



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

March 26, 2020

Eric J. Barron, Ph.D.  
President  
The Pennsylvania State University

c/o James Keller, Esq.  
Saul Ewing Arnstein & Lehr LLP  
Centre Square West  
1500 Market Street, 38<sup>th</sup> Floor  
Philadelphia, PA 19102-2186

**Via email to [james.keller@saul.com](mailto:james.keller@saul.com)**

Re: OCR Compliance Review 03-14-6001  
The Pennsylvania State University

Dear Dr. Barron:

This letter is to notify you of the resolution of the above-referenced compliance review of The Pennsylvania State University (the University) initiated in January 2014 by the U.S. Department of Education (Department), Office for Civil Rights (OCR). This compliance review was launched in light of the revelations of former University assistant football coach Jerry Sandusky's sexual abuse of minors at the University, and the wholly inadequate response thereto by former high-ranking University officials. As a result, it is critical that the University have policies and practices in place to prevent the recurrence of such abuse. Accordingly, the compliance review examined the University's handling of complaints of sexual misconduct, with particular emphasis on complaints of sexual assault, to determine if the University has responded appropriately.

OCR conducted this compliance review pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance from the Department. Because the University is a recipient of Federal financial assistance from the Department, OCR has jurisdictional authority to conduct this compliance review.

## **SUMMARY OF FINDINGS**

OCR determined that the University violated the Title IX regulations at 34 C.F.R. §§ 106.8(b) and 106.31. Specifically, OCR determined:

- The University failed to respond promptly and equitably to complaints of sexual harassment, including student complaints received during the 2016-17 academic year and complaints initially reported to the Athletic Department during the 2015-16 and 2017-18 academic years.
- During the 2019-20 academic year, the University's Title IX policies and procedures failed:
  - to provide adequate notice to students and employees of the procedures, including where complaints may be filed;
  - to ensure adequate, reliable, and impartial investigation of complaints;
  - to provide procedures for complaints alleging discrimination based on sex carried out by employees and third parties;
  - to provide designated and reasonably prompt timeframes for the major stages of the complaint process; and
  - to provide notice of the outcome of complaints to the parties.
- During the 2016-17 academic year, the University failed to maintain records necessary to enable OCR to ascertain whether the University is in compliance with Title IX.

OCR also has the following concerns:

- From the 2017-18 through the 2019-20 academic years, the University's practice was to impose interim suspensions prior to providing respondents the opportunity to respond to allegations.<sup>1</sup>
- From the 2017-18 through the 2018-19 academic years, the University excluded live testimony by non-party witnesses at hearings which may have precluded relevant information at hearings.
- From the 2017-18 through the 2019-20 academic years, the University's general practice was to issue Administrative Directives only to respondents.
- From the 2017-18 through the 2019-20 academic years, the University has failed to implement practices to ensure it maintains records to enable OCR to ascertain whether the University is in compliance with Title IX.

On March 18, 2020, the University voluntarily entered into a resolution agreement, which, when fully implemented, will resolve the aforementioned violations and concerns.

---

<sup>1</sup> OCR completed its review in December 2019.

## **THE UNIVERSITY**

The University is the largest public university in Pennsylvania, with nearly 100,000 students and over 7,000 full-time faculty. In addition to its flagship University Park campus in State College, Pennsylvania, the University operates more than 20 campuses located throughout the Commonwealth of Pennsylvania (“Commonwealth campuses”).<sup>2</sup>

## **METHODOLOGY**

OCR reviewed relevant aspects of the University’s reform efforts in the aftermath of the Jerry Sandusky abuse scandal, as well as a redesigned system for processing sexual harassment complaints.<sup>3</sup> OCR reviewed University policies and procedures for resolving allegations of sexual harassment effective during the 2011-12 through the 2019-20 academic years. OCR also conducted file reviews of complaints of sexual harassment from eight campuses: the University Park campus and the Altoona, Behrend (Erie), Berks, Harrisburg, Hazleton, Schuylkill, and Worthington Commonwealth campuses.<sup>4</sup> OCR’s file review included complaints from the 2013-14 and 2016-17 academic years, and also complaints involving the University’s athletics program from other years.<sup>5</sup>

OCR interviewed former and current administrators responsible for processing complaints of sexual harassment. In addition, OCR provided an opportunity to University students and staff to meet with OCR representatives during an on-site visit to the University Park campus in April 2018.

---

<sup>2</sup> The University also operates several graduate and professional schools; however, OCR’s compliance review focused on undergraduate programs.

<sup>3</sup> As a part of this review OCR considered the (1) 2012 *Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky* (Freeh Report), (2) the Department’s 2016 *Campus Crime Final Program Review Determination regarding The Pennsylvania State University’s Compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* (Clery Report), (3) *The Pennsylvania State University Task Force on Sexual Assault and Sexual Harassment Report* (2015) and (4) the Pennsylvania criminal court proceedings regarding Sandusky in dockets CP-14-CR-2421-2011 and CP-14-CR-2422-2011. OCR also notes that the Pennsylvania Auditor General issued a report in 2017, which among other matters addressed issues related to the University’s governance structure and process for conducting background checks for employees.

See <https://www.paauditor.gov/Media/Default/Reports/PSU%20Audit%20Report.pdf>.

<sup>4</sup> OCR selected a sample of these eight campuses for its review based on several factors, including geographic location, student population/campus size, and the numbers of sexual violence incidents reported under the Clery Act.

<sup>5</sup> For example, on January 13, 2020, a former University football player filed a lawsuit in federal court in the Middle District of Pennsylvania (4:20-cv-00064-MWB) alleging that he was sexually harassed by three other University football players in the team’s locker room during his time on the University’s football team in 2018. Specifically, the lawsuit includes allegation that during 2018, other football players placed their genitals on the plaintiff and threatened to sexually assault him. The lawsuit also alleges that the plaintiff reported the conduct to coaching staff, and that his father reported the conduct to the Head Coach, but no actions were taken in response. OCR requested and the University provided documents related to its internal investigation of the complaint in late January 2020. OCR reviewed the documentation provided; the review is on-going and OCR will address Title IX compliance issues, if any, in the monitoring of the University’s compliance with the resolution agreement.

OCR also reviewed litigation filed by individual students against the University in federal court alleging, among other things, that it violated Title IX in the University's processing of complaints of sexual harassment.

### **SANDUSKY'S MISCONDUCT, THE UNIVERSITY'S FAILURE TO RESPOND, AND TITLE IX IMPLICATIONS**

In 2012, former University assistant football coach Jerry Sandusky was criminally convicted of sexually abusing minors at the University, and is currently in prison for that conduct. Additionally, high-ranking University officials have also faced criminal prosecution for their failure to respond appropriately to Sandusky's conduct. In the time since Sandusky's conviction in 2012, several individuals have come forward with additional allegations that Sandusky abused them, including two individuals who were University students at the time of the alleged abuse.<sup>6</sup>

OCR discusses the Sandusky scandal as part of this compliance review not simply to duplicate the activities of previous investigative bodies and tribunals or echo public censure of the appalling hebetude of former senior University officials in the face of Sandusky's iniquities, but to spotlight the University's Title IX duties in the context of such facts. Among the manifold derelictions of its incompetent response to Sandusky's conduct before his arrest, the University failed to consider the requirements of Title IX, including the obligation to respond appropriately to reports of sexual harassment. The University should always be aware of the possibility that Title IX may be invoked whenever an allegation of sex discrimination or sexual misconduct arises.

To briefly recite the background of the scandal, Sandusky began employment with the University as an assistant football coach in 1969. In 1977, Sandusky founded Second Mile, a non-profit organization that provided services for disadvantaged youth. From its inception, Second Mile had a close relationship with the University, largely because of Sandusky. The University's football staff and players regularly assisted with organization events and volunteered in organization programs. The University also hosted several week-long Second Mile summer youth camps on the University Park campus, as well as at other Commonwealth campuses. Second Mile's summer youth camps used various campus locations, including classrooms, athletic fields, and football facilities. The University sought to promote its athletic program through maintaining a relationship with Second Mile (and through it, the children who took part in its programming) and Sandusky, even after the latter's retirement in 1999, including through an arrangement that provided Sandusky continued access to University facilities.

On May 4, 1998, a year before Sandusky's retirement from the University, the parent (Parent 1) of an 11-year old boy (Participant 1) reported to the University Police Department for University Park (UPD) disturbing behavior by Sandusky towards Participant 1, and the UPD initiated an

---

<sup>6</sup> One student attended the University from [redacted content] and reported the alleged sexual misconduct by Sandusky in [redacted content]. The other student attended the University from [redacted content] and reported in [redacted content]. The University declined to give OCR specific information about these individuals' allegations, but did provide contact information for their legal counsel. OCR reached out to such counsel, but was unable to obtain further information.

investigation. According to Parent 1's account to the UPD, the previous night in the University's football building, Sandusky – who had met Participant 1 through Second Mile - showered with Participant 1 in the University's football locker room while both were naked, and during the shower Sandusky put Participant 1 in a bear hug and lifted him up. Participant 1 reported to the UPD that he felt "weird" and "uncomfortable" when Sandusky lifted him up. When the UPD interviewed Participant 1, he told them that his 10-year-old friend, Participant 2, also attended a Second Mile camp and had also spent time alone with and showered with Sandusky. Like Participant 1, Participant 2 told the UPD that Sandusky lifted him up in the shower, and that it made him uncomfortable.

