

December 18, 2019

XXXXX  
XXXXX  
Emory University  
505 Kilgo Circle  
Atlanta, Georgia 30322

Emory University Compliance Review  
Re: Docket #04-14-6001

Dear XXXXX:

On December 6, 2013, the U.S. Department of Education (Department), Office for Civil Rights (OCR), notified Emory University (University) that OCR had selected the University for a compliance review. The compliance review examined the University's handling of complaints of sexual harassment, including sexual violence.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section §§ 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. The University receives Federal financial assistance from the Department and is therefore subject to Title IX.

During the course of the compliance review, OCR interviewed the Title IX Coordinator for Students<sup>1</sup> (Student Title IX Coordinator); a former Student Title IX Coordinator;<sup>2</sup> the University Title IX Coordinator; the Respect Program Coordinator; the Assistant Director for the University's Respect Program; the Director of Residence Life; the Director of Sorority and Fraternity Life; the Assistant Director of Fraternity and Sorority Life; the Assistant Vice President for Community and Campus Life; a Residence Hall Director; two Fraternity House Directors; two Residence Advisors; the Associate Vice President of Facilities Management; a University employee who was a Title IX Investigator, Deputy Title IX Coordinator, Sexual Misconduct Board Member, and an Assistant Dean of Student Affairs; a University employee who was a Title IX Investigator, an Assistant Director of Housing Operations, and a Sexual Misconduct Board Member; a University employee who was a Title IX Investigator, the Interim Director for the Center for Women, and the Interim Director for the Lesbian, Gay, Bisexual and Transgender Life Office; a University employee who was a Title IX Investigator and a Deputy Title IX Coordinator; a University employee who was a Sexual Misconduct Board Member, a Professor, and an Associate Vice-Provost; the Chief of

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<sup>1</sup> This witness assumed the Student Title IX Coordinator role in June 2015 and was in that position at the time of her interview in April 2016. As of June 28, 2019, she was serving as the interim University Title IX Coordinator.

<sup>2</sup> This witness served as Student Title IX Coordinator from April 2011 to June 2015.

Police of the Emory Police Department (EPD); a Police Captain; a Police Lieutenant; a Police Sergeant; two Police detectives; a Uniform Police Sergeant; and, a Uniform Police Officer.<sup>3</sup> OCR also conducted two on-site student focus groups and distributed to participating students a written questionnaire regarding sexual harassment.

OCR reviewed the sexual harassment and sexual misconduct policies and procedures that the University had in effect from December 2013 to the present. OCR also reviewed and analyzed files relating to the University's response to complaints of sexual misconduct for calendar years 2013 through 2015. Additionally, OCR reviewed the results of a climate survey conducted by the University in April 2015, as well as documents related to training of students and employees regarding sexual harassment and sexual misconduct and other initiatives undertaken by the University to reduce instances of sexual harassment or sexual misconduct.

Prior to the completion of OCR's investigation, the University requested a resolution agreement to resolve the compliance review (Agreement) under Section 302 of OCR's *Case Processing Manual* (CPM). Set forth below are a summary of the facts determined to date and the Agreement for this compliance review.

## **LEGAL STANDARDS**

The Title IX implementing regulation at 34 C.F.R. § 106.9(a) requires that each recipient notify applicants for admission and employment, students and parents of elementary and secondary school students and employees, among others, that it does not discriminate on the basis of sex in its education programs or activities and that it is required by Title IX not to discriminate in such a manner. The notice must state, at least, that the requirement not to discriminate in the education program or activity extends to employment therein and admission thereto unless Subpart C of the regulation does not apply and that inquiries concerning Title IX may be referred to the Title IX coordinator or to OCR.

The Title IX implementing regulation at 34 C.F.R. § 106.8(a) requires each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including any 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. A recipient is also required to notify all its students and employees of the name, office address, and telephone number of the employee(s) designated as the recipient's coordinator of its Title IX responsibilities.

