



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

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April 10, 2018

**SENT VIA ELECTRONIC MAIL ONLY**

Marc Tessier-Lavigne  
President  
Stanford University  
Office of the President  
Building 10  
Stanford, California 94305-2061

(In reply, please refer to OCR case nos. 09-15-2070, 09-15-2405, 09-16-2213)

Dear President Tessier-Lavigne:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaints against Stanford University (University). On February 26, 2015, OCR accepted for investigation a complaint filed by Student A (case no. 09-15-2070) on behalf of herself and other students alleging that the University failed to respond promptly and equitably to reports and complaints of sexual violence and sexual harassment in violation of Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106. Subsequently, OCR received complaints against the University filed by two other individuals, hereinafter Students B and C, raising similar allegations, which OCR accepted for investigation on July 23, 2015 and April 18, 2016 (OCR case nos. 09-15-2405 and 09-16-2213). OCR consolidated the three cases for investigation and resolution.

OCR is responsible for enforcing Title IX and its implementing regulation, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the Department. The University is a recipient of financial assistance from the Department. Therefore, OCR had jurisdiction to investigate this matter under Title IX. OCR investigated the following issues:

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

- D. Whether the University provided a prompt and equitable response to incidents of sexual harassment and sexual violence of which it had notice, including complaints from Student A, B, and C<sup>1</sup>, pursuant to 34 C.F.R. §§ 106.31 and 106.8; and
- E. Whether the University's failure to provide a prompt and equitable response to oral reports and written complaints of sexual harassment and sexual violence allowed affected students to be subjected to or to continue to be subjected to a sexually hostile environment pursuant to 34 C.F.R. §§ 106.31 and 106.8.

#### SUMMARY OF INVESTIGATION AND BACKGROUND

The University is a private university located in Palo Alto, California with more than 16,000 students. Oral reports and written complaints of sexual harassment, including sexual violence, filed by students are generally investigated in the first instance by the Title IX Office<sup>2</sup>. The University's Department of Public Safety (DPS) provides law enforcement, security, and emergency services on campus 24 hours a day. DPS can initiate a simultaneous criminal investigation that is separate from the University's Title IX process.

To investigate these matters, OCR reviewed documentation submitted by the University and the Complainants, including: the University's Title IX policies and procedures in effect as of December 1, 2017; its notices of nondiscrimination and descriptions of training on sexual harassment and sexual violence for the 2015-2016 through 2016-2017 academic years; the University's response to 147 oral reports or written complaints of sexual harassment and/or sexual violence received from June 1, 2015 through May 31, 2016, and 27 oral reports or written complaints of sexual harassment and/or sexual violence received from June 1, 2014 through May 31, 2015<sup>3</sup>; and the University's investigative files for allegations of sexual harassment and/or sexual violence related to Complainants Students A, B, and C, as well as all documentation provided by the Complainants to OCR.

OCR interviewed the Complainants and University-affiliated personnel, including the (former) associate director of OCS, residence dean of Residential Education (residence dean 1), associate vice provost/dean of students (associate vice provost), associate dean of Residential Education (associate dean), associate dean of students/OCS director (OCS director), Title IX coordinator, and Title IX investigators. During a two day onsite visit to the University in January 2017, OCR conducted focus group interviews with 22 students representing different aspects of campus life and, during office hours and by phone, OCR interviewed 54 former and current students.

Documentation regarding training for the 2015-2016 through 2016-2017 academic years showed that the Title IX Office and Sexual Harassment Policy Office provide biannual Title IX training to faculty and

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<sup>1</sup> OCR notified the University of the identities of the three Complainants when the investigation began. OCR is withholding their names from this letter to protect their privacy.

<sup>2</sup> Prior to 2014, the University did not have a specific Title IX Office, and complaints were received by the Office of Community Standards (OCS).

<sup>3</sup> For oral reports and written complaints received by the University from June 1, 2014 through May 31, 2015, OCR reviewed all reports and complaints that were resolved through the formal investigation process and a random sample of informally resolved reports and complaints. Therefore, these numbers do not reflect the total number of oral reports and written complaints of sexual harassment and sexual violence that the University received for this time period. OCR's review of cases is limited to the time periods stated herein and the cases reviewed. OCR, therefore, is not making any findings or identifying any compliance concerns related to reports or complaints made to the University in the years not covered by the investigation or in the cases not reviewed by OCR.

staff and student employees. Entering undergraduate and graduate students undertake separate online Title IX training. Undergraduate students also participate in small group discussions in their dorms, and a program in which an impacted student, student leader, and the Title IX coordinator address relationship violence, sexual violence, University policies and resources and Title IX.<sup>4</sup> The University also has specific Title IX training programs for student organizations and for student athletes. In the 2015-2016 school year, the University conducted an all campus climate survey and shared the results with the University community.

## LEGAL STANDARDS

### *Sexually Hostile Environment and Duty to Respond Promptly and Equitably*

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides that “. . . no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any . . . education program or activity” operated by recipients of Federal financial assistance. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including acts of sexual violence.

When a student sexually harasses another student, the harassing conduct creates a hostile environment if it is so severe, persistent, or pervasive that it denies or limits a student’s ability to participate in or benefit from the recipient’s program or activities. If a recipient knows or reasonably should know about student-on-student harassment, Title IX requires the recipient to respond in a prompt and equitable manner by taking immediate action to stop the harassment, prevent its recurrence, and address its effects. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out his/her responsibilities either (1) conditions an educational decision or benefit on a student’s 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 program, 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.

Title IX and its implementing regulation 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.

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<sup>4</sup> OCR notes that seven undergraduate students who spoke with OCR expressed concern that the University’s harassment training prevention program was insufficient because it did not extend beyond their freshman year.

*Grievance Procedures and Notice of Nondiscrimination and Title IX Coordinator*

The regulation implementing Title IX, 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 the regulation implementing Title IX (Title IX coordinator), including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by the regulation implementing Title IX. The regulation implementing Title IX, at 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 the regulation implementing Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, 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 and its implementing regulation at 34 C.F.R. Part 106 not to discriminate in such a manner. This notice of nondiscrimination must include a statement that inquiries concerning Title IX may be referred to the Title IX coordinator or to OCR and must include contact information, including the name (or title), address, and phone number for the Title IX coordinator.

FACTUAL FINDINGS, ANALYSIS, AND CONCLUSIONS OF LAW

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

Factual Findings, Analysis, and Conclusions of Law

The Stanford Bulletin 2017-18 on the University's website prohibits discrimination and harassment on the basis of sex in the administration of the University's programs and activities, and identifies the Title IX coordinator by title and name and includes her address, number and email.<sup>5</sup> The University's Administrative Guidance (AG) 1.7.4 also includes information about the Title IX office for students and the prohibition against discrimination and harassment on the basis of sex with respect to applicants and employees and others who participate in University programs and activities both on and off-campus, and states that complaints can be filed with OCR.

The Student Title IX Investigation and Hearing Process and Administrative Guidance (AG) 1.7.3 include the title, address, phone number and email address of the Title IX coordinator who receives complaints. In the Title IX Sexual Harassment, Sexual Assault, Sexual Misconduct, Relationship (Dating) Violence and Stalking Administrative Policy and Procedures (Title IX Administrative Process), the address, phone number and email address and contact information for the Title IX coordinator are included.<sup>6</sup> Only AG 1.7.1 and AG 1.7.4 include information about how to file a complaint with OCR and no other policies/procedures include that inquiries about Title IX can be made to OCR. Because the notices of nondiscrimination do not consistently provide notice that inquiries about Title IX can be made to OCR,

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<sup>5</sup> All of the information on the University's website that is discussed in this subsection was last checked by OCR on December 1, 2017.

<sup>6</sup> On March 29, 2018, OCR confirmed that Title IX Administrative Process had been updated to reflect the complete contact information for the Title IX Coordinator. Prior to the University's revision, some but not all of the required contact information was included.

OCR found that the University was not in compliance with the requirements of Title IX with respect to development and distribution of its notice of nondiscrimination.

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

Factual Findings, Analysis, and Conclusions of Law

OCR found that the University had two Title IX coordinators, a Title IX coordinator prior to October 2015, and a current Title IX coordinator from October 2015 until OCR's last check on January 4, 2018. OCR interviewed the current Title IX coordinator and discussed her background and training, and found that she was experienced with respect to the application of Title IX and knowledgeable about complaint investigations, working with complainants and respondents, applicable corresponding state law, and University policies and procedures. Accordingly, OCR found the University in compliance with Title IX and the regulation from at least October 2015 until at least January 4, 2018 because it had designated a Title IX coordinator who was knowledgeable about the requirements of Title IX and who had received training with respect to responding to reports and complaints of sexual harassment and sexual violence.

**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).**

Overview

OCR reviewed the following four sexual harassment and sexual violence policies and procedures applicable to the following types of complaints listed below:

- Student Against Student Sexual Harassment and Violence: AG 1.7.3 v4 (in effect March 11, 2016 and still in effect as of at least December 1, 2017)/Student Title IX Investigation and Hearing Process (Student Title IX Process) (in effect February 1, 2016 and still in effect as of at least December 1, 2017)
- Student Against Faculty/Staff/Third Party Sexual Harassment and Violence: AG 1.7.3 v4 (in effect March 11, 2016 and still in effect as of at least December 1, 2017) (covers sexual violence) / AG 1.7.1 v2 (in effect August 2, 2016 and still in effect as of at least December 1, 2017) (covers sexual harassment) /Title IX Administrative Process (in effect May 1, 2014, updated April 1, 2017 and still in effect as of at least December 1, 2017)

AG 1.7.3 is the University's policy covering allegations of student-to-student sexual harassment and sexual misconduct, sexual violence, stalking and dating violence for allegations made by a student against any student, faculty, staff, or third party participating in University programs and activities. AG 1.7.1 is the University's policy covering student sexual harassment allegations, not including sexual violence, dating violence, or stalking, against faculty, staff, and third parties. These policies work in conjunction with two grievance procedures, specifically the Student Title IX Process for student-to-student reports and complaints and the Title IX Administrative Process for student against faculty, staff or third party reports and complaints. These policies and procedures state that they use the preponderance of the evidence standard. However, for faculty discipline, the University's policies and procedures utilize a clear and convincing standard. The University's <https://titleix.stanford.edu/> website collects in one location all information about University policies and procedures related to sexual

violence and sexual harassment. The University informed OCR that the policies and procedures discussed below are provided to undergraduate students during orientation and to graduate students prior to enrollment. During interviews and focus groups, eleven students told OCR that they did not understand the University's various policies and procedures governing sexual violence/sexual harassment.

## **Policies and Procedures Applicable to Student Against Student Harassment and Sexual Violence**

### Factual Findings

The Student Title IX Process provides that it is the sole process, working in conjunction with AG 1.7.3, that applies where a student is alleged to have engaged in prohibited conduct on campus or off campus in a University program or activity or where it has the effect of potentially creating a hostile environment in a University program or activity. AG 1.7.3 states that the University will take steps to prevent the recurrence of prohibited sexual conduct through safety measures and will redress its effects through appropriate accommodations. AG 1.7.3 includes a list of remedies, which include remedies for the broader community, such as revision of policies, training, and climate surveys.

When allegations of prohibited conduct are coupled with allegations of violations of other University policies, the Title IX coordinator may determine that a joint hearing before OCS or other disciplinary panel is appropriate. No information is included about how a joint hearing affects the rights of complainants and respondents who would otherwise go through the Student Title IX Process.

The Student Title IX Process states that student-on-student sexual harassment is “[u]nwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual nature ... [that] is sufficiently severe, persistent, or pervasive so as to interfere with or limit a reasonable student’s ability to participate in or benefit from the University’s services, activities or opportunities.” The Student Title IX Process incorporates the definitions from AG 1.7.3 for consent, incapacitation, sexual assault and sexual misconduct. AG 1.7.3 defines “sexual misconduct” as “the commission of a sexual act, whether by a stranger or nonstranger and regardless of the gender of any party, which occurs without indication of consent.” AG 1.7.3 states that an act of sexual misconduct is a sexual assault if it is accomplished by use of (a) force, violence, duress or menace; or (b) inducement of incapacitation or knowingly taking advantage of an incapacitated person.

The Student Title IX Process incorporates the definition of retaliation from AG 1.7.3, which states that it is prohibited to retaliate against any person making a complaint of prohibited sexual conduct or participating in an investigation, and is used to address complaints of retaliation and violations of University or court-ordered directives, including no-contact orders, related to the aforementioned conduct. However, the statement of rights for parties and witnesses states that the right for a student is only to be "reasonably protected from retaliation and intimidation".

University and student staff members with knowledge of unreported concerns and faculty and staff who have responsibility for working with students in the capacities of teaching, advising, coaching or mentoring are responsible for promptly reporting. All reports related to students are to the Title IX coordinator and all other reports are to the Sexual Harassment Policy Office.

AG 1.7.3 and the Student Title IX Process state that it is not always possible to provide confidentiality depending on the seriousness of the allegation or other factors, which are weighed by the Title IX

coordinator in conjunction with an individual's request for confidentiality or not to pursue an investigation. If the request for confidentiality is denied, the complainant will be informed before the disclosure is made and interim measures put in place to protect the complainant and community. In its review of files, OCR identified that if an individual complainant wanted to remain confidential, or did not want to provide the name of the responding student, the investigation generally did not move forward.

AG 1.7.3 and the Student Title IX Process do not include a timeframe for reporting but individuals are encouraged to make a report soon after the incident to maximize the University's ability to investigate. Under the Student Title IX Process and AG 1.7.3, the University's goal is to reach a "Non-Hearing Resolution" or complete a hearing within 60 calendar days from the date of issuance of a "Notice of Concern", although extensions may be appropriate in some matters. Neither AG 1.7.3 nor the Student Title IX Process provides a timeframe for when the Notice of Concern will be issued after a report or complaint is received.