On the same day the UPD received Parent 1's complaint, it notified the University's former senior vice president for finance and business (Vice President 1), who in turn informed the University's former Athletic Director (AD) and former president about the allegation the following day. There is no evidence that, while the UPD investigation was pending, the University took any interim steps to limit Sandusky's access to University facilities or safeguard members of the University community, including Second Mile participants who might be present on the University's campus. In late May or early June 1998, the UPD sent its investigation findings to the Centre County District Attorney's office, which declined to bring charges. The University took no further action against Sandusky regarding the incident.

In February 2001, a graduate assistant (Graduate Assistant) in the University's Athletics Department reported to the University's head football coach that the evening before he saw Sandusky engaged in sexual activity involving a young boy (Participant 3) in the locker room showers. The Head Coach shared the report he received from the Graduate Assistant with the AD and Vice President 1 the following day. The AD and Vice President 1 met with the Graduate Assistant approximately a week later, and according to the Graduate Assistant, he recounted the same report he provided to the Head Coach. Soon after, the AD and Vice President 1 informed the President of the allegation. The President (later) stated that he was informed by the AD and Vice President 1 that Participant 3 was "one of [Sandusky's] Second Mile youth." The University made no report of the incident to law enforcement or child protection authorities.<sup>7</sup> In sum, on at least two separate occasions in 1998 and 2001, senior University officials, including the former University president, received reports of Sandusky showering naked with minors in the University's football locker room under circumstances raising suspicions regarding possible sexual abuse.<sup>8</sup> University officials were aware that the children in question had taken part in a Sandusky-affiliated (and now defunct) charity for disadvantaged youth that also had a substantial relationship with the University.<sup>9</sup> The evidence indicates that University officials did not notify the Title IX Coordinator of either the 1998 or 2001 incidents.

---

<sup>7</sup> See e.g. Freeh Report at 75; Clery Report at 5.

<sup>8</sup> See e.g. Freeh Report at 47-53 and 67-70; Clery Report at 17, 20- 21, 24, 26-27, 30.

<sup>9</sup> As noted in the Freeh Report and the Clery Report, the University's relationship with Sandusky and the charity, i.e., Second Mile, was significant and extensive both before and after Sandusky's retirement.

Sandusky continued to have access to the University's campus after these incidents until November 2011, when he was arrested and charged with over 50 criminal counts under Pennsylvania law regarding sexual abuse of minors and related offenses.<sup>10</sup> In June 2012, Sandusky was convicted of 45 counts of those charges, and in October 2012 he was sentenced to 30-60 years imprisonment and declared a sexually violent predator.<sup>11</sup> Sandusky's criminal convictions included the abuse of five boys during incidents that took place on University property after the 1998 incident, two of whom were abused on University property after the 2001 incident.<sup>12</sup> Furthermore, the University reported receiving over 40 complaints since 2011 involving allegations of abuse by Sandusky.<sup>13</sup>

The Department in 2011 launched an investigation of possible violations by the University of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), which resulted in 11 findings of violations and a \$2.4 million fine, the largest in Department history at the time. Among the findings in that investigation, the Department determined that the University had significant information even before Sandusky's indictment that he was a danger to the University community. The Department determined that Sandusky presented a threat to students, employees, and thousands of children participating in youth camps and other activities on the University campus each year, and faulted the University for not issuing an emergency notification when it learned of the forthcoming sexual abuse charges against Sandusky.

The University engaged in a series of responsive actions in the wake of the public revelation of Sandusky's conduct, including a revamping of its ethics and compliance program. On November 21, 2011 the University's Board of Trustees commissioned an independent counsel to investigate the University's actions regarding Sandusky in response to a National Collegiate Athletic Association (NCAA) inquiry. The final report, referred to as the Freeh Report, was issued on July

---

<sup>10</sup> See e.g. Freeh Report at 13, 105-106; Clery Report at 5.

<sup>11</sup> On February 1, 2019, the Pennsylvania Superior Court ordered that Sandusky be resentenced. Sandusky was resentenced on November 22, 2019 to 30-60 years in prison. Sandusky requested reconsideration of the sentence length, and on January 28, 2020, his request was denied. On October 22, 2019, Sandusky filed a petition in the U.S. Middle District Court of Pennsylvania for a writ of habeas corpus, alleging his constitutional rights were violated during and after his 2012 trial. To date, this action is pending.

<sup>12</sup> Criminal charges were also brought against the University's former president, Vice President 1, and AD relating to the failure to report Sandusky to appropriate child protection authorities. In March 2017, the former AD and Vice President 1 each pleaded guilty to one misdemeanor count of endangering the welfare of children and served time in prison. On March 24, 2017, a jury found the former president guilty of child endangerment under Pennsylvania criminal law. After state appellate proceedings, on April 30, 2019, a Magistrate Judge for the Middle District of Pennsylvania overturned the president's child endangerment conviction and sentence. On May 1, 2019, the Pennsylvania Attorney General announced his intent to appeal and the appeal was filed with the U.S. Court of Appeals for the Third Circuit on May 29, 2019. This appeal is still pending.

<sup>13</sup> Some of these claims have been settled. In addition, on [redacted content], multiple news sources reported that on [redacted content], an individual reported to the University Police Department that Sandusky sexually assaulted the individual, [redacted content] in the [redacted content] on the University Park Campus. The University reported that an investigation is ongoing.

12, 2012, and the University accepted the Freeh Report's findings, as reflected in an NCAA consent decree executed on July 23, 2012.<sup>14</sup>

As a part of the University's work to fulfill the requirements of its NCAA consent decree, the University created the oversight position of Athletics Integrity Officer (AIO) within the University's Office of Ethics and Compliance authority. The University hired its first permanent<sup>15</sup> AIO in 2013. Among other duties, the AIO investigates athletics issues such as inquiries into why a specific athlete was cut from a team and allegations of abuse or mistreatment by a coach.

## **THE UNIVERSITY'S EFFORTS TO RESTRUCTURE ITS SEXUAL HARASSMENT PROCEDURES**

In July 2014, the University's current president appointed the Task Force on Sexual Assault and Sexual Harassment (Task Force) to make recommendations regarding the University's response to the issue of sexual misconduct on its campuses, which it did in a January 2015 report.<sup>16</sup>

Prior to issuance of the Task Force's report, the Title IX Coordinator was the Vice Provost for Affirmative Action (Title IX Coordinator A), located within the Affirmative Action Office (AAO). Pursuant to a delegation from Title IX Coordinator A in effect at that time, sexual harassment complaints against University students were to be filed with and processed by the Office of Student Conduct (OSC), while complaints against University employees or third parties were to be filed directly with AAO. In response to the Task Force's recommendations, however, during the 2015-2016 academic year the University created a new entity within Student Affairs, the Office of Sexual Misconduct Prevention and Response (OSMPR), to undertake the initial response to, and investigation of, sexual harassment complaints prior to being forwarded to OSC for adjudication as conduct violations. Initially, OSMPR was directed by the Title IX Coordinator, who reported to Vice President 2. A new Title IX Coordinator (Title IX Coordinator B) was hired in November 2015, and he began the work of hiring OSMPR staff throughout early 2016.<sup>17</sup>

### **OSMPR**

The University initially intended for OSMPR to investigate allegations of sexual harassment involving students only, with AAO (which unlike OSMPR, does not fall under the Student Affairs umbrella) continuing to handle complaints against faculty, staff, and third parties. Shortly before the 2016-17 academic year, however, the University tasked OSMPR with the investigation of

---

<sup>14</sup> See Clery Report at 24.

<sup>15</sup> The Vice President for Student Affairs (Vice President 2) told OCR that he served as AIO on an interim basis for approximately six months in 2013 when the position was created.

<sup>16</sup> See [https://www.psu.edu/ur/2014/Task\\_Force\\_final\\_report.pdf](https://www.psu.edu/ur/2014/Task_Force_final_report.pdf).