The Title IX implementing regulation at 34 C.F.R. § 106.8(b) requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX. OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the school (i) provides notice of the school's grievance procedures, including how to file a complaint, to students, and employees; (ii) applies the grievance procedures

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<sup>3</sup> Unless stated otherwise, the titles or roles discussed in this paragraph refer to the role of the witness at the time of OCR's interview.

to complaints filed by students or on their behalf alleging sexual misconduct carried out by employees, other students, or third parties; (iii) ensures an adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; (iv) designates and follows a reasonably prompt time frame for major stages of the complaint process; (v) notifies the parties of the outcome of the complaint; and (vi) provides an assurance that the school will take steps to prevent recurrence of sexual misconduct and to remedy its discriminatory effects, as appropriate.

The Title IX implementing regulation at 34 C.F.R. § 106.31 states that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance. 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 exists, 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 are not intended to 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.

## **INVESTIGATION TO DATE**

The University is a private institution with its main campus in Atlanta, Georgia and an additional campus in Oxford, Georgia. It has four undergraduate schools or colleges and several graduate schools. According to the University's website, it had a total enrollment of 15,451 students as of fall 2018.<sup>4</sup>

### **Notice of Nondiscrimination**

OCR reviewed several nondiscrimination statements published by the University, but none of the statements reviewed by OCR fulfill the requirements of the Title IX implementing regulation at 34 C.F.R. § 106.9(a).

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<sup>4</sup> <http://www.emory.edu/home/about/factsfigures/index.html> (Last accessed by OCR on June 12, 2019.)

The University's Title IX Sexual Misconduct webpage, located through the home page for the Office of Equity and Inclusion,<sup>5</sup> includes a nondiscrimination statement that does not specifically state that the University is required by Title IX not to discriminate on the basis of sex. The statement states that inquiries concerning application of Title IX may be made to OCR "in addition to or instead of such other campus and non-campus resources." The statement also states that members of the University community should report harassment and discrimination to the University Title IX Coordinator, other listed Title IX Coordinators or mandatory reporters. The statement does not specifically state that questions regarding Title IX and its regulations may be referred to the University's Title IX Coordinator.

The University's Equal Opportunity and Discriminatory Harassment Policy (EO Policy), last revised on August 27, 2018 and posted on the University's website,<sup>6</sup> includes the "Emory University Nondiscrimination Statement" in the Overview section of the policy. While the statement provides notice that the University "cannot and will not tolerate discrimination against or harassment of any individual or group based upon . . . gender . . ." and other listed bases, it does not make an explicit reference to nondiscrimination within educational programs or activities or state that the University is required by Title IX not to discriminate on the basis of sex. The statement refers inquiries to the University's previous Title IX Coordinator, rather than the current Title IX Coordinator, and does not refer inquiries to OCR.

Finally, the University's Equity and Inclusion website includes three versions of nondiscrimination statements for inclusion in various publications.<sup>7</sup> The most comprehensive version of the statement states that the University "is dedicated to providing equal opportunities and equal access to all individuals regardless of . . . gender ...." and other listed bases. It states further that the University does not discriminate in admissions, educational programs, or employment on the basis of any listed factor. The statement does not reference Title IX or state that inquiries may be referred to the Title IX Coordinator or to OCR.

### **Title IX Coordinator(s)**

The University has a designated interim University Title IX Coordinator, who handles, among other responsibilities, sexual misconduct issues involving University employees, students acting as employees, and third parties. The University also has a Student Title IX Coordinator, who has responsibility over sexual misconduct issues involving students, and the University has 10 Deputy Title IX Coordinators.<sup>8</sup> The University has reported to OCR that the University and Student Title IX Coordinator positions are now full-time positions.<sup>9</sup>

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<sup>5</sup> <http://equityandinclusion.emory.edu/title-ix/index.html> (Last accessed by OCR June 13, 2019.)

<sup>6</sup> <http://policies.emory.edu/1.3> (Last accessed by OCR June 13, 2019.)

<sup>7</sup> <http://equityandinclusion.emory.edu/about/resources/eoaa.html> (Last accessed by OCR June 14, 2019.)

<sup>8</sup> The Deputy Title IX Coordinators are from the Emory College of Arts and Sciences, Oxford College, Goizueta Business School, Laney Graduate School, the School of Law, the School of Medicine, the Neil Hodgson Woodruff School of Nursing, the Rollins School of Public Health, and the Candler School of Theology.

