Dean Alfred C. Aman, Jr.
Suffolk University Law School
120 Tremont Street, Suite 410-D
Boston, MA 02108-4977

Re. Complaint No. 01-05-2074

Dear Dean Aman:

I am writing to inform you that the Office for Civil Rights (OCR) of the U.S. Department of Education has completed its investigation of the above-referenced complaint, which was filed against Suffolk University Law School (University) and concerned the University’s handling of a grievance involving an alleged sexual assault. After a thorough investigation, OCR identified a number of compliance concerns, which the University has agreed to resolve, as explained in the enclosed Letter of Agreement. I want to acknowledge and apologize for, the amount of time that it has taken to complete our investigation.

The OCR complaint was filed by an attorney (Complainant) on behalf of a former University student (Student), who alleged that the University failed to investigate, and promptly and equitably respond to, the Student’s complaint that a fellow student sexually assaulted her. The Complainant also asserted that the University’s procedures for responding to the Student’s complaint did not comply with requirements concerning gender-based discrimination claims.

OCR investigated the complaint pursuant to its responsibility for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, and its implementing regulation found at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex, including sexual harassment and sexual assault. The University is subject to the requirements of Title IX because it receives Federal financial assistance from the U.S. Department of Education.

Based on the information provided in the complaint and additional information provided by the Complainant and the Student, OCR identified the following issues for investigation:

Whether the University has established grievance procedures as required by Title IX, and whether the University promptly and equitably responded to the Student’s complaint that a fellow student sexually assaulted her. [34 C.F.R. Section 106.8(b)]
Investigative Approach and Factual Background

OCR’s investigation included a review of written materials provided by the University, including the University’s Title IX procedures and its reports and findings concerning the Student’s complaint to the University. OCR also conducted in-person and follow-up telephone interviews with the Complainant and the Student. In addition, OCR conducted an on-site visit to the University during which we interviewed several University administration and faculty members, including the University’s former Dean of Students (Dean), the Assistant Dean of Students, and the faculty chairpersons and other members of the University’s panels charged with hearing student disciplinary matters.

University Procedures

The University’s Student Handbook sets forth the University’s general “Notice of Non-Discrimination” and University contacts for addressing “inquiries” concerning Title IX, as well as other non-discrimination statutes. Beyond that notice, the University has established a “Harassment Policy,” which describes its prohibition against harassment on the basis of race, color, sex, disability, and other areas. With regard to allegations of sexual harassment, the Handbook specifies the University’s “Harassment Complaint and Resolution Procedures,” which informs students and others in the University community where to file a complaint (i.e., for students, complaints are filed with the Dean of Students), the information to include in a complaint, and the timeframe for filing (i.e., within 90 days of the incident). Regarding alleged harassment by another student, the procedures explain that the Dean of Students or her/his designee will investigate the allegation promptly and in “a fair and expeditious” manner. The Dean is also to interview the complainant and, if appropriate, witnesses and the alleged perpetrator. The parties are to be informed of the results of the investigation and, if it is determined that misconduct has been committed, appropriate disciplinary action is to be taken, which ranges from expulsion to probation to warnings.

Separate from the University’s harassment policy and procedures, the Student Handbook also describes the University’s “Student Disciplinary Procedure” that applies to all forms of alleged student misconduct that would constitute a violation of the University’s Rules and Regulations. The procedure calls for an investigation by the “investigating members” (or the Investigative Subcommittee) of the Faculty Administrative Committee and, following a finding that there is sufficient information to warrant further proceedings to determine whether the student engaged in sanctionable conduct, referral to the Fact-Finding Subcommittee of the Faculty Administrative Committee for review of the evidence and a determination whether sanctionable conduct has been established. The procedures make clear that “investigating members” shall present the witnesses and evidence they have obtained; the student (alleged perpetrator) also is afforded the opportunity to present evidence and appear on his/her behalf. The Fact-Finding Subcommittee’s finding (and recommended sanctions for any sanctionable conduct) is forwarded to the Dean. Finally, a student found to have committed sanctionable conduct may request a formal hearing to contest the Subcommittee’s findings to be conducted by a Hearing Committee selected by the Dean.
Both the Harassment Policy and Student Disciplinary Procedure were utilized, as described below, in response to the grievance that the Student filed with the University.

**Alleged Assault and Investigation**

In the complaint to OCR, the Complainant alleged that the University failed to respond appropriately to the Student’s report of a sexual assault. Specifically, the Student alleged that a fellow law student (Student A) had raped her on the evening of [insert date] during her [insert year] year of law school, that she reported the assault and filed a formal complaint with the Dean, and that the University’s subsequent investigation of the complaint was inequitable, untimely, and did not meet Title IX standards.

Both the Student and the University explained to OCR that on [insert date], the Student initially met with the Dean to report that she had been sexually assaulted. The Student did not, at this meeting, disclose Student A’s identity, and the Dean informed her that the University could not conduct an investigation without knowledge of Student A’s name. The Dean also told the Student that she had the option of filing a criminal complaint against Student A and that she could take leave or change her course schedule if needed in order to avoid contact with Student A. According to the Dean, during this meeting she also asked if the Student was receiving counseling and was told by the Student that she was seeing a counselor. The Student contacted the Dean the following week to request to withdraw from a course, and the request was granted. On [insert date], the Student again met with the Dean but again declined to identify Student A.

