

## **VOLUNTARY RESOLUTION AGREEMENT**

### **State University of New York OCR Docket No. 02-11-6001**

In order to resolve Case No. 02-11-6001, the State University of New York (SUNY) assures the U.S. Department of Education, New York Office for Civil Rights (OCR), that it will take the actions detailed below pursuant to the requirements of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106.

The U.S. Department of Education, Office for Civil Rights (OCR) initiated a compliance review of the State University of New York (SUNY) in December 2010 under Title IX. During the course of the investigation, SUNY implemented a number of policies, procedures, and practices in an effort to improve its response to complaints of alleged sex discrimination, including sexual violence and sexual harassment, in accord with detailed OCR guidance that was released four months into the compliance review.

This Resolution Agreement has been entered into voluntarily by SUNY and does not constitute an admission by SUNY that it is not in compliance with Title IX and/or its implementing regulation. SUNY voluntarily agrees to the following to assure that it and each SUNY campus<sup>1</sup> will continue to: promptly investigate all incidents of sex discrimination of which SUNY and/or the campus has notice (including incidents that SUNY knew or reasonably should have known about); take appropriate disciplinary action against those who violate University/campus policies and procedures addressing sex discrimination; and take prompt and effective responsive action reasonably designed to end a hostile environment if one has been created, prevent its recurrence, and, where appropriate, take steps to remedy the effects of the hostile environment.

#### **A. Title IX Coordinators**

SUNY System Administration and each SUNY campus has designated a Title IX Coordinator. No later than March 31, 2014, SUNY will provide certification that each SUNY campus has continued to revise relevant publications disseminated to students and employees to notify all students and employees of the name and/or title, office address, electronic mail (email) address and telephone number of the person(s) designated to coordinate its efforts to comply with Title IX. SUNY System Administration will notify all employees of the same information. The Title IX Coordinator or a qualified designee will annually review all formal and informal complaints of discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence) received as well as the information collected pursuant to Items I and J of this Agreement, in order to identify any patterns or systemic problems; and, will take appropriate action to address any patterns or problems identified.

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<sup>1</sup> The twenty-nine state-operated campuses of the State University of New York established by New York State Education Law §352 are Albany, Alfred State, Binghamton, Brockport, University at Buffalo, Buffalo State, Canton, Cobleskill, Cortland, Delhi, Downstate Medical, Empire State, Environmental Science and Forestry, Farmingdale, Fredonia, Geneseo, SUNYIT, Maritime, Morrisville, New Paltz, Old Westbury, Oneonta, Optometry, Oswego, Plattsburgh, Potsdam, Purchase, Stony Brook, Upstate Medical.

**Reporting Requirement 1:** By July 31, 2014, July 31, 2015, and July 31, 2016, SUNY will provide documentation to OCR showing that each Title IX coordinator completed an annual review. This documentation will include information about the number of complaints received, the type of complaint (sexual harassment, sexual violence, pregnancy discrimination, etc.), a general description of the outcome of the complaints (such as, referred to discipline or human resources, accused found responsible, accused found not responsible), any trends or patterns identified, and any actions taken in response to trends or patterns identified.

**Reporting Requirement 2:** By March 31, 2014, SUNY will provide to OCR a certification from each Title IX Coordinator that SUNY System Administration and each SUNY campus has revised its relevant publications pursuant to Section A above, and will include a list of the titles of the publications in which the information appears (e.g. college catalog, Title IX web site, student handbook) as well as a copy of at least one publication disseminated to students and/or employees containing the required notification, or printouts or a link to an on-line publication containing the required notification. Inserts may be used pending reprinting of these publications.

## **B. Notices of Nondiscrimination**

No later than January 31, 2014, SUNY's System Administration and each SUNY campus will continue to revise and publish notices of nondiscrimination to state that SUNY System Administration and each SUNY campus, respectively, does not discriminate on the basis of sex in the educational programs or activities which it operates or in employment (and may include other bases such as race, color, national origin, disability and age). Notices will include a statement that inquiries concerning the application of Title IX and its implementing regulation may be referred to the designated Title IX Coordinators or to OCR. Additionally, by the same date, notices of nondiscrimination for each SUNY campus will be published broadly, including on a campus web site, and in the college catalog, student handbook, and application form/web site.

**Reporting Requirement:** By March 31, 2014, SUNY will provide to OCR a certification from each Title IX Coordinator that the campus has revised and published its notice of nondiscrimination. This certification will include a list of the titles of the publications in which the information appears (e.g. college catalog, Title IX web site, student handbook) and a copy of at least one publication disseminated to the campus community, or printouts or a link to an on-line publication containing the notice. Additionally, SUNY will provide copies of applications for employment for SUNY System Administration and each SUNY campus containing the appropriate notice. Inserts may be used pending reprinting of these publications.

