



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
Old Federal Building  
50 United Nations Plaza, Room 239  
San Francisco, California 94102

January 31, 2006

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Dr. Robert J. Birgeneau  
Chancellor  
University of California, Berkeley  
Office of the Chancellor  
200 California Hall #1500  
Berkeley, California 94720-1500

(In reply, please refer to #09-05-2131.)

Dear Chancellor Birgeneau:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the University of California, Berkeley. The issue OCR investigated was whether the University failed to respond adequately to the complainant's<sup>1</sup> report of a June 2004 sexual assault by a University professor.

OCR investigated this issue under the authority of Title IX of the Education Amendments of 1972 and its implementing regulation. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance. The University receives funds from the Department and is subject to Title IX and the regulation.

OCR gathered evidence through interviews with the complainant, Assistant Provost, current Title IX Officer, former Title IX Officer, campus police, Sexual Harassment and Assault Resource Specialist, and Faculty Investigator. OCR also reviewed documents provided by the complainant and the University.

OCR concluded that the University's response to the complainant's report of sexual assault was sufficient given the limited information the University was able to obtain from the complainant. The reasons for this determination are explained below. In this investigation, OCR made no determination with respect to whether the alleged sexual assault occurred.

<sup>1</sup> OCR previously notified the University of the name of the complainant. The complainant's name is omitted from this letter to protect her privacy.

Legal Standard

The Title IX regulation at 34 C.F.R. § 106.31(a) provides that no person shall, on the basis of sex, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by a recipient of Federal financial assistance. When a student is harassed based on sex, the harassing conduct can deny or limit the student's participation in the recipient's program or the student's receipt of educational benefits.

A school is responsible for sexually harassing conduct by an employee when the employee engages in the conduct in the context of carrying out responsibilities for providing benefits and services in the school's program, and the harassment denies or limits the student's ability to participate in or benefit from the program. This situation may occur where the employee: (1) explicitly or implicitly conditions a student's participation in an education program or activity; or bases an educational decision on the students' submission to unwelcome conduct of a sexual nature or (2) engages in unwelcome conduct of a sexual nature that is severe, pervasive or persistent.

Once a university knows, or in the exercise of reasonable care, should have known about sexual harassment students, it must take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective action reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again.

In addition, the Title IX regulation establishes procedural requirements that are intended to prevent and remedy sex discrimination, including sexual harassment. These requirements include issuing a policy against sex discrimination, designating an individual to coordinate compliance with Title IX, and adopting and publishing grievance procedures providing for a prompt and equitable resolution of allegations of gender discrimination.

What constitutes a reasonable response to notice of harassment may depend upon whether a student reporting harassment asks that his or her name not be disclosed to the harasser, or that nothing be done about the alleged harassment. In all cases, a university should discuss confidentiality standards and concerns with the complainant initially. The university should inform the student that a confidentiality request may limit the university's ability to respond. The university also should tell the student that Title IX prohibits retaliation and that, if he or she is afraid of reprisals from the alleged harasser, the university will take steps to prevent retaliation and will take strong responsive actions if retaliation occurs. If the student continues to ask that his or her name not be revealed, the university should take all reasonable steps to investigate and respond to the complaint consistent with the student's request as long as doing so does not prevent the university from responding effectively to the harassment and preventing harassment of other students.

OCR enforces Title IX consistent with the federally protected due process rights of public university students and employees. Thus, for example, if a student who was harassed insists that his or her name not be revealed, and the alleged harasser could not respond to the charges of sexual harassment without that information, in evaluating a university's response, OCR would not expect disciplinary action against the alleged harasser.

At the same time, a university should evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The factors that a university may consider in this regard include the seriousness of the alleged harassment, the age of the student harassed, whether there have been other complaints or reports of harassment against the alleged harasser, and the rights of the accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result.

#### Background

The complainant participated in the University graduation ceremony in the spring of 1999. At that time she had one class and a thesis to complete. According to the complainant, between 2001 and 2003 (while she was not enrolled in the University) she was subjected to sexual harassment by a named professor whose class she had previously been in, and met with various University staff and administrators who were designated to respond to sexual harassment complaints. The complainant asserts that she disclosed relevant information to University officials, such as her name and that of the professor.

