

November 2, 2017

Katherine S. Conway-Turner  
President  
Buffalo State, State University of New York  
Cleveland Hall 517  
1300 Elmwood Avenue  
Buffalo, New York 14222

Re: Case No. 02-15-2085  
Buffalo State, State University of New York

Dear President Conway-Turner:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against Buffalo State, State University of New York (the College). The complainant alleged that the College discriminated against her, on the basis of her sex, by failing to respond promptly and equitably to the report of sexual assault that she made on XXXXXXXX XX, XXXX; and that as a result, she was subjected to a sexually hostile environment.

OCR is responsible for enforcing 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, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title IX.

**Applicable Legal Standards:**

The regulation implementing Title IX, 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 education program or activity operated by a recipient. Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances; requests for sexual favors; and, other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment

of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

When responding to alleged sexual harassment, a recipient must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. Pending the outcome of an investigation, Title IX requires a recipient to take steps to avoid further harassment as necessary, including taking interim steps before the final outcome of the investigation. The recipient should undertake these steps promptly once it has notice of a sexual harassment allegation. Interim measures are individualized services offered as appropriate to either or both parties involved in the alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

Under Title IX, a recipient must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity. Further, once a school is on notice of off-campus sexual violence against a student, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment; and if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires that a recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action prohibited by the regulation implementing Title IX. OCR has identified a number of elements in determining if grievance procedures are prompt and equitable, including whether the procedures provide for: (a) notice to students and employees of the procedures, including where complaints may be filed, that is easily understood, easily located, and widely distributed; (b) application of the procedures to complaints alleging discrimination or harassment carried out by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an equal opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) notice to parties of the outcome; and, (f) an assurance that the institution will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate. Title IX does not require a college to provide separate grievance procedures for sexual harassment complaints; however, a college's grievance procedures for handling discrimination complaints must comply with the prompt and equitable requirements of Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), also requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its

responsibilities under the regulation implementing Title IX, including any investigation of any complaint communicated to the recipient alleging any actions that would be prohibited by the regulation implementing Title IX. It also requires each recipient to notify all of its students and employees of the name, office address and telephone number of the employee or employees so designated.

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), further requires each recipient 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 educational program or activity which it operates, and that it is required by Title IX not to discriminate in such a manner. Such notification shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto, unless Subpart C does not apply to the recipient; and, that inquiries concerning the application of Title IX to such recipient may be referred to the employee designated pursuant to 34 C.F.R. § 106.8, or to OCR's Assistant Secretary. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires each recipient to include the notice of non-discrimination in each announcement, bulletin, catalog, or application form which it makes available to the types of persons described in 34 C.F.R. § 106.9(a), or which is otherwise used in connection with the recruitment of students or employees.

### **Procedural Background:**

The State University of New York (SUNY) System was established by the New York State legislature in 1948. It has the largest comprehensive system of universities, colleges and community colleges in the United States; with a total of approximately 1.3 million students enrolled during academic year 2015-2016, spanning 64 individual campuses across the state. SUNY's leadership structure consists of a Chancellor, Board of Trustees, System Administration Senior Staff, and individual Campus Presidents. SUNY's administrative offices are located in Albany, New York. Enrollment across the SUNY System is approximately 54% women and 46% men.

The College is part of the SUNY System, but is independently governed by the College's President, the Buffalo State College Foundation, and the College's Council. For academic year 2014-2015, the College had an enrollment of approximately 9,316 undergraduate and 1,176 graduate students, for a total of approximately 10,500 students. Women made up approximately 57% of the enrollment and men made up approximately 43% of the enrollment.

On December 23, 2010, OCR initiated a compliance review of the SUNY System (Case No. 02-11-6001). That compliance review examined SUNY's handling of complaints of sexual assault/violence and sexual harassment under its various procedures to determine if SUNY had responded promptly and equitably, especially with regard to complaints of sexual assault/violence. Although the review concerned the entire SUNY System, OCR focused on four campuses, including the College, where OCR conducted focus group meetings, interviewed

various staff, reviewed grievance procedures, and reviewed sexual assault and harassment complaints over a period of 4 years.