<sup>17</sup> OSMPR is physically based at the University Park campus, but processes undergraduate student complaints from the University's Commonwealth campuses as well. Non-OSMPR University employees located at the Commonwealth campuses (referred to sometimes as "Title IX resource persons") also provide on-the-ground assistance with case processing. Prior to the launch of OSMPR in 2016, campuses played a greater role in processing Title IX complaints.

sexual harassment allegations involving University faculty, staff, and third parties as well. In the summer of 2018, the University reconsidered this structure and made organizational changes that reassigned responsibility for processing sexual harassment complaints against University faculty, staff, and third parties to AAO.<sup>18</sup>

Under OSMPR's 2019-20 Student Title IX Report Procedures, once a complaint is received, the Title IX Coordinator (or designated staff in OSMPR) makes an initial assessment of the complaint, which includes providing the complainant written information about available resources (e.g., academic and residential accommodations) and their options, including encouragement to report the matter to law enforcement and the right to seek medical treatment. Complainants may request an informal process that involves negotiated remedies without going through an investigation and/or conduct proceeding; the Title IX Coordinator (or designated staff in OSMPR) determines whether informal resolution is appropriate. Alternatively, the complainant may request, or the Title IX Coordinator (or designated staff in OSMPR) may determine that it is appropriate to initiate, a formal process, in which OSMPR conducts an investigation and forwards the results of the investigation to OSC for adjudication under the University's Code of Conduct & Student and Student Organization Conduct Procedures (Code of Conduct).

The current Student Title IX Report Procedures state the following regarding the initial assessment of a complaint of sexual harassment received by OSMPR:

Whenever the Title IX Coordinator decides to initiate an investigation, impose protective measures that impact the respondent (e.g., administrative directive or interim suspension), or take any other action that impacts a Respondent, the Title IX Coordinator will also ensure that the Respondent is notified and receives written information on available resources and options. The Title IX Coordinator will ensure that a Respondent is informed of the following:

- the nature of the investigation, including a concise summary of the conduct at issue and the portion(s) of the Code the behavior allegedly violates;
- support and assistance available through University resources;
- the University's prohibition against retaliation, that the University will take prompt action when retaliation is reported, and how to report acts of retaliation; and
- the Respondent's opportunity to meet with the Title IX Coordinator or their designee to discuss their resources and options.

---

<sup>18</sup> The Title IX Coordinator position was returned to AAO also, where it now reports to the Associate Vice President for Affirmative Action (Associate VP). OSMPR itself remained in Student Affairs, but as of October 2018, a separate OSMPR Director position was created, with dual reporting to both the Title IX Coordinator in AAO and the Assistant Vice President for Student Rights and Responsibilities (Assistant VP) in Student Affairs. The Assistant VP reports to Vice President 2. The Assistant VP previously served as Title IX Coordinator on an interim basis after Title IX Coordinator B left the University in June 2017. In descriptions of his actions while serving as Title IX Coordinator, the Assistant VP will be referred to in this letter as "Title IX Coordinator C." The current Title IX Coordinator (Title IX Coordinator D) started in the position in July 2018.



The Procedures also provide as follows:

Before any interview of the Respondent by an investigator, the Respondent will be informed in writing of the initiation of the investigation.... The written information will include the identities of the parties, if known, a concise summary of the alleged misconduct at issue, the date and location of the alleged misconduct, if known, and the section(s) of the Code potentially violated. The Respondent will be informed in writing if, during the investigation, additional information is disclosed that may constitute additional prohibited conduct under the Code.

As discussed below, respondents are also notified of the specific Code of Conduct provisions they are alleged to have violated when they meet with OSC after OSMPR has completed its investigative packet and forwarded the case to OSC for conduct processing.

When the investigation is concluded, the OSMPR investigator assigned to the case prepares a preliminary report (which, according to the procedures, does not contain findings but will “articulate the sections of the Code allegedly violated, the alleged behaviors, and the information gathered that relates to the same.”) The OSMPR investigator provides each party the opportunity to review the report and provide any additional documents, names of additional witnesses, evidence, feedback on the report, or any other information within five days. The investigator then conducts any additional investigation deemed appropriate and gives the parties another opportunity to review and comment on the revised investigative report before it is finalized and forwarded to OSC for further processing.

### OSC

The interim senior director of OSC (OSC Director) told OCR that once OSMPR’s investigative packet is transferred to OSC, OSC determines whether the information gathered by OSMPR reasonably supports a conduct charge. If so, OSC meets with the parties to inform them of the same, including the specific code violation charged, and offers them the opportunity to provide an impact or mitigation statement, which OSC then considers in recommending a sanction.<sup>19</sup> OSC

---

<sup>19</sup> The purpose of an impact statement, provided by a complainant, or a mitigation statement, provided by a respondent, is to inform the level of sanction recommended by OSC (which recommendation might be accepted by the respondent if he/she does not contest the charge(s)), or ultimately assigned by the hearing authority upon a finding of responsibility. Based on the Assistant VP’s October 2019 interview with OCR, it is possible that the parties may have also already provided such statements to OSMPR (in addition to other written information relevant to the investigation), and that as such those statements would be included in the investigative packet forwarded to OSC. He told OCR that there was a period previously when OSMPR was redacting information such as mitigation/impact statements from the investigative packet provided to OSC (primarily with the consent of the parties, but in some cases at the OSMPR investigator’s discretion). OCR notes that in a federal lawsuit filed against the University in the Middle District of Pennsylvania in 2017 (4:17-cv-01315-MWB) regarding a complaint of sexual misconduct during the 2016-17 academic year, a respondent alleged that redactions made to the respondent’s statement were improper. The court found that the University failed to provide the hearing panel with the plaintiff’s response to the report until the day before the hearing (contrary to PSU policy requiring 5 days), and that the response was substantially and improperly redacted (based on relevance and whether it was “new information” not learned during the investigation). Together, the court concluded that these issues raised due process concerns. Moreover, the court was skeptical that the investigator should redact a party’s response to the report for relevance, as this should be a determination left to the

notifies the parties of its recommended sanction, and the respondent can then accept the charge and recommended sanction or contest the charge, which will result in a hearing.<sup>20</sup>

The University also informed OCR that in cases in which it deems interim suspensions of the respondent are warranted, its general practice is to issue the interim suspension prior to meeting with the respondent. As per the Code of Conduct, a respondent may appeal an interim suspension, and the University will render its decision within five business days.

When the respondent contests the charge, the investigative packet prepared by OSMPR is provided to the hearing authority (a panel of three University faculty or staff members) at least five days in advance of the hearing. The OSC Director explained that during the hearing the panel uses the information from the investigative packet as part of the factual basis for the case.<sup>21</sup>

Before the 2019-20 academic year, no witnesses other than the complainant and respondent could testify at a sexual harassment hearing. As of the 2019-20 academic year, non-party witnesses are now allowed to testify at hearings.<sup>22</sup> The OSC Director characterized this change as designed to align with “best practice.”<sup>23</sup> The 2019-20 Code of Conduct states the following regarding hearing witnesses:

---

panel, and may work to deprive the accused of due process. The case settled and was dismissed in March 2019. The Assistant VP described the case that involved litigation as an “outlier” and felt confident that OSMPR staff had not been otherwise generally making inappropriate redactions up to that point. The Assistant VP said that consistent with the court order in federal litigation, the practice of making redactions was discontinued while he was serving as Title IX Coordinator C and that now virtually all information provided to OSMPR by the parties is included in the investigative packet.

<sup>20</sup> The OSC Director said that prior to the 2019-20 academic year, OSC would meet with the parties and allow them to provide impact and mitigation statements before making a determination as to whether the information in the investigative packet reasonably supports a charge.

<sup>21</sup> OCR’s review of audio recordings of conduct hearings from the 2016-17 academic year showed that at the outset of the hearing, the hearing panel chair would typically state that any new information the parties wish to submit is subject to the panel’s determination that it was not available during the investigation and is relevant to the issue of whether the respondent violated the Code of Conduct. OCR notes that in one such case that it reviewed the complainant filed a federal lawsuit against the University in the Middle District of Pennsylvania (4:20-cv-00298-MWB) on February 19, 2020. The complaint includes allegations, *inter alia*, that the University violated Title IX because it precluded the complainant from presenting new evidence at the hearing.

<sup>22</sup> OCR also notes that among the Title IX-related litigation filed against the University in recent years were at least two federal lawsuits in the Middle District of Pennsylvania (4:15-cv-02072-MWB and 4:15-cv-02108-MWB) containing allegations of a denial of due process based on, *inter alia*, the inability of respondent-plaintiffs to call witnesses on their own behalf. Both cases settled and were dismissed on motion of the plaintiffs in December 2016.

<sup>23</sup> The OSC Director explained that the changes are effective for all cases filed with OSMPR as of the start of the 2019-20 academic year and going forward. Cases filed with OSMPR during the 2018-19 academic year that proceed to a hearing in 2019-20 will be processed under the University’s 2018-19 policies and procedures. The OSC Director also stated that prior to the 2019-20 academic year, her role during a hearing was limited to answering questions about procedure and other administrative/housekeeping matters such as helping to get people where they need to be for the hearing process. She said that under the new process, she will also have the opportunity to ask questions of witnesses,

- All witnesses will be considered University witnesses. Names of witnesses not included in the investigative packet may be provided by the Respondent, Complainant and others who may have been involved with the case. Prior to the hearing, it is important that the case manager understand the role of each witness in the case. To assist this process, those who have not met with the investigator will need to provide a brief statement outlining the relevant information they will share at least two (2) business days in advance of the hearing....
- The Respondent, Complainant, case manager, and hearing authority will be allowed to ask questions of the investigator and all witnesses who participate in the hearing process. Note, witness participation in this process is voluntary.
- The [OSC Director] (or designee) and/or hearing authority may exclude witnesses if they are deemed duplicative, irrelevant, or inappropriate.

