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November 5, 2014

Christopher L. Eisgruber
President
Princeton University
Office of the President
1 Nassau Hall
Princeton, New Jersey 08544

Re: Case No. 02-11-2025
Princeton University

Dear President Eisgruber:

This letter is to notify you of the determination made by the U.S. Department of Education (Department), New York Office for Civil Rights (OCR) in the above-referenced consolidated complaint filed against Princeton University (University).¹ In response to the above-referenced complaint, OCR examined whether the University responded promptly and equitably to complaints, reports, and any other notice to the University of incidents of sexual harassment, sexual assault and other forms of sexual violence, including the students' reports of sexual assaults; and whether as a result, students, including the students at issue in the above-referenced complaints, were subjected to a sexually hostile environment.

Background

Complainants 1, 2, and 3 alleged that the University discriminated, on the basis of sex, by failing to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student complaints of sex discrimination/harassment, including sexual assault. Additionally, the complainants alleged that the University failed to respond appropriately to complaints of sexual assault that three students (Students 1, 2, and 3) made during academic years 2009-2010 and 2010-2011.

¹ OCR Case Number 02-11-2025 consolidates three OCR complaints: Case Numbers 02-11-2025 (Complainant 1), 02-11-2167 (Complainant 2) and 02-11-2166 (Complainant 3).

In academic year 2013-2014, the University, which is located in Princeton, New Jersey, had a total student population of 8,014 students, comprising 5,323 undergraduate students and 2,691 graduate students. The student body was approximately 55 percent male and 45 percent female.

In its investigation, OCR reviewed documentation that the complainants and the University submitted, as well as the University's policies and procedures relating to sexual harassment, including sexual assault/violence. OCR also interviewed Complainants 1, 2, and 3; Students 1, 2, and 3; and University staff and administrators. In addition, OCR reviewed the University's handling of individual complaints of sexual harassment filed in academic years 2011-2012 and 2012-2013. Further, OCR conducted on-site visits to review files and recordings on April 30, 2012, and June 27, 2013. OCR also reviewed information contained in the Department's Office of Postsecondary Education's Campus Safety and Security Data Analysis Cutting Tool, including statistics collected pursuant to the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act ("Clery Act"), 20 U.S.C. § 1092(f); this information is located at <http://ope.ed.gov/security/GetOneInstitutionData.aspx>, and is discussed in more detail below.

OCR determined that the University's prior grievance procedures failed to comply with the requirements of Title IX. OCR also determined that the University failed to provide a prompt and equitable response to complaints of sexual harassment, including sexual assault/violence, as required by Title IX, as well as Student 1's, 2's, and 3's complaints of sexual harassment/violence. OCR further determined that for Student 1, this failure allowed for the continuation of a hostile environment that limited and denied her access to the education opportunities at the University. On October 12, 2014, the University provided OCR with a signed Resolution Agreement, and in accordance with the Agreement, it submitted revised grievance procedures to address complaints of sexual misconduct (including sex discrimination, sexual harassment, and sexual assault/violence). OCR's preliminary review of the new procedures revealed that it corrects many deficiencies identified in the previous policies and procedures. OCR will review these procedures in detail as part of its monitoring of this Agreement, which when fully implemented, will resolve the University's noncompliance with Title IX.

Legal Authority

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

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity operated by a recipient. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title 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 denies or limits a student's ability to participate in or benefit from the recipient's program.²

In determining whether this denial or limitation has occurred, OCR examines all of the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the college or university; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. For example, a single instance of rape is sufficiently severe to create a hostile environment. Title IX also protects all students at recipient institutions from sex harassment, including male and female students.

If a recipient knows or reasonably should have known about sexual harassment that creates a hostile environment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. A law enforcement investigation does not relieve the recipient of its independent Title IX obligation to investigate the conduct. A recipient should not wait for the conclusion of a criminal investigation or criminal proceeding to conduct its own Title IX investigation; and if needed, must take immediate steps to protect the complainant from further harassment prior to the completion of the Title IX investigation/resolution. Additionally, under Title IX, a recipient must process all complaints of sexual assault/violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity. Further, once a school is on notice of off-campus sexual assault/violence against a student, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment, and if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct.

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 sex discrimination, sexual harassment,

² The applicable legal standards described herein are more fully discussed in OCR's 2011 Dear Colleague letter on Sexual Violence, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (April 4, 2011); for further clarification on this topic, see "Questions and Answers on Title IX and Sexual Violence," at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (April 29, 2014). See also OCR's 2010 Dear Colleague letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html> (October 26, 2010), and OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (January 19, 2001).

and sexual assault/violence. Title IX does not require a university to provide separate grievance procedures for sexual harassment complaints, including sexual assault/violence complaints.

A university may use student disciplinary or other separate procedures for these complaints; however, a university's grievance procedures for handling discrimination complaints must comply with the prompt and equitable requirements of Title IX. In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR reviews all aspects of a recipient's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

1. notice to students and employees of the procedures, including where complaints may be filed;
2. application of the procedures to complaints alleging discrimination or harassment carried out by employees, students, and third parties;
3. provision for adequate, reliable, and impartial investigation of complaints, including an opportunity for both the complainant and respondent to present witnesses and other evidence;
4. designated and reasonably prompt timeframes for major stages of the complaint process;
5. written notice to parties of the outcome of the complaint and any appeal; and
6. an assurance that the institution will take steps to prevent recurrence of any sex discrimination or harassment found to have occurred, and to correct its discriminatory effects on the complainant and others if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the recipient processes complaints, the recipient's Title IX grievance procedures should also include the following in writing:

1. a statement of the recipient's jurisdiction over Title IX complaints;
2. adequate definitions of sexual harassment (which includes sexual assault) and an explanation as to when such conduct creates a hostile environment;
3. reporting policies and protocols, including provisions for confidential reporting;
4. identification of the employee or employees responsible for evaluating requests for confidentiality;
5. notice that Title IX prohibits retaliation;
6. notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
7. notice of available interim measures that may be taken to protect the student in the educational setting;
8. the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint;
9. notice of potential remedies for students;
10. notice of potential sanctions against perpetrators; and
11. sources of counseling, advocacy and support.

