



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION XV

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REGION XV  
MICHIGAN  
OHIO

March 24, 2017

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1375 East Ninth Street  
2100 One Cleveland Center  
Cleveland, Ohio 44114-1724

Re: OCR Docket #15-11-2115 and #15-13-2141

Dear Mr. Campbell:

The U.S. Department of Education (the Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaints filed against Wittenberg University (the University). On July 26, 2011, OCR received a complaint against the University (OCR Docket #15-11-2115), which alleged that the University discriminated against a University student (Student A) on the basis of sex by failing to respond promptly and equitably when Student A reported that she was sexually assaulted by a male student athlete. In addition, the complaint alleged that the University's grievance procedure did not comply with Title IX. On April 10, 2013, OCR received a second complaint against the University (OCR Docket #15-13-2141), which alleged that the University discriminated against a University student (Student B) on the basis of sex by failing to respond promptly and equitably when Student B reported that she was sexually assaulted by a male student athlete at a party hosted by members of a University athletics team.

OCR investigated whether the University failed to promptly and equitably respond to complaints, reports, and/or incidents of sexual harassment and sexual violence of which it had actual or constructive notice, including the reports filed by the two complainants in the above-referenced complaints; and whether, as a result, students, including the complainants, were subjected to or continued to be subjected to a sexually hostile environment.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department, the University is subject to these laws.

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

[www.ed.gov](http://www.ed.gov)

## **Background**

The University is a private, Lutheran-affiliated, liberal arts university in Springfield, Ohio, with a primarily undergraduate population of just under 2,000 students for the 2010-2011 through the 2016-2017 academic years.

Pursuant to their obligations under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics (the Clery Act), the University reported forcible sex offenses over the course of OCR's investigation as follows: 2 (2010); 3 (2011); 10 (2012); 7 (2013); 6 (2014); 5 (2015). The University began reporting additional statistics on relationship violence and stalking in 2013, respectively, as follows: 1, 0 (2013); 3, 3 (2014); 2, 10 (2015).<sup>1</sup>

## **Summary of Investigation**

Over the course of its investigation, OCR reviewed documentation submitted by the University and the complainants, including information regarding the incidents involving Student A and Student B; the University's policies and procedures regarding sexual harassment and sexual violence for the 2010-2011 through the 2016-2017 academic years; University training information and materials from the 2010-2011 through the 2015-2016 academic years for students, staff, Title IX Coordinators, and administrators involved in the investigation of Title IX complaints; and investigative files related to the University's handling of complaints concerning other incidents of sexual harassment and sexual violence filed from the 2010-2011 academic year through the fall semester of the 2013-2014 academic year and three investigative files pertaining to complaints filed during the 2015-2016 academic year. In addition, OCR interviewed Student B and numerous University staff, including Title IX Coordinators, investigators, and hearing panel members. OCR also conducted an onsite campus visit, during which OCR met with students and held focus groups.

## **Summary of OCR Determinations**

Based on the evidence obtained during its investigation, OCR found that the University violated Title IX as follows:

- From the 2010-2011 academic year through March 2017, the notice of nondiscrimination failed to indicate that inquiries could be referred to the University's Title IX Coordinator or OCR.
- During the 2010-2011 academic year, the University failed to designate a Title IX Coordinator, and from the 2010-2011 academic year through March 2017, the University failed to provide notice of its Title IX coordinator.

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<sup>1</sup> The most recent report was published on the University's website in September of 2016, reporting statistics through 2015. <http://www.wittenberg.edu/sites/default/files/media/security/reports/2016%20ASR%20Report.pdf>

- From the 2010-2011 academic year through March 2017, the University’s Title IX grievance procedures that were in place failed to comply with the requirements of Title IX because they applied only to sexual harassment, including sexual assault, but not all forms of sex discrimination.
- From the 2010-2011 academic year through the 2013-2014 academic year, the University’s Title IX grievance procedures, as written and as applied to the complaints of Student A, Student B, and other students, failed to comply with the requirements of Title IX because mediation was permitted in matters involving sexual assault.
- From the 2010-2011 academic year through the 2013-2014 academic year, the University’s Title IX grievance procedures presented conflicting information regarding whether they applied to third parties.
- From the 2010-2011 academic year through the 2011-2012 academic year, the University’s Title IX grievance procedures expressly allowed for the termination of its Title IX process if a party initiated a civil, criminal or agency proceeding.
- The University failed to provide equitable responses to the complaints of sexual assault filed by Student A in XXXX 2011 and Student B in 2013.

In addition, OCR identified deficiencies during its review of the University’s sexual harassment and sexual violence investigative files for the 2010-2011 academic year through the fall semester of the 2013-2014 academic year; in particular, the files did not indicate whether the University provided interim measures as needed, assessed and addressed any hostile environment that was created, and provided notice of the outcome of the complaint to the parties.

On March 7, 2017, the University entered into a voluntary resolution agreement addressing these identified violations and deficiencies. OCR’s determinations are explained below.

### **Legal Authority**

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 a recipient 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. There are various factors that should be considered in determining whether sexual conduct was unwelcome, including whether the student was legally or practically unable to consent to the sexual conduct.

Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's education program or activity. OCR considers a variety of related factors to determine if a sexually hostile environment has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct affected one or more students' education; the type, frequency, and duration of the misconduct; the identity of and relationship between the alleged harasser and the subject of the harassment; the number of individuals involved; the age and the subject of the harassment; the size of the university, location of the incidents, and the context in which they occurred; and other incidents at the university. The more severe the conduct is, the less the need to show a repetitive series of incidents.

Once a recipient knows or reasonably should know of possible sexual harassment, Title IX requires a recipient to take immediate and appropriate action to investigate or otherwise determine what occurred; and if the conduct occurred, whether it created a hostile environment for the harassed student(s) and for others. If an investigation reveals that sexual harassment created a hostile environment, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, prevent the harassment from recurring and remedy its effects on the complainant and others, as appropriate. 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. While investigating an allegation of sexual harassment in the academic setting, it may be appropriate for a University to take interim measures during the investigation to ensure individuals can fully access a recipient's programs while an investigation is pending.

A recipient must also consider the effects of the off-campus sexual harassment when evaluating whether there is a hostile environment on campus because students often experience the continuing effects of off-campus sexual harassment while at school or in an off-campus education program or activity.

In situations where reported sexual harassment may constitute a criminal act, a recipient may have an independent obligation to notify the proper authorities and inform a complainant of the right to file a criminal complaint in addition to the recipient's internal Title IX investigation. A law enforcement investigation does not relieve the recipient of its independent Title IX obligation to investigate the conduct.