During the summer of 2004, she enrolled in a class at the University and was a research assistant for the same professor. The complainant alleges that he sexually assaulted her on June 11, 2004. The complainant acknowledges that, when she brought her allegation about the assault to the University, she had concerns about being identified, about her safety, and about retaliation, and therefore did not fully disclose all relevant information. She asserted, however, that she believed that the University had on record sufficient information to identify the professor and act upon her complaint allegation due, in part, to her prior contact with University officials.

The University's procedure in the summer of 2004, at the time the alleged assault occurred, contained mediation and complaint resolution processes for resolving complaints of sexual harassment. The complaint process required a written complaint to initiate a formal investigation. The procedure called for a full and impartial investigation and set out timeframes for completing investigations. The most recent policy, effective January 2005, refers to a procedure for "early resolution," which is much like mediation in the prior policies but appears to offer greater flexibility in terms resolution options. There is also a procedure for formal investigations that is similar to the prior version but is more detailed and provides for prompt timeframes for the resolution of complaints. The University's publications clearly set out its responsibility to respond to any reports of sexual harassment regardless of whether a formal complaint is filed. The procedure as written complies with Title IX requirements.

The issue investigated by OCR was whether the University had notice of the alleged June 2004 assault and whether it responded appropriately. The answer

to this question turns on what information the University had about the situation, when it received the information, and what steps it took in response. OCR's investigation focused on the following specific issues: (1) whether and when the complainant revealed her identity to the University, (2) whether and when the complainant revealed the identity of the professor to the University, (3) what details the complainant provided about the assault, (4) whether the University gave the complainant information and assistance about how to file a complaint with the University, and (5) what steps the University took in response to information provided by the complainant. University representatives and the complainant had conflicting recollections about many events relevant to these questions. In order to resolve the conflicting evidence, it was necessary for OCR to review these events in detail.

OCR's investigation showed the following:

Events Prior to June 2004<sup>2</sup>

The complainant states that, at various times before the alleged assault, she had contacted the prior Title IX Officer, the present Title IX Officer, and the Sexual Harassment and Assault Resource Specialist (Resource Specialist).

- In late spring 2001, according to the complainant, she contacted the individual who was then the Title IX Officer to report continuing sexual harassment by the professor. The complainant stated that she revealed her name, telephone number and the professor's identity during a meeting with the Title IX Officer. The complainant recalled that the Title IX Officer looked up the professor's course load on a computer while they met.
- When OCR interviewed the former Title IX Officer, she did not recall any communication with the complainant or any complaints about the professor during Spring 2001. She remembered this period of time because it was shortly before she left the position. She stated that the kind of meeting and information the complainant described would be something she would remember.
- According to the complainant, in the early spring of 2003, she contacted the present Title IX Officer to reiterate her concerns and the Title IX Officer recommended that she call the Sexual Harassment and Assault Resource Specialist (Resource Specialist). The complainant did not reveal her name or reveal the professor's identity to the Title IX Officer at that time.

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<sup>2</sup> OCR compliance determinations are limited to actions that are alleged to have occurred no more than 180 days prior to the date the complaint is filed with our office. In this case, the complainant asserted that, when she reported the assault in 2004, the University should have known the identity of the accused professor because of information she had provided several years earlier. Therefore, OCR gathered information about events that took place between 2001 and 2004. However, OCR made no separate compliance determinations about the University's actions during this period. Our compliance conclusion is limited to the events that occurred after June 2004.

