





submission to unwelcome sexual conduct, or (2) engages in sexual harassment that is so severe, persistent, or pervasive to deny or limit a student's ability to participate in or benefit from the recipient's programs or activities, the recipient is responsible for the discriminatory conduct whether or not it has notice.

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. The inquiry must be prompt, reliable, and impartial. Pending the outcome of a response to a report or an investigation of a complaint, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim measures. The recipient also should take steps to prevent any retaliation against the student who made the complaint and/or those who provided information.

A recipient must consider the effects of off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity. 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.

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

#### *Grievance Procedures and Notice of Nondiscrimination*

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 the regulation implementing Title IX, including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by Title IX. 34 C.F.R. § 106.8(b) requires that a recipient adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by Title IX. OCR examines .002 -6 ( a)44 .37 0 Td [



FACTUAL FINDINGS AND ANALYSIS

**A. Whether the University complied with Title IX requirements regarding development and dissemination of notice of nondiscrimination pursuant to 34 C.F.R. §§ 106.8(a) and 106.9.**

Factual Findings

OCR reviewed the University's notice 4r-0.004 T.004o )-4P4(na)4 -n0.eminatitebnar3 /TT0 ,sityE202, 09ed

policy covered student admissions and access to University programs and activities and, among other things, discussed the prohibition against discrimination and harassment on the basis of sex, and explained the University's complaint procedure, the process that campus community members must follow to file a complaint, how to contact OPHD and the Title IX Coordinator, and that inquiries regarding Title IX may be made to OCR. The U.C. system-wide "Sexual Violence and Sexual Harassment Policy" in effect January 1, 2016, to at least the date of last review on November 6, 2017, includes the same required information. This policy is also posted on the University's website.

#### Analysis and Conclusion

OCR found that the University's notice of nondiscrimination is available in multiple locations on the University's website. OCR also found that the University was not in compliance with Title IX requirements between the 2010-11 and 2013-14 academic years because its policies and procedures lacked some of the required information about the Title IX Coordinator and a statement that inquiries may be made to OCR. The University brought these documents into compliance on February 25, 2014. The University's current notices of nondiscrimination posted on its website comply with Title IX requirements, with the exception that they do not include a statement that inquiries regarding Title IX may be referred to OCR. On October 20, 2017, the University provided OCR with amended draft notification to address this issue. Prior to OCR completing its assessment regarding whether the revised notices had been properly distributed, the University expressed an interest in voluntary resolution of this issue, and OCR agreed it was appropriate to do so.

#### **B. Whether the University complied with Title IX requirements regarding the designation and notice of a Title IX Coordinator pursuant to 34 C.F.R § 106.8(a).**

##### Factual Findings

The University's current Title IX Coordinator has overseen Title IX investigations from at least August, 2011 through at least January 25, 2018. OCR confirmed that between August, 2011 and June, 2014, the Title IX Coordinator has attended multiple sessions of professional training regarding Title IX compliance and investigations and University policies and procedures. OCR further confirmed that OPHD staff members, student conduct hearing officers, and peer review committee members attended training sessions on sexual harassment and sexual violence and University policies and procedures. The various iterations of the University's Title IX policies and procedures describe the Title IX Coordinator's responsibilities: monitoring overall compliance with Title IX; ensuring appropriate training; and overseeing the University's investigation, response to, and resolution of complaints made under the policy. As discussed above, the University's website and OPHD web page contain the contact information for the Title IX Coordinator, including her phone number, email, and office address.

#### Analysis and Conclusion

OCR found that the University had designated a Title IX Coordinator from August, 2011 through at least January 25, 2018, and the Title IX Coordinator attended professional training during that

time regarding Title IX compliance and investigations and University policies and procedures. As such, OCR found that the Title IX Coordinator was otherwise qualified to carry out the responsibilities of coordinating Title IX investigations. In addition, OCR confirmed that the University provided trainings for others involved in the investigation process, specifically OPHD investigators, student conduct hearing officers, and peer review committee members. The University's website includes the contact information, including name, address, email, and phone number, for the Title IX Coordinator and OPHD investigators. Accordingly, OCR found the University in compliance with Title IX and its implementing regulation with respect to this issue.

