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February 8, 2018

Via U.S. Mail and E-mail (david@hawaii.edu)

Dr. David Lassner
Interim Chancellor
Office of the President
University of Hawai'i at Mānoa
2444 Dole Street
Honolulu, Hawai'i 96822

Re: University of Hawai'i at Mānoa
OCR Reference No. 10136001

Dear Dr. Lassner:

This letter is to advise you of the resolution of the above-referenced compliance review that was initiated by the Office for Civil Rights (OCR), U.S. Department of Education (the Department), with regard to the University of Hawai'i at Mānoa (the University). The compliance review examined the University's handling of complaints and reports of sexual harassment¹ to determine if the University responded promptly and effectively.

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

As part of its compliance review, OCR investigated whether the University properly designated an employee to coordinate its compliance with Title IX, whether it adopted and published grievance procedures that provided for the prompt and equitable investigation of reports of sexual harassment, and whether the University appropriately responded to incidents of sexual harassment about which it knew or should have known. As described below, OCR found that the University did not fully comply with the grievance procedures requirements. OCR also identified violations of Title IX and concerns with regard to the University's handling of individual complaints.

¹ The phrase sexual harassment is used throughout to include sexual violence.

Background

The University is the largest and oldest campus in the University of Hawai'i System (UH System), which consists of three universities and seven community colleges. The University is located in the city of Honolulu on the island of Oahu. The University's website lists its fall 2017 enrollment as 17,612 students with 12,881 undergraduate students. The University has 58 percent female enrollment.

Over the course of the compliance review, OCR requested files of reports of sexual harassment from the University for the time period covering the 2010 – 2011 academic year through March 2016; OCR received and reviewed 89 such files. OCR also requested other documentary information for the time period covering 2010-2017. For this review period, OCR evaluated the University's policies and procedures regarding sexual harassment and conducted over 35 interviews of University personnel involved in various aspects of the University's Title IX compliance. Additionally, OCR invited all University undergraduate and graduate students to attend scheduled focus groups or private office hours during OCR's April 2014 on-site visit, or to contact OCR with any information related to their perspectives on or experiences with sexual harassment at the University. During the on-site focus groups, OCR received information from more than 53 undergraduate and graduate students, and several additional students contacted OCR individually to share information.

Throughout the review period, the University readily cooperated with OCR, promptly provided all requested information, and made staff available for interviews. Additionally, the University forwarded an e-mail notice of OCR's focus groups and private office hours to students and conducted extensive on-campus publicity about the focus groups and office hours in advance of OCR's visit and during each day of the visit.

Since the inception of the compliance review, the University and the UH System have taken actions to proactively address their obligations under Title IX. For example, in June 2015, the University appointed a single Title IX coordinator, to assist in consolidating its institutional response to Title IX issues. Additionally, in July 2015, the UH System instituted an Office of Institutional Equity (OIE) to oversee and standardize the System's Title IX and Violence Against Women Act compliance throughout the 10 campuses in the System. The OIE Director was appointed to a Hawai'i state legislative task force which assisted the legislature with July 2016 legislation which mandated, among other items, Title IX training for UH System students and staff, a confidential advocate at each System campus, and ongoing campus climate surveys. Of particular note, the UH System has undertaken substantial revisions to its grievance procedure for processing complaints of sexual harassment and OCR's review of almost six years of case files reflects improvement in the University's case processing. OCR acknowledges the University and the UH System for effecting these changes.

During the course of the investigation, the University expressed an interest in resolving the issues under investigation prior to the conclusion of OCR's compliance review. On September 29, 2017, having reviewed investigative materials and identified violations and concerns under Title IX, OCR

concluded that it would be appropriate to negotiate a resolution agreement in accordance with Sections 302 and 303 of OCR’s *Case Processing Manual*. Subsequent discussions with the University resulted in the University signing the enclosed Agreement on December 28, 2017.

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31, provides generally that, except as provided elsewhere in the regulation, “no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives of Federal financial assistance.”

Designation and Notice of a Title IX Coordinator

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the regulation implementing Title IX, including investigation of any complaint communicated to the recipient alleging any actions which would be prohibited by the regulation implementing Title IX. It requires each recipient to notify all of its students and employees of the name, office address and telephone number of the employee or employees so designated. Additionally, the Title IX Coordinator must have adequate training as to what conduct constitutes sexual harassment and how the recipient’s grievance procedures operate.

