



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
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September 9, 2016

IN RESPONSE, PLEASE REFER TO: 03-13-2328 & 03-15-2032

Dr. Ronald Nowaczyk
President
Office of the President
Frostburg State University
101 Braddock Rd.
Frostburg, MD 21532-2303

Dear Dr. Nowaczyk:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaints filed against Frostburg State University (University). 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 notice, including Complainant 1's and Complainant 2's report of sexual assault, and whether as a result, students, including Complainant 1 and Complainant 2, were subjected to a sexually hostile environment.

OCR investigated this case under the authority of Title IX of the Education Amendments of 1972 (Title IX). Title IX and its implementing regulations, 34 C.F.R. §106, prohibit discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the Department. The University receives such Federal funds and, therefore, is a recipient subject to the requirements of Title IX.

In her July 29, 2013 complaint filed with OCR, Complainant 1 alleged that the University failed to provide a prompt and equitable response to a report in March 2013 that the Accused Student allegedly raped her at an off-campus party in February 2013. During OCR's investigation of Complainant 1's complaint, on December 2, 2014, OCR received a complaint from Complainant 2 (Case #03-15-2032). Complainant 2 alleged that the University did not provide a prompt and equitable response to her May 2014 University complaint that she was sexually assaulted by a campus police officer during the Fall 2009 semester. OCR consolidated the investigation of Complainant 2's complaint with the existing investigation of Complainant 1's complaint.

During the investigation, OCR reviewed documentation provided by Complainant 1, Complainant 2, and the University, including relevant University policies and procedures, case files related to reports of sexual harassment and sexual assault from January 2010 through November 2014; conducted an on-site visit to the University in April 2014; and interviewed

Complainant 1 in January and July 2014, Complainant 2 in January 2015, and University students and University staff in 2014 and 2015.

SUMMARY OF FINDINGS

OCR found that the University failed to respond promptly and equitably to Complainant 1's report of sexual violence, and failed to take steps to prevent the recurrence of harassment and correct its discriminatory effects on Complainant 1. With regard to Complainant 2, OCR also found that the University failed to conduct an adequate, reliable, and impartial investigation of Complainant 2's report of sexual assault, and failed to take steps to prevent the recurrence of harassment and correct its discriminatory effects. OCR also found that the University's handling of the majority of other sexual harassment and sexual assault complaints brought by other students from January 2010 through November 2014 were not prompt and/or equitable, as required by Title IX.

OCR found that the University's policies and procedures and Notice of Non-Discrimination that were in effect at the time of Complainant 1's and Complainant 2's report of sexual assault were not compliant with Title IX. When OCR opened this investigation in 2013, the University had five (5) policies to address complaints of sexual harassment and sexual violence. OCR's investigation found that none of these policies met Title IX's procedural requirements. In 2016, the University consolidated all of its previous policies into a single policy that addresses all complaints of sexual harassment and sexual violence that are brought by or against students, employees, and third parties. OCR's investigation found that, while the 2016 Title IX policy and procedure made strides towards compliance with Title IX's procedural requirements, several compliance concerns remain.

More specifically, OCR found violations in the areas of the University's Notice of Non-Discrimination; former and revised grievance procedures; Title IX Coordinator's duties, responsibilities, and training; record keeping practices, and handling of Complainant 1's and Complainant 2's sexual violence complaints, as well as the majority of Title IX complaints reported to the University between January 2010 and November 2014. In addition, OCR's investigation identified concerns regarding the University's handling of criminal complaints; training provided to the campus community; student climate information; and campus climate assessment and response. OCR also notes that although our investigation identified concerns regarding the University's designation of responsible employees and complainant confidentiality, those concerns were remedied by the 2016 Title IX policies and procedures.

On September 6, 2016, the University voluntarily entered into a resolution agreement (Agreement), which requires that the University take specific steps to address the identified violations.

This letter summarizes the applicable legal standards, the evidence gathered during the investigation, OCR's determinations and the remedies the University has agreed to implement to resolve its non-compliance with Title IX.

LEGAL STANDARDS

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires a recipient to implement specific and continuing steps to notify all applicants for admission and employment, students and

parents, 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 its education programs or activities, and that it is required by Title IX not to discriminate in such a manner. The Notice of Non-Discrimination must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

The Title IX implementing regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. The recipient is further required, by the Title IX implementing regulation at 34 C.F.R. § 106.8(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s).

The Title IX regulation 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 in education programs or activities 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. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's 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 or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment, the size of the school, location of the incidents, and the context in which they occurred; and other incidents at the school. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment. For example, a single instance of rape is sufficiently severe to create a hostile environment.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred; and if the conduct occurred, whether a hostile environment existed for the complainant(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, as appropriate, remedy its effects. 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. A recipient has notice of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject the student to a hostile environment. If it does, the recipient will be required

to remedy the effects of both the initial sexual harassment and the effects of the recipient's failure to respond promptly and appropriately. A recipient's obligation to respond appropriately to sexual harassment complaints is the same irrespective of the sex or sexes of the parties involved.

A recipient is responsible under the Title IX regulations for the nondiscriminatory provision of aid, benefits, and services to students. Recipients generally provide aid, benefits, and services to students through the responsibilities they give to employees. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out the employee's responsibilities either conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct, or engages in sexual harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program on the basis of sex, the recipient is responsible for the discriminatory conduct and for remedying any effects of the harassment on the complainant, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has notice of the harassment.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including sexual harassment and sexual violence. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints, including sexual violence complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment or sexual assault, including disciplinary proceedings, must afford the complainant and the accused a prompt and equitable resolution.

BACKGROUND

The University is a public university that is part of the University System of Maryland (USM). The USM is comprised of 12 postsecondary institutions, including the University. Although the Board of Regents' duties include, among other things, formulating policies that govern the member institutions, the University is responsible for adopting and implementing its own policies and procedures.

When OCR initiated this investigation in academic year 2013-2014, the University had 4,703 undergraduate students, of whom 2,303 (49%) were female and 2,400 (51%) were male, and 770 graduate students, of whom 466 (60%) were female and 304 (40%) were male. During the 2015-16 academic year, the University had 4,961 undergraduate students, of whom 2,544 (51%) were female and 2,417 (49%) were male, and 786 graduate students, of whom 450 (57%) were female and 336 (43%) were male.

Pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092 (Clery Act), for the past four reporting years (2011, 2012, 2013, 2014), the University reported a total of 18 sex offenses.

As of the date of the agreement in this matter, the University has not reported crime data for 2015.

FACTS AND ANALYSIS

1. Notice of Non-Discrimination

The University's Notice of Non-Discrimination was published during the 2013-14, 2014-15, and the 2015-16 school years on the University's Diversity and Equal Opportunity webpage. The Notice of Non-Discrimination does not state that "sex" is a protected basis or that inquiries concerning the application of Title IX may be referred to the Title IX Coordinator or to OCR. In addition, the Notice of Non-Discrimination is not published in each announcement, bulletin, catalog or application form which is used in connection with the recruitment of students or employees, or unions or professional organizations holding collective bargaining or professional agreements with the University. In the few publications in which the Notice of Non-Discrimination is referenced, the publication refers to the Policy on Non-Discrimination/Equal Opportunity and states where it may be located.

OCR therefore concludes that the University's Notice of Non-Discrimination does not comply with the requirements of Title IX.

2. Grievance Procedures

OCR's investigation found that at the time the incidents involving Complainant 1 and Complainant 2 were reported, the University had five (5) policies and procedures that addressed sexual harassment and sexual violence:

- (1) *University System of Maryland Policy and Procedures on Sexual Assault (USM Sexual Assault Policy)*;
- (2) *Frostburg's Procedures for Implementing the USM Policy (University's Sexual Assault Procedures)*;
- (3) *Sexual Harassment Policy*;
- (4) *FSU Procedures for Pursuing Complaints of Discrimination and Sexual Harassment (Discrimination and Sexual Harassment Procedures)*; and
- (5) *Code of Student Conduct*.

The *USM Sexual Assault Policy* was an interim policy and in June 2014, the USM Board of Regents approved the *Policy on Sexual Misconduct for the University System of Maryland (Revised USM Sexual Misconduct Policy)*. The *Revised USM Sexual Misconduct Policy* superseded the *USM Sexual Assault Policy*. Collectively these policies and procedures (including the Revised USM policy) will be referred to herein as the "former Title IX policies and procedures."

In January 2016, the University adopted the *Gender-Based Harassment and Violence Policy (2016 Harassment and Violence Policy)* and the *Procedures for Investigating and Resolving Reports of Prohibited Conduct Under the University's Gender-Based Harassment and Violence Policy (2016 Harassment and Violence Procedures)* (collectively referred to as the *2016 Harassment and Violence Policy and Procedures*). The *2016 Harassment and Violence Policy and Procedures* replaced all of the University's previous Title IX policies and procedures.

OCR's investigation found that the University's former Title IX policies and procedures did not satisfy the University's obligation to provide for the prompt and equitable resolution of complaints of sexual harassment, including sexual violence. In particular, the former Title IX policies and procedures were at times confusing and contradictory to complainants, accused students, members of the University community, and third parties. Although the University has made progress in correcting the deficiencies in the University's former Title IX policies and procedures through the adoption of the *Harassment and Violence Policy and Procedures* in January 2016, OCR concludes that the revised policy and procedures are not fully compliant with the requirements of Title IX.

Former Title IX Policies and Procedures¹

USM Sexual Assault Policy, Revised USM Sexual Assault Policy, and the University's Sexual Assault Procedures

The *USM Sexual Assault Policy* and the *Revised Sexual Assault Policy* (collectively *USM Sexual Assault Policies*) were issued by the USM as a directive and guidance to all USM institutions, including the University, about the required contents of their sexual assault policies.²

The *USM Sexual Assault Procedures* set forth information required by the *USM Sexual Assault Policies* and were specific to the University. While they were published and readily available to the University community, the *USM Sexual Assault Procedures* did not provide adequate notice to students and employees of the procedures and did not provide for an adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and relevant evidence. Specifically, the *USM Sexual Assault Procedures*:

- Provided multiple, and at times conflicting, options for who may initiate a complaint of sexual assault and to whom it should be made. In one instance, it referred complainants to the Director of Public Safety, and at another point it identified the University Code of Conduct System reporting system without providing any contact information or details about the process. It also referred complainants to the University Judicial Administrator in the Office for Student and Educational Services (SES).
- Directed victims who wished to file a complaint against an employee to file a complaint with "the vice president of the division in which the accused is employed," but no contact information or procedures were provided. OCR further notes that the Former Title IX Coordinator and the Dean of Students disputed the University policies and procedures, stating that complaints against employees were to be filed with the Title IX Coordinator.
- Failed to provide a process for an adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and relevant evidence. Although the *Sexual Assault Procedures* stated hearings for sexual assault would be conducted through

¹ All of the University's former Title IX policies and procedures, except the *Discrimination and Sexual Harassment Procedures*, were published in the University's *Policy Statements Booklet*, which is an annual University publication available on the University's website provided to students, faculty, and staff by the Division of Student Affairs that contains policies regarding substance abuse, safety, and standards of conduct for students, faculty, and staff. The *Discrimination and Sexual Harassment Procedures* were published on the Office of Human Resource's webpage and the Office of ADA/EEO and Title IX Compliance's webpage.

² The University included the *USM Sexual Assault Policies* in the University's *Policy Statement Booklet* which was distributed to its students, employees, and third parties.

the hearing procedures established in the *Code of Student Conduct*, OCR's investigation concluded the *Code of Student Conduct* also did not provide for an adequate, reliable, and impartial investigation as required by Title IX.

- Noted that inquiries concerning Title IX may be referred to OCR but did not provide OCR's contact information.
- Did not provide for the following: designated and reasonably prompt timeframes for major stages of the grievance process, as well as the process for extending timeframes; written notice to the parties of the outcome of the complaint; an assurance that the institution will take steps to prevent recurrence of harassment and correct its discriminatory effects on the complainant and others, if appropriate; interim measures; a statement that the standard of review is the preponderance of the evidence; a prohibition against retaliatory harassment; an adequate definition of sexual harassment; or the right to proceed with a criminal investigation and a Title IX complaint simultaneously.

OCR therefore concludes that the University's *USM Sexual Assault Policies* and the *USM Sexual Assault Policies Procedures* did not comply with the requirements of Title IX.

Sexual Harassment Policy

The *Sexual Harassment Policy* provided minimal guidance regarding resources available to a victim of sexual harassment, such as how and where to file a complaint or how such a complaint would be investigated. Although the *Sexual Harassment Policy* defined sexual harassment and provided numerous examples of conduct that could rise to the level of sexual harassment, neither the definition nor the examples mentioned sexual violence or sexual assault as a form of sexual harassment. In addition, the *Sexual Harassment Policy* did not state whether it applied to students, employees, and/or third parties. In addition, the *Sexual Harassment Policy* did not provide adequate notice to students and employees of the procedures, including where complaints may be filed, that was easily understood.

OCR also determined that the *Sexual Harassment Policy* did not provide for an adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and relevant evidence. While the *Sexual Harassment Policy* stated that the rights of both the offender and the offended would be protected, including protection from retaliation, it directed the reader to the *Discrimination and Sexual Harassment Procedures*, which as set forth more fully below, did not provide for an adequate, reliable, and impartial investigation. Additionally, the *Sexual Harassment Policy* inappropriately stated that "in assessing whether a particular act constitutes sexual harassment forbidden under this policy, the rules of common sense and reason shall prevail. The standard shall be the perspective of a reasonable person within the campus community." This standard falls short of the preponderance of the evidence standard required to satisfy Title IX.

In addition, the *Sexual Harassment Policy* did not provide for the following: designated and reasonably prompt timeframes for major stages of the grievance process, as well as the process for extending timeframes; written notice to the parties of the outcome of the complaint; an assurance that the institution will take steps to prevent recurrence of harassment and correct its discriminatory effects on the complainant and others, if appropriate; interim measures; a prohibition against retaliatory harassment; or the right to proceed with a criminal investigation and a Title IX complaint simultaneously.

OCR therefore concludes that the University's *Sexual Harassment Policy* did not comply with the requirements of Title IX.

*Discrimination and Sexual Harassment Procedures*³

The University's *Discrimination and Sexual Harassment Procedures* are grievance procedures for filing complaints of discrimination based on race, color, creed, religion, national origin, sex, age, disability, veteran status, and sexual orientation. While the *Discrimination and Sexual Harassment Procedures* adequately provided for written notice to the parties of the outcome of the complaint and prohibited retaliation, they did not provide for: adequate notice to students and employees of the procedures, including where complaints may be filed, that was easily understood; the application of the procedures to complaints alleging discrimination or harassment carried out by employees, other students, and third parties; an adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and other relevant evidence; timeframes for all major stages of the grievance process, and/or a process for extending timelines. Specifically, the *Discrimination and Sexual Harassment Procedures*:

- Did not provide that the parties had an equal opportunity to provide evidence and witnesses during the investigation.
- Did not provide any timeline with respect to the informal complaint process, and with respect to formal complaints, the procedures did not provide a timeframe, but instead stated that the Title IX Coordinator would conclude the investigation of the facts as promptly as possible.
- Required complaints to be filed within 60 calendar days of the complainant having reasonable knowledge of the act and complaints against a faculty member were directed to be brought within 60 calendar days after the last day of the semester in which the incident occurred.
- Stated that the Title IX Coordinator would make the determination as to whether an investigation of the dispute would be undertaken or if the matter would proceed to a hearing, but did not state how this determination would be made.
- Did not define University community member and it was unclear who could make a complaint of discrimination or sexual harassment pursuant to these procedures. We note, however, that the Former Title IX Coordinator explained that "member of the University community," as stated in the procedures, could include a third party, such as a vendor.
- Stated that complainants could file with OCR and other agencies, but did not provide contact information for OCR or any other agency.
- Included an informal process that did not state that the informal process was voluntary and that mediation may not be used in a complaint of sexual assault or sexual violence. In addition, the Former Title IX Coordinator stated that mediation was an available option for cases alleging sexual assault.
- Did not provide the following: an assurance that the University would take steps to prevent the recurrence of harassment and correct its discriminatory effects on the complainant and others, if appropriate; interim measures; or a statement that the preponderance of the evidence was the appropriate evidentiary standard to be utilized.

³ While the University's *Sexual Assault Procedures* were clearly intended to set forth the information required by the *USM Sexual Assault Policies*, several key administrators insisted that the *Discrimination and Sexual Harassment Procedures* were developed by the University to meet the requirements set forth in the *USM Sexual Assault Policies*.

- Prohibited retaliation, but did not contain policies and procedures to protect against retaliatory harassment.
- Did not specify that sexual violence is a form of sexual harassment.

OCR therefore concludes that the University's *Discrimination and Sexual Harassment Procedures* did not comply with the requirements of Title IX.

Code of Student Conduct

The *Code of Student Conduct* set forth conduct that was prohibited by the University and subject to student conduct proceedings, including sexual harassment and sexual offenses labeled as "sexual misconduct I" and "sexual misconduct II."

The *Code of Student Conduct* appropriately identified the preponderance of the evidence as the evidentiary standard of review for the hearing. In addition, it provided to both parties an equal opportunity to present witnesses and other evidence at the hearing and access to information used at the hearing; the opportunity to hear, question, and challenge adverse testimony or witnesses through the hearing panel; advisors to provide support at the hearing; and the right to appeal the hearing determination. However, it did not provide adequate notice to students and employees of the procedures, including where complaints may be filed; an adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and other evidence during the investigation of the complaint; designated and reasonably prompt timeframes for all major stages of the grievance process or a process for extending timeframes; adequate written notice to the parties of the outcome of the complaint; interim measures for the victim; an assurance that the University would take steps to prevent recurrence of harassment and to correct its discriminatory effects on the complainant and others, if appropriate; policies and procedures to protect against retaliatory harassment; or notice to the complainant of the right to proceed with a criminal investigation and a Title IX investigation simultaneously. Specifically, the *Code of Student Conduct*:

- Defined sexual harassment, but the definition did not include sexual assault or sexual violence.
- Stated that any faculty, staff, or student may refer to a University Code Administrator a student or student organization suspected of violating the *Code of Student Conduct*, but it did not provide direction regarding the identity or contact information of the University Code Administrator(s) or the process for making such a referral. In addition, OCR's investigation found that there was contradictory evidence regarding whether all complaints against students must be filed under the *Code of Student Conduct* procedures. Specifically, the Former Title IX Coordinator told OCR that if a complaint alleged sexual harassment or assault by a student against an employee, the *Discrimination and Harassment Procedures* would apply. That distinction, however, was not evident from the *Code of Student Conduct*.
- Did not provide that third parties may bring a complaint against a student by invoking the *Code of Student Conduct*.
- Permitted an accused student to have an attorney present at the hearing if criminal charges were also likely, but the complainant was not similarly entitled to have an attorney present.

- Provided that, during the sanctioning phase, the referred student may present character references or statements to testify on his or her behalf, but the complainant was not provided an equal opportunity for character witnesses.
- Raised a concern regarding the impartiality under the *Code of Student Conduct* because Key Administrator 2, who served as an advocate for victims to help guide them through the *Code of Student Conduct* process, also served as a hearing panel member.
- Contained general timeframes, including that referrals should be made in a “timely manner,” witness statements will be provided to the parties “in a reasonable time prior to the hearing to allow both parties to review and challenge them,” and a written decision shall be sent to the referred student “within a reasonable period of time.”
- Provided that a written decision would be sent to the referred student at his/her address or by email within a reasonable period of time, but it did not provide that the complainant would also receive a copy of the outcome in writing. Moreover, if a victim of a crime of violence or non-forcible sex offense wished to receive the results of any disciplinary hearing conducted by the University against a student who was the alleged perpetrator of the crime or offense, he or she was required to submit a request in writing. In addition, although the *Code of Student Conduct* permitted appeals, it did not provide for written notice to the parties of the outcome of the appeal.
- Included the option for mediation but did not state that mediation is not appropriate for cases of sexual assault.

OCR also has concerns that the Dean of Students informed OCR that the University conducted only a limited investigation to determine if there was enough information to indicate that there was a likelihood that a violation of policy occurred, and that the subsequent judicial panel hearing constituted the University’s investigation.

OCR therefore concludes that the University’s *Code of Student Conduct* did not comply with the requirements of Title IX.

Title IX Website and 2016 Revisions to Title IX Policies and Procedures

The University currently has a Title IX webpage that serves as a comprehensive Title IX resource. The webpage identifies the University’s Title IX and University Compliance Coordinator (Current Title IX Coordinator) and the Deputy Title IX Coordinator and provides the telephone number and email address for each. We note that Key Administrator 2 is now designated as a Deputy Title IX Coordinator. The webpage contains links entitled “reporting options,” “sources of support,” “definitions,” “reporting form,” and “policies and procedures.”

