

Resolution Agreement
University of Notre Dame

The U.S. Department of Education, Office for Civil Rights (OCR), initiated this investigation with the University of Notre Dame (the University), pursuant to Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §1681 *et seq.* and its implementing regulation, 34 C.F.R. Part 106 (which prohibit discrimination based upon sex in any education program or activity receiving Federal financial assistance). The review examined the University's policies and procedures relating to peer sexual harassment of students and the University's implementation of those policies and procedures. This resolution has been entered into voluntarily by the University and does not constitute a finding or admission that the University is not in compliance with Title IX and/or its implementing regulations.

The review found that Notre Dame has implemented and commits to maintaining a number of policies and procedures (i) to ensure that students enrolled in the University are not subjected to a hostile environment on the basis of sex; (ii) to promptly investigate all incidents of sexual harassment of which it has notice (hereinafter, the term "sexual harassment" will include sexual assault, sexual violence, sexual misconduct and any other harassment based on sex); (iii) to take appropriate disciplinary action against students, faculty and staff who violate the University policies and procedures addressing sexual harassment; and (iv) to take prompt and effective responsive action to end sexual harassment and prevent its recurrence, and where appropriate, take steps to remedy the effects of sexual harassment on the affected students, including:

1. The University's Student Handbook ("du Lac") sets forth the University's commitment to having a campus environment free from all discrimination on the basis of sex, and includes and/or references related policies and procedures, including the University's "Standards of Conduct and Disciplinary Procedure" (Code), "Sexual Harassment Policy and Reporting Procedures" (Procedures), "Discriminatory Harassment Policy," and "Title IX Grievance Policy and Procedures." "Du Lac: A Guide to Student Life, University of Notre Dame 2010-11," at <http://orlh.nd.edu/dulac/duLac.pdf>.
2. With respect to sexual harassment, the Code sets forth the University's general standards of conduct and disciplinary procedures, and includes a specific section on "Sexual Assault and Sexual Misconduct" that describes the prohibited types of behavior, and processes for reporting sexual assault and sexual misconduct. The "Sexual Assault and Sexual Misconduct" section states that "sexual misconduct of any kind is inconsistent with the University's values and incompatible with the safe, healthy environment that the Notre Dame community expects. The most egregious form of sexual misconduct is sexual assault, which is an affront to justice that will not be tolerated at Notre Dame. Students found responsible for sexual assault will ordinarily face disciplinary sanctions up to and including dismissal from the University."
3. The Code also references the University's "Procedures," "Discriminatory Harassment Policy," "Title IX Grievance Policy and Procedures," and "Non-Retaliation Policy." The Code specifically encourages students to immediately report incidents of discrimination on the basis of sex. The Code explains that complaints or other reports of sexual assault and sexual misconduct by a student will be addressed through the University's

Disciplinary Procedure. The Code recognizes that students may be hesitant to report sexual misconduct because they themselves or witnesses they identify may be charged with violations of other provisions of the Code (*e.g.*, alcohol violations). The Code states that the University will not pursue disciplinary action against a student who claims to be a victim of sexual assault in connection with reporting that assault or against students named as witnesses.

4. The Code contains examples of the types of sexual misconduct that are prohibited by the University and includes a detailed definition of consent. The Code states that prohibited sexual misconduct/assault offenses include: non-consensual sexual intercourse, non-consensual sexual contact, and other forms of sexual misconduct including, but not limited to, sexual exhibitionism, prostitution, voyeurism, non-consensual video or audio taping of sexual activity. The Procedures also include examples of prohibited conduct such as dirty jokes and display of pictures with sexual content.
5. The Code explains how to report sexual misconduct and provides general contact information for those responsible for receiving and/or investigating complaints or other reports of sexual misconduct. The University provides the Complainant and the Accused with notification regarding the major steps of the hearing process and equal access to written statements prepared by the parties.
6. The Code states that any threat of retaliation or other attempt to prevent the reporting of sexual misconduct is prohibited and will result in disciplinary sanctions.
7. The Code states that, to the extent possible, the University will protect the privacy of all parties to a complaint or other report of sexual misconduct.
8. The Code states that as a general rule, the University's disciplinary process will proceed normally during the pendency of a criminal action.
9. The Code states that the University will conduct an investigation of every complaint or other report of sexual misconduct or sexual assault. The Code explains that while the University has an obligation to investigate every complaint or other report, if a student wishes the details of an incident to be kept strictly confidential, he or she may speak privately with counselors at the University Counseling center, health providers, or off-campus rape crisis resources, such as Sexual Offense Services of the Family Justice Center (S-O-S) (the rape crisis center for St. Joseph County). Residence hall rectors and campus ministers will also honor requests for confidentiality unless there is an imminent danger to the student or to others.
10. The Code and Procedures describe the University's disciplinary process for students alleged to have engaged in sexual assault or sexual misconduct. The Procedures include a general thirty (30) day (business) timeframe for the University's internal investigation, and a process for notifying the complainant when the investigation and disciplinary process will take longer and when the University expects the process to be completed.
11. The Code provides that, except where there was a prior relationship between the parties, past relationships of the complainant or accused will not be considered as evidence in any

