

RESOLUTION AGREEMENT

Elmira College Case No. 02-14-2316

In order to resolve Case No. 02-14-2316, Elmira College (College) assures the U.S. Department of Education, 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), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106.

The Resolution Agreement has been entered into voluntarily and does not constitute an admission by the College that the College is not in compliance with Title IX or its implementing regulations.

Action Item A: Title IX Coordinator

By January 15, 2017, the College will add the office address of the College's Title IX Coordinator to all relevant documents containing information about how to contact the Title IX Coordinator, including, but not limited to, any Title IX brochures and policy, and appropriate pages of the College's website, and will maintain the type of other contact information (name, title, telephone number and email address) it currently provides.

Reporting Requirement: By January 30, 2017, the College will provide documentation to OCR demonstrating its compliance with Action Item A, including copies of the printed versions (or a link to the on-line versions) of all publications disseminated to students and employees containing the required notification. Inserts may be used pending reprinting of these publications.

Action Item B: Notice of Non-Discrimination

By January 30, 2017, the College will revise its notice of non-discrimination, which currently states that discrimination on the basis of "gender" is prohibited, to state that it prohibits discrimination on the basis of "sex" in its programs and activities. The College may use the term "gender" in addition to "sex" if it desires. The notice of non-discrimination will state that inquiries concerning the application of Title IX and its implementing regulation may be referred to the designated Title IX coordinator(s) or to OCR's Assistant Secretary. The College will publish the revised notice of non-discrimination consistent with the requirements of the regulation implementing Title IX, at 34 C.F.R. § 106.9, and include the notice in each announcement, bulletin (including the student and employee handbooks), catalog, or application form that it makes available to applicants for admission and employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the College.

Reporting Requirement: By January 30, 2017, the College will provide documentation to OCR demonstrating its compliance with Action Item B, including copies of the printed versions (or a link to the on-line versions) of all publications disseminated to individuals identified in Action Item B. Inserts may be used pending reprinting of these publications.

Action Item C: Grievance Procedures

The College's grievance procedure specifically states that complaints may be made against non-community members and provides a process for addressing such complaints. Nevertheless, by January 30, 2017, the College will propose a revision to its "Policy Against Gender Discrimination and Sexual and Other Misconduct" to delete or otherwise clarify any language that suggests the College would need "authority over the potential violator" in order to investigate a complaint of sexual harassment, including assault/violence, as such language could create confusion as to whether the College will investigate and act on complaints against non-community members. The College will adopt the revised grievance procedures within 45 days after receiving approval from OCR.

Reporting Requirements:

- a) By January 30, 2017 the College will provide to OCR, for review and approval, its draft revised grievance procedures developed in accordance with Action Item C above.
- b) Within 45 calendar days of written notification from OCR of its approval of the revised grievance procedures, the College will provide documentation to OCR demonstrating that the revised procedures were adopted and implemented and that all faculty, staff and students were provided with written notice regarding the grievance procedures together with information on how to obtain a copy of the grievance procedures. The College, at a minimum, will make this notification through the College's website; email messages to faculty, staff and students; and any regularly issued newsletters (in print or online), as well as by any other additional means of notification the College deems effective to ensure that the information is widely disseminated and easily located. The College will also provide to OCR copies of or a link to its revised student handbooks and any other publications that contain the procedures, and a link to its webpage where the revised Title IX procedures are otherwise located.

Action Item D: Title IX Training

1. Training Responsible Employees

By March 15, 2017, the College will provide in-person or online training to all staff (including student R.A.s) who are responsible employees for recognizing and reporting incidents of sexual harassment, to the extent they are not confidential resources under policy or applicable law. The College may exclude from this training those who have already been provided similar training since January 1, 2016. The training will cover, at a minimum: the College's current grievance procedures; the obligation of responsible employees to report sexual harassment, including sexual harassment involving other entities at which the College places students; how to recognize and identify sexual harassment, including sexual assault/violence and behaviors that may lead to and result in sexual violence; the College's responsibilities under Title IX to address such allegations; and the relevant resources available. The training should also include information on the reporting obligations of College staff; the student's option to request confidentiality and available confidential advocacy, counseling, or other support services; the student's right to both file a sexual harassment complaint with the College and report a crime to campus or local law enforcement; the attitudes of bystanders that may allow conduct to continue; the potential for victimization of students who may have experienced sexual violence and its effects on students; appropriate methods for responding to a

student who may have experienced sexual violence; and the impact of trauma on students who experience sexual violence. During the trainings, the College will provide copies of its Title IX grievance procedures to all attendees, or refer them to their location within the publications they already possess.

