



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

February 1, 2018

Jonathan Lash  
Office of the President  
Hampshire College  
893 West Street  
Amherst, Massachusetts 01002  
president@hampshire.edu

Re: Compliance Review No. 01-14-6001  
Hampshire College

Dear President Lash:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) has completed the above-referenced compliance review of Hampshire College (the College), which OCR initiated in July 2014. OCR's compliance review examined the College's response system for resolving allegations of sexual harassment, including sexual violence. Specifically, OCR reviewed the College's grievance procedures for resolving complaints of sexual harassment, the application of these grievance procedures, and the College's notice(s) of non-discrimination on the basis of sex.

OCR initiated this compliance review pursuant to our authority under Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100. The regulation at 34 C.F.R. § 100.7(a) requires and authorizes OCR to conduct periodic proactive compliance reviews to determine compliance with the laws OCR enforces. OCR also enforces Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any program or activity receiving Federal financial assistance from the U.S. Department of Education. The College is subject to Title IX because it is a recipient of Federal financial assistance from the U.S. Department of Education.

### **Summary of Review and Findings**

In this compliance review, OCR examined all of the College's written grievance procedures for responding to complaints alleging sexual harassment by students and employees during the review period: academic years 2011-2012 through 2016-2017. OCR also examined related materials, such as the College's notices of non-discrimination and resource documents on Title IX found on the College's websites and in student and employee handbooks. OCR also conducted three on-site visits to the College and interviewed College personnel involved in various aspects of the College's compliance efforts with Title IX, including the College's Title IX Coordinators and Deputy Coordinators, the Dean of Students and Associate Dean of Students,

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the Dean of Advising, the Director of Health and Counseling Services, the Director of Counseling, the Director of Health and Wellness, the Director of Spiritual Life, the Director of New Student Programs, the Disability Services Coordinator, the Director of Campus Police and the Deputy Chief of Hampshire Campus Police, and the Area Coordinators for campus housing. OCR also conducted nine focus groups, totaling twenty-one students and seven Community Review Board members. The student focus groups included male and female athletes, peer chaplains, resident advisors, and others. OCR also interviewed four of the College's external investigators for Title IX complaints, and the Executive Director of Five Colleges, Incorporated. Finally, OCR reviewed all of the College's sexual harassment case files for academic years 2011-2012 through 2013-2014.

As explained below, OCR found that the College continuously enhanced its Title IX response system throughout the course of OCR's compliance review, most notably at the start of the 2016-2017 academic year. However, OCR found that the College's Title IX grievance procedures during the review period comported with some, but not all, Title IX requirements, and that some of the College's notices of non-discrimination did not meet Title IX requirements. In addition, OCR identified concerns with the College's response to sexual harassment complaints processed during academic years 2011-2012 through 2013-2014.

On January 26, 2018, the College voluntarily entered into a Resolution Agreement (Agreement) to resolve OCR's findings on the grievance procedures and notices of non-discrimination. The College also entered into this Agreement to resolve OCR's concerns regarding the College's investigation and resolution of sexual harassment complaints, before OCR made a compliance determination on this topic. In doing so, the College has agreed to revise its grievance procedures and ensure that all students and employees are notified of such revisions; provide training on the revised grievance procedures and ensure that its decision-makers and investigators are appropriately trained; revise the notices of non-discrimination; review sexual harassment case files; and take steps towards coordinating with other Five College Consortium institutions on appropriately responding to incidents of sexual harassment.

### **Legal Standards**

Title IX and its implementing regulations prohibit discrimination on the basis of sex in federally assisted education programs and activities. Title IX's implementing regulations generally require a recipient to ensure that a student is not denied or limited in the ability to participate in or benefit from the recipient's programs on the basis of sex. The regulations also specify that, if a recipient discriminates on the basis of sex, the recipient must take remedial action to overcome the effects of the discrimination. Finally, the Title IX regulations establish procedural requirements for notifying stakeholders about a recipient's obligation to prevent and correct the effects of sex discrimination. These requirements include the adoption and publication of grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination, and the issuance of a policy against sex discrimination. The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding.

### Sexual Harassment

The Title IX 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 recipients of Federal financial assistance. Sexual harassment of students and employees can constitute discrimination prohibited by Title IX. 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. Sexual harassment, including sexual violence, is a form of sex discrimination prohibited by Title IX. The relevant issue is whether the conduct rises to the level that it denies or limits a student's ability to participate in or benefit from the recipient's program based on sex. Sexual harassment can take the form of *quid pro quo* harassment if an employee conditions an educational decision or benefit on a student's submission to unwelcome sexual conduct. Sexual harassment can also occur in the form of hostile environment harassment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program based on sex.

