



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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Via U.S. Mail and E-Mail

James R. Johnsen
President
University of Alaska System
P.O. Box 755000
Fairbanks, Alaska 99775-5000

Re: Case No. 10-14-6001
University of Alaska System

Dear President Johnsen:

This letter is to advise you of the resolution of the above-referenced compliance review that was initiated by the Office for Civil Rights (OCR), U.S. Department of Education (the Department), involving the University of Alaska System (the System). The compliance review examined the System's handling of complaints and reports of sexual harassment, including sexual violence, to determine if the System responded promptly and effectively, with particular emphasis on complaints of sexual assault.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity receiving financial assistance from the Department. The System offers education programs and activities and receives financial assistance from the Department and is therefore a recipient subject to Title IX.

The System

Alaska has a state-wide system of public higher education. A board of regents governs the System, and the president of the System serves as the board of regents' chief executive officer. The System's three universities are University of Alaska Anchorage (UAA), University of Alaska Fairbanks (UAF), and University of Alaska Southeast (UAS) in Juneau (the state capital). UAA, UAF and UAS each has a main campus and various other satellite campuses across the state. Each university is led by a chancellor who reports directly to the System president.

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

The board of regents has issued for use by the System the Regents' Policy and University Regulation, which includes policies and regulations relevant to complying with Title IX (BOR Rules).¹ During its investigation, OCR also found policies and practices unique to particular campuses. Drawing upon a definition found in the BOR Rules (P.01.03.990 at G), this letter will use the term “System” to refer to “the public universities and community colleges of the State of Alaska referenced collectively as a system of higher education,” with the intent to be inclusive of the universities and other units. In contrast, this letter will use “university,” “campus,” “college,” or other similar term to refer only to that particular unit.

At the beginning of the 2015-16 academic year, System-wide there were approximately 30,500 full-time and part-time students.²

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides generally that, except as provided elsewhere in the regulation, “no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any . . . education program or activity” operated by 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 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 university, location of the incidents, and the context in which they occurred; and other incidents at the university. The more severe the conduct, the less the need to show a repetitive series of incidents.

Once a recipient knows or reasonably should know of possible sexual harassment, Title IX requires a recipient to take immediate and appropriate action to investigate or otherwise

¹ The BOR Rules are divided into policy sections and regulation sections. Cites to the policy sections begin with a “P” and cites to the regulation sections begin with a “R.”

² University of Alaska Institutional Research, Planning and Analysis: UA in Review 2016, p.11, available at <http://www.alaska.edu/swbir/ir/reports/ua-in-review/uar2015/UAR-2016-Final.pdf>.

determine what occurred; and if the conduct occurred, whether it created a hostile environment for the harassed student(s) and for others. If an investigation reveals that sexual harassment created a hostile environment, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX (Title IX coordinator), including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by the regulation implementing Title IX. And the regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. Finally, the regulation implementing Title IX, at 34 C.F.R. § 106.9, requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in any educational program or activity which it operates, and that it is required by Title IX and its implementing regulation at 34 C.F.R. Part 106 not to discriminate in such a manner.

These regulatory provisions are discussed in more detail below.

Summary

For the reasons briefly stated here and discussed further in this letter, OCR determined that the System violated Title IX with respect its response to sexual harassment complaints, including complaints of sexual assault and sexual violence. OCR reviewed a number of cases processed under a former student grievance procedure. The former grievance procedure provided numerous rights only to student respondents and, as written, violated the Title IX requirement of providing an equitable procedure. The System's processing of cases under that former grievance procedure thus led to inequitable resolutions that violated Title IX. In addition, OCR determined that certain investigations were not prompt and the System failed to assess and address hostile environment. The System implemented revised grievance procedures during OCR's investigation, but OCR has identified deficiencies in them, primarily due to several inconsistent or unclear provisions. OCR also identified violations with the System's notices of non-discrimination.

During the compliance review, OCR received documents from the System and also reviewed information posted on the System and university or college websites.³ OCR interviewed the System's Title IX liaison. In addition, at the university level, OCR interviewed various personnel, including personnel at Kuskokwim, Ketchikan, and Sitka campuses, past and present Title IX coordinators, Title IX investigators, deans and associate deans of students, directors of student conduct, directors and employees of Residence Life, chiefs of university police departments, coordinators for Alaska Native and Rural Outreach Programs, coordinators for student and Greek Life, and former judicial board members. OCR interviewed a total of 59 staff, with key personnel interviewed more than once. OCR reviewed the System's handling of individual complaints of sexual harassment made between academic years 2011-12, 2012-13, 2013-14 and 2014-15. OCR also conducted 17 on-site focus group sessions with various students, as well as listening sessions with distance learners.

On February 17, 2017, the System signed a resolution agreement to address violations and concerns identified as part of OCR's compliance review.

This letter summarizes OCR's findings.

Designation and Notice of a Title IX Coordinator

Each recipient must designate at least one employee as a Title IX coordinator to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX. 34 C.F.R. § 106.8(a). The regulation also requires each recipient to notify all of its students and employees of the name, office address, and telephone number of the employee or employees so designated. A Title IX coordinator must be knowledgeable about what constitutes sexual harassment, including sexual violence, and how the recipient's grievance procedures operate.

Data from the System reflect that in 2011, UAA and UAS had Title IX coordinators, and UAF appointed a Title IX coordinator in 2012. UAA appointed a new Title IX coordinator in June 2015, and UAS appointed a new coordinator in January 2016. UAF's Director of Diversity & Equal Opportunity appointed the Title IX coordinator in 2012, but the Director then took over the role in January 2014. In July 2016, UAF appointed an interim coordinator. As of September 2016, the coordinators at UAA and UAS had received training; the individual serving as interim coordinator at UAF had served as a Title IX investigator since October 2014 and completed additional training as of October 2016.

In February 2016, the System designated a Title IX liaison whose responsibilities included gathering information pertaining to Title IX and relaying that information to the System president. In May 2016, when OCR interviewed the liaison, he reported that he had not received training in Title IX. His contact information was posted on the System's website.

³ Unless otherwise specified, OCR last reviewed relevant web pages as of September 26, 2016, and all references to web-accessible information are as of that date.

OCR notes that, on February 9, 2017, the System appointed a Chief Title IX Officer. This individual “has primary responsibility for coordinating the [System’s] efforts to comply with and carry out its responsibilities under Title IX.” The position description listed education requirements of a “master’s degree” in a relevant discipline, as well as a minimum of five years of experience in a higher education environment, including “demonstrated knowledge of/or professional experience related to Title IX.” The Chief Title IX Officer is to report directly to the System’s president and take over the duties of the former Title IX liaison.

Notice of Non-Discrimination

Each recipient must implement specific and continuing steps to notify applicants for admission and employment, students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in any educational program or activity which it operates, and that it is required by Title IX and its implementing regulation at 34 C.F.R. Part 106 not to discriminate in such a manner. 34 C.F.R. § 106.9(a). Such notification shall state at least that the requirement not to discriminate in any education program or activity extends to employment therein, and to admission thereto, unless Subpart C does not apply to the recipient, and that inquiries concerning the application of Title IX to such recipient may be referred to the employee designated pursuant to § 106.8, or to OCR’s Assistant Secretary. Section 106.9(b) requires each recipient to include the notice of non-discrimination in each announcement, bulletin, catalog, or application form which it makes available to the types of persons described in § 106.9(a), or which is otherwise used in connection with the recruitment of students or employees.

The System has a notice of nondiscrimination (P01.02.020). It is published on the System’s website, but OCR has no evidence it is published in print publications. This notice states that discrimination on the basis of sex is prohibited. It does not identify a Title IX coordinator or OCR as contact points for issues involving Title IX compliance. Moreover, it does not mention expressly that the requirement not to discriminate extends to applicants and employees.

Each of the three universities has its own notice of nondiscrimination. All three notices properly identify each university’s Title IX coordinator and OCR. Both the UAA and UAS notices fail to mention that the requirement not to discriminate extends to applicants, and the UAA notice fails to mention expressly that the requirement not to discriminate extends to employees. The UAF notice is published online, but it has not been included prominently in print publications.

