the Complainant's appeal.

The Vice President for Student Affairs, who also served as the Dean of Students (the Dean), reviewed the Complainant's appeal. Although the Dean inquired into the circumstances surrounding the alleged sexual assault on XXXX, he did not otherwise respond to the Complainant's allegations of retaliatory harassment. On XXXX, the Dean emailed the Complainant denying her appeal; he stated that the finding that the Respondent was responsible was the appropriate outcome, and that the sanctions imposed were appropriate. The College did not provide the Respondent with any notice of the appeal outcome.

Thereafter, the Director informed OCR that on or about XXXX, the Complainant contacted her regarding whether the College would impose any additional sanctions upon the Respondent during the next semester. The Director stated that she would consult with the Associate Dean to make a determination concerning those additional sanctions, but it is unclear what process the College used to make this determination. XXXX months later, on XXXX³⁰, the Director orally notified the Respondent that the College had imposed additional sanctions upon him, effective XXXX.³¹ The Director did not orally notify the Complainant of the additional sanctions until XXXX, nearly two weeks after notifying the Respondent. Further, the College failed to provide both parties with written notification of the additional sanctions.³²

In an email sent on XXXX, the Complainant appealed the sanctions imposed upon the Respondent to the College's then-President, and she asserted that XXXX. In an email sent on XXXX, the President responded that pursuant to the Handbook, he had no role in cases of alleged student misconduct unless dismissal is warranted. Nevertheless, the President noted that he had reviewed the process used in the Complainant's case and was convinced that the College's policy was followed and the decision was based on the evidence. Further, the President directed the Complainant to speak directly with the Director regarding her concerns, encouraged her to include any new or undisclosed information, and noted that, "regardless of determinations of fault and sanctions, [he was] ... holding everyone involved in this unfortunate incident in the Light," and encouraged the Complainant to "continue to recognize [her] own responsibilities."³³ The College, including the former President, did not respond to the

³⁰ In the interim, the XXXX academic year came to an end, the College held final exams on XXXX, and closed residence halls on XXXX.

³¹ The Director informed the Respondent that: (1) the College had reviewed the Respondent's and the Complainant's housing and class schedules to ensure that there was no overlap between their schedules; (2) the Respondent was required to attend one mandatory counseling meeting with the Director of Counseling and the Director on XXXX, including a viewing and discussion of a film entitled "The Bro Code"; and (3) the Respondent received an admonition that any future violation would result in additional and more severe sanctions.

³² On XXXX, the first day of classes for the XXXX semester, the Complainant informed the Dean that she observed the Respondent in her XXXX. In response, the College, through the Director, issued a written no-contact order against the Respondent, dated XXXX, and the College also issued a no-contact order against the Complainant, which equally prohibited her from engaging in contact with the Respondent.

³³ During an interview with OCR, the College's former President explained that he made this statement because he knew XXXX was involved and alcohol impairs judgment. He further explained that, while "it still doesn't give permission," he wanted the Complainant and the Respondent "to realize there is some responsibility in terms of underage drinking that may have contributed to the behavior."

Complainant's report of retaliatory harassment. The Complainant did not file any further complaints/reports with the College regarding the Respondent or other students.³⁴

Summary Regarding Items (a) and (b)

In summary, OCR determined that the College promptly initiated the investigation of the complainant's initial sexual assault allegation only, on or about XXXX. However, OCR determined that the College failed to respond or take any action with respect to the Complainant's initial and second complaints/reports of retaliatory harassment, as well as the subsequent reports of retaliatory harassment that the Complainant made against the Respondent and other students XXXX and then again on XXXX.

Regarding the Complainant's complaint of sexual assault, the Complainant alleged that the Director: discouraged her from reporting the sexual assault to the GPD; failed to provide her with an opportunity to present witness statements from two of her witnesses [Witness A and Witness B] to support her complaint; and failed to provide her with an opportunity to review and respond to the Respondent's written statements and those of his witness(es). OCR determined that there was insufficient evidence to substantiate these specific allegations. Specifically, the Complainant acknowledged not wanting to get the Respondent in trouble with the police³⁵, and she did not provide, and OCR did not find, any other evidence, including any witnesses, to substantiate her allegation that the Director attempted to discourage her from filing a report with the GPD. Further, OCR determined that there was insufficient evidence to substantiate that the Director did not interview Witness A and Witness B; to the contrary, the Director obtained written statements from both witnesses. In addition, OCR was unable to substantiate whether the Complainant was permitted to review and respond to the Respondent's written statements and those of his witnesses, or whether the Respondent was able to do the same.