The reporting options page provides a comprehensive list of the different ways a victim may report sexual harassment or sexual violence, as well as contact information for the University individuals and offices who may provide assistance in doing so. The sources of support page provides detailed information regarding various on and off campus resources available to provide assistance to victims, with accompanying contact information and a short description of each resource. The definitions page includes a definition for confidential employee, gender based violence, relationship violence, sexual exploitation, sexual harassment, sexual intimidation, sexual misconduct, sexual violence, retaliation, stalking, interim measures, and responsible employee. OCR notes that the Title IX webpage states that all employees, except those of the health center and counseling center, are responsible employees obligated to report incidents of

prohibited conduct. The reporting form page is an online reporting form, and the cover page also provides instructions for anonymous reporting. The form also states that all reports are directed to the Title IX Coordinator and provides her name and contact information, along with the contact information for on and off campus resources. The form allows the individual to designate the specific type of misconduct that took place, the location of the misconduct, the complainant's identification, the respondent's identification and the details of the incident. Lastly, the policies and procedures page includes a link to the *2016 Harassment and Violence Policy and Procedures*.

2016 Harassment and Violence Policy and Procedures

OCR concluded that *2016 Harassment and Violence Policies and Procedures* are compliant with Title IX in a number of areas. The following summary describes the provisions of the *2016 Harassment and Violence Policies and Procedures* that are not compliant:

Although the *2016 Harassment and Violence Policy and Procedures* provide for timeframes for many of the major stages of the grievance process, it does not provide timeframes for all of the major stages. Specifically, timeframes are not provided for when the Title IX Coordinator or designee will issue a Notice of Investigation to the parties, for when the University will determine appropriate sanctions when the respondent is an employee, or a timeframe for when the Title IX Coordinator or designee will issue a Notice of Investigative Finding to the parties.

The *2016 Harassment and Violence Policy and Procedures* provide that each party will receive written notice of the outcome of a voluntary resolution, the final investigative report, and the appeal. However, the policy does not explicitly state that written notice will be provided to the complainant when the Title IX Coordinator determines that no further action should be taken after the initial review.

OCR therefore concludes that the University's *2016 Harassment and Violence Policy and Procedures* do not comply with the requirements of Title IX.

3. Responsible Employees

The former Title IX policies and procedures were largely silent with respect to the responsibility of employees to report sexual harassment or sexual assault. Only the *Sexual Harassment Policy* addressed responsible employees, stating that "members of the University community with personal knowledge of incidents of harassment are encouraged, and University employees are required, to report such knowledge to the Title IX Coordinator."

By contrast, the current Title IX website and the *2016 Harassment and Violence Policy and Procedures* inform the campus community of which employees are considered responsible employees and which are considered confidential employees, and define each of those terms. Specifically, it states that responsible employees who learn of or witness prohibited conduct are required to report it to the Title IX Coordinator, and except for confidential employees, all University employees have been designated as responsible employees by the University. Confidential employees are defined as employees who are not required to report incidents, and are limited to employees of the health and counseling centers. In addition, the *2016 Harassment and Violence Policy and Procedures* advises that the University police can assist individuals in making a report to law enforcement and explains that reporting an incident to the University

police will trigger the University police's obligation as responsible employees to report the conduct to the University as well.

OCR's has concerns that the previous Title IX policies and procedures did not adequately designate and categorize University employees as either responsible employees or confidential resources. OCR notes, however, that the University's current Title IX policies and procedures do include appropriate designations and categories.

4. Confidentiality

Prior to 2016, confidentiality was addressed only in the *Discrimination and Sexual Harassment Procedures*, which provided that “*confidentiality will be maintained to the extent permitted by law, except insofar as information needs to be disclosed so that the University may effectively investigate the matter and take corrective action.*” The policy did not specifically address factors such as when a request for confidentiality would be honored, the conditions under which such a request would not be honored, or the individual(s) responsible for deciding whether a complainant's request for confidentiality would be honored. In addition, the former Title IX policies and procedures did not address how student requests to not pursue campus judicial action would be addressed.

The *2016 Harassment and Violence Policies and Procedures* provide definitions for privacy and confidentiality, explain the differences between each, and state that when a complainant requests that their name or other identifiable information not be shared or that no formal action be taken, the Title IX Coordinator, in consultation with the Title IX team, will balance this request with the University's obligation to provide a safe and non-discriminatory environment to the victim and the rest of the community. If the University is unable to honor the request, the Title IX Coordinator will inform the victim prior to starting a formal investigation.

OCR's has concerns that the previous Title IX policies and procedures did not adequately address the University's obligations when a victim requests confidentiality and/or elects not to proceed with a complaint. OCR notes, however, that the University's current Title IX policies and procedures appropriately address the University's obligations regarding confidentiality.

5. Title IX Coordinator

The Former Title IX Coordinator was also the University's Director of the Americans with Disabilities Act/Equal Employment Opportunity (ADA/EEO). According to the Former Title IX Coordinator, her Title IX Coordinator duties included overseeing all Title IX policies and procedures, working with the athletic department to ensure equity, working with SES on its grievance procedures, keeping abreast of Title IX complaints that were filed, as well as their conclusions and outcomes, and investigating Title IX complaints that were made by or against faculty or staff.

The Former Title IX Coordinator did not oversee all of the University's efforts to comply with and carry out its Title IX responsibilities and programs. Although the Former Title IX Coordinator was notified of some of the incidents brought against employees and students, the evidence showed that the Dean of Students bore the primary responsibility for the handling of such complaints, with little to no oversight by the Former Title IX Coordinator. Key Administrator 2 also held significant Title IX responsibilities, including serving as a case

manager for student victims of sexual assault and assisting students with obtaining services, and with the University's judicial process, again with little to no oversight by the Former Title IX Coordinator. In addition, based on the information provided by the University and its administrators, OCR found that the Former Title IX Coordinator did not receive sufficient training and did not sufficiently implement the University's Title IX requirements. Information provided by the University also showed, as discussed below, that the Former Title IX Coordinator only received notice of five of 43 reports of sexual violence and assault that occurred from January 2010 through November 2014 and, thus, was not in a position to identify problematic individuals, groups, or locations or to assess whether patterns of conduct or serial perpetration occurred that the University should address.

OCR also found that, although the Former Title IX Coordinator's name, title, office address, and phone number appeared in some of the University's Title IX policies and procedures, and the University's sexual assault pamphlet and brochure, it did not appear in widely disseminated publications such as the course catalog. As already noted, it also did not appear in the University's Notice of Non-Discrimination, *USM Sexual Assault Policy*, or the *University's Sexual Assault Procedures*.

In January 2015, the University named the new Title IX and University Compliance Coordinator (Current Title IX Coordinator). The Current Title IX Coordinator reported to OCR that since she was hired, the University has revised and enhanced the role of the Title IX Coordinator.

OCR therefore concludes that the University did not comply with Title IX with respect to the training of the Former Title IX Coordinator and assigning her sufficient responsibilities and duties. OCR will review and analyze the role of the University's Current Title IX Coordinator during its monitoring of the Agreement.

6. Handling of Criminal Complaints

The University's former Title IX policies and procedures did not address how the University handled criminal complaints that were brought against students, whether a criminal complaint could trigger a University investigation, or the effect of a criminal complaint on the University's Title IX investigative process. Notwithstanding, OCR's investigation did not reveal any compliance concerns regarding the University's practices regarding the handling of criminal complaints.

The University's Chief of University police stated that the University did not have a memorandum of understanding with the local police or state police, but that the University police shared a reporting system with the local police, and had a verbal agreement with the state police that the state police would notify the University police if a University student was involved in a sexual assault. Subsequently, the University provided a copy of a 2012 Memorandum of Understanding (MOU) between various agencies, including local law enforcement and the University, stipulating that the purpose of the agreement is to coordinate multiple agency law enforcement units to investigate violations of Maryland law. The University explained that, under the MOU, University police report major crimes (including sexual assault) to local law enforcement; local law enforcement then provides a trained investigator to conduct the investigation.

OCR has concerns that the University's MOU does not specifically address the coordination of investigations of sexual harassment and sexual assault. OCR will review and analyze the University's handling of criminal complaints and the MOU during its monitoring of the Agreement.

7. Training

OCR found that at the time of the underlying incidents in this complaint, there were multiple deficiencies in the University's Title IX training, including the quality of the training that was provided to those charged with implementing Title IX and the University's Title IX grievance procedures, as well as the training that was provided to the campus community. Documentation provided by the University, as well as interviews with the Former Title IX Coordinator revealed that the Former Title IX Coordinator and Key Administrator 2, who served as a liaison for victims in the University's Title IX process, were not adequately trained regarding their Title IX responsibilities.

In addition, the University informed OCR that all employees are required to take an online training regarding sexual harassment. OCR reviewed the online sexual harassment training materials and found that, while it addressed sexual harassment in the employment context, it did not address sexual harassment/sexual violence as it relates to students or Title IX, and it did not provide any information specific to the University, such as the University's procedures for reporting sexual harassment/violence or responsible employees. Additionally, while the Former Title IX Coordinator told OCR that responsible employees were informed of their reporting obligations during workshops and training, the University did not provide any specific information regarding those workshops or trainings.

OCR also notes deficiencies with the training of former panel hearing members. While the *Code of Student Conduct* stated that all new hearing panel members would participate in an orientation session, it did not provide for specialized training for panel members who sat on panels where the alleged violation was sexual harassment or sexual assault. The University advised OCR, and Key Administrator 2 confirmed, that the Dean of Students provided hearing panel members with training specific to sexual harassment and sexual assault. Panel members also received periodic additional training related to sexual harassment and sexual assault, such as training by community organizations and the local police. However, one hearing panel member told OCR that specialized training was not mandatory for hearing panel members. According to the Current Title IX Coordinator, the University has revised and enhanced the training it provides to the campus community.

OCR therefore concludes that the University's training of relevant staff and students did not comply with the requirements of Title IX. OCR will review and analyze the training the University currently provides to the campus community during its monitoring of the Agreement.

8. Outreach

OCR found that the University provided the campus community with outreach regarding issues surrounding sexual harassment and sexual violence in a variety of ways. For example, the President's Advisory Council Against Gender Based Violence (Advisory Council) was comprised of administrators, faculty, and staff and was charged with coordinating programs and distributing information and literature to the campus community, such as a campaign regarding

consent. One of the members of the Advisory Council explained to OCR that the Advisory Council was started in 2011 to bring together staff, faculty, students, and administrators for a coordinated University response for education programming, policy, and training regarding sexual harassment and assault. At the time of OCR's visit in April 2014, there were at least two campus-wide programs each semester regarding sexual violence, as well as additional programming for students during the first several weeks of the academic year where incidents are more likely to occur. Additionally, Title IX policy statements, including the student conduct process, are emailed to students every year. Moreover, the Current Title IX Coordinator advised OCR that the University has revised and enhanced its outreach to the campus community.

OCR does not have concerns regarding the University's outreach efforts.

9. Student Climate Information and Climate Assessment/Response

Key Administrator 2 and Key Administrator 1 told OCR that the University assesses student climate through the National College Health Assessment II (the Assessment). The Assessment is a survey that is issued every two years to gauge a number of health-related topics, including sexual health. Key Administrator 2 used the survey results to inform the University's practices and to address trends regarding sexual harassment and assault. The University provided the results of the 2009, 2011, and 2013 surveys that were completed by undergraduates. OCR has concerns regarding the low response rate to the surveys: 21% in 2009, 15.8% in 2011, and 11.6% in 2013. In addition, 70% of the students who responded to the 2013 survey reported they did not believe they received information regarding sexual assault from the University, which also gave rise to concerns. In addition, although there are media reports of a 2015 climate survey, the University did not provide the results to OCR.

OCR has concerns regarding the University's assessment of student climate given the low response rate of prior surveys. OCR will analyze the University's assessment of student climate during its monitoring of the Agreement.

10. Record Keeping Practices

In reviewing the data for the 43 other incidents that occurred from January 2010 through November 2014, OCR observed that the University did not provide complete documentation for thirty-one incidents, including witness interviews, investigative reports, communications with parties, written notice of the outcome to the victim, or documentation confirming that the victim was advised of on-campus and off-campus resources, including interim measures. Despite the statements of the Dean of Students and Key Administrator 2, the data revealed that the Former Title IX Coordinator was only notified of five of the incidents and, thus, was not in a position to identify problematic individuals, groups, or locations.

OCR therefore concludes that the University did not have record keeping practices that comply with the requirements of Title IX.

11. Handling of Complaints and Incidents of Sexual Assault and Sexual Violence

OCR investigated whether the University provided prompt and equitable responses to sexual violence complaints, reports and/or other incidents of which it had notice (knew or should have known about), including those filed by the Complainant 1, Complainant 2, and other students'

complaints/reports. OCR also investigated whether any failure by the University to promptly and equitably respond to complaints of sexual assault/violence of which it had notice, resulted in individuals, including Complainant 1 and Complainant 2, continuing to be subjected to a sexually hostile environment.

Complainant 1 Incident

Complainant 1 was a senior at the University during the Spring 2013 semester. She resided in an on campus residence hall and was involved in student government. The Complainant alleges that, on February 27, 2013, she was raped by a fellow student (Accused Student) at an off campus party. Soon after the incident, Complainant 1 left campus to stay at her parents' home. It is undisputed that, on or about March 3, 2013, Complainant 1's father called Key Administrator 1 and an employee to inform them that Complainant 1 would be out of school for a few days as a result of the trauma from the rape. On March 4, 2013, Key Administrator 1 notified Complainant 1's professors that she missed or would be missing some classes due to medical reasons.

Key Administrator 1 oversees various University functions, including but not limited to, student conduct. It is undisputed that he did not report the alleged rape to SES or anyone else at the University. Key Administrator 1 told OCR he did not report the incident because Complainant 1's father asked him to keep it in confidence and that, although he realized he had to report it at some point, he wanted to have a conversation with Complainant 1 before doing so in order to make her aware of his obligations. Key Administrator 1 also told OCR that a conversation with Complainant 1 became unnecessary because within a week of his conversation with Complainant 1's father, the Dean of Students informed him that Complainant 1 had reported the incident to the police.

On March 3, 2013, Complainant 1 reported the incident to the state police. The Chief of University police told OCR that one of her officers notified her of Complainant 1's report to the state police, and that it is her office's practice to immediately notify the Dean of Students or the Title IX Coordinator of any such reports. However, OCR's investigation did not find evidence showing that the campus police informed SES or the Title IX Coordinator of Complainant 1's report to the state police. In addition, the Dean of Students told OCR that SES did not learn of the incident until March 14, 2013, when Complainant 1 returned to campus and discussed the situation with him.

Complainant 1 told OCR that, during her March 14, 2013 meeting with the Dean of Students she told him that she did not feel safe on campus because, following the incident, the Accused Student tried making contact with her several times, and started following her on campus. In response, by email dated March 14, 2013, and in person on that date, the Dean of Students advised Complainant 1 and the Accused Student to avoid any contact with the other either in person, written, verbal or electronic form. In addition, Complainant 1 told OCR that the Dean of Students informed her that she could receive counseling from the University's counseling center or a community counseling center, but that he did not discuss any other interim measures with her. The Dean of Students, however, told OCR that he provided Complainant 1 with a pamphlet that described all available interim measures. OCR reviewed the pamphlet and found that, with respect to interim measures, it stated only that "a survivor may request alternative academic, living, or employment situations if such alternatives are available, feasible, and appropriate to the facts of the sexual assault." After the incident, Complainant 1 moved back home with her

parents who lived about one hour away because she did not feel safe and she continued to see the Accused Student on campus.

Complainant 1 informed OCR that, as a result of the incident, she experienced some difficulty in her classes. The only interim measures offered by the University were an offer for counseling, as well as to allow her a late withdrawal from her classes and an offer to contact her professors to explain that she was having difficulties because of the incident. Complainant 1 chose to finish her classes and made arrangements with all of her teachers on her own in order to complete her coursework. Last, Complainant 1 told OCR that she was initially told that she would face disciplinary action for engaging in underage drinking the night of the incident. There is no dispute that Complainant was not disciplined for engaging in underage drinking the night of the incident. However, the Dean of Students acknowledged to OCR that he counseled Complainant 1 about her consumption of alcohol the evening of the incident.

On March 14, 2013, the Accused Student was criminally charged with rape and other offenses as a result of Complainant 1's report to the state police. The state police notified the campus police of the charges, and on March 15, 2013, the Chief of University police called SES and advised the Assistant Dean that the Accused Student had been charged with rape. Upon review of the statement of charges, the University learned that there was information to indicate a possible violation of University policy. The Dean of Students proceeded with setting up a judicial board hearing panel.

The judicial board hearing was originally scheduled for April 2, 2013; however, at the request of the Accused Student's attorney, the hearing was delayed until April 12, 2013. Complainant 1 told OCR that she was not aware that she could have retained an attorney to represent her or requested to reschedule the hearing. In addition, Complainant 1 told OCR that she provided the Dean of Students with a list of several witnesses to be interviewed; however only a few of them were contacted. Moreover, a few days before the judicial board hearing, at the request of the Accused Student's attorney, two of the Accused's character witnesses were added to the hearing list and the record was supplemented with reference letters. OCR's investigation found that Complainant 1 was not provided with the opportunity to provide character witnesses or reference letters.

There is no dispute that, prior to the judicial board hearing, the Accused Student violated the no-contact directive. As a result, the University developed a schedule for the Accused Student and Complainant 1. It is also undisputed that subsequent to the development of the schedule, the Accused Student violated the agreement on two separate occasions. A "show cause" hearing was scheduled for the Accused on April 11, 2013 to determine if any additional action was necessary in accordance with the Policy Statement Booklet. Complainant 1 was not made aware that this hearing was taking place and she was not a participant in the University's proceedings regarding the Accused Student's violation of the restricted hours. As a result of the April 11, 2013 hearing, it was agreed that, except to attend class, the Accused Student would be restricted to an area of campus close to his residence hall. Key Administrator 2 informed Complainant 1 of these restrictions after the hearing. The Dean of Students told OCR that the University did not consider the Accused Student's violations of the no contact order to be a form of sexual harassment.

The hearing to address Complainant 1's allegation of rape was held on April 12, 2013. The Dean of Students explained that the Accused Student was permitted to have an attorney present

at the hearing in accordance with the *Code of Student Conduct*, and that Complainant 1 was also permitted to have an attorney present. When asked how Complainant 1 would have been aware that she had this opportunity, the Dean of Students stated that he told her that she could have a support person present. However, the Complainant indicates that she was never notified that her support person could be an attorney. The evidence reflects that Complainant 1 was able to secure a friend of the family who is an attorney to be her support person during the hearing.

Complainant 1 told OCR that none of the Accused Student's evidence was shared with her before the hearing, which the Dean of Students denies. In addition, she told OCR that she was not aware that she could bring physical evidence to the hearing, and was upset when she learned that the Accused Student brought such evidence. As noted, while the Accused Student was permitted to submit character witnesses, Complainant 1's request to submit similar witness statements was denied.

As a result of the hearing, the Accused Student was found responsible for Sexual Misconduct I, Sexual Misconduct II, and Endangering the Health and Safety of Self/Others. On April 16, 2013, the University issued the following sanctions: suspension through the end of the Fall 2013 semester; requirement to reapply for readmission; designated as persona non grata on the University's campus throughout the duration of the suspension; and if readmitted, disciplinary probation through graduation. The Disposition gave the parties five business days to appeal the outcome, and directed the parties to the *Code of Student Conduct* for information regarding appeals. Both parties filed appeals.

Pursuant to University policy, the Accused Student was permitted to remain on campus pending the outcome of the appeal and the April 11, 2013 restrictions on his movement on campus remained in place. After the judicial board hearing, Complainant 1 informed University officials that the Accused Student again violated the no contact agreement. In response, the Dean of Students informed the Accused Student in writing that he was required to leave campus immediately due to reports from the University police indicating that he had violated the no contact order.

The Dean of Students held another "show cause hearing" on April 22, 2013 by phone. There is no transcript or written record of this hearing, and OCR confirmed that Complainant 1 did not attend the hearing. The Dean of Students told OCR that Complainant 1 was asked to provide a statement for the hearing. As a result of April 22, 2013 show cause hearing, the Accused Student was charged with "Refusing a Reasonable Request and Harassment," and an administrative hearing was scheduled to adjudicate these charges on May 14, 2013.

On April 26, 2013, Key Administrator 1 sent written notice to the Accused Student and Complainant 1 denying their appeals and notifying them that the outcome of the hearing on April 12, 2013, took effect immediately.

