

Public Interest Investigations, Inc.
Page 6

M. estimated that she saw [redacted] had reports of small conversations. M. said she was unable to recount the details of each of those conversations. M. said in general, [redacted] mentioned some aspect of the situation with [redacted] from either the night of the incident or when [redacted] saw [redacted] somewhere on campus.

On one occasion, M. walked into the Marketplace on campus and saw [redacted] exiting. [redacted] told M. that she just saw [redacted] and did not recall the specific details of that incident.

M. said when ever [redacted] talked about seeing [redacted] on the Quad or in public, [redacted] felt uncomfortable and terrible about it. M. said [redacted] also felt confused when she saw [redacted] because he behaved nice and normal in public but when they were alone, he was very mean to [redacted]. [redacted] also talked about having flashbacks of the night of the incident that bothered her.

M. said she did not know or she did not recall that [redacted] had officially gone to Project SAFE, until she received an email requesting this interview.

[redacted]
[redacted]
[redacted] Every conversation we had seemed consistent and [redacted] emotions were very, very disturbed.

Public Interest Investigations, Inc.

CONFIDENTIAL MEMORANDUM

TO: Ruth Jones
Title IX Coordinator
Occidental College

FROM: Public Interest Investigations, Inc.

DATE: April 16, 2014

RE: Sexual Misconduct Policy Complaint
PJI Case No. 14-4235

SUBJECT: Interview Summary of [redacted]

[redacted] was interviewed on February 25, 2014, at Occidental College by U Relate, a Public Interest Investigations, Inc. (PII).

Background Information

[redacted] is a 19-year-old sophomore at Occidental College. She is currently an undeclared major.

Relationship with Complainant

[redacted] said she is the residential advisor for the Complainant, [redacted], and she lives on the same floor as [redacted] in Pauley Hall. She said she has a casual relationship with [redacted] but she is available to discuss any difficulties Pauley residents have. [redacted] said [redacted] has confided in her regarding problems she has encountered at school, including the present situation.

[redacted] said she first met [redacted] on the day all the residents moved into Pauley for the Fall 2013 semester. She described [redacted] as the most bubbly person I ever met, super cheerful, and excited to be at school. She said [redacted] was friendly, curious, outgoing and polite.

0309171220044

Relationship with Respondent:

[REDACTED] said she first became acquainted with [REDACTED] because they often crossed paths while walking around campus and they started greeting one another with a smile and a quick "Hi". She said she never knew his name. She said he seemed nice and friendly. [REDACTED] said since Occidental is a small campus, it's very common to have these types of "surface level" relationships with other Occidental students.

Multiple Conversations with [REDACTED] about [REDACTED]

First Conversation

[REDACTED] was not sure when [REDACTED] first spoke to her about [REDACTED]. She estimated it was about two weeks before Winter Break. [REDACTED] approached her and said she needed to talk to her about something. [REDACTED] looked concerned and they

[REDACTED] told [REDACTED] that she had to report the incident and [REDACTED] asked if she could reveal the person's name because she thought [REDACTED] might know him. [REDACTED] said his name was [REDACTED] of [REDACTED]. [REDACTED] said she was confused by the names and she could not put a face to the name. She was not sure that [REDACTED] was the Respondent.

[REDACTED] asked [REDACTED] what she could do to help her. [REDACTED] said she just needed someone to talk to, or a place to talk about what happened. [REDACTED] began telling [REDACTED] what happened with [REDACTED] and gave her a brief overview. [REDACTED] said, "She just told me. I did not question her or ask anything."

[REDACTED] told [REDACTED] she and a group of female friends went to a party and she left with [REDACTED] to go to his room in Rangview (currently, Baker's Hall). [REDACTED] said she was not sure if [REDACTED] said she knew [REDACTED] before the party, or if she met him at the party. [REDACTED] said it may have been an ATO party.

[REDACTED] said she and [REDACTED] were high. [REDACTED] said she assumed they smoked marijuana. [REDACTED] said [REDACTED] was confused about how to leave Rangview and left she she needed to stay with [REDACTED] so he could let her out of the dorm room. [REDACTED] said, "I didn't feel comfortable. I was high and I didn't know how to get out of Rangview."

[REDACTED] said [REDACTED] and [REDACTED] were kissing and making out in his bed. [REDACTED] said she did not want to have sex with [REDACTED] and she just wanted to go to sleep, but [REDACTED] kept pushing and kept kissing and kept touching [REDACTED].

[REDACTED] said she told [REDACTED] she did not want to have sex because she was a virgin and she did not want to lose her virginity to him. [REDACTED] said, "I really recalled that [REDACTED] old [REDACTED] it was 'okay' if they did not have sex, but they ended up having sex anyway."

[REDACTED] said [REDACTED] told her she was hurt and didn't have control of her body. [REDACTED] said she felt trapped. [REDACTED] said she thought [REDACTED] was not under the influence of marijuana, the situation might have been different, and [REDACTED] might have been able to leave.

[REDACTED] said [REDACTED] made comments that [REDACTED] was "very pushy," but [REDACTED] did not specify how [REDACTED] was pushy. [REDACTED] assumed [REDACTED] meant [REDACTED] was both physically and verbally pushy.

[REDACTED] said [REDACTED] did not tell her anything else about that night or what happened the following morning.

[REDACTED] said [REDACTED] seemed surprisingly calm.

Second Conversation

A few days of a week after [REDACTED] first conversation with [REDACTED], [REDACTED] said they met again to talk about how [REDACTED] was feeling and if she was getting the support she needed.

[REDACTED] said [REDACTED] felt a lot of pressure to give [REDACTED] a name to Palacios, Project SAFE, coordinator. [REDACTED] did not want to give [REDACTED] a name because she worried that the friends would see her in the Quad and look down on her as that freshman that accused their friend of rape. [REDACTED] also talked out loud about possibly going to the police, but she did not want to reveal [REDACTED]'s name to the police. [REDACTED] said she and [REDACTED] then discussed the pros and cons of providing [REDACTED]'s name.

[REDACTED] said [REDACTED] was confused. She said [REDACTED] would go back and forth between what to do. She was nervous about what [REDACTED] expressed worry. [REDACTED] said she could not stop thinking about turning into [REDACTED] around campus, and that she was always nervous about [REDACTED] told [REDACTED] that [REDACTED] was

[REDACTED] said [REDACTED] then described an incident where [REDACTED] tried to speak to [REDACTED] in the Quad. [REDACTED] pressed [REDACTED] and told her he had not seen her in a while. [REDACTED] as pointed by walking away from [REDACTED]. [REDACTED] said [REDACTED] was under a lot of stress at the time. She said [REDACTED] was having "flashbacks" about what [REDACTED] did to her on the night of the incident. [REDACTED] said [REDACTED] did not talk about the night of the incident during this conversation.

Third Conversation

[REDACTED] said about two weeks later, she and [REDACTED] had a brief conversation around the start of winter break. [REDACTED] told [REDACTED] that she had obtained the stay away letter and disclosed [REDACTED]'s name to Palacios.

Miscellaneous Conversations

[REDACTED] said she and [REDACTED] did not have any other major conversations about [REDACTED] or the incident. She said they had occasional conversations when [REDACTED] gave her short updates about [REDACTED], but she did not recall what [REDACTED] said negatively affected by the incident.

[REDACTED] said there was definitely a change in [REDACTED] from the time she first met [REDACTED] at the beginning of the semester. She said [REDACTED] demeanor used to be bubbly, but now it was more subdued. She noted on one occasion that [REDACTED] told her she was using alcohol to cope. [REDACTED] told her, "I want to drink all the time to cope, but what happened and forget it." [REDACTED] said [REDACTED] went out every night on the weekends and told her she felt anxious and sometimes "wandered around" campus when there was nothing to do.

February 22, 2014 - Sustained a Panic Attack

[REDACTED] said the Saturday prior to our interview, on February 22, 2014, [REDACTED] knocked on her door and said, "I think I'm having a panic attack." [REDACTED]

Interview Summary of [REDACTED]
Public Interest Investigations, Inc.
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on her way to pick her up, [redacted] asked [redacted] to talk her, but not about the incident. [redacted] said they spoke "casually about life" for about 15 minutes until [redacted] mother arrived. [redacted] said, "It was the most upset I've seen her."

Group	Very concerned	Somewhat concerned	Not concerned
All respondents	68%	28%	4%
U.S. born	72%	26%	2%
Foreign born	58%	32%	10%
U.S. born and foreign born	65%	29%	6%

Interview Summary of T-1 [REDACTED]
Public Interest Investigations, Inc.
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Public Interest
Investigations, Inc.

CONFIDENTIAL MEMORANDUM

TO: Ruth Jones,
Title IX Coordinator,
Occidental College

FROM: Public Interest Investigations, Inc.

DATE: April 15, 2014

RE: Sexual Misconduct Policy Complaint
Pill Case No. 14-225

SUBJECT: [REDACTED]

The following information
is being provided to you
under the provisions of the
California Public Records Act.

Interview Summary of Anonymous Witness
Public Interest Investigations, Inc.
Page 2

The anonymous witness expressed reluctance in being involved in a Title IX investigation. She stated that [REDACTED] had contacted her and asked her to be a witness. She explained that she had been a victim of sexual assault in her hometown. [REDACTED] She said she did not want to become involved in the investigation as a witness because she did not want her name used, or to be asked to appear at a trial. She said she did not want to make public the fact that she had been sexually assaulted.

Fellers contacted Title IX Coordinator Ruth Jones regarding the witness request to be anonymous due to her specific circumstances. Jones stated she would be willing to accommodate the witness request for privacy. Fellers sent a follow-up email to the witness informing her that she can remain anonymous and requested an interview with her.

On April 2, 2014, the witness sent Fellers an email. She stated the process had been a trigger for her and she felt conflicted in their role of helping someone who has been accused of something like this. Anonymous Witness stated that she needed to evaluate her role prior to being interviewed.

Anonymous Witness did not re-contact Fellers regarding scheduling a time for an interview.

09/01/2020 04 4

09-01-5-42 04-5

CONFIDENTIAL MEMORANDUM

TO: Ruth Jones
Title IX Coordinator
Occidental College

FROM: Public Interest Investigations, Inc.

DATE: April 15, 2014

RE: Sexual Misconduct Policy Complaint
PJI Case No. 14-4295

SUBJECT: Complainant Medical Records from Emmons Student Wellness
Center Records

As part of PJI's investigation, we requested specific medical records from Emmons Student Wellness Center (Emmons) for the Complainant during the time period immediately following the date of the alleged sexual assault on September 28 through September 29, 2013.

PJI coordinated with Ruth Jones, Title IX Coordinator, to contact Emmons and obtain the proper release form for [REDACTED], assisted by her advisor, Nadia Palacios, signed a release form for the medical records to be released to PJI and the Title IX office. (Exhibit 18) [REDACTED] submitted the request to Emmons during the week of March 27, 2014.

On March 27, 2014, PJI contacted Dr. Robin Davidson, Director of Emmons, by telephone and email regarding the status of the records request. Dr. Davidson stated the request was received and Dr. Jenny Heetderks was processing it.

On March 27, 2014, PJI received three pages of [REDACTED] medical records. The first document consisted of a single page of handwritten notes on a form labeled "Progress Note." The handwritten notes were dated March 26, 2014, and stated: "Documentation from visit on October 3, 2013 was lost. Exam showed a pregnancy test was requested - result was negative." The second document consisted of two pages and it appeared to be an intake form with handwritten notes and markings regarding a visit to Emmons on October 9, 2013.

The Treasury Building
222 S. Octavia, Suite 109
San Francisco, CA 94111
Phone: 415-455-4700

Complainant Medical Records from Emmons
Public Interest Investigations, Inc.
Page 2

On March 28, 2014, and April 1, 2014, PJI contacted Dr. Davidson to request clarification regarding the lost documentation for [REDACTED] October 3, 2013 visit. PJI also requested any additional documentation, such as an electronic record, that might exist showing [REDACTED] visit from October 3, 2013.

On April 1, 2014, Dr. Davidson responded to PJI by email. Dr. Davidson stated that Dr. Heetderks was assigned to handle the records request for [REDACTED]. Dr. Davidson wrote Dr. Heetderks pulled the requested documents, including the October 3, 2013, records. However, Dr. Heetderks inadvertently shredded the October 3, 2013, documents.

Dr. Davidson said Dr. Heetderks and nurse practitioner, Cindy Bacon, had reviewed [REDACTED] October 3, 2013, records prior to their shredding. Dr. Davidson wrote Dr. Heetderks and Bacon recalled that the notes stated [REDACTED] had seen former physician assistant, Ann Martella, received a pregnancy test, and the test was negative. Dr. Davidson said Bacon then drafted and signed "replacement" progress notes reflecting what they recalled. These notes were then forwarded to PJI in response to our records request.

In the same email, Dr. Davidson also attached a PDF copy of receipts that were generated by Emmons' electronic scheduling system. The receipts showed the [REDACTED] visited Emmons on October 3, and October 9, 2013. On October 3, 2013, the receipt showed that [REDACTED] paid for a urine pregnancy test.

Exhibit 3 Page 7 of 76



ಪ್ರಾಚೀನ ಸಾಹಿತ್ಯದ ಅಧ್ಯಯನ, ವಿಶ್ಲೇಷಣೆ ಮತ್ತು ಪ್ರಚಾರ

Deborah J. Goldstein

Ernst & Young

Nieder

PROGRESS NOTES
 (Addressed to the Clinical Nurse)

Allylglycerol
AMP

March 26, 2014

To Whom It May Concern:

Make the medical records requested for [REDACTED]. Please let me know if you have any questions.

Best:

Ernest Herford

Terry Heedels, Psy.D., PSY22920
Assistant Director of Counseling, Emons Student Wellness Center
323.259.2893
heedels@csu.edu

3/22/14 - Documentation from West as
10/3/13 was sent. From 8/10/13

10/3/73 Wed. 1st. Exam showed
a negative test was requested - result
was negative. 10/11/73

0 5 6 7 8 9

5100/51/60

PROGRESS NOTE

DATE: 10/2/73 AGE: 8 Gender: F

Parental telephone: [redacted]

Address: 1025 W. 26th Ave., S.W.

Referral: [redacted]

History: [redacted]

Physical: [redacted]

Developmental: [redacted]

Diagnosis: [redacted]

Prognosis: [redacted]

Recommendations: [redacted]

PROGRESS NOTE

DATE: 10/2/73 AGE: 8 Gender: F

Parental telephone: [redacted]

Address: 1025 W. 26th Ave., S.W.

Referral: [redacted]

History: [redacted]

Physical: [redacted]

Developmental: [redacted]

Diagnosis: [redacted]

Prognosis: [redacted]

Recommendations: [redacted]

From: Robin Davidson, <robindavidson@comcast.net>
Sent: Wednesday, April 02, 2014 9:52 AM
To: U-Feller
Subject: Re: Marriage from "Emmone-Healy"

The nurse practitioner does not remember anything else in these progress notes. The notes were very brief.

On Tue, Apr 1, 2014 at 4:04 PM, TJ Fellers <tj.fellers@nrlssc.navy.mil> wrote:

Thank you for clarifying the information.

Do you know? If the progress notes from 10/9/13 stated anything else such as any questions or comments expressed by

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Public Interest Investigations, Inc.

The Brady Building

304 S. Broadway, Suite 596

Los Angeles, California 90013

121348251780~X206

University of Illinois

From: Robb Davidson [mailto:rob@davidson.org]
Sent: Tuesday, April 01, 2014 4:02 PM

Subjects find Message from "Emmons-Health"

CONFIDENTIAL - ATTORNEY-CLIENT PRIVILEGE

Attached you will find the receipts for the two dates that [REDACTED] was at Edmonds in October, generated from our electronic scheduling system. I have an explanation for the last progress note!

Dr. Kenneth H. Eberhardt, who has been an Environmental Social Scientist at MIT and in the spring of 1990, records on March 20th, 1990, "I saw the Oct. 3 project notes written by Alan Mitchell, a PA, near the end of the last season, who saw him last July and contacted the preliminary test. These files noted that the indicated the test was negative. A son had indicated spread of an above project was back on Oct. 3, 1990. Mitchell told Larry, who would pull the other original project, possibly a file with him to be scheduled, after Mitchell told him. She realized that forty thereafter. Both him and one of our current nurse practitioners, Cindy Bissell, had seen these project notes earlier than this, with the information about the negative preliminary test and with Alan's statement. As Mitchell only agreed the preliminary test, project notes, who you were, and dated a March 20,

I hope this clarifies things. Best, Robin

Forwarded message

Date: Tue Apr 15 2014

Ta: Rodin Division, Combiniwillon Oxy.

This E-mail was received from "Erin Anne Healy" (Alicia MP 2852).

Scanned Date: 04/01/2014 15:38:00 (-0700)

Quintus, in Tribu Quirina, edna

Robin B. Davidson, Ph.D.

Director of Student Wellness

Emmons Student Wellness Center

Exhibit 3 Page 40 of 76

7 8 9 0 1 2 3 4 5 6 7 8 9 0

Exhibit 4

09/15/2015

FRESNO
(559) 225-6700
FAX (559) 225-3416

IRVINE
(949) 453-4260
FAX (949) 453-4262

PASADENA
(626) 227-9200
FAX (626) 227-9202

PLEASANTON
(925) 227-9200
FAX (925) 227-9202

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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FAX (916) 923-1222

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(858) 485-9526
FAX (858) 485-9412

OUR FILE NUMBER:
006159.00612
12165587.1

May 14, 2014

VIA EMAIL

CONFIDENTIAL COMMUNICATION

Ruth Jones
Interim Title IX Coordinator
Occidental College
1600 Campus Dr.
Los Angeles, CA 90041

Re: External Adjudicator's Decision
Complaint Violation of Occidental College 2013-14 Sexual Misconduct Policy
Complainant: _____
Respondent: _____
Hearing Date: May 12, 2014

Dear Ms. Jones:

On May 12, 2014, I served as the external adjudicator in the hearing of the above-referenced matter. Based on the evidence received at that hearing, the investigative report (including witness summaries and exhibits) and Occidental College's Sexual Misconduct Policy, I provide the following decision.

I. Introduction

A. Procedural Background

1. Pre-Hearing Background

In August 2013, Occidental College (the "College") implemented a new Sexual Misconduct Policy ("Policy"). (A copy of that Policy is attached as Exhibit "1.") The Policy prohibits sexual assault and non-consensual sexual contact by an Occidental student of another Occidental student. (Exhibit "1," Other Forms of Prohibited Conduct, p. 10.) The Policy provides a process to report a complaint of alleged misconduct and to resolve such complaints. (Exhibit "1,"

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Campus Reporting Options, p.22 and Appendix A. Resolving Complaints Against a Student, p. 31.)

In the matter at hand, on or about January 31, 2014, [redacted] the Complainant, made a complaint alleging violations of the Policy by [redacted] the Respondent. Ms. [redacted] the Complainant, states that during the evening of September 28, 2013 and the early morning of September 29, 2013, following the GLOW party, the Respondent's penis penetrated her vagina on three occasions and penetrated her anus on two occasions without her consent. Pursuant to the Policy, the College initiated an investigation of the reported violations. The College engaged Public Interest Investigations, Inc. ("PII") to conduct that investigation, and PII's lead investigator was Li Fellers.

As the lead investigator, Ms. Fellers was present in all witness interviews, and the interviewed witnesses were [redacted]

[redacted] The Respondent provided a potential witness who asked to remain anonymous, and the College granted that request. That witness, however, did not make herself available for an interview by the Investigator. Based on all of this information, PII prepared a written report, along with summaries of the witnesses' testimony, that explained and provided context for the events at issue in this matter. (Because the external adjudicator understands that the report, including witness summaries and exhibits, are available for your review; thus, those documents have not been attached to this decision.)

On April 25, 2014, the College sent to the Respondent a letter referenced as "Notice of Charges" (the "Charge Letter"). The Charge letter provided the Respondent with a brief summary of the Complainant's allegations against him, advised him of the specific violations of the Policy that he had been charged with, and provided him with information concerning the pre-hearing and hearing procedures under the Policy.

2. Summary of Hearing Structure and Procedure

In addition to the Complainant and the Respondent, the following individuals were invited to be witnesses at the hearing: [redacted]

[redacted] declined to be witnesses at the hearing. During the hearing, [redacted] was contacted, and he stated that he was traveling to the hearing.

¹ Keith Rohman, the President of PII, also attended the interviews of both the Complaining Party and the Respondent.

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Nevertheless, by the end of the hearing, Mr. [] had not arrived at the hearing.²

The Hearing Coordinator for this matter was Cherie Scricca. The Complainant and the Respondent were present throughout the hearing. [] was the Complainant's advisor, and she was present throughout the hearing. Professor Danielle Dirks was Ms. [] support person, and Ms. Dirks was present throughout the hearing. Professor Debra Freas was the Respondent's advisor, and she was present throughout the hearing. Ms. Feller, the lead investigator, was also present throughout the hearing.

After the Hearing Coordinator opened the hearing, the external adjudicator advised the parties that she had no connection to the College, the Complainant, the Respondent, their advisors, or Occidental administrators other than as an external adjudicator. The external adjudicator then asked Ms. Fellers to present an opening statement. Ms. Fellers presented a brief opening statement during which she summarized the investigative report focusing on the areas of agreement and disagreement. Following the conclusion of Ms. Fellers' opening statement, the external adjudicator asked Ms. Fellers questions. Neither the Complainant, nor the Respondent provided the External Adjudicator with questions for the Investigator. After Ms. Fellers' questioning was completed, the Complainant provided an opening statement. After the Complainant completed her opening statement, the external adjudicator asked the Complainant questions, and the external adjudicator asked the Complainant questions submitted in writing by the Respondent. (Copies of questions submitted by the Respondent to the Complainant are attached Exhibit "2.")

After the Complainant's questioning was completed, the Respondent was invited to provide an opening statement. Before the Respondent gave his opening statement, he stated procedural objections to the hearing, and he read those objections into the record.³ The Hearing Coordinator retained the copies of the Respondent's procedural objections. The Policy states that the external adjudicator's role in the hearing is to "determine the facts of the case, make a determination as to whether the College policy was violated...." (See, Exhibit "1," p. 40.) Thus, the external adjudicator role does not include resolution of procedural objections. Therefore, the external adjudicator did not make a determination as to Respondent's procedural objections.

After the Respondent read his procedural objections, he provided an opening statement. After the Respondent's opening statement, the external adjudicator asked the Respondent questions, and the external adjudicator asked the Respondent questions submitted by the Complainant in

² Mr. [] absence from the hearing was not material as the issue upon which the External Adjudicator sought to question him—whether he had told the Investigator that Mr. [] had told him, Mr. [] that he had engaged in oral or anal sex with the Complainant—was resolved by the Investigator's testimony at the hearing that the word "not" had been omitted from statement at page 3 of Mr. [] interview summary that reads "[] did say he and [] engaged in other types of sex such as oral or anal sex." The Investigator stated that the word "not" should be inserted between the words "did" and "say." Thus, the correct statement reads, "[] said [] did not say he and [] engaged in other types of sex."

³ Respondent stated that the procedural objections that he read were prepared by his attorney.

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writing. (A copy of the Complainant's questions of the Respondent that were submitted to the external adjudicator are attached as Exhibit "3.")

Following the questioning of the Respondent, the following witnesses were called in the order listed below:

The external adjudicator asked each witness questions and asked questions submitted by the Complainant and Respondent, if the External Adjudicator deemed such questions relevant and appropriate. (Copies of the written questions for witnesses submitted to the external adjudicator by the Complainant and Respondent are attached as Exhibit "4," and Exhibit "5.") At the conclusion of those questions, for each witness, the external adjudicator asked both the Complainant and the Respondent whether either had additional questions.

As previously stated, in reaching this decision, the external adjudicator considered not only the testimony of the witnesses who testified at the hearing, but also considered and relied upon, as identified below, relevant and appropriate portions of the investigative report, witness summaries accompanying the investigative report, and exhibits accompanying the report.

B. Summary of the Complaint and the Parties' Positions

This hearing concerned two forms of conduct prohibited by the Policy: sexual assault and non-consensual contact. The two forms of prohibited conduct at issue in this matter, along with their Policy definition, are set forth below:

Sexual Assault: Having or attempting to have sexual intercourse with another individual:

- By force or threat of force;
- Without effective consent; or
- Where the individual is incapacitated.

Sexual intercourse includes vaginal or anal penetration, however slight, with a body part (e.g. penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.

Non-Consensual Contact: Having sexual contact with another individual:

- By force or threat of force;
- Without effective consent; or

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- Where the individual is incapacitated.

Sexual contact includes intentional contact with the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission, intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner. (Exhibit 1, p. 10.)

The Complainant states that the Respondent engaged in sexual assault and non-consensual sexual contact when he used his penis to penetrate her vagina on three occasions without her consent. The Complainant also states that the Respondent engaged in sexual assault and non-consensual sexual contact when he penetrated her anus on two occasions without effective consent. The Complainant alleges that in one instance of anal penetration consent was obtained through coercion; thus, she did not give effective consent as required by the Policy.

The Respondent denies that he penetrated her vagina with his penis. The Respondent admits that he penetrated the Complainant's anus with his penis on one occasion, but states that she consented to that contact because she proposed that contact to him. The Respondent denies that he penetrated the Complainant's anus with his penis a second time.

Both parties agree that the oral sex that occurred on September 29, 2013 was consensual. The parties also agree that other forms of sexual contact, i.e. touching and fondling of genitalia while unclothed, was consensual.

II. Analysis and Findings

A. Standard of Proof

With respect to the standard of proof for this matter, the Policy states:

The hearing panel will determine a Respondent's responsibility by a preponderance of the evidence. This means that the hearing panel will decide whether it is 'more likely than not,' based upon all relevant information, that the Respondent is responsible for the alleged violation(s).

Thus, the external adjudicator has used the preponderance of the evidence standard in making all findings in this decision.

B. Sexual Assault

1. Elements of Sexual Assault under the Policy Considered in this Matter

In making a determination regarding the Sexual Assault complaint, the following elements were evaluated, in the order listed: 1.) Did the Respondent use his penis to penetrate, however slight,

Ruth Jones
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the Complainant's vagina and/or anus on September 29, 2013? 2.) Did the Complainant demonstrate conduct or make statements that would indicate she consented to such penetration by the Respondent? Although both parties admit that they had consumed alcohol and the Complainant admits that she consumed marijuana during the evening preceding the events at issue, neither the Complainant nor the Respondent has asserted that they were incapacitated. Thus, the element of incapacitation is not analyzed in this decision.

2. Whether the Respondent Penetrated the Complainant's Vagina and/or Anus with His Penis?

The Complainant and the Respondent's testimony regarding whether he penetrated the Complainant's vagina and/or anus are divergent. Thus, the critical factor in reaching a decision in this matter is whose version of the events in question is more reliable. As discussed below, the external adjudicator finds that the Complainant's version of these events is more reliable than the Respondent's version. The external adjudicator made this determination based on consideration of the following factors: a.) Respondent's statements to others that are consistent with statements the Complainant attributes to him; b.) Respondent's inconsistent statements; c.) Complainant's reporting of the key events was consistent; d.) Information provided by the Complainant is corroborated by the Respondent; e.) Conduct by the Complainant consistent with vaginal penetration; f.) Respondent's testimony that, in essence, the absence of bruising requires a finding that no sexual assault occurred; and g.) The inability of witnesses _____ to competently testify to the events that occurred in Respondent's room on September 29, 2013.

a. Respondent's statements to others are consistent with statements the Complainant attributes to him.

_____, the Respondent's roommate and good friend, stated to the Investigator and credibly testified during the hearing that the Respondent told him that there was a "disagreement" and/or "miscommunication," between the Complainant and the Respondent regarding the extent of their sexual interaction. (See p. 4 of White witness summary, which was reiterated by Mr. _____ during the hearing.) The external adjudicator does not credit Respondent's denial of that statement as Mr. _____ has no motivation to provide a statement that would be detrimental to his good friend, and the Respondent has a motive to deny the statement as the statement is inconsistent with his position that no dispute occurred regarding the extent of sexual contact in which the parties were going to engage in that evening. Given that both parties admit that the oral sex and other intimate touching was consensual, the necessary conclusion is that any "disagreement" concerning the extent of sexual contact concerned penetration of the Complainant's vagina and/or anus by the Respondent's penis. Thus, the identified portion of Mr. _____ testimony supports the conclusion that the Complainant's version of the events that a disagreement occurred between her and the Respondent regarding the degree of sexual contact they would have is more credible than the Respondent's statement that no disagreement occurred on this issue.

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May 14, 2014
Page 7

Another instance of Respondent's statements to witnesses that are consistent with statements that the Complainant attributes to him concern the content of his encounter with _____ the Survivor Advocate and Coordinator for the Project Sexual Assault Free Environment (SAFE) at the College. Ms. _____ advised the Investigator that in an incident at her office, the Respondent engaged in rant, and the following were among the statements he made to her during that encounter: "We're [men] are the victims here. These girls wear whatever they want and they tease us all night and they expect us not to get anything" and "The girls owe him something." (See p. 8 Palacios witness summary.) _____ a student program assistant at Project SAFE and was present during the encounter between Ms. _____ and the Respondent. Consistent with Ms. _____ states he heard the Respondent make the following statement during the encounter with Ms. _____ "If she goes back to the room and entices me all night, how can you expect me to think nothing's going to happen?"; "Men are the victims because they are not expected to do anything"; "It can't be sexual assault because both of them wanted to do something"; that the situation "wasn't fair"; and "if both of us are drunk, how am I supposed to not do anything? When they're enticing me the whole time?" Given that both Ms. _____ and Mr. _____ accounts of the incident were provided to the Investigator separately and both accounts are consistent, the external adjudicator credits those statements as having been made by the Respondent. As a result, the external adjudicator finds that the Respondent's denial of such comments is not believable.

The content of the above-quoted statements by the Respondent is consistent with statements that the Complainant attributes to the Respondent. In that regard, the Complainant states the Respondent made statements such as "You can't come in here and torture me like that. It's not fair. Do you do this to all men?" and other comments concerning her "torturing" him because she would not have intercourse with him. Thus, the external adjudicator finds that the Respondent made such statements to the Complainant which, in turn, supports a conclusion that the Complainant's version of the events is more credible than the Respondent's.

b. Respondent's Inconsistent Statements

During the hearing and the investigation the Respondent provided inconsistent statements. Although in and of themselves, those inconsistent statements might not have caused the external adjudicator to find that Respondent's version of the events was not reliable, but when those inconsistent statements are weighed with the other considered factors, these inconsistent statements support a finding that Respondent's version of the events was not credible.

During the hearing, the Respondent testified that he never changed his mind about not wanting to have sex with the Complainant; nevertheless, he acknowledges that he consented to having anal sex with the Complainant. Furthermore, the Respondent's own good friend states that the Respondent told him that a disagreement occurred between the Complainant and the Respondent regarding how far the two would go sexually. As stated previously, given the extent of consensual sexual activity between the two parties, the only conclusion that can be drawn is that

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Page 8

the disagreement concerned the Respondent's desire to penetrate the Complainant with his penis—which directly contradicts his statement that he did not want to have sex with the Complainant.

The Respondent told the Investigator that they did not discuss going back to his room before leaving the GLOW party and that he invited the Complainant to his room while they walked. At the hearing, the Respondent testified that he invited the Complainant back to his room before they began walking.

The Respondent stated to the Investigator that he did not make comments about bruising women when he encountered _____ at Project Safe. (See _____ witness summary page 12.) During the hearing, the Respondent testified that he did make comments to the effect that he did not "bruise" women during his encounter with Ms. _____

Mr. _____ stated that the Respondent told him that on the night in question that he, the Respondent, and the Complainant "just slept together"; however, by the Respondent's own admission he had both oral and anal sex with the Complainant.

