

December 20, 2016

Dr. Norman Smith
President
Elmira College
One Park Place
Elmira, New York 14901

Re: Case No. 02-14-2316
Elmira College

Dear President Smith:

This letter is to inform you of the determinations made by the U.S. Department of Education, Office for Civil Rights (OCR), based on its investigation of the above-referenced complaint filed against Elmira College (the College). OCR investigated whether the College failed to promptly and equitably respond to the Complainant's complaint of a forcible sexual assault made against another student (Student 1), and other complaints of sexual harassment, including sexual assault and sexual violence, of which it had notice; and whether as a result, the Complainant and other students were subjected to a sexually hostile environment.

OCR investigated this complaint under the authority of Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

Legal Overview

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides generally that, except as provided elsewhere in the regulation, “no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any . . . education program or activity” operated by recipients of Federal financial assistance.

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment

can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.

The regulation implementing Title IX, at 34 C.F.R. §§ 106.8 and 106.9, requires a recipient to designate a Title IX Coordinator, adopt grievance procedures, and implement specific and continuing steps to provide notice that it does not discriminate on the basis of sex in its education programs or activities.

These regulatory provisions are discussed in more detail below, issue by issue.

Summary

OCR determined that the College's Title IX grievance procedures, effective for academic year 2015-2016, meet the requirements of Title IX; however, OCR noted a concern about what the grievance procedures mean regarding the need to have "authority over the potential violator" in order to investigate, and whether this would prevent the College from pursuing a complaint if, for instance, the respondent was no longer enrolled in the College. For the reasons briefly stated below, and discussed further in this letter, OCR also identified violations of the regulation implementing Title IX with respect to the College's designation of a Title IX Coordinator and its notice of non-discrimination.

OCR found that the College's response to the Complainant violated Title IX because it was not prompt. The College took approximately four months to complete its investigation and deliver the outcome of that investigation to the Complainant and Student 1. OCR determined that the College conducted an equitable investigation into the Complainant's report of sexual assault in that it provided the parties an equal opportunity to present relevant witnesses and other evidence during its investigation. The College appropriately applied the preponderance of evidence standard and concluded that the Complainant had been subjected to sexual harassment, but not unwanted sexual intercourse. OCR found insufficient evidence that the Complainant continued to be subjected to a sexually hostile environment due to the College's failure to conduct a prompt investigation. OCR's review of other case files revealed either a violation or a concern in all but one of the 16 case files reviewed from academic years 2012-2013, 2013-2014, and 2014-2015, including instances where the College failed to provide prompt and equitable investigations and took insufficient measures to assess and address the impact of harassment and possible hostile environments, as detailed below.

On December 14, 2016, the College executed a Resolution Agreement to resolve the issues and concerns OCR identified during its investigation.

This letter summarizes OCR's findings. For each issue, OCR states the applicable legal standards, the evidence gathered during the investigation, and OCR's determinations.

Background Information

The College is located in Elmira, New York. During academic year 2015-2016, there were approximately 1,376 students, including both undergraduate and graduate students, enrolled at the College. Undergraduate enrollment was approximately 70% female and 30% male.

OCR reviewed the College's campus crime statistics and security information provided pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (the Clery Act), which is reported by calendar year.¹ Accordingly to Clery Act data, in 2012 and 2013, there were two forcible sexual offenses reported in each year; and in 2014, there were five rapes reported.²

The Complainant filed her complaint with OCR on April 7, 2014. She alleged that the College failed to respond appropriately to a complaint of forcible sexual assault that she made against Student 1 on or about October 28, 2013.

During the investigation, OCR reviewed documentation that the Complainant and the College submitted, including the College's policies and procedures. OCR also interviewed the Complainant and College personnel, including its Title IX Coordinator and Interim Dean of Student Life. In addition, OCR reviewed the College's handling of individual complaints of sexual harassment made in academic years 2012-2013, 2013-2014, and 2014-2015. OCR also conducted focus groups with students at the College.

Designation and Notice of a Title IX Coordinator

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX, including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by the regulation implementing Title IX. It also requires each recipient to notify all of its students and employees of the name, office address and telephone number of the employee or employees so designated.

OCR determined that the College has designated the Director of Institutional Research as its Title IX Coordinator. The College's "Title IX Policy" brochure and "Policy Against Gender Discrimination and Sexual and Other Misconduct" included the Title IX Coordinator's name, title, telephone number, and electronic mail (email) address, but did not provide her office address. The College's website included the Title IX Coordinator's name, title, telephone number, email address, and office address in a section of the College's website titled, "Student Consumer Information," but did not provide her office address in a section of the website titled, "Sexual Misconduct Information, Resources."³

¹ Data for calendar year 2015 had not yet been reported as of November 15, 2016.

² The category of forcible sexual offenses was eliminated in 2014; instead, it was broken down into types of forcible sexual offenses, including rape.

³ See http://www.elmira.edu/Student/Offices_Resources/Student_Consumer_Information.html and http://www.elmira.edu/Student/Offices_Resources/Sexual%20Misconduct%20Information/Resources.html (last visited July 7, 2016).

Based on the foregoing, OCR determined that the College has designated at least one person to coordinate its efforts to comply with and carry out its responsibilities under the requirements of Title IX; however, the College failed to effectively notify all students and employees of the office address of the designated Title IX Coordinator, as required by 34 C.F.R. § 106.8(a). Accordingly, OCR determined that the College is in violation of the regulation implementing Title IX, at 34 C.F.R. § 106.8(a).

Notice of Non-Discrimination

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by Title IX and this part not to discriminate in such a manner. Such notification shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto, unless Subpart C does not apply to the recipient, and that inquiries concerning the application of Title IX and this part to such recipient may be referred to the employee designated pursuant to § 106.8, or to OCR's Assistant Secretary. Section 106.9(b) requires each recipient to include the notice of non-discrimination in each announcement, bulletin, catalog, or application form which it makes available to the types of persons described in § 106.9(a), or which is otherwise used in connection with the recruitment of students or employees.

The College includes a non-discrimination notice in its College Bulletin (course catalog), on the "Employment Opportunities" page of the College's website, on its employment application, in its Employee Handbook, and in online student policies, including the Student Handbook, as well as other locations on the College's website.⁴ The notice in each of these places states: "In compliance with Title IX of the Education Amendments of 1972 and the Age Discrimination Act of 1975, and other state, federal, and local laws, Elmira College does not discriminate on the basis of age, color, race, gender, sexual orientation, religion, national origin, or disability in any phase of its employment process, and of its admission or financial aid programs, or any aspects of its educational programs or activities." The non-discrimination notice does not state that the College does not discriminate on the basis of sex, or that inquiries concerning the application of Title IX and its implementing regulation may be referred to the Title IX Coordinator or to OCR's Assistant Secretary.

