



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

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July 16, 2018

Dr. Teresa L. Amott, President
Knox College
Office of the President
2 East South Street
Galesburg, IL 61401-4999

VIA EMAIL AT: teresa.amott@knox.edu

Re: OCR Dockets #05-14-2047
XX
XX

Dear Dr. Amott:

This is to notify you of the disposition of the above-referenced complaints filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) against Knox College (College) alleging discrimination on the basis of sex. Specifically,

1. Complaint #05-14-2047 alleged that the College discriminated against a female student (Student A) in XX when the College failed to afford her a prompt and equitable grievance process in response to her complaint of a sexual assault by another College student (Student B).¹
2. XXX
3. XXX

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in any educational program or activity receiving Federal financial assistance. As a recipient of Federal financial assistance from the Department, the College is subject to the requirements of Title IX and its implementing regulation.

¹ In investigating the College's response to complaints of peer sexual misconduct, OCR specifically reviewed the files of Students C, D, and E, each of whom had also filed OCR complaints that OCR consolidated into Docket #05-14-2047. Additional complaints filed against the College and assigned a separate docket number will be addressed under those separate docket numbers.

During its investigation, OCR reviewed the applicable College's Title IX policies and grievance procedures,² information provided by the College and students pertaining to complaints filed by Students A, XX, and the Title IX policies and grievance procedures training it has provided to the College community students. OCR also interviewed students and College administrators and staff.

Prior to the conclusion of OCR's investigation, the College expressed an interest in voluntarily resolving the allegations regarding the adequacy of the College's response to the complaints made by Students A, XXX. Discussions between OCR and the College resulted in the College's execution of the enclosed resolution agreement (Resolution Agreement) on June 29, 2018, which, when fully implemented, will resolve the complaint allegations.

Applicable Legal Standards

The Title IX implementing regulation, at 34 C.F.R. § 106.31(a), 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 educational program or activity operated by a recipient of Federal financial assistance.

Hostile Environment Created by Sexual Harassment

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature, regardless of the sex of the student. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is so severe, persistent, or pervasive that it denies or limits a student's ability to participate in or benefit from the recipient's program or activities.

OCR considers a variety of related factors to determine if a sexually hostile environment has been created and considers the conduct in question from both an objective and a subjective perspective. Factors examined include the degree to which the misconduct 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 of the alleged harasser and the subject of the harassment; the size of the school, the location of the incidents, and the context in which they occurred; and other incidents at the school. The more severe the conduct, the less the need to show a repetitive series of incidents.

Nature of the Recipient's Responsibility to Prevent and Address Sexual Harassment

The Title IX regulations establish the following procedural requirements that are important for the prevention or correction of sex discrimination, including sexual harassment.

² During the course of its investigation, OCR identified certain concerns regarding the College's Title IX policies and grievance procedures that were in effect at the time these students filed their complaints, which the College recognized and took affirmative steps to address and resolve.

- *Publish Notice of Non-discrimination*

The regulation implementing Title IX, at 34 C.F.R. § 106.9, requires a recipient to implement specific and continuing steps to notify all applicants for admission and employment, students and parents, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in its educational programs or activities, and that it is required by Title IX not to discriminate in such a manner. The notice must also state that questions regarding Title IX may be referred to the recipient's Title IX coordinator or to OCR.

- *Designate Title IX Coordinator*

The Title IX regulation, at 34 C.F.R. § 106.8(a), requires that a recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under that law, including any investigation of any complaint communicated to the recipient alleging noncompliance with Title IX or its implementing regulation. The Title IX Coordinator must have knowledge of the requirements of Title IX and of the recipient's own policies and procedures on sex discrimination. If a recipient designates more than one Title IX Coordinator or has more than one employee responsible for Title IX matters, then one coordinator should be designated as having ultimate coordination and oversight responsibility of all complaints to ensure consistent practices and standards in handling complaints. Further, the recipient is required by the Title IX implementing regulation, at 34 C.F.R. § 106.8(a), to notify all students and employees of the name (or title), office address, email address, and telephone number of the designated employee(s).