The Respondent told the Investigator that he arrived at the GLOW party at 10:30 p.m. and that he and the Complainant left the GLOW party when it was shut down. At the hearing, after the parties had an opportunity to review the Investigator's report that contains documentation concerning both the ending of the GLOW party and the time Respondent entered his dormitory, the Respondent revised the time that he arrived at the GLOW party to 11:30 and stated that he left the GLOW party at 12:45—which appears to be an attempt to adjust the timeline of events to fit the documentary evidence. Additionally, at the hearing the Respondent attempted to clarify his statement that the parties left the GLOW party because it was shut down by stating that he believed that the party would be shut down because an ambulance had arrived. Because the GLOW party continued for at least another hour—using the Respondent's 12:45 a.m. departure time—the external adjudicator finds the Respondent's statement that the party was being shut down implausible.

c. Despite some inconsistencies, Complainant's reporting of the key events was consistent.

The external adjudicator noted four inconsistencies in the Complainant's version of the events. Those events are 1.) Upon entering Rangeview Hall, the Respondent's dormitory, the Respondent took her on a circuitous route to his room; yet, the badge entries show that the Respondent, upon entering Rangeview, used the most direct route to his room; 2.) The Respondent's room was the middle room of the "tringle"; however, Respondent's room was not in the middle of the "tringle"; 3.) The Complainant believed she could not exit Rangeview without a key card, but in fact, could exit Rangeview without a key card, and 4.) The Complainant told the Investigator that the Respondent ripped a shirt that she was wearing,

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Page 9

pulling the buttons off the shirt; however, at the hearing she testified that she did not recall this incident.

With respect to the first inconsistency, the Complainant also told the Investigator that "events seem[ed] to take long[er] that they really were" because of the marijuana. Thus, it is plausible that at that time, the Complainant perceived the route to the Respondent's dormitory room to take more time and to be more confusing than it actually was. Additionally, the route taken to the Respondent's room is not a fact that is material to the determination of whether a violation of the Policy occurred.

With respect to Complainant's incorrect belief that the Respondent's room was the middle room, the Complainant's demeanor when responding to this question at the hearing was hesitant and tentative suggesting that she did not actually have a clear recollection of which room was the Respondent's. The Complainant did, however, correctly observe that one of the Respondent's roommates was in bed in his, the roommate's, room. Given the Complainant had consumed both alcohol and marijuana that evening, and the relative insignificance of the location of the Respondent's room vis-à-vis the events in question, it is not surprising that the Complainant did not correctly recall the location of Respondent's room in the "tringle." Further, the location of the Respondent's room in the tringle is not material in determining whether a violation of the Policy occurred.

With respect to the Complainant's belief that she could not exit Rangeview without a Rangeview key card, the Investigator testified that one could not access the residential floors of Rangeview without Rangeview key card. The Investigator further testified that if one did not have a key card, and used the stairwells, the individual could only exit the building by going down to the garage or basement level and would have to know where those exits were. Additionally, both the Investigator and Ms. _____ testified that Rangeview is a confusing building. In light of these facts, the Complainant's confusion regarding her ability to exit Rangeview without a Rangeview key card is believable.

The Complainant's statement to the Investigator that the Respondent ripped a shirt she had on, pulling the buttons off that shirt and her statement, at the hearing, that she did not recall such an event is a troubling inconsistency. Nevertheless, as discussed below, because the key elements of the Complainant's testimony remained consistent when reporting the events to multiple witnesses and remained consistent when she testified at the hearing, this inconsistency does not undermine the Complainant's credibility regarding the material issues in dispute.

In that regard, below is a summary of material information that the Complainant disclosed to the identified individuals concerning the events that occurred in the Respondent's room on September 29, 2014.

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- [redacted] The Complainant told Ms. [redacted] that she had told the Respondent that she did not want to have sex with him, that she told the Respondent she did not want to have sex with him because she was a virgin; that the Respondent raped her, and that she did not know how to exit Rangeview.
- [redacted] The Complainant told Ms. [redacted] five weeks into the Fall 2013 semester, that she had been raped and was "struggling to keep things together."
- [redacted] The Complainant told Ms. [redacted] that she had told the Respondent she did not want him to penetrate her, but that he had done so, and that the Respondent was "aggressive" and forceful.
- [redacted] The Complainant told Ms. [redacted] that she, the Complainant, had made it clear to the Respondent that she was a virgin and did not want to have sex, but that he "put his penis in her"; that she told him to stop, but that he penetrated her again with his penis, that she estimated that the Respondent penetrated her five times, that she thought about leaving the room, but did not believe that she could leave the building because she did not have a key card for Rangeview.
- [redacted] The Complainant told Ms. [redacted] that she had told the Respondent she did not want to have intercourse, but that the Respondent penetrated her vagina with his penis and that she told the Respondent that she did not want to have sex with him because she was a virgin.

As shown above, the Complainant told each of the above-identified individuals that she communicated to Respondent that she did not want his penis to penetrate her, and that despite such statements, he used his penis to penetrate her. She also told four of the above-identified individuals that she had told the Respondent that she did not want to have sex with him because she was a virgin. Further, the Complainant told two of the above-identified individuals that the Respondent penetrated her with his penis 4 to 5 times, which is consistent with the number of times she told the Investigator that the Respondent penetrated her with his penis. Thus, the information provided by the Complainant to the above-identified individual is consistent on the material issues in dispute—that the Complainant told the Respondent not to penetrate her with his penis, but that he did so anyway. The Complainant's repeated consistent reporting of these key events supports a conclusion that the Complainant's testimony on these issues is reliable and credible.

d. Information provided by the Complainant is corroborated by the Respondent.

The Complainant told the Investigator that during the events of September 29, 2013 that the Respondent stated that he had an epiphany during the summer about being evil. (See, page 7 of

Ruth Jones
May 14, 2014
Page 11

Cones' witness summary.) When questioned about this comment during the hearing, the Respondent replied that he had made a comment to the Complainant concerning being "ruthless." Although "ruthless" has a less negative connotation than "evil," the Respondent clearly recognized and corroborated the conversation thread that the Complainant had identified to the Investigator. Additionally, the Complainant stated that she saw a Malcolm X poster in the Respondent's dormitory room, and the Respondent corroborated that fact. Such corroboration supports the conclusion that the Complainant is an accurate reporter of facts.

e. Conduct by the Complainant consistent with vaginal penetration.

Following the events that occurred in the Respondent's room on September 29, 2014, the Complainant had a pregnancy test. If Respondent had not penetrated the Complainant with his penis vaginally, the Complainant would have had no concern regarding pregnancy. Thus, the Complainant's conduct in obtaining a pregnancy test on October 3, 2014 is consistent with the Respondent penetrating her vagina with his penis.

f. Respondent's testimony that, in essence, the absence of bruising requires a finding that no sexual Assault occurred.

In the Respondent's closing remarks, he suggested that a finding of sexual assault could not be made because he had not injured or bruised the Complainant. Consistent with such remarks, Mr. [] told the Investigator that during the Respondent's encounter with Ms. [] he heard the Respondent state to Ms. [] "There were no bruises, I didn't hit her or anything...so that's not rape, that's not sexual assault." The College's Policy of this decision, contains no requirement that the victim establish injury or bruising as an element of sexual assault, and the absence of physical injury is not a defense to these allegations.

g. The inability of witnesses [] to competently testify to the events that occurred in Respondent's room on September 29, 2013.

Mr. [] told the Investigator that he could not hear what occurred in Respondent's room. Thus, he cannot provide any competent testimony concerning the events that occurred in Respondent's room with the Complainant on September 29, 2013. [] testified that after he threw a shoe at the wall that joined his room and the Respondent's room, he went to sleep and did not awaken until the morning. He also testified that he is a deep sleeper during the night. In light of those facts, Mr. [] cannot provide any competent testimony concerning the events that occurred in Respondent's room with the Complainant on September 29, 2013. Because Mr. [] had no interaction with the Complainant before their introduction on the morning of September 29, 2014, the external adjudicator gives no weight to Mr. [] assessment of the Complainant's demeanor that morning.

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May 14, 2014
Page 12

2. Did the Complainant demonstrate conduct or make statements that would indicate she consented to the Respondent Penetrating her Vagina and/or Anus with His Penis?

a. Vaginal Penetration

As explained above, the external adjudicator finds that the Complainant's version of the key elements of this dispute are credible. As a result, the external adjudicator finds that the Complainant repeatedly told the Respondent that she did not want him to penetrate her vagina with his penis. Those statements were sufficiently clear and unequivocal that the Respondent should have known that the Complainant did not consent to his penetration of her vagina with his penis.

b. Anal Penetration

Because the external adjudicator finds that the Complainant's testimony is credible, the external adjudicator finds that the Respondent attempted to restrict the Complainant from leaving his room and his verbal and physical aggression towards her resulted in the Complainant being coerced into engaging in the first instance of anal sex with the Respondent.⁴ Because the Respondent obtained consent for anal sex through coercion, he did not have effective consent for the anal sex.

With respect to the second instance of Respondent's penetration of the Complainant's anus with his penis, because the external adjudicator finds that the Complainant's testimony is more reliable than the Respondent's, the external adjudicator finds that the Respondent inserted his penis into the Complainant's anus on a second occasion without her consent.

3. Findings

The external adjudicator finds 1.) that the Respondent penetrated the Complainant's vagina on three occasions on September 29, 2013; 2.) that the Respondent did not have consent to penetrate the Complainant's vagina with his penis on September 29, 2013; 3.) that the Respondent penetrated the Complainant's anus with his penis on two occasions on September 29, 2013, 4.) that Respondent did not have effective consent to penetrate the Complainant's anus with his penis on September 29, 2013. As stated above, neither party has contended that they were incapacitated at the time of the relevant events. Thus, the external adjudicator finds that the elements of sexual assault under the College's Policy have been established. Accordingly, the external adjudicator finds that the Respondent has violated the College's sexual misconduct policy.

⁴ The Investigator finds the Respondent's statement that the Complainant proposed having anal sex with him wholly implausible.

Ruth Jones
May 14, 2014
Page 13

B. Non-Consensual Sexual Contact

As set forth above, the external adjudicator has found sexual assault as defined in the College's sexual misconduct policy. The elements for a finding of sexual assault under the College's Policy encompass all of the elements of non-consensual sexual contact. Thus, a finding of sexual assault necessarily includes a finding of non-consensual sexual contact. For that reason, and that reason alone, the external adjudicator finds the Respondent also violated the College's prohibition of non-consensual sexual contact as set forth in the Policy.

III. Conclusion

Based on the investigative report, including witness summaries and exhibits, in this matter and on the testimony received in the hearing on May 12, 2014, the external adjudicator finds that the Respondent has violated the College's sexual misconduct policy.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Marion L. McDermid

Marilou F. Mirkovich

MFM:mfm

Enclosures

4 14072 17666

Exhibit 5

09/15/2015

09/15/2015



OCCIDENTAL COLLEGE
1600 CAMPUS ROAD
LOS ANGELES, CA 90041-3314

May 22, 2014

Dear Mr.

This letter communicates the sanction resulting from the findings of responsibility for violations to the Sexual Misconduct Policy of sexual assault and non-consensual sexual contact.

Sanction

The policy states that in general, the range of sanctions to be applied for a finding of sexual assault is suspension to expulsion. We reviewed the information you provided regarding the impact of this matter on you and your request for suspension rather than expulsion. We also considered the complainant's statement and the adjudicator's decision. Given the severity of the findings, and the nature of the violation, the following sanction is being applied to both findings of responsibility.

Sanction:	Permanent Separation from the College • Termination of student status • Exclusion from College premises, privileges and activities
Effective:	Immediately

Please feel free to contact me should you have any questions.

Sincerely,

Cherie A Scricca
Title IX Hearing Coordinator
323-259-1358
scricca@oxy.edu

Cc: Ruth Jones, Title IX Coordinator

09/15/2015

Exhibit 5

Exhibit 6

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THE ADJUDICATOR'S DECISION CONSTITUTES AN ABUSE OF DISCRETION AND
MUST BE SET ASIDE

The US Department of Education's Office of Civil Rights requires that educational institutions under its jurisdiction must adopt an equitable grievance procedure (See April 4, 2011 "Dear Colleague Letter" at Page 10). This requires that both parties be afforded an equal opportunity for their cases to be considered (Id. P. 11). Here, the Adjudicator's opinion indicates that she applied a different evidentiary standard to the Complainant's case vs. the Respondent's case.

For example, the Adjudicator determined that the Respondent was not credible because stated that the Respondent said there was a "disagreement" or "miscommunication" between himself and the Complainant. Because Respondent denied this statement, he was deemed to not be credible, although this discrepancy has little to do with the substance of the case, ie whether or not there was unconsented-to sexual conduct or harassment.

On the other hand, the Adjudicator found Complainant to be credible, even though some of her claims were clearly impeached, for example, her claim that she was led through a misleading route to Respondent's dormitory suite, and her claim that she screamed out. Both of these claims were refuted by other evidence. Both of these claims were central to Complainant's narrative. Complainant's *entire justification for remaining in the room rested on her claim that she didn't know how she had gotten into the building and could not leave*. Complainant claims to have screamed out, and despite a witness being in the very next room who stated he could hear Complainant and Respondent together, *he heard no such scream*.

charges and without a chance to have access to information that the Complainant and the University have in their possession until the very end. The Respondent has no access to potential witnesses or evidence. Being removed from campus creates a stigma and an environment that discourages any potentially helpful witness from coming forward, and colors all potential witnesses' perceptions of what they recall.

The removal from campus and bar from even attending classes occurs without any opportunity to respond, and without offering any compromise, *before any evidentiary determination has been made that the accusation is merited*. This is a powerful weapon in the hands of the Complainant, for which the Respondent, who is denied even an opportunity to appeal the banishment, has no equal power.

The only knowledge the Respondent receives of the Complainant's statement is when he is confronted with it by outside investigators during his investigation interview. This is unfair, because the College, its investigators, and the Complainant all know her statement long before it is revealed to the Respondent. The only mechanism to develop exculpatory evidence is through the outside investigator, whom the accused has no power to direct.

To describe this procedure as unfair is an understatement of what it truly is. This is a system by which every Respondent faces an impossible battle, and will inevitably be held liable and dismissed.

THE SANCTION IS ARBITRARY AND IS TOO SEVERE

Here, the college has offered no analysis at all to justify the permanent dismissal sanction it has imposed. There is no indication that the sanction was tailored to the specifics of the case. The sanction was determined before asking the

parties to offer mitigating evidence or alternatives. There is no indication that the school has any type of scale or guidelines it employs to determine the sanction at all.

Here, Respondent has received a permanent dismissal and separation from the College. There was no consideration of any possibility of rehabilitation or redemption, or even whether or not the safety of the Complainant or the College could be assured with a lesser sanction.

CONCLUSION

In light of the foregoing, it is respectfully requested that the adjudicator's decision be set aside, and/or that the sanction be reduced.

Respectfully submitted,

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Exhibit 7

09/11/2015 09:15:20

From:
Subject: wo: appea
Date: May 28, 2014 at 2:13 PM
To:

----- Forwarded message -----
From: Cherie Scricca <scricca@oxy.edu>
Date: Tue, May 27, 2014 at 6:30 PM
Subject: Re: appeal
To

Dear

I want to let you know that according to the Sexual Misconduct Policy, tomorrow, I will be forwarding your appeal document to Ms. to allow her an opportunity to review the appeal and if she chooses, to provide a response to me by Monday, June 2, 2014.

I will update you the week of June 2, 2014 with the next step in the appeal process and notify you of the Appeals Officer assigned to this matter.

As always, if you have questions or would like further information, please feel free to contact me.

On Fri, May 23, 2014 at 5:41 PM, Cherie Scricca <scricca@oxy.edu> wrote:

Dear

I received your appeal today. I will be back in touch with you shortly.

On Fri, May 23, 2014 at 7:32 AM

|

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Cherie A Scricca
Title IX Office
Occidental College
1600 Campus Road
Los Angeles, CA 90041
[323-259-1358](tel:323-259-1358)
scricca@oxy.edu

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Cherie A Scricca
Title IX Office
Occidental College
1600 Campus Road
Los Angeles, CA 90041
[323-259-1358](tel:323-259-1358)
scricca@oxy.edu

05/28/2014 2:13 PM
05/28/2014 2:13 PM

Exhibit 8

0801422200#4
0571572015



OCCIDENTAL COLLEGE
1600 CAMPUS ROAD
LOS ANGELES, CA 90041-3314

June 23, 2014

Dear Mr

Today, Associate Dean Timothy Chang, the appeals officer, submitted his ruling on the appeal you filed on May 23, 2014. His report is enclosed with this letter. Please note that the report substitutes individual names with corresponding initials, following a new protocol within the office.

Mr. Chang's review, deliberation and determination of your appeal was based on a review of the investigation report and exhibits, information gathered at the hearing, the review and decision of the external adjudicator, the processes and procedures followed in accordance with the Occidental College Sexual Misconduct Policy, your appeal and the response to your appeal by Complainant

Please let me know if you have any questions or if you would like any additional information.

Respectfully,

Cherie A. Scricca
Title IX Hearing Coordinator
323-259-1358
scricca@oxy.edu

Cc: Ruth Jones, Title IX Coordinator

Encl: Determination on Appeal filed by the Respondent

Exhibit 8

000014310151

Exhibit 9

03091/3 020244
000115/2015



OCCIDENTAL COLLEGE
1600 CAMPUS ROAD
LOS ANGELES, CA 90041-3314

June 23, 2014

Cherie A. Scricca
Hearing Coordinator
Title IX Office
Occidental College
1600 Campus Drive
Los Angeles, CA 90041

RE: Determination on Appeal filed by the Respondent [REDACTED]

I have been asked by the Vice President for Student Services and Dean of Students to serve as the Appeals Officer for this matter. On June 3, 2014, the Hearing Coordinator of the Title IX Office of Occidental College requested that I review the appeal filed by the Respondent [REDACTED] regarding the complaint of violation of the Sexual Misconduct Policy filed by the Complainant [REDACTED] against the Respondent [REDACTED]. I have not previously been involved in this case. All documents that were reviewed for this appeal are listed at the end of this document.

Procedural Background

On January 31, 2014, the Complainant [REDACTED] filed a complaint stating that the Respondent [REDACTED] had violated the College's Sexual Misconduct Policy. The College began investigation of the Complainant [REDACTED]'s complaint on or about February 13, 2014. The investigators completed interviewing witnesses on or about April 2, 2014 and issued a report to the Title IX Office on or about April 15, 2014.

On May 12, 2014, the College conducted a hearing presided over by an external adjudicator, MM. On or about May 14, 2014 the adjudicator issued a decision on the complaint. In that decision, the adjudicator found by a preponderance of the evidence, that the Respondent MC was responsible for sexual assault and non-consensual sexual contact under the College policy. On May 16, 2014, the College notified the Complainant and Respondent of the adjudicator's decision. On May 22, 2014, the College notified the Complainant and Respondent of the resulting sanctions. On May 23, 2014, five (5) day after the issuance of the adjudicator's decision, the Respondent appealed the adjudicator's decision and sanction.

Stated Basis for Appeal

In his May 23rd letter appealing the adjudicator's May 14th decision, the Respondent MC asserts that the following constitute procedural errors and/or new evidence and constitute standing for his appeal:

1. The adjudicator's decision constitutes an abuse of discretion and must be set aside.
2. The College's procedures are not fair and equitable as required by the US Department of Education's Office of Civil Rights, and the decision must therefore be set aside.
3. The sanction is arbitrary and is too severe.

Basis for Appeal Under the Policy

In any request for an appeal, the burden of proof lies with the party requesting the appeal. The Appeals Officer shall first consider whether the appeal is timely filed and if so, whether the appeal is properly framed based on the two grounds.

According to the policy, dissatisfaction with the outcome of the hearing is not grounds for appeal. The policy provides for two grounds for appeal:

- A procedural or substantive error occurred that significantly affected the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- New evidence, unavailable during the original hearing or investigation that could substantially impact the original finding or sanction (a summary of this new evidence and its potential impact must be included).

Appeals are not intended to be full rehearing of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. This is not an opportunity for the Appeals Officer to substitute his/her judgment for that of the original hearing body merely because s/he disagree with its finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error.

Timeliness of Appeal

According to the policy, the appeal must be filed in writing within five (5) business days of receiving the written outcome.

The respondent received the written outcome of the hearing on May 16, 2014 and resulting sanctions on May 22, 2014. The appeal is dated May 23, 2014 which is five (5) business days following the respondent's receipt of the written outcome of the hearing. As a result, the respondent appeal is timely under the Policy.

Issues Raised That May Be Considered Under the Policy

The following issues meet the grounds under the policy and are being considered:

N/A

Analysis

The grounds under which the appeal has been filed constitute neither 1) a material deviation from established procedures or substantive error that significantly affected the outcome of the hearing, nor, 2) new evidence that could substantially impact the original finding.

Issues Raised That May Not Be Considered Under the Policy

The following issues do not meet the grounds for appeal under the policy.

1. The adjudicator's decision constitutes an abuse of discretion and must be set aside.
2. The College's procedures are not fair and equitable as required by the US Department of Education's Office of Civil Rights, and the decision must therefore be set aside.
3. The sanction is arbitrary and is too severe.

Conclusion

In summary, I do not find the issues identified in the appeal to assert a procedural or substantive error, or that new information was introduced that would require a review of the adjudicator's decision. Based on the above, grounds do not exist for an appeal of the adjudicator's May 14, 2014 decision in this matter.

Sincerely,



Timothy Chang

Associate Dean of Students

Reviewed Documents:

1. Appeal by MC 05.23.2014.pdf
2. Appeal Response by EC 06.02.2014.pdf
3. External Adjudicator's Decision 05.14.2014.pdf
4. Hearing Outcome Letter Complainant 05.16.2014.pdf
5. Hearing Outcome Letter Respondent 05.16.2014.pdf
6. Notice of Charges Complainant 04.25.2014.pdf
7. Notice of Charges Respondent 04.25.2014.pdf
8. Notice of Hearing Complainant 05.02.2014.pdf
9. Notice of Hearing Respondent 05.02.2014.pdf
10. Occidental College Sexual Misconduct Policy (Updated).pdf
11. Sanction Letter Complainant 05.22.2014.pdf
12. Sanction Letter Respondent 05.22.2014.pdf

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Exhibit 10

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime.

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. In order to assist recipients, which include school districts, colleges, and universities (hereinafter "schools" or "recipients") in meeting these obligations, this letter¹ explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and lays out the specific Title IX requirements applicable to sexual violence.² Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape,

¹ The Department has determined that this Dear Colleague Letter is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at:

http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters/pdf/012507_good_guidance.pdf.

OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

² Use of the term "sexual harassment" throughout this document includes sexual violence unless otherwise noted. Sexual harassment also may violate Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c), which prohibits public school districts and colleges from discriminating against students on the basis of sex, among other bases. The U.S. Department of Justice enforces Title IV.

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sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victims of completed or attempted sexual assault while in college.³ The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college.⁴ According to data collected under the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), in 2009, college campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act.⁵ This problem is not limited to college. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools.⁶ Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.⁷ The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities.

This letter begins with a discussion of Title IX's requirements related to student-on-student sexual harassment, including sexual violence, and explains schools' responsibility to take immediate and effective steps to end sexual harassment and sexual violence. These requirements are discussed in detail in OCR's *Revised Sexual Harassment Guidance Issued in 2001 (2001 Guidance)*.⁸ This letter supplements the *2001 Guidance* by providing additional guidance and practical examples regarding the Title IX requirements as they relate to sexual violence. This letter concludes by discussing the proactive efforts schools can take to prevent sexual harassment and violence, and by providing examples of remedies that schools and OCR may use to end such conduct, prevent its recurrence, and address its effects. Although some examples contained in this letter are applicable only in the postsecondary context, sexual

³ CHRISTOPHER P. KRIES ET AL., THE CAMPUS SEXUAL ASSAULT STUDY: FINAL REPORT III (Nat'l Criminal Justice Reference Serv., Oct. 2007), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>. This study also found that the majority of campus sexual assaults occur when women are incapacitated, primarily by alcohol. *Id.* at xviii.

⁴ *Id.* at 5-5.

⁵ U.S. Department of Education, Office of Postsecondary Education, Summary Crime Statistics (data compiled from reports submitted in compliance with the Clery Act), available at <http://www2.ed.gov/admns/lead/safety/criminal/2007-09.pdf>. Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. 34 C.F.R. Part 668, Subpt. D, App. A.

⁶ SIMONE ROGERS ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2010 at 104 (U.S. Dep't of Educ. & U.S. Dep't of Justice, Nov. 2010), available at <http://nces.ed.gov/pubinfo/pub/20101/201092.pdf>.

⁷ ERICA HARRILL & MICHAEL R. RAND, CRIME AGAINST PEOPLE WITH DISABILITIES, 2008 (Bureau of Justice Statistics, U.S. Dep't of Justice, Dec. 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cap08.pdf>.

⁸ The *2001 Guidance* is available on the Department's Web site at <http://www2.ed.gov/about/offices/list/ocr/docs/2001guidance.pdf>. This letter focuses on peer sexual harassment and violence. Schools' obligations and the appropriate response to sexual harassment and violence committed by employees may be different from those described in this letter. Recipients should refer to the *2001 Guidance* for further information about employee harassment of students.

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harassment and violence also are concerns for school districts. The Title IX obligations discussed in this letter apply equally to school districts unless otherwise noted.

Title IX Requirements Related to Sexual Harassment and Sexual Violence

Schools' Obligations to Respond to Sexual Harassment and Sexual Violence

Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment prohibited by Title IX.⁹

As explained in OCR's 2001 Guidance, when a student sexually harasses another student, the harassing conduct 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 school's program. 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. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.¹⁰

Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program

⁹ Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. The Title IX obligations discussed in this letter also apply to gender-based harassment. Gender-based harassment is discussed in more detail in the 2001 Guidance, and in the 2010 Dear Colleague Letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

¹⁰ See, e.g., *Jennings v. Univ. of N.C.*, 444 F.3d 255, 268, 274 n.12 (4th Cir. 2006) (acknowledging that while not an issue in this case, a single incident of sexual assault or rape could be sufficient to raise a jury question about whether a hostile environment exists, and noting that courts look to Title VII cases for guidance in analyzing Title IX sexual harassment claims); *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 259 n.4 (6th Cir. 2000) ("[w]ithin the context of Title IX, a student's claim of hostile environment can arise from a single incident" (quoting *Doe v. Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d 57, 62 (D. Me. 1999))); *Soper v. Hoben*, 195 F.3d 845, 855 (6th Cir. 1999) (explaining that rape and sexual abuse "obviously qualify" as "severe, pervasive, and objectively offensive sexual harassment"); see also *Berry v. Chi. Transit Auth.*, 618 F.3d 688, 692 (7th Cir. 2010) (in the Title VII context, "a single act can create a hostile environment if it is severe enough, and instances of unwelcome physical contact with intimate parts of the body are among the most severe types of sexual harassment"); *Turner v. Saloon, Ltd.*, 595 F.3d 679, 686 (7th Cir. 2010) (noting that "[o]ne instance of conduct that is sufficiently severe may be enough," which is "especially true when the touching is of an intimate body part" (quoting *Jackson v. Cnty. of Racine*, 474 F.3d 493, 499 (7th Cir. 2007))); *McKinnis v. Crescent Guardian, Inc.*, 189 F. App'x 307, 310 (5th Cir. 2006) (holding that "the deliberate and unwanted touching of [a plaintiff's] intimate body parts can constitute severe sexual harassment" in Title VII cases (quoting *Harvill v. Westward Commc'ns, L.L.C.*, 433 F.3d 428, 436 (5th Cir. 2005))).

sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.¹¹

If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.¹² Schools also are required to publish a notice of nondiscrimination and to adopt and publish grievance procedures. Because of these requirements, which are discussed in greater detail in the following section, schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly. Training for employees should include practical information about how to identify and report sexual harassment and violence. OCR recommends that this training be provided to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors.

Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. For example, if a student alleges that he or she was sexually assaulted by another student off school grounds, and that upon returning to school he or she was taunted and harassed by other students who are the alleged perpetrator's friends, the school should take the earlier sexual assault into account in determining whether there is a sexually hostile environment. The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.

Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. As discussed later in this letter, the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct. The specific steps in a school's

¹¹ Title IX also protects third parties from sexual harassment or violence in a school's education programs and activities. For example, Title IX protects a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in a school's on-campus residence hall. Title IX also protects employees of a recipient from sexual harassment. For further information about harassment of employees, see 2001 Guidance at n.1.

¹² This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See 2001 Guidance at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643, 648 (1999).

Investigation will vary depending upon the nature of the allegations, the age of the student or students involved (particularly in elementary and secondary schools), the size and administrative structure of the school, and other factors. Yet as discussed in more detail below, the school's inquiry must in all cases be prompt, thorough, and impartial. In cases involving potential criminal conduct, school personnel must determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified.¹³

Schools also should inform and obtain consent from the complainant (or the complainant's parents if the complainant is under 18 and does not attend a postsecondary institution) before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited.¹⁴ The school also should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

As discussed in the 2001 Guidance, if the complainant continues to ask that his or her name or other identifiable information not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.¹⁵ The school should inform the complainant if it cannot ensure confidentiality. Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence. Examples of such steps are discussed later in this letter.

Compliance with Title IX, such as publishing a notice of nondiscrimination, designating an employee to coordinate Title IX compliance, and adopting and publishing grievance procedures, can serve as preventive measures against harassment. Combined with education and training programs, these measures can help ensure that all students and employees recognize the

¹³ In states with mandatory reporting laws, schools may be required to report certain incidents to local law enforcement or child protection agencies.

¹⁴ Schools should refer to the 2001 Guidance for additional information on confidentiality and the alleged perpetrator's due process rights.

¹⁵ For example, the alleged harasser may have a right under FERPA to inspect and review portions of the complaint that directly relate to him or her. In that case, the school must redact the complainant's name and other identifying information before allowing the alleged harasser to inspect and review the sections of the complaint that relate to him or her. In some cases, such as those where the school is required to report the incident to local law enforcement or other officials, the school may not be able to maintain the complainant's confidentiality.

nature of sexual harassment and violence, and understand that the school will not tolerate such conduct. Indeed, these measures may bring potentially problematic conduct to the school's attention before it becomes serious enough to create a hostile environment. Training for administrators, teachers, staff, and students also can help ensure that they understand what types of conduct constitute sexual harassment or violence, can identify warning signals that may need attention, and know how to respond. More detailed information and examples of education and other preventive measures are provided later in this letter.

Procedural Requirements Pertaining to Sexual Harassment and Sexual Violence

Recipients of Federal financial assistance must comply with the procedural requirements outlined in the Title IX implementing regulations. Specifically, a recipient must:

- (A) Disseminate a notice of nondiscrimination;¹⁶
- (B) Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX;¹⁷ and
- (C) Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints.¹⁸

These requirements apply to all forms of sexual harassment, including sexual violence, and are important for preventing and effectively responding to sex discrimination. They are discussed in greater detail below. OCR advises recipients to examine their current policies and procedures on sexual harassment and sexual violence to determine whether those policies comply with the requirements articulated in this letter and the 2001 Guidance. Recipients should then implement changes as needed.

(A) Notice of Nondiscrimination

The Title IX regulations require that each recipient publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to discriminate in such a manner.¹⁹ The notice must state that inquiries concerning the application of Title IX may be referred to the recipient's Title IX coordinator or to OCR. It should include the name or title, office address, telephone number, and e-mail address for the recipient's designated Title IX coordinator.

The notice must be widely distributed to all students, parents of elementary and secondary students, employees, applicants for admission and employment, and other relevant persons. OCR recommends that the notice be prominently posted on school Web sites and at various

¹⁶ 34 C.F.R. § 106.9.

¹⁷ *Id.* § 106.8(a).

¹⁸ *Id.* § 106.8(b).

¹⁹ *Id.* § 106.9(a).

locations throughout the school or campus and published in electronic and printed publications of general distribution that provide information to students and employees about the school's services and policies. The notice should be available and easily accessible on an ongoing basis.