On [insert date], the Student met with the Dean a third time, and during this meeting the Student identified Student A. She also provided the Dean with further details of the alleged rape and told the Dean that she wanted to pursue a complaint against Student A. According to the Student, she provided the Dean names of potential witnesses for the purpose of explaining in further detail the relationship between Student A and the Student, as well as providing information about the interactions between Student A and the Student preceding, and subsequent to, the alleged rape on the night of [insert date]. According to the Student, she asked the Dean during this meeting whether there was a need to retain legal counsel, and the Dean replied that legal counsel was not necessary because the University would “handle the complaint process.”

The Dean and the Assistant Dean of Students met with Student A and his attorney on [insert date] to discuss the rape allegation. At this meeting, the Dean advised Student A to have no further contact with the Student. Student A’s attorney later provided the Dean with affidavits of witnesses supporting Student A, none of whom were present at the time of the alleged assault. Subsequently, on [insert date], the Student reported to the Dean that Student A had been staring at her and trying to initiate contact with her during an off-campus event. The Dean met with Student A and his attorney on [insert date] to discuss this allegation, and Student A denied that he had tried to communicate with the Student.

Following the Dean’s contact with the Student and with Student A in [insert date], it does not appear that the Dean had any further contact with either party regarding the sexual assault complaint and investigation. In fact, the evidence obtained by OCR revealed that the Dean did
not conduct an investigation, or take any further action, in response to the Student’s grievance until On that date, the Dean sent a memo to the Chairperson of the Faculty Administrative Committee, referring the sexual assault complaint pursuant to the University’s Student Disciplinary Procedure (referenced above). The Faculty Administrative Committee appointed an Investigative Subcommittee to review the information provided by the Dean and to determine whether there was sufficient information to warrant further disciplinary proceedings. By letter dated the Chairperson of the Investigative Subcommittee (Investigative Chair) informed the Student that an Investigative Subcommittee had been convened. The Student explained that until that time, she had heard nothing from the University (since her meeting with the Dean) as to the status of her complaint and was unaware that the matter would be referred to the Student Disciplinary Process. In the letter, the Investigative Chair also requested to schedule an interview with the Student and provided her with copies of five affidavits that Student A had submitted on his behalf. Unclear as to what was expected of her with regard to the pending disciplinary proceedings, the Student hired an attorney, and on the attorney notified the Investigative Subcommittee that the Student would be unavailable for an interview until after the period had concluded in . The interview was re-scheduled by .  

On the Investigative Subcommittee interviewed the Student (the Subcommittee had previously interviewed Student A). During the remainder of the Investigative Subcommittee conducted interviews of witnesses, including witnesses offered by both the Student and Student A. On the Subcommittee issued a memo stating that there was sufficient evidence to warrant further proceedings. Both the Student’s and Student A’s attorneys were subsequently notified that the Fact-Finding Subcommittee would convene a hearing on . Both parties were again asked to submit the names of witnesses, and the members of the Fact-Finding Subcommittee interviewed seven witnesses between and .  

On the Fact-Finding Subcommittee notified the Complainant of the unanimous determination that the Student’s allegations of sexual assault had not been established under the University’s evidentiary standard. The Subcommittee filed an official report stating the same conclusion on . The Student was not permitted to appeal the Subcommittee’s finding.

Legal Standard

The regulation implementing Title IX at 34 C.F.R. Section 106.8(b) requires recipient schools and universities to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging discrimination on the basis of sex. Sexual harassment -- generally defined as unwelcome conduct of a sexual nature that has the effect of interfering with, denying, or limiting an individual’s ability to participate in or to benefit from any education program or activity -- is a form of discrimination based of sex. Accordingly, Title IX prohibits sexual harassment of students and the Title IX grievance procedure requirements apply to complaints of sexual harassment.
OCR has identified a number of elements that it considers in evaluating whether a recipient’s (in this case, the University’s) grievance procedure provides for the prompt and equitable resolution of harassment complaints under Title IX. Those factors include whether: (1) students and employees are afforded notice of the grievance procedures, including notice of where and with whom complaints may be filed; (2) the procedures are applied to complaints alleging sexual harassment carried out by employees, other students, or third parties; (3) the University conducts an adequate, reliable, and impartial investigation of the complaint, including providing the opportunity for presentation of witnesses and other evidence; (4) the University follows designated and reasonably prompt timeframes for the major stages of the complaint process; (5) the University notifies the parties as to the outcome of the complaint; and (6) the University takes steps to prevent recurrence of any harassment that it finds, and takes steps to correct its discriminatory effects on the complainant and others, if appropriate.

OCR considers the above factors collectively when assessing the University’s Title IX grievance procedures under Title IX, or assessing whether the University’s response to a specific complaint, or other notice, of sexual harassment is both prompt and equitable. Thus, recipients are generally found to comply with Title IX when they provide proper notice of their complaint procedures, and respond to harassment complaints by conducting thorough and objective investigations and by taking prompt and effective action to stop any sexual harassment, prevent it from recurring, and remedy any discriminatory effects. It is also important to note that under Title IX, the University must take similarly responsive steps (i.e., to stop the harassment, prevent its recurrence, and remedy the effects on victims) once it has notice of possible sexual harassment of students by employees, other students, or third parties. The University has that responsibility regardless of whether the student who was harassed files a grievance, otherwise asks the school to take action, or refuses to participate in the University’s investigation. In short, Title IX requires the University to take prompt and effective corrective action if it knows or reasonably should know of the existence of a sexually hostile environment.