AG 1.7.3 states that complaining individuals have the option to notify law enforcement, filing a complaint with the University is independent of any criminal investigation, and the University will not wait for the conclusion of a criminal investigation to commence its own investigation.

The Student Title IX Process explains that the University investigates concerns brought to the Title IX Office in which the Title IX coordinator determines that the allegations "are plausible under the totality of the circumstances and, if true, would constitute" prohibited conduct defined in the policy. The Title IX coordinator informed OCR that if the allegations, if true, would not be a policy violation, or the allegations are implausible, then the Title IX Office would inform the complainant in writing with a brief explanation. The University would not have contacted the respondent yet. This process is not currently in the University policy and procedure; in one case file reviewed, OCR found that such decision was provided in writing.

The Student Title IX Process states that both parties have a right to a support person, nine hours of attorney services paid by the University, to receive the written Notice of Concern, "Charge" or "No-Charge Letter", "Outcome Letter" (including for a Non-Hearing Resolution), "Appeal Outcome Letter" and to appeal the outcome, review the hearing file at the point of a charge or no charge decision, object to inclusion or exclusion of information in the post-charge hearing file before it is provided to the hearing panel, have the matter heard by a neutral hearing panel, and to decline to give a statement or attend a hearing. Only the support person is permitted to accompany a party into the hearing room.

The Title IX Office "may suggest" a Non-Hearing Resolution to the parties if the Title IX coordinator concludes that a reasonable hearing panel could find by a preponderance of the evidence that the alleged prohibited conduct occurred, but there is not a significant dispute among the parties and the Title IX Office about the proper outcome of the matter (including remedies and sanctions). The parties are not required to engage in discussions together regarding a proposed resolution, and a Non-Hearing Resolution is not available if a party objects. The Non-Hearing Resolution results in an Outcome Letter, which cannot be appealed. The University stated that if either party objects at any time during the process, the University will end the informal process and move forward with the formal resolution process. If the University determines that it will investigate, the parties receive a written Notice of Concern and an investigator will be assigned. Both parties may submit documents, information and a list of witnesses, and request that the investigator collect information that is not accessible to the requesting party.

For a No Charge Decision, the Title IX coordinator issues an Outcome Letter, which can be appealed pursuant to the process specified below. For a Charge Decision, where it is determined that a reasonable hearing panel could find that the alleged conduct occurred and a Non-Hearing Resolution option is not feasible, the Title IX coordinator notifies the parties in writing through a Charge Letter that the matter has been charged and referred. The Charge Letter consists of a summary of the investigation — including allegations and applicable University policy — sufficient to support referral to a hearing panel but does not include findings regarding responsibility. If a charging decision is made, the hearing coordinator issues a hearing schedule for all key dates for the matter that takes into consideration any conflicts identified by the parties.

The parties receive electronic access to view the hearing file and a log of evidence with any redactions and explanation of redactions and the names of panelists. Panelists with a conflict of interest may not serve; the parties may make a request to recuse a panelist within 24 hours of notice of the names. Extensions for good cause may be made in writing to the hearing coordinator, who will respond promptly. The parties may submit objections and the evidentiary specialist will provide a written decision. For the hearing, the parties can appear in person, by telephone, or by video conference. The other party listens by phone or other similar technology to the testimony of the other party or witness' session with the hearing panel; there is a break, so that a party listening is able to submit written follow-up questions to the hearing coordinator.

No more than 12 hours after the hearing, the hearing panel makes a finding regarding responsibility. The Title IX coordinator issues written Outcome Letters to the parties that include the outcome of the hearing/finding of responsibility, rationale for the outcome, and a description of sanctions and remedies.

Both the Student Title IX Process and A.G. 1.73 identify that the Title IX coordinator is authorized to implement interim measures, including but not limited to no-contact directives, escorts, counseling services and academic accommodation. The Title IX coordinator provides written notification to both parties, although a measure affecting only one party will not be shared with the other party. The Student Title IX Process and AG 1.7.3 state that student sanctions range from a formal written warning to suspension or expulsion from the University. A.G. 1.7.3 states that when staff and faculty violations are found, sanctions are determined and issued under the applicable procedure and several links are included. Consideration of whether remedies and sanctions go into immediate effect or are held in abeyance pending appeal are determined on a case-by-case basis based on considerations including the safety of the community and the complainant, the severity of the allegations, and the education and living environments of the parties.

The Student Title IX Process and A.G. 1.7.3 do not address a conflict of interest with the Title IX coordinator or evidentiary specialist, but conflicts with hearing panelists are addressed through replacement by an alternate. The Student Title IX Process states that the investigator shall have been trained on all elements of an investigation and that hearing panelists shall be trained decision-makers.

Where there is a finding of responsibility, the hearing coordinator provides copies of key documents, including the Outcome Letter, to OCS. However, a review of files showed that the University did not maintain all documentation related to the investigation. Many files were missing an initial copy of the complaint and interview notes. In interviews with the Title IX coordinator and a Title IX investigator, they informed OCR that as of September, 2017 the Title IX Office has implemented a new document



management system that captures all documents from the time that the Title IX Office receives a complaint.

### *Appeal*

The Student Title IX Process states that both parties can appeal the Outcome Letter within 10 calendar days, and extensions are granted for "good cause", which is undefined. Each party may submit a written appeal, which will be shared with the other party. An appeal can be taken for: procedural irregularities substantially affecting the outcome, substantive new evidence, unreasonable decision on the findings, sanction and/or remedies. The parties generally have seven calendar days to respond. The Appeal Officer may reject the appeal in whole or in part, issue a new decision regarding responsibility, issue new or revised sanctions and remedies, or refer the matter to a new panel; the decision shall issue no later than 15 calendar days after receipt of all appeal documents. The Provost has the final review of any determination to expel.

### Analysis and Conclusion of Law

OCR found that AG 1.7.3 and the Student Title IX Process are in compliance, except in two respects. In this regard, together, AG 1.7.3 and the Student Title IX Process apply to all instances in which a University student is alleged to have engaged in sexual harassment and sexual violence. Among other things, the policies/procedures provide that the University will take steps to prevent the recurrence of prohibited sexual conduct through safety measures and will redress its effects through appropriate accommodations. The Student Title IX Process also provides equitable opportunities to both parties within the process, including but not limited to an opportunity to identify relevant witnesses and evidence, respond to evidence, address conflicts with hearing panelists, and receive a written notice of the outcome at each stage in the process. However, OCR found that AG 1.7.3 and the Student Title IX Process do not provide a reasonably prompt timeframe for issuance of the Notice of Concern. The Student Title IX Process includes an incorrect standard for addressing retaliation, namely that parties and witnesses only have a right to be "reasonably protected" from retaliation and intimidation. However, as correctly stated in AG 1.7.3, retaliation is prohibited under Title IX and its regulations and the protection is not limited.

For clarity and as a matter of technical assistance, among other things, OCR recommends identifying that, in cases of conflict, the parties will receive notice of the alternate hearing panelists, stating that both parties receive the hearing coordinator's response to extension requests and to decisions by the evidentiary specialist, specifying how a joint hearing would affect the rights of the parties, providing a prompt timeframe for a responsible employee to report, e.g., 24 hours, and stating that the University prohibits conflicts of interest or bias by the Title IX coordinator or evidentiary specialist and/or provide a process for addressing conflicts or bias.

## **Policies and Procedures for Student Against Faculty/Staff/Third Party Harassment and Sexual Violence**

### Factual Findings

For sexual violence, dating or relationship violence, and stalking complaints made by students against faculty, staff, and third parties, AG 1.7.3 is the relevant policy. For sexual harassment complaints made by students against faculty, staff and third parties, AG 1.7.1 is the policy. AG 1.7.1 states that where sexual harassment has occurred, the University will act to stop the harassment, prevent the recurrence of harassment, and discipline and/or take other appropriate action against those responsible.

The Title IX Administrative Process refers to the definition of sexual harassment from AG 1.7.1, which focuses on visual, verbal or physical conduct that has the effect of unreasonably interfering with an individual's academic or work performance or creating an intimidating or hostile academic, work or student living environment, and the definitions of sexual assault and misconduct from AG 1.7.3.<sup>7</sup> The Title IX Administrative Process and AG 1.7.1 cover on campus and off campus conduct with a nexus to the University, refer student complainants to the Title IX Office and state that for concerns in which a respondent is a staff member, the University's Title IX coordinator and the responsible Human Resources manager of the respondent or a listed designee work together.

AG 1.7.1 states that a complaint can be filed with the Sexual Harassment Policy Office, and includes the address, phone number, and email and website address for the Sexual Harassment Policy Office; however, the address needs to be updated. AG 1.7.1 does not refer to any particular grievance procedures for student complainants. It refers to other grievance procedures<sup>8</sup> for staff and faculty but does not specify whether these procedures apply to employees as both the impacted and responding parties. While the Title IX Administrative Process and AG 1.7.1 state that it is a violation to retaliate against anyone making a complaint or participating in an investigation neither states the applicable procedure for complaints of retaliation.

The Title IX Administrative Process and AG 1.7.1 include a list of resources for students; students are encouraged to report criminal concerns to the University DPS and relevant law enforcement contact information is included. The Title IX Administrative Process states that University staff members (other than those who are confidential reporters) with knowledge of unreported concerns relating to prohibited conduct are required to report such allegations to the Title IX coordinator. However, there is no timeframe for reporting and it does not state that such report must be prompt. The Title IX Administrative Process states that an investigation may go forward even if the impacted party declines to consent or requests confidentiality, if appropriate, subject to a balancing test.

With respect to the investigation and response process, under the Title IX Administrative Process both parties are required to receive a "Notice of Investigation" at the "outset" of the investigation; the parties have an opportunity to respond in writing and in a meeting with the investigator, and a right to request that the investigator meet with relevant witnesses and evaluate relevant evidence.

The Title IX Administrative Process states that in some instances, the Title IX coordinator may refer the matter to another process, such as the faculty discipline process or to a University administrator, in lieu of an investigation, but the other process must be fair, equitable and prompt and both the impacted party and respondent must have access to an adequate, reliable and impartial investigation, an opportunity to object to findings, and notice of the complaint outcome. The subsequent process may or may not receive all of the information from the Title IX process, but the Title IX coordinator is to provide a summary of investigations and findings of fact.

Both parties may have a support person. The support person who accompanies the student may not speak for the student; no similar limitation is stated for a support person for a non-student respondent.

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<sup>7</sup> The Title IX Administrative Process reprints the same definition of consent from the December 2013 version of AG 1.7.3, and does not include the new consent definition from the current AG 1.7.3, which is needed so that it is effective in providing notice of the prohibited conduct.

<sup>8</sup> As part of the investigation, OCR did not review the policy, which is identified as *Guide Memo 2.1.11: Grievance Policy and Frequently Asked Questions and Research Policy Handbook at Grievance Procedure: Academic Staff*.

University counsel also informed OCR that if a complaint is filed by a student against a faculty member, the faculty member is entitled to have a faculty investigator, who will work alongside the Title IX investigator. Under the Title IX Administrative Process, the University may impose interim accommodations or safety measures, including housing and class reassignments, to stop prohibited conduct, prevent its recurrence, remedy its effect on the impacted party or improve University policies or practices. The Title IX Administrative Process states that in circumstances in which the Title IX coordinator determines that there is no ongoing risk of harm to the community and that interim measures have redressed the concerns, the Title IX coordinator may forego a formal investigation. The determination that no further action is necessary or that interim measures will remain in place is provided in an Outcome Letter, which is provided to the impacted party and may be provided to the responding party, if involved in the assessment and appropriate. To the extent the Outcome Letter states that the University will not investigate a matter, that determination may be appealed under the appeal procedures specified below.

AG 1.7.1 states that if significant facts are contested, a prompt investigation may be undertaken. For informal resolution, AG 1.7.1 states that when the University uses third party intervention to address a concern, typically the third party meets separately with each party to develop a mutually acceptable understanding of further interactions; such intervention can include agreements about future conduct and changes in the workplace.

If a determination is made to proceed with an investigation, the Title IX coordinator can investigate or assign an investigator. The purpose of the investigation is to determine whether prohibited conduct has occurred, whether there is an ongoing risk of harm, whether accommodations or safety measures, or policy/procedure changes are needed to redress the effects of conduct, and whether the conduct warrants review by OCS. The University sets forth 60 days (with extensions for good cause) for concluding the Title IX investigation. At the conclusion, an Outcome Letter is to be issued to the parties, which includes findings of fact, accommodations, and any measures and systemic remedies for the University community, and it may include a recommendation that the matter be referred for disciplinary review by another University process. The respondent is not subject to discipline through a Title IX process. Rather, where prohibited conduct has been found, the Outcome Letter is provided to the respondent's supervisor, manager or Dean, as appropriate.<sup>9</sup>

With respect to sanctions for students, the Title IX Administrative Process states that the University has disciplinary processes applicable to faculty, staff and other members of the University community, but no link or reference to a specific process is provided. On November 15, 2017, University counsel informed OCR that if the Title IX investigation results in an Outcome Letter with a charge, then the matter is sent to the faculty discipline process, which is governed by the Statement on Faculty Discipline (updated on September 1, 2017 and in effect as of last check December 1, 2017). AG 1.7.1 states that faculty members are subject to discipline under the Statement on Faculty Discipline.

Pursuant to the Statement on Faculty Discipline, the faculty member is entitled to an evidentiary hearing. Each party must provide the hearing officer and the other party with exhibits and a list of the witnesses, along with a detailed summary of expected testimony. The faculty member may request information regarding any matter, not privileged, which is relevant, and the University must disclose any information it believes to be exculpatory. Each party has the opportunity to file a written brief. The burden of proof by clear and convincing evidence is upon the University. The faculty member has the

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<sup>9</sup> The Title IX Administrative Process still includes mention of the Alternate Review Process (ARP), which is not currently in use.

burden of proof by a preponderance of the evidence on any affirmative defenses. The faculty member has the right to have an advisor of choice, the rights of confrontation and cross-examination, and the right to refuse to testify. The procedure does not state that a student impacted party has any of the same rights for an advisor, confrontation, cross-examination, to refuse to testify, or to request information.