**C. Whether the University's sexual harassment and sexual violence policies and procedures, as written, comply with Title IX and the regulation pursuant to 34 C.F.R § 106.8(b).**

Factual Findings

*1. Overview*

OCR reviewed the applicable sexual harassment and sexual violence policies and grievance procedures contained in U.C. system-wide and local policies and procedures and in student, staff, and faculty codes of conduct in effect from August, 2011 through January 25, 2018. During this time period, the U









On July 1, 2017, the University's new Faculty Framework went into effect. The Faculty Framework describes a complaint procedure for sexual harassment and sexual violence complaints against faculty that, in conjunction with the SV/SH policy and updates to local faculty discipline procedures, provides for notice to the complainant of various reporting options, an initial complaint assessment by the Title IX Coordinator, interim measures, and resolution through the SV/SH policy's alternative resolution and formal investigation processes. Under the Faculty Framework, complainants and respondents are provided with: notice of the initiation of the investigation, findings, and, as applicable, sanctions; equal opportunities to present testimony and evidence and to have an advisor present; notice of the timelines for completion of the Title IX investigation and, if applicable, the discipline process.

Under the Faculty Framework, if OPHD finds a respondent faculty member violated the SV/SH policy, then this finding triggers the initiation of the faculty discipline process under APM-015 and APM-016. Both parties have an opportunity to respond to the finding from OPHD under the SV/SH policy prior to the Vice-Provost for Faculty's consultation with the University's Peer Review Committee regarding the range of appropriate corrective actions. The Faculty Framework also includes a 40-day timeframe for the Vice-Provost for Faculty to, in consultation with the Peer Review Committee, enter into an early resolution with the faculty member in accordance with APM-016, file charges against the faculty member to initiate the P & T Committee disciplinary hearing process, or close the matter without taking formal disciplinary action. However, the Faculty Framework fails to include a reasonably prompt timeframe for completion of the early resolution, P & T Committee hearing, or appeal / reconsideration process. It states only that faculty discipline will be imposed within three years of a complainant's initial report of sexual harassment and/or sexual violence. As written, three years is not a reasonably prompt timeframe for concluding an investigation and issuing an effective response for a complaint of sexual harassment and/or sexual violence.

OCR also notes that, under the Faculty Framework and applicable Academic Senate bylaws that govern the P & T Committee hearing process, a respondent faculty member may be permitted to directly cross-examine a complainant who provides witness testimony during a P & T Committee hearing involving a complaint of sexual violence and/or sexual harassment. However, because the University and not individual complainants initiate charges before the P & T Committee, the Academic Senate bylaws do not provide for complainant-witnesses to be able to cross-examine respondent faculty members during P & T Committee hearings.<sup>6</sup>

OCR also notes that under APM-015 and APM-016, the P & T Committee uses the clear and convincing evidence standard for the faculty discipline process. As such, the University has a two-tier system with different standards of proof.

#### *4. Reports and Complaints against Staff*

From September 1, 2011 through at least December 1, 2017, the University had in effect several personnel policies for staff members (specifically relevant here, PPSM 62 and 64) related to

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<sup>6</sup> Although this does not address the equity issue between the complainant and the respondent, OCR notes there are other options, such as cross-examination of either party by a third party, an advisor, or the University, available. Regardless of the method employed, the University will need to ensure equity between the parties.

violations of University policies. Neither PPSM 62, 64, or other PPSMs applicable to conduct that violates University policies included a resolution process for sexual harassment and/or sexual violence complaints against staff and, as such, did not conta

no cross-references in staff PPSMs to the Staff Framework, these

police report, written statement, and notes from the July XX, 2014 meeting to the Title IX Coordinator. CSC requested that OPHD determine whether Complainant A's conduct fell within OPHD's authority to respond to Title IX matters under the SHSVP.

