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ADMINISTRATIVE COMPLAINT

COMPLAINANT

 (referred to below as “Complainant”)
c/o her attorneys below

Please direct all correspondence with Complainant to her attorney, Sandra Park, at the ACLU Women’s Rights Project.

Attorneys for Complainant:

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RECIPIENT

CARNEGIE MELLON University
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PRELIMINARY STATEMENT

1. This Complaint is filed pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (“Title IX”), and the regulations and policies promulgated pursuant to that Title. *See* 34 C.F.R. § 106 et seq. and policies described below. Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities.

2. As detailed in the Factual and Legal Allegations below, Recipient, CARNEGIE MELLON University (“the University”), violated Title IX by subjecting Complainant to sexually harassing conduct so severe as to limit her ability to participate in her educational program at the University and while knowing of this harassment, failing to take immediate effective action to eliminate the hostile environment, prevent its recurrence, and address its effects. Upon notice of Complainant’s allegations that she had been repeatedly sexually assaulted by a fellow student, her ex-girlfriend, the University failed to provide any interim measures to protect Complainant from further harassment. Even after finding Complainant’s assailant to have violated the University’s sexual assault policy, the University failed to take any effective measures to protect Complainant from future harassment or remedy its effects. The University simply continued a pre-existing, mutual no-contact order that permitted Complainant and her assailant to be placed in the same classes and recommended a counseling assessment for Complainant’s assailant. Thus, the only new “remedy” provided by the University following the finding of a violation of its sexual assault policy was ordering a counseling assessment of the perpetrator, a measure that falls far short of effectively protecting the Complainant. The University further violated Title IX by requiring Complainant to be subject to a mutual no-contact order even after concluding that her assailant, and not Complainant, had violated the University’s sexual assault policy. As long recognized by experts in the field, mutual no-contact orders are completely inappropriate in this type of situation because they empower the perpetrator to use the order as a possible retaliatory tool against the victim. Comments made during the University’s disciplinary process suggest that the University’s treatment of Complainant’s situation was based on biased and stereotypical understandings of violence in same-sex dating relationships. Due to the seriously inadequate response by the University, the burden remains on Complainant to address further harassment, depriving her of access to equal education.
3. In order to address these violations, we request that the Philadelphia Office for Civil Rights (“OCR”) determine whether the University violated its obligations under Title IX by investigating the University’s response to Complainant’s report of sexual assault, its failure to implement measures to prevent future harassment, and subjecting Complainant to retaliation through the mutual no-contact order. In addition, we request that the OCR undertake a Compliance Review of the University to determine whether its practices, procedures, and training of staff regarding response to student reports of sexual, dating, and gender-based violence and harassment comply with Title IX and remedy any unlawful conduct, practices, and procedures. We ask the OCR to require the University and its employees to undergo ongoing training, review, and monitoring and to redress the effects of its discrimination against Complainant.

JURISDICTION

4. The OCR is responsible for ensuring compliance with Title IX and receiving information about, investigating, and remedying violations of Title IX and its implementing regulations and guidelines in the region. 34 C.F.R. §§ 106.71, 100.7.

5. Complainant has not filed this administrative complaint with any other agency or institution.
6. This complaint is timely, because it is being filed within 180 days of the discriminatory conduct. Complainant completed the University's administrative procedure for addressing the sexual assaults on [REDACTED] when she received a rejection of her request for an appeal of the University Disciplinary Committee's recommendations regarding her case.