Title IX does not require a recipient to adopt a policy specifically prohibiting sexual harassment or sexual violence. As noted in the 2001 Guidance, however, a recipient's general policy prohibiting sex discrimination will not be considered effective and would violate Title IX if, because of the lack of a specific policy, students are unaware of what kind of conduct constitutes sexual harassment, including sexual violence, or that such conduct is prohibited sex discrimination. OCR therefore recommends that a recipient's nondiscrimination policy state that prohibited sex discrimination covers sexual harassment, including sexual violence, and that the policy include examples of the types of conduct that it covers.

(B) Title IX Coordinator

The Title IX regulations require a recipient to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with Title IX.²⁰ The coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The Title IX coordinator or designee should be available to meet with students as needed. If a recipient designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities (e.g., who will handle complaints by students, faculty, and other employees). The recipient should designate one coordinator as having ultimate oversight responsibility, and the other coordinators should have titles clearly showing that they are in a deputy or supporting role to the senior coordinator. The Title IX coordinators should not have other job responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest.

Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. Because sexual violence complaints often are filed with the school's law enforcement unit, all school law enforcement unit employees should receive training on the school's Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school's Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint, and to report incidents of sexual violence to the Title IX coordinator if the complainant consents. The school's Title IX coordinator or designee should be available to provide assistance to school law enforcement unit employees regarding how to respond appropriately to reports of sexual violence. The Title IX coordinator also should be given access to school law enforcement unit investigation notes

²⁰ *Id.* § 106.8(a).

and findings as necessary for the Title IX investigation, so long as it does not compromise the criminal investigation.

(C) Grievance Procedures

The Title IX regulations require all recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints.²¹ The grievance procedures must apply to sex discrimination complaints filed by students against school employees, other students, or third parties.

Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and sexual violence complaints. Therefore, a recipient may use student disciplinary procedures or other separate procedures to resolve such complaints. Any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary procedures, however, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution.²² These requirements are discussed in greater detail below. If the recipient relies on disciplinary procedures for Title IX compliance, the Title IX coordinator should review the recipient's disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX.²³

Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints. OCR has frequently advised recipients, however, that it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school (e.g., participation by a trained counselor, a trained mediator, or, if appropriate, a teacher or administrator). In addition, as stated in the 2001 Guidance, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints.

²¹ *Id.* § 106.8(b). Title IX also requires recipients to adopt and publish grievance procedures for employee complaints of sex discrimination.

²² These procedures must apply to all students, including athletes. If a complaint of sexual violence involves a student athlete, the school must follow its standard procedures for resolving sexual violence complaints. Such complaints must not be addressed solely by athletics department procedures. Additionally, if an alleged perpetrator is an elementary or secondary student with a disability, schools must follow the procedural safeguards in the Individuals with Disabilities Education Act (at 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500-300.519, 300.530-300.537) as well as the requirements of Section 504 of the Rehabilitation Act of 1973 (at 34 C.F.R. §§ 104.35-104.36) when conducting the investigation and hearing.

²³ A school may not absolve itself of its Title IX obligations to investigate and resolve complaints of sexual harassment or violence by delegating, whether through express contractual agreement or other less formal arrangement, the responsibility to administer school discipline to school resource officers or "contract" law enforcement officers. See 34 C.F.R. § 106.4.

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Prompt and Equitable Requirements

As stated in the 2001 Guidance, OCR has identified a number of elements in evaluating whether a school's grievance procedures provide for prompt and equitable resolution of sexual harassment complaints. These elements also apply to sexual violence complaints because, as explained above, sexual violence is a form of sexual harassment. OCR will review all aspects of a school's grievance procedures, including the following elements that are critical to achieve compliance with Title IX:

- Notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- Application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
- Designated and reasonably prompt time frames for the major stages of the complaint process;
- Notice to parties of the outcome of the complaint;²⁴ and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

As noted in the 2001 Guidance, procedures adopted by schools will vary in detail, specificity, and components, reflecting differences in the age of students, school sizes and administrative structures, State or local legal requirements, and past experiences. Although OCR examines whether all applicable elements are addressed when investigating sexual harassment complaints, this letter focuses on those elements where our work indicates that more clarification and explanation are needed, including:

(A) Notice of the grievance procedures

The procedures for resolving complaints of sex discrimination, including sexual harassment, should be written in language appropriate to the age of the school's students, easily understood, easily located, and widely distributed. OCR recommends that the grievance procedures be prominently posted on school Web sites; sent electronically to all members of the school community; available at various locations throughout the school or campus; and summarized in or attached to major publications issued by the school, such as handbooks, codes of conduct, and catalogs for students, parents of elementary and secondary students, faculty, and staff.

(B) Adequate, Reliable, and Impartial Investigation of Complaints

OCR's work indicates that a number of issues related to an adequate, reliable, and impartial investigation arise in sexual harassment and violence complaints. In some cases, the conduct

²⁴ "Outcome" does not refer to information about disciplinary sanctions unless otherwise noted. Notice of the outcome is discussed in greater detail in Section D below.

may constitute both sexual harassment under Title IX and criminal activity. Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.

A school should notify a complainant of the right to file a criminal complaint, and should not dissuade a victim from doing so either during or after the school's internal Title IX investigation. For instance, if a complainant wants to file a police report, the school should not tell the complainant that it is working toward a solution and instruct, or ask, the complainant to wait to file the report.

Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime. Any agreement or Memorandum of Understanding (MOU) with a local police department must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably. Although a school 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 (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete its fact-finding for the Title IX investigation.²⁵ Moreover, nothing in an MOU or the criminal investigation itself should prevent a school from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the school community while the law enforcement agency's fact-gathering is in progress. OCR also recommends that a school's MOU include clear policies on when a school will refer a matter to local law enforcement.

As noted above, the Title IX regulation requires schools to provide equitable grievance procedures. As part of these procedures, schools generally conduct investigations and hearings to determine whether sexual harassment or violence occurred. In addressing complaints filed with OCR under Title IX, OCR reviews a school's procedures to determine whether the school is using a preponderance of the evidence standard to evaluate complaints. The Supreme Court has applied a preponderance of the evidence standard in civil litigation involving discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e et seq. Like Title IX,

²⁵ In one recent OCR sexual violence case, the prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances.

Title VII prohibits discrimination on the basis of sex.²⁶ OCR also uses a preponderance of the evidence standard when it resolves complaints against recipients. For instance, OCR's Case Processing Manual requires that a noncompliance determination be supported by the preponderance of the evidence when resolving allegations of discrimination under all the statutes enforced by OCR, including Title IX.²⁷ OCR also uses a preponderance of the evidence standard in its fund termination administrative hearings.²⁸ Thus, in order for a school's grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred). The "clear and convincing" standard (i.e., it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.

Throughout a school's Title IX investigation, including at any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and the alleged perpetrator must be afforded similar and timely access to any information that will be used at the hearing.²⁹ For example, a school should not conduct a pre-hearing meeting during which only the alleged perpetrator is present and given an opportunity to present his or her side of the story, unless a similar meeting takes place with the complainant; a hearing officer or disciplinary board should not allow only the alleged perpetrator to present character witnesses at a hearing; and a school should not allow the alleged perpetrator to review the complainant's

²⁶ See, e.g., *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003) (noting that under the "conventional rule of civil litigation," the preponderance of the evidence standard generally applies in cases under Title VII); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 252-55 (1989) (approving preponderance standard in Title VII sex discrimination case) [plurality opinion]; *id.* at 260 (White, J., concurring in the judgment); *id.* at 261 (O'Connor, J., concurring in the judgment). The 2001 Guidance noted (on page vi) that "[w]hile *Gebser* and *Davis* made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the *Davis* Court also indicated, through its specific references to Title VII case law, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX." See also *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007) ("We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.").

²⁷ OCR's Case Processing Manual is available on the Department's Web site, at <http://www.ed.gov/about/offices/list/ocr/docs/cpman.html>.

²⁸ The Title IX regulations adopt the procedural provisions applicable to Title VI of the Civil Rights Act of 1964. See 34 C.F.R. § 106.71 ("The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference."). The Title VI regulations apply the Administrative Procedure Act to administrative hearings required prior to termination of Federal financial assistance and require that termination decisions be "supported by and in accordance with the reliable, probative and substantial evidence." 5 U.S.C. § 556(d). The Supreme Court has interpreted "reliable, probative and substantial evidence" as a direction to use the preponderance standard. See *Steadman v. SEC*, 450 U.S. 91, 98-102 (1981).

²⁹ Access to this information must be provided consistent with FERPA. For example, if a school introduces an alleged perpetrator's prior disciplinary records to support a tougher disciplinary penalty, the complainant would not be allowed access to those records. Additionally, access should not be given to privileged or confidential information. For example, the alleged perpetrator should not be given access to communications between the complainant and a counselor or information regarding the complainant's sexual history.

statement without also allowing the complainant to review the alleged perpetrator's statement.

While OCR does not require schools to permit parties to have lawyers at any stage of the proceedings, if a school chooses to allow the parties to have their lawyers participate in the proceedings, it must do so equally for both parties. Additionally, any school-imposed restrictions on the ability of lawyers to speak or otherwise participate in the proceedings should apply equally. OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment. OCR also recommends that schools provide an appeals process. If a school provides for appeal of the findings or remedy, it must do so for both parties. Schools must maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings.

All persons involved in implementing a recipient's grievance procedures (e.g., Title IX coordinators, investigators, and adjudicators) must have training or experience in handling complaints of sexual harassment and sexual violence, and in the recipient's grievance procedures. The training also should include applicable confidentiality requirements. In sexual violence cases, the fact-finder and decision-maker also should have adequate training or knowledge regarding sexual violence.³⁰ Additionally, a school's investigation and hearing processes cannot be equitable unless they are impartial. Therefore, any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed.

Public and state-supported schools must provide due process to the alleged perpetrator. However, schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.

(C) Designated and Reasonably Prompt Time Frames

OCR will evaluate whether a school's grievance procedures specify the time frames for all major stages of the procedures, as well as the process for extending timelines. Grievance procedures should specify the time frame within which: (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal, if applicable. Both parties should be given periodic status updates. Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint. Whether OCR considers complaint resolutions to be timely, however, will vary depending on the complexity of the investigation and the severity and extent of the harassment. For example, the resolution of a complaint involving multiple incidents with multiple complainants likely would take longer than one involving a single incident that

³⁰ For instance, if an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner.

occurred in a classroom during school hours with a single complainant.

(D) *Notice of Outcome*

Both parties must be notified, in writing, about the outcome of both the complaint and any appeal.¹¹ *i.e.*, whether harassment was found to have occurred, OCR recommends that schools provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. Title IX does not require the school to notify the alleged perpetrator of the outcome before it notifies the complainant.

Due to the intersection of Title IX and FERPA requirements, OCR recognizes that there may be confusion regarding what information a school may disclose to the complainant.¹² FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student's "education record." However, as stated in the 2001 Guidance, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.¹³ Disclosure of other information in the student's "education record," including information about sanctions that do not relate to the harassed student, may result in a violation of FERPA.

Further, when the conduct involves a crime of violence or a non-forcible sex offense,¹⁴ FERPA permits a postsecondary institution to disclose to the alleged victim the final results of a

¹¹ As noted previously, "outcome" does not refer to information about disciplinary sanctions unless otherwise noted.

¹² In 1994, Congress amended the General Education Provisions Act (GEPA), of which FERPA is a part, to state that nothing in GEPA "shall be construed to affect the applicability of title VI of the Civil Rights Act of 1964, title IX of Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." 20 U.S.C. § 1231(d). The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. See 2001 Guidance at vii.

¹³ This information directly relates to the complainant and is particularly important in sexual harassment cases because it affects whether a hostile environment has been eliminated. Because seeing the perpetrator may be traumatic, a complainant in a sexual harassment case may continue to be subject to a hostile environment if he or she does not know when the perpetrator will return to school or whether he or she will continue to share classes or a residence hall with the perpetrator. This information also directly affects a complainant's decision regarding how to work with the school to eliminate the hostile environment and prevent its recurrence. For instance, if a complainant knows that the perpetrator will not be at school or will be transferred to another class or another residence hall for the rest of the year, the complainant may be less likely to want to transfer to another school or change classes, but if the perpetrator will be returning to school after a few days or weeks, or remaining in the complainant's classes or residence hall, the complainant may want to transfer schools or change classes to avoid contact. Thus, the complainant cannot make an informed decision about how best to respond without this information.

¹⁴ Under the FERPA regulations, crimes of violence include arson; assault offenses (aggravated assault, simple assault, intimidation); burglary; criminal homicide (manslaughter by negligence, criminal homicide (murder and

disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed.¹⁵ Additionally, a postsecondary institution may disclose to anyone—not just the alleged victim—the final results of a disciplinary proceeding if it determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution's rules or policies.¹⁶

Postsecondary institutions also are subject to additional rules under the Clery Act. This law, which applies to postsecondary institutions that participate in federal student financial aid programs, requires that "both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense."¹⁷ Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on redisclosure of information do not apply to information that postsecondary institutions are required to disclose under the Clery Act.¹⁸ Accordingly, postsecondary institutions may not require a complainant to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of this information.

Steps to Prevent Sexual Harassment and Sexual Violence and Correct Its Discriminatory Effects on the Complainant and Others

Education and Prevention

In addition to ensuring full compliance with Title IX, schools should take proactive measures to prevent sexual harassment and violence. OCR recommends that all schools implement preventive education programs and make victim resources, including comprehensive victim services, available. Schools may want to include these education programs in their (1) orientation programs for new students, faculty, staff, and employees; (2) training for students who serve as advisors in residence halls; (3) training for student athletes and coaches; and (4) school assemblies and "back to school nights." These programs should include a

non-negligent manslaughter; destruction, damage or vandalism of property; kidnapping/abduction; robbery; and forcible sex offenses. Forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include rape, sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses are incest and statutory rape. 34 C.F.R. § 99.31(a)(9). For purposes of 34 C.F.R. § 99.31(a)(13)(4)(i), disclosure of "final results" is limited to the name of the alleged perpetrator. Any violation found to have been committed, and any sanction imposed against the perpetrator by the school. 34 C.F.R. § 99.33.

¹⁵ 34 C.F.R. § 99.31(a)(14). "Outcome" means the institution's final determination with respect to the alleged sex offense and any sanctions imposed against the accused. 34 C.F.R. § 668.46(b)(1)(v)(18).

¹⁶ 34 C.F.R. § 668.46(b)(1)(v)(18). Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person's will, or not forcibly or against the person's will where the person is incapable of giving consent. Forcible sex offenses include incest, rape, sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses include incest and statutory rape. 34 C.F.R. Part 668, Subpart D, App. A.

¹⁷ 34 C.F.R. § 99.33(a).

¹⁸ 34 C.F.R. § 99.33(a).

discussion of what constitutes sexual harassment and sexual violence, the school's policies and disciplinary procedures, and the consequences of violating these policies.

The education programs also should include information aimed at encouraging students to report incidents of sexual violence to the appropriate school and law enforcement authorities. Schools should be aware that victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of school or campus rules were involved.⁴⁰ As a result, schools should consider whether their disciplinary policies have a chilling effect on victims' or other students' reporting of sexual violence offenses. For example, OCR recommends that schools inform students that the schools' primary concern is student safety, that any other rules violations will be addressed separately from the sexual violence allegation, and that use of alcohol or drugs never makes the victim at fault for sexual violence.

OCR also recommends that schools develop specific sexual violence materials that include the schools' policies, rules, and resources for students, faculty, coaches, and administrators. Schools also should include such information in their employee handbook and any handbooks that student athletes and members of student activity groups receive. These materials should include where and to whom students should go if they are victims of sexual violence. These materials also should tell students and school employees what to do if they learn of an incident of sexual violence. Schools also should assess student activities regularly to ensure that the practices and behavior of students do not violate the schools' policies against sexual harassment and sexual violence.

Remedies and Enforcement

As discussed above, if a school determines that sexual harassment that creates a hostile environment has occurred, it must take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. In addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant, as well as changes to the school's overall services or policies. Examples of these actions are discussed in greater detail below.

Title IX requires a school to take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. The school should undertake these steps promptly once it has notice of a sexual harassment or violence allegation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the school may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school's investigation. When taking steps to separate the complainant and alleged perpetrator, a school should minimize the burden on the

⁴⁰ The Department's Higher Education Center for Alcohol, Drug Abuse, and Violence Prevention (HEC) helps campuses and communities address problems of alcohol, other drugs, and violence by identifying effective strategies and programs based upon the best prevention science. Information on HEC resources and technical assistance can be found at www.higheredcenter.org.

complainant, and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain. In addition, schools should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement.⁴¹

Schools should be aware that complaints of sexual harassment or violence may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to name-calling and taunting. As part of their Title IX obligations, schools must have policies and procedures in place to protect against retaliatory harassment. At a minimum, schools must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

When OCR finds that a school has not taken prompt and effective steps to respond to sexual harassment or violence, OCR will seek appropriate remedies for both the complainant and the broader student population. When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department or refer the case to the U.S. Department of Justice for litigation.

Schools should proactively consider the following remedies when determining how to respond to sexual harassment or violence. These are the same types of remedies that OCR would seek in its cases.

Depending on the specific nature of the problem, remedies for the complainant might include, but are not limited to:⁴²

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes;
- moving the complainant or alleged perpetrator to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;

⁴¹ The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to notify proper law enforcement authorities, including campus and local police, and the option to be assisted by campus personnel in notifying such authorities. The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community. 20 U.S.C. §§ 1092(f)(8)(B)(v)-(vi).

⁴² Some of these remedies also can be used as interim measures before the school's investigation is complete.

- arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.⁴³

Remedies for the broader student population might include, but are not limited to:

Counseling and Training

- offering counseling, health, mental health, or other holistic and comprehensive victim services to all students affected by sexual harassment or sexual violence, and notifying students of campus and community counseling, health, mental health, and other student services;
- designating an individual from the school's counseling center to be "on call" to assist victims of sexual harassment or violence whenever needed;
- training the Title IX coordinator and any other employees who are involved in processing, investigating, or resolving complaints of sexual harassment or sexual violence, including providing training on:
 - the school's Title IX responsibilities to address allegations of sexual harassment or violence
 - how to conduct Title IX investigations
 - information on the link between alcohol and drug abuse and sexual harassment or violence and best practices to address that link;
- training all school law enforcement unit personnel on the school's Title IX responsibilities and handling of sexual harassment or violence complaints;
- training all employees who interact with students regularly on recognizing and appropriately addressing allegations of sexual harassment or violence under Title IX; and
- informing students of their options to notify proper law enforcement authorities, including school and local police, and the option to be assisted by school employees in notifying those authorities.

Development of Materials and Implementation of Policies and Procedures

- developing materials on sexual harassment and violence, which should be distributed to students during orientation and upon receipt of complaints, as well as widely posted throughout school buildings and residence halls, and which should include:
 - what constitutes sexual harassment or violence
 - what to do if a student has been the victim of sexual harassment or violence
 - contact information for counseling and victim services on and off school grounds
 - how to file a complaint with the school
 - how to contact the school's Title IX coordinator

⁴³ For example, if the complainant was disciplined for skipping a class in which the harasser was enrolled, the school should review the incident to determine if the complainant skipped the class to avoid contact with the harasser.

- what the school will do to respond to allegations of sexual harassment or violence, including the interim measures that can be taken
- requiring the Title IX coordinator to communicate regularly with the school's law enforcement unit investigating cases and to provide information to law enforcement unit personnel regarding Title IX requirements;⁴⁴
- requiring the Title IX coordinator to review all evidence in a sexual harassment or sexual violence case brought before the school's disciplinary committee to determine whether the complainant is entitled to a remedy under Title IX that was not available through the disciplinary committee;⁴⁵
- requiring the school to create a committee of students and school officials to identify strategies for ensuring that students:
 - know the school's prohibition against sex discrimination, including sexual harassment and violence
 - recognize sex discrimination, sexual harassment, and sexual violence when they occur
 - understand how and to whom to report any incidents
 - know the connection between alcohol and drug abuse and sexual harassment or violence
 - feel comfortable that school officials will respond promptly and equitably to reports of sexual harassment or violence;
- issuing new policy statements or other steps that clearly communicate that the school does not tolerate sexual harassment and violence and will respond to any incidents and to any student who reports such incidents; and
- revising grievance procedures used to handle sexual harassment and violence complaints to ensure that they are prompt and equitable, as required by Title IX.

School Investigations and Reports to OCR

- conducting periodic assessments of student activities to ensure that the practices and behavior of students do not violate the school's policies against sexual harassment and violence;
- investigating whether any other students also may have been subjected to sexual harassment or violence;
- investigating whether school employees with knowledge of allegations of sexual harassment or violence failed to carry out their duties in responding to those allegations;
- conducting, in conjunction with student leaders, a school or campus "climate check" to assess the effectiveness of efforts to ensure that the school is free from sexual harassment and violence, and using the resulting information to inform future proactive steps that will be taken by the school; and

⁴⁴ Any personally identifiable information from a student's education record that the Title IX coordinator provides to the school's law enforcement unit is subject to FERPA's nondisclosure requirements.

⁴⁵ For example, the disciplinary committee may lack the power to implement changes to the complainant's class schedule or living situation so that he or she does not come in contact with the alleged perpetrator.

- submitting to OCR copies of all grievances filed by students alleging sexual harassment or violence, and providing OCR with documentation related to the investigation of each complaint, such as witness interviews, investigator notes, evidence submitted by the parties, investigative reports and summaries, any final disposition letters, disciplinary records, and documentation regarding any appeals.

Conclusion

The Department is committed to ensuring that all students feel safe and have the opportunity to benefit fully from their schools' education programs and activities. As part of this commitment, OCR provides technical assistance to assist recipients in achieving voluntary compliance with Title IX.

If you need additional information about Title IX, have questions regarding OCR's policies, or seek technical assistance, please contact the OCR enforcement office that serves your state or territory. The list of offices is available at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. Additional information about addressing sexual violence, including victim resources and information for schools, is available from the U.S. Department of Justice's Office on Violence Against Women (OVW) at <http://www.ovw.usdoj.gov/>.⁴⁵

Thank you for your prompt attention to this matter. I look forward to continuing our work together to ensure that all students have an equal opportunity to learn in a safe and respectful school climate.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary for Civil Rights

⁴⁵ OVW also administers the Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program. This Federal funding is designed to encourage institutions of higher education to adopt comprehensive, coordinated responses to domestic violence, dating violence, sexual assault, and stalking. Under this competitive grant program, campuses, in partnership with community-based nonprofit victim advocacy organizations and local criminal justice or civil legal agencies, must adopt protocols and policies to treat these crimes as serious offenses and develop victim service programs and campus policies that ensure victim safety, offender accountability, and the prevention of such crimes. OVW recently released the first solicitation for the Services, Training, Education, and Policies to Reduce Domestic Violence, Dating Violence, Sexual Assault and Stalking in Secondary Schools Grant Program. This innovative grant program will support a broad range of activities, including training for school administrators, faculty, and staff; development of policies and procedures for responding to these crimes; holistic and appropriate victim services; development of effective prevention strategies; and collaborations with mentoring organizations to support middle and high school student victims.



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 Los Angeles Superior Court

JUN 29 2015

Sherri R. Carter, Executive Officer/Clerk
 By: Moses Boto, Deputy

D-85
 JAMES C.
 CHALFANT

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 JOHN DOE, an individual,
 14 Petitioner,
 15 v.
 16 OCCIDENTAL COLLEGE,
 17 Respondent.

Case No. BS 156253
 PETITION FOR WRIT OF
 ADMINISTRATIVE MANDATE;
 VERIFICATION; EXHIBITS

18 Petitioner, a 20-year-old college student, petitions this court for a Writ of
 19 Mandate under Code of Civ. Proc. § 1094.5 or alternatively, under Code Civ. Proc.
 20 § 1085, directed to Occidental College in order to redress his improper expulsion
 21 through the college's private Title IX investigation process for: (1) "sexual
 22 misconduct" on the grounds that Petitioner continued performing oral sex on a
 23 female student, age 20, after she said, "Wait, I haven't shaved," which, according to
 24 Occidental College, indicated a withdrawal of consent due to hesitancy or
 25 uncertainty, but which Petitioner understood to mean he might not want to continue
 26 performing oral sex because she hadn't shaved, to which he replied, "I don't mind,
 27 it's ok" and continued to perform oral sex, but without first obtaining further clear
 28 and mutually understandable consent, although the female student put her hand on

1 his head and moved or pushed his head while he was giving her oral sex; and (2) for
2 "sexual assault" for participating in sexual intercourse without first obtaining verbal
3 consent from the female student and relying instead upon non-verbal indications of
4 consent, stopping when the female student said, "Ow, That hurts."

5 By this verified Petition, Petitioner further alleges as follows:
6

7 THE PARTIES

8 1. Petitioner JOHN DOE, 20, was a student at the Occidental College at
9 all times relevant.

10 2. Respondent OCCIDENTAL COLLEGE is a private California
11 corporation formed April 20, 1887 and operates as a private, 501(c)3 non-profit
12 co-educational liberal arts college located in the Eagle Rock neighborhood of Los
13 Angeles County.

14 3. Petitioner is informed and believes that non-party JANE ROE, age 20,
15 was a student at Occidental College, but is no longer a student at Occidental
16 College, and is the Reporting Party in the underlying Occidental College Title IX
17 process at issue in this writ proceeding.

18 4. Petitioner uses the pseudonyms of "John Doe" and "Jane Roe" in his
19 Petition in order to preserve privacy in a matter of sensitive and highly personal
20 nature, which outweighs the public's interest in knowing the parties' identity. Use
21 of the pseudonyms does not prejudice Respondent because the identities of
22 Petitioner and the Reporting Party are known to Respondent Occidental College.
23 See, *Starbucks Corp. v. Superior Court* (2008) 68 Cal.App.4th 1436 ("The judicial
24 use of 'Doe plaintiffs' to protect legitimate privacy rights has gained wide currency,
25 particularly given the rapidity and ubiquity of disclosures over the World Wide
26 Web"); see also *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531; *Johnson v.*
27 *Superior Court* (2000) 80 Cal.App.4th 1050; *Roe v. Wade* (1973) 410 U.S. 113;
28 *Doe v. Bolton* (1973) 410 U.S. 179; *Poe v. Ullman* (1961) 367 U.S. 497; *In Does I*

1 *thru XXIII v. Advanced Textile Corp.* (9th Cir. 2000) 214 F.3d 1058. If required,
2 Petitioner will seek leave of the court to file his Petition using the fictitious names
3 of Jane Roe and John Doe at the earliest opportunity.

4
5 JURISDICTION AND VENUE

6 5. The Supreme Court, courts of appeal, superior courts, and their judges
7 have original jurisdiction in proceedings for extraordinary relief in the nature of
8 mandamus directed to any inferior tribunal, corporation, board, or person. Cal.
9 Const., art. VI, § 10; see Code Civ. Proc. § 1084 ("mandamus" synonymous with
10 "mandate"); Code Civ. Proc. § 1085.

11 6. Petitioner, an aggrieved college student, must exhaust judicial
12 remedies through this petition for writ of mandate following the private university's
13 appeal process, before bringing an action in state court for damages and other relief
14 for denial of rights by Occidental College in violation of the Unruh Civil Rights
15 Act, Civ. Code § 52, for breach of contract, libel per se, breach of good faith and
16 fair dealing, and other torts:

17 "The doctrine of exhaustion of judicial remedies precludes an action
18 that challenges the result of a quasi-judicial proceeding unless the plaintiff
19 first challenges the decision though a petition for writ of mandamus.
20 (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 70.) Administrative
21 mandamus is available for review of "any final administrative order or
22 decision made as the result of a proceeding in which by law a hearing is
23 required to be given, evidence required to be taken, and discretion in the
determination of facts is vested in the inferior tribunal, corporation, board, or
officer" (Code Civ. Proc., § 1094.5, subd. (a).)

24 "The remedy of administrative mandamus is not limited to public
25 agencies; rather it applies to private organizations that provide for a formal
26 evidentiary hearing. (*Pomona College v. Superior Court* (1996) 45
27 Cal.App.4th 1716, 1722–1723 [§ 1094.5 applicable to private universities].)
Moreover, failure to exhaust administrative remedies is a proper basis for
demurrer. (*Id.* at pp. 1730–1731.)"
28 *Gupta v. Stanford University* (Cal. App. 6th Dist. 2004) 124 Cal. App. 4th

1 407, 411. (Code Civ. Proc. § 1094.5 applied to the case of a student who was
2 subject to university disciplinary proceedings.)¹

3 7. The Superior Court for the County of Los Angeles, the county where
4 the Respondent is located, is the proper court for the hearing of this action. Code
5 Civ. Proc. § 395. A petition for writ of mandate is to be heard in Departments 82,
6 85, or 86 of the Los Angeles Superior Court. Los Angeles Superior Court Local
7 Rules, Rule 2.7, Rule 3.5.

8
9 PROCEDURAL HISTORY AND BACKGROUND

10 8. This case arises amidst a growing national controversy about the
11 responses of colleges and universities to alleged sexual violence on college and
12 university campuses.²

13 9. The Federal Government, through the U.S. Department of Education,
14 has been pressuring colleges and universities to aggressively pursue investigations
15 of sexual violence on campuses under Title IX, the federal civil rights law that
16 prohibits discrimination in education on the basis of gender, and for violations of
17 the Clery Act, which requires all colleges and universities that participate in federal
18 financial aid programs to keep and disclose information about crime on and near
19 their respective campuses. Compliance with reporting sexual violence is monitored
20 by the U.S. Department of Education, which can impose civil penalties for each
21 infraction and can suspend institutions from participating in federal student
22 financial aid programs. The Jeanne Clery Disclosure of Campus Security Policy
23

24 _____
25 ¹ Stanford University has recently taken the position that Code Civ. Proc. § 1094.5
26 does not apply to Title IX proceedings because, *inter alia*, neither Title IX nor
27 U.S. Dept. of Education guidelines require a hearing. *Doe v. Stanford University*, Santa
28 Clara Superior Court Case No. 115CV275851 (demurrer filed February 20, 2015).

27 ² Richard Dormont, *Occidental Justice*, (April 2015) Esquire; Teresa Watanabe,
28 *More College Men Are Fighting Back Against Sexual Misconduct Cases* (June 7, 2014)
Los Angeles Times.

1 and Campus Crime Statistics Act or Clery Act is a federal statute codified at 20
2 U.S.C. § 1092(f), with implementing regulations in the U.S. Code of Federal
3 Regulations at 34 C.F.R. 668.46.

4 10. On April 4, 2011, the Office for Civil Rights ("OCR") in the U.S.
5 Department of Education issued a Dear Colleague Letter on student-on-student
6 sexual harassment and sexual violence. Exhibit 2. "Sexual violence" refers to
7 physical sexual acts perpetrated against a person's will or where a person is
8 incapable of giving consent, including rape, sexual assault, sexual battery, sexual
9 abuse, and sexual coercion. All such acts of sexual violence are forms of sex
10 discrimination prohibited by Title IX. Exhibit 2, p. 1.

11 11. Under Title IX, federally funded schools, such as Occidental College,
12 must ensure that students are not denied or limited in their ability to participate in or
13 benefit from the school's educational programs or activities on the basis of sex. A
14 school violates a student's rights under Title IX regarding student-on-student sexual
15 violence when the following conditions are met: (1) the alleged conduct is
16 sufficiently serious to limit or deny a student's ability to participate in or benefit
17 from the school's educational program, i.e. creates a hostile environment; and (2)
18 the school, upon notice, fails to take prompt and effective steps reasonably
19 calculated to end the sexual violence, eliminate the hostile environment, prevent its
20 recurrence, and, as appropriate, remedy its effects. See Exhibit 3, April 29, 2014,
21 OCR Questions and Answers on Title IX and Sexual Violence, sections A-1 and A-
22 2. Exhibit 3, p. 8.