Reporting Requirement: By April 15, 2017 the College will provide documentation to OCR demonstrating that it has provided the training referenced in Action Item D(1) above. The documentation will include, at a minimum: the dates of the training, the names and titles of the trainer(s), a copy of any materials used or distributed during the training, and a sign-in sheet with the names and titles of the individuals who attended the training, or other documentation that the College may propose and OCR deems acceptable. This documentation will also be provided with respect to any similar training the College provided between January 1, 2016 and the date of the execution of this Agreement, which the College asserts satisfies the requirements of Action Item D(1).

2. Training for Community Members Involved in Implementation of Sexual Misconduct/Title IX Grievance Procedures

By March 15, 2017, the College will provide training to its Title IX coordinator(s) and designees and any other College employees directly involved in receiving, processing, investigating, adjudicating and/or resolving complaints of sexual harassment, including sexual assault/violence. The College may exclude from this training those who have already been provided similar training since January 1, 2016. The training will include instruction on the College's Title IX grievance procedures, the College's obligation regarding investigation of complaints; how to conduct adequate, reliable and impartial Title IX investigations for those charged with investigative duties, including how to handle incidents that occur off campus; information on working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including same-sex sexual violence; the proper standard of review (preponderance of the evidence); information about coordination and communication between the College and the City of Elmira Police Department, particularly with respect to suspending investigations; information on consent and the role drugs and alcohol can play in the ability to consent; the importance of accountability for individuals found to have committed sexual violence; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; how to handle confidentiality issues; the effects of trauma; cultural awareness training regarding how sexual assault/violence may impact students differently depending on their backgrounds; how to assess hostile environment; and the prohibitions on retaliation. The training will also include information regarding the provision of interim measures and the need for remedial actions for the perpetrator, complainant, and school community. Finally, the training will stress fully documenting all steps of an investigation and resolution, such as testimony collected from witnesses, the start and stop dates of any investigation suspension, the offer and acceptance/decline of interim relief, and the issuance of notice to any party.

Reporting Requirement: By April 15, 2017 the College will provide documentation to OCR demonstrating that it has provided the training referenced in Action Item D(2) above. The documentation will include, at a minimum: the dates of the training, the names and titles of the trainer(s), a copy of any materials used or distributed during the training, and a sign-in sheet with the names and titles of the individuals who attended the training, or other documentation that the College may propose and OCR deems acceptable. This

documentation will also be provided with respect to any similar training the College provided between January 1, 2016 and the date of the execution of this Agreement, which the College asserts satisfies the requirements of Action Item D(2).

Action Item E: Campus-Based Committee

By September 30, 2017, the College will establish a Committee made up of students (with representation from various student groups, such as women's groups, student athletes, Residential Life students, and others), the College's Title IX coordinator(s), and others, as appropriate, to identify and recommend, by December 31, 2017, strategies to ensure that students understand their rights under Title IX and the College's procedures, including how to report possible violations of Title IX. Additionally, the Committee will recommend strategies for improving the College's support services and resources available to students, and for preventing sexual harassment and sexual assault/violence, including outreach and educational activities, such as safe bystander intervention.

Reporting Requirements:

- a) By October 31, 2017, the College will provide documentation to OCR demonstrating that it has established the committee described in Action Item E above, including a list of names and titles of the members of the committee.
- b) By January 31, 2018, the College will provide to OCR a report of the committee's recommendations. The report will state the College's plans with respect to the implementation of those recommendations it has decided to adopt, and explain the College's decision not to proceed with any recommendation. OCR will respond within 15 days if it has concerns.
- c) If OCR has any concerns that the College's plan is not compliant with Title IX, OCR and the College will conference by February 28, 2018, to discuss those concerns; how the College's plan might be revised to address OCR's concerns; and agree on a final plan.
- d) By June 30, 2018, the College will provide a report to OCR of the steps taken to implement the College's plans as reported in conjunction with the reporting requirement identified in subparagraph (b) above.

Action Item F: Information Sessions

1. The College offers Title IX training during its new student orientation. Again during academic year 2017-2018, and annually thereafter, the College will offer an information session during the academic year on the topics of the College's prohibition against sex discrimination (including sexual harassment and sexual assault/violence); how to recognize such sex discrimination and sexual harassment when it occurs; the College's grievance procedures for Title IX complaints, including how and to whom to report any incidents of sex discrimination; a general overview of Title IX and the rights it confers on students; the resources available to students who have experienced sexual harassment or sexual assault/violence, including interim measures available during the course of an investigation; safe bystander intervention strategies; and the existence of

OCR and its authority to enforce Title IX. The information session shall be scheduled as an element of new student orientation.