FACTUAL ALLEGATIONS

7. Complainant is and has been a student at the University since the [REDACTED] semester. She is currently in her [REDACTED] year.
8. In [REDACTED] Complainant began dating a fellow classmate at the University ([REDACTED]). Shortly thereafter, in or about [REDACTED], [REDACTED] became emotionally and sexually abusive toward Complainant.
9. On numerous occasions from [REDACTED] until the relationship between Complainant and [REDACTED] ended in [REDACTED], [REDACTED] sexually assaulted Complainant.
10. [REDACTED]
11. Over the course of the following few days, [REDACTED] continuously harassed Complainant by standing outside Complainant's dormitory. Fearing for her safety, Complainant blocked all calls and Facebook messages from [REDACTED] and stayed with a friend for several days to avoid another encounter with [REDACTED].
12. Complainant reported the assault in the [REDACTED] to a professor, who referred Complainant to the House fellow at her residence hall, [REDACTED]. On [REDACTED], Complainant and [REDACTED] voluntarily entered into a mutual no-contact agreement in which both parties agreed to have no direct or indirect contact with one another, including that of "verbal, written, electronic, or any other nature" or "indirectly through friends or other people, or by leaving phone messages." However, this only applied to contact "other than that which might be necessary for [Complainant and [REDACTED]'s] academic pursuits at the university," and therefore still allowed [REDACTED] to attend the same classes and other activities as Complainant. Given that they were both students in the same, small department, it was foreseeable that they would continue to have constant contact.
13. Despite the no contact order, [REDACTED] and Complainant had five classes together throughout the [REDACTED] semester, and Complainant had only one class without [REDACTED]. Although, pursuant to the no-contact order, [REDACTED] was not permitted to speak to Complainant, she nonetheless continued to harass Complainant by doing school projects that referred to sexual assault and regularly made comments alluding to sexual assault in her classes. Moreover, she moved in across the hallway from Complainant's off-campus apartment, an action that intimidated

Complainant. Complainant was forced not to participate in certain school activities in order to avoid contact with [REDACTED]

14. Complainant entered private therapy to deal with the sexual violence as well as the trauma of being forced to see her attacker on a daily basis. She was eventually diagnosed with post traumatic stress disorder. The university's mental health program, called Counseling and Psychological Services and available to all students, was offered to Complainant. However, Complainant could not go there for safety reasons because [REDACTED] accessed services there. When Complainant made the University aware of this, she was not offered any alternative psychological services but simply was told that the services were available there. Despite the no-contact order, on several occasions throughout the [REDACTED] semester, [REDACTED] made several attempts to intimidate Complainant. [REDACTED] would approach and stand very close to Complainant, loudly addressing whoever was standing near Complainant at the time.
15. On [REDACTED], Complainant reported the sexual violence, the harassment, and the incident [REDACTED] to an officer at the University police station. The officer questioned her motives in making a complaint against [REDACTED] and commented that it "seemed like revenge." On that same date, Complainant also made a written statement for the police describing the abuse and subsequent harassment.
16. Shortly thereafter and without Complainant's knowledge, campus police disclosed to [REDACTED] that Complainant had filed a report against her, and [REDACTED] came to the [REDACTED] where Complainant was working and stayed there, though she had no reason to be there. When Complainant found out that this information had been disclosed to [REDACTED], Complainant feared for her safety and immediately moved out of her apartment. Following that, [REDACTED] repeatedly came to the [REDACTED] where Complainant was working and stared at her. Complainant was also told by friends that [REDACTED] was displaying the police report that Complainant had filed in school and talking about it loudly on her phone in public spaces.
17. On [REDACTED], the University Disciplinary Committee held a hearing on the charges against [REDACTED] for violation of the University policy on sexual assault, as well as on assault [REDACTED]. Complainant testified in detail about the many times that [REDACTED] sexually assaulted her, as well as the abusive nature of the relationship. She further asked that [REDACTED] be expelled or suspended for [REDACTED] while Complainant finished her studies at the University, in order to prevent [REDACTED] from harassing Complainant in the future. Each of these requested punishments is authorized by the University's disciplinary procedures.
18. Throughout the hearing, several Committee members made comments indicating that they minimized the severity of the sexual assaults because Complainant remained in the relationship after the assaults occurred. It also appeared that they inappropriately sympathized with Complainant's assailant. For example, one Committee member suggested that [REDACTED], when she sexually assaulted Complainant, merely had a "different understanding of events."
19. On [REDACTED], the [REDACTED] at the University sent a letter to Complainant, stating the Disciplinary Committee's findings. The Committee found 1) [REDACTED]

was not responsible for assault (referring to the [REDACTED] incident in the [REDACTED] where there had been no other witnesses); and 2) [REDACTED] was responsible for violation of the University policy on sexual assault. Pursuant to these findings, the Committee issued the following outcomes: 1) that [REDACTED] be required to complete a counseling assessment and follow through on recommendations; and 2) that there be a review of the preexisting no-contact agreement between Complainant and [REDACTED] and ensure clarification of expectations of behavior in both on-campus and off-campus spaces.