- *Respond When Knows or Should Have Known*

A recipient has notice of harassment if a responsible employee actually knew or, in the exercise of reasonable care, should have known about the harassment. A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility. Accordingly, schools need to ensure that employees are trained so that those with authority to address harassment know how to respond appropriately, and other responsible employees know that they are obligated to report harassment to appropriate school officials. Training for employees should include practical information about how to identify harassment and, as applicable, the person to whom it should be reported.

Once a recipient knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If an investigation or other inquiry reveals that sexual harassment created a hostile environment, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment if one has been created, prevent the harassment from recurring and, as appropriate, remedy its effects. These duties are a recipient's responsibility regardless of

whether or not the student who was harassed makes a complaint or otherwise asked the recipient to take action. If, upon notice, a recipient fails to take prompt and effective corrective action, the recipient's own failure has permitted the student to be subjected to a hostile environment. If so, the recipient will be required to take corrective actions to stop the harassment, prevent its recurrence, and remedy the effects on the student that could reasonably have been prevented had the recipient responded promptly and effectively.

In situations where reported sexual harassment may constitute a criminal act, a recipient should notify a complainant³ of the right to file a criminal complaint with local law enforcement and should not dissuade a complainant from doing so either during or after the recipient's internal Title IX investigation. Additionally, recipients should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the complainant and allow continued access to the recipient's programs and activities. A law enforcement investigation does not relieve the recipient of its independent Title IX obligation to investigate the conduct and or otherwise respond to the conduct.

- *Interim Measures*

It may be appropriate for a recipient to take interim measures during the investigation of a complaint. In fairly assessing the need for a party to receive interim measures, a recipient may not rely on fixed rules or operating assumptions that favor one party over another, nor may a recipient make such measures available only to one party. 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. The Title IX Coordinator should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' evolving needs.

- *Immediate and Appropriate Action to Address Retaliation*

When a recipient knows or reasonably should know of possible retaliation, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires recipients to protect against retaliation; at a minimum, this includes making sure that individuals know how to report retaliation, making follow-up inquiries to see if any retaliation or new incidents of harassment have occurred, and responding promptly and appropriately to address any new or continuing concerns.

- *Respond to Requests for Confidentiality*

If the complainant requests that his or her name not be disclosed or that the recipient not investigate or seek action against the respondent, the recipient will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the complainant.

³ The term "complainant" as used throughout this letter refers to an individual who is the subject of alleged sexual violence or other types of sexual harassment.

- *Adopt, Publish and Implement Grievance Procedures*

The Title IX 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 complaints alleging any action that would be prohibited by Title IX, including sex discrimination, sexual violence and other types of sexual harassment. The procedures for addressing and resolving complaints of sex discrimination should be written in language that is easily understood, should be easily located, and should be widely distributed.

OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the recipient:

1. provides notice to students and employees of the procedures, including where complaints may be filed;
2. applies the procedures to complaints alleging discrimination carried out by other students, employees or third parties;
3. ensures an adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence;
4. designates and follows a reasonably prompt timeframe for the major stages of the complaint process;
5. notifies the parties of the outcome of the complaint; and
6. provides assurance that the recipient will take steps to prevent recurrence of any sex discrimination found to have occurred and to remedy its discriminatory effects, as appropriate.

There is no fixed time frame under which a recipient must complete a Title IX investigation. OCR will evaluate a school's good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.

An equitable investigation of a Title IX complaint requires a trained investigator to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence—including both inculpatory and exculpatory evidence—and take into account the unique and complex circumstances of each case. In addition, a recipient should ensure that all designated employees have adequate training as to what conduct constitutes sex discrimination and are able to explain how the grievance procedure operates.

Once it decides to open an investigation that may lead to disciplinary action against the responding party, a recipient should provide written notice to the responding party of the allegations constituting a potential violation of the school's Title IX policy, including sufficient details and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved, the specific section of the code of conduct allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident. Each party should receive written notice in advance of any interview or hearing with sufficient time to prepare for meaningful participation. The

investigation should result in a written report summarizing the relevant exculpatory and inculpatory evidence. The investigator(s), or separate decision-maker(s), with or without a hearing, must make findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of the school’s nondiscrimination policy.