Many of the satellite campuses also have their own separate notices of nondiscrimination. UAA’s Kodiak College had a notice that identified OCR and the UAA Title IX coordinator and extended its prohibition of discrimination to applicants for employment and admissions, but it was not published in print publications. UAA’s Prince William Sound College’s notice that was published in its print publications, as well as the notices for Matanuska-Susitna and Kenai Peninsula College, did not specify that the nondiscrimination provision extended to applicants for admission and employment. For four of UAF’s satellite campuses, OCR received

no evidence from the System and could not find evidence that the notice was published in print publications. Likewise, for UAF's Kuskokwim Campus, OCR did not receive any evidence from the System and was unable to locate a notice of nondiscrimination on the Kuskokwim campus website. The print publications for the Kuskokwim campus that OCR located did not mention that the prohibition on discrimination applies to employees and applicants for employment and admission. UAS's two satellite campuses use the same notice described above; OCR received no evidence that they published the notice of nondiscrimination in print publications.

OCR determined that the System is in violation of Title IX and its implementing regulation at 34 C.F.R. § 106.9. The notices used and distributed by the System and its various units did not comply with the requirements of Title IX.

Grievance Procedures

A recipient must adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. 34 C.F.R. § 106.8(b). The following elements are necessary to achieve compliance with Title IX: (a) notice to students and employees of the procedures, including where complaints may be filed, that is easily understood, easily located, and widely distributed; (b) application of the procedures to complaints alleging discrimination or harassment carried out by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) notice to parties of the outcome and any appeal; and, (f) an assurance that the recipient will take steps to prevent further harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

The regulation implementing Title IX does not require a recipient to provide separate grievance procedures for sexual harassment complaints; however, a recipient's grievance procedures for handling discrimination complaints must comply with the prompt and equitable requirements of the regulation implementing Title IX. Recipients should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling services, and their right to file a complaint with local law enforcement.

Title IX prohibits a recipient 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. 34 C.F.R. § 100.7(e) (incorporated by reference through 34 C.F.R. § 106.71). Prohibited retaliatory acts include intimidation, threats, coercion, or discrimination against any such individual. When a recipient knows or reasonably should know of possible retaliation by student or third parties, it must take immediate and appropriate steps to investigate or otherwise determine what happened.

A recipient must ensure that complainants know how to report any subsequent problems and should follow up with such individuals to determine whether any retaliation or new incidents of harassment have occurred.

Throughout the period of OCR's investigation, the System represented that it had chosen to use one set of grievance procedures across all of its campuses. Specifically, the System identified to OCR sections of the BOR Rules as comprising the written procedures for the processing of sexual harassment complaints, including those alleging sexual violence. During the course of OCR's review, the System revised aspects of the BOR Rules.

Current Rules

The BOR Rules include a part entitled Mission and General Provisions. According to Title IX coordinators, this part is to apply broadly and be read in conjunction with all other sections of the BOR Rules; the part includes a chapter on General Provisions, which in turn has a section entitled Nondiscrimination and Title IX Compliance (P01.02.020, revised as of September 18, 2015 (General Provisions)). According to the System, complaints against employees are governed by chapter 04.02 General Personnel Policies (last revised September 9, 2014), and chapter 04.08 Dispute and Grievance Resolution (last revised March 2, 2015) (together, Human Resources Procedures). Complaints against students are governed by 09.01 Student Affairs: General Provisions (last revised December 12, 2014) and 09.02 Student Rights and Responsibilities (last revised December 15, 2015) (together, Student Conduct Code or Code).

Notably, the System takes the position that the three sections of the BOR Rules are compliant with Title IX when read together, but that they are "cumbersome." Title IX coordinators at the universities also reported to OCR that the multiple, intersecting procedures caused confusion among staff.

- General Provisions

This section offers an assurance that the institution will take steps to prevent recurrence of harassment and to correct its effects on the complainant and others. There is a "commitment to respond appropriately to sexual harassment and sexual violence, in accordance with" Title IX, as well as other state and federal law. The System and its administrators are identified as responsible "for a campus educational and workplace climate free from discrimination and intimidation based on sex." The section affirms that the System will respond appropriately to sexual harassment and sexual violence.

- Human Resources Procedures

Chapter 04.02 has two parts: General Personnel Policies, which is a series of policy statements, and General Personnel Regulations, which set forth regulations to implement the policy statements. The policy part of 04.02 includes a "Discrimination" provision that states the System will not engage in discrimination on the basis of legally protected categories, among other

designations, and that the System will “protect employees and students from discrimination by agents or employees of the university, students, visitors and guests.” It also includes a “Sexual Harassment” provision, where the System states that it will not tolerate sexual or sexually harassing behavior and seeks to prevent such conduct, explains the responsibility of faculty and staff, and commits to providing an environment free from sexual harassment.

In the regulation section outlining the procedures for addressing “Sexual Harassment,” sexual harassment is referred to as “a form of employee or student misconduct,” and is defined as “unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature” where: submission is made a condition of employment or education, submission is used as a factor in making employment or academic decisions, or the conduct has the purpose or effect of interfering with work or creating a hostile environment and is known by the offender to be unwelcome, harmful or offensive,” or a “person of average sensibilities would clearly understand the behavior or conduct is unwelcome, harmful or offensive;” sexual violence is not mentioned expressly as a kind of sexual harassment. No specific steps are provided as to how the System will take action to prevent recurrence of sexual harassment that creates a hostile environment and remedy its effects.

The Sexual Harassment section outlines two resolution processes: informal and formal. Neither procedure addresses providing interim relief, as appropriate, pending the outcome of an investigation.

The informal process consists of a conversation between the complainant and respondent. The complainant “generally should try to inform the person directly that his or her behavior is unwelcome, harmful or offensive;” however, the procedures also allow for the use of a mediator as an option. The informal process does not include any written reports, sanctions, or witnesses. The procedures acknowledge that where “informal resolution efforts fail to achieve satisfactory results, or [...] is inappropriate in consideration of the circumstances or the egregious nature of the alleged behavior,” formal resolution is available to the complainant. The procedures do not indicate what a “satisfactory result” is, what circumstances indicate informal resolution is inappropriate, or what would constitute “egregious” behavior.

The formal resolution process “requires an investigation and written findings.” Specifically, investigators “will be designated to conduct a timely investigation to insure an objective review of the allegations.” They gather statements from the complainant, respondent, and witnesses, which then “become part of a written record for administrative review and action as necessary.” “A copy of the written findings will be distributed to the complainant, the respondent” and various other administrators.

Complaints under the formal process require that the complainant provide the names of both parties, their affiliation to the university, and a description of what occurred. The complaint should also include a history of any previous informal resolution attempts, how the incident impacted the complainant, and any requested remedies. In resolving a formal complaint, the investigator must consider the totality of the circumstances and applicable regulatory guidelines.

Where a preponderance of the evidence supports the complainant's position, the university may take disciplinary action, which will be assessed based on the facts and circumstances of the case.

No timeframes are specified for the informal resolution process. For the formal resolution process, the only timeframes specified concern the following: a party who disputes the written findings of the investigation report may request a review within five working days of the release of the findings; a request for a discretionary review must be made within five working days of that decision, which will be granted within 15 working days; if denied, the decision becomes the final decision.

Retaliation is addressed in two provisions. The first provision states that all persons "have the right to complain about any conduct they reasonably believe constitutes sexual harassment. No university official may take disciplinary or other adverse action against a person who genuinely but mistakenly believes himself or herself to be harassed, even if the practices complained of do not, in fact, constitute sexual harassment." The second provision states that "[t]hreats or other forms of intimidation or retaliation against complainants, respondents, witnesses or investigators will constitute a violation of this regulation." Neither provision defines who is a "university official" or explains if the prohibition of threats and other forms of intimidation applies to everyone or only extends to university officials.

The Human Resources Procedures include Chapter 04.08, entitled Dispute and Grievance Resolution. According to the System's Title IX Scorecards and metrics, this chapter applies to sexual harassment. In the regulatory definitions section of Chapter 04.08 (R04.08.60), it states at D. that "employee" includes student employees and at G.2.a that allegations or findings of sexual harassment "are governed by alternate processes and can not (sic) be processed under this chapter."