disciplinary proceeding. The Code provides that if a student is charged with a felony, the University may take summary action to temporarily dismiss the student and may temporarily or permanently dismiss a student who is convicted of a felony.

12. The Code includes a description of the medical, pastoral and counseling resources available for students who have been sexually assaulted. The Code also states that a complainant may request assistance with academic matters or a change in housing.
13. The members of the University's campus coalition, the Committee on Sexual Assault Prevention ("CSAP"), include University administrators, University professors, University representatives from the Department of Security, Counseling Center, Office of Residence Life and Housing, Office of Alcohol and Drug Education, Gender Relations Center, Athletics Department, administrators from neighboring St. Mary's College, Notre Dame and St. Mary's students, representatives from Men Against Violence (a University student organization of male students who conduct outreach presentations and activities in a proactive effort to prevent sexual assault), Sexual Offense Services of the Family Justice Center (S-O-S), and Belles Against Violence (a St. Mary's College organization that provides proactive programs to prevent sexual assault and support for complainants). CSAP will continue to consider and recommend additional strategies to ensure no sexual harassment/sexual assault incidents occur on campus and that students feel comfortable reporting any that occur. CSAP will continue to develop recommendations for tools to assess the effectiveness of efforts to ensure that the University is free from sexual harassment and violence.
14. Each year, the University mandates, and effectively ensures compliance, that all new students attend an orientation which includes the following components:
 - a. A reminder to students that it does not tolerate sexual harassment including sexual assault and sexual misconduct and other forms of harassment based on sex, that it encourages any student who believes he or she may have been subjected to sexual harassment to report the incident(s) to the University, and of its commitment to having a campus environment free from all harassment and explaining to students what they should do if they believe they or other students have been subjected to sexual harassment and that students and staff should work cooperatively to prevent acts of sexual harassment.
 - b. A review of the University's revised sexual harassment policies and procedures, including an explanation of what constitutes sexual harassment, the University's commitment to conducting a prompt investigation as well as disciplinary sanctions (including if appropriate suspension or expulsion) related to findings of violations of the University's sexual harassment policies and procedures and/or the University's policy prohibiting retaliation and intimidation.
 - c. The names and contact information for the designated staff member(s) to whom students may report allegations of sexual harassment.

- d. The names and contact information of University employees that the students may contact if they wish to confidentially discuss any concerns they have and a reminder of the availability of counseling services.
 - e. The connection between alcohol abuse and sexual harassment/sexual assault.
 - f. The resources and information available through the University's CSAP Committee.
 - g. The Vice President for Student Affairs will continue to play a personal and prominent role in delivering the messages identified in items 14.a.- f.
15. Each year, the information described in paragraph 14 above is made available to all students through a number of programs that the University is committed to continue.
16. University officials regularly meet with their counterparts at neighboring St. Mary's College to exchange information about sexual harassment policies and procedures. The University commits to continue this practice, and will apprise St. Mary's officials of the modifications to its policies and procedures, as set forth below. The University will offer to provide annual training on its sexual harassment policies and procedures to St. Mary's officials.

REPORTING REQUIREMENT: By September 30, 2011 and by the same date annually thereafter during the monitoring of this agreement, the University will report in writing to OCR that it has complied with the provisions set forth in paragraphs 14 and 16.

17. The University commits to continue its annual training of all individuals involved in processing, investigating and/or resolving complaints or other reports of sexual harassment, and will include in such training an overview of Title IX and any changes to the University's sexual harassment policies and procedures.

REPORTING REQUIREMENT: By June 30, 2012 and by the same date annually thereafter during the monitoring of this agreement, the University will report in writing to OCR that it has complied with the provision set forth in paragraph 17. The University will make available copies of any documents utilized in the training and a list of all participants who attended the training.