If all parties voluntarily agree to participate in an informal resolution that does not involve a full investigation and adjudication after receiving full disclosure of the allegations and their options for formal resolution and if a recipient determines that the particular complaint is appropriate for such a process, the recipient may facilitate an informal resolution, including mediation, to assist the parties in reaching a voluntary resolution.

Recipients are cautioned to avoid conflicts of interest and biases in the adjudicatory process and to prevent institutional interests from interfering with the impartiality of the adjudication. Decision-making techniques or approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the adjudication proceeds objectively and impartially.

If a recipient chooses to allow appeals from its decision regarding responsibility and/or disciplinary sanctions, the recipient may choose to allow appeals (i) solely by the responding party; or (ii) by both parties, in which case any appeal procedures must be equally available to both parties.

The College’s Current Policies and Procedures

The College’s current Title IX policies and procedures, which went into effect on October 1, 2016,⁴ make clear that discrimination based on sex, including sexual harassment and assault is prohibited. The procedures utilize an investigation model where a trained investigator gathers relevant evidence from both parties and witnesses, and drafts a final Title IX investigative report which includes a determination, based on the preponderance of the evidence, as to whether the respondent student is responsible for the alleged violation of the College’s policy.

Notice of Nondiscrimination⁵

The College’s Notice of Non-Discrimination⁶ (Notice), which is widely disseminated, states in pertinent part “[the College] does not discriminate on the basis of sex...in admission, financial aid, employment, athletics, or any other aspect of its educational programs or activities,” and that the College is prohibited by Title IX from discriminating on the basis of sex. It refers inquiries to the Title IX Coordinator or OCR, and provides appropriate contact information for both (address telephone number and email address).

Title IX Coordinator

⁴ <https://www.knox.edu/Documents/TitleIX/Sex-Discrimination-Policy.pdf> and <https://www.knox.edu/Documents/TitleIX/Investigation-Resolution-Procedures.pdf>

⁵ This Notice is available at <https://www.knox.edu/notice-of-non-discrimination>.

⁶ <https://www.knox.edu/notice-of-non-discrimination>

The Title IX Coordinator⁷ is responsible for implementing and monitoring the College's compliance with Title IX. This includes coordination of training, education, communications, and administration of the complaint and grievance procedures for the handling of suspected or alleged violations of the College's Policy Against Sex Discrimination, Sexual Misconduct, and Interpersonal Violence (Policy).⁸

The Deputy Title IX Coordinator is "responsible for implementing and monitoring Title IX compliance at the College and for notifying the Title IX Coordinator of any alleged or suspected violations of this Policy and the resolution of such alleged or suspected violations."

Title IX Policy and Procedures

The Policy, which applies to students, faculty, staff, and third parties, states that the College and Title IX prohibit discrimination on the basis of sex in the College's educational programs and activities. The Policy prohibits sexual harassment and specifically prohibits the creation of a hostile environment on the basis of sex. It defines sexual harassment as conduct that is "sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit a person's ability to participate in or benefit from the College's programs, services, opportunities or activities."

The Policy's investigation and resolution procedures (Procedures) state the College will provide "a prompt, thorough, impartial and fair investigation" into the allegations of sex discrimination, sexual misconduct and interpersonal violence.⁹ The Policy provides definitions of key terms, such as sexual harassment, sexual assault, consent, and incapacitation, including examples. The Policy also states that the College prohibits retaliation.

The College will issue sanctions (*e.g.*, up to and including termination or dismissal or other separation from the College) and remedial measures as warranted. The Procedures also make clear that the College will eliminate any hostile environment, take steps to assure it does not recur and correct any discriminatory effects on the complainant.

Additionally, the Procedures explain that the College will not share information beyond those with a need to know for investigation and reporting purposes. The Procedures list the College's confidential advisers (*e.g.*, mental health counselors) and discusses the factors considered in cases in which a complainant reports an incident of sexual misconduct to a non-confidential source, but requests confidentiality or requests that no investigation into the incident be conducted.

The Procedures give detailed instructions for filing a Title IX complaint, including how potential conflicts of interest will be handled,¹⁰ and makes clear that students reporting sexual misconduct

⁷ The College refers to this individual in its procedures as the "Lead Title IX Coordinator." At the time Student A filed her complaint the College's former Title IX Coordinator was not the individual the College designated to oversee the College's grievance procedures; such complaints were handled by a Grievance Coordinator.