- The present Title IX Officer did not recall specifically speaking with the complainant during Spring 2003. However, she stated that, if the complainant made an anonymous call to her, she would have referred the caller to the Resource Specialist if she was interested in filing a complaint.
- The Resource Specialist plays a support/advocacy role for those wishing to report or file a complaint regarding sexual harassment. The Resource Specialist offers to look at complainants' documentation and assist in helping them put together a timeline of events. She also explains other University resources that are available, such as counseling.
- According to the complainant, she contacted the Resource Specialist in the late fall of 2003. She did not tell the Resource Specialist her name, instead they agreed to use the name "Jane" to protect her identity. In her conversation with the Resource Specialist, according to the complainant, she revealed the professor's name and specifically mentioned his department.
- OCR interviewed the Resource Specialist and obtained a copy of the log of calls that she maintained in the fall of 2003. The Resource Specialist confirmed that in early December 2003 she spoke with a "Jane," the complainant. However, according to the Resource Specialist and her log, the complainant did not wish to provide any identifying information about the professor, such as his name or department, and therefore the assistance she could offer was limited. She provided the caller with counseling and domestic violence resources and the contact information for the Ombudsperson who can assist students who wish to remain anonymous.
- The complainant did not describe any contacts with University representatives between late 2003 and June 2004.

#### Events between June 11, 2004 and January 2005

The complainant described several conversations and a meeting with University staff in June and July 2004, after the alleged assault. As to this period as well, the complainant and the University had different versions of whether the complainant provided identifying information about herself or the professor, and whether the University provided her with information about how to file a complaint or attempted to dissuade her from filing a complaint. OCR examined whether the University response during the period was sufficient in light of the information it had.

- Seven months after the complainant last spoke with the Resource Specialist, according to the complainant she left a voicemail message for the Title IX Officer following the alleged June 11, 2004, sexual assault on her by the professor. She then spoke with the Title IX Officer on June 18th. The complainant states that, since the complainant wanted to continue to protect her identity, the Title IX Officer referred her to the Ombudsperson.

- The Title IX Officer recalls no communication specifically with the complainant around this date but stated that, if the complainant made an anonymous call, it made sense that she would have referred the caller to the Ombudsperson.
- On June 25, 2004, the Ombudsperson and the complainant spoke. The complainant acknowledges that she did not reveal her own identity or the professor's during that conversation.
- The complainant describes the conversation with Ombudsperson as follows: They spoke about the possibility of filing a complaint. The Ombudsperson said she "routinely advises students to just finish up their work and move on without filing a formal complaint" because of the inevitability of retaliation. The complainant expressed the desire to move forward with a complaint. The Ombudsperson then encouraged her to save relevant documents such as e-mails and notes. She further stated that confidentiality could not be assured if the complainant chose to go forward.
- The Ombudsperson recalls speaking with an anonymous caller at the end of June 2004. However, she states that she never mentioned the inevitability of retaliation in the way the complainant alleged, although it is possible that the issue of retaliation came up in their conversation. She also stated that she would not make a statement such as the one attributed to her by the complainant.
- The complainant stated that, on July 19, 2004, she called the Title IX Officer again to convey both her distress about the professor and her intention to file a complaint. She stated to OCR that she also told the Title IX Officer about another student who was harassed by the professor and who was facing criminal charges, which the complainant believed were the result of the professor's efforts to discredit the other student.<sup>3</sup> According to the complainant, the Title IX Officer again recommended that the complainant contact the Ombudsperson to discuss her situation and her plan to file a complaint. According to the Title IX Officer, she still did not know the complainant's name after the call.
- After talking with the Title IX Officer, the complainant contacted the Ombudsperson again on July 19. The complainant told OCR that, in the July 19 conversation with Ombudsperson, while she did not give the professor's name, she thought the Ombudsperson knew his identity.

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<sup>3</sup> OCR's investigation showed the accused professor's name had come up in connection with a University of California Police Department case involving a student charged with stalking two other faculty members. However, the UCPD did not mention the accused professor to any other University officials because the information about him was not found to be significant in any way. The Title IX Officer told OCR that the UCPD does not normally contact the UCB administration unless there is evidence of some kind of imminent threat.