Grievance Procedures

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. OCR has identified a number of elements in evaluating whether grievance procedures provide for a prompt and equitable resolution, including whether the procedures address: (a) notice to students and employees of the procedures, including where complaints may be filed; (b) application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties; (c) adequate, reliable, and impartial investigation, including the opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for the major stages of the complaint process; (e) notice to the parties of the outcome of the complaint; and, (f) an assurance that the institution will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate. Moreover, any rights or opportunities made available to one party during the investigation should be made available to the other party on equal terms.

Additionally, recipients should take steps to prevent retaliation against a student who makes a complaint (or was the subject of the harassment), against a person who files a complaint on behalf of a student, or those who provide information as witnesses. Recipients should follow up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

Further, recipients must use the same legal standard of proof for resolving complaints of sexual harassment as they do for other conduct determinations and may use either the “clear and convincing evidence” standard or the “preponderance of the evidence” standard. Pending the outcome of an investigation, a recipient should also take steps to protect students and prevent recurrence as necessary, including taking interim steps before the final outcome of the investigation. If interim measures are specifically addressed in a recipient’s grievance procedures, they must be addressed in a manner consistent with Title IX. A recipient’s grievance procedures may not make such measures available only to one party, and the recipient may not rely on fixed rules or operating assumptions that favor one party over another.

Response to Complaints

In order to comply with Title IX and its implementing regulation at 34 C.F.R. § 106.31, the recipient must provide a prompt and effective response to complaints of sexual harassment. Discussed below are the applicable legal standards relevant to OCR’s findings in this compliance review.²

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX at 34 C.F.R. § 106.31(a). Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student’s ability to participate in or benefit from the recipient’s program.

OCR considers the harassment from an objective and subjective perspective to determine whether it is severe, persistent, or pervasive enough to deny or limit a student’s educational opportunity and evaluates the conduct in light of the following factors: the degree to which the conduct affected one or more students’ education; the type, frequency, and duration of the conduct; the identity of and relationship between the alleged harasser and the subject of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the recipient, location of the incidents, and context in which they occurred; other incidents at the recipient; and incidents of gender-based, but nonsexual harassment.

If a recipient knows or reasonably should have known about sexual harassment by employees, other students or third parties, Title IX requires a recipient to respond promptly and effectively to reports of sexual harassment. Once a recipient has notice of possible sexual harassment of students, whether carried out by employees, other students, or third parties, it should take immediate and appropriate steps to investigate or otherwise determine what occurred and take prompt and effective steps reasonably calculated to end any harassment, eliminate a hostile environment if one has been created, and prevent harassment from occurring again. These steps are the recipient’s responsibility whether or not the student who was harassed makes a complaint or otherwise asks the recipient to

² For further clarification, see OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (2001 Guidance) at 12.

take action. If a recipient fails to respond appropriately to a report of sexual harassment, and this failure permits a student to be subjected to a hostile environment, the recipient is also responsible for taking corrective action to remedy the effects on the student or students that could reasonably have been prevented had it responded promptly and effectively.³ The extent of a recipient's responsibilities if an employee sexually harasses a student is determined by whether or not the harassment occurred in the context of the employee's provision of aids, benefits, or services to the student.⁴

OCR's guidance mandates that a recipient's response to alleged incidents of sexual harassment be prompt. Although there is no fixed timeframe to provide a prompt investigation, OCR will evaluate the recipient's good faith effort to provide a fair, impartial investigation of a Title IX complaint in a timely manner designed to provide resolution to all parties.

During the course of a recipient's investigation of sexual harassment complaints, including those of sexual violence, it may be appropriate for the recipient to provide interim measures to the parties. Interim measures may include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. Interim measures must be appropriate both in the kind of interim measures offered and in the implementation of those interim measures. In assessing the need for interim measures, every effort should be made to avoid depriving any student of his or her education. The University should ensure that any interim measures are necessary and effective.

Regardless of whether the student who was harassed decides to file a formal complaint or otherwise request action on his/her own behalf, the recipient must promptly investigate a report of sexual harassment or otherwise determine what occurred and then take appropriate steps to resolve the situation. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the recipient, and other factors. However, in all cases the inquiry must be prompt, thorough, and impartial.

