



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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January 10, 2024

David H. Stull
President
San Francisco Conservatory of Music
50 Oak Street
San Francisco, CA 94102

By email only to: dstull@sfc.edu

Re: San Francisco Conservatory of Music
OCR Case No. 09-23-2061

Dear President Stull:

The U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the San Francisco Conservatory of Music (the Conservatory). The complaint alleged that the Conservatory discriminated against the Student on the basis of sex in violation of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulations at 34 C.F.R. Part 106. Specifically, OCR investigated the following issues:

1. Whether the Conservatory failed to respond in a manner consistent with the requirements of Title IX, when the Student reported to the Conservatory on [redacted content], 2022, that another student had sexually assaulted her and stalked her; and
2. Whether the Conservatory failed to adopt sexual harassment procedures and a notice of nondiscrimination that comply with the requirements of Title IX.

OCR enforces Title IX and its implementing regulations, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the Conservatory is subject to Title IX.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Student and the Conservatory. After careful review of the information gathered in the investigation, OCR concluded that the Conservatory violated Title IX and its implementing regulations with regard to the issues OCR investigated. The applicable legal standards, facts gathered, and reasons for OCR's determinations are summarized below.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Legal Standards

Title IX and its implementing regulation at 34 C.F.R. § 106.31(a) prohibit recipients of Federal financial assistance from subjecting students to discrimination based on sex under any of the recipient's education programs or activities. Sexual harassment is a form of discrimination based on sex under Title IX. The regulation at 34 C.F.R. § 106.30 defines "sexual harassment" to include, in relevant part, "sexual assault" and "stalking." The regulation's definition of sexual harassment also includes "(2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity."

The Title IX regulation at 34 C.F.R. § 106.44(a) requires recipients to respond promptly to actual knowledge of sexual harassment in their education programs or activities against a person in the United States in a manner that is not deliberately indifferent. In the postsecondary context, the regulations define "actual knowledge" as notice of sexual harassment or allegations of sexual harassment to the Title IX coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient. The regulation states that a recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. 34 C.F.R. § 106.44(a).

Once a recipient has actual knowledge of sexual harassment in its education program or activity against a person in the United States, the recipient must offer "supportive measures to "the complainant." 34 C.F.R. § 106.44(a). The regulation defines "complainant" as "an individual who is alleged to be the victim of conduct that could constitute sexual harassment." 34 C.F.R. § 106.30(a). The regulation defines "supportive measures" as "non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed." *Id.* Supportive measures are designed to restore or preserve equal educational access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. *Id.* Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. *Id.*

When the Title IX coordinator or any official of a postsecondary recipient with authority to institute corrective measures on behalf of the recipient has actual knowledge of sexual harassment in a recipient's education program or activity, "the Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in § 106.30, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint." 34 C.F.R. § 106.44(a).

When a complainant or the Title IX coordinator files a formal complaint alleging conduct that could constitute sexual harassment as defined in § 106.30, the recipient must investigate the

allegations and follow a grievance process that complies with the requirements at 34 C.F.R. §106.45. *See* 34 C.F.R. § 106.44(b); 34 C.F.R. § 106.45(b). The only exceptions are if the recipient must dismiss the formal complaint because the alleged conduct would not constitute sexual harassment even if proved, did not take place in the United States, or did not take place in a program or activity of the recipient withdrew their complaint, *id.* § 106.45(b)(3)(i), or the recipient exercises its discretion to dismiss the complaint because the complainant withdrew their complaint, the respondent is no longer enrolled or employed by the recipient, or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. *Id.* § 106.45(b)(3)(ii).

Upon receipt of a formal complaint, a recipient must provide the following written notice to parties who are known: (A) Notice of the recipient's grievance process that complies with this section, including any informal resolution process; (B) Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. 34 C.F.R. § 106.45(b)(2).

When investigating a formal complaint of sexual harassment, a recipient must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations in a formal complaint so that each party can meaningfully respond to the evidence prior to the investigation's conclusion. 34 C.F.R. § 106.45(b)(5)(vi). Prior to completing the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and give the parties at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. *Id.* The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination. *Id.* When investigating a formal complaint of sexual harassment, a recipient also must create an investigative report that fairly summarizes the relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under § 106.45 or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. 34 C.F.R. § 106.45(b)(5)(vii).

For postsecondary institutions, the recipient's grievance process must provide for a live hearing. 34 C.F.R. § 106.45(b)(6)(i). The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. 34 C.F.R. § 106.45(b)(7)(i). The written determination must include: (A) identification of the allegations potentially constituting sexual harassment as defined in § 106.30; (B) a description of the procedural steps taken from the receipt of the formal complaint through the determination, (C) findings of fact supporting the determination, (D) conclusions regarding the application of the recipient's code of conduct to the facts; (E) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions on the respondent, and whether the recipient will provide the complainant any remedies designed to restore or preserve equal access to its education program or activity; and (F) the recipient's procedures and permissible bases for both parties to appeal.