- Student Conduct Code

Chapters 09.01 and 09.02 govern the conduct of individual students and all university-affiliated student organizations; as with the Human Resources Procedures above, they contain policy statements and regulations. Students and student organizations are "responsible for ensuring that they and their guests comply with the [Code] while on property owned or controlled by the university or at activities authorized or sponsored by the university." In addition, the policy section states that no student acting in good faith will be subject to retaliation for initiating a request or complaint, or for participating in any proceeding, that is designed to foster compliance with the regents' policy, university regulation, or other administrative rules and procedures. The Code, under the heading of "Gender-based or Sexual Misconduct," defines sexual harassment "as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature where" someone must submit as a condition of employment or education, someone may suffer retaliation, or the conduct "has the purpose or necessary effect of unreasonably interfering with an individual's work or creating a hostile, intimidating, or offensive working, living, or learning environment" and the conduct is either "known by the offender" or "a person of average sensibilities would clearly understand" that the conduct is

“unwelcome, harmful, or offensive.” The Code identifies various forms of sexual violence as sexual misconduct.

According to the Code, a Student Conduct Procedure is a “review” undertaken to determine “whether there is substantial information to determine whether it is more likely than not that a student violated the Code,” and an Administrative Review is “the review process for matters involving imposition of either a minor or major sanction.” Each university is to have appointed a “senior student services professional experienced in student discipline proceedings” (Senior Professional) to supervise and implement the “student conduct review process,” including “serving as, or designating, a student conduct administrator to conduct administrative reviews.” The student conduct administrator is tasked with “collect[ing] information, initiat[ing] the student conduct process, articulat[ing] alleged violations, present[ing] information indicating whether alleged violations occurred, conduct[ing] administrative reviews, and impos[ing] or recommend[ing], as applicable, sanctions.”

Under the heading “Initiation of a Student Conduct Review,” the Code explains that complaints must be in writing and submitted to the student conduct administrator. Anonymous complaints are allowed, but without identifying information for the complainant, “the university’s ability to investigate and respond to a complaint” is limited. The Code does not identify any employee responsible for handling confidential reporting.⁴ The student conduct administrator will send the student written notification that includes the allegations and whether a major or minor sanction is likely to be imposed should the allegations be substantiated by a preponderance of the evidence.

According to a provision entitled “Rights Afforded Students in Student Conduct Proceedings,” students have the right to due process, have the right not to respond to allegations, may be accompanied by an advocate of their choice during student conduct proceedings, may have access to records of their proceedings, and may appeal. A provision entitled “Rights Afforded Injured Parties During the Student Conduct Process,” refers to several measures, including an “equal opportunity to participate in the student conduct process,” with the enumerated right to “notice of the opportunity to schedule an administrative review separate from the administrative review held for the respondent,” participate in the “student conduct process, including the right to participate in the administrative review and other meetings, present relevant witnesses and other evidence,” and “comment upon the findings, conclusion, and recommendations of cases that could result in the imposition of major sanctions.” In a provision entitled “General Rules for Administrative Reviews,” it states that “student disciplinary determinations of responsibility are based on whether substantial evidence establishes that it is more likely than not that the respondent violated the Code.” A provision entitled “Procedures for Administrative Reviews,” states that the “student(s), if present, will be given the opportunity to present relevant

⁴ While not in the Code, the System has online and printed resources containing this information. The System’s main webpage has a link to a “Stop the Silence” webpage, which links to each university’s Title IX resources. The System’s main page also has links for confidential resources and a confidential hotline phone number. The System developed a “Title IX Gender-based and Sex Discrimination” brochure, which lists confidential resources and telephone numbers. Also, according to staff interviewed, each Title IX office provides a list of campus-specific confidential and other resources to anyone who inquires.

information, names of witnesses, relevant explanations, and/or mitigating factors for the alleged violation.”⁵

Timeframes are provided for the following steps: (1) administrative conduct reviews will ordinarily be scheduled within three and 15 days after written notice of the allegations has been sent to the student, at times determined by the student conduct administrator; (2) an administrative review will result in the “preparation of written findings and conclusions within 10 days of the conclusion” of an administrative review; (3) if a major sanction is recommended, within 10 days of the conclusion of an administrative review, notifications will be sent to the respondent and complainant, and the record forwarded to the Senior Professional; (4) a complainant who wants to submit a comment regarding the conclusions of the administrative review has seven days after the notification is sent out to do so; (5) after receiving the recommendation regarding the administrative review, the Senior Professional has 14 days, barring extenuating circumstances, to decide whether to “uphold a decision and/or recommended sanction” or take other outlined actions; (6) appeals about imposition of or dismissal of allegations involving minor sanctions go to the Senior Professional, who has seven days from receipt to “uphold a decision and/or recommended sanction” or take other outlined actions; and (7) appeals from imposition of major sanctions, as well as appeal from a decision to dismiss an allegation or impose only a minor sanction, go to the chancellor, who will, barring extenuating circumstances, render a decision within seven days.

The Code provides that both parties are to receive simultaneous written notice of findings and conclusions. Alleged victims will be provided “support and assistance options, other remedies, and the university’s responses as required by law.” Appeals may be made on several bases, including that the decision “is not supported by a preponderance of the evidence.”

The Code does not specifically address Title IX and does not assert that the institution will take steps to prevent recurrence of harassment and to correct its effect on the complainant and others, if appropriate.

Previous Version of the Code

The cases that OCR reviewed arose under a previous version of the Student Conduct Code (Past Code), which already was in effect at the initiation of OCR’s review and remained in effect until July 2015. Under the Past Code, a complaint was resolved by determining “whether there [wa]s substantial information to determine whether it [wa]s more likely than not that a student violated the [Past] Code.” There were two options for review of complaints, including complaints of sexual harassment and sexual violence, a judicial board hearing or an administrative review, but both required an initial judicial review to determine what occurred and whether a major sanction was implicated. This initial process called for a judicial officer or his designee to review allegations and conduct a preliminary investigation. Once the judicial officer completed this

⁵ Throughout the Code, the term “student” is used to define rights without a clear reference as to whether the student is the complainant, the respondent, or both. Although the Code does refer to “injured parties” separately from “student(s),” the latter term is never preceded by any qualifying language, such as “accused” or “charged.”

review, he or she informed the respondent through written notification, identifying the relevant allegations as well as whether a minor or major sanction was likely to be imposed. If the judicial officer determined that a minor sanction was likely to be imposed, then an administrative review was initiated. If the judicial officer determined that a major sanction was likely, then the respondent was allowed to choose between a judicial board hearing or an administrative review.

The administrative review process and the judicial board hearing set forth different rights and opportunities for both parties.

If the respondent chose a judicial board hearing, only the respondent received written notice of “the names of witnesses, copies of any witnesses’ written statements, or other documents on which the university will rely.” The respondent had to submit “the names of witnesses, copies of any witnesses’ written statements, or other documents on which the student will rely.” There was no corresponding right for the complaining student. The respondent had to abide by a no contact order, requiring that he or she avoid all “contact with judicial board members or alleged victims involved in the matter, and, where appropriate, limited contact with other individuals involved with the hearing.” The judicial board comprised students, faculty, and staff who might come from a campus or site other than the one where the respondent was located. Only the responding student had the opportunity to object to the judicial board members if he or she believed that they were biased. Only the respondent could choose whether to have an open or closed hearing. A closed hearing, the default option, meant that the testimony and hearing was closed to everyone, including the complainant, except the judicial board members and the respondent. Regardless of whether the hearing was open or closed, only the respondent could question all witnesses, present a defense including witnesses, exhibits and information or mitigating factors supporting his or her position. The judicial board deliberated and then informed only the respondent of its decision.

If the respondent chose an administrative review, it was a closed proceeding involving only the review officer and the respondent, though the respondent could invite an advisor to be present. The respondent could “present information, explanations, and/or mitigating factors for the alleged violation.” It was unclear whether the respondent could present witnesses. The Past Code did not expressly mention an opportunity for the complainant to participate or be present for an administrative review. There was also no provision for notice regarding the outcome of the proceeding.