### **Notice of Nondiscrimination and Designation of 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 (Title IX Coordinator), including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by the regulation implementing Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.9, also requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary academic institution 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 any educational program or activity which it operates, and that it is required by Title IX and its implementing regulation at 34 C.F.R. Part 106 not to discriminate in such a manner. The regulation sets forth specific requirements for the notice, including that it must state that inquiries concerning the application of Title IX to the recipient may be referred to Title IX Coordinator, or to OCR's Assistant Secretary.

During the 2010-2011 academic year, the University identified an employee affiliated with its athletic department as its Title IX Coordinator and stated that complaints of sexual harassment and sexual violence were handled by its Human Resources Department. However, OCR obtained no evidence that the Title IX Coordinator was informed of the filing of these complaints, their investigation, and their outcome.

During the 2011-2012 academic year, the University designated the Associate Vice President for Human Resources as the University's Title IX Coordinator (Coordinator 1). Coordinator 1 was apprised of the filing of Title IX complaints, assigned investigators, assembled hearing panels, issued communications to complainants and respondents throughout the course of the investigation, and communicated with University counsel as needed during the processing of the complaints.

From December 2012 to March 2014, the University designated its Director of Business Services as the Title IX Coordinator (Coordinator 2). Coordinator 2 stated that she did not, herself, conduct investigations of complaints alleging sexual assault or sexual harassment; rather, she oversaw the process, including the Student Conduct/Student Development office's work with respect to its investigative activities. Coordinator 2 stated that, as the Title IX Coordinator, her primary responsibilities included ensuring the University's compliance with Title IX and serving in an advisory capacity to the campus for the day-to-day work dealing with Title IX issues.

In April 2014, the University designated two employees to act as Co-Coordinators, Coordinator 3, who was the Dean of Students and responsible for student incidents, and Coordinator 4, who was the Director of Human Resources and responsible for employee concerns. Coordinator 3's responsibilities were originally similar to Coordinator 2's responsibilities. Coordinator 4 explained to OCR that his role was primarily to oversee complaints involving faculty and staff, but that he was continually in communication with Coordinator 3 regarding all Title IX issues at the University.

In March 2014, the University also designated several Deputy Coordinators, one to oversee athletics, one to oversee complaints involving employees, and one to oversee student complaints. In December 2016, the University designated Coordinator 3 as its Title IX Coordinator. Coordinator 3 primarily oversees and supports the Director of Student Conduct, who is a Deputy Title IX Coordinator, in coordinating the complaint process from intake through adjudication.

OCR examined various University publications in effect from the 2010-2011 academic year through the 2016-2017 academic year and found that a number of them contained a nondiscrimination notice that did not contain all of the elements required by 34 C.F.R. § 106.9, including the appropriate contact information for the University's Title IX Coordinator(s). For example, the 2011-2012 Student Handbook did not include information identifying a Title IX Coordinator or providing contact information for obtaining additional information or raising a concern related to possible discrimination. The 2013-2014 Title IX Campus Notification the University published with respect to Clery Act requirements did not provide addresses for the Title IX Coordinators and did not state that Title IX's prohibition against sex discrimination extends to employment matters. Further, the online job postings during the 2013-2014 academic year that OCR examined stated that the University is required by Title IX not to discriminate on the basis of sex, but did not state that the University does not discriminate on the basis of sex with respect to employment, and did not include the names, titles or contact information for the Title IX Coordinators or state that inquiries regarding Title IX may be directed to OCR and provide appropriate contact information to do so.

Although the 2014-2015 Student Handbook contained a general nondiscrimination notice under the heading "Affirmative Action Policy," the notice did not specifically identify a Title IX Coordinator. Although a subsequent section of the 2014-2015 Student Handbook identified the Title IX Coordinators, their addresses were not provided anywhere in the document. The 2014-2015 Faculty Handbook contained a general prohibition against discrimination, but it failed to identify or provide contact information for any Title IX Coordinator or other compliance officer, or OCR. The University's general nondiscrimination notice that appeared in the 2015-2016 Student Handbook, Staff Manual, and Faculty Manual also lacked contact information for any University Title IX Coordinator or other designated compliance officer. The lack of contact information persisted in the version of these publications available on the University's website as of March 2017.

As noted above and in summary, OCR determined that the University failed to comply with the regulation implementing Title IX, at 34 C.F.R. § 106.8(a), with respect to designating a Title IX Coordinator during the 2010-2011 academic year. OCR also finds that from the 2010-2011 academic year through March 2017 the University has not adequately notified students and employees of contact information for the Title IX Coordinator as required by 34 C.F.R. § 106.8(a) and has not complied with Title IX's requirements of 34 C.F.R. § 106.9 regarding its notice of nondiscrimination.

### **Title IX 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 in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for: (1) notice of the procedure, including where complaints may be filed, that is easily understood, easily located, and widely distributed; (2) application of the procedure to complaints alleging discrimination or harassment carried out by employees, other students, or third parties; (3) adequate, reliable, and

impartial investigation of complaints, including an opportunity to present witnesses and evidence; (4) designated and reasonably prompt timeframes for the major stages of the complaint process; (5) notice to the parties of the outcome of the complaint; and (6) an assurance that the academic institution will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate. A grievance procedure applicable to sexual harassment complaints cannot be prompt or equitable unless members of the academic community are aware of information such as, its existence, how it works, and how to file a complaint.

Grievance procedures may include informal mechanisms for resolving sexual harassment complaints to be used if the parties agree to do so. However, it is not appropriate for a student who is complaining of harassment to be required to work out the problem directly with the individual alleged to be harassing him or her, and certainly not without appropriate involvement by the academic institution. In addition, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In some cases, such as alleged sexual assaults, mediation will not be appropriate even on a voluntary basis.

During the course of the investigation, OCR reviewed numerous sets of policies and procedures that were provided by the University or publically available on the University's website. The University's "Sexual Complaint Grievance Board Abridged Manual," dated January 2010, contained its "Policies and Procedures Concerning Sexual Harassment and Misconduct," under which both Student A's and Student B's complaints were processed. The University subsequently provided OCR with "Policies and Procedures Concerning Sexual Harassment and Misconduct, Revised 2013." Additionally, the University's 2014-2015 Student Handbook consolidated all policy and procedures in one place; the policy and procedures contained therein remain largely unchanged from the policies and procedures revised in 2013.

The University's 2015-2016 Student Handbook, effective fall 2015, made substantive changes to the University's policies and procedures. The 2015-2016 Student Handbook included: a "Sexual Misconduct Policy" that covered sexual harassment, sexual exploitation, dating violence, domestic violence, and nonconsensual sexual contact and nonconsensual sexual intercourse; a Code of Conduct and Ethics that identified available sanctions; and procedures for investigation and adjudication of alleged violations of the Sexual Misconduct Policy. The 2016-2017 Student Handbook remained unchanged in relevant part from the 2015-2016 version.