Based on the foregoing, OCR determined that the College's notice of non-discrimination does not comply with the requirements of the regulation implementing Title IX, at 34 C.F.R. § 106.9. Specifically, the notice does not state that the College does not discriminate on the basis of sex, and that inquiries concerning the application of Title IX and its implementing regulation may be referred to the Title IX Coordinator or to OCR's Assistant Secretary.

⁴ For example, the non-discrimination notice is published on a section of the College's website titled "Procedures for Requests." (last visited July 7, 2016)

Grievance Procedures

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. OCR has identified a number of elements necessary in evaluating if grievance procedures are prompt and equitable, including whether the procedures provide for: (a) notice to students and employees of the procedures, including where complaints may be filed, that is easily understood, easily located, and widely distributed; (b) application of the procedures to complaints alleging discrimination or harassment carried out by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) notice to parties of the outcome and any appeal; and, (f) an assurance that the recipient will take steps to prevent further harassment and to correct its discriminatory effects on the complainant and others, if appropriate.⁵

The regulation implementing Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints; however, a recipient's grievance procedures for handling all types of sex discrimination complaints must comply with the prompt and equitable requirements of the regulation implementing Title IX. Recipients should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling services, and their right to file a complaint with local law enforcement.

To ensure individuals can invoke grievance procedures without fear of reprisal, the regulation implementing Title IX prohibits the recipient and others, including students, from retaliating against any individual "for the purpose of interfering with any right or privilege secured by [Title IX]," or because that individual "has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" under Title IX. 34 C.F.R. § 100.7(e) (incorporated by reference through 34 C.F.R. § 106.71). Prohibited retaliatory acts include intimidation, threats, coercion, or discrimination against any such individual. At a minimum, recipients therefore should take steps to prevent any retaliation against a student who makes a complaint or any student who provides information regarding the complaint, and must ensure that complainants and their parents/guardians, if appropriate, know how to report any subsequent problems, and should follow up with such individuals to determine whether any retaliation or new incidents of harassment have occurred.

Pending the outcome of an investigation, Title IX requires a recipient to take steps to protect the complainant from further harassment as necessary, including taking interim steps before the final outcome of the investigation.

As of the date of this letter, the College relies upon one document for its Title IX grievance procedures, entitled "Policy Against Gender Discrimination and Sexual and Other Misconduct" (the Policy). The Policy was last updated during academic year 2015-2016.

⁵ For further explanation, see generally OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, at: <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (Jan. 19, 2001) [hereinafter "2001 Guidance"].

The Policy applies to all students, faculty, staff, and “non-community members.”⁶ It applies to conduct on campus as well as in connection with any College-sponsored activity, regardless of its location, and is available on the College’s website.⁷ Complainants have the right to make a report to Campus Security, one of the “Responsible Administrators” listed in the Policy,⁸ local law enforcement and/or the New York State Police, or to choose not to report. Complaints can be made directly by victims, by third parties on behalf of victims, or anonymously. As long as the College “has authority over” the potential violator (the respondent), there is no time limit for filing a complaint; however, the College encourages complainants to file reports as soon as possible to maximize the College’s ability to respond effectively. The preponderance of the evidence standard applies to complaints of sexual misconduct under Title IX, and complainants are protected from retaliation.

Once a Responsible Administrator receives a complaint, s/he will discuss with the complainant the available options for proceeding, including discipline against the respondent; remedial actions to correct the effects of the misconduct; interim measures to separate the complainant and respondent in academic, residential, or work settings; and other measures to enhance security. The Responsible Administrator will share with the Title IX Coordinator all information s/he collects.

The College may take interim measures to respond immediately to a complaint, including changing housing, academic schedules, and/or work assignments; providing transportation; removing the complainant’s information from the College directory; issuing a no contact order; and providing escorts or increased monitoring. The College may also issue a suspension pending the outcome of an investigation.

Both the complainant and the respondent are allowed to have an advisor of their choice accompany them to any investigatory meeting; however, unless the complaint involves sexual assault, domestic or dating violence, or stalking, the advisor must be a non-attorney member of the campus community. The advisor serves only a supporting role; the advisor is not permitted to speak to the investigators at any meetings.

Mediation is allowed for certain kinds of complaints, but mediation is not allowed for complaints of sexual assault or other violence, or where a student is complaining about conduct by an employee in a position of authority over that student. Either party can request mediation; however, both parties must agree to participation in mediation, and the Title IX Coordinator must also agree that mediation is appropriate under the circumstances. Either party has the right to end the mediation at any point. A third-party mediator must conduct the mediation and report to the Title IX Coordinator that the mediation occurred. If the parties reach an agreement, that agreement is subject to the Title IX Coordinator’s approval.

⁶ The Policy does not provide an exhaustive definition of “non-community members,” but rather cites alumni, family of students, and vendors as examples of individuals who fall into this category.

⁷ See http://elmira.edu/Student/Offices_Resources/Sexual%20Misconduct%20Information/index.html (last visited July 7, 2016).

⁸ The Policy lists the following “Responsible Administrators”: The Title IX Coordinator, the Director of Campus Security, the Director of Resident Life, the Dean of Student Life, the Vice President of Enrollment Management, and the Vice President of Athletics.

Once an investigation begins, the Title IX Coordinator appoints a team of internal Title IX investigators, who will contact and meet with each party to discuss the investigation procedures. Each party receives a notice listing the alleged violations of the Policy, as well as the date, time, location, and factual allegations underlying the alleged violations. The investigative process includes interviews of the parties and other witnesses, as well as collection and review of other evidence. Each party has an equal opportunity to present information to the investigators, as well as an equal opportunity to review, upon request, information in the case file on campus. The Policy outlines the rights of each party throughout the process.