23 12. The Dear Colleague Letter also indicated that, in order to comply with
24 Title IX, colleges and universities must have transparent, prompt procedures to
25 investigate and resolve complaints of sexual misconduct. Most notably, the Dear
26 Colleague Letter required schools to adopt a relatively low burden of proof —
27 "more likely than not"— in cases involving sexual misconduct, including assault,
28 and suggested that schools should focus more on victim advocacy. Exhibit 2, p. 11.

1 13. Respondent Occidental College is one of at least 74 colleges and
2 universities under federal scrutiny for alleged indifference to "sexual violence" on
3 campus in violation of Title IX as of May 2014.³

4 14. In April 2013 Occidental College professors Caroline Heldman and
5 Danielle Dirks⁴, in association with 36 alleged victims of rape or sexual assault at
6 Occidental, filed a 250-page complaint with the U.S. Department of Education's
7 Office of Civil Rights alleging that Occidental College maintains a hostile
8 environment for sexual assault victims and their advocates and violated Title IX
9 laws against sexual discrimination and the Clery Act.⁵

10 15. In September 2013, Occidental College settled with at least ten
11 of the complainants under an agreement negotiated by attorney Gloria Allred. The
12 ten female complainants received cash payments from Occidental College and
13 agreed not to participate in the Occidental Sexual Assault Coalition. Asst.
14 Professor Danielle Dirks criticized attorney Gloria Allred's negotiated settlement
15 stating that requiring "the women to remain silent and not to participate in campus
16 activism could have a chilling effect at Occidental."⁶

17
18 ³ U.S. Department of Education Releases List of Higher Education Institutions with Open
19 Title IX Sexual Violence Investigations, (May 1, 2014) U.S. Dept. Of Education, press@ed.gov.

20 ⁴ In February 2012, Occidental College Associate Professor of Politics Caroline
21 Heldman and Assistant Professor of Sociology Danielle Dirks founded the Occidental
22 Sexual Assault Coalition, a campus advocacy group that has pushed the college to address
23 what it calls the "rape culture" on campus and with a "mission is to raise awareness of the
24 sexual assault epidemic." (<http://oxysexualassaultcoalition.wordpress.com/>) Asst. Prof.
25 Danielle Dirks told a female student in another Title IX case that "[the male student] fits
the profile of other rapists on campus in that he had a high GPA in high school, was his
class valedictorian, was on [a sports] team, and was 'from a good family.'" See *Doe v.*
Occidental College, LASC Case No. BS147275, petition pending in Dept 82.

26 ⁵ Tyler Kingkade, *Occidental College Sexual Assault Response Subject Of Federal*
27 *Complaints* (04/19/2013, Updated: 12/03/2013), www.huffingtonpost.com;

28 ⁶ Jon Wiener, *Rape Settlement at Occidental College: Victims Barred from Campus*
Activism (September 19, 2013) The Nation.

00415-02015

1 16. In January 2014, President Barack Obama, who attended Occidental
2 College, put further pressure on colleges and universities to prevent and police
3 sexual assaults on their campuses by creating a task force of senior administration
4 officials, including the attorney general and the secretaries of the Education, Health
5 and Human Services and Interior Departments, to coordinate federal enforcement
6 efforts.⁷

7 17. In February 2014, Catherine E. Lhamon, the Assistant Secretary of
8 Education who heads the department's Office for Civil Rights, told college officials
9 attending a conference at the University of Virginia that schools need to make
10 "radical" change. According to the Chronicle of Higher Education, college
11 presidents suggested afterward that there were "crisp marching orders from
12 Washington."⁸

13 18. The Federal government has created a significant amount of pressure
14 on colleges and universities to treat all those accused of sexual misconduct with a
15 presumption of guilt. The Chronicle of Higher Education noted that "Colleges face
16 increasing pressure from "survivors" and the federal government to improve the
17 campus climate."⁹ In the same article, the Chronicle noted that different standards
18 were applied to men and women: "Under current interpretations of colleges' legal
19 responsibilities, if a female student alleges sexual assault by a male student after
20 heavy drinking, he may be suspended or expelled, even if she appeared to be a
21 willing participant and never said no. That is because in heterosexual cases,
22 colleges typically see the male student as the one physically able to initiate sex, and

23
24 ⁷ Jackie Calmes, *Obama Seeks to Raise Awareness of Rape on Campus* (January 22,
25 2014) New York Times; Jason Felch and Larry Gordon, *Federal Task Force to Target
Campus Sexual Assaults* (January 22, 2014) Los Angeles Times.

26 ⁸ *Colleges Are Reminded of Federal Eye on Handling of Sexual-Assault Cases*
27 (February 11, 2014) Chronicle of Higher Education.

28 ⁹ *Presumed Guilty: College men accused of rape say the scales are tipped against
them* (September 1, 2014) Chronicle of Higher Education.

1 therefore responsible for gaining the woman's consent." Title IX sexual
2 misconduct personnel are under pressure to act more as advocates for women and
3 focus on validating the initial allegations of sexual misconduct, rather than arriving
4 at a fair and impartial determination of the facts.

5 19. After years of criticism for being too lax, the pendulum has now swung
6 far in the other direction with Occidental College discriminating against male
7 students in order avoid federal penalties and settlement pay-outs for Occidental
8 College's failure to address the so-called "rape culture" and "sexual assault
9 epidemic" on campus.¹⁰

10 20. This dispute is between two private parties, – a private college and one
11 of its students, – concerning the college's internal disciplinary process that
12 terminated the student's legal and contractual rights to complete his college
13 education through a private administrative process controlled entirely by the private
14 college, with no rules of evidence, no right to the evidence against him, no right to
15 confront witnesses, no right to counsel, an internal appeal that ignores the hearing
16 record entirely, and with the accused student labeled as responsible for "sexual
17 assault" under the college's policy, not under any penal code or civil code, but with
18 similar adverse life-time consequences.

19 21. In this case, Petitioner has not been charge with any crime nor any civil
20 wrong. Occidental College does not serve the public nor the People of the State of
21 California. Occidental College serves its own private financial and institutional
22 interests to protect its right to receive federal education money, and for Occidental
23 College students have access to federally-guaranteed student loans to pay their
24 tuition to Occidental College, which federal money is at risk due to the pending
25
26

27 ¹⁰ U.S. Dept. of Education data shows that Occidental College's reported rate of
28 sexual misconduct is *16 times higher* than the next ten California schools combined.
<http://ope.ed.gov/security/>

1 U.S. Department of Education investigation into Occidental College's conduct.¹¹

2 22. Petitioner is unable to present any documents from the Occidental
3 College Title IX process with his Petition because Occidental College does not
4 allow Petitioner to possess copies of the investigation reports, witness statements,
5 nor any of the evidence against him. Sharing of any documents with third parties,
6 including filing with the California Superior Court, would subject Petitioner to
7 further discipline by Occidental College.

8
9 OCCIDENTAL COLLEGE'S ACTIONS AND DECISION ARE INVALID

10 23. On information and belief, Respondent's actions, sanctions, and
11 decision are invalid under Code Civ. Proc. § 1094.5, and alternatively Code Civ.
12 Proc. § 1085, for the following reasons:

- 13 (1) Respondent failed to grant Petitioner a fair hearing;
14 (2) Respondent committed a prejudicial abuse of discretion,
15 in that Respondent failed to proceed in the manner
16 required by law;
17 (3) Respondent's findings are not supported by the evidence;
18 and
19 (4) Respondent's decision is not supported by the findings.

20 24. Respondent Occidental College's actions and decision deprive
21 Petitioner of fundamental vested rights, therefore, the reviewing court must
22 exercise it's independent judgment to reweigh the evidence pursuant to Code Civ.
23 Proc. § 1094.5(c).

24
25 No Presumption of Correctness.

26
27 ¹¹ Occidental College is one of 113 colleges and universities currently under
28 investigation by the U.S. Dept. Of Education for their handling of sexual violence cases.
As April 1, 2015, 113 sexual violence cases are under investigation at 106 postsecondary
institutions in the United States. Source: U.S. Dept. Education Office of Civil Rights.

25. Respondent Occidental College is a private corporation and not an administrative or public agency entitled to the "official duty presumption" of correctness under Code Civ. Proc. § 1094.5. The notion that an administrative decision is be presumed correct is based on the "official duty presumption" in California Evidence Code § 664, which states, "It is presumed that official duty has been regularly performed."

"The findings of a board where formal hearings are held should and do come before the courts with a strong presumption in their favor based primarily on the [rebuttable] presumption contained in section 1963, sub section 15, of the Code of Civil Procedure [currently Evidence Code section 664] 'That official duty has been regularly performed.' Obviously, considerable weight should be given to the findings of experienced administrative bodies made after a full and formal hearing, especially in cases involving technical and scientific evidence." *Fukuda v. City of Angels* (1999) 20 Cal. 4th 805, 812 citing *Drummey v. State Board of Funeral Directors & Embalmers* (1939) 13 Cal. 2d 75, 86.

Although Code Civ. Proc. § 1094.5 has been made applicable to faculty tenure and student disciplinary matters conducted by private colleges and universities,¹² the "official duty presumption" set forth in Evid. Code § 664 has not been made applicable to such private entities, or private parties. Respondent Occidental College serves it's own financial and institutional interests, not the interests of the public or People of the State of California and is not entitled to the "official duty presumption" in California Evid. Code § 664.

Doctrine of Judicial Non-Intervention Does Not Apply.

26. The doctrine of judicial nonintervention into the academic affairs of schools does not apply in instances of non-academic affairs, such as this Title IX

¹² *Pomona College v. Superior Court* (1996) 45 Cal.App.4th 1716, 1722- 1723; *Gupta v. Stanford University* (Cal. App. 6th Dist. 2004) 124 Cal. App. 4th 407.

1 investigation and hearing process for alleged violation of the Occidental College
2 sexual misconduct policy. See *Banks v. Dominican College* (Cal. App. 1st Dist.
3 1995) 35 Cal. App. 4th 1545; *Paulsen v. Golden Gate University* (1979) 25 Cal. 3d
4 803.

5 27. On information and belief, relevant evidence is available which was
6 improperly excluded or unavailable at the hearing. Petitioner will seek leave to
7 offer said evidence before the reviewing court at the hearing on this Petition.

8 28. Petitioner has exhausted all administrative remedies.

9 29. Petitioner has no plain, speedy and adequate remedy in the ordinary
10 course of law.

11 30. Petitioner is obligated to pay an attorney for legal services to prosecute
12 this action. Petitioner is entitled to recover attorney's fees as provided in Gov. Code
13 § 800 if Petitioner prevails in the within action, on the ground that, on information
14 and belief, Respondent's decision was the result of arbitrary and capricious conduct.

15 31. Petitioner will suffer irreparable harm if this matter is not stayed
16 pending judicial review, because even if the Court subsequently rules in his favor,
17 will have irreparably lost over a year of his education, be unable to continue his
18 education at another institution, and will have suffered public humiliation and
19 disgrace from an improper determination of sexual assault and sexual misconduct.

20
21 32. Each of the exhibits identified in the following paragraphs are true and
22 correct copies of the documents described.

23 33. A true and correct copy of the Occidental College Sexual Misconduct
24 Policy is attached as Exhibit 1 and made a part of this petition.

25 34. A true and correct copy of the April 4, 2011 Dear Colleague Letter
26 issued by the Office for Civil Rights, U.S. Department of Education is attached as
27 Exhibit 2 and made a part of this petition.

28 35. A true and correct copy of the April 29, 2014, OCR Questions and

1 Answers on Title IX and Sexual Violence, issued by the Office for Civil Rights,
2 U.S. Department of Education is attached as Exhibit 3 and made a part of this
3 petition.

4 36. The administrative record of Respondent's disciplinary process against
5 Petitioner will be submitted and made a part of this petition as soon as Respondent
6 provides the administrative record.

7
8 WHEREFORE, Petitioner prays the court for judgment as follows:

9 1. For an alternative writ of mandate directing respondent to set aside the
10 findings and sanctions in the Summery Administrative Review, or to show cause
11 why a peremptory writ of mandate to the same effect should not be issued;

12 2. For a peremptory writ of mandate directing respondent to set aside its
13 findings and sanctions in the Summery Administrative Review;

14 3. For a stay of Respondent's administrative finding and sanctions under
15 Code Civ. Pro. § 1094.5(g);

16 4. For reasonable attorney's fees and litigation expenses, in addition to
17 any other relief granted or costs awarded;

18 5. For all costs of suit incurred in this proceeding; and

19 6. For such other and further relief as the court deems proper.

20 WERKSMAN JACKSON
21 HATHAWAY & QUINN LLP

22
23 Dated: June 29, 2015 By:


24 MARK M. HATHAWAY
25 Attorneys for Petitioner
26
27
28

1 VERIFICATION

2 I, John Doe, am the petitioner in this action. I have read the foregoing
3 petition and know the contents thereof. The same is true of my own knowledge,
4 except as to those matters which are therein alleged on information and belief, and
5 as to those matters, I believe it to be true.

6 I declare under penalty of perjury under the laws of the State of California
7 and of the United States that the foregoing is true and correct. Signed on the date
8 below at Los Angeles, California.

9
10 Date: June 29, 2015

11 _____
12 John Doe
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Policies & Procedures

Members of the college community, guests and visitors have the right to be free from sexual violence.

Occidental College Sexual Misconduct Policy

Applies to sexual and gender-based harassment, sexual violence, stalking and intimate partner violence

1. **Introduction: Institutional Values and Community Expectations**
Sets forth the College's values and expectations for community members
2. **Scope of Policy**
Outlines the College's jurisdiction to take action
3. **Notice of Non-Discrimination**
Outlines protected classes and protections under Title IX
4. **Privacy v. Confidentiality**
Delineates the difference between confidential resources and those that will maintain an individual's privacy
5. **Prohibited Conduct and Definitions**
Provides specific definitions for sexual harassment and other forms of prohibited conduct, consent, force and incapacitation; also outlines policy on prohibited relationships by persons in authority
6. **Resources**
Outlines on and off campus resources, including confidential resources
7. **Reporting**
Provides emergency, campus, anonymous and law enforcement reporting options, timeframes, and provisions for amnesty, retaliation and mandatory reporting of suspected child abuse
8. **Interim Measures, Remedies and Accommodations**
Sets forth the range of interim protections available
9. **Options for Resolution**

intimate partner violence through clear and effective policies, a coordinated education and prevention program, and prompt and equitable procedures for resolution of complaints.

Retaliation against any person or group who makes a complaint, cooperates with an investigation, or participates in a grievance procedure is a violation of College policy. Retaliation should be reported promptly to the Title IX Coordinator for investigation, which may result in disciplinary action independent of any sanction or interim measures imposed in response to the underlying allegations of discrimination and/or harassment.

The College encourages all members of our community to participate in the process of creating a safe, welcoming and respectful environment on campus. In particular, the College expects that all Occidental community members will take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Taking action may include direct intervention when safe to do so, enlisting the assistance of friends, contacting law enforcement, or seeking assistance from a person in authority. Community members who chose to exercise this positive moral obligation will be supported by the College and protected from retaliation.

II. Scope of Policy

The policy applies to all Occidental community members, including students, faculty, administrators, staff, volunteers, vendors, independent contractors, visitors and any individuals regularly or temporarily employed, studying, living, visiting, conducting business or having any official capacity with the College or on College property.

This policy is intended to protect and guide individuals who have been affected by sexual harassment, sexual violence, stalking or intimate partner violence, whether as a Complainant, a Respondent, or a third party, and to provide fair and equitable procedures for investigation and resolution of reports.

When used in this policy, Complainant refers to the individual who identifies him/herself as being a victim or survivor of sexual harassment, sexual violence, stalking or intimate partner violence. A Respondent refers to the individual who has been accused of prohibited conduct under this policy. A third party refers to any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else.

All Occidental College community members are required to follow College policies and local, state, and federal law. This policy applies to conduct occurring on Occidental College property or at College-sanctioned events or programs that take place off campus, including study abroad and internship programs. In situations in which both the Complainant and Respondent are members of the Occidental College community, this policy will apply regardless of the location of the incident. In particular, off campus conduct that is likely to have a substantial adverse effect on, or poses a threat of danger to, any member of the Occidental College community or Occidental College is covered

under this policy.

A Complainant is encouraged to report misconduct regardless of where the incident occurred, or who committed it. Even if the College does not have jurisdiction over the Respondent, the College will still take prompt action to provide for the safety and well-being of the Complainant and the broader campus community.

III. Notice of Non-Discrimination

The College does not permit discrimination or harassment in its programs and activities on the basis of race, color, national origin, ancestry, sex, gender, gender identification, sexual orientation, disability, age, religion, physical and/or mental disability, medical condition, veteran status, marital status or any other characteristic protected by institutional policy or state, local, or federal law.

This policy addresses all forms of sexual discrimination, including sexual harassment, sexual violence and intimate partner violence. Occidental College does not discriminate on the basis of sex in its educational, extracurricular, athletic, or other programs or in the context of employment. Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides that:

No person in the United States 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 receiving Federal financial assistance.

Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable statutes.

This policy prohibits sexual harassment, sexual violence, stalking and intimate partner violence against Occidental community members of any gender, gender identity, gender expression or sexual orientation. This policy also prohibits gender-based harassment that does not involve conduct of a sexual nature.

The College, as an educational community, will respond promptly and equitably to reports of sexual harassment, sexual violence, stalking and intimate partner violence in order to eliminate the harassment, prevent its recurrence, and address its effects on any individual or the community.

The College has designated Ruth Jones to serve as the College's Title IX Coordinator. The Title IX Coordinator oversees the College's centralized review, investigation, and resolution of reports of sexual harassment, sexual violence and intimate partner violence. The Coordinator also oversees the College's overall compliance with Title IX.

The Title IX Coordinator is:

- Responsible for oversight of the investigation and resolution of all reports of sexual harassment, sexual violence and intimate partner violence involving students, staff, administrators, faculty, vendors, and visitors;
- Assisted by Deputy Title IX Coordinators, and by a Title IX team as detailed in this policy. These Deputy Title IX Coordinators have a shared responsibility for supporting the Title IX Coordinator and are accessible to any member of the community for consultation and guidance;
- Knowledgeable and trained in College policies and procedures and relevant state and federal laws;
- Available to advise any individual, including a Complainant, a Respondent or a third party, about the courses of action available at the College, both informally and formally, and in the community;
- Available to provide assistance to any College employee regarding how to respond appropriately to a report of sexual harassment, sexual violence, stalking or intimate partner violence;
- Responsible for monitoring full compliance with all procedural requirements and time frames outlined in this policy; and
- Responsible for training, prevention and education efforts and periodic reviews of climate and culture.

The Title IX Coordinator is supported by the Title IX team. Members of this interdepartmental team include the Title IX Coordinator, Title IX Deputy Coordinators, and the Chief of Campus Safety. In addition, based on the role of the Complainant and the Respondent, the members of the team could include the Vice President for Academic Affairs and Dean of the College and a representative from the Dean of Students Office and/or Human Resources. Composition of the team will be limited to a small circle of individuals who "need to know" in order to implement procedures under this policy.

Inquiries or complaints concerning the application of Title IX may be referred to the College's Title IX Coordinator, Deputy Title IX Coordinators and/or to the U.S. Department of Education's Office for Civil Rights:

Ruth Jones
Title IX Coordinator

(323) 259-1338
Trailer D, Office 2
ruthjones@oxy.edu
Web: <http://www.oxy.edu/office-title-ix>

Office for Civil Rights
Beale Street, Suite 7200
San Francisco, CA

(415) 486-5555
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr50>

Jacalyn Feigelman
Deputy Title IX Coordinator

(323) 259-2614
jacalynf@oxy.edu
Web: <http://www.oxy.edu/office-title-ix>

Alison Haehnel
Deputy Title IX Coordinator (Athletics)

(323) 259-2632
haehnel@oxy.edu
Web: <http://www.oxy.edu/office-title-ix>

Inquiries involving employees may also be referred to:

**California Department of Fair Employment
and Housing**

1055 West 7th Street, Ste 1400
Los Angeles, CA 90017
(213) 439-6799

**United States Equal Employment
Opportunity Commission**

Roybal Federal Building
255 East Temple St., 4th Floor
Los Angeles, CA 90012
1-800-699-4000

IV. Privacy vs. Confidentiality

The College is committed to protecting the privacy of all individuals involved in a report of sexual harassment, sexual violence, stalking or intimate partner violence. All College employees who are involved in the College's Title IX response, including the Title IX Coordinator, investigators, and hearing panel members, receive specific instruction about respecting and safeguarding private information. Throughout the process, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report.

Privacy and confidentiality have distinct meanings under this policy.

Privacy: Privacy generally means that information related to a report of misconduct will only be shared with a limited circle of individuals. The use of this information is limited to those College employees who "need to know" in order to assist in the active review, investigation or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

Confidentiality: Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These campus and community professionals include mental health providers, ordained clergy, rape crisis counselors and attorneys, all of whom have legally protected confidentiality. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others.

An individual who seeks completely confidential assistance may do so by speaking with professionals who have a legally protected confidentiality. On campus, Confidential Resources available to students include psychological counselors in the Emmons Student Wellness Center, ordained clergy in the Office for Religious & Spiritual Life, and the Survivor Advocate. Employees may access confidential assistance through the Employee Assistance Program. Information shared with these resources will remain confidential and will not be shared with the College or anyone else without express permission of the individual seeking services. When a report involves suspected abuse of a minor under the age of 18, these confidential resources are required by state law to notify child protective services and/or local law enforcement.

An individual may also seek assistance from a medical provider. In general, the disclosure of private information contained in medical records is protected by the Health Insurance Portability and Accountability Act (HIPAA). In the context of sexual violence, however, medical providers in California are required to notify law enforcement if a patient tells personnel s/he has experienced sexual assault. The patient has the right to request that a survivor advocate be present and to request that law enforcement not pursue a criminal charge. Neither campus nor community medical providers will notify the College of the report.

Responsible Employees: In general, most College employees do not have legally protected confidentiality. Under Title IX, a College is required to take immediate and corrective action if a "responsible employee" knew or, in the exercise of reasonable care, should have known about sexual or gender-based harassment that creates a hostile environment. A "responsible employee" includes any employee who:

- Has the authority to take action to redress the harassment;
- Has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or
- A student could reasonably believe has the authority or responsibility to take action.

Using this lens, employees with supervisory and leadership responsibilities on campus are considered "responsible employees." This includes, for example, faculty, coaches, administrators, Resident Advisors and other student employees with a responsibility for student welfare.

The College requires that all "responsible employees" share a report of misconduct with the Title IX Coordinator or a member of the Title IX team.

The Title IX team, under the guidance of the Title IX Coordinator, will conduct an initial assessment of the conduct, the Complainant's expressed preferences, if any, as to course of action, and the necessity for any interim remedies or accommodations to protect the safety of the Complainant or the community.

Request for Confidentiality: Where a Complainant requests that his/her name or other identifiable information not be shared with the Respondent or that no formal action be taken, the College will balance this request with its dual obligation to provide a safe and non-discriminatory environment for

all College community members and to remain true to principles of fundamental fairness that require notice and an opportunity to respond before action is taken against a Respondent. In making this determination, the College may consider the seriousness of the conduct, the respective ages and roles of the Complainant and Respondent, whether there have been other complaints or reports of harassment or misconduct against the Respondent, and the rights of the Respondent to receive notice and relevant information before disciplinary action is sought.

The College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. Where the College is unable to take action consistent with the request of the Complainant, the Title IX Coordinator or a member of the Title IX team will inform the Complainant about the chosen course of action, which may include the College seeking disciplinary action against a Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

Timely Warning: If a report of misconduct discloses a serious or continuing threat to the Occidental community, the College may issue a campus wide timely warning (which can take the form of an email to campus) to protect the health or safety of the community. The timely warning will not include any identifying information about the Complainant. Even where there is no imminent threat, the College may send campus-wide e-mail notifications on all reported sexual misconduct.

At no time will the College release the name of the Complainant to the general public without the express consent of the Complainant. The release of the Respondent's name to the general public is guided by Family Educational Rights and Privacy Act (FERPA) and the Clery Act.

All College proceedings are conducted in compliance with the requirements of FERPA, the Clery Act, Title IX, and state and federal law. No information shall be released from such proceedings except as required or permitted by law and College policy.

V. Prohibited Conduct and Definitions

The College prohibits all forms of sexual and gender-based harassment, including sexual violence and intimate partner violence. Each of these terms encompasses a broad range of behavior. In general, sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to incapacitation. Intimate partner violence refers to any act of violence or threatened act of violence, sexual or otherwise, against a person who is or has been involved in a sexual, dating, domestic or other intimate relationship with that person.

Within these broad categories, the College prohibits the following specific conduct:

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(1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a College program or activity;

or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and objective standard.

Sexual harassment also includes gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature.

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, gender identity, gender expression or sexual orientation.
- May occur in the classroom, in the workplace, in residential settings, or in any other

setting.

- May be a one-time event or can be part of a pattern of behavior.
- May be committed in the presence of others or when the parties are alone.
- May affect the Complainant and/or third parties who witness or observe harassment and are affected by it.

Examples of conduct that may constitute sexual harassment as defined above may include a severe, persistent or pervasive pattern of unwelcome conduct that includes one or more of the following:

- Physical conduct:
 - Unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements
 - Unwanted sexual advances within the employment context
- Verbal conduct:
 - Making or using derogatory comments, epithets, slurs or humor
 - Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations
 - Objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes
- Visual conduct:
 - Leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters in a public space or forum
 - Severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading sexually oriented images that are not pedagogically appropriate
- Written conduct: letters, notes or electronic communications containing comments, words, or images described above
- Quid pro quo conduct:
 - Direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists
 - Offering employment benefits in exchange for sexual favors
 - Making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose
 - Making or threatening reprisals after a negative response to sexual advances

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B. Other Forms of Prohibited Conduct

The following forms of conduct fall under the broad definition of sexual harassment, and are specifically prohibited under this policy. The College will treat attempts to commit any prohibited conduct as if those attempts had been completed.

Sexual Assault: Having or attempting to have sexual intercourse with another individual:

- By force or threat of force;
- Without effective consent; or
- Where that individual is incapacitated.

Sexual intercourse includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.

This definition tracks the FBI's Uniform Crime Report definition of rape: "the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." Under many state laws, including California, however, rape definitions differ in that they require proof of an element of force or threat of force. Our definition incorporates both.

Non-Consensual Sexual Contact: Having sexual contact with another individual:

- By force or threat of force;
- Without effective consent; or
- Where that individual is incapacitated.

Sexual contact includes intentional contact with the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

Sexual Exploitation: Occurs when an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

- *surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;*
- *non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;*
- *exposing one's genitals or inducing another to expose their own genitals in non-*

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Retaliation: Acts or attempts to retaliate or seek retribution against the Complainant, Respondent, or any individual or group of individuals involved in the complaint, investigation and/or resolution of an allegation of sexual misconduct. Retaliation can be committed by any individual or group of individuals, not just a Respondent or Complainant. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others.

C. Consent: Force, Coercion, Incapacitation, Drugs and Alcohol

Consent: Under California law, consent means positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

Consent consists of an affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity. The following are essential elements of effective consent:

Informed and reciprocal: All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.

Freely and actively given: Consent cannot be obtained through the use of force, coercion, threats, intimidation or pressuring, or by taking advantage of the incapacitation of another individual.

Mutually understandable: Communication regarding consent consists of mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity. In the absence of clear communication or outward demonstration, there is no consent. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.

Not indefinite: Consent may be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed "no" or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

Not unlimited: Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant.

Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.

In the state of California, consent cannot be given by minors under the age of 18, except where the parties are within three years of age of one another. Under no circumstances may an adult over the age of 21 engage in sexual activity with a minor under the age of 16.

Force: Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. For the use of force to be demonstrated, there is no requirement that a Complainant resists the sexual advance or request. However, resistance by the Complainant will be viewed as a clear demonstration of non-consent.

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Coercion: Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against his/her will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

Incapacitation: Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because s/he lacks conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why or how of the sexual interaction) and/or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if s/he is asleep, unconscious, or otherwise unaware that sexual activity is occurring.

Incapacitation may result from the use of alcohol and/or drugs. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impact an individual's:

- decision-making ability;
- awareness of consequences;
- ability to make informed judgments; or
- capacity to appreciate the nature and the quality of the act.

Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known, that the Complainant was incapacitated.

Alcohol and Other Drugs: In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence, stalking or intimate partner violence and does not diminish one's responsibility to obtain consent.

D. Intimate Partner Violence

Intimate partner violence is often referred to as dating violence, domestic violence or

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relationship violence. Intimate partner violence includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, domestic or other intimate relationship with the Respondent. Intimate partner violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. Intimate partner violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientation and does not discriminate by racial, social, or economic background.

The College will not tolerate intimate partner violence of any form. For the purposes of this policy, the College does not define intimate partner violence as a distinct form of misconduct. Rather, the College recognizes that sexual harassment, sexual assault, sexual exploitation, harm to others, stalking, and retaliation all may be forms of intimate partner violence when committed by a person who is or has been involved in a sexual, dating or other social relationship of a romantic or intimate nature with the Complainant.

Under Clery and the Campus SaVE Act, the College will record and report all relevant incidents of intimate partner violence.

E. Prohibited Relationships by Persons in Authority

Sexual or other intimate relationships in which one party maintains a direct supervisory or evaluative role over the other party are prohibited. In general, this includes all sexual or other intimate relationships between students and their employers, supervisors, professors, coaches, advisors or other College employees. Similarly, College employees (faculty and staff) who supervise or otherwise hold positions of authority over others are prohibited from having a sexual or other intimate relationship with an individual under his/her direct supervision.

The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. However, faculty, administrators, and others who educate, supervise, evaluate, employ, counsel, coach or otherwise guide students should understand the fundamentally asymmetrical nature of the relationship they have with students or subordinates. Intimate or sexual relationships where there is differential in power or authority produce risks for every member of our community and undermine the professionalism of faculty and supervisors. In either context, the unequal position of the parties presents an inherent element of risk and may raise sexual harassment concerns if one person in the relationship has the actual or apparent authority to supervise, evaluate, counsel, coach or otherwise make decisions or recommendations as to the other person in connection with his/her employment or education at the college.

Sexual relations between persons occupying asymmetrical positions of power, even when

both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment based on changes in the perspective of the individuals as to the consensual nature of the relationship. Similarly, these relationships may impact third parties based on perceived or actual favoritism or special treatment based on the relationship.

Therefore, persons with direct supervisory or evaluative responsibilities who contemplate beginning or are involved in such relationships are required to promptly: 1) discontinue any supervising role or relationship over the other person; and 2) report the circumstances to his/her own supervisor. Failure to fully or timely comply with these requirements is a violation of this policy, and the person in authority could be subject to disciplinary action, up to and including dismissal from employment by the College.

Any individual may file a complaint alleging harassment or discrimination, including an aggrieved party outside the relationship affected by the perceived harassment or discrimination. Retaliation against persons who report concerns about consensual relationships is prohibited and constitutes a violation of this policy.

VI. Resources

The College is committed to treating all members of the community with dignity, care and respect. Any individual who experiences or is affected by sexual harassment, sexual violence, stalking or intimate partner violence, whether as a Complainant, a Respondent, or a third party, will have equal access to support and counseling services through the College. Interim remedies are also available to all parties (see Section IX).

The College recognizes that deciding whether or not to make a report, either to the College or law enforcement, and choosing how to proceed can be difficult decisions. Making a report means telling someone in authority what happened, in person, by telephone, in writing or by email. All individuals are encouraged to seek the support of campus and community resources. These trained professionals can provide guidance in making decisions, information about available resources and procedural options, and assistance to either party in the event that a report and/or resolution under this policy is pursued. Individuals are encouraged to use all available resources on and off campus, regardless of when or where the incident occurred.

