

October 28, 2016

Jay Fund
President
Hunter Business School
3601 Hempstead Turnpike
Levittown, New York 11756

Re: Case No. 02-16-2218
Hunter Business School

Dear President Fund:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against Hunter Business School (the College). The complainant alleged that the College discriminated against her, on the basis of her sex, by failing to respond appropriately to (a) two complaints that she filed with an instructor (instructor A) and the Director of Education, in or around early XXXXX 2016, in which she alleged that other students in instructor A's class sexually harassed her; and, (b) a complaint that she filed with the Vice President on or about XXXXX XX, 2016¹, in which she alleged that her instructor (instructor B) sexually harassed her (Allegation 1). She also alleged that instructor B subjected her and her classmates to a hostile environment on the basis of national origin (Allegation 2).

OCR is responsible for enforcing 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, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Section 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in educational programs and activities receiving financial assistance from the Department. The College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under both Title IX and Title VI.

¹ In her complaint to OCR, the complainant initially indicated that she submitted a written complaint to the Vice President on XXXXX XX, 2016. During the course of OCR's investigation, OCR determined that the complainant submitted her complaint on XXXXX XX, 2016.

In its investigation, OCR interviewed the complainant, College staff and administrators, and third party witnesses. OCR also reviewed documentation that the complainant and the College submitted. OCR made the following determinations.

The College's Title IX Policies and Procedures

OCR reviewed the University's sexual harassment policies and procedures to determine whether they comply with the requirements of Title IX. Specifically, OCR examined whether the College had: (a) designated and provided notice of a Title IX Coordinator; (b) provided notice that it does not discriminate on the basis of sex; and (c) adopted and published grievance procedures providing for the prompt and equitable resolution of student and employee complaints of discrimination/harassment on the basis of sex.

Designation and Notice of Title IX Coordinator

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires that each recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX (the Title IX Coordinator). It also requires the recipient to notify all students and employees of the name, office address, and telephone number of the designated coordinator.

OCR determined that the College has designated the Vice Presidents of each of its two campuses as its Title IX Coordinators. The College publishes the name, office address, and telephone number of each Title IX Coordinator in its Sexual Misconduct, Stalking, Dating, and Domestic Violence (Sexual Misconduct Policy), which was recently added to the College's website and Student Handbook. The College also provides the Title IX Coordinator's contact information as part of its orientation PowerPoint presentation. The relevant slide from the PowerPoint presentation is posted in the student lounge. The College further provided OCR with a copy of its Student Catalog² and its Employee Handbook; however, neither of these documents identifies the College's Title IX Coordinators.

Based on the foregoing, OCR determined that the College failed to adequately notify students and employees of the name, office address, and telephone number of its Title IX Coordinators, in violation of 34 C.F.R. § 106.8(a). OCR will obtain a resolution agreement to address this compliance concern.

Nondiscrimination Notice

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires that a recipient implement specific and continuing steps to notify applicants for employment, students, employees, 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 the education programs or activities it operates; that the prohibition against discrimination extends to employment; and that inquiries to recipients concerning the application of Title IX and its implementing regulation may be referred to the Title IX Coordinator or to OCR. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b),

² The Student Catalog contains the College's Equal Opportunity Policy and Student Grievance Procedures.

requires recipients to include this notice of nondiscrimination in each announcement, bulletin, catalog, or application form which it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees.

OCR determined that the College has a nondiscrimination notice that appears in its Student Catalog and Student Handbook, both of which are distributed during student orientation and appear on the College's website. The notice states that the College is committed to providing equal opportunity in its recruitment, admissions, financial aid, placement, educational programs, and employment, without discriminating on the basis of sex, among other protected bases. In addition, the College's Employee Handbook states that the College's policy is to prohibit harassment of any employee by supervisors, employees, customers, or vendors on the basis of sex. Neither of these two notices states that inquiries about Title IX may be directed to the College's Title IX Coordinator or to OCR.

Based on the foregoing, OCR determined that the College failed to adopt a notice of nondiscrimination that conforms to the requirements of 34 C.F.R. § 106.9. OCR will obtain a resolution agreement to address this compliance concern.