The grievance process must describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility. 34 C.F.R. § 106.45(b)(1)(vi).

A recipient must offer both parties an appeal from a determination regarding responsibility, and from a dismissal of a formal complaint or any allegations therein, on the following bases: (A) procedural irregularity that affected the outcome of the matter; (B) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and (C) the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. 34 C.F.R. § 106.45(b)(8)(i).

When a recipient has actual knowledge of sexual harassment under § 106.44(a), the recipient must maintain for seven years records of any action including any supportive measures, taken in response to a report or formal complaint of sexual harassment. 34 C.F.R. § 106.45(b)(10)(ii). In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. *Id.* If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. *Id.* The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken. *Id.* A recipient also must maintain for seven years records of each sexual harassment investigation, including any determination of responsibility, any audio or audiovisual recording or transcript required by §106.45(b)(6)(i), any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant. *Id.* § 106.45(b)(10)(i)(A).

Issue 1: Whether the Conservatory failed to respond in a manner consistent with the requirements of Title IX when the Student reported to the Conservatory on [redacted content], 2022, that another student had sexually assaulted her and stalked her.

A. The Conservatory's Response to the Student's Allegations of Sexual Assault

During 2021-2022, the Student was in her [redacted content] year and Student 2 was in his [redacted content] year at the Conservatory. The Student alleged the following to OCR: The Student and Student 2 [redacted content] began dating in [redacted content] 2022. On [redacted content], 2022, Student 2 touched the Student sexually without her consent until she told Student 2 to stop. On [redacted content], 2022, Student 2 had sex with the Student even though she said "no" because Student 2, who is bigger and stronger than she, pressured her and she decided that she had no choice. On or around [redacted content], 2022, the Student told Student 2 that she did not want to see him and she broke up with him.

The Student also reported the following to OCR. During [redacted content] 2022, she ran into Student 2 [redacted content] and elsewhere on campus, and she felt that he was intentionally trying to have contact with her. Student 2 also sent her gifts that she did not want or encourage. On [redacted content], 2022, she told him to stay away from her, but on [redacted content], 2022, and

again on [redacted content], 2022, he attended concerts in which she was performing. On [redacted content], 2022, after the Student's performance, the Student's roommates let Student 2 into the Student's room, and he left her flowers with a card that stated, "[redacted content]." The Student reported Student 2's behavior to her [redacted content] counselor (the Counselor) at the Conservatory, and the Student said the Counselor discouraged her from making a Title IX complaint.

The Student told OCR that in [redacted content] 2022, she and her roommates decided to move [redacted content] into a [redacted content] apartment building to save money. According to the Student, Student 2 found out about the planned move and decided to move with his roommates into the same apartment building. The Student stated that she pleaded with one of Student 2's [redacted content] not to move in, and that the [redacted content] responded that Student 2 was determined to move into the Student's new building.

On [redacted content], 2022, the Student emailed Student 2 and told him not to move in, to leave her alone, and that he should know that there would be "consequences to [his] actions." The Student told OCR that she was referencing that she could make a Title IX complaint, and that Student 2 knew what she meant. That same day, Student 2 complained to the Conservatory's Title IX Designee for Students (the Title IX Designee) that the Student was "blackmailing" him and had threatened to file a Title IX complaint against him if he moved into the apartment building where he planned to live the next year. According to the Conservatory, the Title IX Designee responded by offering Student 2 an "Active Avoidance Order" (AAO) and stating that she would follow up with the Student. A few hours later, the Student and her roommates each received an email from the Title IX Designee stating that Student 2 made a retaliation complaint against the Student. The emails also included an AAO prohibiting the Student and her roommates from having contact with Student 2.

The Student's AAO stated that the Office of Student Affairs received a report of "retaliation as a result of possible misconduct" between the Student and Student 2. The AAO required the Student to "actively avoid another student in all situations so that the reporting party can feel secure in their on-and off-campus working/living environment." The AAO stated that while each party was expected to act reasonably in the event of incidental or unanticipated contact, "the responsibility for initiating leaving an area" rested with the Student. The AAO further stated that Student 2 was "receiving a similar notice" and that "he should not be in touch with you." Student 2's AAO contained substantively the same language as the Student's AAO, including that while he should act reasonably to avoid the Student, it was the Student's responsibility to leave. Each of the Student's roommates' AAOs stated that it was their responsibility to leave an area, not Student 2's.