Reporting Requirement: By July 31, 2017, and by the same date in 2018, the College will provide documentation to OCR demonstrating implementation of Action Item F(1) above, including a description of each information session and the dates that the information sessions were held.

Action Item G: Dissemination of Information Regarding Sex Discrimination

By February 28, 2017, the College will, as appropriate, revise its existing materials or develop new materials (e.g., informational pamphlets) to be distributed to students for general education purposes, including during orientation, and upon receipt of complaints of sexual harassment and sexual assault/violence. The materials will contain information on how and where to file a complaint of sexual harassment or sexual assault/violence with the College; the name and contact information for the College's Title IX coordinator(s) and a description of the responsibilities of the Title IX coordinator(s); information on how to obtain counseling and academic assistance in the event of sexual harassment and sexual assault; and information on what interim measures can be taken to protect a complainant and how to request interim measures. The College will distribute and make available these materials after they are approved by OCR.

Reporting Requirements:

- a) By February 28, 2017, the College will provide to OCR, for review and approval, the materials developed or revised consistent with Action Item G.
- b) Sixty (60) days after receiving OCR's approval in (a) above, the College will provide a final copy of the materials to OCR, along with a link to where the material is posted on the College's website. The documentation will include information about which of the College's offices will be responsible for distributing the materials for general education purposes and upon receipt of a complaint of sex discrimination, sexual harassment, and/or sexual assault/violence.

Action Item H: Climate Surveys

The College submits that it is required to conduct climate surveys for students every other year in accordance with state law, and that such a survey will be conducted in or around February 2017. The College submits that this survey will contain questions about the student's knowledge of sex discrimination (including sexual harassment and sexual assault/violence), any experiences with sex discrimination while attending the College, and the student's awareness of the College's Title IX policies and procedures. The College submits that information gathered from these surveys will be used to inform future proactive steps taken by the College to provide an environment that is safe and supportive to all students and in compliance with Title IX.

Reporting Requirement: By May 31, 2017, the College will provide documentation to OCR demonstrating implementation of Action Item H above, including a description of how the 2017 survey was conducted, a copy of the survey questions; summaries of any student

responses to the survey; and, to the extent any information was provided beyond student responses to the survey questions, summaries of such information; and proposed actions, if any, that the College plans to take in response to the information gathered from the 2017 climate survey. The College will provide the same information to OCR by May 31, 2019 for the next bi-annual survey that will be conducted in 2019.

Action Item I: Coordination with Local Law Enforcement

By February 28, 2017, the College will send a letter to the City of Elmira Police Department and any other external local law enforcement agencies with jurisdiction over the College and its students requesting a Memorandum of Understanding (MOU) to improve communication and coordination and to address the protocols and procedures for referring allegations of sexual violence, sharing information, and conducting contemporaneous investigations. The overall goal of any MOU should be to aid the College in complying with Title IX, to the extent permitted by applicable privacy and confidentiality laws. Any MOU should establish, at a minimum: (1) that in instances where conduct of a sexual nature is involved, the College will delay temporarily the fact-finding portion of its Title IX investigation during local law enforcement's initial evidence gathering process, if local law enforcement requests a suspension of the College's investigation; (2) that local law enforcement will endeavor to complete initial evidence gathering within 3 to 10 days of requesting that the College suspend its Title IX investigation; (3) that the College will resume its Title IX investigation on the earlier of (i) the date the College receives notification from local law enforcement that it has completed its initial evidence gathering process, or (ii) the 11th day after the College suspended its Title IX investigation, unless the College receives from local law enforcement another request to continue the suspension for a brief and specified number of days; and (4) that during the pendency of the initial evidence gathering by the police, the College is not precluded from providing witnesses with information about their Title IX rights or resources for students who experience sexual assault/violence, or taking such interim actions as may be necessary to ensure the safety of any students who experience sexual assault/violence and the campus community.

Reporting Requirement: By January 31, 2017, the College will provide to OCR a draft of the letter(s) required by Action Item I. Further, before any MOU is finalized, the College will provide to OCR for review and input, any draft MOU developed with the Elmira Police Department, if any. OCR will respond with any recommendations to the draft MOU within 15 days.