As a result of the May 14, 2013 administrative hearing to adjudicate the charges of Refusing a Reasonable Request and Harassment, the Accused Student pled responsible for Refusing a Reasonable Request and agreed that he would not reapply or otherwise be readmitted to the University following the one year suspension. OCR notes, however, that no disposition was made with respect to the harassment charge. The University described the outcome as a "permanent suspension from the University." Complainant 1 promptly received notice of the outcome of the administrative hearing via email from the Dean of Students, including that the

Accused Student would no longer be eligible to return to the University. However, OCR notes that the University did not provide Complainant 1 a copy of the disposition of the hearing, despite her request. OCR further notes that the University did not consider the hearing regarding the Accused Student's failure to abide by the no contact order to be a hearing governed by the requirements of Title IX.

ANALYSIS of Complainant 1 Incident:

Based on the investigation, OCR concludes that the University failed to respond promptly and equitably to Complainant 1's report of sexual violence. Additionally, OCR concludes that Complainant 1 was subjected to a sexually hostile environment, and continued to be subjected to a hostile environment due to the University's failure to provide adequate interim measures and to take steps to stop the harassment and prevent its recurrence.

First, the University did not promptly respond after two mandatory reporters had notice of the incident. Although Key Administrator 1, another employee, and the campus police learned of the incident on or about March 3, 2013, OCR's investigation found that the University did not initiate any action until Complainant 1 herself reported the incident to the Dean of Students on March 14, 2013. Although Key Administrator 1 told OCR he did not initiate any action regarding the incident because Complainant 1's father asked him to keep it in confidence, OCR notes that while a complainant's request for confidentiality is a factor a recipient should consider, a university must take action to address incidents upon receiving notice of them, including but not limited to whether honoring a request for confidentiality is appropriate under the circumstances presented. OCR's investigation did conclude, however, that once Complainant 1 reported the incident to the Dean of Students, the University did promptly move forward to hold a hearing and address the subsequent appeal.

In addition, the University did not adequately provide Complainant 1 with interim measures. Although the Dean of Students put a no contact order in place, it was not effective in keeping the Accused Student away from Complainant 1, as evidenced by the Accused Student's multiple violations of the no contact order. In addition, although Key Administrator 2 was assigned as Complainant 1's support person and information was provided to Complainant 1 about available counseling services, the evidence did not show that the University provided her with guidance regarding the full range of available interim measures. Further, OCR found that in some instances, Complainant 1 arranged for interim measures, such as alternative coursework, on her own.

The University's investigation of the incident involving Complainant 1 was not adequate, reliable or impartial. The University conducted only a cursory investigation that consisted of speaking to several student witnesses and reviewing the police report prior to holding a hearing regarding the incident. However, the University did not interview or invite all of the relevant witnesses identified by Complainant 1 to the hearing, even though it considered the hearing to be its investigation. In addition, both parties did not have equitable access to an attorney because Complainant 1 was not informed that she could have counsel present until the day of the hearing. Although Complainant 1 was able to find an attorney to accompany her to the hearing, unlike the Accused Student, she did not have the benefit of being represented by counsel throughout the University's process. Furthermore, Complainant 1 was not afforded the same opportunity to provide character witnesses as the Accused Student. OCR also has concerns that Key Administrator 2, who served as a victim's advocate, also served as a member of the hearing

panel, which may have posed a potential conflict of interest at the time. OCR's investigation was not able to resolve the factual dispute regarding whether Complainant 1 was denied access to the Accused Student's evidence prior to the hearing. Despite its written policies, the University employed the correct standard of proof (preponderance of the evidence), informed the parties of the status of the investigation, and provided both parties with an equal opportunity to appeal the outcome of the hearing.

The University provided the parties with written notice of the outcome of the hearing and appeal pertaining to the incident. In addition, the evidence reflects that Complainant 1 received email notification of the outcome of the May 14, 2013 administrative hearing that addressed the Accused Student's failure to abide by the no contact order. However, the University erroneously did not treat the Accused Student's failure to abide by the no contact order as a violation of Title IX, and as such, it did not provide Complainant 1 with all of the information regarding that proceeding as required by Title IX, such as the hearing disposition form. The evidence also reflects that the University took actions that could have a chilling effect on students reporting incidents of sexual assault. Specifically, Complainant 1 perceived the Dean of Students as having suggested she could receive discipline for having engaged in underage drinking the night of the offense and the Dean of Students confirmed that he counseled Complainant 1 regarding her consumption of alcohol on the evening of the incident.

Complainant 2 Incident

On May 20, 2014, just prior to her graduation from the University, Complainant 2 reported to the Former Title IX Coordinator that a campus police officer sexually assaulted her in his police vehicle during the fall 2009 semester.

OCR's investigation found that after meeting with Complainant 2, the Former Title IX Coordinator immediately contacted the campus police, and the campus police turned the case over to the county authorities. The Chief of University police and the Former Title IX Coordinator told OCR that they informed Complainant 2 of available University and community resources. Complainant 2 told OCR that the Former Title IX Coordinator did not provide her with any information regarding her reporting options, but rather, only took her information and then about 20 minutes later the Chief of University police called her and asked her to come in for an interview with investigators from the county, which she did. Complainant 2 also told OCR that she had received counseling from the University counseling center immediately following the incident and that she received an email from Key Administrator 2 detailing outside resources after she reported the incident to the Former Title IX Coordinator. The Chief of University police told OCR that she kept in touch with Complainant 2 throughout the summer and provided OCR with copies of text message exchanges between July and September 2014 in which she checked-in on Complainant 2 and provided her with updates on her criminal case. The University asserts that no additional remedial measures or accommodations were deemed necessary for Complainant 2, as she graduated from the University and left the area shortly after making her report. Complainant 2 confirmed that she graduated the day after she made her report and left campus shortly thereafter to begin a job in another jurisdiction.

The University suspended the police officer on May 23, 2014. As a result of the criminal investigation, on May 29, 2014, the officer was criminally charged. On September 9, 2014, the police officer pled guilty and the plea required that he, among other things, not have any contact

with Complainant 2, resign from the campus police department, and provide information to the county police as to similar activities known to him that occurred within the campus police.

In addition, the Chief of University police informed OCR that during the course of the criminal investigation of the police officer, she received an anonymous letter regarding possible misconduct by another University police officer (Officer 2). In addition, a witness who was interviewed during the investigation of Complainant 2's incident, provided information that coincided with the allegation in the anonymous letter. The Chief of University police explained that in response to the anonymous letter, she requested a law enforcement investigation of Officer 2, and that the police explored the allegations but they were not able to substantiate the allegations. The Former Title IX Coordinator told OCR that, while she received an administrative internal summary of the investigation of the incident from the Maryland State Police, she never reviewed the summary because it was sealed, and she had no reason to believe that other officers engaged in misconduct, or that there were other student victims.

The Chief of University police and the Former Title IX Coordinator told OCR that the University referred the matter to the police and did not conduct a separate Title IX investigation independent of the police investigation. They also explained to OCR that investigations of police conduct are conducted pursuant to the Law Enforcement Officers Bill of Rights, which, in this instance, was conducted by the Maryland State Police Internal Affairs unit. While Complainant 2 did not receive a copy of the summary of findings from the Maryland State Police, the Chief of University police stated that Complainant 2 was advised of the plea bargain.

ANALYSIS of Complainant 2 Incident:

The University failed to conduct an adequate, reliable, and impartial investigation of the incident involving Complainant 2, and failed to take steps to prevent the recurrence of harassment and correct its discriminatory effects with respect to Complainant 2. Specifically, the evidence reflects that the University failed to promptly respond to Complainant 2's report of sexual assault by conducting a simultaneous Title IX investigation. In addition, because the campus police officer committed the sexual assault in the context of carrying out his responsibilities as an employee, the University was responsible for the discriminatory conduct and for remedying any effects of the harassment on Complainant 2, as well as for ending the harassment and preventing its recurrence. Moreover, the University erroneously determined that it did not have any obligations to Complainant 2 under Title IX because she had graduated from the University soon after making her report. Although the University provided some limited information regarding counseling services, it determined that additional services were not necessary because Complainant 2 graduated from the University the day after making her report, and thus, Complainant 2 was not offered the full range of remedial services. Thus, OCR concludes that Complainant 2 was subjected to a sexually hostile environment due to the University's failure to respond to her complaint.

Incidents Involving Other Students

OCR also reviewed documentation for all student complaints or reports of sexual harassment or sexual violence from January 2010 through November 2014. In total there were forty-three formal and informal complaints or reports made during that time period. As set forth below, OCR identified several general deficiencies in the way in which the University processed complaints of sexual harassment and assault from January 2010 through November 2014, which

further support OCR's findings that the University failed to provide for adequate, reliable, and impartial investigations⁴:

In one of the incidents, the University had not yet completed its investigation at the time it provided responsive data to OCR. OCR notes, however, that the University never provided subsequent documentation demonstrating that the incident had been fully investigated and/or resolved.

In five incidents, the University did not conduct an investigation under its Title IX policies and procedures, but instead relied upon the local police or the campus police to conduct an investigation. Additionally, the documentation provided by the University did not show that in any of these five incidents, University staff, including Dean of Students, the Former Title IX Coordinator, or Key Administrator 2, were advised of the incident. In one of the incidents, the University did not complete its investigation at the request of local law enforcement, who requested that the University delay its investigative process in order to not compromise the integrity of the criminal investigation. However, the documentation provided by the University is insufficient to demonstrate that the University completed its investigation once the police completed gathering evidence. As noted above, a recipient has an independent responsibility under Title IX to investigate an incident of sexual harassment/sexual assault, apart from any separate criminal investigation. Similarly, a recipient should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation. Although a recipient may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, it should not permanently cease all investigatory activities.

In nine of the incidents, the University did not proceed with an investigation at the victim's request. A school should weigh and consider requests for confidentiality carefully, while at the same time it must consider its responsibility to provide a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. This requires a balanced, deliberative approach to each individual request from a victim. However, the documentation provided by the University does not demonstrate that the University engaged in a deliberative determination regarding whether, in each instance, it could honor the victim's request not to proceed, and whether that decision was balanced against the need to keep the community safe.

In six of the incidents, the University did not proceed with an investigation because the incident occurred off campus or involved a non-student victim or perpetrator. Thus, in these six incidents, the University did not make a determination regarding 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.

In one of the incidents, the University did not conduct an investigation in accordance with its policy and procedures, and instead resolved the complaint informally, even though there were at least two additional complaints filed against the same alleged perpetrator. Because the University did not conduct a formal investigation, it never determined whether the victim or other students experienced a hostile environment, and thus, did not provide appropriate remedies.

⁴ In separate correspondence to the University, OCR provided specific case numbers for each issue area referenced below.

In addition, there were twenty-four cases in which the documentation did not support that the victim was advised of the available on campus and off campus resources, including counseling.

OCR found that the University conducted an investigation under its Title IX policies and procedures in thirteen of the forty-three incidents. Of those thirteen investigations, in two of the cases identified by OCR, the documentation did not support that the victim was provided with interim measures, and, as noted above, in many cases the documentation did not support that the victim was advised of the available on campus and off campus resources, including counseling. Title IX requires a school to take steps to ensure equal access to its education programs and activities, and to protect the victim, as necessary, including taking interim measures before the final outcome of the investigation and to take steps to end the harassment and correct its effects, once a final determination is reached. Imposing sanctions against the perpetrator, without more, likely will not eliminate the hostile environment, prevent its recurrence, and effectively remedy its effects.

In addition to the thirteen incidents which were investigated by the University, there was one case in which the documentation showed that the accused student was advised of his right to have witnesses at the hearing, while the victim was not, and there were nine cases in which the documentation did not support that the parties were allowed to provide evidence and witnesses. As noted above, a school's grievance procedures should provide for the adequate, reliable and impartial investigation of complaints in which both parties are provided an equal opportunity to present witnesses and evidence. While a school has flexibility in how it structures the investigative process, for Title IX purposes, a school must give both the complainant and the alleged perpetrator any rights that it gives to one of them. A balanced and fair process that provides the same opportunities to both parties will lead to sound and supportable decisions.

Similarly, while schools are required to provide a prompt and equitable response to all Title IX complaints, in one of the thirteen incidents which were investigated by the University, the University did not provide a prompt and equitable response, as the complaint was not resolved for nearly 10 months. Last, in eight of the thirteen incidents which were investigated by the University, the documentation is not sufficient to demonstrate that the victims were notified of the outcome of the investigation in writing, as required by Title IX.

Moreover, OCR has further concerns because in one of the incidents, the alleged perpetrator withdrew prior to the matter being addressed by a panel hearing and a judicial hold was placed on his student account, meaning that the alleged perpetrator could not be readmitted to the University until after the hearing was held. This is in direct contravention with the University's grievance procedures, which state: "*Withdrawal from the University after a violation report has been filed does not excuse the student from the hearing. Students who fail to appear after proper notice may be deemed to have pleaded responsible to the charges pending against them.*"

As set forth above, OCR also notes significant concerns regarding the University's record-keeping practices. Specifically, OCR requested that the University provide a copy of all investigative reports, findings or other documents that describe the outcome and resolution, including a description of all the remedies and sanctions resulting from the decision. In twenty three cases, the investigative file provided by the University was incomplete and missing specific documentation referred to in the cover sheet that the University developed to respond to OCR's request for information regarding each incident. In addition, it is unclear from the data whether the information was monitored by anyone at the University. In fact, the evidence reflects that the

Former Title IX Coordinator was only advised of five of the incidents. While the University asserts that the Former Title IX Coordinator was advised of an additional two incidents, it did not provide any documentation substantiating this assertion. A Title IX coordinator's core responsibilities should include overseeing the school's response to Title IX reports and complaints, and identifying and addressing any systemic problems.

These issues are addressed in the Resolution Agreement which requires the University to reassess the comparative cases where OCR identified deficiencies, using its revised policies and procedures once they are approved by OCR, and to make improvements in its record keeping practices.

CONCLUSION

OCR determined that the University's policies and procedures and its Notice of Non-Discrimination are not compliant with the regulation implementing Title IX, at 34 C.F.R. §§ 106.8 and 106.9. In addition, OCR determined that the University failed to provide prompt and equitable responses to complaints of sexual violence of which it had notice, including the complaints/reports made by Complainant 1, Complainant 2, and other students, in violation of the regulation implementing Title IX, at 34 C.F.R. § 106.31. OCR also determined that the University's failure to provide an equitable response to complaints of sexual harassment/violence allowed Complainant 1, Complainant 2, and possibly other students to be subjected to a sexually hostile environment that denied or limited the students' ability to participate in or benefit from the school's program, in violation of 34 C.F.R. § 106.31.

RESOLUTION

On September 6, 2016, the University provided OCR with the enclosed signed Resolution Agreement, which addresses the compliance concerns identified in OCR's investigation and, when fully implemented, will resolve the University's noncompliance with Title IX.

In accordance with the Agreement, the University agrees to:

- Publish an anti-harassment statement, revise its Title IX grievance procedures, and ensure that the responsibilities of the Title IX Coordinator and any Deputy Coordinators are consistent with Title IX.
- Provide training to ensure that all members of the University community – including students, faculty, administrators, and other staff – are trained regularly on issues related to sexual harassment and on the requirements of Title IX.
- Reinvestigate and/or investigate the comparative incidents in which OCR determined that the University failed to conduct an adequate investigation, provide written notice of remedial services for the comparative incidents in which OCR determined that the University failed to provide such services, and provide written notice of the outcome of the complaint for the comparative incidents in which OCR determined that the University failed to provide such notice.
- Review the complaints and reports of sexual harassment and/or sexual assault made from January 1, 2010, through the date of the Agreement, to determine whether the University investigated each complaint or report promptly and equitably.
- Enhance its outreach to and feedback from students, including by conducting an annual climate check or series of climate checks with students on campus to assess the

effectiveness of steps taken by the University towards providing a campus free of sexual misconduct. In addition, the University will convene a committee, composed of staff and students, to develop a plan for educating students and employees about sexual harassment and assault.

- Provide OCR with case files and other information concerning all incidents of alleged sexual harassment or sexual assault at the University for the next two academic years.
- Reimburse Complainant 1 and Complainant 2 for expenses for counseling/academic/therapy services for the assessment and/or treatment of lingering effects of the incidents that are the subject of this complaint.

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 a minimum of sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint and 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 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 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, the complainant may file another complaint 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.

We want to thank the University, including University counsel and the Current Title IX Coordinator, for their cooperation during the investigation.

Page 26 – Dr. Ronald Nowaczyk

Should you have any questions, please contact Amy Niedzalkoski, Team Attorney at 215-656-8571 or Amy.Niedzalkoski@ed.gov, or myself at 215-656-6935 or Beth.Gellman-Beer@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Supervisory Attorney
OCR Philadelphia

Enclosure

Cc: Karen Treber, University Counsel
Emily Caputo, Title IX Coordinator

**Resolution Agreement
Frostburg State University
Complaint Nos. 03-13-2328 and 03-15-2032**

In order to resolve the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106 (Title IX), Frostburg State University (University) agrees to take the steps set forth below. The Resolution Agreement has been entered into voluntarily and the University and does not constitute an admission by the University that the University is not in compliance with Title IX or its implementing regulation. OCR recognizes that the University has cooperated with OCR during the course of the investigation.

ACTION STEPS

I. Anti-Harassment/Anti-Retaliation Statement

The University will issue a statement to all students, faculty and staff that will be printed in the University's newspaper, posted in prominent locations in the University, and published on the University's website, stating that the University does not tolerate sex discrimination, including sexual harassment, sexual assault, and sexual violence. The statement will also state that retaliation against individuals who file complaints about sex discrimination, sexual harassment or sexual assault/violence, or participate in the investigation of such complaints, is prohibited. The statement will encourage any member of the University community who believes he or she has been subjected to sexual harassment to report the harassment to the University, and will note the University's commitment to conducting a prompt investigation and appropriately addressing any violation of the University's policies in a timely manner. The statement will inform students how to report allegations of sex discrimination, including sexual harassment, sexual assault and sexual violence, and include the appropriate contact information for the designated staff member to whom students may report allegations. The statement will advise that any findings by the University that a student or employee has engaged in an act or acts of sex discrimination, including sexual harassment, sexual assault, and sexual violence, or retaliation will be promptly addressed in accordance with University policies and may result in disciplinary action. The statement will make clear that such disciplinary action may include, if circumstances warrant, suspension, expulsion or termination of employment. The statement will encourage students, faculty and staff to work together to prevent acts of sex discrimination of any kind, and will highlight resources available to individuals who have been subjected to sex discrimination, including sexual harassment, sexual assault and sexual violence. The statement will be provided to OCR for review and approval.

Reporting Requirement: By November 1, 2016, the University will provide for OCR review and approval, a copy of the proposed Anti-Harassment/Anti-Retaliation Statement. Within 45 days of OCR approval of the proposed Anti-Harassment/Anti-Retaliation Statement, the University will submit to OCR documentation substantiating that the Anti-Harassment/Anti-Retaliation Statement has been posted in prominent

locations and widely published, including in the University's newspaper and on the University's website.

II. Title IX Coordinator

Since the filing of the above-referenced complaints, OCR acknowledges that the University has taken a number of steps in an effort to ensure its compliance with 34 C.F.R §106.8(b) and §106.9(a), in addressing the requirements for a Title IX Coordinator, including hiring a full-time Title IX Coordinator in January 2015. As a result, the University has reviewed and revised the responsibilities of its Title IX Coordinator, and by this Agreement agrees to conduct an additional review of the current responsibilities of its Title IX Coordinator and any Deputy Coordinators by December 31, 2016, to determine and ensure that their responsibilities are consistent with Title IX. Based on the Title IX Coordinator's responsibilities, the University will develop a description of corresponding mandatory training requirements for its Title IX Coordinator. The responsibilities and training requirements will continue to include or will be revised to include the following:

1. The Title IX Coordinator will have expert knowledge of the University's Title IX grievance procedure(s) and will oversee all Title IX reports/complaints received by the Title IX Coordinator and all other departments, offices, and individuals identified as responsible employees or delegated the responsibility for receiving and/or investigating reports/complaints of sex discrimination, including sexual harassment and sexual violence, and will address any patterns or systematic problems that arise during the review of such reports/complaints, and assess overall efficacy of coordination and overall response by the University to sexual harassment and sexual violence, including the implementation and efficacy of interim measures, the steps taken to stop sex discrimination/harassment found to have occurred and prevent its recurrence, steps taken to eliminate any hostile environment that has been created for students and steps taken to remedy any discriminatory effects on the complainant and others, as appropriate.
2. The Title IX Coordinator will retain ultimate oversight and responsibility for any Deputy Coordinators the University designates to assist the Title IX Coordinator. The University will also develop specific statements of the roles and responsibilities of each Deputy Coordinator that clearly delineate the scope of each Deputy Coordinator's duty and their subordinate roles to the Title IX Coordinator.
3. The Title IX Coordinator will have ultimate responsibility for: the prompt investigation of reports/complaints alleging sexual harassment and sexual violence; adjudication of whether sexual harassment or sexual violence has occurred in individual cases; the identification of remedies (including interim measures) necessary to address sexual harassment or sexual violence, eliminate any hostile environment, and prevent its recurrence; and consultation, as necessary, on any matter where it has been determined that sexual harassment or sexual violence has occurred in order to ensure the University's compliance with Title IX. To the extent that any of the duties of the Title IX Coordinator will be delegated to other individuals at the University, the statement will clearly state what will be delegated to whom and how the Title IX Coordinator will retain oversight of any delegated responsibilities.