On October 31, 2013, after identifying several compliance issues, OCR reached an agreement with SUNY (the Agreement). SUNY agreed that it and each of its 29 state-operated campuses, including the College, would ensure that grievance procedures comply with Title IX requirements and provide Title IX training to appropriate staff and students. Additionally, SUNY agreed to ensure that students and staff at each campus are aware of Title IX's prohibition against sex discrimination, how to recognize sex discrimination when it occurs, and how to report incidents. Further, SUNY agreed to ensure that individuals were on-call to notify individuals of counseling and advocacy services, available medical assistance, the option to file criminal charges or a complaint with the individual college campus, or both, and safety services (escort services or safe housing). Pursuant to the Agreement, SUNY also agreed that the SUNY System, including the College, would seek input from each campus community, including from past complainants, and conduct periodic assessments of each campus's climate in order to evaluate and improve the effectiveness of the campus's implementation of its sexual harassment policies and procedures, and to inform its future proactive steps to provide a safe environment for students free of sexual harassment and sexual violence. SUNY agreed to provide certification that each 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. Further, SUNY agreed that the SUNY System, including the College, would review annually all formal and informal complaints of discrimination on the basis of sex (including sexual harassment, sexual assault, and sexual violence) in order to identify any patterns or systemic problems, and would take appropriate action to address any patterns or problems identified. The Agreement also required the SUNY System, including the College, to provide training to staff responsible for recognizing and reporting incidents of sexual harassment, and to staff with Title IX compliance and implementation responsibilities.

As one of the state-operated campuses within the SUNY system, the College is covered by the Agreement and subject to its reporting requirements described above. OCR continues to monitor the implementation of the Agreement reached with SUNY, which includes information from the College regarding the reporting requirements described above. Pursuant to the Agreement, the College has provided ongoing reports to OCR to demonstrate compliance. Relevant information from those reporting submissions is provided in the sections that follow, as appropriate.

## **Factual Information**

OCR reviewed documentation that the complainant and the College submitted, including with respect to OCR's monitoring of the Agreement in the compliance review of the SUNY System. OCR also conducted interviews of College personnel.

### **1. Designation and Notice of the Title IX Coordinator**

Pursuant to the Agreement, the College was required to provide certification that it 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, email address and telephone number of the person(s) designated to coordinate its efforts to comply with Title IX. The College submitted documentation to OCR demonstrating that the College has designated a Title IX Coordinator and provided appropriate notice of the College's designated Title IX Coordinator. The College's website contains a "Title IX Compliance Webpage,"<sup>1</sup> which includes the name and/or title, telephone number, office address, and email address for the Title IX Coordinator.<sup>2</sup>

### **2. Notice of Non-Discrimination**

Pursuant to the Agreement, the College was required to revise and publish its notice of non-discrimination to state that the College does not discriminate on the basis of sex in the educational programs or activities which it operates or in employment (and the notice could include other bases such as race, color, national origin, disability and age). The Agreement required that the notice include a statement that inquiries concerning the application of Title IX and its implementing regulation may be referred to the designated Title IX Coordinator or to OCR, and that the College publish such notices broadly, including on its website, and in its College catalog, student handbook, and application form/website. The College submitted documentation to OCR demonstrating that it has revised and published a notice of non-discrimination. The "Equity and Diversity Webpage"<sup>3</sup> on the College's website also contains a link to the notice of non-discrimination.<sup>4</sup>

### **3. Grievance Procedures**

During the course of OCR's monitoring of the Agreement reached with the SUNY System, SUNY revised its grievance procedures and provided copies of the revised procedures to OCR for review and approval. OCR determined that the proposed grievance procedures, known as the "SUNY-Wide Discrimination Complaint Procedure," were prompt and equitable as written. OCR approved the procedures on April 29, 2015. The College adopted the SUNY-Wide Discrimination Complaint Procedure on November 6, 2015. The College's "Equity and Diversity Webpage" includes a link to the grievance procedures.<sup>5</sup>

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<sup>1</sup> See <http://equity.buffalostate.edu/title-ix-compliance> (site last visited October 16, 2017).

<sup>2</sup> See <http://equity.buffalostate.edu/title-ix-compliance> (site last visited October 16, 2017).

<sup>3</sup> See <http://equity.buffalostate.edu/> (site last visited October 16, 2017).

<sup>4</sup> See <http://equity.buffalostate.edu/nondiscrimination-notice-0> (site last visited October 16, 2017).

<sup>5</sup> See <https://equity.buffalostate.edu/sites/equity.buffalostate.edu/files/uploads/Documents/policies/DiscrimComplaPolfnl.pdf> (site last visited October 16, 2017).

