



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I

5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

April 28, 2014

President Anthony P. Monaco
Tufts University
Office of the President
Ballou Hall, 2nd Floor
Medford, Massachusetts 02155

Re: Complaint No. 01-10-2089

Dear Dr. Monaco:

This letter is to advise you that the U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation and resolved the above-referenced complaint of sexual assault and sexual harassment filed against Tufts University (University) in September 2010, and amended in February 2011. As you know, the original complaint alleged that the University discriminated against a Student on the basis of sex by failing to take prompt and equitable steps to investigate and respond to the Student's report that she was sexually assaulted and that the University retaliated against the Student by threatening to remove her from her selective University leadership program (Program) should she not attend the Program's weekly meetings with the accused student. In the amendment, the Complaint further alleged that the University failed to respond appropriately to the Student's written complaint of sexual assault made in June 2010, that the Student had been subjected to a continued sexually hostile environment, and that the University's internal investigation had not progressed in a prompt and equitable manner. This letter constitutes both a letter of findings and a letter of pending enforcement action under OCR's case processing procedures, as set forth in its *Case Processing Manual*.¹

OCR initiated this investigation under Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex in programs and activities that receive Federal financial assistance from the U.S. Department of Education. OCR had jurisdiction to proceed in this case because the University is a recipient of such Federal financial assistance.

OCR examined whether the University responded promptly and equitably to complaints, reports and other incidents of sexual violence and sexual harassment (hereafter referred to as sexual violence/harassment) of which it knew or reasonably should have known, including the Student's

¹ <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>

sexual assault report and complaint and her sexual harassment complaint, and whether any failure to respond appropriately allowed for the creation and continuation of a sexually hostile environment.

This letter summarizes the facts and conclusions found by OCR during its investigation and resolution of this complaint. OCR determined that the evidence did not support that the University retaliated against the Student. OCR determined that the University has failed to provide a prompt and equitable response to complaints of sexual harassment/violence as required by Title IX, including the Student's complaints of sexual harassment/violence. OCR further determined that for the Student, this failure allowed for the continuation of a hostile environment that limited and denied her access to the educational opportunities in her Program. OCR also determined that the University failed to comply with the Title IX requirement to designate and provide notice of its Title IX Coordinator, but that the University has taken action to resolve this compliance concern.

Legal Authority

The Title IX implementing regulation, at 34 C.F.R. § 106.31(a), provides that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. Specific obligations are set forth at 34 C.F.R. § 106.31(b), including a recipient's obligation to ensure that its students are not denied or limited in their ability to participate in or benefit from the recipient's programs or activities on the basis of sex.

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX.² Sexual harassment is unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, including sexual assault or other 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 a variety of related factors to determine if a sexually hostile environment has been created and also considers the conduct in question from both an objective and subjective perspective. Factors examined include the type of harassment; the frequency and severity of the misconduct; the age, sex, and relationship of the individuals involved; the setting and context in which the harassment occurred; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. A single or isolated instance of sexual violence may create a hostile environment. Even if the sexual harassment/violence did not occur in the context of an

² The applicable legal standards described herein are more fully discussed in OCR's 2011 Dear Colleague Letter on Sexual Violence, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (Apr. 4, 2011). See also OCR's 2010 Dear Colleague Letter on Harassment and Bullying, which is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html> (Oct. 26, 2010); OCR's Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties at: <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html> (Jan. 19, 2001).

education program or activity, a recipient must consider the effects of the off-campus sexual harassment/violence 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 harassment/violence while at school or in an off-campus education program or activity.

Once a recipient knows or reasonably should have known about sexual harassment/violence that may create a hostile environment for its students, the recipient must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that sexual harassment/violence created a hostile environment, the recipient must then take prompt and effective steps reasonably calculated to end the sexual harassment/violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. These duties to respond are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the sexual harassment/violence as a form of discrimination. A series of escalating consequences may be necessary if the initial steps are ineffective in stopping the harassment. If a recipient delays responding to allegations of sexual harassment/violence or responds inappropriately, the recipient's own action may subject the student to a hostile environment. If it does, the recipient will be required to remedy the effects of sexual harassment/violence that could reasonably have been prevented had the recipient responded promptly and appropriately. A recipient's obligation to respond appropriately to sexual harassment/violence complaints is the same irrespective of the sex or sexes of the parties involved.

In addition, if there is an incident involving potential criminal conduct, the recipient must determine, consistent with state and local law, whether appropriate law enforcement or other authorities should be notified. A law enforcement investigation does not relieve the recipient of its independent Title IX obligation to investigate the conduct; a recipient should not wait for the conclusion of a criminal investigation or proceeding before responding itself, including by beginning its own investigation and, if needed, by taking immediate steps to protect the complainant³ during the pendency of its investigation/resolution.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX, including sexual harassment/violence. The recipient's grievance procedures must apply to complaints filed by students alleging discrimination by employees, other students, or third parties. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment/violence complaints. However, a recipient's grievance procedures for handling discrimination complaints must meet the Title IX requirement of affording a complainant a prompt and equitable resolution.

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR considers whether the procedures provide for notice to students and employees of the procedures,

³ The term "complainant" as used throughout this letter refers to an individual who is the subject of alleged sexual harassment/violence.

including where complaints may be filed; application of the procedures to complaints alleging discrimination or harassment carried out by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and prompt timeframes for major stages of the grievance process; written notice to the parties of the outcome of the complaint and any appeal; and an assurance that the recipient will take steps to prevent recurrence of any discrimination, such as harassment, and to correct its discriminatory effects on the complainant and others, if appropriate. The procedures for resolving complaints of sex discrimination, including sexual harassment/violence, should be written in language that is easily understood, be easily located and be widely distributed.

Pending the outcome of an investigation of a report or complaint, Title IX requires a recipient to take steps to ensure equal access to its education programs and activities and to protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. Such interim measures minimize the risk of harm and continued harassment while the recipient conducts its inquiry. The recipient should undertake these interim measures promptly once it has notice of the sexual harassment/violence allegation and should provide the complainant with periodic updates on the status of the investigation. It should notify the complainant of his or her options to avoid contact with the accused and allow the complainant to change academic and extracurricular activities or his or her living, transportation, dining, and working situation appropriate. The recipient 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. The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. In general, when taking interim measures, recipients should minimize the burden on the complainant. For example, if the complainant and alleged perpetrator share the same class or residence hall, the recipient should not, as a matter of course, remove the complainant from the class or housing while allowing the accused to remain without carefully considering the facts of the case. Recipients should also check with complainants to ensure that the interim measures are effective, and if ineffective, identify alternatives.

For Title IX purposes, if a student requests that his or her name not be revealed to the accused or asks that the recipient not investigate or seek action against the accused, the recipient should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the accused. The recipient should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. If the student still requests that his or her name not be disclosed to the accused or that the recipient not investigate or seek action against the accused, the recipient will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the violence. If the school determines that it can respect the student's request not to disclose his or her identity to the accused, it should take all reasonable steps to respond to the complaint consistent with the request.

When a recipient 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. OCR has advised recipients to be aware that complaints of sexual harassment/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, recipients must have policies and procedures in place to protect against retaliatory harassment. At a minimum, recipients 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 and respond promptly and appropriately to address any new problems.

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

Throughout the recipient's investigation and in any hearing, both parties must have equal opportunity to present relevant witnesses and other evidence. Also, the recipient must use a preponderance of the evidence standard for investigating allegations of sexual harassment/violence. If a recipient provides for appeal of the findings or remedy, it must do so for both parties. The recipient must maintain documentation of all proceedings.