There are many resources available on campus and in the surrounding community. As detailed below, there are Confidential Resources which by law cannot share information without the consent of the individual seeking assistance. There are also a variety of College resources that will be discreet and private, but are not considered confidential. These resources will maintain the privacy of an individual's information within the limited circle of those involved in the resolution of a complaint under this policy. For more information about the difference between privacy and confidentiality, see Section IV.

A. Confidential Resources

The College encourages all community members to make a prompt report of any incident of sexual harassment, sexual violence, stalking or intimate partner violence to local law enforcement and the College. For individuals who are not prepared to make a report, or who may be unsure what happened, but are still seeking information and support, there are several legally-protected confidential resources available as designated below. These confidential resources will not share information with the College or anyone else without the individual's permission.

On Campus Confidential Resources:

- **Sexual Assault Survivor Advocate and Project SAFE Coordinator**

- **Naddia Palacios**

- Accessible 24 hours a day to provide highly confidential crisis support and resource options to students who experience sexual assault of any kind. Support includes, but is not limited to advising, case management and accompanying survivors to rape treatment centers or medical services. As the Project SAFE Coordinator, conducts comprehensive outreach and educational programming.

- (323) 259-1359

- npalacios@oxy.edu

- **Oxy Assault, Advocacy & Case Management Team (OAACM)**

- Provides a comprehensive support system to sexual assault survivors that includes advocacy, counseling, and medical services, as well as information about and linkage to forensic exams, legal support, and housing and academic accommodations. Team members include Naddia Palacios (Survivor Advocate), Jenny Heetderks (Emmons psychologist) and Ann Martella (physician assistant).*

- *Medical providers who treat a physical injury sustained from an assault, physical or sexual, are required by state law to report the assault to law enforcement.

- **Emmons Student Wellness Center**

- Provides confidential psychological counseling services. As detailed below, Emmons also provides medical treatment, but under California law medical providers are required to notify law enforcement when they receive a report of sexual assault.

- (323) 259-2657

- **Office for Religious & Spiritual Life**

- Provides spiritual guidance and in the context of ordained clergy, confidential support.

- (323) 259-2621

- **Employee Assistance Program**

- Provides confidential telephone consultation or face-to-face meeting with a master's level consultant; also provides educational materials through an online library of downloadable materials and interactive tools.

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A medical provider can provide emergency and/or follow-up medical services. The medical exam has two goals: first, to diagnose and treat the full extent of any injury or physical effect (including prevention of sexually transmitted illnesses and pregnancy) and second, to properly collect and preserve evidence. There is a limited window of time (within 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Taking the step to gather evidence immediately does not commit an individual to any particular course of action. The decision to seek timely medical attention and gather any evidence, however, will preserve the full range of options to seek resolution under this policy or through the pursuit of criminal prosecution.

On campus, Emmons Student Wellness Center can provide medical care; however, Emmons is not equipped for forensic examinations. As with off-campus medical providers, Emmons medical providers who treat a physical injury sustained from an assault, physical or sexual, are required by state law to report the assault to law enforcement.

- **Emmons Student Wellness Center**

Provides medical treatment.

(323) 259-2657

Taxi vouchers are available at Campus Safety, Emmons Student Wellness Center and Residential Education and Housing Services to provide free transportation to local medical centers. The Survivor Advocate is also available to accompany survivors to access off-campus resources.

- **San Gabriel Valley Medical Center***

438 W. Las Tunas Dr., San Gabriel 91776

Provides medical treatment and forensic exams; closest facility to campus.

(877) 209-3049

- **LA County/USC Medical Center***

1200 N. State St., Los Angeles 90033

Provides medical treatment and forensic exams.

(323) 226-3961

- **Rape Treatment Center at Santa Monica-UCLA Medical Center***

Provides comprehensive, free treatment for sexual assault victims, including 24-hour emergency medical care and forensic services, counseling and psychotherapy, advocacy, and accompaniment services.

(310) 319-4000 Ext. 3

*L.A. County designated Sexual Assault Response Team (SART) Center

C. Campus Resources

- **Project SAFE (Sexual Assault Free Environment)**

A prevention and education support program dedicated to ending sexual violence on campus through resources, advocacy, and educational programming related to issues of sexual violence and intimate partner violence.

(323) 341-4750

D. Community Resources

Students, faculty and staff may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention and assistance in dealing with the criminal justice system. All individuals are encouraged to use the resources that are best suited to their needs, whether on or off campus.

It may be helpful for survivors to have someone who can help them explore their off-campus options and guide them through legal processes; an advocate can provide assistance in this area. Two local resources, Peace Over Violence and the Rape Treatment Center at Santa Monica-UCLA Medical Center offer advocacy support.

- **LAPD**

911 (24 hours)

For dispatch, (877) ASK-LAPD (877-275-5273)

- **LAPD Northeast Division**

3353 North San Fernando Road

Los Angeles, CA 90065

(323) 344-5701

Occidental is located in Northeast Division.

- **Rape Treatment Center at Santa Monica-UCLA Medical Center**

Provides comprehensive, free treatment for sexual assault victims, including 24-hour emergency medical care and forensic services, counseling and psychotherapy, advocacy, and accompaniment services.

(310) 319-4000

- **Peace Over Violence ("POV")**

POV case managers can provide assistance and support with the medical and criminal legal process as well as accompaniment to hospitals, law enforcement agencies, and court appointments.

1015 Wilshire Blvd.

Los Angeles, CA 90017

(213) 626-3393 or (626) 793-3385

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- **LA Gay and Lesbian Center**

Provides support and advocacy services for LGBT community members.
1625 Schrader Blvd., Los Angeles 90028
(323) 993-7400

- **California Women's Law Center (CWLC)**

The CWLC has attorneys available to serve as a resource/advisor to Occidental College complainants, men and women, who are filing Title IX sexual assault/harassment/gender discrimination complaints and going through the Occidental College resolution process. To request assistance contact both Laura Riley (laura.riley@cwlc.org) and Kylie Reynolds (kylie.reynolds@cwlc.org) by e-mail.

Please note, however, that the College does not endorse or recommend this organization (or their attorneys), and that each organization makes an independent decision about the cases that it will accept and the terms of the representation.

360 North Sepulveda Blvd., Suite 2070
El Segundo, CA 90245

VII. Reporting

The College encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual violence. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response.

The College encourages all individuals to make a report to the College and to local law enforcement. Reporting options are not mutually exclusive. Both internal and criminal reports may be pursued simultaneously.

The College has a strong interest in supporting victims and survivors of sexual harassment, sexual violence, stalking and intimate partner violence and encourages all individuals or third party witnesses to report any incident to the College.

Making a report means telling someone in authority what happened -- in person, by telephone, in writing or by email. At the time a report is made, a Complainant does not have to decide whether or not to request any particular course of action, nor does a Complainant need to know how to label what happened. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The College provides support that can assist each individual in making these important decisions, and to the extent legally possible will respect an individual's autonomy in deciding how to proceed. In this process, the College will balance the individual's interest with its obligation to provide a safe and non-discriminatory environment for all members of the College community.

Any individual who reports sexual harassment, sexual violence, stalking or intimate partner violence can be assured that all reports will be investigated and resolved in a fair and impartial manner. A Complainant, a Respondent and all individuals involved can expect to be treated with dignity and

A. Emergency and External Reporting Options

- **LAPD**

For concerning situations

- **LAPD Northeast Division**

Los Angeles, CA 90065

Occidental is located in Northeast Division.

- **San Gabriel Valley Medical Center***

Provides medical treatment and forensic exams; closest facility to campus.

- **LA County/USC Medical Center***

Provides medical treatment and forensic exams.

- **Rape Treatment Center at Santa Monica-UCLA Medical Center***

(310) 319-4000 Ext. 3

*These three medical centers are Los Angeles County designated Sexual Assault Response Team (SART) Centers.

B. Campus Reporting Options

The College encourages all individuals to report misconduct to any College employee the Complainant trusts and feels comfortable with. In general, most College employees do not have legally protected confidentiality. Under Title IX, a College is required to take immediate and corrective action if a "responsible employee" knew or, in the exercise of reasonable care, should have known about sexual or gender-based harassment that creates a hostile environment. A "responsible employee" includes any employee who:

- Has the authority to take action to redress the harassment;
- Has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or
- A student could reasonably believe has the authority or responsibility to take action.

Using this lens, employees with supervisory and leadership responsibilities on campus are considered "responsible employees." This includes, for example, faculty, coaches, administrators, and Resident Advisors.

The College requires that all "responsible employees" share a report of misconduct with the Title IX Coordinator or a member of the Title IX team. The Title IX team, under the guidance of the Title IX Coordinator, will conduct an initial assessment of the conduct, the Complainant's expressed preferences, if any, as to course of action, and the necessity for any interim remedies or accommodations to protect the safety of the Complainant or the community.

All Occidental community members, even those who are not obligated to do so by this policy, are strongly encouraged to report information regarding any incident of sexual harassment, sexual violence, stalking or intimate partner violence directly to the Title IX Coordinator or a member of the Title IX team. The College cannot take appropriate action unless an incident is reported to the College.

Members of the interdepartmental Title IX team include the Title IX Coordinator, Title IX Deputy Coordinators, and the Chief of Campus Safety. In addition, based on the role of the Complainant and the Respondent, the members of the team could include the Vice President for Academic Affairs and Dean of the College and a representative from the Dean of Students Office and/or Human Resources.

Campus Reporting Options:

- **Title IX Coordinator Ruth Jones**
Available on weekdays during regular office hours to coordinate a fair and equitable

response to reports of sexual misconduct.
ruthjones@oxy.edu; (323) 259-1338

- Deputy Title IX Coordinator **Jacalyn Feigelman**
Available on weekdays during regular office hours.
jacalynf@oxy.edu; (323) 259-2614
- Deputy Title IX Coordinator (**Athletics**) **Alison Haehnel**
Available on weekdays during regular office hours.
haehnel@oxy.edu; (323) 259-2632
- **Campus Safety**
Available as a first option to report an incident of sexual violence or intimate partner violence. Also provides an escort service on campus to any student and can reach the Dean on Duty at any time. Available 24 hours a day, 7 days a week.
(323) 259-2511 (emergency line), or dial 5 from any campus phone.
- **Dean of Students Office/Dean on Duty**
Can provide reasonable accommodations for housing, academic flexibility and no contact letters. Available on weekdays during regular office hours. Access to Dean on Duty 24 hours a day by calling Campus Safety at (323) 259-2599.
Office: AGC #111 and #112 (Ground floor, north side)
deanofstudents@oxy.edu
(323) 259-2661

C. Anonymous Reporting

Any individual may make an anonymous report concerning an act of sexual harassment, sexual violence, stalking or intimate partner violence. An individual may report the incident without disclosing his/her name, identifying the Respondent or requesting any action. Depending on the extent of information available about the incident or the individuals involved, however, the College's ability to respond to an anonymous report may be limited. The Anonymous Reporting Form can be found here.

The Title IX Coordinator will receive the anonymous report and will determine any appropriate steps, including individual or community remedies as appropriate, and in consultation with the Clery Team, compliance with all Clery Act obligations.

D. Reporting Considerations: Timeliness and Location of

Incident

Complainants and third-party witnesses are encouraged to report sexual harassment, sexual violence and intimate partner violence as soon as possible in order to maximize the College's ability to respond promptly and effectively. The College does not, however, limit the time frame for reporting. If the Respondent is not a member of the Occidental community, the College will still seek to meet its Title IX obligation by taking steps to end the harassment, prevent its recurrence, and address its effects, but its ability to take disciplinary action against the Respondent may be limited.

An incident does not have to occur on campus to be reported to the College. Off-campus conduct that is likely to have a substantial effect on the Complainant's on-campus life and activities or poses a threat or danger to members of the Occidental community may also be addressed under this policy.

E. Amnesty for Alcohol or Other Drug Use

The college community encourages the reporting of prohibited conduct under this policy. It is in the best interest of this community that as many Complainants as possible choose to report to college officials, and that witnesses come forward to share what they know. To encourage reporting, an individual who reports sexual harassment or misconduct, either as a Complainant or a third-party witness, will not be subject to disciplinary action by the College for his/her own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The College may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

F. Coordination with Law Enforcement

The College encourages Complainants to pursue criminal action for incidents of sexual harassment, sexual violence and intimate partner violence that may also be crimes under California law. The College will assist a Complainant in making a criminal report and cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law.

The College's policy, definitions and burden of proof may differ from California criminal law. A Complainant may seek recourse under this policy and/or pursue criminal action. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this policy has occurred. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

At the request of law enforcement, the College may agree to defer its Title IX fact gathering until after the initial stages of a criminal investigation. The College will nevertheless communicate with the Complainant regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. The College will promptly resume its Title IX fact gathering as soon as it is informed that law enforcement has completed its initial investigation.

G. Statement against Retaliation

It is a violation of College policy to retaliate in any way against an individual because s/he raised allegations of sexual harassment, sexual violence, stalking or intimate partner violence. The College recognizes that retaliation can take many forms, may be committed by or against an individual or a group, and that a Complainant, Respondent or third party may commit or be the subject of retaliation.

The College will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting sexual harassment or misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

H. False Reports

The College will not tolerate intentional false reporting of incidents. The College takes the accuracy of information very seriously as a charge of sexual harassment, sexual violence, stalking or intimate partner violence may have severe consequences. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation of sexual misconduct. However, when a Complainant or third party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Complainant may be subject to disciplinary action. It is a violation of the Code of Student Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

I. Reports Involving Minors or Suspected Child Abuse

Under California law, an individual must make a mandatory report of suspected child abuse and neglect, including sexual assault when that individual, in his/her professional capacity or within the scope of his/her employment, has knowledge of or observes a minor under the age of 18 whom the individual knows or reasonably suspects has been the victim of child abuse or neglect.

All College employees, whether designated as a mandatory reporter under California state law or not, are required to immediately report any suspected child abuse and neglect to the Title IX Coordinator and the Director of Campus Safety. The source of abuse does not need to be known in order to file a report.

The College will report all suspected child abuse and neglect, including sexual assault, to law enforcement and/or to Los Angeles County Department of Child and Family Services. The College must act quickly regarding all reasonable suspicions of sexual or physical abuse. It is not the responsibility of any employee, student, or volunteer to investigate suspected child abuse. This is the role of Child Protective Services and law enforcement authorities.

In addition to notifying the Title IX Coordinator and Director of Campus Safety, any individual may make a direct report as follows:

- resolution of the matter
- Voluntary leave of absence
- Providing an escort to ensure safe movement between classes and activities
- Providing medical services
- Providing academic support services, such as tutoring
- Interim suspension or College-imposed leave
- Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

C. Interim Suspension or Separation

Where the report of sexual harassment, sexual violence, stalking or intimate partner violence poses a substantial and immediate threat of harm to the safety or well-being of an individual, members of the campus community, or the performance of normal College functions, the College may place a student or student organization on interim suspension or impose leave for an employee. Pending resolution of the report, the individual or organization may be denied access to campus, campus facilities and/or all other College activities or privileges for which the student might otherwise be eligible, as the College determines appropriate. When interim suspension or leave is imposed, the College will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

The full provisions for Interim Suspension for students are contained in the Code of Student Conduct. Provisions for suspension of faculty members are contained in the Faculty Handbook. Staff may be placed on leave at the discretion of the College.

IX. Options for Resolution

A. Overview

Upon receipt of a report, the College's Title IX team will conduct an Initial Title IX Assessment. The goal of this assessment is to provide an integrated and coordinated response to reports of sexual harassment or misconduct. The assessment will consider the nature of the report, the safety of the individual and of the campus community, and the Complainant's expressed preference for resolution.

At the conclusion of the assessment, the College may choose to pursue Informal Resolution, a remedies-based approach that does not involve disciplinary action against a Respondent, or refer the matter for Investigation. The goal of the Investigation is to gather all relevant facts and determine if there is sufficient information to refer the report to a hearing panel for disciplinary action using the College's Formal Resolution procedures.

The initial steps for resolution of a complaint against a student, an employee or a faculty member will

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B. The Role of the Title IX Team

C. Initial Title IX Assessment

The initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made. Thereafter, the investigation may be initiated depending on a variety of factors, such as the Complainant's wish to pursue disciplinary action, the risk posed to any individual or the campus community by not proceeding, and the nature of the allegation.

D. Investigation

investigation must be impartial and free of any conflict of interest.

The investigator will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent and any witnesses. The interviews will be supplemented by the gathering of any physical, documentary or other evidence. As part of the investigation, the College will provide an opportunity for the parties to present witnesses and other evidence.

The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial and fair, and all individuals will be treated with appropriate sensitivity and respect. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns.

The College will seek to complete the investigation within 20 (twenty) business days of receiving the complaint, but this time frame may be extended depending on the complexity of the circumstances of each case. At the conclusion of the investigation, the report will be forwarded to the Title IX Coordinator and the Hearing Coordinator responsible for initiating Formal Resolution proceedings.

Information gathered during the review or investigation will be used to evaluate the responsibility of the Respondent, provide for the safety of the Complainant and the College campus community, and impose remedies as necessary to address the effects of the conduct cited in the report. Where there is sufficient information set forth that, if proven, would constitute a violation of policy, the College will have the discretion to institute Formal Resolution proceedings against the Respondent. At the conclusion of the investigation, the College will notify all parties that the investigation is complete and provide information about next steps in the process.

Based on the information gathered in the initial Title IX assessment and/or full investigation, the College will take appropriate measures designed to end the misconduct, prevent its recurrence and address its effects.

The Title IX Coordinator will document each report or request for assistance in resolving a case involving charges of sexual misconduct, whether formal or informal, and will review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law.

E. Informal Resolution

Informal resolution is a remedies-based, non-judicial approach designed to eliminate a hostile environment without taking disciplinary action against a Respondent. Where the Title IX assessment concludes that informal resolution may be appropriate, the College will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant's access to the educational and extracurricular activities at the College and to eliminate a hostile environment. Examples of protective remedies are provided in Section IX: Interim Remedies. Other potential remedies include targeted or broad-based educational programming or

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training, direct confrontation of the Respondent and/or indirect action by the Title IX Coordinator or the College. Depending on the form of informal resolution used, it may be possible to maintain anonymity.

The College will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of informal resolution. Mediation, even if voluntary, may not be used in cases involving sexual violence or assault. The decision to pursue informal resolution will be made when the College has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in informal resolution is voluntary, and a Complainant can request to end informal resolution at any time.

The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Informal resolution will typically be completed within thirty (30) business days of the initial report.

F. Formal Resolution

Disciplinary action against a Respondent may only be taken through Formal Resolution procedures. Because the relationship of students, staff, and faculty to the College differ in nature, the procedures that apply when seeking disciplinary action necessarily differ as well. Each of the procedures, however, is guided by the same principles of fundamental fairness and respect for all parties, which require notice, an equitable opportunity to be heard, and an equitable opportunity to respond to a report under this policy.

The specific procedures for Formal Resolution will vary based upon the role of the Respondent:

- For a *complaint against a student*, disciplinary action may be taken by the Vice President of Student Affairs and Dean of Students or his/her designee following a finding of responsibility by an Administrator or a Hearing Panel.
- For a *complaint against an employee*, disciplinary action may be taken at the conclusion of the investigation by the Director of Human Resources or the Vice President for Finance and Planning.
- For a *complaint against a faculty member*, disciplinary action may be taken at the conclusion of the investigation by the Vice President for Academic Affairs and Dean of College and the Faculty Council or Advisory Council Hearing Committee pursuant to the "Procedures for Actions Leading to Warning, Reprimand, or Dismissal" in the Faculty Handbook.

G. Time Frame for Resolution

The College seeks to resolve all reports within 60 days of the initial report. All time frames expressed in this policy are meant to be guidelines rather than rigid requirements. Extenuating circumstances may arise that require the extension of time frames, including extension beyond 60 days.

Extenuating circumstances may include the complexity and scope of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal

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investigation, any intervening school break or vacation, or other unforeseen circumstances.

In general, a Complainant and Respondent can expect that the process will proceed according to the time frames provided in this policy. In the event that the investigation and resolution exceed this time frame, the College will notify all parties of the reason(s) for the delay and the expected adjustment in time frames. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

Appendix A: Resolving Complaints Against a Student

I. Overview

As outlined in the Reporting section of this policy, an individual who wishes to make a report of sexual harassment, sexual violence, stalking or intimate partner violence is encouraged to make a report directly to the Title IX Coordinator, Deputy Title IX Coordinators, the Dean of Students Office, Campus Safety or Human Resources. In every instance under this policy, the College, through the coordinated efforts of the Title IX team, will conduct an initial Title IX Assessment.

At the conclusion of the Title IX Assessment, the report will be referred for Informal Resolution or Investigation to determine if there is sufficient information to proceed with Formal Resolution. Informal Resolution is a non-judicial, remedies-based approach that does not involve disciplinary action against a Respondent. Formal Resolution is a judicial, sanctions-based approach that may involve discipline up to and including expulsion.

II. Initial Title IX Assessment

Upon receipt of a report, the College, through the coordinated efforts of the Title IX team, will conduct an initial Title IX assessment. The first step of the assessment will usually be a preliminary meeting with the Complainant with the Title IX Coordinator or a member of the Title IX team. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full forensic interview. At this meeting, the Complainant will be provided with information about resources, procedural options and interim remedies.

As part of the initial assessment of the report, the Title IX team will:

- Assess the nature and circumstances of the allegation
- Address immediate physical safety and emotional well-being needs
- Notify the Complainant of his/her right to contact law enforcement and seek medical treatment, including the importance of preservation of evidence
- Enter the report into the College's daily crime log
- Assess the reported conduct for the need for a timely warning under Clery
 - Provide the Complainant with information about:

scope of the conduct, which may occur at any time. Participation in informal resolution is voluntary, and a Complainant can request to end informal resolution at any time.

The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Informal resolution will typically be completed within thirty (30) business days of the initial report.

IV. Investigation

Following the initial Title IX assessment, the College may initiate a prompt, thorough and impartial investigation. The Title IX Coordinator, in consultation with the Title IX team, will oversee the investigation. At the conclusion of the investigation, if warranted, a Hearing Coordinator will be assigned to facilitate the adjudication through a conduct conference or specially trained conduct hearing panel.

The investigation is designed to provide a fair and reliable gathering of the facts. All individuals in the investigation, including the Complainant, the Respondent and any third-party witnesses, will be treated with appropriate sensitivity and respect. Consistent with the need for a full assessment of the facts, the investigation will safeguard the privacy of the individuals involved.

The College will designate an investigator who has specific training and experience investigating allegations of sexual harassment and sexual misconduct. The investigator may be an employee of the College or an external investigator engaged to assist the College in its fact gathering. The College will typically use a team of two investigators, which may include the pairing of an external investigator with a College employee. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest.

The investigator(s) will coordinate the gathering of information from the Complainant, the Respondent, and any other individuals who may have information relevant to the determination. The investigator(s) will also gather any available physical or medical evidence, including documents, communications between the parties, and other electronic records as appropriate. The investigator(s) may consider prior allegations of, or findings of responsibility for, similar conduct by the Respondent. The Complainant and Respondent will have an equal opportunity to be heard, to submit evidence, and to identify witnesses who may have relevant information.

The investigation will usually be completed within twenty (20) business days. Given the availability of witnesses or complexity of the circumstances, this time frame may be extended as necessary to ensure the integrity and completeness of the investigation.

At the request of law enforcement, the College may agree to defer its Title IX fact gathering until after the initial stages of a criminal investigation. The College will nevertheless communicate with the Complainant regarding Title IX rights, procedural options and the implementation of interim measures to assure safety and well-being. The College will promptly resume its Title IX fact gathering as soon as law enforcement has completed its initial investigation.

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A. Threshold Determination and Appeal from Insufficient Threshold

Upon receipt of the investigative report, the Hearing Coordinator, in consultation with the Title IX team, will review the report and make a threshold determination as to whether there is sufficient information upon which an adjudicator could find a violation of this policy. This threshold determination does not involve making a determination of responsibility, nor does it involve a credibility assessment. If the threshold has been established, the Hearing Coordinator will issue a Notification Letter to the Respondent and the Complainant and refer the report for Pre-Hearing Procedures.

V. Formal Resolution

A. Conduct Conference

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implemented. Both parties and the Hearing Coordinator must agree that the matter is appropriate for resolution by a conduct conference. Depending upon the nature and severity of the allegations, the Hearing Coordinator may decline to handle the matter administratively and refer the case to a Hearing Panel.

A conduct conference is particularly appropriate when the Respondent has admitted to the harassment or misconduct and there is no discernible dispute in the relevant facts of the investigation report; however, at the discretion of the Hearing Coordinator, it may also be used when the facts are in dispute. The investigative report will serve as the primary evidence in making a determination of responsibility.

Both parties must have notice, the opportunity to review the investigative report in advance, and the opportunity to present any additional relevant information to the Hearing Coordinator. In reaching a determination as to whether this policy has been violated, the Hearing Coordinator will reach a determination by a preponderance of the evidence, that is, whether the conduct was more likely than not to have occurred as alleged. Based on the outcome of the conduct conference, the Hearing Coordinator will issue an appropriate sanction.

Both a Complainant and Respondent may appeal the determination of the Hearing Coordinator as provided in the Appeal section below.

B. Hearing Panel

The hearing panel typically consists of a three members drawn from a pool of trained faculty and campus administrators. Faculty members of the hearing panel pool are appointed by Faculty Council. Administration members of the hearing panel pool are selected and appointed by the Dean of Students Office. At the discretion of the Hearing Coordinator, the College may engage an external adjudicator to serve as a member of the hearing panel or in lieu of the hearing panel whenever, in the exercise of judgment, doing so will best serve the fair and equitable resolution of the complaint. In making the determination to select an external adjudicator, the Hearing Coordinator will consider, among other factors, the nature of the allegations, the complexity of the case, whether there is any issue of conflict of interest, the availability of trained panel members for the hearing, whether the College is in session or on break, or any other relevant factors.

All hearing panelists must participate in annual training on non-discrimination; the dynamics of sexual harassment, sexual violence and intimate partner violence; the factors relevant to a determination of credibility; the appropriate manner in which to receive and evaluate sensitive information; the manner of deliberation; evaluation of consent and incapacitation; the application of the preponderance of the evidence standard; sanctioning and the College's policies and procedures. The training will be coordinated by the Title IX Coordinator in conjunction with campus and external partners.

The Hearing Panel is supported by the Hearing Coordinator, who is present at hearing panel meetings, but is not be a voting member of the panel. He or she will meet with all involved parties

In most cases, it should be possible to convene a hearing panel; however if the hearing must be heard at or after the end of the semester or academic year and/or a full hearing panel cannot reasonably be convened, those cases may be heard by the Vice President for Student Affairs and Dean of Students (or designee) or the College may substitute an alternate method of adjudication at its discretion.

Advisor: In any hearing, the Complainant and Respondent may choose to be assisted by an advisor. The Title IX Office maintains a list of campus community members who have undergone Title IX training who can guide a student through the pre-hearing and hearing process. The advisor may accompany the student to any College investigative, administrative or adjudicative meeting, including the panel hearing. The advisor may not speak to the panel during the hearing.

The support person cannot be a witness in the proceedings. The support person is a silent and non-participating presence who is there solely to observe and provide moral support during the hearing itself. This person is not to address the hearing panel, except to ask for a short recess if one of the parties requires some time to compose him or herself or collect his or her thoughts. The Hearing Coordinator has the right at all times to determine what constitutes appropriate behavior on the part of a support person and whether the person may remain at the proceedings. While the support person may be present to hear testimony, no written materials are to be shared with support people.

Role of the Attorney/Outside Agreements: The College prohibits outside attorneys, or family members acting as attorneys, from participating in proceedings under this policy. A Complainant or Respondent may choose to seek the advice and assistance of an attorney at his/her own expense, but the attorney may not participate in investigatory interviews, informal resolution proceedings, or formal resolution via administrative hearing or Hearing Panel. Similarly, the College will not recognize or enforce agreements between the parties outside of these procedures.

1. Notice of Charges

Following the threshold determination that there is sufficient information to move forward with a hearing, the Hearing Coordinator will send written Notification Letter to both the Complainant and the Respondent. The Notification Letter provides each party with a brief summary of the conduct at issue and the specific provision of the policy violation(s) that are alleged to have taken place.

2. Pre-Hearing Meeting with Complainant and Respondent

Following the Notification Letter, the Hearing Coordinator will contact the Complainant and Respondent to schedule separate meetings with each party. At this pre-hearing meeting, each party will receive an explanation of the hearing process and have the opportunity to ask any questions. If the Complainant and/or Respondent have elected to have advisors throughout the hearing process, the advisor is encouraged to accompany the Complainant/Respondent to this initial meeting.

3. Notice of Hearing

Once each party has met with the Hearing Coordinator, a Notice of Hearing is sent to the Complainant and the Respondent. In addition, the Notice provides the parties with the date, time, and place of the hearing, as well as the name(s) of the person(s) hearing the case.

In general, the hearing will be scheduled within ten (10) business days of the date of the Notice of Hearing. Under extenuating circumstances, this time frame may be extended.

4. Composition of the Hearing Panel

The Complainant and the Respondent may submit a written request to the Hearing Coordinator that a member of the hearing panel be removed. The request must clearly state the grounds to support a claim of bias, conflict of interest or an inability to be fair and impartial. This challenge must be raised within two (2) business days of receipt of the Notice of Hearing. All objections must be raised prior to the commencement of the hearing. Failure to object prior to the hearing will forfeit one's ability to appeal the outcome based on perceived or actual bias.

5. Pre-Hearing Review of Documents

The Complainant and the Respondent will each have the opportunity to review all investigative documents, subject to the privacy limitations imposed by state and federal law, at least five (5) business days prior to the hearing. The investigative documents will include the investigation report, any witness statements or interviews, statements or interviews by both parties, and any other documentary information that will be presented to the hearing panel.

6. Witnesses

The Complainant, Respondent, and the hearing panel all have the right to call witnesses. Witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character.

In general, neither party will be permitted to call as a witness anyone who was not interviewed

by the investigator as part of the College's investigation. If either party wishes to call witnesses, whether or not they were previously interviewed as part of the College's investigation, the following must be submitted no later than five (5) business days before the hearing to the Hearing Coordinator via e-mail or in hardcopy format:

- The names of any witnesses that either party intends to call;
- A written statement and/or description of what each witness observed, if not already provided during investigation;
- A summary of why the witness' presence is relevant to making a decision about responsibility at the hearing; and,
- The reason why the witness was not interviewed by the investigator, if applicable.

The Hearing Coordinator will determine if the proffered witness(es) has relevant information and if there is sufficient justification for permitting a witness who was not interviewed by the investigator. The Hearing Coordinator may also require the investigator to interview the newly proffered witness.

If witnesses are approved to be present, the Respondent and Complainant are provided with a list of witnesses and any relevant documents related to their appearance at the hearing no later than five (5) business days before the hearing. All parties have the opportunity to ask questions of witnesses (through the panel), regardless of who called them to the hearing.

7. Relevance

The Hearing Coordinator will review the investigative report, any witness statements and any other documentary evidence to determine whether the proffered information contained therein is relevant and material to the determination of responsibility given the nature of the allegation. In general, the Hearing Coordinator may redact information that is irrelevant, more prejudicial than probative, or immaterial. The Hearing Coordinator may also redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty.

8. Prior Sexual History and/or Pattern Evidence

Prior Sexual History of a Complainant: In general, a Complainant's prior sexual history is not relevant and will not be admitted as evidence at a hearing. Where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is typically not relevant and will not be permitted.

The College, through the Hearing Coordinator or Title IX Coordinator, may choose to introduce this information, with appropriate notice to the parties. Alternatively, a party may request in writing that information under this section be admitted. A request to admit such information must be submitted to the Hearing Coordinator. The Hearing Coordinator, in consultation with the Title IX Coordinator, will assess the relevance of this information and determine if it is appropriate for inclusion at the hearing.

- A written statement and/or description of the proposed information, if not already provided during investigation; and
- A summary of why this information is relevant to making a decision of responsibility at the hearing.