At the end of the investigation, the investigators must issue a written report and submit it to the appropriate person (the decision maker), depending on whether the respondent is a student, faculty member, other employee, or third party.⁹ The decision maker may accept or reject the investigators' findings and recommendations, send the matter back for reconsideration, or issue his/her own determination. The decision maker reviews the investigators' findings and recommendations based on a preponderance of the evidence standard. If the decision maker determines that the respondent violated the Policy, and if the complainant or respondent is a student, then both parties are allowed to submit a written impact statement to the Title IX Coordinator. The decision maker reviews the impact statements and determines sanctions.¹⁰ Any College employee or faculty member found to have engaged in misconduct by the decision maker is subject to a range of discipline depending on the circumstances of each case.¹¹

The College will send written notification of all determinations to each party. Either party may appeal the determination, unless the party is not a student or College employee. The Policy outlines three grounds on which an appeal may be filed.¹² The person designated to review the appeal may accept, reject, or modify any findings or sanctions, and will issue a written decision regarding the appeal, based on the preponderance of the evidence standard.¹³

The College will take reasonable and appropriate remedial action to prevent sexual misconduct, eliminate a hostile environment, prevent its recurrence, and correct its discriminatory effects on the complainant and others. The College's investigation and resolution of a complaint,

⁹ If the respondent is a student, then the Dean of Student Life will review the finding and recommendations of the investigatory team and make a final determination, including issuing appropriate sanctions. If the respondent is a faculty member, then the Associate Dean of Faculty has this authority. If the respondent is another type of employee, the Director of Human Resources has this authority. If the respondent is a third party, then the Director of Campus Security or other College administrator (as designated by the Title IX Coordinator) has this authority.

¹⁰ A student found to have engaged in misconduct is subject to a range of sanctions depending on the circumstances of each case. Those sanctions can include written warnings, educational programs, education assignment, mandatory referral to the Clarke Health Center (or other appropriate healthcare provider), a fine, suspension, expulsion, referral to other disciplinary bodies, and other sanctions as may be deemed reasonable by the College under the circumstances.

¹¹ That discipline can include termination, referral to other disciplinary bodies, or other sanctions as may be deemed appropriate by the College.

¹² Appeals will be permitted only for claims of procedural error (including issues relating to the adequacy of any investigation), new evidence which was not reasonably available at the time of the investigation and decision, or because any sanction imposed (or the failure to impose a sanction) is claimed to be inappropriate.

¹³ Where the accused is a student, the appeal will be considered by a panel consisting of the Vice President of Enrollment Management and two other College officials appointed by the Title IX Coordinator. Where the accused is a faculty member, the appeal will be sent to Vice President of Academic Affairs; and where the accused is a non-faculty employee, the appeal will be sent to the Vice President of Finance and Administration.

excluding an appeal, normally will not exceed 60 calendar days; however, this timeframe may be extended based on the nature of the complaint, or because of extenuating circumstances such as the time in the academic year and College breaks and the effect of concurrent criminal proceedings. The investigation itself will typically be completed within 14 days of receipt of the complaint, and the decision maker will typically complete his/her review of the investigative findings within 14 days thereafter. The parties have ten days from the date of the written determination to file an appeal. The appeal officer then has ten days to render a determination on the appeal.

Confidential resources are listed, both on and off-campus. On-campus confidential resources include the College's Health Services, Counseling Services, and Office of Retention and Advocacy. Off-campus confidential resources include local medical providers, hotlines, and counseling services. Individuals who are unsure of whether they wish to file a formal complaint may still seek help from a confidential resource, and doing so does not constitute reporting to the College or otherwise obligate the individual to file a formal complaint.

For situations in which a complainant reports an incident to a Responsible Administrator but then requests confidentiality or requests that the College not investigate or take other responsive action, the Policy emphasizes that Responsible Administrators are not confidential resources. If a complainant who reports a violation to a Responsible Administrator requests that the College not conduct an investigation or take disciplinary action, the College may decide not to honor that request, depending on the circumstances. The College will similarly consider a complainant's request for confidentiality or anonymity, but may not honor such a request, depending on whether it can proceed with an investigation without revealing the complainant's identity. If the College receives an anonymous complaint, it will investigate the complaint and take action to the extent practicable.

Based on the foregoing, OCR determined that the College's current Title IX grievance procedures, effective for academic year 2015-2016, are compliant with the regulation implementing Title IX. Specifically, the current Title IX grievance procedures provide for: (1) notice to students and employees of the grievance procedures, including where complaints may be filed; (2) application of the grievance procedures to complaints alleging discrimination or sexual harassment or assault/violence carried out by employees, other students, or third parties; (3) provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence; (4) designated and reasonably prompt time frames for the major stages of the complaint process; (5) notice to the complainant and alleged perpetrator of the outcome of the complaint; and (6) assurance that the College will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, if appropriate. OCR noted a concern about what the grievance procedures meant regarding the need to have "authority over the potential violator" with regard to the time limits for filing a complaint, and whether this would prevent the College from pursuing a complaint if, for instance, the respondent was no longer enrolled. The current procedures specify that the "preponderance of the evidence" standard applies to complaints of sexual misconduct, explains that complainants are protected from retaliation, and describes interim measures the College may provide to respond immediately to complaints.

In addition, the current procedures advise students about their right to file concurrent complaints with law enforcement or choose not to file; the option of mediation, except for complaints of sexual assault, sexual violence, or where a student is complaining about an employee who has authority over that student, and the right to end the mediation at any point; the availability of confidential resources, both on and off-campus; and the circumstances under and extent to which the College will investigate even where confidentiality has been requested.

Handling of Criminal Complaints/Law Enforcement's Role

As noted above, a recipient must provide a prompt resolution of complaints under Title IX pursuant to 34 C.F.R. § 106.8(b). The regulation does not provide an exception for the recipient to perform its duty in the event that law enforcement activities are also occurring. OCR requested that the College provide copies of any Memorandum of Understanding (MOU) it had with local law enforcement. The College did not provide a copy of a MOU in response.

The Policy states that the College encourages complainants to report alleged sexual misconduct to local law enforcement, and provides contact information for the local police department. It explains that a complaint filed with the College is processed separately from any related criminal investigation or proceeding, and that a complainant can file a complaint with either the College or law enforcement, or both. It also notes that the standards for finding a violation under the Policy and under criminal law are different.

The Policy states that any internal investigation the College conducts will proceed concurrently with any criminal investigation or proceeding. The College may temporarily delay its investigation to enable law enforcement to gather evidence; however, such delays will not last longer than ten days unless law enforcement authorities specifically request and justify a longer delay.

The Policy further explains that law enforcement may issue an order of protection, including one that restricts the respondent's right to enter the College's property. The College will abide by the terms of any lawfully issued order of protection, and will also provide assistance to individuals who seek to obtain an order of protection.

OCR determined that the written grievance procedures will help the College provide prompt and equitable resolutions when there are concurrent investigations by law enforcement agencies also responding to complaints of sexual assault and violence; however, OCR strongly encourages, and the College has agreed to request, a MOU with local law enforcement to improve communication and coordination and to address the protocols and procedures for referring allegations of sexual violence, sharing information, and conducting contemporaneous investigations.