However, OCR had other concerns regarding the College's response to the Complainant's complaint of sexual assault during the pendency of its investigation and thereafter. Specifically, OCR determined that the College failed to conduct a prompt and equitable investigation when it failed to: offer a no-contact order or other protective measures against the Respondent or XXXX during the initial investigation, especially considering the Complainant's reports of retaliatory harassment; provide the Complainant with any other interim measures, including but not limited to any offer of further counseling or housing accommodations; obtain witness statements from Witness D and Witness E, who reported to the room after the Complainant XXXX, and purportedly observed the Complainant and the Respondent XXX; and, interview the PSO or seek to obtain any information from the GPD officer and XXXX.

In addition, OCR also had concerns regarding the College's application of the preponderance of the evidence standard, which the College identified as its standard of proof. OCR determined that the Director's comments indicate that the College did not in fact weigh all of the evidence collected when

³⁴ On XXXX, the Complainant informed OCR that she was in counseling; that she still felt terrified and unsafe on the campus because she was worried about running into the Respondent and XXXX; and that she did not feel supported by the staff and administration. At the beginning of the XXXX semester of the XXXX academic year, the Complainant transferred to another educational institution.

³⁵ The Complainant acknowledged to OCR that she did not want to involve the police, because XXXX.

making a determination. Rather, despite all of the other information the College was required to assess, including but not limited to whether the Complainant consented to engage in sexual activity and XXXX, the College found the Respondent responsible for sexual assault based XXXX. OCR finds that this analysis constitutes a misapplication of the preponderance of the evidence standard.

Further, with respect to the Complainant's allegation that the College failed to impose adequate sanctions upon the Respondent, in reviewing the adequacy of sanctions, OCR examines whether such sanctions sufficiently prevent the recurrence of harassment and alleviate a hostile environment. Given the inadequacy of the College's investigation and its failure to respond promptly and equitably, OCR is unable to assess whether the imposed sanctions remedied the harassment and served to prevent its recurrence.

Moreover, OCR determined that the College failed to respond promptly and equitably when it failed to: provide both parties with written notice of the initial investigation outcome, even though it provided both parties with oral notice of the outcome, including sanctions, on XXXX; provide the Respondent with an equal opportunity to appeal the initial investigation outcome/sanctions; notify the Respondent of the Complainant's appeal, dated XXXX, or provide him with an opportunity to provide additional witnesses and evidence during the appeal process; provide the Respondent with notice, written or otherwise, of the appeal outcome, dated XXXX; provide the Complainant with oral notice of the additional sanctions imposed upon the Respondent, on XXXX, when the Respondent was so notified; and, provide both the Complainant and the Respondent with written notification of the additional sanctions imposed upon the Respondent, on XXXX.

Based on the above, OCR determined that the College failed to provide a prompt and equitable response to the Complainant's complaints/reports of sexual assault, as well as retaliatory harassment, of which it had notice, therefore adversely impacting both the Complainant and the Respondent, in violation of the Title IX regulation, at 34 C.F.R. §§ 106.8 and 106.31. However, due to the inadequacy of the College's investigation (including its failure to interview relevant witnesses) and its failure to appropriately apply the preponderance of the evidence standard, OCR is unable to determine whether the Complainant was (and continued to be) subjected to a sexually hostile environment that denied or limited her ability to participate in or benefit from the College's program. On January 19, 2018, the College agreed to implement the enclosed Resolution Agreement, which commits the College to take specific steps to address these compliance concerns/violations, pursuant to Section 302 and Section 303(b) of OCR's *Case Processing Manual*.³⁶

F. Whether the College subjected the Complainant to retaliation, as previously described in Allegation 3 above. 34 C.F.R. § 106.71.

The Complainant alleged that the College retaliated against her for her complaints of sexual harassment and sexual assault/violence, by XXXX, during a meeting held approximately between XXXX and XXXX. Specifically, the Complainant stated that the Dean advised her that she XXXX.

³⁶ Specifically, OCR found a Section 303(b) violation on the issue of whether the College responded promptly and equitably to complaints/reports of sexual harassment and sexual assault/violence, and a Section 302 compliance concern on the issue of whether the failure to respond allowed students to be subjected to a sexually hostile environment.