- The Ombudsperson stated to OCR that she did not know the professor's identity or his department as a result of her contact with the complainant and that she had not received any other complaints about him from students. According to the Ombudsperson, based on the complainant's stated desire to go forward with a complaint, a meeting between the Title IX Officer, the Ombudsperson, and the complainant was then scheduled for July 26. The Resource Specialist was unable to attend the meeting.
- The complainant and the University have very different interpretations of many details about the July 26, 2004 meeting. OCR's inquiry focused on determining whether the complainant provided enough information to the University about her own identity, the professor's identity and what action she wanted to take, to give rise to an obligation on the part of the University take further action.
- According to the complainant, during the meeting she made reference to a specific class the professor taught. She believed those attending the meeting should have been able to figure out his identity based on this reference. She also assumed that the Title IX Officer knew the identity of the professor because, according to the complainant, the Title IX Officer implied that she had a full understanding of the circumstances.
- Neither the Ombudsperson nor the Title IX Officer recalls mention during the meeting of anything that would allow them to identify the professor individually or his department. There is also no mention of a class taught by the professor in the summary of the meeting contained in Title IX Officer's contact log.
- The complainant provided OCR with copies of notes she stated she took at the meeting. In the margin on one page, not in the body of the notes, there is a statement that the complainant "inadvertently made reference" to a class taught by the professor. The complainant told OCR that she went to the library after the meeting and wrote annotations of additional details and therefore the notes accurately reflected what occurred at the meeting. OCR could not verify when the complainant added the notes in the margin.
- The complainant stated that at the time of the meeting she wanted to file a complaint. The complainant's understanding of filing a formal complaint was that she would come and talk with the Title IX Officer, the Resource Specialist and the Ombudsperson. She stated that nothing specific was discussed at the meeting regarding how to file a complaint. However, the complainant acknowledges that she was provided with written information about how to file a complaint at the meeting.
- The complainant told OCR that it was her impression that they did not want her to file a complaint. However, the complainant also stated that there was no indication that the University was not going forward with an investigation as a result of the meeting.
- According to the Title IX Officer, the formal complaint procedure was explained to the complainant at the meeting and she was not discouraged from filing a complaint.

However, the complainant continued to be concerned about confidentiality and never said that she was willing to go on record during the meeting, so they reiterated that if she provided any identifying information, they would be obliged to investigate and could not thereafter guarantee her confidentiality. The Title IX Officer stated to OCR that it was difficult to clarify what the complainant understood and wanted to do.

- The complainant stated that, during the meeting, she provided a detailed description of the professor's violent assault on her on June 11. The Title IX Officer stated that, while the complainant talked about being sexual harassed, she provided no description of what occurred.
- The Title IX Officer stated that during the meeting the complainant mentioned having emails from the professor pertaining to inappropriate behavior; the complainant was asked to provide whatever emails she felt were relevant.
- According to the Title IX Officer, at the end of the meeting she knew the complainant's first name, but not her last name, did not know her major, and did not know whether the complainant was currently enrolled in the University. The complainant told OCR that she understood her name would eventually be revealed but she did not think they needed it at the time of the meeting.
- On July 27, the Title IX Officer and Ombudsperson met with the Assistant Provost about the situation. The Assistant Provost told OCR that the Title IX Officer's description of the meeting included no indication that the complainant had either described an assault or referenced the professor's department. Since the University still had few details, it was determined that it was up to the complainant to decide whether she wanted to disclose information that would allow the University to investigate the situation. However, it was also decided that the Title IX Officer should give her a follow-up call.
- On July 28, the Title IX Officer made a follow-up call to the complainant and let her know that she would be on vacation, but that the complainant could drop off the e-mails that they discussed in the July 26 meeting with the security officer at her building anytime if she desired.
- The Title IX Officer stated that she did not contact with the complainant further after July 28 because she did not want to pressure her to file a complaint if she did not want to. The Title IX Officer stated that she received no further communication from the complainant until the complainant e-mailed her six months later, on January 25, 2005.
- According to the complainant, she called the Title IX Officer on August 4, 2004, and told her it was difficult to review the e-mails, and the Title IX Officer said she understood. The Title IX Officer had no record or recollection of this communication. The complainant never provided copies of the emails to the Title IX Officer.