### **C. Grievance Procedures**

SUNY has revised its SUNY System grievance procedures addressing complaints alleging discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence), known as the SUNY-Wide Discrimination Complaint Procedure, to include the bulleted points below, so that such procedures provide for the prompt and equitable resolution of complaints by students and all types of employees alleging all forms of sex discrimination (including sexual harassment, sexual assault, and sexual violence) against students, employees and third parties. No later than March 31, 2014, SUNY will determine whether at that time each SUNY campus is utilizing the SUNY-Wide Discrimination Complaint Procedure or is utilizing different grievance procedures to address complaints alleging discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence). Each SUNY campus utilizing a grievance procedure other than the SUNY-Wide Discrimination Complaint Procedure must revise it as necessary and as indicated in the bulleted points below, to include at a minimum:

- notice that the procedures apply to complaints alleging all forms of sex discrimination (including sexual harassment, sexual assault, and sexual violence) against employees, students, or third parties;
- an explanation to students and all types of employees of how to file a complaint pursuant to the procedures;
- the name or title, office address, email address, and telephone number of the individual(s) with whom to file a complaint;
- definitions and examples of what types of actions may constitute sex discrimination (including sexual harassment, sexual assault and sexual violence);
- a statement that responsible employees are expected to promptly report sexual harassment that they observe or learn about;
- provisions for the prompt, adequate, reliable, and impartial investigation of all complaints, including the opportunity for the parties to present witnesses and other evidence;
- provisions for the investigation of complaints when the complainant does not choose to proceed with an informal or formal resolution or a hearing;
- provisions to indicate that SUNY has an obligation to make reasonable efforts to investigate and address instances of sex discrimination when it knows or should have known about such instances, regardless of complainant cooperation and involvement;
- provisions ensuring that the parties are afforded similar and timely access to any information used at the hearing;
- clarification that any informal resolution mechanism set forth in the procedures will only be used if the parties voluntarily agree to do so, that the complainant should not be required to resolve the problem directly with the respondent and that there will be instances when the informal resolution mechanism may be inappropriate (e.g., mediation is prohibited in cases of sexual assault, and those involving a student complaining of sexual harassment against an employee in a position of authority over the student); and that 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;

- a statement that the preponderance of the evidence standard will be used for investigating alleged sex discrimination and sexual harassment;
- designated and reasonably prompt timeframes for the major stages of the grievance process that apply equally to the parties of the complaint, including the investigation, complaint resolution, and appeal processes, if any;
- an assurance that victims will be made aware of their Title IX rights and available resources, such as counseling, the local rape crisis center, and their right to file a complaint with a local law enforcement agency;
- a provision indicating that SUNY will comply with law enforcement requests for cooperation and such cooperation may require SUNY to temporarily suspend the fact-finding aspect of a Title IX investigation while the law enforcement agency is in the process of gathering evidence, and that SUNY will promptly resume its Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process;
- a provision indicating that SUNY will implement appropriate interim steps during the law enforcement agency's investigation period to provide for the safety of the victim(s) and the campus community and the avoidance of retaliation;
- provisions indicating the availability of interim measures during the University's investigation of possible sexual harassment (such as how to obtain counseling and academic assistance in the event of a sexual assault, and what interim measures can be taken if the alleged perpetrator lives on campus and/or attends classes with the victim), and that such interim measures will not disproportionately impact the complainant;
- an assurance that the complaint and investigation will be kept confidential to the extent possible;
- written notice to both parties of the outcome;
- notice of the opportunity of both parties to appeal the findings, if the procedures allow appeals;
- an assurance that any appeal will be conducted in an impartial manner by an impartial decision maker;
- an assurance that steps will be taken to prevent discrimination and harassment, to prevent the recurrence of discrimination and harassment, and to remedy the discriminatory effects on the victim(s) and others, if appropriate;
- examples of the range of possible disciplinary sanctions, and the types of remedies available to victims and others; and
- a statement that retaliation is prohibited against any individual who files a sex discrimination complaint under Title IX or participates in a complaint investigation in any way.