#### **4. Training**

Pursuant to the Agreement, the College was required to continue to provide regular in-person or online training to all staff responsible for recognizing and reporting incidents of sexual harassment, and to staff with Title IX compliance and implementation responsibilities, which may include the Title IX Coordinator, any deputy coordinators, residential assistants, and the University Police Department (UPD). The College was required to demonstrate that training was provided by SUNY System Administration and/or by the College, and covered, at a minimum: (1) the grievance procedures; (2) how to recognize and appropriately address allegations and complaints pursuant to Title IX; (3) identifying sex discrimination, sexual harassment, sexual assault, and sexual violence; (4) the College's responsibilities under Title IX to address such allegations; and, (5) the relevant resources available. The training for Title IX Coordinators and designees was also to include instruction on how to conduct and document adequate, reliable, and impartial Title IX investigations. During the training, the College was required to provide copies of a revised notice of non-discrimination and Title IX grievance procedures to all attendees as these became available, or refer them to their location within the publications they already possessed.

Pursuant to the Agreement, the College submitted reports to OCR for a three year period documenting the trainings held at the College during calendar years 2013, 2014 and 2015. OCR determined that as of 2015, the College provided training on addressing allegations of sex discrimination, sexual harassment, sexual assault, and sexual violence; how to recognize and appropriately address allegations and complaints pursuant to Title IX; available resources; and, the College's revised grievance procedures. Additionally, the College provided the required training to the Title IX Coordinator on how to conduct and document adequate, reliable, and impartial Title IX investigations.

#### **5. Complainant's Allegation**

During the course of the investigation, OCR reviewed documentation that the complainant, the complainant's advocate from an off-campus crisis services center (the Advocate), and the College submitted. OCR also interviewed College personnel, including the Interim Dean of Students who served as the Director of Campus Judicial Affairs (the Judicial Officer); the Head Coach of the women's athletics team on which the complainant participated (Coach 1); the Head Coach of the men's athletics team of the similar sport (Coach 2); the Athletic Director; UPD officers; and, the Title IX Coordinator.

The complainant alleged that the College failed to respond promptly and equitably to the report of sexual assault that she made on XXXXXXXX XX, XXXX; and that as a result, she was subjected to a sexually hostile environment. Specifically, the complainant alleged that the College failed to provide her with an explanation of its Title IX grievance procedures or how to file a complaint; failed to provide her with the interim remedial measures she requested; failed to conduct any investigation or otherwise respond to her report of sexual assault; and, violated her confidentiality when Coach 1 disclosed her reported sexual assault to her team members, as well as to Coach 2.

During academic year 2014-2015, the complainant was enrolled as a XXXXXXXXXX at the College and was a member of a women's athletics team. At approximately 1:15 a.m. on XXXXXXXX XX, XXXX, the College's Department of Residence Life contacted the UPD to inform them that a student (Student 1) wished to report an incident of alleged sexual assault on behalf of another student [the complainant]. According to the police report, a UPD Officer (Officer 1) arrived at the complainant's dormitory, where he interviewed the complainant and Student 1. The complainant reported that she had been sexually assaulted by another College student who participated on a similar men's athletics team (the respondent) while attending a XXXXX XXXXXXXXXX. The complainant reported the details of the incident to Officer 1, including that during the alleged sexual assault, she had sustained X XXXXXXX XX XXXXXXX XXXXX XXX XXXX which Officer 1 photographed. The complainant and Student 1 also provided the names and other identifying details of several College students who may have witnessed the incident.<sup>6</sup> Upon the complainant's request, Officer 1 requested an ambulance, which transported the complainant to a local hospital for medical attention. The UPD reported the alleged sexual assault to the Buffalo Police Department (BPD), including the identities of the complainant and the respondent<sup>7</sup>, as the incident had occurred off-campus and was within the BPD's jurisdiction. The BPD interviewed the complainant at the hospital. Shortly thereafter, the complainant left the hospital, and then the College's campus, to stay at her parents' residence.

During the morning of XXXXXXXX XX, XXXX, the complainant's mother informed Coach 1 via text message that the complainant had been sexually assaulted, and that the complainant would be at home for several days. The complainant's mother also advised Coach 1 that she and the complainant were concerned that her absences might affect her academics. In response, Coach 1 assured the complainant's mother that "the College would take care of any issues with her classes." After speaking with the complainant's mother on the telephone, Coach 1 immediately notified his supervisor, the Athletic Director, about the complainant's alleged sexual assault, who in turn notified the College's Vice President of Student Affairs (the Vice President).

On or about XXXXXXXX XX, XXXX, the Athletic Director called the complainant's mother to express his concern and offer his assistance to the complainant. According to the complainant's mother, during that telephone conversation, she and the complainant requested two interim measures; namely, to excuse the absences the complainant would accrue while at home recovering from the alleged sexual assault, and that the respondent be removed from a course in which the complainant was also enrolled. The Athletic Director stated that he would share this information with relevant College personnel.