<sup>9</sup> Between 2013 and 2015, the University Title IX Coordinator was also the Associate Vice Provost for Equity and Inclusion, and her responsibilities included overseeing "portfolios for Access Disability Services and Resources." The Student Title IX Coordinator during that period also served as the Special Assistant to the Senior Vice President and Dean of Campus Life.

The University's website lists all Title IX Coordinators, including deputies, by name and title, and provides their contact information.<sup>10</sup> As noted above, the University's EO Policy identifies the University's former Title IX Coordinator rather than the current Interim Title IX Coordinator.<sup>11</sup>

Between 2013 and 2015, the Student Title IX Coordinator worked with a pool of six investigators. The Title IX investigators interviewed by OCR were administrators who had other responsibilities and handled sexual misconduct investigations on a periodic basis. One investigator was the Director of the International and Joint Degree Programs in the Master of Business Administration Program Office at the University's Business School; she conducted three investigations in a one-year period. Another investigator was the Assistant Dean of Student Affairs, Laney Graduate School and also served as a faculty member, Deputy Title IX Coordinator, and Sexual Misconduct Board Member. During a period of approximately one year, she completed one investigation and had a second investigation underway. A third investigator was the Assistant Director of Housing Operations, who also served on the Sexual Misconduct Board. She investigated five cases over the course of two years. The University reports that the Office of Title IX now has a full time Title IX Investigator.

## **Grievance Procedures**

The University has two written policies that relate to sexual misconduct or sexual violence and the University's handling of reports of such misconduct and violence: the Sexual Misconduct Policy and the EO Policy, referenced above.

### ***Sexual Misconduct Policy***

The Sexual Misconduct Policy provides a reporting, investigation, hearing, and appeals process applicable to reports of sexual misconduct committed by students.<sup>12</sup> The policy states that allegations in which a student acting in an employment capacity is accused of sexual misconduct are primarily addressed through the EO Policy, but also states that such students may still be subject to the Sexual Misconduct Policy.<sup>13</sup> The Sexual Misconduct Policy provides that upon receipt of a report of sexual misconduct, the University Title IX Coordinator monitors responsive action and the steps taken, as appropriate, to remedy the effects of the sexual misconduct, including the commencement of disciplinary proceedings. Complaints may be filed with the University Title IX Coordinator or the Student Title IX Coordinator, and questions may be directed to a Deputy Title IX Coordinator. Students may also report sexual misconduct incidents to the EPD.

The policy further states that the Student Title IX Coordinator assigns a team of Title IX Investigators to investigate each complaint. The policy is silent as to whether notice goes to a respondent before an interview by Title IX investigators.<sup>14</sup> At the conclusion of the investigation,

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<sup>10</sup> <http://equityandinclusion.emory.edu/title-ix/coordinators.html> (Last accessed by OCR June 13, 2019.)

<sup>11</sup> <https://emory.ellucid.com/documents/view/16834/?security=d3b7518a869d72e6d5b0c965c987b3c9053079b3>  
(Last accessed by OCR June 13, 2019.)

<sup>12</sup> <https://emory.ellucid.com/documents/view/16836/?security=4f94881ac0ddcbae11c4a4115a74ae7de40de24b>  
(Last accessed by OCR June 14, 2019.)

<sup>13</sup> The policy also states that the EO Policy is used for "allegations of sexual misconduct not involving a student."

<sup>14</sup> Throughout this letter "respondent" is used to refer to the party accused in a complaint and "complainant" is used to refer to the party that has filed a complaint.