⁸ <https://www.knox.edu/Documents/TitleIX/Sex-Discrimination-Policy.pdf>

⁹ <https://www.knox.edu/Documents/TitleIX/Investigation-Resolution-Procedures.pdf>

¹⁰ The Procedures require any individual participating in the investigation, sanctioning or appeal to disclose any potential or actual conflict of interest. The Reporting and Responding Party will both receive notice of the

will receive assistance in making a criminal complaint in addition to pursuing a case through the College, if desired. The Procedures describe a range of available individualized interim measures, available for both parties, including advocacy services, no-contact orders, academic assistance, residential assistance, counseling services, and assistance obtaining protective orders.

Sexual Misconduct Complaint Process

Timeframes

The Procedures include a description of the College's sexual misconduct complaint process. The Procedures state the College will complete investigations into sexual misconduct reports within 60 calendar days (excluding appeals), and that in cases where more time is needed, the parties will be notified contemporaneously of the extension and its reason(s). The procedures also designate timeframes for the major stages of the investigation and student conduct process. The Procedures make clear that the College will notify the parties at regular intervals of the status of the investigation.

Informal Resolution

The Procedures provide for an informal resolution process where both parties agree to participate. Specifically, the Procedures state:

Where appropriate, the College will work to informally resolve allegations of sexual misconduct or interpersonal violence by taking immediate and corrective action to stop the conduct, address its effects, and prevent recurrence without a formal investigation and determination...

Informal resolution may also include a voluntary resolution, which produces an agreement designed to cease the conduct at issue and remedy its effects on the safety and welfare of the Reporting Party and the campus community, while respecting the preferences of the Reporting Party.

The Procedures further state that parties to the informal process will not be required to interact with each other personally and states that the Title IX Coordinator, in conjunction with one or more College representatives will coordinate and facilitate the informal resolution process between the parties. Either party or the College can terminate the informal resolution process at any time. Upon termination of the informal process, the formal resolution process commences.

Formal Resolution

individual(s) with authority to make a finding or impose a sanction before those individuals initiate contact with either party, and if a party believes that an individual has a conflict of interest, the party can submit a request to replace that person to Lead Title IX Coordinator. If the Lead Title IX Coordinator is believed to have a conflict, the party may submit such request to the Vice President for Student Development (when requesting party is a student) or the Associate Vice President of Human Resources (when requesting party is an employee).

The formal resolution provides for a “prompt, thorough, impartial and fair” investigation of the complaint allegations. According to the Procedures, the Title IX Coordinator will appoint one or more investigators (internal or external) to investigate the complaint.¹¹ In describing the investigator’s duties, the Procedures state:

The investigator(s) will undertake an Investigation for the purposes of adjudicating whether the Responding Party is responsible for the alleged violation(s) of the Policy. As part of the Investigation and Resolution, the Investigator(s) will review any information gathered during the Initial Assessment and will seek to interview both the Reporting and Responding Party, as well as identify and seek to interview with any other witnesses who can provide germane information.

In addition to interviews, both parties may provide written statements, identify and/or present statements from fact witnesses or submit any other relevant evidence. Both parties may have advisors or support persons present with them during investigation interviews and meetings. Additionally, the Procedures require both parties be provided with “timely and equal access to information.” Pursuant to the Procedures, in a case where the Responding Party raises consent as a defense, “any prior sexual or other relationship between the parties may be deemed relevant to the investigation but not necessarily determinative.”

At the conclusion of the investigation, the investigator(s) will produce a Title IX Investigative Report (Investigative Report), which, according to the Procedures, “summarizes and analyzes the allegations, the relevant facts, and any supporting documentation (which may include statements by the parties, third- party witnesses, or others with information and any physical, written, or electronic or other evidence).”