Finally, Title IX does not require that a recipient provide separate grievance procedures for sexual harassment or other complaints under Title IX, permitting (for example) the use of a student disciplinary procedure to resolve sex discrimination complaints, as long as the procedure meets the requirement of affording a complainant a "prompt and equitable" resolution of the complaint. In other words, a recipient that utilizes its student disciplinary process to respond to a Title IX complaint, or other notice of a possible Title IX violation, must ensure that the process addresses the requirements of Title IX. Thus, if a recipient uses a student disciplinary process in response to a sexual harassment allegation, and if the disciplinary process does not determine whether sexual harassment occurred consistent with the requirements of Title IX, the recipient must make that determination and remedy fully and appropriately any harassment that it determines to have occurred.
Analysis

The University’s Title IX Grievance Procedures

The University’s Title IX policy and procedures detailed above are, as written, consistent with Title IX. The policies in the Student Handbook identify University contacts for Title IX complaints and the means for filing complaints regarding Title IX violations. In particular, the University’s “Harassment Policy” properly identifies the Dean as the appropriate contact person for complaints of harassment by another student and explains the investigative process that the Dean is to follow, as well as the range of disciplinary actions that can be taken for conduct, such as sexual assault, that violates Title IX. The procedures also apply to complaints brought by others (e.g., faculty) and specify appropriate contacts depending on whether the person(s) responsible for the alleged harassment is a student, administrator, faculty, or staff member.

Because the University’s Title IX procedures are published in the Student Handbook and provide for appropriate, responsive action in response to sexual harassment complaints, OCR generally found the procedures, when viewed on their face, to provide for the prompt and equitable resolution of sexual harassment complaints under Title IX.

OCR also found, however, that the University did not follow its Title IX procedures in response to the Student’s complaint and did not respond to the complaint in a manner consistent with Title IX. Thus, while the University’s written harassment procedures comply (facially) with Title IX, the actions taken by the University with regard to the complaint filed by the Student, warrant modifications to the University’s procedures and complaint resolution process. The basis for that determination follows.

Notice

As noted above, the University’s policies and procedures did not sufficiently notify the Student of the full resolution process that the University would utilize in order to resolve her complaint. Specifically, the University responded to the Student’s complaint by relying extensively on the Student Disciplinary Process, which (as noted above) is described in a separate section of the Student Handbook. The use of the Disciplinary Procedures for resolving Title IX complaints does not, by itself, raise a compliance concern because Title IX does not require a recipient to designate separate grievance procedures to address harassment complaints, as long as the procedures used are effective in preventing sexual harassment and in resolving grievances promptly and equitably. At the same time, however, OCR has consistently held that a grievance procedure cannot be prompt or equitable under Title IX unless students know it exists and how it works.

The role of the “Student Disciplinary Procedures” in resolving Title IX complaints is not clearly described in the University’s “Harassment Complaint and Resolution Procedures.” The procedures explain that the Dean of Students or her/his designee will investigate the allegations promptly and in “a fair and expeditious” manner, including conducting appropriate witness interviews, and that “appropriate disciplinary action” will be taken in response to inappropriate conduct. In the Student’s case, however, the Dean did not investigate the case beyond meeting with the parties and receiving witness affidavits supplied by Student A, eventually referring the
case to the Student Disciplinary Process for investigation and a determination whether sanctionable conduct had occurred. Yet, the University's Title IX complaint procedures make no mention that a complaint may be referred to the Disciplinary Process for resolution; nor did the policy, Dean or other University official explain to the Student that the Disciplinary Process could be utilized and that she would need to participate in that process. Thus, OCR found that the Student was not notified of the resolution process that would be followed in response to her complaint, or of the extensive role she would play in the proceedings by attending meetings and hearings, identifying witnesses at several junctures, and presenting testimony to the disciplinary panels.

**Promptness**

The University's "Harassment Complaint and Resolution Procedures" state that an allegation "will be promptly investigated in a fair and expeditious manner." OCR found, however, that over [redacted] passed between the time the Student raised her sexual assault allegations and identified Student A to the Dean, and the Dean's subsequent referral of the complaint to the Faculty Administrative Committee for investigation through the University's Disciplinary Procedures. OCR also found that the Dean did not take any action at all regarding the complaint between the Dean's [redacted] meetings with each student and the Dean's referral. Consequently, the University's investigation and final resolution of the complaint was not completed until the Fact-Finding Committee's final decision in [redacted] months from the time the Student identified the alleged assailant to the Dean. Such delays, without sufficient justification, are exceedingly long and contrary to the general Title IX requirement that grievances be resolved in a prompt fashion so as to prevent any additional harassment, or remedy any discriminatory effects on a complainant or others.

OCR notes that once the Student's grievance was referred to the Faculty Administrative Committee, the University conducted the Student Disciplinary Process somewhat more expeditiously, accounting for the availability (and preferred meeting times) of the Student and the need to coordinate the process among various disciplinary panel members. However, neither the Dean nor other University officials could provide any reasonable explanation for the [redacted] delay between the time the Dean received the complaint and her referral of the complaint for investigation by the disciplinary committees. Accordingly, OCR found that the University's complaint resolution process, particularly the unexplained [redacted] delay preceding the disciplinary panels' investigation, to be untimely.

**Equitable Response**

OCR also identified other compliance issues arising from the University's response to the sexual harassment complaint brought by the Student. The evidence gathered by OCR indicates that the Dean initially did take some responsive steps when the Student informed her of the alleged assault, first by seeking to accommodate the Student's schedule and possible need for time off and inquiring about counseling assistance; then by meeting with the parties individually and prohibiting Student A from contacting the Student, after the Student identified Student A as the alleged assailant. Beyond those early steps, however, the Dean did not follow the University's internal Title IX policy and procedures (as described above) in that neither she (nor a designee)
investigated the Student’s allegations, interviewed witnesses, or reached a decision as to whether sexually inappropriate conduct had taken place and if so, what responsive steps needed to be taken. In fact, the University did not take any further action to respond to the Student’s allegations at all until the matter was referred several months later to the Student Disciplinary Process. The University then treated the Student’s complaint as purely a disciplinary matter, deciding (consistent with its Disciplinary Process) only whether Student A had committed sanctionable conduct and should be disciplined.