- The complainant stated that she did not contact the Resource Specialist after the July 26 meeting because the Specialist only had voicemail and she did not feel comfortable leaving a message. She also thought that information about her taking action was getting back to the professor.
- The complainant went to the Berkeley Police Department (BPD) on September 22, 2004, to report the June 11, 2004 assault by the professor. According to the complainant, the BPD told her not to contact the Title IX Officer during the BPD investigation because it would interfere with the BPD investigation.
- The BPD's subsequent report suggests that the complainant indicated to the BPD that she had decided not to pursue a University complaint because of her fear of disclosing her identity.
- The BPD began an investigation into the complainant's situation. On October 5, 2004, the assigned detective interviewed a colleague of the accused professor, who taught in the same department. The colleague was asked if she knew of or heard of instances in which the accused professor engaged in "non-consensual or coercive" sexual activity. She responded in the negative. The detective inquired as to whether she knew several individuals, including the complainant, who were at one time students in the department.
- A few weeks later the colleague spoke with the department chair about her contact with the BPD. She told OCR that she conveyed to the chair the nature of the allegations against the professor (sexual misconduct) and they discussed the importance of keeping students safe. However, the chair stated to OCR that, while the colleague told him the BPD had come to speak to her about the professor, the colleague had not said, and did not seem know, what the BPD inquiry was about. The chair was familiar with University sexual harassment complaint procedures. However, he stated that, since there was no indication at the time that the BPD matter involved the University, he did not think it necessary to pass the information onto the University administration.

January – May 2005

- The first official contact with the University regarding the BPD investigation was on January 18, 2005 at which time the University of California Police Department (UCPD) was notified of a search warrant pertaining to the professor's office. However, the BPD provided the University with no information regarding the reasons for the warrant.
- The complainant stated that the BPD authorized her to initiate contact with the Title IX Officer after the search warrant was executed because at that point the BPD investigation would not be compromised.

- The first time the complainant mentioned the professor's name was in an e-mail to the Title IX Officer on January 25, 2005, the first communication from her since the previous summer. In that email she wrote: "This concerns discussions we had during and after our meeting on July 26, 2004, when you and [Ombudsperson] advised me about the options prior to filing a formal grievance against . . . [the professor] who sexually harassed and then assaulted me in June. I'd like to thank you for your input that day; however, despite the advice from both of you, I am still confused as to how to specifically proceed." She also requested that they communicate via e-mail and not by phone. She continued to provide only her first name, but not her last name or information about whether she was enrolled as a student.
- The Title IX Officer responded to the complainant's e-mail on January 27, 2005. She expressed a hope that they could meet in person about the available options, and notified the complainant that because she had identified the professor in her January 25, 2005 e-mail, the University was obligated to respond independently of the complainant's decisions about moving forward with a complaint. She informed the complainant that she would be meeting with the professor to discuss the allegations against him. She invited the complainant to schedule a time to meet with her prior to talking with the professor. In her response, the Title IX Officer reiterated that she did not know who the professor was before the complainant's January 25 e-mail. The Title IX Officer's email also stated that the January 25<sup>th</sup> email was the first time the complainant had mentioned that she had been sexually assaulted.
- In an e-mail response dated February 4, 2005, the complainant stated that due to safety concerns she did not feel comfortable meeting with the Title IX Officer in person. She requested that they communicate via e-mail. According to the complainant, in her e-mail she did not take issue with the fact that the Title IX Officer had denied prior knowledge of the professor's identity because it was pointless to do so.
- On February 7, 2005, the Title IX Officer sent her an e-mail response in which she asked if they could work together to eliminate any safety concerns so that they could speak in person. She also included a link to the sexual harassment complaint procedures. She said that if e-mail was the only way the complainant wanted to communicate she would honor that request. She also provided the complainant with the campus social services number.
- According to the complainant, she did not want to meet face-to-face with the Title IX Officer after her January e-mail because she felt the Title IX Officer was untruthful at that point and she had lost trust in her. She wanted a record of their communication and thought that this could be accomplished best via e-mail. It was also the complainant's belief that the University had plenty of information to move forward.
- The Title IX Officer stated that the complainant never expressed surprise to her about the University not initiating an investigation prior to January.