On [redacted content], 2022, the Student met with the Title IX Designee. The Student told OCR that she asked the Title IX Designee for clarification as to the retaliation allegation that was the basis of the AAO, and that the Title IX Designee responded that Student 2 alleged that the Student threatened that if Student 2 moved into her apartment building, the Student would retaliate by reporting him for "misconduct." The Student reported to OCR that she then told the Title IX Designee that Student 2 had sexually assaulted her twice on [redacted content], 2022, that Student 2 was stalking her, including trying to move into her new apartment building, and that she wanted to make a Title IX complaint. According to the Student, the Title IX Designee asked two individuals to come join them in the meeting: the Student's "Title IX Advisor" and the

Conservatory's "Title IX Investigator." The Student told OCR that they asked her to write out a preliminary statement and arranged to interview her the next day, [redacted content], 2022. The Conservatory told OCR that following the meeting, the Title IX Designee referred the matter to the Conservatory's Title IX Coordinator.

On [redacted content], 2022, the Title IX Coordinator emailed the Student and informed her that his office received her report of possible misconduct, an investigator was assigned to gather facts about the matter, the AAO was still in effect, and it was her responsibility to leave an area if she encountered Student 2. In addition, the Title IX coordinator informed the Student that supportive services were available, and she could learn more about them on the counseling webpage or by emailing the Counselor or the Title IX Designee. The Title IX Coordinator emailed the same information to Student 2.

The Student told OCR that at that time ([redacted content]), she was not certain whether the Conservatory was conducting one Title IX investigation (of her complaint), or two investigations (of her complaint and Student 2's report of retaliation). The Student stated that she had five meetings with the Title IX Investigator to report all of the misconduct and to draft and to review her statement between [redacted content], 2022. Neither the Student's signed statement nor any statement from Student 2 was included in the investigative report or in the data response provided by the Conservatory to OCR.

On [redacted content], 2022, the Title IX Coordinator informed the Student and Student 2 that the investigation was complete and that he (the Title IX Coordinator) was reviewing the investigative report. The Conservatory stated to OCR that the Title IX investigation lasted from [redacted content], 2022. On [redacted content], 2022, the Title IX Coordinator emailed the Student and Student 2 and informed them that based upon the preponderance of the evidence, he determined that Student 2 had not violated the Conservatory's Title IX Sexual Misconduct Policy because "a lack of affirmative consent [had] not been shown." The email further stated that it was his "understanding that [the Student and Student 2] had been given the opportunity to comment on the Title IX investigator's prepared notes," and that the AAO was still in effect. The Student told OCR that she never saw the Title IX investigator's notes or otherwise was provided with a copy of the evidence for her to inspect and review prior to the issuance of the investigative report. The Student also told OCR that the Conservatory did not provide her with the opportunity to have a live hearing.

The Student alleged that the Conservatory's final determination did not address one of the two sexual assaults she reported in [redacted content] and did not include the outcome of her allegation that Student 2 stalked her by attending her performances and entering her room and leaving her flowers. The Student told OCR that after she received the Title IX Coordinator's email on [redacted content], 2022, she asked him for a copy of the investigative report and that he said "no." According to the Student, she kept asking until [redacted content], 2022, when the Title IX Coordinator permitted her to look at the report in his office under his supervision. The Student stated that the Title IX Coordinator did not permit her to have a copy of the report, to write anything down about it, or to take pictures of it. The Student told OCR that the investigative report contained no information about her allegation that Student 2 stalked her by attending her performance and entering her room to leave flowers and a card.

OCR reviewed the Title IX Investigator's 72-page report. It states that it contains information from interviews conducted with the Student over the course of five meetings, as well as information from interviews with three witnesses on the Student's behalf, and information from Student 2. The information attributed to the Student discusses the two alleged sexual incidents in [Redacted Content] and her allegations that after she told Student 2 she needed him to give her space, he attended her performance, left flowers and a card in her room, made her feel scared, kept contacting her friends to discuss his feelings for her, and tried to move into the same apartment building after she told him to stop harassing her friends and to leave them and her alone. The information attributed to Student 2 shares his account of the two incidents and the alleged stalking. It is not clear if the information in the report is being presented as a factual finding or as a statement of fact by a witness. The report also contains more than 100 text messages exchanged among the Student, Student 2, and the three witnesses. The Student provided the text messages to the Conservatory. The investigative report does not state the allegation(s) investigated, nor does it state whether the investigation was conducted under the Title IX grievance process or the Student Conduct Code. It also does not state whether other witnesses were identified and declined to be interviewed. Lastly, it does not make a recommendation or a determination regarding responsibility for the alleged sexual assaults or stalking and states that it is up to the Title IX Coordinator to do so.

The Student told OCR that she met with the Title IX Coordinator on [redacted content], 2022, and asked if she could have a hearing but he declined her request because the case was closed and dismissed. He did not offer her an appeal. She told OCR that she asked him why there had not been a hearing, and that he responded that he decided not to have one because he did not think the evidence was in her favor, that live hearings are "traumatic for both parties," and that he was "saving her a lot of pain" by not having one. According to the Student, when she asked about the outcome of her allegation that Student 2 stalked her by attending her performances and entering her room, the Title IX Coordinator referred her to a new dean who was the Conservatory's new Title IX Coordinator.