the investigators will submit a written “Report of Investigation” to the Student Title IX Coordinator detailing the information that was collected. After obtaining any other supplemental information deemed necessary, the Student Title IX Coordinator is to provide the parties with a copy of the draft report and provide them an opportunity to submit statements to respond to or clarify any information in the report. If the Student Title IX Coordinator determines that “there is sufficient information that a Respondent may have committed a violation (or violations) of the Sexual Misconduct Policy,” a “‘Notice of Charges of Policy Violation’ (‘Notice of Charges’)” is provided to both parties with a summary of information supporting the charges. If an investigation supports the issuance of charges and the respondent does not accept responsibility for the conduct alleged in the charges, then the Student Title IX Coordinator will appoint a hearing board of three individuals. Both parties have the right to be present at the hearing; present relevant evidence and witnesses; and, have an advisor<sup>15</sup> present to provide advice and support. The policy provides that both parties are provided simultaneous written notice of the outcome of the hearing, and disciplinary sanctions, including expulsion, suspension, and separation of the parties may be applied. The section on discipline states that some of the imposed sanctions may be “aimed at eliminating sexual misconduct, preventing its recurrence, and addressing its effects.” Under the policy, both parties also have the right to appeal the outcome of the decision by the hearing board.

During the course of OCR’s compliance review, the University has revised the Sexual Misconduct Policy, and it was last updated on March 28, 2019. The revisions have included, for example, adding the opportunity for the parties’ review of the draft investigative report and adding a notice that respondents may contact the Title IX Coordinator for referral to support services. The University’s website includes a link to the Sexual Misconduct Policy.<sup>16</sup>

### ***Equal Opportunity and Discriminatory Harassment Policy***

The EO Policy provides a reporting and investigation process for incidents of sexual misconduct committed by students acting as employees, as well as by University employees and third parties. In a subsection captioned “Complaints Against Students,” the policy states that complaints against students acting in the capacity of students will be handled under the University’s Conduct Code. In the next subsection, captioned “Sexual Harassment Complaints Against Students,” the policy states that the procedures in the Sexual Misconduct Policy apply to allegations of student-on-student sexual misconduct and other allegations in which a student is the respondent.

The EO Policy further states that members of the University community may file an internal complaint with the Office of Equity and Inclusion (OEI) or with their immediate supervisors, department heads, or Deans, who will then notify the OEI. The OEI will investigate the complaint. The policy is silent as to what, if any, notice goes to the parties before an investigation. During the investigation, both parties are given the opportunity to provide evidence and identify witnesses. At the conclusion of the investigation, the OEI determines whether the respondent violated the policy. Both parties are then notified of the determination regarding whether there was a policy violation. If OEI finds that there has been a violation of the policy, the appropriate Dean or division head may decide upon and impose a disciplinary sanction.

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<sup>15</sup> The advisor is not permitted to directly participate in the hearing.

<sup>16</sup> <http://policies.emory.edu/8.2> (Last accessed by OCR June 14, 2019.)

During the course of OCR’s compliance review, the University revised the EO Policy, which was last updated on August 27, 2018. Revisions to the policy have included additional possible sanctions for those who have been found to violate the policy.

### ***Information on University’s Equity and Inclusion Website***

The OEI website includes a tab for a “Discrimination and Harassment” page and a separate tab for a “Title IX Sexual Misconduct” page.<sup>17</sup> The Discrimination and Harassment page states that the OEI does not investigate complaints of harassment filed against students and those complaints are instead investigated by the University’s Office of Student Conduct.<sup>18</sup> The foregoing page does not state whether OEI investigates allegations against students acting in an employment capacity.

The Sexual Misconduct page within the OEI website states that the University’s Title IX process is invoked by reports to the University Title IX Coordinator, the Student Title IX Coordinator, a Deputy Title IX Coordinator or other mandatory reporters.<sup>19</sup> The page references, and provides a link to, the Sexual Misconduct Policy.

### ***Concerns Regarding Policies***

The University’s policies and information posted on the “Equity and Inclusion” page create ambiguity concerning the handling of allegations of sexual misconduct committed by students acting in an employment capacity. Although the Sexual Misconduct Policy and the EO Policy provide that the EO Policy is used to address such allegations, the Sexual Misconduct Policy states that it may still apply to students acting in an employment capacity. Also, in a paragraph concerning sexual harassment complaints against students, the EO Policy states that the procedures in the Sexual Misconduct Policy apply to allegations of student-on-student sexual misconduct, but also notes within that paragraph the exception related to student respondents acting in an employment capacity. Further, while the EO Policy provides that the OEI investigates complaints against students acting in an employment capacity, the Discrimination and Harassment page on the OEI website states that the OEI does not investigate complaints against students and fails to note the exception concerning students acting in an employment capacity.