**Reporting Requirement 1:** By March 31, 2014, for each SUNY campus, SUNY will indicate whether at that time the institution is utilizing the SUNY-Wide Discrimination Complaint Procedure to address complaints alleging discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence), or has chosen to utilize a grievance procedure other than the SUNY System grievance procedures. SUNY may choose to provide to OCR an updated version of the list it previously provided to OCR of the campuses that have chosen to utilize a grievance procedure other than the SUNY System

Grievance Procedures, if there have been any changes. As per policy, all campuses must use the SUNY-Wide Discrimination Complaint Procedure unless the campus has made application for an exception. Requests for exception, along with a copy of the requesting campus's discrimination complaint procedure, must be filed with the SUNY Office of General Counsel. The request for an exception will be acted upon by the SUNY Office of General Counsel after a review of the campus's complaint procedure.

**Reporting Requirement 2:** As of this Resolution Agreement's execution date, SUNY has provided for OCR's review a draft of the revised SUNY-Wide Discrimination Complaint Procedure. SUNY will share with OCR the approved procedures for SUNY campuses that have chosen to use a grievance procedure other than the SUNY-Wide Discrimination Complaint Procedure as these become available; by no later than March 31, 2014, SUNY will have provided to OCR a draft of the grievance procedures for any SUNY campus that, by that time, has chosen to utilize a grievance procedure other than the SUNY-Wide Discrimination Complaint Procedure to address complaints alleging discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence), which will have already received approval from the SUNY Office of General Counsel. OCR will review these grievance procedures in order to ensure that they comply with Title IX.

**Reporting Requirement 3:** Within six (6) months of OCR's confirmation that the revised SUNY-Wide Discrimination Complaint Procedures, and any other sex discrimination grievance procedures used by a SUNY campus that differs from the SUNY-Wide Discrimination Complaint Procedures, conform with Title IX, each SUNY Title IX Coordinator will certify that the campus or SUNY System Administration has formally adopted its revised procedures; updated their printed publications and on-line publications with the revised procedures (inserts may be used pending reprinting of these publications); and electronically disseminated the revised grievance procedures to students and employees. This documentation will include evidence of the electronic dissemination of the revised grievance procedures to students and employees, a list of the titles of the publications in which the information appears (e.g. college catalog, Title IX web site, student handbook) as well as a copy of at least one publication, either a printout or a link to an on-line publication containing the revised grievance procedures or if not yet finalized, a copy of the insert for printed publications.

#### **D. Individuals On-Call to Notify Complainants of Options and Coordination with Law Enforcement Agencies**

SUNY asserts that each SUNY campus has procedures that allow victims to report complaints of sexual violence and sexual assault at any time of day. During general business hours the Title IX Coordinator and/or designees are available to assist victims, and at all other times campus police are available. The Campus Police departments are 24-hour operations and they are equipped to

receive reports from victims at any time. By January 31, 2014, each SUNY campus' policies and procedures will codify existing practices and require the following:

1. Upon receipt of a sex discrimination complaint or report (including receipt by any SUNY campus police department), each SUNY campus will provide to the complainant a written notice describing the available options, including pursuing a criminal complaint with a law enforcement agency, pursuing SUNY's investigation and disciplinary process, or pursuing both options at the same time; and the potential consequences of pursuing both options (*i.e.*, possible temporary suspension of the fact-finding aspect of SUNY's investigation while the law enforcement agency is in the process of gathering evidence). The SUNY campus will document which option(s) the complainant wishes to pursue.
2. SUNY campus police will promptly notify the campus Title IX Coordinator upon receipt of any complaint or report of alleged sexual misconduct/assault. The SUNY campus will not wait for the conclusion of the criminal investigation or criminal proceeding to begin its own sex discrimination investigation, and if needed, will take immediate steps to protect the student in the educational setting.

**Reporting Requirement:** Within a month of the signing of this agreement, SUNY will provide a copy of a written notice to a victim developed consistent with Section D above. This notice will be a model for each SUNY campus, which will develop campus-specific notices that will contain at a minimum, the information contained in the model notice sent from SUNY to OCR. By June 30, 2014, copies of or a website link to each campus' notice will be submitted to OCR.

#### **E. Title IX Training**

SUNY System and/or each SUNY campus will continue to provide regular in-person or online training to all staff responsible for recognizing and reporting incidents of sexual harassment and staff with Title IX compliance and implementation responsibilities, which may include Title IX Coordinators, deputy coordinators, residential assistants, and campus police. By December 31, 2013, and by the same date in 2014 and 2015, SUNY will demonstrate that training was provided by SUNY System Administration and/or by each SUNY campus and covered, at a minimum: the grievance procedures; how to recognize and appropriately address allegations and complaints pursuant to Title IX; identifying sex discrimination, sexual harassment, sexual assault, and sexual violence; SUNY's responsibilities under Title IX to address such allegations; and the relevant resources available. The training for Title IX Coordinators and designees will include instruction on how to conduct and document adequate, reliable, and impartial Title IX investigations. During the training, SUNY will provide copies of revised nondiscrimination notices and Title IX grievance procedures, as these become available, to all attendees or refer them to their location within the publications they already possess.