20. On [REDACTED], Complainant sent a letter to the University [REDACTED] requesting an appeal of the sanctions that the Committee had imposed against [REDACTED]. In this letter, Complainant expressed her belief that the sanctions would have no impact in preventing [REDACTED] from further harassing her. She specifically mentioned that the [REDACTED] required her to be in close proximity with [REDACTED] on a daily basis. She stated her belief that the sanctions against [REDACTED] were inappropriate because the no-contact order necessarily limited Complainant in her participation in the program. She also noted that the same no-contact order had been in place for over a year and had done little to prevent [REDACTED]'s further harassment because they continued to be in the same classes, and [REDACTED] continued to approach Complainant and to stare at and intimidate her. Complainant further expressed her constant fear while remaining on campus with her assailant and her inability to enjoy or fully participate in academic or campus life. Complainant again requested that [REDACTED] be suspended for [REDACTED] so that she could complete her education without having to constantly face her attacker. Complainant reiterated in this letter that she had been diagnosed with post-traumatic stress disorder as a result of the attacks, that [REDACTED] lived in the apartment across the hall from her, and that Complainant was unable to go anywhere on campus or near her apartment without an escort.
21. Following the Disciplinary Committee's decision, Complainant spoke with Dean [REDACTED] seeking more effective remedies. Complainant repeatedly explained that she felt constant fear and anxiety of running into her attacker on campus, making it difficult for her to complete her course of study, but [REDACTED] did not offer more aid to Complainant or address her safety concerns. At one point, [REDACTED] even told Complainant that it was not an uncommon situation at the University for a sexual assault victim to be forced to see her attacker on a daily basis.
22. Complainant's appeal was unsuccessful. On [REDACTED], [REDACTED] sent Complainant a letter affirming the decisions by Dean [REDACTED] and the Disciplinary Committee. This letter indicated that [REDACTED] did not independently review the Disciplinary Committee's decision but based his decision to affirm the Committee's recommendation on his belief that its members are "thoughtful individuals" who "gave deep and serious consideration to this matter before rendering their recommendation."
23. At no time did the University's Title IX Coordinator reach out to Complainant. Complainant's friend contacted the Title IX Coordinator and was told that all procedures had been followed.

24. On information and belief, during the [REDACTED] the [REDACTED] at the University resigned from her position due to the University's poor handling of Complainant's case.
25. In [REDACTED], Complainant talked with Dean [REDACTED] expressing her concern that she would be forced to attend the same classes as [REDACTED] in the future. Dean [REDACTED] did little to allay these concerns and, on one occasion, even suggested that if Complainant was concerned about facing [REDACTED] in the future, then Complainant should consider withdrawing from the University.
26. On [REDACTED] Dean [REDACTED] sent Complainant an email discussing the no-contact order and several issues relating to scheduling for the [REDACTED] semester. In that email, Dean [REDACTED] stated that she had met with [REDACTED] regarding the fact that Complainant and [REDACTED] were scheduled to take the same class and that [REDACTED] "offered to make the move this time around" but suggested that the burden would likely fall on Complainant in the future to avoid [REDACTED]. [REDACTED] stated, "My hope is that if such conflicts emerge again in the future that we will work ... to identify the problem and see which of you is able to most easily switch to another course, section, etc.," indicating that, in the future, Complainant may be forced to change her schedule to avoid [REDACTED]. Later, despite this email stating that [REDACTED] had offered to drop the class for which they were both scheduled, [REDACTED] failed to follow up with Complainant as to whether [REDACTED] had actually dropped that class. Fearing future interactions with [REDACTED] Complainant ultimately withdrew from the class.
27. On [REDACTED], Dean [REDACTED] sent [REDACTED] a letter extending the no-contact order. Despite the fact that it was issued following the Disciplinary Committee's finding that [REDACTED] had violated the university sexual assault policy, the new no-contact order did not meaningfully change the terms of the previous order. The letter stated that "the responsibility rests on [REDACTED] to avoid any type of interaction wherever and however possible," including avoiding interaction with Complainant in spaces in which [REDACTED] knows Complainant would be present, removing herself from spaces on campus in which [REDACTED] finds herself confronted with Complainant and attendance is not required, and to refrain from any activities that could be interpreted as hostile or intimidating by Complainant. Furthermore, the no-contact order states, "[T]he terms of the [prior no-contact order] still apply to and are embraced by [Complainant] relating to her own actions," indicating that the Complainant shares the burden of avoiding future contact between Complainant and her assailant.
28. On [REDACTED], [REDACTED] breached the no-contact mandate. Complainant was standing in line at a cafe on campus, when [REDACTED] came up and stood three or four feet behind her, speaking loudly to the person standing on Complainant's left and then to the person on Complainant's right. Complainant did not turn around to look at or engage with [REDACTED] at any point. [REDACTED] remained standing behind Complainant for several minutes, then left (without ever standing in line to purchase anything) shortly after the individuals standing next to Complainant left. As Complainant was leaving the cafe, she observed [REDACTED] glaring at her from an elevator.
29. Immediately after this occurrence, Complainant filed a report with [REDACTED] from the University's campus police. On [REDACTED], Complainant sent a letter to the Mediation Review Board describing this breach of the no-contact order. She again reiterated