The procedures for addressing and resolving complaints of sexual harassment should be written in language that is easily understood, should be easily located, and should be widely distributed.

For Title IX purposes, a recipient must inform the complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the recipient has taken to eliminate the hostile environment, if the recipient finds one to exist, and prevent recurrence. Sanctions that directly relate to the complainant (but that may also relate to eliminating the hostile environment and preventing recurrence) include, but are not limited to, requiring that the perpetrator stay away from the complainant until both parties graduate, prohibiting the perpetrator from attending school for a period of time, or transferring the perpetrator to another residence hall, other classes, or another school. Additional steps the recipient may take to eliminate the hostile environment include counseling and academic support services for the complainant and other affected students.

To ensure individuals can invoke these grievance procedures without fear of reprisal, Title IX also prohibits the university and others, including students, from retaliating against any individual “for the purpose of interfering with any right or privilege secured by [Title IX],” or because that individual “has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing” under Title IX. Prohibited retaliatory acts include intimidation, threats, coercion, or discrimination against any such individual. Universities therefore should take steps to prevent any retaliation against a student who makes a complaint or any student who provides information regarding the complaint. At a minimum, under Title IX, the university must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems; and should follow up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

Pending the outcome of an investigation, Title IX requires a recipient to take steps to ensure equal access to its education programs and activities and to protect the complainant from further harassment as necessary, including taking interim steps before the final outcome of the investigation. The recipient should undertake these steps promptly once it has notice of a sexual harassment allegation and should provide the complainant with periodic updates on the status of the investigation. It should notify the complainant of his or her options to avoid contact with the alleged perpetrator, and allow students to change academic or living, transportation, dining and working situations as appropriate. For instance, the recipient may prohibit the alleged perpetrator from having contact with the complainant pending the results of the investigation. The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. When taking steps to separate the complainant and the alleged perpetrator, a recipient should minimize the burden on the complainant and thus should not, as a matter of course, remove the complainant from classes or housing while allowing the alleged perpetrator to remain. If an accused student is found responsible and a recipient determines that he/she must be separated from the complainant, it must do so in a manner that minimizes the burden on the complainant. Recipients should also check with complainants to ensure that the interim measures are effective and, if ineffective, identify alternatives. In addition, recipients should ensure that complainants are aware of their Title IX rights and any available resources, such as advocacy, housing assistance, academic support,

counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement.

In addition, if there is an incident involving potential criminal conduct, the university must determine, consistent with state and local law, whether appropriate law enforcement or other authorities should be notified, bearing in mind that a university's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve a university of its independent Title IX obligation to investigate the conduct. A university therefore should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation; and if needed, must take immediate steps to protect the complainant in the educational setting. These duties are a university's responsibility, regardless of whether a student has complained, asked the university to take action, or identified the harassment as a form of discrimination.

If the complainant requests confidentiality or asks that the complaint not be pursued, a university should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If the complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the recipient should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the accused. The recipient should notify students of the information that will be disclosed, to whom it will be disclosed, and why. The recipient should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. If the student still requests that his or her name not be disclosed to the accused or that the recipient not investigate or seek action against the accused, the recipient will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the harassment.

Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints; however, it is improper for a complainant to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the recipient (e.g., participation by a trained counselor, a trained mediator, or, if appropriate, a faculty member or administrator). The complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault/violence, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault/violence complaints.

Throughout the recipient's investigation and in any hearing, both parties must have equal opportunity to present relevant witnesses and other evidence and to otherwise participate in the process. Also, in order for a recipient's grievance procedures to be consistent with the Title IX evidentiary standard, the recipient must use a preponderance of the evidence standard for investigating allegations of sexual harassment, including sexual assault/violence. If a recipient

provides for appeal of the findings or remedy, it must do so for both parties. The recipient must maintain documentation of all proceedings.

In addition, a school must ensure that responsible employees with the authority to address sexual assault/violence know how to respond appropriately to reports of sexual assault/violence; that other responsible employees know that they are obligated to report sexual assault/violence to appropriate school officials; and that all other employees understand how to respond to reports of sexual assault/violence. A school should provide training to all employees likely to witness or receive reports of sexual assault/violence, including professors, university law enforcement unit employees, university administrators, university counselors, general counsel, athletic coaches, health personnel, and resident advisors. Training for employees should include practical information about how to prevent and identify sexual assault/violence, including same-sex sexual assault/violence; the behaviors that may lead to and result in sexual assault/violence; the attitudes of bystanders that may allow conduct to continue; the potential for revictimization by responders and its effect on students; appropriate methods for responding to a student who may have experienced sexual assault/violence, including the use of nonjudgmental language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. The training also should explain responsible employees' reporting obligation, including what should be included in a report and any consequences for the failure to report and the procedure for responding to students' requests for confidentiality, as well as provide the contact information for the school's Title IX coordinator. A school also should train responsible employees to inform students of: the reporting obligations of responsible employees; students' options to request confidentiality, available confidential advocacy, counseling, or other support services; and students' rights to file a Title IX complaint with the school and to report a crime to campus or local law enforcement.

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. § 106.9(a), to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s). In addition, OCR's 2011 Dear Colleague Letter on Sexual Violence states that recipients should notify all students and employees of the electronic mail (email) address of the Title IX Coordinator. The coordinator's responsibilities include overseeing the recipient's response to Title IX reports and complaints of sexual harassment, including sexual assault/violence, and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. The coordinator or designee should be available to meet with students, as needed. The Title IX coordinator should not have other job responsibilities that may create a conflict of interest. Also, as noted above, recipients must ensure that employees designated to serve as Title IX coordinators have training or experience in handling sexual harassment, including sexual assault/violence complaints, and in the operation of the recipient's grievance procedures.