- **Policies and Procedures Concerning Sexual Harassment and Misconduct (2010-2012) (the original policies and procedures)**

The original policies and procedures provided for the investigation and resolution of complaints alleging sexual harassment and sexual misconduct. The procedures did not state that they applied to complaints alleging sex discrimination or harassment carried out by third parties. The original policies and procedures detailed a range of informal resolution mechanisms available prior to the formal complaint process, which is initiated upon the filing of a written complaint.

However, the policies and procedures stated that staff could not assist with an informal resolution when a complaint alleged sexual assault, as this type of issue was to be handled through the formal resolution and adjudication process.<sup>2</sup>

The original policies and procedures identified the major steps of the formal complaint process as “assisted resolution” and “adjudication,” and identified stages of the adjudication process as: investigation, hearing, determination and sanction, and right to an appeal. According to the original policies and procedures, formal complaints could be filed with an “intake officer,” designated as follows:

- Assistant Dean of Students—for student-initiated complaints
- Associate Vice President for Human Resources<sup>3</sup>—for student-, faculty- or staff-initiated complaints
- Associate Provost for Student Success and Retention—for student-, faculty- or staff-initiated complaints

All complaints were to be written, signed, and filed with the Department of Human Resources. In addition, the original policies and procedures stated that the Associate Vice President for Human Resources would designate an investigative officer(s) for each complaint as follows:

- the Assistant Dean of Students if the respondent was a student;
- a member of the faculty if the respondent was a faculty member; or
- a member of the administration or administrative staff, if the respondent was a non-faculty employee.

The investigative officer’s responsibilities included gathering documents and conducting interviews with all individuals reasonably believed to have relevant information, including the complainant, the respondent, witnesses, and individuals alleged to have been the victims of the similar conduct. In cases of sexual misconduct, defined as “a form of physical harassment that includes a range of behaviors from unwanted touching and fondling to acts of sexual assault or rape,” the University Chief of Police and Director of Security or the Chief’s designee would be assigned to co-investigate. The original policies and procedures also stated that, should a party initiate a “civil, criminal or agency proceeding,” the University reserved the right to initiate, suspend, terminate, or continue its internal proceedings.

The original policies and procedures provided that the Associate Vice President for Human Resources would then forward a complaint to an appointed “university officer” for assisted resolution, the first step in the formal complaint process. During the assisted resolution phase, according to the original policies and procedures, the university officer would communicate with the parties separately to attempt to resolve the matter. Investigative witness interviews of the

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<sup>2</sup> Informal resolution mechanisms included direct informal resolution and assisted informal resolution. Under direct informal resolution, the procedures provided information for persons wishing to attempt to directly resolve a complaint with the alleged perpetrator and, for assisted informal resolution, the procedures identified University employees, by title, who could be contacted for help in completing an assisted informal resolution, either as a first step or after attempting direct informal resolution.

<sup>3</sup> As of the 2011-2012 academic year, the Associate Vice President for Human Resources served as the University’s Title IX Coordinator.



parties were not conducted at this stage and no determination on the merits was made. According to University staff, during the time period the original policies and procedures were in effect, the Senior Associate Dean of Students often facilitated the assisted resolution process between complainants and respondents. The original policies and procedures contained no prohibition with respect to using assisted resolution in matters involving allegations of sexual assault. Examples of assisted resolution outcomes listed in the policies and procedures included an apology, counseling and education requirements, access restrictions, disciplinary action, or the dismissal of the complaint. The procedures stated that, unless one party specifically requested adjudication, the University would attempt to resolve all formal complaints through assisted resolution and that “experience has shown that assisted resolution can be particularly appropriate in situations where there are different perceptions about whether consent was given or where thoughtless or unintentional behavior has caused distress.” If an agreement was reached and signed, the parties lost the right to have an adjudicated hearing. The original policies and procedures did not address what steps might be taken in the event that either party failed to meet the terms of the agreement reached through assisted resolution.

The original policies and procedures provided for “resolution by adjudication” in the event that 1) the complaint was not resolved through the assisted resolution stage within 15 days; or 2) either the complainant or respondent requested the complaint be adjudicated; or 3) the University decided to bypass assisted resolution. The chair of the University’s Sexual Complaint Grievance Board (SCGB) would appoint a hearing panel from the SCGB board members “to determine if the respondent has violated the institution’s policies concerning sexual misconduct [defined as “physical sexual harassment that includes a range of behaviors from unwanted touching and fondling to acts of sexual assault or rape.”].” The SCGB was composed of faculty, staff, and student members.

The original procedures were silent as to the provision of interim measures; however, University staff informed OCR that it was their practice to issue no-contact orders and to discuss other support such as academic assistance with scheduling and assignments.

The adjudication process in the original procedures explained that supports were available to both parties in the hearing process, which included an advisor, assigned by the Title IX coordinator. The procedures stated that advisors could be SCGB members, not serving on the hearing panel, and that they would provide general information about the hearing process and offer assistance to help a complainant and/or respondent prepare to testify, question, rebut, and make closing statements. The procedures stated that advisors were not counselors or legal advisors and did not prepare statements, question witnesses, or provide testimony, though they could help guide each party in his or her thought process and ask clarifying questions and offer advice regarding the presentation of information without presenting or advocating for the party in the case.

Within seven days of receipt of a complaint the investigator(s) would consult with the complainant and the respondent in order to ascertain the facts and views of both parties. Then the investigator would submit a written report of the factual findings to the chair of the hearing panel; the findings were also to be provided to the complainant and respondent. The original policies and procedures did not provide for an appeal or request for reconsideration at this stage.

A hearing was convened before a hearing panel, formed from at least three members of the University's SCGB. The original policies and procedures stated that no one with a significant conflict of interest for a particular case would be permitted to serve on the hearing panel for that case.

The hearing panel was to hold a formal hearing during which it received testimony from the investigator(s), the complainant, the respondent, and other witnesses, as the panel deemed necessary. The procedures instruct the chair of the hearing panel to exercise discretion in determining which witnesses were necessary to the hearing process. The hearing panel was required to convene as promptly as possible, but no more than ten days after receiving the investigative officer's report. The respondent and complainant were to be provided a written copy of the charges and investigative report, including the names of any witnesses and copies of any documents that would be presented by the complainant. The procedures stated that "both parties are expected to offer their own testimony."

The policies and procedures required that the panel rely on the preponderance of the evidence standard when making its determination by majority vote. Within five days of the conclusion of the hearing, the panel was to prepare a written report, including a summary of the evidence before the panel, the testimony heard, and a statement of findings of fact and conclusions as to whether the University's policy had been violated. When a student was found in violation, the panel was to use the disciplinary guide provided in the Student Handbook to determine a sanction. The chair was also to consult with the Vice President for Student Development to determine whether the respondent had prior violations; then the chair was to issue the determination to both the complainant and respondent, at the same time providing a copy to the Associate Vice President for Human Resources and the Vice President for Student Development. The procedures similarly detailed how sanctions would be determined and how to issue findings for complaints against faculty and staff.