AGREED MODIFICATIONS

1. At the conclusion of the review, Notre Dame and OCR agreed that Notre Dame will make the following modifications to its policies and procedures, which the parties believe will further enhance Notre Dame's commitment to ensure that students enrolled in the University are not subjected to a hostile environment on the basis of sex, and to ensure that all incidents of sexual harassment of which the University has notice are promptly investigated and that appropriate disciplinary actions are taken with respect to students, faculty or staff who violate University

policies and procedures addressing sexual harassment. The University agrees to memorialize in du Lac, or make more clear, its current practices and policies, as follows:

- a. Allegations of sexual harassment are evaluated using a “preponderance of the evidence” standard;
- b. Complainant’s option to pursue a criminal complaint with the appropriate law enforcement agency, to pursue the University’s disciplinary process, or to pursue both processes simultaneously will be stated more prominently;
- c. Upon receipt of a sexual misconduct/assault complaint or report, the University will provide to the complainant a written notice describing the options of pursuing a criminal complaint with a law enforcement agency, pursuing the University’s investigation and disciplinary process, or pursuing both options at the same time, and the potential consequences of pursuing both options (*i.e.*, possible deferral of the University’s investigation and disciplinary process). The University will obtain a written acknowledgement from the complainant of which option(s) the complainant wishes to pursue;
 - i. When a complainant elects to pursue a criminal complaint exclusively, the University will request that the St. Joseph County Prosecutor’s Office immediately advise the University’s Security Chief of its decision on whether to prosecute the complaint. The University will maintain documentation of the date of the deferral and request to the Prosecutor’s Office¹;
 - ii. In cases where the Prosecutor’s Office declines prosecution, the University will provide written notice to the complainant of the decision of the Prosecutor’s Office and resume its investigation and disciplinary process as appropriate. The University will maintain documentation of the date that the process was resumed.
- d. The specific steps the University takes in conducting investigations of reported incidents, including review of statements obtained from either party, interviews with both parties, interviews with witnesses as appropriate, and review of relevant documentary evidence;
- e. Complainants are advised that the University will investigate allegations of sexual harassment, and take appropriate action, even if the complainant does not wish to pursue the disciplinary process, but that any response by the University may be hindered by the complainant’s wishes for anonymity and/or inaction;
- f. “No contact” orders are issued in writing to all parties to an alleged sexual assault promptly after the University receives notice of a complaint.

¹ In extraordinary circumstances, the University may continue its Title IX investigation where it has reason to believe that the alleged harasser may be a threat to the safety of the Complainant and/or other students.

- g. The interim and permanent steps the University will take to stop the harassment, remedy the harassment and prevent recurrence include specific discussions with the complainant about academic, extracurricular activities, housing and on-campus dining arrangements of the parties to determine if adjustments in schedules or housing are necessary and explain that any adjustments made will be designed to minimize the burden on the complainant's educational program;
 - h. Both the complainant and the accused in sexual harassment cases have the opportunity to present witnesses and other evidence, and both receive equivalent notice of the process, access to peer support, information about procedures and written notice of the outcome;
 - i. The University recognizes that sexual assault, sexual misconduct and sex based cyber-harassment are forms of sexual harassment, and will include a reference to cyber harassment in the University's "Policy on Responsible Use of Information Technology," at <http://oit.nd.edu/policies/rup.shtml>;
 - j. The prohibition of actual or threatened retaliation or any act of intimidation to prevent or otherwise obstruct the reporting of sexual harassment/sexual misconduct or the participation in proceedings relating to sexual misconduct applies to third parties as well as accused students; and
 - k. The medical, counseling and pastoral resources available to complainants are also available to accused students and witnesses.
2. The Code will be amended to provide for alternative arrangements for complainants who do not want to be present in the same room as the accused during the disciplinary hearing.
 3. The Code will be amended to allow the complainant to initiate a case review upon the completion of the Disciplinary Hearing process based only upon the following grounds to mirror the process under which a charged student can initiate a case review: procedural defect in the disciplinary process that had a significant effect on the outcome, and/or, the discovery of substantive new information which was unknown or unavailable to the student at the time of the Disciplinary Conference or Disciplinary Hearing and would have had a significant effect on the outcome. In the event of a case review request by either party, the non-requesting party will have the opportunity to provide a written response. Except in extraordinary circumstances (notice of which will be provided to all parties), case reviews will be resolved within 30 days of receipt of the request for review.
 4. The University will review its Code, Procedures and du Lac and ensure that the policies, investigation protocols, contact information (including email addresses) and other safeguards and procedures reflected in one are reflected in all, and moreover will

determine whether these documents can be consolidated to provide a more efficient resource for students, faculty and staff.

5. In consultation with CSAP, the University will create a focus group process, survey, climate check or other means of assessing the effectiveness of the steps taken pursuant to this Agreement and otherwise by the University, to achieve its goal of having a campus environment free of sexual harassment, in particular sexual assaults. The assessment protocol(s) will be submitted to OCR for approval prior to implementation. The University commits to implementing the assessment protocol(s) within three months of approval and annually thereafter during the monitoring of this agreement.