The University faculty who participated in the Student Disciplinary Process (and thus, the University’s investigation of the Student’s grievance) explained to OCR that this was the first instance in which they were aware of student disciplinary proceedings involving a sexual assault by another student. The faculty stated that in their experiences, the procedures had been used to address plagiarism, theft, or other more common types of charges brought against students. Thus, not surprisingly, OCR found that the University used its Disciplinary Process in the Student’s case in much the same way as it had in previous situations, that is by interviewing witnesses, gathering information, and conducting hearings in order to determine whether to discipline a student suspected of misconduct. The faculty members also explained that in order to properly address the Student’s allegations, the University required the Student to participate in the Student Disciplinary Process, appearing before the panels and identifying additional witnesses for the panels’ members to interview. As noted above, the final disciplinary panel (Fact-Finding Subcommittee) did not find Student A in violation of the student conduct code, and that determination ended the University’s inquiry.

As indicated previously, the use of the Disciplinary Process to investigate the Student’s Title IX grievance does not, by itself, raise a compliance concern since Title IX permits the use of such procedures to address sex discrimination complaints, as long as the procedure results in a “prompt and equitable” resolution of the complaint (consistent with Title IX). Moreover, OCR recognizes (and does not question) that the University chose to employ its Disciplinary Process in this case in order to afford Student A his due process rights before taking potential disciplinary action against him. However, a “prompt and equitable” response to a harassment complaint under Title IX, as described in the Legal Standards above, must include an assessment of whether the allegations involve conduct that is potentially violative of Title IX (i.e., constitutes a hostile environment) and, if so, an investigation and determination as to whether there exists a sexually hostile environment affecting a student’s ability to participate in school programs or activities, necessitating prevention and remedial action by the University.

OCR found that the University, in using its Student Disciplinary Procedure to resolve the Student’s harassment complaint, failed to evaluate or investigate the Student’s allegations in accordance with the “prompt and equitable” standard established under Title IX. The University never made a judgment as to whether the alleged assault raised by the Student resulted in a sexually hostile environment for her at the University (which would have required responsive action by the University) and ultimately treated her allegations as solely a matter of whether Student A should be disciplined. OCR recognizes that the potential hostile environment resulting from the Student’s allegations -- involving an incident between two students at an off-campus location -- might not require the same responsive steps as might alleged harassment in other circumstances. However, the University’s treatment of the Student’s complaint as purely a
disciplinary matter indicated that the University did not appear to understand the extent of its responsibilities to evaluate, investigate, and resolve grievances under Title IX.

Finding of Non-compliance

As noted in the Legal Standards above, OCR considers several factors, collectively, in assessing whether the University’s overall response to a sexual harassment complaint is both prompt and equitable. The University failed to fulfill a number of those factors in responding to the Student’s harassment complaint. As explained previously, neither the University’s procedures, nor University officials, notified the Student that her grievance would be investigated by the Student Disciplinary Committees (and not the Dean, as stated in the University’s Harassment Procedure) or that the Student would need to participate in the disciplinary proceedings. In fact, the Student was generally unaware of the complaint process that would be followed from the time she made her complaint in -- until she was contacted by the Investigative Chair in --. Additionally, the clear delays in the University’s investigation -- particularly the unexplained delay that preceded the Dean’s referral of the complaint to the Faculty Administrative Committee -- disadvantaged the Student by preventing her from obtaining a prompt resolution of her complaint, as Title IX requires.

Beyond the lack of notice and timeliness, the manner in which the University responded to the Student’s complaint also raised additional concerns as to the University’s preparedness to respond to complaints of sexual harassment. Once the University referred the Student’s complaint to the Disciplinary Process for investigation, the University treated the matter as purely a question as to whether to discipline Student A. In contrast, Title IX requires that the process utilized by the University to resolve sexual harassment complaints -- whether through its Title IX procedures, its Disciplinary Process, or a combination thereof -- must result in the University determining whether a sexually hostile environment exists and, if so, ending the harassment, preventing it from recurring and remediating any discriminatory effects. The fact that the University did not consider the possible existence of a sexually hostile environment and ended its inquiry when it decided Student A would not be disciplined indicated, to OCR, a need for the University to modify the manner in which it responds to complaints of sexual harassment.

Accordingly, the lack of procedural notice afforded the Student, the delays in the University’s investigation, and the University’s treatment of the Student’s harassment complaint as principally a disciplinary matter, resulted in OCR finding that the University did not respond to the Student’s complaint promptly or equitably, as required under Title IX. The University has since agreed to resolve OCR’s concerns by committing to several steps, including: (1) revising University procedures in order to notify complainants of its process for investigating and resolving sexual harassment complaints, and of the complainant’s possible role in that process; (2) establishing reasonable timeframes for investigating and resolving such complaints; and (3) resolving sexual harassment complaints by determining whether a sexually hostile environment exists and, if so, ending the harassment, preventing it from recurring and remediating any discriminatory effects. OCR has determined that these and the other actions to be taken by the University, as detailed in the enclosed Letter of Agreement, are sufficient to resolve OCR’s finding of non-compliance.
Other Concerns Raised by the Student