- Around February 2, the Title IX Officer notified the department chair that an investigation into the professor's conduct was being commenced. The chair told OCR that was this first he had heard of alleged sexual misconduct by the professor.
- On February 7, the Title IX Officer met with the accused professor to inform him of the investigation. She reviewed with him the University's sexual harassment/assault policies and procedures and informed him that, if he met with female students individually, he was to hold no closed door meetings, offer the presence of a third party, and restrict interactions to business and/or academic concerns.
- On March 8, 2005, the Title IX Officer sent the complainant an e-mail offering again to meet with her. The complainant did not respond.
- Between January and mid-March, the University took action, through its counsel or the UCPD, to get the BPD search warrant unsealed and to get a copy of the BPD report, so that the University could learn the details of the alleged misconduct and make contact with the other victims.
- On March 9, 2005, the Executive Vice Chancellor and University Provost appointed a faculty investigator to work with the Title IX Officer to investigate alleged misconduct on the part of the professor. The UCPD lieutenant responsible for making contact with the victims, who had been identified through the BPD report, told the faculty investigator on March 23 that she had been able to identify the complainant and had made contact with her, as she was attempting to do with all of the victims.<sup>4</sup> According to the University, this was the first time the University had been informed of the complainant's full name. Upon receiving this information, the faculty investigator contacted the complainant.
- According to the faculty investigator, his conversation with the complainant lasted about 20 or 30 minutes. The complainant described in broad terms a variety of concerns about the professor, but she did not provide specific details surrounding her allegations. The complainant told the investigator that she was unwilling to come forward due to fears of retaliation and that at that point she feared leaving her home. The complainant said that she would consider speaking with the investigator in the future and requested that he send her e-mail with his initial questions.
- According to the complainant, she spoke with the faculty investigator at length. They discussed the incident but did not go into detail. The complainant thought that, since the investigator indicated he had the police report, it was not necessary for her to answer his questions, either in person or in response to his subsequent email. She states that she never declined to participate in the investigation, but rather told the faculty investigator that the information he sought was in the police report.

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<sup>4</sup> UCPD was able to obtain a copy of the report resulting from BPD investigation, under the condition that it would not be disseminated beyond UCBP.

- The interview was the last time the University heard from the complainant. On March 24, 2005, the investigator sent her an e-mail but received no response. He followed up with two phone calls but still received no response. He also e-mailed her on March 30 and received no response.
- On May 11, the investigator again contacted the complainant, stating that the investigation was close to resolution and inviting her again to participate and offering to explain the likely outcome of the investigation. The complainant declined to do so.
- Based on the information provided by two other witnesses who had come forward, the matter was ultimately resolved with the professor's permanent separation from the University. The University investigation concluded that sexual harassment did occur.
- The University investigator tried to notify the complainant of the result of his investigation by leaving a message in which he stated that others came forward and indicated that professor resigned. The message he was trying to convey to the complainant was that the matter had been resolved.

#### Conclusion

Under Title IX recipients have a duty to respond promptly and effectively to notice of sexual harassment. As explained above, however, what constitutes a reasonable response may depend upon whether a student reporting harassment asks that his or her name not be disclosed to the harasser, or that nothing be done about the alleged harassment. A university's ability to respond under such circumstances may be limited. However, the university should evaluate a confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students and should take all reasonable steps to investigate and respond to the complaint consistent with the student's request, taking into account both the seriousness of the charges and the rights of the accused individual.

Applying this standard, OCR concluded that the University's response to the complainant's June 2004 report of sexual harassment did not violate Title IX or the regulation. The evidence showed that, until January 2005, despite multiple contacts with the University the complainant did not provide sufficient information to enable the University to identify her, identify the accused professor, or understand the nature of her charges. Given the limited information provided by the complainant, the University was unable to respond in a more comprehensive manner and its response was reasonable.

The complainant asserts that, when she contacted the University in June 2004, the University should have known the identity of the professor even though she did not reveal it, based on her one conversation with University staff in 2001 and two conversations in 2003. University staff indicate that, while the complainant may have had anonymous conversations with staff members in 2001 and 2003, she revealed no details about herself or the situation. OCR found the information provided by the University persuasive and concluded that, when the complainant contacted the University

in June 2004, the University did not have reason to know of possible prior sexual harassment of the complainant by the professor. The evidence also showed that in 2003 the University Resource Specialist provided the complainant with information about counseling, the office of the Ombudsperson, and other resources that were available to her given her desire not to reveal further details.