REPORTING REQUIREMENT: By November 15, 2011, the University will submit its first assessment protocol to OCR for approval, and will submit any new assessment protocols to OCR for approval prior to implementation. By June 30, 2012 and by the same date annually thereafter during the monitoring of this agreement, the University will report in writing to OCR that it has complied with the remaining provisions of paragraph 5 and will provide OCR with copies of the results of the assessment protocol and access to the information received in response to the University's implementation of the protocol. OCR will approve or submit objections to the assessment protocol.

6. University policies and procedures require written investigative reports regarding any complaint of sexual harassment, but this requirement does not currently specify the contents of such reports. All relevant policies and procedures will be amended to ensure that the written reports will contain, at a minimum, the following information:
 - a. The name and sex of the alleged victim and, if different, the name and sex of the person reporting the allegation;
 - b. A statement of the allegation, a description of the incident(s), and the date(s) and time(s) (if known) of the alleged incident(s);
 - c. The date that the complaint or other report was made;
 - d. The date the accused was interviewed;
 - e. The names and sex of all persons alleged to have committed the alleged harassment;
 - f. The names and sex of all known witnesses to the alleged incident(s);
 - g. The dates that any relevant documentary evidence (including cell phone and other records as appropriate) was obtained;
 - h. Any written statements of the complainant (or victim, if different from the complainant);
 - i. The date on which the University deferred its investigation and disciplinary process because the complainant filed a law enforcement complaint and, as applicable, the date on which the University resumed its investigation and disciplinary process;
 - j. The outcome of the investigation and, if any, disciplinary process;
 - k. The response of University personnel and, if applicable, University-level officials, including any interim and permanent steps taken with respect to the complainant and the accused; and

1. A narrative of all action taken to prevent recurrence of any harassing incident(s), including any written documentation.

7. The University will develop written materials summarizing the rights, under Title IX and the University's policies and procedures, of all victims of sexual harassment and will provide these materials to anyone alleging sexual harassment within 24 hours of receiving the complaint. The written materials will include a contact person to whom comments or suggestions about the University's policies and procedures can be submitted.

REPORTING REQUIREMENT: By September 30, 2011, the University will provide to OCR copies of the written materials described in paragraph 7.

8. In accord with the recommendations in the "significant guidance document" (the "Dear Colleague Letter") issued by the United States Department of Education on April 4, 2011, the University will conclude its Title IX investigations within sixty (60) calendar days of receipt of a complaint, except in extraordinary circumstances. If extraordinary circumstances prevent the conclusion of an investigation within that time frame, all parties will be promptly notified and will be given an estimated time for the conclusion of the investigation.

REPORTING REQUIREMENT: By June 30, 2012 and June 30, 2013, the University will report in writing to OCR that it has complied with the provision set forth in paragraph 8. The University will also provide access to the investigative reports concerning complaints of sexual harassment described in paragraph 6 above, all correspondence provided to the complainant, accused and witnesses; investigative notes or reports; interview records; no contact orders; documentation of any interim measures taken; and if applicable, any documentation of resulting discipline.

9. By September 1, 2011, the University will publish in the print and on-line editions of its student newspaper, The Observer, an invitation to those who have reported alleged sexual misconduct (as defined in the Code) or otherwise believe they have been subjected to sexual misconduct on campus to provide to CSAP any recommendations regarding ways to improve the effectiveness of the University's implementation of its sexual harassment policies and procedures.

REPORTING REQUIREMENT: By July 15, 2011, the University will submit to OCR for its review and approval its revised policies and procedures, as described in provisions 1, 2, 3 and 6. Within fifteen (15) days of receipt of notice of OCR's approval of the policies and procedures, the University will adopt, implement and publish the policies and procedures. By August 15, 2011, the University will report in writing to OCR that it has adopted, implemented and published the policies and procedures. By September 30, 2011, the University will report in writing to OCR that it has complied with provisions 4 and 9. The University will provide OCR with copies of any recommendations received pursuant to provision 9.

The University understands that by signing this Agreement, it agrees to provide access to data and other information in a timely manner. Further, the University understands that, during the monitoring of this Agreement, the OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for the OCR to determine whether the University has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Title IX, at 34 C.F.R. §§106.8, 106.9, and 106.31, which were at issue in this review.

Approved and agreed to on behalf of the University of Notre Dame:

The Reverend Thomas P. Doyle, C.S.C.
Vice President for Student Affairs

Date

Approved and agreed to on behalf of the United States Department of Education, Office of Civil Rights:

Debbie Osgood
Director
Chicago Office

Date