her belief that the no-contact order has done little to prevent ■ from harassing and intimidating her and that she remained in constant fear that ■ would hurt her. She was informed by the University that she would need to pursue the full disciplinary process and that ■ would be given the opportunity to file a counter-complaint against her. At that point, Complainant withdrew the complaint because she feared that, like the first investigation, another investigation would produce no meaningful results and that the trauma of undergoing the process would be too damaging to her mental health.

LEGAL ALLEGATIONS

A. Legal Framework

30. Title IX provides in relevant part that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a).

31. The United States Supreme Court has recognized that a funding recipient's inappropriate response to a student's report of being sexually harassed or assaulted by another student can constitute a violation of the recipient's responsibilities under Title IX. *See generally Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246 (2009); *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999).

32. OCR is responsible for enforcing Title IX and the Department of Education's implementing regulations, which prohibit sex discrimination in education programs and activities operated by educational institutions that receive Federal financial assistance. *See* 34 C.F.R. § 106.

33. OCR has instructed funding recipients, through a series of policies issued over the course of many years, regarding their obligations under Title IX when responding to students' reports of sexual harassment and sexual violence by other students at school. These policies include but are not limited to:

- United States Department of Education Office for Civil Rights, "Revised Sexual Harassment Guidance: Harassment of Students by school employees, other students, or third parties," (January 2001) ("2001 Sexual Harassment Guidance");
- United States Department of Education Office for Civil Rights, January 2006 "Dear Colleague" letter concerning sexual harassment ("2006 Dear Colleague Letter");
- United States Department of Education Office for Civil Rights, "Sexual Harassment: It's Not Academic" (Sept. 2008) ("2008 Guidance");
- United States Department of Education Office for Civil Rights, April 4, 2011 "Dear Colleague" letter discussing schools' obligations to respond appropriately to incidents of sexual violence ("2011 Dear Colleague Letter"); and
- United States Department of Education Office for Civil Rights, April 2013 "Dear Colleague" letter concerning retaliation ("2013 Dear Colleague Letter");