4. The Title IX Coordinator will oversee the provision of initial and ongoing training to any Deputy Coordinators and any other individuals from any University department or office delegated the responsibility for receiving and/or investigating reports of sex discrimination, including sexual harassment and sexual violence. The Title IX Coordinator will also have sufficient experience or training in these same concepts. The training content will include the substantive requirements of Title IX and how to investigate reports under Title IX that allege sex discrimination, including sexual harassment and sexual violence.
5. The Title IX Coordinator will be responsible for the development, coordination, and implementation of periodic Title IX training for the University community (i.e., staff, faculty, resident assistants, coaches, students, etc.).
6. The Title IX Coordinator will have responsibility for the continued development, coordination, and implementation of regular events hosted by or supported by the University leadership to raise awareness in the University community about all forms of sex discrimination (including sexual harassment and sexual violence) and the University's policies and procedures regarding such matters.
7. The Title IX Coordinator will be responsible for providing information to students and employees regarding their Title IX rights and responsibilities, including but not limited to: information about the resources available on and off University property, the formal and informal resolution processes, the availability of interim measures, and the ability to file a complaint with local law enforcement and the University simultaneously.
8. The Title IX Coordinator will be responsible for periodic review and assessment of the University's Title IX procedures, and any related policies and procedures, to ensure that they are consolidated to the maximum extent possible to provide an efficient resource for students, faculty, and staff.
9. Neither the Title IX Coordinator nor any Deputy Coordinators shall have other job responsibilities that create a conflict of interest with regard to their duties and responsibilities under Title IX.
10. The Title IX Coordinator will be responsible for coordinating communications with University Police and local law enforcement regarding the University's obligations under Title IX and for serving as a resource on Title IX issues.
11. The Title IX Coordinator will be responsible for coordinating the development and implementation of periodic assessments (including, for example, surveys and focus groups) of campus climate with regard to sexual harassment and sexual violence.
12. The Title IX Coordinator will coordinate with appropriate administrators, student services personnel, and law enforcement officers to identify and address any patterns or systemic problems under Title IX and to assess the overall efficacy of the coordination among these various offices.
13. The Title IX Coordinator will annually review all reports/complaints of discrimination on the basis of sex, including sexual harassment and sexual violence, in order to identify, to the maximum extent possible, and address any patterns or systemic problems, such as: how many reports involved particular groups of students, e.g., first-year students, athletes, graduate students, members of student organizations; whether any individuals or organizations engaged in repeated misconduct, whether there are any patterns of barriers to reporting for any group of students, whether there are any campus or off-campus locations which are repeatedly the site of alleged incidents and/or if reports/complaints

were not processed promptly and equitably in compliance with Title IX and the applicable policies and procedures.

Reporting Requirement: The University agrees that the responsibilities of the Title IX Coordinator described above are essential to its commitment to compliance with Title IX and will not change or minimize those responsibilities, except with approval of OCR. By February 1, 2017, the University will provide for OCR review and approval, a copy of the Title IX Coordinator's responsibilities and corresponding mandatory training requirements. Within 45 days of OCR's approval, the University will revise the Title IX Coordinator's responsibilities and corresponding training requirements as may be needed. Within 60 days of revising the Title IX Coordinator's responsibilities and corresponding mandatory training requirements, the University shall provide OCR with the revised Title IX Coordinator's responsibilities and corresponding mandatory training requirements, and documentation substantiating that the University implemented and distributed the revised Title IX Coordinator's responsibilities and corresponding training requirements to the University's Title IX Coordinators.

III. Notice of Non-Discrimination

The University will revise its notice of non-discrimination to state that the University does not discriminate on the basis of sex in its programs and activities and that the prohibition extends to employment, and submit it to OCR for review and approval. The notice of non-discrimination will include the name/title, office address, telephone number, and electronic mail (email) address of the University's Title IX Coordinator. The notice of nondiscrimination must include that inquiries to the University concerning application of Title IX and its implementing regulation may be referred to the Title IX Coordinator or to OCR. The University will broadly publish its revised notice of nondiscrimination, including on the University's website and in its promotional materials, student and employee handbooks, application forms and its other published materials in accordance with 34 C.F.R. § 106.8(a). Inserts may be used pending reprinting of the publications.

Reporting Requirement: By November 1, 2016, the University will provide, for OCR review and approval, a copy of its amended notice of non-discrimination, a list of the titles of the publications in which the notice of nondiscrimination appears (e.g. University catalog, web site, student handbook), and a copy of at least one publication disseminated to the campus community, printouts, or link to an on-line publication containing the notice.

IV. Title IX Policies and Grievance Procedures

OCR acknowledges that since its investigation beginning in 2013, the University has reviewed and revised its policies in order to improve its investigation and response to sexual misconduct and comply with Title IX as well as reviewed and revised its policies and procedures on sexual misconduct. On January 1, 2016, the University approved and disseminated its most recent update of its Policy on Gender Based Harassment and Violence, as well as the Procedures for Investigating and Resolving Reports of Prohibited Conduct.

The University will revise, as may be necessary, its policies and procedures that address complaints of sex discrimination (including sexual harassment, sexual assault, and sexual violence), including but not limited to the *Gender-Based Harassment and Violence Policy*, and *the Procedures for Investigating and Resolving Reports of Prohibited Conduct*, for OCR review and approval. Noting that many of the provisions below are already included in the most recent revision of the Gender-Based Harassment and Violence Policy and Procedures; with regard to such provisions, the University will retain them in the revised procedures. The University will ensure that the old policies are not available anywhere on the University's website to the extent practicable, and that all references to them have been removed from current University publications. The University will also ensure that notice is provided to students and employees of the existence of the revised policies and procedures and that these materials are widely distributed.

The University will ensure that the following provisions are in its policies and procedures or will adopt revisions as needed to provide, at a minimum, the following:

- a) notice that the procedures apply to reports/complaints alleging all forms of sex discrimination (including sexual harassment, sexual assault and sexual violence) against employees, students or third parties;
- b) notice to students and employees of where reports/complaints may be filed, including contact information for the Title IX Coordinator;
- c) provisions for adequate, reliable and impartial investigation of reports/complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
- d) designated and reasonably prompt time frames for the major stages of the investigative process, as well as the process for extending timelines, that apply equally to the parties to the complaint;
- e) written notice to the complainant and alleged perpetrator of the outcome of the investigation and any appeals;
- f) assurance that the University will take immediate and appropriate steps to stop any harassment or sexual violence, prevent recurrence and remedy discriminatory effects on the complainant and others, if appropriate;
- g) where the procedures allow the parties to have a lawyer or other representative at a hearing, a statement that both parties will have an equal opportunity to have lawyers/representatives present and that any restrictions on the lawyers/representatives' ability to speak or otherwise participate will be applied equally to both parties;
- h) appropriate definitions and examples of what types of actions may constitute sex discrimination (including sexual harassment, sexual assault, and sexual violence) including a clear and consistent definition of what does and does not constitute consent to sexual conduct;
- i) a statement clarifying that the University's policy and procedures for addressing complaints of sex discrimination, including sexual harassment, sexual assault and sexual violence, apply to: all University facilities, programs, and activities, including discrimination that occurs on campus, discrimination that occurs at off-campus programs or activities that are sponsored by the University, discrimination that occurs

- off-campus that has an effect on campus, the University's professional and graduate schools, and any sexual harassment perpetrated by an employee, regardless of location, if in the context of the employee's provision of aid, benefits or services to students;
- j) a statement that all responsible employees are expected to promptly report sexual harassment, including sexual assault and sexual violence that they observe or learn about;
 - k) provisions that make clear the right of the victim not to appear in the hearing room or otherwise confront the alleged perpetrator during the grievance process, including any hearings or appeals;
 - l) if the procedures allow for cross-examination of the parties, the procedures should strongly discourage allowing the parties to personally question or cross-examine each other during a hearing;
 - m) provisions for confidential reporting, including informing a complainant that the University's ability to respond may be limited in the event of a request for confidentiality;
 - n) provisions ensuring that the parties are afforded regular updates regarding the status of the investigation, as well as similar and timely access to any information used at hearings;
 - o) provisions clarifying that any informal resolution mechanism set forth in the procedures will only be used if the parties voluntarily agree to do so; that the complainant should not be required to resolve the problem directly with the respondent; and a statement that there will be instances when the informal resolution mechanism is inappropriate (e.g., mediation is prohibited in cases of sexual assault, and in cases involving a student complaining of sexual harassment against an employee in a position of authority over the student); and that the complainant must be notified that he or she has the right to end the informal process at any time and begin the formal stage of the complaint process;
 - p) a statement that the preponderance of the evidence standard will be used for investigating alleged sex discrimination, sexual harassment and sexual violence complaints and a statement that it is the University's responsibility to determine whether sex discrimination, sexual harassment or sexual violence has occurred;
 - q) a statement that retaliation and retaliatory harassment is prohibited against any individual who files a sex discrimination complaint with the University or participates in a complaint investigation in any way, as well as a clear explanation of how retaliation or retaliatory harassment can be reported to the University;
 - r) notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously, that the University may need to temporarily suspend the fact-finding aspect of a Title IX investigation for an appropriate but brief period of time while the law enforcement agency is in the process of gathering evidence and that the University will promptly resume its Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process;
 - s) provisions ensuring that students are notified, in writing, of the availability of interim measures to protect students during the University's investigation of possible sexual harassment and during any judicial process, including appeals (such as University-enforced no contact orders, changes in class schedules, counseling, other mental

- health services, academic assistance, the ability to retake or withdraw from courses without penalty, etc.) and that the University will take steps to ensure, where possible, that such interim measures do not negatively impact the complainant;
- t) an assurance that the University will not allow conflicts of interest (real or perceived) by those handling the complaints;
 - u) an assurance that the University does not consider evidence of past sexual relationships when making a determination regarding these complaints;
 - v) notice of potential remedies for students;
 - w) notice of potential sanctions against perpetrators; and
 - x) sources for counseling, advocacy and support.

Reporting Requirements:

1. By November 1, 2016, the University will provide for OCR’s review and approval, a draft of the revised procedures and any additional policies or informational documents that address complaints alleging discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence). Within 90 days, OCR will review these grievance procedures and related materials in order to ensure that they comply with Title IX and this Agreement.
2. Within sixty (60) calendar days of written notification from OCR that the revised Title IX procedures are consistent with the Title IX requirements, the University will certify to OCR that the University has formally adopted the revised procedures, updated all printed publications and on-line publications with the revised procedures (inserts may be used pending reprinting of these publications) and electronically disseminated the revised grievance procedures to students and employees. This documentation will include evidence of the electronic dissemination of the revised grievance procedures to students and employees, a list of the titles of the publications in which the information appears (e.g. University catalog, Title IX web site, student handbook), as well as a copy any such publications, which may include either a printout or a link to an on-line publication containing the revised grievance procedures or, if not yet finalized, a copy of the insert for printed publications. The University will also provide documentation of how the revised procedures were distributed and that University law enforcement, the Title IX Coordinator, students, employees, staff, faculty and other appropriate University community members have access to the procedures and know where copies may be obtained.

V. Sexual Misconduct/Title IX Training

The University is committed to publicizing, disseminating and providing a comprehensive education and prevention program that informs the University community about the University’s policies and procedures, with continuous efforts toward strengthening individual knowledge and skills; educating responsible employees; fostering coalitions and networks both on-campus and in the greater community of the City of Frostburg; and devoting resources to the education, prevention and environmental change efforts to address issues related to alcohol and other drug

programs. In addition to current education and prevention initiatives, the University will provide additional training as described below.

1. Training Employees Responsible for Recognizing and Reporting Sexual Misconduct

The University will provide in-person or online training or refresher training to all employees who interact with students on a regular basis and who are responsible for recognizing and reporting incidents of sexual misconduct, to the extent they are not confidential resources under policy or applicable law. The training will cover, at a minimum: the University's Gender Based Harassment and Violence Policy and related procedures, the obligation of employees to report sexual misconduct including what should be included in a report, any consequences for the failure to report and the procedure outlining their responsibility to the student or other University community member's requests for confidentiality, how to report sexual misconduct pursuant to Title IX and the procedures, the person(s) to whom sexual misconduct must be reported, how to recognize and identify sexual misconduct and the behaviors that may lead to and result in sexual misconduct, the University's responsibilities under Title IX to address such allegations and the relevant resources available. The training should also include information on the reporting obligations of University staff, the student's option to request that their identifying information not be shared with the respondent or that no action be taken, the existence of available confidential advocacy, counseling, or other support services, the right to file a sexual harassment complaint with the University and to report a crime to campus and/or local law enforcement, the attitudes of bystanders that may allow conduct to continue, the potential for victimization of students who may have experienced sexual misconduct and its effects on students, appropriate methods for responding to a student who may have experienced sexual misconduct and the impact of trauma on students who experience sexual misconduct. During the training, the University will provide information on how to access online the Gender Based Harassment and Violence Policy and associated procedures and forms for reporting sexual misconduct, or refer them to their location within the publications they already possess.

Reporting Requirement: By January 31, 2017 and by the same date in 2018 and 2019, the University will provide documentation to OCR demonstrating that it has provided the training referenced in Action Step V.1 above. The documentation will include, at a minimum, the date(s) of the training, the name(s) and title(s) of the trainer(s), a copy of any materials used or distributed during the training and a sign-in sheet or other evidence of attendance with the names and titles of the individuals who attended the training.

2. Training for Community Members Involved In Implementation of Sexual Misconduct/Title IX Grievance Procedures

The University will provide comprehensive training for its Title IX Coordinator, any Deputy Coordinators, and any other University officials/students directly involved in receiving, processing, investigating, adjudicating and/or resolving complaints of sexual misconduct or who will otherwise coordinate the University's compliance with Title IX. The training will cover, at a minimum: the University's sexual misconduct/Title IX policies and grievance procedures; the University's obligations regarding the investigation of complaints; guidance from OCR; Title IX's prohibitions on retaliation; instruction on how to conduct and document adequate, reliable and impartial sexual misconduct/Title IX investigations for those charged with investigative

duties, including information on working with and interviewing persons subjected to sexual violence, information on particular types of conduct that would constitute sexual violence, including same-sex sexual violence; the proper evidentiary standard of review of allegations of sexual misconduct (preponderance of the evidence); information about coordination and communication between the University and local external law enforcement; information on consent and the role drugs and alcohol can play in the ability to consent; the importance of accountability for individuals found to have committed sexual misconduct; the need for remedial actions for the respondent, complainant and school community; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; confidentiality; the effects of trauma; and cultural awareness training regarding how sexual misconduct may impact students differently depending on their backgrounds.

Reporting Requirement: By December 31, 2016, and by the same date in 2017 and 2018 the University will provide documentation to OCR demonstrating that it has provided the training referenced in Action Step V.2., above. The documentation will include, at a minimum, the date(s) of the training, the name(s) and title(s) of the trainer(s), a copy of any materials used or distributed during the training and a sign-in sheet or other evidence of attendance with the names and titles of the individuals who attended the training.

3. Training of Students

The University will review and revise as needed, its programs, materials and training addressing sexual misconduct for students, including transfer students and graduate students. The University will ensure that, during the monitoring of this agreement, all incoming students receive training approved by OCR. The training will include, at a minimum, information on the University's sexual misconduct/Title IX grievance procedures, the University's obligations regarding the investigation of reports/complaints, guidance from OCR, and Title IX's prohibitions on retaliation. The training will also include information on particular types of conduct that would constitute sexual violence, including sexual assault and information on consent and the role drugs and alcohol can play in the ability to consent. The training will also make students aware of the University's prohibition against sexual harassment, sexual violence and retaliation, educate students on how to recognize such forms of sex discrimination when they occur, inform students regarding how and to whom any incidents of sexual harassment, sexual violence and retaliation should be reported, provide a general overview of Title IX, the rights this law confers on students, the resources available to students who have experienced sexual harassment, sexual violence and retaliation, and the role and authority of OCR to enforce Title IX. The training should be presented in lay terms familiar to University students, and illustrated with examples relevant to student life at the University. Information included in the training will be provided to students on an annual basis. During the first year of this agreement, the University will ensure that all returning students are provided with training. In subsequent years, the University will send an email to all students at the beginning of each semester providing the information outlined in this paragraph.

The University will identify any additional training needed for specific groups, including but not limited to, fraternities, sororities, and athletes base on assessments made by the Title IX Coordinator.

Reporting Requirement: By May 31, 2017, and by the same date in 2018 and 2019, the University will provide documentation to OCR demonstrating that it has provided the training referenced in Action Step V.3., above. The documentation will include, at a minimum, the date(s) of the training, the name(s) and title(s) of the trainer(s), a copy of any materials used or distributed during the training and a sign-in sheet or other evidence of attendance with the names and titles of the individuals who attended the training, and a copy of the email issued at the start of each semester.

VI. Student Outreach

1. The University will ensure that the Gender-Based Harassment and Violence Elimination Task Force (Task Force) includes the following members: (i) the University's Title IX Coordinator; (ii) an additional University level administrator with knowledge, responsibilities and authority relevant to the duties of the Committee; (iii) representative administrators, faculty members and students; and (iv) such other individuals as the University determines appropriate, such as University counselors or health service workers or representatives from any community-based organizations which provide services to the University related to sexual harassment/violence prevention. The Task Force will develop a plan to be implemented at the University for educating students and employees about issues related to sexual harassment, including what constitutes sexual harassment and the impact it has on individual students and the educational environment, the prohibition of sexual harassment in the educational setting, the importance of reporting sexual harassment, how and to whom to report incidents of sexual harassment, the University's obligation to respond appropriately to notice of sexual harassment and potential consequences and corrective action if harassment is found. The University will implement the plan and monitor its effectiveness.
2. The University will, as appropriate, revise its existing materials or develop new materials on sexual misconduct to be distributed to students during the University's orientation sessions, currently FSU Preview, for new students. The University will also, as appropriate, revise its existing materials or develop new materials on sexual misconduct to be distributed to students upon receipt of complaints of sexual misconduct. The materials will contain information on what constitutes sexual misconduct, what to do if a student has been subjected to sexual misconduct and contact information for on and off-campus resources for students who have been subjected to sexual misconduct. In addition, the University will include information on: how to file a report/complaint of sexual misconduct with the University; the name and contact information for the University's Title IX Coordinator or the individual with whom reports/complaints are filed; a description of the Title IX Coordinator's role; information on how to obtain counseling and academic assistance in the event of sexual misconduct; information on what interim measures can be taken to protect a complainant; and how to request interim measures if the alleged perpetrator lives on campus and/or lives in the same dorm and/or attends the same classes as the complainant.

Reporting Requirements:

1. By December 1, 2016, the University will provide OCR with documentation that it has implemented Action Step VI.1, including a list of names and titles of the members of the Task Force, meeting dates and minutes.
2. By January 1 and June 1, 2017, the University will submit to OCR for review a list of recommendations submitted by the Task Force, as well as a list of the recommendations that were adopted by the University. In particular, this list will include a copy of the Task Force's recommended actions relating to the procedures, outreach, training and/or other University practices addressed by this Agreement, together with supporting information that explains the bases to proceed or not to proceed with any recommendation (such as climate checks), and the University's plans with respect to those recommendations (including timeframes for such plans). The Task Force will incorporate feedback from OCR in its recommendations.
3. By February 1, 2017, the University will provide OCR with documentation that it has implemented Action Step VI.2, including copies of the materials that the University developed in accordance with Action Step VI.2, for OCR review and approval. After OCR's approval of the training materials, and within 10 days following the final 2017 FSU Preview session, the University will provide documentation demonstrating that the University disseminated the information during FSU Preview, including the FSU Preview schedule, the names and titles of employees who presented on the required topics, an agenda and copies of any materials that were used or distributed regarding the required topics.