Training

As previously discussed, the regulation implementing Title IX requires both the designation of a Title IX Coordinator and grievance procedures that provide for the prompt and equitable

resolution of complaints. One means to ensure these measures are effective is for recipients to provide training to responsible employees, including the Title IX Coordinator, and to students.¹⁴

OCR determined that all College employees, including the Title IX Coordinator, receive mandatory sexual harassment prevention training annually. In addition, during academic year 2013-2014, the College's Title IX Coordinator participated in a comprehensive, interactive one-day training developed by two higher education attorneys with practice expertise in Title IX. Prior to attending the training, the Title IX Coordinator and other attendees were required to view three video sessions describing the basic legal requirements of Title IX, required policies and trainings, and legally compliant response strategies. At the training, attendees were asked to apply the video session information to seven different workshop sessions relating to various elements of Title IX compliance. The Title IX Coordinator advised OCR that this training informed the College's work in overhauling its Title IX grievance procedures following academic year 2013-2014.

The College informed OCR that each year during its new student orientation, it hosts an interactive workshop for students. The workshop focuses on sexual and gender-based misconduct; the role of societal pressures, gender stereotypes, and alcohol in such incidents; and bystander intervention training. Beginning with its orientation for Summer Session 2014, the College has distributed a booklet to new students that contains detailed information about the College's sexual harassment and assault policies and procedures. Also, as of the orientation for Summer Session 2014, the College has included detailed information on its sexual harassment and sexual assault policy and procedures in its Parent Information booklet, which it distributes to parents in person or by mail. The College informed OCR that Residence Life staff in each first-year dormitory meets with first-year students at the start of each academic year to review the Student Handbook, including specifically the harassment and assault policies and procedures. Additionally, each fall the College has a local organization provide an interactive workshop for all students about sexual assault awareness and prevention.

OCR identified no concerns in connection with the College's training efforts under Title IX. As the College takes the actions required in the resolution agreement to address compliance issues OCR identified, OCR will monitor to ensure that the College continues to provide annual training to staff and informational sessions to students to ensure that the College effectively addresses sexual harassment incidents on campus.

Climate Assessment/Outreach

OCR staff conducted two focus groups on the College's campus. On those dates, OCR also provided an opportunity for members of the College community to meet with OCR staff individually. The focus group sessions included College administrators, staff and students.

Students expressed concern that the College had not done enough to build awareness about sexual harassment and sexual assault in its campus community. As an example, students stated

¹⁴ The importance of training is explained more fully in the 2001 Guidance at pages 13-14, 19, and 21; *see also* OCR's "Questions and Answers on Title IX and Sexual Violence" (April 29, 2014) [hereinafter "Title IX Q&A"], at Questions J-1 to J-3.

that the College put up Title IX awareness posters only three weeks prior to OCR's visit, as the academic year was already winding down. Students also voiced concern about the College's response to sexual assault complaints, stating that the College: (a) makes it difficult for students who wish to file complaints to understand to whom they should report their concerns; (b) generally seeks to downplay complaints that it does receive, including discouraging students from filing police reports; and (c) administers a weak sanction even when it determines that a student has committed a sexual assault. Students expressed a concern about the overall campus climate, explaining that because it is a small school, gossip spreads quickly. Finally, students reported concerns about online harassment within the campus community, through the anonymous messaging application Yik Yak and a "Campus Chatter" forum on the College's Student Life website. Not all of the harassment described was sexual in nature.

College administrators and staff were also engaged in the focus group discussions. The administrators acknowledged problems with the College's procedures in the past, but asserted that the College was trying to improve the situation. During the focus group sessions, the College's Title IX Coordinator admitted explicitly that there were problems with how the College had addressed Title IX issues in the past, but stated that the College is now improving.

Record Keeping Practices

The College is required to meet its legal obligation to comply with the record-keeping provisions of the regulation implementing Title IX.¹⁵ A recipient is required to make available to OCR information that may be pertinent to reach a compliance determination. OCR determined that the College was inconsistent in maintaining complete records of investigations for the time period for which OCR reviewed files, academic years 2012-2013, 2013-2014 and 2014-2015. For example, in several cases, the College did not maintain (or provide to OCR) adequate documentation of material information ascertained during its investigations. Some of the information not included in the files is identified in case discussions below, including a lack of documentation as to whether the College consistently offered and provided appropriate interim measures. The absence of complete records means that relevant information was not available to OCR during its investigation to assess whether the College is carrying out its legal obligations under the regulation implementing Title IX. OCR reviews pertinent practices and policies of the College, the circumstances in which the noncompliance occurred, and other factors relevant to a determination of whether the College is in compliance with Title IX.

The College's Response to Complaints of Sexual Harassment/Violence

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by a recipient. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title

¹⁵ The regulation implementing Title VI, at 34 C.F.R. § 100.6(b) and (c), requires that a recipient of Federal financial assistance make available to OCR information that may be pertinent to reach a compliance determination. This requirement is incorporated by reference in the regulation implementing Title IX at 34 C.F.R. § 106.71

IX. Sexual harassment creates a hostile environment if the conduct is sufficiently serious that it denies or limits a one's ability to participate in or benefit from the recipient's program.¹⁶

In determining whether the sexual harassment of a student was sufficiently serious such that it denied or limited the student's ability to participate in or benefit from the recipient's program, OCR examines all of the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical), the frequency and severity of the conduct, the age and relationship of the individuals involved (e.g., teacher-student or student-student), the setting and context in which the harassment occurred, whether other incidents have occurred at the college or university, and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. For example, a single instance of rape is sufficiently severe to create a hostile environment.

If a recipient knows or reasonably should have known about sexual harassment that creates a hostile environment, Title IX requires a recipient to take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination.

Additionally, under Title IX, a recipient must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity. Further, once a school is on notice of off-campus sexual harassment against a student, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment; and, if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct.

Complainant's Case

Approximately one and a half months prior to the incident that formed the basis of the complaint filed with OCR, on September 7, 2013, a resident assistant (RA) witnessed a confrontation between the Complainant and Student 1 in a dormitory stairwell (Incident 1). The RA observed that Student 1 was holding the Complainant's wrist and shaking it. The RA filed an incident report, in which she described the confrontation and a conversation she had with the Complainant shortly after the incident. The Complainant advised the RA that she and Student 1 were in a relationship, and Student 1 was "very abusive." The RA asked the Complainant if Student 1 was ever physically abusive, and the Complainant responded, "No, he is very emotionally abusive." In response to Incident 1, within two days, the College referred the Complainant for counseling, as an offer of support. Further, within three weeks, the College conducted an administrative hearing for Incident 1, which it classified as "physical abuse." On

¹⁶ For further explanation, see 2001 Guidance, at Section V.A., page 5.