34. Together, these OCR publications set forth the standards with which funding recipients must comply when responding to reports of sexual violence at school in order to comply with Title IX, including instructions about what funding recipients may do and what they may not do. The relevant principles are outlined below.
35. When harassing conduct is sufficiently serious, it creates a hostile environment and adversely affects a student's ability to participate in or benefit from the school's program. 2001 Guidance at vi. It is widely recognized that even a single incident of rape or sexual assault of a student constitutes conduct sufficiently severe and pervasive to deprive a student of equal access to education. 2011 Dear Colleague Letter at n.10 (citing case law from the Fourth, Sixth, and Seventh Circuits as well as district courts); 2001 Guidance at 6; 2008 Guidance at 7.
36. Title IX protects students from sexual harassment, regardless of whether the harasser and the harassed student were in a dating relationship when the sexual assault occurred or continued dating following the assault. The 2001 Guidance defines "sexual harassment" as "conduct of a sexual nature" that is "unwelcome" and further clarifies that "the failure to complain does not always mean that the conduct was welcome." 2001 Guidance at 7-8.
37. Once a school knows of student-on-student harassment that creates a hostile environment, it must, under Title IX, "take immediate action to eliminate the harassment, prevent its recurrence, and address its effects." 2011 Dear Colleague Letter at 4. "The school must conduct a prompt, impartial, and thorough investigation to determine what happened and must take appropriate steps to resolve the situation." 2008 Guidance at 9.
38. OCR has clearly stated that the Title IX protections apply equally to all students, regardless of the sex of the harasser or the person being harassed or if the harasser and the harassed student are of the same sex. 2001 Guidance at 3; 2008 Guidance at 8.
39. Proper remedial measures that a recipient may take to eliminate the hostile environment may include: providing an escort to ensure that the complainant can move safely between classes and activities; ensuring that the complainant and alleged perpetrator do not attend the same class; moving the complainant or alleged perpetrator to a different residence hall; providing counseling services; providing medical services; and providing academic support services. 2011 Dear Colleague Letter at 16-17. While there is no specific measure that must be taken in any given situation, the school's response must be calculated to "eliminate the harassment, prevent its recurrence, and address its effects." 2011 Dear Colleague Letter at 4. "If harassment has occurred, doing nothing is always the wrong response." 2001 Guidance at iii.
40. OCR has made clear that victims must not be required to "work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school." 2011 Dear Colleague Letter at 8; 2001 Guidance at 21; *see also*, 2001 Dear Colleague Letter; *S.S. v. Alexander*, 177 P.3d 724, 730, 740 (Wash. App. Div. 1 2008) (finding a jury question on the question of Title IX liability where the school's only remedial action was to have the rape victim engage in mediation with her attacker).

41. It is widely recognized that any remedial measures taken to stop the harassment, including separating the harassed student and the harasser, should minimize the burden on the student who was harassed. 2001 Guidelines at 16. Schools and funding recipients “should not, as a matter of course, remove complainants from classes or housing.” 2011 Dear Colleague Letter at 16-17; *see also S.S. v. Alexander, supra*, at 740 (school repeatedly suggested that student victim raped by student football player leave her job with the football team). Schools may not respond to sexual violence by further depriving reporting victims of access to education, and they must take steps to eliminate any hostile environment.
42. If the initial action that a school takes is insufficient to end the harassment, the school must employ a series of escalating consequences, as necessary, including taking action to further separate the harasser and the harassed student. 2008 Guidance at 13.
43. Title IX prohibits retaliation against students for reporting sexual harassment. Schools must “take steps . . . to prevent any retaliation against the student who made the complaint.” 2001 Guidance at 17. Schools must “review any disciplinary actions taken against the complainant to see if there is causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.” 2011 Dear Colleague Letter at 17. The school is required to inform the complainant that Title IX prohibits retaliation. If the harasser retaliates against the complainant, the school should take “stronger responsive actions.” 2008 Guidance at 15. Naturally, the recipient may not *itself* engage in retaliation against the reporting student. 2013 Dear Colleague Letter.
44. Schools also must take steps to remedy the effects of sexual harassment and any resulting exclusion from educational opportunities. 2001 Guidance at 17. This may include counseling and other services. *Id.*

B. Application of Legal Framework to Complainant’s Allegations

45. The University violated its Title IX obligations when it, upon learning of the harassment that Complainant faced, failed to “take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.” 2011 Dear Colleague Letter at 4.
46. The University took virtually no action to address the harassment that Complainant faced or to prevent future harassment. Upon learning of the multiple sexual assaults that ■ committed against Complainant, the University took no action to protect Complainant pending the investigation. This is in clear violation of OCR’s Guidelines, which state that Title IX recipients must take all necessary interim measures to protect Complainant from harassment pending an investigation by the university. 2011 Dear Colleague Letter. Rather, the University placed Complainant at further risk of harm by informing her attacker, who lived across the hallway from Complainant at the time, that Complainant had filed charges against her. This was done without giving any prior warning to Complainant or providing any measures to protect Complainant from retaliation by ■, despite the University’s knowledge of ■’s history of abuse toward Complainant. ■ did retaliate against Complainant after Complainant reported the abuse by waiting at Complainant’s ■ while Complainant was in ■ and glaring at Complainant. The only measure

taken to protect Complainant at that time was taken by Complainant herself, when she immediately moved out of her apartment to avoid further harm. This clearly violates OCR's guidelines set forth in the 2008 Guidelines, which state that the burden of preventing further harassment, even pending a university investigation, should never fall on the Complainant.