According to the University, in practice this means that “the parties can call any witness that they want – regardless of whether that individual is referenced in the investigative packet.” The University acknowledged that under this process an OSC case manager could prevent a witness from testifying, but stated that “such a circumstance would arise only if the individual had absolutely no knowledge of the case or the witness would serve solely as a character witness.”

While parties may offer their own third-party witnesses, a complainant cannot call a respondent as a witness and a respondent cannot call a complainant as a witness.<sup>24</sup> If a complainant does choose to testify, the respondent can propose questions for the complainant; however, such questions are subject to the hearing panel’s discretion and, if approved, will be posed by the hearing panel, not the respondent. The same applies for questions proposed by the complainant to be asked of a respondent who chooses to testify.

The hearing panel renders its decision on responsibility for a conduct violation, and also determines the sanctions for any such violation. A respondent or complainant may request an appeal when suspension or expulsion is either assigned or was possible in light of the charges. An appeal may be requested on one or more of the following grounds:

---

although she added that she has not under the previous process and will not under the current process participate in the hearing authority’s deliberations on whether to find the respondent responsible for a conduct violation.

<sup>24</sup> The University provided OCR the following statement regarding participation of the parties as witnesses in a conduct hearing:

The University cannot compel a party to testify, even if requested by the other party. The University also cannot compel a party to be present at the hearing. Either party may participate on any level that they choose. Therefore, and by way of example, a party may choose to only observe the hearing, to observe and provide a statement, or to only ask questions of others and not answer any posed to them....

- The Respondent has been deprived of their rights and/or stated procedures were not followed that affected the outcome;
- new evidence is presented, that was not available during the time of the original outcome, relevant to establishing whether it is more likely than not that the Respondent is responsible for the conduct offense; and/or
- the sanction(s) imposed was (were) outside the University’s sanction range for such violations and/or not justified by the nature of the violation.

The OSC Director and the Title IX Coordinator can also appeal a decision on these grounds as well as the additional ground that “the hearing authority misapplied or misinterpreted the University’s policies and related definitions.”

#### Affirmative Action Office

Title IX complaints against University employees or third parties are currently processed by AAO, separate from the student process within OSMPR and OSC. Title IX Coordinator D also oversees the processing of sexual harassment allegations involving employees and third parties within AAO. The Associate VP told OCR that she and the AAO’s associate director investigate all complaints involving employees and third parties as respondents. Separately, the Assistant VP told OCR that when a University student files a complaint against a non-student/non-faculty, third party respondent, or unknown respondent, OSMPR takes responsibility for supporting the student (which could include providing information regarding available accommodations), but is not responsible for a formal investigation if one is appropriate.<sup>25</sup>

#### Athletic Integrity Officer/Athletic Department Referrals to Title IX Coordinator

According to the University, the AIO reports any alleged incident he is aware of with potential Title IX implications to the Title IX Coordinator and to the Title IX Coordinator’s supervisor, the Associate VP. The Assistant VP told OCR that the AIO has always referred Title IX matters since the creation of the AIO position in 2013. Prior to the creation of OSMPR during the 2015-16 academic year, the AIO would refer matters involving University student respondents to OSC (as per the delegation from Title IX Coordinator A), and matters involving faculty/staff respondents directly to Title IX Coordinator A. Similarly, the University’s Senior Associate Athletic Director (SAAD), who is also listed in University policy AD 85: Discrimination, Harassment, Sexual Harassment, and Related Inappropriate Conduct (AD 85) as a deputy Title IX Coordinator, told OCR that if a student athlete were to inform her of a sexual assault she would offer assistance with filing an OSMPR report, as well as file her own online Title IX report to OSMPR. AD 85 requires all responsible employees (which generally includes all University employees other than certain counselors and advocates) to report incidents of conduct which possibly violates AD 85 to the University’s Title IX Coordinator.

---

<sup>25</sup> The OSMPR Director told OCR in October 2019 that it is possible that a student-filed case against a non-University third party might remain in OSMPR, but more likely it would be referred to Title IX Coordinator D for any further processing. He said that OSMPR would try to connect the complainant with appropriate resources in any case.

## **PROCESSING OF COMPLAINTS ALLEGING SEXUAL HARASSMENT**

Given the University's profoundly inadequate response to Sandusky's sexual abuse, OCR reviewed over 300 case files, including, in particular, complaints that were initially reported to the Athletic Department staff. In the review of these cases, OCR found, *inter alia*, that the University did not follow its own policies and procedures, there was delay in notifying the Title IX Coordinator of sexual harassment allegations, that student-athletes were told to keep the investigation of a coach confidential, and that records do not reflect the University providing interim measures to complainants. These deficiencies indicate that the University has not adequately addressed its failures in the wake of the Sandusky scandal.

- *Summary: 1) There were significant delays in notifying the Title IX Coordinator of the allegations; and 2) there is no record that the youth camp participant parents were contacted during or after the investigation.*

In [redacted content] at a University-sponsored youth summer sports camp reported that a coach harassed them by making a series of inappropriate sexual and racial comments to them, some within hearing distance of the youth campers. Their report was relayed to camp staff, and then relayed to several senior-level Athletic Department administrators. However, none of them notified the Title IX Coordinator as required by the University's policies and procedures, but instead endeavored to handle the matter on their own. Approximately three months after the complaint was made, the Athletics Department reported it to Title IX Coordinator B. Upon receiving this information, Title IX Coordinator B and the AIO notified senior University leadership and initiated a joint investigation.

The resulting investigative report issued by the University's Office of Ethics and Compliance found that the [redacted content] allegations were substantiated and that Athletic Department staff "demonstrated a lack of understanding related to proper reporting of potential Title IX issues." [Redacted content]. There is no documentation that the University assessed whether interim measures were appropriate for the [redacted content], or that the [redacted content] were notified of the outcome of their complaint. There is also no record of whether the youth participants' parents were contacted as part of the investigation or whether any information was shared with the parents regarding the coach's conduct. Likewise, there is no indication that Athletic Department staff were disciplined or provided additional training regarding their initial handling of the case.

- *Summary: 1) The University did not adhere to its policy regarding processing of sexual harassment allegations against a University employee; 2) the investigator requested that student-athletes keep the investigation of the coach confidential; and 3) there is no record that the student complainant was notified of the outcome.*

In [redacted content], a student athlete reported to the SAAD that over a long period of time one of her [redacted content] coaches used inappropriate language, including calling members of the team [redacted content]. The SAAD notified senior athletic department officials and the AIO, and later Title IX Coordinator B, of the information and initiated an investigation of the coach's behavior. Title IX Coordinator B was consulted during the

investigation, but the matter was not processed by AAO, which under University policy would normally handle complaints alleging sexual harassment by employees.

The records indicate that in the course of the SAAD's investigation she told the student athletes interviewed during the investigation to keep the matter confidential. According to the records, the SAAD told some of the student athletes she interviewed that the University prohibits retaliation and that they should reach out to her or a (different) coach if they felt in harm's way, but she did not otherwise refer them to OSMPR or AAO for follow-up or the opportunity to file their own complaints. In [redacted content], the SAAD and Title IX Coordinator B met with the respondent coach to discuss the allegations, and at the end of [redacted content], the University determined that the coach violated AD 85 and the University Code of Conduct for Intercollegiate Athletics and "engaged in a pattern and practice of directing gendered verbal attacks, slurs, and demeaning statements toward student-athletes ...over a period of at least two years." [Redacted content]. There is no record confirming that the University notified the complainant student of the outcome.

- *Summary: 1) The Title IX Coordinator was not notified of two of four complaints made against the Head Coach of [redacted content]; and 2) there is no record that the complainants or student [redacted content] were notified of the outcome of a later complaint or assessed whether interim measures were appropriate.*

In [redacted content], the Deputy Athletic Director and a Human Resources representative received information that the Head [redacted content] Coach (Head Coach), [redacted content], told a team member that she was "acting like a pussy" and apologized to the student. After corroborating the incident, the Assistant Athletics Director for Human Resources issued [redacted content]. Inconsistent with the University's policies and procedures, the records do not indicate that the Title IX Coordinator was informed of the allegation or the determination.

In [redacted content] student-athlete reported to the AIO that the Head Coach [redacted content] in a manner that resulted in [redacted content]. The AIO contacted the Title IX Coordinator. Although the Title IX Coordinator interviewed the student-athlete and asked to be apprised of any further developments, the AIO conducted the investigation. During the course of the investigation, the AIO learned that in [redacted content], another student [redacted content] previously reported the same allegation to the Deputy Athletic Director during a team meeting. The Deputy Athletic Director spoke to the Head Coach [redacted content] two days later, but did not contact the Title IX Coordinator. In [redacted content], the AIO submitted an investigative report to the President finding that [redacted content].