OCR considers a variety of factors to determine if a hostile environment has been created, and considers the conduct from both a subjective and objective perspective. In evaluating the severity and pervasiveness of the conduct, OCR considers all of the relevant circumstances, including: the degree to which the conduct affected students' education; the type of harassment; the frequency and duration of the conduct; the identity of and relationship between the individuals involved; the number, age, and sex of the individuals involved; the size of the school, location of the incidents, and the context in which they occurred; and other incidents at the school. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For example, a single instance of rape is sufficiently severe to create a hostile environment. Title IX protects all students from sexual harassment by employees, other students, or third parties in a recipient's education programs and activities.

Sexual harassment of a student by a teacher or other school employee can be discrimination in violation of Title IX. If an employee who is acting (or who reasonably appears to be acting) in the context of carrying out the employee's responsibilities in relation to students (including teaching, counseling, supervising, advising, and transporting students) engages in sexual harassment and the harassment denies or limits a student's ability to participate in or benefit from a school program on the basis of sex, the recipient is responsible for the discriminatory conduct. The recipient is, therefore, also responsible for remedying any effects of the harassment on the complainant, as well as for ending the harassment and preventing its recurrence. This is true whether or not the recipient has "notice" of the harassment. A recipient has "notice" of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. Responsible employees include employees who have the authority to redress the harassment, who have the duty to report misconduct to school officials, or whom students could reasonably believe have this authority or duty.

### The Recipient's Responsibility to Respond to Sexual Harassment

Once a recipient has notice of possible discriminatory harassment of students, whether carried out by employees, other students, or third parties, it should take immediate and appropriate steps to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the persons involved, the size and administrative structure of the recipient institution, and other factors. In all cases, the inquiry must be prompt, thorough, and impartial.

It may be appropriate for a recipient to take interim measures during its investigation. Interim measures should be individualized and appropriate based on the information gathered by the Title IX coordinator, making every effort to avoid depriving any student of his or her education. The measures needed by each student may change over time, and the Title IX coordinator should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' evolving needs.

In some instances, a complainant may allege harassing conduct that constitutes both sex discrimination and possible criminal conduct. Police investigations or reports may be useful in terms of fact gathering; however, because legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve a recipient of its duty to respond promptly and effectively.

If a recipient determines that discriminatory harassment has occurred, it must take timely and effective steps reasonably calculated to end any harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. If it fails to do so, then the recipient may be liable for perpetuating or otherwise failing to resolve the hostile environment created by the underlying misconduct. These steps are a recipient's responsibility whether or not the student who was harassed makes a complaint or otherwise asks the recipient to take action.

### Title IX Grievance Procedures

The Title IX regulation, at 34 C.F.R. § 106.8(b), requires recipients to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints of Title IX violations. OCR evaluates on a case-by-case basis whether the resolution of a sexual harassment complaint is prompt and equitable. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. OCR examines a number of factors in evaluating whether a recipient's grievance procedures provide for the prompt and equitable resolution of complaints, including whether the procedures provide for the following:

1. Notice to students and employees of the grievance procedures, including where complaints may be filed;
2. Application of the grievance procedures to complaints alleging discrimination carried out by employees, other students, and third parties;

3. Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
4. Designated and reasonably prompt timeframes for the major stages of the complaint process;
5. Notice to the parties of the outcome of the complaint; and
6. An assurance that the recipient will take steps to prevent recurrence of any discrimination and to correct discriminatory effects on the complainant and others, if appropriate.

A grievance procedure cannot be prompt or equitable unless members of the recipient's community are aware of its existence, how it works, and how to file a complaint. In addition, because retaliation is prohibited by Title IX, a recipient may want to include a provision in its grievance procedures prohibiting retaliation against any individual who files a complaint or participates in an investigation.

For Title IX purposes, if a student requests that his or her name not be revealed to the alleged perpetrator or asks that the recipient not investigate or seek action against the alleged perpetrator, 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 alleged perpetrator. 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 alleged perpetrator or that the recipient not investigate or seek action against the alleged perpetrator, 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 sexual violence. If the school determines that it can respect the student's request not to disclose his or her identity to the alleged perpetrator, it should take all reasonable steps to respond to the complaint consistent with the request.

#### Notice of Non-Discrimination

The Title IX regulation, at 34 C.F.R. § 106.9, requires recipients to implement specific and continuing steps to notify applicants for admission and employment, students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the education program or activity which it operates, and that it is required by Title IX and its implementing regulations not to discriminate in such a manner. This notice (hereinafter, the "Notice of Non-Discrimination") must state that inquiries concerning the application of Title IX may be referred to the employee designated by the recipient to coordinate its responsibilities under Title IX (hereinafter, the "Title IX coordinator") or to the Assistant Secretary of OCR. It must also provide notice of the designated employee's name or title, office address, and telephone number.