47. The University further violated Title IX in its response following the University Disciplinary Committee hearing. Despite the fact that the Disciplinary Committee found █ to have violated the University's sexual assault policy in her abuse of Complainant, the University did not take any effective measures to eliminate the harassment or prevent future abuse. The only sanctions issued against █ were a continuation of the *mutual* no-contact order that had been in place for over a year, as well as a "counseling assessment," that, upon information and belief, has yet to take place. The only change that the University made was to send a letter to █ explaining that the "spirit" of the preexisting no contact order was that she was responsible for avoiding future contact with Complainant. While there is no specific measure that a university is required to take when it has found harassment to exist, OCR has been clear that "doing nothing is always the wrong response." *See* 2001 Guidance at iii.
48. Clearly, such inaction violates OCR's mandate that when a school finds harassment to exist, it must respond in a way that is reasonably calculated to end the harassment and prevent it from recurring. *See* 2008 Guidance at 4. Courts have found that requiring a student to continuously face her attacker on campus can constitute "severe and pervasive" harassment in itself, in violation of Title IX. *See Doe v. Derby Bd. of Educ.*, 451 F. Supp. 2d 438, 444 (D. Conn. 2006); *Kelly v. Yale University*, 2003 WL 1563424 (D. Conn. 2003). The outcomes that the University issued after finding █ to have violated its sexual assault policy do not prevent future contact between █ and Complainant. While the no-contact order forbids █ from speaking to or interacting with Complainant, it does not prevent █ from being in the same room as Complainant or from taking the same classes as Complainant. The no-contact order is particularly inappropriate under these circumstances because Complainant and █ are in the same program of study. Indeed, after the initial no-contact order was entered on █ Complainant and █ saw each other on a daily basis because they were in five of the same classes during the █. During the █ school year, they will likely again be placed in the same classes, jeopardizing Complainant's safety and educational opportunity. As the only remedial measures provided by the University allow for Complainant to be confronted by her attacker on a daily basis, these measures are clearly not calculated to prevent Complainant from facing further harassment and therefore violate Title IX.
49. Furthermore, the imposition of a mutual no-contact order against Complainant and █ violates Title IX because it constitutes impermissible retaliation against Complainant for reporting sexual harassment. OCR's 2013 Dear Colleague Letter clearly states that if "an individual brings concerns about possible civil rights problems to a school's attention, it is unlawful for the school to retaliate against that individual for doing so." 2013 Dear Colleague Letter. Upon finding that █ violated the University's sexual assault policy, the University continued a mutual no-contact order. Since the no-contact order was also applied against Complainant, the University effectively punished Complainant for reporting a sexual assault.

Extending a mutual no-contact order in these circumstances, where one party has not violated any policy or law, contradicts longstanding best practices as recognized by experts because it permits the perpetrator to use the order as a tool to exert control or retaliation against the victim. Among the problems with issuing a mutual no-contact order is that it “encourage[s] society to trivialize the abuse, to consider the abuse too minor to determine the identity of the real abuser. At the same time, such orders also encourage people to blame the victim rather than hold the abuser accountable.” Joan Zorza, *What's Wrong with Mutual Orders of Protection?*, in Domestic Violence Rep. (1999), available at http://www.scvan.org/mutual_orders.html (last visited Dec. 9, 2013). Furthermore, mutual no contact orders actually function to empower the abuser rather than the victim. “Mutual orders reward the abuser and further empower [her]. They enable [her] to deny [her] actions and not take responsibility for them. Through mutual orders, the abuser is also able to get the entire system to focus on the victim.” *Id.* Mutual no-contact orders can increase the danger to the victim by confusing police as to who the truly dangerous party is and giving the batterer “a sense of legitimacy to her violence.” Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra . Rev. 801, 1074 (1993).