The Advisory Board (Board) affirms the hearing officer's findings that it concludes are supported by substantial evidence. Such findings are final and binding upon the President. If the President does not accept the decision, the case is resubmitted to the Board for reconsideration. The Board reconsiders the case, holds further hearings and receives new evidence, if necessary, and either renders a new decision or states the reasons for its decision to reaffirm its original decision. The Statement on Faculty Discipline does not include any timeframes for the evidentiary hearing, final hearing before the Board, the Board's decision, the President's decision, for further hearings and the resulting decisions. The procedure does not state whether both parties receive the decision(s).

### *Appeal*

The Title IX Administrative Process provides an appeal process for both parties after receipt of the Outcome Letter. The Title IX Appeal Officer may attempt informal resolution or refer the matter or any part of it to another designee for resolution. The Title IX Administrative Process does not describe the informal appeal process or whether it is voluntary. The grounds for appeal are limited to: new compelling evidence; procedural irregularities that substantially affect the outcome of the matter; and whether the decision was reasonable. The appeal decision is provided in writing within 20 business days, unless there is good cause. It does not state that both parties receive the decision.

The Title IX Administrative Process and AG 1.7.3 do not discuss conflicts of interest or any requirement for maintaining documentation. However, AG 1.7.1 states that the Sexual Harassment Policy Office tracks reports of sexual harassment and that if a University fact-finder or grievance officer has a conflict of interest, an alternate will be arranged but does not address potential conflicts at the sanctions phase for staff and faculty. There is no prohibition on receipt of evidence about past sexual relationships as evidence in AG 1.7.1 or the Title IX Administrative Process.

During interviews, several graduate students shared with OCR that their principal concern is inappropriate relationships and unwelcome sexual advances from professors, and that there is a lack of trust that the University will adequately protect them from retaliation, which deters them from reporting because graduate students depend on faculty recommendations and connections for career growth.

### Analysis and Conclusion of Law

The Title IX Administrative Process covers both on campus and off campus student complaints against faculty, staff and third parties related to reports of sexual harassment/sexual violence, and includes the appropriate University staff members who are required to report prohibited sexual conduct to the Title IX coordinator. Both parties receive a Notice of Investigation at the outset of the investigation; they have an opportunity to respond in writing and in a meeting with the investigator, and the right to request that the investigator meet with relevant witnesses and evaluate relevant evidence. The Title IX Administrative Process states that the University provides interim accommodations or safety measures.

AG 1.7.1 also includes that reports of sexual harassment will be dealt with promptly and states that where sexual harassment has occurred, the University will stop the harassment, prevent its recurrence,

and take appropriate action against those responsible. The policy includes an equitable investigation process if significant facts are contested, and a timeframe of 60 days for completing the investigation process.

However, OCR found that the Title IX Administrative Process does not explain what the process in lieu of a formal investigation would involve for impacted party students, does not provide a reasonable timeline for the process, or state that it is voluntary.<sup>10</sup> The Title IX Administrative Process does not state that the Outcome Letter includes the determination as to whether the conduct occurred and information about the process that will be applied for conduct sanctions, such that a student impacted party has inadequate notice of the outcome and any final remedies and sanctions process. In OCR's interview with the Title IX coordinator, she told OCR that she did not know what happens where sanctions are to be implemented against faculty or staff.

AG 1.7.1 does not provide adequate notice of how to file a complaint, as it does not specify that it applies to students only if they are the impacted party and a staff member/faculty member or third party is the responding party, and it does not specify the grievance process to be applied for student complaints. The Title IX Administrative Process does not include the new consent definition from current AG 1.7.3., such that it would be effective in providing notice of prohibited conduct, and continues to include reference to the ARP, which is no longer in effect. The policies and procedures applicable to staff/faculty/third parties do not include a reasonably prompt timeframe for a responsible employee to report an oral report or complaint to the Title IX coordinator or other appropriate official. The Statement on Faculty Discipline, which is the second phase of the grievance process against a faculty member, does not state that a student impacted party has any of the same rights as the faculty respondent for an advisor, to present and respond to evidence, to request information from the University regarding the matter, or to refuse to testify; and does not include any timeframes (reasonably prompt or otherwise) for the evidentiary hearing, final hearing before the Board, the Board's decision, the President's decision, for further hearings and the resulting decisions; and does not state that both parties receive notice of the outcome. Accordingly, for the reasons stated above, OCR found that the grievance process for students making complaints against staff and faculty was not compliant with Title IX requirements.

Because OCR identified a concern with the admission of past sexual history information XX XXXXXXX XXX XXXX XXXX XXXXXXX X XXXXXX and because there would be a discrepancy in terms of the process for student complaints filed against faculty/staff, OCR has identified a concern that AG 1.7.1/Title IX Administrative Process does not exclude receipt of evidence about past sexual relationships with individuals other than the party to a matter, when such evidence would have a prejudicial effect. Further review of case files and interviews would be needed to assess whether such evidence is being admitted and having a prejudicial effect that would create an inequitable process for student parties.

As a matter of technical assistance, OCR also recommends: in the Title IX Administrative Process, clarifying for equity reasons that both parties either may or may not have the support person speak for him or her and providing a reference to the applicable grievance procedure for complaints of retaliation; adding a requirement for maintaining documentation for sexual assault complaints; addressing conflicts of interests in either the Title IX Administrative Process or AG 1.7.3, and, in AG 1.7.1, potential conflicts with other staff involved in the process for faculty/staff hearings/sanctions; expanding the examples of

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<sup>10</sup> OCR notes that this is mitigated in part, because the Title IX Administrative Process provides for an Outcome Letter and a right to appeal the determination.

sexual harassment in AG 1.7.1 to include nonverbal acts of a sexual nature; defining “good cause” to extend the investigation and appeal timelines and including status updates for the parties; and explaining the informal appeal process, and whether both parties receive notice of the appeal decision.

- D. Whether the University provided a prompt and equitable response to incidents of sexual harassment and sexual violence of which it had notice, including OCR Complainants – Students A, B, and C --pursuant to 34 C.F.R. §§ 106.31 and 106.8; and**
- E. Whether the University’s failure to provide a prompt and equitable response to oral reports and written complaints of sexual harassment and sexual violence allowed affected students to be subjected to or to continue to be subjected to a sexually hostile environment pursuant to 34 C.F.R. §§ 106.31 and 106.8.**

### Factual Findings

#### **OCR Complaints Filed by Students A, B, and C**

During the timeframes covered in the complaints reported to the University by Students A, B, and C, the University had in effect an Alternate Review Process (ARP or ARP Policy, in effect January 29, 2013-January 31, 2016). The ARP did not contain a procedure for addressing violations of University no-contact orders related to underlying allegations of sexual harassment or sexual violence. Once the Dean chose the ARP, the Dean referred the matter to a staff member from OCS to conduct an investigation. After finalizing interviews and gathering relevant documents, the investigator determined if there was sufficient evidence of misconduct to file formal charges against a student. When this standard had been met, the investigator would prepare a “Notice of Charges” describing the alleged misconduct; prepare an investigator’s summary report describing the alleged misconduct and supporting and exculpatory evidence; and gather materials into an investigation file for the responding student, impacted party and hearing panel members (known as “Reviewers”). The investigator was expected to take 30 days or less to complete the investigation phase, except for complex cases or cases with multiple witnesses, which might take longer.

After the Reviewers reviewed the investigation file, interviewed parties and witnesses, they met to discuss the case and within seven days issue the Reviewers’ findings of fact. Findings included a decision on whether there was sufficient evidence based on a preponderance of evidence to find a student responsible. If one Reviewer was not in agreement with a particular finding, it was noted. Following a finding of responsibility, each party had three days to provide a written statement to the Reviewers. After reviewing these documents, if at least four of the five Reviewers found a student responsible, the Reviewers would assign sanctions under the Penalty Code of the OCS within seven days.

#### **Complaint of Student A (09-15-2070)**

##### **A. Allegations**

Student A alleged that the University did not provide her with adequate interim measures during the pendency of the investigation and appeal of her complaint of sexual assault, including because it failed to enforce a no-contact order and assist her with getting a Temporary Restraining Order (TRO) against the respondent. She also alleged that the University failed to provide a prompt and equitable response

to an incident allegedly involving a XXXXXX XX XXXXXXXXXXXXXXX XXXXXXXXXXXX. In addition, she alleged that the University's actions created a continuing hostile environment for her on campus.<sup>11</sup>

#### B. Findings of Fact

On XXXXXXX X, 2014, Student A reported to the University that the respondent student had forcibly sexually assaulted her XXXXXX XXX XXXXXX XXXXX. On the same date, Student A met with several University administrators about her reports, and the University offered Student A a mutual no-contact order; she agreed that she wanted a no-contact order but told OCR that she thought it should only be applied against the respondent.

Student A did not receive the terms of the no-contact order in writing. However, she informed OCR that she thought that if the respondent violated the no-contact order, the respondent would have to move off campus. She stated that the University told her that the no-contact order applied as follows: 1) if both she and the respondent needed to enroll in the same class, she would have priority; 2) if they saw each other on campus, they would each have to walk in the opposite direction; 3) if they were at a specific location whoever was there first was allowed to stay and the other person would have to leave. In OCR's interviews with the former associate director of OCS and residence dean 1, they did not recall the discussion or process followed for interim measures in this case. Student A informed OCR that she did not recall any discussion about other interim measures at this initial meeting.

Also on XXXXXXX X, 2014, the assistant dean of the office of residential education sent the respondent an email notifying him of the no-contact order, which stated that he was to stop all attempts to communicate with Student A for the next 90 days, including, but not limited to, in-person contact, telephone calls, written communication, gifts of any sort, and contact through a third party. The message told him not to go to Student A's residence and informed him that the University also directed Student A not to go to his residence. If he encountered Student A on campus, he was to move in an opposite direction "as quickly as possible." In addition, he was directed not to engage in any behavior that would be construed as retaliation against her. The email also stated that any violation of the no-contact order would be grounds for his immediate removal from University housing.

On XXXXXXX X, 2014, a day after Student A filed her complaint, the Office of Sexual Assault & Relationship Abuse Education & Response (SARA) informed her in writing about how to initiate a criminal proceeding, and provided her physical and mental health services information. Email communication between Student A and her professors showed that the University provided her with extensions and flexibility to complete assignments and make up missed classes in the winter and spring 2014 quarters. For both the winter and spring 2014 quarters, the University also granted Student A's request for a reduced course load XX XXX XXXXXXX XXX XXXXXXX.

On XXXXXXX XX, 2014, Student A saw the respondent on campus riding in a car XXXX XXX XXX XXXXXXX XXX XXXXXXX. He did not do or say anything. The respondent did not exit the car, XX XXXXXXX XXXXXXX XXX XXXXX XXXXXXX XXX XX XXX XXXXXXX. She reported this incident to residence dean 1. On XXXXXXX XX, 2014, the interim Title IX coordinator sent an email to Student A and her father

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<sup>11</sup> In 2016, the respondent filed state and federal court cases based on the same set of operative facts that were the subject of Student A's report of sexual assault. In those filings, he challenged whether the University's process was fair and equitable. Accordingly, because the matters filed with the courts involve the same set of operative facts and similar allegations, OCR is dismissing Student A's allegations that relate to promptness and equity in the investigative process. See OCR's Case Processing Manual, § 108(h).

stating that based on residence dean 1's communication with the respondent, the University was confident that he would not XX XXXX XXXXXXXX XXX XXXXXXXXXXXX again. The Title IX coordinator stated that she would speak with the respondent, and that Student A could move out of her current residence, if she wished.

On XXXXXXXX XX, 2014, in response to the XXXXXXXX XX, 2014 incident when the respondent was XXXXXXXX XXXXXXXX XXX XXXXXXXXXXXX, the assistant dean sent the respondent an email stating that the respondent was only permitted to enter his own residence, unless there was a specific, compelling educational reason for him to enter another residence, and he must notify by email residential directors in advance if he planned to do so. Also, he was required to meet weekly with the assistant dean to confirm that he had not violated the no-contact order. Student A asserted that the University's response was inadequate because the XXXXXXXX X, 2014 no-contact order stated that any violation would be grounds for his immediate removal from University housing.

In XXXXXXXX 2014, Student A's father requested assistance from the University with a TRO.

On or about XXXXX XX, 2014, the first day of class for the spring quarter, Student A arrived at one of her classes and found that the respondent also was enrolled in the class. She called her father, who called the assistant dean. The assistant dean suggested that Student A leave the class for the day while the University addressed the situation. Student A, however, decided to return to the class. XXXXXXXX X XXXXXXXX XXX XXXX XXX XXXXXXXXXXXX XX XXX XXXXXXXXXXXX XXX XXX XX XXXXX XXX XXXXXXX XXX XX XXXXXXX. The lecturer who was auditing the class stated to the professor in an email dated XXXXX X, 2014, that she intervened on XXXXX XX, 2014 by asking the respondent to leave and he did. Student A informed OCR that later on XXXXX XX, 2014, she called the assistant dean back and told her she was having a panic attack. The assistant dean immediately met her on campus and walked her to her office. The assistant dean told her that the respondent would not be in the class, and the respondent did not attend again.

On XXXXX X, 2014, the University sent Student A an email confirming that the respondent had withdrawn from class. On the same day, the professor granted Student A an excused absence for the section meeting while she met with the University about the incident; he stated that he would work with the teacher assistant and Student A to get her caught up. Student A told OCR that the University should have ensured that the respondent was not allowed to register for a class she was in.

Student A saw the respondent on campus three other times during the spring 2014 semester. The first two times he did not see her. The third time they saw each other across a parking lot. She told OCR that he glared at her. She did not report these sightings to the University.