The Past Code provided an appeals process for an accused student who wished to challenge the imposition of minor sanctions. Under the provision addressing appeals of minor sanctions, one of the bases for appeal was that “the decision is not supported by substantial information.” For matters involving the recommendation of imposing a major sanction, an accused student was given the opportunity to submit written comments within seven days of the date of the “findings, conclusions, and recommendations of the administrative review or judicial board hearing.” A senior student services officer would then conduct a review of the record with 14 class days. If the senior student services officer recommended the imposition of a major sanctions, the chancellor of the university would then conduct a review of the record and render

a decision within seven class days. According to the Past Code, the chancellor could “dismiss the charges, impose a major or minor sanction, or take such action as the chancellor deems appropriate.”

Other Policy Statements

During the investigation, OCR reviewed other policy statements regarding sexual misconduct that the System did not identify to OCR but that OCR found published by the three universities and one satellite campus. The statements are summarized below.

In its 2015-16 Academic Catalog, UAA published a Gender-Based and Sexual Misconduct Policy, which stated that gender-based and sexual misconduct are forms of discrimination because “women are more often victims than men.” It stated that gender- and sex-based discrimination include sexual violence, sexual harassment, domestic violence, dating violence, and stalking.

In its 2013-14 Academic Catalog, UAA stated that sexual and other kinds of harassment are against the BOR policy and the Student Code of Conduct. It stated that UAA prohibits gender discrimination but it did not explicitly state that sexual assault and sexual violence are forms of sexual harassment.

UAS’s 2014-15 Academic Catalog stated that sexual harassment is a form of employee or student misconduct that is prohibited by Human Resources Procedure 04.02.020.

Kenai Peninsula College has a Gender-Based and Sexual Misconduct Policy, which states that sexual harassment involves unwelcome sexual advances or requests for sexual favors by a member of the campus community. Sexual harassment also includes other verbal or physical conduct related to sex when it has the purpose of or effect of substantially interfering with an individual’s performance at work or study by creating an intimidating, hostile, or offensive environment in which to work, live, or learn. The policy states that a sexual assault may be considered a violation of the UA System’s policy against sexual harassment (BOR 4.08.02).

OCR conducted supplemental interviews in May, June, and July 2016 of each university’s personnel responsible for handling sexual harassment complaints. UAA and UAS both stated that their intent is that complaints of sexual harassment should be processed under the Human Resources Procedures and the Student Conduct Code. UAA acknowledged, however, that it still had a former Sexual Offenses Policy on its website that provided procedures for addressing sexual harassment complaints that were different from the Human Resources Procedures and both the Code and Past Code. UAF, on the other hand, admitted Residence Life still used its own procedures for handling sexual harassment complaints it deemed to be “low-level.”⁶

⁶ Residence Life has a 2016-2017 Department of Residence Life Housing Handbook that is provided to residents on the Fairbanks campus. This handbook contains written procedures that apply to incidents of misconduct, including “gender-based or sexual misconduct.” If the incident of misconduct could potentially lead to the imposition of major sanctions, such as suspension or expulsion, these procedures would not apply and the matter

ANALYSIS

Current Grievance Procedures

OCR finds that the System's notice about its grievance procedures, including where complaints may be filed, is not easily understood. For instance, the System's Title IX Scorecards state that a Human Resources Procedures chapter on grievances (04.08) is relevant to sexual harassment, yet that chapter itself states grievances regarding allegations of or findings that an employee engaged in sexual harassment are not processed under that section. The chapter instead refers readers to "alternate processes." If the alleged harasser is a student employee, it is unclear whether a complaint is to be filed and processed under the Human Resources Procedures (which refers to sexual harassment as a form of employee or student misconduct, and then defines students as "employees" only in the grievance section that does not apply to sexual harassment), under the Code, or under both the Human Resources Procedures and the Code.

The lack of easily understood notice generated by the three relevant BOR Rules is acknowledged by the System both in university Title IX Scorecards and in interviews with Title IX coordinators and other employees tasked with addressing sexual harassment and sexual violence. Notice of what grievance procedures apply also is unclear where the System has not fully and successfully implemented its central policies and procedures, as evidenced by campuses that have retained old information or utilized a nonconforming Residential Life process.

OCR finds the System's grievance procedures do not consistently include information regarding coverage of discrimination or harassment carried out by third parties. The General Provisions do not address this required element. Although the Human Resources Procedures have a general statement that the System will protect against discrimination by third parties, the specific provision addressing sexual harassment states that "[s]exual harassment is a form of employee or student misconduct" and contains no statements elsewhere applicable to third party harassment. Finally, the Code applies only to students and student organizations, making them responsible for the conduct of their guests. Thus, as written, neither the Human Resources Procedures nor the Code applies to sexual harassment, including sexual violence, carried out by third parties.

In cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. The Human Resources Procedures, however, refer to an informal process being inappropriate "in consideration of the circumstances or the egregious nature of the alleged behavior," which does not clearly prohibit use of the process for all allegations of sexual assault.

would "be referred to the Dean of Students for action." For all other incidents of potential misconduct, the procedures provide for a Conduct Meeting between the student and a Residence Life staff member. This meeting is conducted in an informal manner, may consist of multiple sessions, and is closed to the public. The Residence Life staff member will decide whether or not to hear from potential witnesses. Although there is not explicit language stating that the Residence Life staff member will hear from the alleged victim, the proceedings are "conducted in a manner that assures fundamental fairness." Only "[t]he student will receive a written summary of the meeting and any decisions made." The procedures specify that "the student" will receive a decision "normally within 10 business days" of the end of the proceedings. The procedures also provide for an appeals process.

Further, with respect to investigations under the Code, one provision addressing only the injured party specifies the right to present relevant witnesses during the Student Conduct Process, which is the investigative stage. On the other hand, there is a general reference to the right to present witnesses under the Procedures for Administrative Reviews, which addresses the rights of students during the adjudicative stage. The System's enumeration of the right to present witnesses should be clearly stated so as to give notice of the right to present witnesses for all students in the grievance process.

The System's grievance procedures do not provide designated and reasonably prompt timeframes for the major stages of the complaint process. The General Provisions contain no timeframes. Similarly, neither the informal nor formal process within the Human Resources Procedures addresses timeframes, except with respect to appeals under the formal process. Finally, the Code outlines timeframes for some steps in the administrative process, but there are no identified timeframes for the investigative stage. OCR notes, however, that as of February 16, 2017, the System's website included a statement that it expects its Title IX investigation process "will typically be complete in 60-business days."

The General Provisions and the informal process under the Human Resources Procedures do not state an evidentiary standard, and the formal process under the Human Resources Procedures uses preponderance of the evidence. The Student Conduct Code refers to both preponderance of the evidence and "substantial information to determine whether it is more likely than not that a student violated the Code."

OCR finds the System's grievance procedures provide notice of the outcomes to both parties. Notice is provided to both parties in the formal process under the Human Resources Procedures; the informal process does not mention whether notice is provided, but because this process does not result in any findings or sanctions, there is no outcome about which to provide notification. The Student Conduct Code does provide for notice to both the complaining and responding parties.

OCR finds the System's grievance procedures offer assurances about preventing recurrence of harassment and correcting its effects in compliance with Title IX. Both the General Provisions and the Human Resources Procedures contain statements that the System will not tolerate sexual harassment. Moreover, the assurance in the General Provisions commits that the System will respond to sexual harassment and sexual violence appropriately.

OCR has a concern about the System's written policies regarding retaliation. The System addresses retaliation in its grievance procedures in two instances. Title IX prohibits retaliation by the recipient and others, such as students, against anyone who files a complaint or participates in a complaint resolution process. The policy section of the Code specifically prohibits only retaliation against students, not employees or third parties, for initiating or participating in proceedings regarding university policy, regulations, or rules, and the Human Resources Procedures prohibit retaliation by university officials for complaints about sexual harassment, but they are silent regarding retaliation by individuals other than university officials.

Past Grievance Procedures

The System's Past Code as written violated the Title IX requirement to provide equitable grievance procedures. The Past Code did not provide the complainant an opportunity to participate in the initial review or in deciding how the complaint would be adjudicated. Moreover, while the respondent received written notice of the results of the initial review and his or her options, there was no corresponding notice provision for the complainant. On its face, the Past Code provided only to the respondent the right to various notices, present witnesses, object to judicial board members, select an open or closed proceeding, and receive notice of outcome.