## **Background**

The College is a private, liberal arts college located in Amherst, Massachusetts. According to the National Center for Educational Statistics, in fall 2016, the College enrolled 1,321 undergraduate students (62% of those students identified as female and 38% of those students identified as male).<sup>1</sup>

The College is a member of the Five College Consortium (“Consortium”), which provides students the opportunity to cross-register at other Consortium institutions – Amherst College, Mount Holyoke College, Smith College, and the University of Massachusetts Amherst. OCR found that the College’s membership in the Consortium was a key feature of student life. According to Five Colleges, Incorporated, each year there are about 6,000 course registrations for students taking courses at one of the other Consortium institutions. OCR’s interviews with College administrators and student focus groups reflected that, in addition to taking classes and utilizing libraries and other cross-campus academic settings, College students’ social lives are also highly interconnected within the Consortium. The five campuses are linked by a free bus service, such that students can typically travel to another Consortium institution within a half-hour to attend affinity group events, join an intramural club, and/or socialize.

The College confirmed that there is no Memorandum of Understanding (or similar formal arrangement) among the Consortium institutions to coordinate their Title IX response for cases involving parties from different Consortium institutions. However, the College explained that the Title IX coordinators from all five Consortium institutions convene fairly regularly (and at least once a semester), have developed good working relationships with one another, and contact one another to coordinate a response whenever a complaint is filed involving a different coordinator’s student or campus.

During the course of its compliance review, OCR noted the College’s efforts to enhance its Title IX response system. For example, since 2011, the College expanded its Title IX team, increasing that staff from one Title IX Coordinator to a team comprised of a Title IX Coordinator and at least four deputies. The Title IX Coordinator instituted measures to oversee the handling of Title IX complaints and increased awareness of issues pertaining to sexual harassment and sexual violence on campus. OCR also found that the College increased training opportunities for employees and students on the College’s grievance procedures; assessed the effectiveness of its initiatives and the overall campus climate; and developed relationships with law enforcement and the Title IX coordinators of other Consortium institutions. Finally, as detailed directly below, OCR also found that the College regularly reviewed and revised its Title IX grievance procedures in an effort to comport with Title IX.

## **Analysis**

OCR found that the College’s Title IX grievance procedures during the review period comported with some, but not all, Title IX requirements, particularly with respect to complaints against

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<sup>1</sup> See National Center for Educational Statistics’ College Navigator for Hampshire College, *available at* <https://nces.ed.gov/collegenavigator/?id=166018> (last visited 12/20/2017).

student respondents. In addition, before OCR made a compliance determination about how the College's applied its grievance procedure to respond to complaints of sexual harassment, OCR accepted the College's request to voluntarily resolve the concerns that OCR identified. Finally, OCR found that some of the College's Notices of Non-discrimination did not meet Title IX requirements.

### Title IX Grievance Procedures

During the review period, the College's grievance procedures for addressing complaints of sexual harassment by students, including sexual violence, were located within the Hampshire College Student Handbook ("Student Handbook")<sup>2</sup>; and the College's grievance procedures for addressing complaints of sexual harassment by employees (including staff and faculty) were located in the Employee Policy Manual. OCR reviewed the College's Title IX grievance procedures in effect during academic years 2011-2012 through 2016-2017. This review included the student grievance procedure, which was revised at least annually from 2011 to 2017; and the grievance procedures applicable to employees, which was not revised until 2016. The grievance procedures for resolving complaints against students and employees were substantially revised for the 2016-2017 academic year.

Below, OCR has summarized its findings with respect to the grievance procedures in effect for the 2011-2012 through 2015-2016 academic years, for both students and employees. Then OCR has provided a detailed explanation of the College's revised grievance procedure in effect for the 2016-2017 academic year, and identified the remaining items requiring remediation.

#### A. Student Handbook: Overview of Revisions from 2011-2012 through 2015-2016

The College's Title IX Coordinator explained that the first major revision to the College's Title IX grievance procedure applicable to students was implemented in the 2012-2013 academic year, and the College represented that the grievance procedures have since evolved on a regular basis in a good-faith effort to promptly comply with guidance and recommendations from various sources, including OCR guidance documents and the Violence Against Women Act (VAWA).

OCR's review confirmed that the College regularly revised its grievance procedures to enhance Title IX compliance and to respond to evolving laws, regulations, guidance, and best practices. While noting the College's work in this area, OCR also found that each version of the College's Title IX grievance procedures applicable to students did not fully comply with Title IX. A brief summary of OCR's findings is below:

**Sexual-Offense Policy for 2011-2012:** The Sexual-Offense Policy in effect during the 2011-2012 academic year raised a variety of compliance issues regarding notice of applicable procedures, the investigative process, and remedial measures. Specifically, the Sexual-Offense Policy did not:

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<sup>2</sup> Each version of the Student Handbooks is posted on the College's Student Handbook archives website, located at <https://handbook.hampshire.edu/node/4> (last visited 12/20/2017).