On XXX X, 2014, Student A stated that a young man (not the respondent) broke into XXX XXXXXXXX XX XXX XXXXXXXXXXXX on campus and screamed at her about her complaint against the respondent (hereinafter XXX X incident). As a result, she became traumatized and fearful about her safety. On the same day, Student A's father reported the incident to Stanford via email. Student A stated that she did not know the name or identity of the intruder but believed he was X XXXXXXX XX XXX XXXXXXXXXXXXXXX XXXXXXXXXXXX.

On XXX X, 2014, a University police officer met with Student A about the alleged XXX X incident and offered to move her into alternative housing. The residence assistant XX XXX XXXXXXXXXXXX verbally



instructed XXXXXXXX not to approach or have any contact with Student A.<sup>12</sup> On XXX X, 2014, the University informed Student A that per the terms of the sanctions imposed after the conclusion of the investigation process, the respondent had been moved off campus and was being escorted to campus for his classes. Subsequent email correspondence on XXX XX, and XXX XX, 2014, showed that the University informed Student A of the specifics of the route that the respondent was taking to his classes and stated that he would be accompanied by a University DPS employee at all times.

On XXX XX, 2014, in an email to Student A and her father, the newly hired Title IX coordinator stated that the University could assist with a TRO. In the same message, the Title IX coordinator offered Student A an escort on campus, which the Title IX coordinator stated she had declined in the past. In an email dated XXXX X, 2014 to Student A, the director of University DPS offered for someone to work with Student A to complete the information needed for a TRO and accompany her to court. On or about XXXX XX, 2014, DPS staff helped Student A fill out the TRO paperwork and drove her to XXX XXXXXX courthouse so that she could file it. While at the courthouse, Student A became frustrated with the court's process, and decided to leave without filing the paperwork. DPS drove her back to campus.

On XXXX X, 2014, the University moved Student A into a XXXXX XXXX XX XXXXXX in response to the XXX X incident. On XXXX X, 2014, residence dean 1 met with Student A, who was requesting X XXXXXXXX XXXXXXXXXXXX to address issues related to the incident. The SARA office provided Student A with resources. Residence dean 1 notified the respondent's escorts that Student A was in XXX XXXXX XXXX, so that they would avoid that location when the respondent traveled on campus.

On XXXX XX, 2014, the vice provost of academic affairs provided a list to Student A of the academic adjustments the University provided and offered her in the spring 2014 quarter, which included X--- paragraph redacted---X.

XXXX XXX XXXXXXX, the University attempted to help Student A identify the alleged XXX X incident intruder. The University police offered to interview any individual Student A could identify. On two occasions, the University showed the Student photos of the XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX. On XXXX X, 2014, Student A indicated that some of the pictures were too old, and she stopped the meeting. The University then informed her that it had updated photos and met with her again on XXXXXX X, 2014. Student A alleged in her OCR complaint that she again ended the meeting because the University told her that the photos were approximately one year old. She reported to OCR that the University did not contact her again to identify the intruder. On XXXXXXXX X, 2014, in a letter emailed to Student A, the Title IX coordinator detailed Stanford's efforts to respond to her report of retaliation, but concluded that it was unable to investigate the claim without an identified suspect. According to the letter, Student A reviewed close to 100 photos and was unable to identify the intruder.

Student A informed OCR that on XXXXXXXX X, 2015, some of the XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXXXXXXX questioned her about why the incident needed to involve the University. Student A did not report to OCR that these students were hostile, and she did not report these interactions to the University.

### **Analysis and Conclusion of Law for Student A**

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<sup>12</sup> Stanford's internal notes show that on XXX X, 2014, residence dean 1 asked the residence assistant to take this action, and the residence assistant did take this action, but the notes do not indicate when residence dean 1 spoke to XXX XXXXXXX. In an interview with OCR, residence dean 1 did not recall when it took place, or how long it was in effect.

OCR found that the University promptly assessed for a hostile environment and implemented responsive interim measures. The same day that Student A reported the sexual assault, the University implemented a mutual no-contact order and notified the respondent that he was subject to the same.<sup>13</sup> The following day the University provided Student A with a list of physical and mental health services, and information about how to initiate a criminal proceeding. Two days after Student A reported the sexual assault, the University notified her professors that she may have to miss work or class time. The University provided her with extensions and flexibility to complete assignments and make up missed classes in the winter and spring 2014 quarters. The University also granted Student A's request for a reduced course load for the winter and spring 2014 quarters.

With respect to enforcement of the interim measures, and specifically with regard to the XXXXXXXX XX, 2014 incident when the respondent was in a car XXXXXXXX XXXXXXXX XXX XXXXXXXXXX, OCR identified that the University took sufficient steps to investigate and respond to the allegation. The University investigated the incident, including by meeting with the respondent. The evidence was undisputed that the respondent did not approach Student A. Also, even though a violation was not found, the University provided an email to the respondent on XXXXXXXX XX, 2014 identifying concerns about the incident, and stating that he was to notify a residential director in advance if he planned to enter another residence and meet weekly with the assistant dean.

With respect to the XXXXX XX, 2014 incident, while a review of the course schedules of both students would have ensured enforcement of the no-contact order, OCR found that the University responded promptly and effectively to address this issue after receiving notice. Student A alleged that the respondent violated the no-contact order by failing to remove himself from class immediately upon seeing Student A in the classroom. However, Student A acknowledged that the respondent left the class as soon as a lecturer asked him to leave. The respondent withdrew from the class, and an administrator immediately met with Student A to address her concerns.

Regarding the XXX X incident, on the same day as the report, the University moved the respondent to alternative housing. Two days later, the University offered to provide Student A with alternate housing (which she requested and received on XXXX X, 2014); and provided Student A multiple opportunities to identify the alleged intruder, but she was unable to do so. On XXXXXXXX X, 2014, the University issued its written conclusion that it was unable to investigate the claim without an identified suspect. It took the University five months to reach this conclusion because of efforts to identify the individual. Therefore, OCR found insufficient evidence of noncompliance with respect to the University's response to this incident. Accordingly, with respect to Student A's allegations, OCR found the University in compliance with Title IX and its implementing regulation.

### **Complaint of Student B (09-15-2405)**

#### **A. Allegations**

Student B XXXXXXXXXX XXXX XXX XXXXXXXXXXXX XX XXXX XXXX. She alleges that between XXXXXXXX, 2010, and XXXXXXXX, 2011, she was subjected to physically violent and abusive behavior by another student at the University during and shortly after their romantic relationship, and that the University failed to

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<sup>13</sup> While the University's efforts to help Student A with a TRO were delayed, OCR did not find any evidence that the no-contact order issued by the University was insufficient to protect Student A from harassment from the respondent. In addition, after the University helped Student A fill out the paperwork and took her to the court, she decided not to complete the process.

promptly and equitably investigate her allegations that the respondent repeatedly violated no-contact orders and failed to take prompt, effective action to prevent recurrence of harassment and remedy its effects. At the time of this report, the University did not include violations of no-contact orders as prohibited conduct that would be addressed under its ARP procedure for Title IX.

B. Findings of Fact

In XXXXXXX 2011, when Student B was X XXXXXXXXXX residing in University XXXXXXXXXXXX housing, the respondent, who was also a student on campus at the time, became angry with Student B over her breaking up with him, and XXXXX XXX XXXXXX XXXXX XX XXX XXXXXXXXXX XXXXXXX XXXXX XXXX XXX XXXXXXXXXX XXX XXXX XXX XXX XXX XXX. She stated that XXX XXXXX XXXXXXXXXX called DPS, and DPS XXXXXXXXXXXX XXXX XXXXXXXXXX XX XXX XXXXXXXXXX, but they did not speak to Student B. Student B informed OCR that sometime shortly after the XXXXXXX 2011 incident, she reported it XXX XXXXX XXXXX incidents with the respondent that occurred between XXXXX 2011 and XXXXXXX 2011 to her XXXXXXXXXX XXXXXXXXXX. XXX XXXXX XXXXXXXXXX XXXXXXXXXX XXXX XXX XXXX XXXX XXX XXXXXXXXXX XX XXXX XXXX XXXXXXXXXX XX XXXXX XXXXX XX XXXXXXXXXX XXXX XXX XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX X by XXXXXXXXXX XXX XX XXX XXXX XXXXXXXXXX XXX XXXX XX XXXXXXXXXX X XXXXXXX XXXX XXXX XXXXXXXXXX XXXX XXX XXXXXXXXXX XXX XXXXXXX XXX XXXXX; XXX XX XXX XXXXX XX XXXXXXXXXX XXXX XXX XXXXXXXXXX XXXXXX XXX XXXXXXXXXX XXX XXXXX XXX XXX XXX XXX XXX XXX XXXXXXXXXX XXX XXXXXXXXXX XX XXXXXXX XXX XXX XXXX XXX XXX XXXXXXX XX. The XXXXXXXXXX XXXXXXXXXX informed the associate vice provost of at least the XXXXXXX 2011 incident. The University did not confirm or deny that it received notice of the other alleged incidents at this time.

On XXXXXXX X, 2011, the University issued a letter to the respondent, which informed him that he was not allowed to live in University housing and was banned from stepping on any property that contains a University residence XXXX XXX XXXXXXXXXX XX XXX XXXX XXXX XX XXX XX XXXXXXXXXX XXXXXXXXXX XX XXX XXXXXXXXXX XXX XXXXXXXXXX due to the incident with Student B and other incidents cited between XXXX-XXXX, which included: XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX X XXXXXXXXXX XX XXX XXXXXXXXXX XX X XXXXXXX XXXXXXXXXX XXX XXXXXXXXXX XXXXX XX XXXX. The letter, signed by the residence dean/assistant dean of residential education, stated that failure to comply with any other University policy “would result in the filing of judicial affairs charges” and a “recommendation for an involuntary leave of absence.” The letter did not include XXX XX XXX XXXXX XXXXXXXXXX XXXX XXXXXXXXXX X XXXXXXXXXX XXXX XXX XXXXXXXXXX XX XXX XXXXXXXXXX XXXXXXXXXX. Student B did not receive a similar outcome letter, and the University did not refer her complaint for processing under its Title IX grievance procedures.

Student B stated that several months after the XXXXXXX 2011 incident when she asked the associate vice provost about the outcome of her report, the associate vice provost informed her that the respondent had been banned from her residence. However, she did not receive any documentation related to the University’s ban or that it included all University residences, or any other information regarding the outcome of the report.

On XXXXX XX, 2012, Student B emailed the assistant dean/SARA director (SARA director)<sup>14</sup> requesting to meet to discuss the respondent, describing him as an “abusive ex-boyfriend.” In 2012, the University did not have a specific Title IX Office, so the SARA Office provided support to students requesting a formal

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<sup>14</sup> At the University, the SARA director and staff are responsible employees, who are required to report allegations of sexual harassment/violence upon receiving notice. The University has designated other individuals as confidential resources, such as the Stanford University Confidential Support Team and Counseling and Psychological Services (CAPS).

process for Title IX complaints. The following day, Student B met with the SARA director. The SARA director's summary of the meeting included that Student B reported to her that the respondent had been "extremely violent" during their romantic relationship, and was banned from entering her University residence. Student B also informed the SARA director that the respondent had created a hostile environment for her by continuing to XXXXX XXX XXXXXXXXXXXX XXX XXXXXXXX XXXXXXXX XXXXXXXX, even though he XXXXXXXX XX XXX XXXXXXXXXXXX XXXXXXXXXXXX XXX XXXXX XXXXXXXX.<sup>15</sup> The SARA director identified that Student B had shared XXXXXXXX XXXXXXXXXXXX of "physical . . . abuse". XXXXXXXX X XXXX XXX XXXX XXXX XXXXXXXX XX XXXXXXXX XXXX XXXXXXXXXXXX XXXX XXXXXXXX XXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX XXXX XXXXXXXXXXXX XXXX XXX XXXXXXXXXXXX XXXXXXXX XX XXXXXXXX XXXX. The University told OCR that Student B told the SARA director that she did not want to pursue a formal investigation or complaint and did not want her name to be provided to the respondent, XXX XXX XXX XXXX XXX XXXXXXXXXXXX XXXX XXXXXXXX XX XXXXXXXX XXXX XXX XXXXXXXXXXXX XXXXXXXX XXX XXXXXXXX XX XXXX XXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXX.

XX XXXXX XXX XXXXX XXXXXXXX X XXXXXXXXXXXX XXXX XXX XXXXXXXX XXX XXXXXXXXXXXX XXXX XXXXXXXX XX XXXXXXXX XX XXX XXXXXXXXXXXX XXXXXXXX XXX XXXXXXXXXXXX XXXX XXXXXXXX XXXXXXXXXXXX XXXXXXXX, but she declined a no-contact order because she was fearful of the respondent's response XX XX XXXX XXX XXX XXXXXXXXXXXX XXXXXXXX XXX. On XXXXX X, 2012, Student B sent a follow up email to the associate vice provost stating, "XXXX XX XX XXXXXXX XXX XX XXXXXXX XXXXXXX XX XXX XXXXXXX XX XXXXXXXXXXXX XX XXXX XX XXX." In that email, she stated:

X---paragraph redacted---X.

That same day, the associate vice provost responded that she had a good understanding of the concerns. In an email on XXXXX X, 2012, the associate vice provost met with the respondent and reiterated the campus residence ban and informed the respondent that there may be additional restrictions if it was not followed. On XXXXX XX, 2012, the SARA director informed Student B via email that the residential education staff spoke with the respondent's parents about the residential ban, and the resident deans were working to ensure that it was consistently upheld and would continue to monitor the situation.

On XXX X, 2012, Student B sent an email to the SARA director, stating that she did not attend several activities on campus and remained in a building for half an hour because the respondent was frequently on campus. The SARA director responded the same day via email to inform Student B that the respondent was not forbidden from visiting the broader campus community. On XXX XX, 2012, Student B sent another email to the SARA director stating that the respondent would be attending an event XXXXXXXX XXX XXXXXXXXXXXX the following week, and that she would not be able to participate if he was at the event.