The Student told OCR that on [redacted content], 2022, she met with the new Title IX Coordinator and informed him that she had not been provided with an opportunity to have a live hearing for her Title IX complaint and that she wanted one. According to the Student, the new Title IX Coordinator responded that there was nothing he could do since he had not been working at the Conservatory at the time of her complaint, and that he would ask Student 2 to have a "mediated conversation." The Student stated that she learned that Student 2 declined the new Title IX Coordinator's request for a mediated conversation on [redacted content], 2022.

The Student stated that on [redacted content], 2022, she again reviewed the Title IX investigation report in the Title IX Coordinator's office, and that he again prohibited her from having a copy of it and from taking notes or pictures of it.

The Conservatory told OCR that, with respect to the hearing, as permitted by its Title IX policies, the Title IX Coordinator "declined to forward the complaint to a hearing." The Conservatory stated that the Student read the investigative report in the Title IX Coordinator's office on [redacted content], 2022, and [redacted content], 2022. The Conservatory's response did not indicate why it did not provide the Student with a copy of the report to inspect and review prior to its finalization or after the investigation concluded.

B. The Conservatory's Response to Reported Violations of the AAO in [redacted content] 2022

The Student told OCR that during [redacted content] 2022, Student 2 violated the AAO several times and that she reported Student 2's actions to the new Title IX Coordinator. For example, according to the Student, on [redacted content], 2022, Student 2 came into the [redacted content] after the Student had already arrived and sat three rows away from her. The Student emailed the new Title IX Coordinator in real-time and reported that Student 2 "is sitting too close and I'm extremely uncomfortable. I was here first, and he saw me [and] chose to sit close to me." On [redacted content], 2022, the Student asked for a copy of the AAO and an update on Student 2's violation of the AAO. On [redacted content], 2022, the new Title IX Coordinator responded and informed the Student that he was "handling the situation."

The Student told OCR that during [redacted content] 2022, she did not feel safe on campus and wanted to obtain a restraining order from the California Superior Court. According to the Student, her legal advocate told her that she needed to include the investigative report in her application for a restraining order because the wording of the AAO – specifically, that it was the Student's responsibility to leave an area – would negatively impact her credibility. On [redacted content], 2022, the Student's legal advocate emailed the Title IX Coordinator and requested a copy of the investigative report. The Title IX Coordinator denied the request, stating that the Conservatory's policies and procedures "prohibit the release of the Title IX Report to either the complainant or the respondent." The Student stated that she also asked the new Title IX Coordinator to modify the language of the AAO in light of Student 2's actions, so that the responsibility for leaving an area was joint, and that the new Title IX Coordinator refused to do so.

According to the Student, Student 2 continued to violate the AAO. The Student said that on [redacted content], 2022, Student 2 was following and watching her in a building where she had [redacted content] practice. The Student emailed the new Title IX Coordinator and reported Student 2's conduct. Her email reported that she had asked an instructor to walk her to the door and help her leave the building because she was afraid, and that Student 2 had appeared again as she was leaving. On [redacted content], 2022, the new Title IX Coordinator informed the Student that he had referred the incident to the Dean "for adjudication." On [redacted content], 2022, the Student emailed the new Title IX Coordinator to report that while she was walking toward the door of a campus building, Student 2 suddenly cut in front of her and started walking to the door as well, and that he did so slowly and deliberately while turning his head back to look at her. The Student asked the new Title IX Coordinator what the Conservatory was doing in response to her reports that the Student had breached the AAO.

The Student stated that on [redacted content], 2022, she met with the Dean to discuss that Student 2 had breached the AAO three times in a month, including twice during the week of [redacted content], 2022. According to the Student, she told the Dean that the new Title IX Coordinator informed her that he was referring the [redacted content] breach to the Dean for adjudication and that it was a ["redacted content"] on Student 2's record. The Student told OCR that the Dean responded that there was no indication in Student 2's file that he had previously violated the AAO. The Student stated that she followed up and asked the new Title IX Coordinator "what happened

with the adjudication” and that he responded that he had changed his mind and removed the [“redacted content”]in Student 2’s record.

The Student told OCR that to the best of her knowledge, the Conservatory never investigated Student 2’s actions as an allegation of “stalking” in violation of its Title IX/Sexual Misconduct policies. She stated that the Conservatory looked at them only as alleged breaches of the AAO.

On [redacted content], 2022, the Dean informed the Student by email that he had a “good conversation with [Student 2] about how he can and should approach the AAO in the future.” The Dean further stated that he “encouraged [Student 2] to read the Title IX report, and that he [the Dean] had read the report and that he commended the Student “for coming forward and reporting your truth.”