OCR enforces Title IX consistent with the federally protected due process rights of the recipient's students and employees. Thus, for example, if a student, who was the only student harassed, insists that his or her name not be revealed, and the alleged harasser could not respond to the charges of sexual harassment without that information, in evaluating the school's response, OCR would not expect disciplinary action against an alleged harasser. However, a recipient should evaluate the confidentiality request or a request to not pursue a report of sexual harassment in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The factors that a recipient may consider in this regard include the seriousness of the alleged harassment, the age of the student harassed, whether there have been other complaints or reports of harassment against the

³ See 2001 Guidance at 12.

⁴ See 2001 Guidance at 10.

alleged harasser, and the rights of the accused individual to receive information about the accuser and the allegations if a formal proceeding with sanctions may result.

Title IX requires that notice of the outcome of a recipient's investigation of Title IX complaints be provided to both parties and that the provision of that notice be equitable. In order to determine whether the notice of outcome is equitable, OCR will consider factors such as the form, content, and timing of the notice provided by a recipient to both parties.

Pursuant to Title IX's prohibition against retaliation, a recipient should take steps to prevent any retaliation against an individual who makes a complaint (or was the subject of the harassment), against a person who files a complaint on behalf of someone else, or against those who provide information as witnesses. At a minimum, this includes making sure that the harassed individuals know how to report any subsequent problems and making follow-up inquiries to see if there have been any new incidents of harassment or any retaliation.

A recipient must provide notice of its grievance process because a grievance procedure applicable to sexual harassment complaints cannot be prompt or equitable unless individuals know it exists, how it works, and how to file a complaint. Thus, the procedures should be written in language that is easily understood and widely disseminated.

Findings and Conclusions

The following describes OCR's findings regarding the University's Title IX Coordinator and describes the violations and concerns found by OCR with respect to the University's grievance procedures and handling of complaints and reports of sexual harassment. Each of these is addressed in the Agreement. For issues identified as concerns, OCR would need to obtain additional information and conclude its investigation in order to determine whether the concern was in fact a violation of Title IX. As a result of the Agreement, however, OCR has resolved this compliance review prior to completing its investigation.

Designation and Notice of a Title IX Coordinator

During the times relevant to OCR's investigation, the University had one or more designated Title IX Coordinators. Contact information for these individuals was published on the University's website. On June 22, 2015, the University announced that it had appointed a new Title IX Coordinator. The new Title IX Coordinator was formerly the University's Director of the Office of Judicial Affairs (OJA) from 2007 – August 2014. The University informed OCR that under this new Title IX Coordinator, the Title IX office investigates all Title IX complaints and the Title IX Coordinator has ultimate oversight and responsibility for responding to complaints and Title IX compliance. The University provided information to OCR in May 2016 reflecting that the new Title IX Coordinator has been trained. This training included receiving certifications from a national for-profit Title IX organization as a Title IX Coordinator and investigator, and a certification from a national for-profit behavioral intervention organization.

The University also has seven Deputy Title IX Coordinators assigned to cover distinct areas: 1) two for employee on employee sexual harassment issues - one in Human Resources and the other in the Equal Employment Opportunity/Affirmative Action office (EEO/AA), 2) Student Housing Services (SHS), 3) the law school, 4) the medical school, 5) the Office of Graduate Education, and 6) athletics. Each of these individuals is identified by name on the Title IX office webpage; contact information for each including telephone numbers, office addresses, and e-mail addresses is also published on the same webpage. The University provided information in May 2016 and September 2017 that all Deputy Title IX Coordinators have received Title IX training specific to their roles as Title IX Coordinators.

OCR determined that the University has a Title IX Coordinator with overall responsibility for Title IX compliance, including responsibility for responses to reports of sexual harassment; that students and employees are notified of the name, office address, and telephone number of the Title IX Coordinator as well as the Deputy Title IX Coordinators; and that the University's Title IX Coordinator and its Deputy Title IX Coordinators have received adequate training to carry out their Title IX responsibilities. Accordingly, OCR finds that the University is compliant with Title IX in this area.