VII. Climate Checks

The University will conduct climate checks with students to assess the steps and measures taken pursuant to this Resolution Agreement and otherwise by the University to achieve its goal of a campus free of sexual misconduct, in particular sexual assault and sexual violence. A climate check may be accomplished in many ways, including but not limited to, a written or electronic survey, focus groups, open forum information sessions for students and employees or designated publicized walk-in hours for campus community input. Any written or electronic survey used should contain questions about the student's knowledge of sexual misconduct (including sex discrimination and/or sexual harassment/violence) any experiences with sexual misconduct while attending the University and the student's awareness of the University's sexual misconduct/Title IX policies and procedures and include a contact person, such as a counselor, who the student can go to for support or if they wish to discuss an issue of sexual misconduct in person.

The University will submit for OCR review and approval a description of the tools used for conducting a climate check or series of climate checks. The description will include the University's strategy for implementing the climate check(s) and analyzing the results. Information gathered during these climate checks will be used to inform future proactive steps taken by the University to provide an environment that is safe and supportive to all students and in compliance with Title IX. Finally, part of the University's ongoing climate checks will include informing students about to whom they can report concerns of sexual misconduct

(including sex discrimination and/or sexual harassment/violence), such as the Title IX Coordinator or a counselor, as described in other provisions of this Agreement. The University will submit proposed future revisions to its climate check tool(s) for OCR review and approval during the monitoring of the Agreement.

Reporting Requirement: By December 1, 2016, the University will provide documentation for OCR review and approval, demonstrating implementation of Action Item VII, including a description of how, when and by whom the climate check(s) were completed; copies of aggregate data of student and employee written responses to surveys or narrative summaries of verbal responses; summaries of other relevant information obtained; and documentation demonstrating the actions that the University plans to take in response to the information gathered during the climate checks. By August 1, 2017 and the same date in 2018, the University will provide OCR with the same documentation regarding assessments conducted and any responsive actions taken, for OCR review and approval.

VIII. Individual Remedies

The University will issue, by certified mail, a written offer to reimburse out-of-pocket expenses for any counseling therapy, or academic services for Complainant #1 and Complainant #2 from the date of notice to the University through the execution date of this Agreement to each complainant that relates to the incidents that are the subject of these complaints. Reimbursement shall be contingent upon receipt by the University of written, supporting documentation such as billing invoices, receipts, or other similar records of the complainant's out-of-pocket expenses for counseling therapy, or academic services. Reimbursement for academic services shall be limited to courses or tutoring taken at the University or, if taken elsewhere, to fulfill an academic requirement of the University. The University's letter will inform each complainant that she has thirty (30) calendar days from the date of the letter to accept the offer by providing written notice of acceptance to the University.

Reporting Requirement: By December 5, 2016, the University will provide OCR with a copy of the letter that it sent to each complainant offering reimbursement for counseling/academic/therapy services for each complainant, and copies of each complainant's response, in compliance with Action Step VIII. If Complainant #1 or Complainant #2 accepts the University's offer, the University will provide OCR with documentation substantiating that it provided reimbursement for such services, in compliance with Action Step VIII.

IX. Complaint Reviews and Student Focused Remedies

1. In accordance with Title IX and the standards outlined in Action Step IV of this Agreement, the University will review the complaints and reports of sexual harassment and/or sexual assault made from January 1, 2010, through the date of this Agreement to determine whether the University investigated each complaint or report promptly and equitably, including but not limited to, assessing: whether the appropriate definitions and analyses were used under Title IX, the appropriate evidence standard to make determinations regarding allegations of sexual misconduct, the equal opportunity of the parties to provide witnesses and other

evidence, the interim relief provided to protect the complainant during the pendency of the investigation, the written notice of the outcome (including any appeal) and appeal rights to the complainant and the accused, and the steps taken to prevent the recurrence of sexual misconduct and to address any hostile environment created by the harassment and/or assault. For any incidents which the University determines were not investigated in accordance with Title IX, the University will take appropriate action to address any problems identified in the manner in which these complaints were handled, including reopening the investigation and conducting an investigation that complies with the requirements of Title IX, and/or providing appropriate remedies that may still be available for the complainants and/or accused students in these cases, including, referrals to counseling or academic assistance or adjustments, or other appropriate relief. These reviews will at a minimum carefully scrutinize issues noted by OCR during the course of this investigation. The University will offer counseling or other appropriate services to individual students during its review and/or reinvestigation of any of the incidents. The University will submit the results of its review conducted pursuant to Action Step IX to OCR for review and approval. While this assessment will cover all complaints during the relevant time period, it will specifically address the following:

- a. For the five incidents identified by OCR under separate cover, where the University did not conduct an investigation under its Title IX policies and procedures, the University will conduct and/or complete its investigation of the allegations under Title IX. As part of this process, the University will determine whether new witnesses need to be interviewed, whether previously interviewed individuals need to be contacted for follow-up questioning and whether further documentation needs to be obtained. The University will ensure that the investigation is adequate, reliable and impartial in accordance with Title IX, and the University will provide each party with a written summary of its findings. If the University determines that the allegations of sexual harassment and/or sexual assault are substantiated, the University will offer remedial services, including an offer of counseling and/or academic services to the victim. In addition, the University will ensure that the Title IX Coordinator is advised of the outcome of each review and that each review is appropriately documented.
- b. For the nine incidents identified by OCR under separate cover where the University's documentation did not support that the parties were allowed to provide evidence and witnesses, the University will assess whether, in conducting its initial investigation, both parties were provided with an equal opportunity to present witnesses and other evidence. In the event that the University determines that any party in any of the above-referenced incidents was denied this opportunity, the University will reinvestigate the incident under Title

IX and in accordance with the standards outlined in Action Step IV of this Agreement. As part of this process, the University will determine whether new witnesses need to be interviewed, whether previously interviewed individuals need to be brought in for follow-up questioning and whether further documentation needs to be obtained. The University will ensure that the investigation is adequate, reliable and impartial in accordance with its revised procedures, and the University will provide each party with a written summary of its findings. If the University determines that the allegations of sexual harassment and/or sexual assault are substantiated, the University will offer remedial services, including an offer of counseling and/or academic services to the victim. In addition, the University will ensure that the Title IX Coordinator is advised of the outcome of each review and that each review is appropriately documented.

- c. For the 26 incidents identified by OCR under separate cover where the documentation did not support that the victim was provided with interim measures or not advised of the available on campus and off campus resources, the University will assess whether there are any appropriate remedies that may still be available for the complainants in these cases, such as counseling and/or academic adjustments, and, if appropriate, will make an offer in writing to the complainant for the provision of such services. In addition, the University will ensure that the Title IX Coordinator is advised of the outcome of each review and that each review is appropriately documented.
- d. For the eight incidents identified by OCR under separate cover where the victims were not notified of the outcome of the investigation in writing, the University will provide written notice to the parties of the outcome of its investigation of the complaint. In addition, the University will ensure that the Title IX Coordinator is advised of the outcome of each review and that the notice to each party is properly documented.

Reporting Requirements:

1. By March 31, 2017, the University will submit to OCR for review and approval the results of its review conducted pursuant to Action Step IX, including documentation of its investigation and/or reinvestigation of the Incidents referenced in Action Step IX.1.a and Action Step IX.2.b, and determinations regarding remedies for Incidents referenced in Action Step IX.2.c.. The report will specifically identify any sexual misconduct complaints or reports that were not handled promptly and equitably, all supporting materials relating to the University's review and the University's planned action(s) to address any problems identified in the review.

2. Within 45 days of OCR's approval, the University will take appropriate action to address any problems identified in its review and provide documentation of these actions to OCR.

X. Record Keeping

1. The University will submit documentation of its centralized record keeping process for documenting and tracking complaints of sexual harassment for OCR review and approval. The University will ensure that this process requires the University to maintain information that includes the location where the incident took place, the name of the individual who reported the allegation, the identification of the alleged victim and alleged perpetrator, summaries of witness interviews, documentation of investigative steps completed and the determination, including disciplinary actions, if any, of all parties involved. The University will demonstrate that the process developed by the University requires that the University maintain all evidence listed herein pursuant to the University's document retention policies. The University will also produce documentation evidencing that the process requires the University to maintain information regarding requests for confidentiality, the individual responsible for assessing the University's determination regarding the request for confidentiality, as well as interim and/or remedial services provided to the complaining party, including referrals to counseling and/or academic services in accordance with University document retention policies. The University will also indicate the individual(s) responsible for maintaining and reviewing this information and the location where the records will be maintained.
2. The University will provide case files for each incident alleging sexual harassment, including sexual assault and sexual violence, investigated at the University during the preceding academic year: a description of how the incident came to the University's attention (i.e., whether reported by a student or parent, or witnessed by a staff member), the location where the incident took place, a description of the incident, a detailed written narrative describing how the University investigated the incident, including the names of all witnesses interviewed and a list of any documents or other evidence reviewed, a statement as to whether the University concluded that sexual harassment occurred or did not occur and a description of the steps taken by the University to remedy any harassment that occurred and prevent its recurrence.

Reporting Requirements:

1. By November 30, 2016, the University will provide for OCR review and approval a description of its record-keeping process developed under Action Step X.1.
2. By December 31, 2016, and at the end of each calendar year through the monitoring of this Agreement, the University will provide OCR with documentation demonstrating that it has implemented Action Step X.2, including copies of the initial report, any records, and the investigative files, including those of the University's Title IX Coordinator, showing the response and remedies obtained, if any.

XI. Code of Conduct

The University will review and revise its *Student Code of Conduct* as needed to ensure that it is consistent with its revised Title IX policies and procedures referenced above in Action Step IV.

Reporting Requirement: By February 1, 2017, the University will submit to OCR its revised *Student Code of Conduct* and documentation confirming that it has publicized and disseminated its revised *Student Code of Conduct*, including a description of how it was distributed, copies of its revised student handbook(s) and a link to its webpage where the revised *Student Code of Conduct* is located.

XII. Memorandum of Understanding (MOU)

The University will review its existing Memorandum of Understanding (MOU) with the local law enforcement agency responsible for investigating sexual violence. The University will supplement or amend the MOU to make clear that a University student may pursue a criminal action with law enforcement and a sexual harassment complaint through the University at the same time regarding the same incident and that, where feasible and applicable, law enforcement will assist the University in obtaining/testing relevant forensic evidence. The MOU will clearly outline how the relevant law enforcement agencies will coordinate in such cases.

In addition, the MOU will outline the steps Title IX Coordinator, University Police and local law enforcement will take to promptly notify each other when they receive a complaint of sexual harassment, including sexual violence and sexual assault, and to what extent, if any, they will coordinate efforts on behalf of the University to promptly and equitably respond, as well as to accurately and thoroughly document those efforts, including all investigatory steps taken.

The University will develop written protocol with University Police that will specify when a complaint of sexual assault is received, University Police will refer the complainant to the University's Title IX Coordinator and to local law enforcement if the complainant desires to file criminal charges.

Reporting Requirement: By February 1, 2017, the University will provide OCR with a copy of its MOU with local law enforcement and the written protocol with University law enforcement. By February 1, 2017 and the same date in 2018 and 2019, the University will submit to OCR documentation verifying that the MOU and protocol are being followed, including with respect to complaints of sexual misconduct received by University law enforcement.

The University understands that OCR will not close the monitoring of this Agreement until OCR determines that the University has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title IX, at 34 C.F.R. Sections 106.8(a), 106.8(b), 106.9, and 106.31, which were at issue in this case.

The University also understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this

agreement. Further, the University understands that during the monitoring of this agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this agreement and is in compliance with the regulations implementing Title IX, at 34 C.F.R. Sections 106.8(a), 106.8(b), 106.9, and 106.31, which were at issue in this case.

In addition, the University understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

/s/

9/6/2016

Ronald H. Nowaczyk
President
Frostburg State University

Date



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

October 12, 2016

IN RESPONSE, PLEASE REFER TO: 03-15-2329

Robert E. Clark II
President
Wesley College
120 North State Street
Dover, DE 19901

Dear President Clark:

This letter is to inform you that the U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Wesley College (the College). The Complainant alleged that the College discriminated against her son (the accused Student) on the basis of sex when it subjected him to an inequitable grievance and appeal process in April 2015.

OCR investigated this complaint under the authority of Title IX of the Education Amendments of 1972 (Title IX), and its implementing regulations, 34 C.F.R. §106, which prohibit discrimination on the basis of sex in education programs and activities that receive Federal financial assistance from the Department. The College receives Federal financial assistance funds from the Department and, therefore, is subject to the requirements of Title IX and its implementing regulations.

The accused Student was a senior at the College during the 2014-2015 school year. On March 31, 2015, the accused Student was accused of planning and implementing the live streaming of a female student engaged in a sexual act with another male student (Student 1) sometime over the weekend of March 20-22, 2015, without the female student's knowledge. On April 1, 2015 the College notified the accused Student that he was charged with violating the College's Sexual Misconduct Policy. Following the Judicial Board Hearing on April 7, 2015, the College expelled the accused Student.

The OCR complaint was filed on May 14, 2015, asserting that the accused Student did not participate in the planning or implementation of the live streaming, and that the College violated Title IX by failing to conduct an equitable investigation and resolution of the incident.

OCR investigated whether the College provided prompt and equitable responses to sexual harassment and sexual assault complaints, reports, and /or other incidents of which it had notice,

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

including the incident involving the accused Student and three other accused male students (Students 1, 2, and 3) who were also alleged to have been involved in the incident.

During the investigation, OCR reviewed documentation provided by the Complainant and the College, including relevant College policies and procedures and case files related to reports of sexual harassment and sexual violence at the College from August 2013 through April 2015, interviewed the Complainant in June 2015, and conducted an on-site to the College and interviewed the accused Student, other students, and staff in November 2015.

SUMMARY OF FINDINGS

The College is required under Title IX to respond to allegations of sexual harassment or sexual violence when it knows, or reasonably should know, about possible sexual harassment or sexual violence. In undertaking this responsibility, the College must have an equitable process that ensures that the rights of survivors and those of the accused are protected.

OCR's role, after the College has responded to the allegations, is not to reinvestigate the underlying incident or substitute its judgement for that of the College. Rather, OCR's role in investigating Title IX sexual harassment and sexual violence allegations is to determine whether the College's grievance procedures for the resolution of complaints, such as those utilized for this complaint, are prompt and equitable and have been properly implemented.

For the reasons briefly stated below, and discussed further in the letter, OCR determined that the College failed to adopt and implement Title IX grievance policies and procedures that fully comply with the requirements of Title IX. Specifically, the College failed to implement several provisions of its Title IX policies and procedures during the processing of the complaint involving the accused Student, including when it suspended, and later expelled him for sexual misconduct. The College thereby denied the accused Student procedural protections to which he was entitled under Title IX, and under the College's own written procedures. OCR also had concerns regarding College's failure to maintain the recording of the hearing in the accused Student's case. OCR also determined that the College handled several other reports of sexual harassment and sexual violence from August 2013 through April 2015 in an inequitable manner.

OCR also found that the College's Notice of Non-Discrimination and its two (2) policies and procedures to address Title IX complaints that were in effect at the time of the incident, as well as the February and June 2016 revisions to them, did not fully comply with Title IX. Specifically, the Notice of Non-Discrimination did not identify the individual at the College responsible for investigating and resolving Title IX complaints and was not widely publicized. In addition, at all relevant time periods during OCR's investigation, the College's Title IX Policies and Procedures did not provide adequate notice to students and employees regarding where complaints may be filed and did not maintain designated and reasonably prompt timeframes for all stages of the grievance process. OCR also found that the College's designation and notice of the College's Title IX Coordinator does not comply with Title IX. Further, OCR's investigation identified concerns regarding whether the College has appropriately designated responsible employees obligated to report possible sexual violence to school officials, provided adequate training for the Title IX Coordinator, Title IX Team, and all other College staff and employees regarding the College's grievance procedures, as well as responsible employee designations and obligations to respond to requests for confidentiality.

OCR also had concerns regarding the maintenance of hearing transcripts for sexual harassment and sexual violence allegations and complaints.

On September 30, 2016, the College voluntarily entered into a resolution agreement (Agreement), which was provided to OCR on October 6, 2016 and requires that the College take specific steps to address the identified violations and concerns.

This letter summarizes the applicable legal standards, the evidence gathered during the investigation, OCR's determinations, and the remedies the College has agreed to implement to ensure compliance with Title IX.

LEGAL STANDARD

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires a recipient to implement specific and continuing steps to notify all applicants for admission and employment, students and parents, 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 its education programs or activities, and that it is required by Title IX not to discriminate in such a manner. The Notice of Non-Discrimination must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

The Title IX implementing regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. The Title IX Coordinator responsibilities include overseeing the school's response to Title IX reports and complaints, and identifying and addressing any patterns or systemic problems revealed by such reports and complaints; and therefore, the Title IX Coordinator must have knowledge of the requirements of Title IX, the school's own policies and procedures on sex discrimination, and of complaints raising Title IX issues throughout the school. The recipient is further required, by the Title IX implementing regulation at 34 C.F.R. § 106.8(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s).

The Title IX regulation 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 in education programs or activities 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. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's 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 or subjects of the harassment; the

number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment, the size of the school, location of the incidents, and the context in which they occurred; and other incidents at the school. The more severe the conduct, the less the need to show a repetitive series of incidents; this is particularly true if the harassment is physical. A single or isolated incident of sexual harassment may, if sufficiently severe, create a hostile environment. For example, a single instance of rape is sufficiently severe to create a hostile environment.

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, as appropriate, remedy its effects. 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. A recipient has notice of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject the student to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial sexual harassment and the effects of the recipient's failure to respond promptly and appropriately. A recipient's obligation to respond appropriately to sexual harassment complaints is the same irrespective of the sex or sexes of the parties involved.

A recipient is responsible under the Title IX regulations for the nondiscriminatory provision of aid, benefits, and services to students. Recipients generally provide aid, benefits, and services to students through the responsibilities they give to employees. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out the employee's responsibilities either conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct, or engages in sexual harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program on the basis of sex, the recipient is responsible for the discriminatory conduct and for remedying any effects of the harassment on the complainant, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has notice of the harassment.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging action that would be prohibited by Title IX, including sexual harassment and sexual violence. OCR has identified a number of elements in the determining if grievance procedures are prompt and equitable for both parties, 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 regarding complaints alleging discrimination and harassment carried out by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) written notice to the parties of the outcome and any appeal; and (f) an assurance that the institution will take steps to further prevent harassment and to correct its discriminatory effects, if appropriate. Title IX does not require a recipient to provide

separate grievance procedures for sexual harassment complaints, including sexual violence complaints. A recipient may use student disciplinary or other separate procedures for these complaints; however, any procedures used to adjudicate complaints of sexual harassment or sexual assault, including disciplinary proceedings, must afford survivors and the accused a prompt and equitable resolution.

BACKGROUND

Wesley College is a private college located in Dover, Delaware, and has one campus. During the 2014-2015 academic year, the time period in which the incident at issue in the OCR complaint occurred, the College had a total enrollment of 1,615 students, of whom 1,528 were undergraduates. Of the undergraduate students, 826 (54%) were female and 701 (46%) were male.¹ During the 2015-2016 academic year, the College had a total enrollment of 1,571 undergraduate students, of whom 895 (57%) were female and 676 (43%) were male.

Pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092 (Clery Act), the College reported zero (0) forcible sex offenses in 2011, two (2) forcible sex offenses in 2012, one (1) forcible sex offense in 2013, and one (1) rape in 2014.

FACTS AND ANALYSIS

1. Notice of Non-Discrimination²

The College's Notice of Non-Discrimination was published in the 2015-2016 undergraduate and graduate course catalogs, the College's employment weblink, 2015-2016 Student Nursing Guide, Nursing Graduate Program Student Handbook, and Staff Handbook (undated). It did not appear in the 2014-2015 or 2015-2016 Student Handbook. The Notice of Non-Discrimination does not identify the Title IX Coordinator or any individual at the College responsible for investigating and resolving Title IX complaints. In addition, none of the publications in which the Notice of Non-Discrimination appears, except the Staff Handbook, states that complaints may be referred to OCR. The reference to OCR in the Staff Handbook, however, provides the incorrect address for OCR.

OCR concludes that the College's Notice of Non-Discrimination does not comply with the requirements of Title IX, as it 1) does not identify the individual at the College responsible for investigating and resolving Title IX complaints, and 2) is not included in the Student Handbook and, therefore, is not widely distributed.