In addition, a sentence on the Sexual Misconduct page within the OEI website potentially creates confusion as to where students should submit complaints of sexual misconduct committed by students who are not acting in an employment capacity. While the Sexual Misconduct Policy provides that complaints should be filed with a Title IX Coordinator or a Deputy Title IX Coordinator, the above-referenced webpage states that the Title IX process is invoked by complaints to any mandatory reporter as well as to the coordinators referenced in the Sexual Misconduct Policy.

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<sup>17</sup> <http://equityandinclusion.emory.edu/index.html> (Last accessed by OCR June 14, 2019.)

<sup>18</sup> <http://equityandinclusion.emory.edu/discrimination/index.html> (Last accessed by OCR June 14, 2019.)

<sup>19</sup> <http://equityandinclusion.emory.edu/title-ix/index.html> (Last accessed by OCR June 13, 2019.)

## **Reports of Sexual Harassment/Sexual Violence During Compliance Review Period**

OCR focused its analysis on the University’s documentation regarding all reports of sexual harassment, including sexual violence, made to the University during the three-year period from 2013 to 2015.<sup>20</sup> During the foregoing time frame, students were allowed to report incidents involving student respondents not acting as employees to the Student Title IX Coordinator, the University Title IX Coordinator, a Residence Life Assistant, the EPD, the University’s Respect Program,<sup>21</sup> Campus Life Professionals, and any other University faculty or staff member. Applicable procedures specified that complaints made to individuals outside of the Respect Program should be routed to the Student Title IX Coordinator.<sup>22</sup>

Numerous files received from the University appeared to be incomplete and many of them consisted of only a single-page EPD report and/or a two-page incident report form reflecting information reported to either the Title IX Coordinator or the Respect Program. The available documentation showed that some reports made to nonconfidential staff were referred to the Student Title IX Coordinator within one or two days after receipt by the staff member. However, other files reflected time frames of 15 days or longer for forwarding reports to staff with responsibility for addressing Title IX matters or did not reflect how or when reports were relayed from staff members to the Student Title IX Coordinator.

Documentation provided by the University reflected that for the three-year period, the University received approximately 191 reports of sexual harassment, including sexual assault. At least 104 of those reports alleged sexual assaults.<sup>23</sup> Sixty-two of the reports alleged that a University student engaged in conduct categorized by the University as rape, aggravated sodomy, aggravated sexual battery, nonconsensual sexual intercourse, oral penetration or sex, or a forcible sex offense (most egregious incidents). According to the records provided by the University, in 43 instances across the three years, the most egregious incidents allegedly occurred on campus or other University-controlled property, fraternity houses or sorority lodges; 22 allegedly occurred in fraternity houses and 1 allegedly occurred in a sorority lodge.<sup>24</sup>

### ***Investigations of Most Egregious Incidents***

As noted above, the University’s records pertaining to sexual harassment appeared incomplete. The files reflected that in 2013, there were 24 reports of conduct by students that fell within the

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<sup>20</sup> In response to a supplemental request for information concerning 2016 complaints, the University also provided information concerning reports made through March 14, 2016. Those complaints are not included in this discussion.

<sup>21</sup> The Respect Program is a University resource for survivors of sexual assault. Students may make confidential reports to the program.

<sup>22</sup> Hereinafter, the letter will use the phrase “nonconfidential staff” to refer to staff outside of the Respect Program.

<sup>23</sup> “Sexual assaults” refers to incidents categorized or described by the EPD or another University office as aggravated sodomy, aggravated sexual battery, attempted aggravated sodomy, forcible sex offense, nonconsensual sexual intercourse, oral penetration or sex, rape, sexual assault, or sexual battery.

<sup>24</sup> The University has reported initiatives designed to prevent sexual violence in the University community. These include a “Bystander Intervention Program,” which provides information to students on how to take an active bystander role in preventing incidents of sexual violence; revised and enhanced education programs for students and employees; incorporation of discussions of sexual misconduct prevention into its existing education programs, such as the “Creating Emory” orientation program for all new students; and, Title IX training for the University’s Greek Community.

most egregious incidents categories. Four of those 24 files reflected a Title IX investigation; all four resulted in at least one violation finding or acceptance of responsibility for a violation. For 12 of the 20 remaining cases, the files contained only documentation reflecting a report to the Respect Program.<sup>25</sup> Five files contained an anonymous police report and a Respect Program report. The remaining three files included a notation that the student subjected to the alleged sexual assault did not want to pursue further action.