Grievance Procedures

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that each recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student, employee, and third party complaints that allege any action which would be prohibited by the regulation. OCR has identified a number of elements in determining whether grievance procedures are prompt and equitable, including whether the procedures provide for: (a) notice to students and employees of the procedures, including where complaints may be filed; (b) application of the procedures to complaints alleging discrimination by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) notice to parties of the outcome and any appeal; and (f) an assurance that the institution will take steps to prevent further harassment and to correct its effects if appropriate.³

In response to OCR's request that the College provide a copy of the College's policies and procedures, and/or a description of its practices, governing the investigation of complaints of harassment on the basis of sex, the University provided the following policies: (1) Student Grievance Procedures; (2) Employee Grievance Procedures; and (3) Sexual Misconduct Policy.

1. Student Grievance Procedures

The Student Grievance Procedures, which were in effect at the time of the complainant's complaints in XXXXX 2016,⁴ outline both informal and formal complaint procedures that may be followed if a

³ For further information, see OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (2001) ("OCR's 2001 Guidance"), and OCR's "Dear Colleague" Letter, dated April 4, 2011.

⁴ Although the College published a new Sexual Misconduct Policy in July 2016, to date, it has not repealed the Student Grievance Procedures.

student believes that an employee, fellow student, or third party has violated a school policy or “has acted in a manner that is inappropriate or unfair to the student.” The Student Grievance Procedure encourages students to use the informal procedure first, which directs students to report their concerns directly to their instructor. The Student Grievance Procedure further indicates that if the instructor is not the appropriate person to contact regarding the complaint, and/or the instructor lacks the authority to address the stated concern, then students should speak with the program chair of the relevant department. If the program chair is unable to resolve the problem, then students should report the complaint to the Director of Education.⁵ The Student Grievance Procedure further states that if the matter is not resolved through these steps, students may contact the campus director or, finally, the President of the College. If the informal process is unsuccessful in resolving the complaint, then students may file a formal written grievance with the campus director, for consideration by the College’s Executive Management Team. The Student Grievance Procedure does not provide the contact information for any of the identified points of contact. OCR determined that the College provides adequate notice to students and employees of the Student Grievance Procedure as it is contained within the Student Handbook which is located on the College’s website, and distributed to new students during orientation. However, the Student Grievance Procedure does not provide adequate notice of where complaints may be filed.

OCR determined that the Student Grievance Procedure does not provide for prompt and equitable resolution of complaints. It fails to provide for an adequate, reliable, and impartial investigation because it does not provide an opportunity to present witnesses and evidence. Although the Student Grievance Procedure states that a written grievance will be addressed at the next scheduled meeting of the College’s executive management, and that a determination will be provided within five business days of such meeting, the Student Grievance Procedure does not otherwise provide for designated and reasonably prompt timeframes for major stages of the grievance process. Further, the Student Grievance Procedure provides an appeal mechanism, but it is not clear whether it is available to the accused in cases where the accused is a faculty member. Finally, the Student Grievance Procedure does not state whether, and how, the complainant and accused will be notified of the outcome of any investigation; and, it does not contain an assurance that the College will take steps to correct the discriminatory effects of any harassment on the complainant and others, if appropriate.

2. Employee Grievance Procedure

The Employee Grievance Procedure, which is found in Sections 1-4 of the College’s Employee Handbook, states that if an employee feels he or she has been subjected to sexual harassment, the employee should immediately report the matter to his or her supervisor. If an employee is unable to contact a supervisor or has not received a satisfactory response within five days of reporting the alleged harassment, the employee should contact the School Director.⁶ The Employee Grievance Procedure states that “[e]very report of perceived harassment will be fully investigated and corrective action will be taken where appropriate.” Violations may result in disciplinary action, including discharge. The Employee Grievance Procedure also prohibits retaliation against individuals who

⁵ The Director of Education informed OCR that students may opt to speak directly with him, as they all know him from orientation and are aware of the College’s open door policy.

⁶ The Employee Grievance Procedures provide that if the employee’s supervisor or School Director is the person towards whom the complaint is directed, the employee should contact the President.

report alleged violations. In addition, it provides that all complaints will be kept confidential to the extent possible, but that confidentiality cannot be guaranteed.

OCR determined that the Employee Grievance Procedure does not provide for prompt and equitable resolution of complaints. It fails to provide for an adequate, reliable, and impartial investigation because it does not provide an opportunity to present witnesses and evidence. It also fails to provide for designated and reasonably prompt timeframes for major stages of the grievance process. Finally, the Employee Grievance Procedure does not state whether, and how, the complainant and accused will be notified of the outcome of any investigation; and it does not contain an assurance that the School will take steps to correct the discriminatory effects of any harassment on the complainant and others, if appropriate.