The original policies and procedures provided for a right to appeal for both the complainant and the respondent and required that appeals be submitted to the Associate Vice President for Human Resources within seven days of a determination. The original policies and procedures provided three grounds for appeal: that new and significant evidence could be introduced; that there was clear reason to believe the sanction was not consistent with the seriousness of the action; or that the party's right to a fair and impartial hearing was violated. A response to the appeal had to be provided within ten days by a senior administrator. In addition, the procedures stated that any appeal challenging the procedures applied in the formal resolution of a complaint could be directed to the University President.

- **Analysis**

OCR found that the original policies and procedures did not comply with the Title IX regulations in a number of respects: 1) they provided conflicting information regarding whether third parties were covered; 2) they expressly allowed for the termination of the Title IX process if a party initiated a civil, criminal, or agency proceeding; 3) they utilized "assisted resolution" as the default first step of formal complaints; however, mediation is not appropriate for matters involving sexual assault, and for complaints of sexual assault that were resolved pursuant to the

assisted resolution process, the University failed to discharge its responsibilities to assess and address any hostile environment that may have been created and to take effective action to prevent its recurrence of any sexual harassment; and 4) they applied only to complaints of sexual harassment and sexual “misconduct,” but not to other forms of sex discrimination prohibited by Title IX.

- **Sexual Harassment Policies & Title IX Grievance Procedure (2012-2014) (the revised policies and procedures)**

The revised policies and procedures implemented by the University for the 2012-2014 academic years addressed the processing of Title IX complaints simultaneously with a criminal investigation. Specifically, the revised policies and procedures included a section titled “Criminal Proceeding,” under which the University asserted it would make every effort to ensure its investigation did not impede that of law enforcement, but with the assurance that the University would not unreasonably delay its own proceedings. It also made clear that the outcome of a legal proceeding would not dictate the outcome of the University’s process (e.g., the University might find that conduct constituted sexual harassment or sexual assault even if law enforcement declined to prosecute for lack of evidence.) The revised policies and procedures added one additional term to the assisted resolution process, by creating an exception of when the severity of the alleged incident [was] was deemed by the University to require adjudication. The revised policies and procedures did not define the types of complaints that would fall under this exception. The revised procedures also provided information about interim measures and stated that they may include such measures as no-contact orders during the investigation and hearing, and additional steps such as altering student academic schedules, University housing, or employment arrangements. The procedures stated that the University will seek to minimize unnecessary or unreasonable burdens on either party, provided, however, “that every reasonable effort will be made to allow the complainant to safely continue in his or her academic schedule, University housing, and/or University employment arrangements.”

OCR determined that the revised policies and procedures violated Title IX because they contained conflicting information as to whether the revised policies and procedures covered third parties (the introduction to the revised policies and procedures included sexual harassment by third parties and in another section, entitled “Resources for Individuals Who May be Victims of Sexual Misconduct,” misconduct by third parties was omitted); permitted assisted resolution as a first step to process formal complaints; and applied only to sexual harassment and sexual assault and not other forms of sex discrimination, such as pregnancy discrimination, etc. (and absent any other University procedures that did so in compliance with Title IX).

- **The 2015-2016 and 2016-2017 “Sexual Misconduct Policy” and Conduct Procedures (2015-2016 and 2016-2017 policies and procedures)**

The 2015-2016 grievance procedures applied only to allegations of sexual harassment and sexual violence, but not the other forms of sex discrimination prohibited by Title IX, in violation of 34 C.F.R. § 106.8(b). OCR notes that the Student Handbook discusses other types of sex

discrimination; however, the 2015-2016 policies and procedures, as written, do not apply to such complaints and the University provided OCR no procedures for addressing such complaints that meets the requirements of Title IX.

While the original and revised policies and procedures contained no references to interim suspensions, the 2014-2015 policies and procedures and the 2015-2016 policies and procedures stated that the Dean of Students, the Dean of Students' designee, and/or Title IX Coordinator may impose interim suspensions and/or separate a student from the community or university housing pending the scheduling of a campus hearing on alleged violation(s) of the Student Code of Conduct when immediate action is deemed necessary to ensure the physical and emotional well-being of student(s). The 2016-2017 policies and procedures retain this language, but incorporate it directly into the Sexual Misconduct Policy. The 2016-2017 policies and procedures continue to provide that "when taking steps to separate the complainant and the respondent, the University will seek to minimize unnecessary or unreasonable burdens on either party; provided, however, that every reasonable effort will be made to allow the complainant to safely continue in his or her academic schedule, university housing, and/or university employment arrangements."

### **University Response to Complaints of Sexual Harassment and Sexual Violence**

- **Student A (OCR Docket #15-11-2115)**

On July 26, 2011, a complaint was filed with OCR alleging that the University failed to respond promptly and equitably to a complaint that Student A, a XXXX student, had been sexually assaulted. Specifically, the complaint alleged that on XXXX 2011, Student A filed a formal complaint with the University's then Senior Associate Dean of Students (Senior Associate Dean), an intake officer under the grievance procedures, stating that she had been sexually assaulted on XXXX 2011, by a male student (Student C) XXXX.

The complaint to OCR stated that the University forced Student A to choose between a criminal prosecution and the University process; failed to comply with its own policies concerning the investigative and hearing processes; failed to properly train staff, including hearing advisors, involved in the investigation and adjudication of Student A's complaint; subjected Student A to repeated and lengthy questioning about her sexual history and included the information about Student A's previous sexual history in its investigative report; and required Student A to provide medical documentation in order to modify the hearing format.

- **OCR's Findings**

On XXXX, 2011, Student A filed her complaint with the University, and Coordinator 1 immediately assigned the Senior Associate Dean to co-investigate the complaint with the University's Assistant Chief of Police (the Assistant Chief).

Internal University communications indicate that because Student A left campus on XXXX, 2011, immediately after filing her complaint, the Senior Associate Dean communicated with her and her family via e-mail and phone to determine what measures should be in place upon her anticipated return on XXXX, 2011. In an XXXX, 2011 e-mail, the Senior Associate Dean notified Student A's instructors that she would be off campus so that she would not be penalized for her absence. On XXXX, 2011, the University issued no-contact orders to both Student A and C via separate letters. Student A's letter also noted that the Student Development Office had resources to support her during what could be an "emotionally tolling experience," though it made no specific offers of counseling or other assistance. The letter to Student C also cautioned him not to retaliate in any form. Upon Student A's return to campus, the University also implemented interim measures, including taking steps to minimize the possibility that Student A would encounter Student C on campus while taking into consideration Student C's schedule and access to his classes; and providing Student A with an escort to XXXX.