In addition, recipients should provide training to employees about its grievance procedures and their implementation. 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/violence, and in the recipient's grievance procedures as well as applicable confidentiality requirements. In sexual assault cases in particular, the fact-finder and the decision-maker also should have adequate training or knowledge regarding sexual violence. Recipients should also provide training about its grievance procedures and their implementation to any employees likely to witness or receive reports of sexual harassment/violence; including teachers, university law enforcement unit employees, university administrators, university counselors, general counsels, health personnel, and resident advisors. Recipients need to ensure that their employees are trained so that they know to report harassment to appropriate officials, and so that employees with the authority to address harassment know how to respond properly.

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX, including sexual

harassment/violence). To comply with these regulatory requirements, a recipient's grievance procedures must be responsive to complaints of sex discrimination in the recipient's education programs and activities filed by students alleging discrimination by employees, other students, or third parties. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment/violence complaints. However, any procedures used for sexual harassment/violence complaints must meet the Title IX requirement of affording a complainant a prompt and equitable resolution.

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR considers whether the procedures provide for notice to students and employees of the procedures, including where complaints may be filed; application of the procedures to complaints filed by students or on their behalf alleging discrimination or harassment carried out by employees, other students, or third parties; provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and accused to present witnesses and evidence; designated and reasonably prompt timeframes for major stages of the grievance process; written notice to the complainant and accused of the outcome of the complaint and any appeal; and an assurance that the recipient will take steps to prevent recurrence of any discrimination or harassment, and remedy discriminatory effects on the complainant and others, if appropriate.

To ensure individuals can invoke Title IX protections without fear of reprisal, Title IX prohibits retaliation against any student who files a complaint and/or participates in the grievance procedure, participates in the investigation or resolution of such complaints, opposes perceived sex discrimination, or otherwise exercises any right secured by Title IX.⁴ Prohibited retaliatory acts include intimidation, threats, coercion, or discrimination against any such individual. In determining whether retaliation has occurred, OCR examines: (1) whether the complainant engaged in a protected activity – that is, exercised a right or took some action that is protected under the laws that OCR enforces; (2) whether the covered entity had notice of the individual's protected activity; (3) whether the covered entity took an adverse action against the complainant; and (4) whether OCR can infer a causal connection between the protected activity and the adverse action. If any one of these elements is not established, then OCR will find insufficient evidence of a violation. If, however, all the elements are established, then OCR will determine: (5) whether the covered entity has identified a legitimate, non-discriminatory reason for taking the adverse action. If so, OCR will determine whether this explanation (or any other reason it uncovers) is merely a pretext for retaliation.

The Title IX implementing regulation, at 34 C.F.R. § 106.8(a), also requires that recipients of Federal financial assistance designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law. The recipient is further required to notify all students and employees of the name (or title), office address, and telephone number of the designated employee(s). The coordinator's responsibilities include overseeing the recipient's response to Title IX reports and complaints of sexual harassment/violence, and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. The coordinator or designee should be available to meet with students, as needed. The Title IX

⁴ 34 C.F.R. §§ 106.8(b) and 106.71, incorporating by reference 34 C.F.R. § 100.7(e).

coordinator should not have other job responsibilities that may create a conflict of interest. Also, as noted above, recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. In addition, OCR's 2011 Dear Colleague Letter on Sexual Violence states that recipients should notify all students and employees of the electronic mail (email) address of the Title IX Coordinator.

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), also requires that recipients implement specific and continuing steps to notify applicants for employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the education programs or activities it operates. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires recipients to include the notice of non-discrimination in each announcement, bulletin, catalog, or application form that it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees. The notice of nondiscrimination must state that the recipient 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 recipient's Title IX coordinator or to OCR. The recipient must notify all of its students and employees of the name or title, office address, telephone number, and email address of the recipient's designated Title IX coordinator.

Background

Tufts University is a private educational institution with undergraduate, graduate, and professional schools principally based in Medford, Massachusetts with additional campuses in Boston and Grafton. For the 2013-2014 academic year, the University has over 10,000 students, approximately half of whom are undergraduate students (51% female and 49% male).

As part of its investigation, OCR examined the University's policies and procedures for responding to reports of sex discrimination and retaliation, including the University's current policies and procedures and those in effect at the time the Student filed her complaint in the 2010-11 academic year. OCR specifically reviewed documentation provided by the University regarding its handling of the Student's allegations of sexual assault and sexual harassment in 2010 and 2011 and the eight complaints of sexual harassment/violence processed by the University in 2011-2012 and 2012-2013. OCR also reviewed extensive documentation from the University, including correspondence between the University and the Student's attorney, internal correspondence amongst University staff, documentation from the case files of the Student and the eight complaints filed in 2011-12 and 2012-13, and University police records. OCR interviewed the Student as well as the two other complainants who agreed to speak with OCR about their experiences.

OCR also gathered additional information regarding the components of the University's overall response to sexual harassment/violence, including the designation, role and responsibilities of the Title IX coordinator; the University's notice of non-discrimination; training for staff and administrators, especially for those charged with administering the University's policies on

sexual harassment/violence; outreach and trainings for students on how to prevent sexual harassment and assault and how to respond if it should occur; information about the University's Task Force; and resources on campus for students who are victims of sexual harassment/violence. OCR also reviewed and considered information that is generally available to the public, such as news reports, social media, including blogs, and information from advocates regarding the University's response to sexual harassment/violence.

OCR conducted a number of on-site interviews of University staff, including with the Vice President of University Relations; current Dean of Campus Life and Student Leadership and former Dean of Student Affairs (a new Dean of Student Affairs was appointed as of April 2014); Judicial Affairs Officer; Dean of Undergraduate Education; Senior Director of Health and Wellness Services; Sexual Violence Resource Coordinator; Director of the Women's Center; Captain of the University Police Department; Director of Residence Life; and other faculty, staff and administrators relevant to the issues investigated.

Facts

Title IX Coordinator

At the time of the Student's report of sexual assault in January 2010,⁵ the University's sexual harassment policy identified the Director of the University's Office of Equal Opportunity and Affirmative Action (OEO) as the University's Title IX Coordinator, and required all University personnel to report incidents of sexual harassment to that individual. However, the OEO Director position was vacant at that time and was not filled in on a permanent basis until November 2011.

Notice of Non-Discrimination

The University has a notice of non-discrimination and accompanying non-discrimination policy, published on its website in the OEO Policies and Procedures Handbook as a "Non-Discrimination Statement" and a "Non-Discrimination Policy,"⁶ which state that the University prohibits discrimination on the basis of sex in any of its "educational programs or activities" as well as such discrimination against "any employee or any applicant for employment." These materials also specify that the University's non-discrimination obligations are assured by Title IX, and refer inquiries concerning the application of the non-discrimination statement(s) to certain designated employees whose contact information is provided.

Student Judicial Processes

As of January 2010, when the Student made a report of sexual assault to the University, the University had two separate grievance procedures for processing complaints, including

⁵ The Student's report may have been filed as early as December 2009, but because the evidence as to the December date was inconclusive, OCR has used January 2010 as the date of her report for purposes of this letter.