3. Sexual Misconduct Policy

The College implemented its Sexual Misconduct Policy on or about July 27, 2016. The Sexual Misconduct Policy applies to all members of the College community, including students, faculty, administrators, staff, and third parties. The Sexual Misconduct Policy states that the College is committed to promoting a safe environment free from sexual misconduct. It identifies the Title IX Coordinator for each of its two campuses, including each individual's name, address, and phone number. It further states that individuals may also file complaints with OCR, and lists several confidential resources. The Sexual Misconduct Policy defines consent and includes a list of prohibited conduct, including sexual harassment. It also prohibits retaliation against anyone who exercises rights or participates in an investigation under the policy, and provides that retaliation may be punished with suspension or dismissal. In addition, it provides for amnesty for individuals who report an incident during which they had consumed alcohol or drugs. For complaints of sexual misconduct, the Sexual Misconduct Policy states that any report "will be promptly investigated," and that the College will take immediate action to ensure that victims can continue their education free of ongoing discrimination or harassment. It further states that if a complaint is substantiated, "appropriate corrective action will follow." The Sexual Misconduct Policy does not provide further details about investigations or corrective action.

OCR determined that the Sexual Misconduct Policy provides adequate notice of the policy, including that it applies to students, employees, and third parties. Further, it provides adequate notice of where complaints may be filed as it is posted on its website and reviewed during new student orientation.⁷ However, OCR determined that the Sexual Misconduct Policy fails to provide for an adequate, reliable, and impartial investigation because it does not provide parties an opportunity to present witnesses and evidence. Although it states that the College will conduct a "prompt" investigation, it fails to include designated timeframes for major stages of the grievance process. Furthermore, it does not provide for notice to the parties of the outcome.

Based on the foregoing, OCR determined that the College failed to adopt grievance procedures for the prompt and equitable resolution of complaints of discrimination and/or harassment on the basis

⁷ The College also discusses its policies, including the Sexual Misconduct Policy, during new employee orientation.

of sex in violation of 34 C.F.R. § 106.8(b). OCR will obtain a resolution agreement to address this compliance concern.

The Complainant's Allegations

The complainant was enrolled in the College's XXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX (XXXX) program from XXXXXXXX XX, 2016 until XXX X, 2016. From XXXXXXXX XX, 2016 through XXXXX X, 2016, she was enrolled in XXXX XXX, a XXXXXXXX and XXXXXXXX XXXXXXXX course (course 1), taught by instructors A and B.⁸ From XXXXX X, 2016 through XXX X, 2016, she was enrolled in two consecutive courses, XXXX XXX (course 2), and XXXX XXX (course 3); both courses were taught by instructor A.⁹

Allegation 1

With respect to Allegation 1(a), the complainant alleged that the College discriminated against her, on the basis of her sex, by failing to respond appropriately to two complaints she filed in or around early XXXXX 2016 with instructor A and the Director of Education, in which she alleged that other students in instructor A's class sexually harassed her. The complainant asserted that students in instructor A's class made inappropriate jokes mocking her as a XXX XXXXX. She alleged that she first complained to instructor A about this behavior, but that the students' behavior continued even after instructor A spoke to the students. She further asserted that instructor A defended one of the primary students involved in the harassment, and told the complainant that she should excuse his behavior. The complainant alleged that, as a result of her continued frustration, she filed a second complaint with the Director of Education; however, that still did not stop the students' behavior, and she did not feel comfortable returning to class.

With respect to Allegation 1(b), the complainant alleged that the College discriminated against her, on the basis of her sex, by failing to respond appropriately to a complaint that she filed with the Vice President on or about XXXXX XX, 2016, in which she alleged that instructor B sexually harassed her. She asserted that on or about XXXXX XX, 2016, instructor B made lewd comments to her and XXXX X XXXXXXX XXXXX XX XXX XXXXXXXXXXX. She further asserted that instructor B made sexual comments and jokes throughout the time she was enrolled in course 1. She alleged that she complained to the Vice President confidentially on or about XXXXX XX, 2016, and that the Vice President's response was inadequate because he refused to remove instructor B from the class or terminate his employment.¹⁰ The complainant stated that she was scheduled to take another class with instructor B beginning in XXXX 2016, but that she did not feel safe doing so.