Grievance Procedures

From the beginning of OCR's review period until September 2015, the University had three procedures that were applicable to complaints of sexual harassment, including sexual assault complaints. The existence of three different procedures resulted in a grievance process that was potentially conflicting and confusing. In September 2015, the University adopted the System's revised sexual harassment policies and procedures entitled "EP1.204 Interim Policy and Procedure on Sex Discrimination and Gender-Based Violence" (Procedure). As of the date of this letter, the Procedure continues to be an "interim" procedure; no final procedure has been adopted by the University. This current Procedure addresses certain issues with the prior procedures, however, as discussed below, OCR finds that it is not yet fully compliant with the procedural requirements of Title IX.

OCR found that the University provides clear and easily understood notice as to where complaints may be filed as the Procedure is posted on the University's Title IX website and states that anyone subjected to sex discrimination, sexual harassment, or gender-based harassment should report the prohibited behavior immediately to the respective campus Title IX Coordinator. OCR also found that the Procedure explicitly states that it applies to complaints alleging sex discrimination, sexual harassment, or sexual assault carried out by employees, other students, or third parties. The Procedure, as written, provides for an adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and evidence.

The Procedure provides a timeframe of 60 days for completion of all investigative activities and sanctions and provides a specific timeframe for the University to respond to appeals. However, the Procedure does not set forth a specific timeframe in which complaining parties or respondents should file an appeal, leaving the timeframe for filing an appeal open-ended. OCR found that the

Procedure does provide for notice to both parties of the outcome of the complaint. OCR found that the Procedure states a broad commitment to preventing, reporting, and promptly resolving sexual harassment sufficient to constitute an assurance that the institution will take steps to prevent further harassment and to correct its discriminatory effects on the complainant and others, if appropriate. OCR found that the University's Procedure expressly states that the University prohibits and will not tolerate retaliation, lists the types of activities which are protected under the prohibition against retaliation, and provides that retaliation will be treated as a separate offense. The Procedure specifies that the "preponderance of the evidence" standard of proof applies to complaints filed under the Procedure. This is the same standard that the University uses for other misconduct.

Although not required to specifically address interim measures in written procedures, a recipient must do so in a manner consistent with Title IX, if it includes such information. OCR found that the Procedure defines interim measures which may be available and why they may be instituted. OCR found that the definition of interim measures is consistent with Title IX. However, the wording of the interim measures definition section conveys greater consideration for reporting parties than for responding parties and does not convey that the rights of the responding party or accused will be weighed appropriately. The Procedure specifically states that "in those instances where interim measures affect both the reporting party and responding party, the University shall minimize the burden on the Reporting Party wherever appropriate." The Procedure also implies that interim measures are only available to reporting parties, as it states "Requests for interim measures may be made by or on behalf of the reporting party to the Title IX Coordinator, or the EEO/AA Office" and does not identify which individual or office should receive requests for interim measures made by or on behalf of responding parties. Thus, OCR finds that the Procedure, as written, does not apply equally to all parties and is therefore not consistent with Title IX.

Accordingly, OCR finds that the Procedure does not provide a timeframe for a major stage of the grievance process and does not provide for equitable application of interim measures in violation of Title IX.

Response to Complaints

In order to evaluate whether the University complied with the requirements of Title IX, OCR investigated whether the University provided a prompt and effective response to reports of sexual harassment and, if sexual harassment was found to have occurred that was sufficiently serious as to create a hostile environment, whether it effectively took steps to end the harassment, eliminate the hostile environment, and prevent recurrence. OCR also evaluated whether there were instances in which the University's failure to properly respond to instances of sexual harassment may have permitted a hostile environment for the student or students involved. To make this determination, OCR reviewed 89 reports (complaint files) of sexual harassment received by the University from the beginning of the 2010-2011 academic year through March 2016. OCR also reviewed files of three cases appealed during the 2010-2013 time period which were also originally investigated during that period. In almost 60 percent of these files, the University determined that for various reasons which are discussed further below, it could not investigate the report. For the reports the University investigated, OCR reviewed and analyzed the documentation provided to determine

compliance with regard to the requirements for a prompt and effective response to reports of sexual harassment.

OCR identified both violations of Title IX and concerns with respect to elements of the University's response to complaints and reports of sexual harassment. Those elements are detailed below.