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires that recipients notify applicants for employment, students, employees, 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 must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

Factual Information

The Sexual Harassment/Violence Reporting Process

Designation and Notice of Title IX Coordinator

OCR determined that the University has complied with the Title IX regulations at 34 C.F.R. § 106.8(b) and 106.9, with respect to the designation and notice of its Title IX Coordinator. The University has designated the Vice Provost for Institutional Equity and Diversity as the Title IX Coordinator and notified its students and employees of the name, office address,³ and telephone number of the designated employee in various University publications; including the University's *Rights, Rules and Responsibilities*, the University's Annual Security and Fire Safety Report, and *Working at Princeton, a Handbook for Administrative and Support Staff*. The information is also available on the University's website at <http://sexualmisconduct.princeton.edu/coordinator>. The University's Title IX Coordinator is responsible for overseeing the University's centralized response to complaints and reports of sexual harassment, including sexual assault/violence.

OCR found that the University's Title IX Coordinator receives training in handling sexual harassment, including sexual assault/violence complaints, and in the operation of the University's grievance procedures. In addition, the Title IX Coordinator regularly attends webinars and conferences relating to sexual harassment, including sexual assault/violence.

Notice of Non-Discrimination

OCR determined that the University has nondiscrimination notices that comply with the regulation implementing Title IX, at 34 C.F.R. § 106.9(a). The notices include the name, title, address, and telephone number of the Title IX Coordinator, and appear in several publications, including the University's Equal Opportunity Policy; the University's *Rights, Rules and Responsibilities*; University's website, at <http://www.princeton.edu/pub/RRR/eop>; the Undergraduate admission materials and financial aid application; *Working at Princeton, a Handbook for Administrative and Support Staff*; and Rules and Procedures of the Faculty of Princeton University and Other Provisions of Concern to the Faculty.⁴

Grievance Procedures

During OCR's investigation and until September 2014, the University used two policies to address complaints of sexual harassment, including sexual assault/violence: (1) the *Nondiscrimination/Anti-Harassment Policy and Complaint Procedures* (the *General Policy*); and, (2) *Rights, Rules and Responsibilities* (RRR). The University also published a document,

³ The email address of the Title IX Coordinator is included in the University's revised policies and procedures.

⁴ The non-discrimination statement also is displayed prominently on many notices, announcements, and pages on the University's website.

entitled, *Frequently asked Questions Regarding Allegations of Sexual Misconduct and the University Discipline Process* (the *FAQ*);⁵ and a document entitled, *Title IX Administrative Review Procedure Based on an Alleged Pattern of Risk to the Physical Safety of the University*.⁶

During its investigation, OCR reviewed the most recent version of the *General Policy* published in hard copy, dated November 2011. OCR also reviewed a version of the *General Policy* available on the University's website, dated August 2013, which differed from the earlier version only in that contact information for filing complaints and making inquiries referenced individual titles rather than individual names.

OCR found that complaints of sexual harassment, including sexual assault/violence, against students typically were investigated and resolved through the student disciplinary process administered by the Office of the Dean of Undergraduate Students (ODUS) and Office of the Dean of the Graduate School (ODGS), respectively. Pursuant to the *RRR*, after receiving a complaint, a University dean would conduct an initial investigation; following this, ODUS or ODGS would convene a Faculty-Student Committee on Discipline, Subcommittee on Sexual Assault and Sexual Harassment (the Committee) comprised of faculty, staff, and students. The Committee would then hold a hearing to review evidence and hear from witnesses, including the complainant and the accused. Following this, the members of the Committee would convene to determine responsibility and, if necessary, sanctions. The accused had the right to appeal the Committee's determination; however, the complainant did not have this right.

Notice of the Procedures

Students, employees and third parties previously could file complaints of sexual harassment, including sexual assault/violence against employees and third parties, using the procedures outlined in the *General Policy*. The *General Policy* provided information regarding how and where such complaints could be filed, and informal options for resolution. The *General Policy* contained a description of the investigation, complaint resolution, and appeal process for complaints filed against employees and third parties alleging sexual harassment, including sexual assault/violence; however, the process for investigating and resolving complaints contained in the *General Policy* did not apply to students.

Complaints of sexual harassment, including sexual assault/violence, against undergraduate and graduate students generally were investigated and resolved through the student disciplinary process (the *RRR*), administered by the ODUS and ODGS, respectively. However, the sections addressing sex discrimination, sexual harassment, and sexual misconduct in the *RRR* (found in sections 1.2.3 and 1.6.5) did not include a description of or reference to how to file a complaint of sexual discrimination, sexual harassment, and/or sexual misconduct, including sexual assault or other sexual violence, or detail the investigative process, resolution, and appeal processes. OCR also found that three separate documents, the *RRR*, a document entitled *Sexual Misconduct*:

⁵ See <http://www.princeton.edu/odus/docs/sexual-misconduct-FAQ.pdf> (July 14, 2014) (Note that OCR reviewed an earlier version of this FAQ during its investigation).

⁶ See <https://www.princeton.edu/diversity/documents/Title-IX-Administrative-Review-Procedure.pdf> (Effective July 2013).

Resources, Services, and Options at ODUS,⁷ and the *FAQ*, each contained incomplete information describing the process for addressing sex discrimination, sexual harassment, and/or sexual misconduct complaints against students. These documents often did not clearly reference one another.

Designated and Reasonably Prompt Timeframes

The *General Policy* stated that the University will “make an effort” to conclude the complaint resolution process within 45 working days. However, the *General Policy* did not give a timeframe for appeals; and the *RRR* did not include any timeframes for complaint resolution or appeals. The only timeframes found in the procedures in the *RRR* stated that when a matter is first presented to the ODUS or ODGS within one week of the end of an academic term, it may be held for consideration until the following term. The *FAQ* also did not contain specific timeframes for either process; it stated that the University sought to conduct disciplinary adjudications with “reasonable promptness” and that the information gathering process will proceed as quickly as possible but “given the complexity of sexual misconduct cases, it may take days or weeks.” Further, with respect to a “statute of limitations” on filing a complaint of sexual misconduct, the *RRR* stated, “Our student disciplinary procedures are only invoked when there is a complaint of sexual misconduct against a *current* University student.” [emphasis added]. This position could discourage students from filing sex discrimination/harassment complaints against former students by implying that the University is unable to investigate or take any action with respect to such complaints, such as providing support for the complainant and taking steps to address the effects of the harassment.