⁸ Instructor B taught Course 1 until XXXXX X, 2016; instructor A taught the remainder of Course 1 beginning on XXXXX X, 2016.

⁹ Course 2 ran from XXXXX X, 2016 through XXXXX X, 2016 and Course 3 ran from XXXXX X, 2016 through XXX X, 2016. However, the complainant withdrew from Course 3 on XXX X, 2016.

¹⁰ The complainant asserted that the Vice President offered to place a monitor in instructor B's classroom; to allow the complainant to attend instructor B's upcoming course with a different instructor at the College's other campus; and to implement sensitivity trainings; however, the complainant rejected these options because she felt that a monitor would not allow her to avoid facing her harasser; that she, as the victim, should not be penalized by having to travel XX miles round trip to the College's other campus; and that the College should have implemented sensitivity trainings earlier.

The regulation implementing Title IX provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by a recipient. 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, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

In determining whether the sexual harassment of a student was sufficiently serious such that it denied or limited the student's ability to participate in or benefit from the recipient's program, OCR examines all of the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age and relationship of the individuals involved (e.g., teacher-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the college or university; and, other relevant factors.

If a recipient knows or reasonably should have known about sexual harassment that creates a hostile environment, Title IX requires a recipient to take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual complaint of harassment, other means may be available to address the harassment. In some situations there may be prior reports by former students who now might be willing to come forward and be identified, thus providing a basis for further corrective action. In instances affecting a number of students (for example, a report from a student that an instructor has repeatedly made sexually explicit remarks about his or her personal life in front of an entire class), an individual can be put on notice of allegations of harassing behavior and counseled appropriately without revealing, even indirectly, the identity of the student who notified the school.

The Complainant's Complaints/Reports of Sexual Harassment

OCR determined that the complainant sent an electronic mail message (email) to the Vice President on XXXXX XX, 2016, stating that she needed to discuss a personal matter with him.¹¹ The Vice President scheduled a meeting with the complainant, but the complainant did not attend; and he assumed that the issue had been resolved because he did not hear further from the complainant.

In or around late XXXXX or early XXXXX 2016, the complainant approached instructor A in the hallway of the College and began crying, stating that she felt unsafe because students in course 3

¹¹ This email did not provide details about what she wished to discuss.

were making sexually explicit comments, and derogatory comments about XXX XXXXXX; and, that she XXXXXXXX XXX XXX and found the comments offensive. Instructor A stated that he would speak to the class about these incidents, without disclosing the complainant's identity. On or about the same day, instructor A addressed the class, stating that they must act like professionals and avoid offensive language. Shortly after addressing the class, instructor A spoke with two students who sat near the complainant, and he asked them what might have been said in class that could make a student uncomfortable. These students admitted to making a joke about XXXXXXXX XXXXXXXX and XXX or XXXXXXXXXXXXXXX XXXXXXXX. Instructor A told them that jokes like that were not acceptable.

On or about XXXXX X, 2016, the complainant met with the Director of Education. She told him that male students¹² in instructor A's class were using foul language and making inappropriate references to the opposite sex. She suggested that the College organize a session on professionalism.¹³ The Director of Education informed the complainant that he would ask instructor A to address these concerns with the class. Later that day, the Director of Education approached instructor A about the complainant's concerns. Instructor A informed the Director of Education that he had already spoken to his class about this issue, and that he thought the problem had been resolved. The Director of Education asked instructor A to speak to his class again, which he did later the same day. Neither the Director of Education nor instructor A interviewed any students regarding the complainant's complaints.

On the afternoon of XXXXX X, 2016, the complainant and instructor A exchanged a series of text messages beginning with a text message the complainant sent to instructor A, in which she stated that she had spoken with the Director of Education and suggested that he organize sensitivity trainings. She further stated, "I informed [the Director of Education] that we did have a problem in the classroom but that you did take care of it right away. He said he was going to talk to you and I didn't think it was necessary." Instructor A responded by stating that the Director of Education had spoken with him already, and that, as a result, he had addressed the matter with the class again. The complainant then responded, "Sorry I think he misunderstood me[.] I was speaking about the future not the present[.]" The complainant stated that no additional incidents had occurred since the time instructor A had first spoken with the class. Instructor A stated that the complainant should be more understanding of one of the students who had made the comments (student 1), because he was a XXX XXXXXXXX who was suffering from XXXXXXXXXXXXXXXXXXXX XXXXXXX XXXXXXXXXX (XXXX). Instructor A stated that he believed in giving XXXXXXXXXX some "leeway." The complainant responded that student 1's behavior was offensive and discriminatory, and that she felt that instructor A was condoning it simply because of student 1's XXXX.