In response to Student B's concerns about the respondent visiting campus, the University decided to take additional actions. On XXX XX, 2012, after speaking with Student B, the SARA director sent an email to University administrators stating that Student B agreed to the terms of a no-contact letter, and provided consent to mention her name in the letter to the respondent. Student B was informed that the respondent would be told not to attend the event XXXXXXXX XX XXX XXXXX and resident staff would be told to support the restriction.

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<sup>15</sup> X---paragraph redacted---X.

On XXX XX, 2012, the associate dean sent the respondent an email titled, No Contact Directive. The email stated that “[Student B] has requested that you refrain from being in contact with her. We are therefore requiring that you avoid all attempts to communicate with [Student B] including, but not limited to, in-person contact, telephone calls, electronic mail, instant messaging, twitter, text messaging, Facebook, written communication, gifts of any sort, and contact through a third party . . .” The respondent was directed to make an active effort to avoid places where she would be, such as XXXXXXXXXXXX XXX XXXXXXXX XXXXXXXX XXXXXXXXXXXX XXX XXXXX XXXXXXXX XXXXXXXXXXXX X XXXXX XXXXXXXX XXX XXX XX, 2012; the respondent was not to engage in any retaliation against Student B. In addition, the respondent was expected to limit his presence on campus to locations relevant for him to fulfill his academic requirements or to address XXX XXXXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXX XXXXXXXX XX XXX XXXXXXXX XX XXXXXXXXXXXX XXXXXXXX.<sup>16</sup> The respondent was told that any violation of the no-contact order would jeopardize his ability to graduate and may result in a judicial affairs complaint. The conditions were to remain in place until he completed his degree and for as long as Student B was enrolled at the University.

On XXX XX, 2012, when Student B saw the letter that the University sent to the respondent<sup>17</sup>, she responded that she had not requested the no-contact order, XXXX XX XXX XXX XX XXXXXXXXXXXXXXX XXXXXXXXXXXX XXX XXXXXXXXXXXX XXXXXXXXXXXXXXX XXX X XXXXX XXXXXXXXXXXX. In response, on XXX XX, 2012, the SARA director apologized for the phrasing of the letter, stating that, “[w]e acted based on the conversation that you and I had on [several days prior], with the understanding you were fully informed and in agreement with what the letter would involve.” The University stated that on XXX XX, 2012, the SARA director met with Student B to discuss her concerns; OCR did not obtain additional information from either party about the contents of this discussion.

On XXX XX, 2012, Student B informed the SARA director that she received two calls from the phone of the respondent’s XXXXXXX, and she was concerned that the respondent was going to attend X XXXXXXXXXXXXXXX XX XXXXXXX the following day. Later that day, the SARA director informed Student B via email that the resident dean talked with the respondent, and he would not be attending the event. The email also informed Student B that the resident dean would meet with the respondent the following week regarding the allegations. On XXXX X, 2012, the associate vice provost sent an email to Student B and asked whether she received similar calls recently. He recommended that she take note of any similar calls and provide him with notice of the same. Student B told OCR that the University did not inform her of whether it took any action against the respondent in response to her XXX XX, 2012 report. However, the University reported in a XXXXXXX, 2015 letter to Student B that the associate dean contacted the respondent’s family to obtain more information. In OCR’s interview with the associate dean of residential education, he did not recall the date on which he contacted the respondent’s family, but he said that the respondent and XXX XXXXXXX denied any involvement with the call; the associate dean, reminded the respondent not to make any contact and told him that, XXXXX XX XXX XXX XXXXXXXXXXXX XXXXXXXXXXXX XX XXX XXXXXXXXXXXXXXX, he should not come to campus without giving the associate dean advance notice.

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<sup>16</sup> In OCR’s interview with the associate vice provost, she stated that the respondent had a case before OCS regarding XX XXXXXXXXXXXXXXX XXXX X XXXX XXXXXXXX XX XXXXXXXX XXXXX XXX XXXXXXXXXXXX XXXXXXXX XXX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXXX XXXXXXXX.

<sup>17</sup> Student B informed OCR that X XXXXXXX XXX XXX XXXX XXXX X XXXXXXXXXXXX XX XXXXXXX XXXXXXXX to the University forwarded her the no-contact letter, but the University did not provide her with a copy of it.

On XXXX XX, 2012, the respondent emailed the associate vice provost and associate dean and stated that he understood, based on a conversation with them two weeks prior, that he needed to request advance approval to enter the University campus and must stay away from residences completely. Student B did not receive written notice of the steps taken in response to her XXX XX, 2012 report.

On XXXXXX XX, 2012, the respondent emailed Student B and asked her to “end [their] no contact policy. XXXXXXXXXXXXXXXX. XXXXXXXXXXXXXXXX. XXXXXXXX XXX XXXX . . . XXX XXXX XXXXXX XXXXXX XXXXXXXXXXXX XX XXXXXXXX XX XXXXXXXX XXX XXXXX.” On XXXXXXXXXXXX X, 2012, the respondent again emailed Student B, XXXXXXXX XXX X XXXXX XX XXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXX XXX XXX. The respondent then sent a follow up email with the subject line, XXXXXXXX in which he stated, “XXXXXXXX XXXXXX XXX XXXXXX XXXX XXXX XX XXX. XXXX XXX XX XXXXXXXXXXX XXXX X XXXX XXXXXX XXXX. XXX XXX XXXX.” Student B did not respond.

On XXXXXXXX XX, 2012, Student B reported to the SARA director that the respondent attended a class XXXX XXX XX XXX XXXX XXXXXXXXXXX XXXXXX XXX XXXXXXXXXXX XXXX XXXX. The SARA director encouraged her to contact DPS if she felt threatened in any way and offered to meet with her. Student B decided to go to class. She informed the University that she decided to XXXX XX X XXXXX that evening after she heard that the respondent was still on campus after the class. The University did not inform Student B that the respondent XXX XXXXXXXXXXXXXXX because the individuals handling her complaints were not aware that he XXX XXXXXXXXXXX.

On XXXXXXXX XX, 2012, Student B met with the OCS director, and also sent the OCS director the three emails the respondent sent to her on XXXXXXXX XX, 2012 and XXXXXXXXXXXX X, 2012. She also sent the OCS director a photo of XX XXX XXXXXXX XXXX XXX XXXXXXXXXXX XXX 2011 incident.

On XXXXXXXX XX, 2012, the associate dean sent an email to the respondent stating that he must refrain from contact with Student B. The email included the following restriction on the respondent: he could only be on campus for class and must arrive and depart promptly XXXXXXX XX XXXXXXX of his class, XXXXX XXXXXXX X XXXX XXXX XXXXXXX XX XXXX XXXXXXX. The email stated that failure to comply would result in a referral to the involuntary leave of absence process.<sup>18</sup> The same day, the SARA director informed Student B about the respondent’s restrictions.

On XXXXXXXX XX, 2012, the OCS director sent an email to Student B requesting that Student B edit the OCS director’s notes from their meeting on XXXXXXXX XX, 2012. The OCS director asked Student B for confirmation that she wanted to file a complaint XXXXX XXX XX XXX XXXXXXXXXXX XXXX XXXXXXXXXXX XXXX XXX XXXXXXXXXXX XX XXXXXXXXXXX. She asked Student B to provide the names and contact information for witnesses, and to confirm that she would like to file a complaint. The notes edited by Student B indicated that Student B’s biggest fear was that the respondent would retaliate, and that she was uncomfortable going to class or walking around if he was anywhere on campus. The edited notes also XXXX XXXXXXX XXX XXXXXXXXXXX XXX XXXXXXX XXXXX XXXXXXXXXXX XX XXXXX XXXX XXXXXXXXXXX XXXXX XX XXXXXXX XXX XXXX XXX XXXXXXXXXXX XXXXXXXXXXX XXX XXXXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXX

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<sup>18</sup> In relevant part, the 2012-2013 Involuntary Leave policy stated that an involuntary leave of absence can be imposed in circumstances in which a student: “presents a substantial risk of harm to self or others or is failing to carry out substantial self-care obligations; significantly disrupts the educational or other activities of the University community . . . Students whose circumstances warrant a review under the Involuntary Leave of Absence Policy, will be apprised, in writing, of University concerns by the Dean of Student Life and will be provided an opportunity to respond to concerns in writing or in person or via telephone before a review committee convened by the Dean of Student Life. Students placed on involuntary leave of absence can appeal an unfavorable decision to the Vice Provost for Student Affairs. The University can condition a student’s return to registered student status on such requirements as the University deems appropriate in the individual case.”

XXX XXXXXXXX XXXXX XXXXXXXXXXXX XXXX XX XXXXXXXXXXXX XXX XXX XXXX XXX XXXXXXXX XXXXXXXXXXXX XXXX XX  
XXXXXXXXXXXX XXXXXXX XXXX.

Between XXXXXXXX XX and XXXXXXXX XX, 2012, Student B made a request to the University for a security escort to be assigned to the respondent. In response, on XXXXXXXX XX, 2012, the associate vice provost sent an email notifying a professor that a XXXXXXXXXXXXXXXXXX XXXXXXX XXXXXXXX would be in the lobby of the building XXXXX XXXX XXXX XXX XXXXX XXXX XXXXXXXXXXXX. On XXXXXXXX XX, 2012, at Student B's request, the residence dean for Student B sent emails to three of Student B's professors requesting for them to work with her on any potential missed classes or assignments.

On XXXXXXXX XX, 2012, the SARA director stated to Student B via email that she was glad the safety planning strategies they discussed the preceding week were helpful, and asked her to keep her posted on how things were going. On XXXXXXXX XX, 2012, the associate vice provost informed Student B that a public safety officer would be onsite XXXX XXX XXXXXXX XXX XXXXX, and that the associate vice provost would be there as well.

On XXXXXXXX XX, 2012, the associate vice provost sent herself an email with her notes from interviewing the respondent, which indicated that the respondent was XXXXXXX X XXXXXXXXXXXXXXX. On XXXXXXXX XX, 2012, the respondent sent an email to the associate vice provost and associate dean stating that he would not go to XXX XXXXXXXXXXX XXXX XXXX XXX, as they advised the day prior, because Student B XXXXXXX XXX XXXXXXXXXXX XXXXX XXX XXXXX XX XX XXX XXXXX XXX XXXXXXX XXXX XXX XXXXXXX. On XXXXXXXX XX, 2013, the associate vice provost requested a XXXXXXX XXXXXXX to meet Student B to escort her to her class that was in XXX XXXX XXXXXXXXXXX XX XXX XXXXXXXXXXXXXXX XXXXX. Student B told OCR that the assignment of a XXXXXXX XXXXXXX escort made her feel physically safer, but it also caused her distress because she felt she had to explain the reason for XXX XXXXXXXXXXX presence and this increased her sense of stigma and caused her to withdraw further from classes, peers, and activities.

Since the University was assessing whether to proceed with an investigation without Student B's cooperation, the associate vice provost informed Student B that the University's outside psychologist was conducting a threat assessment. XX XXXXXXX XXX XXXXX XXX XXXXXXX XXXXXXXXXXXXXXX XXXXXXXXXXXX X XXXXXXX XXXXXXXXXXX XXXX XXXXXXX XX XXX XX XXXX XXXXXXXXXXXXXXX XXX XXXXXXXXXXXX. On XXXXXXXX XX, 2012, the outside psychologist determined that the respondent did not pose a threat, XXX XXXX XX XXXX XXXXXXX XX XXXXXXXXXXX XXX XXXXXXX XXX XXXXX XXX XXXXXXXXXXXXXXX. X---paragraph redacted---X.

X---paragraph redacted---X.

On XXXXXXXX X, 2012, the associate dean informed the outside psychologist that the respondent was expected to text the associate dean or another University designee whenever he arrived and left from campus; and the respondent would only need to be on campus for XXX XXX XXXXX XX XXX XXXX XXXXXXXXXXX XX XXXXXXX X, and other academic requirements could be completed without coming on campus, pending conversations with the relevant department. On the same day, the associate vice provost informed Student B via email that for the remainder of the fall quarter, he would provide a security staff member during the XXX XXX XX XXXXX XXXX XXXX XX XXX XXXX XXXXXXXXXXX XX XXX XXXXXXXXXXXX; the respondent would limit his presence on campus to XXXX XXXXX XXXX; and the respondent was required to notify a University staff member when he arrived and left campus. On XXXXXXXX X, 2012, in response, Student B stated that the plan sounded "good" for the fall quarter.

On XXXXXXXX X, 2012, the associate vice provost met with Student B to confirm the respondent's arrangement for the remainder of the fall quarter. During this meeting, he informed Student B that the respondent XXX XXX XXXXXX XX XXXXXX XXX XXX XXXXXX XXXXXXXX, but there was no basis to remove him from campus because a student could only be removed indefinitely through a finding of responsibility in their judicial process. XX X XXXXXXXX XXXXXXXX X XXXXXXXXXX X XXXXXXXX XXXX XXX XXXX XXXXXXXXXX XXXXXXXXXX XX XXX XX XXXX X XXXXXXXXXX XXXXXXXX XXXXXXXXXX XXXXXXXX XXX XXXXXXXXXX. Later that day via email to the XXX XXXXXXXXXXXXXXX, Student B stated that after speaking with her father she decided to seek more information about X XXXXXX XXXXXXXXXXXXXXX XXXXX, XXX XXXXXX XXX XXXXXXXXXXXXXXX XXX XX XXXXXXXX XXXXXX XXX XXXXXXXXXXXXXXX.

On XXXXXXXX XX, 2012, Student B reported to the associate vice provost that she received a three minute long voicemail from the cell phone number of the respondent's XXXXXXX. No one spoke in the voicemail, just what sounded like a television in the background. Student B informed OCR that the University never responded to her report about this call. The associate dean informed OCR that when he received information from Student B about any phone calls, he would ask the respondent about the call and remind the respondent that he should not call Student B, and that all family members should remove her phone number from their phones. He recalled having more than one conversation with the respondent about that issue.