⁶ Available at <http://oeo.tufts.edu/non-discrimination-statement> and <http://oeo.tufts.edu/wp-content/uploads/Non-Discrimination-Policy-December-2012.pdf> respectively.

complaints of sexual harassment/violence. First, the University had a Student Judicial Process, the disciplinary mechanism through which any individual could bring forward concerns about enrolled students at the University. Second, as of June 2010, the University instituted its new “Student Judicial Process for Allegations of Violence, Including Sexual Assault Cases” (Sexual Assault Process).

The University’s Dean of Student Affairs and the Judicial Affairs Officer (who was and continues to be part of the Student Affairs Office) were charged with overseeing these procedures. According to the Dean and Judicial Affairs Officer, every complaint that was filed pursuant to either the Student Judicial Process or the Sexual Assault Process was required to be reviewed to determine whether the conduct described, if true, would constitute a violation of the University’s student Code of Conduct at that time. The disciplinary consequences for violations of the Code of Conduct were contained in the University’s student Judicial Code, which listed possible sanctions for violations of the Code of Conduct, with examples of conduct that could lead to each level of disciplinary sanctions.

The Sexual Assault Process was used when a complaint was filed with the Dean of Student Affairs Office, and the complaint was accepted as stating a claim of sexual assault or violence. Once this complaint, described as “an initial written statement detailing the allegations,” was submitted, the complainant was not permitted to amend it. The process required the complainant to author the complaint, and stated “it was unacceptable for a complainant to submit a statement written by others, including parents, support persons or attorneys.” Students were allowed to consult with a support person (who was not allowed to be an attorney) regarding the complaint. Once the complaint was filed and accepted, the accused student would be notified about the complaint and provided with a brief description of the incident (written by the complainant) underlying the complaint. The accused student had one week to submit a written statement responding to the charges. Parties were not allowed to file amendments/addenda, nor were they allowed to introduce another party’s sexual history or medical information.

The Sexual Assault Process provided that “all ... complaints involving sexual assault will be referred to the fact-finding process” and that “[o]ther complaints will be referred [to the fact-finding process] at the Dean’s [of Student Affairs] discretion.” The process did not include any timeframes for the resolution of a complaint or its major stages; the only stated timeframe was the one-week allowed for an accused student to respond in writing to the charges made against him/her. That process also charged the Fact-Finder with investigation and evaluation of the information obtained during an investigation that would include relevant witnesses and information, and providing the report and recommendation to the Dean of Student Affairs, who in turn would formally decide whether a violation occurred and, if so, what discipline to issue. In order to take disciplinary action, the process required that the Dean of Student Affairs “be sufficiently persuaded that the student has violated the rules of the University,” which would be “guided by his/her reasonable discretion and interpretation of the report and recommendation of the fact-finder and consistent with the standards set forth in the Student Judicial Process booklet.”

The Student Judicial Code also stated that the University would not restrict a student accused of a violation (including sexual harassment/violence) from attending classes or University activities

unless/until there was an actual finding in the case or a court order requiring separation. A University stay-away order could be obtained by one student against another student “for any reason,” and its purpose was to formalize one student’s request not to have any form of communication with another student. The University’s stay-away orders at the time prohibited students from communicating with one another but did not require students to physically stay away from each other.

Response to Student’s Report/Complaints of Sexual Assault and Sexual Harassment

As noted above, the Student alleged that the University failed to promptly and equitably respond to her report in January 2010 of sexual assault and her June 2010 written complaint of sexual assault and subsequent harassment. The Student objected that the University’s investigation took too long, that the University did not provide her with appropriate interim protective measures during the investigation, and that the University’s actions and inactions subjected the Student to a continued hostile environment.

During the 2009-10 academic year, the Student was involved in a selective University leadership program (Program) that included a weekly seminar, networking opportunities and summer internship opportunities. OCR’s investigation indicated that in January 2010, the Student reported to Program staff that she had recently been sexually assaulted by her then-boyfriend (Accused), who was also a Program participant. She also told Program staff that in addition to feeling uncomfortable participating in the Program’s weekly seminar, which both she and the Accused attended, she felt particularly uncomfortable on a continual basis because the Accused lived in her residence hall. Shortly afterwards, staff reported the alleged assault to the Dean of Student Affairs Office.

Around this time, the Accused also contacted the Dean of Student Affairs Office. The Accused explained to the Judicial Affairs Officer that he wanted to secure a University stay-away order against the Student for what he claimed were her impending false charges of rape. The University issued a stay-away order to the Student and the Accused.

Shortly afterwards, the Student herself met with the Judicial Affairs Officer and the Dean of Student Affairs Office to ask questions about the grievance procedure and the types of sexual assault covered by University policy.

The University initiated an investigation of the alleged sexual assault in late June 2010, when the Student filed a written complaint. As noted above, the University instituted its new Sexual Assault Process that same month. The Dean of Student Affairs and Judicial Affairs Officer explained to OCR that until March 2011 (when they attended an OCR conference on Title IX), they did not believe they had a duty to investigate or otherwise respond to a report of a sexual assault if the student did not file a written complaint with the University.

Shortly before the Student filed her written complaint, the University had accepted the Accused’s complaint against the Student for “fraud” stemming from her alleged untruthful statements to him. The University processed the parties’ complaints against one another as a single consolidated investigation and required the Student to respond to the Accused’s complaint against her as a condition of continuing with her complaints of sexual assault and sexual

harassment. The University hired the investigating Fact-Finder on October 29, 2010, who interviewed witnesses in late January 2011 and submitted a report to the Dean of Student Affairs regarding both complaints on June 10, 2011. The Student was informed of the outcome of the investigation on June 21, 2011.

OCR noted that, in implementing the complaint resolution procedures with respect to the Student and Accused, the University allowed the Accused to depart from the sexual harassment grievance procedures in effect at that time, by allowing him to amend his complaint several times, including by submitting an Addendum to his response on July 28, 2011, and allowing him to include details of the Student's sexual history. Although it was determined that the Accused had obtained medical information about the Student by misrepresenting himself as a University medical student, the University also allowed consideration of that information, contrary to applicable policy prohibiting the use of medical history.

With one exception (discussed in this paragraph below), the University did not, at the time of being on notice of the Student's allegation (in January 2010) and the concerns she expressed to the University that she did not feel safe on campus, take steps to physically separate the students, including by moving either/both student(s) out of the residence hall they shared, or advising the Student about University resources available to her to help obtain physical separation, such as existing University procedures allowing any student to request a move at any point for any reason. The Student stated that she was not aware of the option to move out of her residence hall until around April 2010, when a concerned professor informed her that she could do so upon request. As a consequence, she asserted, she spent several months isolated in her room, travelled circuitous routes through the residence hall, and avoided communal spaces. The Student moved out of the residence hall after learning of this option. The one exception noted above was the Judicial Affairs Officer's explanation to the Student in or around January 2010 about her right to file a University-issued stay-away order against the Accused. The Judicial Affairs Officer told the Student that she would only be able to ensure physical separation by obtaining a court-issued restraining order. The Student was not provided any other resources or information at that time.

Subsequent to the filing of her initial report of sexual assault, the Student reported ongoing harassment by friends of the Accused. Specifically, she reported that she had been verbally and/or physically assaulted by strangers she connected to the Accused, and in one instance an individual the Student did not know walked up to her and quoted sensitive language from her complaint. She also reported being subjected to harassment in the residence hall, including being called derogatory names and placing items in her doorway that jammed her door. She stated that she asked the Dean of Student Affairs for assistance.