- Clearly state to whom students should report or who at the College had responsibility for investigating Title IX complaints.
- Provide notice of the procedures that would apply to cases involving a respondent from another Consortium institution (students and employees), an employee respondent, a third party respondent, or a respondent who is no longer a member of the College community.
- Designate reasonably prompt timeframes for the major stages of the complaint process, specifically the Community Review Board (CRB) process and Dean’s Hearing process.
- Provide equitable rights to both parties, as only respondents were permitted to request a Dean’s Hearing, or receive a copy of the CRB’s letter of recommendation to the Dean of Students.
- Provide an assurance that the College would take steps to prevent recurrence of any harassment and correct its discriminatory effects on the complainant and others, if appropriate.

Sexual Offense Policies for 2012-2013: It is evident from the breadth of the changes that the College made concerted efforts to revise its Title IX grievance procedure in 2012-2013 to comport with Title IX requirements, including but not limited to OCR published guidance. Nevertheless, the Sexual Offenses Policies in effect in fall 2012 and as revised in spring 2013 continued to raise compliance issues involving notice of applicable procedures,<sup>3</sup> the investigative process,<sup>4</sup> and remedial measures.<sup>5</sup>

Sexual Offense Policy for 2013-2014: The Sexual Offense Policy in effect during the 2013-2014 academic year provided much greater clarity and prominence around Title IX and the College’s Title IX response team. However, it raised compliance issues related to the reintroduction of a process that closely mirrored the CRB hearing process and retained several non-compliant aspects from prior versions of the policy regarding notice of applicable procedures and the investigative process.

Gender-based and Sexual Misconduct Policy & Grievance Process (GSMP) for 2014-2015: Although the College made a number of changes in the 2014-2015 Title IX student grievance

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<sup>3</sup> For example, the policies did not provide sufficient notice of the procedures that would apply to cases involving a respondent from another Consortium institution (students and employees), an employee respondent, a third party respondent, or a respondent who is no longer a member of the College community.

<sup>4</sup> For example, the policies stated that investigations would normally be completed within 60 days, but did not designate reasonably prompt timeframes for the investigation, the review panel (which replaced the CRB process), or the Title IX Coordinator’s decision that the complaint was appropriate.

<sup>5</sup> For example, the policies did not explain whether or how the parties would receive notice of the Dean of Students’ decision regarding the review panel’s determinations and recommendations on sanctions, and did not provide an assurance that the College would take steps to prevent the recurrence of any harassment and correct its discriminatory effects.



procedure,<sup>6</sup> the substance of the policy remained largely the same and thus the same or similar limited compliance issues regarding notice of applicable procedures, the investigative process, and remedial measures persisted.

Gender-based and Sexual Misconduct Policy & Grievance Process (GSMP) for 2015-2016: The text of the GSMP applicable during the 2015-2016 academic year is identical in all material respects to the 2014-2015 version. As a result, OCR identified the same compliance concerns regarding notice of applicable procedures, the investigative process, and remedial measures. The 2015-2016 GSMP also clarified that the College would stop the investigative or hearing process at the end of the semester in which a respondent withdrew, keeping all investigative information on file, to be completed if the respondent were readmitted to the College. OCR notes that although the College's authority over a respondent who is no longer a student may be more limited, terminating or postponing indefinitely a process based solely on the withdrawal of a respondent fails to address how the College would prevent the recurrence of sexual violence and remedy its effects on the complainant and others, if appropriate.

#### B. Sexual Harassment Policy in the Employee Policy Manual (Effective Until the 2016-2017 Academic Year)

The College reported to OCR in its data responses that its grievance procedures to resolve employees' allegations of sexual harassment against other employees remained the same since at least 2011 until the beginning of the 2016-2017 academic year.<sup>7</sup> The College explained in its data responses that the Sexual Harassment Policy contained within the Employee Policy Manual was the College's means of addressing sexual harassment complaints against employees, including faculty and staff; and the College did not provide any other Title IX grievance procedures for complaints of sexual harassment against employees.

While a number of provisions in the Employee Policy Manual comported with Title IX, it also raised a variety of compliance issues regarding notice of applicable procedures, the investigative process, and remedial measures. Specifically, the Employee Policy Manual did not:

- Provide notice of the procedures that would apply to cases involving a College student complainant and an employee respondent, regardless of whether the employee was an employee at the College or at another Consortium institution.
- Ensure the adequate, reliable, and impartial investigation of complaints, as the investigation consisted solely of interviews of the parties and witnesses and there were no avenues for the parties to submit evidence or identify witnesses.

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<sup>6</sup> For example, the policy included a clear discussion of disclosures that were privileged (i.e., to professional and pastoral counselors), confidential (i.e., to non-professional counselors and advocates), and reports to responsible employees. The policy also clarified that civil or criminal proceedings may not delay internal College processes.

<sup>7</sup> OCR notes that the College's Employee Policy Manual in effect at the time indicated that it was last revised in 1999.

- Designate reasonably prompt timeframes for any of the major stages of the complaint process.
- Ensure that notice was provided to both parties of the outcome of the complaint, but rather stated that the parties would be informed of the results of the investigation “to the extent appropriate.”
- Provide an assurance that the College would take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, if appropriate.