In an email message sent on XXXXXXXX XX, XXXX, UPD's Chief of Police (the UPD Chief) notified several members of the College's administration of the complainant's report of sexual assault, including the College's Chief Diversity Officer, who also served as the College's

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<sup>6</sup> The complainant stated that one witness whom she identified by nickname only XXX XXXX XXXXXXX XXX XXXX XXXXXXX XXX XXXXXXX XX XXX XXXXXXX XXXXXXX XX XXXXXXX XXX XXXXXXXXXXX XXXX X XXXXXXXXXXX XXXXXXX.

<sup>7</sup> The College stated that the UPD was able to ascertain the respondent's identity based upon information that the complainant provided, including the respondent's first name and that they shared a course together.

designated Title IX Coordinator.<sup>8</sup> In his email, the UPD Chief explained that the BPD was assisting the complainant, and that the complainant had requested that the College not contact the respondent.

Thereafter, during a meeting on XXXXXXXX X, XXXX, with the Vice President, his direct reports, and the Athletic Director, the UPD notified the Judicial Officer<sup>9</sup> of the complainant's report of sexual assault. The Athletic Director stated that he informed the Judicial Officer of the interim measures that the complainant's mother had requested on XXXXXXXX XX, XXXX, with respect to the complainant's absences and the removal of the respondent from the course. The Judicial Officer stated that she would inform the complainant's professors about her absences, but did not propose any action regarding the complainant's request to remove the respondent from the course. OCR determined that the Judicial Officer did not contact any of the complainant's professors until approximately XXXXXXXX XX, XXXX.

On or about XXXXXXXX X, XXXX, another UPD Officer (Officer 2) telephoned the complainant, who stated that she would return to the College's campus within the next few days. Officer 2 informed the complainant of the availability of counseling services at the College; however, the complainant stated that she had already enlisted such services from an off-campus local crisis services center. Officer 2 also informed the complainant that she could contact the Judicial Officer for information about the judicial hearing process, one of the avenues for pursuing a complaint of sexual assault; however, Officer 2 did not specifically inform the complainant that she could alternatively file a complaint with the Title IX Coordinator. The complainant reiterated her concerns about interim measures, namely her absences and the removal of the respondent from the course; however, she told Officer 2 that Coach 1 and the Athletic Director were assisting her with these issues. Officer 2 informed OCR that she did not follow up with any other College personnel regarding these interim measures.

On XXXXXXXX X, XXXX, Coach 1 and the Athletic Director XXXXXXXX X XXXXXXXX with the XXXXXXXX XXXXXXXXXXXX XXXXXXX XXXXX XXX XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX to inform the XXXXXXXXXXXXXXXX XXXXXXXXXXXX that she XXXXX XXX XXXX XXXXXXXX as a result of an alleged sexual assault. The complainant asserted that she XXXX XXXX Coach 1 XXXXXXXXXXXXXXXX to XXXXX that XXX XXX XXXX XXXXXXXXXXXX in an XXXXXXXXXXXX and was not XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXX as a result, but she did not want XXX XXXXXXXXXXXX XX XXXX that she had allegedly been sexually assaulted. Coach 1 asserted to OCR, however, that during a telephone conversation with the complainant, XXX XXX XXXXXXX XXX XXXXXXXXXXXXXXXX to generally XXXXXXX XXX XXXXXXXXXXXXXXXX of the alleged sexual assault. Coach 1 acknowledged that after the XXXXXXXX, several XXXXXXXX XX XXX XXXX who were present at the XXXXX during which the alleged sexual assault took place approached him to further discuss what had happened, including XXXXXXXXXXXX that they XXXXXXXXXXXXXXXXXXXXXXXX at the XXXXX. The complainant alleged that Coach 1's continued XXXXXXXXXXXXXXXX with XXXXXXXX of XXX XXXX after the XXXX XXXXXXXX on XXXXXXXX X, XXXX, violated her

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<sup>8</sup> The College President, Vice President, and the Judicial Officer were among the recipients copied on the email.

<sup>9</sup> The Dean of Students regularly served as the Deputy Title IX Officer for students; however, because the Dean of Students was on leave at the time that the complainant made her report, the Judicial Officer was serving as the interim Deputy Title IX Officer.



confidentiality.<sup>10</sup> Coach 1 informed OCR that he continued to XXXX to XXXXXXXX XX XXX XXXX about the details of the incident in response to subsequent questions and concerns from the complainant's mother about the incident.<sup>11</sup> Coach 1 additionally asserted that several XXXXXXXX XX XXX XXXX approached him to discuss their concerns about what had occurred, and that he responded to their concerns by discussing issues related to their safety at the XXXXX.