With respect to the July 26, 2004 meeting and subsequent communications during the remainder of 2004, the information provided by the complainant and that provided by the University was conflicting in numerous respects. For example, with respect to the July 26, 2004 meeting, although the complainant states that she revealed a class taught by the professor, the Title IX Officer and Ombudsperson deny this and OCR was unable to verify that the annotations in the margins of the complainant's meeting notes were made contemporaneously with the meeting. There was no mention of the reference to the professor in the Title IX Officer's log or in a subsequent conversation between the Title IX Officer and the Assistant Provost. Further, since the University did not know the complainant's identity and whether she was a student, it could not trace who her professors were. In evaluating the conflicting testimony, OCR found the information from the University more persuasive. A number of contradictory statements made by the complainant called into question her credibility. For example, though the complainant told OCR that she anticipated that an investigation would be commenced after the July 2004 meeting, in September 2004, according to the UCB police report, the complainant told the BPD detective that the University would not commence an investigation until she revealed her identity, which she had not. She asserted that the University did not explain to her how to file a complaint. However, she acknowledges that the University representatives gave her a copy of the University's complaint procedures at the July 26 meeting. Moreover, the University's complaint procedures were included in a variety of campus publications. OCR concluded that the preponderance of the evidence showed that the University did not know the identity of the complainant, whether she was enrolled as a student, the identity or any other identifying information about the professor, or that the complainant was referring to a sexual assault as a result of either the July 26<sup>th</sup> meeting or subsequent communications during the summer of 2004.

OCR also determined that the evidence did not show that the University had sufficient information to proceed as a result of the BPD investigation during fall 2004. While the BPD interviewed a colleague of the accused professor, OCR could not establish that a responsible official (an official with the authority to address the situation) had notice that the BPD matter involved a former student at the University.

After the January 25, 2005 e-mail where the complainant disclosed the professor's name, the University immediately commenced an investigation. The complainant still had not provided her last name and would not meet in person with the Title IX Officer to provide more detailed information about the alleged assault. However, the University took the steps available to it, such as its continued attempts to obtain further information by having the search warrant unsealed, so that it could proceed with an investigation. In the interim, by its directives to the professor, it took steps to safeguard other students pending the outcome of the investigation. Although the complainant initially spoke with the

faculty investigator after her name was revealed through the search warrant, she thereafter declined to participate. Notwithstanding the complainant's unwillingness to participate further, the University investigation ultimately led to the professor's separation from the University. OCR determined that, once the University knew the identity of the professor it took prompt and effective steps to address the situation.

OCR concluded that the actions taken on the part of the University were in compliance with Title IX and its implementing regulation. As a result, we are closing this complaint as of the date of this letter.

In the course of this investigation, OCR noted that the University lacks an established and reliable communication mechanism to ensure that information about sexual harassment of students that is reported to the UCPD also reaches the Title IX Officer and other appropriate University officials. While there is a Sexual Harassment/Assault Task Force that meets periodically, OCR has the impression that information exchanged in that forum was limited to instances that pose an immediate danger on campus. With respect to the situation involving a student charged with stalking a professor, the information the UCPD obtained about faculty conduct, even though the UCPD decided not to pursue it, may have been helpful to the Title IX Officer for the purposes identifying potential patterns on campus, though access to such information would not have changed the outcome in this case. While OCR recognizes that police investigations require certain protocols to protect their integrity, as a matter of technical assistance, OCR suggests a thorough review of how information concerning harassment of students is exchanged between UCPD and the University to determine whether changes are needed.

OCR wishes to thank the University for its cooperation in this matter. If you have questions or concerns about OCR's resolution of this complaint, please contact me at (415) 556-4154.

Sincerely,

  
Stella Klugman  
Team Leader

Cc: Sarah Hawthorne  
Assistant Provost