### C. Sexual Misconduct, Relationship Violence, and Stalking Policy for 2016-2017

On August 1, 2016 the College implemented an entirely new set of Title IX grievance procedures entitled, the “Sexual Misconduct, Relationship Violence, and Stalking Policy” (2016-2017 Policy) that applied to students, employees, and third parties.<sup>8</sup> The College made further revisions to the 2016-2017 Policy in September 2016 and January 2017. The 2016-2017 Policy significantly revised the College’s prior grievance procedures and replaced the Gender-based and Sexual Misconduct Policy & Grievance Process in the Student Handbook and the Sexual Harassment Policy in the Employee Policy Manual. The 2016-2017 Policy was comprised of three sections – a general section (Policy Section), a student section (Appendix A), and an employee section (Appendix B).

Below is OCR’s summary and analysis of the 2016-2017 Policy. As explained in subsection (4) below (“Compliance Determinations for the 2016-2017 Policy”), OCR found that the 2016-2017 Policy corrected many Title IX violations that existed in previous versions of the College’s grievance procedures found in the Student Handbooks and the Employee Policy Manual, but OCR also found that several items require remediation to ensure compliance with Title IX.

#### 1. Summary of the Policy Section of the 2016-2017 Policy

The Policy Section listed general information, including: to whom the 2016-2017 Policy applies; which procedures would apply based on the respondent’s relationship to the College; the role and contact information for the Title IX Coordinator and Deputy Coordinators; privacy and confidentiality information; resources; and definitions of key terms.

With respect to “resources and reporting options,” the 2016-2017 Policy referred students to Appendix A, referred employees to Appendix B, and instructed third parties to “contact the Title IX Coordinator to discuss available College and/or community resources and reasonably available assistance.” The 2016-2017 Policy did not otherwise provide a discussion of the

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<sup>8</sup> As of July 2016, the College also updated its Faculty Handbook to clearly state that sexual misconduct, relationship violence, and stalking would be handled by the 2016-2017 Policy. The College also represented to OCR that it was working to amend the Employee Policy Manual to include the 2016-2017 Policy and that it distributed the 2016-2017 Policy as a stand-alone document to employees via e-mail.

procedures that would apply to sexual misconduct reports against third party respondents.<sup>9</sup> Rather, the Policy Section of the 2016-2017 Policy stated that the Title IX Coordinator would determine the appropriate manner of resolution for complaints against third party respondents based on the nature of the third party's relationship to the College and consistent with the College's commitment to provide a prompt and equitable process.

The 2016-2017 Policy, as updated on October 5, 2016, addressed complaints involving Consortium students and shared employees of the College and other institutions. Specifically, in defining to whom the policy applies, the Policy Section explicitly included "students taking courses at Hampshire College through the Five College Interchange" in its definition of "Students," and "Hampshire College employees and Five College employees working at Hampshire College" in its definition of "Employees" covered by the 2016-2017 Policy. The 2016-2017 Policy reiterated that violations of disciplinary policies by Consortium student respondents would be treated as though they occurred on the Consortium student's home institution, including any investigation and resolution processes.

## 2. Summary of Appendix A of the 2016-2017 Policy

Appendix A set out the reporting, investigative, hearing, and appeals processes for reports of sexual misconduct against student respondents. OCR's review found that these processes were similar to those provided in prior versions of the College's Title IX grievance procedures applicable to students, and consisted of a meeting with a Title IX Coordinator or Deputy Coordinator for an "Initial Assessment," an investigation, and a hearing process.

The 2016-2017 Policy stated that during the Initial Assessment, the Title IX Coordinator or Deputy Coordinator would assess the complainant's safety and wellbeing, provide information about medical and legal resources, explain the College's processes, and address any reporting requirements (such as child protective services or Clery Act obligations). According to Appendix A, if a complainant requested to maintain privacy or did not want to seek disciplinary action against the respondent, the Title IX Coordinator or Deputy Coordinator would "balance that request against the College's obligation to provide a safe, non-discriminatory environment for all community members, including the [c]omplainant." Appendix A stated that the College would consider broader remedial action even in instances where it could honor the complainant's request.

According to Appendix A, following the Initial Assessment, the Title IX Coordinator would determine "whether the circumstances warrant proceeding to an investigation." Appendix A did not list a timeframe for this determination. Once made, the College would communicate its determination to the complainant in writing and notify the respondent to the extent the respondent was impacted, for example, by protective measures that restricted the respondent's

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<sup>9</sup> OCR notes that Appendix B included references to "Third Party Respondents" to the extent that: (1) the members assigned to the adjudicating panel were the same as those assigned for non-faculty employees; (2) the potential sanctions were the same as those for employees; and (3) the effect of a pending complaint was the same as that for an employee who separated from his or her employment with the College. Other than these three references, however, Appendix B did not indicate that its procedures apply to complaints against third party respondents.

movement or by the initiation of an investigation, alternative resolution, or other disciplinary process.