The complainant also alleged that, without her permission, Coach 1 notified Coach 2 that the complainant had been allegedly sexually assaulted by a member of Coach 2's team. The complainant further asserted that, also without her permission, on or about XXXXXXXX X, XXXX, Coach 2 spoke with X XXXXXXX of XXX XXXX (Student 2) who was present at the XXXXX where the alleged sexual assault occurred. Coach 1 acknowledged telling Coach 2 that there had been an incident of alleged sexual assault involving one of his team members, but denied identifying the complainant. He stated that he notified Coach 2 because the other XXXX XXXXXXXX informed him that members of the men's team, including Student 2, may have been present during the incident. Coach 2 stated that Student 2, and not Coach 1, identified the complainant as the student who had reported the alleged sexual assault. Coach 2 denied speaking with XXX XXXXX XXXXXXXX of XXX XXXXX XXXX.

On XXXXXXXX X, XXXX, the BPD informed the UPD Chief that it had interviewed the complainant (along with her parents) and the respondent, but the BPD determined that there was not sufficient probable cause for an arrest. In an email sent on that same day, the UPD Chief notified College personnel, including the Title IX Coordinator and the Judicial Officer, of the BPD's determination. The UPD did not take any further steps to investigate or otherwise respond to the complainant's report of sexual assault.

The Advocate called the Title IX Coordinator on XXXXXXXX X, XXXX, after not having received a response to a call she and the complainant made to the Title IX Coordinator on XXXXXXXX X, XXXX. The Advocate stated that she introduced herself as the complainant's representative, and informed the Title IX Coordinator of the complainant's concerns regarding her absences and the removal of the respondent from the course, as interim measures. The Title IX Coordinator informed the Advocate that she did not know of the complainant, and that she could not assist her because these issues were the responsibility of the Judicial Officer.<sup>12</sup> On that same day, the Advocate also called the Judicial Officer and introduced herself as the complainant's representative. The Advocate informed the Judicial Officer of the complainant's request for interim measures, including her understanding that Coach 1 and the Athletic Director

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<sup>10</sup> The complainant stated that sometime between XXXXXXXX X and XXXXXXXX XX, XXXX, another XXXXXX XX XXX XXXX informed her that Coach 1 had XXXXXXXXXXXX every XXXXXX XX XXX XXXX who had XXXXXXXX the XXXXX on XXXXXXXX XX, XXXX, where the complainant was allegedly sexually assaulted.

<sup>11</sup> Beginning on XXXXXXXX XX, XXXX, the complainant and her mother remained in frequent contact via telephone and text messages with Coach 1. Coach 1 also met the complainant, her mother, and the Advocate on or about XXXXXXXX X, XXXX.

<sup>12</sup> As previously discussed, the UPD Chief notified College personnel, including the Title IX Coordinator, of the complainant's report of sexual assault in an email sent on XXXXXXXX XX, XXXX. The Title IX Coordinator asserted that she had not been provided with the complainant's full name at that time, but acknowledged that she also did not take any steps to identify the complainant.

had agreed to handle those concerns. The Judicial Officer informed the Advocate that she was unaware of the complainant, or of any assurances made by Coach 1 or the Athletic Director regarding obtaining any interim measures for the complainant.<sup>13</sup> The Advocate then scheduled an in-person meeting for herself, the complainant, the complainant's mother, and the Judicial Officer for XXXXXXXX X, XXXX.

On XXXXXXXX X, XXXX, the complainant, complainant's mother, and the Advocate met with the Judicial Officer and Officer 2. During the meeting, Officer 2 provided the complainant with the College's "Notice to Victims of Sexual Assault" form (hereinafter, "Sexual Assault Notice"), which included a checklist of services, as well as contact information for Safety Services and the Title IX Coordinator. The complainant acknowledged that during the course of the meeting, the Judicial Officer attempted to explain one of the mechanisms to file a formal Title IX complaint through the College's Office of Judicial Affairs, but stated that she found the explanation confusing and was not provided with any additional information such as a brochure or pamphlet. The complainant asserted that as a result, she elected not to file a formal complaint. OCR determined that neither Officer 2 nor the Judicial Officer provided the complainant with a copy of the College's Title IX grievance procedures, and they did not inform the complainant that, in the alternative, she could file a complaint with the College's Title IX Coordinator.<sup>14</sup>

During the course of the meeting held on XXXXXXXX X, XXXX, the complainant again requested interim measures with respect to her absences and the removal of the respondent from the course. The complainant asserted that the Judicial Officer agreed to contact her professors, but stated that the Judicial Officer was unsure how to handle the request for interim measures because she was only serving as the "Acting Dean." The complainant asserted that the Judicial Officer also informed her that "it was up to the complainant to speak with [her professors] as they all may require different documentation and an e-mail may not be enough." Further, the complainant stated that in response to her request for individual tutoring in the event that the respondent could not be removed from the course, the Judicial Officer advised the complainant to speak directly with the professor. The complainant stated that she also requested that the College issue a "no contact order" prohibiting the respondent from contacting her, and the Judicial Officer informed the complainant that the College would not issue a "no contact order" unless she filed a complaint through the College's Office of Judicial Affairs.<sup>15</sup> The complainant declined to file a complaint through the College's Office of Judicial Affairs, and the College did not otherwise issue a "no contact order."