In addition to the above-described deficiencies, the Student raised several other points about the University's investigation and overall response to her complaint that she believed to be inequitable and, therefore, violative of Title IX. For instance, the Student expressed great dissatisfaction to OCR that the University's investigation relied entirely on her participatory role and willingness to attend meetings or hearings to provide information to the panel members, a process which she found uncomfortable and intimidating. On the other hand, panel members indicated that the incident (and alleged assault) reported by the Student (in a private setting off-campus, without any eye-witnesses) required that the University rely on the parties to provide most of the investigative information. OCR could not conclude that the panels' approach to their investigations was inequitable and recognizes that there may be instances in which the University might be limited in the extent of investigation it can conduct without the alleged victim's cooperation. OCR did share with the University that Title IX requires that the University respond to any possible hostile environment of which it is or reasonably should be aware, and to take reasonable steps to investigate based on the information available to it, regardless of whether a student files a grievance or fully participates in the University's investigation. However, in this case, OCR does not question the University's responsiveness from the point that the disciplinary committees began the investigations, since the Student did participate (albeit with hesitation) in the panels' investigative processes.

Additionally, the Student asserted that the Dean obtained affidavits from witnesses identified by Student A soon after meeting with Student A for the first time in April, but that the Dean did not seek affidavits from the Student's witnesses at that time. The Student also emphasized that the University did not speak with a number of witnesses whom she identified, and that because her witnesses who did speak with University officials did not do so until the disciplinary panels' investigations over the course of the next few months, those witnesses were either unable to fully recall the details of the Student's contemporaneous reports about the alleged assault or refused to participate at all in an investigation about an incident that occurred so long ago.

In response, and based on the disciplinary panels' reports and interviews with faculty panel members, OCR concluded that the committees either interviewed, or attempted to contact, the witnesses that the Student identified to the panel members. In the absence of further written evidence, OCR was unable to reconcile the Student's assertions that she had identified other witnesses whom the University did not interview with the University's position that it had interviewed (or attempted to interview) each of the witnesses that the Student named. Consequently, OCR could not conclude that any disparity in the number of witnesses identified by the Student and Student A and interviewed by the faculty panels was inequitable under Title IX. However, OCR did find the University's delay in speaking with the Student's witnesses to be problematic and a consequence of the University's failure to investigate the Student's complaint promptly. That finding is addressed more fully above under "Promptness," which the University has agreed to resolve by establishing reasonable timeframes for its investigations.

OCR could not conclude that other aspects of the Disciplinary Process that the Student believed to be unfair were, in fact, inequitable under Title IX. The Student asserted that she was not allowed to have her attorney present for her initial meeting with the investigating panel or speak
at the hearing before the Fact-Finding Subcommittee. The Student also stated that she was never allowed to cross-examine or question those witnesses who provided affidavits or testified before the disciplinary panels in support of Student A, and that she (unlike an alleged perpetrator who comes before the disciplinary panel) was not permitted to appeal the Fact-Finding Subcommittee’s ruling after it found in Student A’s favor. OCR notes, however, that although the University might have afforded the Student these opportunities, such steps are not necessarily required under Title IX. Moreover, in reviewing the disciplinary panels’ reports and interviewing panel members, OCR did not find that the lack of opportunity to cross-examine the witnesses (who did not have first-hand accounts of the incident) or to allow the parties’ attorneys (as opposed to the Student or Student A) to present evidence disadvantaged the Student. In addition, the University appeared to have treated both students similarly with regard to the role of their attorneys and in not affording either party the opportunity to cross-examine witnesses, meaning that OCR could not find these aspects of the University’s process inequitable under Title IX.

Lastly, OCR notes, and shared with the University, that many schools include appeal rights as part of their Title IX grievance procedures and as an additional right afforded the parties to a Title IX complaint. However, appeal rights are not necessarily required by Title IX, whereas an accused student’s appeal rights are a standard component of University disciplinary processes in order to assure that the student is afforded due process before being removed from or otherwise disciplined by the University. Nonetheless, OCR recognizes the apparent inequity, with regard to appeal rights, that arose from the University’s use of its Student Disciplinary Process to resolve the Student’s complaint. In effect, the process the University used to resolve the Student’s Title IX grievance afforded appeal rights to the accused (which Student A could have exercised had the Fact-Finding Subcommittee ruled against him), but not to the Student. OCR also finds, however, that the University’s commitment to alter its process for responding to Title IX complaints resolves this concern. As noted above and based on the commitments specified in the enclosed Letter of Agreement, the University will respond to Title IX grievances by assessing the allegations to determine whether a Title IX violation is alleged, investigating to determine (in the case of a harassment allegation) whether a student has or is being subject to sexual harassment, and taking steps to end any harassment and remedy any harm that it finds. Although the University certainly has the discretion to also afford parties the right to appeal its Title IX determinations, it is not required to do so. Thus, OCR finds the University’s commitment to respond to and resolve Title IX complaints consistent with Title IX standards sufficiently responsive to the inequity involving appeal rights, which arose in this case because the University processed the Student’s complaint as solely a disciplinary, as opposed to both a disciplinary and Title IX, matter.

Conclusion

Based on the foregoing, OCR found sufficient evidence to conclude that while the University had established grievance procedures as required by Title IX, the University did not respond to the Student’s complaint that a fellow student sexually assaulted her in a prompt and equitable manner, as required under 34 C.F.R. § 106.8(b). The University has agreed to address the compliance concerns described above, as reflected in the enclosed Letter of Agreement.
Accordingly, OCR will monitor the terms of its Agreement with the University and is closing the investigation phase of this complaint, effective the date of this letter.