In [redacted content], two assistant [redacted content] coaches filed a complaint with OSMPR alleging that the Head Coach engaged in a pattern of inappropriate comments regarding the physical appearances and [redacted content] of the student-athletes. The next day the Title IX Coordinator interviewed both assistant coaches and the following day the University [redacted content] the Head Coach.<sup>26</sup> There is no record that the complainants

---

<sup>26</sup> [Redacted content].

or student [redacted content] were notified of the outcome of the complaint or that the University assessed whether interim measures were appropriate.<sup>27</sup>

- *Summary: The head coach of [redacted content] failed to report an allegation of potential sexual harassment involving an assistant coach to the University.*

In [redacted content], a non-affiliated party told a University [redacted content] coach that in [redacted content], a University assistant [redacted content] coach [redacted content]. Despite receiving this information, the coach did not report the matter to the Title IX Coordinator. In [redacted content], another person reported the alleged incident to a senior Athletic Department staff member on the non-affiliated party's behalf. The AIO and Title IX Coordinator D, along with other University officials, investigated and responded to the allegation, ultimately resulting in the [redacted content]. At the conclusion of that investigation, Title IX Coordinator D and the Associate VP also recommended that the coach who had received the initial report from the complainant in [redacted content].

- *Summary: 1) Delays in the case processing were significant and likely contributed to the complainant abandoning her request for a formal investigation; and 2) the case was stalled until another University department reached out to OSMPR.*

Within a few days of the alleged incident, the complainant reported in [redacted content] that the respondent raped her in a residence hall. On [redacted content], the complainant met with OSMPR to express concerns about the respondent's presence in one of her classes and requested a formal investigation. On [redacted content], Residence Life advised OSMPR that the respondent would not be eligible to serve as an RA the following year if a formal investigation had been requested, and on the following day, OSMPR provided the respondent with notice of the formal investigation and confirmed that he would not attend the complainant's class presentation.

In [redacted content], OSMPR informed the complainant that the investigation would likely go into the summer. In [redacted content], OSMPR informed the respondent it would be working on the case over the next few weeks and apologized for how long the investigation was taking. In [redacted content], Residence Life asked OSMPR for the status of the investigation. OSMPR responded that unfortunately the case has "been on the back burner for a while" and it would reach out to the complainant to determine if she still wanted to pursue a formal investigation. OSMPR emailed the complainant to apologize, to ask whether she still wished to pursue the matter, and to inform her that if she proceeded with the investigation it would take several months to complete. The complainant responded that she had not heard from OSMPR since [redacted content] and that she did not think pursuing a formal investigation further would be beneficial to her.

- *Summary: 1) Delays in the case processing were significant, likely leading the complainant to abandon her complaint; and 2) the University failed to interview the respondent in connection with the first complaint against him and therefore lacked critical information*

---

<sup>27</sup> [Redacted content].

*relevant to responding to a second complaint against the same respondent brought by another student.*

In [redacted content], the complainant reported that the respondent raped her in [redacted content]. On [redacted content], the respondent requested to meet with the investigator but OSMPR did not respond to his email until [redacted content]. On [redacted content], OSMPR advised the Title IX Coordinator that the complainant wanted to move forward with a formal investigation, but OSMPR did not commence a formal investigation at that time. Rather, OSMPR continued to contact the complainant by email until at least [redacted content], to ask if she wished to move forward with an investigation. On [redacted content], the complainant asked to meet with OSMPR because she “ha[s] no idea about anything currently going on. . .” Despite the complainant’s response to OSMPR’s email, OSMPR did not respond to her [redacted content] email until [redacted content], at which time it notified the complainant that OSC had issued an Administrative Directive to the respondent that day. On [redacted content], OSMPR interviewed the complainant, but then did not contact her again until [redacted content], when an OSMPR investigator emailed her to apologize for the delay, explain that the delay had been caused by having a significant number of cases, and to inquire whether she still wished to proceed with her complaint. The complainant responded later that day and stated she was not interested in pursuing a formal investigation because it had been months since OSMPR’s last contact and she was trying to move on with her life. She also asked the investigator to not ask her again. OSMPR closed the file on [redacted content].

In [redacted content], OSMPR received a second complaint from a different female student against the same respondent. On [redacted content], a different OSMPR investigator found that there were no notes in the first complaint’s file to show if OSMPR interviewed him in connection with the first complaint.

- *Summary: There is no record that the University considered whether it was appropriate to offer interim measures to the complainant.*

In [redacted content], the complainant reported to the University police that she was sexually assaulted in a residence hall. There are no records of whether interim measures were considered for the complainant, or any other steps were taken in the case.

- *Summary: The parties’ statements were redacted in a manner that may have precluded relevant information at the hearing.*

In [redacted content] the complainant reported that the respondent sexually assaulted her in her residence hall room. In [redacted content], OSMPR finalized the investigative report and transferred the case to OSC. In addition, OSMPR redacted the parties’ statements included in the packet for the hearing panel members. Small portions were removed from the complainant’s statement, but full pages of text were redacted from the respondent’s statement. During the [redacted content] hearing, the panel 1) determined that the respondent’s questions about the parties’ previous conversations were not relevant and were already covered in the packet; 2) determined that the respondent’s questions about



the complainant's report to Campus police that the respondent was a threat were included as attachments to the investigative packet; 3) precluded the respondent's questions about the complainant's medical exam and whether the exam revealed evidence of a sexual assault because the fact the complainant received medical treatment was covered in the packet and the evidence from her examination would not be determinative of whether there was an assault; and 4) rejected the respondent's questions about whether the complainant was on medication at the time of the incident because they deemed it new information not covered in the investigative packet.

The panel concluded that the respondent was responsible for sexual assault and imposed the following sanctions: academic suspension for the [redacted content]; loss of privilege for campus housing; counseling related to the behavior; and a recommendation that the respondent lose his privilege to the University's [redacted content] program while the complainant is in attendance. The respondent appealed, and in [redacted content], the University notified the respondent and complainant in writing that the appeal was denied and the sanctions would go into effect.

In July 2017, the respondent filed a complaint in federal district court alleging that the University had violated his due process rights. Specifically, the respondent alleged that 1) the University issued an administrative directive to the respondent but did not issue one to the complainant; 2) the University placed the full burden of changing classes on respondent prior to any determination of responsibility for the alleged conduct; 3) that the panel questioned the respondent about conduct not included in the formal charges against the respondent; and 4) the respondent was not provided an equal opportunity to present evidence at the hearing. In August 2017, the court granted a temporary restraining order enjoining the University from implementing the sanctions against the respondent and instructing the University to register the respondent for classes, which were set to begin in August 2017. In March 2018, the litigation was dismissed because the University and respondent entered into a settlement agreement.

- *Summary: Although the University routinely issued Administrative Directives that prohibited respondents from having contact with complainants, including through third parties and social media, there is no record of issuance of an Administrative Directive to the complainant where the respondent notified the University that the complainant was harassing him via third parties.*

In [redacted content], the complainant reported to OSMPR that the respondent raped her. In [redacted content], during the course of OSMPR's investigation, the respondent reported to the University that the complainant's friends harassed him at work and that the complainant posted on social media [redacted content]. In response, OSMPR emailed the complainant and urged her to be 'considerate' of what she posts online and provided her with the University's retaliation policy. There is no record at any point in the case of an Administrative Directive being issued to the complainant.

- *Summary: The University delayed notifying the respondent regarding whether he would be charged with violating the University's Title IX Policies.*

In [redacted content], the complainant reported that she was sexually assaulted and requested that the University investigate. On [redacted content], OSMPR completed its investigation and sent the investigative report to OSC. Three months later, in [redacted content], OSC notified the respondent of the charges against him.

## **TITLE IX COORDINATION AND TITLE IX POLICIES AND PROCEDURES**

### Title IX Coordinator

At all relevant times, including since at least March 2014, the University has had a designated Title IX Coordinator, and such coordinator's name, office address, and telephone number is published to the University community.

Under the 2018 organizational changes described above, Title IX Coordinator D does not directly supervise OSMPR investigators, but he told OCR that he oversees all Title IX compliance actions and monitors OSMPR investigations. Title IX Coordinator D also told OCR that he receives every Title IX report that is made<sup>28</sup> and that he reviews them daily, delegating immediate response to the OSMPR Director.

### Policies and Procedures

OCR reviewed the University's Title IX policies and procedures in place at the outset of this compliance review and at other points since, particularly focusing its analysis on those currently in effect.<sup>29</sup>

As of the 2019-20 academic year, the University maintains four principal sources of policies/procedures relevant to Title IX: (1) AD 85;<sup>30</sup> (2) Student Title IX Report Procedures;<sup>31</sup> (3) Code of Conduct;<sup>32</sup> and (4) information on the AAO website<sup>33</sup> (collectively, the current

---

<sup>28</sup> In addition to contacting OSMPR staff directly, individuals can make Title IX complaints online. OSMPR's website allows students and other members of the University community to make an online complaint of a potential Title IX incident, sometimes called a SHARE (Sexual Harassment and Assault Reporting and Education) report.