September 30, 2013, the College notified Student 1 that he had been found responsible for violating the College's physical abuse policy, and as a result, was placed on disciplinary probation until April 11, 2014. The College advised OCR that when responding to Incident 1, it was unaware that the Complainant had previously experienced what she considered unwelcome sexual contact with Student 1.¹⁷ The Complainant's relationship with Student 1 continued after Incident 1, through September and October 2013.

According to a College Campus Security Incident Report, approximately one month after the hearing about Incident 1, the Complainant's mother called College Campus Security and reported that the Complainant had been sexually assaulted by Student 1 (Incident 2). The Campus Security Officer responding to the report (the Officer) notified the College Resident Life Coordinator¹⁸ on duty (RLC 1) of the report. The Officer and RLC 1 reported to the dormitory in which the Complainant and Student 1 both lived, and discussed the matter with a second Resident Life Coordinator (RLC 2). RLC 1 twice attempted to call the Title IX Coordinator, but was unable to reach him. RLC 1 then contacted the College's Vice President of Enrollment Management, who advised RLC 1 and RLC 2 that they should interview the Complainant.

RLC 1 prepared a report of the College Office of Residence Life's response to Incident 2.¹⁹ She stated that when the Complainant's mother called Campus Security, she told the Officer that Student 1 was "forcing himself" on the Complainant, and that the mother was unsure whether it was sexual assault or rape. RLC 1's report described her and RLC 2's interview with the Complainant. RLC 1 stated that the Complainant described her relationship with Student 1 in detail, stating that Student 1 was controlling, manipulative and jealous; was mentally and physically abusive; and wanted sex all the time. The RLCs asked the Complainant if Student 1 had ever continued to have intercourse with her after she asked him to stop. She did not give a direct response. The RLCs also asked if Student 1 had raped her and she stated "I don't know if he has raped me, and I also adapt way too quick. I felt emotional tension, so I just gave out, and then felt guilty again." The RLCs also advised the Complainant to contact her RA, an RLC, or Campus Security if she needed any sort of assistance.

The next day, the College moved the Complainant to another dormitory on campus, and banned Student 1 from all dormitories except his own and one other dormitory on campus. The Complainant advised OCR that she did not wish to move, because her friends all lived in her original dormitory, but the College did not offer her any alternatives. The College's Title IX Coordinator at the time of Incident 2 advised OCR that he had asked the Complainant whether she preferred to move or stay in the same dormitory, and she chose to move. The Coordinator

¹⁷ As discussed in greater detail below, the Complainant first brought this information to the College's attention in the written statement she filed with the College in conjunction with her later internal complaint, on November 21, 2013.

¹⁸ The RLC position in the College's Office of Residence Life is a live-in administrator, responsible for supervising an undergraduate residence hall and a staff of RAs. RLCs report to the Director of Residence Life, and in addition to other responsibilities, are responsible for participating in a scheduled "on-duty" rotation (including emergency situation response), and responding to incidents regarding student conduct and discipline. At the time of Incident 2, RLCs at the College were recent alumni, some of whom may have been pursuing graduate studies at the College.

¹⁹ This was separate from the College Campus Security's report concerning the same incident, dated October 28, 2013.

stated that he believed this was a better outcome than moving Student 1, because at least initially, Student 1 would not know where the Complainant lived.

Two days after the move, the College's Director of Multicultural and International Student Services, who also served as the College's Administrative Hearing Officer, met with the Complainant regarding Incident 2. In an email following up on the in-person meeting, the Administrative Hearing Officer instructed the Complainant that she should avoid visiting the floor of her old dormitory on which Student 1 lived.

Five days after her first call, the Complainant's mother contacted the Officer to follow up; she expressed concern about the Complainant's well-being. The Officer in turn contacted the RLCs on duty (RLCs 3 and 4), who called the Complainant's mother. The Complainant's mother stated her belief that the Complainant was in "a state of meltdown" in the aftermath of Incident 2, and was "truly scared of [Student 1]." She also stated to the RLCs that Incident 2 was rape in the view of the Complainant. RLC 4 spoke with the Complainant after this call, and offered to put her in contact with the County Crisis Center.

By letter dated November 6, 2013, the Administrative Hearing Officer initiated an administrative hearing regarding Incident 2, to take place on November 12, 2013.²⁰ The Administrative Hearing Officer copied the College's Title IX Coordinator and the Vice President of Student Affairs on the letter. At the hearing, Student 1 was charged with the following violations of the Student Conduct Expectations (Code of Conduct): committing an act of physical abuse, committing an act of intimidation or bullying, committing an act of harassment toward another member of the College community, and endangering the mental or physical health of another member of the College community. Though the Complainant's mother had specifically alleged that Student 1 sexually assaulted the Complainant, the College did not initiate a sexual assault disciplinary proceeding at this time. The College explained that it interpreted the Complainant's statements to RLCs 1 and 2 in the aftermath of Incident 2, discussed above, as a description of a relationship in which the Complainant felt controlled and bullied, and in which Student 1 wanted sex more often and in a rougher way than the Complainant did, but also in which their past

²⁰ As discussed later in this document, the College erroneously believed that the Complainant was not raising an allegation of sexual assault/violence. It initiated an administrative hearing under its disciplinary system for students, as set forth in its Code of Conduct, which in academic year 2013-2014 consisted of four "tiers" of possible disciplinary response by the College. The tier that applied to a given offense was determined based on the nature and severity of the offense, with Tier One applied to minor offenses and Tier Three applied to the most severe offenses. Tier Four, the final level of the disciplinary system, was the level at which the College President heard appeals from the lower three tiers. The Code of Conduct set forth the specific offenses and potential sanctions that fall within each tier. It also described the entity within the College community that was responsible for adjudicating complaints that arose under each tier. For complaints arising under Tier One, Campus Security or Residence Life Administration issued a Conduct Citation. For complaints arising under Tier Two, there was a hearing before either the Student Judicial Board or the Administrative Hearing Board (consisting of two trained hearing officers). For complaints arising under Tier Three, there was a hearing before a Discipline Committee or Conduct Committee (these two terms were used interchangeably to describe the same committee). The Dean of Student Life and Vice President of Enrollment Management were responsible for determining whether a referral to the Discipline Committee/Conduct Committee was appropriate. Finally, as discussed above, Tier Four consisted of appeals of lower tier decisions to the College President. The Code of Conduct for academic year 2013-2014, when the Complainant filed her complaint with the College, set forth, in relevant part that "harassment violations" were Tier Two offenses, whereas "sexual assault" was a Tier Three offense. Thus, the College erroneously determined that the Complainant had alleged a "harassment violation" rather than a sexual assault.

sexual activities had not been without her consent. At the hearing, however, the Complainant's description of Incident 2 led the College to believe that the Complainant wished to pursue a complaint of sexual assault. Since a complaint involving sexual assault involved a separate procedure from the administrative hearing, the College required the Complainant to submit a written statement to initiate the Title IX grievance process under the Policy to address the Complainant's allegation of a sexual assault.