The complainant did not make any further complaints to instructor A or the Director of Education. The College informed OCR that instructor A and the Director of Education therefore believed the matter involving instructor A's class had been resolved.

¹² The class contained only XXXX females, and approximately three times as many males.

¹³ The Director of Education informed OCR that his meeting with the complainant was initially to discuss attendance issues. He stated that she mentioned instructor A's class and her idea to organize a training on professionalism as if she were making a general suggestion, not filing a complaint.

XXXXXXXXX counselor relayed the President’s and Vice President’s proposals to the complainant; however, the complainant was dissatisfied with the College’s proposals for addressing her complaints. The complainant did not attend the meeting on XXXXX XX, 2016, and was absent from the College that day.

On or about XXXXX XX, 2016, the President and Vice President gathered instructor A, instructor B, and the students in both of their classes for a meeting. They spoke in general terms, for approximately 15 minutes, about inappropriate behavior and language, as well as the need to be careful about offending others. After this discussion, several students expressed confusion about why they were called into this meeting, and seemed to be unaware of any behavior that would have necessitated such a discussion.¹⁸ Neither the President nor the Vice President interviewed instructor A, instructor B, or any of their students about the complainant’s allegations at this time.

Later on Friday, XXXXX XX, 2016, the complainant emailed the Vice President with additional details about the incidents she had initially reported to him on XXXXX XX, 2016. She outlined her allegations with respect to instructor B, as well as the steps she had taken to address her concerns about course 2.¹⁹ In her email, she wrote that instructor A had responded to her concerns by immediately addressing the students, and that the students’ inappropriate behavior “had slowed down,” although the students continued to make inappropriate jokes followed by statements that they were not supposed to make such comments, or that they “might get in trouble.” She also stated in this email that she did not feel safe returning to school. On XXXXX XX, 2016, the Vice President responded by email, stating that, had the complainant permitted him to do so, he would have addressed the issues with instructor B directly, as soon as the complainant had reported her concerns. He also reiterated the steps the College had taken with respect to her complaint and the option to have a monitor placed in the complainant’s class. On or about XXXXX XX, 2016, the complainant left a voicemail for the Vice President, stating that she would return to school on XXX X, 2016. She stated that she did not feel a monitor was necessary to accompany her, but that she did not feel that the sexual harassment she had reported was resolved. However, in a subsequent email to the Vice President, dated XXX X, 2016, the complainant stated that she had ultimately decided not to return to the College because the students in instructor A’s classroom had continued “with inappropriate words/behavior” and she did not believe that a monitor would resolve her concern about having to encounter instructor B.

The Vice President informed OCR that because the complainant stated that she would not return to the College, he decided to break confidentiality and address the complainant’s specific concerns with instructor B.²⁰ In or around XXXX 2016, he met with instructor B and presented him with the written statement that the complainant had submitted to him on XXXXX XX, 2016. Instructor B stated that he was shocked by the complainant’s allegations, and that her examples of inappropriate behavior were all taken out of context. He further stated that the XXXXXXXX he made in her XXXXXXXXX was only a XXXXXXXX of a XXXXXXXX he had seen in Montauk and was not meant to

¹⁸ The Vice President and student witnesses OCR interviewed described the students’ reactions in this manner.

¹⁹ Specifically, she reported that she contacted instructor A directly regarding inappropriate comments her classmates made during course 2.

²⁰ The Vice President informed OCR that he believed that he needed to disclose her identity in order to resolve the situation.

be interpreted as sexual. He stated that he had only joked about the name “XXXXXX XXX,” and he denied ever using the word “penis” in class. The Vice President informed OCR that he found instructor B’s response to be credible.

The Vice President also spoke separately with instructor A. Instructor A stated that he had already addressed the complainant’s concerns by speaking to the students in his class; and, that he was not aware of any additional complaints filed by the complainant since early XXXXX 2016.