The Investigative Report is to be provided to the Title IX Coordinator and shared with the parties (to the extent permitted by law). The Procedures state that each party may provide the Title IX Coordinator their comments on the Investigative Report within five (5) calendar days of receipt. The Investigator will review the parties’ submissions and revise the Investigative Report as appropriate. The investigator will then make a finding, based on the preponderance of the evidence, as to whether the Responding Party violated the Policy.¹²

The Procedures state that if there is a finding of non-responsibility, either party¹³ may appeal such a finding within seven calendar days of receiving the final Investigative Report.

According to the Procedures, if the investigator finds the Responding Party responsible for a violation of the Policy, the final Investigative Report will be forwarded to the appropriate

¹¹ According to the Procedures, “all investigator(s) shall receive 8 to 10 hours of annual training regarding the investigation of, and other issues related to, sexual misconduct and interpersonal violence.”

¹² Although the Procedures do not expressly state that the investigator or Title IX Coordinator will make a determination regarding whether the complainant was in fact subjected to a sexually hostile environment, OCR notes that the Title IX Policy prohibits conduct that creates a hostile environment.

¹³ OCR notes that a responding party may appeal a finding if he or she disagrees with any of the findings of fact, imposition of the no-contact order, etc.

College official for determination of sanctions.¹⁴ Additionally, both parties are given seven (7) calendar days to submit written comments and statements for the appropriate official to consider in determining sanctions. An appeal in the case of a violation finding is not permitted until after the sanctions determination.

As set forth in the Procedures, upon reviewing the final Title IX Investigative Report and any comments or statements submitted by the parties, the sanctioning official will determine what, if any, sanctions will be imposed and will notify both parties, contemporaneously of any sanctions or other corrective actions in writing, as well as the rationale for the sanctions or other corrective actions (to the extent permitted by law). Additionally, the parties will be advised of their ability to appeal the sanctions decision.

Appeals Procedures

Appeal of Finding of Non-Responsibility

Either party may appeal the finding within seven (7) calendar days of receipt of the final Investigative Report. The Procedures set forth two permitted grounds for an appeal: (i) new evidence or information sufficient to alter a decision; and (ii) allegations that the investigator deviated from the Investigation and Resolution process in a way that substantially altered the outcome of the case. When a sanction is issued, the sanction may be appealed if it is disproportionate to the violation.

Additionally, the responding party may request to have a sanction suspended pending the outcome of the appeal. The Procedures state, “It is within the sole discretion of the Title IX Coordinator to grant a suspension of the sanction pending an appeal determination and to invoke necessary interim remedies and measures during this period.”

Appeal Process

The Procedures describe the appeal process as containing two steps. First, within seven (7) calendar days of receiving an appeal (of either finding or sanction), the Title IX Coordinator will determine whether the appeal satisfies the grounds for appeal and will notify the parties contemporaneously in writing of the decision regarding this issue.

If the appeal is allowed to proceed, the party that did not initiate the appeal will then have seven (7) calendar days to submit a written response to the appeal. Appeals are reviewed by a three-person panel of appeals officials trained in Title IX matters and appointed by the Title IX Coordinator. The Appeal Panel may uphold the original finding, remand the case to the original Investigator(s) for reconsideration, convene an entirely new Investigation, or recommend reconsideration of the sanction or other corrective actions.

¹⁴ The Dean of Students is the decision maker for complaints against students; the Dean of the College is the decision maker for complaints against faculty; and the Associate Vice President of Human Resources is the decision maker for complaints against staff.

Absent extenuating circumstances, the Appeal Panel will communicate its decision to the Title IX Coordinator within 14 days of receiving the appeal. Within seven (7) days of the completion of the appeal, the Title IX Coordinator will notify the parties contemporaneously of the outcome of the appeal and the rationale for the decision. The Appeal Panel's decisions are considered final.

Training and Educational Programming on the College's Title IX Policy and Procedures

The College provides annual training to officials responsible for investigating and adjudicating misconduct under the Title IX Policy. The training covers topics including, the Title IX Policy; how to conduct an investigation; the College's role and other roles (*i.e.*, law enforcement, medical providers, etc.) involved in the process to ensure a coordinated response to a reported incident of sexual violence; examples of conduct that violate the College's Title IX Policy; the College's definition of consent and the role drugs and alcohol use can have on consent; cultural sensitivity and compassionate communication skills.