<sup>29</sup> OCR's analysis of the University's Title IX policies and procedures in effect during the 2019-20 academic year in this section is based on the versions of the same published online in December 2019. See the Analysis section for a discussion of the University's policies and procedures in effect during the 2013-14 academic year, when this compliance review was initiated.

<sup>30</sup> <https://policy.psu.edu/policies/ad85>.

<sup>31</sup> <https://titleix.psu.edu/psu-title-ix-procedures/>.

<sup>32</sup> <https://studentaffairs.psu.edu/support-safety-conduct/student-conduct/code-conduct>.

<sup>33</sup> <https://affirmativeaction.psu.edu/welcome/discrimination-complaints/>.

policies and procedures).<sup>34</sup> The current policies and procedures were published at various locations on the University's website, including webpages for OSMPR, OSC, and AAO.

### Filing Complaints

AD 85 provides notice of the University's policy prohibiting sex discrimination, as well as its designation of a Title IX Coordinator. Furthermore, the University provides notice of the procedures for those complaints in which the responding party is a University student within AD 85 and on the OSMPR and OSC websites,<sup>35</sup> including a link on the OSMPR website where complaints may be filed online. The plain language of these documents, including the Student Title IX Report Procedures found on OSMPR's website and the Code of Conduct on OSC's website, reflects that they apply to complaints involving students.

The University also provides information regarding procedures for complaints in which the responding party is a University employee or third party within AD85 and on the AAO website,<sup>36</sup> but OCR notes that on the AAO website there are several different links to file online complaints: one for a complaint with the University's Equity office, one for Ethics and Compliance,<sup>37</sup> one for OSMPR, and one for AAO. The fact that several such different links are provided in the same section of AAO's website could leave a potential complainant unclear on the correct way to file a sexual harassment complaint. According to the OSMPR Director, OSMPR receives SHARE reports from other sources, most frequently the Ethics and Compliance Office, and OSMPR then assigns such cases to either AAO or OSMPR as appropriate.

Moreover, for complaints regarding conduct of employees or third parties under the jurisdiction of AAO, there are two different sets of procedures on the AAO website, and it is not clear whether both or only one applies to Title IX complaints: one is entitled Discrimination and Harassment Resolution Procedures,<sup>38</sup> which by its terms covers "all complaints of alleged discrimination or harassment, including sexual harassment [and] sexual misconduct," and the other is entitled Employee Disciplinary Proceedings for Reports of Sexual Assault, Dating Violence, Domestic

---

<sup>34</sup> OCR also notes the following two University policies which have been revised and, in the case of AD 72, developed since the Sandusky scandal: AD39 Minors Involved in University-Sponsored Programs or Programs Held at the University and/or Housed in University Facilities, and AD72 Reporting Suspected Child Abuse. See <https://policy.psu.edu/policies/ad39> and <https://policy.psu.edu/policies/ad72>. While AD 39 cross-references AD 42, a predecessor policy to AD 85 (currently the University's primary policy document regarding Title IX sexual harassment, as discussed herein), AD 72 does not specifically cross-reference any of the University's Title IX policies and procedures, including AD 85.

<sup>35</sup> AD 85 also links to the OSMPR and OSC websites.

<sup>36</sup> <https://affirmativeaction.psu.edu/welcome/on-line-report/>.

<sup>37</sup> AD 85 also contains the link for the Ethics office complaint form, and states that it allows individuals to make an anonymous report of conduct prohibited by AD 85.

<sup>38</sup> <https://affirmativeaction.psu.edu/welcome/discrimination-complaints/discrimination-and-harassment-resolution-procedures/>.

Violence and Stalking Against an Employee (Employee Disciplinary Proceedings).<sup>39</sup> Moreover, the Discrimination and Harassment Resolution Procedures document states that complaints of discriminatory action by any University student will be processed by OSC, without mentioning OSMPR's role in the process.<sup>40</sup>

OCR also notes the University's adoption of a Code of Conduct for Intercollegiate Athletics (Athletics Code).<sup>41</sup> While it does not address sexual harassment specifically, the Athletics Code (which is not cross-referenced in the University's list of policies on its website) imposes a duty on all the University's NCAA Division I student athletes as well as, *inter alia*, all University employees directly involved with the University's NCAA-sanctioned teams to report any suspected violation of the University's or Athletic Department's policies, the NCAA or Big Ten rules, the Athletics Code, or "any other conduct that materially undermines the University's and the Athletic Department's commitment to its Core Values of integrity, honor and respect."

### Investigations

The Student Title IX Report Procedures describe OSMPR's investigation of complaints prior to the matter being forwarded to OSC for adjudication under the Code of Conduct. The Code of Conduct contains a section entitled "Special Protocols for Sexual Harassment and Misconduct and Title IX Allegations" and provides that such special protocols will be used when OSC receives an investigative report from OSMPR. Under these protocols, the parties may request an appeal when suspension, indefinite expulsion or expulsion is either assigned or was possible, and each party will be notified if the other party appeals. In addition, the OSC Director<sup>42</sup> or Title IX Coordinator may appeal the hearing decision based on enumerated grounds, and if such an appeal is filed, the Code of Conduct provides that the respondent will be notified, but does not state that the complainant will be notified.

### Timeframes

The Student Title IX Report Procedures contain general timeframes for OSMPR's processing. Specifically, they provide that the goal is for OSMPR to complete an investigation in 120 days, that the parties have five (5) business days to submit comments and feedback to the investigative

---

<sup>39</sup> <https://affirmativeaction.psu.edu/welcome/discrimination-complaints/employee-disciplinary-proceedings-for-reports-of-sexual-assault-dating-violence-domestic-violence-and-stalking-against-an-employee/>.

<sup>40</sup> Although OCR does not address the University's professional schools in this compliance review, we do note some inconsistencies on those schools' websites with respect to Title IX reporting, e.g., the link for "Sexual Harassment and Assault Reporting and Information" on the Office for Student Services page on the University Park law school's website (<https://pennstatelaw.psu.edu/office-for-student-services>) points to AAO's website. By contrast, the webpage for the student services office for the University's Dickinson law school (<https://dickinsonlaw.psu.edu/student-services>) directs Title IX complaints to OSMPR's website.

<sup>41</sup> [https://universityethics.psu.edu/sites/universityethics/files/revised\\_code\\_of\\_conduct\\_11.16.12.pdf](https://universityethics.psu.edu/sites/universityethics/files/revised_code_of_conduct_11.16.12.pdf).

<sup>42</sup> The OSC Director can file such an appeal under the Code of Conduct generally, not just under the Special Protocols for Sexual Harassment and Misconduct and Title IX Allegations.

report, and that after receiving comments and feedback submitted by either party or after the five (5) day comment period has lapsed without comment, the final report will be created and every party will be given an opportunity to review it.

The Code of Conduct also contains timeframes. Specifically, the parties may submit consideration statements within five (5) business days of receiving notice of the charges, the respondent may take up to three (3) business days to decide whether to accept the charges, the hearing authority will submit its finding or responsibility or non-responsibility to the case manager within five (5) business days, the parties may submit appeals within five (5) days of receiving official notification of the results of the hearing, and the opposing party will have three (3) business days to respond upon receiving notice of the appeal. Similarly, the OSC Director and Title IX Coordinator may submit an appeal within five (5) business days following the date that the respondent receives official notification of the results of the hearing.

However, the two sets of procedures for AAO cases contain different timeframes:

- The Discrimination and Harassment Resolution Procedures provide that informal resolution processing of a case will typically take 30 calendar days, and formal resolution will typically take 60 calendar days.
- The Employee Disciplinary Proceedings state that the University “will strive to complete the formal investigation within 60 business days.” However, after the formal investigation and a determination report is provided to the parties, the Title IX Coordinator is supposed to schedule a disciplinary meeting within 30 business days. The ensuing disciplinary report that reflects the decision of the Title IX Coordinator and other administrators on whether a policy violation has occurred and, if so, states applicable sanctions, is supposed to be issued to the parties within 15 business days of that meeting, and appeals are to be filed within 15 business days of receipt of that report. A decision on the appeal is to be issued within 15 business days as well.

### Notice of Outcome

The Student Title IX Report Procedures provide that each party will have the opportunity to review the final investigative report, and the Code of Conduct provides that the parties will be notified when the respondent accepts the charges and sanctions, of the hearing authority’s final decision on responsibility or non-responsibility for a violation, and of the outcome of any appeal.

With respect to AAO’s two possible sets of procedures, under the Employee Disciplinary Proceedings, both parties are provided written notice of the investigative determination, disciplinary sanctions, and the outcome of any appeal. However, the Discrimination and Harassment Resolution Procedures are inconsistent with the Employee Disciplinary Proceedings insofar as under the former, the complainant is not provided information regarding the specific sanction recommended against an employee found responsible for a policy violation.

## **RECORD-KEEPING**

As a threshold matter, each case file OCR reviewed had a case number assigned, and most cases had a summary sheet that showed the names of the parties, the date of the complaint, and a summary of the alleged incident. However, the contents of the case files varied as to whether they included documents showing the investigation that was conducted, the outcome of the complaint, and whether the parties were provided with notice of the outcome, along with other case processing documents relevant to assessing compliance with Title IX.