2. Title IX Coordinator and Training of Title IX Team

In June 2013, the College hired the Dean of Students, and shortly thereafter she also took on the role of Title IX Campus Site Coordinator, acting as the College's Title IX Coordinator (hereafter the Dean of Students will be referred to as the Title IX Coordinator). The Title IX Coordinator

¹ Source: National Center for Education Statistics-
<http://nces.ed.gov/globallocator/index.asp?search=1&State=&city=&zipcode=&miles=&itemname=wesley+college&sortby=name&School=1&PrivSchool=1&College=1&CS=9A6F8015>

² At all times relevant, the College utilized the same Notice of Non-Discrimination.

reported that she immediately began the process of initiating, drafting, and implementing new Title IX policies and procedures and oversight over Title IX complaints, as well as designating specific responsibilities to members of the Title IX staff. In January 2015, the College created a Title IX Team to assist with its efforts to carry out its duties under Title IX, and in February 2015, the College implemented the *Title IX Policy and Procedures*, which replaced the College's previous anti-harassment policy.

As of February 2015, prior to the date of the incident that is the subject of this complaint, the Title IX Team consisted of the Title IX Coordinator, the Central Coordinator for Anti-Harassment, the Central Coordinator for Student Conduct and Sexual Assault (the Student Conduct Coordinator), the Central Coordinator for Athletic Compliance, the Central Coordinator for Disability Support, and the Central Coordinator for Hostile Environment. Although not designated or identified in the February 2015 *Title IX Policy and Procedures*, the Director of Security operated as a member of the Title IX Team.

Prior to October 2015, the Student Conduct Coordinator investigated all Title IX complaints involving students and also maintained all documentation regarding all Title IX complaints that were forwarded to her from the other Title IX Team members. The Student Conduct Coordinator was responsible for submitting a spreadsheet summarizing all the Title IX incidents for the Title IX Coordinator's review.

In October 2015, the College hired an additional Central Coordinator for Student Conduct and Sexual Assault, who is referred to as the "Title IX Educator/Investigator," and in February 2016 the College changed several titles/roles of the Title IX Team Members. Namely, the Director of Security was designated as a member of the Title IX Team, and the Title IX Educator/Investigator took over many of the roles that were previously held by the Student Conduct Coordinator, described above. The Title IX Educator/Investigator also serves as the investigator/advocate for survivors. Another individual serves as the investigator/advocate for accused students. Although the Title IX Coordinator's title changed from the Title IX Central Coordinator to the "Coordinator/Gatekeeper," her responsibilities stayed the same. Specifically, the Title IX Coordinator is responsible for reviewing all incidents to identify repeat offenders, problematic locations, and times of the year when the highest number of incidents occur, and is responsible for maintaining oversight over Title IX training and Title IX outreach efforts. During OCR's onsite, College staff outside of the Title IX office told OCR that they were aware of the Title IX Coordinator, the Student Conduct Coordinator, and their duties.

The names, titles, and contact information for the members of the Title IX Team were published in the College's February 2015, February 2016 and June 2016 *Title IX Policy and Procedures*, in its *2015-2016 Student Handbook*, and on its *Title IX Information Page*. The *Title IX Information Page*, however, has not yet been updated to include the Director of Security as a member of the Title IX Team. In addition, at all times during OCR's investigation, the Title IX Team members detailed in the *Title IX Policy and Procedures* were not consistently detailed in the *Title IX Information Page*.

The College provided OCR with documentation demonstrating that the Title IX Coordinator and Student Conduct Coordinator attended Title IX training in May 2015, and in September 2015, the Central Coordinator for Disability Support, the Student Conduct Coordinator, the Title IX Educator/Investigator, and one of the hearing members attended a session on Title IX conduct boards. The May 2015 training reviewed OCR resolution letters and agreements and various

model Title IX investigative documents. The September 2015 training reviewed the College's *Title IX Policy and Procedures* and *Student Code Procedures* set forth in the *Student Handbook*. In addition, the College provided OCR with documentation demonstrating that in October 2015, the Assistant Director for Residence Life and Student Conduct Coordinator attended a Title IX session that reviewed the *Title IX Policy and Procedures* and the *Student Conduct Procedures* set forth in the *Student Handbook*.

While OCR did not find violations regarding the establishment of the role and responsibilities of the Title IX Coordinator and the Title IX Team from March 2015 through June 2016, for several reasons OCR has concerns regarding the adequacy of the training provided to Title IX Team members. Specifically, as described more fully below, the Title IX Team members who investigated and resolved the complaint that was brought against the accused Student misapplied the College's *Title IX Policies and Procedures*, resulting in an inequitable process that did not meet the requirements of Title IX. Moreover, also as discussed further below, OCR found several other instances of inequitable Title IX complaint investigations in the College's 2013 to 2015 case files. Additionally, and as discussed below, the Title IX Team members provided conflicting information regarding the College's obligations in response to requests for confidentiality, and hearing panel members, whose work is facilitated by certain Title IX Team members, lacked clarity about the preponderance of evidence standard which is provided for in the College's *Title IX Policies and Procedures*. OCR also notes that the role of Central Coordinator for Anti-Harassment was not clear to the Title IX Team members. Thus, OCR has concerns that the Title IX Coordinator and/or other Title IX Team members were inadequately trained to effectively fulfill their Title IX responsibilities.

3. Grievance Procedures

At the time the incident was reported to the College, the College utilized two policies to address complaints of sexual harassment, including sexual assault/violence: (1) *Title IX Policy and Procedures* that were adopted in February 2015 and (2) *Student Conduct Procedures* that were published in the 2014-2015 *Student Handbook*. The College also maintained a *Title IX Information Page* that provided general information about Title IX and resources at the College. The *Title IX Policy and Procedures* were revised in February and June 2016.

Title IX Policy and Procedures

The *Title IX Policy and Procedures* apply to all complaints of sexual harassment and sexual assault involving students, employees, or third parties and specifically states that it is applicable regardless of the status of the parties involved, including members or non-members of the campus community, students, student organizations, faculty, administrators, and/or staff. In addition, it provides the contact information for the Title IX Team.

The *Title IX Policy and Procedures* provides definitions for all forms of harassment, including sexual harassment and sexual misconduct/assault. In addition, the *Title IX Policy and Procedures* states that the College considers non-consensual sexual intercourse violations to be the most serious, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. It also explicitly states that acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation, and/or gender identity of those involved.

The *Title IX Policy and Procedures* also prohibits retaliation and states that the College will implement initial remedial and responsive and/or protective actions upon notice of alleged harassment, retaliation, and/or discrimination, and provides examples of interim and remedial actions offered by the College.

The *Title IX Policy and Procedures* describes in detail the process for investigating and resolving complaints of sexual harassment and/or sexual assault. Specifically, any member of the community, guest, or visitor may file a complaint with any member of the Title IX Team, who will contact the Title IX Coordinator within 24 hours. The *Title IX Policy and Procedures* state that within two business days of the receipt of a complaint, an initial determination is made whether a policy violation may have occurred and/or whether “conflict resolution,” a mediation process, might be appropriate. If the incident does not appear to allege a policy violation or if conflict resolution is desired and is appropriate, then the investigation does not proceed. If an investigation does proceed, the *Title IX Policy and Procedures* states that the College aims to complete the investigation and resolution of the complaint within a 60 business day time period, which can be extended as necessary for appropriate cause by the Title IX Team, with notice to the parties.

If the complaining party wishes to pursue a formal investigation, or if the College decides to pursue a formal investigation based on the alleged policy violation, then the Title IX Coordinator appoints a Title IX Team member to conduct the investigation. During interviews with OCR, two Title IX Team members stated that the Director of Security, although not identified as a Title IX Team member in the February 2015 *Title IX Policy and Procedures*, conducts all Title IX investigations.

According to the *Title IX Policy and Procedures*, investigations of incidents should be completed expeditiously, normally within 10 business days, unless initial interviews fail to provide direct first-hand information. In addition, the *Title IX Policy and Procedures* states that the College may undertake a short delay (three (3) to ten (10) days) when criminal charges on the basis of the same behaviors that invoke the student conduct process are being investigated. However, College action will not be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed, or that charges have been dismissed or reduced.

The *Title IX Policy and Procedures* permits the College to suspend a student, employee, or organization on an interim basis pending the completion of the investigation and provides procedures that are to govern the interim suspension process. Specifically, the *Title IX Policy and Procedures* states that, in all cases in which an interim suspension is imposed, the accused will be given the opportunity to meet with the Title IX Coordinator prior to such interim suspension being imposed, or as soon thereafter as reasonably possible, to show why the interim suspension should not be implemented. In addition, during an interim suspension, a student may be denied access to classes, but at the discretion of the appropriate administrative officer or the Title IX Team, alternative coursework options may be pursued to ensure as minimal an impact as possible on the accused student.

The *Title IX Policy and Procedures* states that all investigations will be thorough, reliable and impartial, and will entail interviews with all relevant parties and witnesses. In addition, the *Title IX Policy and Procedures* states that during or upon the completion of the investigation, the investigators will meet with the Title IX Team and make a decision regarding whether there is reasonable cause to proceed. If the Title IX Team decides that no policy violation occurred, or

that the preponderance of the evidence did not support a finding of a policy violation, then the process will end. If there is reasonable cause, the Title IX Team will direct the investigation to continue, and if there is a preponderance of evidence of a violation, then the Title IX Team may recommend that the matter be resolved in one of three ways: (1) Conflict resolution, (2) Resolution without a hearing, or (3) the formal hearing processes.

- Conflict resolution is described as a mediation facilitated by the Title IX Coordinator that it is often used for behaviors that are inappropriate but less serious, and is encouraged as an alternative to the formal hearing process to resolve conflicts. The *Title IX Policy and Procedures* states that it is not necessary to pursue conflict resolution first in order to “make” a formal investigation, and anyone participating in conflict resolution can stop that process at any time and request a formal hearing. While the *Title IX Policy and Procedures* states that conflict resolution is not the primary resolution mechanism used to address grievances of sexual misconduct, it also states that it may be made available after the formal process is completed, should the parties and the Title IX Coordinator believe that it could be beneficial.
- Resolution without a hearing is described as a process in which the responding party may choose to admit responsibility for all or part of the alleged violations at any point in the process. The *Title IX Policy and Procedures* states that resolution without a hearing can be pursued for any behavior that falls within the policy, at any time during the process. This section of the *Title IX Policy and Procedures* states that the Title IX Coordinator will provide written notification of an investigation to any member of the College community who is accused of an offense of harassment, discrimination or retaliation. The Title IX Coordinator will meet with the responding individual to explain the finding(s) of the investigation, at which time, the responding party may choose to admit responsibility for all or part of the alleged policy violations. If so, the Title IX Coordinator will render a finding that the individual is in violation of College policy and the Title IX Team will recommend an appropriate sanction or responsive action.
- Formal hearings are applicable for grievances that are not appropriate for conflict resolution and which are not resolved without a hearing.

If the complaint proceeds to a formal hearing, the Title IX Coordinator will initiate the hearing and appoint a non-voting panel Chair and three hearing panel members, none of whom have been previously involved with the investigation. Hearing panels may include both faculty and non-faculty employees, with at least one faculty employee selected in an investigation involving a faculty member. Students do not serve on hearing panels, except in cases of lesser student-on-student investigations. OCR learned that a key Title IX Team member participates in Judicial Board Hearings as a non-voting member, and also as the individual who determines whether an appeal should be forwarded to the appeal panel for processing.

At least one week prior to the hearing, the Chair will send a letter to the parties detailing the alleged violation, applicable procedures and potential sanctions; time, date and location for the hearing; and offer of an advisor. Hearings will be convened usually within one to two weeks of the completion of the investigation. The *Title IX Policy and Procedures* states that the Chair will exchange the names of witnesses the College intends to call, all pertinent documentary evidence, and any written findings from the investigators “between the parties,” at least two business days prior to the hearing. In addition, all parties are to have ample opportunity to present facts and arguments in full and question all witnesses during the hearing, though formal cross-examination is not used between the parties. Following the hearing, the hearing panel will deliberate in

closed session and will base its determination on a preponderance of the evidence. If an individual is found responsible, the panel will recommend appropriate sanctions to the Title IX Coordinator. The *Title IX Policy and Procedures* allows both parties to appeal the findings and/or sanctions of the panel hearing. In February 2016, the College revised the *Title IX Policy and Procedures*. The revisions did not change the manner in which the College investigates and resolves Title IX complaints, but rather, provided clarifying information regarding the name and role of each Title IX Team member and designated the Director of Security as a member of the Title IX Team. In February 2016, the College also provided OCR with model documents to be utilized during the investigation and/or resolution of a sexual misconduct complaint, including an Investigative Report Template, sample of a Confirmation of Report-Rights and Support Letter, Declining Student Conduct Action Form, and an Educational Conference Acknowledgement Form.

In June 2016, the College made additional revisions to the *Title IX Policy and Procedures*. Once again, the revisions did not change the manner in which the College investigates and resolves Title IX complaints, but instead, revised the name of the Title IX Team to the “Title IX Advocate Team,” and replaced the “Alcohol Education and Programming Coordinator” with a “Central Coordinator for Human Resources Advocate.”³

*Student Conduct Procedures*⁴

The *Student Conduct Procedures* are contained in the *Student Handbook*, which set forth the procedures the College will use in order to investigate and resolve alleged violations of the *Code of Conduct*. The *Student Conduct Procedures*, detailed in the 2014-15 *Student Handbook*, provide that, once an incident or violation of the *Code of Conduct* has been reported, the first step will be an educational conference, in which the accused student will be given the opportunity to explain his version of events. Educational conferences are held by trained Judicial Hearing Officers. Each accused student is assigned a conduct officer for their educational conference. During the educational conference, the accused student and the conduct officer meet to informally discuss the incident. If the conduct officer determines that a policy has not been violated, then the case and any related judicial charges may be dismissed. If the conduct officer maintains that the policy has been violated, the accused student is given the option of accepting responsibility and thus waiving the right to a formal Judicial Board Hearing and having the officer issue judicial sanctions. When this occurs, the case is considered resolved at the conclusion of the educational conference. Students who do not feel that they have violated the *Student Code of Conduct* have a second option, which is to request a formal Judicial Board Hearing. Students may request that witnesses be called to testify, and students may also invite a member of the faculty or staff to act as an advisor during the hearing. At the conclusion of the

³ Because the February and June 2016 revisions to the *Title IX Policy and Procedures* did not change the manner in which the College investigates and resolves Title IX complaints, unless otherwise noted as the February or June 2016 *Title IX Policy and Procedures*, any general reference to the “*Title IX Policy and Procedures*” refers to information that consistently appears in each version of the *Title IX Policy and Procedures*.

⁴ In the incident involving the accused Student, OCR’s investigation found that the *Student Conduct Procedures* contained in the *Student Handbook* were provided to the accused Student to guide him through the investigative process. Thus, even though College staff informed OCR that the procedures set forth in the *Title IX Policy and Procedures* were to govern the processing of the complaint involving the accused Student, the accused Student believed that the *Student Conduct Procedures* in the *Student Handbook* governed the processing of the complaint. Accordingly, OCR also assessed the *Student Conduct Procedures* for compliance with the requirements of Title IX.

hearing, the board members meet in closed session to determine its decision, and, in the event that the student is found responsible, the board will recommend appropriate sanctions. Both parties are permitted to appeal the outcome of an Administrative or Judicial Board Hearing.

The 2015-2016 *Student Handbook* included a disclaimer stating that all incidents of sexual misconduct are processed under the College's *Title IX Policy and Procedures*. The 2014-2015 *Student Handbook* that was in effect at the time of the incident in this complaint did not contain such a disclaimer, even though College staff members told OCR that, at the time of that incident, sexual misconduct complaints were being processed under the *Title IX Policy and Procedures*.

Title IX Information Page

As of at least September 2015 through September 2016, the *Title IX Information Page* on the College's website provided general information regarding Title IX, definitions, the College's responsibilities under Title IX, contact information for the Title IX Team, an incident report to be utilized to report any incident of sexual harassment and/or sexual violence, a description of the College's reporting options, and a list of resources with contact information. The *Title IX Policy and Procedures* and *Title IX Information Page* appear together as links on the College's Title IX webpage.

OCR concludes that the *Title IX Policy and Procedures* adequately states that they apply to complaints alleging discrimination or harassment carried out by employees, students and third parties. Specifically, the *Title IX Policy and Procedures* appropriately states that any member of the community, guest, or visitor who believes that the Policy has been violated should contact a member of the Title IX Team. The *Title IX Policy and Procedures* also appropriately states that it applies to behaviors that take place on the campus, at college-sponsored events, and may also apply off-campus and to actions online, and that the College will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. In addition, the *Title IX Policy and Procedures* states that its procedures for conducting and resolving an investigation applies to students, staff, or faculty members, and redress and requests for responsive actions involving non-members of the community are also covered.

OCR also concludes that the *Title IX Policies and Procedures*, as written, provide for an adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence. Specifically, the *Title IX Policy and Procedures* explicitly states that all investigations will be thorough, reliable, and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary. However, as described more fully below, OCR's investigation revealed that the College failed to follow this stated practice in the incident involving the accused Student, and with regard to many of the other incidents of sexual harassment and/or sexual violence investigated by the College during the 2013-2014 and 2014-2015 academic years.

OCR also concludes that the *Title IX Policies and Procedures* adequately provides for written notice to the parties of the outcome and any appeal. Specifically, the *Title IX Policy and Procedures* states that the Title IX Coordinator will inform the accused individual and the party bringing an investigation of the final determination within two (2) to three (3) business days of the hearing. In addition, the *Title IX Policy and Procedures* states that the Title IX Coordinator will render a written decision on the appeal to all parties within two (2) to three (3) business days

from the hearing of the appeal. However, as described more fully below, OCR’s investigation revealed that the College failed to provide written final determinations in several incidents of sexual harassment and/or sexual violence investigated by the College during the 2013-2014 and 2014-2015 academic years.

Last, OCR concludes that the *Title IX Policies and Procedures* adequately provides an assurance that the College will take steps to prevent further harassment and to correct its discriminatory effects on the complainant, if appropriate. Specifically, the *Title IX Policy and Procedures* states that the College may provide interim remedies intended to address the short-term effects of harassment, discrimination, and/or retaliation to redress harm to the alleged survivor and the community and to prevent further violations. In addition, the *Title IX Policy and Procedures* describe the various sources of remedial support for survivors, as well.

OCR’s investigation also determined, however, that the *Title IX Policies and Procedures* are not fully compliant with Title IX. Specifically, the College’s policy providing for discontinuation of investigation if a student waived a right to a formal Judicial Board Hearing, when given that option, violates Title IX. OCR also found that the College violated Title IX by failing to provide adequate notice to students, employees, and third parties of the procedures and by failing to provide designated and reasonably prompt timeframes for all stages of the grievance process, as described more fully below:

a. Notice

At all relevant times, the *Title IX Policy and Procedures* and the *Title IX Information Page* included contact information for different Title IX Team members. The June 2016 *Title IX Policy and Procedures* provides contact information for a Central Coordinator for Human Resources Advocate, but the current *Title IX Information Page* provides different contact information for an individual designated as the Title IX Coordinator for Hostile Environments. In addition, as noted above, the *Title IX Information Page* has not yet been updated to include the Director of Security as a member of the Title IX Team, even though he appears as a member of the Title IX Team in the June 2016 *Title IX Policy and Procedures*.

b. Designated and reasonably prompt timeframes

The *Title IX Policy and Procedures* states that all employees receiving reports are expected to promptly contact the Title IX Coordinator within 24 hours. In addition, the *Title IX Policy and Procedures* also states that the College aims to complete the investigation and resolution of complaints within a 60 business-day time period, which can be extended, as necessary, for appropriate cause and with notice to the parties. Moreover, the *Title IX Policy and Procedures* states that investigations should be completed within ten (10) business days, and that hearings will be convened usually within one (1) to two (2) weeks of the completion of the investigation, and that the parties will be informed of the hearing determination within two (2) to three (3) days.

OCR has several concerns regarding the College’s timeframes. The *Title IX Policy and Procedures* do not provide any timeframes for the appeal panel to make a determination. In addition, typically, a 60 calendar, not business, day period is considered an appropriate guidepost to investigate and reach resolution for a Title IX matter. Also, OCR has concerns that the time period utilized to investigate and resolve some of the College’s sexual harassment and sexual

violence cases between 2013 and 2015, including the accused Student's case, may have been too short to allow for equitable investigations and resolutions. See discussion below.

c. Other Concerns

OCR also identified the following concerns with regard to the *Title IX Policy and Procedures* and *Student Conduct Procedures*:

- The College's *Title IX Policy and Procedures* and *Student Conduct Procedures* do not explicitly bar conflict resolution in matters involving sexual harassment or sexual violence, even if only utilized after the formal process is completed.
- The *Title IX Policy and Procedures* state that within two business days of the receipt of a complaint an initial determination is made whether a policy violation may have occurred, which may not provide sufficient time for the College to meet its responsibility to investigate and determine whether steps are necessary to ensure student safety, both for students directly involved and for others who may experience a hostile environment.
- A key Title IX Team member participates in Judicial Board Hearings as a non-voting member, and also as the individual who determines whether an appeal should be forwarded to the appeal panel for processing. This may present a conflict of interest if the Title IX Team member has any oversight over the investigation of sexual misconduct complaints.
- The 2014-2015 *Student Handbook* that was in effect at the time of the incident involving the accused Student did not include a disclaimer directing individuals to the *Title IX Policy and Procedures*. Thus, prior to the 2015-2016 academic year, in which a disclaimer was inserted into the *Student Handbook*, individuals may have mistakenly believed that the *Student Conduct Procedures* set forth in the *Student Handbook* applied to incidents involving sexual misconduct.
- The *Title IX Policy and Procedures* and the 2014-15 *Student Conduct Procedures* that were in effect at the time of the incident involving the accused Student were contradictory, with each providing a different process for the resolution of the complaints of sexual harassment and/or sexual violence.