50. The University’s treatment of Complainant’s case also violates its obligation to prevent unwelcome sexual conduct, regardless of whether the victim was in a dating relationship with the perpetrator. OCR has been clear that sexual harassment under Title IX is sexual conduct that is unwelcome by the harassed person and that the failure to complain about or resist such conduct does not make the conduct welcome. 2001 Guidance at 7-8. Throughout the University’s investigation and response to the assaults that Complainant faced, several officials made comments indicating that the University did not take Complainant’s allegations seriously because she remained in a relationship with ■ after ■ began sexually assaulting her. Moreover, a Disciplinary Committee member explained the lack of severity of ■’s punishment by stating that ■ had a “different understanding of events” when she repeatedly sexually assaulted Complainant. Similarly, a university police officer questioned Complainant’s motives for filing a police report about ■’s assaults against her because Complainant had been involved in a relationship with ■ at the time that the assaults occurred. These comments not only indicate that officials at the University have a grave misunderstanding of dating violence but also that they did not take the sexual violence that Complainant faced seriously because it was in the context of an abusive relationship.
51. Furthermore, the University violated its Title IX obligations by placing the burden of preventing future harassment on Complainant. As OCR has stated, a school is obligated to take measures to prevent future harassment and cannot place the burden on the victim to stop the harassment. *See* 2001 Guidance at 16; 2011 Dear Colleague Letter at 16-17. In this case, the University placed the burden in large part on Complainant to avoid future interactions with ■. The only measure that the University put in place to prevent further contact between Complainant and M was a mutual no-contact order that required both Complainant to stay away from ■ and ■ to stay away from Complainant. This places a significant burden on Complainant to be responsible for preventing future interactions with her attacker, in violation of Title IX. Furthermore, Complainant was forced to move out of her apartment

and drop a class that she was scheduled to take in order to avoid contact with ■■■, burdens that OCR has stated should not fall on the complainant. *See* 2011 Dear Colleague Letter at 16 (“[Title IX recipients] should not, as a matter of course, remove complainants from classes or housing.”) And when Complainant expressed her fear to Dean ■■■ that she may have to take a class with ■■■ in the future, ■■■ told Complainant that *she* (Complainant) should consider leaving the University if she felt unsafe. She also indicated that Complainant may need to drop classes in the future if ■■■ signed up for the same courses. ■■■ further indicated to Complainant that it was commonplace for victims to bear the burden of interacting with the perpetrators of sexual assault, as persons found to have committed sexual assault were often allowed to remain on campus with their victims. All of these actions impermissibly placed the burden on Complainant to avoid further harassment.

52. Additionally, the University violated its Title IX obligations by failing to take more effective measures once it became clear that the initial sanction of a no-contact order was insufficient to prevent ■■■ from further harassing Complainant. OCR has clearly stated that a Title IX recipient must employ “a series of escalating consequences” when it is clear that the initial remedial measures that it put in place do not adequately prevent future harassment against Complainant. 2008 Guidance at 13. Since ■■■, ■■■ has regularly harassed and intimidated Complainant by approaching very closely to her and speaking loudly to whoever is standing next to her. Complainant informed university officials of this continuing harassment, yet the sanctions against ■■■ were not changed. Such incidents occurred even after the no-contact order was in place, indicating that the no-contact order was insufficient to prevent ■■■ from harassing Complainant. When it became clear to the University officials that the no-contact order was unsuccessful in preventing ■■■ from harassing Complainant, the University was required to take more effective measures, which it failed to do. Instead, the burden was placed on Complainant to pursue a full disciplinary hearing, which would further subject her to trauma and which she had no basis to believe would result in effective remedies.
53. These incidents also show that the University has violated its obligation to prevent retaliation against students for reporting sexual harassment. Pursuant to Title IX, a recipient is required to take “stronger responsive actions” when a harasser retaliates against a complainant for reporting sexual harassment. 2008 Guidance at 15. ■■■, as detailed above, has tried to intimidate Complainant following Complainant’s report of the abuse and after the University found violation of its sexual assault policy. Nonetheless, the University has taken no stronger action against ■■■
54. The University has also violated its obligation to remedy the effects of the harassment that Complainant faced. OCR has stated that universities are required to not only prevent future harassment but to also take steps to remedy the effects of prior sexual harassment and any resulting exclusion from educational opportunities. 2001 Guidance at 17. Complainant was forced to move out of her apartment, switch classes to avoid contact with ■■■, and forfeit non-mandatory extracurricular and academic activities for fear of encountering her attacker. Furthermore, as a result of ■■■’s sexual abuse toward her, Complainant suffered severe psychological consequences and has been diagnosed with post-traumatic stress disorder. It has been well established that ongoing fear and emotional distress resulting from sexual