Action Item J: Assessment of the Individual Complainant

By February 1, 2017, with respect to the individual who filed the complaint that launched OCR's investigation (Complainant), the College will revise and re-issue the determination letter sent to Complainant to clarify that the misconduct that respondent was found responsible for was sexual harassment. Further, the College will investigate whether Complainant asked to move from her dormitory or whether she was required to move. Finally, the College will assess what effects, if any, the Complainant experienced due to the length of the investigation and adjudication process, as well as from moving from her dormitory, if appropriate, depending on the outcome of the College's investigation. The College must redress the effects, if any, taking into account the interim relief already provided to the Complainant. Depending on the outcome of the College's review, the College may decide to offer to reimburse Complainant for tuition, housing and other education

expenses between the time of Complainant's report to the College on or about October 29, 2013 and the College's March 7, 2014 disciplinary decision and/or expenses for counseling (if any) that the Complainant incurred during that period of time.

Reporting Requirements:

- a) By February 15, 2017, the College will provide to OCR, for review and approval the results of its review conducted pursuant to Action Item J and its proposed actions as a result of that review.
- b) Within 10 days of OCR's approval, the College will implement those proposed actions that OCR approves, if any.

Action Item K: Redress for the Cases Reviewed by OCR

During the course of the investigation, the College has provided OCR with its case files for academic years 2012-2013, 2013-2014, and 2014-2015. OCR has identified compliance issues or other areas of concern in certain of those cases. By March 31, 2017, the College will review those specific compliance issues and areas of concern noted below and will take appropriate action to address the problems identified, including, where appropriate, providing appropriate remedies that may still be available for the complainants, such as offers of counseling if the complainant is still on campus, referrals to counseling if the complainant is no longer on campus and/or, if the complainant is still a student, academic accommodations. If the College, in the course of re-assessing these cases, determines that a particular action was taken but not documented in the file, (e.g., notice actually was sent to both parties but the file reflects no notice or notice only to one party) then the College need not repeat that action.

OCR has identified fourteen (14) case files in which there are compliance issues or areas of concern, specified by category, as per the below:

- a. For the three files identified by OCR where the documentation did not indicate that the complainants were provided with proper notification of the outcome of the College's investigation or decision on appeal,¹ the College will make reasonable efforts to provide such notice to the complainant. The College is not required to modify any determination or outcome. Such notice must be provided for each incident identified by OCR, except that the College need not notify a complainant if the College is not reasonably assured that the notification will be received directly and privately by the complainant and that the complainant wishes to receive such notification (however, in the event no notice is provided, the College will explain to OCR in writing how it reached its determination not to provide notice).
- b. For the four files identified by OCR where the documentation did not demonstrate that the College conducted a prompt investigation,² the College will determine if the

¹ OCR identified these three cases as Case 2, 3 and 16.

² OCR identified these four cases as Case 3, 4, 10, and 13.

investigation was delayed, and, if so, whether exigent circumstances justified the delay, if any, and what effects, if any, the complainant suffered as a consequence of the College's failure to conduct a prompt investigation and whether any of the complainants experienced a hostile environment due to the College's delayed investigation.

- c. For the ten files identified by OCR where the documentation did not demonstrate that the complainant was provided with all interim measures and/or advised of all available on campus and off campus resources,³ the College will assess whether additional interim measures or information should have been provided, and whether there remains any continuing effects that can be addressed by taking additional measures at this time.
- d. For the two files identified by OCR for which OCR has determined that the documentation did not demonstrate that the College adequately assessed whether it should not have honored the complainant's request not to proceed with an investigation,⁴ the College will, if still possible, complete an investigation of the complaint in order to ensure a safe and non-discriminatory environment for all students, including, if appropriate and still available, disciplinary measures. If the respondent is no longer a member of the College community, the College will determine if a no trespass order is appropriate.
- e. For the three files identified by OCR where the documentation did not demonstrate that the College conducted an assessment as to whether it could honor the complainant's request that the College not proceed with an investigation,⁵ the College will assess whether it was proper to honor the complainant's request while still providing a safe and non-discriminatory environment for the College community. If the College determines that it was not appropriate to have honored the complainant's request not to proceed with an investigation, the College will, if still possible, complete an investigation of the complaint in order to ensure a safe and non-discriminatory environment for all students, including, if appropriate and available, disciplinary measures.
- f. For the nine files identified by OCR (all of which already are discussed above) for which OCR has determined that the College may have failed to properly address the effects of a hostile environment,⁶ the College will determine if additional measures are possible, available and should be taken to more fully remedy any hostile environment. In addition, if the respondent is no longer a member of the College community, the College will determine if a no trespass order is appropriate.