- Promptness

OCR reviewed the complaint files to determine whether the University resolved complaints in a timely manner. For the period 2010 through 2013, the average time period for resolution of the underlying complaint (excluding appeal) was 49 days for 2010-2011, 51 days for 2011-2012, 111 days for 2012-2013, and for the files from 2014 to March of 2016, the average time period for the resolution of student on student incidents was 85 days. In its review, OCR found 10 cases that took over 150 days for the University to complete. Seven of these cases took over 200 days to complete, including one case involving allegations against an employee that took 620 days to complete. Several of these cases included information in the case file explaining potential reasons for delay, but others contained no such information.

Based on the evidence contained in the case files provided by the University, OCR has a concern that the University may not be completing its investigations in a reasonably prompt timeframe consistent with the requirements of Title IX. OCR would need to further investigate the University's explanation for these investigative timeframes in order to determine if any of these cases represented a violation of Title IX.

- Interim Measures

In some instances, interim measures may be necessary to protect the rights of the reporting or responding parties. In those instances, the University is responsible for fairly and effectively carrying out the interim measures or amending them as appropriate. OCR's review of complaint files identified instances in which the University imposed interim measures to protect the reporting party from a potentially hostile environment pending completion of an investigation, but the file suggests that those measures may not have been effectively enforced. In one such case, OCR found that the University's failure to effectively enforce interim measures resulted in a failure to appropriately respond to a report of sexual assault.

In this case, a student athlete reported that, following a residence hall party, she was raped by another student athlete who was well-known on campus. Pursuant to the process employed under the University's procedures in place at the time of the incident, both SHS and OJA investigated the complaint. The investigation took place during the respondent's athletic season. As interim measures during the investigation, SHS notified the respondent, who was not living on campus that semester, that he was banned from entering all student housing property, and OJA issued an order prohibiting the respondent from contacting or retaliating against the complainant. The files provided to OCR show that the respondent violated the trespass ban four times within a three month period by entering residence halls, including where the complainant lived. These instances were

reported to the University. In particular, both the complainant and her roommate separately reported seeing the respondent in their dormitory building during the period of time that the ban was in place. In response to the first violation of the trespass ban, the University emailed the respondent a written clarification of the interim measures. In response to the second violation of the trespass ban, the University issued two charge letters to the respondent regarding his violation of the directive not to enter student housing. Two days later, student housing and OJA held a joint hearing with the respondent regarding the violation of the trespass ban. When he subsequently violated the trespass ban for a third and fourth time, the University again sent him letters charging him with violating the ban and met with him once. No additional actions were taken. The OJA investigation took 134 days, and the SHS investigation took 159 days. When the University ultimately issued its decision letters, the University found the respondent responsible for the sexual assault as alleged and he was dismissed from school for the sexual assault as well as for the violation of the interim trespass ban.

Based upon the severity of the allegations, the number of times the respondent reportedly violated the trespass ban and the ineffectiveness of the University's response to the reported violations, OCR finds that the University failed to effectively enforce the interim measures as described above. This failure constitutes a violation of the University's responsibility under Title IX to fairly and effectively implement interim measures.

- Hostile Environment

The University has an obligation to determine whether an allegation of sexual harassment creates a hostile environment for the impacted student or students. If a hostile environment is found to exist, the University must take steps to eliminate the hostile environment. OCR reviewed the case files to evaluate whether the University was effectively responding to incidents of sexual harassment in order to identify whether the incident created a hostile environment for a student or students and, if so, whether there were appropriate steps necessary to eliminate it.

OCR found that in one case, the University's own inaction resulted in the presence of a hostile environment for a student who was subjected to sexual assault. In the case described above regarding interim measures involving the rape of a student athlete by another student athlete, the University's failure to enforce the interim no trespass ban and no contact order against the respondent caused the reporting student to continue to be subjected to a hostile environment. In that case, the University found that the reporting student had been raped by the respondent. A single incident of rape is considered sufficiently serious as to constitute a hostile environment under Title IX. The University instituted the interim measures to keep the respondent away from the reporting student during the pendency of the investigation. Over the course of the 134 days and 159 days it took the University to complete its OJA and SHS investigations, the student, her roommate, and others reported that the respondent was violating the orders, including being in the reporting student's residence hall. As described above, however, the University did not take steps reasonably calculated to enforce the order and the complainant continued to encounter the respondent, including in her residence hall. The failure to enforce the interim measures, compounded by the

fact that it took 134 and 159 days to complete the investigations, allowed the complainant to continue to be subjected to a hostile environment.