The University asserted to OCR that the city police department requested that Student A and her parents make a decision about pursuing criminal action regarding her complaint; this was documented in the Assistant Chief's police report entry of XXXX, 2011, which was provided to OCR. In an e-mail communication to the University on the same day, Student A's parent inquired about the University's ability to suspend its investigation while the parents explored steps to support a potential criminal complaint. The University responded that it was concerned that accommodating such a request could create due process problems because they needed to timely notify Student C that a complaint had been filed against him. In another internal e-mail, dated XXXX, 2011, from Coordinator 1 to Student A's parent, Coordinator 1 explained that if Student A wished to pursue the criminal complaint, then "essentially, the complainant is opting not to use the university's internal assisted resolution process," and "if that is the case, we will defer to [the city police department] and will not take further action on our end until the criminal investigation is complete." According to Student A's parent, on XXXX, 2011, the Senior Associate Dean advised Student A and her parent that the University would not move forward with adjudication of her complaint if she had filed a criminal complaint. Police records documented that Student A contacted city police on XXXX, 2011, and indicated that she did not wish to file a criminal complaint.

According to the University, because Student A declined to file criminal charges, the University moved the complaint forward. The Senior Associate Dean informed OCR that at the onset of the investigation she spoke with Student A's parent about proceeding under the formal complaint process and that the parent expressed interest in pursuing assisted resolution. However, the University rejected a condition of the terms proposed by Student A's parent for assisted resolution. Coordinator 1 issued a letter to both parties stating that following an unsuccessful attempt at resolving the complaint "through the University's direct resolution process" on XXXX, 2011, Student A requested the complaint be resolved through adjudication. The University continued its investigation in order to gather evidence for a formal adjudication proceeding. Coordinator 1 identified one faculty member to chair the hearing panel, who selected from members of the SCGB to compose a panel to hear Student A's complaint, including three faculty and staff members and one student. In letters to Students A and C, the Senior Associate Dean identified two SCGB members assigned to serve as advisors for Students A and C. The hearing was scheduled for XXXX, 2011.

OCR reviewed records related to the investigation, which indicate that the Senior Associate Dean conducted separate informal meetings with Student A and Student C to discuss the complaint and the investigation and adjudication process, and that the Senior Assistant Dean and the Assistant Chief jointly conducted separate initial and follow-up interviews with Student A and Student C, as well as total of XXXX student witnesses identified by Student A, Student C, and the hearing panel. Separately, the Assistant Chief spoke with XXXX in an attempt to obtain footage from security video and attempted to obtain videos from surrounding cameras; however, no video footage was available. Both the Senior Associate Dean and the Assistant Chief informed OCR that they reviewed text messages between Student A and Student C and also listened to a taped telephone conversation between the students. In addition, the day Student A filed her complaint, the Senior Associate Dean arranged for the University police to pick up Student A's clothing from the night of the incident and the bedding from XXXX. The Senior Associate Dean stated that to her knowledge, neither the clothing nor the bedding was tested for evidence.

The investigative report was provided to both students on XXXX, 2011. The same day, Student A requested that the hearing format be modified to permit her to be in a separate room from Student C. OCR reviewed correspondence between the University and Student A's family and notes that there was a notation as to medical documentation but found it was not possible to determine whether the discussion of medical documentation was in reference to the hearing format or to the hearing. Student A was granted a modified hearing format on XXXX, 2011.

The day before the hearing, Student A's parents raised the concern that the investigative report, which had previously been reviewed by Coordinator 1 and University legal counsel, referenced Student A's previous unrelated sexual history, and asked for the report to be revised. Although the materials had already been provided to the panel, the Senior Associate Dean told OCR the University immediately removed the reference and that the hearing chair stated at the hearing that this reference should be disregarded.

On XXXX, 2011, Student A and Student C participated in a hearing before the hearing panel. The panel issued findings five days after the hearing. The panel found that it "did not have enough evidence to determine whether sexual contact, intercourse or otherwise, took place on XXXX, 2011, let alone sexual assault." The panel therefore concluded that the preponderance of the evidence did not support that Student C had violated the University policy prohibiting sexual assault.

Written notice of the outcome was issued to both parties five days after the hearing, along with notice of their right to appeal. The report provided an overview of the proceedings, including a description of the complaint; detailed the evidence considered by the hearing panel; explained that both students had the right to appeal the decision; and noted that there had been an unsuccessful attempt at assisted resolution. The letter also provided both parties with notice of available counseling resources on campus.

Student A appealed the University's decision on XXXX, 2011, raising concerns that the panel improperly considered her sexual history and that the University did not test her clothing or XXXX bedding even though it had collected them and the University did not consider text messages between the students the day after the alleged assault. Additionally, Student A asserted

that her right to a fair and impartial hearing was violated because the hearing panel members lacked training and “essential qualifications.” Student A received a written denial of the appeal on XXXX, 2011. The Dean of Students, who responded to the appeal, addressed Student A’s concern that information regarding her sexual history was initially included in the hearing packet, by stating that such information was not solicited by the investigators, but rather was volunteered by Student A, and was removed from the packet to her satisfaction prior to the hearing. The Dean of Students also noted that all panel members had prior experience with such hearings and were trained in the University’s policies, legal standards, and evidentiary standards.

OCR interviewed the hearing panel members regarding the types and frequency of trainings they received. Some members recalled receiving extensive training upon being selected for the SCGB, but did not recall recent SCGB board-specific trainings. They stated that their most recent sexual harassment training had been the annual University employee online training. Other panel members told OCR they had received recent and annual trainings on sexual harassment. The student member<sup>4</sup> stated that once appointed to the board, she was asked to complete online training through the University website on the basics of sexual assault. All panel members recalled receiving the SCGB manual and stated they had received some training on the manual. The SCGB manual contained guidance on the responsibilities of investigators, hearing panel members, hearing advisors, and the Associate Vice President of Human Resources, as well as on investigating complaints, interviewing parties, assessing credibility, making determinations, and instituting sanctions. The manual also stated that the University uses the preponderance standard and provided a definition. OCR also noted that the University’s original policies and procedures provided that the hearing advisor’s role was “to listen and provide general information about the hearing process” and interviews with University officials confirmed that the hearing advisors were expected to explain the process to the students generally, but they were not to give legal advice.

Student A withdrew from the University on XXXX, 2011.

○ **Analysis**

The investigation and hearing process was prompt, as they were completed within 25 days of when the complaint was filed. OCR determined, however, that the University’s response to Student A’s complaint was not equitable. The evidence revealed that University staff requested that the family make a decision between pursuing criminal charges or proceeding through the University’s complaint process, which is consistent with the University’s original policies and procedures in effect at the time that stated the University complaint process could terminate if there were criminal proceedings involving the same conduct. However, as noted above, a criminal investigation into allegations of the same sexual conduct does not relieve the University of its duty under Title IX to resolve complaints promptly and equitably.

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<sup>4</sup> Although Title IX does not prohibit student participation on hearing panels, the use of students on panels is discouraged.