**Reporting Requirement:** By December 31, 2013, and by the same date in 2014 and 2015, SUNY will provide documentation to OCR demonstrating that training was provided by SUNY System Administration and/or by each SUNY campus in

accordance with Section E above. The documentation will include, at a minimum, the name(s) and credentials of the trainer(s); the date(s) and time(s) of the training(s); the type of audience and estimated number of attendees; and copies of any training materials distributed.

#### **F. Campus-Based Committees**

SUNY has asserted that its campuses already operate personal safety committees consisting of representative student leaders that, among other duties, identify strategies for ensuring that students understand their rights under Title IX, how to report possible violations of Title IX, and feel comfortable and confident that campus officials to whom they make such reports will take them seriously and promptly and equitably respond. By June 30, 2014, the committees at each SUNY campus will identify and recommend strategies for the prevention of sexual harassment/sexual assault incidents, including outreach and educational activities; such as providing for incoming freshmen to take a course or attend a workshop that highlights the connection between alcohol abuse and sexual harassment and sexual violence, which will be recommended to the campus for implementation.

**Reporting Requirement:** Within a month of the signing of this agreement, SUNY will provide OCR with a copy of a communication sent to Personal Safety Committee Chairs about Title IX and the goals outlined in section F above. By June 30, 2014, SUNY will provide a written description of the strategies identified and recommended by the committees for the prevention of sexual harassment/sexual assault incidents. SUNY will also provide OCR with a list of the current membership of the Personal Safety Committee on each SUNY campus and the committee's web site, if applicable.

#### **G. Information Sessions**

By December 31, 2014, and annually thereafter during the course of the monitoring, each SUNY campus will offer a series of information sessions to students so that they are aware of the campus' prohibition against sex discrimination (including sexual harassment, sexual assault, and sexual violence); how to recognize such sex discrimination and sexual harassment when it occurs; and how and with whom to report any incidents of sex discrimination (including sexual harassment, sexual assault, and sexual violence). In addition, the sessions will cover the campus' revised grievance procedures for Title IX complaints, as well as a general overview of Title IX, the rights it confers on students, the resources available to students who believe that they have been victims of sexual harassment/assault/violence, and the existence of OCR and its authority to enforce Title IX. These sessions may be provided as part of the existing annual student orientation for new and returning students, and existing annual residence life orientation for students residing in campus housing.

**Reporting Requirement:** By December 31, 2014, and annually thereafter during the course of the monitoring, SUNY will provide to OCR documentation demonstrating implementation of Action Item G above at each SUNY campus, including a description of each information session and the dates the information sessions were held.

## **H. Dissemination of Information Regarding Sex Discrimination**

SUNY has asserted that each of its campuses distributes information that identifies sex discrimination, sexual harassment and sexual assault (including sexual violence); what to do if a student has been the victim of sexual assault; how to obtain counseling and academic assistance in the event of a sexual assault; available interim measures of protection; contact information for on and off-campus resources for victims of sexual assault; the campus' grievance procedure(s) for addressing Title IX complaints raised by students and staff; and the name or title and contact information for the campus' Title IX Coordinator(s) and a description of the Title IX Coordinator's role.

**Reporting Requirement:** By September 30, 2014, SUNY will provide confirmation that each campus distributes the information referenced in Action Item H. If the information is posted on a website, SUNY may provide the website link. SUNY will also provide samples of campus-created brochures or pamphlets, which will also be shared with all Title IX Coordinators as examples or models. By September 30, 2015, and the same date in 2016, SUNY will provide a sample of website links and brochures or pamphlets that have been revised in the previous year.

## **I. Climate Checks**

By the end of academic years 2013-2014, 2014-2015, and 2015-2016, each SUNY campus will conduct (with the support and assistance of the committees referenced above) periodic assessments of campus climate to assess the effectiveness of steps taken pursuant to this Resolution Agreement, or otherwise by the campus, to provide for a campus free of sexual harassment, in particular sexual assaults and sexual violence. The campus will seek input from the campus community, which includes students (including victims and witnesses to sexual harassment), the personal safety committee, the Title IX Coordinator, and any deputy coordinators or designees. Campuses will use information gathered during these climate checks to inform future proactive steps taken by the campus to provide for a safe educational environment and compliance with Title IX. Campuses will share information gathered and recommendations with each campus' respective Title IX Coordinator. A climate check can be conducted in many ways, including but not limited to a survey distributed in-person or online, or a poll conducted in-person or online. In addition, the campus may organize an open forum information session for students and employees, and designated, publicized walk-in hours for campus community input.