Beginning in the summer of 2010, the Dean of Student Affairs arranged for assistance for the Student from the University Police Department (TUPD) by referring each of the Student's allegations of harassment to TUPD for investigation, encouraging her to use the TUPD escort service, and asking TUPD to be more responsive to the Student's requests for an escort. The Student stated that she found the escorts ineffective for a number of reasons. The University did not consult with the Student to determine whether she desired the TUPD escort services to begin with, and the Student reported that she was in fact reluctant to take advantage of that service because the Accused had alleged in his complaint that she was misusing it. On several occasions

the Student reported to the Dean of Student Affairs Office that these measures were “not working,” but the University did not consult with the Student regarding what could be changed. Because TUPD was only charged with investigating criminal activity, it took no action on the Student’s allegations of ongoing harassment once it concluded that they did not comprise criminal misconduct.

The Student secured a court-ordered temporary restraining order against the Accused in February 2010. In February 2010, Program staff notified her that the University would enforce the court order by allowing her and the Accused to alternate attendance at the Program’s weekly seminars. In March 2010, the University moved the Accused to a different residence hall to enforce the court order, as well.

Shortly before the Fall 2010 term, staff with the Student’s Program informed her that she and the Accused would now be required to attend every weekly seminar (together) or risk expulsion from the Program. OCR found that the Student met with staff with the Program to protest this decision, and within a week they reversed it to some extent: Program staff informed the Student that she would not be required to attend the seminars and that she would not be penalized, much less expelled, for missing the seminars; and Program staff offered to meet with her every week to apprise her of any significant discussions she may have missed and to provide advising services. But, the Program declined to revert to the Spring 2010 arrangement where the Student and Accused alternated their attendance at the weekly seminar. The Student elected to not attend the seminar to avoid being in close physical proximity with the Accused, and in doing so missed every weekly seminar from that point forward until she graduated in Spring 2011. She reported to OCR that she accelerated her academic schedule and took summer coursework to graduate – and therefore exit the University– one full year early, but she asserted that she lost summer fieldwork opportunities and incurred debt in order to do so.

As noted earlier, the Student Judicial Code then in effect provided that the University would not restrict any accused student from attending classes or University activities unless/until there was an actual finding in the case (which in this case did not occur in this case until June 2011) or a court order requiring separation (which, for the Student, was in effect for much of Spring 2010 but was vacated before the start of the Fall 2010 term).

On June 21, 2011, the Dean of Student Affairs wrote to the Student to inform her of the outcome of the “disciplinary cases” between her and the Accused. The Dean explained that the preponderance of the evidence standard was used in reaching the findings. The Dean concluded based on the report of the Fact-Finding that there was insufficient evidence to sustain her allegations of “sexual assault, assault or harassment” against the Accused. The Dean also notified the Student that she was found to have committed “misrepresentation/fraud” relating to her creation and use of a fabricated letter about her medical conditions and her “lack of truthfulness with others, including university officials.” The letter further stated that this violated the Code of Conduct and she therefore received a consequence of Disciplinary

Probation, Level II.⁷ That same day, the Dean of Student Affairs notified the Accused that he was being placed on Disciplinary Probation level II for “misrepresentation/fraud,” specifically misrepresenting himself as a University medical student in order to obtain the Student’s confidential medical information. This June 2011 disposition occurred 18 months after the Student notified Program staff of her allegation of sexual assault.

Other Complaints of Sexual Misconduct

In addition to reviewing the University’s response to the Student’s complaint, OCR also reviewed documents from the eight complaints of sexual misconduct, a majority that alleged sexual assault, that were processed by the University in the 2011-2012 and 2012-2013 academic years. Documentation provided to OCR from the University about its handling of these complaints did not include information about whether interim measures were provided to the complainants. Of these cases, two concluded with insufficient evidence findings, and one case was resolved without a full investigation. The five remaining cases resulted in violation findings, with disciplinary sanctions that varied with the severity of the conduct.

OCR also reached out to students involved in the complaints we reviewed and those students expressed the following concerns to us: dissatisfaction with the then-Dean of Student Affairs’ role in the process, stating that the Dean lacked empathy for the students and did not provide adequate information about the process, including information about available interim measures, disagreement with the sanctions imposed on students found responsible for sexual harassment/violence, and criticism that the definition of the most serious form of sexual assault then used by the panel was inadequate, particularly for gay and lesbian students.

University’s Revised Sexual Harassment Policies and Procedures

Beginning Fall 2011, the University undertook steps to extensively update its Title IX response structure and process. The University’s current Title IX response structure centralizes Title IX response authority primarily with the OEO, whose director is the Title IX Coordinator. All notices and complaints of actual or potential sexual harassment/violence are forwarded to OEO, whose staff are charged with “managing” the resolution process – including investigating such notices and complaints, overseeing interim measures, coordinating with other University bodies during the resolution process (*e.g.*, to provide and assess the efficacy of interim remedies), and training and selecting the administrative decision-making panel which ultimately decides all cases of sexual harassment/violence. The University has trained and designated a number of staff at each of the University’s campuses (Medford, Boston and Grafton) to serve as Title IX Liaisons to whom students may report sexual harassment/violence or discuss Title IX resources in general. Furthermore, any member of the public also has the option of filing a report online, including anonymously, through the University’s electronic database EthicsPoint, which the Title IX Coordinator directly reviews. The Title IX Coordinator is generally charged with overseeing

⁷ The Judicial Code stated that Disciplinary Probation Level II “indicates a more serious breach of community standards.” Under Level II, the student is placed on probation for a specified time period and a record of such probation is noted on the student’s transcript for four years from the date of the incident that caused the action.

this entire process and reports directly to the University's Senior Vice President and General Counsel. The Title IX Coordinator's responsibilities and work since 2011 are further discussed in the next section ("New Title IX Coordinator").

OEO has no direct authority to take any disciplinary action; that authority is vested with the Dean of Student Affairs Office, which is formally charged with initiating the adjudication process and exacting and enforcing any resulting sanction. To that end, students are notified of their right to file complaints with either the Dean of Student Affairs Office or OEO to trigger the adjudication process. The Dean of Student Affairs also serves as a point of contact for the parties in addition to the Title IX Coordinator (*e.g.*, to debrief the parties about the final findings and sanctions, if any).

The University's most current Title IX policies and procedures, which were substantially revised following OCR's 2011 Dear Colleague Letter on Sexual Violence, are posted on the University's website and include the updated Sexual Harassment Policy (SH Policy), published in July 2012; updated Sexual Misconduct/Sexual Assault Policy (SM/SA Policy), published in September 2013; and the Sexual Misconduct Adjudication Process (SMAP), published in September 2013.⁸ The SM/SA Policy and SMAP were effective at the beginning of the 2013-14 academic year.

The current SM/SA Policy covers all aspects of sex and gender discrimination in the campus environment, including sexual harassment/violence. The Policy includes comprehensive definitions of terms like "consent," "incapacity" and "force," as well as examples of the types of prohibited conduct, and defines sexual harassment as "unwelcome conduct of a sexual nature." The Policy also includes a broader definition of "sexual assault," which addresses the concern expressed about the definition of the most serious form of sexual assault being overly narrow. The current Policies cover all aspects of sex and gender discrimination in the campus environment, including sexual harassment/violence. The policies include comprehensive definitions of terms like "consent," "incapacity" and "force," as well as examples of the types of prohibited conduct, and define sexual harassment as "unwelcome conduct of a sexual nature."