On August XX, 2014, Complainant A contacted CSC regarding her pending conduct charges and reported that Student 1 had sexually assaulted her. On August XX, CSC met with Complainant A and temporarily suspended<sup>7</sup> other unrelated pending conduct charges against Complainant A to first proceed with the grievance process under the SHSVP because Complainant A's sexual assault allegation arose from the same June X, 2014 incident as Student 1's allegations. CSC provided Complainant A with information about on-campus resources and offered Complainant A a no-contact directive. Complainant A declined the no-contact directive, and CSC informed Complainant A that all information concerning her allegation would be shared with OPHD. CSC forwarded all meeting notes and correspondence with Complainant A to the Title IX Coordinator.

In an August XX, 2014, email, Complainant A XXXXXXXXXX XXXX XXX XXXXXXXXXXXX XXXXXXXXXXXX XXXX. The team Coach forwarded this email to the Associate Athletics Director, who forwarded it to the Title IX Coordinator. The Title IX Coordinator scheduled a meeting with CSC, University Counsel, and UCOP Counsel to determine an appropriate response. Before the group could make a determination, Student 1 requested a no-contact directive because Complainant A had threatened another student. The Associate Athletics Director connected this student to UCPD, and the Title IX Coordinator drafted a response to Complainant A's August XX, 2014 email. In this response, sent on September XX, 2014, Complainant A was notified that she should not have to XXXXXX XXXX XXX XXXX due to her allegations against Student 1. Complainant A was again informed of campus resources, the University's policies prohibiting retaliation for reporting sexual harassment and sexual violence, and notified that OPHD had been contacted because Complainant A's allegations against Student 1 concerned conduct prohibited by the SHSVP.

On September XX, 2014, OPHD notified Complainant A and Student 1 that their respective allegations (the University characterized Student 1's allegation against Complainant A as "dating violence" and Complainant A's allegation against Student 1 as "sexual assault / dating violence" based on the June X incident and statements made to CSC) would be formally investigated by OPHD under the University's SHSVP. Also on September XX, 2014, OPHD issued mutual no-contact directives that included prohibiting communications with each other; "[s]peaking negatively about the other individual to mutual friends or acquaintances"<sup>8</sup>; and indirect threats or intimidation.

OPHD's investigation was conducted by two investigators trained in the University's SHSVP. Between September XX, 2014, and January X, 2015, OPHD interviewed Complainant A and Student 1 multiple times and interviewed seven additional witnesses identified by Complainant A and Student 1. OPHD made multiple requests for each party to provide documentary evidence and – while Student 1 provided call logs, text messages, photographs of his injuries allegedly caused by Complainant A, and other documents – Complainant A shared only the police report she had filed with BPD. Complainant A promised, but ultimately never provided, evidence of injuries allegedly caused by Student 1 during the June X incident or messages from Student 1 corroborating Complainant A's statement that Student 1 had previously threatened to rape her.

On October X, 2014, Complainant A was placed on interim suspension for conduct unrelated to the OPHD investigation. Later that same day, Complainant A appealed the interim suspension asserting that the underlying allegations were a false accusation that had been made against her in retaliation for reporting Student 1's alleged sexual assault. In response, on October XX, 2014, CSC modified the interim suspension to allow Complainant A to attend classes and access counseling resources. On October XX, 2014, CSC followed up with Complainant A to determine if additional supports were needed, and Complainant A reported that the team Coach had previously asked Complainant A questions that made her uncomfortable. On October XX and November X, 2014, OPHD followed up with Complainant A, her father, and, later, the team Coach to address these concerns.

On October XX and November X, 2014, Student 1 notified CSC and OPHD, respectively, that Complainant A had cal

- Complainant A's conduct during the June X, 2014, incident constituted dating violence under the University's policy and, therefore, Complainant A violated the SHSVP then in effect.
- Student 1's conduct before and during the June X, 2014, incident did not constitute dating violence, sexual assault, or any other violation of the SHSVP and, therefore, Student 1 did not violate University policies then in effect.

As the University proceeded with the conduct process against Complainant A, all parties were provided with contemporaneous notice concerning each step in the conduct process and equal opportunities to participate, present evidence, have an advisor present, and review information presented by the other party.