On November 15, 2013, the College issued a written notice of its determination regarding the administrative hearing on November 12, 2013. The College found Student 1 to be responsible for "committing an act of intimidation or bullying" and "endangering the mental or physical health of another member of the College community," and it imposed various measures to address the situation.

On November 21, 2013, the Complainant submitted a written "incident report" that the College considered the Complainant's initiation of its Title IX grievance procedure regarding an alleged sexual assault.²¹ According to the incident report, the Complainant stated that she and Student 1 first met prior to the start of academic year 2013-2014, during the College's summer registration for incoming first-year students. Thereafter, they communicated frequently with one another, and Student 1 visited the Complainant at her parents' house. Complainant stated that Student 1 engaged in unwelcome, physically aggressive foreplay, and was persistent in persuading her to engage in sexual intercourse; no one apprised the College of this incident at the time the Complainant and Student 1 arrived on the College's campus. In the incident report, the Complainant also shared additional details regarding the events surrounding Incident 2. She stated that on October 25, 2013, Student 1 had approached her seeking to reconcile, and she agreed to meet with him after his last class that day. She stated that when they met, he "pulled [her] back into his room, took [her] books from [her], and threw [her] on the bed. He started to become forceful, persuading [her] to take off her clothes, and out of fear, [she] agreed to have sex with him." The Complainant said that she and Student 1 got back together after this encounter. Subsequently, after another sexual encounter that upset her, the two broke up for good. In subsequent conversations with her friends and her mother, the Complainant came to believe that the incidents "felt like rape." She informed her mother of this belief, and her mother contacted campus security to report her concerns.

The College did not begin an investigation into the Complainant's incident report of November 21, 2013, until February 6, 2014. The College advised OCR that it did not immediately commence its investigation for a number of reasons, primarily based on the College's academic calendar. First, the College's Thanksgiving break was imminent. Then came the final day of classes and final exams were administered. Shortly thereafter, the College began its winter break and did not reconvene for its winter 2014 semester until January 6, 2014.²² In addition, the College stated that Student 1 suffered a medical episode in January 2014, which led to his hospitalization for at least a week. Thus, the College asserted that it delayed the investigation because it had to balance its concerns for both the Complainant and Student 1. Nevertheless, the

²¹ OCR was unable to determine, based on documentation provided by the College, whether the College confirmed with the Complainant at the time she submitted the incident report that she understood how to report if any retaliation resulted from her complaint.

²² The College operates on a trimester schedule.

College stated that it had previously taken interim measures related to the Complainant's earlier complaint that remained in place.

OCR reviewed the College's case file, which included transcripts of the College's investigatory interviews, dated February 6, 7, and 12, 2014; a draft investigative report, dated February 14, 2014; and a final investigative report submitted to the Title IX Coordinator on March 3, 2014. In its investigation, the College interviewed the Complainant, Student 1, and two additional student witnesses (Students 2 and 3).

In her interview with the investigative officers on February 6, 2014, the Complainant detailed her relationship history with Student 1, dating back to the summer of 2013. She described his allegedly controlling and manipulative behavior, verbal abuse, and physically abusive conduct during their sexual encounters. In describing her second-to-last encounter with Student 1, the Complainant stated, "[Student 1] said that he wanted to talk and grabbed me from the hallway and pushed me onto the bed and raped me."

Students 2 and 3 corroborated the Complainant's prior statements to the RLCs following Incident 2, i.e., that she wanted abstinence and Student 1 did not want a sexless relationship. Student 4, who had been Student 1's roommate during the fall 2013 semester, stated that the Complainant had told him at the time that Student 1 had verbally and physically abused her; however, he had only witnessed one instance of verbal abuse.

According to the investigative officers, Student 1 stated that his relationship with the Complainant was "unhealthy" because he and the Complainant "were always fighting and yelling at each other," but he denied any physical contact with the Complainant during such fights. Student 1 stated that he hit the Complainant during sex but asserted that she enjoyed it. Student 1 stated that the Complainant never told him "no" during any of their sexual encounters, and asserted that none of their sexual encounters could have been construed as "sexual misconduct." The investigative officers did not ask Student 1 about any specific sexual encounters or about the Complainant's stated desire for "abstinence."

On February 12, 2014, the investigative officers conducted a follow-up interview with the Complainant, during which they asked the Complainant if she ever said "no" to Student 1 at any time during their sexual contact. She stated that she would say "we shouldn't do it" and there were times she said she did not want to, but she did not believe she ever said the word "no."

The College's final investigative report concluded that Student 1 had sexually harassed the Complainant and committed sexual misconduct; however, the final investigative report did not conclude that Student 1 had engaged in sexual intercourse without the Complainant's consent. As a sanction, the final investigative report recommended several measures, including that Student 1 have no contact with the Complainant for the remainder of academic year 2013-2014 and also through academic year 2014-2015, and that the Complainant be allowed to choose her housing and register for courses before Student 1 until both students were no longer enrolled at the College.

By letters dated March 7, 2014, the College's Title IX Coordinator informed both the Complainant and Student 1 of the College's findings.²³ The letters stated that Student 1 was found responsible for "displaying inappropriate behavior and misconduct;" the letter did not state that Student 1 was found to have sexually harassed the Complainant. The letters outlined a number of sanctions, including: (1) Student 1 was banned from living in or visiting any residence hall in which the Complainant resides; (2) Student 1 could not register for or attend the same section of a course for which the Complainant registered; (3) Student 1 was assigned "housing probation"²⁴ through the conclusion of academic year 2015-2016, and advised that any incidents of "misconduct" occurring in or pertaining to residence halls would result in a review of his status as a student; and, (4) Student 1 was issued a "formal warning" that any other incidents of harassment while he was a student might result in his dismissal from the College. Neither letter advised the Complainant or Student 1 of appeal rights; the Title IX Coordinator asserted that he orally notified both parties of their appeal rights. The Complainant asserted that the Title IX Coordinator advised her that Student 1 could appeal the determination, but not that she could appeal. Neither party filed an appeal.