Adequate, Reliable, and Impartial Investigation/Notice of Outcome/Preventive Steps

The procedures found in the *General Policy* and the *RRR* did not explicitly provide the complainant with an equal opportunity as the accused student to present witnesses and other evidence. OCR determined that these rights were outlined in the *FAQ*; however, as noted, the *FAQ* was not directly referenced in the *General Policy* and/or *RRR* (the *RRR* referenced the document, *Sexual Misconduct: Resources, Services, and Options at ODUS*, which referenced the *FAQ*). The *RRR* specifically provided certain rights to a charged undergraduate or graduate student participating in the hearing process, but did not provide equivalent rights to the complaining student.⁸ These rights included: (a) obtaining reports detailing the alleged misconduct, and the names of the members of the Committee; (b) being informed in writing of the charge(s) and of the specific day and time to appear before the Committee; as well as the ability to (c) request the appearance of anyone with information about the matter; (d) have an advisor; (e) testify on his/her own behalf; (f) question witnesses or be questioned by the committee members; (g) submit additional character statements in writing; and (h) make a closing statement.

⁷ This document outlines University resources and describes the options available to complainants and accused students, and is located at <http://www.princeton.edu/odus/standards/sexual-misconduct/>.

⁸ The *FAQ* states that all of these rights, except for the right to have the names of the members of the Committee, are provided to the complainant as well as the accused.

The University used a “clear and persuasive” standard of evidence rather than the appropriate “preponderance of the evidence” standard during the hearing process, including the findings phase, under the *RRR*. The University used a “preponderance” standard of evidence under the *General Policy*.

The *General Policy* stated that the appropriate dean or vice president would provide a summary of the findings to both parties, although it did not explicitly state that it would be in writing. The *General Policy* and *RRR* did not indicate that written notice of the outcome of the complaint (or any appeal) would be provided to either party. Further, neither the *General Policy* nor the *RRR* provided for an assurance that the University would take steps to prevent further harassment or remedy its effects, if appropriate.

The *General Policy* included an informal as well as a formal process; however, it did not notify parties of their right to end the informal process and begin the formal process at any time. The *RRR* does not include an informal process.

The *General Policy* provided for appeal rights only to the individual found to have violated the *General Policy*. Neither party had a right to appeal if there was a determination that the behavior did not violate the *General Policy*, or if there was a finding of inappropriate behavior not rising to the level of a violation. Further, the *RRR* did not provide a right of appeal to the complaining party; only the respondent had the right to appeal. In practice (although not written in the *RRR*), the University would prepare a transcript of the hearing only in the event of an appeal, at which time it would be provided to both parties; however, as stated above, only the respondent had the right to appeal.

Additionally, the *General Policy* did not include a provision notifying the complainant of the right to proceed with a criminal investigation and a Title IX complaint simultaneously, although this was included in *RRR*.

Handling of Criminal Complaints and Law Enforcement’s Role

The University informed OCR that if the Department of Public Safety (DPS) receives a report of an incident of sexual assault or violence, officers will meet with the complainant and first ensure that he/she is receiving appropriate medical care and feels safe; will explain the individual’s right to report the incident to the University and/or file a criminal complaint with local police; and will provide information about counseling services at the University. If a student chooses to file a criminal complaint, DPS will turn over the case to the local police department to conduct its own criminal investigation. The DPS officers may take a statement and/or obtain other general information, but they typically do not conduct a detailed investigation; rather, these investigations are led by either a University dean (for internal complaints) or the local police department (for criminal complaints). The University noted that if the individual files a criminal complaint, the police department rarely will share information with DPS or the University because of concerns that this will interfere with the criminal investigation.

The University informed OCR that it does not wait for the conclusion of a criminal investigation/proceeding to begin its own administrative investigation (whether for Title IX or

other purposes), and that it takes immediate steps to protect its students. The University stated that it will proceed with a Title IX investigation while a criminal complaint is active; however, whether (and/or for how long) the University might delay its administrative investigation depends on a variety of circumstances, such as the wishes of the complainant, the severity of the alleged misconduct, the status of the criminal investigation, whether the respondent is currently enrolled, and the safety of the campus community. The University stated that because its Title IX grievance procedures reference a resolution within 45 working days, any delay typically will not last very long.

Requests for Confidentiality

University staff informed OCR that if a student wishes to remain confidential, the University would first encourage a student to move forward and explain that without further information, the University's ability to redress the issue would be limited. University staff further stated that if the University has independent information beyond what the student told University staff, the University would nonetheless have to explore this, and would explain this to the complainant in advance. University staff stated that the University would also encourage the student to visit Sexual Harassment/Assault Advising, Resources and Education (SHARE), and make clear that he/she always has the option to request an investigation at a future date.

The University informed OCR that while responsible employees generally may move forward with an investigation despite a request for confidentiality if the need for safety supersedes a student's interest in confidentiality, employees at SHARE will not breach a student's confidentiality unless there is persuasive evidence of a "clearly identified threat" that someone will be endangered. Nonetheless, SHARE employees will explain all options to an alleged victim, including the investigative process.

Training/Outreach

Every year, the University conducts education and prevention initiatives for the campus community, including faculty, staff, and students. All faculty and staff are required to take several trainings every year addressing sexual harassment prevention, discrimination and the legal aspects of supervision. The University also provides multiple trainings to undergraduate and graduate students regarding sexual harassment prevention and alcohol education. The University also disseminates a Title IX resource letter/email each year to all students, faculty, and staff. In addition, the University conducts specific training for individuals responsible for addressing complaints of sexual harassment/assault/violence, as well as those individuals serving in a resource capacity. These individuals and offices include the Title IX Coordinator and any assistants, SHARE office staff, SHARE Peer Advisors, the Ombuds office, Residential College Advisors, the Faculty-Student Committee on Discipline, the Residential College Disciplinary Board, Title IX investigators, community members who have volunteered to serve as advisors to complainants and respondents in student disciplinary hearings involving sexual misconduct allegations, DPS staff members, athletics staff members, the LGBT Center, the Women's Center, the Office of the Dean of the Faculty, Human Resources, ODUS, and ODGS.