Consistent with the University's original policies and procedures in effect at the time, the University's internal communications indicate that the Title IX Coordinator took the position that Student A's complaint of sexual assault could be addressed through the University assisted resolution process, the first step of its formal complaint process. As discussed above, however, mediation of complaints of alleged sexual assault is never appropriate.

The University also included information regarding Student A's sexual history in the investigative report, which was reviewed by the Title IX staff prior to being provided to the panel. While the University removed the materials prior to the start of the hearing, the hearing panel members had already received the report. Furthermore, when Student A raised the matter on appeal, the University took the position that Student A's volunteering of the information during the University's interviews excused its inclusion of the information in the documents provided to hearing officers. The inclusion of Student A's sexual history in the report reviewed by the SCGB created a danger of unfair prejudice to Student A in the adjudication of her complaint.

Although Student A asserted that hearing panel members lacked training and essential qualifications, OCR found that all the SCGB members hearing Student A's complaint received training to participate in the panel. All of the panel members received the SCGB manual that provides guidance regarding their responsibilities as adjudicators, as well as training on the manual.

Accordingly, OCR finds that the University failed to provide an equitable process to Student A, in violation of 34 C.F.R. § 106.8(b).

- **Student B (OCR Docket #15-13-2141)**

On April 10, 2013, a complaint was filed with OCR alleging that the University failed to respond promptly and equitably to a complaint that Student B, a XXXX student, had been sexually assaulted XXXX on XXXX, 2012. On XXXX, 2012, Student B filed a formal complaint with the University regarding the assault. In her complaint to OCR, Student B specifically alleged that the University failed to conduct a prompt investigation by waiting to interview students who were at XXXX until two months after the alleged sexual assault, failed to interview all possible witnesses, and failed to provide appropriate interim measures.

- **OCR's Findings**

According to OCR's interviews and review of the investigative file, Student B attended XXXX on XXXX, 2012, at a University-owned property XXXX. Between approximately XXXX, 2012, campus police were called to the XXXX and Student B was transported by officers with the city police department to the local hospital, where she was treated for "acute alcoholic intoxication." Student B reported that she blacked out and some point during XXXX and had no recollection of the later parts of evening. After returning to XXXX and changing her clothes, Student B suspected that she had been sexually assaulted while at XXXX and returned to the hospital that afternoon. The hospital collected a rape kit from Student B that was turned over to the city police department. Based on reports from campus police, the University immediately initiated



an investigation into violations of the University's alcohol policy at XXXX that evening and the alleged sexual assault of Student B. According to information provided by the University, the rape kit results were completed on XXXX, 2012 and confirmed evidence of sexual intercourse.

The University's then interim dean of students (Coordinator 3) told OCR that, upon being notified of the alleged assault, she attempted to meet Student B at the hospital and ultimately spoke with her in XXXX the morning following the incident, on XXXX, 2012, at which point they scheduled a time to meet the following day. Coordinator 3 told OCR that she spoke with Student B about the information Student B recalled from XXXX, the University's procedures for filing a sexual assault complaint, information regarding resources available on campus for sexual assault victims, including information on counseling services and a local community resource center, and confidentiality in on-campus counseling. Student B's and Coordinator 3's reports of these meetings are consistent.

Although Student B reported to OCR that the University did not affirmatively state to her that she had the option to leave campus, she decided to return to XXXX on XXXX, 2012, and returned to campus on XXXX, 2012. On the same day she returned, Student B was interviewed by Coordinator 3 and the Senior Associate Dean. At that time she told the University investigators that she felt she may have been drugged the night of the incident.

The files provided by the University indicate that on XXXX, 2012, the Senior Associate Dean sent an e-mail to Student B's instructors to inform them that she was dealing with "a significant trauma" and asked that they provide any support to her that they could during XXXX that week. The e-mail notes that the University encouraged Student B to take a break from school.

According to the University, the Senior Associate Dean and Coordinator 3 interviewed XXXX students between XXXX, 2012 and XXXX, 2012, including witnesses identified by Student B as XXXX. Based on information they learned through these student interviews, the University interviewed XXXX additional students and re-interviewed three students in XXXX 2013. The Senior Associate Dean explained to OCR, and Coordinator 3 confirmed, that they did not interview all of the individuals who attended XXXX regarding the alleged assault because, during a separate investigation into violations of the University's alcohol policy, it was determined that several students had left XXXX before the time period Student B identified as when she blacked out.

OCR reviewed the transcripts from the University's interviews with the XXXX students. Many witnesses reported being intoxicated and/or not recalling the specific details from the evening. XXXX. The University and Student B reported to OCR that this male student voluntarily provided a DNA sample to the city police department. Student B later reported to the University that the student's DNA was not a match to the DNA collected from the rape kit. After numerous

interviews and DNA testing of another male student, whose DNA did not match the rape kit DNA, in XXXX 2013, the city police informed Student B it was not moving forward with the case.

The Senior Associate Dean and Coordinator 3 explained to OCR that in Student B's case they could not make a determination or complete their investigation of Student B's complaint because they could not identify a potential assailant. On XXXX, 2013, the Senior Associate Dean notified Student B in writing that the University could not proceed any further with its investigation due to the lack of any additional evidence to identify an assailant at the time. The letter included a description of Student B's allegation and the steps the University took to investigate her complaint and also explained that, should actionable information be brought to the University's attention, it would resume its investigation of her complaint. The letter did not provide Student B any information on resources or other supports.

Student B completed the fall semester and then withdrew from the University.

- **Analysis**

With regard to Student B, OCR finds that University did not provide an equitable grievance process to Student B, in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.8(b).

The University's investigation process primarily focused on identifying a respondent and the University failed to assess whether Student B was subjected to or continued to be subjected to a sexually hostile environment. As such, even though it had notice the alleged assault as of XXXX, 2012, and knew within a few days that Student B XXXX XXXX 2012, the investigative file indicates that the University did not contact Student B's instructors until XXXX, 2012. Moreover, the file does not provide any records indicating that the University provided other interim measures or individual remedies to Student B, except to offer counseling services during the initial phases of the investigation. The file does not evidence that any other remedies or measures, such as campus escorts, academic assistance, or broader measures, such as specific training for the XXXX on sexual harassment/sexual assault, were considered or provided to support a safe environment on campus.

The University's processing of Student B's complaint spanned 86 days. Although the University received notice of the alleged assault on XXXX, 2012, it did not interview any students who were present at XXXX until 22 days later, on XXXX, 2012. The University's delay in interviewing potential witnesses is a deficiency with respect to meeting its Title IX obligation, upon receiving notice of possible sexual harassment or sexual violence, to take immediate action to investigate or otherwise determine what happened.