Handling of Criminal Complaints/Law Enforcement's Role

Under Title IX, a recipient must provide for the prompt and equitable resolution of complaints pursuant to 34 C.F.R. § 106.8(b). Criminal investigations by law enforcement do not relieve a recipient of its Title IX duty to respond promptly and effectively to complaints/reports. Entering into a Memorandum of Agreement (MOA) with law enforcement agencies can facilitate a recipient's meeting its obligations under Title IX.

The System provided to OCR one executed MOA with the Alaska State Troopers (State Troopers), executed in January 2016. The MOA is specifically tailored toward sexual assault investigations and requires the State Troopers to share information relating to a sexual assault report or investigation "as soon as reasonably possible" with the System, provided the victim gives written consent. UAA, UAF, and UAS are all covered under the MOA. UAF has MOAs with four additional law enforcement agencies that largely track the MOA that the System has with the State Troopers, are specific to sexual assault, and became effective by early February 2016.⁷ Likewise, the Juneau Police Department signed an MOA with UAS on November 9, 2016, that tracks the MOA the System has with the State Troopers. Finally, as of November 2016, UAA reported that it had reached an MOA with the Anchorage Police Department.

Any MOA must allow the System to meet its Title IX obligation to resolve complaints promptly and effectively. It is unclear whether the MOA's requirement that law enforcement share information as soon as possible refers to a temporary delay in order for law enforcement to complete its fact-finding or to the completion of law enforcement's report or investigation. OCR notes that, as of February 16, 2017, the System's webpage entitled "Title IX Compliance" stated that investigations might be paused if there is a parallel criminal investigation, but that the System "will maintain regular contact with law enforcement to determine when it may begin or resume its investigation" and will not delay its investigation until the criminal investigation is concluded.

⁷ The four MOAs are with (i) Fairbanks Police Department, (ii) Fairbanks International Airport Police and Fire Department, (iii) North Pole Police Department, and (iv) Kotzebue Police Department.

Training

As previously discussed, the regulation implementing Title IX requires both the designation of a Title IX coordinator and grievance procedures that provide for the prompt and equitable resolution of complaints. One means to ensure these measures are effective is for recipients to provide training to responsible employees, including the Title IX coordinator, other staff with Title IX responsibilities, and students.

The System's administrative office provides training to employees at all three universities. As part of the System's internal self-assessment of its compliance with Title IX, the System's administrative office developed criteria and outcome metrics designed to ensure Title IX staff, faculty, and other staff received adequate training. Training occurs annually and faculty and staff must demonstrate knowledge and competence in specific areas, which include among others: grievance procedures, confidential resources, responsible employees, definition of consent, role of bystanders, impact of trauma on victims, role of alcohol/drugs and amnesty policy, and protection against retaliation. Orientation programs for new students, faculty and staff must incorporate sexual misconduct education. Additionally, at various times during the review period, the System's administrative office has provided Title IX training conducted by outside consultants to the Dean of Students staff, Title IX coordinators, investigative staff, and other administrators.

According to UAA's November 2016 Title IX Scorecard⁸, 67 percent of faculty and staff have taken online or in-person Title IX training. Additionally, UAA has notified all employees other than those designated as confidential sources that they are a "responsible employee" and the meaning of that designation in the context of sexual harassment. At times, Title IX investigative staff have provided training to on campus groups, including staff in residence life, athletics, health and counseling, enrollment, student affairs, student life and leadership, conference services, and general support services. As of May 2016, the Title IX Coordinator reported that since her appointment in June 2015, she has been developing a Title IX Campus Climate Committee with faculty and students. With respect to students, the November 2016 Scorecard indicates that 21 percent of students have been trained using in-person training at new student orientation and resident hall, club, and organization meetings. UAA was also developing training for specific student groups, such as commuter students, non-traditional students, and international students. According to staff and student interviews, although some training occurred during new student orientation in the past, it was limited in duration (sometimes as little as 30 minutes) and usually not mandatory.

According to UAF's October 2016 Title IX Scorecard, 98 percent of UAF faculty and staff have taken online Title IX training. Like UAA, UAF has notified all non-confidential employees that they are a "responsible employee" and the meaning of that designation in the context of sexual harassment. UAF's Title IX office also provided training that occurred monthly to various

⁸ In February 2016, the System published a set of "Title IX Compliance Scorecard Metrics" that identified compliance requirements. The metrics were applied by each university to identify compliance issues. These were put into a scorecard format. The scorecards have been periodically updated and are publicly available.

groups such as supervisory staff, graduate students, the chancellor and his cabinet, and residence life and advising staff. The Scorecard indicates that the chancellor has made sexual harassment and sexual violence training a mandatory requirement for all students starting in the 2016-17 academic year, and that as of October 5, 2016, 2,160 students had registered for training. Since 2011, UAF's Title IX office has also made presentations on sexual harassment and sexual violence during new student orientation.

According to UAS's November 2016 Title IX Scorecard, 70 percent of employees were trained and 100 percent of certain groups of staff were trained, including staff with Title IX responsibilities, staff academic advisors, and Residence Life. In-person training was offered at new student orientation and UAS was incentivizing student participation in online training; no data was reported about what percent or number of students had been trained.

OCR has a concern with UAA's, UAF's, and UAS's training efforts prior to the 2016-17 academic year.

Record-Keeping Practices

The System is required to comply with the records provisions of the regulation implementing Title IX.⁹ A recipient is required to make available to OCR information that may be pertinent to reach a compliance determination.

OCR has a concern about the System's records. Staff at a rural UAF satellite campus shared that they were aware of and had received reports of sexual misconduct, but OCR did not receive any documentation of these incidents. Only 19 out of a total of 163 UAA cases came from UAA satellite campuses; UAF and UAS both failed to identify any cases from their satellite campuses. In fact, for the entire review period, UAS only identified 14 cases to OCR. Of the 296 cases reviewed by OCR, the majority had incomplete and poorly maintained records, and many of the early files from the 2011-12 academic year had no investigation records at all; instead, the System prepared incident summary sheets for OCR in 2014.

The absence of complete records means that relevant information was not available to OCR during its investigation to assess whether the System was carrying out its legal obligations under the regulation implementing Title IX.

OCR notes that the System has chosen to move its three universities towards centralized tracking of Title IX complaints and investigations; it is in the process of implementing uniform tracking software. As of January 2016, UAF became the pilot university for the new software program to track Title IX investigations. UAA and UAS were expected to implement the software by Spring 2017.

⁹ The regulation implementing Title VI, at 34 C.F.R. § 100.6(b) and (c), requires that a recipient of Federal financial assistance make available to OCR information that may be pertinent to reach a compliance determination. This requirement is incorporated by reference in the regulation implementing Title IX at 34 C.F.R. § 106.71.

Response to Complaints of Sexual Harassment/Violence

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 creates a hostile environment if the conduct is sufficiently severe, pervasive, or persistent that it denies or limits one's ability to participate in or benefit from a recipient's program.

In determining whether the sexual harassment of a student was sufficiently severe, pervasive, or persistent such that it denied or limited a student's ability to participate in or benefit from a recipient's program, OCR examines all of the relevant circumstances from both 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 and relationship of the individuals involved (e.g., professor-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. For peer-to-peer harassment, if a recipient knows or reasonably should have known about the harassment, Title IX requires a recipient to take immediate and appropriate action to investigate or otherwise determine what occurred. On the other hand, if employees engage in sexual harassment in the context of carrying out their day-to-day job responsibilities, the recipient is responsible for discrimination whether or not it knew or should have known about it, because the discrimination occurred as part of the school's undertaking to provide nondiscriminatory aid, benefits, and services to students.

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.

Under Title IX, once a university is on notice of off-campus sexual harassment, it must assess whether there are any 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 and its effects, as appropriate.

As part of its investigation, OCR examined how the System handled sexual harassment complaints, including complaints of assault and violence, filed between academic years 2011-12, 2012-13, 2013-14, and 2014-15. OCR reviewed investigation files and incident summary sheets for 296 individual cases.¹⁰

As already stated, the cases that OCR reviewed arose under the Past Code. Due to the poor state of the records, OCR often could not determine whether a preliminary investigation occurred; if so, whether the case moved on to a judicial board hearing or an administrative review; and during the hearing or review, what rights were actually accorded the parties. As noted above, the Past Code provided for grievance procedures that were not equitable and violated Title IX. Investigations, hearings, and administrative reviews conducted under the Past Code failed to provide equitable rights to complainants and therefore violated Title IX.