The University advised that training to the aforementioned individuals/groups includes a discussion of:

- The University's policies and procedures for complaints of sex discrimination;
- The University's responsibility to address sex discrimination;
- The role and obligations of the Title IX Coordinator and the Assistant Title IX Coordinators;
- How to appropriately respond to allegations and complaints;
- Applicable confidentiality requirements;
- Notifying complainants of their rights to file criminal complaints and how to do so;
- Understanding how Title IX investigations differ from criminal investigations;
- Protecting and preserving evidence;
- Conducting thorough, prompt, and impartial investigations;
- The University's prohibition of retaliation;
- The roles of alcohol and drug use;
- How to appropriately coordinate and cooperate with other members of the University community and local law enforcement;
- Implementing interim measures; and
- Interactive discussions involving practical hypotheticals.

In addition, the University conducts community-based trainings/outreach programs for students each academic year.⁹

Climate Information/Climate Assessment/Response

The University informed OCR that it maintains a standing committee on Sexual Misconduct Policies, Prevention and Programs (SMPPP) to provide oversight and monitor campus activities relating to sexual misconduct, including sexual harassment and assault, for members of the University community, including students, faculty, and staff. The SMPPP collects and reviews data, monitors training activities, reviews the effectiveness of campus programs and policies, and provides recommendations on new policies and activities. The University also informed OCR that it implemented a tracking system for all complaints of sexual discrimination. The Title IX Coordinator uses this system to identify patterns of risk, and whether a specific student poses a risk to the physical safety of the University community. If the Title IX Coordinator determines that a pattern exists sufficient to pose a risk to the campus community, she will intervene as appropriate to mitigate the risk.¹⁰

⁹ These include *The Way You Move* freshmen orientation performance and debrief; a residential education program during orientation; SHARE peer programs in colleges and with high risk groups; Domestic Violence Awareness Month programming; Sexual Assault Awareness Month programming; *STANDBY* bystander mobile website; Sexual harassment briefing to recreational sports club leaders; *STEP UP!* pro-social behavior and bystander intervention program for student athletes; Ongoing awareness raising and education through social media, listserv, and the University's website; SHARE Peer Program liaisons to eating clubs and residential colleges.

¹⁰ The University's *Title IX Administrative Review Procedure Based on an Alleged Pattern of Risk to the Physical Safety of the University* outlines how the Title IX Coordinator determines whether a student poses a safety risk to the University community based on a pattern of sexual harassment. In these cases, the Title IX Coordinator reviews the matter herself "to determine whether any action should be taken to protect the University community." The Title IX Coordinator employs a preponderance of the evidence standard, makes a finding, and imposes any interventions.

**Review and Analysis of the University's Handling of
Complaints and Reports of Sexual Harassment/Assault/Violence**

The complainants alleged that the University failed to respond promptly and appropriately to complaints of sexual assault that three students (Students 1, 2, and 3) made during academic year 2009-2010 and 2010-2011.

Student 1's Complaint

Complainant 1 alleged that the University discriminated against Student 1, on the basis of her sex, by failing to respond appropriately to a complaint Student 1 made during academic year 2009-2010, in which she alleged that Student A sexually assaulted her. Complainant 1 alleged that the disciplinary hearing, the appeal process, and a subsequent re-hearing were neither fair nor equitable.

OCR determined that in response to Student 1's complaint, the University informed Student 1 of the student disciplinary process and available resources, including counseling and health services. The University stated that it informed Student 1 that the University could administer a no-contact order (NCO) between Student 1 and Student A; Student 1 stated that she did not recall receiving this information and the University did not provide documentation to support that a NCO had been offered to Student 1. The University also granted Student 1's request to change her dormitory.

After an investigation and a hearing, the University determined that Student A was responsible for sexually assaulting Student 1 and suspended him. Student A appealed and was allowed to remain on campus during the appeal. Student A withdrew about a month after being informed of the University's determination; this status did not bar Student A from visiting campus. Student 1 told the University that she observed Student A on campus and felt very uncomfortable; she also informed OCR of the negative impact of seeing Student A. The University responded, in part, by advising Student 1 of her right to request a NCO. Student 1 asserted to OCR that this was the first time the University discussed the option of a NCO in detail with her, but that she declined the offer because at that time she believed Student A had been suspended; and until the next month was unaware that Student A had filed an appeal and had the right to remain on campus. The University did not inform Student 1 that Student A had appealed his decision and remained enrolled pending the outcome of the appeal until the end of the next month. Student 1 informed OCR that once she learned of Student A's appeal, she decided not to request a NCO because she believed any NCO would unfairly apply equally to her, although she had done nothing wrong. Student A's appeal was subsequently granted, overturning the initial determination.

Following a rehearing, the University again found Student A responsible for sexual assault and re-imposed the suspension. A NCO order was issued at that time. OCR did not find any

The policy states that all interventions "will be limited to protecting the physical safety of the University community, and any particular member of the University community," and makes clear that the process is separate from the University's standard disciplinary process "as these processes serve different purposes."

evidence to indicate that there was further interaction between Student A and Student 1 on campus, or that Student 1 was subjected to harassment by other students.

The evidence established that Student 1 was subjected to a sexually hostile environment when she was sexually assaulted by Student A. OCR determined that the University did not provide a prompt response to Student 1's complaint, as the appeals process was unduly long. Although the University issued its initial decision within a month of her complaint, the University's final decision on Student A's appeal was not issued until nine months after the initial determination.¹¹ The University also failed to provide Student 1 with an adequate, reliable, and impartial investigation, as the University used a "clear and persuasive" evidentiary standard during the investigation and hearing and allowed only Student A, not Student 1, to present in-person character witnesses. In addition, Student 1 was not given equal written notice of the outcome of the complaint, as she was not notified of the sanctions that directly affected her, including that Student A had an opportunity to appeal; and that Student A filed an appeal and could remain on campus during the appeal. While the University provided an opportunity for Student A to appeal, it did not provide an equal appeals process for Student 1. The evidence supports that the University took some interim steps before the final outcome of the investigation to protect the complainant, including providing her with information about counseling and other resources and changing her dormitory. However, the University did not implement a NCO until eleven months after Student 1 filed her complaint. The evidence supports that Student 1 did not agree to a NCO earlier, at least in part, because the University did not inform her of Student A's appeal and enrollment status at the University. Based on a totality of circumstances, OCR determined that there was sufficient evidence to support that Student 1 continued to be subjected to a sexually hostile environment as a result of the University's failure to provide a prompt and equitable response to Student 1's complaint.