The files reflected that in 2014, there were 30 reports of conduct by students that fell within the most egregious incidents categories. Five of those 30 files reflect a Title IX investigation; the investigations resulted in violation findings or acceptance of responsibility for sexual misconduct policy violations in three of the five cases. For 12 of the 25 remaining cases, the files contained only documentation reflecting a report by a student to the Respect Program.<sup>26</sup> Eight of the remaining files included only a police report; four included reports to the Title IX Coordinator<sup>27</sup> as well as an anonymous police report; and one included a report to the Respect Program and an EPD report for statistical purposes.

The files reflected that in 2015, there were seven reports of conduct by students that fell within the most egregious incidents categories. Five of those files reflect a Title IX investigation of a specific University student. In two of those five cases, the University did not bring charges following the investigation. In the other three cases, the respondents were charged with violations of the Sexual Misconduct Policy. Two of the charged respondents accepted responsibility for the charged conduct and a hearing panel found the third respondent not responsible for the charged conduct. In one of the two remaining cases the complainant, a student at another university, reported to the EPD that she was raped while at a fraternity house, but did not specify who raped her and said she did not want to pursue any action. The University investigated the fraternity and concluded that the fraternity's "alleged conduct" did not rise to the level of sexual misconduct. The seventh case file included only EPD and Respect Program reports.

There were documentation gaps in the files related to investigations of cases in the most egregious incidents categories. For example, in one file there was no documentation of the content of the initial notice to the respondent concerning the allegation by the complainant; an email from the complainant accused the respondent of violating a no contact order, but the file did not include a copy of the no contact order; the file reflects discussions of possible interim measures for the complainant but does not document whether the measures were provided; the file does not document notice of the hearing outcome<sup>28</sup> to the parties; and, the file documents a decision on appeal from the hearing decision, but does not indicate the basis of the appeal or the date of the appeal decision. Another file, for example, relates to the investigation of a complainant's allegations against one student (Respondent 1), but also includes a letter from the Student Title IX Coordinator to another student (Respondent 2) regarding Respondent 2's acceptance of responsibility for violating the sexual misconduct policy. The letter to Respondent 2 includes a

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<sup>25</sup> The University's "Division of Campus Life Title IX Review Checklist," for a case that was reported by a Divinity School student to a non-confidential resource, reflects that the student opted to not pursue an investigation and felt that faculty had been abusive toward her.

<sup>26</sup> In ten of these cases there was also a police report; however, the reporting party was the Assistant Director of the Respect Program. Some of the police reports stated that the reports were for statistical purposes only.

<sup>27</sup> These reports do not reflect the name of the individual reporting the incident to the Title IX Coordinator.

<sup>28</sup> Since there was an appeal, presumably there was some notice to at least one party.

no contact order precluding his contact with the complainant who alleged misconduct by Respondent 1; however, there is nothing else in the file related to allegations against Respondent 2.

The University advised OCR that it has been creating an electronic database, where it will maintain records of its interactions with individuals who report sexual harassment and sexual violence, as well as records pertaining to resulting investigations and hearings.

In light of gaps in the 2013 through 2015 files, OCR’s ability to draw conclusions about the University’s responses was constrained. Nonetheless, OCR did identify concerns after reviewing the files that resulted in investigations of cases within the most egregious incidents categories. The concerns included a lack of consistency in providing both parties notice of the outcome of the Title IX process; the apparent issuance of no-contact orders only to respondents prior to a finding of responsibility without a case-specific assessment; a failure to provide respondents adequate information in the initial notice regarding the complainant’s allegations; and, delays in various steps of the Title IX process.