The College also provides primary prevention and awareness programs for all incoming students and new employees, and ongoing prevention and awareness campaigns for all students and employees. Training topics include the College's Title IX policies that prohibit sexual misconduct and retaliation; the College's Title IX grievance procedures and discipline procedures related to alleged violations of the policy; available survivor services; the possible sanctions and protective measures that the College may impose following a final determination of a violation of the Title IX policy; and information about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for student and employee complainants and respondents both on-campus and in the community, as well as information about options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the complainant.

The College's System to Track Title IX Complaints

In Spring 2016, the College began using a third party electronic centralized reporting and recordkeeping software system to monitor its handling of the Title IX complaints it receives. The College reported to OCR that, at the time a matter of concern under Title IX is raised through any means, the relevant known details with regard to each matter are recorded in a case list spreadsheet, including the name of the person making the report, the date of the report, the names of the parties, the date and location of the incident, and any/all known behaviors. The system records the immediate offer of appropriate interim measures to the parties to address any immediate concerns about the physical safety and emotional well-being of the parties, and to protect the safety of the parties and the campus community. The offered interim measures are communicated to the appropriate College personnel, including documentation through the software program. College personnel also document through this software program dates of initial assessment and notification to the parties of investigation and deadlines for each step in the resolution process, such as a start and expected end date for the investigative period and each subsequent step of the College's procedures.

Throughout the investigative period, updates are provided (and recorded) by the investigator directly to the parties on a periodic basis, often according to a schedule arranged in cooperation with the parties. Parties are also encouraged to contact the Title IX Coordinator at any time with questions or concerns, and beyond the investigation, updates are provided to the parties in accordance with each approaching next step in the procedures, as well as wellbeing checks that are conducted regularly through electronic and in-person exchanges. In addition to these communications with the parties, if a question or concern is raised by one party, the response provided to them is shared with the other party (or parties) to ensure equity. Each communication to the parties with a relevant deadline or date is recorded, and if circumstances are warranted and/or more time is needed, parties are encouraged to make these requests in writing, including their rationale for the request, which is also documented in the system. Finally, the College reported that a paper case file for each matter, containing all relevant documents and communications, is maintained securely in the Title IX Coordinator's office; at the close of any matter, all relevant dates as well the outcome, are added to the case list spreadsheet in the software program.

OCR observed during its investigation that implementation of the software system enhanced the College's ability to investigate and resolve Title IX complaints consistently within the timeframes described in its published procedures and that such complaints were more promptly resolved.

Facts

Complaint #05-14-2047:

Student A

On XX, Student A reported to the College's Campus Safety Office that Student B had sexually assaulted her on campus on XX. In response, the College's Campus Safety personnel interviewed a total of XX witnesses, including Student A and Student B and all witnesses identified by Student A and Student B, and considered other evidence submitted by both parties. On XX, the College notified both parties that Student B had not violated the College's policy against sexual assault, and advised each party of their right to appeal. On XX, Student A appealed this determination and further proceedings ensued pursuant to the College's procedures in effect at that time, including a second appeal by Student A to the President. On XX, the President denied Student A's appeal and ultimately upheld the College's determination that, based on the preponderance of the evidence standard, Student B did not violate the College's policy against sexual assault.

During Student A's formal grievance process and appeals, the College offered her counseling and, at Student A's request, the College XXX, reviewed the class schedules for both students to ensure there were not in any of the same classes, and XX.

Student C

In XX, Student C reported to the Director of Campus Safety (Director) and the Campus Safety Officer/Title IX Investigator (Investigator) that she was “harassed and pressured” by XX students to XX. Student C said that when the College did not follow up with her regarding this report to the Director, so she filed a second report with the Director in XX. In her XX report, in addition to reporting that she had been XX, she told the Director that she was worried she had been sexually assaulted by XX student, but she XX. The Director denied to OCR that Student C reported she was sexually assaulted, asserting that she discussed relationship concerns with him. The Director’s contemporaneous notes do not reflect that Student C reported a sexual assault.

In XX, Student C spoke with the former Title IX Coordinator. The former Title IX Coordinator acknowledged to OCR that during this conversation, Student C reported being upset about how the College processed her “complaint” of sexual assault she made to the Director and said that she wished XX and did so. Student C did not provide details to the College or to OCR, regarding the circumstances of this alleged sexual assault, including the identity of the assailant.