We wish to thank the University and your counsel, Ms. Sheila O’Leary, for your cooperation throughout our investigation and resolution of this complaint. If you have any questions about this letter or our procedures, please contact Ms. Maria Montalvo, OCR Investigator, at (617) 289-0033 or by email at Maria.Montalvo@ed.gov or Allen Kropp, OCR Deputy Chief Attorney, at (617) 289-0120 or Allen.Kropp@ed.gov. You may also call me at (617) 289-0111.

Sincerely,

Carolyn F. Lazaris
Acting Regional Director

Enclosure

cc: Sheila O’Leary, Esq.
September 18, 2008

Via U.S. Mail

Allen Kropp, Esquire
United States Department of Education
Office for Civil Rights, Region 1
33 Arch Street, Suite 900
Boston, MA 02110-1424

Re: Complaint No. 01-05-2074

Dear Mr. Kropp:

Enclosed please find the letter from Suffolk University which serves as its Commitment To Resolve Complaint No. 01-05-2074, which was filed by [REDACTED] at [REDACTED] the Department of Education’s Office for Civil Rights.

Thank you for your attention to this matter.

Very truly yours,

[Signature]

Sue O'Leary

Enclosure

cc: Paul V. Lyons, Esq. (without enclosure)
September 16, 2008

Allen Kropp, Esquire
United States Department of Education
Office for Civil Rights, Region 1
33 Arch Street, Suite 900
Boston, MA 02110-1424

Re: Complaint No. 01-05-2074

Dear Mr. Kropp:

This letter serves as Suffolk University’s Commitment To Resolve Complaint No. 01-05-2074, which was filed by at the Department of Education’s Office for Civil Rights (“OCR”).

Suffolk University agrees to the following points addressed below in order to resolve the Complaint, but does not admit that it violated Title IX of the Education Amendments of 1972 (“Title IX”) as alleged.

1. Suffolk University’s Law School (the “Law School”) will amend its discrimination and harassment policy which addresses Title IX to include reasonable timeframes for the investigation of complaints.

2. The Law School will evaluate its current Title IX investigatory procedures and will amend those procedures, as appropriate, to make clear how Title IX complaints are investigated. In particular, the Law School will amend the procedures to advise students who complain of a violation of Title IX (“complainants”) that the student disciplinary procedure may be used when the complaint is against a student, the faculty disciplinary procedure may be used when the complaint is against a faculty member, and the staff disciplinary procedure may be used when the complaint is against a staff member or an administrator, so that complainants can understand what procedure applies. The Law School procedures will also inform complainants as to their possible role in connection with the respective disciplinary process (i.e. be a witness or present evidence) and will direct complainants to the appropriate policy for review, so that they can understand what their role might be in the investigation.
3. If, upon investigation of a Title IX complaint, the Law School determines that a violation has occurred, it will take reasonable, timely and effective corrective action, including steps to end the Title IX violation, prevent its recurrence and remedy the effects on any victim.

4. The Law School will train the appropriate individuals regarding its investigatory procedures, including any new procedures and timelines. The training will address, in addition to the procedural changes, the Law School’s responsibility under Title IX to respond to a potential Title IX violation and to eliminate, prevent and redress that Title IX violation.

In addition, the training will address the responsibility of the Law School to investigate and respond to notice of a possible violation of Title IX, to the extent reasonable and consistent with Title IX, even if the complainant elects not to participate in the process.

The Law School will complete the above-referenced items within one (1) year of the execution of this letter. Upon the expiration of that year, the Law School will report to OCR the corrective steps it has taken and, if requested, will provide OCR with the updated policy for review.

OCR will now close its investigation and this complaint with the submission of this letter.

Yours sincerely,

Alfred C. Aman, Jr.
Dean and Professor of Law
Mitchell D. McCrate, Esq.
Associate General Counsel
University of Cincinnati
P.O. Box 210623
Cincinnati, Ohio 45221-0063

Re: #15-05-2041

Dear Mr. McCrate:

This letter is to advise you of the disposition of the above-referenced complaint against the University of Cincinnati (University), which the U.S. Department of Education (Department), Office for Civil Rights (OCR), received on May 2, 2005. The complaint alleged that the University discriminated against a student on the basis of sex. Specifically, the complaint alleged that a male student at the University sexually harassed a female student (Complainant) and that the University, once notified of the sexual harassment, failed to take prompt and effective measures to address it.

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

This complaint raises the issue of whether the University appropriately responded to a reported incident of student-to-student sexual harassment. During our investigation of this matter, OCR interviewed the Complainant and University staff and administrators. OCR also reviewed documents provided by the Complainant and the University. Based on a careful analysis of this information, OCR has determined that there is insufficient evidence to find that the University violated Title IX as alleged. The basis for OCR’s determination is discussed below.

The Complainant stated that she enrolled at the University as a freshman in fall 2006 and 2007. She alleged that on January 7, 2007, a male student (the accused) raped her on January 7, 2007. She reported the rape
Withheld pursuant to exemption
(b)(6); (b)(7)(C)
of the Freedom of Information and Privacy Act
The University distributes annually a publication to all of its enrolled students, entitled "UC’s Right to Know," containing the University’s sexual harassment policy, procedures for filing a complaint of sexual harassment, and other information. The publication also contains the University’s discrimination complaint process that explains where to file a complaint of discrimination, how a complaint is processed and investigated, and what happens with the findings of the investigation.