On or about XXX X, 2016, the College administered an anonymous online survey to all students in the XXXX program.²¹ The survey was the College’s standard course evaluation survey and was not specific to the complainant’s allegations. The survey asked students whether their instructors were courteous and considerate, and whether they maintained high standards of conduct. Instructor B received only the highest rating with respect to these issues, and almost all of instructor A’s ratings on these issues were of the highest rating. The College informed OCR that it considered the high ratings of instructors A and B as part of its investigation of the complainant’s allegations.

On or about XXXX XX, 2016, in response to the complainant’s complaints of sexual harassment, the College cancelled all classes and required that all staff attend a sensitivity training led by the Nassau County Commission on Human Rights. On or about XXXX XX, 2016, the College required that all management staff attend training on harassment, led by its payroll company.

After receiving notice of OCR’s investigation in or around XXXX 2016, the Vice President asked instructor B to prepare a written statement, responding to the complainant’s allegations.²² In his written statement, instructor B explained that “[j]okes made on break occasionally are with the understanding that they could be of an adult nature and before any such jokes were made, that statement was made by me. This is the statement. ‘If there is anyone who would be offended by an adult based comment or joke please let me know.’” (Emphasis in original). With respect to the specific instances the complainant had outlined, instructor B stated that he did not recall any “XXX XXXXX,” and denied that he ever used the word “XXXXXX” or “XXXX” during class. He explained that XXXXXXXXX parts are often referred to by gender descriptors, such as “XXXX XXXXXXXXXXXX” and “XXXXXX XXXXXXXXXXXX,” and that he referred to them accordingly. He further explained that he often analogizes to the human body when teaching about XXXXXXXXX XXXXX, as he tries to emphasize the need to plug the correct parts into the proper location; however, he denied making any sexual references in this regard, and instead stated that he would use analogies such as humans’ need to put food in their mouths, not their ears. With respect to the complainant’s assertion that instructor B asked a student if he was XX XXXXXXXXXXXXXXX XXX XXXXX, instructor B stated that he had actually used the word “XXXXXXXXX” as a reference to students who stay up all night gaming. He explained that he made the joke to one student who looked tired in class and who was known as a “gamer,” as a means to wake him up during a break. With respect to the complainant’s assertion that instructor B referred to a XXXXX XXXX’s XXXX as XXXXX XXXX, instructor B stated that the XXXXX XXXX is the class mascot, and that a former student had named him “XXXXXX XXXX.” He further stated that he often uses the XXXX as

²¹ The College regularly administered a Survey Monkey survey to its classes, to collect feedback on courses and instructors; 16 students provide response regrading instructor A, and eight provided responses regarding instructor B.

²² Instructor B further elaborated on his written response in an interview with OCR in or around August 2016.

a means to stop students from texting in class, by tossing it onto their desks to capture their attention. Regarding the complainant's assertion about instructor B's joke involving the name "XXXXX XXX", instructor B stated that he heard the complainant speaking with another student about XXXXX XXX, and made a joke stating that the name sounded like that of a male gigolo. When the students expressed that they did not understand his joke, instructor B stated that "XXXXX" is another word for "male genitalia." With respect to the complainant's assertion that he had XXXXX an inappropriate image in her XXXXXXXX, instructor B stated that he XXXX the image because the complainant and the other student were looking at images of misshapen artwork on a computer, and he was reminded of a XXXXXXXX he had seen, which depicted a XXXXX XXXXXXX with a XXXXX XXXX and XXXX XXXX.²³ When he first XXXX the picture in the complainant's XXXXXXXX, the complainant and the other student asked him what it meant, which prompted him to warn the students that it was "a little risqué" before writing the caption from the XXXXXXXX. Instructor B informed OCR that the complainant told him at the time that she was fine with their conversation, as members of her family said similar things.

During OCR's investigation, OCR interviewed two students who had been enrolled in instructor B's class.²⁴ The student witnesses denied hearing instructor B curse or make any sexual jokes or references. One student witness stated that she recalled instructor B's discussing XXXXXXXX parts by their technical, gendered names, such as "XXXX XXXXXXXXXX," but that he never made jokes about these terms. When asked about the complainant's assertions about instructor B's jokes and comments to the class, student witnesses denied ever hearing them. In general, the student witnesses praised instructor B and stated that they were comfortable in his class.

Based on the foregoing, OCR determined that in or around early XXXXX 2016, the College had notice of the complainant's report of sexual harassment by students in instructor A's classroom when she reported the issue directly to instructor A. OCR further determined that the College had notice of the complainant's written complaint that instructor B had subjected her to sexual harassment when she delivered the written complaint to the Vice President on or about XXXXX XX, 2016. OCR determined that once on notice of the complainant's complaints of sexual harassment, the College had an obligation to take immediate and appropriate action to investigate or otherwise determine what occurred.