9. Request to Reschedule Hearing

10. Consolidation of Hearings

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E. Hearing Panel Procedures

1. Attendance at Hearing

If a party does not attend a hearing for any non-emergency or compelling reason, the hearing may be held in his/her absence at the discretion of the Vice President of Student Affairs and Dean of Students.

A Respondent will not be permitted to withdraw from the College prior to the conclusion of an investigation or formal resolution under this policy. If a Respondent chooses not to participate, the College will move forward with the hearing and imposition of sanction, if any, in absentia. The Respondent's academic transcript will be marked Withdrawal Pending Disciplinary Action, or, if finally resolved in absentia, with the final outcome in accordance with regular practice under this policy.

A Complainant or Respondent may also request alternative testimony options that would not require physical proximity to the other party. Options include placing a privacy screen in the hearing room, allowing the Complainant or Respondent to speak outside the physical presence of the other by using relevant technology to facilitate participation. Any proposed alternative must be reviewed in advance of the hearing to ensure that it is consistent with the goals of a fair and equitable process. While these options are intended to help make the alleged Complainant or Respondent more comfortable, they are not intended to work to the disadvantage of the other party.

2. Participants in Hearing Procedures

The hearing panel is a closed hearing; it is not open to the public. The individuals who may appear before the hearing panel are: the Complainant; the Respondent; any individual serving as an approved advisor or support person; and any individuals appearing as witnesses. Attorneys, including family members acting as attorneys, are not permitted.

3. Safeguarding of Privacy

All parties involved in a hearing are required to keep the information learned in preparation for the hearing and at the hearing private. No copies of documents provided are to be made or shared with any third parties. All copies provided must be returned to the College at the conclusion of the hearing and any appeals. Any breach of this duty is subject to further disciplinary action by the College.

4. Hearing Panel Procedures

A hearing is not intended to be adversarial; rather, it is intended to be educational and developmental. The hearing is intended to provide a fair and ample opportunity for each side

to present his/her account of the incident and for the hearing panel to determine the facts of the case, make a determination as to whether College policy was violated, and to recommend appropriate sanctions, if necessary. The hearing is an informal proceeding not comparable to a criminal trial; it is the mechanism by which the College assesses, and as appropriate, takes formal disciplinary action regarding a violation of College policy.

The hearing panel must review all pertinent information regarding the incident in question prior to the date of the hearing panel. Relevant information supporting the violation(s) alleged may be offered in the form of written statements, documents, items, or oral information from the Complainant, the Respondent, and witnesses.

A member of the panel will be designated as the panel chair. A hearing will be called to order by the panel chair. The Hearing Coordinator serves as a (non-voting) advisor to the hearing panel. The chair will explain the hearing process and will provide an opportunity to all parties to ask procedural questions prior to initial statements and the presentation of information.

The investigator will provide a brief opening statement summarizing the investigation. The opening statement should focus on the areas of agreement and disagreement in order to assist the hearing panel in prioritizing areas of inquiry. The hearing panel, Complainant, or Respondent may make brief inquiries of the investigator at this juncture, as there will be additional opportunity to ask questions of the investigator after the hearing panel has heard from the Complainant, the Respondent, and any witnesses.

The Complainant may supplement the information provided to the panel with a brief statement. This is not intended to be a retelling of the event. The hearing panel may pose questions to the Complainant, including questions suggested by the Respondent.

After the Complainant is finished, the Respondent will be given an opportunity, and is encouraged, to make a brief statement. The hearing panel may pose questions to the Respondent, including questions suggested by the Complainant.

The panel may hear from witnesses on behalf of the Complainant and the Respondent. Each witness will be questioned by the hearing panel, and, as appropriate, the Complainant and the Respondent. Under some circumstances, the Complainant or Respondent may be asked to present a list of written questions to the panel, who will determine the relevance of the questions and pose any questions deemed relevant.

The hearing panel, Complainant, and Respondent may then question the Investigator. The investigator is not permitted to offer an opinion on the credibility of any individual or as to the ultimate issue.

At the conclusion of the presentation of all witnesses, the Complainant and Respondent will each be given a brief final opportunity to address any outstanding issues of fact.

5. Questioning of Witnesses

F. Sanctions

A hearing panel that finds a Respondent responsible for a violation of this policy may recommend appropriate sanctions that may include, but are not limited to, those set forth below. Sanctions may be issued individually, or a combination of sanctions may be imposed. The Complainant and Respondent will each have the opportunity to present a written statement about impact and/or requested sanctions. The hearing panel will review these statements only if the Respondent has been found responsible for one or more violation.

In general:

- Any student who is determined to have committed sexual assault may receive a sanction ranging from suspension to expulsion.
- Any student who is determined to have committed non-consensual sexual contact or any other prohibited form of conduct may receive a sanction ranging from conduct warning to expulsion.

The hearing panel may deviate from the range of recommended sanctions, based upon a full consideration of the following factors: (1) the Respondent's prior discipline history; (2) how the College has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the Complainant; (5) the impact of the conduct on the community, its members, or its property; (6) whether the Respondent has accepted responsibility for his actions; (7) whether the Respondent is reasonably likely to engage in the conduct in the future; (8) the need to deter similar conduct by others; and (9) any other mitigating or aggravating circumstances, including the College's values.

The hearing panel or Hearing Coordinator may also consider restorative justice outcomes that, taking into account the safety of the community as a whole, allows a Respondent to learn about the origins of his/her behavior, his/her responsibility for this behavior, and how s/he can change this behavior.

In appropriate cases, a panel may determine that the conduct was motivated by bias, insofar as a Complainant was selected on the basis of his or her race, color, ethnicity, national origin, religion, age, disability or other protected class. Where the panel determines that student misconduct was motivated by bias, the panel may elect to increase the sanction imposed as a result of this motivation.

The hearing panel will make a recommendation about the appropriate sanction. The Hearing Coordinator, in consultation with the Title IX Coordinator, may affirm or modify the recommended sanction(s). The Hearing Coordinator and Title IX Coordinator will review the panel's recommendations and take reasonable steps to foster consistency for similar violations and circumstances.

Sanctions that may be imposed under this policy include:

Warning: Notice, in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.

Censure: A written reprimand for violating the Code of Student Conduct or other College policy. This conduct status specifies a period of time during which the student's or organization's good standing with the College may be in jeopardy. The student is officially warned that continuation or repetition of prohibited conduct may be cause for additional conduct action including probation, suspension, or expulsion from the College.

Disciplinary Probation: Exclusion from participation in privileged activities for a specified period of time (privileged activities may include, but are not limited to, elected or appointed ASOC offices, student research, athletics, some student employment, and study abroad). Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other College policy violations may result in further disciplinary action.

Restitution: Repayment to the College or to an affected party for damages resulting from a violation of this Code. To enforce this sanction, the College reserves the right to withhold its transcripts and degrees or to deny a student participation in graduation ceremonies and privileged events.

Removal from Campus Housing: Students may be removed from College housing and/or barred from applying for campus housing due to disciplinary violations of this Code.

Suspension: Exclusion from College premises, attending classes, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Notice of this action will remain in the student's conduct file. Conditions for readmission may be specified in the suspension notice.

Expulsion: Permanent termination of student status and exclusion from College premises, privileges, and activities. This action will be permanently recorded on the student's academic transcript.

Revocation of Admission and/or Degree: Admission to, or a degree awarded by, the College may be revoked for fraud, misrepresentation in obtaining the degree or violation of College policies, the Student Code of Conduct or for other serious violations committed by a student prior to enrollment or graduation.

Withholding Degree: The College may withhold awarding a degree otherwise earned until the completion of the process set forth in this Code, including the completion of all sanctions imposed, if any.

Other sanctions may be imposed instead of, or in addition to, those specified here. Service, education or research projects may also be assigned. More than one of the sanctions listed above may be imposed for any single violation.

G. Outcome Letter

The outcome of the hearing panel will be final and communicated to the Complainant and Respondent in writing, usually within four (4) business days from the date the hearing is concluded. The notification of each party should occur at or near the same time.

Both parties have the right to be informed of the outcome. In addition, the Respondent will be fully informed of any sanctions. For reports involving sexual violence, the Complainant will be fully informed of any sanctions. For all other reports under this policy, the Complainant will be informed of only those sanctions that directly relate to the Complainant, consistent with FERPA and other applicable law.

The imposition of sanctions will take effect immediately and will not be stayed pending the resolution of the appeal.

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is not dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about individual conduct complaints pursuant to FERPA requirements.

H. Appeals

Either party may appeal the final outcome in writing to the Vice President for Student Affairs and Dean of Students or designee (the "Appeals Officer"). The appeal will be conducted in an impartial manner by an impartial decision-maker. The appeal must be filed in writing within five (5) business days of receiving the written outcome. The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal.

The Complainant and/or Respondent may appeal only the parts of final outcome directly relating to him/her. Dissatisfaction with the outcome of the hearing is not grounds for appeal. The only grounds for appeal are:

- A procedural or substantive error occurred that significantly affected the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- New evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction (a summary of this new evidence and its potential impact must be included).

The receipt of the appeal will be acknowledged in writing (which can include email). Each party will be given the opportunity to respond in writing to the other party's appeal. Any response by the opposing party must be submitted to the Appeals Officer within three (3) business days from receipt

In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The Appeals Officer shall first consider whether the appeal is timely filed and if so, whether the appeal is properly framed based on the two grounds. If the Appeals Officer determines that the appeal is not properly framed, the appeal will be denied.

Appeals are not intended to be full rehearing of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. This is not an opportunity for the Appeals Officer to substitute his/her judgment for that of the original hearing body merely because s/he disagree with its finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error. The Appeals Officer can affirm or alter the original findings, depending on the basis of the requested appeal.

The Appeals Officer will render a written decision on the appeal to the Complainant and Respondent within fifteen (15) business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.

These procedures are entirely administrative in nature and are not considered legal proceedings. Neither party may audio or video record the proceedings, nor is formal legal representation allowed.

J. Records

The Title IX Coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by means of Title IX assessment, informal resolution or formal resolution. Complaints resolved by means of Title IX assessment or informal resolution are not part of a student's conduct file or academic record or of an employee's personnel record.

Affirmative findings of responsibility in matters resolved through formal resolution are part of a student's conduct record and an employee's personnel record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record or an employee's personnel record.

Generally suspension, expulsion, and withdrawal pending disciplinary action are permanently noted on a student's transcript. The conduct files of students who have been suspended or expelled from the College are maintained in the Dean of Students Office indefinitely. Conduct files of students who have not been suspended or expelled are maintained in the Dean of Students Office for no fewer than seven years from the date of the incident. Further questions about record retention should be directed to the Dean of Students Office.

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The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victims of completed or attempted sexual assault while in college.³ The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college.⁴ According to data collected under the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), in 2009, college campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act.⁵ This problem is not limited to college. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools.⁶ Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.⁷ The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities.

This letter begins with a discussion of Title IX's requirements related to student-on-student sexual harassment, including sexual violence, and explains schools' responsibility to take immediate and effective steps to end sexual harassment and sexual violence. These requirements are discussed in detail in OCR's *Revised Sexual Harassment Guidance* issued in 2001 (*2001 Guidance*).⁸ This letter supplements the *2001 Guidance* by providing additional guidance and practical examples regarding the Title IX requirements as they relate to sexual violence. This letter concludes by discussing the proactive efforts schools can take to prevent sexual harassment and violence, and by providing examples of remedies that schools and OCR may use to end such conduct, prevent its recurrence, and address its effects. Although some examples contained in this letter are applicable only in the postsecondary context, sexual

⁴ *Id.* at 5-5.

⁵ U.S. Department of Education, Office of Postsecondary Education, Summary Crime Statistics (data compiled from reports submitted in compliance with the Clery Act), *available at* <http://www2.ed.gov/admins/lead/safety/criminal2007-09.pdf>. Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. 34 C.F.R. Part 668, Subpt. D, App. A.

⁶ SIMONE ROBERS ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2010 at 104 (U.S. Dep't of Educ. & U.S. Dep't of Justice, Nov. 2010), available at <http://nces.ed.gov/pubs2011/2011002.pdf>.

⁷ ERIKA HARRELL & MICHAEL R. RAND, CRIME AGAINST PEOPLE WITH DISABILITIES, 2008 (Bureau of Justice Statistics, U.S. Dep't of Justice, Dec. 2010), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/capd08.pdf>.

⁸ The 2001 Guidance is available on the Department's Web site at:

<http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>. This letter focuses on peer sexual harassment and violence. Schools' obligations and the appropriate response to sexual harassment and violence committed by employees may be different from those described in this letter. Recipients should refer to the *2001 Guidance* for further information about employee harassment of students.

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sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.¹¹

If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.¹² Schools also are required to publish a notice of nondiscrimination and to adopt and publish grievance procedures. Because of these requirements, which are discussed in greater detail in the following section, schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly. Training for employees should include practical information about how to identify and report sexual harassment and violence. OCR recommends that this training be provided to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors.

Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. For example, if a student alleges that he or she was sexually assaulted by another student off school grounds, and that upon returning to school he or she was taunted and harassed by other students who are the alleged perpetrator's friends, the school should take the earlier sexual assault into account in determining whether there is a sexually hostile environment. The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.

Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. As discussed later in this letter, the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct. The specific steps in a school's

¹¹ Title IX also protects third parties from sexual harassment or violence in a school's education programs and activities. For example, Title IX protects a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in a school's on-campus residence hall. Title IX also protects employees of a recipient from sexual harassment. For further information about harassment of employees, see *2001 Guidance* at n.1.

¹² This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See *2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643, 648 (1999).

investigation will vary depending upon the nature of the allegations, the age of the student or students involved (particularly in elementary and secondary schools), the size and administrative structure of the school, and other factors. Yet as discussed in more detail below, the school's inquiry must in all cases be prompt, thorough, and impartial. In cases involving potential criminal conduct, school personnel must determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified.¹³

Schools also should inform and obtain consent from the complainant (or the complainant's parents if the complainant is under 18 and does not attend a postsecondary institution) before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited.¹⁴ The school also should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

As discussed in the *2001 Guidance*, if the complainant continues to ask that his or her name or other identifiable information not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.¹⁵ The school should inform the complainant if it cannot ensure confidentiality. Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence. Examples of such steps are discussed later in this letter.

Compliance with Title IX, such as publishing a notice of nondiscrimination, designating an employee to coordinate Title IX compliance, and adopting and publishing grievance procedures, can serve as preventive measures against harassment. Combined with education and training programs, these measures can help ensure that all students and employees recognize the

¹³ In states with mandatory reporting laws, schools may be required to report certain incidents to local law enforcement or child protection agencies.

¹⁴ Schools should refer to the *2001 Guidance* for additional information on confidentiality and the alleged perpetrator's due process rights.

¹⁵ For example, the alleged harasser may have a right under FERPA to inspect and review portions of the complaint that directly relate to him or her. In that case, the school must redact the complainant's name and other identifying information before allowing the alleged harasser to inspect and review the sections of the complaint that relate to him or her. In some cases, such as those where the school is required to report the incident to local law enforcement or other officials, the school may not be able to maintain the complainant's confidentiality.

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nature of sexual harassment and violence, and understand that the school will not tolerate such conduct. Indeed, these measures may bring potentially problematic conduct to the school's attention before it becomes serious enough to create a hostile environment. Training for administrators, teachers, staff, and students also can help ensure that they understand what types of conduct constitute sexual harassment or violence, can identify warning signals that may need attention, and know how to respond. More detailed information and examples of education and other preventive measures are provided later in this letter.

Procedural Requirements Pertaining to Sexual Harassment and Sexual Violence

Recipients of Federal financial assistance must comply with the procedural requirements outlined in the Title IX implementing regulations. Specifically, a recipient must:

- (A) Disseminate a notice of nondiscrimination;¹⁶
- (B) Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX;¹⁷ and
- (C) Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints.¹⁸

These requirements apply to all forms of sexual harassment, including sexual violence, and are important for preventing and effectively responding to sex discrimination. They are discussed in greater detail below. OCR advises recipients to examine their current policies and procedures on sexual harassment and sexual violence to determine whether those policies comply with the requirements articulated in this letter and the *2001 Guidance*. Recipients should then implement changes as needed.

(A) Notice of Nondiscrimination

The Title IX regulations require that each recipient publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to discriminate in such a manner.¹⁹ The notice must state that inquiries concerning the application of Title IX may be referred to the recipient's Title IX coordinator or to OCR. It should include the name or title, office address, telephone number, and e-mail address for the recipient's designated Title IX coordinator.

The notice must be widely distributed to all students, parents of elementary and secondary students, employees, applicants for admission and employment, and other relevant persons. OCR recommends that the notice be prominently posted on school Web sites and at various

¹⁶ 34 C.F.R. § 106.9.

¹⁷ *Id.* § 106.8(a).

¹⁸ *Id.* § 106.8(b).

¹⁹ *Id.* § 106.9(a).

locations throughout the school or campus and published in electronic and printed publications of general distribution that provide information to students and employees about the school's services and policies. The notice should be available and easily accessible on an ongoing basis.

Title IX does not require a recipient to adopt a policy specifically prohibiting sexual harassment or sexual violence. As noted in the *2001 Guidance*, however, a recipient's general policy prohibiting sex discrimination will not be considered effective and would violate Title IX if, because of the lack of a specific policy, students are unaware of what kind of conduct constitutes sexual harassment, including sexual violence, or that such conduct is prohibited sex discrimination. OCR therefore recommends that a recipient's nondiscrimination policy state that prohibited sex discrimination covers sexual harassment, including sexual violence, and that the policy include examples of the types of conduct that it covers.

(B) Title IX Coordinator

The Title IX regulations require a recipient to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with Title IX.²⁰ The coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The Title IX coordinator or designee should be available to meet with students as needed. If a recipient designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities (e.g., who will handle complaints by students, faculty, and other employees). The recipient should designate one coordinator as having ultimate oversight responsibility, and the other coordinators should have titles clearly showing that they are in a deputy or supporting role to the senior coordinator. The Title IX coordinators should not have other job responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest.

Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. Because sexual violence complaints often are filed with the school's law enforcement unit, all school law enforcement unit employees should receive training on the school's Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school's Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint, and to report incidents of sexual violence to the Title IX coordinator if the complainant consents. The school's Title IX coordinator or designee should be available to provide assistance to school law enforcement unit employees regarding how to respond appropriately to reports of sexual violence. The Title IX coordinator also should be given access to school law enforcement unit investigation notes

²⁰ *Id.* § 106.8(a).

and findings as necessary for the Title IX investigation, so long as it does not compromise the criminal investigation.

(C) Grievance Procedures

The Title IX regulations require all recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints.²¹ The grievance procedures must apply to sex discrimination complaints filed by students against school employees, other students, or third parties.

Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and sexual violence complaints. Therefore, a recipient may use student disciplinary procedures or other separate procedures to resolve such complaints. Any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary procedures, however, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution.²² These requirements are discussed in greater detail below. If the recipient relies on disciplinary procedures for Title IX compliance, the Title IX coordinator should review the recipient's disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX.²³

Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints. OCR has frequently advised recipients, however, that it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school (e.g., participation by a trained counselor, a trained mediator, or, if appropriate, a teacher or administrator). In addition, as stated in the *2001 Guidance*, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints.

²¹ *Id.* § 106.8(b). Title IX also requires recipients to adopt and publish grievance procedures for employee complaints of sex discrimination.

²² These procedures must apply to all students, including athletes. If a complaint of sexual violence involves a student athlete, the school must follow its standard procedures for resolving sexual violence complaints. Such complaints must not be addressed solely by athletics department procedures. Additionally, if an alleged perpetrator is an elementary or secondary student with a disability, schools must follow the procedural safeguards in the Individuals with Disabilities Education Act (at 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500-300.519, 300.530-300.537) as well as the requirements of Section 504 of the Rehabilitation Act of 1973 (at 34 C.F.R. §§ 104.35-104.36) when conducting the investigation and hearing.

²³ A school may not absolve itself of its Title IX obligations to investigate and resolve complaints of sexual harassment or violence by delegating, whether through express contractual agreement or other less formal arrangement, the responsibility to administer school discipline to school resource officers or "contract" law enforcement officers. See 34 C.F.R. § 106.4.

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may constitute both sexual harassment under Title IX and criminal activity. Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.

A school should notify a complainant of the right to file a criminal complaint, and should not dissuade a victim from doing so either during or after the school's internal Title IX investigation. For instance, if a complainant wants to file a police report, the school should not tell the complainant that it is working toward a solution and instruct, or ask, the complainant to wait to file the report.

Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime. Any agreement or Memorandum of Understanding (MOU) with a local police department must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably. Although a school 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 (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete its fact-finding for the Title IX investigation.²⁵ Moreover, nothing in an MOU or the criminal investigation itself should prevent a school from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the school community while the law enforcement agency's fact-gathering is in progress. OCR also recommends that a school's MOU include clear policies on when a school will refer a matter to local law enforcement.

As noted above, the Title IX regulation requires schools to provide equitable grievance procedures. As part of these procedures, schools generally conduct investigations and hearings to determine whether sexual harassment or violence occurred. In addressing complaints filed with OCR under Title IX, OCR reviews a school's procedures to determine whether the school is using a preponderance of the evidence standard to evaluate complaints. The Supreme Court has applied a preponderance of the evidence standard in civil litigation involving discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.* Like Title IX,

²⁵ In one recent OCR sexual violence case, the prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances.

Title VII prohibits discrimination on the basis of sex.²⁶ OCR also uses a preponderance of the evidence standard when it resolves complaints against recipients. For instance, OCR's Case Processing Manual requires that a noncompliance determination be supported by the preponderance of the evidence when resolving allegations of discrimination under all the statutes enforced by OCR, including Title IX.²⁷ OCR also uses a preponderance of the evidence standard in its fund termination administrative hearings.²⁸ Thus, in order for a school's grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (*i.e.*, it is more likely than not that sexual harassment or violence occurred). The "clear and convincing" standard (*i.e.*, it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.

Throughout a school's Title IX investigation, including at any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and the alleged perpetrator must be afforded similar and timely access to any information that will be used at the hearing.²⁹ For example, a school should not conduct a pre-hearing meeting during which only the alleged perpetrator is present and given an opportunity to present his or her side of the story, unless a similar meeting takes place with the complainant; a hearing officer or disciplinary board should not allow only the alleged perpetrator to present character witnesses at a hearing; and a school should not allow the alleged perpetrator to review the complainant's

²⁶ See, e.g., *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003) (noting that under the "conventional rule of civil litigation," the preponderance of the evidence standard generally applies in cases under Title VII); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 252-55 (1989) (approving preponderance standard in Title VII sex discrimination case) (plurality opinion); *id.* at 260 (White, J., concurring in the judgment); *id.* at 261 (O'Connor, J., concurring in the judgment). The 2001 Guidance noted (on page vi) that "[w]hile *Gebser* and *Davis* made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the *Davis* Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX." See also *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007) ("We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.").

²⁷ OCR's Case Processing Manual is available on the Department's Web site, at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.html>.

²⁸ The Title IX regulations adopt the procedural provisions applicable to Title VI of the Civil Rights Act of 1964. See 34 C.F.R. § 106.71 ("The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference."). The Title VI regulations apply the Administrative Procedure Act to administrative hearings required prior to termination of Federal financial assistance and require that termination decisions be "supported by and in accordance with the reliable, probative and substantial evidence." 5 U.S.C. § 556(d). The Supreme Court has interpreted "reliable, probative and substantial evidence" as a direction to use the preponderance standard. See *Steadman v. SEC*, 450 U.S. 91, 98-102 (1981).

²⁹ Access to this information must be provided consistent with FERPA. For example, if a school introduces an alleged perpetrator's prior disciplinary records to support a tougher disciplinary penalty, the complainant would not be allowed access to those records. Additionally, access should not be given to privileged or confidential information. For example, the alleged perpetrator should not be given access to communications between the complainant and a counselor or information regarding the complainant's sexual history.

statement without also allowing the complainant to review the alleged perpetrator's statement.

While OCR does not require schools to permit parties to have lawyers at any stage of the proceedings, if a school chooses to allow the parties to have their lawyers participate in the proceedings, it must do so equally for both parties. Additionally, any school-imposed restrictions on the ability of lawyers to speak or otherwise participate in the proceedings should apply equally. OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment. OCR also recommends that schools provide an appeals process. If a school provides for appeal of the findings or remedy, it must do so for both parties. Schools must maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings.

All persons involved in implementing a recipient's grievance procedures (e.g., Title IX coordinators, investigators, and adjudicators) must have training or experience in handling complaints of sexual harassment and sexual violence, and in the recipient's grievance procedures. The training also should include applicable confidentiality requirements. In sexual violence cases, the fact-finder and decision-maker also should have adequate training or knowledge regarding sexual violence.³⁰ Additionally, a school's investigation and hearing processes cannot be equitable unless they are impartial. Therefore, any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed.

Public and state-supported schools must provide due process to the alleged perpetrator. However, schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.

(C) Designated and Reasonably Prompt Time Frames

OCR will evaluate whether a school's grievance procedures specify the time frames for all major stages of the procedures, as well as the process for extending timelines. Grievance procedures should specify the time frame within which: (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal, if applicable. Both parties should be given periodic status updates. Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint. Whether OCR considers complaint resolutions to be timely, however, will vary depending on the complexity of the investigation and the severity and extent of the harassment. For example, the resolution of a complaint involving multiple incidents with multiple complainants likely would take longer than one involving a single incident that

³⁰ For instance, if an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner.

occurred in a classroom during school hours with a single complainant.

(D) Notice of Outcome

Both parties must be notified, in writing, about the outcome of both the complaint and any appeal,³¹ i.e., whether harassment was found to have occurred. OCR recommends that schools provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. Title IX does not require the school to notify the alleged perpetrator of the outcome before it notifies the complainant.

Due to the intersection of Title IX and FERPA requirements, OCR recognizes that there may be confusion regarding what information a school may disclose to the complainant.³² FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student's "education record." However, as stated in the *2001 Guidance*, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.³³ Disclosure of other information in the student's "education record," including information about sanctions that do not relate to the harassed student, may result in a violation of FERPA.

Further, when the conduct involves a crime of violence or a non-forcible sex offense,³⁴ FERPA permits a postsecondary institution to disclose to the alleged victim the final results of a

³¹ As noted previously, "outcome" does not refer to information about disciplinary sanctions unless otherwise noted.

³² In 1994, Congress amended the General Education Provisions Act (GEPA), of which FERPA is a part, to state that nothing in GEPA "shall be construed to affect the applicability of title VI of the Civil Rights Act of 1964, title IX of Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." 20 U.S.C. § 1221(d). The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. See *2001 Guidance* at vii.

³³ This information directly relates to the complainant and is particularly important in sexual harassment cases because it affects whether a hostile environment has been eliminated. Because seeing the perpetrator may be traumatic, a complainant in a sexual harassment case may continue to be subject to a hostile environment if he or she does not know when the perpetrator will return to school or whether he or she will continue to share classes or a residence hall with the perpetrator. This information also directly affects a complainant's decision regarding how to work with the school to eliminate the hostile environment and prevent its recurrence. For instance, if a complainant knows that the perpetrator will not be at school or will be transferred to other classes or another residence hall for the rest of the year, the complainant may be less likely to want to transfer to another school or change classes, but if the perpetrator will be returning to school after a few days or weeks, or remaining in the complainant's classes or residence hall, the complainant may want to transfer schools or change classes to avoid contact. Thus, the complainant cannot make an informed decision about how best to respond without this information.

³⁴ Under the FERPA regulations, crimes of violence include arson; assault offenses (aggravated assault, simple assault, intimidation); burglary; criminal homicide (manslaughter by negligence); criminal homicide (murder and

disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed.³⁵ Additionally, a postsecondary institution may disclose to anyone—not just the alleged victim—the final results of a disciplinary proceeding if it determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution's rules or policies.³⁶

Postsecondary institutions also are subject to additional rules under the Clery Act. This law, which applies to postsecondary institutions that participate in Federal student financial aid programs, requires that "both the accuser and the accused must be informed of the outcome"³⁷ of any institutional disciplinary proceeding brought alleging a sex offense.³⁸ Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on redisclosure of information do not apply to information that postsecondary institutions are required to disclose under the Clery Act.³⁹ Accordingly, postsecondary institutions may not require a complainant to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of this information.

Steps to Prevent Sexual Harassment and Sexual Violence and Correct its Discriminatory Effects on the Complainant and Others

Education and Prevention

In addition to ensuring full compliance with Title IX, schools should take proactive measures to prevent sexual harassment and violence. OCR recommends that all schools implement preventive education programs and make victim resources, including comprehensive victim services, available. Schools may want to include these education programs in their (1) orientation programs for new students, faculty, staff, and employees; (2) training for students who serve as advisors in residence halls; (3) training for student athletes and coaches; and (4) school assemblies and "back to school nights." These programs should include a

non-negligent manslaughter); destruction, damage or vandalism of property; kidnapping/abduction; robbery; and forcible sex offenses. Forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include rape, sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses are incest and statutory rape. 34 C.F.R. Part 99, App. A.

³⁵ 34 C.F.R. § 99.31(a)(13). For purposes of 34 C.F.R. §§ 99.31(a)(13)-(14), disclosure of "final results" is limited to the name of the alleged perpetrator, any violation found to have been committed, and any sanction imposed against the perpetrator by the school. 34 C.F.R. § 99.39.

³⁶ 34 C.F.R. § 99.31(a)(14).

³⁷ For purposes of the Clery Act, "outcome" means the institution's final determination with respect to the alleged sex offense and any sanctions imposed against the accused. 34 C.F.R. § 668.46(b)(11)(vi)(B).

³⁸ 34 C.F.R. § 668.46(b)(11)(vi)(B). Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person's will, or not forcibly or against the person's will where the person is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses include incest and statutory rape. 34 C.F.R. Part 668, Subpt. D, App. A.

³⁹ 34 C.F.R. § 99.33(c).

discussion of what constitutes sexual harassment and sexual violence, the school's policies and disciplinary procedures, and the consequences of violating these policies.

The education programs also should include information aimed at encouraging students to report incidents of sexual violence to the appropriate school and law enforcement authorities. Schools should be aware that victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of school or campus rules were involved.⁴⁰ As a result, schools should consider whether their disciplinary policies have a chilling effect on victims' or other students' reporting of sexual violence offenses. For example, OCR recommends that schools inform students that the schools' primary concern is student safety, that any other rules violations will be addressed separately from the sexual violence allegation, and that use of alcohol or drugs never makes the victim at fault for sexual violence.

OCR also recommends that schools develop specific sexual violence materials that include the schools' policies, rules, and resources for students, faculty, coaches, and administrators. Schools also should include such information in their employee handbook and any handbooks that student athletes and members of student activity groups receive. These materials should include where and to whom students should go if they are victims of sexual violence. These materials also should tell students and school employees what to do if they learn of an incident of sexual violence. Schools also should assess student activities regularly to ensure that the practices and behavior of students do not violate the schools' policies against sexual harassment and sexual violence.

Remedies and Enforcement

As discussed above, if a school determines that sexual harassment that creates a hostile environment has occurred, it must take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. In addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant, as well as changes to the school's overall services or policies. Examples of these actions are discussed in greater detail below.

Title IX requires a school to take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. The school should undertake these steps promptly once it has notice of a sexual harassment or violence allegation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the school may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school's investigation. When taking steps to separate the complainant and alleged perpetrator, a school should minimize the burden on the

⁴⁰ The Department's Higher Education Center for Alcohol, Drug Abuse, and Violence Prevention (HEC) helps campuses and communities address problems of alcohol, other drugs, and violence by identifying effective strategies and programs based upon the best prevention science. Information on HEC resources and technical assistance can be found at www.higheredcenter.org.

complainant, and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain. In addition, schools should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement.⁴¹

Schools should be aware that complaints of sexual harassment or violence may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to name-calling and taunting. As part of their Title IX obligations, schools must have policies and procedures in place to protect against retaliatory harassment. At a minimum, schools must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

When OCR finds that a school has not taken prompt and effective steps to respond to sexual harassment or violence, OCR will seek appropriate remedies for both the complainant and the broader student population. When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department or refer the case to the U.S. Department of Justice for litigation.