The Title IX regulation, 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, or participates in an OCR proceeding. When analyzing a claim of retaliation, OCR will determine: 1) whether the complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law OCR enforces); 2) whether the recipient took a materially adverse action against the complainant; and 3) whether there is a causal connection between the protected activity and the materially adverse action. If all these elements are present, this establishes an initial, or prima facie, case of retaliation. OCR then determines whether the recipient has a legitimate, non-retaliatory reason for its action. Finally, OCR examines whether the recipient's reason for its action is a pretext, or excuse, for unlawful retaliation.

OCR determined that the Complainant engaged in a protected activity when she filed her complaint of sexual assault/sexual violence with the College, beginning on XXXX. OCR next determined whether the College took a materially adverse action against the Complainant. In email correspondence with the Dean on XXXX and XXXX, the Complainant complained that the additional sanctions the College imposed upon the Respondent for the sexual assault were inadequate; asserted that she intended to engage in future advocacy by XXXX; and requested a meeting to discuss the additional sanctions and XXXX. The Complainant recalled that after she sent these emails, and during a meeting with the Dean on an unspecified date, he advised her that she XXXX.

The College denied that the Dean made the alleged threatening statement. Rather, the College stated that College personnel discussed the issuance of a no-contact order and that any violation thereof would be penalized by suspension. Neither the Complainant nor the Dean identified any other witnesses at the meeting in question, and, the College asserted that it was not in possession of any notes taken during this meeting. Moreover, although the Complainant subsequently engaged in the advocacy that she described, the College and the Complainant confirmed that the College never XXXX the Complainant for any such advocacy.³⁷ Accordingly, OCR finds insufficient evidence that the adverse action took place as alleged. Therefore, OCR determined that the Complainant has not established an initial, or prima facie, case of retaliation. In the absence of evidence that the Complainant suffered a materially adverse action, OCR will not proceed further with the investigation of the Complainant's retaliation claim. Based on the foregoing, OCR determined that there was insufficient evidence to substantiate that the Dean retaliated against the Complainant, as alleged, and it will take no further action regarding the Complainant's retaliation allegation.

CONCLUSION

Throughout OCR's investigation and resolution of this complaint, the College expressed its ongoing commitment and willingness to make the changes necessary in furtherance of its efforts to comply with Title IX, including in response to OCR's investigation, as well as through its agreement to implement the enclosed Resolution Agreement (the Agreement), which it signed on January 19, 2018. For example, the College made significant personnel changes, including through the departure of individuals who ceased to serve in an employment capacity regarding Title IX complaints/reports, including those filed by the Complainant; hiring individuals to serve as its designated Title IX

³⁷ Specifically, the Complainant XXXX.

Coordinator(s); hiring a new Public Safety Director; and creating a full-time Wellness Coordinator position to provide further support to students reporting and responding to allegations of sexual misconduct. In addition, the College sought to appropriately revise its Title IX grievance policies and procedures, and it enhanced its training and prevention programs for employees and students.

As stated above, on January 19, 2018, the College agreed to implement the Agreement, which commits the College to take specific steps to address the identified compliance concerns and violations of Title IX, pursuant to Section 302 and Section 303(b) of OCR's *Case Processing Manual*. Under Section 302 of OCR's *Case Processing Manual*, the Agreement, when fully implemented, will resolve the allegations identified in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the College's implementation of the Agreement until the College is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the College deemed compliant if the College enters into an agreement that, fully performed, will remedy the identified area of noncompliance.

The College understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, the College understands that during the monitoring of this Agreement, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Title IX at 34 C.F.R. Part 106, which was at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close this complaint.

As stated in the Agreement entered into the by the College on January 19, 2018, the College understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce this Agreement, OCR shall give the College written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter 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. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

OCR greatly appreciates the College's cooperation during the investigation and resolution of this complaint. In particular, OCR appreciates the cooperation of the College's current President, Dr. Jane K. Fernandes, as well as counsel for the College, Julie Theall Earp. If you have any questions regarding this letter, please contact Letisha Morgan, the OCR Team Leader assigned to this complaint, at Letisha.Morgan@ed.gov.

Sincerely,

/s/

Ralph A. Suris
Chief Regional Attorney
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Julie Theall Earp, Esq., via email at Julie.Earp@smithmoorelaw.com