During OCR's interviews, University staff told OCR that the complainant had suffered a drop in her grades after the incident and that she considered dropping out of school in part because the lack of enforcement of the trespass ban meant she could not avoid seeing the respondent. University advocacy staff told OCR that they worked extensively with the complainant to encourage her not to drop out of school. Based on these facts, OCR finds that the University's own inaction perpetuated the hostile environment experienced by the student.

OCR finds the University in violation of Title IX regarding its response to the hostile environment that it permitted to continue by its own inaction.

- Adequate Response to Reports

The University has an obligation to respond to incidents of sexual harassment about which it knows or should have known. This response should include determining what occurred, who was involved, and whether and what steps the University should take.

While it can present a challenge for the University to take these steps in circumstances such as those when the University has notice of an incident, but where the alleged victim does not file a report, where the alleged victim or reporting party declines to participate in the investigation or requires confidentiality, where the suspected respondent is unknown to the University, or where the suspected respondent is not a student, these circumstances do not relieve the University of its responsibility to take reasonable steps to determine what occurred and evaluate whether steps should be taken to address any hostile environment that may have been created by the incident. In cases such as these, the University should evaluate what steps it can take in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Based on the case files reviewed, OCR has concerns that in some instances the University may have taken no or inadequate action solely because it lacked sufficient participation of the impacted or reporting student, or the suspect was unknown or not a student.

For example, the University received a report from student B that student A had been raped by student C, who lived one floor above students A and B in the same dormitory building. Student A did not wish to file a report, student B requested confidentiality, and neither students A nor B provided the name of student C to the University. Student B informed the University that student C routinely used the dormitory stairs next to student A's room. The University provided student B with information about sexual assault resources to share with student A. There is no information in the file to suggest that further steps were taken to assess if additional steps might be appropriate to meet the University's responsibility to provide a safe environment for all students.

Accordingly, OCR has a concern that the University may not have fulfilled its obligations to investigate or otherwise determine what occurred when it knew or should have known about alleged sexual harassment.

- Notice of Outcome for Both Parties

The University has an obligation under Title IX to provide notice of the outcome of its investigation to the parties on an equitable basis.

OCR found that in almost every case file it reviewed that included decision letters, the respondent's decision letter included more detail than the complainant's. Specifically, the respondents' decision letters recounted the evidence and witness statements relied on for the determinations, and the complainants' decision letters simply included the determination without any elaboration regarding the reason for the fact-finder's conclusion or any of the evidence considered in arriving at the determination. For example, in two related cases alleging that one student was raped by two other students, the University's investigation found insufficient evidence to support a finding of sexual assault under the Student Conduct Code. In both instances, the respondents' letters providing notice of outcome were significantly longer and more detailed than the complainant's letter, and the respondents' letters set forth the reasons for the University's decision, while the complainant's letter did not.

In other instances, OCR found that notice of the outcome was provided to the complainant sometime after the respondent received notice. In two related cases, one student reported that she was physically sexually harassed by the respondent, and one month later a second student reported inappropriate touching by the same respondent. The respondent was found responsible in the investigation of both allegations. In both cases, the records in the file suggest that the complainants received notice of the outcome of the investigation two months after the respondent was notified. OCR also found cases in which the respondent received notice of the outcome but there is no record in the file that the complainant in the case ever received notice of the outcome. For example, in one case involving verbal sexual harassment, the complainant reported to the University that she received many sexually harassing e-mails from the respondent. Once the University completed the investigation, the respondent received a decision letter explaining its findings and sanctioning him, but the file does not reflect that the complainant was ever provided notice regarding the outcome of the investigation.

In several instances, OCR's review identified cases where only the respondent was provided notice of the right to appeal the University's decision but the complainant was not. In the example above involving the two students accused of rape, when the University found in favor of the respondents, the respondents received a notice of their right to appeal but the complainant did not.