Based on the above, OCR determined that the College did not conduct a prompt investigation into the Complainant's report of a sexual assault. OCR did not make a determination about interim measures given the conflicting evidence offered by the College and the Complainant about her desire to move dormitories rather than requiring the respondent to move; additional information was required to resolve the conflict. OCR determined that the College conducted an equitable investigation into the Complainant's report of sexual assault in that it provided the parties an equal opportunity to present relevant witnesses and other evidence during its investigation. The College appropriately applied the preponderance of evidence standard. While the College did not make any specific findings as to hostile environment, the evidence does not indicate that the Complainant was subjected to subsequent encounters with Student 1 on the College campus, or any other source of related harassment, as a result of the College's failure to conduct a prompt investigation after the Complainant reported the incident. Accordingly, the evidence does not support that the Complainant continued to be subjected to a sexually hostile environment due to the College's failure to conduct a prompt investigation.

²³ In the Title IX Coordinator's letter to the Complainant, he advised her to contact Campus Security if any act of retaliation occurred.

²⁴ The College's Student Handbook for academic year 2013-2014 defined "housing probation" as follows: "A warning because of the engagement of certain behaviors, a resident student's housing may be revoked if another violation occurs. The consequences of violating the probation may be dismissal from the College for any student whose family does not live within commuting distance (50 miles) of the College. For a student within commuting distance, it means being banned from all residence halls and other related and appropriate sanctions. Housing Probation may be applied to a student who is involved in one serious incident, such as violent behavior, harassment, sexual harassment, compromise of the security of the living community, bullying or intimidation, etc. that does not result in a student's dismissal. It can also be applied to a student involved in a series of minor policy violations who has gone through one or more tiers of the discipline system. Housing Probation is usually administered by the Assistant Dean of Student Life and may be appealed to the Vice President of Enrollment Management. If the probation is administered by the Judicial Board, the appeal goes to the Vice President of Enrollment Management. If it is administered by the Discipline Committee, the President would receive the appeal. The length of the Housing Probation will be determined by the individual or board creating the sanction and can range from one term to the rest of one's career at the College."

Review of 16 Investigative Case Files

In addition to the College's handling of the Complainant's case, OCR reviewed how the College handled other sexual harassment complaints, including complaints of assault and violence, filed during academic years 2012-2013, 2013-2014, and 2014-2015, totaling 16 files.²⁵ OCR concluded that the College weighed the evidence in the 16 files consistent with a preponderance of the evidence standard. Based upon its review of these 16 files alone, however, OCR identified violations of Title IX and other concerns, which are discussed below.²⁶

OCR determined that information the College provided demonstrated that the College sometimes failed to provide prompt resolutions, and other times failed to provide equitable resolutions to these complaints, in violation of the regulation implementing Title IX at 34 C.F.R. § 106.8(b). OCR determined that when the College conducted investigations, the College equitably interviewed witnesses and reviewed evidence. The College also equitably provided notice of the outcome, except in two files: one in which the College notified the respondent that it would modify the restrictions imposed on him but did not communicate that modification to the complainant²⁷, and another in which the College provided no evidence of notice to the complainant while it provided written notice of the outcome of the investigation to the respondent.²⁸ In a third file, the College did not, in the notice of the outcome, identify what the College concluded based on the investigation, or specify the misconduct for which the respondent was responsible.²⁹ OCR identified four files in which the College did not promptly initiate and/or conduct the investigation.³⁰ Case Number 3 is illustrative of the College's failure to provide a prompt resolution to a sexual harassment complaint and sufficient information in the notice of outcome.

Case Number 3

A student (the complainant) complained to a RLC that she had been sexually assaulted by another student. The complainant claimed that she was drinking with the respondent, and ended up in the respondent's room, where he forced her to have sex. The College did not begin interviews until 44 days after the filing of the complaint. Over one month later, the Vice President of Enrollment Management sent a letter to the respondent, and an email to the complainant, informing them of the completion of the investigation. The letter and email did not explicitly identify what the College concluded based on the investigation, or specify the misconduct for which the respondent was found responsible.

²⁵ OCR requested all documentation relevant to each complaint, as well as a detailed description of the College's complaint investigation procedures. OCR's findings are based on the materials produced by the College in response to OCR's data requests.

²⁶ The College twice provided case files to OCR, once on June 12, 2014, and once on June 5, 2015. The College used a sequence of numbered tabs to identify the files in both submissions, and the files were not submitted in chronological order. OCR put the files in chronological order and applied case numbers from 1 to 16.

²⁷ This occurred in Case Number 2.

²⁸ This occurred in Case Number 16.

²⁹ This occurred in Case Number 3.

³⁰ This occurred in Case Numbers 3, 4, 10 and 13.

OCR's review identified 10 files with no record that the College assessed the need for or provided interim measures, or with records that demonstrated limited and sometimes improper interim measures.³¹ A recipient must provide interim measures where appropriate to comply with the regulation at 34 C.F.R. § 106.31 and ensure individuals can fully access a recipient's programs while an investigation is pending. Case Number 10 is an example of the College providing limited interim measures.

Case Number 10

A student (the complainant) reported to a RA that the respondent, who lived in her dormitory, entered her dormitory room when she was wearing only a towel. The respondent tried to kiss her and remove her towel. She pushed him away and told him to leave her room. The RA reported the incident to the RLC. In the Residence Life Incident Report, the RLC stated that the complainant should not have any contact with the respondent, and that, during winter break, the complainant would stay in a different dormitory, because it was unclear whether the respondent would be living in their dormitory over winter break. There was no documentation indicating whether the College offered the complainant counseling or other interim measures.

Further, OCR identified five files in which the College did not complete an investigation after the complainants stated that they did not wish to proceed with the investigation.³² The Title IX regulatory requirement that “no student” be denied the benefits of a recipient's education program or subjected to discrimination on the basis of sex, at 34 C.F.R. § 106.31(a), obligates the College to take steps to ensure student safety when it has notice of alleged discrimination. OCR has provided guidance regarding the issue of what a recipient should do when a complainant indicates that she/he does not want to proceed with a complaint investigation.³³ According to that guidance, when a complainant informs a college that he/she does not want to proceed with an investigation, the college is supposed to conduct an independent assessment of whether it can honor the complainant's request not to proceed while “still providing a safe and non-discriminatory environment for all students.” The College did not provide information to support that in making the decisions to not proceed with an investigation, the College conducted an independent assessment of whether it could honor the complainants' requests not to proceed while “still providing a safe and non-discriminatory environment for all students.” OCR found that in two files reviewed, such an assessment may have demonstrated to the College that it needed to proceed with an investigation despite the complainant's request not to proceed.³⁴ Case Number 9 illustrates this failure.