harassment constitute exclusion from educational opportunities. *See, e.g., S.S. v. Alexander*, 143 Wash. App. 75, 109 (2008); *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999). The University has done nothing to remedy these effects and has merely offered Complainant the counseling services available to all students at the University. When Complainant explained that she would be unable to utilize these services because her attacker attended counseling services there regularly, the University made no attempt to provide any alternative counseling services or meaningful support to ensure her physical and mental security. Complainant has been in intensive therapy for several months because of the harassment but had to seek such therapy from a private counselor.

55. Finally, the University may have violated its Title IX obligation to prevent sexual harassment that limits a student's ability to participate in or benefit from a school's program, "regardless of whether the harassment is aimed at gay or lesbian students or is perpetrated by individuals of the same or opposite sex." 2008 Guidance at 8. In this case, the Disciplinary Committee downplayed the severity of the harassment that Complainant faced and ordered the continuation of a mutual no-contact order as one of two outcomes of the disciplinary process. Experts have recognized that the assumption that there has been mutual battering is especially used against victims in same-sex relationships. "[T]he myth of mutual battering is particularly invidious for same-sex couples, since a common misconception in both the heterosexual and homosexual communities is that any violence between two men or two women is by its very nature 'just fighting' which is actively initiated by both parties." Sandra E. Lundy, *Abuse That Dare Not Speak Its Name: Assisting Victims of Lesbians and Gay Domestic Violence in Massachusetts*, 28 New Eng. L. Rev. 273, 284 (1993). We ask OCR to investigate whether bias based on the sex and sexual orientation of the harasser and victim in this case affected the University's response.

REMEDIES SOUGHT

56. The OCR should fully investigate the University's response to Complainant's report that she was sexually assaulted by another student at school. The OCR should issue a determination describing the University's Title IX violations.
57. The OCR should require the University to remedy the effects of its actions, particularly to prevent ■ from further harassing Complainant and to give Complainant equal access to her education. The University should implement new remedies that prevent ■ from further contacting or harassing Complainant and do not place the burden on Complainant to avoid the harassment. Remedies should include: requiring ■ not to take any of the same classes as the Complainant and ordering ■ to avoid common educational spaces, including school buildings, where Complainant will be, except when required to complete her studies; amending the no-contact order so that ■ is restrained from contacting Complainant, but that Complainant is no longer vulnerable to retaliation if ■ alleges that Complainant sought contact; or other actions authorized by the University's policy, such as suspension of ■ for the remaining term of Complainant's degree program. Complainant must be able to continue her studies at the University without having to come into contact with her attacker on a daily basis. The University should further ensure that Complainant's filing of reports and/or

pursuit of disciplinary action does not negatively impact Complainant's academic record in any way.

58. The OCR should require the University to implement and enforce strong policies and procedures governing student safety at school and schools' response to sexual assault. These policies and procedures should require the University to implement remedies that are likely to prevent future harassment and retaliation against complainants that report sexual abuse.
59. The University should be required to implement measures that ensure that the burden of preventing further sexual harassment or retaliation is never placed on a victim of sexual harassment. The University should further be required to implement meaningful measures to remedy the effects that sexual harassment has on victims by providing counseling services and ensuring that victims of sexual harassment are able to participate fully in student life without experiencing future harassment.
60. The University should be required to take action to ensure that its policies and decisions regarding sexual harassment are not biased based on the fact that the alleged victim and perpetrator are dating or formerly dated or the sex of the perpetrator (or victim).
61. The University's attempts to meet the requirements of Title IX in remedying the effects of harassment and preventing future harassment have failed. Accordingly, Complainant respectfully requests that, in addition to the remedies requested above, the OCR (1) undertake a systematic Compliance Review of the University's compliance with Title IX, (2) appoint an independent monitor to review the University's procedures, and (3) require the University to undergo monitoring and reporting for a period of five years.

I hereby certify that the foregoing is true and accurate to the best of my knowledge and belief.

This, the 17th day of December, 2013.

Respectfully submitted,

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