³ OCR identified these ten cases as Case 1, 3, 4, 6, 8, 9, 10, 12, 14 and 15. OCR acknowledges that some of these complainants were afforded some interim measures. The documentation does not indicate whether all complainants were afforded all interim measures.

⁴ OCR identified these two cases as Case 9 and 13. Depending on the outcome of the College's investigation into Case 9, if such an investigation is still possible, the College will, to the extent appropriate, provide additional sexual harassment training to the members of the men's athletic team that was involved in the complaint in that case.

⁵ OCR identified these three cases as Case 5, 7, and 12.

⁶ OCR identified these nine cases as Case 1, 3, 4, 8, 9, 10, 12, 13 and 14. With respect to Case 4, in determining whether additional measures are available and should be taken to remedy any hostile environment, the College will assess whether additional investigation and/or measures might be appropriate due to previously reported similar incidents about the same respondent.

Reporting Requirements:

- a) By April 15, 2017, the College will provide to OCR, for review and approval, the College's determinations, proposed remedies, and proposed notices.
- b) Within 20 days of OCR's approval of the College's proposed actions, the College will provide documentation to OCR demonstrating that the College has taken steps to implement all approved remedies and sent all approved notices.

Action Item L: Complaint Reviews

By June 15, 2017, the College will review all sexual harassment and sexual assault/violence complaints filed during academic year 2015-2016 and the Fall 2016 semester. The College will review these files to determine whether the College investigated each complaint or report promptly and equitably, including but not limited to, specifically determining whether the College used the appropriate definitions and analyses of sexual harassment and hostile environment under Title IX; used the preponderance of the evidence standard; provided interim measures to protect the complainant during the pendency of the investigation; provided written notice of the outcome (including any appeal) and appeal rights to the complainant and the accused; and took steps to prevent the recurrence of sexual harassment and to address any hostile environment created by any sexual harassment. For any complaints which the College determines were not investigated in accordance with the requirements of Title IX, the College will take appropriate action to address any problems identified regarding the manner in which these complaints were handled, including providing appropriate remedies that may still be available for the complainants and/or accused students in these cases, such as counseling or academic adjustments. It is understood that the College is not expected to reinvestigate or rehear matters that have been fully and/or finally adjudicated under College policy.

Reporting Requirements:

- a) By June 15, 2017, the College will provide to OCR, for review and approval, the results of the College's review conducted pursuant to Action Item L, specifically identifying any complaints or reports that were not handled promptly and equitably; all supporting materials relating to the College's review; and, the College's planned action(s) to address any problems identified in its review.
- b) Within 45 days of OCR's approval, the College will provide documentation to OCR demonstrating that the College has taken appropriate action to address any problems identified in its review.

Action Item M: Documentation And Submission of New Complaints

By July 1, 2017, and by the same date in 2018 and 2019, the College will submit to OCR complete copies of its files for academic years 2016-2017, 2017-2018 and 2018-2019, respectively, documenting the College's responses to complaints of sexual harassment, including sexual

assault/violence.⁷ Along with such files, the College will submit a tracking report that will include, at a minimum: the names of complainants and respondents; the conduct alleged; the name and position of the individual(s) who received and processed the initial complaints; the status of the case (e.g., investigation is ongoing, the investigation is suspended due to a request from law enforcement, the College is assessing discipline to be imposed, etc.); the outcome of all completed investigations; and the outcome of any disciplinary matters related to the investigation. If the College submits any files before the case is complete, the College will flag those files as incomplete and, upon request, re-submit those files once the case is completed.

By May 1, 2018, and/or by the same date in 2019, the College may petition OCR to modify the submissions for Action Item M for academic years 2017-2018 and/or 2018-2019, respectively, if OCR has not identified any compliance issues with the previous year's reporting submissions.

Reporting Requirement: By July 1, 2017, and by the same date in 2018 and 2019, the College will provide copies of the files and the tracking reports required in Action Item M, unless this reporting requirement is modified consistent with Action Item M.

Monitoring: General Principles

The College understands that OCR will not close the monitoring of this agreement until OCR determines that the College 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. The College 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, the College understands that during the monitoring of this agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College 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. In addition, the College understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of this agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings, including to enforce this agreement, OCR shall give the College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This agreement will become effective immediately upon the signature of the President or his designee below.

December 14, 2016
Date

_____/s/
Dr. Norman Smith, President (or designee)
Elmira College

⁷ Note that the requirement for complete files for 2016-2017 is different from the requirements of Action Item L.