The SM/SA Policy provides information about University and community resources available to support complainants' physical and emotional well-being, as well as information on how to obtain interim measures, how to report misconduct and file complaints, and the disciplinary consequences for sexual harassment/violence. The Policy also includes detailed information about the availability and types of interim remedial measures, such as restrictions of movement on campus, removal from the University housing and/or removal from campus, and enforceable no-contact orders that address communications between as well as physical separation of students. Relatedly, the Policy provides information about University and community resources that provide support for individuals' immediate personal safety as well as their physical and emotional well-being.

The adjudication process for sexual misconduct complaints, described in the SMAP, has changed from a one-person decision-making process by the Dean of Student Affairs on each of the

⁸ <http://oio.tufts.edu/policies-and-procedures/sexual-harassment-policy/>

University's three campuses, to a three-person panel selected by the Title IX Coordinator that decides cases based on its review of investigative findings presented by the Title IX investigator.

Among other revisions, the SMAP designates reasonably prompt timeframes for several of the major stages of the investigation and complaint resolution process. Specifically, the SMAP states that "under ordinary circumstances during the academic year," the process should be completed within 60 to 90 days from the receipt of the complaint. The SMAP also includes non-retaliation provisions; clarifies that the preponderance of evidence standard applies to investigations of sexual harassment/violence allegations; and confirms that a criminal investigation will not halt the University's processing of an internal complaint. The SMAP appeal system has also been modified. Under older systems, appeals were heard by a committee of students, which was later modified to a single administrator, to the current appellate body that consists of a three-person panel of trained administrators. Both parties can request an appeal, and each party may have one non-attorney support person in any/all interactions relating to the resolution process (*e.g.*, interviews with the Title IX investigator, related meetings, hearings). Conflicts of interest will disqualify panel members from hearing an individual case, and panel members are specifically trained in Title IX matters (see "Training and Outreach" section below).

New Title IX Coordinator

As noted above, the position of Title IX Coordinator was filled on a permanent basis in November 2011. The University has widely disseminated information about its designation of the Title IX Coordinator (including the name, e-mail address, office address, telephone numbers and information about the duties of Title IX coordinator) online and in printed materials, including in the University's Policies and Grievance Procedures for resolving complaints of sexual harassment/violence, and also within its notice of non-discrimination.

Since 2011, the Title IX Coordinator's job description has included responsibility to maintain centralized records relating to all complaints of sex discrimination. She is also charged with providing information to individuals regarding Title IX rights, the University's grievance policies and procedures, the availability of interim measures, and the option to file a complaint both through the SMAP and through the law enforcement process by pursuing criminal charges. The Title IX Coordinator has also been responsible for facilitating communication among various components of campus life (*e.g.*, Residential Life, Judicial Affairs, Health and Counseling Services, and TUPD). The Title IX Coordinator is also responsible for regularly coordinating with TUPD (at least monthly) regarding the University's obligations under Title IX and serving as a resource on Title IX issues, and accesses complaints filed with TUPD to determine whether and how the University itself may respond.

The University has provided training on at least a bi-annual basis to its Title IX response staff, including but not limited to its Title IX Coordinator, on substantive legal standards, specific investigative approaches, and available resources for students, employees and other community members.

Training and Outreach and Student/Climate Information

The Title IX Coordinator is tasked with overseeing Title IX training efforts for the entire University. Since the hiring of the current coordinator in November 2011, the University has expanded its training program for staff. The University has provided on-going training to its Title IX Coordinator, Title IX Investigator, SMAP Panel Members, and Liaisons – individuals who are most directly involved in processing, investigating, adjudicating, and/or resolving complaints of sexual harassment/violence. As noted directly above, this training has been provided on at least a bi-annual basis, and has addressed substantive legal standards under Title IX and other federal and state laws, OCR policy guidance on sexual harassment/violence retaliation, the preponderance of the evidence standard for sexual harassment/violence investigations, victim behavior, dynamics of power, implicit bias, scenarios for discussion, reporting responsibilities, confidentiality – limits and expectations, the Campus SaVE Act (part of the Violence Against Women Reauthorization Act of 2013⁹), University non-discrimination policies and procedures and how to report sexual harassment/violence, and available resources for students, employees and other community members.

The Title IX Coordinator has also provided training for students about Title IX; the role and responsibilities of the Title IX Coordinator and Title IX Liaisons; how to report sexual harassment/violence; the University's non-discrimination policies and procedures, including its policies prohibiting sexual harassment/violence; the investigation process for complaints filed under the SMAP; and the University's prohibition against retaliation.

The Title IX Coordinator is now also charged with examining trends and assessing campus climate. OCR learned that she has been meeting informally with students, staff and faculty about climate related matters and coordinates and/or oversees the development and implementation of annual assessments (*i.e.*, surveys) of campus climate with regard to sexual harassment/violence, as well as its policies and procedures to address sexual harassment/violence. She is also charged with conducting a semi-annual review of all Title IX complaints and reports brought to her and/or designees, processed under SMAP, any other grievance procedures, and/or independently investigated by the University, in order to identify and address any patterns or systemic problems under Title IX.

In addition, as noted above, she coordinates with any designees and appropriate student services on campus (*e.g.*, Residential Life, Judicial Affairs, Health and Counseling Services, and TUPD). These coordination efforts are in part aimed at examining trends and assessing the climate on campus. The Coordinator facilitates communication among these components of campus life, in order to identify and address any patterns or systemic problems under Title IX and to assess and improve the overall efficacy of the coordination of information and responsibilities among these various offices as it relates to the University's Title IX response.

In 2012, the University developed a pamphlet for its community on sexual misconduct (including sexual harassment/violence) that was made available in print and electronic form to the entire University community. The pamphlet contains information on what constitutes sexual

⁹ 42 U.S.C. § 13701 *et seq.*

misconduct, the contact information for on- and off-campus resources for complainants, information on how and where to file a complaint of sexual misconduct, the name and contact information for the University's Title IX Coordinator, and information on what interim measures can be taken to protect a complainant. This pamphlet has been distributed during student orientation since 2012 and is readily available to community members in electronic and print form.

In April 2013, two student groups submitted an "open letter" to the University that collected hundreds of signatures from students, alumni, faculty and staff. The letter recognized the "great strides Tufts has already made in combating sexual assault on campus" and stated that the reforms "have already had a positive effect on the Tufts community." The letter went on to state "more change is necessary to ensure the safety of Tufts students" and requested specific actions to be taken. The letter criticized the "lack of access to policy, process and resources," citing the lack of any centralized coordinating and response office and the students' view that the University systems and practices pertaining to sexual harassment/violence are "excessively complex, bureaucratic, and difficult for students to access." The letter also criticized the "lack of institutional support for survivor's healing," citing the need for improved training for University officials and staff. The letter called for making the resources available to complainants more accessible through a dedicated website page for sexual violence resources, institutionalized support groups for complainants and 24-hour support hotline services that would provide confidential information on emergency services, rape crises counseling, resources and University policy and general support. The letter also called for the establishment of victim and witness advocates, noting also that the Tufts Community Union Senate had passed a resolution favoring the creation of these positions. The letter also criticized the "lack of extended support infrastructure for survivors and lack of education for students," specifically objecting that students have to make their requests for academic adjustments and housing changes and thereby disclose their personal information to "many tangentially related groups or resources," respectively their academic dean and Office of Residential Life. The letter requested that complainants be able to request and receive academic adjustments (including schedule changes, extensions on assignments and "incomplete" grades) and housing changes through the OEO office or another dedicated sexual violence prevention employee. Finally, the letter criticized the sexual violence education program provided to students as "grossly inadequate," noting that it takes place through a brief program at orientation and is not mandatory.