In addition, and as discussed below, to the extent the College's policies contain many of the required Title IX procedural requirements, the College did not implement many of those procedural requirements in the investigation and resolution of the incident involving the accused Student.

4. Responsible Employees

The *Title IX Policy and Procedures* and the *Student Conduct Procedures* contained in the *Student Handbook*, provide for three reporting categories: (1) confidential reporting, (2) formal reporting, and (3) quasi-confidential reporting:

The confidential reporting option provided for in the *Title IX Policy and Procedures* permits survivors to report an incident of sexual harassment or sexual violence to certain designated individuals who will maintain the survivor's confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. On-campus confidential reporters include campus counselors, the employee assistance program, and on-campus clergy/chaplains. The *Title IX Policy and Procedures* further states that the on-campus resources cited above will

submit anonymous statistical information for Clery Act purposes only, unless they believe it would be harmful to the reporting individual.

The *Title IX Policy and Procedures*' formal reporting option provides that formal reports may be made to the Title IX Team and that privacy is afforded to the reporter because only a small group of officials who need to know the information will be told. The *Title IX Policy and Procedures* states that information will be shared as necessary with investigators, witnesses and the responding party, and that the circle of people with this knowledge will be kept as tight as possible to preserve the individual's rights and privacy.

Pursuant to the *Title IX Policy and Procedures*, most resources on campus fall in the middle of these two extremes, meaning that neither the College, nor the law, requires them to divulge private information that is shared with them, except in rare circumstances.

The *Student Conduct Procedures* set forth in the 2014-2015 *Student Handbook* provides information regarding this third reporting option, which is referred to as "quasi-confidential reporting," describing it as:

You can seek advice from certain resources who are not required to tell anyone else your private, personally identifiable information unless there is cause for fear for your safety, or the safety of others. These resources include those without supervisory responsibility or remedial authority to address sexual misconduct, such as [Resident Advisors], faculty members, advisors to student organizations, career services staff, admissions officers, student activities personnel, Student Life staff members, and many others. If you are unsure of someone's duties and ability to maintain your privacy, ask them before you talk to them. They will be able to tell you, and help you make decisions about who can help you best. Some of these resources, such as RAs, are instructed to share Incident Reports with the supervisors, but they do not share any personally identifiable information about your report unless you give permission, except in the rare event that the incident reveals a need to protect you or other members of the community.

Eight (8) College staff members interviewed asserted that all members of the College faculty, staff, and administration, except for the chaplain and counseling, are required to notify the Title IX Team of all incidents of sexual misconduct, including all details of the incident that are shared with them by the survivor, and that this reporting requirement also applies to resident advisors. Thus, none of these staff members were aware of a quasi-confidential reporting option, even though it was provided for in the *Student Conduct Procedures* set forth in the 2014-2015 *Student Handbook*. Further, when asked to explain what is meant by the quasi-confidential reporting category detailed in the *Student Conduct Procedures*, two (2) Title IX Team members stated that they were unsure of the intent of this category given that their understanding was that all employees on campus were responsible employees except for the campus chaplain, nurse and counselor.

A responsible employee includes any employee: who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or

whom a student could reasonably believe has the authority or duty. OCR recognizes that any person with a professional license requiring confidentiality is not required to report, without the student's consent, incidents of sexual violence to the school in a way that identifies the student. OCR recognizes that some people who provide assistance to students who experience sexual violence are not professional or pastoral counselors, and thus, schools have the latitude not to require that these individuals report incidents of sexual violence in a way that identifies the student without the student's consent. However, this category should be limited and typically applies to individuals who work or volunteer in an on-campus sexual assault center, survivor advocacy office, health center, or similar entity. Thus, OCR has concerns that the quasi-confidential category detailed in the *Student Conduct Procedures* is overly inclusive; to the extent there are staff and persons who may receive confidential reports at the College, the number should be very limited.

OCR also has concerns that the College's policies and procedures provide conflicting information regarding staff reporting obligations and confidential reporting by students. A school's Title IX policies and procedures should be easily understood, but the College's *Title IX Policy and Procedures* do not adequately describe the "quasi-confidential" reporting option. Last, OCR has concerns that the *Student Conduct Procedures* inappropriately places the burden on the student to determine the duties and ability of staff persons or persons affiliated with the College to maintain privacy.

In addition, given that none of the College staff members interviewed by OCR were aware of the quasi-confidential reporting category, OCR has concerns that College staff are not adequately trained regarding the College's policy regarding reporting obligations. A school needs to ensure that responsible employees with the authority to address sexual harassment and sexual violence know how to respond appropriately, and know that they are obligated to report sexual harassment and sexual violence to appropriate school officials, and that all other employees understand how to respond to reports of sexual harassment and sexual violence.

5. Confidentiality

The *Title IX Policy and Procedures* states that every effort will be made to maintain the privacy of those initiating a report, and in all cases, the College will give consideration to the party bringing an investigation with respect to how the investigation is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution when an alleged survivor chooses not to initiate or participate in a formal investigation. By contrast, without noting the obligation to investigate to the degree possible, the *Title IX Information Page* contains a tab entitled "Why is Reporting Important?" in which it states that "*the College is unable to charge someone who has participated in an act of sexual misconduct or harassment without an actual survivor coming forward.*"

Additionally, one Title IX Team member told OCR that if a survivor wishes not to proceed with an investigation or adjudication, the College will cease its investigative activities.⁵ The Team member further stated that the College will only proceed with investigation or adjudication, against the survivor's wishes, if there is a risk to the community. According to that Title IX

⁵ In contrast, other Title IX Team members interviewed by OCR told OCR that the College has an obligation to investigate every reported Title IX incident, without consideration to the victim's wishes.

Team member, the Title IX Coordinator is responsible for making the determination as to whether the College can honor the survivor's request, or has to proceed with an investigation.

Based on this information, OCR has concerns regarding the College's approach to confidentiality issues. Specifically, the College's *Title IX Information Page* stating that the College is unable to proceed without an actual survivor is flawed, as written. The College has an obligation to make reasonable efforts to investigate and address instances of sexual misconduct when it knows or should have known about such instances, even when a complainant chooses not to participate in an investigation. As such, the information presented in the College's *Title IX Information Page* should be consistent with the information presented in its College's *Title IX Policy and Procedures*, where it states that the College will carry out its Title IX obligations to investigate to the extent possible even when information is provided in a confidential manner. In addition, OCR has concerns that College staff are not adequately trained regarding the *Title IX Policy and Procedures* with respect to confidentiality, given the conflicting information provided by the Title IX team members during interviews.

6. Handling of Criminal Complaints

The *Title IX Information Page* lists the various reporting options for survivors, including reporting to police for criminal charges, and provides the phone number for the Dover Police Department. According to a Title IX Team member, when a student notifies the Campus Safety and Security Office of a sexual assault, Campus Safety and Security will respond to the location on campus, ensure that the student is safe, and provide the student with emergency medical assistance. OCR observed that the College followed this practice in four (4) sexual misconduct incidents that occurred in 2014 and 2015. The Director of Security told OCR that his office coordinates with local police and that he routinely advises survivors who come directly to his office to report an incident, of their right to file a complaint with local law enforcement. He further informed OCR that, if an incident just took place, or is sufficiently egregious, his office will contact local law enforcement to secure the scene. He stated, however, that the decision to involve local law enforcement depends on the facts of each case.

Based on a review of the College's case files related to reports of sexual harassment and sexual violence from August 2013 through April 2015, OCR does not have any concerns regarding the College's handling of criminal complaints. Specifically, the documentation reviewed by OCR reflects that the College contacted local law enforcement, when appropriate, and, in accordance with Title IX, continued with its Title IX investigation notwithstanding of the law enforcement process.

7. Training/Outreach⁶

The College conducted Title IX training for all employees in November 2015, which addressed: the definition of Title IX, including the various types of discrimination and harassment; the individuals protected by Title IX (students, staff, faculty and third parties); the College's obligation to address harassment that may occur off-campus; definitions of the various categories of employees; definitions of sex discrimination, harassment and assault; bystander intervention; confidentiality; retaliation; guidance on how to take a stand against and avoid engaging in sexual

⁶ OCR reviewed and assessed the College's Title IX training activities that occurred during, or after the time period in which the incident that is the subject of this complaint occurred.

harassment; information on various on and off campus resources, including the contact information for the Title IX Coordinator and other members of the Title IX Team; and case scenarios. As noted above, even though the training addressed the definitions of the various employee reporting categories, OCR has concerns regarding the adequacy of the training provided to the College community given that College staff interviewed by OCR lacked sufficient understanding of the various employee reporting options and obligations regarding confidentiality.

The College also conducted Title IX training for all students in the fall 2015, in which 720 students who lived in residence halls, and 12 commuter students participated. The College provided OCR with a copy of the PowerPoint slides that were utilized during the training, which reflects that the training: provided an overview of Title IX, including its statutory language; explained that Title IX applies to all forms of sex based discrimination, including sexual harassment, sexual misconduct, sexual violence and gender-based harassment, and applies to students, staff and third parties; clarified that Title IX protects students in any educational program or activity, even at school-sponsored off-campus activities; provided a definition of notice, and further defined what is considered a responsible employee; provided an in-depth definition of sexual harassment, including sexual violence, and provided several examples; included a section on consent and retaliation, and bystander intervention; the duty to report; confidential reporting options; and a list of available resources, including the name and contact information for the Title IX Coordinator and the other Title IX Team members. A key Title IX Team member told OCR that the training was mandatory and that they tracked attendance; however, it was acknowledged that there was no consequence for non-attendance.

A Title IX Team member stated that the College also conducted targeted Title IX training for resident advisors during the summer 2015, which addressed the reporting process, consent, bystander intervention, the influence of alcohol, etc. In addition, as described more fully above, the documentation provided by the College demonstrates that it conducted several targeted training sessions for the Title IX Coordinator, other Title IX Team members and Assistant Director for Residence Life in 2015. Additionally, the College provided OCR with copies of posters that are located throughout campus since the fall 2013, providing information regarding sexual assault.

During OCR onsite interviews with hearing panel members, OCR learned they received general training addressing sexual harassment in 2012 by the College's consulting attorney for student affairs issues. However, the hearing panel members each lacked clarity regarding the College's preponderance of evidence standard.

As noted above, OCR has concerns that the training of the Title IX Team members who handled various aspects of the complaint against the accused Student was insufficient as several Title IX Team members either did not follow or misapplied the College's *Title IX Policies and Procedures*, resulting in an inequitable process that did not meet the requirements of Title IX. In addition, as described more fully above, OCR has concerns that College staff are not adequately trained regarding the College's policy on requests for confidentiality and reporting obligations, and that hearing panel members were not trained since 2012. Thus, staff did not have sufficient knowledge of the requirements of Title IX and the College's own policies and procedures on sex discrimination in order to effectively implement their role and responsibilities.

8. Record Keeping Practices

The *Title IX Policy and Procedures* provides that records of all investigations, resolutions and hearing will be kept in the President's Office. The February and June 2016 *Title IX Policy and Procedures* modified this provision by designating that the materials would be maintained in the Student Affairs' Office. However, in November 2015, a key Title IX administrator informed OCR that the College's practice is to delete recordings of hearings 10 days after the conclusion of the hearing or appeal process, including the recording of the accused Student's hearing. The revised February and June 2016 *Title IX Policy and Procedures* state that "[a]ll recordings will be deleted 10 days after the conclusion of the hearing or the appeal process."

A Title IX Team member reported that information regarding incidents of sexual harassment or sexual violence is documented in a daily Blotter and Crime log, and Incident Reports are completed by each relevant Title IX Team member. The Team member further provided that the Safety and Security Administrative Assistant maintains documentation of complaints, investigative materials and findings regarding each incident.

The Title IX Coordinator told OCR that the Student Conduct Coordinator compiles all information regarding incidents of sexual harassment, which the Title IX Coordinator reviews on at least a monthly basis to identify patterns in repeat offenders, events of concern, and locations. The Title IX Educator/Investigator took over this role once she was hired in October 2015. The Central Coordinator for Hostile Environment maintains all documentation of incidents of sexual harassment involving employees.

OCR has concerns regarding the College's deletion within 10 days of the accused Student's hearing record. The College is required to meet its legal obligation to comply with the record-keeping provisions of the Department's regulation.⁷ While Title IX does not require a recipient to make a recording of hearings, to the extent that such a recording is made, it constitutes a record and must be kept in order to be available to enable OCR to ascertain whether the College is carrying out its legal obligations under the Title IX regulations. Destroying hearing records after the hearing or appeal necessarily means that the College was undertaking steps that would result in relevant information not being available to OCR during its investigation and monitoring to assess whether the College is carrying out its legal obligations under the Title IX regulations. OCR is obligated to review 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 has corrected its noncompliance with Title IX. Similarly, the document destruction prevents any external review, including pursuant to judicial proceedings, should a participating student wish to challenge the equity of the College's administrative process in court. Finally, destruction of the hearing records prevents the College itself, and specifically its Title IX Coordinator, from being able to review information to determine whether patterns of conduct exist, or whether further steps are necessary for the College to take to ensure student safety, or whether the College is satisfied with the fairness of its own administrative process as applied in particular cases.

⁷ 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 Title IX regulation at § 106.71.

OCR also has concerns that the College's February and June 2016 *Title IX Policy and Procedures* have conflicting provisions regarding maintaining all materials regarding reports of sexual violence. On the one hand, the February 2016 *Title IX Policy and Procedures* require that all documents are maintained by the College and, on the other, provide that hearing transcripts will be deleted within 10 days at the conclusion of the hearing or appeal process.

9. Student Climate Information and Climate Assessment/Response

The College provided copies of an employee and student Title IX survey that was administered in early January 2016. The College reported that it is using the results of the survey to develop a strategic plan for shifting the College climate regarding Title IX issues.

OCR reviewed a summary report of the survey results of the January 2016 survey, which reflects that 118 students (7.5%) completed the survey (79% female students; 21% male students). OCR notes that only 5% of the responders who experienced or observed an incident of sexual harassment and/or misconduct indicated that they reported the incident formally to College staff or administrators; 15% of the responders indicated that they did not know to whom they should report the incident. Twelve and one-half percent of the responders indicated they did not report the incident because they did not think College administration would do anything. Half of the responders (50%) indicated that they understand the College process for addressing reports or unlawful discrimination and sexual misconduct.

One hundred fifty-three (153) employees completed the employee survey. The summary report for the employee survey reflects that 11% of the responders indicated that they had observed sexual harassment on campus and 6% of the responders stated that they encountered sexual harassment that they did not report. In addition, 18% of the responders stated that they feared retaliation for reporting sexual harassment.

The College's administration of the survey afforded the College information through which it can assess its Title IX obligations. OCR does not have concerns generally regarding the College's administration of the climate survey and assessment, except that increased participation will potentially lead to more accurate data upon which the College could justifiably rely in developing its strategic plan for changing the College climate regarding Title IX issues.

10. Handling of Complaints and Incidents of Sexual Assault/Violence

OCR investigated whether the College provided prompt and equitable responses to sexual harassment and/or sexual violence complaints, reports and/or other incidents of which it had notice (knew or should have known about) from August 2013 through April 2015, including the incident involving the accused Student. OCR also investigated whether any failure by the College to promptly and equitably respond to complaints of sexual harassment/violence of which it had notice, resulted in individuals being subjected to continuing to be subjected to a sexually hostile environment.

Incident Involving the accused Student and Students 1, 2 and 3

On March 31, 2015, an Associate Professor (the reporting Professor) notified a Title IX Team member (Administrator 1) that she received a report by two female students of an incident of sexual misconduct involving several students at an off-campus residence. The reporting

Professor stated that the female students told her that a member of a fraternity, Student 1, had live streamed himself engaged in a sex act with a female student (Student 4) without her knowledge, and that other students had seen the live stream. She reported that the incident occurred sometime over the weekend of March 20-22, 2015. Administrator 1 reported to OCR that, later that same day, the two female students arrived at his office to make their own report, and at that time, they provided him with the name of another male student (Witness 1) who could provide additional information. On the afternoon of March 31, 2015, Administrator 1 interviewed Witness 1, who stated that, although he was not present at the time of the incident, he was aware that members of the fraternity provided Student 1 with a video camera to live stream the sexual encounter. Witness 1 identified the fraternity members who watched the live stream as the accused Student and Students 2 and 3. On April 1, 2015, Administrator 1 conducted an interview with Student 1, who conceded that a video camera was setup in his bedroom and live streamed downstairs, where the accused Student and Students 2 and 3 watched it.

Later on April 1, 2015, Administrator 1 and another Title IX Team member (Administrator 2) spoke with Student 4, who confirmed that she engaged in a consensual sex act with Student 1, but that she never consented to the live streaming and found out about it from another student days later. Student 4 told OCR that she informed Administrators 1 and 2 that she believed that the accused Student was not involved in the planning or execution of the live streaming. Student 4 told OCR that another Title IX Team member (Administrator 3) told her that the hearing would have to proceed because the accused Student was identified by witnesses as being involved in the planning and execution of the live streaming. Student 4 confirmed that, shortly thereafter, a College counselor called her, stated that she was aware of the incident, and offered counseling.

On the same day (April 1, 2015), the accused Student and Students 1, 2 and 3 were called to Administrator 3's office and notified that they were being charged with violations of the College's *Code of Conduct* (violations 13.0 (General Laws: Violation of Delaware Privacy Law) and 15.0 (Sexual Misconduct)) and that the College was imposing an interim suspension upon each student. Although the *Title IX Policy and Procedures* states that whenever an interim suspension is imposed, the student will be given the opportunity to show why the suspension should not be implemented, College staff conceded to OCR that neither the accused Student, Students 1, 2, or 3 were afforded this opportunity. Later on April 1, 2015, Administrator 3 provided each student with written notification of the charges, advising each student of the interim suspension that included a bar from campus and attendance in classes, and a no contact order with Student 4. The letter further advised that each student must contact Administrator 2 to obtain information about the student conduct process.

The April 1, 2015 letter that was sent to the accused Student and Students 1, 2 and 3 differed from the notices that were sent to accused students in every prior incident report that was provided to OCR from the 2013-2014 and 2014-2015 academic years. Specifically, all other notices provided to accused students stated:

*“You do have the right to go through the college’s student conduct process to respond to these charges. Please call or email [the designee] to arrange an **educational conference**. During this conference you and [the designee] will discuss what occurred and she will inform you of your options, which may be a formal Judicial Board Hearing, to resolve the matter.”*

By contrast, the notice sent to the accused Student and Students 1, 2 and 3 stated: “*You do have the right to go through the college’s student conduct process to respond to these charges. Please call or email [Administrator 2]...to discuss the procedure. During this conversation you and [Administrator 2] will discuss the formal Judicial Board Hearing process. She will also convene the board and inform you of the date and time of your hearing.*”

According to the *Student Conduct Procedures* set forth in the 2014-2015 *Student Handbook* in effect at the time of the incident, that was also forwarded as a link to the accused Student and Students 1, 2 and 3 on April 2, 2015, the educational conference is where the accused student is provided with the opportunity to explain his/her version of events, and, where the accused student is given the option of accepting responsibility and thus waiving the right to a formal Judicial Board Hearing. The educational conference takes place between the College and the accused student; the student who makes the accusation does not participate.

Administrator 2 conceded that no educational conference was provided to the accused Student or Students 1, 2, and 3. Administrator 2 also confirmed that another resolution option detailed in the *Title IX Policy and Procedures* (Resolution without a hearing), was not provided to the accused Student or Students 1, 2 and 3. Thus, although the educational conference and Resolution without a hearing resolution options were detailed in the policies and procedures in effect at the time of the incident, neither the accused Student, nor Students 1, 2 and 3 were ever offered these resolution options. Administrator 2 also conceded that the *Title IX Policy and Procedures* and the *Student Conduct Procedures* provide for the options of the educational conference and Resolution without a hearing for all matters, including incidents of sexual violence. Thus, not only were these resolution options never made available to the accused Student or Students 1, 2 or 3; notice was never provided to the accused Student or Students 1, 2 or 3 that these means of resolution were not available for them. Moreover, because these options were not afforded to the accused Student or Students 1, 2 or 3, they were not provided with the opportunity to explain their version of events or the option of accepting responsibility and thus waiving the right to a formal Judicial Board Hearing. The accused Student asserts that as a result of his confusion regarding the student conduct process, he believed that the formal hearing was, in fact, an informal educational conference and/or Resolution without a hearing.