The Student told OCR that as a result of the Conservatory’s failure to respond appropriately to her Title IX complaint, her grades suffered, and she experienced adverse health effects. She missed important required concerts, masterclasses, private lessons, and [redacted content] coachings and had to postpone a [redacted content] 2022 final [redacted content] until [redacted content] 2022. She also stated that she did not have full access to educational programs and activities on campus due to the inequitable AAO.

C. The Conservatory’s Response to the Student’s Reports Violated Title IX

Based upon the preponderance of the evidence, OCR determined that the Conservatory had actual notice of alleged sexual harassment, including two alleged sexual assaults and alleged stalking of the Student, in its education program and responded in a manner that was deliberately indifferent, in violation of 34 C.F.R. § 106.44(a). OCR also determined that the Conservatory’s investigation of the Student’s formal complaint alleging the two sexual assaults and stalking against Student 2 violated several requirements for investigations under 34 C.F.R. § 106.45(b)(5). OCR further found that the Conservatory’s determination arising from the investigation failed to comply with several requirements under 34 C.F.R. § 106.45(b)(7)(ii)(A), (B), (E), and (F), including by failing to address the allegation of stalking and failing to provide a determination for each of the two alleged sexual assaults by Student 2. The determination also failed to notify the parties of the procedures and bases for an appeal, in violation of 34 C.F.R. § 106.45(b)(7)(ii)(F), which effectively denied the Student the right to appeal the determination in violation of 34 C.F.R. § 106.45(b)(8)(1). OCR also found that the Conservatory failed to keep records of its response to the Student’s complaint, including its denial of supportive measures to her and certain investigative records, as required by 34 C.F.R. § 106.45(b)(10)(i)-(ii). Lastly, OCR found the Conservatory’s response to the Student’s multiple reports that Student 2 had violated the AAO in [redacted content] 2022 was clearly unreasonable in light of known circumstance. The bases of OCR’s findings are as follows.

The Conservatory had actual knowledge of alleged sexual harassment on [redacted content], 2022, when the Student made a formal complaint to the Title IX Designee alleging that she had twice been sexually assaulted by Student 2 in [redacted content] 2022 and that Student 2 had stalked her since that time. As explained above, the Title IX regulation’s definition of sexual harassment includes sexual assault and stalking, and the Title IX Designee is an official with the authority to institute corrective measures on behalf of the Conservatory. As a result, the Conservatory should

have met the mandatory obligations under 34 C.F.R. § 106.44(a) to have the Title IX coordinator offer supportive measures to the complainant and consider the complainant's wishes. On [redacted content], 2022, the Title IX Coordinator responded to the Student's formal complaint by emailing the Student and Student 2 and reminding them that the AAO issued on [redacted content], 2022, in response to Student 2's "retaliation" report was still in place, and that it was the Student's responsibility to initiate leaving an area. The Title IX Coordinator's email also stated that supportive services were available and referred the students to the school counseling website, the Counselor, and the Dean of Residential Life for more information.

Although the Title IX coordinator referred the Student to a website where supportive measures were described, this response did not fulfill the Conservatory's obligation to discuss the availability of supportive measures and engage in an interactive process with the Student complainant to ascertain her wishes about such measures, in violation of 34 C.F.R. § 106.44(a). In addition, the Conservatory's response to maintain the AAO was unreasonably burdensome to the Student in further violation of 34 C.F.R. § 106.44(a). The AAO was issued as a supportive measure to Student 2 based on his allegation that the Student was retaliating against him by trying to stop him from living in her apartment building, was implemented so that Student 2 could "feel secure in their on-and off-campus working/living environment," and placed the responsibility for leaving an area solely on the Student and her roommates. The Title IX regulation's definition of "supportive measures" includes "mutual restrictions on contact between the parties." *Id.* § 106.30(a). However, there was no evidence that the Conservatory revised the terms of the AAO to issue a new mutual AAO with bilateral responsibilities for leaving an area based on the Student's report on [redacted content] that Student 2 had sexually assaulted her twice and stalked her, including by trying to move into her new apartment building. Because sexual assault and stalking meet the Title IX regulation's definition of sexual harassment, the Conservatory had a duty to offer her supportive measures and consider her wishes under 34 C.F.R. § 106.44(a).