For example, in one case, a female student reported that she was raped by two male students at a fraternity house. The University provided both respondents notice that there was a pending allegation. In both instances, the notice stated generally that the Campus Life Office had received a report that the respondent may have violated the Sexual Misconduct Policy but provided no information about the date or nature of the alleged incident. The notice letters included a no-contact order; but the documents provided by the University did not include a no-contact order directed to the complainant, and did not indicate why a unilateral no-contact order was issued. The notice letter to the respondents also barred their access to campus, including their “assigned rooms,” for any purpose other than attending class and attending meetings related to the conduct process. The University assigned staff to assist the respondents with locating off campus housing. After the University conducted a Title IX investigation, both accused students were charged with violating the Sexual Misconduct Policy. One respondent accepted responsibility for “sexual exploitation” for taking pictures of the alleged incident and was placed on disciplinary probation. In addition, he was placed on housing probation, was restricted from living in fraternity housing, and was required to continue to have no contact with the complainant throughout the complainant’s enrollment at the University. The second respondent proceeded to a hearing and was found not responsible for the charged violation.

Another example involves a case in which a female student alleged that she was raped by a male student while waiting for a shuttle bus on the Atlanta campus. The available records reflect that 20 days elapsed between the date that a Deputy Title IX Coordinator received the report and the date that the Deputy Title IX Coordinator relayed the report to the Student Title IX Coordinator. Subsequently, an Assistant Dean provided the respondent notice that there had been a report of an interaction between the complainant and the respondent; the correspondence to the respondent did not indicate that the interaction at issue was of a sexual nature. The letter to the respondent included a no-contact order, and stated that a no-contact directive had been issued to the complainant; however, the file did not include a copy of a no-contact order directed to the complainant. Six days after the Assistant Dean sent the respondent a letter, the Student Title IX Coordinator provided the respondent notice that the Student Title IX Coordinator had received

allegations that the respondent had violated the Sexual Misconduct Policy; the correspondence included no further information about the alleged incident. After the matter was investigated, the University charged the respondent with violating the Sexual Misconduct Policy by engaging in nonconsensual sexual intercourse; the notice did not discuss the possible sanctions for the offense. The accused student accepted responsibility and was expelled. The file reflects that the University provided the respondent notice of the outcome; however, the file does not show that the complainant was provided notice of the outcome.

A final example concerns a complaint of an alleged incident occurring in a residence hall. The complainant alleged that, after she invited a male student to her residence hall room, he engaged in sex with her without her consent. The file does not include written notice of the allegations to the respondent prior to his interview with the Title IX investigator. Based on evidence obtained during the investigation, a Deputy Title IX Coordinator declined to charge the respondent with violation of the Sexual Misconduct Policy because there was insufficient evidence of a violation. The investigation was completed within about six weeks after the report of the alleged sexual misconduct. However, the notice of outcome was issued nearly four months after the investigators presented their summary to the Deputy Title IX Coordinator.

### **RESOLUTION AGREEMENT**

As noted above, prior to OCR's completion of the investigation, the University expressed an interest in resolving this compliance review under Section 302 of the CPM, and OCR determined that it would be appropriate to resolve this allegation under Section 302. The University signed the enclosed Agreement that, when fully implemented, will resolve the compliance review. The Agreement requires the University to revise the notice of nondiscrimination on its website and in its print materials disseminated to faculty, staff and students to add a statement that it is required by Title IX to not discriminate on the basis of sex in its educational programs and activities, and that inquiries concerning the application of Title IX may be made to the University's Title IX Coordinator or to OCR's Assistant Secretary; ensure that it continues to notify employees and students of the current name and contact information for its Title IX Coordinators; post notice of how the Sexual Misconduct Policy, Equal Opportunity and Discriminatory Harassment Policy and other related policies or procedures interact and apply; and maintain a procedure for documenting each report or complaint of discrimination on the basis of sex and the University's responsive actions. In addition, the University agreed that the University Title IX Coordinator will review responses to complaints submitted to the University from August 1, 2018 through May 31, 2019 for compliance with Title IX under the University's revised procedures and provide to OCR specific files related to the Title IX Coordinator's review of responses pursuant to the Agreement.

### **CONCLUSION**

This concludes OCR's compliance review of the University. 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 duly authorized OCR officials and made available to the public. 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.

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

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive such a request, we 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.

Sincerely,

Melanie Velez  
Regional Director