Student 2's Complaint

Complainant 2 alleged that the University discriminated against Student 2, on the basis of her sex, by failing to respond appropriately to a complaint Student 2 made during academic year 2010-2011, alleging that Student B sexually assaulted her. Complainant 2 asserted that University staff discouraged Student 2 from filing a complaint or gathering evidence; did not provide Student 2 with rights during the investigation and hearing on an equitable basis with the accused; subjected Student 2 to direct and inappropriate lines of questioning during the hearing; limited Student 2's ability to present witnesses and other evidence and participate in the

¹¹ OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. OCR has noted that, based on its experience in typical cases, there is a 60-calendar day timeframe for investigations. "Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks. A school may need to stop an investigation during school breaks or between school years, although a school should make every effort to conduct an investigation during these breaks unless doing so would sacrifice witness availability or otherwise compromise the process." OCR has explained that this timeframe does not include appeals, but that a school should be aware that any unduly long appeals process may impact whether the school's response was prompt and equitable as required by Title IX. See F-8, in OCR's "Questions and Answers on Title IX and Sexual Violence."

disciplinary hearing; failed to provide Student 2 with appeal rights (Student B did not appeal); and employed the incorrect evidentiary standard during the disciplinary hearing.

After investigation, the University found that it did not have sufficient evidence to substantiate that Student 2 was sexually assaulted. Namely, the University determined that based on its investigation, the versions of events offered by Student 2 and Student B regarding their interaction over the course of a weekend were “diametrically opposed” and could not be reconciled.

Based on the evidence obtained in OCR’s investigation, including its review of the University’s investigation, OCR concluded that the evidence did not support that Student 2 was subjected to a sexually hostile environment, but that while prompt, the University did not provide an equitable response to response to Student 2’s complaint, as required by Title IX. Upon receipt of Student 2’s complaint, the University informed Student 2 of the complaint reporting options and available resources, including counseling and medical services. The University also issued a NCO restricting contact between Student 2 and Student B. OCR determined that the University conducted a prompt (i.e., within approximately two and one half months, including a school recess period) and thorough investigation of Student 2’s allegations of sexual assault by interviewing relevant witnesses; reviewing relevant documentation; and, providing both Student 2 and Student B with the opportunity to present evidence and witnesses, question the opposing party, provide opening and closing statements, and avail themselves of an advisor and character witness statements. OCR found insufficient evidence to substantiate Complainant 2’s assertions that University staff discouraged Student 2 from filing a complaint or gathering evidence; subjected Student 2 to direct and inappropriate lines of questioning during the hearing; or limited Student 2’s ability to present witnesses and other evidence and participate in the disciplinary hearing. OCR also determined that the University provided written notice to Student 2 and Student B regarding the outcome of the complaint, and that it conducted the investigation in a timely manner. OCR determined, however, that the University’s disciplinary hearing process employed an inappropriate “clear and persuasive” evidence standard during the investigation used to determine the outcome of the complaint; and did not provide Student 2 with an opportunity to appeal the outcome of the hearing although Student B had this right.

Student 3’s Complaint

Complainant 3 alleged that the University discriminated against Student 3, on the basis of her sex, by failing to respond appropriately to a complaint Student 3 made during academic year 2010-2011, alleging that Student C sexually assaulted her. Specifically, Complainant 3 alleged that University staff: discouraged Student 3 from filing a complaint¹² and permitted Student C to file a retaliatory complaint of sexual assault against her; failed to take appropriate interim measures; did not provide comparable rights to Student 3 and Student C during the investigation; failed to provide an impartial disciplinary hearing; used the incorrect evidentiary standard during the disciplinary hearing; failed to provide Student 3 with appeal rights (Student C did not appeal)

¹² Specifically, Complainant 3 alleged that University staff told Student 3 that a University investigation would be disruptive to her life; informed Student 3 that she would have to prove her case using the clear and convincing evidence standard (rather than the appropriate preponderance of the evidence standard); and warned Student 3 that many students found the grievance procedure frustrating because they could not muster the necessary evidence.

or the opportunity to receive a copy of the disciplinary hearing transcript; and failed to take measures to prevent the recurrence of sexual harassment. The University found that it did not have sufficient evidence to substantiate that Student 3 was sexually assaulted.

Based on the evidence obtained in OCR's investigation, including its review of the University's investigation, OCR concluded that the evidence did not support that Student 3 was subjected to a sexually hostile environment, but that, while prompt, the University did not provide an equitable response to Student 3's complaint, as required by Title IX. OCR determined that in response to Student 3's complaint, the University advised Student 3 of the complaint reporting options, and the availability of health and counseling services. The University also provided the complainant with housing and academic accommodations, and issued a NCO restricting contact between Student 3 and Student C. Student 3's counsel objected that this NCO continued and subjected Student 3 to restrictions on attending campus events, including some graduation events. OCR determined that the University conducted a prompt (i.e., within less than two months) and thorough investigation of Student 3's allegation of sexual assault by interviewing relevant witnesses; reviewing relevant documentation; and, providing both Student 3 and Student C with the opportunity to present evidence and witnesses, ask questions of the opposing party and witnesses, provide opening and closing statements, and avail themselves of an advisor and character witness during the disciplinary hearing. OCR also determined that the University provided written notice to Student 3 and Student C regarding the outcome of the complaint. OCR found insufficient evidence to substantiate Complainant 3's assertions that University staff discouraged Student 3 from filing a complaint; failed to provide appropriate interim measures; and failed to take measures to prevent the recurrence of harassment. OCR concluded, however, that the University's disciplinary hearing process was not equitable, as the University gave only Student C the opportunity to appeal the outcome of the complaint. OCR also determined that the University employed an inappropriate "clear and persuasive" evidence standard during the investigation used to determine the outcome of the complaint.