Following the Initial Assessment, a complainant or the College could elect an alternative resolution process or a formal resolution process involving an investigation and potential discipline. Appendix A was clear that the alternative resolution process was voluntary for both parties and that either party could terminate the process any time. In addition, Appendix A excluded cases involving sexual assault from some avenues of alternative resolution, such as an alternative resolution involving face-to-face meetings between the parties.

The formal resolution process would begin with an investigation, which Appendix A stated would typically be completed within 60 calendar days – from the College’s “notice of an investigation” to the parties through resolution (finding and sanction, if any) – but the timeframe could be extended for “good cause” to ensure the integrity and completeness of the investigation and to account for College breaks or vacations, among other reasons listed.

Appendix A stated that at the start of an investigation, the Title IX Coordinator or Deputy Coordinator would meet with the parties separately to describe the process and provide written notice of the reported violation, including a summary of the allegations and the potential violations at issue. The Title IX Coordinator or Deputy Coordinator would assign an investigator, who received annual training under Title IX and VAWA. Both parties would have an equal opportunity during the investigation to notify the College of any bias or conflicts of interest of the investigator, to be heard, to submit information and corroborating evidence, and to identify witnesses. Both parties were entitled to be accompanied by a supporter of their choice throughout the process. The investigation would conclude with an investigation report that made a “threshold determination as to whether the allegations, if proven, would provide sufficient information to establish a violation” of the 2016-2017 Policy. If the investigator decided that the threshold had not been reached, Appendix A permitted the complainant an opportunity to request, within five business days, that the Director of Student Conduct, Rights, and Responsibilities (Director) review the determination. This administrative review would be completed within 10 business days and could result in affirming, reversing, or remanding the investigator’s finding. Conversely, if the investigator determined that the threshold had been reached, the report would be submitted to the Director, who would convene a hearing.

For cases that proceeded to a hearing, the Director would convene a panel of three faculty and/or staff who received training on Title IX and VAWA and who had no known biases or conflicts of interest in the case. To ensure the same, the parties would receive equal opportunity to advise of any biases or conflicts of interest among the panelists. The parties would also receive notice of the hearing, could review the final investigative report and any supplemental report or documents provided to the panel, and were invited to submit a written statement concerning impact and sanctioning recommendations. According to Appendix A, the hearing would be typically held within 55 calendar days of the initiation of the investigation. At the hearing, both parties could be accompanied by a supporter, could have an equal opportunity to be heard, could identify issues for the panel’s consideration, and could respond to questions from the panel. The parties were not permitted to question each other directly, but could propose questions to the panel members, who would then screen the questions for appropriateness and relevance. Appendix A

further clarified that a hearing could proceed, and sanctions could be imposed, even if a party elected not to attend or participate in the hearing.

At the conclusion of the hearing, the panel would determine whether there was sufficient information to support a finding of responsibility under the 2016-2017 Policy. The panel would also determine appropriate sanctions, if any, after consultation with the Director or his/her designee. The Title IX Coordinator or Deputy Coordinator could also advise the panel concerning consistency and proportionality in sanctions, and the sufficiency of the sanction to eliminate the violation, prevent its recurrence, and remedy its effects. Appendix A listed potential sanctions.

Both parties would be notified simultaneously and in writing of the outcome within five business days. The parties had an equal opportunity to appeal the outcome to a senior administrator designated in the outcome letter within seven calendar days, and receive a decision within 10 business days.

In a departure from the College's prior Title IX grievance procedures, Appendix A provided that the College would complete the formal resolution procedures even if a respondent left the College for any reason while the formal resolution process was underway.

### 3. Summary of Appendix B of the 2016-2017 Policy

Appendix B set out the reporting, investigation, adjudication, and appeals processes for reports of sexual misconduct against employees. Appendix B was largely identical to Appendix A, except in the following two ways: (1) the alternative resolution process had one additional carve-out; and (2) the formal resolution process omitted the hearing process.

First, with respect to the alternative resolution process, Appendix B added that face-to-face processes, such as mediation, were not permitted in cases where the complainant was a student and the respondent was an employee in a position of authority over the complainant.

Second, with respect to the formal resolution process, Appendix B omitted the hearing process altogether. Instead, the investigator would prepare a recommendation that would be reviewed by an adjudicative panel. Specifically, at the conclusion of the investigation, the investigator would prepare a report recommending a "determination of whether there is sufficient information, by a preponderance of the evidence, to support a finding of responsibility for a violation of [the 2016-2017 Policy]." Both parties had the opportunity to review the report and correct factually inaccurate information.

A complainant could contest the investigator's findings of insufficient information, and a respondent could contest the investigator's findings of sufficient information. In either case, the party contesting the findings had three business days to notify the Title IX Coordinator in writing of the reason for contesting the findings. The other party would then have the opportunity to respond in writing within three business days.