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<sup>13</sup> As previously discussed, the UPD notified the Judicial Officer of the complainant's report of sexual assault on XXXXXXXX X, XXXX. According to the complainant, the Judicial Officer later informed the complainant that the Judicial Officer had spoken with the Athletic Director at some point prior to XXXXXXXX X, XXXX, but could not take any action with respect to the complainant's concerns because the Athletic Director had not revealed the complainant's identity. OCR determined that the Judicial Officer did not otherwise take any steps to ascertain the complainant's identity or address her concerns at that time.

<sup>14</sup> At the meeting on XXXXXXXX X, XXXX, the Judicial Officer informed the complainant that she did not have any written documentation available. The complainant stated that Officer 2 suggested that the complainant photograph a poster outside the office that provided information about Title IX.

<sup>15</sup> On February 9, 2015, the UPD Chief also notified several members of the College's administration via email, including the Title IX Coordinator, of the complainant's request for a "no contact order."

On XXXXXXXX XX, XXXX, the Judicial Officer met with the respondent regarding the complainant's request that he be removed from the course. The respondent agreed to remove himself from the course as long as he could attend an alternative course. In an email later that day, the respondent also agreed that he would not otherwise contact the complainant. The Judicial Officer stated that she did not interview or question the respondent about the alleged sexual assault, as the complainant had not filed a formal complaint with the Office of Judicial Affairs as of that date.

Also on XXXXXXXX XX, XXXX, the Judicial Officer contacted the professor of the course (the Professor) to explore what options were available to separate the complainant and the respondent. The Professor explained that the options to reassign the respondent to another class were limited because the College only offered XXX XXXXXXXX XX XXX XXXXXXXX during the spring 2015 semester. Consequently, the Professor proposed that the complainant and the respondent might be able to "continue attending if they agree[d] to sit in different regions of the class." On or about XXXXXXXX XX, XXXX, the Judicial Officer communicated this information to the complainant during a telephone conversation, but the complainant did not consider this a viable option. OCR determined that in response to the complainant's renewed request that the College provide her with individual tutoring as an alternative to attending the course, the Judicial Officer again informed the complainant that she would need to consult with the Professor regarding such a request. Ultimately, the Judicial Officer and the Professor arranged for the respondent to enroll in another course. The Judicial Officer and the Professor confirmed that the respondent ceased attending the course on XXXXXXXX XX, XXXX. Although the Judicial Officer asserted that she advised the complainant that the respondent was no longer enrolled in the course, the complainant disputed that assertion, and stated that because she believed the respondent was still enrolled in the course, she felt unsafe attending the course. In an email sent to the Professor on XXXXXXXX XX, XXXX, the complainant stated that she felt uncomfortable attending the course because she was "extremely nervous of [sic] seeing [the respondent] X XXXXXXXX X XXXX."

The complainant stated that when she returned to the College's campus and began attending some of her classes on XXXXXXXX XX, XXXX, her XXXXXXXX XXXXXXXX XXXXXXXX and College professors informed her that the absences and missing classwork that had accrued while the complainant was recovering from the alleged sexual assault would not be excused. Although both the Judicial Officer and Title IX Coordinator asserted that it is the College's practice to excuse student absences under such circumstances, the College did not provide to OCR any evidence that it had contacted the complainant's professors and arranged for her absences to be excused, or that such absences had in fact been excused.

The complainant submitted a request for a medical withdrawal from the College on XXXXXXXX XX, XXXX, and she did not return to the College after that date. The College formally approved her request on XXXXXXXX XX, XXXX. The complainant asserted that she withdrew from the College because College personnel "made [her] feel unsafe, like the assault was [her] fault, and that [she] should just get over the fact that [she] was sexually assaulted and move on." She also informed OCR that she does not intend to return to the College. The Judicial Officer and the Title IX Coordinator did not attempt to contact the complainant after learning that she had withdrawn from the College.