**Reporting Requirement:** By July 31, 2014, and by the same date in 2015 and 2016, SUNY will provide documentation to OCR demonstrating implementation of Section I above at each SUNY campus, including any resulting summaries of the information obtained and any proposed and/or completed actions based on that information.

## **J. Remedies for Other Complainants**

By December 31, 2013, each SUNY campus will publish an invitation to those who have reported alleged sexual misconduct or otherwise believe they have been subjected to sexual



misconduct on campus to provide to the Title IX Coordinator any recommendations regarding ways to improve the effectiveness of the campus' implementation of its sexual harassment policies and procedures. These notices must be widely distributed and may be published on the campus web site, sent via email to the campus community, or posted in a conspicuous on-campus location.

**Reporting Requirement:** By February 28, 2014, SUNY will report in writing to OCR that each SUNY campus has published the notices consistent with Section J above, including a link to the notices and/or a description of where the paper notice was posted; and by June 30, 2014, will provide to OCR copies of any recommendations received as a result of the published notices.

### **K. Complaint Reviews**

By January 31, 2014, SUNY Albany, SUNY New Paltz, SUNY Buffalo State College, and SUNY Morrisville will review all complaints filed during and since academic year 2011-2012, to determine whether each complaint was handled consistent with the criteria set forth in Section C above. These four campuses will take appropriate action to address any problems identified in the manner in which these complaints were handled; including providing appropriate remedies that may still be available for the complainants in these cases, such as counseling or academic adjustments. These reviews will carefully scrutinize areas of concern noted by OCR during the course of this compliance review; i.e., whether the campus failed to investigate a complaint of which it had notice; whether the campus failed to promptly and adequately investigate a complaint or report of harassment; whether the campus failed to use the preponderance of the evidence standard in investigating allegations of sexual harassment; whether the campus provided notice of the outcome of the complaint investigation to the alleged victim and the alleged harasser; and, whether the campus took steps to prevent the recurrence of harassment and to address any hostile environment created by the harassment.

**Reporting Requirement:** By January 31, 2014, SUNY will provide to OCR a report of each campus' review of complaints filed during and since academic year 2011-2012 at SUNY Albany, SUNY New Paltz, SUNY Buffalo State College, and SUNY Morrisville. At a minimum, this report will identify any complaints that were not handled consistent with the criteria set forth in Section C above; and, will indicate the action that will be taken to address any problems identified.

### **L. Documentation**

By one month of signing the RA, SUNY agrees to provide the following checklist to Title IX Coordinators and designees so that they can make their best efforts to include in their written reports of complaint investigations, at a minimum, the following information:

- the name and sex of the alleged victim, and if different, the name and sex of the person reporting the allegation;
- 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);

- the date that the complaint or other report was made;
- the date the accused was interviewed;
- the names and sex of all persons alleged to have committed the alleged harassment;
- the names and sex of all known witnesses to the alleged incident(s);
- the dates that any relevant documentary evidence (including medical, cell phone and other records as appropriate) was obtained;
- any written statements of the complainant (or victim, if different from the complainant);
- the date on which SUNY or the campus temporarily suspended the fact-finding aspect of its Title IX investigation while the law enforcement agency was in the process of gathering evidence, and as applicable, the date on which SUNY or the campus resumed its investigation process;
- the outcome of the investigation, and if any, the disciplinary process;
- the response of SUNY or campus personnel, including any interim and permanent steps taken with respect to the complainant and the accused; and
- a narrative of all action taken to prevent recurrence of any harassing incident(s), including any written documentation.

**Reporting Requirement:** By within two months of signing the RA, SUNY will submit to OCR documentation confirming completion of Section L above.

SUNY understands that OCR will not close the monitoring of this agreement until OCR determines that SUNY 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 case. SUNY also understands that by signing this agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, SUNY understands that during the monitoring of this agreement, if necessary, and with notice to SUNY, OCR may visit SUNY campuses, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether SUNY 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 case. SUNY understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceeding to enforce this agreement, OCR shall give SUNY written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

September 30, 2013

Date

/s/

William F. Howard

Senior Vice Chancellor, General Counsel and Secretary  
of the University