On a separate page the publication provides the University’s policy statement on sex offenses and information regarding sex offenses, such as procedures for reporting incidents of sexual assault and options to consider if one has been sexually assaulted. The publication informs students how to file a police report alleging sexual assault and how to file a complaint with Judicial Affairs. The publication advises that University disciplinary proceedings may occur independently of any criminal proceedings and are subject to a different burden of proof. This portion of the publication does not reference sexual harassment.

The University’s sexual harassment policy is also published in the student code of conduct and is available on the University’s website. The code sets forth the type of misconduct that should be reported to Judicial Affairs, the sanctions that may be imposed, and grievance procedures used by the University to process allegations of code violations. The grievance procedures include a hearing and notice of outcome and designated time frames for certain stages in the process, such as when the accused must answer the complaint, when the hearing administrator must send the ARC’s recommendation to the dean, and when the dean must respond to the recommendation.

The University’s “Manual for University Personnel who Receive and Investigate Complaints of Harassment and Discrimination,” which sets forth the University’s policy on sexual harassment and discriminatory harassment, states that investigations will be initiated promptly upon receipt of a formal complaint and will be completed as soon as practicable under the circumstances of a particular case. It does not set any mandatory time frames for completion of certain stages of a complaint investigation or for the completion of the entire complaint investigation. The manual also describes the sanctions that may be imposed, which include suspension or termination for egregious or repeat offenses.

The Title IX regulation, at 34 C.F.R. § 106.31, provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic education program operated by a recipient that receives federal financial assistance. Sexual harassment of students is a form of prohibited sex discrimination. OCR has defined sexual harassment as unwelcome conduct of a sexual nature that has the effect of interfering with, denying, or limiting, on the basis of sex, a student’s ability to participate in or to benefit from any education
program or activity. Hostile environment sexual harassment is conduct that is sufficiently severe, persistent, or pervasive to limit a student’s ability to participate in or benefit from the education program or create a hostile or abusive educational environment.

Title IX requires that once a recipient has notice of the existence of a sexually hostile environment, the recipient should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. To that end, the Title IX regulation, at 34 C.F.R. § 106.8(b), requires a recipient to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. OCR has identified a number of elements in evaluating whether a recipient’s grievance procedures are prompt and equitable, including whether the procedures provide for: (1) notice of the procedure, including where complaints may be filed; (2) application of the procedure to complaints alleging harassment carried out by employees, other students, or third parties; (3) adequate, reliable, and impartial investigation of complaints; (4) designated and reasonably prompt timeframes for the major stages of the complaint process; and (5) notice to the parties of the outcome of the complaint.

An isolated incident that is sufficiently severe can be sufficient to create a hostile environment on the basis of sex. The alleged act of rape in the instant case is such an incident. Accordingly, OCR’s investigation focused on whether the University has a prompt and equitable grievance procedure for Title IX complaints and whether it promptly and effectively responded to known sexual harassment.

The Complainant contends that the University did not promptly respond to her complaint of sexual harassment because it did not immediately (b)(6); (b)(7(C)

OCR concludes that the evidence is insufficient to find that the University did not timely and effectively respond to the Complainant’s allegation of sexual harassment (b)(6); (b)(7(C)

(b)(6); (b)(7(C)
There also is insufficient evidence to establish that the University failed to take effective steps to prevent harassment from occurring again. Although the Complainant contends the sanctions imposed on the accused were inadequate, there is no indication that the sanctions were not reasonably calculated to end the harassment and prevent it from recurring. The accused was 

For the foregoing reasons, OCR finds that there is insufficient evidence to conclude that the University violated Title IX with respect to this matter. Accordingly, we are closing this complaint effective the date of this letter.

During OCR's investigation, OCR staff discussed with you aspects of the University's operations that might lead to compliance problems in the future. As discussed, the operations of the University police when they process a complaint of sexual assault could preclude the University from implementing its obligations under Title IX to address known incidents of sexual harassment if the campus police do not recognize sexual assault as a form of sexual harassment and provide timely notice to the Office of Judicial Affairs. We also noted that there are no guidelines for timeframes for the major stages of the complaint process in the procedures used by the Office of Judicial Affairs. We encourage you to consider these potential problems and take appropriate actions to address them.

OCR appreciates the courtesy and cooperation shown by you and University staff during the investigation of this complaint. If you have any questions about the issues addressed in this letter or if we can provide technical assistance to the University on this or any other matter related to Title IX compliance, please feel free to contact me.

Sincerely,

Rhonda Raines
Team Leader, Cleveland Office
Midwestern Division
Dr. David Porter  
President  
Skidmore College  
815 North Broadway  
Saratoga Springs, New York 12866-1632

Re: Case No. 02-95-2136

Dear Dr. Porter:

This letter is to notify you of the determination of the New York Regional Office for Civil Rights (OCR) regarding the closure of the above-referenced complaint. The complainant alleges that the Skidmore College (the College) discriminates on the basis of sex. Specifically, the complainant alleges that the College failed to take appropriate action following her sexual assault by a student (the Student) by:

1. (a) not allowing the complainant to give testimony outside of the Student’s presence; (b) providing its results only to the Student; (c) not explaining the basis for its determination; and (d) not taking appropriate disciplinary action against the Student, or providing the complainant with counseling;

2. not providing the complainant the opportunity to appeal the decision rendered at the administrative hearing, while providing the Student with the opportunity to appeal; and

3. not assisting the complainant in consulting with her teachers to request additional time to prepare for examinations and to submit a term paper at a later date, which the complainant needed because of the trauma she underwent as a result of the sexual harassment.