In addition to the open letter, an "Op-ed" piece by the student groups was published at the same time in the student newspaper. The article described the group's requests and complained that while the situation had improved in recent years, there was "still a severe lack of cohesion and efforts that do currently exist are under-resourced."

Your May 10, 2013 response to the student groups stated that the open letter identified a number of issues "worthy of consideration" and that it would be most productive to create a working group of staff and students to discuss the issues further. The groups responded by expressing interest in participating in the working group and also emphasized the importance of any process

going forward to “involve regular, organized forums for input from the student body and the community at large.”¹⁰

University’s Sexual Misconduct Prevention Task Force

In Fall 2013, you convened the Sexual Misconduct Prevention Task Force. The Task Force, with you as its chair, is comprised of the Title IX Coordinator and other administrators, faculty, and student representatives. Its overall charge has been to seek out information from stakeholders such as students, faculty and staff for the purpose of continuously improving the University’s response and prevention efforts in the area of sexual harassment/violence.

In April 2014, the Task Force issued its Progress Report and posted it on the University’s new sexual harassment/violence website.¹¹ The website provides information about available resources to assist and support victims/survivors of sexual harassment/violence and the University policies and procedures for responding to sexual harassment/violence. The website includes the following statement:

Tufts University is committed to providing a campus environment free of sexual misconduct and sexual assault. The university takes all allegations of sexual misconduct seriously and is committed to providing information, resources and clear direction to members of the Tufts community so that, together, we can help prevent and address this conduct. The university will always respond to allegations of sexual misconduct by taking aggressive measures to stop it, prevent its recurrence and address any lingering effects it has on our community. Sexual misconduct is never acceptable and will not be tolerated.

According to the Progress Report, the Task Force’s Policy and Procedures Working Group reviewed the Sexual Misconduct/Sexual Assault Policy and other University sexual harassment/violence policies and next will review the Sexual Misconduct Adjudication Process (SMAP). The Working Group recommended clarifying policy language, providing a glossary of terms, including usage of the terms “victim/survivor,” creating gender-neutral language throughout the policy, and addressing specific lesbian, gay and transgender issues. The Task Force’s Prevention and Education Working Group recommended training on Title IX policies, bystander intervention, social norms, sensitivity and other issues for all members of the University community. This Working Group also recommended the creation of a centralized website that would include policies and procedures, and other information; as noted this website has already been created.

The Task Force’s Support for Victim/Accused Resource Working Group reviewed the possibility of creating a sexual assault prevention and response office, developing institutional support for survivor healing and extended support programs, establishing a 24-hour crisis hotline for

¹⁰ The letters exchanged between you and the student groups are available on the website for one of the group’s (Action for Sexual Assault Prevention at Tufts) at <http://tuftsasap.org/>.

¹¹ <http://oeo.tufts.edu/sexualmisconduct/>; <http://oeo.tufts.edu/sexualmisconduct/files/SexMis-Interim-Progress-Report-final-4-18-14.pdf>

survivors and friends, and creating a victim and accused witness advocates group. This group recommended an increase of staff resources to support sexual assault prevention efforts that led to the University recruiting for a Sexual Misconduct Prevention Specialist to develop and execute a University-wide prevention and education program for all students. The Working Group also recommended hiring a confidential Response and Resource Coordinator to provide crisis intervention, case management and assistance to students. The Working Group further recommended expanding current partnerships with local crisis centers, as well as providing additional information to students on the services available to victims/survivors in the areas of housing, academic accommodations, stay away orders, transportation and legal advice.

All three working groups will reconvene in the 2014 fall semester to develop a plan and timeline for implementation of their recommendations, including developing a process for ongoing evaluation and annual review of key areas for each group.

Analysis

Title IX Coordinator (34 C.F.R. §§ 106.8 and 106.9(a))

OCR found that, at the time the Student reported sexual assault to the University in early 2010, the University failed to designate a Title IX coordinator. Specifically, while the University's sexual harassment/violence policy identified the Director of the University's Office of Equal Opportunity and Affirmative Action (OEO) as the University's Title IX Coordinator, and required all University personnel to report incidents of sexual harassment to that individual, the office was without a permanent hire from January 2010 through late 2011.

In November 2011, the University hired a new OEO Director/Title IX Coordinator, and provided notice to all students and employees of the name (or title), email and office addresses, and telephone number of the Title IX Coordinator. The Title IX Coordinator's information has also been widely disseminated online and in printed materials, including within the University's notice of non-discrimination. The designated Title IX Coordinator has received and continues to receive training on at least a bi-annual basis on a variety of topics relating to Title IX investigative procedures and substantive standards, and available resources for students, employees and other community members. OCR has thus concluded that the University has corrected the compliance concerns regarding designation and notice of a Title IX Coordinator and thus is in compliance with the applicable Title IX regulations, at 34 C.F.R. §§ 106.8 and 106.9(a).

Notice of Non-Discrimination (34 C.F.R. § 106.9)

OCR also determined that the University has complied with the Title IX regulation, at 34 C.F.R. § 106.9, regarding its notice of non-discrimination, published in the OEO Policies and Procedures Handbook as a "Non-Discrimination Statement" with an accompanying "Non-Discrimination Policy." These documents state that the University prohibits discrimination on the basis of sex in any of its "educational programs or activities" as well as such discrimination against "any employee or any applicant for employment," respectively. These materials also specify that the University's non-discrimination obligations are assured by Title IX, and refer inquiries concerning the application of the non-discrimination statement(s) to certain designated

employees (including the Title IX Coordinator) whose contact information is provided. We note that, although the notice provides contact information for OCR, it includes inaccurate language about a “statute of limitations” for OCR complaints. The University must replace that language to accurately describe OCR’s timeliness standards.

Sexual Misconduct Policies and Procedures and Responses (34 C.F.R. §§ 106.8, 106.31)

OCR’s investigation revealed that, as of January 2010 when the Student reported the alleged sexual assault, the Dean of Student Affairs Office oversaw the processes for responding to complaints of sexual harassment/violence, and was the ultimate decision-maker as to whether a violation occurred and, if so, what discipline to issue. However, OCR found that Dean of Student Affairs and the Judicial Affairs Officer who worked within that office admitted that they did not then understand the University’s Title IX obligation to respond to any notice of possible sexual harassment/violence and to investigate alleged or reported sexual harassment/violence, before and also in the absence of a written complaint being filed. The University’s sexual harassment/violence policies and procedures at this time also did not acknowledge the University’s obligation to respond to sexual harassment/violence of which it was or should be aware even in the absence of the filing of a written complaint, or designate any timeframes for the resolution of a complaint or its major stages.

As a result of the University’s Title IX response structure at the time, the University failed to promptly respond to sexual harassment/violence allegations. In the Student’s case, the University did not conduct any investigation of the Student’s January 2010 report of sexual assault for the first six-month period during which it was aware of her allegation but believed no action was necessary until/unless she filed a written complaint. And, even when the investigation began after the Student filed a written complaint, the University did not begin its investigation until the Fall 2010 and did not issue its determination until June 2011, 18 months after the University was first notified of the Student’s allegation of sexual assault. In addition, in its review of documents from the eight complaints of sexual harassment/violence processed in 2011-2012 and 2012-201, OCR found that cases that took an average of four months to resolve and one case that took approximately eight months to resolve.