On April 1, 2015, Administrator 2 spoke with the accused Student regarding the student conduct process. Administrator 2 asserts that she informed the Student that the College could assist him with providing an excuse from classes for each witness he intended to call, which the Student adamantly denies. OCR notes that the Judicial Hearing Pointers sheet which was provided to the accused Student via email on April 2, 2015, stated that it was his responsibility to contact any witnesses to the alleged violation that he wanted to attend the Hearing.

On April 2, 2015, Administrator 2 emailed the accused Student to advise him of the date and time for his Judicial Board Hearing, and provided an attached Judicial Hearing Pointers sheet, as well as a link to the *Student Handbook* for further information regarding the student conduct process. Even though staff interviewed by OCR averred that the applicable policy at the time of the incident was the *Title IX Policy and Procedures*, this was not provided to the accused Student during the investigation and/or resolution of the complaint against him. The accused Student told OCR that it was his understanding that he should follow the *Student Conduct Procedures* set forth in the *Student Handbook* because Administrator 2 provided him with a link to it as further information and guidance. More specifically, because the *Student Conduct Procedures* set forth

in the *Student Handbook* called for an educational conference as the first step in the student conduct process, he explained to OCR that he believed that the hearing scheduled for April 7, 2015 was either an informal hearing, the educational conference, and/or the Resolution without a hearing process detailed in the *Student Conduct Procedures*, and, therefore, he was not sufficiently prepared at the hearing.

The Judicial Board Hearing for the accused Student and Students 1, 2 and 3 was held on April 7, 2015. Although the *Title IX Policy and Procedures* states that all investigations will be thorough, reliable, and impartial, and will entail interviews with all relevant parties and witnesses, the College did not conduct any interviews with the accused Student or Students 2 and 3 prior to the hearing. Moreover, although the *Title IX Policy and Procedures* states that the Chair will exchange the names of witnesses the College intends to call, all pertinent documentary evidence, and any written findings from the investigators “between the parties,” at least two business days prior to the hearing, neither the accused Student, nor Students 1, 2 or 3 were provided with a copy of the Incident Report or the investigative findings prior to the hearing. Thus, neither the accused Student nor Students 2 or 3 were provided with the information collected by Administrator 1 from the anonymous female students who reported the incident, Witness 1, and Student 1. The accused Student did not bring any witnesses to the hearing, but he provided a letter of support from two of his professors. As stated above, the accused Student stated that he did not bring witnesses to the hearing because he did not believe that the April 7, 2015 hearing was the final step in the process; rather, in accordance with the *Student Conduct Procedures* set forth in the *Student Handbook* that was sent to him as a link on April 2, 2015, he believed that the April 7, 2015 hearing was an educational conference and/or Resolution without a hearing.

The College stated that the reporting Professor and Student 4 were the only two witnesses called during the hearing. In addition to the hearing panel members, Administrator 1 and Administrator 2 were also present at the hearing. At the hearing, the accused Student and Students 1, 2 and 3 were present to hear the initial reading of the Incident Report by Administrator 1, and were each able to question Administrator 1 directly. The accused Student and Students 1, 2 and 3 were then brought to the hearing panel individually to give their statement and be questioned by the panel; none of the students were informed of each other’s testimony. According to the hearing panel members, Student 1 stated during his individual testimony that the accused Student participated in the planning of the incident and watched the live stream on the date of the incident. Although the *Title IX Policy and Procedures* states that all parties are to have ample opportunity to question all witnesses during the hearing, the accused Student was not made aware of this testimony by Student 1 at any time during the hearing or thereafter, and was never provided with the opportunity to question Student 1 regarding his testimony. Each panel member also informed OCR that Student 4 expressed reluctance to participate as a witness because she disagreed with the College pursuing adjudication against the accused Student and Students 1, 2 and 3. Although the proceedings were recorded, a key Title IX administrator reported that recording was deleted within ten (10) days after the appeal was completed.

The College provided OCR with the Judicial Board Hearing Summary for all four accused students, which was dated April 8, 2015 and reflects that the Board found each responsible for violations 13.0 (General Laws) and 15.0 (Sexual Misconduct) and recommended an expulsion for each student. The accused Student and Students 1, 2 and 3 were provided with written notice of the outcome of the hearing and expulsion, which also stated that each student was prohibited indefinitely from taking classes, or being present on College owned or controlled property, and

was subject to arrest for criminal trespass if he was found present on College property without permission from Administrator 2. Included with the letter was a summary of the appeal procedures. Student 4 told OCR that she received a copy of the letter advising her of the outcome of the Judicial Board Hearing via email.

The Complainant asserts that the College did not conduct an equitable investigation of the incident by failing to obtain other witness statements during the investigation, and by failing to assist the accused Student with excusing his witnesses from class to attend the Judicial Board Hearing. The Complainant also asserts that a key witness was Student 4, but the accused Student could not ask for Student 4 to provide a statement as a no contact order was implemented on April 1, 2015. Last, the Complainant cited the following statement in the College's *Title IX Policy and Procedures*: "*The College is unable to charge someone who has participated in an act of sexual misconduct or harassment without an actual victim coming forward.*" The Complainant asserts that the College failed to follow its policy by charging the accused Student when Student 4 did not come forward to report the incident.

The Complainant provided OCR with a copy of an April 9, 2015 email that Student 4 sent to Administrator 2 after the hearing, asking for a meeting, and stating that she learned that there was a video of Student 3 admitting to planting the camera in the room. She further stated that she wanted to discuss why the accused Student was expelled given that he had no involvement in the incident. Student 4 told OCR that, after the hearing, Students 1, 2 and 3 admitted to her their involvement in the incident, and conceded that the accused Student had no involvement in the planning or execution of the incident. She further asserts that she informed Administrator 2 of this information, who told her that the accused Student would have to appeal the hearing panel decision.

On April 16, 2015, the accused Student submitted an Intent to Appeal Form, based on new evidence that was not available at the time of the hearing, which, if introduced, he believed would significantly affect the outcome of the hearing. The accused Student stated in his appeal that new evidence that was not available at the time of the hearing was that Student 4 learned exactly who was responsible for the live streaming, and reported it to Administrator 2. In addition, the accused Student submitted letters of support. Administrator 2 notified the accused Student in writing that his appeal was denied because it failed to meet the College's criteria. The appeal requests for Students 1, 2, and 3 were also denied.

The accused Student was expelled from the College a few weeks before graduation and subsequently in February 2016 he entered into and completed a trade program at another school.

Analysis of the Incident Involving the Accused Student and Students 1, 2, and 3

The Accused Student

OCR determined that the accused Student was entitled to procedural protections that the College did not afford him. In processing the complaint against the accused Student, the College did not satisfy Title IX, the College did not comply with its own procedures and, in fact, the College acted in direct contradiction of its procedures and as a result the resolution of the complaint was not equitable. The College's failure to interview the accused Student impacted the College's investigation and resolution of the accused Student's case. Without any information regarding the accused Student's responses to the allegations, the College was limited in its ability to obtain

all potential relevant evidence, which, in turn, made the decisions it undertook potentially based on insufficient information. Likewise, the College's failure to share information with the accused Student, as well as the College's provision of misinformation (the incorrect policy) to the accused Student, limited his ability to fully participate in the process. Finally, the College's deviation from its own process, as well as from process that would be consistent with Title IX, in the conduct of the hearing itself prevented the accused Student from receiving equitable treatment as required by Title IX.

Specifically, OCR's investigation disclosed evidence that the resolution of the complaint was not equitable in several ways:

The accused Student was not given an opportunity to share his version of events and to benefit from an investigation of the accuracy of that version of events. Because the College skipped the step in its policy providing for an educational conference at which accused students could be interviewed, the College could not have investigated – and did not investigate – facts the accused Student may have presented. In addition, because this step in the process never took place (coupled with the failure, discussed below, to share the incident report with the accused Student), the accused Student did not benefit from notice, in advance of the hearing, of the scope of issues under investigation and the information he could rebut if he so chose.

The accused Student was not provided with the opportunity to challenge evidence that the College relied upon in imposing his interim suspension. The College imposed an interim suspension on the accused Student on the same day as the incident was reported, without conducting an interview with the accused Student, or providing him with an opportunity to explain why the proposed interim suspension was not justified, as required by the College's *Title IX Policy and Procedures*. While a school must assess whether the presence of an accused student threatens the safety of individuals within the school community, a sufficient level of inquiry – that is not here evident – must be undertaken in determining the appropriateness of interim suspensions.

The accused Student was never afforded his resolution options. While the College's *Title IX Policy and Procedures* and/or *Student Conduct Procedures* provided opportunities for an educational conference and/or Resolution without a hearing, the accused Student was given no choice except the Hearing process. Further, the specific information that the College provided the accused Student regarding his resolution options provides some support for the accused Student's position that he thought that he was attending an informal educational conference and/or Resolution without a hearing, not the Judicial Hearing.

The Student was not provided an adequate opportunity to defend himself at the Hearing. The College's *Title IX Policy and Procedures* specifically states that the Chair would share all pertinent documentary evidence and any written findings from the investigators between the parties, at least two business days prior to the hearing and that all parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing. However, the accused Student never received a copy of or information contained in the Incident Report or other critical materials regarding the College's anticipated evidence against him in advance of the Hearing, including Student 1's statement against him, and, therefore, had a

very limited opportunity to rebut the charges made against him in the Judicial Board Hearing, and challenge the evidence that the College relied upon in imposing the penalty of expulsion.⁸

The accused Student may not have been provided sufficient time to participate in the process. The accused Student was notified of the charges on April 1, 2015 and was expelled following the Judicial Board Hearing on April 8, 2015. Yet, the College's own processes may have required more time than six business days to investigate and resolve the case if it had adhered to its own procedures and timelines. As previously discussed and according to the College's *Title IX Policy and Procedures* and/or *Student Conduct Procedures*, the following is required:

- Within two (2) business days of the receipt of a complaint, an initial determination is made whether a policy violation may have occurred.
- If the complaining party wishes to pursue a formal investigation, or if the College decides to pursue a formal investigation based on the alleged policy violation, then the Title IX Coordinator appoints a Title IX Team member to conduct the investigation.
- All investigations entail interviews with all relevant parties and witnesses.
- At least one week prior to the hearing, the Chair will send a letter to the parties detailing the alleged violation, applicable procedures and potential sanctions; time, date and location for the hearing; and offer of an advisor. Hearings will be convened usually within one to two weeks of the completion of the investigation.
- The Chair will exchange the names of witnesses the College intends to call, all pertinent documentary evidence, and any written findings from the investigators "between the parties," at least two business days prior to the hearing.

The College's *Title IX Policy and Procedures* also state that investigations of incidents should be completed expeditiously, normally within 10 business days, unless initial interviews fail to provide direct first-hand information. The *Title IX Policy and Procedures* also states that the College aims to complete the investigation and resolution of complaints within a 60 business-day time period, which can be extended, as necessary, for appropriate cause and with notice to the parties.⁹ Thus, the College own procedures allowed it to take more time and it could have implemented its procedural steps to ensure an equitable and prompt investigation and resolution in the accused Student's case.

It is critical, for purposes of satisfying the Title IX requirement that procedures be "equitable," that the accused Student have a reasonable opportunity to present his version of the events, particularly in response to adverse "findings" which the College relied upon in imposing the substantial penalty meted out to the accused Student – expulsion. Thus, in conclusion, OCR determined that the College failed to provide an equitable investigation and resolution of the complaint involving the accused Student, including failures to follow many procedural elements set forth in its *Title IX Policies and Procedures*.

⁸ The College's assertion that it would have provided assistance to the accused Student in excusing his witnesses from classes for the hearing is belied by the College own Judicial Pointers sheet. Moreover, whether or not the College would have helped the accused Student's witnesses attend the hearing does not address OCR's concern that the accused Student was provided the wrong policies which supports the accused Student's position that he believed that he was attending an educational conference rather than the Hearing.

⁹ As discussed above, OCR has concerns regarding the College's 60 business, rather than calendar, day timeframe.

Students 1, 2 and 3

For the same reasons as noted above regarding the procedures employed in the College's investigation and resolution of the incident involving the accused Student, OCR concludes that the College did not comply with the requirements of Title IX with regard to Students 2 and 3 by failing to provide them with the opportunity to present witnesses and evidence during the investigation; and by failing to provide Students 1, 2 and 3 notice regarding all possible means of resolution, an opportunity to review the evidence prior to the hearing and fully participate in the hearing, and sufficient time to participate in the process. OCR also concludes that the College did not comply with the requirements of Title IX by failing to assess the risk of threat to the school community and the rights of students, including the accused, by ensuring the sufficient level of inquiry in determining the appropriateness of an interim suspension imposed against Students 1, 2 and 3.

Incidents Involving Other Students

In its review of documentation for all student complaints or reports of sexual harassment or sexual violence from August 2013 through April 2015 provided by the College, OCR focused on assessing whether the College's processes provided prompt and equitable responses for both parties to the complaint. OCR did not interview parties or witnesses involved in the cases. In total there were twelve (12) complaints or reports made during that time period and OCR found several cases with deficiencies, which further support OCR's findings that the College failed to provide for adequate, reliable and impartial investigations and resolutions of complaints.¹⁰ Specifically, OCR found that the College violated the requirements of Title IX by, in many cases, failing to offer the opportunity to accused students to provide witnesses and other evidence, failing to provide students who alleged sexual harassment including sexual assault with appropriate interim remedies including counseling and/or academic services, and by failing to provide the complainant with written notice of the outcome of the complaint. OCR also has concerns that, in several incidents, the College imposed an immediate interim suspension without evidence demonstrating that the College engaged in a sufficient level of inquiry regarding the risk of threat to the community, and the rights of the students, including the accused. In addition, the records the College provided reflect that it did not implement many of the Title IX procedural requirements contained in its grievance procedures in the investigation and resolution of incidents involving other students.

OCR concludes that the College responded promptly to reports of sexual harassment and/or sexual violence, as demonstrated by the conclusion of the College's investigative process in a matter of days in ten (10) of the twelve (12) incidents. OCR has concerns, however, that the College's expedited investigation of complaints of sexual harassment and sexual violence may have compromised the equity of such investigations.

In addition, OCR notes that, in several incidents, interim suspensions were imposed on the same date that the incident was reported. Specifically, in the interim suspensions imposed on students in six (6) incidents on the same date reported, it is not clear from the incident files whether there was an appropriate process to determine whether the interim suspension was warranted. While

¹⁰ In separate correspondence to the College, OCR identified the College's specific incident file numbers for each issue area referenced below.

immediate suspensions may be warranted by the circumstances to protect individuals or the community, here the repetition of the swift imposition of interim suspension coupled with both the absence of effective recordkeeping and the lack of accused interviews, raises concerns. Specifically, OCR has concerns that the College may not be affording accused students their basic procedural protections by imposing immediate suspensions without conducting a sufficient assessment of the risk to the community, while also considering the rights of the parties, including the accused student. The equitable principle in Title IX requires the College to consider a variety of factors in weighing whether an interim suspension is an appropriate interim remedy, given the potential educational impact of an interim suspension on the accused student. These factors include, for example, circumstances that suggest a risk to the greater College community, and the existence of risk that the accused student will commit additional acts of sexual harassment or sexual violence. Other factors to consider are whether there have been other sexual harassment or sexual violence complaints against the same accused student, whether the accused student threatened further sexual harassment or sexual violence against the victim or others, and whether the sexual harassment or sexual violence was committed by multiple perpetrators. It is not clear, however, from the documentation provided by the College that it reviewed or assessed any of these factors, or others, in any of the incidents in which an interim suspension was imposed.

In seven (7) of the twelve (12) incidents, no evidence was provided to demonstrate that the complainant was provided with counseling and/or academic services. Title IX requires a school to take steps to ensure equal access to its education programs and activities, and to protect a survivor, as necessary, including taking interim measures before the final outcome of the investigation and to take steps to end the harassment and correct its effects, once a final determination is reached. Imposing sanctions against the perpetrator, without more, likely will not eliminate the hostile environment, prevent its recurrence, and effectively remedy its effects.

OCR also found that, although Administrator 2 told OCR that the College always provides written or verbal notice to the complainant of the outcome of the hearing, no documentation was provided to substantiate this assertion for any of the incidents. Title IX requires that a school adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of sexual harassment and sexual violence. One element that is critical to achieving compliance with Title IX is providing notice to both parties of the outcome of the complaint. As stated above, while the College's grievance procedures provided for many of the basic procedural protections to which students are entitled under Title IX, including providing notice to both parties of the outcome of the complaint, the College did not implement this procedural requirement in all cases. By failing to provide written notice of the outcome to victims, the College denied such students basic procedural protections to which they are entitled under Title IX, and the opportunity to appeal the College's findings in accordance with the College's grievance procedures.

These issues outlined in the Resolution Agreement require the College to address the specific deficiencies that OCR has identified by case file, using its revised policies and procedures once they are approved by OCR.

CONCLUSION

OCR determined that the College's policies and procedures and its Notice of Non-Discrimination are not compliant with the regulation implementing Title IX, at 34 C.F.R. §§ 106.8 and 106.9. In

addition, OCR determined that the College failed to provide equitable responses to complaints of sexual harassment and sexual violence of which it had notice, including the complaint against the accused Student, and complaints involving other students, in violation of the regulation implementing Title IX, at 34 C.F.R. § 106.31. In addition, OCR's investigation identified concerns regarding the College's designation and training of responsible employees, training for the Title IX Coordinator and Title IX Team, including training regarding the appropriate response to requests for confidentiality, and record keeping practices.

RESOLUTION

The enclosed Resolution Agreement addresses the compliance concerns identified in OCR's investigation and, when fully implemented, will resolve the College's noncompliance with Title IX.

In accordance with the Agreement, the College agrees to:

- Determine whether it engaged in a sufficient level of inquiry and consideration of the rights of students, including the accused Student and Students 1, 2 and 3, and Student 4, and the risk of the threat to the school community prior to imposing interim suspensions upon the accused Student and Students 1, 2 and 3, and provide specific remedial actions if warranted, including, but not limited to, removal of each expulsion from all relevant educational records, as well as an offer to allow the accused Student and/or Students 1, 2 and 3 to complete their degrees at the College and reimburse them for documented costs incurred for enrollment at a different educational institution, and any other appropriate measure.
- Complete its investigation of the incident involving the accused Student and Students 1, 2 and 3, in compliance with Title IX.
- Address the specific investigative deficiencies OCR identified in the cases involving other students, including, but not limited to, failures to conduct adequate investigations, provide written notice of remedial services, and provide written notice of the outcome of the complaint investigation to the parties.
- Publish an anti-harassment statement, revise its Title IX grievance procedures, and confirm that it has properly designated a Title IX Coordinator.
- Make revisions to its Title IX grievance procedures to ensure consistency among its various Title IX policies and procedures so that students and employees receive clear notice of the applicable policies and procedures.
- Provide training to ensure that all members of the College community--particularly its Title IX staff and including students, faculty, administrators and other staff – are trained regularly on issues related to sexual harassment and on the requirements of Title IX.
- Review the complaints and reports of sexual harassment and/or sexual violence made from May 2015 through the date of the Agreement, to determine whether the College investigated each complaint or report promptly and equitably.
- Provide OCR with information concerning all incidents of alleged sexual harassment or sexual violence at the College for the next two academic years.
- Enhance its outreach to and feedback from students, including by conducting an annual climate check or series of climate checks with students on campus to assess the effectiveness of steps taken by the College towards providing a campus free of sexual misconduct. In addition, the College will convene a committee, composed of staff,

students, and community representatives, to develop a plan for educating students and employees about sexual harassment and violence.

OCR will monitor implementation of the Agreement. If the College 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 College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint and 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 happens, the complainant may file another complaint 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.

We want to thank the College, including the Dean of Students, as well as Counsel for their cooperation during the investigation.

Should you have any questions, please contact Amy Niedzalkoski, Team Attorney at 215-656-8571 or Amy.Niedzalkoski@ed.gov, or myself at 215-656-6935 or Beth.Gellman-Beer@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Supervisory Attorney
OCR Philadelphia

Enclosure

Cc: Margaret DiBianca, Esq.
Wanda Anderson