In addition to the inequitable procedures above created under the Past Code, set forth below are additional factual findings and conclusions about the System's grievance procedures that affected individual cases.¹¹

Failure to Respond Promptly and Equitably to Complaints of Sexual Harassment and Sexual Violence

OCR found that the System failed to provide prompt and equitable investigations in response to reports of sexual harassment, including sexual violence. This failure to properly respond included not conducting or completing investigations, not completing prompt investigations and failing to provide notice of the outcome.

- Failure to Conduct or Complete Investigations

OCR found a number of instances where the System failed to conduct or initiated but failed to complete investigations of sexual harassment or sexual violence as required by 34 C.F.R. §§ 106.8(b) and 106.31. Under Title IX, the recipient has a duty to ensure that its sex discrimination grievance procedures apply to all complaints of sex discrimination, including sexual harassment, against employees, other students, and third parties, and to conduct investigations. The fact that a complaint involves a third party or occurred off campus does not relieve the System of this duty. Even where a complainant does not want to proceed, a recipient must assess if it can honor the request and still provide a non-discriminatory environment for the complainant and all other students and employees. Below are examples of cases where the System either failed to investigate or failed to complete an investigation.

¹⁰ Separate from this letter, OCR has provided the recipient with identifying information for 23 cases, some of which are discussed in this letter.

¹¹ These findings are based on the documentation provided by the System to OCR during the compliance review and during negotiations, presumably encompassing all of the System's available and relevant documentation.

Case Number 10

In 2013 a student was found in a university residential building intoxicated, unconscious, and wrapped in a blanket with her clothing partially undone. She said that she had met a soldier, but could not recall what had happened because she had blacked out. The soldier was ultimately court-martialed for sexually assaulting the student and university staff testified at the court-martial for which the soldier received three years of confinement and a dishonorable discharge. The case records indicate that Residence Life handled the situation and the university failed to conduct a Title IX investigation or offer the student any interim measures, but it did investigate and discipline the student for underage drinking on the night of the sexual assault.

Case Number 17

In 2015 a student at a satellite campus disclosed to her advisor that she was sexually assaulted. The respondent was not a student. The records the university provided to OCR acknowledge that it is “unknown why no further action was taken.”

Case Number 11

In 2013, university faculty became aware that one of its students placed in various middle and high schools as a student teacher was accused of sexually harassing middle school students. Documents reflect that university faculty discussed what to do internally, but no one reported the incident to the university’s Title IX office, took steps to initiate a complaint, or sought any guidance from the university’s administration. More than six months later, when the student’s misconduct was discovered by the university’s Title IX office through a news article published about his arrest for sexually harassing two high school students, the university’s Title IX coordinator decided not to complete an investigation because there was allegedly no victim at the university.¹²

Additionally, while the System’s grievance procedures were applicable to complaints of harassment made against employees, the System suspended investigations after accused employees resigned their positions or failed to discipline employees who remained on campus. Cases 3, 4, and 22 each illustrate instances where individuals in positions of authority were reported to have sexually harassed or sexually assaulted students or employees; in each of these cases, the System failed to complete investigations or determine the effects of the misconduct on the affected students or employees.

¹² In 2015, the university re-opened this case to investigate. In March 2016, a decision was issued expelling respondent and revoking his degree.

Case Numbers 3 and 4

In 2012 a student reported that a [REDACTED] allegedly was involved in an intimate relationship with a student. System officials investigated the report and conducted witness interviews. However, according to documents provided to OCR, the respondent opted to resign “in lieu of participating in the investigative interview.” After the [REDACTED] resignation, the records indicate that the university suspended its investigation and did not issue a final investigative report or provide any relief, including interim relief, to any students who may have been affected. Three months after the [REDACTED] resigned, the university received a report that the replacement [REDACTED] had engaged in sexual assault and sexual harassment during a recruiting trip. The new [REDACTED] was interviewed twice regarding the allegations, and he opted to resign after the second interview. After the replacement [REDACTED] submitted his letter of resignation, the records indicate that the university failed to complete its Title IX investigation, and failed to provide any relief, including interim relief, for any students who may have been affected.

Case Number 22

In 2013, a student reported that a professor was sexually harassing female students. The complainant stated that she knew at least four students with whom the professor had had a sexual relationship. When interviewed, a female professor said that several students had complained about this professor’s conduct towards female students. The documents provided to OCR contained a draft Title IX investigation report, concluding that the respondent behaved inappropriately with students and recommending a letter of expectations of behavior from the Dean. The investigation was not completed, and neither a final report with findings nor a letter from the Dean was issued.

Finally, the System failed to complete investigations of complaints involving students who were placed in off-site locations for internships or clinical programs. The regulation implementing Title IX, at 34 C.F.R. § 106.31(d)(2), expressly identifies the recipient’s responsibilities for ensuring Title IX compliance in educational programs or activities to which a recipient requires or permits participation by any student or employee. Moreover, where the entity providing the program or activity, such as an internship or clinical practicum, does not assure the recipient that it will comply with Title IX’s obligations, the recipient cannot obligate or allow participation in the entity’s program or activities. The System provided no information to indicate compliance with this regulatory requirement. Case number 19 illustrates a failure to complete investigations and ensure that mandatory, off-site practicums comply with Title IX.

Case Number 19

In 2015, a nursing student complained about sexual harassment by a nurse employed by the hospital during a university mandatory practicum course. The student reported that the employee was making sexually explicit comments and propositions and had referred to engaging in sexual activities with other nursing students. The student informed the university that the employee's actions made her extremely uncomfortable during the practicum and that as a result of the harassment, she was experiencing heightened anxiety and depression. The university initiated a Title IX investigation but failed to complete it once the hospital fired the employee.

Based on the review of individual case files, OCR determined that the System is in violation of Title IX and implementing regulations 34 C.F.R. §§ 106.8(b) and 106.31 for the System's failure to conduct or complete Title IX investigations (case numbers 3, 4, 10, 11, 15, 17, 19, and 22).

- Failure to Provide Prompt Investigations and Resolutions

OCR found that the System failed to provide prompt resolution of Title IX complaints, as required by 34 C.F.R. § 106.8(b). Title IX requires that a recipient adopt grievance procedures providing for the prompt resolution of student and employee complaints of sex discrimination, including sexual harassment. Whether a complaint is completed timely will vary depending on the complexity of the investigation and the severity and extent of the sexual harassment. Although a university may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence, the university must promptly resume and complete its fact-finding for the Title IX investigation.

OCR reviewed files for four academic years and found that the universities had the highest case processing averages during the 2013-14 academic year; that year UAF's case processing time averaged 122 days and the longest time was 567 days; UAA had an average of 97 days and the longest case took 403 days, and UAS provided only one investigative record to OCR for a case that took 125 days. Investigations required less time in 2014-2015, with averages ranging from a high of 155 at UAF to 58 at UAA. OCR identified several examples of cases with no evident circumstances to explain the prolonged resolution times.

Case Number 9

In 2013, a female student reported being assaulted and restrained by a male student in his university dorm room. The files provided to OCR show that the perpetrator was barred from residences other than his own, but he was otherwise allowed to remain on campus. A year later, in 2014, the university's Title IX office learned that the same male student sexually assaulted a female student. This female student had attended a dorm room party and passed out. She awoke to the respondent trying to remove her clothing. She told him

“no” and tried to stop him. The second female student also informed the university that the respondent threatened her. The Title IX office completed the investigation and notified the second female student and respondent after 151 days that the respondent was found guilty. It then took a total of 203 days between the filing of the complaint about the sexual assault to the imposition of the sanction, which was expulsion.

Case Number 16

In 2014, a female student reported that she was sexually assaulted by a male student-employee. The female student had fallen asleep intoxicated and she awoke to another student putting his hands down her pants despite her protests. She later awoke to the respondent lying on top of her. The student sent a message to the manager of the school organization employing the respondent, which led to a report to the Dean of Students. The Dean of Students and Title IX offices conducted a joint investigation; in July, the Title IX office sent its investigative report to Dean of Students. Almost nine months later, respondent’s sanction was finalized after an administrative review and appeals. The investigation took 78 days and the entire process, including the finalizing of sanctions, took 351 days.