The contested findings (if any), the final determination of responsibility, and sanctions would be decided by an adjudicating panel comprised of members who received training under Title IX and VAWA and were free of bias or conflicts of interest.<sup>10</sup> The adjudicating panel would determine whether the contesting party's concerns raised substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation; if not, whether there was sufficient evidence to support the investigator's recommended finding(s) and sanctions. Appendix B also listed potential sanctions.

Otherwise, Appendix B was similar to Appendix A in all material respects, including noting that the College would finalize formal resolution procedures even if a respondent left the College for any reason while the process was underway.

#### 4. Compliance Determinations for the 2016-2017 Policy

OCR notes that the 2016-2017 Policy corrected many of the Title IX violations that existed in prior versions of the College's Title IX grievance procedures applicable to both students and employees. In addition, the organization of the information makes it readily accessible to students, employees, and third parties. While recognizing these considerable improvements, OCR also found that the 2016-2017 Policy did not meet certain Title IX requirements, as detailed below.

- The 2016-2017 Policy did not provide notice to College students of the procedure that would apply against third-party respondents. Rather, the Policy Section of the 2016-2017 Policy stated that the Title IX Coordinator would determine the appropriate manner of resolution, as determined by the nature of the third party's relationship to the College, consistent with the College's commitment to provide a prompt and equitable process. The College has agreed to clarify this obligation.
- The 2016-2017 Policy did provide notice to College student-complainants of how to file complaints against Consortium-respondents or the procedures that would apply. However, although the 2016-2017 Policy clarified that violations of disciplinary policies by Consortium-respondents would be treated as though the actions occurred at the Consortium-respondent's home institution, it did not identify the actual procedures that would apply in a given case. By not providing this information, the onus is left on the College student-complainant to locate and determine the relevant "home institution's applicable and appropriate disciplinary procedures" and how and where to file a complaint. The College has agreed to further clarify this information to provide full and clear notice to its stakeholders.
- Although the 2016-2017 Policy stated that the College would normally complete its investigation within 60 days and provided timeframes for its formal resolution process,

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<sup>10</sup> According to Appendix B, for employee-respondents who are members of the faculty, the adjudicating panel would include the Vice President for Academic Affairs and Dean of Faculty, and one or more School Deans. For non-faculty employees or third party respondents, the adjudicating panel would include the Vice President for Finance and Administration and a designated department head.

the 2016-2017 Policy did not have a designated and reasonably prompt timeframe for the Initial Assessment, which is a major stage of the complaint process. The College has explained to OCR that it believes other language in the 2016-2017 Policy<sup>11</sup> indicates that the Initial Assessment should be conducted promptly, but nonetheless has agreed to resolve this compliance finding.

- The 2016-2017 Policy provided that the College would finalize formal resolution procedures even if a respondent left the College for any reason while the formal resolution process was underway. Limiting this assurance to the “formal resolution process” may exclude those cases where the College has not yet initiated a formal resolution process, specifically, cases reported after a respondent’s withdrawal or separation, cases still in the Initial Assessment phase, or cases in an alternative resolution process. The College has agreed to clarify that it will provide a Title IX response in all cases.

As noted above, the College has agreed to remedy these violations by revising its current Title IX grievance procedure, consistent with the provisions detailed in the Agreement. OCR also notes that upon learning of these findings, the College drafted responsive changes to its grievance procedure, which OCR will formally review when monitoring the Agreement.

#### Investigation and Resolution of Complaints of Sexual Harassment: Review of Case Files

As noted in the Legal Standards section above, once a college has notice of possible sexual harassment of students, whether carried out by employees, other students, or third parties, it should take immediate and appropriate steps to investigate or otherwise determine what occurred. In its investigations, OCR generally considers how a college responds to incidents of sexual harassment by reviewing how a college applies its grievance procedures to individual cases.

During the course of its compliance review, OCR reviewed 55 cases of sexual harassment filed with the College from academic years 2011-2012 through 2013-2014, and conducted related interviews.<sup>12</sup> Of these 55 cases, 26 cases involved allegations of sexual violence. OCR identified concerns with respect to the College’s handling of some of these cases, as described below. Before OCR completed its review and made any compliance determinations, the College expressed a willingness to resolve OCR’s concerns by taking the steps set out in the enclosed Agreement.

- OCR is concerned about the College’s actions in cases in which a respondent withdrew (student) or resigned (employee) and in cases in which a complainant elected not to move forward with the process. In these types of cases, OCR is concerned whether the College sufficiently evaluated whether a hostile environment existed for the complainants or for

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<sup>11</sup> E.g., An introductory phrase to the “Initial Response and Title IX Assessment” part of Appendix A, which states “the College will take immediate and appropriate steps to investigate or otherwise determine what happened and work to resolve the matter promptly and equitably.”