Accordingly, OCR has a concern that the University may not have provided equitable notice of outcome to parties. OCR would need to further investigate these individual cases to determine if the apparent failures found in the case files regarding notice could be confirmed.

- Protection Against Retaliation

OCR found that there were cases where it appears that the University failed to properly respond to allegations of retaliation against a complainant. In one case, a graduate student alleged that she had

been sexually harassed by her advisor, who made unwanted sexual advances to her. Following the investigation a fact-finding report concluded that the professor had sexually harassed the student.

The University’s fact-finding report stated that, according to one witness, after the student filed the complaint, the advisor told this witness “on numerous occasions how he will retaliate against (complainant);” that he would “ruin (complainant’s) career;” and that if he lost the sexual harassment case, “his name will be stained and he will sue (complainant) and take her to court to give her a lesson.” The fact-finding report states that the decision maker must decide whether or not to initiate an investigation of retaliation. There is no information in the file, however, that the potential retaliation issue identified in the fact-finding report was ever investigated by the University or that the University took steps to respond to these threats of retaliation or to follow up with the complainant.

OCR has concerns that the University may have failed to take proper steps to prevent retaliation, respond to retaliation allegations presented to the University during its investigation, or to consider those issues as related to its investigation.

- Notice of Grievance Procedures

OCR’s investigation identified students in particular graduate programs, including the law school and library sciences programs, who may not have been provided information that they could file complaints with the Title IX office. During the on-site, OCR conducted a focus group with law students. The third year law students reported that they were not told about University-wide Title IX resources or procedures, but rather were told to report sexual harassment to the law school deans. A former graduate student in the library sciences program reported to OCR that after she was raped off campus, she did not know how or where to report the rape, and that no such information had been given to graduate students in her department.

Additionally, the University’s medical school’s webpage for Title IX and sexual harassment states that the medical school’s own Title IX grievance procedure applies to all allegations of sexual discrimination involving students, faculty, or staff members. However, the University’s websites do not appear to contain such a procedure. In addition, the medical school’s 2016-2017 Medical Student Resource Guide provides an outdated reference/weblink to a withdrawn University sexual harassment procedure.

Accordingly, OCR has a concern that the University may have failed to provide adequate notice of its grievance process to its graduate students.

Resolution Agreement

The enclosed Agreement addresses the violations and concerns that OCR identified. In accordance with the Agreement, the University agrees to:

- Review, revise, and provide notice of its policies and procedures (Procedures) used to address sexual harassment, so they are consistent with Title IX requirements.
- Review any additional published material relevant to sexual harassment, including electronic materials and websites, and ensure that all materials are internally consistent with, and do not conflict with, the Procedures.
- Provide training regarding revised policies and procedures to “responsible employees,” and University employees and contracted persons who are directly involved in investigating and/or resolving reports of sex discrimination for the University.
- Conduct climate surveys of students.
- Submit to OCR documentation of its centralized system for tracking and recording complaints, reports, investigations, interim measures, and resolutions of student, employee, and third party conduct that may constitute sexual harassment or sexual violence.
- Contact the complainants and respondents who were involved in reports and complaints of sexual harassment and sexual violence, from August 1, 2013, to October 1, 2017, for which a student was one of the parties, to provide them with the opportunity to request that the University review any specific concerns they may have about the processing of their reports or complaints.

This concludes OCR’s investigation. This letter should not be interpreted to address the University’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR’s determination in an individual OCR compliance review. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint or compliance review resolution process. If this should occur, an individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR will monitor implementation of the Agreement. If the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the University written notice of the alleged breach and 60 calendar days to cure the alleged breach. The University’s first report under the Agreement was received by OCR on January 29, 2018.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this compliance review. We recognize and appreciate the dedication displayed by your staff throughout our interactions with them. If you have any questions, please feel free to contact Amy Klosterman, Attorney, by telephone at (206) 607-1622 or by e-mail at amy.klosterman@ed.gov; Shirley Oliver, Senior Equal Opportunity Specialist, by telephone at (206) 607-1633 or by e-mail at shirley.oliver@ed.gov, or Tina Sohaili, Attorney, by telephone at (206) 607-1634 or by e-mail at tina.sohaili@ed.gov.

Sincerely,

/ s /

Linda Mangel
Regional Director

Enclosure: Resolution Agreement