#### Analysis and Conclusion

OCR found that the University provided the parties with an equitable complaint resolution process because it conducted an adequate, reliable, and impartial investigation. After Complainant A reported her allegation of sexual assault / dating violence to CSC on August XX, 2014, OPHD initiated a formal investigation of the allegations under the SHSVP. The University provided Complainant A and Student 1 with written notice of all allegations and applicable University policies. OPHD's investigation was conducted by two trained investigators. The investigation included a review of all relevant information produced by Complainant A, Student 1, and other witnesses identified by Complainant A and Student 1. When Complainant A and Student 1 raised new concerns, OPHD sought out additional information and worked with CSC, the Athletics Department, and other University departments to implement interim measures and other supports and information, including offering t



2. *Complainant B – 09-16-2399*

On August XX, 2017, OCR learned that Complainant B had resolved her allegations through mediation with the University, and she requested to withdraw her OCR complaint per the terms of a private settlement agreement reached with the U.C. Regents. OCR confirmed that this private settlement agreement was reached through a resolution process compar4 (r)2 (ut)-ie (t ttp)-10B /Pagination >1

reports / complaints filed in the 2014-15 academic year,<sup>9</sup> and one matter in the 2015-16 academic year that was brought to OCR's attention. Through this review of files, OCR identified compliance concerns and made noncompliance findings as follows:

Overall, OCR identified compliance concerns with respect to equity when the University used an alternative resolution process. The alternative resolution process resulted in complaints being resolved without the voluntary agreement of, or, in some matters, notice of the outcome being provided to the complainant and/or respondent. In some matters, the alternative resolution process also resulted in complaints being resolved without interviews of the impacted parties

him, it looks like she wants to have sex with him. Over the next four days, XXXXXXXXX  
XXXXX XXXX XXXXXXXX XXXXXXXX XX XXXXXX, the faculty member sent the  
graduate student seven personal messages on social media, all unanswered, demanding with  
increasing urgency that she respond to him. The Title IX Coordinator, along with the dean of the  
college and the chair of the department, met with the faculty member in September 2013. The  
faculty member received a letter in December 2013



documentation in the file indicating that any notice of this outcome was provided to the other two complainants. OCR's review of OPHD documentation showed that only one complainant requested, and was provided with, this written information. The University's policies and procedures at the time did not provide for notice to student complainants regarding the outcome of the faculty adjudication and discipline process in matters involving faculty sexual harassment and sexual violence. In order to make a noncompliance finding with respect to equity, OCR would have needed to conduct further investigation, including but not limited to interviews with the OPHD investigator assigned to this matter. Prior to completing OCR's investigation, the University expressed an interest in entering into a voluntary resolution agreement to remedy the above-identified compliance concerns, and OCR agreed it was appropriate to do so.



In three other matters where undergraduate or graduate students alleged unwelcome conduct including comments of a sexual nature by graduate student instructor respondents, the alternative resolution process was utilized. In two of the three matters involving graduate student instructors, the documentation provided raises a concern that notice of the outcome of the process was not provided to the complainants, and the cases were closed with no further action or follow-up to assess whether the alleged sexual harassment had stopped. In all three cases, the University did not reach a determination as to whether the conduct occurred and if it did, whether it created a hostile environment on the basis of sex.

In one matter, on May XX, 2012, an undergraduate female student reported to a department administrator and faculty member that her graduate student instructor was sending her unwelcomed messages with sexual content through two social media sites. His messages identified her address, her current and past boyfriends, and his estimation of when she would get her next period. In addition, the graduate student threatened to tell her father who she was having sex with. He also sent her messages under a pseudon0n Td ( )Tju (r)3enbgesimal csunwel rt.o (i)-24 (e

possible sexual harassment, or otherwise



*Student-to-Student Reports and Complaints*

OCR also identified compliance issues with respect to the use of the alternative resolution process for student-to-student matters involving unwelcome sexual conduct and/or comments.