OCR determined that the Conservatory's response was deliberately indifferent because it did not offer or provide the Student with reasonable, individualized supportive services designed to preserve equal access to its education programs. Instead, the Conservatory retained the AAO with its requirement that the Student initiate leaving an area, despite her allegation that Student 2 sexually assaulted her twice and stalked her. In addition, the Title IX Coordinator offered the Student and Student 2 the same supportive services: a referral to a website, to the same Counselor, and to the Dean of Residential Life. There was no evidence that the Conservatory offered to make changes to the Student's or Student 2's schedules, or to make other modifications to ensure that the Student would not miss classes, performance opportunities, and would have equal access to the campus while the Conservatory investigated her formal complaint of sexual assault and stalking. The Student stated that as a result of the absence of individualized supportive measures and the wording of the AAO, she was denied access to the Conservatory's educational programs and activities including missing classes, tutorials, and performances. In light of these known circumstances, it was clearly unreasonable for the Conservatory not to provide the Student with supportive measures that would allow her to attend classes, tutorials, and performances in violation of 34 C.F.R. § 106.44(a), and the Conservatory failed to maintain the required records about this response. *See* 34 C.F.R. 106.45(b)(10)(ii) (requiring a recipient to document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity or why its failure to provide a complainant with supportive measures was not clearly unreasonable in light of known circumstances) Additionally, at that time, a complainant's right to

have these supportive measures pursuant to Title IX was also missing from the Conservatory's Temporary Title IX Policy, as discussed below in the section about Allegation 2.

The Conservatory's investigation did not comply with the Title IX regulations in other respects. For example, upon receipt of a formal complaint of sexual harassment, a recipient must provide written notice including information about a grievance process that complies with the Title IX regulations at § 106.45. 34 C.F.R. § 106.45(b)(2)(A). Here there was no evidence that the Title IX Coordinator provided the Student or Student 2 with information about the grievance process that would be used to investigate the complaint. The Title IX Coordinator's email to the Student on [redacted content], 2022, did not include this information, nor did any subsequent correspondence.

Additionally, the Title IX regulations require that the recipient provide the parties with notice of the allegations of conduct that could constitute sexual harassment as defined in §106.30. 34 C.F.R. § 106.45(b)(2)(B). Here, there was no evidence that the Conservatory provided the Student or Student 2 with notice of the allegations being investigated. The Student stated that she did not receive this information, and the investigative report does not include it.

The Title IX regulations also require that, at least 10 days prior to completion of the investigative report, the parties be given the opportunity to inspect and review relevant evidence. 34 C.F.R. § 106.45(b)(5)(vi). Here, the Student stated that she was not given the opportunity to inspect and review the evidence in the investigative report. The Title IX Coordinator's email to the Student on [redacted content], 2022, indicated that he thought the Student had been provided with the opportunity to "comment on some of the Investigator's prepared notes." Even if true, however, it does not satisfy the regulatory requirement that prior to completion of the investigative report, the recipient must send to each party the evidence subject to inspection and review. This failure also raises concerns that, absent the Student's review, the investigative report did not fairly summarize the relevant evidence, as required by the regulations. As noted above, neither the investigative report, nor the Conservatory's data response to OCR included the Student's signed statement or any statement from Student 2, which 34 C.F.R. § 106.45(b)(10)(i)(A) required maintaining.

The Title IX regulations also require that a recipient's grievance process must provide for a live hearing, 34 C.F.R. § 106.45(b)(6)(i), unless the recipient must or may dismiss the formal complaint. Here, neither circumstance applies, and yet the Conservatory did not provide the Student with a live hearing. According to the Conservatory, Title IX Coordinator "declined to move the Student's complaint forward to a hearing." This decision violated the Title IX regulation.

The Title IX regulations also require a recipient to create an investigative report that fairly summarizes relevant evidence. 34 C.F.R. § 106.45(b)(5)(vii). Here the investigative report did not include a statement of the allegations investigated, did not outline the details of the investigation, including how the witnesses were selected or if any were contacted who refused to participate, did not state the standard of evidence used, and did not make a recommendation for a determination in violation of this regulatory requirement.

OCR also found that the Title IX Coordinator's determination that Student 2 had not violated the Sexual Misconduct Policy failed to identify all of the allegations potentially meeting the definition of sexual harassment in § 106.30, including the two alleged sexual assaults and stalking, in

violation of § 106.45(b)(7)(ii)(A). The determination also failed to describe all the procedural steps taken from receipt of the Student's formal complaint through the Title IX Coordinator's determination in violation of § 106.45(b)(7)(ii)(B). Because the determination failed to address the allegation of stalking and failed to provide a determination for each of the two alleged sexual assaults in violation of § 106.45(b)(7)(ii)(E), the Student thought the Conservatory had not investigated the stalking or the second assault. The determination also failed to notify the parties of the procedures and bases for an appeal, in violation of § 106.45(b)(7)(ii)(F), which effectively denied the Student the right to appeal the determination because the Conservatory did not otherwise offer her this right, as required by § 106.45(b)(8)(1).