³¹ This is reflected in Case Numbers 1, 3, 4, 6, 8, 9, 10, 12, 14, and 15.

³² This occurred in Case Numbers 5, 7, 9, 12 and 13.

³³ For further information, see 2001 Guidance, Section VII.C, page 18. *See also* Title IX Q&A, Question E-1.

³⁴ This occurred in Case Number 9 (alleged rape by three athletes) and Case Number 13 (alleged physical harassment by a Residence Life staff member).

Case Number 9

A student (the complainant) reported to a RA that she was raped by three members of a College athletics team. She claimed that respondents forced her to drink alcohol, that one had sex with her, and that the two others tried to force oral sex. The RA notified the RLC about the incident and took the complainant and two of the complainant's friends to the hospital. The Dean of Students and RLC met with the complainant.³⁵ During the conversation, the complainant informed the College that she did not want to proceed under the College's Title IX grievance procedures; instead, she wanted to pursue the case only through a criminal prosecution. The Dean of Students sent a letter to the complainant confirming that the complainant did not want to participate in the College's investigative process and instead would pursue a criminal prosecution. The letter also stated the complainant could contact him if she decided to pursue this issue so that the College could support her. The documentation the College provided did not indicate if the College considered whether it should continue its investigation of the case or if it informed the respondents whether or not it decided to continue the investigation. The Dean of Students advised OCR that all three of the respondents were suspended from their athletics team while the complainant's allegation was still pending with the College; however, once the complainant indicated that she did not wish to proceed internally, the suspensions were lifted.

With respect to nine files, the information provided by the College was not sufficient for OCR to make an independent determination about whether the College properly addressed the effects of a possible hostile environment.³⁶

Summary of Resolution Agreement

The College delivered an executed copy of the Resolution Agreement to OCR on December 14, 2016. The Resolution Agreement addresses the compliance issues and other concerns identified in OCR's investigation, and when fully implemented, will resolve the College's noncompliance with Title IX. In accordance with the Resolution Agreement, the College agrees to:

- Add the office address of the College's Title IX Coordinator to all relevant documents containing information about how to contact the Title IX Coordinator.
- Revise its notice of non-discrimination to add that it prohibits discrimination on the basis of "sex." The College will also revise its notice of non-discrimination to state that inquiries concerning the application of Title IX and its implementing regulation may be referred to the designated Title IX coordinator(s) or to OCR's Assistant Secretary; and take steps to ensure that the notice is appropriately published and distributed.
- Revise its "Policy Against Gender Discrimination and Sexual and Other Misconduct" to delete or otherwise clarify any language that suggests the College would need "authority

³⁵ The documentation the College provided indicated that the College tried to schedule the meeting with the complainant earlier, but the complainant was sick and was unable to meet.

³⁶ This occurred in Case Numbers 1, 3, 4, 8, 9, 10, 12, 13, and 14.

over the potential violator,” in order to investigate a complaint of sexual harassment, including assault/violence.

- Provide training to all College staff who are responsible employees for recognizing and reporting incidents of sexual harassment, and also provide training to its Title IX coordinator(s) and designees and any other College employees directly involved in receiving, processing, investigating, adjudicating and/or resolving complaints of sexual harassment, including sexual violence.
- Establish a committee of students (with representation from various student groups, including women’s groups, student athletes, Residential Life students, and others), the College’s Title IX coordinator(s), and others, as appropriate, to identify and recommend strategies to ensure that students understand their rights under Title IX and the College’s procedures, including how to report possible violations of Title IX.
- Offer information sessions to students so that they are aware of the College’s prohibition against sex discrimination (including sexual harassment and sexual assault/violence); how to recognize such sex discrimination and sexual harassment when it occurs; the College’s grievance procedures for Title IX complaints, including how and to whom to report any incidents of sex discrimination; a general overview of Title IX and the rights it confers on students; the resources available to students who have experienced sexual harassment or sexual assault/violence, including interim measures available during the course of an investigation; safe bystander intervention strategies; and, the existence of OCR and its authority to enforce Title IX.
- Ensure that existing informational materials contain information on: how and where to file a complaint of sexual harassment or sexual assault/violence with the College; the name and contact information for the College’s Title IX Coordinator, and a description of the responsibilities of the Title IX Coordinator; information on how to obtain counseling and academic assistance in the event of sexual harassment and sexual assault; and information on what interim measures can be taken to protect a complainant and how to request interim measures.
- Continue to conduct bi-annual climate surveys for students that contain questions about the student’s knowledge of sex discrimination (including sexual harassment and sexual assault/violence), any experiences with sex discrimination while attending the College, and the student’s awareness of the College’s Title IX policies and procedures.
- Send a letter to the City of Elmira Police Department and any other external local law enforcement agencies with jurisdiction over the College and its students requesting a Memorandum of Understanding (MOU) to improve communication and coordination and to address the protocols and procedures for referring allegations of sexual violence, sharing information, and conducting contemporaneous investigations.
- With respect to Complainant, the College will revise and re-issue the determination letter sent to Complainant to clarify that the misconduct that respondent was found responsible for was sexual harassment. Further, the College will investigate whether Complainant asked to move from her dormitory or whether she was required to move. Finally, the College will assess what effects, if any, the Complainant experienced due to the length of the investigation and adjudication process, as well as from moving from her dormitory, if appropriate, depending on the outcome of the College’s investigation. The College must redress the effects, if any, taking into account the interim relief already provided to the Complainant.

- Take actions to address violations and concerns OCR identified with respect to the 16 cases OCR reviewed from academic years 2012-2013, 2013-2014 and 2014-2015.
- Reexamine all reports of sexual harassment and sexual assault/violence filed with the College during academic year 2015-2016 and the Fall 2016 semester to determine whether each complaint was handled consistent with Title IX; and take appropriate action to address any problems identified, including providing remedies that may still be available for the complainants in these cases, such as counseling or academic adjustments.
- Provide complaint files and information about the College's processing of sexual harassment complaints for the academic years 2016-2017, 2017-2018 and 2018-2019.

Conclusion

This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this should occur, an individual may file a separate complaint alleging such harassment or intimidation.

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

OCR thanks the College for its cooperation with OCR during the course of the investigation. If you have any questions about OCR's determination, please contact Coleen Chin, Senior Attorney, at (646) 428-3809 or coleen.chin@ed.gov; Eric Bueide, Senior Attorney, at (646) 428-3851 or eric.bueide@ed.gov; or Aditi Shah, Compliance Team Attorney, at (646) 428-3897 or aditi.shah@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

cc: Laura Harshbarger, Esq.