Review of Other Sexual Harassment Complaints Filed with University

According to the Clery Act statistics outlined in the Office of Postsecondary Education's Campus Safety and Security Data Analysis Cutting Tool, in academic year 2011-2012, the University reported 16 on-campus forcible sex offenses, 14 of which occurred in University residence halls. It also reported 4 off-campus forcible sex offenses. In academic year 2012-2013, the University reported 17 on-campus forcible sex offenses, 14 of which occurred in the University residence halls. It also reported 3 off-campus forcible sex offenses.

OCR reviewed the records relating to the University's handling of seven complaints of sexual harassment, including allegations of sexual assault that were filed against students or staff at the University between academic years 2011-2012 and 2012-2013.¹³ Most of these cases involved allegations of sexual assault/violence sufficient to create a sexually hostile environment; and in two cases, the University's investigation confirmed the reported allegations of sexual

¹³ The University informed OCR that this number does not match its reported Clery Act numbers because the Clery numbers encompass reports of sexual offenses made to confidential sources. The University noted that confidential reports do not trigger an investigation. It stated that this practice allows the University to analyze patterns and trends on campus without revealing confidential information.

assault/violence. OCR determined that in all cases involving a current University student, the University offered interim measures during the pendency of the investigation, such as academic accommodations, counseling services, access to Public Safety Protection, SHARE services, and NCOs. However, OCR's review of the complaint files revealed concerns relating to the prompt and equitable nature of the process, including failure to provide the complainant with written notice of the complaint outcome, inequitable application of the NCO to the complainant and not the accused student, use of an inappropriate "clear and convincing" evidentiary standard, not allowing the complainant an equal opportunity to participate in the appeals process, and delays in the investigative process.

Conclusions

Based on its investigation, OCR determined that the University complied with Title IX requirements regarding the notice of non-discrimination and with Title IX requirements regarding the designation and notice of a Title IX coordinator.

OCR determined that the University's prior sexual harassment, including sexual assault/violence, policies and procedures did not comply with the applicable Title IX requirements. As noted above, the University used the *General Policy* to address sexual harassment complaints against employees and third parties, and *RRR*, the discipline process, to address sexual harassment complaints against students. The University provided supplemental guidance in several documents, including its FAQs, *Sexual Misconduct: Resources, Services, and Options at ODUS*, and *Title IX Administrative Review Procedure Based on an Alleged Pattern of Risk to the Physical Safety of the University*. OCR determined that these procedures did not provide adequate notice to students and employees of the University's sexual harassment, including sexual assault/violence, policies and procedures, as these documents each contained incomplete information describing the process for addressing sex discrimination, sexual harassment, and/or sexual misconduct complaints against students. These documents often did not clearly reference one another, resulting in a policy that was not easily understood or easily located. Additionally, the *RRR* noted that the disciplinary procedures could not be invoked when there was a complaint of sexual misconduct against a student who had graduated or otherwise left the University; OCR determined that this might have discouraged students from filing sex discrimination/harassment complaints against former students, and implied that the University was unable to investigate or take any action with respect to such complaints.

The University's prior sexual harassment, including sexual assault/violence, policies and procedures also did not include designated and reasonably prompt timeframes for the major stages of the grievance process, including the complaint resolution and appeals procedures. Specifically, the *General Policy* did not give a timeframe for appeals, and the *RRR* did not include any timeframes for complaint resolution or appeals.

OCR also determined that the prior policies and procedures did not provide for an adequate, reliable, and impartial investigation, as appeal rights were provided only for the accused student, not the complainant; the *RRR* process did not use of the preponderance of the evidence standard in investigating allegations of sexual harassment, including sexual assault/violence; written notice was not required to be provided to the parties of the outcome (and appeal) and sanctions

imposed on the perpetrator that directly relate to the complainant; and there was no assurance that the University would take steps to prevent further harassment and to correct its effects, if appropriate. The prior policies and procedures also did not explicitly provide for equal opportunities for the complainant and accused to present witnesses and other evidence and to participate in the hearing process; these rights were described in the separate *FAQ* document.

OCR determined that the *General Policy* did not notify parties of their right to end the informal process and begin the formal process at any time. Additionally, the *General Policy* did not include a provision notifying the complainant of the right to proceed with a criminal investigation and a Title IX complaint simultaneously.¹⁴

OCR also determined that the University failed to provide prompt and equitable response(s) to complaints of sexual assault/violence of which it had notice (including complaints made by Students 1, 2 and 3, and other students' complaints/reports). OCR further determined that, for Student 1, the University's failure allowed for the continuation of a sexually hostile environment that limited and denied Student 1's access to the University's educational program. Thus, OCR concluded that the University did not comply with the applicable Title IX regulations at 34 C.F.R. §§ 106.8, 106.31.¹⁵

Resolution Agreement and the University's 2014 Revised Sexual Harassment Policies and Procedures

On October 12, 2014, 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. As part of the Agreement, the University submitted revised grievance procedures to OCR on October 8, 2014. The University adopted the new "Sex Discrimination & Sexual Misconduct Policy" (the *Policy*) on September 15, 2014, and the *Policy* is on the University's website.¹⁶ The University has affirmed that the procedures are internally consistent and provide for the prompt and equitable resolution of complaints of sexual misconduct (including sex discrimination, sexual harassment, and sexual assault/violence) filed against students, employees, and third parties.

¹⁴ The University stated that the police department does not always share information with the University because of concerns that it will interfere with the criminal investigation. OCR determined that at the time of OCR's investigation, there was no indication that the police department had agreed to a Memorandum of Understanding with the University on this topic.