College personnel, including the Judicial Officer and the Title IX Coordinator acknowledged to OCR that after the complainant withdrew from the College, they did not take any action to investigate or otherwise respond to the complainant's report of sexual assault. The Judicial Officer informed OCR that she did not take any steps to investigate or otherwise respond to the complainant's report of sexual assault because the complainant did not file and sign a formal complaint form with the Office of Judicial Affairs. The Judicial Officer asserted to OCR that she is "unable" to conduct an investigation unless a student submits a formal complaint to the Office of Judicial Affairs, and she does not have the authority to independently initiate an investigation in the absence of a formal complaint by a student. She stated that to do otherwise would preclude the provision of "due process" to all students involved.

The complainant asserted to OCR that she did not feel comfortable filing a judicial complaint against the respondent for several reasons. According to the complainant, the Judicial Officer's explanation of the judicial process was confusing, and the complainant did not understand the process after their in-person meeting on XXXXXXXX X, XXXX. Additionally, the complainant alleged that the Judicial Officer informed her that because a result of any hearing was uncertain, and she and the respondent XXXXXX X XXXXX, the complainant could continue seeing the respondent in her classes in the event that he received only a "warning." The complainant asserted that during the meeting on XXXXXXXX X, XXXX, she felt as though the Judicial Officer was attempting to convince her not to file a complaint.

Similarly, the Title IX Coordinator informed OCR that she did not take any steps to investigate or otherwise respond to the complainant's report of sexual assault, such as interviewing the complainant, the respondent, or any of the student witnesses, because the complainant never filed a Title IX complaint through her office, the Office of Equity and Campus Diversity.<sup>16</sup> Although the Title IX Coordinator acknowledged receiving the names of the complainant and the respondent, and the location of the alleged sexual assault, she maintained that she did not have sufficient information to initiate an investigation. The Title IX Coordinator also asserted that an investigation was not necessary because the alleged sexual assault took place off-campus. Moreover, the Title IX Coordinator informed OCR that absent a formal complaint filed by a student, she will only conduct a Title IX investigation when the facts suggest a "pattern of behavior," such as a repeat offender or a location where more than one sexual assault was alleged to have occurred.<sup>17</sup> The Title IX Coordinator stated that if she received a report of a singular instance of sexual assault (such as the complainant's report), without a formal complaint from the complaining party, she would not initiate a Title IX investigation as it would be based on "gossip and rumors." With respect to the complainant's report of sexual assault, the Title IX Coordinator stated that she looked at the address where the party occurred and found no other complaints originating from that location. Similarly, she had not received a previous complaint regarding the respondent. Based on the foregoing, the Title IX Coordinator concluded that

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<sup>16</sup> The Title IX Coordinator asserted that the Advocate contacted her on XXXXX X, XXXX, to request information about how to file a complaint through the Office of Judicial Affairs; and, that she volunteered to meet with the complainant and the Advocate to discuss this information. According to the Title IX Coordinator, the Advocate agreed to follow up after discussing this offer with the complainant. The Advocate and complainant did not corroborate this assertion.

<sup>17</sup> Under such circumstances, she would conduct a "soft review" of the circumstances to determine whether to initiate an investigation.

absent a “pattern of behavior” there was no need to investigate.<sup>18</sup> The Title IX Coordinator informed OCR that she only became aware of the specific details of the complainant’s report of sexual assault in or around XXXXX XXXX, when she began an inquiry solely in preparation for responding to OCR’s data request for the instant OCR complaint. The Title IX Coordinator’s inquiry entailed speaking to College personnel and compiling correspondence and other materials; the Title IX Coordinator did not interview the complainant, the respondent, or any student witnesses, and she did not make any determinations or take any action in response to any information compiled during her limited inquiry.

**Conclusion:**

OCR determined that the College had notice of the complainant’s report of sexual assault as of XXXXXXXX XX, XXXX, when the complainant reported the alleged assault to the UPD. OCR determined that through the UPD, the College had detailed information about the alleged sexual assault, including the time, date, and location of the alleged sexual assault; a description of the alleged sexual assault; the name of the respondent; and, the names/identities of student witnesses. OCR further determined that once on notice of the complainant’s report to the UPD, the College had an obligation to take immediate and appropriate action to investigate or otherwise determine what occurred regardless of whether the complainant complained directly to the College or otherwise asked the College to take action; however, the College failed to investigate.