The University also failed to provide the Student with effective interim measures during the eighteen months that followed her January 2010 report that she had been sexually assaulted. While the University issued a stay-away order to prevent the Student and the Accused from communicating with each other, the University’s policies and procedures at the time did not include any mechanism to enforce physical separation of students unless/until there was an actual finding in a case or a court order required separation. The Student therefore obtained a court-ordered restraining order in February 2010 that the University enforced in the residence hall by requiring the Accused to move out of the residence hall and allowing the Student and the Accused to alternate attendance at the Program’s weekly seminar. After this restraining order was vacated, the University initially required the Student to attend weekly Program seminars for the Fall semester together with the Accused or risk expulsion from the Program, and then permitted her to miss the seminars altogether without penalty, which resulted in her not attending any Program seminars in the 2010-11 academic year. Furthermore, the University did not inform the Student that she could request to move out of her residence hall for several months after she

reported the sexual assault. The University was also not responsive to the Student's reports that the TUPD escort services it offered were not working.

The Student was thus exposed to close physical proximity to the Accused and to harassment in the residence hall for several months. The Student expressed to the University that she did not feel safe on campus. The interim measures provided by the University deprived the Student of an equal opportunity to participate with other students in the Program by first alternating her attendance at the weekly seminars with the Accused and then making arrangements in the Fall 2010 under which she did not participate at all in the seminars. The University also failed to ensure that escort services were effective, even after the Student reported to the University that the services were not working for her. The University's failure to provide effective interim protective measures for the Student and, instead, placing the burden of interim measures largely on the Student was contrary to the requirements of Title IX to provide effective interim measures that minimize the burden on complainants of sexual harassment/violence. OCR also noted that another student complainant indicated that the University did not inform him that interim measures could be put in place when he first filed his sexual violence complaint, although the Title IX Coordinator put a no contact order in place a few weeks later.

In addition to finding that the University failed to provide prompt responses or, in the Student's case, failed to provide prompt responses and effective interim measures, OCR also found that the University's investigation and response to the Student's complaint of sexual assault/harassment was not equitable. The University inappropriately processed the Accused's complaint of fraud/misrepresentation against the Student with the Student's sexual harassment/violence complaints and required the Student to respond to the Accused's complaint as a condition of moving forward with her sexual harassment/violence complaints. The joint processing of these complaints contributed to significant delays in the processing of the Student's sexual harassment/violence complaints. The Fact-finder also inappropriately allowed the introduction of potentially prejudicial information about the Student into the investigation and did not apply the procedures consistently to both parties. The University allowed consideration of the Student's medical history, contrary to the applicable policies, even after the Accused was found to have obtained the Student's confidential medical information by misrepresenting himself as a University medical student; and the University repeatedly modified existing procedures in a manner that benefited the Accused, including by allowing the Accused to submit an Addendum to his response on July 28, 2011, and allowing him to include details of the Student's sexual history.

The University also failed to conduct an investigation and respond to the Student's allegation that the Accused's friends continued to harass her while she was on campus. Instead, the University referred her complaints to TUPD, but neither TUPD nor anyone else at the University ever investigated and resolved those complaints under Title IX.

OCR concluded that, as a result of the University's actions and inactions in responding to the Student's reports and complaints of sexual violence and sexual harassment, the Student was subjected to a sexually hostile environment. The evidence establishes that the Student was denied and limited in her ability to participate in and benefit from the University's program, and specifically the leadership Program for which she was selected. The Student reported being

isolated in her residence hall room in the first part of 2010 until the Accused was required to move out of the residence hall and also reported being harassed by other students. Because of the arrangements made by the University, the Student was denied the opportunity to attend and participate fully with other students in the Program seminar, first when she alternated attendance at the seminar with the Accused in the Spring 2010 and then when she did not attend the seminars in person at all in the Fall 2011. In both instances, the University's response deprived the Student of educational benefits offered to other Program students. Moreover, because of her continued concerns about not feeling safe on campus, the Student accelerated her education and graduated a year early.

OCR found that the University's current sexual harassment/violence policies and procedures address some of the above shortcomings. Among these changes is an express commitment to investigate any and all complaints of sexual harassment/violence of which the University becomes aware, the designation of reasonably prompt timeframes for several of the major stages of the investigation and complaint resolution process, information about the availability of academic interventions and other interim measures, and the ability to enforce physical separation of students without need for a court order. In addition, the Title IX Coordinator is now responsible for investigating and responding to Title IX sexual harassment/violence complaints, rather than the Dean of Student Affairs Office.

However, OCR found that the University's current sexual harassment/violence policies and procedures, including the Sexual Misconduct/Sexual Assault Policy and the Sexual Misconduct Adjudication Process implemented in September 2013, do not provide for the prompt and equitable response to sexual harassment/violence allegations as required by Title IX. Until April 24, 2014, the policies and procedures did not designate a timeframe for resolving appeals. On April 24, 2014, the University amended its policies and procedures to designate a thirty (30) day timeframe for the appeals process after receiving an appeal, which must be filed within 10 days of the complainant and accused's required separate meetings with the Title IX Coordinator and the Dean of Student Affairs, at which time University will provide them with a copy of its decision. OCR also noted that the SMAP has been recently revised to include an explicit statement that mediation will never be used for the resolution of issues of "sexual misconduct."¹²

Specifically, the current policies and procedures do not make clear that interim measures (including academic adjustments and housing changes as necessary) are not only available but will be provided, state that the policies and procedures cover allegations of off-campus sexual harassment/violence that has effects in the University's educational setting (the SMAP states only that the Title IX Coordinator will make a determination of whether the University has jurisdiction over allegations of conduct that occurred off campus), exclude inappropriate restrictions on the ability of the parties to discuss the investigation and proceedings with others (including friends) who may provide them with support and/or assistance during the process, or ensure that the processing of any related matters (such as other issues arising under the student Judicial Code such as theft or plagiarism) will not delay the prompt resolution of a complaint of

¹² While the SMAP procedures on the University's website continue to indicate that the SMAP was revised in September 2013, this date is not accurate as it does not reflect changes made by the University this month and/or during the course of the University's negotiations with OCR, which began in January 2014.

sexual harassment/violence (the SMAP states that the investigation will not be limited to information provided by the parties or the violations outlined in the complaint).

As noted below, the University has agreed to address these as well as other compliance concerns by implementing the enclosed Resolution Agreement it entered on April 17, 2014 to ensure its compliance with Title IX. The Agreement requires the University to revise its Title IX policies and procedures and provide its revised Title IX policies and procedures to OCR for review and approval by July 31, 2014. OCR will consider as part of this review the changes already made by the University, including how the designated appeals timeframe impacts whether the University's response will be prompt and equitable as required by Title IX. Also, because OCR's investigation examined sexual harassment/violence complaints processed by the University in the 2011-2012 and 2012-2013 academic years, OCR is not making any compliance determination regarding the University's implementation of the current policies and procedures, including whether any complaints filed after the September 2013 implementation of these policies and procedures were handled in a prompt and equitable manner. These issues will also be addressed as part of OCR's monitoring of the Agreement.