OCR determined that the College responded to the complaints the complainant made to instructor A in or around XXXXX 2016, when instructor A spoke to his class about the complainant's concerns while maintaining the complainant's confidentiality, as she requested. In addition, instructor A addressed his class a second time after the complainant reported further inappropriate comments to the Director of Education. However, OCR determined that the College failed to adequately investigate the complainant's allegations regarding the students in courses 2 and 3. The College did not interview most of the students enrolled in courses 2 and 3²⁵; and instructor A addressed the issue

²³ The College's position statement to OCR's data request reported that instructor B explained that the complainant and the other student were looking at images of "misshapen things" that reminded him of Salvador Dali paintings.

²⁴ OCR contacted all of the students enrolled in course 1; however only two students responded to OCR's request for information.

²⁵ Instructor A spoke with two students in course 2 who sat near the complainant, and asked them what information they might have regarding comments that someone might find offensive.

by generally reminding the students to act professionally and refrain from using offensive language. OCR further determined that although the complainant initially informed instructor A by text message that she had experienced no further incidents since the time he addressed the class, she subsequently complained to the Vice President about continuing problems in instructor A's class, thereby indicating that instructor A's actions were ineffective to eliminate any hostile environment and its effects, and prevent the harassment from recurring. Furthermore, although the President and Vice President addressed instructor A's class generally regarding the College's expectations of appropriate behavior during a meeting with the students on XXXXX XX, 2016, the College failed to conduct an investigation into the complainant's allegations, such as by conducting interviews of other students. The College also failed to offer the complainant any interim relief with respect to the complaints involving students in instructor A's class.

Accordingly, OCR determined that there was sufficient evidence to substantiate the complainant's allegation that the College discriminated against her, on the basis of her sex, by failing to respond appropriately to two complaints she filed with instructor A and the Director of Education, respectively, in or around early XXXXX 2016, and on XXXXX XX, 2016, in which she alleged that other students in instructor A's class sexually harassed her, in violation of 34 C.F.R. § 106.8(b). OCR will obtain a resolution agreement to address this compliance concern.

OCR determined that the College responded to the complainant's complaint of XXXXX XX, 2016, when the College's President and Vice President spoke with instructor B on or about XXXXX XX, 2016, regarding his obligation to monitor the behavior of his students and ensure that they did not engage in inappropriate conduct. However, OCR determined that although the College spoke to instructor B and his students, it failed to investigate the complainant's specific allegations of sexual harassment. In particular, the College did not question instructor B or student witnesses about the complainant's allegations that instructor B made sexual comments and jokes in front of the whole class;²⁶ nor did the survey that the College administered to instructor B's students in or around XXX 2016, specifically inquire about the complainant's allegations. Additionally, although the College initially maintained the complainant's confidentiality as she requested, once she left the College, it breached her confidentiality. Thereafter, although the Vice President questioned instructor B regarding the complainant's written allegations, he failed to conduct an adequate interview of instructor B regarding the allegations, as evidenced by the Vice President's failure to establish the undisputed facts that instructor B made jokes "of an adult nature" to his students; XXXX the image in the complainant's XXXXXXXXX and acknowledged that it was "risqué"; and made a comment about XXXXX XXX's name referring to male genitalia and adult films or a male gigolo.²⁷ Furthermore, the College failed to interview any students about instructor B's sexual jokes or the disclaimer that instructor B admitted making generally during the class; nor did it question any of the students regarding their knowledge of the XXXXXXXX that instructor B made in the complainant's XXXXXXXXX. Although instructor B asserted that the complainant stated that she was not offended by his conduct; the complainant asserted the opposite and described feeling "shocked and nervous" in response to instructor's B's comments during class. Furthermore, the complainant's email correspondence with College personnel indicated that she found instructor B's conduct unwelcome.

²⁶ Although the complainant requested confidentiality, the College could have questioned instructor B regarding many of the complainant's allegations, and/or questioned the class regarding whether these statements were made.

²⁷ Instructor B admitted to this conduct in subsequent written and oral statements to OCR.