Interviews with OSMPR staff, including Title IX Coordinator B, described duplicate and overlapping paper and electronic file systems, neither of which was necessarily complete, in place during the earlier stages of OSMPR's existence. Staff interviews stated that OSMPR has experimented with different electronic file systems in the short period of time since its creation.<sup>43</sup> OSMPR staff acknowledged to OCR that there was a lack of clarity as to what should be preserved in the file, leading to inconsistency in what was included.

During the 2016-17 academic year, Title IX Coordinator B expressed concerns regarding the need to improve record-keeping practices and in February 2017 sent Vice President 2 a memo, which stated in relevant part as follows:

Conducting individual case and trend assessments requires that the Title IX Coordinator be able to aggregate and disaggregate various pieces of micro- and macro-level data on an ongoing basis, such as: the identity of individual parties to each report, so that repeat offenders and/or survivors can be readily identified; the location of alleged incidents, so that patterns of incidents at particular on- or off-campus locations can be tracked; and/or the demographic characteristics of the parties to individual incidents, so that elevated perpetration and/or victimization rates among various groups (e.g., freshman, international students, LGBTQ students, members of fraternities or sororities, student athletes, residents of the Residence Halls) can be observed. This information cannot be gathered without the use of a robust database, which must either be designed, administered, and maintained by OSMPR staff, or else purchased on the open market. . . .  
Despite the importance of the administrative processes to the University's Title IX efforts, OSMPR is currently without adequate manpower or technological solutions to meet its needs.

According to Vice President 2, however, Title IX Coordinator B was not appropriately managing OSMPR's resources. Vice President 2 also stated that after Title IX Coordinator B left the University in Spring 2017, Title IX Coordinator C discovered problems with case and staff management and worked to correct them.

---

<sup>43</sup> For example, when Title IX Coordinator B first arrived at OSMPR, he developed a spreadsheet to keep track of cases. He explained that prior to the time he had a staff in place, the spreadsheet was manageable because he was the only person using it. Once he had a staff in place, the spreadsheet was no longer effective because multiple people needed to access the spreadsheet in order to track case information.

When a case is transferred from OSMPR to OSC, OSC creates a new file for the case. As a general matter, many of the OSC case files OCR reviewed that were processed during the 2016-17 academic year did not contain information indicating whether notice of the outcome was provided to the parties or other documentation relevant to the processing of the case. OCR also notes that as a general matter, the files it reviewed from the 2016-17 academic year did not contain copies of conduct hearing board reports or documentation showing that they were shared with complainants and respondents.

According to the OSC Director, OSC began to use Maxient software for case management in January 2018. Under this system, the OSC Director reported that once a case is heard by a hearing panel, the board produces an electronic report, which usually contains the panel's rationale for its decision, and the panel shares it with the OSC case manager, who in turn shares it with the complainant and respondent. The OSC Director also stated that charges and sanctions are also put into Maxient. According to the OSC Director, hearing panel notes are not maintained.

The Title IX Coordinator D explained that the Maxient used by OSC and the Maxient used by OSMPR are not integrated. In October 2018, Title IX Coordinator D reported that the University was working with Maxient to develop a way to connect OSMPR's records to OSC's records. As of October 2019, the OSC Director and the OSMPR Director acknowledged that the Maxient databases for OSC and OSMPR were still not integrated.

## **LEGAL STANDARDS**

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: "Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance."

The Title IX regulation contains a number of procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX, or alleging any actions which would be prohibited by Title IX, 34 C.F.R. § 106.8(a). In addition, the Title IX regulation requires recipients to publish a notice of nondiscrimination covering Title IX, and to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.9(a); *see also* 34 § C.F.R. 106.8(b).

Sexual harassment is a form of sex discrimination prohibited by Title IX. 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.

In determining whether sexual harassment based on sex occurred, OCR looks at the totality of the circumstances, and considers a variety of factors, including the degree to which the conduct affected one or more students' education; the type, frequency, and duration of the conduct; the

identity of and relationship between the alleged harasser and the subject or subjects of the harassment; the number of individuals involved; the age and sex of the alleged harasser and the subject of the harassment; the size of the school, location of the incidents, and the context in which they occurred; other incidents at the school; and whether there were also incidents of sex-based but non-sexual harassment. OCR examines the conduct from an objective perspective and a subjective perspective.

OCR enforces the requirements of Title IX consistent with the requirements of the First Amendment of the U.S. Constitution. The laws that OCR enforces protect students from discrimination, but do not restrict the exercise of protected speech in violation of the First Amendment. Thus, for example, in addressing harassment allegations, OCR has recognized that the fact that a particular expression is offensive, standing alone, is not a legally sufficient basis to establish sex discrimination under the statutes enforced by OCR.

Sex-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature, is also a form of discrimination to which a school must respond if it rises to a level that denies or limits a student's ability to participate in or benefit from the educational program. In cases of such harassment, a school has an obligation to respond promptly and equitably. In accessing all related circumstances to determine whether sex discrimination exists, incidents of sex-based harassment combined with incidents of sexual harassment constitute sex discrimination, even if neither the sex-based harassment alone nor the sexual harassment alone would be sufficient to do so.

Where a school has notice of possible sexual harassment, Title IX requires that it respond appropriately. This could include taking appropriate steps to investigate or otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. It may be appropriate for a school to take interim measures prior to or during the investigation of a complaint. Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. 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.

The following factors are considered in determining whether an employee has engaged in sex-based harassment in the context of the employee's provision of aid, benefits or services to students: 1) the type and degree of responsibility given to the employee, including both formal and informal authority, to provide aid, benefits, or services to students, to direct and control student conduct, or to discipline students generally; 2) the degree of influence the employee has over the particular student involved, including the circumstances in which the harassment took place; 3) where and when the conduct in question occurred; 4) the age and educational level of the student involved; and 5) as applicable, whether, in light of the student's age and educational level and the way the school is run, it would be reasonable to believe that the employee was in a position of responsibility over the student, even if the employee was not.



What constitutes a recipient university's program or activity for purposes of Title IX broadly includes "all of the operations of ... [a] college, university, or other postsecondary institution, or a public system of higher education." 34 C.F.R. § 106.2(h)(2)(i).

A school should take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of harassment) or against those who provided information as witnesses. At a minimum, the school's responsibilities include making sure that the harassed students know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems. In cases where the harassment is widespread, the school may need to provide training for the larger school community to ensure that individuals can recognize harassment if it recurs and know how to respond.

The Title IX regulation also prohibits discrimination based on sex in employment. *See* Subpart E, 34 C.F.R. §§ 106.51 – 106.61. In the employment context, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment. When an employer receives a complaint or otherwise learns of alleged sexual harassment in the workplace, the employer should investigate promptly and thoroughly. The employer should take immediate and appropriate corrective action to end the harassment and prevent the misconduct from recurring.

The rights established under Title IX must be interpreted consistent with any federally guaranteed due process rights involved in a complaint proceeding. Procedures that ensure the Title IX rights of the complainant, while at the same time according due process rights of the parties involved, will lead to sound and supportable decisions.

## **ANALYSIS AND CONCLUSIONS**

### **Processing of Sexual Harassment Complaints**

The University's reaction to the Sandusky scandal exhibited wholesale problems amounting to a cluster of grievously deficient failures. To this day there are serious inadequacies in how the University treats both complainants and respondents in cases of alleged sexual harassment that need correction in order to bring the University into compliance with Title IX.

Based on OCR's review of the University's processing of complaints of sexual harassment, OCR found violations, and also has concerns, regarding the University's failure to promptly and equitably respond to numerous cases.

University policy AD 85 generally requires employees to report incidents of possible sexual harassment to the University's Title IX Coordinator. In addition, complaints of sexual harassment by the University's employees, including Athletic Department staff, are to be processed within AAO by the Title IX Coordinator or the Associate VP. In adopting this structure, the University

recognizes the importance of swift reporting of potential sexual harassment to University authorities empowered and competent to address it. However, OCR found multiple instances in the cases it reviewed in which Athletic Department staff failed to properly report allegations of sexual harassment. A complaint of sexual harassment made to a coach about an assistant coach was not promptly reported to the Title IX Coordinator and was only officially addressed after another person made a second complaint regarding the incident on behalf of the alleged victim to a senior Athletic Department official. In another case involving a youth camp coach, Athletic Department staff waited three months to report the allegation to the Title IX Coordinator. Likewise, with respect to allegations involving the Head Coach of the [redacted content] team, it came to light that the Title IX Coordinator had not been notified of two previous complaints of possible sexual harassment against the Head Coach.

OCR's review of the University's processing of sexual harassment complaints during the 2016-17 academic year revealed gaps in case processing. These gaps included delays in case processing of such length that they likely contributed to complainants' disengagement from the complaint process and that respondents experienced extended interim actions taken against them, including actions affecting their educational program such as Administrative Directives.