Additionally, OCR found examples where the university unduly delayed or suspended Title IX investigations due to local law enforcement activities, as discussed below.

Case Number 5

A university received reports that a male student sexually assaulted two different female students. In November 2012, the first sexual assault was reported and the Dean of Students office took no action, instead deferring to the university police and the local prosecutor to conduct an investigation and take appropriate action. In January 2013, the Dean of Students’ office interviewed the complainant but did not conduct an investigation. In March 2013, after another complainant alleged that she had been sexually assaulted in her dorm by the respondent, the university notified the police of the second assault. At that point, the university initiated an investigation. The respondent was arrested in April 2013 and at that time, the System suspended its Title IX investigation. The student was ultimately criminally convicted for both sexual assaults.¹³

Case Number 7

In 2013, at a satellite campus, the Title IX office learned of the off-campus sexual assault of a student by another student. The complainant declined to file a report even though she already had a restraining order against the respondent as a result of the off-campus sexual assault. Although the university banned the respondent from campus pending resolution of his criminal trial, no Title IX investigation

¹³ This case was re-opened in 2015 and an investigation was completed. In June 2016, respondent was expelled. Almost four years passed between the date the complaint was received and the date sanctions were issued.

was conducted until two years later, after a criminal conviction was obtained. At that time, the university found the respondent responsible for violating the Code and expelled him.

Case Number 20

In 2015, university police reported the sexual assault of a female student by a member of a men's athletic team to the university's Title IX office and Residence Life. Ten days later, university police reported to the Title IX office that two other students allegedly had been raped by the same respondent. Soon after the complainants reported their sexual assaults, members of the athletic team began calling the complainants and their friends "whores." Investigation of all three cases was put into abeyance at the request of the district attorney's office. OCR received no indication that the university resumed the investigation.

OCR determined that the System failed to promptly resolve complaints of sexual harassment and sexual violence (case numbers 9, 16, and 18) including in cases where they unreasonably delayed investigations due to law enforcement investigations or proceedings (case numbers 5, 7, and 20).

- Failure to Provide Adequate Investigations and Notice of Outcome

Prompt and equitable grievance procedures include providing an investigation that is adequate, reliable, and impartial, as well as notice to parties of the outcome of the investigation and any appeal. OCR identified a number of concerns related to this requirement, as illustrated in the cases below.

Case Number 18

A student reported to a university administrator in 2015 that she had been raped by three students at an off-campus party. Three respondents allegedly raped the student while she was intoxicated. The university conducted a Title IX investigation and issued a report that recommended disciplinary hearings for two of the three respondents, finding that one of the respondents and the complainant were too intoxicated to have consented. Consistent with the flawed structure of the Past Code, only the two respondents were offered a choice of administrative review or judicial board hearing.

Case Number 21

In 2012, a student was allegedly sexually assaulted in student housing. Residence Life staff indicated in the case file that they recalled speaking with a hospital employee, who had advised them that a determination had been made that the complainant had not been raped. In response to this information, Residence Life

determined the complainant was not sexually assaulted without speaking to witnesses and concluded its investigation.

Case Number 8

In 2013, a student at a satellite campus reported that a student resident advisor sexually assaulted her in her dorm room. The Title IX investigation resulted in a finding of no violation; however, there is no evidence in the file that the System notified either party of the outcome of the investigation.

OCR determined that the System failed to conduct adequate and reliable investigations (case numbers 18, 21, and 22), and failed to provide notice of investigation outcomes (case numbers 2, 5, and 8).¹⁴

Failure to Prevent Retaliation

Title IX makes it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured under Title IX. OCR found incidents where the System did not investigate claims of retaliation brought by complainants after they filed complaints of sexual violence. Case number 2 illustrates OCR's concern.

Case Number 2

In 2011, a student was raped in a dorm room by multiple students while others watched and videotaped the assault. The video was publicly posted on social media and discussed by other students in the residence hall. In the months after the assault, the complainant reported to the Director of Residence Life that she was being harassed by the respondents' friends on social media and that she felt afraid to walk by herself on campus. There is no evidence that the university took any steps to remove the video once it was posted or address it with students who may have viewed it, or to address the alleged retaliation.¹⁵

Additionally, OCR has concern regarding the System's failure to respond to allegations of retaliation in case number 20, discussed above. Complainants reported their sexual assaults, and then reported retaliatory actions by members of the athletic team, but there was no documentation of any response by the university to the alleged retaliation.

As a result, OCR has concern with respect to the System's apparent failure to address retaliatory harassment (case numbers 2 and 20).

¹⁴ Case number 2 is discussed below.

¹⁵ Over three years later, in May 2015, the case was re-opened to assess further sanctions for four of the respondents. In April 2016, one respondent was permanently expelled. Another respondent was suspended in June of 2016 for one year. A third respondent was suspended in July 2016 for one year. The sanctions process for the fourth respondent was not yet complete as of the date when OCR and the System commenced negotiations.

Failure to Provide Interim Measures

A recipient must provide interim measures where appropriate to comply with the regulation at 34 C.F.R. § 106.31 and ensure individuals can fully access a recipient's programs while an investigation is pending. OCR's review identified numerous instances with no record that the System assessed the need for or provided interim measures, or with records that demonstrated limited and sometimes improper interim measures. Case number 12 is a notable example of the System's failure to identify or provide any interim measures, and case number 14 is a notable example of the System's failure to properly implement interim relief identified as necessary (either completely or in a timely fashion).

Case Number 12

In 2013, a student alleged that she was raped in her dorm room. After investigating, Residence Life found that respondent had violated a provision about "endangerment, assault, or infliction of physical harm," but found no violation regarding sexual assault or harassment. It sanctioned the respondent with a one-year suspension from campus housing and all other residential properties at the university. The complainant was not offered interim measures; instead, she was sanctioned for engaging in underage drinking when the incident occurred.¹⁶

Case Number 14

In 2014, a student alleged that the respondent sent sexually harassing text messages to her and her boyfriend and that she had obtained a restraining order against him. During the investigation process, the Title IX office learned that several other students contacted the police about the respondent sending them sexually graphic and threatening messages. The investigation took a little over three months, and the final investigative report identified changes to classroom, work, living, and transportation accommodations as necessary for the students, and stated that the accommodations should have been provided immediately. However, there is no evidence that shows these changes were implemented, except for the class change, which was implemented after a three-week delay.

OCR found no documentation that the System provided adequate interim relief to alleged victims, despite the pervasiveness of some of the sexual harassment and the severity of some of the sexual misconduct in several instances (case numbers 2, 3, 4, 10, 12, 14, and 15).

¹⁶ This case was re-opened in 2015 to assess further sanctions for respondent and he was expelled in February 2016. No further action was taken with respect to the sanctions imposed against the complainant.

Failure to Assess Hostile Environment

If a recipient ignores or otherwise fails to end harassment and ameliorate a hostile environment, and in so doing allows the hostile environment to continue, it is in violation of its obligations under Title IX.

OCR did not find evidence in the files of the System that indicated that it assessed whether a hostile environment existed in the cases that it investigated. Instead, OCR found instances where a university did investigate, but failed to investigate promptly or equitably and thus allowed a possible hostile environment to continue. Case numbers 2 and 15 are notable examples of this. Case number 2, discussed above, involved a rape that was videotaped and posted on social media. Because rape by its nature is sufficiently serious to create a hostile environment, the university had an obligation to investigate and remedy the hostile environment that was experienced by the student. The university was made aware of the alleged incident and determined that sexual assault had occurred; it barred the perpetrators from campus housing. OCR was not provided with any documentation about what actions, if any, the university took to remove the video, and assess and address the effects on the students who witnessed the event or saw the posted video of the sexual assault.

Case Number 15

In 2014, the then-director of a satellite college was alleged to have sexually harassed multiple students, employees, and members of the community. Title IX investigators interviewed five complainants, witnesses and the director himself, who resigned immediately following the interview. There is no evidence in the available records that the university completed its Title IX investigation, provided any relief, including interim relief, to the multiple complainants, or assessed and addressed any hostile environment that may have been created for students and employees through the director's actions.