<sup>12</sup> OCR also requested and received the sexual harassment complaint files from academic years 2014-2015 through 2016-2017.

the broader College community, or otherwise took steps to eliminate a hostile environment and prevent its recurrence.

- OCR is concerned about the College's actions in cases involving one or more parties from a different Consortium institution. While OCR notes that many of these cases appear to have involved some communication between the College and the other Consortium institutions, OCR is concerned whether the College provided prompt responses to some complainants, which may have been delayed due to a lack of a formal protocol and/or consistent coordination among Consortium institutions aimed at guaranteeing a prompt and equitable response to complaints of sexual harassment.

As detailed in the Agreement, the College agreed to review certain case files that OCR has identified from academic years 2011-2012 through 2016-2017, with a focus on OCR's concerns, and to take remedial action where appropriate.

### Notices of Non-Discrimination

OCR reviewed the College's various Notices of Non-Discrimination disseminated during academic years 2011-2012 through 2016-2017, and found that some of the College's Notices of Non-Discrimination did not meet Title IX requirements. As noted in the Legal Standards section above, a college must provide notice that it does not discriminate on the basis of sex in its education programs and activities; that it is required by Title IX not to discriminate in such a manner; and that questions regarding Title IX may be referred to the Title IX coordinator and any other employee charged with coordinating the school's compliance with Title IX or to OCR. All of this information is required to comply with Title IX.

OCR found that the Notice of Non-Discrimination in the 2016-2017 Student Handbook fully complied with Title IX.<sup>13</sup> Specifically, this Notice of Non-Discrimination included a prohibition on discrimination based on sex, with a citation to Title IX; an explanation that reports of sexual misconduct should be reported to the Title IX Coordinator or Title IX Deputy Coordinator for Students and contact information for those staff members, including their full names, titles, office addresses, telephone numbers, and e-mail addresses; and a statement that complaints may be brought to OCR.

However, OCR found that the Notices of Non-Discrimination in the Employee Policy Manual, on various College webpages, and on the College's job postings included most, but not all, of the information required by Title IX. Specifically, OCR found that the Employee Policy Manual stated that the College prohibited discrimination on the basis of sex, as required, but did not cite to Title IX or explain that questions regarding Title IX may be referred to the Title IX Coordinator or OCR. In addition, OCR found that certain webpages that contained the College's Notice of Non-Discrimination<sup>14</sup> included language prohibiting discrimination on the basis of sex

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<sup>13</sup> In addition to the 2016-2017 Student Handbook, the Notice of Non-Discrimination in the 2013-2014 Student Handbook also contained all required information.

<sup>14</sup> See Human Resources website at <https://www.hampshire.edu/hr/notice-of-non-discrimination>; Admissions website at <https://www.hampshire.edu/admissions/notice-of-non-discrimination>; President's Office website at



and cited Title IX, as required, but did explain that questions regarding Title IX may be referred to the Title IX Coordinator or OCR. Finally, OCR found that the College’s online job postings contained the statement that “Hampshire College is an equal opportunity institution, committed to diversity in education and employment,” but did not state that the College prohibited discrimination based on sex, or explain that questions regarding Title IX may be referred to the Title IX Coordinator or OCR, as required.

The College agreed to remedy these violations by revising the above Notices of Non-Discrimination, consistent with the provisions detailed in the Agreement. OCR notes that upon learning of these findings, the College promptly drafted corrections to the non-compliant Notices of Non-Discrimination, which OCR will formally review when monitoring the Agreement.

### **Conclusion**

On January 26, 2018, the College agreed to implement the enclosed Agreement, which commits the College to take specific steps to address the identified areas of noncompliance (Title IX grievance procedure and Notices of Non-Discrimination), as well as the area where OCR identified concerns but did not make a compliance determination (investigation and resolution of complaints). Among other terms, the College has agreed to do the following:

- Revise its Title IX grievance procedures and ensure that all students and employees are notified of such revisions.
- Provide training on the revised Title IX grievance procedures and ensure that its decision-makers and investigators are appropriately trained.
- Revise its Notices of Non-Discrimination.
- Review sexual harassment case files from the 2011-2012 through 2016-2017 academic years.
- Take steps towards coordinating with other Five College Consortium institutions on appropriately responding to incidents of sexual harassment.

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

Please be advised that the College may not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law

enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

We wish to thank the College for its cooperation during OCR's compliance review. If you have any questions, you may contact Civil Rights Attorney Amy Fabiano at (617) 289-0007 or by e-mail at Amy.Fabiano@ed.gov, or Compliance Team Leader Ramzi Ajami at (617) 289-0086 or by e-mail at Ramzi.Ajami@ed.gov.

Sincerely,

/s/

Meena Morey Chandra *w/p AMM*  
Acting Regional Director

Enclosure

cc: Joanna Olin, Chief of Staff and Counsel  
Leslie Gomez, Cozen O'Connor