In one instance, a complainant reported a rape and requested a formal investigation, but did not hear from the University for several months in the midst of the investigation -- during which the case was, in the words of an OSMPR staffer, "on the back burner." In another case, OSC failed to act on the investigative report it received from OSMPR for three months, extending the total processing time for the case to eleven months.

In another case of alleged rape, the complainant requested that the University process her complaint. Nonetheless, five months later OSMPR contacted the complainant by email to ask if she wished to move forward with an investigation. One month later, OSMPR interviewed the complainant, but she was not contacted again by OSMPR for another eight months, at which time OSMPR again asked whether she wanted to proceed with the case. At that time, the complainant declined and asked the OSMPR investigator never to contact her again. Further, despite the requirement that that he comply with an Administrative Directive in the last nine months the case was pending in the investigation stage, there are no records that OSMPR ever interviewed the respondent during that time period. However, two months after the complainant indicated that she did not want the investigator to contact her ever again, the University received another complaint from a different student against the same respondent. The University's failure to promptly respond to the first complaint also impacted its ability to respond to another complaint against the same respondent.

OCR found that in previous years live testimony by non-party witnesses was not allowed at hearings, and that portions of the parties' statements may have been improperly redacted or excluded at hearing. OCR notes the University's representation that non-party witnesses will be able to testify at hearings as of the 2019-20 academic year.<sup>44</sup>

---

<sup>44</sup> OCR also notes the University's representation that OSMPR is no longer redacting information from investigative packets before they are forwarded to OSC for conduct processing, and that now virtually all information provided to OSMPR by the parties is included in the investigative packet.

As noted in OCR's case summaries, in an instance where a respondent alerted the University that the complainant called the respondent [redacted content] on social media, the University only warned the complainant to be considerate of what she posts online and of the University's prohibition against retaliation, and there is no indication that the University assessed whether issuance of an Administrative Directive to the complainant was appropriate. However, any rights or opportunities that a school makes available to one party during an investigation should be made available to the other party on equal terms.<sup>45</sup>

Interim measures should be individualized and appropriate based on the information gathered by the Title IX Coordinator, making every effort to avoid depriving any student of her or his education. OCR notes that in many instances, there are no records that interim measures were considered for the parties.

According to the OSC Director, the University will issue an interim suspension against a respondent before making contact with the respondent and then provide the respondent an opportunity to appeal the decision. While imposing an immediate interim suspension may be appropriate in certain circumstances, the University's standard process regarding interim suspensions denies the respondent the opportunity to respond to allegations before his or her educational program is significantly disrupted.

#### Title IX Policies and Procedures

OCR determined that the University's current Title IX policies and procedures do not provide sufficient notice to students and employees of the procedures, including where complaints may be filed, and do not sufficiently provide for application of the procedures to complaints alleging discrimination or harassment carried out by employees and third parties.<sup>46</sup> Specifically, the University's website provides confusing instructions on how to file a complaint regarding a University employee or third party. Visitors to the AAO website are prompted to click on four different options, but the distinction between the four options for purposes of Title IX reporting is somewhat unclear. Also, for complaints regarding conduct of employees or third parties under the jurisdiction of AAO, there are two different sets of procedures on the AAO website, and it is not clear whether both or only one applies to Title IX complaints. In addition, the Discrimination and Harassment Resolution Procedures document states that complaints of discriminatory action by

---

<sup>45</sup> Restricting the ability of either party to discuss the investigation (e.g., through "gag orders") is likely to deprive the parties of the ability to obtain and present evidence or otherwise to defend their interests and therefore is likely inequitable.

<sup>46</sup> Because OCR initiated the compliance review in January 2014, OCR also reviewed those that were in place during the 2013-2014 academic year. The University maintained the following policies and procedures relevant to Title IX: (1) University Policy AD85: Discrimination, Harassment, Sexual Harassment, and Related Inappropriate Conduct; (2) Code of Conduct & Student Conduct Procedures; and (3) Title IX Procedures Document (collectively the 2013-2014 Policies and Procedures). The 2013-2014 Policies and Procedures largely complied with Title IX's requirements, but examples of their deficiencies include but are not limited to that the 2013-2014 Code of Conduct provided that the complainant may submit a statement of facts prior to a hearing and have an advisor during a hearing, but did not specify that the respondent may do so as well.

any University student will be processed by OSC but without mentioning the role of OSMPR in the process.

OCR also determined that the University's current Title IX policies and procedures do not provide for the adequate, reliable, and impartial investigation of complaints. The Code of Conduct does not provide for the complainant to be notified in the event of an appeal by the OSC Director or Title IX Coordinator.

Furthermore, the University's current Title IX policies and procedures do not contain adequate designated and reasonably prompt timeframes for the major stages of the complaint process, insofar as the two possible sets of AAO procedures for complaints against University employees or third parties contain different timeframes.

Finally, the University's current Title IX policies and procedures do not sufficiently provide for notice of the outcome of a complaint, since for complaints handled by AAO, the Discrimination and Harassment Resolution Procedures are inconsistent with the Employee Disciplinary Proceedings insofar as under the former, the complainant does not appear to be informed of the specific sanction recommended against an employee found responsible for a policy violation.

### Record-Keeping

For the cases the University received during the 2016-2017 academic year, the University's record-keeping was insufficient. Whether its cause was a lack of resources, as reported by Title IX Coordinator B, or a deficiency of management, as suggested by Vice President 2, or a combination of both, a large portion of the case files provided by the University were incomplete. As a result, OCR was unable to ascertain whether the University's actions in those cases was in compliance with Title IX. Additionally, the insufficiency of the records meant that the University's Title IX Coordinator could not effectively coordinate the University's efforts to comply with and carry out its responsibilities under Title IX.<sup>47</sup>

Specifically, OCR's investigation found that while both OSMPR and OSC maintain records of Title IX complaints and the University's response to the same, the records provided to OCR were incomplete. The University's complaint processing records often did not include information indicating that the University updated complainants when there were delays in processing their complaints. Additionally, the records did not always reflect whether notice of the outcome of a case was provided.

Despite statements in 2018 from University administrators to OCR that they planned to integrate the OSMPR Maxient database and the OSC Maxient database, the programs remained separate as of October 2019. In addition, as of October 2019, the University had still not finalized a draft checklist for OSMPR's case closing process, including which case documents must be preserved.

---

<sup>47</sup> OCR found a similar lack of records in the files it reviewed for the 2013-14 academic year.

## CONCLUSION

Based on the aforementioned, OCR determined that the University violated the Title IX regulations at 34 C.F.R. §§ 106.8(b) and 106.31. Specifically, OCR determined:

- The University failed to respond promptly and equitably to complaints of sexual harassment, including student complaints received during the 2016-17 academic year and complaints initially reported to the Athletic Department during the 2015-16 and 2017-18 academic years.
- During the 2019-20 academic year, the University's Title IX policies and procedures failed to provide adequate notice to students and employees of the procedures, including where complaints may be filed; to ensure adequate, reliable, and impartial investigation of complaints; to provide procedures for complaints alleging discrimination based on sex carried out by employees and third parties; to provide designated and reasonably prompt timeframes for the major stages of the complaint process; and to provide notice of the outcome of complaints to the parties.
- During the 2016-17 academic year, the University failed to maintain records to enable OCR to ascertain whether the University is in compliance with Title IX.

OCR also is concerned that:

- From the 2017-18 through the 2019-20 academic years, the University's practice was to impose interim suspensions prior to providing respondents the opportunity to respond to allegations.
- From the 2017-18 through the 2018-19 academic years, the University excluded live testimony by non-party witnesses at hearings which may have precluded relevant information at hearings.
- From the 2017-18 through the 2019-20 academic years, the University's general practice was to issue Administrative Directives only to respondents.
- From the 2017-18 through the 2019-20 academic years, the University has failed to implement practices to ensure it maintains records to enable OCR to ascertain whether the University is in compliance with Title IX.

The University has executed a resolution agreement to resolve the above-referenced violations and concerns, which includes, *inter alia*, requirements that:

- The University will provide for certain individual remedies as appropriate for instances where it has not promptly and equitably processed complaints of sexual harassment.
- The University will report to OCR on its processing of sexual harassment complaints for the 2019-2020 and 2020-2021 academic years.

- The University will review and revise its Title IX Policies to ensure they provide for an appropriate response to complaints of sexual harassment, including the availability of interim measures to both parties and the opportunity to respond to allegations before being subject to an interim suspension.
- The University will revise its record-keeping practices to ensure that it is adequately and accurately documenting all complaints of sexual harassment and the University's response to such complaints.
- The University will provide additional relevant Title IX training to University staff, including Athletics staff.
- The University will provide notification to participants in its youth programs and their parents/guardians that Title IX prohibits sexual harassment against youth participants.

This letter should not be interpreted to address the University'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.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy. Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has participated in the complaint resolution process. If this occurs, the individual may file a complaint with OCR alleging such treatment.

Sincerely,

/s/

Carol Ashley  
Enforcement Director