On XXXXXXXX XX, 2012, Student B sent an email to the associate vice provost stating that she was having a very difficult time XXXXXXXXXX XXXXXXXX XX XXXX X XXXXXXXXXX XXXXXXXX XXXX, and asked for a meeting. Student B and the University have not provided any information about the meeting taking place in response to this email. That same day, Student B also reported that the respondent was XXXXXXXXXX XX XXXXXXXXXX XXXXXX XXX XXXXXX, XXX XXXXX XXX XXXXXX XXXX XXX XXXXXXXXXXXXXXX XX XXX XXX XX XXXX XXXXXXX XXX XXXXXXXXXX XXXXXX XXX XXX XXXXXX XXXX XXXXXX XX XXX XXXXXX. Also, on XXXXXXXXXX XX, 2012, the respondent was informed again that he could not attend X XXXXXXXXXXXXXXX XXXXXXXXXX XXXX. On XXXXXXXXXX XX, 2012, the associate vice provost informed Student B of the same and that the respondent had been told that if he needed to arrive earlier than five minutes XXXXXX XX XXXXXX, he should XXXXXXX XXXXXXX XXX XXXXXXXXXX.

On XXXXXXXXXX XX, 2012, Student B received a fourth call from the respondent's XXXXXXXXXX cell phone. On XXXXXXXXXX XX, 2012, the associate vice provost informed Student B's father that the University would contact the respondent that day to let him know that the phone call from his XXXXXXXXXX cell phone was a violation of the no-contact directive, and that if he attempted to XXXXXXXXXX XX XXXXXXXXXX XXX XXXXXXXXXXXXXXXXXX XXXXXXXX, the University would implement the involuntary leave of absence process and review the disciplinary process.

On XXXXXXXX XX, 2013, the associate vice provost informed Student B's father that in response to a violation of the no-contact order, the respondent was restricted from coming to campus, except for legitimate educational purposes, and had to provide 24-hours notice and obtain written approval from an associate dean before entering campus. When interviewed by OCR, neither the associate vice provost or the associate dean could recall if the restriction was a result of a new violation, but the associate vice provost stated that this was the next step of progressive restrictions.

On XXXXXXXX XX, 2013, the associate vice provost sent the respondent an email reminding him that his email contact with Student B during XXX XXXXXXX 2012 constituted a violation of the no-contact order, and recommended that he and his family members remove Student B's phone numbers and email addresses from any devices; he stated that wrong or misdialed numbers would no longer be viewed as



accidental. In addition, the associate vice provost informed the respondent that the University would continue to limit his access to campus until further notice, and reserved the right to consider these alleged violations under the University disciplinary system XXXX XXX XXXXXXXX XX XXX XXXXXXXXXXXX. He informed the respondent that he could come to the University for a legitimate educational purpose but only if he notified the associate dean at least 24 hours prior to his planned visit and received written, affirmative permission. The respondent was directed to describe the purpose of his visit, and the time he would be on campus. The associate vice provost stated that pursuant to the respondent's conversation with the associate dean, XX XXX XXX XXXXXXXXXXXX XX XX XXXXXXXXXXXX XXX XXX XXXXXXXX XXXXXXXX XX XX XXX XXXXXXXXXXXX XXXXXXXX. OCR confirmed with the University that the respondent did not XXXXXXXXXXXX XX XXX XXXXXXXXXXXXXXX XXXXXXX XXX XXXX XXXX XXXXXXXXXXXX.

On or around XXXXX XX, 2013, the associate vice provost notified Student B that the respondent would be on campus for X XXXXXXXX XX XXX XXXXXXXX XXXXXXXXXXXX XXXXXXX on XXXXX XX, 2013. To limit the likelihood of having contact with her, Student B asked that the respondent be required to park in a particular lot; the University agreed to this request. On XXXXX XX, 2013, Student B sent an email to the associate vice provost stating that the University did not notify her that the respondent would be on campus XXXX XXX XXXXXXXXXXXX on XXXXX XX, and she saw him and ran back into her classroom; she stated that she had difficulty focusing on work and did not leave her room for the rest of the day because XXX XXX XXXXXXXXXXXXXXXXXXXX XXXXXXX XXXXXXXXXXXX. On XXXXX XX, 2013, the associate dean told the associate vice provost that he had approved the respondent's written advanced request to XXXX XX XXX XXXXXXXXXXXX XX XXXXXXXXXXXX X XXXXXXXXXXXXXXX XXX XXX XXXXXXXX, but had not realized that this would also require him to go to XXX XXXXXXXXXXXX XXXXXXX near Student B's classroom.

On or about XXX XX, 2013, Student B informed the associate vice provost that she received an unintelligible voicemail from the phone of the respondent's XXXXXXX around X:XX a.m. On XXX XX, 2013, an email from the associate vice provost to Student B and her parents stated that the respondent would not be permitted to participate in XXXXXXX XXX XXXXXXXXXXXXXXX XX XXXXXXX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX because of his violation of the University's no-contact orders. On XXX XX, 2013, Student B's father asked the University to ban the respondent from XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX, since Student B would be attending. On XXX XX, 2013, the associate vice provost informed Student B and her parents via email that the University had decided to ban the respondent from campus while Student B continued to be enrolled. On XXX XX, 2013, the associate vice provost informed the respondent that, given repeated violations of the no-contact order, beginning immediately his presence on campus was prohibited while Student B was a student, including attendance at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

On XXX XX, 2013, Student B notified the associate vice provost that she saw the respondent's name on the list of individuals XXXXXXXXXXXXXXX XX XXXX XX XXXXXXXXXXXXXXX; he responded to confirm that the University had notified the respondent that he would be removed from campus by authorities if he violated the restriction. On XXX XX, 2013, the respondent emailed the associate vice provost and associate dean to request to XXXXXXX XXX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX. The associate vice provost informed the respondent that he could appeal the decision.

On XXXX XX, 2013, Student B attended XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX. On XXXX XX, 2013, in an email to the associate vice provost, Student B informed him that her friends saw a photo on social media of the XXXXXXXXXXXXXXX XXXXXXX XX XXXXXXX XX XXX XXXXXXXXXXXXXXX XXXXXXX XXX XXXXXXXXXXXXXXX XXXXXXX. On XXXX XX, 2013, the vice provost spoke by phone with Student B and apologized for the University not informing her of the decision to allow the respondent to XXXXXXX XXXXXXXXXXXXXXX. The vice provost and Student B discussed the need for the University to review policies, practice and protocols; and for additional staff

training. He told Student B that the respondent would not be allowed on campus XXXXXXXX XXX XXXX XXXXXXXX XXXX. On XXXX XX, 2013, in an email exchange between the University's president and Student B, the University president apologized and stated that the University "messed up." Among other things, he invited her to meet with him to discuss what could have done better to support her.

The University informed OCR in a letter dated XXXXXX XX, 2015 that it allowed the respondent to attend the XXXX XX, 2013 XXXXXXXXXXXX XXXX XXX XXXXXXXX with specific restrictions, including that he had to be escorted by the associate dean XX XXX XXXX XXX XXXXXXXX XXXX XXX XXXXXXXXXXXX XXX XXXXXXXX, XXX XXXX XXX XXXXXXXXXXXX XXXX XX XX XXXX XXXX XXXX XXX XXXXXXXX XXX XXXXXXXX XXXXXXXXXXXX XXXXXXXX, and could not XXXX XX XXXXXXXX XXX XXXXXXXX XXXX XXXXX XXXXXXXX.

On XXXXXXXXXXX X, 2013, Student B sent an email to the associate vice provost requesting confirmation that the respondent would not be allowed on campus XXXXX XXX XXXXXXXXXXXX, XXXXXXXXXXX XXX XXX XXXXXXXX XX XXXXXXXXXXX XXXX XXXXXXXX XXXXX. She stated that XXX XXXXX XX XXXXXXXX XXXXXXX XXX XXX XXXXXXXX XXXXXXXX XX XXX XXXXX XXXX XXX XXXXXXXX. The associate vice provost responded by email that day informing her that the campus ban was in place as long as she was enrolled. On XXXXXXXXXXX XX, 2013, Student B sent an email to the University's president thanking him for meeting with her, and offering to provide input and feedback.

On XXXXXXXXXXX XX, 2013, Student B reported to the associate vice provost that she learned via social media that the respondent had XXXX XX X XXXXXXXXXXXX XXXXXXXX XXXX XXXX XX XXXXXXXXXXX XX, 2013, again in violation of the campus ban. On XXXXXXXXXXX XX, 2013, the associate vice provost sent an email to the vice provost stating that he spoke with Student B that day. He stated that he also spoke with the respondent and informed the respondent that the ban continued to be in effect. The associate vice provost outlined the next steps of issuing a campus ban through the president's office, and finding out if deputies would be able to have a picture of the respondent XX XXXX XXXXXXXXXXX XXXXX in case he attempted to attend XXXXXXX XXXX. The associate vice provost stated that he believed that the respondent would violate the campus ban again due to his history with the University.

On XXXXXXXXXXX XX, 2013, the University approved a stay away order for the respondent, which would be served via email, registered letter, and phone by DPS. The stay away order did not include a timeframe by which it would expire. XXXXXXX X XXXX XXXXX XX XXXXXXXXXXXXXXXX XXXXXXX XXXX XXX XXXXX XXX XXXXXXXXXXX XXXX XXX XXXXXXXXXXX, and DPS deputies obtained a picture of the respondent in case he attempted to come on campus. On XXXXXXX X and X, 2013, the associate vice provost sent Student B emails informing her of the stay away notice, and what it included.

On XXXXXXX X, 2013, Student B sent an email to the associate provost requesting a reduced course load for the fall quarter due to duress she was experiencing after the respondent broke the campus ban in XXXXXXXXXXX 2013. On XXXXXXX X, 2013, the associate vice provost responded via email that in order to obtain academic accommodations, she needed to register with the Office of Accessible Education, provide documentation of her diagnosis and its impact in the educational setting. He also informed Student B that the respondent XXX XXXXXXX XXX XX XXXXX, and had been notified by phone and email by DPS that the campus stay away was in place and that if he came to campus, while she was enrolled, he would be arrested.

On XXXXXXX X, 2013, a letter addressed to the University from an XXXXXXXXXXX XXXXXXXX XXXXXXXXXXXXXXXX stated that Student B XXXXXXXXXXX XXXX XXXXXXXXXXXXXXXX XXXXXXX XXXXXXXX XXXXXXX. The letter supported Student B's request for one academic quarter's reduced course load. Student B

informed OCR that XXX XXXX was due to the respondent's abuse, and that she experienced XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXX XXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX; she also experienced difficulty attending classes and university activities. On XXXXXXXX X, 2013, Student B met with a disability adviser regarding her request for a reduced course load, which the University granted for the fall 2013 quarter. The contact entry stated that Student B was XXXXX XXXXXXXX XXX XXXX XXX XXXXXXXXXXXX XXX XXXX XX XXX XXXX XXXX. The entry also said that the respondent's recent appearance XX X XXXXXXXXXXX XXXX triggered symptoms in her.

XX XXXX XXXX, XXXXXXXX X XXXXXXXXXXX XXXX XXX XXXXXXXXXXX. In response to requests from Student B and a faculty supporter, on XXXXXXXX XX, 2015, the Title IX coordinator provided Student B a written summary of events in her case, and explained that there was never a formal process instituted against the respondent because of Student B's requests that the University not do so, and the outside psychologist's recommendation that the University not do so against her wishes. The letter included that the University acknowledged that on two occasions it failed to communicate with Student B about the respondent being on campus – XXX XXXXXXXXXXX XXXXXXXXXXX XXX XXX XXXXXXXXXXX XXXXXXXX XXXXXXXXXXX -- and acknowledged that on one of those occasions, the University "did not fully enforce a campus restriction."

Student B told OCR that as a result of the University's actions, she was subjected to an ongoing hostile environment, incurred expenses XXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX, and did not receive adequate personal or academic support during her time at University. The XXXXXXXX XX, 2015 letter included an XXXXX XX XXXXXXXX XXXXXXXX XXX XXXXXXXXXXXX XX XXXXXXX XXXXXXX XXXXXXX XXXXXXXXXXX to Student B. Student B and the University reported to OCR that Student B did not XXXXXXX XXX XXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX.

On XXXXX XX, 2015, Student B wrote to the University asking to amend the XXXXXXXX XX, 2015 letter to include additional information about the concerns that she had about the University's handling of the matter, including that the University did not proceed with an investigation of the underlying allegations of assault, and that the University did not effectively enforce the no-contact orders. On XXX X, 2015, the Title IX coordinator informed Student B that she would attach Student B's correspondence to the XXXXXXXX XX, 2015 letter; the response letter, along with the XXXXXXXX XX letter and other documents, were considered and discussed by the University in a debrief with Student B of her case on XXXX XX, 2015.

**Analysis and Conclusion of Law for Student B**

With respect to whether the University provided a prompt and equitable response to Student B's reports related to XXX XXXX XXXXXXXX XXXXXXXXXXXX that occurred between XXXXXXXX, 2010 and XXXXXXXX, 2011, OCR found that XXXXX XXX XXX X XXXXXXXX, Student B told the University in writing on several occasions that she did not want to participate in the formal investigative process for student conduct violations, and did not want the University to proceed with the process. When weighing a student's request not to proceed or participate, the University balances the student's request in the context of the need to ensure a nondiscriminatory environment for its students. The factors that a school may consider in this regard include but are not limited to the seriousness of the alleged harassment and whether there have been other complaints or reports of harassment against the alleged harasser.