¹⁵ Complainant 1 further asserted that the Campus SaVE Act, a federal law recently enacted as part of The Violence Against Women Reauthorization Act of 2013 (Pub. L. No. 113-4) (VAWA) is contrary to and/or does not include some of the requirements articulated in OCR's "Dear Colleague Letter" of April 4, 2011, including recipients' use of the preponderance of the evidence legal standard, responses to incidents regardless of whether they are "reported" to campus officials or local law enforcement, and promptness in obtaining resolution. OCR notes that the VAWA has no effect on a school's obligations under Title IX. VAWA amended the Violence Against Women Act and the Clery Act, which are separate statutes. Nothing in Section 304 or any other part of the Violence Against Women Reauthorization Act of 2013 relieves a school of its obligations to comply with the requirements of Title IX, including those set forth in OCR's "Dear Colleague Letter" of April 4, 2011. OCR is responsible for enforcing Title IX and has applied Title IX as reflected in OCR guidance. OCR does not enforce the SaVE Act.

¹⁶ <http://sexualmisconduct.princeton.edu/policy>.

OCR's preliminary review of the new *Policy* revealed that it already includes many of the revisions required by the Agreement and thus corrects many of the deficiencies identified in the University's previous sexual harassment, including sexual assault/violence, policies and procedures. For example, the new *Policy* consolidates its sexual harassment, including sexual assault/violence, procedures into one document that addresses complaints of harassment filed against students, employees and third parties; states that the University will use the preponderance of the evidence standard for investigating allegations of sexual harassment, including sexual assault/violence; includes appeal rights for both parties; requires both parties to be provided concurrent written notice of the outcome of the University's investigation and any appeal; and includes designated and reasonably prompt timeframes (45 days, unless extended for good cause and with notice to the parties) for the investigation and appeal processes. OCR found that in the new *Policy*, other students are not involved in the investigative process and neither party is allowed to cross-examine the other or to present character witnesses.

The new *Policy* also includes the University's specific assurances that it will respond to complaints or reports of sexual harassment or sexual assault/violence with measures designed to stop the behavior, eliminate the discrimination, prevent the recurrence of the harassment, and remediate any adverse effects of the harassment on campus or in University-related programs or activities. The *Policy* specifically states that if the accused student is no longer enrolled, the University may not be able to take disciplinary action, but will still seek to meet its Title IX obligations by providing support for the complainant and taking steps to end the prohibited behavior, prevent its recurrence, and address its effects. The *Policy* also states that, upon receipt of a sexual harassment or sexual assault/violence complaint or report, the University will provide reasonable and appropriate interim measures designed to preserve the complainant's educational experience, the safety of all parties and the broader University community, maintain the integrity of the investigative and/or resolution process, and deter retaliation. The *Policy* includes a provision requiring that, if requested by the complainant, the University will promptly implement a one-way no contact order (with the burden of no contact on the accused) if the University has made a finding of responsibility under the *Policy*, even if an appeal may be filed, or has been filed and is pending.

Finally, the *Policy* makes clear that while discretion regarding the process relating to sexual harassment, including sexual assault/violence, complaints is important, complainants and accused students are not restricted from discussing and sharing information with others who may support or assist them in present their case. Finally, the *Policy* outlines a student's options, including pursuing a criminal and/or University investigation at the same time and states the University promptly resume its Title IX investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process and will not wait for the conclusion of a criminal proceeding to begin its own investigation and will, as appropriate, provide interim remedies.

OCR will review the revised policies and procedures in detail as part of its monitoring of the Agreement to ensure their compliance with the terms of the Agreement and applicable Title IX requirements. OCR expects to complete this review by December 7, 2014.

In addition to revising its sexual harassment, including sexual assault/violence, policies and procedures, the University has agreed to:

- Provide training to all staff responsible for recognizing and reporting incidents of sexual harassment, and any other University community members, officials/students directly involved in receiving, processing, investigating, adjudicating, and/or resolving complaints of sexual misconduct.
- Provide annual information sessions to students regarding sexual misconduct (including sex discrimination, sexual harassment and sexual assault/violence); develop and implement a public awareness and bystander intervention campaign; and revise its existing materials or develop new materials on sexual misconduct to be distributed to students during orientation and upon receipt of complaints of sexual misconduct.
- Conduct annual climate checks with students to assess the steps and measures taken by the University pursuant to this Resolution Agreement and otherwise; and use gathered information to inform future proactive steps to achieve its goal of a campus free of sexual misconduct, in particular sexual assault/violence.
- In addition, SMPPP will review and monitor systemic issues relating to sexual misconduct and Title IX compliance, including applicable policies, procedures, trainings and campus climate. SMPP will identify and annually recommend, strategies to ensure that students understand their rights under Title IX and the University's sexual misconduct policy and procedures; understand how to report possible violations of sexual misconduct policy/Title IX; and to ensure that the University takes each complaint seriously and provides a prompt and equitable response in accordance with the requirements of Title IX. Additionally, the committee will recommend additional strategies for improving the effectiveness of the University's procedures, support services, and resources available to students and for the prevention of sexual misconduct, including outreach and educational activities.
- Request from external local law enforcement agencies with jurisdiction over the University, a Memorandum of Understanding (MOU), where there is not an existing MOU, to improve communication and coordination and to address the protocols and procedures for referring allegations of sexual misconduct, sharing information, and conducting contemporaneous investigations.
- In accordance with its OCR-approved, revised grievance procedures, review all complaints and reports of sexual misconduct made from academic year 2011-2012 to September 1, 2014, to determine whether the University investigated each complaint or report promptly and equitably and take appropriate action to address any problems identified in the manner in which these complaints were handled, including providing appropriate remedies that may still be available for the complainants in these cases, such as counseling or academic adjustments.
- Provide the students identified in the complaint with remedies relating to the educational and other expenses incurred from the date on which each student first reported alleged sexual violence to the University to the date of resolution.
- Annually track, and provide to OCR documentation of, the University's responses and handling of all sexual misconduct/Title IX allegations reported during the previous calendar year.

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.

Should you have any questions, please contact Stacy L. Bobbitt, Compliance Team Investigator, at (646) 428-3823 or stacy.bobbitt@ed.gov; David Hensel, Compliance Team Attorney, at (646) 428-3778 or david.hensel@ed.gov; Jocelyn Panicali, Compliance Team Attorney, at (646) 428-3796 or jocelyn.panicali@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Sankar Suryanarayan, Esq.