Students D and E

On XX, Student D reported to the College’s Dean of Students that Student F had sexually assaulted her in XX, and Student E reported to the Dean that Student F had sexually assaulted her in XX. Both students told OCR that they elected to report the assault to the Dean of Students because they believed the former Title IX Coordinator had a conflict of interest in addressing their complaints. The College agreed to the students’ request not to involve the former Title IX Coordinator in the investigation of these complaints. The College offered counseling services to the students and issued mutual no-contact orders to the parties. The College investigated both complaints, which included interviews of Students D, E, and F, and other students with potential knowledge of the allegations. Based on documentation submitted by the College, during Student F’s interview, he admitted to engaging in sexual conduct that could have been construed as nonconsensual by Student D and by Student E.¹⁵

According to Student D, given the lack of consistent information, guidance, and her perception that the College’s process was not fair, Student D chose to withdraw all of her Title IX allegations from the formal grievance process in XX. Student D XX. While Student E participated in the grievance process in effect at the time, she XX before her complaint was resolved.

Documentation submitted by the College indicates that, after it appointed a new Title IX Coordinator in XX, the College sent written correspondence dated XX, to Students E and F indicating that the grievance proceedings concerning Student E’s allegations could proceed and asked each student to contact the new Title IX Coordinator to resume the grievance proceeding. Student D was also notified on XX, that the grievance process could proceed as to her allegations, but she did not respond. On XX, Student F responded indicating he had concerns about proceeding XX. On XX, Student E indicated that she did not want to proceed in view of her pending OCR complaint, and participating XX.

¹⁵ XXXX.

On XX, the College sent a letter to Students D, E and F notifying each student that based on its investigation up to that point in time it had determined that the College had “good cause [to] resolve” the pending allegations against Student F. Specifically, the College notified the students that Student F was to have no contact with Students D and E and that Student F is prohibited from being present on campus or attending any College-sponsored events unless he obtains the prior express permission from the Dean of Students. The letter also stated that Student F XX. In the letter to Student F, the College documented the procedural steps it took in response to the complaints filed against him prior to making this decision. The College also advised the students of their right to appeal the decision within 10 days. Students D, E and F did not appeal the decision.

XXXXX

Complaint Resolution

Although OCR had some concerns about the delays in processing some of the afore-mentioned students’ complaints, prior to the conclusion of OCR’s investigation, the College expressed an interest in voluntarily resolving the allegations made by Students A, C, D, E, XX. OCR notes that the investigation thus far revealed that in 2016, the College initiated and currently uses a centralized and electronic tracking system designed to ensure it is better able to monitor and timely address Title IX reports its receives. OCR determined that it is appropriate to resolve the complaints with an agreement.

On June 29, 2018, the College voluntarily signed the enclosed Resolution Agreement that, when fully implemented, will address all of the allegations in these complaints.

The Agreement requires the College to take the following actions:

- send letters via certified mail to Students A, B, C, D, E, F, XX, explaining the ways in which the grievance process has been revised to meet the Title IX requirements for complainants and respondents and offer each student an opportunity to share concerns regarding their experiences with the College’s handling of the earlier reports;
- commit to continuing its education, prevention, and training efforts of College personnel and students, and submit a written report to OCR at the conclusion of the 2018-2019 academic year describing the various training completed.

Based on the commitments the College has made in the Agreement described above, OCR has determined that it is appropriate to close the investigative phase of these complaints. OCR will monitor the implementation of this Agreement until the College has fulfilled the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

This letter sets forth OCR’s determination in individual OCR complaints. It 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.

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

Additionally, 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, 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.

The complainant may file a private suit in federal court whether or not OCR finds a violation.

We wish to thank you, your staff, and particularly Mr. Scott L. Warner, Counsel, for the courtesy and cooperation extended to OCR during this investigation. If you have any questions, please contact Ms. Tamara Perry, Attorney, at (312) 730-1510 or by email at Tamara.Perry@ed.gov.

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

Enclosure

cc: Mr. Scott L. Warner at Scott.Warner@huschblackwell.com