- **University Complaints filed by Students E, F, and G**

- **Student E's Complaint**

On XXXX, 2016, Student E filed a complaint with the University police alleging that she had been sexually assaulted on XXXX, 2016. The University police immediately notified the University's Title IX Coordinators and the University initiated its investigation on XXXX, 2016. Student E also filed a formal Title IX complaint with the University on XXXX, 2016. In her complaint to the University, Student E alleged that Student D had made repeated sexual advances to her on XXXX, 2016, which she repeatedly refused. Student E alleged that later that day, XXXX, Student D sexually assaulted her. Student E informed University police and University investigators that she knew of another female student (Student G) who had been similarly assaulted by Student D XXXX.

OCR interviewed the Deputy Title IX Coordinator. She reported that on XXXX, 2016, the Interim Dean of Students met individually with Student D and Student E and then he conferred with her. On XXXX, 2016, the University sent Student D and Student E correspondence directing that they have no contact with each other. XXXX. Other than receipt of Student E's complaint, the investigative file did not reflect that the University had conducted any investigation that would support its decision to XXXX.

On XXXX, 2016, Student E was interviewed by University investigators and she identified XXXX witnesses. XXXX. However, XXXX submitted a list of witnesses. From XXXX, 2016, through XXXX, 2016, University investigators interviewed XXXX witnesses.

- **Student F's Complaint**

According to the University's interview notes, on XXXX, 2016, after hearing about the other incident involving Student E, Student F filed a complaint with the University alleging that XXXX, Student D made several sexual advances that she rebuffed. XXXX.

The investigative file for Student F's complaint contained no documentation concerning whether the University offered or provided interim measures to Student F. On XXXX, 2016, the University issued a letter to both Student F and Student D informing them that it was opening an investigation. The letter contained no reference to interim measures, no-contact orders, or other assistance available to either party. Student F provided the names of XXXX witnesses, XXXX of whom was interviewed. XXXX; there is no documentation that she

was interviewed with respect to Student F's allegations. XXXX. XXXX provided the names of XXXX witnesses. The University interviewed XXXX, as XXXX refused to participate.

○ **Student G's Complaint**

On XXXX, 2016, Student G filed a formal complaint with the University police. She stated that XXXX because Student D was sexually assaulting her. XXXX

On XXXX, 2016, Student G was interviewed by University staff. XXXX. XXXX provided the names of three witnesses to the University and they were interviewed between XXXX, 2016 and XXXX, 2016. The University's investigative file for Student G's complaint does not indicate that University offered or provided any interim measures. During this same time period, the University interviewed witnesses in Student F's file as well.

○ **The University's Response**

On XXXX, 2016, the University separately informed the Students E, F, and G, and Student D of the charges it was filing against Student D in each matter. The correspondence also set a hearing date of XXXX, 2016. The charges against Student D were as follows:

Student E-- XXXX.

Student F-- XXXX.

Student G-- XXXX.

On XXXX, 2016, the University also provided the parties with a redacted copy of the investigative reports, the names of the hearing board members, notice that the hearing board procedures are detailed in the Student Handbook, and an outline of the parties' rights and responsibilities. It also stated that University proceedings are distinct and separate from Ohio civil and criminal proceedings that there is not a right of confrontation and cross-examination, and provided notice that a preponderance standard would be used. It also provided information about the provision of an advisor and the role that an advisor could play.

On XXXX, 2016, Student D withdrew from the University.

On XXXX, 2016, the hearing for all three complaints involving Student D went forward. The panel for the hearing consisted of XXXX (who served as the chair of the hearing); and a student. The hearing panel report states the evidence that was considered included the incident report submitted by Students E, F, and G and the investigative reports in all three cases; testimony from Students E, F, and G; witness reports; and text messages sent by XXXX. The report identified that the panel considered whether consent was obtained and the evidentiary standard that was used was the preponderance standard. The hearing panel report found Student D responsible on all charges made against him by Students E, F, and G.

The University XXXX. The University also determined that XXXX. The University's files indicate that XXXX. Finally, Student D was told not to contact Students E, F, and G, and Students E, F, and G were told not to have any further contact with Student D.

On XXXX, 2016, a letter was issued to Students D, E, F, and G that included the hearing panel report of XXXX, 2016. This letter included notice of the right of appeal and stated that any appeals should be filed within three days. On XXXX, 2016, Students E, F, and G were informed that no appeal had been filed and that the findings and sanctions in the letter of XXXX, 2016 remained in effect.

The files for all three of the complaints do not indicate that any interim measures other than a no-contact order in the file pertaining to XXXX, and a reference by the hearing panel to a continuation of a no-contact order with respect to XXXX. They do not document that any remedies were provided for any of the three XXXX students other than the final no-contact orders or that the University assessed whether any remedies were necessary for the University community. There is no indication that the University made an assessment as to whether there was a hostile environment. According to the Deputy Title IX Coordinator and Coordinator 3, the University provided Students E, F, and G with remedies they requested.

- **Analysis**

The investigation and hearing process was prompt as the University learned of the first allegation on XXXX, 2016, and all three complaints were processed as of XXXX, 2016. However, OCR noted deficiencies in the investigation and hearing process for Student D, as well as for Students E, F, and G. OCR would have to conduct further investigation in order to make a finding with regard to the University's handling of these complaints.

Based on OCR's review of the investigative file for Student E's complaint, there was no indication that the University conducted a sufficient level of inquiry regarding Student E's allegations made on XXXX, 2016, before XXXX on XXXX, 2016. XXXX.

In addition, the investigative files for the three complaints do not document any interim measures for Students E, F, and G, other than an initial no-contact order in one of the files and mention of a continuation of a no-contact order in another file. The files also do not document any remedies for Students E, F, and G after the University's violation finding, other than the no-contact order that was imposed after the hearing. The files also do not indicate that University made an assessment as to whether there was a hostile environment and, if so, took steps to eliminate it for the Students E, F, and G. In addition, the files do not indicate whether the University assessed whether remedies were appropriate for the University community.

- **Other complaints of sexual harassment and sexual violence filed under the University's grievance process**

The original policies and procedures state that "all records of complaints will be kept in a separate file from other university records." OCR reviewed the investigative files that the University produced in response to its requests for copies of the complete investigative files for

any sexual harassment or sexual assault matters. Specifically, OCR reviewed 43 University investigative files, in addition to files for Student A and Student B, which involved incidents from academic year 2010-2011 through February 2014. Of these files, 21 alleged sexual assault and 12 were adjudicated. The respondents were found in violation of University policy in six of the 12 adjudicated cases.

OCR notes several deficiencies regarding the investigative files. Many files lacked documentation as to whether the University assessed whether a hostile environment existed for the student and, if so, whether any steps were taken to eliminate it and prevent recurrence of the harassment, including, where appropriate, taking steps to protect the broader university community. OCR also noted that while many files documented no contact orders, many contained little or no documentation regarding any other interim measures or academic assistance.