Finally, OCR found that the Conservatory's response to the Student's reports in [redacted content] 2022 that Student 2 had stalked her and repeated reports that he violated the AAO were clearly unreasonable in light of known circumstances under § 106.44(a). The evidence showed that the Student reported to the Conservatory's previous and new Title IX Coordinators on [redacted content], 2022, that she felt unsafe and that Student 2 was following and watching her while she engaged in educational activities on campus. There was no evidence that the Title IX Coordinators responded to these reports by discussing the availability of supportive measures to protect her safety or preserve her equal access to these activities, considering the Student's wishes with respect to supportive measures, informing the Student of the availability of supportive measures with or without the filing of a formal complaint, and explaining to the Student the process for filing a formal complaint. Later, in [redacted content], the Student reported to the new Title IX Coordinator that Student 2 was violating the AAO. On [redacted content], 2022, the new Title IX Coordinator responded to the Student by saying that he would "handle it." The Student told OCR that Student 2 continued to violate the AAO, and that when she asked the new Title IX Coordinator to modify the language of the AAO, so that responsibility for leaving an area was joint, the Title IX Coordinator refused to do so. After she reported more violations of the AAO, the Title IX Coordinator referred the incident to the Dean "for adjudication," and she told the Dean that Student 2 had breached the AAO three times in a month. On [redacted content], 2022, the Dean informed the Student that he had had a "good conversation" with Student 2 about how Student 2 should approach the AAO in the future.

During this period of Student 2's alleged AAO violations and stalking, the Student told OCR that she missed concerts, master classes, private lessons, and coachings and that her grades and health suffered. The alleged stalking may have continued because the Conservatory did not revise the AAO or issue a new mutual restriction AAO following the Student's complaint of sexual assault to the Conservatory on [redacted content], 2022, and the alleged violations of the AAO continued without any consequence on Student 2.

In sum, OCR determined based upon the preponderance of the evidence that the Conservatory is not in compliance with the Title IX regulations with respect to Issue 1, including that the Conservatory was deliberately indifferent to the Student's reports of sexual assault and stalking.

Issue 2: Whether the Conservatory failed to adopt sexual harassment procedures and a notice of nondiscrimination that comply with the requirements of Title IX.

OCR found that the Conservatory's Title IX grievance procedures were not compliant with the 2020 amendments to the Department's Title IX regulations.

At the time of the Student's complaint, the Conservatory's Title IX policies and grievance procedures were published in the "2021-2022 Collegiate Student Handbook" (2021-2022 Handbook). OCR reviewed the 2021-2022 Handbook. It included a "Sexual, Gender, and Other Unlawful Harassment Policy" (Unlawful Harassment Policy) that prohibited sexual, gender, and other unlawful harassment and discrimination of any kind. The 2021-2022 Handbook further stated that it was in the process of being updated to reflect the 2020 Title IX regulations. The 2021-2022 Handbook also included a section entitled, "Prohibiting Sexual Misconduct," which stated that it was an extension of the Unlawful Harassment Policy and that "Title IX prohibits discrimination and harassment on the basis of gender in all programs or activities." The Handbook also included the names and contact information for the Conservatory's Title IX Coordinator and two other individuals designated to receive Title IX complaints. The "Prohibiting Sexual Misconduct" section did not state that it prohibited discrimination on the basis of "sex" as well as gender, or that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX and this part may be referred to the Conservatory's Title IX Coordinator, to the Assistant Secretary, or both. The 2022-2023 Collegiate Student Handbook (2022-2023 Handbook) included the same Unlawful Harassment Policy and "Prohibiting Sexual Misconduct" section.

The 2021-2022 Handbook included a "Reporting Sexual Misconduct, Discrimination, Harassment and Retaliation Policy" (the 2021-2022 Policy) that defined sexual harassment inconsistently with the Title IX regulation's definition. The 2021-2022 Policy also stated that, "Interim measures [will] be implemented at the discretion of SFCM, if needed to prevent possible harm to SFCM community or any member thereof," which is not consistent with the 2020 regulation's requirement to offer complainants "supportive measures," once a recipient has actual knowledge of sexual harassment. The 2021-2022 Policy further stated that a hearing for allegations that would constitute sexual harassment as defined by the Title IX regulations was at the discretion of the Conservatory, which contradicts the regulation's hearing requirement for postsecondary recipients. The 2021-2022 Policy also did not include that both parties must be provided with the opportunity to review evidence in the investigative report prior to a determination in violation of 34 C.F.R. § 106.45(b)(5)(vi).

Additionally, the 2021-2022 Policy states that after reviewing the investigative report, the Title IX Coordinator has three options: 1) make a determination and close the complaint, with no further proceedings including no appeal; 2) proceed to the informal resolution process, which includes meeting with the parties within ten days and trying to resolve the complaint, without the possibility of appeal; or 3) proceed with a formal resolution process that includes a hearing before the Dean or before the Community Judicial Board and an opportunity to appeal the determination to the Dean. The 2021-2022 Policy did not state whether the Dean was the appellate decisionmaker if they also made the determination at the hearing.