OCR found that the documentation showed that Student B opposed the University proceeding with a formal investigation XXXXX XXX XXX XXXXXXXX. The University ultimately determined that it should not conduct a formal investigation into the Student B's allegations of dating violence because of Student B's request not to participate, Student B's fear of retaliation by the respondent, and the lack of a threat of violence toward Student B, as determined after consultation with the University's outside psychological expert. While the decision was a difficult one, particularly where the University was on notice that XXX XXXXXXXXXXXX XXX XXXXXXXXXXXX XXXXXXXX XX XXXXXXXXXXXX XXXX XX XXXXXXXXXXXX against Student B, OCR found insufficient evidence of noncompliance because the University engaged in a multi-factor analysis, when new information came to light, reopened a discussion with Student B about proceeding with disciplinary proceedings in XXXXXXXX 2012, informed Student B of the results of the outside psychologists recommendations, and did not proceed after she made a request not to move forward without her confirmation. OCR did not find any documentation that Student B objected to the University's decision XXXXX XXX XXX XXXXXXXXXXXX XX XXXXXX.

OCR identified a concern because the University did not, in the first instance, effectively enforce the XXXXXXXX 2011 stay away order from University residences; and after receiving notice of the XXXXXXXX 2011 XXXXXXXX XXXXXXXX incident, it did not timely provide her with notice of the outcome of that investigation or refer her report for consideration of whether to open an investigation under its Title IX grievance procedures. In this regard, OCR found that Student B did not receive information from the University related to the University's placement of a residence ban on the respondent for a few months, or any other information regarding the outcome of her oral complaint. Then, on XXXXX XX, 2012, Student B reported that University staff had not prevented the respondent from entering her residence on more than one occasion, even though the University had issued an order in XXXXXXXX 2011 for the respondent to stay away from all University residences. This raised a compliance concern regarding the lack of communication and coordination with resident staff related to the stay away order in the first instance.

However, OCR also found that the University took prompt and appropriate progressive responsive actions after it received reports from Student B of alleged stay away and no-contact violations. In this regard, the University took reasonably prompt action to reiterate the terms of the stay away to the respondent on XXXXX X, 2012 and spoke with residence hall staff about the same on XXXXX XX, 2012. On XXX XX, 2012, after further conversation with Student B about her requests for additional restrictions on the respondent's activities on campus, the University issued a no-contact order and prohibited the respondent from attending specific activities at which the Student B would be present.

Student B stated that she did not receive any other information about the outcome of the University's investigation into the XXX XX, 2012 report of two calls from the respondent's XXXXXXXX number, but OCR found University witnesses credible in their testimony that the SARA director informed Student B that the University had interviewed the respondent and XXXXXXXXXXXXXXXX XXXXXXXX shortly after the report (both denied the call), directed them that such contacts violated the no-contact order, and imposed an additional restriction on the respondent, namely that he could not enter campus without advance notice. A XXXX XX, 2012 email from the respondent confirmed that the same actions occurred.

OCR also found that on XXXXXXXX XX, 2012, the University did not timely inform Student B that the respondent had XXXXXXXXXXXXXXXX in a class XX XXX XXXX XXXXXXXXXXXX XXX XX XXX XXXX XX XXXXXXXX XXX XXXXX. This resulted in Student B seeing the respondent under circumstances that triggered reported anxiety symptoms. The associate vice provost and others handling the no-contact orders stated that they were unaware that the respondent XXX XXXXXXXXXXXXXXXX, identifying a need for better coordination with the relevant University department. However, after receiving the report, the University did take

prompt responsive action to avoid further contact and address Student B's concerns by, on the following day, restricting the respondent's campus access to class time and entry and exit times. Within several days of the report, the University assigned XX XXXXXXXX in the building lobby, who also acted as a security escort for Student B. The University also provided Student B with academic accommodations for any missing classes and assignments.

In response to Student B's report on XXXXXXXX XX, 2012 that the respondent violated the no-contact order by emailing her three times XXXX XXX XXXXXXXX requesting that she end the no-contact order, the University responded the same day. The University set-up an interview with Student B to discuss XXX XXXXXXXXXX of alleged violence, any witnesses, and safety planning strategies. The University obtained the services of an outside psychologist to assess the respondent's capacity for further violence and determine whether to move forward with an investigation and disciplinary proceeding, over Student B's objections. It also implemented additional campus restrictions, which Student B said were "good" for the fall quarter. On XXXXXXXX X, 2012, the University informed Student B that the respondent would XXX XXXXXXX XX XXXXXXX XXX XXXXXXXXXX XXXXXXX XXX XXXXX XXXXXXXXXX XXX XXXXXXXXXX XXXXXXXXXXXXXXX XXXX XXXX XXXXXXX.

On XXXXXXXX XX, 2012, Student B reported another call from respondent's XXXXXXXX cell phone; OCR did not receive any documentation of responsive action, but the associate dean said after any report he would follow-up with the respondent XXX XXX XXXXXXX. On XXXXXXXX XX, 2012, Student B received another call from respondent's XXXXXXXX cell phone; the next day, the University informed the respondent that it would move forward with the involuntary leave of absence process if the respondent XXXXXXX XX XXXXXXX. On XXXXXXX XX, 2013, the University informed the respondent that additional wrong or misdialed numbers would no longer be considered accidental and imposed an additional restriction that the respondent had to make a written request 24 hours in advance of any request to enter campus for an academic reason and receive written permission.

On XXXXX X, 2013, Student B saw the respondent on campus when the University misunderstood which part of campus he was going to visit XXX XXXXXXXXXX XXXXXXX. After another call from the respondent's XXXXXXXX cell phone, on XXX XX, 2013, the University banned the respondent from campus, XXXXXXXXXX XXXXXXX XXXXXXXXXX, until Student B graduated. OCR identified a concern that on XXXX XX, 2013, it failed to communicate with Student B to inform her that it had decided to allow the respondent to attend XXX XXXXXXXXXX XXXXXXXXXX with certain additional restrictions, including an administrative escort. On XXXXXXXXXX XX, 2013, when the respondent violated the campus ban by XXXXXXXXXX X XXXXXXXXXX XXXX XXXX XXXXXXX X XXX XXXXXXX, the University responded by putting a DPS enforced stay away order in place.

Student B provided information to the University and OCR regarding the impact that the violations of the no-contact orders by the respondent had on her and her access to the University's education program, as confirmed by the accommodations put in place, including the reduced course load during the winter and spring 2014 quarters. However, OCR also found that the University took steps to address any harms identified by Student B when it offered to XXXXXXXXXX XXXXXXX X XXX XXXXXXXXXX XXX XXXXXX XXXXXXX XXXXXXX.

To determine whether, with respect to the XXXXXXX 2011 incident, the University's failure to: provide Student B notice of the University's determination; assess whether the incident should have been investigated under the Title IX grievance procedures; and effectively enforce the XXXXXXX 2011 University residence stay away order in the first instance violated Title IX, OCR would need to conduct further interviews with the resident assistant and SARA director, regarding the nature of Student B's

report and the reason for not proceeding with an investigation under the ARP at that time. Prior to OCR completing its investigation into the remaining compliance concern, the University expressed an interest in entering into a voluntary agreement, and OCR agreed it was appropriate to do so.

**Complaint of Student C (09-16-2213)**

A. Investigation and Hearing

Student C is XXXXXXXXXXX XXXXXXXX XX XXX XXXXXXXXXXXX. Student C has a XXXXXX XXXXXXXX disability and XXXXX XXXXXXXX XXXX. On XXXXXX XX, 2015, Student C reported to the University that she was subjected to sexual harassment and unwanted sexual touching, XXXXXXXXXXX XXXXXXXX XXXXXXXXXXXXXX, by another University student on both XXXXXX X, 2015 and XXXXXX X, 2015, and the University failed to provide a prompt and equitable resolution to her complaint. During the XXXXXX X, 2015 incident, Student C alleged that XXXXX XXX XXX XXXXXXXXXXX, the respondent student XXX XXXXXXXXXXXXXX XXXXX XXXXXXXX XXX XXXX XX XXX XXXX; Student C alleged that this conduct was unwelcome.

On XXXXXX XX, 2015, before classes for the 2015-2016 academic year began, OCS issued a no-contact letter to the respondent and began an investigation. The investigation included interviewing Student C, the respondent, all of the XXXXX witnesses Student C identified, all of the XXXXX witnesses the respondent identified; and reviewing text messages and social media screenshots Student C provided, and text messages the respondent provided.

On XXXXXX X, 2015, the investigative report was provided to both parties. On XXXXXX X, 2015, the Title IX Office issued a charge letter to Student C and the respondent, which contained a link to the electronic investigation file for the case. The respondent was charged with "sexual harassment and non-consensual sexual touching." On XXXXXX X, 2015, the assistant dean of residential education notified the respondent that he was placed on administrative leave from XXX XXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX pending the outcome of the Title IX process. The hearing was scheduled for XXXXXXXXXXX X, 2015.

Pursuant to University's ARP Policy, Student C and the respondent were each given six days to submit a written statement in response to the investigation file, which they had received on XXXXXX X, 2017. Following a review of all the documents in the investigation file, Student C contacted OCS on XXXXXX X, 2015 and requested that they interview an additional witness for information about the respondent allegedly XXXXXXXX XX XXXXXXXXXXXXXXXXXXXX XX XXX XXXX. OCS interviewed the witness, XXX XXXXXXXXXXXXXXXXXXXX, but determined that the information gathered from her interview was not relevant to Student C's case and did not include the interview in the investigative file. The University did not provide OCR with a copy of XXX XXXXXXXXXXXXXXXXXXXX interview statement. Both parties requested an extension to respond to the investigation file. The University granted the requests, and extended the deadline for responses to XXXXXX XX, 2015.

On XXXXXX XX, 2015, the Title IX Office contacted Student C's professors and informed them that Student C may be unable to attend class or complete assignments on time.

On XXXXXX XX, 2015, Student C submitted her evidentiary redaction requests. Student C requested that OCS redact positive character evidence statements about the respondent from XXXXX witnesses. She also requested a ruling on redactions before her response to the investigation file was due, or, in the alternative, an extension to submit her response to the investigation file until after she was

informed of the ruling. On XXXXXXXX XX, 2015, OCS met with Student C and her two support people to go over the evidentiary requests. On XXXXXXXX XX, 2015, Student C's support person requested to be able to submit negative character evidence in rebuttal to the positive character evidence submitted by the respondent. OCS informed Student C that she should respond to the investigation file "as it currently exists", and that her deadline for responding to the investigation file would be postponed to XXXXXXXX XX, 2017.

On XXXXXXXX XX, 2015, OCS informed Student C that her requests related to positive character evidence about the respondent contained in the XXXXX witness statements were granted, and that her request to submit negative character evidence in rebuttal was denied because there was no positive character evidence to rebut. On the same day, Student C and the respondent submitted their responses to the investigation file.

On XXXXXXXX XX, 2015 at XX:XX am, the revised investigation file, which for the first time included the respondent's response to the investigation file, was provided to the hearing panel members (also known as the "Reviewers"), Student C and the respondent. The respondent's written response to the investigation file contained a statement that Student C had told him about an alleged XXXXXXXXXXX XXXXXX XXXXXXXXXXX XXXXXXXX X XXX XXXXXXXX XXXXXXXXXXXXXX XXXXXXXX XXX XXXXX XXXX and information about her past relationship with XXX XXXXXXX XXXXXXXXXXX, and positive character evidence about him, in the form of a statement that he made about his family and his XXXXXXXXXXX XXXXXXX. The University ARP Policy stated that positive character and reputation evidence was irrelevant at the fact finding stage and "that past sexual history of the Impacted Party and Respondent is relevant only when the investigator finds the past sexual incident provides direct compelling evidence on a finding."

In his statement, the respondent stated that he was X XXXXXXXXXXX XXXXXXXX XX XXXX XXXXXXXXXXX XXXX XXXXX XXXXXXXXXXX XXX XXXXXXXX XXX XXXX XXXXXXXX XXXXXXXX XXX XXXXXXXXXXX XXXXXXXX, and, as such, he would not do something like engage in sexual misconduct to risk his educational opportunities at the University. The respondent also described Student C's relationship with XXX XXXXXXX XXXXXXXXXXX XXXXXXXXXXX XXX XXXX XX XXXXX XXXX XXXXXXXX XXX XXXXXXXXXXXXXX XXX XXXXXXX. He also related that Student C disclosed to him that XXX XXXX XX XXXXXXXXXXX XXXXXXX XXXXXXXXXXX XXXX XXXXXXX XX. OCS had removed this reference to the past incident with XXX XX in other witness statements, but not in the respondent's statement. The University informed OCR that it redacted references to this incident in some other witness statements as potentially prejudicial X---paragraph redacted---X.

At XX:XX am, on XXXXXXXX XX, 2015, Student C's support person responded to OCS, stating that Student C needed time to respond to the significant amount of new evidence, and that the positive character and past sexual history statements made by the respondent needed to be excluded based on the University ARP Policy. The OCS director responded at XX:XX pm and stated that the deadline for any response was X:XX pm the same day. At XX:XX pm, Student C's support person told the OCS director that the deadline was unreasonable, denied Student C sufficient opportunity to respondent and due process, and could not be met by X:XX pm. At XX:XX pm, Student C's support person told the OCS director that Student C had X XXXXXXXX XX X:XX pm that same day, requested that the timeline for a response be extended to XXXXXXXX, XXXXXXXX X, 2015, and the hearing continued. At XX:XX pm, the OCS director informed Student C's support person that she would remove the new evidence from the investigation file and redact the positive character evidence and past sexual history regarding the alleged XXXXXXXXXXX XXXXXXX XXXXXXXXXXX XXXX XX XX. The OCS director informed Student C's support person that if she had additional redactions, Student C could submit them by X:XX pm, a time which still fell during Student C's XXXXXXXX XXXX; the OCS director also stated that the hearing would go forward as

scheduled on XXXXXXXX X, 2015. At XX:XX pm, OCS told Student C's support person she could submit further redaction "XXXXX XXX XXXXXXXX." It was not until X:XX pm that the OCS director sent another email, stating that Student C could provide objections and redactions by X:XX am on XXXXXXXX X, 2015. By this time, Student C had determined that she would need to XXXX XXX XXXXXXXX in order to complete the redactions and objections; she worked several hours with two support people to try to meet the OCS director's request before receiving the email at X:XX pm.