With respect to interim measures, OCR determined that the College failed to provide the complainant with all of the appropriate interim measures that she requested. Officer 2 offered an interim measure in the form of counseling services to the complainant on XXXXXXXXX X, XXXX, and the College obtained the respondent’s agreement to remove himself from the course and to not contact the complainant; however, the College failed to provide any evidence to support that it had notified the complainant once the respondent was removed from the course, and as a result, the complainant did not feel safe to attend the course. Additionally, although the complainant requested that the College issue a no-contact order to the respondent, it did not do so. Furthermore, the College failed to assist the complainant in obtaining excused absences for her courses; and as a result, the complainant withdrew from the College. OCR determined that the College did not offer to provide other appropriate alternatives to the complainant. Moreover, the College failed to provide OCR with any reasonable explanation regarding its failure to excuse the complainant’s absences. The documentation provided to OCR by the College indicates that it not only failed to investigate the complainant’s allegation of sexual assault, the College failed to conduct any assessment of whether the complainant was subjected to, or continued to be subjected to, a hostile environment.

Based on all of the above, OCR determined that there was sufficient evidence to substantiate the complainant’s allegation that the College failed to respond promptly and equitably to her report

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<sup>18</sup> OCR notes that at the time that the Title IX Coordinator made this decision, on or about XXXXXXXXX XXXX, the Title IX Coordinator had not yet received the training required by the Agreement signed by SUNY, including training on how to conduct and document adequate, reliable, and impartial Title IX investigations, which was ultimately provided to the Title IX Coordinator in June 2015. Additionally, the College had not yet adopted revised grievance procedures; the revised grievance procedures were adopted in November 2015.

of sexual assault, in violation of 34 C.F.R. § 106.8(b). Further, OCR had concerns regarding the College's failure to provide the complainant with adequate notice of its grievance procedures when she reported the sexual assault to the College. The complainant denied receiving notice of the grievance procedures at any time after she reported the sexual assault and the College otherwise provided only a limited explanation of one of the available complaint mechanisms when the complainant met with the Judicial Officer on XXXXXXXX X, XXXX. The College provided documentation indicating that Officer 2 provided the Sexual Assault Notice to the complainant on XXXXXXXX X, XXXX; however, the Sexual Assault Notice did not contain information about how to locate the grievance procedures, and Officer 2 informed OCR that although she discussed the Sexual Assault Notice with the complainant, she did not discuss the grievance procedures with the complainant. The complainant informed OCR that following her meeting with the Judicial Officer and Officer 2, she did not have a clear understanding of the College's Title IX grievance procedures.

With respect to the complainant's assertion that the College failed to respond appropriately to her complaint of sexual assault when Coach 1 and Coach 2 violated her confidentiality during its investigation, OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the assertion. The complainant alleged that Coach 1 and Coach 2 disclosed her reported sexual assault to XXXXXXXX of XXXX XXX XXXXXXXX and XXXXX XXXXXXXX XXXXX without her consent; however, OCR did not find sufficient evidence to corroborate that Coach 1 XXXX XXXXXXXX the XXXXXXXXXX granted by the complainant to XXXXXXXX XXX XXXXXXXX with the XXXXXXXX of XXX XXXXXXXX XXXX or that Coach 1 disclosed the complainant's name to Coach 2. Similarly, OCR did not find sufficient evidence to corroborate that Coach 2 XXXXXXXXXX the complainant's name to XXX XXXXXXXX of XXX men's team.

During the course of OCR's investigation, OCR determined that multiple College staff involved in the instant complaint, including the Title IX Coordinator, lacked a clear understanding of the College's obligations pursuant to Title IX. The College provided documentation to OCR indicating that the Title IX Coordinator and various staff in the Athletic Department and UPD had received training regarding the College's obligations pursuant to Title IX at the time that the complainant reported being sexually assaulted XXXXXXXX XX, XXXX; however, OCR was unable to confirm whether any of the specific staff involved in the instant complaint attended such trainings. Nevertheless, OCR was able to conclude that even if they had attended such trainings, the College staff involved in the instant complaint failed to understand their obligations to investigate the complainant's report of sexual assault made on XXXXXXXX XX, XXXX; therefore, further training is needed to ensure that College staff understand the College's obligations to respond promptly and equitably to complaints of sexual harassment, including sexual assault/violence.

On October 6, 2017, the College signed the enclosed resolution agreement to remedy the compliance issues identified above. OCR will monitor the implementation of the enclosed resolution agreement.

This concludes OCR's investigation of the complaint. 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Joy M. Purcell, Senior Compliance Team Attorney, at (646) 428-3766 or [joy.purcell@ed.gov](mailto:joy.purcell@ed.gov) or Félice Bowen, Compliance Team Leader, at (646) 428-3806 or [felice.bowen@ed.gov](mailto:felice.bowen@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXX XXXXXXXXXXXX, Esq.  
XXXXXX XXXXXXXX, Esq.