The university's failure to take follow-up action raises concerns that a hostile environment continued. The fact the alleged harasser was no longer at the university did not necessarily eliminate a hostile environment. OCR determined that in multiple cases (case numbers 2, 12, 15, 18, and 20) the System failed to assess whether a hostile environment existed, and thus if one did exist, the System failed to take any action to address it.

The System's Actions To Comply With Title IX

OCR initiated the compliance review in 2014. During OCR's investigation, the System has taken several actions to address its obligations under Title IX. In May 2014, the System created a permanent state-wide Title IX taskforce (Title IX Taskforce) composed of employees in the System responsible for Title IX compliance. The purpose of the taskforce, at least in part, is to share best practices relating to Title IX compliance across the entire System. In February 2015, the Board of Regents started to receive regular updates on Title IX, including information on Title IX compliance and progress that was insufficient or absent.

In September 2015, after the System discovered that UAF had not suspended or disciplined any student for *any* sexual assault cases between 2011 and 2014, the System commissioned an independent review of UAF and its compliance with Title IX. On October 20, 2015, a month after commissioning the independent review, UAF interim chancellor Mike Powers issued a public statement apologizing for UAF's failure to address sexual assault on campus and calling for an end to silence and inaction around campus sexual assault.¹⁷

The System published the report of that independent review (Feldman Report) on March 31, 2016.¹⁸ To remedy the deficiencies identified in the Feldman Report, UAF took the following steps: appointed a new Dean of Students; made changes to the Title IX office; made structural changes to ensure transparency in the discipline process and knowledge of the status of pending cases by all stakeholders; obtained software to centralize the tracking of student conduct cases across all departments; trained employees on Title IX requirements; and created a UAF Title IX taskforce. Additionally, in response to the Feldman Report, the System reopened certain UAF cases to investigate and assess sanctions where it determined that the Dean of Students' discipline philosophy resulted in a failure to hold the respondent accountable.¹⁹

In February 2016, each university began publishing a "Title IX Scorecard," the purpose of which is to allow each university to measure its performance and compliance with Title IX. The scorecards are publicly available.

Finally, as already noted, the System has appointed a Chief Title IX Officer and made recent changes to its website concerning Title IX compliance.

Summary of Resolution Agreement

During the investigation, the System expressed an interest in resolving the issues under investigation prior to the conclusion of OCR's compliance review. On November 10, 2016, having reviewed certain investigative materials and identified violations and concerns under Title IX, OCR concluded that it would be appropriate to negotiate a resolution agreement before OCR completed its investigation.

Pursuant to the *OCR Case Processing Manual*, the parties had a period of up to 90 calendar days, or until February 8, to reach a final agreement. No agreement was signed by February 8, so OCR issued an impasse letter on February 9. The impasse letter advised the System that OCR

¹⁷ Press Statement available at <https://www.uaf.edu/chancellor/communications/memos/october-20-2015/> (September 26, 2016).

¹⁸ The Feldman Report identified six reasons for UAF's failure to initiate a major sanctions process for sexual violence between 2011 and 2014: (1) the discipline philosophy of UAF's Dean of Students, (2) a lack of qualified personnel to respond to guidance issued by OCR, (3) a lack of oversight and resources at UAF, (4) no system to monitor and track cases, (5) lack of monitoring and guidance by the UAF administration and the absence of a Title IX compliance function at the UA System statewide office, and (6) a failure to request guidance and direction from the General Counsel's office.

¹⁹ These cases included case numbers 2, 5, 11, and 12 discussed above.

would issue a letter of findings if the parties did not reach an agreement within 10 calendar days of the date of the letter.

The System delivered an executed copy of the Resolution Agreement to OCR on February 17, 2017. The Resolution Agreement addresses the compliance concerns identified in OCR's investigation.

In accordance with the Resolution Agreement, the System agrees to:

- Ensure that each of its universities' Title IX coordinators: oversees the handling of all complaints of sex discrimination, including sexual harassment and sexual violence, at their respective universities and satellite campuses; addresses any patterns or systemic concerns; assesses the overall efficacy and response to sexual harassment and sexual violence; and participates in training for themselves and their staff.
- Designate a senior Title IX administrator who will oversee the System's efforts to comply with and carry out its Title IX responsibilities.
- Continue the state-wide Title IX taskforce.
- Revise the System's publications to include the title, office address, e-mail address and telephone number of the senior Title IX administrator and for each university, the same information for its respective Title IX coordinator.
- Create a single notice of nondiscrimination that complies with the requirements of Title IX and take steps to ensure it is appropriately published and distributed System-wide.
- Revise the System's grievance procedures for addressing complaints alleging discrimination on the basis of sex (including sexual harassment and sexual violence) to ensure that these are not unduly complicated, written in a way that is easily understood, easily locatable, and otherwise comply with Title IX; remove references to old, non-compliant procedures.
- Provide training to the senior Title IX administrator, university Title IX coordinators, and all other employees involved in processing, investigating, adjudicating, and/or resolving complaints of sex discrimination, including sexual harassment and sexual violence, including training on the importance of fully documenting all steps of an investigation and resolution.
- At each university, develop a protocol for ensuring that Residence Life staff report and refer complaints involving sex discrimination to the Title IX office within 24 hours.
- Continue to provide training to all employees responsible for recognizing and reporting incidents of sex discrimination, including training on the new grievance procedures.
- Provide information sessions to new and returning students as part of annual student orientation and Residence Life orientation addressing sex discrimination, including sexual harassment and sexual violence, and information on the System's Title IX grievance procedures.
- Ensure that existing informational materials contain information on the following or develop new materials to address: how and where to file a complaint of sexual harassment or sexual violence with the System; the contact information for the senior Title IX administrator and the respective universities' Title IX coordinators and a

description of the responsibilities of the senior Title IX administrator and university Title IX coordinators; information on how to obtain counseling and academic assistance in the event of sexual harassment and sexual violence; and information on what interim measures can be taken to protect a complainant and how to request interim measures.

- Establish a student committee at each of the three universities, with representation from a cross-section of the student community, which will identify and recommend strategies to the System to ensure that students understand their rights under Title IX and the System's grievance procedures, including how to report possible violations of Title IX as well as recommend strategies for improving the effectiveness of the System's procedures, support services and resources available to students, and for preventing sexual harassment and sexual violence, including outreach and educational activities.
- Conduct annual climate checks for students to assess the effectiveness of steps taken pursuant to this Resolution Agreement and otherwise by the System to achieve its goal of a campus free of sex discrimination, in particular sexual harassment and sexual violence.
- Continue to coordinate with local law enforcement agencies.
- Provide written notice or information sessions to all students participating in internships, clinical programs, or other off-campus programs of the System's prohibition against sex discrimination; the System's grievance procedures for Title IX complaints; and related System resources; and develop and implement a procedure designed to assure the System that operators or sponsors of education programs and activities at which the System places students will take no action prohibited by Title IX.
- Take actions to address the specific cases that OCR identified based on its review of cases from academic years 2011-12, 2012-13, 2013-14, and 2014-15.
- Review all reports of sexual harassment and violence filed with the System during academic years 2014-15 and 2015-16, to determine whether the System investigated each complaint promptly and equitably; and take appropriate action to address any problems identified regarding the manner in which these complaints were handled, including providing appropriate remedies that may still be available for the complainants, such as counseling or academic adjustments.
- Provide complete investigation files and information about the System's processing of sexual harassment complaints for the next three academic years.

Conclusion

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

This letter should not be interpreted to address the System'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.

Please be advised that the System 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 should occur, an individual may file a complaint alleging such harassment or intimidation.

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, it 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.

If you have any questions about OCR's determination, please contact Amy Klosterman, Attorney, by telephone at (206) 607-1622 or by e-mail at amy.klosterman@ed.gov; Shirley Oliver, Senior Equal Opportunity Investigator, by telephone at (206) 607-1633 or by e-mail at shirley.oliver@ed.gov; or Tina Sohaili, Attorney, by telephone at (206) 607-1634 or by e-mail at tina.sohaili@ed.gov.

Sincerely



Linda Mangel
Regional Director

Enclosure: Resolution Agreement

cc: The System, Office of General Counsel