On XXXXXXXX X, 2015, Student C submitted her written redactions and objections to the respondent's response statements and new evidence. Student C stated in her objections statement that the incident with XXX XX "XXX XXX X XXXXXXX XXXXXXXXXX." The University informed OCR that the incident was in reference to Student C seeing XXX XX XXXXXXXXXXXXXXX XXX XX XXXXXXX XXXXX and that it made her feel uncomfortable. The respondent's response and Student C's objections to the investigation file, however, did not contain the information about the incident not involving Student C and, rather, XXXXXXXXXX XXXXXXX XXXXX.

On XXXXXXXX X, 2015, the OCS director emailed the hearing panel members Student C's objections and redactions to the investigation file and an unredacted version of the respondent's response, including all of the new evidence and the statements, along with the investigator's reasons that the evidence was appropriate for their review. The investigator's written explanation for inclusion of the evidence stated specifically that the XXXXXXXXXX XXXXXXX XXXXXXXXXX XXXXXXX XXXXXXX X XXX XXX XX is not Student C's past sexual history, but rather it is evidence of a pattern, it supports information included in a witness's statement, it is proper rebuttal evidence, and it goes to Student C's credibility. The email from the OCS director requested that the hearing panel members decide at the hearing whether to review the respondent's unredacted statement, texts and photos. The University later told OCR that it did not redact the positive character evidence statements because they were offered to 1) respond to Student C's statement that she was afraid that he would get away with the alleged sexual misconduct because of XXX XXXXXXXXXX XXXXXXXXXX XX XXX; and 2) support the respondent's rebuttal to Student C's statements that he knows that XXX XXXXXXX XX XXXX XXX XX XXXXXXX, when he stated that he does not "XXXX XXX XXXXXXX XX XXXXXXX XXXXX XXX XX XXXXX XXXXXXXXXX XXXXXXXXXX." However, Student C's statement about the respondent XXXXXXX XXXXXXXXXX XXXXXXXXXX XX XXX was redacted in the investigation file provided to the hearing panel members because Stanford determined it was "potentially prejudicial" to the respondent.

At X:XX pm, three minutes prior to the start of the hearing, the hearing panel members denied all of Student C's requests for redaction and accepted all of the respondent's evidence into the record. The investigator informed Student C of this decision by email, but did not provide a rationale for the decision. At X:XX pm, Student C attempted to review the updated file electronically to see what was in front of the hearing panel members, but she told the OCS director that the evidentiary file containing the documents was not updated. In an email to Student C at X:XX p.m., when Student C was scheduled to provide her statement at the hearing, the OCS director denied her request for the updated documents and told her that she would receive all of the information at the appeal stage, and the hearing was not the time to bring up objections to their evidentiary rulings. In an interview with the OCS director, she stated that both parties received the final file before the hearing, but she did not recall when this occurred.

B. Disability Accommodations for XXXXXXXX



For the 2015-2016 academic year, Student C was registered with the University's Office of Accessible Education, which had documentation of XXX XXXXXX disability. Her academic accommodations were for XXXXX XXXXXXXXXXXX XXXXXXX XXXX XXX XXXXXXX XXXXXXX XXX XXXXXXXXXXXX XX XXXXX XXXXXXX XXX XXXXX XXX XXXXXXX XXXXXXXXXXXX XXX XXXXXXX XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXX XXX XX XXXXXXX. On XXXXXXX XX, 2015, the OCS director initially denied Student C's request for specific accommodations for XXX XXXXXXX disability and for a pre-hearing meeting to discuss the logistics of an accommodation on the grounds that Student C XXX XXX XXXXXXXXXXXXXXXXXXXX XX XXX XXXXXXXXXXXX. The OCS director denied Student C's request that the hearing be XXXXXXXXXXXX XX XXXXXXXXXXXX XXXXXXXXXXXX. However, OCS offered to XXXXXXX XXXX XXXX XXXXXXXXXXXX XXX X XXXXX XXXXXXXXXXX XXXXXXX XXX XXXXXXXXXXXXXXXXXXXX XXXXXXX XXXX XXX XXXXXXX XXXXXXX XXXXXXX. The OCS director also asked Student C to provide documentation showing that she needed these accommodations XX XXX XXXXXXXXXXXX. On the same day, Student C explained to the OCS director that she did in fact XXXX XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX, and she provided the OCS director with a letter dated XXXXXXX X, 2015, from the University's Office of Accessible Education documenting her need for those accommodations. She also explained to the OCS director that her accommodation needs in a hearing, XXXX XX XXXXX XXX XXXXX XXXXXXX XX XXXXXXX, substantially differed from the accommodations she required XX XXX XXXXXXX.

On XXXXXXX X, 2015, the evening before the hearing, the OCS director agreed to accommodations XXX XXXXXXX XXX XXXXXXX disability, which included X---paragraph redacted---X.

However, Student C informed OCR that the difficulty she faced in obtaining accommodations for her disability substantially increased the stress she experienced before and during the hearing. She told OCR that the climate the University created surrounding her disability needs hampered her ability to participate fully and provide testimony at the hearing.

C. Outcome Letter and Educational Impact

On XXXXXXX X, 2015, the OCS issued an Outcome Letter with a not responsible finding. Student C was informed that the no-contact letter was no longer in effect. The Outcome Letter stated that the panel had "[d]etermined that there was insufficient evidence to substantiate that what occurred was actually XX XXX XX XXXXXXXXXXXXXXX." With regard to the sexual misconduct charge XX XXXXXXX XXXXXXXXXXXXXXX and unwanted touching, the panel stated, "four of us found that a preponderance of evidence does not exist to support this claim. XX XXXXX XXX XXXXXXXXXXXXXXX XXXXXXXXXXX XXXXXXX XX XX XXXXXXX. XXX XXXXXXX XXXXXXX XXXX XXXX XXX XXXXXXXXXXXXXXX XX XXX XXXXXXXXXXXXXXX XXXXXXX XXX XXXXXXXXXXXXXXX."

On XXXXXXX X, 2015, the University notified the respondent that he could XXXXXXX XXX XXXX XX XX XX. Student C was given a nine day extension to file an appeal but ultimately did not do so.

Student C informed OCR that she continued to suffer from XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXX XXXXXXX, particularly since she frequently saw the respondent on campus. After XXXXXXX XXX XXXXXXX, Student C took an incomplete in that class and in another class the quarter the hearing took place. The following quarter (winter 2015-2016) Student C took a reduced course load and XXXXXXXXXXXXXXX XX XXX XXXXXXX XXXXXXX XXX XXX XXXXXXX XXX XXXXXXX; she ultimately dropped this course. As an administrative remedy, after the drop class deadline had passed, the University removed the course from her record. Documentation provided to OCR from the University shows that Student C XXXXXXX XXX XXXXXXX XXXXXXX. Her transcript was updated to show that she received a X in the course, and she did not pay an additional fee for the course on either occasion when she was enrolled. Student C stated that

because of the reduced course load XXXXXX XXX XXXXXX XXXXXXXXXXX XXXXXXX XXX XXXX XXX XXXXXXXXXXX XX XXXX XXXXX. OCR's review of Student C's transcripts before the incident, during the investigation and hearing, and after the hearing ended did not show any significant change in her academic grades.

### **Analysis and Conclusion of Law for Student C**

OCR's investigation to date raised a concern that allowing the respondent to include a statement about his character and XXX XXXXXX XXXXX and failing to redact statements about Student C's alleged past sexual history may have created an inequitable process. In this regard, the ARP did not allow parties to include positive character evidence. Where, as here, the University's decision rested on the credibility of each party's account, the fact that the University permitted one party to include a statement related to his character and did not provide the other party with an opportunity to provide the same (or rebuttal), may have created an inequitable process. The University stated such evidence from the respondent was proper rebuttal evidence to a statement made by Student C that the respondent had XXXXXXXXXXX XXXXXX XXXXXXXXXXX, but OCR found that the University redacted that statement from Student C from the investigative file before providing it to the hearing panel, stating that it was prejudicial to the respondent.

In addition, prior to the hearing, the evidence showed that the University did not redact the respondent's response to the investigation file, which included statements about Student C's alleged past sexual history, including an alleged XXXXXXXXXXX XXXXXX XXXXXXXXXXX XXXX XX XX XXX XX XXXXXXXXXXX XXXXXXX XXXXXXXXXXXXXXX XXXX XXX XXXXXXXXXXXXXXX. The University investigator's explanation for inclusion of the evidence to Student C was that it was not the past sexual history of Student C, but rather it was proper rebuttal evidence and went to Student C's credibility. However, this same information was redacted from other witness statements based on its prejudicial nature, and information from Student C that may have clarified that the incident involved XXXXXXX XXXXX XXXX XXXXXXX X was not provided to hearing panel members. In addition, the University did not redact statements about her alleged XXXXXXX XXXXXXX XXXX XXX XXXXXXXXXXXXXXX, but the interview from the XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX was removed from the file (and not provided to OCR). Relatedly, OCR identified a concern with the University's delay in granting Student C's request to have sufficient time to respond to the significant new evidence presented by the respondent in his response to the investigative file, which may have prejudicially impacted Student C's ability to present the case.

OCR also identified a concern with the University's lack of coordination between its OCS office and disability accommodations office to address Student C's requests XXX XXXXXXX accommodations. Finally, OCR had a concern that the outcome letter did not have sufficient information from which the parties could determine the reason for the insufficient evidence finding, specifically it did not explain why the hearing panel found the respondent's account more credible than Student C's account. Accordingly, OCR identified several equity concerns with the Title IX grievance process for this matter. To complete the investigation, OCR would need to conduct further interviews. However, prior to OCR completing the investigation, the University expressed an interest in voluntary resolution for this case, and OCR agreed it was appropriate to do so.

### **Other Reports and Complaints of Sexual Harassment /Sexual Violence**

OCR reviewed 174 case files submitted by the University to OCR regarding oral reports and written complaints of sexual harassment and/or sexual violence that it received from June 1, 2014 through May 31, 2016. One hundred and fifty-two (152) of the cases were resolved through an informal resolution

process, and seven were resolved through a formal hearing process<sup>19</sup>. OCR also reviewed the log entries for 15 reports of sexual harassment and/or sexual violence for which the University provided no other documents or communications. University counsel informed OCR that in providing documents and files, every contact to the Title IX Office was entered into the spreadsheet it created for OCR and provided as a case file.

However, OCR identified a compliance concern because a number of case files did not contain sufficient documentation from which OCR could determine whether the University had provided a prompt and equitable response to the reporting party or the parties involved. In six instances, the University's spreadsheet notes state that a respondent was required to complete training as a remedy, but there are no notes or documents showing that the University informed the complainant and the respondent about the outcome of the resolution process or the remedy. Thirty-six (36) files only have an outgoing email from the Title IX office to the impacted party and no other documents (no complaint, if one was filed, and no oral complaint, if one was taken), and six other files lacked any form of notes from interviews or meetings with the respondent or the complainant, so there is no documentation as to whether the complainant was advised of the option for formal investigation or of the voluntary nature of the informal resolution process under the University's grievance procedure. In this regard, in the case identified as number 57, the file did not include sufficient information to determine whether an investigation occurred or was needed. In that case, the file stated that a resident assistant received reports from his residents that another student had XXXXXX XXXXXXXXXXXX XXXX X XXXX XXXX XXX XXX XXXXXXXXXXXX. He reported it to the residential advisor who reported to the Title IX Office. The University informed OCR that it did not have enough information from the initial report to determine its credibility. The only item in the case file is the email from the RA to the residential advisor; there is no documentation in the file as to why the Title IX Office could not speak with the RA and the residents who reported the incident.

During negotiations, the University provided OCR with additional information and documentation that addressed OCR's concerns in several other cases, and the University also identified that as of September, 2017, it had changed its document management system so that it now captures significant correspondence and contacts with the parties and witnesses in a matter. OCR also notes that during the investigation, several student witnesses reported concerns to OCR over the University's inconsistent enforcement of no-contact orders in sexual harassment/sexual violence cases. Prior to completing the investigation regarding this concern and with respect to the cases reviewed, the University expressed an interest in voluntary resolution, and OCR agreed it was appropriate to do so.

#### OVERALL CONCLUSION

The University has entered into the enclosed Agreement to address the compliance concerns and violations identified in these consolidated matters. Among other things, the Agreement requires the University to: review and revise its notice of nondiscrimination on the basis of sex and policies and procedures governing sexual harassment and sexual violence to ensure compliance with Title IX; provide notice of Title IX policy and procedure revisions to the University community and training to those handling the University's response to complaints on the revisions; develop a protocol and guidance for

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<sup>19</sup> For oral reports and written complaints received by the University from June 1, 2014 through May 31, 2015, OCR reviewed all reports and complaints that were resolved through the formal investigation process and a random sample of informally resolved reports and complaints. Therefore, these numbers do not reflect the total number of oral reports and written complaints of sexual harassment and sexual violence that the University received for this time period.

addressing violations of no-contact orders; and submit a self-monitoring assessment on the University's handling of reports and complaints of sexual harassment and sexual violence.

This concludes OCR's investigation of these consolidated OCR complaints and should not be interpreted to address the University'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 these consolidated OCR 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.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of the consolidated complaints as of the date of this letter, and notifying the Complainants concurrently. The Complainants may have the right to file a private suit in federal court whether or not OCR finds a violation. When fully implemented, the Agreement is intended to address the complaint allegations. OCR will monitor the implementation of the Agreement until the University is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

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, the individual may file another complaint alleging such treatment.

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

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Gemini McCasland, Attorney at (415) 486-XXXX and Dana Isaac Quinn, Attorney, at 415-486-XXXX.

Sincerely,

/s/

Laura Faer  
Regional Director

Enc.

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