Based on the above, OCR determined that the University failed to respond in a prompt and equitable manner to complaints, reports, and other incidents of sexual harassment/violence of which it had notice, including the Student's complaints of sexual violence and sexual harassment and at least one other complaint filed in the 2011-2012 and 2012-2013 academic years. OCR further determined that this failure resulted in the continuation of a sexually hostile environment for the Student. Thus, OCR concluded that the University is not in compliance with the applicable Title IX regulations, at 34 C.F.R. §§ 106.81 and 106.31.

Retaliation (34 C.F.R. § 106.71)

As noted above, in the Fall 2010 semester, the University discontinued its arrangement of allowing the Student and Accused to alternate their attendance in the Program's weekly seminar, which they permitted in Spring 2010. Because Program staff presented the Student with this information in September 2010 – after she filed her written complaint in June 2010 – the Student alleged that this action was retaliatory for filing her complaint.

As detailed in the "Legal Authority" section above, the basic elements for the first three elements of the retaliation analysis were met in this instance: the Student engaged in the protected activity of filing a written complaint of sexual assault in June 2010; the University was demonstrably aware of the filing; and afterwards, the University took adverse action against her by requiring her to attend weekly seminars with the Accused, reversing the Spring 2010 arrangement whereby both students were allowed to alternate their attendance. Even though the University ultimately excused the Student from being required to attend the Fall 2010 seminar, this also resulted in an adverse action in that she did not participate in the seminars at all under this arrangement. With respect to the fourth element, OCR can infer a causal connection between the Student's protected activity and the adverse actions because of the proximity in time, that is, the change in the attendance arrangement occurred shortly after she filed her written complaint.

OCR next considered whether the University had a legitimate, non-discriminatory reason for the adverse action, that is, requiring the Student to attend weekly seminars with the Accused. The

University explained that the Student Judicial Code then in effect provided that the University would not restrict any accused student from attending classes or University activities unless/until there was an actual finding in the case, except if a court order required separation. The University also explained that there were no other mechanisms available at that time to require physical separation of students; as noted above, the University's stay-away orders only prohibited communication, and a court order was required to enforce any physical separation. In this case, the Student had such a court order that was in effect for Spring 2010, which caused the University to implement the alternate attendance arrangement. However, after the close of the Spring 2010 term, the University learned that the order was vacated, removing the basis for continuing the Spring semester arrangement. Nonetheless, OCR found that Staff immediately offered to waive the attendance requirement when she protested and offered to provide her alternative instruction, and the Staff did not penalize her for missing the seminar, culminating in her graduating as a designated Program participant.

OCR concluded that the University's actions were not a pretext for retaliation against the Student, and thus found insufficient evidence of retaliation in this case. As covered in the Agreement, the University has since revised its policies and procedures to lift restrictions on its ability to enforce effective academic interventions during the pendency of a complaint and to permit the University to require physical separation without the need for a court order.

Conclusion

As discussed above, as a result of its investigation, OCR found that, at the time the complaint was filed, the University was not in compliance with Title IX requirements regarding the designation and notice of a Title IX Coordinator, though it has corrected that concern with the appointment, notice and required Title IX training of a Title IX Coordinator. We also found that the University's notice of non-discrimination and accompanying non-discrimination policy comply with the applicable Title IX regulations, although they must be revised to accurately describe the applicable time period for filing complaints with OCR.

OCR also concluded that the University has failed to provide a prompt and equitable response to complaints of sexual harassment/violence, as required by Title IX, and, for the Student, this failure allowed for the continuation of a hostile environment that limited and denied her access to the educational opportunities in her Program. We also found that the University's current policies and procedures do not comport with the applicable Title IX requirements. Finally, we found insufficient evidence that the University retaliated against the Student.

On April 17, 2014, the University agreed to implement the enclosed Agreement, which commits the University to take specific steps to address the identified Title IX violations. When fully implemented, the Agreement entered into by the University will resolve these Title IX violations. The Agreement requires the University to address sexual harassment/violence on its campuses in a comprehensive manner that not only requires clear notice of its commitment and the applicable processes for responding in a prompt and equitable manner to sexual harassment/violence allegations, but also requires the University to assess the effectiveness of the steps it takes and, with OCR review and approval, take additional steps that may be necessary to ensure that students are not subjected to a sexually hostile climate on the University campuses and are

confident that the University is committed to responding promptly and effectively should sexual harassment/violence occur. The Agreement specifically requires that the University take the following actions:

- Report annually to OCR on the steps taken by the Title IX Coordinator to prevent and respond to sexual harassment/violence, including the Coordinator's semi-annual assessment of the trends and patterns related to sexual harassment/violence and the campus climate, and specific measures the University will take to identify and address, subject to OCR review and approval, any patterns or systemic problems under Title IX.
- Revise the University's Title IX grievance policies and procedures to provide for prompt and effective responses to alleged sexual harassment/violence and to ensure consistency among its various Title IX policies and procedures so that students receive clear notice of the applicable policies and procedures.
- Report annually to OCR on the Task Force's actions and, submit for OCR review and prior approval, recommendations on revisions to the University's policies, procedures, outreach and training and/or other practices related to its prevention and response to sexual harassment/violence.
- Provide regular and mandatory training on issues related to sexual harassment/violence and on the requirements of Title IX to all members of the University community – including students, faculty, administrators and other staff.
- Enhance its outreach to and feedback from students, including by conducting an annual climate check or series of climate checks with students on campus to assess the effectiveness of steps taken by the University towards providing a campus free of sexual harassment/violence.
- Provide monetary compensation for the Student.
- Assess whether the eight complaints examined by OCR as well as any newer complaints filed under the current policies and procedures were handled in a prompt and equitable manner under Title IX. Based on its review, the University is required to take action as appropriate to address any concerns identified, including providing appropriate remedies to the complainants that may still be available, such as referrals to counseling or academic adjustments. The University's assessment of the handling of these complaints and any remedies identified will be subject to prior OCR review and approval as part of OCR's monitoring of the University's implementation of the Agreement. OCR has noted above issues relating to the processing of the eight complaints it examined, including the time it took to complete the investigations, the use of a narrower definition of the most serious form of sexual assault than exists under current policy, and concerns about the adequacy of the interim measures provided to complainants and disciplinary sanctions imposed on students found to have violated University policies. OCR expects that the University will take specific steps to ensure that the complainants, if still on campus, are not subjected to a hostile environment.
- Provide timely and effective interim relief for complainants, including academic adjustments and housing changes as necessary.

Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the recipient deemed compliant if the recipient enters into an agreement that, fully performed, will remedy the identified violations (pursuant to Section 303(b)). As stated in the

Agreement entered into the by the University on April 17, 2014, if the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the University written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

On April 26, 2014, the University General Counsel wrote to OCR to indicate she was “revoking” her signature on the Agreement. The General Counsel’s letter constitutes a breach of the Agreement the University signed on April 17, 2014. Pursuant to Section 404 of the *Manual*, OCR is therefore notifying that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement entered into by the University. The University has sixty (60) calendar days from the date of this letter to cure its breach of the Agreement.

This letter of findings and of impending enforcement action sets forth OCR’s determination in an individual OCR complaint and should not be construed to cover any other issue regarding the University’s compliance. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

If you have any questions, please contact Michael Burns, Program Manager, at (617) 289-0012 or by e-mail at Michael.Burns@ed.gov. You may also contact me directly at (617) 289-0111.

Sincerely,

/s/

Thomas J. Hibino
Regional Director

Enclosure

cc: Mary R. Jeka, Senior Vice President and General Counsel (w/ encl.)