As a result, OCR determined that the College failed to conduct an adequate investigation to determine whether the complainant or other students were subjected to a sexually hostile environment. OCR determined that after receiving the complainant's complaint of XXXXX XX, 2016, regarding the alleged sexual harassment by instructor B, the College's Vice President offered her interim remedial measures including placing a monitor in instructor B's classroom; attending the relevant course with another instructor at the College's other location; or arranging for instructor A to teach the course that instructor B was assigned to teach in the future.²⁸ However, based on the College's failure to investigate the allegations contained within the complainant's XXXXX XX, 2016 complaint, OCR determined that there was sufficient evidence to substantiate the complainant's allegation that the College discriminated against her, on the basis of her sex, by failing to respond appropriately to a complaint that she filed with the Vice President on or about XXXXX XX, 2016, that instructor B sexually harassed her in violation of 34 C.F.R. § 106.8(b). OCR will obtain a resolution agreement to address this compliance concern.

Allegation 2

With respect to Allegation 2, the complainant alleged that instructor B subjected her and her classmates to a hostile environment on the basis of national origin. She asserted that instructor B sang a song about Mexicans in a Mexican accent, and referred to a certain group of students as "the Italian section." The complainant further stated that instructor B regularly made such comments, creating a hostile environment.

Harassment on the basis of national origin is a form of discrimination prohibited by Title VI and its implementing regulation. Harassing conduct can include verbal, written, graphic, physical or other conduct by an employee, a student, or a third party, as well as conduct that is physically threatening, harmful, or humiliating. Harassment can create a hostile environment if it is sufficiently serious to interfere with or deny a student's participation in or receipt of benefits, services, or opportunities in the recipient's program. This requires that conduct be evaluated from the perspective of a reasonable person in the alleged victim's position. If OCR determines that harassing conduct occurred, and that the recipient had actual or constructive notice of the harassment, OCR will examine additional factors to make a determination as to whether a hostile environment existed and whether the recipient took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

OCR determined that on one occasion, or about XXXXXXXX XX, 2016, instructor B sang a few lines from a song entitled "Mexican Americans," by Cheech and Chong. Instructor B informed OCR that he sang it on a morning when students seemed tired, because a few lines of the song are about tired people.²⁹ He stated that he did not sing it in a Mexican accent, but rather in the way that the

²⁸ The complainant was no longer enrolled in any courses with instructor B at the time that she made her complaints in XXXXX 2016. However, she was scheduled to take courses with instructor B later in the year. The complainant did not make use of any of the offered interim remedial measures.

²⁹ Instructor B informed OCR that he sang the following lines from the song: "Mexican Americans don't like to get up early in the morning; But they have to so they do it real slow; Mexican Americans love education so they go to night school; And they take Spanish and get a B."

original singer, Tommy Chong, sings the song. Instructor B denied referring to any students as “the Italian section.”

OCR interviewed student witnesses in the class. The student witnesses stated that they did not recall instructor B making any comments or jokes about national origin, and they did not recall him singing “Mexican Americans.” One student witness noted that she XXXXXXXX XX XXXXXXXX, but she did not recall instructor B referring to her or anyone else as “the Italian section.” Another student noted that he is from a different country, and that he always felt that instructor B respected him. The student witnesses stated that instructor B treated people of all backgrounds with respect. The complainant provided no further examples, nor did OCR find other evidence, to support that instructor B created a hostile environment on the basis of national origin.

Based on the foregoing, OCR determined that instructor B sang four lines of a well-known song entitled “Mexican Americans” on one occasion; however, student witnesses in the class did not recall instructor B’s singing the song. Student witnesses also did not recall instructor B’s making any other comments related to national origin during course 1. Therefore, OCR determined that instructor B’s singing the song described on a single occasion under the circumstances described was not sufficiently serious to limit or deny the complainant’s or any other students’ ability to participate in or benefit from the educational program. Accordingly, OCR determined that there was insufficient evidence to support the complainant’s allegation that instructor B subjected her and her classmates to a hostile environment on the basis of national origin.

On October 26, 2016, the College agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified with respect to Allegations 1(a) and 1(b), and the compliance issues regarding the College’s notice of nondiscrimination, designation and notice of Title IX coordinator, and grievance procedures. OCR will monitor the implementation of the resolution agreement.

This letter should not be interpreted to address the College’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant 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, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Joy Purcell, Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov or Félice Bowen, Compliance Team Attorney, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Cc: XXXXXX XXXXXX, Esq.