



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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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