The 2021-2022 Policy indicated that it was in the process of being updated to address the 2020 Title IX regulations, and that in the meantime, it was being supplemented by the "Temporary Supplement To Sexual Misconduct Policy" (the Temporary Title IX Policy). The Temporary Title IX Policy stated that it applied to a "very serious asserted violation," which was when, "upon completion of the intake, the Title IX Coordinator believes that if true, the case reasonably may lead to sanctions of expulsion, suspension of matriculation or of co-curricular activities, and/or a

permanent adverse finding of sexual misconduct on record with the Conservatory.” As with the 2021-2022 Policy, the Temporary Policy did not comply with the Title IX regulations. For example, it did not include that upon the Conservatory’s receipt of actual notice of sexual harassment or allegations thereof, the Title IX Coordinator must explain to the complainant the process for making a formal complaint, offer the complainant supportive measures, discuss their availability and consider the complainant’s wishes, and inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, as required by 34 C.F.R. § 106.44(a). The Temporary Policy also did not include all the procedural requirements for a grievance process as set forth in the Title IX regulations at 34 C.F.R. § 106.45(b)(1)-(10). For instance, the Temporary Policy did not describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility. *See id.* § 106.45(b)(1)(vi). The Temporary Policy also did not state that supportive measures were to be individualized and designed to restore or preserve equal access to the recipient’s education program or activity, as required by the definition of supportive measures. *See id.* § 106.30(a). Unlike the 2021-2022 Policy, however, the Temporary Policy provided for a live hearing for all very serious reports of sexual misconduct.

The Unlawful Harassment Policy and Reporting Sexual Misconduct Policy in the 2022-2023 Handbook were almost identical to the versions in the 2021-2022 Handbook (the 2022-2023 Policy) and therefore failed to comply with the Title IX regulation in similar ways. For example, the 2022-2023 Policy did not include that both parties must be given the opportunity to review evidence including the investigative report prior to a hearing. The 2022-2023 Policy also does not provide information about the range of sanctions or remedies available at the time of final decision. The 2022-2023 Handbook included a new grievance procedure, “Addressing Title IX Complaints Process” (Title IX Complaint Process), which included the same areas of noncompliance as the Temporary Title IX Policy. The 2022-2023 Handbook also did not include that both parties will be provided with information about the range of sanctions or remedies at the time of final decision and instead stated that the written final determination “may also include a recommendation for sanctions or other remedies.”

OCR determined that the Conservatory’s Nondiscrimination Policy does not meet the Title IX regulatory requirements for a Notice of Nondiscrimination under 34 C.F.R. § 108(b). The Conservatory has a “Nondiscrimination Policy” posted on its website that includes “sex” among the protected categories. However, this Policy does not state that the Conservatory is required by Title IX not to discriminate in such a manner, nor does it include that inquiries about the application of Title IX may be referred to the recipient’s Title IX Coordinator, the Assistant Secretary, or both.

Lastly, OCR reviewed the Conservatory’s training materials about Title IX and found them deficient. As required by the Title IX regulations, the Conservatory posts on its website copies of the materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. While the materials included information about the Title IX regulations, investigators, and advisors, the posted training materials did not include information about the Conservatory’s Title IX grievance process, specifically. *See* [Campus Safety | SFCM](#). The Conservatory also provided OCR with a copy of the training materials used for a 2021 student “Preventing Sexual Violence” training. These training materials also did not include information about the Conservatory’s grievance process for complaints of sexual harassment.

As a result, and based upon the preponderance of the evidence, OCR determined that the Conservatory is not in compliance with the Title IX regulations with respect to issue 2.

Conclusion

This concludes the investigation of this complaint. To address OCR's findings of noncompliance, the Conservatory entered into the enclosed resolution agreement (the Agreement). Under the terms of the Agreement, the Conservatory will review and revise its Title IX policies, grievance procedures, and Notice of Nondiscrimination to comply with the Title IX regulations. The Conservatory will also issue a written guidance memorandum and facilitate training for its Title IX Coordinator and all staff members who are responsible for responding to and investigating reports of sexual harassment. The Conservatory will also provide OCR with information about all complaints of sexual harassment, including sexual assault, that it received during the 2022-2023 and 2023-2024 academic years, including how it responded; and will issue an AAO or similar order prohibiting Student 2 from being present on campus or on property under the Conservatory's control, including classrooms, performance spaces, and dorms.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Student concurrently. When fully implemented, the Agreement is intended to address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the Agreement until the Conservatory is in compliance with the terms of the Agreement and the Title IX statutory and regulatory obligations at issue in the case.

OCR's determination in this matter should not be interpreted to address the Conservatory's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Student may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

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

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

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact OCR attorney Matthew Wood at Matthew.Wood@ed.gov.

Sincerely,

/s/

Ava De Almeida Law
Team Leader

Attachment: Resolution Agreement