Schools should proactively consider the following remedies when determining how to respond to sexual harassment or violence. These are the same types of remedies that OCR would seek in its cases.

Depending on the specific nature of the problem, remedies for the complainant might include, but are not limited to:⁴²

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes;
- moving the complainant or alleged perpetrator to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;

⁴¹ The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to notify proper law enforcement authorities, including campus and local police, and the option to be assisted by campus personnel in notifying such authorities. The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community. 20 U.S.C. §§ 1092(f)(8)(B)(v)-(vi).

⁴² Some of these remedies also can be used as interim measures before the school's investigation is complete.

- arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.⁴³

Remedies for the broader student population might include, but are not limited to:

Counseling and Training

- offering counseling, health, mental health, or other holistic and comprehensive victim services to all students affected by sexual harassment or sexual violence, and notifying students of campus and community counseling, health, mental health, and other student services;
- designating an individual from the school's counseling center to be "on call" to assist victims of sexual harassment or violence whenever needed;
- training the Title IX coordinator and any other employees who are involved in processing, investigating, or resolving complaints of sexual harassment or sexual violence, including providing training on:
 - the school's Title IX responsibilities to address allegations of sexual harassment or violence
 - how to conduct Title IX investigations
 - information on the link between alcohol and drug abuse and sexual harassment or violence and best practices to address that link;
- training all school law enforcement unit personnel on the school's Title IX responsibilities and handling of sexual harassment or violence complaints;
- training all employees who interact with students regularly on recognizing and appropriately addressing allegations of sexual harassment or violence under Title IX; and
- informing students of their options to notify proper law enforcement authorities, including school and local police, and the option to be assisted by school employees in notifying those authorities.

Development of Materials and Implementation of Policies and Procedures

- developing materials on sexual harassment and violence, which should be distributed to students during orientation and upon receipt of complaints, as well as widely posted throughout school buildings and residence halls, and which should include:
 - what constitutes sexual harassment or violence
 - what to do if a student has been the victim of sexual harassment or violence
 - contact information for counseling and victim services on and off school grounds
 - how to file a complaint with the school
 - how to contact the school's Title IX coordinator

⁴³ For example, if the complainant was disciplined for skipping a class in which the harasser was enrolled, the school should review the incident to determine if the complainant skipped the class to avoid contact with the harasser.

- ### ***School Investigations and Reports to OCR***

- ⁴⁴ Any personally identifiable information from a student's education record that the Title IX coordinator provides to the school's law enforcement unit is subject to FERPA's nondisclosure requirements.

Exhibit 2, Page 18

- submitting to OCR copies of all grievances filed by students alleging sexual harassment or violence, and providing OCR with documentation related to the investigation of each complaint, such as witness interviews, investigator notes, evidence submitted by the parties, investigative reports and summaries, any final disposition letters, disciplinary records, and documentation regarding any appeals.

Conclusion

The Department is committed to ensuring that all students feel safe and have the opportunity to benefit fully from their schools' education programs and activities. As part of this commitment, OCR provides technical assistance to assist recipients in achieving voluntary compliance with Title IX.

If you need additional information about Title IX, have questions regarding OCR's policies, or seek technical assistance, please contact the OCR enforcement office that serves your state or territory. The list of offices is available at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. Additional information about addressing sexual violence, including victim resources and information for schools, is available from the U.S. Department of Justice's Office on Violence Against Women (OVW) at <http://www.ovw.usdoj.gov/>.⁴⁶

Thank you for your prompt attention to this matter. I look forward to continuing our work together to ensure that all students have an equal opportunity to learn in a safe and respectful school climate.

Sincerely,

/s/

Russlynn Ali
Assistant Secretary for Civil Rights

⁴⁶ OVW also administers the Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program. This Federal funding is designed to encourage institutions of higher education to adopt comprehensive, coordinated responses to domestic violence, dating violence, sexual assault, and stalking. Under this competitive grant program, campuses, in partnership with community-based nonprofit victim advocacy organizations and local criminal justice or civil legal agencies, must adopt protocols and policies to treat these crimes as serious offenses and develop victim service programs and campus policies that ensure victim safety, offender accountability, and the prevention of such crimes. OVW recently released the first solicitation for the Services, Training, Education, and Policies to Reduce Domestic Violence, Dating Violence, Sexual Assault and Stalking in Secondary Schools Grant Program. This innovative grant program will support a broad range of activities, including training for school administrators, faculty, and staff; development of policies and procedures for responding to these crimes; holistic and appropriate victim services; development of effective prevention strategies; and collaborations with mentoring organizations to support middle and high school student victims.

**Notice of Language Assistance
Questions and Answers on Title IX and Sexual Violence**

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A-1. What is sexual violence?

A-2. How does Title IX apply to student-on-student sexual violence?

A-3. How does OCR determine if a hostile environment has been created?

⁹ This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. *See 2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. *See Davis v. Monroe Cnty Bd. of Educ.*, 526 U.S. 629, 643 (1999).

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A-4. When does OCR consider a school to have notice of student-on-student sexual violence?

Answer: OCR deems a school to have notice of student-on-student sexual violence if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual violence. See question D-2 regarding who is a responsible employee.

A school can receive notice of sexual violence in many different ways. Some examples of notice include: a student may have filed a grievance with or otherwise informed the school's Title IX coordinator; a student, parent, friend, or other individual may have reported an incident to a teacher, principal, campus law enforcement, staff in the office of student affairs, or other responsible employee; or a teacher or dean may have witnessed the sexual violence.

The school may also receive notice about sexual violence in an indirect manner, from sources such as a member of the local community, social networking sites, or the media. In some situations, if the school knows of incidents of sexual violence, the exercise of reasonable care should trigger an investigation that would lead to the discovery of additional incidents. For example, if school officials receive a credible report that a student has perpetrated several acts of sexual violence against different students, that pattern of conduct should trigger an inquiry as to whether other students have been subjected to sexual violence by that student. In other cases, the pervasiveness of the sexual violence may be widespread, openly practiced, or well-known among students or employees. In those cases, OCR may conclude that the school should have known of the hostile environment. In other words, if the school would have found out about the sexual violence had it made a proper inquiry, knowledge of the sexual violence will be imputed to the school even if the school failed to make an inquiry. A school's failure to take prompt and effective corrective action in such cases (as described in questions G-1 to G-3 and H-1 to H-3) would violate Title IX even if the student did not use the school's grievance procedures or otherwise inform the school of the sexual violence.

A-5. What are a school's basic responsibilities to address student-on-student sexual violence?

Answer: When a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E). If an investigation reveals that sexual violence created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its

effects. But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

Title IX requires a school to protect the complainant and ensure his or her safety as necessary, including taking interim steps before the final outcome of any investigation.¹⁰ The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. If the school determines that the sexual violence occurred, the school must continue to take these steps to protect the complainant and ensure his or her safety, as necessary. The school should also ensure that the complainant is aware of any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. For additional information on interim measures, see questions G-1 to G-3.

If a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to a hostile environment. If it does, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately. For example, if a school's ignoring of a student's complaints of sexual assault by a fellow student results in the complaining student having to remain in classes with the other student for several weeks and the complaining student's grades suffer because he or she was unable to concentrate in these classes, the school may need to permit the complaining student to retake the classes without an academic or financial penalty (in addition to any other remedies) in order to address the effects of the sexual violence.

A-6. Does Title IX cover employee-on-student sexual violence, such as sexual abuse of children?

Answer: Yes. Although this document and the DCL focus on student-on-student sexual violence, Title IX also protects students from other forms of sexual harassment (including sexual violence and sexual abuse), such as sexual harassment carried out by school employees. Sexual harassment by school employees can include unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, including but not limited to sexual activity. Title IX's prohibition against

¹⁰ Throughout this document, unless otherwise noted, the term "complainant" refers to the student who allegedly experienced the sexual violence.

sexual harassment generally does not extend to legitimate nonsexual touching or other nonsexual conduct. But in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment. Early signs of inappropriate behavior with a child can be the key to identifying and preventing sexual abuse by school personnel.

A school's Title IX obligations regarding sexual harassment by employees can, in some instances, be greater than those described in this document and the DCL. Recipients should refer to OCR's *2001 Guidance* for further information about Title IX obligations regarding harassment of students by school employees. In addition, many state and local laws have mandatory reporting requirements for schools working with minors. Recipients should be careful to satisfy their state and local legal obligations in addition to their Title IX obligations, including training to ensure that school employees are aware of their obligations under such state and local laws and the consequences for failing to satisfy those obligations.

With respect to sexual activity in particular, OCR will always view as unwelcome and nonconsensual sexual activity between an adult school employee and an elementary school student or any student below the legal age of consent in his or her state. In cases involving a student who meets the legal age of consent in his or her state, there will still be a strong presumption that sexual activity between an adult school employee and a student is unwelcome and nonconsensual. When a school is on notice that a school employee has sexually harassed a student, it is responsible for taking prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects. Indeed, even if a school was not on notice, the school is nonetheless responsible for remedying any effects of the sexual harassment on the student, as well as for ending the sexual harassment and preventing its recurrence, when the employee engaged in the sexual activity in the context of the employee's provision of aid, benefits, or services to students (*e.g.*, teaching, counseling, supervising, advising, or transporting students).

A school should take steps to protect its students from sexual abuse by its employees. It is therefore imperative for a school to develop policies prohibiting inappropriate conduct by school personnel and procedures for identifying and responding to such conduct. For example, this could include implementing codes of conduct, which might address what is commonly known as grooming – a desensitization strategy common in adult educator sexual misconduct. Such policies and procedures can ensure that students, parents, and

school personnel have clear guidelines on what are appropriate and inappropriate interactions between adults and students in a school setting or in school-sponsored activities. Additionally, a school should provide training for administrators, teachers, staff, parents, and age-appropriate classroom information for students to ensure that everyone understands what types of conduct are prohibited and knows how to respond when problems arise.¹¹

B. Students Protected by Title IX

B-1. Does Title IX protect all students from sexual violence?

Answer: Yes. Title IX protects all students at recipient institutions from sex discrimination, including sexual violence. Any student can experience sexual violence: from elementary to professional school students; male and female students; straight, gay, lesbian, bisexual and transgender students; part-time and full-time students; students with and without disabilities; and students of different races and national origins.

B-2. How should a school handle sexual violence complaints in which the complainant and the alleged perpetrator are members of the same sex?

Answer: A school's obligation to respond appropriately to sexual violence complaints is the same irrespective of the sex or sexes of the parties involved. Title IX protects all students from sexual violence, regardless of the sex of the alleged perpetrator or complainant, including when they are members of the same sex. A school must investigate and resolve allegations of sexual violence involving parties of the same sex using the same procedures and standards that it uses in all complaints involving sexual violence.

Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations. Indeed, lesbian, gay, bisexual, and transgender (LGBT) youth report high rates of sexual harassment and sexual violence. A school should investigate and resolve allegations of sexual violence regarding LGBT students using the same procedures and standards that it

¹¹ For additional informational on training please see the Department of Education's Resource and Emergency Management for Schools Technical Assistance Center – Adult Sexual Misconduct in Schools: Prevention and Management Training, available at http://rems.ed.gov/Docs/ASM_Marketing_Flyer.pdf.

uses in all complaints involving sexual violence. The fact that incidents of sexual violence may be accompanied by anti-gay comments or be partly based on a student's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy those instances of sexual violence.

If a school's policies related to sexual violence include examples of particular types of conduct that violate the school's prohibition on sexual violence, the school should consider including examples of same-sex conduct. In addition, a school should ensure that staff are capable of providing culturally competent counseling to all complainants. Thus, a school should ensure that its counselors and other staff who are responsible for receiving and responding to complaints of sexual violence, including investigators and hearing board members, receive appropriate training about working with LGBT and gender-nonconforming students and same-sex sexual violence. See questions J-1 to J-4 for additional information regarding training.

Gay-straight alliances and similar student-initiated groups can also play an important role in creating safer school environments for LGBT students. On June 14, 2011, the Department issued guidance about the rights of student-initiated groups in public secondary schools under the Equal Access Act. That guidance is available at <http://www2.ed.gov/policy/elsec/guid/secletter/110607.html>.

B-3. What issues may arise with respect to students with disabilities who experience sexual violence?

Answer: When students with disabilities experience sexual violence, federal civil rights laws other than Title IX may also be relevant to a school's responsibility to investigate and address such incidents.¹² Certain students require additional assistance and support. For example, students with intellectual disabilities may need additional help in learning about sexual violence, including a school's sexual violence education and prevention programs, what constitutes sexual violence and how students can report incidents of sexual

¹² OCR enforces two civil rights laws that prohibit disability discrimination. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits disability discrimination by public or private entities that receive federal financial assistance, and Title II of the American with Disabilities Act of 1990 (Title II) prohibits disability discrimination by all state and local public entities, regardless of whether they receive federal funding. See 29 U.S.C. § 794 and 34 C.F.R. part 104; 42 U.S.C. § 12131 *et seq.* and 28 C.F.R. part 35. OCR and the U.S. Department of Justice (DOJ) share the responsibility of enforcing Title II in the educational context. The Department of Education's Office of Special Education Programs in the Office of Special Education and Rehabilitative Services administers Part B of the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. 1400 *et seq.* and 34 C.F.R. part 300. IDEA provides financial assistance to states, and through them to local educational agencies, to assist in providing special education and related services to eligible children with disabilities ages three through twenty-one, inclusive.

aside for victims of certain crimes who have suffered substantial mental or physical abuse as a result of the crime and are helpful to law enforcement agency in the investigation or prosecution of the qualifying criminal activity.¹⁵ The T nonimmigrant status is available for victims of severe forms of human trafficking who generally comply with a law enforcement agency in the investigation or prosecution of the human trafficking and who would suffer extreme hardship involving unusual and severe harm if they were removed from the United States.¹⁶

A school should be mindful that unique issues may arise when a foreign student on a student visa experiences sexual violence. For example, certain student visas require the student to maintain a full-time course load (generally at least 12 academic credit hours per term), but a student may need to take a reduced course load while recovering from the immediate effects of the sexual violence. OCR recommends that a school take steps to ensure that international students on student visas understand that they must typically seek prior approval of the designated school official (DSO) for student visas to drop below a full-time course load. A school may also want to encourage its employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence to approach the DSO on the student's behalf if the student wishes to drop below a full-time course load. OCR recommends that a school take steps to ensure that its employees who work with international students, including the school's DSO, are trained on the school's sexual violence policies and that employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence are aware of the special issues that international students may encounter. See questions J-1 to J-4 for additional information regarding training.

A school should also be aware that threatening students with deportation or invoking a student's immigration status in an attempt to intimidate or deter a student from filing a Title IX complaint would violate Title IX's protections against retaliation. For more information on retaliation see question K-1.

¹⁵ For more information on the U nonimmigrant status, see <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/questions-answers-victims-criminal-activity-u-nonimmigrant-status>.

¹⁶ For more information on the T nonimmigrant status, see <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>.

B-5. How should a school respond to sexual violence when the alleged perpetrator is not affiliated with the school?

Answer: The appropriate response will differ depending on the level of control the school has over the alleged perpetrator. For example, if an athlete or band member from a visiting school sexually assaults a student at the home school, the home school may not be able to discipline or take other direct action against the visiting athlete or band member. However (and subject to the confidentiality provisions discussed in Section E), it should conduct an inquiry into what occurred and should report the incident to the visiting school and encourage the visiting school to take appropriate action to prevent further sexual violence. The home school should also notify the student of any right to file a complaint with the alleged perpetrator's school or local law enforcement. The home school may also decide not to invite the visiting school back to its campus.

Even though a school's ability to take direct action against a particular perpetrator may be limited, the school must still take steps to provide appropriate remedies for the complainant and, where appropriate, the broader school population. This may include providing support services for the complainant, and issuing new policy statements making it clear that the school does not tolerate sexual violence and will respond to any reports about such incidents. For additional information on interim measures see questions G-1 to G-3.

C. Title IX Procedural Requirements

Overview

C-1. What procedures must a school have in place to prevent sexual violence and resolve complaints?

Answer: The Title IX regulations outline three key procedural requirements. Each school must:

(1) disseminate a notice of nondiscrimination (see question C-2);¹⁷

(2) designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX (see questions C-3 to C-4);¹⁸ and

¹⁷ 34 C.F.R. § 106.9.

¹⁸ *Id.* § 106.8(a).

(3) adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee sex discrimination complaints (see questions C-5 to C-6).¹⁹

These requirements apply to all forms of sex discrimination and are particularly important for preventing and effectively responding to sexual violence.

Procedural requirements under other federal laws may also apply to complaints of sexual violence, including the requirements of the Clery Act.²⁰ For additional information about the procedural requirements in the Clery Act, please see <http://www2.ed.gov/admins/lead/safety/campus.html>.

Notice of Nondiscrimination

C-2. What information must be included in a school's notice of nondiscrimination?

Answer: The notice of nondiscrimination must state that the school does not discriminate on the basis of sex in its education programs and activities, and that it is required by Title IX not to discriminate in such a manner. The notice must state that questions regarding Title IX may be referred to the school's Title IX coordinator or to OCR. The school must notify all of its students and employees of the name or title, office address, telephone number, and email address of the school's designated Title IX coordinator.²¹

Title IX Coordinator

C-3. What are a Title IX coordinator's responsibilities?

Answer: A Title IX coordinator's core responsibilities include overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. This means that the Title IX coordinator must have knowledge of the requirements of Title IX, of the school's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the school. To accomplish this, subject to the exemption for school counseling employees discussed in question E-3, the Title IX coordinator must be informed of all

¹⁹ *Id.* § 106.8(b).

²⁰ All postsecondary institutions participating in the Higher Education Act's Title IV student financial assistance programs must comply with the Clery Act.

²¹ For more information on notices of nondiscrimination, please see OCR's Notice of Nondiscrimination (August 2010), available at <http://www.ed.gov/ocr/docs/nondisc.pdf>.

reports and complaints raising Title IX issues, even if the report or complaint was initially filed with another individual or office or if the investigation will be conducted by another individual or office. The school should ensure that the Title IX coordinator is given the training, authority, and visibility necessary to fulfill these responsibilities.

Because the Title IX coordinator must have knowledge of all Title IX reports and complaints at the school, this individual (when properly trained) is generally in the best position to evaluate a student's request for confidentiality in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students. A school may determine, however, that another individual should perform this role. For additional information on confidentiality requests, see questions E-1 to E-4. If a school relies in part on its disciplinary procedures to meet its Title IX obligations, the Title IX coordinator should review the disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX as discussed in question C-5.

In addition to these core responsibilities, a school may decide to give its Title IX coordinator additional responsibilities, such as: providing training to students, faculty, and staff on Title IX issues; conducting Title IX investigations, including investigating facts relevant to a complaint, and determining appropriate sanctions against the perpetrator and remedies for the complainant; determining appropriate interim measures for a complainant upon learning of a report or complaint of sexual violence; and ensuring that appropriate policies and procedures are in place for working with local law enforcement and coordinating services with local victim advocacy organizations and service providers, including rape crisis centers. A school must ensure that its Title IX coordinator is appropriately trained in all areas over which he or she has responsibility. The Title IX coordinator or designee should also be available to meet with students as needed.

If a school designates more than one Title IX coordinator, the school's notice of nondiscrimination and Title IX grievance procedures should describe each coordinator's responsibilities, and one coordinator should be designated as having ultimate oversight responsibility.

C-4. Are there any employees who should not serve as the Title IX coordinator?

Answer: Title IX does not categorically preclude particular employees from serving as Title IX coordinators. However, Title IX coordinators should not have other job responsibilities that may create a conflict of interest. Because some complaints may raise issues as to whether or how well the school has met its Title IX obligations, designating

the same employee to serve both as the Title IX coordinator and the general counsel (which could include representing the school in legal claims alleging Title IX violations) poses a serious risk of a conflict of interest. Other employees whose job responsibilities may conflict with a Title IX coordinator's responsibilities include Directors of Athletics, Deans of Students, and any employee who serves on the judicial/hearing board or to whom an appeal might be made. Designating a full-time Title IX coordinator will minimize the risk of a conflict of interest.

Grievance Procedures

C-5. Under Title IX, what elements should be included in a school's procedures for responding to complaints of sexual violence?

Answer: Title IX requires that a school adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints of sex discrimination, including sexual violence. In evaluating whether a school's grievance procedures satisfy this requirement, OCR will review all aspects of a school's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- (1) notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- (2) application of the grievance procedures to complaints filed by students or on their behalf alleging sexual violence carried out by employees, other students, or third parties;
- (3) provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
- (4) designated and reasonably prompt time frames for the major stages of the complaint process (see question F-8);
- (5) written notice to the complainant and alleged perpetrator of the outcome of the complaint (see question H-3); and
- (6) assurance that the school will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the school processes complaints, a school's Title IX grievance procedures should also explicitly include the following in writing, some of which themselves are mandatory obligations under Title IX:

- (1) a statement of the school's jurisdiction over Title IX complaints;
- (2) adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;
- (3) reporting policies and protocols, including provisions for confidential reporting;
- (4) identification of the employee or employees responsible for evaluating requests for confidentiality;
- (5) notice that Title IX prohibits retaliation;
- (6) notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
- (7) notice of available interim measures that may be taken to protect the student in the educational setting;
- (8) the evidentiary standard that must be used (preponderance of the evidence) (*i.e.*, more likely than not that sexual violence occurred) in resolving a complaint;
- (9) notice of potential remedies for students;
- (10) notice of potential sanctions against perpetrators; and
- (11) sources of counseling, advocacy, and support.

For more information on interim measures, see questions G-1 to G-3.

The rights established under Title IX must be interpreted consistently with any federally guaranteed due process rights. Procedures that ensure the Title IX rights of the complainant, while at the same time according any federally guaranteed due process to both parties involved, will lead to sound and supportable decisions. Of course, a school should ensure that steps to accord any due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.

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D. Responsible Employees and Reporting²²

D-1. Which school employees are obligated to report incidents of possible sexual violence to school officials?

Answer: Under Title IX, whether an individual is obligated to report incidents of alleged sexual violence generally depends on whether the individual is a responsible employee of the school. A responsible employee must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee, subject to the exemption for school counseling employees discussed in question E-3. This is because, as discussed in question A-4, a school is obligated to address sexual violence about which a responsible employee knew or should have known. As explained in question C-3, the Title IX coordinator must be informed of all reports and complaints raising Title IX issues, even if the report or

²² This document addresses only Title IX's reporting requirements. It does not address requirements under the Clery Act or other federal, state, or local laws, or an individual school's code of conduct.

complaint was initially filed with another individual or office, subject to the exemption for school counseling employees discussed in question E-3.

D-2. Who is a “responsible employee”?

Answer: According to OCR’s 2001 *Guidance*, a responsible employee includes any employee: who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.²³

A school must make clear to all of its employees and students which staff members are responsible employees so that students can make informed decisions about whether to disclose information to those employees. A school must also inform all employees of their own reporting responsibilities and the importance of informing complainants of: the reporting obligations of responsible employees; complainants’ option to request confidentiality and available confidential advocacy, counseling, or other support services; and complainants’ right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement.

Whether an employee is a responsible employee will vary depending on factors such as the age and education level of the student, the type of position held by the employee, and consideration of both formal and informal school practices and procedures. For example, while it may be reasonable for an elementary school student to believe that a custodial staff member or cafeteria worker has the authority or responsibility to address student misconduct, it is less reasonable for a college student to believe that a custodial staff member or dining hall employee has this same authority.

As noted in response to question A-4, when a responsible employee knows or reasonably should know of possible sexual violence, OCR deems a school to have notice of the sexual violence. The school must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E), and, if the school determines that sexual violence created a hostile environment, the school must then take appropriate steps to address the situation. The

²³ The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. *Gebser v. Lago Vista Ind. Sch. Dist.*, 524 U.S. 274, 290 (1998), and *Davis*, 524 U.S. at 642. The concept of a “responsible employee” under OCR’s guidance for administrative enforcement of Title IX is broader.

school has this obligation regardless of whether the student, student's parent, or a third party files a formal complaint. For additional information on a school's responsibilities to address student-on-student sexual violence, see question A-5. For additional information on training for school employees, see questions J-1 to J-3.

D-3. What information is a responsible employee obligated to report about an incident of possible student-on-student sexual violence?

Answer: Subject to the exemption for school counseling employees discussed in question E-3, a responsible employee must report to the school's Title IX coordinator, or other appropriate school designee, all relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location. A school must make clear to its responsible employees to whom they should report an incident of alleged sexual violence.

To ensure compliance with these reporting obligations, it is important for a school to train its responsible employees on Title IX and the school's sexual violence policies and procedures. For more information on appropriate training for school employees, see question J-1 to J-3.

D-4. What should a responsible employee tell a student who discloses an incident of sexual violence?

Answer: Before a student reveals information that he or she may wish to keep confidential, a responsible employee should make every effort to ensure that the student understands: (i) the employee's obligation to report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator or other appropriate school officials, (ii) the student's option to request that the school maintain his or her confidentiality, which the school (*e.g.*, Title IX coordinator) will consider, and (iii) the student's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services (*e.g.*, sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers). As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request

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should also explain to the student (again, before the student reveals information that he or she may wish to keep confidential) that, although the RA must report the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location to the Title IX coordinator or other appropriate school designee, the school will protect the student's confidentiality to the greatest extent possible. Prior to providing information about the incident to the Title IX coordinator or other appropriate school designee, the RA should consult with the student about how to protect his or her safety and the details of what will be shared with the Title IX coordinator. The RA should explain to the student that reporting this information to the Title IX coordinator or other appropriate school designee does not necessarily mean that a formal complaint or investigation under the school's Title IX grievance procedure must be initiated if the student requests confidentiality. As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.

Regardless of whether a reporting obligation exists, all RAs should inform students of their right to file a Title IX complaint with the school and report a crime to campus or local law enforcement. If a student discloses sexual violence to an RA who is a responsible employee, the school will be deemed to have notice of the sexual violence even if the student does not file a Title IX complaint. Additionally, all RAs should provide students with information regarding on-campus resources, including victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. RAs should also be familiar with local rape crisis centers or other off-campus resources and provide this information to students.

E. Confidentiality and a School's Obligation to Respond to Sexual Violence

- E-1. How should a school respond to a student's request that his or her name not be disclosed to the alleged perpetrator or that no investigation or disciplinary action be pursued to address the alleged sexual violence?**

Answer: Students, or parents of minor students, reporting incidents of sexual violence sometimes ask that the students' names not be disclosed to the alleged perpetrators or that no investigation or disciplinary action be pursued to address the alleged sexual violence. OCR strongly supports a student's interest in confidentiality in cases involving sexual violence. There are situations in which a school must override a student's request

For Title IX purposes, if a student requests that his or her name not be revealed to the alleged perpetrator or asks that the school not investigate or seek action against the alleged perpetrator, the school should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. The school should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate

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and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary. See question K-1 regarding retaliation.

If the student still requests that his or her name not be disclosed to the alleged perpetrator or that the school not investigate or seek action against the alleged perpetrator, the school will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. As discussed in question C-3, the Title IX coordinator is generally in the best position to evaluate confidentiality requests. Because schools vary widely in size and administrative structure, OCR recognizes that a school may reasonably determine that an employee other than the Title IX coordinator, such as a sexual assault response coordinator, dean, or other school official, is better suited to evaluate such requests. Addressing the needs of a student reporting sexual violence while determining an appropriate institutional response requires expertise and attention, and a school should ensure that it assigns these responsibilities to employees with the capability and training to fulfill them. For example, if a school has a sexual assault response coordinator, that person should be consulted in evaluating requests for confidentiality. The school should identify in its Title IX policies and procedures the employee or employees responsible for making such determinations.

If the school determines that it can respect the student's request not to disclose his or her identity to the alleged perpetrator, it should take all reasonable steps to respond to the complaint consistent with the request. Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual allegation of sexual violence, other means may be available to address the sexual violence. There are steps a school can take to limit the effects of the alleged sexual violence and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; changing and publicizing the school's policies on sexual violence; and conducting climate surveys regarding sexual violence. In instances affecting many students, an alleged perpetrator can be put on notice of allegations of harassing behavior and be counseled appropriately without revealing, even indirectly, the identity of the student complainant. A school must also take immediate action as necessary to protect the student while keeping the identity of the student confidential. These actions may include providing support services to the student and changing living arrangements or course schedules, assignments, or tests.

E-2. What factors should a school consider in weighing a student's request for confidentiality?

Answer: When weighing a student's request for confidentiality that could preclude a meaningful investigation or potential discipline of the alleged perpetrator, a school should consider a range of factors.

These factors include circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of sexual violence or other violence (e.g., whether there have been other sexual violence complaints about the same alleged perpetrator, whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence, whether the alleged perpetrator threatened further sexual violence or other violence against the student or others, and whether the sexual violence was committed by multiple perpetrators). These factors also include circumstances that suggest there is an increased risk of future acts of sexual violence under similar circumstances (e.g., whether the student's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group). Other factors that should be considered in assessing a student's request for confidentiality include whether the sexual violence was perpetrated with a weapon; the age of the student subjected to the sexual violence; and whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

A school should take requests for confidentiality seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. For example, if the school has credible information that the alleged perpetrator has committed one or more prior rapes, the balance of factors would compel the school to investigate the allegation of sexual violence, and if appropriate, pursue disciplinary action in a manner that may require disclosure of the student's identity to the alleged perpetrator. If the school determines that it must disclose a student's identity to an alleged perpetrator, it should inform the student prior to making this disclosure. In these cases, it is also especially important for schools to take whatever interim measures are necessary to protect the student and ensure the safety of other students. If a school has a sexual assault response coordinator, that person should be consulted in identifying safety risks and interim measures that are necessary to protect the student. In the event the student requests that the school inform the perpetrator that the student asked the school not to investigate or seek discipline, the school should honor this request and inform the alleged perpetrator that the school made the decision to go forward. For additional information on interim measures see questions G-1 to G-3. Any school officials responsible for

discussing safety and confidentiality with students should be trained on the effects of trauma and the appropriate methods to communicate with students subjected to sexual violence. See questions J-1 to J-3.

On the other hand, if, for example, the school has no credible information about prior sexual violence committed by the alleged perpetrator and the alleged sexual violence was not perpetrated with a weapon or accompanied by threats to repeat the sexual violence against the complainant or others or part of a larger pattern at a given location or by a particular group, the balance of factors would likely compel the school to respect the student's request for confidentiality. In this case the school should still take all reasonable steps to respond to the complaint consistent with the student's confidentiality request and determine whether interim measures are appropriate or necessary. Schools should be mindful that traumatic events such as sexual violence can result in delayed decisionmaking by a student who has experienced sexual violence. Hence, a student who initially requests confidentiality might later request that a full investigation be conducted.

E-3. What are the reporting responsibilities of school employees who provide or support the provision of counseling, advocacy, health, mental health, or sexual assault-related services to students who have experienced sexual violence?

Answer: OCR does not require campus mental-health counselors, pastoral counselors, social workers, psychologists, health center employees, or any other person with a professional license requiring confidentiality, or who is supervised by such a person, to report, without the student's consent, incidents of sexual violence to the school in a way that identifies the student. Although these employees may have responsibilities that would otherwise make them responsible employees for Title IX purposes, OCR recognizes the importance of protecting the counselor-client relationship, which often requires confidentiality to ensure that students will seek the help they need.