Below are some examples:

- Following investigation and adjudication in 2010, a male student athlete was found responsible for non-consensual sexual contact and dismissed from campus. The investigative file did not indicate that the complainant was provided with notice of the outcome or any remedies.
- In a 2010 complaint, a female student reported that she had been sexually assaulted in her dorm room by a male student while she was unable to consent. There was no evidence in the file that the University conducted an investigation; the complaint form indicated that it was resolved through assisted resolution.

- Assisted resolution was pursued in a complaint in 2012 in which a female student reported that following attendance at a University sporting event with two male students and a third non-student male, she was physically assaulted and sexually harassed in the dorm room of one of the male students.

## **Training**

The documentation that the University provided to OCR and its publically available 2015 Annual Campus Safety and Security Report indicate that the University has provided the following Title IX training: student orientation as of the 2013-2014 academic year includes a segment titled “Not Without Consent,” facilitated with the assistance of numerous student development staff and representatives from the local women’s center; new members to fraternities and sororities received “Greek 101” training in October 2013 and in March 2014; a training was provided to all members of a specific fraternity in November 2013; an online educational module was implemented for all students and employees on, in relevant part, sexual misconduct and Title IX; as of the 2014-2015 year, annual training, including topics about prevention, awareness, risk reduction, and identification of sexual assault, was provided to all advocates, investigators, hearing officers, panelists, and appeals officers; in 2015 and 2016 a training was provided for first-responders and University police officers; and in February 2016 the University provided a training for athletic coaches. Additionally, the Director of Student Conduct/Deputy Title IX Coordinator collaborated with the Assistant Athletic Director to provide a number of trainings on alcohol, drugs, and sexual misconduct for orientation for all sports teams. As noted above, the hearing panel members also received training regarding Title IX and the University’s adjudication process.

## **Campus Climate**

The University hired additional Title IX investigative staff in 2014, revised its investigative and conduct processes in 2012 and 2014, and implemented a campus-wide awareness campaign against sexual assault in 2015. In addition, the University received state grants in 2016 to improve education programming and has improved resources and supports for victims of sexual harassment and assault, including offering a free legal clinic for survivors of sexual assault and a year-long support group for female students called Women Supporting Women. According to the University, as of January 2016, it reinstated a task force from 2013 of a variety of constituents from across the campus community.

The University reported that it also conducted surveys in 2014, 2015, and 2016 to assess the campus climate with regard to sexual harassment and sexual violence and subsequently developed and implemented actions to improve the climate at the University. The surveys solicited anonymous responses from students on issues such as experiences of sexual harassment or assault, knowledge of and confidence in reporting avenues, and effectiveness of University education programming around sexual assault.

The University provided OCR documentation that the results of the climate surveys were used in 2016 as part of the University’s five-year strategic planning process, including development of additional or refinement of existing training. The University reported that it reconstituted its

Title IX advisory committee in response to the climate assessment results. In February 2017, the University provided documentation to OCR showing it is in the process of preparing another climate assessment for later in 2017.

### **Conclusion and Resolution**

In summary, OCR found that the University:

- 1) from the 2010-2011 academic year through March of 2017, failed to provide an appropriate notice of nondiscrimination in violation of 34 C.F.R. § 106.8(a);
- 2) for the 2010-2011 academic year, failed to designate a Title IX Coordinator in violation of 34 C.F.R. § 106.9(a);
- 3) from the 2010-2011 academic year through March 2017, failed to notify students and employees of the identity of the Title IX coordinator in violation of 34 C.F.R. § 106.8(a);
- 4) from the 2010-2011 academic year through the 2013-2014 academic year, failed to provide grievance procedures, as written and as applied, that complied with 34 C.F.R. §§ 106.8(b) and 106.31 because mediation was permitted in matters related to sexual assault;
- 5) from the 2010-2011 through the 2013-2014 academic year, failed to provide grievance procedures that complied with 34 C.F.R. §§ 106.8(b) and 106.31 because third parties were not properly covered;
- 6) from the 2010-2011 through the 2011-2012 academic year, failed to provide grievance procedures that complied with 34 C.F.R. §§ 106.8(b) and 106.31 because termination of proceedings were permitted if the same matters were under criminal investigation;
- 7) from the 2010-2011 academic year through March 2017 failed to provide grievance procedures that complied with 34 C.F.R. §§ 106.8(b) and 106.31 because not all forms of sex discrimination were covered.

In addition, OCR noted a deficiency, based on its review of sexual assault investigative files from the 2010-2011, 2011-2012, and 2012-2013 academic years, in providing students with interim measures or notices of determinations. Further, OCR noted deficiencies in the investigation and hearing process for Student D, as well as for Students E, F, and G.

On March 7, 2017, the University signed a resolution agreement, a copy of which is enclosed herewith, which, when fully implemented, is intended to address the Title IX violations OCR identified during its investigation and the portion of OCR's investigation that has not yet concluded concerning the University's response to other students' complaints. Under the terms of the Agreement, the University will:

- Review the complaints of rape the University received from academic year 2010-2011 through fall semester 2013 to determine whether the University responded promptly and equitably and take appropriate remedial steps to correct any violations.



- Review all complaints of sexual harassment and sexual violence the University received from spring semester 2014 through academic year 2015-2016 to determine whether the University responded promptly and equitably and take appropriate remedial steps to correct any identified violations.
- Submit to OCR for review documents pertaining to the University's handling of complaints of sexual harassment and sexual violence for academic years 2016-2017, 2017-2018, and 2018-2019.
- Revise the University's Title IX policies and procedures to ensure that they provide for the prompt and equitable processing of complaints of sex discrimination, and revise the University's website, publications, and other materials for addressing complaints of sex discrimination.
- Ensure that the University annually assesses the effectiveness of its efforts to address sex discrimination, and ensure that the University maintains sufficient records with respect to complaints received under Title IX.
- Continue to provide annual training regarding the University's obligations pursuant to Title IX to members of the University community, including instruction on how to conduct adequate, reliable and impartial investigations and the right of students to pursue simultaneously a criminal charge with law enforcement and a Title IX complaint with the University.
- Offer to reimburse Student A and Student B for counseling services for a period of up to one year, capped at \$2,000 each.
- Publish a notice of nondiscrimination that is compliant with Title IX.

OCR will monitor implementation of the Agreement. If the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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 complainants may have the right to file private suits in federal court whether or not OCR finds a violation.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, individuals may file complaints alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we 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.

Should you have any questions about this letter, please contact Supervisory Attorney/Team Leader Donald S. Yarab at (216) 522-7634. We look forward to receipt of the University's first monitoring report by June 30, 2017. For questions about the monitoring, please contact OCR Senior Equal Opportunity Specialist Sarah Poppleton, who will be overseeing the University's implementation of the Agreement, at (216) 522-2674 or at [Sarah.Poppleton@ed.gov](mailto:Sarah.Poppleton@ed.gov).

Sincerely,

/s/

Meena Morey Chandra  
Regional Director

Enclosure