In one matter, in two complaints filed by students involving allegations that another student engaged in unwanted sexual touching<sup>11</sup>, including unwanted touching under the clothes, OCR identified that the University was not in compliance because it did not provide the complainants with notices of the outcome of the alternative resolution process until 235 days after the alleged misconduct was reported to the University. OCR did not identify any mitigating factors that might have explained the extended timeframe, such as the complexity of the investigation or the need to coordinate with a pending police investigation, and the University took no action to investigate for two months while the respondent was allowed to participate in a University-sponsored program. In addition, OCR identified a concern because the notice provided was not adequate because, among other things, it only stated that the matter had been “explored and resolved” and did not describe an outcome, including whether a hostile environment had been created and, if it had, whether any measures were necessary to allow the complainants continued access to the University’s educational programs and activities. OCR also had a concern that the University’s resolution was not equitable because neither the respondent nor the complainants were provided adequate notice of the procedure that the University had chosen to resolve the complaint. Finally, OCR had a concern that the University was unable to confirm that it exercised appropriate oversight to ensure that the sexual harassment prevention training it identified as a remedy for the student group that hosted the event where some of the alleged conduct occurred was provided.

In a second matter, documentation reviewed by OCR raised a compliance concern that the University proceeded with an alternative resolution process without providing adequate notice of

On June X, 2015, OPHD sent mutual no-contact directives to both parties.<sup>12</sup> Between then and March, 2016, there was much back and forth about the implementation of the no-contact order and how to ensure that both students, who were majors in the same academic department, would be enrolled in the 36 Tm

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In a third student-to-student matter, students participating in a University extracurricular group traveling in a convoy of buses of students to a University activity distributed 45 copies of documents that contained lyrics, passages, images, and text to student passengers in their bus. Much of the content was read aloud or sung to the other students on the bus while they were in transit. Nineteen days later

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included a copy of the redacted investigation report, but did not include a description of the sanction against the respondent.

On December X, 2014, the respondent sent an e-mail stating that he had not yet received a copy of the investigative report. The investigator replied on the same day, stating that the report was sent out three days earlier.

OCR identified a violation because the University failed to afford the respondent with an equitable investigation. The respondent was not provided with an equitable process because he was asked to respond to questions about alleged inappropriate conduct without receiving information about when and with whom the alleged misconduct occurred. OCR also identified a concern that OPHD did not have a process or procedure in place to assist parties when either is not proficient in English. In this regard, the investigator

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Prior to completing its investigation with respect to the other files reviewed by OCR in subsection D./E.3.b. wherein OCR identified compliance concerns, the University expressed an interest in a voluntary resolution, and OCR agreed it was appropriate to do so. The University also informed OCR that it has initiated a climate survey for its faculty, students, and staff and will be analyzing the results to determine if any other measures are needed to prevent and address sexual harassment and sexual violence and provide a prompt and equitable resolution to reports and complaints regarding the same.

### Overall Conclusion

The University has entered into the enclosed Agreement to address the compliance concerns and violations identified in these consolidated matters. The Agreement includes:

- Revisions to the U.C. system-wide policies and procedures including, but not limited to, changes to the alternative resolution process to provide for a reasonably prompt process that is voluntary for both parties and includes the ability to proceed to formal investigation and adequate notice of the outcome, and an assurance that findings against a faculty or staff employee under the SV/SH policy and any decision regarding actions taken to prevent the recurrence of harassment, including sanctions, will be made in a reasonably prompt amount of time, factoring in the complexity of the matter and severity of the allegations;
- Review by the University of eight matters where OCR identified significant concerns and/or violations with respect to whether an equitable process was provided;
- OCR review of the University's notices of outcome for all formal Title IX investigations involving faculty or staff and that are referred to a discipline process for the school year following the University's implementation of its revised sexual harassment and sexual violence policies and procedures;
- Ongoing training for faculty and members of the faculty peer review committees on the University's revised policies and procedures,

This letter sets forth OCR's determination in these consolidated cases. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. Please be advised that the University may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, any individual may file a complaint with OCR alleging such treatment.

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

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please call OCR San Francisco at (415) 486-5555.

Sincerely,

/s/

Laura Faer  
Regional Director

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