OCR has jurisdiction over complaints alleging discrimination on the basis of sex in programs or activities that receive Federal financial assistance from the U.S. Department of Education (the Department). OCR has jurisdiction over these complaints pursuant to Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit such discrimination. OCR has determined that the College receives such financial assistance and therefore, is subject to the provisions of this regulation.
In reaching a determination on this complaint, OCR reviewed relevant policies and procedures, as well as other documentation submitted by both the complainant and the College. OCR also conducted interviews with the complainant and staff of the College.

On the basis of an analysis of the information obtained, OCR has determined the evidence is not sufficient to support a finding of a violation of the regulation implementing Title IX. Specifically, OCR has made the following determinations of fact:

a) The complainant alleges that she was not allowed to give testimony outside of the Student’s presence; the College provided the results of its decision only to the Student; the College did not explain the basis of its decision, and, the College provided the Student with an opportunity to appeal the decision, but did not provide the same opportunity to the complainant.

The College has established and adopted policies and procedures detailing the process for conducting an administrative hearing for sexual assault complaints. These policies and procedures, contained in student handbooks and the College’s Sexual Assault Policy Statement and Information Guide set forth the procedure used in an administrative hearing. According to the policies and procedures, the Dean of Student Affairs selects from two to four administrative participants and designates one as chairperson for that specific administrative hearing. Any relevant witnesses may be called. The complainant and the respondent are usually both present and are interviewed by the hearing board. Additionally, the complainant must testify to the alleged occurrences and the respondent has the right to be present throughout the hearing and to hear all testimony. At the conclusion of the hearing, the decision is read to both parties. The respondent, (the student in this case), and not the complainant, has the right to appeal.

The complainant filed a formal complaint of sexual assault with the Office of Student Affairs on [redacted]. An administrative hearing was held on [redacted], before a Dean’s panel comprised of three administrative personnel. The complainant and the Student testified to the alleged occurrences and both were present throughout the hearing. At the conclusion of the hearing, the decision was read to both parties. The decision was based on the administrators review of both parties testimony. Later, when the complainant’s father requested a copy of the decision, one was sent to him.

OCR has determined that the College conducted the administrative hearing with the complainant in accordance with its sexual assault policies and procedures, and that those procedures were fair and equitable. Although the complainant did not have the opportunity to appeal the decision, she did have the opportunity to be heard at the hearing and to have the results of the hearing read to her in a timely manner, as well as mailed to her upon request. The College
explained that it limits the right to appeal in a Social Integrity Board hearing, such as the one conducted in this case, to the respondent because he/she is the one who stands to suffer from any penalty imposed and should not be made to be tried twice for the same allegation. These are rational reasons for limiting the right to appeal to the respondent. Thus, OCR has determined that the evidence is insufficient to support violation with regard to the College’s sexual assault procedures.

(b) The complainant alleges that the College did not take appropriate disciplinary action against the Student.

In determining whether a violation of Title IX exists, OCR examines whether the institution in question has taken appropriate action in response to the alleged violation; it does not review the sufficiency of any findings made, or any penalties imposed. As described above, the College, upon learning of the alleged violation, conducted an administrative hearing in which the complainant and the Student were provided the opportunity to give their version of events. Based upon the testimony of the complainant and the Student, the administrative panel formulated a decision and imposed a penalty.

Moreover, in this case, the Student received a penalty of social probation from [Omitted for Privacy] through the end of the [Omitted for Privacy] academic year. OCR found that all other students who were respondents in administrative hearings for incidents comparable to the one for which the Student was found guilty, received penalties of social probation. In [Omitted for Privacy], a student received a social probation penalty through [Omitted for Privacy] for Assault/Harassment and Possession of a Firearm, and in [Omitted for Privacy], a student received a social probation penalty through [Omitted for Privacy] for Sexual Harassment and Sexual Assault. Thus, OCR finds that there were insufficient facts to support a violation.

(c) The complainant alleges that the College did not provide her with counseling.

OCR’s investigation disclosed that, although the College did not pay for private counseling for the complainant during her summer recess, it provided on-campus counseling to her from approximately the middle of [Omitted for Privacy] until the end of the [Omitted for Privacy] academic year. It is not the College’s policy to provide or pay for private counseling services, other than those counseling services provided on campus. For these reasons, there was insufficient information to support a violation of Title IX in regard to this allegation.

(d) The complainant alleges that the College did not assist her in consulting teachers regarding the flexibility she needed in her course work as a result of the incident.
Following the incident, the complainant spoke with the Dean of Student Office to request that the College inform two of her professors about the incident and her need for flexibility in regards to her coursework. The complainant stated that necessary assistance was not provided by her professors. However, the College sent a memo to the professors explaining the complainant’s absences and requesting that she be extended flexibility. Both professors excused the complainant’s absences, and one told the complainant to contact him if additional assistance was needed. The complainant did not request any additional assistance from either professor. Based on this, OCR finds that there is insufficient evidence to support a violation of Title IX.

This concludes OCR’s consideration of this complaint. This letter is not intended, nor should it be construed, to cover any issues regarding the College’s compliance with Title IX that are not discussed herein.

The College is reminded that retaliation or harassment against any person who has filed a complaint, participated in, or cooperated with an OCR investigation is prohibited.

Under the Freedom of Information Act, 5 U.S.C. § 552, 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, personal information which, if released, could constitute an unwarranted invasion of privacy.

We appreciate the cooperation and assistance you and your staff provided to us during this investigation. If you have any questions regarding this matter, please contact Ms. Diane Castro, Equal Opportunity Specialist, at (212) 637-6311.

Sincerely,

[Signature]

Sharyn Martin
Compliance Team Leader