Professional counselors and pastoral counselors whose official responsibilities include providing mental-health counseling to members of the school community are not required by Title IX to report *any* information regarding an incident of alleged sexual violence to the Title IX coordinator or other appropriate school designee.²⁶

²⁶ The exemption from reporting obligations for pastoral and professional counselors under Title IX is consistent with the Clery Act. For additional information on reporting obligations under the Clery Act, see Office of Postsecondary Education, *Handbook for Campus Safety and Security Reporting* (2011), available at <http://www2.ed.gov/admins/lead/safety/handbook.pdf>. Similar to the Clery Act, for Title IX purposes, a pastoral counselor is a person who is associated with a religious order or denomination, is recognized by that religious

OCR recognizes that some people who provide assistance to students who experience sexual violence are not professional or pastoral counselors. They include all individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers, or health centers ("non-professional counselors or advocates"), including front desk staff and students. OCR wants students to feel free to seek their assistance and therefore interprets Title IX to give schools the latitude not to require these individuals to report incidents of sexual violence in a way that identifies the student without the student's consent.²⁷ These non-professional counselors or advocates are valuable sources of support for students, and OCR strongly encourages schools to designate these individuals as confidential sources.

Pastoral and professional counselors and non-professional counselors or advocates should be instructed to inform students of their right to file a Title IX complaint with the school and a separate complaint with campus or local law enforcement. In addition to informing students about campus resources for counseling, medical, and academic support, these persons should also indicate that they are available to assist students in filing such complaints. They should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary.

In order to identify patterns or systemic problems related to sexual violence, a school should collect aggregate data about sexual violence incidents from non-professional counselors or advocates in their on-campus sexual assault centers, women's centers, or

order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor. A professional counselor is a person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification. This definition applies even to professional counselors who are not employees of the school, but are under contract to provide counseling at the school. This includes individuals who are not yet licensed or certified as a counselor, but are acting in that role under the supervision of an individual who is licensed or certified. An example is a Ph.D. counselor-trainee acting under the supervision of a professional counselor at the school.

²⁷ Postsecondary institutions should be aware that an individual who is counseling students, but who does not meet the Clery Act definition of a pastoral or professional counselor, is not exempt from being a campus security authority if he or she otherwise has significant responsibility for student and campus activities. See fn. 24.

health centers. Such individuals should report only general information about incidents of sexual violence such as the nature, date, time, and general location of the incident and should take care to avoid reporting personally identifiable information about a student. Non-professional counselors and advocates should consult with students regarding what information needs to be withheld to protect their identity.

E-4. Is a school required to investigate information regarding sexual violence incidents shared by survivors during public awareness events, such as "Take Back the Night"?

Answer: No. OCR wants students to feel free to participate in preventive education programs and access resources for survivors. Therefore, public awareness events such as "Take Back the Night" or other forums at which students disclose experiences with sexual violence are not considered notice to the school for the purpose of triggering an individual investigation unless the survivor initiates a complaint. The school should instead respond to these disclosures by reviewing sexual assault policies, creating campus-wide educational programs, and conducting climate surveys to learn more about the prevalence of sexual violence at the school. Although Title IX does not require the school to investigate particular incidents discussed at such events, the school should ensure that survivors are aware of any available resources, including counseling, health, and mental health services. To ensure that the entire school community understands their Title IX rights related to sexual violence, the school should also provide information at these events on Title IX and how to file a Title IX complaint with the school, as well as options for reporting an incident of sexual violence to campus or local law enforcement.

F. Investigations and Hearings

Overview

F-1. What elements should a school's Title IX investigation include?

Answer: The specific steps in a school's Title IX investigation will vary depending on the nature of the allegation, the age of the student or students involved, the size and administrative structure of the school, state or local legal requirements (including mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

For the purposes of this document the term "investigation" refers to the process the school uses to resolve sexual violence complaints. This includes the fact-finding investigation and any hearing and decision-making process the school uses to determine: (1) whether or not the conduct occurred; and, (2) if the conduct occurred, what actions

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without additional remedies, likely will not be sufficient to eliminate the hostile environment and prevent recurrence as required by Title IX. If a school typically processes complaints of sexual violence through its disciplinary process and that process, including any investigation and hearing, meets the Title IX requirements discussed above and enables the school to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, then the school may use that process to satisfy its Title IX obligations and does not need to conduct a separate Title IX investigation. As discussed in question C-3, the Title IX coordinator should review the disciplinary process

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to ensure that it: (1) complies with the prompt and equitable requirements of Title IX; (2) allows for appropriate interim measures to be taken to protect the complainant during the process; and (3) provides for remedies to the complainant and school community where appropriate. For more information about interim measures, see questions G-1 to G-3, and about remedies, see questions H-1 and H-2.

- Throughout the investigation, the parties must have an equal opportunity to present relevant witnesses and other evidence.
- The school must use a preponderance-of-the-evidence (*i.e.*, more likely than not) standard in any Title IX proceedings, including any fact-finding and hearings.
- If the school permits one party to have lawyers or other advisors at any stage of the proceedings, it must do so equally for both parties. Any school-imposed restrictions on the ability of lawyers or other advisors to speak or otherwise participate in the proceedings must also apply equally.
- If the school permits one party to submit third-party expert testimony, it must do so equally for both parties.
- If the school provides for an appeal, it must do so equally for both parties.
- Both parties must be notified, in writing, of the outcome of both the complaint and any appeal (see question H-3).

²⁹ As explained in question C-5, the parties may have certain due process rights under the U.S. Constitution.

Intersection with Criminal Investigations

F-2. What are the key differences between a school's Title IX investigation into allegations of sexual violence and a criminal investigation?

Answer: A criminal investigation is intended to determine whether an individual violated criminal law; and, if at the conclusion of the investigation, the individual is tried and found guilty, the individual may be imprisoned or subject to criminal penalties. The U.S. Constitution affords criminal defendants who face the risk of incarceration numerous protections, including, but not limited to, the right to counsel, the right to a speedy trial, the right to a jury trial, the right against self-incrimination, and the right to confrontation. In addition, government officials responsible for criminal investigations (including police and prosecutors) normally have discretion as to which complaints from the public they will investigate.

By contrast, a Title IX investigation will never result in incarceration of an individual and, therefore, the same procedural protections and legal standards are not required. Further, while a criminal investigation is initiated at the discretion of law enforcement authorities, a Title IX investigation is not discretionary; a school has a duty under Title IX to resolve complaints promptly and equitably and to provide a safe and nondiscriminatory environment for all students, free from sexual harassment and sexual violence. Because the standards for pursuing and completing criminal investigations are different from those used for Title IX investigations, the termination of a criminal investigation without an arrest or conviction does not affect the school's Title IX obligations.

Of course, criminal investigations conducted by local or campus law enforcement may be useful for fact gathering if the criminal investigation occurs within the recommended timeframe for Title IX investigations; but, even if a criminal investigation is ongoing, a school must still conduct its own Title IX investigation.

A school should notify complainants of the right to file a criminal complaint and should not dissuade a complainant from doing so either during or after the school's internal Title IX investigation. Title IX does not require a school to report alleged incidents of sexual violence to law enforcement, but a school may have reporting obligations under state, local, or other federal laws.

F-3. How should a school proceed when campus or local law enforcement agencies are conducting a criminal investigation while the school is conducting a parallel Title IX investigation?

Answer: A school should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, it is important for a school to understand that during this brief delay in the Title IX investigation, it must take interim measures to protect the complainant in the educational setting. The school should also continue to update the parties on the status of the investigation and inform the parties when the school resumes its Title IX investigation. For additional information on interim measures see questions G-1 to G-3.

If a school delays the fact-finding portion of a Title IX investigation, the school must promptly resume and complete its fact-finding for the Title IX investigation once it learns that the police department has completed its evidence gathering stage of the criminal investigation. The school should not delay its investigation until the ultimate outcome of the criminal investigation or the filing of any charges. OCR recommends that a school work with its campus police, local law enforcement, and local prosecutor's office to learn when the evidence gathering stage of the criminal investigation is complete. A school may also want to enter into a memorandum of understanding (MOU) or other agreement with these agencies regarding the protocols and procedures for referring allegations of sexual violence, sharing information, and conducting contemporaneous investigations. Any MOU or other agreement must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably, and must comply with the Family Educational Rights and Privacy Act ("FERPA") and other applicable privacy laws.

The DCL states that in one instance a prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances. OCR understands that this example may not be representative and that the law enforcement agency's process often takes more than ten days. OCR recognizes that the length of time for evidence gathering by criminal investigators will vary depending on the specific circumstances of each case.

Off-Campus Conduct

F-4. Is a school required to process complaints of alleged sexual violence that occurred off campus?

Answer: Yes. Under Title IX, a school must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

A school must determine whether the alleged off-campus sexual violence occurred in the context of an education program or activity of the school; if so, the school must treat the complaint in the same manner that it treats complaints regarding on-campus conduct. In other words, if a school determines that the alleged misconduct took place in the context of an education program or activity of the school, the fact that the alleged misconduct took place off campus does not relieve the school of its obligation to investigate the complaint as it would investigate a complaint of sexual violence that occurred on campus.

Whether the alleged misconduct occurred in this context may not always be apparent from the complaint, so a school may need to gather additional information in order to make such a determination. Off-campus education programs and activities are clearly covered and include, but are not limited to: activities that take place at houses of fraternities or sororities recognized by the school; school-sponsored field trips, including athletic team travel; and events for school clubs that occur off campus (e.g., a debate team trip to another school or to a weekend competition).

Even if the misconduct did not occur in the context of an education program or activity, a school must consider the effects of the off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity because students often experience the continuing effects of off-campus sexual violence while at school or in an off-campus education program or activity. The school cannot address the continuing effects of the off-campus sexual violence at school or in an off-campus education program or activity unless it processes the complaint and gathers appropriate additional information in accordance with its established procedures.

Once a school is on notice of off-campus sexual violence against a student, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment and, if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct. The mere presence on campus or in an

off-campus education program or activity of the alleged perpetrator of off-campus sexual violence can have continuing effects that create a hostile environment. A school should also take steps to protect a student who alleges off-campus sexual violence from further harassment by the alleged perpetrator or his or her friends, and a school may have to take steps to protect other students from possible assault by the alleged perpetrator. In other words, the school should protect the school community in the same way it would had the sexual violence occurred on campus. Even if there are no continuing effects of the off-campus sexual violence experienced by the student on campus or in an off-campus education program or activity, the school still should handle these incidents as it would handle other off-campus incidents of misconduct or violence and consistent with any other applicable laws. For example, if a school, under its code of conduct, exercises jurisdiction over physical altercations between students that occur off campus outside of an education program or activity, it should also exercise jurisdiction over incidents of student-on-student sexual violence that occur off campus outside of an education program or activity.

Hearings³⁰

F-5. Must a school allow or require the parties to be present during an entire hearing?

Answer: If a school uses a hearing process to determine responsibility for acts of sexual violence, OCR does not require that the school allow a complainant to be present for the entire hearing; it is up to each school to make this determination. But if the school allows one party to be present for the entirety of a hearing, it must do so equally for both parties. At the same time, when requested, a school should make arrangements so that the complainant and the alleged perpetrator do not have to be present in the same room at the same time. These two objectives may be achieved by using closed circuit television or other means. Because a school has a Title IX obligation to investigate possible sexual violence, if a hearing is part of the school's Title IX investigation process, the school must not require a complainant to be present at the hearing as a prerequisite to proceed with the hearing.

³⁰ As noted in question F-1, the investigation may include a hearing to determine whether the conduct occurred, but Title IX does not necessarily require a hearing. Although Title IX does not dictate the membership of a hearing board, OCR discourages schools from allowing students to serve on hearing boards in cases involving allegations of sexual violence.

F-6. May every witness at the hearing, including the parties, be cross-examined?

Answer: OCR does not require that a school allow cross-examination of witnesses, including the parties, if they testify at the hearing. But if the school allows one party to cross-examine witnesses, it must do so equally for both parties.

OCR strongly discourages a school from allowing the parties to personally question or cross-examine each other during a hearing on alleged sexual violence. Allowing an alleged perpetrator to question a complainant directly may be traumatic or intimidating, and may perpetuate a hostile environment. A school may choose, instead, to allow the parties to submit questions to a trained third party (e.g., the hearing panel) to ask the questions on their behalf. OCR recommends that the third party screen the questions submitted by the parties and only ask those it deems appropriate and relevant to the case.

F-7. May the complainant's sexual history be introduced at hearings?

Answer: Questioning about the complainant's sexual history with anyone other than the alleged perpetrator should not be permitted. Further, a school should recognize that the mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence. The school should also ensure that hearings are conducted in a manner that does not inflict additional trauma on the complainant.

Timeframes

F-8. What stages of the investigation are included in the 60-day timeframe referenced in the DCL as the length for a typical investigation?

Answer: As noted in the DCL, the 60-calendar day timeframe for investigations is based on OCR's experience in typical cases. The 60-calendar day timeframe refers to the entire investigation process, which includes conducting the fact-finding investigation, holding a hearing or engaging in another decision-making process to determine whether the alleged sexual violence occurred and created a hostile environment, and determining what actions the school will take to eliminate the hostile environment and prevent its recurrence, including imposing sanctions against the perpetrator and providing remedies for the complainant and school community, as appropriate. Although this timeframe does not include appeals, a school should be aware that an unduly long appeals process may impact whether the school's response was prompt and equitable as required by Title IX.

OCR does not require a school to complete investigations within 60 days; rather OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks. A school may need to stop an investigation during school breaks or between school years, although a school should make every effort to try to conduct an investigation during these breaks unless so doing would sacrifice witness availability or otherwise compromise the process.

Because timeframes for investigations vary and a school may need to depart from the timeframes designated in its grievance procedures, both parties should be given periodic status updates throughout the process.

G. Interim Measures

G-1. Is a school required to take any interim measures before the completion of its investigation?

Answer: Title IX requires a school to take steps to ensure equal access to its education programs and activities and protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow the complainant to change academic and extracurricular activities or his or her living, transportation, dining, and working situation as appropriate. The school should also ensure that the complainant is aware of his or her Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. If a school does not offer these services on campus, it should enter into an MOU with a local victim services provider if possible.

Even when a school has determined that it can respect a complainant's request for confidentiality and therefore may not be able to respond fully to an allegation of sexual violence and initiate formal action against an alleged perpetrator, the school must take immediate action to protect the complainant while keeping the identity of the complainant confidential. These actions may include: providing support services to the

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Answer: Effective remedial action may include disciplinary action against the perpetrator, providing counseling for the perpetrator, remedies for the complainant and others, as well as changes to the school's overall services or policies. All services needed to remedy the hostile environment should be offered to the complainant. These remedies are separate from, and in addition to, any interim measure that may have been provided prior to the conclusion of the school's investigation. In any instance in which the complainant did not take advantage of a specific service (*e.g.*, counseling) when offered as an interim measure, the complainant should still be offered, and is still entitled to, appropriate final remedies that may include services the complainant declined as an interim measure. A refusal at the interim stage does not mean the refused service or set of services should not be offered as a remedy.

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without more, likely will not be sufficient to satisfy its Title IX obligation to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. Additional remedies for the complainant and the school community may be necessary. If the school's student disciplinary procedure does not include a process for determining and implementing these remedies for the complainant and school community, the school will need to use another process for this purpose.

Depending on the specific nature of the problem, remedies for the complainant may include, but are not limited to:

- Providing an effective escort to ensure that the complainant can move safely between classes and activities;

³¹ As explained in question A-5, if a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to be subjected to a hostile environment. In this case, in addition to the remedies discussed in this section, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately.

- Ensuring the complainant and perpetrator do not share classes or extracurricular activities;
- Moving the perpetrator or complainant (if the complainant requests to be moved) to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring;
- Arranging for the complainant to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty; and
- Reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the sexual violence and the misconduct that may have resulted in the complainant being disciplined.³²

Remedies for the broader student population may include, but are not limited to:

- Designating an individual from the school's counseling center who is specifically trained in providing trauma-informed comprehensive services to victims of sexual violence to be on call to assist students whenever needed;
- Training or retraining school employees on the school's responsibilities to address allegations of sexual violence and how to conduct Title IX investigations;
- Developing materials on sexual violence, which should be distributed to all students;
- Conducting bystander intervention and sexual violence prevention programs with students;
- Issuing policy statements or taking other steps that clearly communicate that the school does not tolerate sexual violence and will respond to any incidents and to any student who reports such incidents;

³² For example, if the complainant was disciplined for skipping a class in which the perpetrator was enrolled, the school should review the incident to determine if the complainant skipped class to avoid contact with the perpetrator.

- Conducting, in conjunction with student leaders, a campus climate check to assess the effectiveness of efforts to ensure that the school is free from sexual violence, and using that information to inform future proactive steps that the school will take;
- Targeted training for a group of students if, for example, the sexual violence created a hostile environment in a residence hall, fraternity or sorority, or on an athletic team; and
- Developing a protocol for working with local law enforcement as discussed in question F-3.

When a school is unable to conduct a full investigation into a particular incident (*i.e.*, when it received a general report of sexual violence without any personally identifying information), it should consider remedies for the broader student population in response.

H-2. If, after an investigation, a school finds the alleged perpetrator responsible and determines that, as part of the remedies for the complainant, it must separate the complainant and perpetrator, how should the school accomplish this if both students share the same major and there are limited course options?

Answer: If there are limited sections of required courses offered at a school and both the complainant and perpetrator are required to take those classes, the school may need to make alternate arrangements in a manner that minimizes the burden on the complainant. For example, the school may allow the complainant to take the regular sections of the courses while arranging for the perpetrator to take the same courses online or through independent study.

H-3. What information must be provided to the complainant in the notice of the outcome?

Answer: Title IX requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal. OCR recommends that a school provide written notice of the outcome to the complainant and the alleged perpetrator concurrently.

For Title IX purposes, a school must inform the complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment, if the school finds one to exist, and prevent recurrence. The perpetrator should not be notified of the individual remedies offered or provided to the complainant.

Sanctions that directly relate to the complainant (but that may also relate to eliminating the hostile environment and preventing recurrence) include, but are not limited to, requiring that the perpetrator stay away from the complainant until both parties graduate, prohibiting the perpetrator from attending school for a period of time, or transferring the perpetrator to another residence hall, other classes, or another school. Additional steps the school has taken to eliminate the hostile environment may include counseling and academic support services for the complainant and other affected students. Additional steps the school has taken to prevent recurrence may include sexual violence training for faculty and staff, revisions to the school's policies on sexual violence, and campus climate surveys. Further discussion of appropriate remedies is included in question H-1.

In addition to the Title IX requirements described above, the Clery Act requires, and FERPA permits, postsecondary institutions to inform the complainant of the institution's final determination and any disciplinary sanctions imposed on the perpetrator in sexual violence cases (as opposed to all harassment and misconduct covered by Title IX) not just those sanctions that directly relate to the complainant.³³

I. Appeals

I-1. What are the requirements for an appeals process?

Answer: While Title IX does not require that a school provide an appeals process, OCR does recommend that the school do so where procedural error or previously unavailable relevant evidence could significantly impact the outcome of a case or where a sanction is substantially disproportionate to the findings. If a school chooses to provide for an appeal of the findings or remedy or both, it must do so equally for both parties. The specific design of the appeals process is up to the school, as long as the entire grievance process, including any appeals, provides prompt and equitable resolutions of sexual violence complaints, and the school takes steps to protect the complainant in the educational setting during the process. Any individual or body handling appeals should be trained in the dynamics of and trauma associated with sexual violence.

If a school chooses to offer an appeals process it has flexibility to determine the type of review it will apply to appeals, but the type of review the school applies must be the same regardless of which party files the appeal.

³³ 20 U.S.C. § 1092(f) and 20 U.S.C. § 1232g(b)(6)(A).

information for the school's Title IX coordinator. A school also should train responsible employees to inform students of: the reporting obligations of responsible employees; students' option to request confidentiality and available confidential advocacy, counseling, or other support services; and their right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement. For additional information on the reporting obligations of responsible employees and others see questions D-1 to D-5.

There is no minimum number of hours required for Title IX and sexual violence training at every school, but this training should be provided on a regular basis. Each school should determine based on its particular circumstances how such training should be conducted, who has the relevant expertise required to conduct the training, and who should receive the training to ensure that the training adequately prepares employees, particularly responsible employees, to fulfill their duties under Title IX. A school should also have methods for verifying that the training was effective.

J-2. How should a school train responsible employees to report incidents of possible sexual harassment or sexual violence?

Answer: Title IX requires a school to take prompt and effective steps reasonably calculated to end sexual harassment and sexual violence that creates a hostile environment (*i.e.*, conduct that is sufficiently serious as to limit or deny a student's ability to participate in or benefit from the school's educational program and activity). But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

OCR therefore recommends that a school train responsible employees to report to the Title IX coordinator or other appropriate school official any incidents of sexual harassment or sexual violence that may violate the school's code of conduct or may create or contribute to the creation of a hostile environment. The school can then take steps to investigate and prevent any harassment or violence from recurring or escalating, as appropriate. For example, the school may separate the complainant and alleged perpetrator or conduct sexual harassment and sexual violence training for the school's students and employees. Responsible employees should understand that they do not need to determine whether the alleged sexual harassment or sexual violence actually occurred or that a hostile environment has been created before reporting an incident to the school's Title IX coordinator. Because the Title IX coordinator should have in-depth knowledge of Title IX and Title IX complaints at the school, he or she is likely to be in a better position than are other employees to evaluate whether an incident of sexual

harassment or sexual violence creates a hostile environment and how the school should respond. There may also be situations in which individual incidents of sexual harassment do not, by themselves, create a hostile environment; however when considered together, those incidents may create a hostile environment.

J-3. What type of training should a school provide to employees who are involved in implementing the school's grievance procedures?

Answer: All persons involved in implementing a school's grievance procedures (*e.g.*, Title IX coordinators, others who receive complaints, investigators, and adjudicators) must have training or experience in handling sexual violence complaints, and in the operation of the school's grievance procedures. The training should include information on working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including same-sex sexual violence; the proper standard of review for sexual violence complaints (preponderance of the evidence); information on consent and the role drugs or alcohol can play in the ability to consent; the importance of accountability for individuals found to have committed sexual violence; the need for remedial actions for the perpetrator, complainant, and school community; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; how to conduct investigations; confidentiality; the effects of trauma, including neurobiological change; and cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.

In rare circumstances, employees involved in implementing a school's grievance procedures may be able to demonstrate that prior training and experience has provided them with competency in the areas covered in the school's training. For example, the combination of effective prior training and experience investigating complaints of sexual violence, together with training on the school's current grievance procedures may be sufficient preparation for an employee to resolve Title IX complaints consistent with the school's grievance procedures. In-depth knowledge regarding Title IX and sexual violence is particularly helpful. Because laws and school policies and procedures may change, the only way to ensure that all employees involved in implementing the school's grievance procedures have the requisite training or experience is for the school to provide regular training to all individuals involved in implementing the school's Title IX grievance procedures even if such individuals also have prior relevant experience.

J-4. What type of training on sexual violence should a school provide to its students?

Answer: To ensure that students understand their rights under Title IX, a school should provide age-appropriate training to its students regarding Title IX and sexual violence. At the elementary and secondary school level, schools should consider whether sexual violence training should also be offered to parents, particularly training on the school's process for handling complaints of sexual violence. Training may be provided separately or as part of the school's broader training on sex discrimination and sexual harassment. However, sexual violence is a unique topic that should not be assumed to be covered adequately in other educational programming or training provided to students. The school may want to include this training in its orientation programs for new students; training for student athletes and members of student organizations; and back-to-school nights. A school should consider educational methods that are most likely to help students retain information when designing its training, including repeating the training at regular intervals. OCR recommends that, at a minimum, the following topics (as appropriate) be covered in this training:

- Title IX and what constitutes sexual violence, including same-sex sexual violence, under the school's policies;
- the school's definition of consent applicable to sexual conduct, including examples;
- how the school analyzes whether conduct was unwelcome under Title IX;
- how the school analyzes whether unwelcome sexual conduct creates a hostile environment;
- reporting options, including formal reporting and confidential disclosure options and any timeframes set by the school for reporting;
- the school's grievance procedures used to process sexual violence complaints;
- disciplinary code provisions relating to sexual violence and the consequences of violating those provisions;
- effects of trauma, including neurobiological changes;
- the role alcohol and drugs often play in sexual violence incidents, including the deliberate use of alcohol and/or other drugs to perpetrate sexual violence;
- strategies and skills for bystanders to intervene to prevent possible sexual violence;
- how to report sexual violence to campus or local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance; and
- Title IX's protections against retaliation.

The training should also encourage students to report incidents of sexual violence. The training should explain that students (and their parents or friends) do not need to determine whether incidents of sexual violence or other sexual harassment created a

It is also important for a school to educate students about the persons on campus to whom they can confidentially report incidents of sexual violence. A school's sexual violence education and prevention program should clearly identify the offices or individuals with whom students can speak confidentially and the offices or individuals who can provide resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. It should also identify the school's responsible employees and explain that if students report incidents to responsible employees (except as noted in question E-3) these employees are required to report the incident to the Title IX coordinator or other appropriate official. This reporting includes the names of the alleged perpetrator and student involved in the sexual violence, as well as relevant facts including the date, time, and location, although efforts should be made to comply with requests for confidentiality from the complainant. For more detailed information regarding reporting and responsible employees and confidentiality, see questions D-1 to D-5 and E-1 to E-4.

K-1. Does Title IX protect against retaliation?

Answer: Yes. The Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual violence or filing a sexual violence complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an OCR or school's investigation or proceeding. Therefore, if a student, parent, teacher, coach, or other individual complains formally or informally about sexual violence or participates in an OCR or school's investigation or proceedings related to sexual violence, the school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way

discriminating against the individual) because of the individual's complaint or participation.

A school should take steps to prevent retaliation against a student who filed a complaint either on his or her own behalf or on behalf of another student, or against those who provided information as witnesses.

Schools should be aware that complaints of sexual violence may be followed by retaliation against the complainant or witnesses by the alleged perpetrator or his or her associates. When a school knows or reasonably should know of possible retaliation by other students or third parties, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and witnesses and ensure their safety as necessary. At a minimum, this includes making sure that the complainant and his or her parents, if the complainant is in elementary or secondary school, and witnesses know how to report retaliation by school officials, other students, or third parties by making follow-up inquiries to see if there have been any new incidents or acts of retaliation, and by responding promptly and appropriately to address continuing or new problems. A school should also tell complainants and witnesses that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation, but will also take strong responsive action if it occurs.

L. First Amendment

L-1. How should a school handle its obligation to respond to sexual harassment and sexual violence while still respecting free-speech rights guaranteed by the Constitution?

Answer: The DCL on sexual violence did not expressly address First Amendment issues because it focuses on unlawful physical sexual violence, which is not speech or expression protected by the First Amendment.

However, OCR's previous guidance on the First Amendment, including the 2001 Guidance, OCR's July 28, 2003, Dear Colleague Letter on the First Amendment,³⁵ and OCR's October 26, 2010, Dear Colleague Letter on harassment and bullying,³⁶ remain fully in effect. OCR has made it clear that the laws and regulations it enforces protect students from prohibited discrimination and do not restrict the exercise of any expressive activities or speech protected under the U.S. Constitution. Therefore, when a school works to prevent

³⁵ Available at <http://www.ed.gov/ocr/firstamend.html>.

³⁶ Available at <http://www.ed.gov/ocr/letters/colleague-201010.html>.

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Answer: Anyone who has questions regarding this guidance, or Title IX should contact the OCR regional office that serves his or her state. Contact information for OCR regional offices can be found on OCR’s webpage at <https://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. If you wish to file a complaint of discrimination with OCR, you may use the online complaint form available at <http://www.ed.gov/ocr/complaintintro.html> or send a letter to the OCR enforcement office responsible for the state in which the school is located. You may also email general questions to OCR at ocr@ed.gov.

Answer: Yes. OCR’s policy guidance on Title IX is available on OCR’s webpage at <http://www.ed.gov/ocr/publications.html#TitleIX>. In addition to the April 4, 2011, Dear Colleague Letter, OCR has issued the following resources that further discuss a school’s obligation to respond to allegations of sexual harassment and sexual violence:

- Dear Colleague Letter: Harassment and Bullying (October 26, 2010),
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>
- *Sexual Harassment: It's Not Academic* (Revised September 2008),
<http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>
- *Revised Sexual Harassment Guidance: Harassment of Students by Employees, Other Students, or Third Parties* (January 19, 2001),
<http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

In addition to guidance from OCR, a school may also find resources from the Departments of Education and Justice helpful in preventing and responding to sexual violence:

- Department of Education's Letter to Chief State School Officers on Teen Dating Violence Awareness and Prevention (February 28, 2013)
<https://www2.ed.gov/policy/gen/guid/secletter/130228.html>
- Department of Education's National Center on Safe Supportive Learning Environments
<http://safesupportivelearning.ed.gov/>
- Department of Justice, Office on Violence Against Women
<http://www.ovw.usdoj.gov/>

09/15/2015

Criminal Offenses – On campus

Criminal offense	Total occurrences On campus		
	2011	2012	2013
a. Murder/Non-negligent manslaughter	0	0	0
b. Negligent manslaughter	0	0	0
c. Sex offenses – Forcible	11	10	60

For all of California 4-year institutions, here are the numbers:

Criminal Offenses – On campus (Reporting Year: 2013)

Criminal offense	Total occurrences On campus		
	2011	2012	2013
a. Murder/Non-negligent manslaughter	2	0	1
b. Negligent manslaughter	0	0	0
c. Sex offenses – Forcible	229	271	397

Search Criteria: Undergraduate Enrollment: 'Between 500 and 999', 'Between 1,000 and 1,499', 'Between 1,500 and 1,999', 'Between 2,000 and 2,999', 'Between 3,000 and 4,999', 'Between 5,000 and 9,999', 'Between 10,000 and 14,999', 'Between 15,000 and 19,999', 'Between 20,000 and 29,999', '30,000 and greater'

Institution State: 'CA'; Type of institution: 'Public, 4-year or above', 'Private nonprofit, 4-year or above', 'Private for-profit, 4-year or above'

Spreadsheet from the Cleary site showing the top 18 schools, by rate, showing that Occidental is almost FIVE times the rate of any other school in California (excluding schools with under 500 students):

Year	Institution	Campus	Institution Size	Sex offenses – Forcible	Rate
2013	Occidental College	Occidental College	2128	60	2.82%
2013	Claremont McKenna College	Main Campus	1328	8	0.60%
2013	Pomona College	Main Campus	1610	8	0.50%
2013	Harvey Mudd College	Main Campus	807	4	0.50%
2013	Whittier College	Main Campus	2339	5	0.21%
2013	Scripps College	Main Campus	1009	2	0.20%
2013	California Institute of Technology	Main Campus	2181	4	0.18%
2013	Stanford University	Main Campus	18346	25	0.14%
2013	Mills College	Main Campus	1595	2	0.13%
2013	University of the Pacific	Main Campus	6421	7	0.11%
2013	University of California-Santa Barbara	Main Campus	22225	23	0.10%
2013	Southern California University of Health Sciences	Southern California University of	968	1	0.10%

		Health Sciences Campus			
2013	Notre Dame de Namur University	Main Campus	2030	2	0.10%
2013	Azusa Pacific University	Azusa (main campus)	10755	10	0.09%
2013	Pitzer College	Pitzer College	1081	1	0.09%
2013	University of California- Hastings College of Law	Main Campus	1088	1	0.09%
2013	University of California-Los Angeles	UCLA	40795	33	0.08%

Search criteria: Undergraduate Enrollment: 'Between 500 and 999', 'Between 1,000 and 1,499', 'Between 1,500 and 1,999', 'Between 2,000 and 2,999', 'Between 3,000 and 4,999', 'Between 5,000 and 9,999', 'Between 10,000 and 14,999', 'Between 15,000 and 19,999', 'Between 20,000 and 29,999', '30,000 and greater',
Institution State: 'CA', Type of institution: 'Public, 4-year or above', 'Private nonprofit, 4-year or above', 'Private for-profit, 4-year or above'

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